

## *North Carolina, Domestic Violence, Custody, and the Courts*

Part 1 of a 6 part series

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### **Where can I file for a Domestic Violence Protective Order?**

Domestic violence is a complex subject because every person, family, and situation is different. In fact, every state has its own set of policies, rules, regulations and laws concerning the family and domestic violence. While every state has its own laws, in 1994, the Federal government passed the *Violence Against Women Act* (“VAWA”), which helps victims of domestic violence across the United States. You can file for a Protective Order in any state even if you are a resident of a different state. VAWA makes Protective Orders valid across state lines and offers a variety of other protections. It is best if you are a resident of North Carolina to file for a Protective Order in North Carolina. However, in the most extreme of circumstances, it is possible, although perhaps not legally advisable, to file a protective order in another state. The best course of action is likely to file in North Carolina first and then go to another state, if that is where your family and resources exist.

### **Where can I file for Emergency Custody?**

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) is a Uniform Act drafted by the National Conference of Commissioners on Uniform State Laws in 1997. The UCCJEA has since been adopted (means became the law) by 49 U.S. States, including North Carolina. The UCCJEA has also been adopted by the District of Columbia, Guam, and the U.S. Virgin Islands. The UCCJEA provides emergency custody protections even though you may not be a resident of a state. In the event that you need to flee from your home state, you would be able to file for a Protective Order in another state as well as an Emergency Custody Order. While the other state may not be able to issue a permanent custody order, another state may be able to issue a temporary order to ensure your children are protected. The courts can communicate with one another across state lines, and the judges will determine which state is best suited for your custody case. There is a chance that if you file for emergency custody in a different state, you may have to return to North Carolina for subsequent temporary or permanent custody hearings. Thus, there is no guarantee that you won't have to return to North Carolina or your home state.

If you attempt to flee the state with your children, your abuser may file for emergency custody in North Carolina in an effort to bring the children back to North Carolina, thus frustrating your opportunity to get to safety and to get to an environment that offers other resources and freedom from the abuser. You will likely be advised to file for emergency custody or a domestic violence protective order prior to leaving the state. That way there is a concrete record of your actions, thoughts and intent.

Although the children may be required to return to North Carolina, the abused parent is not required to do so. This is a difficult choice to make, although the parent almost always decides to return. Once back in NC, the abused parent is at risk of being forced to reconcile into the abusive and controlling relationship or relinquishing more custody than is healthy for the children. The

abuser is usually the one who has the majority of the financial resources (in some cases they have all of the financial resources) and can out-lawyer and out-spend the victim, leaving the custodial parent and the children vulnerable.

The general rule, although not absolute, is that the first to file a custody lawsuit will determine what state will have initial jurisdiction. While it may not always be feasible to file first, it is always legally advisable to have a consultation with an attorney before acting.

### **Where does NC law consider domestic violence?**

North Carolina's laws on domestic violence are contained within N.C. General Statute § 50B, which is in a different section from the laws on custody. You may hear a Domestic Violence Protective Order or a Restraining Order referred to as a "50B." The term comes from the North Carolina statutes on domestic violence.

In order to meet the legal definition of domestic violence, you must have or have had a *personal* relationship with the offender, such as a spouse, former spouse, family member, roommate or household member, co-parent or a dating partner of the opposite sex. There is inherent discrimination against same sex couples built into the laws governing domestic violence in North Carolina unless you lived together at some point.

So, what is domestic violence? Most people think that you are only abused if you are physically hurt or assaulted by the other person. Although one form of domestic violence, and a very serious form, it is not the only form. In fact, domestic violence (by legal definition) in North Carolina includes: bodily injury; attempting to cause bodily injury; rape; sexual assault; stalking; and continued harassment that rises to the level to inflict substantial emotional distress. It is "continued harassment" that is the most common, most destructive, and hardest to break away from.

What does continued harassment mean according to the North Carolina courts? Generally speaking, it is the situation where your home becomes more of a prison than a place to seek sanctuary. If someone close to you is: cussing, screaming, threatening you or themselves; name calling; forcing everyone to walk on pins and needles; abusing drugs or alcohol; recording you; following you around; texting and calling non-stop; waking you in the middle of the night; destroying property; isolating you from friends, family or finances; making you feel that you are going crazy or that you are the problem; telling you that they will take the children from you; telling you that they will kill themselves, or brandishing guns or other weapons as a joke or as a threat, then you are most likely in an abusive relationship and you need to seek help.

Luckily, across the state of North Carolina, and in most counties, there are domestic violence agencies that are set up to provide free services, such as advice, counseling, housing assistance, and legal services to those in need. North Carolina has a very active non-profit base setup across the state to assist those in need, not limited to Legal Aid. For example, InterAct of Wake County (<http://www.interactofwake.org/>) offers services where you can file for a Protective Order on site and video conference with the judge without stepping foot into a courtroom. Wake County has worked very hard to provide easy access to families in trouble.

