

26<sup>th</sup> District Court District  
Mecklenburg County

**DOMESTIC VIOLENCE COURTS:  
POLICIES AND PROCEDURES  
MANUAL**

DV Committee  
Second Edition  
2001

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## I. GENERAL INFORMATION

### A. SECURITY AND COURTROOM ORGANIZATION:

#### 1. COURTROOM:

- a. There should be two deputies assigned to each of the Domestic Violence Courtrooms at all times.
- b. There will always be at least one deputy in the courtroom, even if the judge is temporarily off the bench.
- c. Deputies will call their superiors to be relieved for breaks as needed.
- d. There should be a deputy in the hallway outside each Domestic Violence Courtroom well in advance of each scheduled session.
- e. Deputies will be trained to follow parties out of the courtroom at the conclusion of cases which are potentially explosive. Training will include how to identify cases in which this action should be taken.
- f. The doors between the courtroom and the vestibule leading to the hallway in Courtroom 2202 will be kept open.
- g. Deputies should not answer the telephone for the clerk or run errands for judges, and judges should not make such requests.
- h. When courtroom deputies need to transport prisoners to or from holding cells, they will call for assistance if necessary, so that the courtroom is not unstaffed.
- i. All persons will report any deviations from these standards to their immediate supervisor.

2. COUNTY COURTS BUILDING: The County Courts Building should be included in the courthouse security system.

### B. COURT PERSONNEL: STAFFING AND TRAINING:

1. TRAINING, GENERALLY: Various training opportunities are available in the domestic violence area. All persons working in domestic violence, in any capacity, are encouraged and expected to take advantage of training opportunities.

2. JUDGES: The judges assigned to Domestic Violence Courts shall be interested in this subject, knowledgeable about its dynamics and the courtrooms' procedures, and committed to the goal of reducing domestic violence in our community. They should be required to avail themselves of continuing education about domestic violence. They should schedule their vacations and other absences from court for weeks when they are not assigned to Domestic Violence Court. If this is not possible, another Domestic Violence Court judge should cover for the absent judge. If none of the regular Domestic Violence Court judges is available, the Chief District Court Judge will preside over the session; if he is unavailable, another judge will be assigned. Only as a last resort will Domestic Violence Courts be canceled. The court should provide to judges who are newly assigned to Domestic Violence Court mentoring and training in the dynamics of domestic violence and the operation of the court prior to the judges assuming the Domestic Violence Court bench.

3. MAGISTRATES: Magistrates are supervised by the Chief District Court Judge. The on-duty magistrate is the point of entry for the alleged victim seeking: (a) an arrest warrant for a crime of domestic violence, and (b) a civil domestic violence protective order when court is not in session. For the latter, the magistrate may issue an *ex parte* order on the authority of the Chief District Court Judge, or another on-call judge. While magistrates should be knowledgeable about domestic violence, they perform a judicial function and do not advocate for either side.

4. CLERKS: Courtroom clerks assigned to Domestic Violence Courts shall be interested in the subject and familiar with the courtrooms' procedures.

a. The civil clerk will perform the following duties:

1. deliver on a daily basis copies of all 50B orders to the Sheriff and the Intake Center
2. provide copies of 50B orders to the parties involved
3. organize each day's files for the presiding judge
4. contact plaintiffs who fail to appear
5. follow up on service of process by:
  - i. preparing package for Sheriff
  - ii. reviewing file, before hearing, to see if defendant has been served and advising court of "no service" cases
  - iii. reissuing summons in "no service" cases and preparing extended *ex parte* orders for judge
  - iv. calling the Sheriff, if package has not been returned, to learn of the status of service
6. contact the jail to request transportation of incarcerated parties
7. be knowledgeable about referral services available in the community
8. maintain a supply of current 50B forms in the courtroom
9. place in the NOVA basket copies of all orders requiring NOVA participation
10. maintain supplies of child support forms (child support orders, wage withholding orders and notices) in the courtroom
11. arrange for interpreters, as needed

b. The criminal clerk will perform the following duties:

