

Special Topics

Pisgah Legal Services

2017 50B CLE

Topics

- Enforcement
- Motion to Set Aside
- Renewals
- 50Cs
- Jurisdictional considerations
- Minors as plaintiffs
- Related criminal charges



Enforcement

- DVPOs are unique in that they can be enforced either through a criminal charge OR civil motion for contempt
 - Ex Parte order or final order

Enforcement: Criminal Charges

- Box 1 on order: D shall not assault, threaten, abuse, follow, harass (by telephone, visiting the home or workplace, or other means), or interfere with P.
- Box 2 on order: D 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 P.
- Box 7 on order: D shall stay away from P's residence or any place where P receives temporary shelter.
- **“A law enforcement officer shall arrest D if the officer has probable cause to believe D has violated this provision.”**
 - With or without a warrant



Enforcement: Criminal Charges

- Plaintiff simply calls police or goes to local magistrate's office to report violations
 - Results in Class A1 misdemeanor charge
 - Three strikes results in Class H felony
 - Violations with a gun results in Class H felony
 - Going to a DV shelter and violating an order results in Class H felony
 - Committing a felony and violating an order bumps the felony up one class
- Defendant is arrested and taken to local detention center before his/her bond hearing in front of a judge

Enforcement: Civil

- If Defendant fails to follow provisions of the DVPO, such as those addressing temporary child custody, property exchange, etc. Plaintiff can file a motion for contempt
- Can use AOC court form AOC-CV-307 and file pro se

STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice District Court Division
Name Of Plaintiff _____ _____ _____	MOTION FOR ORDER TO SHOW CAUSE DOMESTIC VIOLENCE PROTECTIVE ORDER	G.S. 50B-4; 5A-15, -23
VERSUS		
Name Of Defendant _____ _____ _____	The Court issued a Domestic Violence Protective Order in this case on (Give date of Order.) _____ . The defendant has willfully violated that Order by (Tell what the defendant did that violated the Order.): _____ _____ _____	

Enforcement: Civil

- Clerk may issue "Order to Appear And Show Cause For Failure To Comply With Domestic Violence Protective Order," form AOC-CV-308, commonly called a "Show Cause Order"
 - Must be served on the Defendant
- Defendant must then come to court and show the court why he/she should not be held in contempt
 - Defendant is eligible for court appointed counsel and will be allowed a First Appearance as in a criminal matter
- If the judge finds the defendant in criminal contempt, the defendant can be sentenced to serve up to 30 days in jail and fined up to \$500 or both.
- If the judge finds the defendant in civil contempt, the defendant can be kept in jail until what has been ordered has been done.

Motion to Set Aside DVPO

STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice District Court Division
Name Of Plaintiff	VERSUS	MOTION <input type="checkbox"/> TO RENEW <input checked="" type="checkbox"/> OR SET ASIDE DOMESTIC VIOLENCE PROTECTIVE ORDER NOTICE OF HEARING
Name And Address Of Defendant		
G.S. 50B-3(b)		
NOTE TO PLAINTIFF: <i>A temporary custody order entered as part of a domestic violence protective order cannot be renewed to extend an award of custody beyond the maximum one year period. Therefore, if your original order granted custody for a one-year period, a renewed order cannot award an order of custody.</i>		
MOTION		
A Domestic Violence Protective Order, a copy of which is attached, was entered by a district court judge in this county on the date listed below and has an expiration date as listed below. <i>(Attach a copy of the order.)</i>		
<input type="checkbox"/> 1. I move that the Domestic Violence Protective Order previously entered on the date listed below and not yet expired be renewed for an additional two years and request the court to set a hearing date to determine whether the order will be renewed. <i>(State facts that cause you to want to renew the order including new violations of the order, if any, and give any other you believe the order should be renewed.)</i>		
<input checked="" type="checkbox"/> 2. I move that the Domestic Violence Protective Order previously entered on the date listed below be set aside because it is no longer equitable that the order have future application or for other good cause pursuant to G.S. 1A-1, Rule 60(b)(5) or (6), and I request the Court to set a hearing date to determine whether the order will be set aside <input type="checkbox"/> and if it is set aside, whether a new protective order will be entered. <i>(State reasons for setting aside protective order.)</i>		

Set Aside

- Form AOC-CV-313
 - “I move that the [50B] previously entered on the date listed below be set aside because it is **no longer equitable** that the order have future application **or for other good cause** pursuant to G.S. 1A-1, Rule 60(b)(5) or (6)”
- NCGS 60(b)
 - Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. - On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
 - (5) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
 - (6) Any other reason justifying relief from the operation of the judgment.

