

Ex Parte Domestic Violence Protective Orders

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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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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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Timeline



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

Transition

- ▶ 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 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 A DV Action (CV-312)	Affidavit as to Status of Minor Child (CV-609)

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More . . .

Transition

- ▶ 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.
- ▶ 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."
- ▶ **G.S. 50B-1(c-1).**
- ▶ 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."
- ▶ **G.S. 50B-3 (a).**

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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. A must be 14+.
- ▶ (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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Definition of DV:

Personal Relationship + Act

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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

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- ❑ 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 (GS: 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. She and the child's father share custody, with the child residing with mother one week and with father every other week. The child's father resides with another woman. Plaintiff alleges that the child returned from the last week with father 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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Ex Parte Domestic Violence Protective Orders

Scenarios

April 2023

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.
 - a. Do you grant the ex parte DVPO?
 - b. If yes, what relief do you order?

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.
 - a. Do you grant the ex parte DVPO?
 - b. If yes, what relief do you order?

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.
 - a. Do you grant the ex parte DVPO? Do you need additional information?
 - b. If you grant the DVPO, what relief do you order?

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.
 - a. Do you grant the ex parte DVPO?
 - b. If so, what relief do you order?

5. Plaintiff alleges that she is the mother of a 9-year-old child. She and the child's father share custody, with the child residing with mother one week and with father every other week. The child's father resides with another woman. Plaintiff alleges that the child returned from the last week with father 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.
 - a. Do you grant the ex parte DVPO?
 - b. If so, what relief do you order?

G.S. Chapter 50B

Ex Parte Domestic Violence Protective Orders—Bullet Points

What It Is & When It's Available

- Primary relief sought by plaintiff is protective order issued by DC enforceable by contempt or criminal law
- Ex parte DVPO is supplemental remedy sought by plaintiff for purpose of protection during interval between filing complaint/motion and DC hearing.
- Ex parte DVPO issued following hearing conducted in absence of defendant.
- Magistrates may issue ex parte DVPO if
 - ✓ Authorized by CDCJ
 - ✓ Court is not in session
 - ✓ No DCJ available within next four hours
- Ex parte DVPO expires at midnight of next day district court is in session.

Ultimate Legal Questions

Does it clearly appear from specific facts shown that there is a danger of acts of domestic violence against the plaintiff or minor child? If so, what relief is necessary to protect plaintiff/child from such acts?

Has an act of domestic violence in fact occurred?

Essential Elements

Requires plaintiff to prove

- 1) Relationship &
- 2) Act

Firearms

If plaintiff establishes right to relief, magistrate must inquire about firearms.

If any of 5 statutory factors are present, magistrate must order surrender of firearms.

Remedy

Magistrate must order defendant to refrain from further acts of DV, Magistrate may order additional relief necessary to protect the plaintiff/child.

LEGAL ISSUES IN DOMESTIC VIOLENCE

SOME BASIC INFORMATION ABOUT DOMESTIC VIOLENCE PROTECTIVE ORDERS¹

G.S. Ch. 50B creates a special kind of civil action in which the relief sought is protection from injury by the defendant, in the form of a coercive order by a judge prohibiting the defendant from taking certain actions. If the defendant knowingly violates the order, he may be found in contempt of court for violation of a court order. The defendant also may be found guilty of the crime of violating a DVPO.

A special kind of DVPO is available to a plaintiff who fears that she may be injured during the interval between filing the complaint and the time the hearing is held. What statistical fact suggests that this concern of plaintiffs is often well-founded?

A person seeking a DVPO has the option of asking for an **ex parte DVPO** as well. An ex parte DVPO is a protective order already in place before the defendant learns that the victim has filed for a DVPO. An ex parte DVPO is issued following a hearing conducted in the absence of the defendant. What concern does this raise in your mind?

Magistrates never issue final DVPOs, but in some counties magistrates are authorized to determine whether an ex parte DVPO should issue. Authorized magistrates may conduct hearings on requests for ex parte DVPOs only if (1) district court is not in session, and (2) no district court judge will be available to conduct the hearing for at least four hours.