1. maintain a supply of forms in the courtroom, including continuance forms and indigency forms
2. ensure that the judge's copy of the docket is on the bench before the judge takes the bench
3. write word for word what the judge says on disposition, both on the clerk's docket and (when applicable) on the jail cards
4. when jail cases are done, give paper work to deputy as quickly as possible so prisoners can be returned to lock-up
5. when defendants are placed on supervised probation, give paper work to the probation officer as quickly as possible

c. All clerks should:

1. be available to swear witnesses and parties

2. maintain supplies (pens, legal pads, rubber bands, paper clips, etc.) for both themselves and the judges
3. maintain in the courtroom a copy of the Administrative Order setting court schedules, with judge assignments, for the current year and as soon as possible, for the upcoming year
4. be aware of all persons in the courtroom and alert deputy if a situation may be developing
5. maintain Child Protective Services referral forms in the courtroom
6. inform the appropriate Family Court case manager of cases that may require close monitoring by the court

5. BAILIFFS: See Courtroom Security Section (Section I.A.1 of Manual).

6. DISTRICT ATTORNEYS: The assistant district attorneys assigned to Domestic Violence Courts should be interested in this subject, knowledgeable about its dynamics and courtroom procedures, and committed to the goal of reducing domestic violence in our community. They should be required to avail themselves of continuing education about domestic violence. They should develop skill in utilizing exceptions to the rule against hearsay and in using demonstrative evidence such as photographs. At bond hearings and sentencing hearings, they should be prepared to articulate the position of the alleged victim and of the state. When cases are appealed, the misdemeanor assistant district attorney should assist the misdemeanor appeals assistant district attorney in preparing the case for Superior Court.

7. DEFENSE ATTORNEYS: Assistant public defenders, farm-out attorneys who appear in domestic violence court, as well as privately retained defense attorneys, should be knowledgeable about the law, the courtroom procedures, and the basic dynamics of domestic violence. They should familiarize themselves with evidentiary issues peculiar to domestic violence cases; for example, the absent or recanting witness. At bond hearings, they should be prepared to address the court's concerns, particularly about witness safety. They should have a working knowledge of punishment ranges, and particularly of the NOVA program and its rules, and of other available community programs (e.g. for diagnosing and treating substance abuse or mental health problems). If NOVA or some other treatment program (for example, an out-of-county abuser treatment program or a program for drug or alcohol abuse) is a likely condition of a probationary judgment, a defense attorney should discuss these programs with his or her client.

8. PROBATION: The probation officers assigned to Domestic Violence Courtroom 2202 shall be highly motivated and familiar with courtroom procedures. They should be required to avail themselves of continuing education about domestic violence. The probation officer assigned to the courtroom shall perform the following duties:

- a. complete the probation judgment and present same for the presiding judge's signature
- b. escort the new, non-custody probationer to Courtroom 2204 (the Postjudgment Center) for completion of probation intake process
- c. direct probationer to the appropriate agencies in the Postjudgment

- Center which are ordered by the court
- d. provide the court, probationer, victim, and any other authorized persons with the name of a contact person regarding assignment of the case. Until the cases are formally assigned, concerned parties should contact the Chief Probation/Parole Officer at (704) 342-6234 ext. 270, regarding those cases that have the NOVA program requirement.
  - e. be knowledgeable about referral services available in the community
  - f. promptly cite violators back to court, especially for non-compliance with NOVA, or continued contact with the victim
  - g. provide NOVA notice of probation violation hearings, when NOVA presence is needed, in 2202 or 3302.

