

Charlotte

**Proposed Protocol To Be Used by Judicial Officers
During Domestic Hearings Involving Pro Se Litigants**

1. Verify that the party is pro se and wishes to proceed without an attorney.
2. Verify the address of each party. Affirm that each party has an ongoing responsibility to advise the Clerk of Court and/or the Family Court Office of any change in address.
3. Provide an overview of the hearing and consider swearing both parties in at the same time.

↓ **Nature of Hearing:** We are here today in the matter of _____ v. _____ on the issue of _____.

↓ **Sequence:** “I will hear both sides in this matter. First I will hear what Mr./Ms. _____ would like for me to know about the case and then I will listen to what Mr./Ms. _____ would like for me to know about the case.”

↓ **Timing:** “I will give each side _____ minutes (enough time) to tell me their side of the case in that order.

↓ **Etiquette:** Do not interrupt while the other party is presenting their evidence. Wait until the person asking the question finishes before answering. And wait until the person answering the question finishes before asking the next question.

4. **Explain the elements**

↓ Mr./Ms. _____ is requesting an order for _____. He/she will be required to prove _____.

Domestic Violence 50-B: That the parties have or have had a personal relationship and

1. one party intentionally caused or attempted to cause bodily injury to other party; or
2. one party placed the other party or family member in fear of imminent serious bodily harm and thereby inflicted severe emotional distress; or
3. one party committed a crime of a serious sexual nature (rape, sexual battery or sex and sexual offenses with certain other victims).

Child Custody and/or Visitation: That it is in the best interest and welfare of the child that he/she be granted custody and/or visitation. If both parents are fit, the court will look at the physical and emotional health of each parent and child, the child’s attachment to each parent, the wishes of the child and the child’s environment.

Note for third-party cases: A parent will prevail over a non-parent unless parent is proven unfit or has acted inconsistent with parental status. The non-parent must explain why he/she should have a priority position over the parent.

Note for grandparent cases: Grandparents may be granted visitation rights if the family is no longer together and there is an on-going custody dispute, and visitation is in the child’s best interest.

Child Support: That the other party has a duty to provide financial support sufficient to meet the reasonable needs of the child. The Court will look at the amount of time the child spends with each parent, earnings of each parent, payment of health insurance, child care and extraordinary expenses.

Modification of Child Custody, Visitation or Support: That a substantial change in circumstances has occurred that affects the welfare of the child.

Equitable Distribution of Marital Property: Which property is separate and which may be deemed marital. You may then tell me how you recommend the property be equitably divided.

In determination of what is equitable, the court will consider the following factors:

1. the income, property, and liabilities of each party at the time the property division is to become effective
2. any obligations of support from a previous marriage
3. the duration of the marriage as-well-as the age and physical welfare of any children
4. the need of the custodial parent to occupy or own the marital residence and to use any household effects
5. any expectation of deferred compensation
6. any direct or indirect contributions made to the acquisition of marital property, or to help educate or develop career potential of other spouse
7. any contributions to increase the value of separate, or non-marital, property
8. the liquid or non-liquid character of any marital and divisible property
9. the difficulty of evaluating a parties interest in a business, corporation, or profession and the need to keep that interest intact.
10. the tax consequences to each party
11. any other factor which the court finds to be just and proper.

Post Separation Support: That he/she is a dependent spouse, lacks the resources to adequately meet his or her reasonable needs and the supporting spouse has the ability to pay support.

If that is proven, the court will base the amount of post separation support on

1. the financial needs of the parties
2. the parties' accustomed standard of living
3. the present income and recurring earnings of both parties from any source
4. the income-earning abilities of both parties
5. any separate and marital debt obligations of the parties
6. the expenses reasonably necessary to support each party
7. any legal obligations of support from a prior marriage
8. any marital misconduct by either party

5. **Explain that the party bringing the action has the burden to present evidence in support of the relief sought.**

↓ **Burden of Proof:** Because Mr./Ms. _____ has requested this order, he/she has to present evidence to show that a court order is needed. I can only consider evidence that is presented in court today. If Mr./Ms. _____ is unable to present evidence that an order is needed, then I must dismiss this action.

6. **Explain the kind of evidence that may be presented.**

↓ **Forms of Evidence:** Evidence may be in the form of testimony from the parties, testimony from witnesses or exhibits. Everyone who testifies will be placed under oath and will be subject to questioning by the other party.

- ↓ **Presenting Exhibits:** All exhibits must first be given an exhibit number by the clerk and then must be briefly described by the witness who is testifying and who can identify the exhibit. The exhibit is then given to the other party who can look examine it and let me know any reason why I should not consider that exhibit when I decide the case. I will then let you know whether that exhibit can be used as evidence.

7. **Explain the limits on the kind of evidence that can be considered.**

- ↓ **Admissible/Inadmissible Evidence:** I have to make my decision based upon the evidence that is admissible under the North Carolina Rules of Evidence. If either party starts to present evidence that is not admissible, I may stop you and tell you that I cannot consider that type of evidence.

8. **Verify that both parties if they understand the process and procedure.**

Notes

Provide substantive and procedural guidelines for litigants orally at the beginning of court proceedings. Include an explanation of the likely judicial engagement and its consistency with neutrality.

Ask relevant questions of the parties to solicit information relevant to a just decision. Questioning should be directed at obtaining general information to avoid the appearance of advocacy. (Example: “If you have specific instances supporting your claim that you’d like to tell me about, start with the most recent incident. Tell me what happened, where it happened and who was present.”)

Be alert to imbalances in power between the parties (e.g. disparate levels of education, legal sophistication, or English proficiency).

Explain judicial decisions orally in court including. Whenever possible the matter should be decided and the order prepared immediately upon the conclusion of the hearing and presented to the parties. Judges should make parties aware of resources available to ensure the orders are complied with.