Has your chief district court judge authorized magistrates to issue ex parte DVPO's?

- Never
 - Only during conferences or other relatively rare occasions
 - Theoretically, but we are strongly urged to use criminal charges when possible
 - Yes
-

¹ This outline refers to the victim of domestic violence as "the plaintiff" or "she", and the perpetrator of domestic violence as "the defendant" or "he", but any of these terms may be inaccurate in a specific case. The terms are used consistently in order to avoid confusion and were chosen because they are accurate in the majority of cases. In fact, though, a significant minority of victims of domestic violence are male. And because a person may seek a DVPO either by filing a civil action or by filing a motion in an already-existent civil action, that person may be a plaintiff or a defendant.

An ex parte DVPO issued by a magistrate is valid until midnight of the next day district court is in session. A district court judge will conduct another ex parte hearing when court is back in session.

The “permanent” hearing on plaintiff’s request for a DVPO is referred to as the “10 day hearing.” After defendant is served with the complaint, a full hearing is conducted on whether plaintiff is entitled to a DVPO and, if so, what provisions the order should contain. The order entered by the district court judge after hearing the evidence is valid for up to one year and may be extended at the end of that time for up to two years.

A DVPO is available only to parties involved in a **type of personal relationship** specified in the statute. These relationships are:

- current or former spouses
- persons of the opposite sex who live together or have lived together
- parents and children,² and grandparents and grandchildren. NOTE: no DVPO may issue under this section against a child under the age of 16.
- persons having a child in common
- current or former household members
- persons who are or have been in a dating relationship.³

² Including those acting *in loco parentis* to a minor child.

³ A dating relationship is defined as a relationship in which the parties are romantically involved over time and on a continuous basis over the course of the relationship.

Particular behavior qualifies as domestic violence only if the defendant:

- tried to cause physical injury;
- intentionally caused physical injury;
- behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid of imminent serious bodily injury;
- behaved in a way that caused the plaintiff, a member of her family, or a member of her household, to be afraid that defendant will continue to torment or terrorize that person to such a degree that the person experiences significant mental suffering. This behavior must be intentional on the part of the defendant, and it must have no legitimate purpose.⁴ The statute refers to this behavior as **harassment**.
- committed any act defined as rape or sexual offense in GS 14-27.2 to 14-27.7.

If a magistrate determines that *it clearly appears* from *specific facts shown* that there is *danger of acts of domestic violence* against the plaintiff or a minor child, the magistrate *may* order any relief set out in GS 50B-3 that the magistrate finds is necessary to protect them from such acts. [Note, however, additional showing required for order related to child custody.]

If a magistrate finds that an act of domestic violence *did in fact occur* (i.e., the defendant committed one of the acts listed above against a person in a personal relationship protected by the statute), the magistrate *MUST* enter an order which at a minimum prohibits the defendant from committing any further acts of domestic violence.

And the magistrate must do one other thing as well: the magistrate must question the plaintiff about defendant's ownership or access to firearms. (Does the defendant have access? Does the defendant own or have access to ammunition? A permit to purchase firearms? A permit to carry a concealed firearm?)

The magistrate must ask about the information above in every case, but in some cases the magistrate is required to go further and specifically order the defendant to turn over to the sheriff all guns, ammunition, and permits within his custody or control. This order is mandatory if any of the following factors are present:

⁴ The statute specifically states that this behavior may include, among other things, written communication, telephone calls (including voice mail), email, faxes, and pager messages.

- 1) The defendant has at some time in the past used or threatened to use a deadly weapon.
- 2) The defendant has a pattern of prior conduct involving the use or threatened use of violence with a firearm against people.
- 3) The defendant has made threats to seriously injure or kill the plaintiff or minor child.
- 4) The defendant has threatened suicide.
- 5) The defendant has inflicted serious injuries on the plaintiff or minor child.