9. NOVA STAFF: A NOVA case coordinator person will be available, either in the courtroom or by telephone, to advise the judge of the defendant's suitability for the program, past involvement in NOVA, and/or of a defendant's performance in the program. The NOVA staff shall be trained in the area of domestic violence and in assessing for the appropriateness for the program. In cases of illness or other absences, the Court Administrator's Office will be notified, and a back-up plan will be put in place for handling referrals to NOVA. NOVA staff will also be available to provide education on domestic violence and offenders. NOVA staff shall check the NOVA basket in Courtroom 203 for their copies of orders directing NOVA participation.

C. VOLUNTEER LAWYERS:

The Mecklenburg Bar's Volunteer Lawyer Program (VLP) provides volunteer attorneys to represent parties in civil domestic violence cases. Generally, this representation is limited to one hearing. Lawyers who volunteer in this way should familiarize themselves with the procedures in Courtroom 203, with Chapter 50B, with basic child support laws, including application of the guidelines, and with this manual. They should avail themselves of the "Mentor" component of the VLP. They should advise the presiding judge that they are volunteering, so that their cases can be given priority.

D. VICTIM ASSISTANCE:

1. COURTROOM FUNCTION: The Victim Assistance program is operated by United Family Services, a United Way agency. Its staff fulfills a vital function in both Civil and Criminal Domestic Violence Courts. They provide services for the majority of female, as well as some male, persons who may suffer from acts of domestic violence.

- a. Criminal Court: Services may include accompanying victims to court, sitting with them before trial (and during trial, at the A.D.A.'s discretion), providing information to the assistant district attorney prosecuting the case (e.g., copies of 50B orders), and providing referrals and other information to any victims in the courtroom.
- b. Civil Court: Services may include assisting plaintiffs in filling out *pro se* forms, accompanying them to court, and sitting with them before and during trials. When *ex parte* orders have not been served, they may obtain extended orders for plaintiffs so that the plaintiff will

not have to appear.

- c. Magistrate's Office: With a two-year VOCA grant, Victim Assistance currently offers services to plaintiffs seeking help with the 50B process at the Magistrate's office, Monday-Friday, 6:00 p.m. – 9:00 p.m.

2. COURTROOM POLICIES: Victim Assistance staff is encouraged to introduce themselves to Domestic Violence Court judges, familiarize judges and attorneys with their services and the role they are prepared to play, and comply with whatever directives individual judges may give about their role's scope. Because batterers' anger may be transferred from victims to victim advocates, court personnel should not refer to Victim Assistance staff by name, but rather refer to them as "Victim Advocates."

3. OUTREACH: In addition to individual client services, Victim Assistance performs an essential educational role. Their staff serves as trainers for other agencies and as members of the Domestic Violence Committee and all of its subcommittees. They keep the Domestic Violence Courtrooms supplied with resource materials. They are a consistent voice of information for domestic violence victims, and the collective voice of domestic violence victims to the judicial system. The telephone number for Victim Assistance is 336-4126.

#### E. CHILD SUPPORT ENFORCEMENT (IV-D) AGENCY:

See Appendix A.

#### F. CHILD PROTECTIVE SERVICES:

Referrals will be made to Youth and Family Services any time the judge, law enforcement officers, or court personnel has cause to suspect child abuse, neglect or dependency. Referral forms will be kept in the courtroom and shall be faxed by the courtroom clerk to Youth and Family Services. Any concerns regarding YFS should be addressed to the DV Specialist with the agency.

#### G. FAMILY COURT CASE MANAGERS:

When the Family Court case managers become aware of DV cases involving family members who are also involved in other Family Court cases, they will, when practical, consolidate all of the Family Court cases before one judge. The Family Court case managers should be trained in the area of DV, knowledgeable about its dynamics, and knowledgeable about courtroom procedures. The Family Court case managers may also be assigned to monitor high risk DV cases.

