

Family Law Update

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Child Support

- ▶ “Payments ordered shall be in such amount as to meet the reasonable needs of the child for health, education, and maintenance, having due regard to the estates, earnings, conditions, accustomed standard of living of the child and the parties, the child care and homemaker contributions of each party, and any other facts of the particular case.”
 - GS 50-13.4(c)

Child Support

- ▶ “Shall determine amount of support by applying presumptive guidelines.”
 - GS 50-13.4(c)
- ▶ May order more or less than guideline amount (deviate) if:
 - Guideline amount does not meet or exceeds reasonable needs of child; or
 - Guideline amount would be otherwise unjust or inappropriate

Deviation

- ▶ Can deviate on own motion
- ▶ Discretionary decision

- ▶ Required findings:
 - Guideline amount
 - Reasonable needs of child
 - Relative ability of each parent to provide support
 - Reason for deviating
 - Basis for amount ordered

Deviation

- ▶ Based on 3rd party contributions?
- ▶ *Easter v. Easter*, 344 NC 166 (1996)
 - May consider contributions from non-parents
 - Consider extent and nature of contribution
- ▶ *Cf. Hartley v. Hartley*, NCAApp (6-19-06)
 - Consider non-parent contributions made directly to the child only if parent is unable to meet needs of child

3rd Party Contributions

▶ *Easter*

- Grandparent contributions in form of rent, expenses supported deviation

▶ *Cf. Williams*, NCAApp (10-1-06)

- Grandparent rent payments must be included in custodial parent's income
- Guideline "income" includes gifts and maintenance received from any source
- *But* Guidelines: income shall not include income of non-parent

Child Support

- ▶ Guidelines do not violate:
 - The Supremacy Clause
 - The Equal Protection Clause
 - The Due Process Clause
 - Neither procedural nor substantive due process
- ▶ *Row v. Deese*, NCAApp (8-21-07)

Domestic Violence

- ▶ Rule 65 TRO and Injunction were “protective orders entered pursuant to Chapter 50B”
- ▶ *Ex parte* TRO was a protective order entered “upon hearing”
- ▶ *State v. Byrd*, 649 SE2d 444 (2007)

Civil No-Contact Orders

GS Chapter 50C

- ▶ “Upon finding that the **victim** has suffered **unlawful conduct** committed by the **respondent**, the court may issue temporary or permanent no-contact orders as authorized in this Chapter.”
 - GS 50C-5

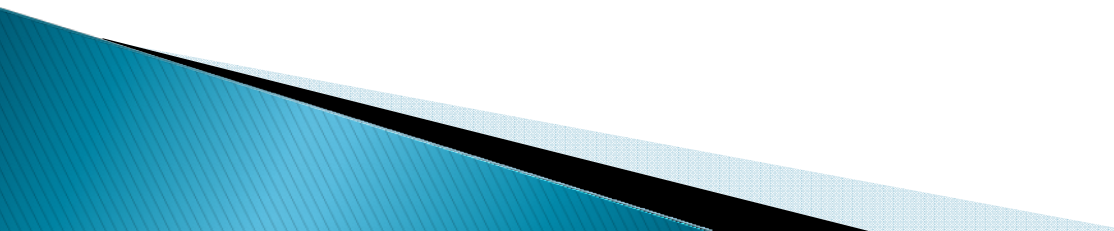
Civil No-Contact Orders

GS Chapter 50C

- ▶ **Victim** is “a person against whom an act of unlawful conduct has been committed by another person not involved in a personal relationship with the person as defined in GS 50B-1(b).”
 - GS 50C-1(8)
- ▶ 50C is not an alternative for 50B
- ▶ “Current or former household members”??
 - GS 50B-1(b)

Civil No-Contact Orders

GS Chapter 50C

- ▶ **Respondent** must be at least 16 years of age
 - ▶ S.L. 2007-199, amending GS 50C-1(7)
 - ▶ Effective July 8, 2007
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Civil No-Contact Orders