The magistrate has authority to grant a wide range of additional relief to the plaintiff, depending on the particular circumstances of the case. These remedies are listed in GS 50B-3 and include

- 1) granting the plaintiff possession of the parties' shared residence, and ordering the defendant to leave the home;
- 2) determining which party has the right to possession of personal property during the time the order is effective, including possession of family pets; and
- 3) ordering the defendant to stay away from the plaintiff, as well as specific places such as the plaintiff's workplace and homes of family members.

The magistrate is often asked to make a determination of temporary custody of minor children residing with one or both parties. The magistrate is explicitly prohibited by GS 50B-2(c)(1) from doing this, unless the magistrate finds that . . .

. . . the child is exposed to a substantial risk of physical or emotional injury or sexual abuse.

If a magistrate makes this finding, s/he may then go on to order that the defendant stay away from the minor child, return the child to the plaintiff, or not remove the child from the plaintiff. In support of this order, the magistrate must make a formal finding that the order is necessary for the child's safety.

ANSWERING QUESTIONS ABOUT DVPO'S

Every magistrate should know the answers to the following questions, and those answers sometimes vary from one county to the next—and one magistrate to the next, depending on your personality, the shift you're working, and other circumstances. Magistrates should be guided by two fundamental principles in responding to these questions:

Providing information to citizens about the court system's response to domestic violence is an important part of your job;
and

You have a responsibility to be certain that the information you provide is accurate.

1. How do I get a DVPO?
2. How much does it cost?
3. What do I have to prove to get one?
4. What if the defendant violates the order?
5. How long will it last?
6. Can I get one for my kids and family too?
7. Do I need a lawyer to get one?
8. Is there anyone that can help me fill out the forms?
9. When will the defendant find out about it?

Other Questions?

10. _____

11. _____

In many counties, the clerk's office or local agency offering assistance to domestic violence has prepared brochures or other handouts providing victims with answers to these questions. In every case, the magistrate should be certain that the citizen is informed that **there are no court costs** associated with seeking a DVPO, and that an attorney is not necessary to access these services.

INSTRUCTIONS FOR DOMESTIC VIOLENCE FORMS

FORMS YOU NEED TO FILL OUT:

- I. Complaint And Motion For Domestic Violence Protective Order (AOC-CV-303)
 1. You will need three (3) copies of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name - you are the plaintiff;
 - (c) Defendant's name and address - a defendant is a spouse, former spouse, person of the opposite sex with whom you live or have lived, your child or grandchild who is at least 16 years old, the mother or father of your child, a current or former household member, or a person that you are dating or have dated;
 - (d) Check the blocks and fill in the blanks that apply to you. If you are afraid of additional acts of domestic violence and you want the judge/magistrate to act immediately, check block #2 at the bottom of page 2, asking for an Ex Parte Order. A request for an Ex Parte Order will be heard soon and without giving notice to the defendant. If a magistrate hears your request for ex parte relief, the magistrate's order is only good for a short period of time and a second temporary Ex Parte Order must be issued by the judge. If the judge issues the temporary Ex Parte Order, another hearing will be held after the defendant is given notice. If no Ex Parte Order is entered, a hearing will still be held after the defendant is given notice;
 - (e) Date and sign the complaint on the back;
 - (f) In some counties you may be able to take it to the magistrate's office on weekends and evenings.
 3. If you or the defendant is under the age of eighteen (18) and not married, you must ask the clerk for the form to appoint a guardian ad litem (AOC-CV-318).
- II. Notice Of Hearing On Domestic Violence Protective Order (AOC-CV-305)
 1. You will need three (3) copies of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name;
 - (c) Defendant's name and address.
 3. **DO NOT** fill out the remainder of this form.
- III. Ex Parte Domestic Violence Order Of Protection (AOC-CV-304)
 1. You will need only one (1) copy of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name;
 - (c) Defendant's name and address.
 3. **DO NOT** fill out the remainder of this form.
- IV. Civil Summons Domestic Violence (AOC-CV-317)
 1. You will need three (3) copies of this form.
 2. Fill in:
 - (a) Name of county;
 - (b) Plaintiff's name and address. You may give an address where you want your mail to go, not necessarily where you are staying;
 - (c) Defendant's name and address (*under the block designated "Defendant"*);
 - (d) Defendant's name and address again in the block designated "Name and Address of Defendant."
 3. **DO NOT** fill out the remainder of this form.