#### H. RECUSAL:

It is inevitable that the same judge will sometimes be assigned to hear some matters s/he has already heard and about which s/he has already formed an opinion. Judge recusal can result in delays and particular hardships for litigants who are incarcerated, missing time from work, or caring for children. Every effort will be made to avoid inconvenience, while at the same time



providing all litigants with the impartial judge to whom they are entitled. In a case when one judge has recused her or himself, another domestic violence judge will whenever possible hear the case during the same term of court. When this is not possible, the case will be given the earliest possible continuance date before another judge.

#### I. DOUBLE JEOPARDY:

As a general principle, a person who has been found in civil or criminal contempt of a 50B order and punished with an active or suspended jail sentence cannot be further prosecuted in criminal court for the same conduct which formed the basis for the contempt finding. The alleged victim in such a case should carefully weigh his/her options before pursuing a contempt motion if criminal charges are pending. When presented with a proper motion to dismiss criminal charges on double jeopardy grounds, a judge will likely grant the motion to dismiss the charges.

#### J. JUDICIAL REVIEWS

It is the policy of the domestic violence judges to periodically review certain cases, both in civil and also in criminal court. This policy is based on a 1999 national survey of 160 specialized domestic violence courts, by the National Center for State Courts. Among other conclusions, this study reached the following:

**“Consistent and regular mechanisms** for monitoring and enforcing batterer compliance with court orders are fundamental to effective justice system intervention in domestic violence cases (Healey, Smith & O’Sullivan, 1998). These mechanisms ideally should include judicial review calendars held on specified days. Calendars set in this manner facilitate the ability of batterer intervention providers to file or present reports on a routine basis and for prosecutors to be present to file charges for violations of orders. Regularly scheduled calendars combined with specialized assignment of judges promote the highest level of consistency in monitoring and enforcement and thus are most conducive to effective judicial oversight of batterer behavior.”

Judicial reviews will include, in particular, reviews of NOVA progress by defendants ordered to NOVA in 203; probation reviews in 2202 for especially severe cases; and some child custody cases in 203. As much as possible, reviews will be set before the judge who entered the original order.

## II. CIVIL DOMESTIC VIOLENCE COURT

### A. PLACE AND TIME:

*Pro se* domestic violence cases are heard in Courtroom 203 of the Civil Courts Building, 800 East Fourth Street, Monday – Friday, at 9:00 a.m. and 1:30 p.m. This court is considered an emergency court which operates on many days when other courts are canceled; for example, during judges' conferences. For emergency orders when court is not in operation, magistrates are available.

### B. WHEN COURT IS CLOSED:

On weekends, holidays, days when court is closed, and between 5:00 p.m. and 8:00 a.m. weekdays, magistrates are available for citizens seeking protective orders. A magistrate will review the petition and call the judge on call for authorization of the *ex parte* order. Should an order be entered, it will be for a ten-day period, with a follow-up hearing in Courtroom 203. In these instances, it shall be the magistrate's responsibility to ensure that the paper work gets to the Sheriff for service.

### C. STATUTORY FRAMEWORK:

N.C.G.S. 50B, the Domestic Violence Protection Act, defines domestic violence, sets out the requisite relationships between the parties, provides the procedure for *ex parte* and follow-up hearings, and details the remedies available under the Act. Attorneys and others working in Courtroom 203 should be very familiar with Chapter 50B, and should stay informed of its amendments, as it has been frequently amended.

### D. 50B HEARINGS INITIATED BY ATTORNEYS:

1. 50B COMPLAINTS: Complaints filed by attorneys for only 50B relief shall be heard in Civil Domestic Violence Court.
2. JOINDER OF CHAPTER 50 CLAIMS: Complaints filed by attorneys which join claims for 50B relief with Chapter 50 claims shall be assigned in accordance with the individual calendaring system, and the entire action shall be heard by the assigned judge, including any request for *ex parte* 50B relief.
3. PENDING CHAPTER 50 ACTION: If an active Chapter 50 action is pending, any claim for 50B relief should be filed as a motion in the cause except when immediate *ex parte* relief is requested and the assigned judge is not available.
4. CHAPTER 50 COUNTERCLAIMS: Chapter 50 counterclaims filed in response to a 50B complaint shall be assigned in accordance with the individual calendaring system. In such cases, only the 50B claims shall be heard in Civil Domestic Violence Court, with all remaining claims being heard by the assigned judge.

