

Ex Parte Domestic Violence Protective Orders

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GS Chapter 50B: Domestic Violence Protective Orders

- ▶ Any NC resident can file a lawsuit asking for protection for herself or for a child residing with her or in her custody because the defendant has committed acts of DV. This is a civil action, and like all civil actions, it is initiated when a plaintiff files a complaint or a motion in an existing civil proceeding.
- ▶ No lawyer is required, and no court costs or other fees are charged.
- ▶ The remedy requested by the plaintiff is a coercive order directing or prohibiting the defendant from engaging in certain acts.
- ▶ Enforceable by contempt or criminal charge of violating DVPO.

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Where you come in

- ▶ All magistrates in the criminal section are likely to be involved at the enforcement stage.
- ▶ Magistrates authorized by their chief district court judge are also involved at a very early stage of the civil proceedings.
- ▶ An ex parte DVPO is a temporary order put in place to protect the plaintiff during the time before the case comes to trial.
- ▶ An ex parte DVPO issued by a magistrate is an even briefer order put in place to protect the plaintiff until a district court judge can conduct a hearing on the request for an ex parte order.

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Timeline

Plaintiff files complaint for DVPO

Defendant is served with complaint & summons.

"Ten-day" hearing scheduled within 10 days of ex parte order or 7 days after service of process

Plaintiff is protected by ex parte order.

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GS 50B-2(c1): Ex parte DVPOs

Translation

- ▶ The chief district court judge may authorize a magistrate or magistrates to hear any motions for emergency relief ex parte. Prior to the hearing, if the magistrate determines that at the time the party is seeking emergency relief ex parte the district court is not in session and a district court judge is not and will not be available to hear the motion for a period of four or more hours, the motion may be heard by the magistrate.
- ▶ A CDCJ may give a magistrate authority to hear requests for ex parte DVPOs when:
 - ▶ district court is not in session,
&
 - ▶ no dcj will be available for 4 hrs

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Procedure for ex parte DVPOs

- ▶ Generally, plaintiff files action as usual with clerk. If complaint includes request for ex parte order and no district court judge is available, you're the next stop.
- ▶ When the clerk's office is closed and a magistrate has been authorized to hear a motion for emergency ex parte relief, the plaintiff may "file" complaint with magistrate as first step.
 - ▶ The magistrate shall accept the complaint for filing, note thereon the filing date, and issue a summons. GS 50B-2(c1)
 - ▶ Any complaint, motion or other documents accepted by the magistrate shall be delivered to the clerk's office as soon as the office is opened for business. GS 50B-2(c1)

"The clerk shall provide a supply of pro se forms to authorized magistrates who shall make the forms available to complainants seeking relief under subsection (c1) of this section." GS 50B-2(d)

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AOC-CV-303: Instructions for DV Forms

Complaint & Motion for DVPO (CV-303)

Notice of Hearing on DVPO (CV-305)

Ex Parte DVPO (CV-304)

Civil Summons DV (CV-317)

Identifying Info about Δ DV Action (CV-312)

Affidavit as to Status of Minor Child (CV-609)

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More . . .

- ▶ An ex parte order entered under this subsection shall expire and the magistrate shall schedule an ex parte hearing before a district court judge by the end of the next day on which the district court is in session in the county in which the action was filed.

Translation

- ▶ Order automatically expires at midnight on next day court is in session.
- ▶ Magistrate is responsible for scheduling a second ex parte hearing, before a DCJ, before order expires.

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Ultimate questions

- ▶ “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.”
▶ **GS 50B-(c1).**
- ▶ If the magistrate “finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from any further acts of domestic violence.”
▶ **GS 50B-3 (a).**

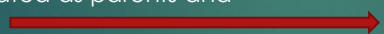
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Definition of DV:

Personal Relationship + Act

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Personal Relationship: a relationship in which the plaintiff and the defendant:

- ▶ (1) Are current or former spouses;
- ▶ (2) Are persons of opposite sex who live together or have lived together;
- ▶ (3) Are related as parents and children;  including others acting in loco parentis to a minor child, or as grandparents and grandchildren. Δ must be 16+.
- ▶ (4) Have a child in common;
- ▶ (5) Are current or former household members;
- ▶ (6) Are persons who are or have been in a dating relationship [ignore "of the opposite sex"]