Set Aside

- PLS does **NOT** assist former clients in setting aside DVPOs
- Reasons a judge may set aside a DVPO?
 - Substance abuse has been addressed, abuser is clean
 - Mental health issues have been addressed, abuser has sought counseling, etc.
 - RARELY GRANTED!
- PLS does assist defending motions to set aside filed by the opposing party
 - Essentially defending the original entry of the DVPO
- Terrible reasons to argue for a set aside
 - Difficult to co-parent
 - Reconciliation
 - Defendant's mistake as to the court date

Motion to Renew DVPO

STATE OF NORTH CAROLINA		File No. _____
_____ County		In The General Court Of Justice District Court Division
Name Of Plaintiff	VERSUS	MOTION <input checked="" type="checkbox"/> TO RENEW <input type="checkbox"/> OR SET ASIDE DOMESTIC VIOLENCE PROTECTIVE ORDER NOTICE OF HEARING
Name And Address Of Defendant		
G.S. 50B-3(b)		
NOTE TO PLAINTIFF: <i>A temporary custody order entered as part of a domestic violence protective order cannot be renewed to extend an award of custody beyond the maximum one year period. Therefore, if your original order granted custody for a one-year period, a renewed order cannot award an order of custody.</i>		
MOTION		
A Domestic Violence Protective Order, a copy of which is attached, was entered by a district court judge in this county on the date listed below and has an expiration date as listed below. <i>(Attach a copy of the order.)</i>		
<input checked="" type="checkbox"/> 1. I move that the Domestic Violence Protective Order previously entered on the date listed below and not yet expired be renewed for an additional two years and request the court to set a hearing date to determine whether the order will be renewed. <i>(State facts that cause you to want to renew the order including new violations of the order, if any, and give any other you believe the order should be renewed.)</i>		
<input type="checkbox"/> 2. I move that the Domestic Violence Protective Order previously entered on the date listed below be set aside because it is no longer equitable that the order have future application or for other good cause pursuant to G.S. 1A-1, Rule 60(b)(5) or (6), and I request the Court to set a hearing date to determine whether the order will be set aside <input type="checkbox"/> and if it is set aside, whether a new protective order will be entered. <i>(State reasons for setting aside protective order.)</i>		

Renewal of DVPO

- *See 50B-3(b): “The court may renew a protective order for a fixed period of time not to exceed two years, including an order that previously has been renewed, upon a motion by the aggrieved party filed before the expiration of the current order”*
- Renewal motion must be filed **BEFORE** current order expires
- Renewal can extend order for up to **TWO** years
- Order can be renewed **MULTIPLE** times
- Plaintiff doesn't need to be NC resident to renew (*Comstock v. Comstock*, 2015 NC Court of Appeals)
- Temporary custody orders **CANNOT** be renewed

Renewal of DVPO

- What happens when the motion to renew is still pending when the current order expires?
 - No requirement that the renewal order be entered before existing order expires (*Comstock v. Comstock*, 2015 NC Court of Appeals)
- What happens if defendant “violates” the original order when (a) motion to renew is pending and (b) original order has expired?
 - Statute does not provide for the extension of an order when a motion to renew is pending without some action by the court
 - In theory, you could file a motion for ex parte order to “bridge the gap” so to speak... but our office has yet to attempt this

Renewal of DVPO

- *“The court may renew a protective order for good cause. The commission of an act as defined in G.S. 50B-1(a) by the defendant after entry of the current order is not required for an order to be renewed.”*
- Renewal is allowed - not required unlike entry of original order
- What is **good cause**?
 - Continuing subjective fear of defendant
 - Prior acts may be “incorporated by reference” into renewal orders (Basden v. Basden, 2002 unpublished Court of Appeals case)
- **NO** new acts of DV are required to renew the order
 - But certainly testimony regarding violations is helpful

50C Civil No-Contact Orders

- No-Contact Order for Stalking or Nonconsensual Sexual Conduct
- Filing requirements
 - Either party resides in that NC county or the conduct occurred there
 - Defendant must be 16 or older
- Filing process, ex parte orders, and renewals are similar to a DVPO
- When does PLS typically see 50Cs?
 - Stranger sexual assaults
 - Same-sex couples who have never resided together
 - Co-worker sexual harassment
 - Relatives/new girlfriends of either party in a related 50B