See Local Domestic Rule 3.8 regarding consolidation of multiple pending actions in Family Court.

#### E. SEQUENCE OF CASES:

1. Generally, *ex parte* cases will be heard first.
2. Next, the court will extend, when appropriate, previously issued *ex parte* orders which have not yet been served.
3. Contempt cases will then be called up so the right to counsel issue can be addressed, and the case can be continued, if necessary (the clerk shall maintain a supply of indigency screening forms and appointment orders).
4. The court will then call cases for ten-day and contempt hearings, giving priority to cases with volunteer attorneys.

#### F. INCARCERATED DEFENDANTS:

1. PROCEDURE: Each day, the courtroom clerk shall provide to the courtroom bailiffs a copy of the docket for the following day. The bailiffs shall determine whether any defendants are incarcerated and, if so, shall arrange for them to be transported to Courtroom 203 for their hearings.
2. POLICY: All efforts should be made by all concerned, and especially by the Sheriff's Department, to expeditiously transport incarcerated defendants to Courtroom 203 for scheduled hearings in order to preserve the parties' rights to due process, prompt hearings, and the safety and protection for which G.S. 50B was designed. When an incarcerated defendant requests transportation to a 50B hearing and presents a hearing notice to jail personnel, the Sheriff's Department should not refuse to transport the incarcerated defendant, but should confirm the date and time of the hearing with the clerk and then transport the defendant.
3. WHEN AN INCARCERATED DEFENDANT IS NOT PRESENT: If a defendant is incarcerated and has not been brought to court, the hearing should not proceed in the defendant's absence, but rather the *ex parte* order may be extended, and a new hearing may be set.

#### G. FAILURE TO APPEAR:

1. EX PARTE CASES: The plaintiff is expected to appear for *ex parte* hearings. When the plaintiff is absent, the clerk should attempt to contact her/him to find out the reason for the absence. If the court finds good cause for non-appearance and also good cause for entering an *ex parte* order, such an order may be entered, a ten-day hearing may be set, and notice may be sent to all parties by the courtroom clerk.
2. TEN-DAY CASES:
  - a. Plaintiff: When a plaintiff fails to appear for both the *ex parte* hearing and the ten-day hearing, the case should be dismissed. If the

plaintiff fails to appear for the ten-day hearing, having appeared at the *ex parte* hearing, and the defendant is present, the clerk shall attempt to contact the absent plaintiff. If the plaintiff can not be reached or does not provide a sufficient reason for the non-appearance, the case should be dismissed.

- b. Defendant: If the defendant does not appear for a ten-day hearing and the plaintiff is present, the clerk should attempt to determine whether the defendant is incarcerated. If so, the hearing should not proceed until the incarcerated defendant is present.
- c. Both Parties: If neither party appears at the ten-day hearing, and the plaintiff was present at the *ex parte* hearing, the clerk should try to initiate contact with the plaintiff. If no contact can be made, the ten-day hearing should be continued from session to session for three working days. If, at the end of the three working days, the plaintiff still does not appear, the case should be dismissed.

#### H. SERVICE ON OUT-OF-STATE DEFENDANTS:

The clerk's office will attempt to serve 50B pleadings on out-of-state defendants by certified mail.

#### I. NO SERVICE:

If the defendant has not been served for the ten-day hearing, and the plaintiff wishes to have the *ex parte* order continued, the judge may issue an extended *ex parte* order for another ten days. If the defendant remains unserved after several extensions, the judge may dismiss the action or may continue to honor the plaintiff's requests for extensions, depending on the facts and circumstances of the case. Victim Assistance staff may appear on the plaintiff's behalf to request extensions.

