

## Issues in 50B Cases

Cheryl Howell  
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### Relationships: GS 50B-1(b)

- ▶ Current or former spouses
- ▶ Persons of opposite sex who live together or have lived together
- ▶ Related as parents and children, including others acting in loco parentis to a minor child, or grandparents and grandchildren (minor defendant must be at least 16)
- ▶ Have child in common
- ▶ Current or former household members
- ▶ Persons of opposite sex in dating relationship or have been in dating relationship

### Minor Parties: General Rules

- ▶ A minor can be a plaintiff or a defendant
- ▶ When child is the plaintiff or defendant, the child should be named as the plaintiff or defendant
- ▶ Minors generally need a Rule 17 GAL appointed when they are parties
  - No GAL is required if child has general or testamentary guardian
  - Parent is not a general or testamentary guardian

### Rule 17 GAL

- ▶ Any competent adult
- ▶ Is not a court appointed attorney
- ▶ Is not a party to the action
  - So should not be named as a party on the complaint or on the answer
- ▶ Is paid as a part of court costs

### 50B Actions

- ▶ Plaintiff must be an "aggrieved party"
- ▶ "Aggrieved party" means a person who has one of the listed relationships with the defendant
- ▶ Act alleged against either:
  - The aggrieved party, or
  - A minor child "residing with" or "in the custody of" the aggrieved party

### Protection for Minors

- ▶ The only time a minor *must* be a plaintiff in order to get protection is when the parent with whom child is residing or "in the custody of" has no personal relationship with the defendant
- ▶ But, only time minor *cannot* be a plaintiff is when minor has no personal relationship with defendant

## Minors in 50B Action

- ▶ Minor should not be named as a plaintiff on the complaint unless minor actually is a plaintiff
- ▶ If minor is a plaintiff, there must be a GAL appointed
  - But GAL is not named in the caption to the complaint
  - Separate AOC form
- ▶ If minor is not a plaintiff, there should be no GAL appointed

## Consider .....

- ▶ Mom has primary physical custody
- ▶ Dad has 'standard' visitation
- ▶ Dad alleges mom has committed acts against the child
- ▶ Can child be plaintiff?
- ▶ Can dad be plaintiff?

## Rule 65 and 50B

- ▶ Injunction is a remedy, not a cause of action
- ▶ Rule 65 injunction is a 'preliminary injunction' to be used pending the outcome of an action
- ▶ 50B action and 50B remedies are not exclusive

## Temporary Custody Provisions

- ▶ "Nothing in this section shall be construed to affect the right of the parties to a de novo hearing under Chapter 50 of the General Statutes. Any subsequent custody order entered under Chapter 50 of the General Statutes supersedes a temporary order issued pursuant to this Chapter."
  - GS 50B-3