

North Carolina, Domestic Violence, Custody, and the Courts

Part 3 of a 6 part series

By Tiffany A. Lesnik, Attorney at Law
Lesnik Family Law, P.C.

Can I Request Support as Part of a Domestic Violence Protective Order?

If you need to file for emergency protection through a Domestic Violence Protective Order (DVPO) in North Carolina, you can request several forms of relief under the Domestic Violence Statute (N.C. Gen. Stat. § 50B-3). The first form of relief is to keep possession of the house so that you and your children will have a place to live. Your partner will then be evicted. You can also request that your partner provide other suitable housing for you and the children if possession of the house is not possible. For example, the lease on your home is about to expire. You can also request possession of a vehicle(s) or for possession of other personal property. The court will rarely order that your partner make payments on the house or the vehicle but at least you will have possession in the interim. You can also request child support and spousal support as part of your request for a Domestic Violence Protective Order. Again, the court rarely enters child support or spousal support awards as a part of a DVPO. You will need to be prepared that you could go for some time without any support, and you will need to have a backup plan to make ends meet. That being said, definitely request some sort of support when you are asking the judge for relief. Whether support will be granted will depend on the judge and the county, but it is allowed pursuant to North Carolina law under North Carolina General Statute 50B-3.

A creative way to be awarded support through a Domestic Violence Protective Order is through the entry of a consent order. Your partner will have to consent to its' entry, and you both will have to work out the terms, including support terms, but if agreed upon, and once signed by the judge, it becomes an official court order with as much force and effect as if you went to hearing.

Is there Emergency Support in North Carolina?

Other than requesting an expedited hearing on temporary support or requesting support through a Domestic Violence Protective Order, North Carolina does not have a statute or procedure for acquiring emergency child support or emergency spousal support. Different counties may have different systems set up to ensure that families are provided for, but Wake County does not have an emergency procedure set up at this time. Be mindful that it could take two to four months to have your first hearing on support. It is important to act quickly when financial help is needed. Remember that there are other state resources such as Medicaid and food stamps that are also available if you qualify. It may be hard to fathom applying for these resources, but when your children need to be fed and need medical care, you may be thankful that they are available.

What is the Difference between Spousal Support and Child Support?

There are two different types of support available in North Carolina; the first is called spousal support. It is also called postseparation support or "PSS", and, in its more permanent and more popular form, it is also called alimony. Spousal support or postseparation support (PSS) is a temporary form of support that may begin from the date of separation until the date that alimony begins or some other date (usually the date of divorce or the date the court orders PSS to end or the parties agree it will end). Alimony is spousal support from the date PSS ends until some

defined date, such as when the parties agree, when the court orders alimony to end, when either party dies, or when the spouse receiving alimony begins cohabitating with a romantic partner.

Both forms of support are for the spouse. PSS is based upon present income and need whereas alimony relates to the accustomed standard of living during the marriage. One must prove three factors in order to qualify for spousal support and/or alimony. One must show that they are a dependent spouse, that the other spouse is a supporting spouse, and that the dependence on the supporting spouse is substantial, meaning that one could not pay their reasonable bills and maintenance without the assistance of the supporting spouse. The bottom line is that if you cannot pay your bills without the help of your spouse then you may qualify for postseparation support or alimony in North Carolina.

Child support is financial support that you receive for the benefit of your children. North Carolina uses a defined calculation for determining the amount of child support that each person is entitled to receive. It is based upon the income of both parties, the number of children that you have, the number of overnights each parent has (or the custodial schedule), and other expenses such as childcare or medical premiums. This information is placed into a child support calculator using the NC Child Support Guidelines and a defined amount of support will be generated with this calculator (in most cases). There are cases with extremely high or low incomes or other unusual circumstances where the Guidelines will not apply.

Child support is required in North Carolina once you and the other parent are separated. Even if there is not a court order in place, the other parent should begin paying child support right away or they risk being sanctioned by the court later. Child support cannot be waived. Parties cannot agree that neither one will pay child support and sign a document to the same. Those documents have been found unenforceable in this state. Also, just because you and the other parent share a 50/50 custody schedule does not necessarily mean that there is not a child support obligation. Many times the parent who makes more money will still have an obligation to pay monthly support.

How Do I File for Child Support?

Child Support Enforcement

One of the most cost-effective ways for a parent to apply for child support is through Child Support Enforcement (CSE). Every state has their own form of Child Support Enforcement and the states can communicate with one another, so if the other parent moves, it is easy for the agencies to transfer the case, communicate with each other, garnish wages, etc. Every county will have its' own county office, but you can contact the main CSE office through this online link: <https://www.ncdhhs.gov/divisions/social-services/child-support-enforcement>. In Wake County, you will only be charged \$25.00 and will be assigned a case manager and an attorney who will handle your case from beginning to end. It is truly a wonderful state benefit for children and their struggling parents.

Do It Yourself Clinics and the Court

You do not have to hire an attorney to file a lawsuit. You are entitled to file a lawsuit on your own and represent yourself. You are still required to know all of the rules and abide by any deadlines or financial disclosure requirements or risk your lawsuit being dismissed. Most courthouses will have “Do It Yourself” forms. If you go to the clerk’s office or the family court office and request a template for child support, they may provide one for you. Once you fill out the required documentation, make the correct number of copies, notarize and pay the appropriate court fee, your lawsuit for support will begin. Make sure that after you file all of the paperwork, you also must calendar a date for hearing. Many litigants representing themselves believe that once they file their motion or complaint that it is automatically calendared by the court; Most of the time this is not the case.

There are also “Do It Yourself Clinics” across North Carolina. A quick Google search may help to reveal where and who they are. Some private attorneys may offer “Do It Yourself” services as well. In legal terms, it is also called ghost writing or unbundled legal services. A Google search for those terms may also help you find what you are looking for. These clinics will be more expensive than CSE or truly doing it yourself, but they come with the benefit of attorney direction, someone to ensure that you are completing the proper paperwork, which can also provide you with advice in the process. These clinics do not require a long term contract and are much more affordable than traditional legal services. My firm currently offers do it yourself services by appointment only and at a reduced rate at www.lesnik-law.com. Carolina Dispute Settlement Services also offers do it yourself services on a sliding scale. They can be found at <http://www.notrials.com>.

There are many law firms that offer courtesy initial consultations. It may be a good idea to seek the advice of an attorney. There are many legal alternatives to resolving child support other than a lawsuit, such as a support or separation agreement and an attorney can help you choose the best option for you. We offer free initial consultations and are happy to help you or find someone who can.