(Over)

V. Identifying Information About Defendant Domestic Violence Action (AOC-CV-312)

1. You will need only one (1) copy of this form.
2. Fill in all the information that you know. Be as complete and accurate as you can.
3. Leave blank any portion for which you do not have the information.
4. You may either:
 - (a) turn in the completed form to the clerk or magistrate with the other papers, or
 - (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

VI. Affidavit As To Status Of Minor Child (AOC-CV-609)

1. You **do not** need this form unless you are asking for temporary custody of the children.
2. You will need one (1) copy of this form for each minor child.
3. You must attach the completed form to the Complaint and give it to the clerk or magistrate with the other papers:
 - (a) turn in the completed form to the clerk or magistrate with the other papers, or
 - (b) keep the form, get the needed information, and turn in the completed form to the judge or magistrate at the hearing.

TAKE ALL FORMS TO THE CLERK/MAGISTRATE FOR FURTHER DIRECTIONS.

Case No.

Court General Court of Justice
District Court Division

County **NORTH CAROLINA**

**EX PARTE
DOMESTIC VIOLENCE
ORDER OF PROTECTION**

G.S. 50B-2, -3, -3.1

PETITIONER/PLAINTIFF

First Middle Last

PETITIONER/PLAINTIFF IDENTIFIERS

Date Of Birth Of Petitioner

And/or on behalf of minor family member(s): *(List Name And DOB)*

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

Other Protected Persons/DOB:

<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>

VERSUS

RESPONDENT/DEFENDANT

First Middle Last

Relationship to Petitioner: spouse former spouse
 unmarried, of opposite sex, currently or formerly living together
 unmarried, have a child in common
 currently or formerly in dating relationship
 current or former household member
 parent grandparent child grandchild

Respondent's/Defendant's Address

RESPONDENT/DEFENDANT IDENTIFIERS

Sex	Race	DOB	HT	WT
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Eyes	Hair	Social Security Number		
<input type="text"/>	<input type="text"/>	<input type="text"/>		
Drivers License No.		State	Expiration Date	
<input type="text"/>		<input type="text"/>	<input type="text"/>	

CAUTION:
 Weapon Involved

Distinguishing Features

THE COURT HEREBY FINDS THAT:

This matter was heard by the undersigned district court judge. magistrate. The court has jurisdiction over the subject matter.

Additional findings of this order are set forth on Page 2.

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 ,

WARNINGS TO THE RESPONDENT/DEFENDANT:

This order shall be enforced, even without registration, by the courts of any state, the District of Columbia, and any U.S. Territory, and may be enforced by Tribal Lands (18 U.S.C. Section 2265). Crossing state, territorial, or tribal boundaries to violate this order may result in federal imprisonment (18 U.S.C. Section 2262).

This order will be enforced anywhere in North Carolina.

Only the Court can change this order. The plaintiff cannot give you permission to violate this order.

See additional warnings on Page 4.