Unfortunately, not all counties are the same. In fact, every county in North Carolina has its own set of judges, court systems and biases. Your outcome in court will be dependent on where you live and the day that you go to court. Remember that each judge is a person with a different set of experiences that form their opinions about others, and unfortunately, some judges don't understand domestic violence. This is not to dissuade you from seeking help. If you are in a dangerous or toxic relationship, you should not let these facts deter you from seeking help. However, you need to be prepared and proactive in order to have a successful outcome in court.

### **Why is establishing domestic violence helpful to obtaining custody of your children?**

The court is required to consider domestic violence in custody cases. Domestic cases are referred to as Chapter 50 cases because the domestic laws in North Carolina are contained within Chapter 50 of the North Carolina General Statutes. Pursuant to North Carolina General Statute § 50-13.2 *“in making a custody determination, the court shall consider all relevant factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party.”* The key word in that statute is “shall.” Pursuant to North Carolina law, the judge is required to consider acts of domestic violence in deciding as to what is in the best interests of the minor children.

That is why it is so important to be proactive and to create a record. If you end up in court, your abuser is likely to blame you for everything that has gone wrong. A key feature of abusive partners is blaming others and a lack of accountability for themselves. When it comes down to he said/she said, you will want to have a record to show that your story is more credible, and that abuse has occurred. As uncomfortable as it may be, you need to call the police when you feel threatened. If you call the police, a report will be generated documenting your call. That report can be used in court as evidence. Contact friends and family members who can support you and vouch for your distress. Begin taking photos of bruising, scratches or other physical harm. Take photos of property damage or broken items around the house.

You can also begin audio recording or videotaping your significant other when they are on a rampage, but do not let them know you are doing so, as that may provoke even more anger. The law in North Carolina and federally is that you may record someone so long as you are a party to the conversation, meaning if you are in the same room or on the phone with them, it is allowed by law. What you cannot do is place a recording device in their car or home while you are not present. Criminal charges might occur if you place recording devices in this manner. Again, you need to be proactive but also careful. Everyone's case and facts are different so seeking legal attention sooner rather than later may provide you with the best outcome.

Legal care is like medical care, the sooner you go to the doctor the more likely you are to keep the disease from spreading. Don't wait until the disease has completely eroded your life. Also keep in mind that just like there are specialists in medical care, there are specialists in legal services. You want to make sure you are talking to a family law attorney or someone with domestic violence experience; not every attorney will be able to properly give you advice. There are many family law firms and/or individual attorneys who offer a free initial consultation. Make some calls or do some research online to find out who offers free consultations or discounted

services if you can't afford traditional legal services. There are many attorneys who offer discounted rates to help you draft documents or to help you prepare for court. Use those attorneys as you can afford them. Another good general rule is to avoid the attorneys who show up first on Google searches. Those attorneys usually pay a lot for advertising on Google and have a higher hourly rate and deposit, it does not mean that they are the best, it just means they are better at advertising.

If you absolutely cannot afford an attorney there are ways that you can protect yourself and your children in the middle of a lawsuit:

**#1. Be prepared and organized.** Judges become frustrated when you are overly flustered and cannot tell your story. As humans, when we are in crisis, we tend to just spill our guts in ways that are very disjointed. Take the time before trial to create an organized, chronological outline to assist you with your case. You can take your outline up to the witness stand with you and check each item as you go. Also, make sure you have all of your evidence with you and copied so that you, your ex and the judge will all have a copy to look at when you are describing why the evidence is important.

**#2. Be polite.** The judge will be watching and listening to determine which party is the most credible. They will likely find favor with the person who is most polite and shows them the most respect.

**#3. Be calm.** Many times victims do not do well in court because they become overwhelmed and are overly emotional. It is okay to cry, but it is not okay to cry with every sentence. Find a way to create balance. You may need to seek out some counseling before the trial in order to empower yourself or bring a supportive person with you. If the judge doesn't understand your story and can't follow what you are saying, then the chances are that you will not do well in court.

**#4. Be child focused.** Remember that this is about your children. While you want to bring up the abuse of your partner, you do not want to make it seem like you are on a witch hunt against them. Talk about your children and why you are a good parent as well. This isn't a trial against your ex; this is a case for your children. This is your time to show that you are the parent with better judgment and the person best suited for primary custody.

**#5. Be truthful.** Even if the facts are bad to you tell the truth! If you get caught in a lie the judge will never believe anything you say after that. It is better to be viewed as credible and lacking in judgment on occasion than a liar.

While it is advisable to have legal representation in court, if you cannot afford an attorney, you can follow these basic steps as a start. Remember that Legal Aid is an option (<http://www.legalaidnc.org/>). Also, remember that custody is never over. Even if you don't get the exact outcome you were seeking the first time, you can always try again. Keep trying for your children – they deserve it and you can do it! You can obtain more information at our website at [www.lesnik-law.com](http://www.lesnik-law.com). We also offer free initial consultations and are happy to help you or find someone who can.