

DOMESTIC VIOLENCE FOR MAGISTRATES

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1

DOMESTIC VIOLENCE ACTIONS (CHAPTER 50B)

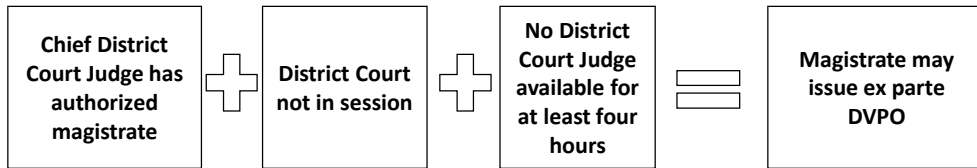
- Civil action alleging actions of domestic violence against himself or herself or a minor child who resides with or is in the custody of such person and seeking protection (protective order)
- Initiates with the filing of a civil action or a motion in any existing civil action filed under G.S. Chapter 50
- Can be filed by any NC resident
 - A minor can be a plaintiff or defendant in the action, except in situations involving G.S. 50B-1(a)(3)(parents and grandparents may not obtain a protective order against a child or grandchild under the age of 16)
- A lawyer is not required, there are no court costs or other fees charged
- Relief is a protective order retraining the defendant from further acts of domestic violence. The order may direct the defendant or prohibit the defendant from doing certain acts.



2

2

MAGISTRATE AUTHORIZATION



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MAGISTRATE AUTHORIZATION

- A complaint or motion for a domestic violence order is filed (forms available to pro se complainants)
- The Chief District Court Judge authorizes a magistrate or magistrates to hear any motions for emergency relief ex parte (G.S. 50B-2(c1))
 - District Court is not in session and a district court judge is not and will not be available to hear the motion for ex parte relief for a period of four hours or more
 - When the office of the clerk is closed, a magistrate that is authorized to hear ex parte motions accepts the complaint for DVPO for filing, records the filing date, and issues the summons
 - Authority granted to authorized magistrates to award temporary child custody (G.S. 50B-2(c1) and G.S. 50B-3(a)(4)) is subject to custody rules established by Chief District Court Judge of each judicial district (G.S. 50B-2(c2))



4

4

PROCEDURE (MAGISTRATE AUTHORIZED)

- Plaintiff files complaint with the clerk
 - District Court not in session & no district court judge for at least 4 hours
 - Plaintiff goes to magistrate for hearing on the request for an ex parte order
 - Magistrate receives evidence and may issue order
- Clerk's office is closed
 - Plaintiff may file complaint with the magistrate & magistrate issues summons
 - Magistrate records filing date and hears request & evidence for ex parte order
 - Magistrate may issue ex parte order
 - Any complaint and motion for emergency relief ex parte and any other documents accepted for filing under this section and any order entered by the magistrate shall be delivered to the clerk's office for processing as soon as that office is open for business



5

5

FORMS

- AOC-CV-303 (instructions for DV forms)
- AOC-CV-303 (Complaint and motion for DVPO)
- AOC-CV-317 (Civil Summons Domestic Violence)
- AOC-CV-304 (Ex parte DVPO)
- AOC-CV-609 (Affidavit as to state of minor child)
- AOC-CV-312 (Identifying Info about a DV action)
- AOC-CV-311 (Notice of ex parte hearing before district court judge)



6

6

WHAT IS AN EX PARTE DVPO ORDER?

- Temporary order of protection to provide protection during the time period before the cases is heard on the merits
- A magistrate's ex parte order protects the plaintiff until a district court judge can hear the request for an ex parte order (G.S.50B-2(c1))
 - Magistrate order expires at 11:59 pm of the next day on which the district court is in session
 - Magistrate must schedule 2nd ex parte hearing before a DCJ before the order expires
 - The defendant is not entitled to notice of the second ex parte hearing.



7

7

ISSUING AN EX PARTE DVPO

- “If it clearly appears to the magistrate from specific facts shown that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the magistrate may enter orders as it deems necessary to protect the aggrieved party or minor children from those acts, except that a temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.” (G.S. 50B-2(c1))
- “If the court, including magistrates as authorized under G.S. 50B-2(c1), finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from further acts of domestic violence.” (G.S. 50-3(a))



8

8

DOMESTIC VIOLENCE PROTECTIVE ORDERS (DVPO)

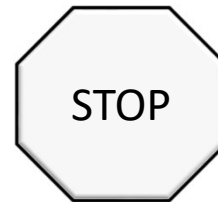
Personal Relationship



Act



DVPO



9

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CHAPTER 50B ACTIONS

Personal Relationship

- Are current or former spouses
- Are persons of opposite sex who live together or have lived together
- Are related as parents and children, including *in loco parentis* to a child, or a grandparent & grandchild (child or grandchild Defendant must be 16+)
- Have a child in common
- Are current or former household members
- Are **persons** who are in a dating relationship or have been in a dating relationship (*M.E. v. T.J.*)

ACT

- Attempting to cause bodily injury
- Intentionally causing bodily injury
- Placing aggrieved party or a member of the party's family or household in fear of imminent serious bodily injury or continued harassment that arises to such a level as to inflict substantial emotional distress
 - Harassment as defined in G.S. 14-277.3A: "Knowing conduct, including written or printed communication or transmission, telephone, cellular, or other wireless telephonic communication, facsimile transmission, pager messages or transmissions, answering machine or voice mail messages or transmissions, and electronic mail messages or other computerized or electronic transmissions directed at a specific person that torments, terrorizes, or terrifies that person and that serves no legitimate purpose."
- Committing any act as defined in G.S. 14-27.21-14-27.33 (Rape and other sex offenses)

Does not include acts of self-defense



10

10

M.E. v. T.J., 2022-NCSC-23



- COA addressed plaintiff's due process and equal protection challenges under the NC & US Constitutions and concluded, "[t]he holdings in this opinion shall apply to all those similarly situated with Plaintiff who are seeking a DVPO pursuant to Chapter 50B; that is, the "same-sex" or "opposite-sex" nature of their "dating relationships" shall not be a factor in the decision to grant or deny a petitioner's DVPO claim under the ACT."
- Updated AOC forms in response to opinion



11

11

STATE OF NORTH CAROLINA

County

File No.