ADDITIONAL FINDINGS

1. As indicated by the check block under Respondent/Defendant's name on Page 1, the parties are or have been in a personal relationship.
2. That on *(date of most recent conduct)* _____, the defendant
- a. attempted to cause intentionally caused bodily injury to the plaintiff the child(ren) living with or in the custody of the plaintiff
 - b. placed in fear of imminent serious bodily injury the plaintiff a member of the plaintiff's family a member of the plaintiff's household
 - c. placed in fear of continued harassment that rises to such a level as to inflict substantial emotional distress the plaintiff a member of plaintiff's family a member of plaintiff's household
 - d. committed an act defined in G.S. 14- 27.21 (1st deg. rape) 27.22 (2nd deg. rape) 27.26 (1st deg. sexual off.) 27.27 (2nd deg. sexual off.) 27.33 (sexual battery) 27.31 (sexual activity by substitute parent) against the plaintiff a child(ren) living with or in the custody of the plaintiff by
(describe defendant's conduct)

3. The defendant is in possession of, owns or has access to firearms, ammunition, and gun permits described below. *(Describe all firearms, ammunition, gun permits and give identifying number(s) if known, and indicate where defendant keeps firearms)*

4. The defendant
- a. used threatened to use a deadly weapon against the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - b. has a pattern of prior conduct involving the use threatened use of violence with a firearm against persons
 - c. made threats to seriously injure or kill the plaintiff minor child(ren) residing with or in the custody of the plaintiff
 - d. made threats to commit suicide
 - e. inflicted serious injuries upon the plaintiff minor child(ren) residing with or in the custody of the plaintiff in that *(state facts)*:

5. The parties are the parents of the following child(ren) under the age of eighteen (18). The child(ren) are presently in the physical custody of the plaintiff. defendant. The plaintiff has submitted an "Affidavit As To Status Of Minor Child."

NOTE TO JUDGE: *A copy of AOC-CV-609 for each child must be attached to the order.*

Name	Sex	Date Of Birth	Name	Sex	Date Of Birth

6. The minor child(ren) is exposed to a substantial risk of physical or emotional injury or sexual abuse in that:
7. It is in the best interest of and necessary for the safety of the minor child(ren) that defendant stay away from the minor child(ren) that the defendant return the minor child(ren) to plaintiff and that the defendant not remove the minor child(ren) from plaintiff in that:
8. *(Check block only if plaintiff is entitled to physical care of child(ren).)* It is in the best interest of the minor child(ren) that defendant have contact with the minor child(ren) in that:
9. The defendant plaintiff is presently in possession of the parties' residence at _____

10. The defendant plaintiff is presently in possession of the parties' vehicle. (describe vehicle)

11. Other: (specify)

12. (for magistrate only) This matter was heard at a time when the district court was not in session and a district court judge was not available and would not be available for a period of four or more hours.

CONCLUSIONS

Based on these facts, the Court makes the following conclusions of law:

- 1. The defendant has committed acts of domestic violence against the plaintiff.
- 2. The defendant has committed acts of domestic violence against the minor child(ren) residing with or in the custody of the plaintiff.
- 3. It clearly appears that there is a danger of acts of domestic violence against the plaintiff. minor child(ren). [G.S. 50B-2(c)]
- 4. The minor child(ren) is exposed to a substantial risk of physical injury. emotional injury. sexual abuse. [G.S. 50B-2(c)]
- 5. The Court has jurisdiction under the Uniform Child Custody Jurisdiction And Enforcement Act.
- 6. It is in the best interest of and necessary for the safety of the minor child(ren) that the defendant stay away from the minor child(ren). (and) return the minor child(ren) to the physical care of the plaintiff. (and) not remove the minor child(ren) from the physical care of the plaintiff.
- 7. The defendant's conduct requires that he/she surrender all firearms, ammunition and gun permits. [G.S. 50B-3.1]
- 8. The plaintiff has failed to prove grounds for ex parte relief.