#### J. CONTINUANCE POLICY:

As a matter of policy, the Court will avoid continuances absent exigent circumstances or a manifest injustice. It is the responsibility of attorneys representing parties in Courtroom 203 to check in with the clerk at 1:30 p.m.

#### K. DURATION OF ORDERS:

50B orders entered, after notice to the defendant and a hearing, are usually for periods of one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to one additional year. N.C.G.S. 50B-3(b). Such application may be made prior to expiration of an existing order, and in the view of some authorities, may even be made after expiration of an existing order. Notice of hearing must be provided to the opposing party, as the statute does not provide for *ex parte* extensions. The motion and notice may be served by regular mail. AOC forms are available in Room 214 of the Civil Courts Building for this purpose.

L. VOLUNTARY DISMISSALS/ AMENDED ORDERS:

Plaintiffs who contact the clerk's office seeking to dismiss their 50B actions before entry of a final order will be sent to the next session of Courtroom 203. The judge will explain that an order can be entered allowing defendant unlimited contact with the plaintiff, but maintaining the prohibitions against domestic violence. If the parties agree, the judge may enter such an amended order. If, after hearing the judge's explanation, the plaintiff still wishes to take a voluntary dismissal, he/she may do so. After entry of a final order, the majority view is that the judge should not dismiss the case unless s/he is satisfied the protective order is no longer needed.

M. "BOTH-WAY" ORDERS:

Pursuant to N.C.G.S. 50B-3(b), a judge will not issue orders prohibiting the plaintiff from acts of domestic violence against the defendant in the absence of pleadings by defendant alleging domestic violence by plaintiff and findings that the plaintiff committed the alleged acts of domestic violence against defendant.

N. CONTEMPT:

The procedures to be followed are set forth in Appendix B.

O. PAPER FLOW:

The court should ensure that the courtroom clerk provides the Intake Center with copies of all 50B orders.

P. CUSTODY AND VISITATION:

No domestic violence cases shall be referred to the custody mediation program from Courtroom 203. The court will take the time to hear these matters and enter the appropriate order at the time of the ten-day 50B hearing. To protect children from becoming pawns, it is very important that custody be awarded.

Q. CHILD SUPPORT:

See Appendix A.

R. NOVA:

1. USE: NOVA is one of two programs in Mecklenburg County certified for abuser treatment by the Department of Administration; the other is Dr. William Tyson's Program, Blue Ridge Behavior Systems. NOVA should receive copies of all orders and notices when the program is included as part of the judgment in a case. A bailiff shall accompany a defendant ordered to NOVA to the Postjudgment Services Center.

2. REVIEW: Compliance with the court's 50B order to attend NOVA will be accomplished only through the scheduling of review dates. At each review date, the

defendant must provide a letter from NOVA reflecting compliance. The use of the contempt sanction may be employed when compliance does not occur. The appointment of counsel must be offered if the outcome of the contempt hearing may result in jail time. Review dates will be directly scheduled by each judge.

#### S. FIREARMS:

1. PROHIBITION AGAINST PURCHASE AND POSSESSION: Federal law currently prohibits possession of firearms by persons convicted of misdemeanor crimes of domestic violence or persons against whom a restraining order has been issued. See 18 U.S.C. 921 (a)(33) and (g)(8). Pursuant to North Carolina and federal law, most 50B orders include prohibitions against purchasing or possessing firearms.

2. SEIZURE: *Ex parte* orders often direct the sheriff to seize a defendant's firearms. Seized firearms will be kept by the sheriff for the duration of any 50B order prohibiting firearm possession.

3. EXPIRATION OF ORDER: After an order has expired, the defendant may request the return of the firearm, provided s/he has not been convicted of a domestic violence crime, or a felony of any type. If no request is made, after a statutory period the Sheriff's Department may destroy the firearms.