50Cs: Grounds

- Defendant committed **nonconsensual sexual conduct**
 - “Any intentional or knowing touching, fondling, or sexual penetration by a person, either directly or through clothing, of the sexual organs, anus, or breast of another, whether an adult or a minor, for the purpose of sexual gratification or arousal. ... Include[s] the transfer or transmission of semen.”
- Defendant has followed **on more than one occasion** or otherwise **tormented, terrorized, or terrified [Plaintiff]** with the intent to place the plaintiff in reasonable fear for the plaintiff’s safety or the safety of the plaintiff’s immediate family or close personal associates or with the intent to cause, and which did cause, the plaintiff to **suffer substantial emotional distress** by placing the plaintiff in fear of death, bodily injury, or continued torment or terror

Jurisdictional Considerations

- 50B-2 states *“any person residing in this State may seek relief under this Chapter...”*
- Plaintiff must be a resident of NC **at the time of filing**
- Residency is sufficient even if the act of DV occurred outside the state OR Plaintiff wasn't a resident at the time of the act
- However, if the defendant also resides outside of the state, personal jurisdiction requirements may limit the court's ability to enter a DVPO
 - Due Process clause requires 'minimum contacts' between Defendant and NC
 - Defendant's relationship with, involvement in or connection to NC must make it 'fair' to require that defendant appear and defend in NC

Minors as Plaintiffs

- **When should a minor be the named plaintiff in a 50B?**
- When a minor files for a 50B, a Rule 17 Guardian Ad Litem (GAL) must be appointed for the minor
 - Same applies where the defendant is a minor
 - GAL's name does not need to be on the complaint
 - Clerk appoints GAL when the complaint is filed using an AOC form
 - The order appointing the GAL is sufficient to inform the court and any other interested person that the appointment has been made
- Chapter 50B allows an adult to seek protection for him/herself and a minor child residing with him/her OR just for a minor child residing with him/her or in her custody
 - Custodial parent need not be the victim of the DV but can still file as Plaintiff... no need for a GAL

Minors as Plaintiffs

- In some circumstances the child must be the Plaintiff to file
- If the custodial parent **does not have a qualifying relationship** with the Defendant, the parent does not meet the definition of aggrieved party and cannot file a 50B action
 - The child would need to be the named Plaintiff
- **Common example: teenagers in a dating relationship.**
 - Parent of teenager cannot be Plaintiff because parent is not an aggrieved party
 - However, parent can be appointed GAL for the teenager. In that situation, mom is NOT a party
 - To avoid confusion, the child should be named clearly as plaintiff rather than parent

Related Criminal Charges

- Often one or both parties have pending criminal charges by the return hearing date for the DVPO
 - Frequently seen: assault on a female, communicating threats, assault with a deadly weapon, injury to personal property
- Findings of fact in a DVPO and either party's testimony could be used in a subsequent criminal hearing
- Buncombe: doesn't impact court calendar unless attorneys/parties elect to continue in consideration
 - DA's office prefers to be consulted if charges are "dismissed" in a settlement
 - PD's office prefers to be consulted if Defendant is a client
- 29B, 29A: prefer to link the cases together for judicial efficiency
 - DA's office might work in your DVPO into a plea deal

How can you help?

- Overview of Pisgah Legal's case handling system
- MAVL referrals
- Case closings



How are cases handled at PLS?

- Generally 50Bs are filed by potential clients pro se and then referred to PLS by domestic violence agencies (Helpmate in Buncombe County)
 - Occasionally we speak to clients BEFORE they file and walk them through the process
- Prospective clients are screened for income eligibility and cleared of any possible conflicts of interest
 - Safety planning is also done at the screener level

How are cases handled at PLS?

- Cases are then assigned to staff attorneys who review pleadings and do an initial intake/interview with the client
- Clients are either immediately informed they are going to be represented in court OR that their case will be discussed at the staff attorney meeting on Tuesday afternoons
 - Clients who do not have grounds are encouraged to file a voluntary dismissal and other legal remedies are explored
 - Depending on the team's capacity that week, some clients must go forward pro se and are prepared for and advised on court procedure and case outcomes
 - Some clients may be assisted just through negotiation with the opposing party or facilitating property exchange to resolve the issues between the parties
- PLS staff attorneys may handle as many as 5 or 6 cases each week

MAVL Referrals

- Compelling cases are identified as possible “MAVLs” and referred to our MAVL legal assistant, Annie Reid
 - Annie then begins contacting possible MAVL attorneys to take the client’s case
- Cases are referred to the MAVL department as soon as possible
- Any evidence, intake notes, etc. are forwarded to the MAVL attorney who accepts the case
- PLS staff attorneys are available to assist with any questions, seeking a continuance, and providing whatever support the MAVL attorney may need in and out of court

Case Closings

- Are your work is complete with the client, we ask that you complete a short survey to report the outcome and hours spent on the case
- This data and your client stories are reported to our grant funders, used in fundraising materials, etc.

Questions?