

## LEGAL ISSUES IN DOMESTIC VIOLENCE

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### SOME BASIC INFORMATION ABOUT DOMESTIC VIOLENCE PROTECTIVE ORDERS<sup>1</sup>

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G.S. Ch. 50B creates a special kind of civil action in which the relief sought is protection from injury by the defendant, in the form of a coercive order by a judge prohibiting the defendant from taking certain actions. If the defendant knowingly violates the order, he may be found in contempt of court for violation of a court order. As an alternative to being found in contempt, the defendant may be found guilty of the crime of violating a DVPO.

A special kind of DVPO is available to a plaintiff who fears that she may be injured during the interval between filing the complaint and the time the hearing is held. What statistical fact suggests that this concern of plaintiffs is often well-founded?

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A person seeking a DVPO has the option of asking for an **ex parte DVPO** as well. An ex parte DVPO is a protective order already in place before the defendant learns that the victim has filed for a DVPO. An ex parte DVPO is issued following a hearing conducted in the absence of the defendant. What concern does this raise in your mind?

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Magistrates never issue DVPOs, but in some counties magistrates are authorized to determine whether an ex parte DVPO should issue. Authorized magistrates may conduct hearings on requests for ex parte DVPOs only if (1) district court is not in session, and (2) no district court judge will be available to conduct the hearing for at least four hours.

Has your chief district court judge authorized magistrates to issue ex parte DVPO's?

- Never
  - Only during conferences or other relatively rare occasions
  - Theoretically, but we are strongly urged to use criminal charges when possible
  - Yes
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<sup>1</sup> This outline refers to the victim of domestic violence as "the plaintiff" or "she", and the perpetrator of domestic violence as "the defendant" or "he", but any of these terms may be inaccurate in a specific case. The terms are used consistently in order to avoid confusion, and were chosen because they are accurate in the majority of cases. In fact, though, a significant minority of victims of domestic violence are male. And because a person may seek a DVPO either by filing a civil action or by filing a motion in an already-existent civil action, that person may be a plaintiff or a defendant.

An ex parte DVPO issued by a magistrate is valid until midnight of the next day district court is in session. A district court judge will conduct another ex parte hearing when court is back in session.

The “permanent” hearing on plaintiff’s request for a DVPO is referred to as the “10 day hearing.” After defendant is served with the complaint, a full hearing is conducted on whether plaintiff is entitled to a DVPO and, if so, what provisions the order should contain. The order entered by the district court judge after hearing the evidence is valid for one year, and may be extended at the end of that time for up to two years.

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A DVPO is available only to parties involved in a **type of personal relationship** specified in the statute. These relationships are:

- current or former spouses
- persons of the opposite sex who live together or have lived together
- parents and children,<sup>2</sup> and grandparents and grandchildren. NOTE: no DVPO may issue under this section against a child under the age of 16.
- persons having a child in common
- current or former household members
- persons of the opposite sex who are or have been in a dating relationship.<sup>3</sup>

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<sup>2</sup> Including those acting *in loco parentis* to a minor child.

<sup>3</sup> A dating relationship is defined as a relationship in which the parties are romantically involved over time and on a continuous basis over the course of the relationship.

Particular behavior qualifies as domestic violence only if the defendant:

- tried to cause physical injury;
- intentionally caused physical injury;
- behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid of imminent serious bodily injury;
- behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid that defendant will continue to terrorize that person to such a degree that the person experiences significant mental suffering. This behavior must be intentional on the part of the defendant, and it must have no legitimate purpose.<sup>4</sup> The statute refers to this behavior as **harassment**.
- committed any act defined as rape or sexual offense in GS 14-27.2 to 14-27.7.

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If a magistrate determines that *it clearly appears* from *specific facts shown* that there is *danger of acts of domestic violence* against the plaintiff or a minor child, the magistrate *may* order any relief necessary to protect them from such acts. [Note, however, additional showing required for order related to child custody.]

If a magistrate finds that an act of domestic violence *did in fact occur* (i.e., the defendant committed one of the acts listed above against a person in a personal relationship protected by the statute), the magistrate *MUST* enter an order which at a minimum prohibits the defendant from committing any further acts of domestic violence.

And the magistrate must do one other thing as well: the magistrate must question the plaintiff about defendant's ownership or access to firearms. (Does the defendant have access? Does the defendant own or have access to ammunition? A permit to purchase firearms? A permit to carry a concealed firearm?)

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The magistrate must ask about the information above in every case, but in some cases the magistrate is required to go further and specifically order the defendant to turn over to the sheriff all guns, ammunition, and permits within his custody or control. This order is mandatory if any of the following factors are present:

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<sup>4</sup> The statute specifically states that this behavior may include, among other things, written communication, telephone calls (including voice mail), email, faxes, and pager messages.

- 1) The defendant has at some time in the past used or threatened to use a deadly weapon.
- 2) The defendant has a pattern of prior conduct involving the use or threatened use of violence with a firearm against people.
- 3) The defendant has made threats to seriously injure or kill the plaintiff or minor child.
- 4) The defendant has threatened suicide.
- 5) The defendant has inflicted serious injuries on the plaintiff or minor child.

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The magistrate has authority to grant a wide range of additional relief to the plaintiff, depending on the particular circumstances of the case. These remedies include

- 1) granting the plaintiff possession of the parties' shared residence, and ordering the defendant to leave the home;
- 2) determining which party has the right to possession of personal property during the time the order is effective, including possession of family pets; and
- 3) ordering the defendant to stay away from the plaintiff, as well as specific places such as the plaintiff's workplace and homes of family members.

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The magistrate is often asked to make a determination of temporary custody of minor children residing with one or both parties. The magistrate is explicitly prohibited by GS 50B-2(c)(1) from doing this, unless the magistrate finds that . . .

. . . the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.

If a magistrate makes this finding, s/he may then go on to order that the defendant stay away from the minor child, return the child to the plaintiff, or not remove the child from the plaintiff. In support of this order, the magistrate must make a formal finding that the order is necessary for the child's safety.

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### ANSWERING QUESTIONS ABOUT DVPO'S

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Every magistrate should know the answers to the following questions, and those answers sometimes vary from one county to the next—and one magistrate to the next, depending on your personality, the shift you're working, and other circumstances. Magistrates should be guided by two fundamental principles in responding to these questions:

*Providing information to citizens about the court system's response to domestic violence is an important part of your job;*

*and*

*You have a responsibility to be certain that the information you provide is accurate.*

1. How do I get a DVPO?
2. Why should I consider a DVPO?
3. How much does it cost?
4. What do I have to prove to get one?
5. What if my spouse violates the order?
6. How long will it last?
7. Can I get one for my kids and family too?
8. Do I need a lawyer to get one?
9. Is there anyone that can help me fill out the forms?
10. When will my spouse find out about it?

List other questions you've heard or can think of:

11. \_\_\_\_\_

12. \_\_\_\_\_

13. \_\_\_\_\_

In many counties, the clerk's office or local agency offering assistance to domestic violence has prepared brochures or other handouts providing victims with answers to these questions. In every case, the magistrate should be certain that the citizen is informed that **there are no court costs** associated with seeking a DVPO, and that an attorney is not necessary to access these services.