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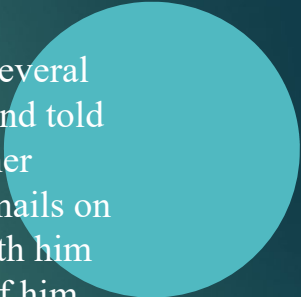
An Act:

- ▶ Attempting to cause bodily injury, or intentionally causing bodily injury;
or
- ▶ Placing the aggrieved party or a member of the aggrieved party's family or household in **fear of** imminent serious bodily injury
or
continued harassment,
as defined in G.S. 14-277.3A,
that rises to such a level as to **inflict substantial emotional distress;**
or
- ▶ Committing any act defined in G.S. 14-27.21 through G.S. 14-27.33

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Scenario #1

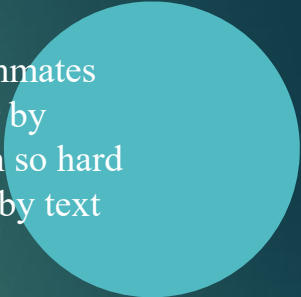


- ▶ Plaintiff alleges that she dated the defendant for several months. Two weeks ago, she broke up with him and told him not to contact her. Since then, he has texted her several times each day and has left several voicemails on her cell phone. She tells you that she broke up with him because he has a “bad temper” and she is afraid of him. She feels “anxious” all the time and is scared to leave her apartment alone.
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Scenario #2



- ▶ Plaintiff alleges that she and defendant were roommates for several years. Two years ago, he assaulted her by slapping her across her face and grabbing her arm so hard that it bruised. He recently started contacting her by text and email. She wants him to leave her alone.
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Scenario #3

- ▶ 56-year-old male plaintiff seeks a DVPO against his 52-year-old brother. Plaintiff alleges that the defendant pointed a loaded gun at him during a recent argument.

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Special rules for guns . . .



Magistrate must always ask about defendant's ownership and/or access to firearms, ammunition, along with identifying information, in addition to permits to purchase and/or to carry concealed.

If statutory requirements exist, **magistrate must order that defendant surrender all firearms, ammunition and permits to the sheriff**

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Statutory factors: your interview must cover whether defendant

- ❑ has used or threatened to use a deadly weapon, or has a pattern of prior conduct involving the use or threatened use of a firearm against a person;
- ❑ has made threats to seriously injure or kill plaintiff or minor child;
- ❑ has threatened suicide;
- ❑ has inflicted serious injuries on plaintiff or child.

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Scenario #4

- ▶ Husband requests an ex parte DVPO against his wife. Last night, she came home after being out drinking with girlfriends and argued with him. During the argument, she threw several household items at him, hitting him with a plate and an ashtray. She has done this several times before. Her actions woke the children and scared them. He asks that you grant him possession of their home and custody of the children.

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Special rules for kids . . .



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“[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.”

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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.

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Ultimate questions

- ▶ "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."
- ▶ **GS 50B-(c1).**

- ▶ If the magistrate "finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from any further acts of domestic violence."
- ▶ **GS 50B-3 (a).**

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THE COURT HEREBY ORDERS THAT:

- The above named Respondent/Defendant shall not commit any further acts of domestic violence or make any threats of domestic violence (G.S. 50B-1).
- The above named Respondent/Defendant shall have no contact with the Petitioner/Plaintiff. No contact includes any defendant-initiated contact, except through an attorney, direct or indirect, by means such as telephone, personal contact, email, pager, gift-giving or telefacsimile machine. **[05]**
Additional terms of this order are as set forth on Pages 3 and 4.

The terms of this order shall be effective until ,

AOC-CV-304: Ex Parte Domestic Violence Order of Protection

If the magistrate “finds that an act of domestic violence has occurred, the court shall grant a protective order restraining the defendant from any further acts of domestic violence.”
GS 50B-3 (a).

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Scenario #5

- ▶ Plaintiff alleges that she is the mother of a 9-year old child who resides with her. The child’s father resides with another woman and the child visits the father’s residence every other weekend. Plaintiff alleges that the child returned from the last visit with a large bruise on his arm. The child told plaintiff that the father’s girlfriend grabbed his arm because she was angry at him for “talking back” to her. Mother wants a DVPO against the girlfriend.

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