ORDER

It is ORDERED that:

- 1. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**
- 2. the defendant shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace or other means), or interfere with the minor child(ren) residing with or in the custody of the plaintiff. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[01]**
- 3. the defendant shall not threaten a member of the plaintiff's family or household. **[02]**
- 3a. the defendant shall not cruelly treat or abuse an animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
- 4. the plaintiff is granted possession of, and the defendant is excluded from, the parties' residence described above and all personal property located in the residence except for the defendant's personal clothing, toiletries and tools of trade. **[03]**
- 5. any law enforcement agency with jurisdiction shall evict the defendant from the residence and shall assist the plaintiff in returning to the residence. **[08]**
- 6. the plaintiff **[08]** defendant **[08]** is entitled to get personal clothing, toiletries, and tools of trade from the parties' residence. A law enforcement officer shall assist the plaintiff defendant in returning to the residence to get these items.
- 6a. the plaintiff is granted the care, custody, and control of any animal owned, possessed, kept, or held as a pet by either party or minor child residing in the household.
- 7. the defendant shall stay away from the plaintiff's residence or any place where the plaintiff receives temporary shelter. A law enforcement officer shall arrest the defendant if the officer has probable cause to believe the defendant has violated this provision. **[04]**
- 8. the defendant shall stay away from the following places:
 - a. the place where the plaintiff works. **[04].**
 - b. any school(s) the child(ren) attend. **[04]**
 - c. the place where the child(ren) receives day care. **[04]**
 - d. the plaintiff's school. **[04]**
 - e. Other: (name other places) **[04]** _____

The sheriff must deliver a copy of this order to the principal or the principal's designee at the following school(s): (name schools)

- 9. the plaintiff is granted possession and use of the vehicle described in Block No. 10 of the Findings on Page 3. **[08]**
- 10. The plaintiff is awarded temporary custody of the minor child(ren) (Check any of a, b, or c that apply.)
 - a. and the defendant is ordered to stay away from the minor child(ren).
 - b. and the defendant is ordered to immediately return the minor child(ren) to the care of the plaintiff.
 - c. and the defendant is ordered not to remove the minor child(ren) from the care of the plaintiff.

11. (If No. 10 is checked and you are allowing visitation to defendant) The defendant is allowed the following contact with the minor child(ren):
12. the defendant is prohibited from possessing or receiving [07] purchasing a firearm for the effective period of this Order [07] and the defendant's concealed handgun permit is suspended for the effective period of this Order. [08]
 The defendant is a law enforcement officer/member of the armed services and may may not possess or use a firearm for official use.
13. the defendant surrender to the Sheriff serving this order the firearms, ammunition, and gun permits described in Number 3 of the Findings on Page 2 of this Order and any other firearms and ammunition in the defendant's care, custody, possession, ownership or control. **NOTE TO DEFENDANT: You must surrender these items to the serving officer at the time this Order is served on you. If the weapons cannot be surrendered at that time, you must surrender them to the sheriff within 24 hours at the time and place specified by the sheriff. Failure to surrender the weapons and permits as ordered or possessing, purchasing, or receiving a firearm, ammunition or permits to purchase or carry concealed firearms after being ordered not to possess firearms, ammunition or permits is a crime. See "Notice To Parties: To The Defendant" on Page 4 of this Order for information regarding the penalty for these crimes and instructions on how to request return of surrendered weapons.**
14. the request for Ex Parte Order is denied.
15. Other: (specify) [08]

Date	Signature	<input type="checkbox"/> District Court Judge <input type="checkbox"/> Designated Magistrate
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NOTE TO PLAINTIFF: If the judge signs this Order and gives it to you, take it to the Clerk's office immediately. If the magistrate signs this Order and gives it to you, follow the magistrate's directions.

NOTE TO CLERK: Give or mail a copy of this Order to the plaintiff and to the appropriate local law enforcement agency. Send copies to sheriff with Notice Of Hearing, Complaint and Summons for service on defendant. Send extra copies to the sheriff if required to deliver copy(ies) to the child(ren)'s school.

