

**Civil Domestic Violence Protective Orders**

Clerks of Superior Court  
Cheryl Howell

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**Statutory responsibilities of clerks**

- GS 50B-2

“(d) Pro Se Forms. – The clerk of superior court of each county shall provide to pro se complainants all forms that are necessary or appropriate to enable them to proceed pro se pursuant to this section. The clerk shall, whenever feasible, provide a private area for complainants to fill out forms and make inquiries. The clerk shall provide a supply of pro se NC General Statutes forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section.”

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**Statutory responsibilities of clerks**

- When emergency or ex parte relief is granted for an unrepresented party:  
 ....“the clerk shall set a date for hearing and issue a notice of hearing within the time periods provided in this subsection, and shall effect service of the summons, complaint, notice, and other papers through the appropriate law enforcement agency where the defendant is to be served.”  
 GS 50B-2(b)  
 GS 50B-2(c)(7)

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**Statutory responsibilities of clerks**

- When DVPO requires defendant to attend abuser treatment:
  - Clerk must issue and serve notice of compliance hearing
    - Hearing shall be held as soon as practicable after 60 days from the entry of the original order
  - If clerk receives notice of compliance before hearing, clerk removes hearing from calendar and notifies parties
- GS 50B-3(a1) and (a2)

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**Information for plaintiffs**

- GS 50B-3(c1):  
“When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:
  - (1) Domestic violence agencies and services.
  - (2) Sexual assault agencies and services.
  - (3) Victims’ compensation services.
  - (4) Legal aid services.
  - (5) Address confidentiality services.
  - (6) An explanation of the plaintiff’s right to apply for a permit under G.S. 14-415.15.”
- AOC-CV-323

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**Civil Domestic Violence**  
GS 50B

The diagram consists of three circles. The first circle on the left is labeled "Relationship GS 50B-1(b)". To its right is a plus sign (+). The second circle is labeled "Act GS 50B-1(a)". To its right is an equals sign (=). The third circle on the right is labeled "Domestic Violence".

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**Civil Domestic Violence**  
**GS 50B**

Relationship	Act
<ul style="list-style-type: none"><li>• Current or former spouses</li><li>• Persons of opposite sex who live together or have lived together</li><li>• Related as parent(or person in loco parentis)/child, or grandparent/grandchild (<b>defendant must be 16 or over</b>)</li><li>• Have child in common</li><li>• Current or former household members</li><li>• Persons of opposite sex in dating relationship</li></ul>	<ul style="list-style-type: none"><li>• Attempting to cause bodily injury</li><li>• Intentionally causing bodily injury</li><li>• Placing aggrieved party in fear of imminent bodily injury</li><li>• Placing member of aggrieved party's family or household in fear of imminent bodily injury</li><li>• Placing aggrieved party in fear of continued harassment</li><li>• Placing member of aggrieved party's family or household in fear of continued harassment</li></ul>

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<p><b>Compare:</b> <b>Civil No-Contact Order</b></p>	<ul style="list-style-type: none"><li>• An order of protection for a victim of "unlawful conduct"<ul style="list-style-type: none"><li>• Stalking or</li><li>• Nonconsensual sexual conduct</li></ul></li><li>• A victim is a person who does <b>NOT</b> have a 50B personal relationship with defendant</li><li>• <b>All</b> defendants must be 16 or older</li></ul>
<p><b>GS 50C</b></p>	

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<p><b>Who is the plaintiff in a 50B case?</b></p>	<ul style="list-style-type: none"><li>• Any "aggrieved party" can file a civil action under 50B<ul style="list-style-type: none"><li>• So a plaintiff must be an "aggrieved party"<ul style="list-style-type: none"><li>• GS 50B-2</li></ul></li></ul></li><li>• To be an "aggrieved party", person must have a personal relationship with defendant</li></ul>

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**Who is the plaintiff in a 50B case?**

- The alleged act of DV can be an act against:
  - The aggrieved party, OR
  - A minor child residing with or in the custody of the plaintiff, OR
  - *When the act is causing fear of imminent bodily injury or continued harassment*, a member of the aggrieved party's family or household

GS 50B-1(a)

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**Protecting children**

- Adult plaintiff with personal relationship with the defendant can obtain protection for minor child residing with or in the custody of that adult
  - Child is not a plaintiff in this situation
  - Child does not need a Rule 17 GAL
- If child has personal relationship with the defendant and wants protection, child can be the plaintiff
  - If child is listed as plaintiff, a Rule 17 GAL must be appointed

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**Rule 17 Rules of Civil Procedure**

- Minor child (under age of 18) can be plaintiff or defendant in a civil proceeding
- If minor child is a party, child must be represented by child's general or testamentary guardian – if any – or by a GAL
- GAL is appointed by clerk or judge
  - AOC-CV-318
- GAL is not a court-appointed lawyer
- Parties probably can be taxed with cost of GAL
- GAL should never be listed as a plaintiff in the complaint

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Example.....

- Mother of child alleges father of child committed act of DV against mother **and** the child. Child lives with the mother
- Mother is an aggrieved party
  - She has personal relationship with defendant father
- Mother is listed as plaintiff
- DVPO can grant protection to minor child because child lives with mother
- Child does not need to be named a plaintiff
  - If child is not a plaintiff, child does NOT need a GAL

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Example.....