In The General Court Of Justice
District Court Division

Name Of Plaintiff (Person Filing Complaint)

VERSUS

Name And Address Of Defendant (Person Accused Of Abuse)

COMPLAINT AND MOTION FOR DOMESTIC VIOLENCE PROTECTIVE ORDER

G.S. 50B-1, -2, -3, -4

(Check only boxes that apply and fill in blanks. Additional sheets may be attached.)

1. I live in _____ County, North Carolina.

2. The defendant and I
- ☐ are spouses. ☐ are former spouses.
 - ☐ are persons of the opposite sex who are not married but live together or have lived together.
 - ☐ have a child in common.
 - ☐ are parent and child or grandparent and grandchild.
 - ☐ are current or former household members.
 - ☒ are persons who are in or have been in a dating relationship.

3. There ☐ is ☐ is not another court proceeding between the defendant and me pending in this or any other state. (List county, state, date, and what kind of proceeding, if applicable.)

- ☐ 4. The defendant has attempted to cause or has intentionally caused me bodily injury; or has placed me or a member of my family or household in fear of imminent serious bodily injury or in fear of continued harassment that rises to such a level as to inflict substantial emotional distress; or has committed a sexual offense against me in that: (Give specific dates and describe in detail what



12

12

WHAT IS A DATING RELATIONSHIP?

- “[A] dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.” (G.S. 50B-1(b)(6))
- Thomas v. Williams, 242 NC App 236 (2015)
 - Defendant argued that he and Plaintiff were not in a “dating relationship” because their relationship lasted for less than 3 weeks
 - There is no set minimum length of time. The circumstances are relevant. “Over time” does not “categorically preclude[s] short-term romantic relationship[s]...from *ever* being considered a “dating relationship” for the purpose of G.S. 50B-1(b)(6).”
 - “[A]casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship.”



13

13

NON-EXHAUSTIVE FACTORS TO CONSIDER FOR A FINDING THAT A DATING RELATIONSHIP EXISTS

- Was there a minimal social interpersonal bonding of the parties over and above [that of] mere casual [acquaintances or ordinary] fraternization?
- How long did the alleged dating activities continue prior to the acts of domestic violence alleged?
- What were the nature and frequency of the parties' interactions?
- What were the parties' ongoing expectations with respect to the relationship, either individually or jointly?
- Did the parties demonstrate an affirmation of their relationship before others by statement or conduct?
- Are there any other reasons unique to the case that support or detract from a finding that a "dating relationship" exists?

Thomas v. Williams, 242 N.C. App. 236(2015).



14

14

TEMPORARY CUSTODY ORDERS

Temporary order for custody ex parte **shall not** be entered unless

**Substantial risk of physical or emotional injury or
Sexual abuse**



15

15

TEMPORARY CUSTODY ORDERS

- If the magistrate finds the child is exposed to substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to:
 - stay away from the child, or
 - return the child to, or
 - not remove the child from, the physical care of a parent or person acting in loco parentis

Magistrate must find that the order is in the best interest of the child and necessary for the child's safety.



16

16

TEMPORARY CUSTODY ORDERS

- “[A] temporary order for custody ex parte and prior to service of process and notice shall not be entered unless the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.
- “If the magistrate finds that the child is exposed to a substantial risk of physical or emotional injury or sexual abuse, upon request of the aggrieved party, the magistrate shall consider and may order the other party to stay away from a minor child, or to return a minor child to, or not remove a minor child from, the physical care of a parent or person in loco parentis, if the magistrate finds that the order is in the best interest of the minor child and is necessary for the safety of the minor child.”
- “If the magistrate determines that it is in the best interest of the minor child for the other party to have contact with the minor child or children, the magistrate shall issue an order designed to protect the safety and well-being of the minor child and the aggrieved party. The order shall specify the terms of contact between the other party and the minor child and may include a specific schedule of time and location of exchange of the minor child, supervision by a third party or supervised visitation center, and any other conditions that will ensure both the well-being of the minor child and the aggrieved party.”



17

17

FIREARMS-INQUIRY

- Magistrate must ask about:
 - Ownership
 - Access to
 - Presence of
 - Ammunition
 - Permits (purchase & concealed carry)
 - Identifying information about the firearms (description, location, number, etc.)



18

18

FIREARMS INQUIRY-STATUTORY FACTORS (G.S. 50B-3.1)

1. The use or threatened use of a deadly weapon by the defendant or a pattern of prior conduct involving the use or threatened use of violence with a firearm against persons
2. Threats to seriously injure or kill the aggrieved party or minor child by the defendant.
3. Threats to commit suicide by the defendant.
4. Serious injuries inflicted upon the aggrieved party or minor child by the defendant.



19

19

REQUIRED SURRENDER OF FIREARMS

Upon issuance of an ex parte order, if any of the statutory factors exist, the magistrate must order the surrender of all firearms, machine guns, ammunition, and permits to the Sheriff.



20

20



THANK YOU

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