GS Chapter 50C

- ▶ **Unlawful conduct** includes:
 - Nonconsensual sexual conduct
 - Stalking

Stalking

- ▶ Before 7/8/07: “Following **on more than one occasion** or otherwise harassing ... with intent” to cause fear or emotional distress
- ▶ After 7/8/07: “**On more than one occasion** following or otherwise harassing ... with intent” to cause fear or emotional distress
 - S.L. 2007–199, amending GS 50C–1(6)

Separation Agreements Incorporation

- ▶ Once incorporated, separation agreement (contract) becomes a court order for all purposes.
 - *Walters*, 307 NC 381 (1983)
- ▶ “We note the possibility that a trial judge, in the exercise of equitable power, may be able to refuse to incorporate if he finds that incorporation would be inequitable.”
 - *Cavanaugh*, 317 NC 652 (1986)

Incorporated Agreements

- ▶ Once incorporated, support and custody provisions can be modified upon showing substantial change of circumstances since time of incorporation.
 - *Cavanaugh*, 317 NC 652 (1997)
- ▶ “Alimony” cannot be modified if it is actually “property settlement”
- ▶ Integrated agreements are property settlements, not “alimony”
 - *Borgersrode*, NCAppe (6-19-07)
 - *Marks*, 316 NC 447 (1986)

Custody

- ▶ *Tilley v. Diamond*, NCAApp (7-17-07)
 - “Strangers” do not have standing to file custody complaint
 - Standing is subject matter jurisdiction – no waiver
- ▶ *Cordell v. Doyle*, NCAApp (8-7-07)
 - Modification – can consider changes occurring after motion to modify filed

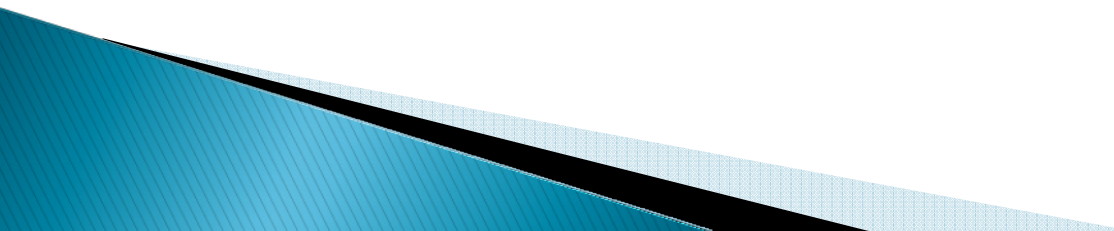
Military Custody

S.L. 2007-175: actions filed on or after 10/1/07

- ▶ When parent with custody deploys:
 - Temporary orders end 10 days after parent returns
 - Deployment not considered changed circumstances
- ▶ When parent with visitation deploys:
 - Visitation can be delegated by court to third parties

Military Custody

S.L. 2007-175

- ▶ Expedited hearings allowed at request of parent about to be deployed
 - ▶ Deployed parent can use electronic means to present testimony and evidence
 - ▶ Nothing alters court's duty to consider best interest of child
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Equitable Distribution

- ▶ Postseparation payment of marital debt
 - Before 10/11/02: *Hay*, 148 NCAApp 649 (2002)
 - Treatment within discretion of court
 - After October 11, 2002: Maybe divisible property
 - GS 50-20(b)(4)(d) : Divisible property includes increases and decreases in marital debt
 - *Cooke v. Cooke*, NCAApp (8-7-07):
 - Reimbursement order entered 1/06 upheld in case filed before 10/11/02
 - Error to classify payments as divisible property

Rule 8 “Defaults”

- ▶ “Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in a responsive pleading.”
- ▶ *But see* GS 50–10(a)
 - “material facts in every complaint seeking divorce or annulment shall be deemed denied by the defendant, whether the same shall actually be denied by pleading or not”
 - *Phillips*, NCAApp (8–7–07) – applies to CC’s as well