- Mother of child alleges father of child committed act of DV against **just** the child (no act alleged against mom). Child lives with the mother
- Mother is an aggrieved party
  - She has personal relationship with defendant father
- Mother is listed as plaintiff
- DVPO can grant protection to minor child because child lives with mother
- Child does not need to be a plaintiff
  - If child is not a plaintiff, child does NOT need a GAL

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Example.....

- Mom's boyfriend commits act of domestic violence against child residing with mom. Boyfriend has never lived with child.
- Mom is an aggrieved party because she is in dating relationship with boyfriend.
- Child is not an aggrieved party because she does not have a relationship with boyfriend.
- Mom can be plaintiff and seek protection for child.
- Child cannot be a plaintiff
- Child does not need a GAL

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<p><b>But what if.....</b></p>	<ul style="list-style-type: none"><li>• Girl is 16 years old. She alleges defendant committed acts of DV against her. She has been in a dating relationship with defendant.</li><li>• Girl's mother is NOT an aggrieved party.<ul style="list-style-type: none"><li>• Mom has no personal relationship with defendant</li></ul></li><li>• Girl's mother cannot be a plaintiff</li><li>• Girl must be listed as plaintiff</li><li>• Girl needs GAL</li><li>• GAL is NOT listed as plaintiff</li></ul>

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	<h1>Frequently Asked Questions</h1>	
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<p><b>Information for plaintiffs</b></p>	<ul style="list-style-type: none"><li>• GS 50B-3(c1): “When a protective order issued under this Chapter is filed with the Clerk of Superior Court, the clerk shall provide to the applicant an informational sheet developed by the Administrative Office of the Courts that includes:<ol style="list-style-type: none"><li>(1) Domestic violence agencies and services.</li><li>(2) Sexual assault agencies and services.</li><li>(3) Victims' compensation services.</li><li>(4) Legal aid services.</li><li>(5) Address confidentiality services.</li><li>(6) An explanation of the plaintiff's right to apply for a permit under G.S. 14-415.15.”</li></ol></li><li>• AOC-CV-323</li></ul>

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### Compare Civil Statutes

<p>▶ <b>GS Chapter 50B</b></p> <ul style="list-style-type: none"><li>◦ For people with 'personal relationship'</li><li>◦ To stop acts of domestic violence</li><li>◦ Extensive relief authorized</li><li>◦ Violation of order is a crime</li></ul> <p><b>Domestic Violence Protective Order</b></p>	<p>▶ <b>GS Chapter 50C</b></p> <ul style="list-style-type: none"><li>◦ To stop sexual assault or stalking/harassment</li><li>◦ Only for people without 'personal relationship'</li><li>◦ Defendants must be 16 or older</li><li>◦ Relief more limited than 50B</li><li>◦ Violation is not a crime</li></ul> <p><b>Civil No-Contact Order</b></p>
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### Clerk responsibilities in 50C

- GS 50C-9:
  - (a) The clerk shall deliver on the same day that a civil no-contact order is issued, a copy of that order to the sheriff
  - (b) If respondent is not in court when order is issued, order must be served on respondent by Rule 4 service (as an initial complaint is served)
  - (d) Any order extending, modifying, or revoking any civil no-contact order shall be promptly delivered to the sheriff by the clerk and served on respondent

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### Service of 50B orders

<p>GS 50B-2(c)(7):</p>	<ul style="list-style-type: none"><li>• The clerk "shall effect service of the summons, complaint, notice, order and other papers through the appropriate law enforcement agency where the defendant is to be served."</li></ul>
<p>GS 50B-3(c):</p>	<ul style="list-style-type: none"><li>• "A copy of any order entered and filed under this Article shall be issued to each party."</li></ul>
<p>Rule 58, NC Rules of Civil Procedure</p>	<ul style="list-style-type: none"><li>• "The party designated by the judge or, if the judge does not otherwise designate, the party who prepares the judgment, shall serve a copy of the judgment upon all other parties within three days after the judgment is entered. Service and proof of service shall be in accordance with Rule 5."</li></ul>

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**Court costs**

- GS 50B-2(a):
  - "In compliance with the federal Violence Against Women Act, no court costs or attorneys' fees shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena, except as provided in G.S. 1A-1, Rule 11."
- GS 50C-2(b):
  - "No court costs or attorneys' fees shall be assessed for the filing or service of the complaint, or the service of any orders, except as provided in G.S. 1A-1, Rule 11."

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**Ex parte 'hearings'**

- *Ex parte* 50B order requires that court hear testimony; cannot be entered on the pleadings
  - *Hensey v. Hennessy*, 201 NC App 56 (2009)
- *Ex parte* 50C order can be based on verified pleadings or affidavits
  - GS 50C-6(a)(1)

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**Firearm provisions**

- When granting DVPO, judge must order surrender of firearms to sheriff if:
  1. Defendant used or threatened to use a deadly weapon or that defendant has a pattern of prior conduct involving the use or threatened use of firearms against persons; or
  2. Defendant threatened to seriously injure or kill the plaintiff or minor child; or
  3. Defendant has threatened suicide; or
  4. Defendant inflicted serious injury upon plaintiff or minor child

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**Return of Firearms**

- Sheriff cannot return without court order
- Defendant can request return within 90 days after expiration of DVPO and resolution of any criminal charges
- Court can enter order only if court concludes:
  - All criminal charges have been resolved, and
  - Defendant is not precluded by state or federal law from possessing or owning firearms

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