

**Civil Domestic Violence
Legal Issues**
March 2015

Question 1:

- You are presented with a consent DVPO, on the AOC form.
- There are no findings of fact or conclusions of law, and the parties have signed in the correct place on the form indicating that they agree to entry of the order with no findings of fact or conclusions of law.
- The terms of the order include a provision that both parties are ordered to "not assault, threaten, abuse, follow, harass or interfere with the other."
- If you sign that order, will it be a valid DVPO?

Consent Orders

- › Before October 1, 2013: Orders entered without conclusion of law that "Defendant committed an act of domestic violence" are *void ab initio*
- › After October 1, 2013: Consent orders can be entered without findings of fact and conclusions of law if parties agree in writing

AOC Form DVPO

FOR CONSENT JUDGMENTS ONLY

Each of us enters into this Consent Order knowingly, freely, and voluntarily. The defendant understands that in consenting to this Order all of the consequences set out in the Notice to Parties and Warnings to Respondent/Defendant in this Order apply.

Each of us agrees that no findings of fact and conclusions of law will be included in this consent protective order.

<small>Date</small>	<small>Signature Of Plaintiff</small>	<small>Date</small>	<small>Signature Of Defendant</small>

SIGNATURE OF JUDGE	
<small>Name Of District Court Judge (Type Or Print)</small>	<small>Signature Of District Court Judge</small>

Mutual Consent Orders

- ▶ "Protective orders entered , including consent orders, shall not be mutual in nature unless both parties file a claim and the court makes detailed findings of fact indicating both parties acted as aggressors, that neither party acted primarily in self-defense, and the right of each party to due process is preserved."

Question 2:

- The plaintiff has filed seeking a DVPO, using the AOC form complaint. She has requested an ex parte order as well as a one-year DVPO.
- There is no statement in the complaint regarding whether defendant is in the military.
- Can you enter the ex parte order if she is able to prove there is a danger of acts of domestic violence?

Servicemembers' Civil Relief Act

- ▶ 50 USC app., sec. 521:
 - Applies when servicemember has not made an appearance
 - Must have affidavit
 - If defendant in military, no 'judgment' entered before court appoints a lawyer
 - "Judgment" includes both permanent and temporary orders

Servicemembers' Civil Relief Act

- ▶ 50 USC app., sec 522:
 - Applies when servicemember has applied for stay
 - Must grant stay if servicemember complies with statute
 - If deny request for extension of original stay, no judgment until attorney appointed for servicemember

Question 2 continued:

- At the hearing, defendant has been served but does not appear.
- There is nothing in the file regarding defendant's military status.
- Can you enter the one-year DVPO?

Question 3:

- The plaintiff seeking a one-year DVPO testifies that the defendant is her brother.
- Is that a relationship sufficient to support a conclusion that there has been an act of domestic violence?

Relationships: GS 50B-1(b)

- › Current or former spouses
- › Persons of opposite sex who live together or have lived together
- › Related as parents and children, including others acting in loco parentis to a minor child, or grandparents and grandchildren (minor defendant must be at least 16)
- › Have child in common
- › Current or former household members
- › Persons of opposite sex in dating relationship or have been in dating relationship

Question 4:

What if plaintiff testifies that defendant is her roommate?

Webster's Dictionary

- ▶ "Household: the people in a family or other group living together in one house."

Question 5:

- At the hearing for the one-year DVPO, plaintiff proves:
- In April 2013, defendant - plaintiff's live-in boyfriend at that time- stated to plaintiff while trying to break down the door to the room where plaintiff had locked herself in: "I'm going to f-ing kill you."
- In November 3, 2013, defendant 'hacked' plaintiff's Facebook account and posted embarrassing things about her.
- These things bothered and annoyed her.
- November 13, 2013, she filed the complaint for the DVPO
- Has plaintiff proved an act of domestic violence?

Acts of Domestic Violence

- ▶ Attempting to cause bodily injury, or intentionally causing bodily injury; or
- ▶ Placing the aggrieved party or a member of the aggrieved party's family in fear of imminent serious bodily injury or continued harassment, as defined in GS 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or
- ▶ Committing any act defined in GS 14-27.2 through GS 14-27.7

Question 6:

- **Mother files for DVPO against father of her two minor daughters. She proves father placed a video camera in the bathroom of the minor girls and taped the girls dressing and undressing.**
- **Mother found the camera and removed the video before father saw it. Mother testifies that she fears for the safety of her children.**
- **The children are not parties to the action and did not testify.**
- **Has mom proved an act of domestic violence?**

Acts of Domestic Violence

- › Attempting to cause bodily injury, or intentionally causing bodily injury; or
- › Placing the aggrieved party or a member of the aggrieved party’s family in fear of imminent serious bodily injury or continued harassment, as defined in GS 14-277.3A, that rises to such a level as to inflict substantial emotional distress; or
- › Committing any act defined in GS 14-27.2 through GS 14-27.7

Question 7:

- **The AOC form complaint states in the ‘Plaintiff’ box: “Jane Smith o/b/o Wendy Smith”**
- **At trial, Jane Smith proves that she is Wendy’s mother and defendant is Wendy’s father. Jane also proves defendant committed an act of domestic violence against Wendy. As part of the one-year DVPO, can you enter a temporary custody order?**

Minor Parties: General Rules

- ▶ A minor can be a plaintiff or a defendant
- ▶ When child is the plaintiff or defendant, the child should be named as the plaintiff or defendant
- ▶ Minors generally need a Rule 17 GAL appointed when they are parties
 - No GAL is required if child has general or testamentary guardian
 - Parent is not a general or testamentary guardian