NOTICE TO PARTIES

TO THE DEFENDANT:

1. **If this Order prohibits you from possessing, receiving or purchasing a firearm and you violate or attempt to violate that provision, you may be charged with a Class H felony pursuant to North Carolina G.S. 14-269.8 and may be imprisoned for up to 39 months.**
2. **If you have been ordered to surrender firearms, ammunition, and gun permits and you fail to surrender them as required by this Order, or if you failed to disclose to the Court all information requested about possession of these items or provide false information about any of these items you may be charged with a Class H felony and may be imprisoned for up to 39 months.** If you surrendered your firearms, ammunition, and permits, you may file a motion for the return of weapons with the clerk of court in the county in which this Order was entered when the protective order is no longer in effect, except if at the time this Order expires criminal charges, in either state or federal court, are pending against you alleged to have been committed against the person who is protected by this order, you may not file for return of the firearms until final disposition of the criminal charges. The form, "Motion For Return Of Weapons Surrendered Under Domestic Violence Protective Order" AOC-CV- 319, is available from the clerk of court's office. The motion must be filed **not later than 90 days after the expiration of the Order that requires you to surrender the firearms or if you have pending criminal charges alleged to have been committed against the person who is protected by the domestic violence protection order, the motion must be filed not later than 90 days after final disposition of the criminal charges.** At the time you file the motion, the clerk will schedule a hearing before the district court for a judge to determine whether to return the weapons to you. The sheriff cannot return your weapons unless the Court orders the sheriff to do so. You must pay the sheriff's storage fee before the sheriff returns your weapons. If you fail to file a motion for return of the weapons within 90 days after the expiration of this Order, or the final disposition of criminal charges pending at the time this Order expired, or if you fail to pay the storage fees **within 30 days after the Court enters an order to return your weapons**, the sheriff may seek an order from the Court to dispose of your weapons.

TO THE PLAINTIFF:

1. You should keep a copy of this order on you at all times and should make copies to give to your friends and family. If you move to another county or state, you may wish to give a copy to the law enforcement agency where you move, but you are not required to do so.
2. The court or judge is the only one that can make changes to this order. If you wish to change any of the terms of this order, you must come back into court to have the judge modify the order.
3. If the defendant violates any provision of this order, you may call a law enforcement officer or go to a magistrate to charge the defendant with the crime of violating a protective order. You also may go to the Clerk of Court's office in the county where the protective order was issued and ask to fill out form AOC-CV-307, Motion For Order To Show Cause Domestic Violence Protective Order, to have an order issued for the defendant to appear before a district court judge to be held in contempt for violating the order.

Name Of Defendant

File No.

CERTIFICATION

I certify this order is a true copy.

Date	Signature Of Clerk	<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC
		<input type="checkbox"/> Clerk of Superior Court	

RETURN OF SERVICE

NOTE: To be used when Magistrate issues ex parte protective order and order will be served on defendant separate from the complaint and civil summons. If complaint and summons are served with order, return on summons covers order.

I certify that this Ex Parte Domestic Violence Order of Protection was received and served as follows:

Date Served	Time Served <input type="checkbox"/> AM <input type="checkbox"/> PM	Name Of Defendant
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- By delivering to the defendant named above a copy of the order.
- By leaving a copy of the order at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.

Name And Address Of Person With Whom Copies Left

- Other manner of service on the defendant (specify)
- Defendant WAS NOT served for the following reason.

Date Received	Signature Of Deputy Sheriff Making Return
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Date Of Return	Name Of Deputy Sheriff Making Return (type or print)
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County Of Sheriff

STATE OF NORTH CAROLINA

File No.

In The General Court Of Justice
District Court Division

_____ County

Name Of Plaintiff

Address

City, State, Zip

VERSUS

Name Of Defendant

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

CIVIL SUMMONS DOMESTIC VIOLENCE

ALIAS AND PLURIES SUMMONS

G.S. 50B-2(a)

To The Defendant Named Below:

Name And Address Of Defendant

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within ten (10) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address; and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Date Issued

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court Designated Magistrate

ENDORSEMENT

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint and a copy of the ex parte order were received and served as follows:

DEFENDANT

<i>Date Served</i>	<i>Time Served</i>	<input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing within.

Name And Address Of Person With Whom Copies Left

Other manner of service (specify)

Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
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<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
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<i>Date Of Return</i>	<i>County Of Sheriff</i>
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