Rule 17 GAL

- ▶ Any competent adult
- ▶ Is not a court appointed attorney
- ▶ Is not a party to the action
 - So should not be named as a party on the complaint or on the answer
- ▶ Is paid as a part of court costs

50B Actions

- ▶ Plaintiff must be an "aggrieved party"
- ▶ "Aggrieved party" means a person who has one of the listed relationships with the defendant
- ▶ Act alleged against either:
 - The aggrieved party, or
 - A minor child "residing with" or "in the custody of" the aggrieved party

Protection for Minors

- ▶ The only time a minor *must* be a plaintiff in order to get protection is when the parent with whom child is residing or “in the custody of” has no personal relationship with the defendant
- ▶ But, only time minor *cannot* be a plaintiff is when minor has no personal relationship with defendant

Minors in 50B Action

- ▶ Minor should not be named as a plaintiff on the complaint unless minor actually is a plaintiff
- ▶ If minor is a plaintiff, there must be a GAL appointed
 - But GAL is not named in the caption to the complaint
 - Separate AOC form
- ▶ If minor is not a plaintiff, there should be no GAL appointed

Custody

- ▶ GS 50B-3: A protective order may include any of the following types of relief:
 - “(4) Award temporary custody of minor children and establish temporary visitation rights ...”

Question 8:

- You granted plaintiff's request for an ex parte DVPO and the hearing was set for 10 days following the entry of the ex parte.
- Defendant was served 5 days after the ex parte was entered and appears at the hearing.
- Defendant requests a continuance, arguing that his time to file an Answer has not expired.
- Do you have to grant the continuance?

Henderson

- GS 50B-2 requires that a hearing be held 10 days after entry of an ex parte DVPO
- Statute allows defendant "no more than 10 days" to file an Answer but does not give defendant 10 days to file
- Because statute requires 10 day hearing after an ex parte, it 'necessarily' authorizes the trial on the merits at that point in time.

Question 9:

- Defendant is in front of you to respond to an order to show cause issued upon the allegation he violated an ex parte DVPO.
- Defendant argues that the ex parte order was no longer valid at the time of the alleged violation because it had been in effect for well over one year, having been 'continued in effect' 13 times since it was entered originally.
- Can you hold him in contempt for violating the ex parte?

Rudder

- ▶ 50B statute shows clear legislative intent that continuances of hearing after entry of ex parte DVPO should be limited in number
- ▶ Where ex parte order expired after being continued in effect for more than one year, trial court had no authority to conduct trial on the merits of complaint and enter one year DVPO

Question 10:

- Defendant is in front of you to respond to an order to show cause issued upon the allegation that he violated a consent order entered in a 50B file.
- The case was initiated on an AOC form 50B complaint and the file contains a voluntary dismissal of the 50B claims signed by plaintiff. The file also contains the consent order signed by both parties and a judge.
- The consent order states that plaintiff dismisses the domestic violence claims and both parties agree to entry of a Rule 65 injunction ordering defendant not to assault, threaten, abuse, follow, harass or interfere with plaintiff.
- Defendant argues that the consent order is invalid and cannot be enforced. Is it a valid order?

Rule 65 and 50B

- ▶ Injunction is a remedy, not a cause of action
- ▶ Rule 65 injunction is a 'preliminary injunction' to be used pending the outcome of an action
- ▶ 50B action and 50B remedies are not exclusive

Question 11:

- Defendant is in front of you to respond to a show cause order issued upon the allegation that defendant violated a provision in a DVPO.
- Defendant tells you that he was not served with a copy of the DVPO and did not know the specific terms of the order.
- The file shows he was served with process and notice of the 10-day hearing after which the DVPO was entered. There is no indication that a copy of the order was mailed to defendant.
- Can you hold defendant in contempt for violating the DVPO?
- What if defendant is in front of you on a criminal charge of violating the DVPO?

Service of Order

- "A copy of any order entered and filed under this Article shall be issued to both parties."
 - GS 50B-3(c)
- An ex parte order is served along with the process
 - GS 50B-2(c)(7)
- Neither 50B or the Rules of Civil Procedure require that an order be served
- If served, Rule 5 applies – regular mail sufficient
- Parties to a civil proceeding are presumed to know the content of any order entered

Service of order

- Crime of violating DVPO requires that defendant 'knowingly' violated the order
 - GS 50B-4.1
- Criminal decisions acknowledge knowledge can be inferred from the circumstances:
 - defendant must know or "have reasonable grounds to believe"
 - "knew or should have known."

Question 12:

- The one-year DVPO ordered defendant to attend abuser treatment. The order also required defendant to return to court in 3 months for the court to 'review' whether defendant was complying with all terms of the DVPO.
- During this review hearing, plaintiff testified that defendant was not attending abuser treatment. What can the trial court do if convinced defendant has not complied with the DVPO?

Relief in a DVPO

- ▶ GS 50B-3
 - (a)(13): "Include any additional prohibitions or requirements the court deems necessary to protect any party or any minor child."

Question 13:

- You are conducting a custody trial. You find out there is a DVPO in effect that contains custody provisions. The DVPO grants custody to mom. In addition, the DVPO orders dad to stay away from and have no contact with mom, to stay away from and have no contact with the child at issue in your custody case, and to stay away from the family home. In addition, the DVPO orders dad to stay away from the child's school and all extracurricular activities.
- How does the DVPO affect your authority in the custody case?

Temporary Custody Provisions

- ▶ “Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter.”
 - GS 50B-3