#### T. VOLUNTEER LAWYERS:

Litigants in 50B cases may qualify for attorneys under the VLP "Project 100." If a volunteer lawyer appears in Courtroom 203 and makes the court aware that s/he is there as a volunteer, the judge will endeavor to accommodate the attorney by hearing the case early in the session.

For more information, contact Victim Assistance at 336-4126 or Legal Services of the Southern Piedmont at 376-8627.

#### U. 50B FORMS

50B forms provided by the Administrative Office of the Courts – including complaints, ex parte orders, domestic violence protective ("one year") orders, contempt motions, show cause orders, contempt orders, motions and orders for renewal - and a "page 3" form developed for Mecklenburg County (see Appendix C) - are available either in Room 214 (Civil Filing) or Courtroom 203.

### III. CRIMINAL DOMESTIC VIOLENCE COURT

#### A. PLACE AND TIME:

Domestic violence misdemeanor cases are heard in Courtroom 2202 in the Criminal Courts Building, 700 East Fourth Street. Monday-Friday, sessions begin at 9:00 a.m. and at 1:30 p.m.

#### B. TYPES OF CASES:

1. REQUIRED RELATIONSHIPS: The defendant and the prosecuting witness must be of the opposite sex, and have been involved in one of the following relationships to be assigned to Criminal Domestic Violence Court:

- a. married, separated, or divorced
- b. current or previous cohabitant
- c. those who have a child in common
- d. current or ex-boyfriend/girlfriend

2. ELIGIBLE CHARGES: The following charges are eligible for Criminal Domestic Violence Court, if the parties are in one of the required relationships:

- a. Assault
- b. Assault with a Deadly Weapon
- c. Assault by Pointing a Gun
- d. Assault on a Female
- e. Assault Inflicting Serious Injury
- f. Communicating Threats (if DV-related)
- g. Harassing Phone Calls (if DV-related)
- h. Damage to Real Property (if DV-related)
- i. Damage to Personal Property (if DV-related)
- j. Breaking and Entering (if DV-related)
- k. Trespass (if DV-related)
- l. Domestic Criminal Trespass
- m. Going Armed to the Terror of the People (if DV-related)
- n. Cruelty to Animals (if DV-related)
- o. Larceny (if DV-related)
- p. Misdemeanor child abuse and child neglect
- q. Assault on a child under 12
- r. Violation of 50B order

3. ADDITIONAL CHARGES: Other related charges stemming out of the same incident shall be joined with the primary charge and heard in Criminal Domestic Violence Court. All stalking cases, regardless of the relationship, or lack thereof or gender of parties, will be assigned to the Criminal Domestic Violence Court; as will all 50B violation cases.

4. MAGISTRATES' DISCRETION: Magistrates may also schedule, at their discretion, any case in which a crime intended to harass, intimidate, injure, threaten, control, etc. is committed by the defendant against the victim, if the parties are involved in one of the required relationships.

## C. CRIMINAL SCHEDULING ERRORS:

1. PROCEDURE IN EVENT OF ERRORS: Criminal domestic violence cases which are inadvertently scheduled in a courtroom other than 2202 shall first be referred to the Criminal Domestic Violence Court if it is in session. If 2202 is not in session, a hearing should proceed in the courtroom improperly assigned. The rescheduling of the case to another day and place should only be initiated as a last resort. General misdemeanor cases which are mistakenly set in 2202 will be heard as time permits. All scheduling errors should be brought to the attention of the Chief District Judge or the Trial Court Administrator.

## D. INITIAL APPEARANCE:

Defendants who have been arrested and charged with one of the domestic violence offenses shall make their first appearance in Courtroom 1101. Defendants charged by summons will make their first appearance in Courtroom 2205. Defendants in 1101 or 2205 shall be provided with information about deferred prosecution, as well as their right to court appointed attorneys if they are indigent. Defendants for whom counsel is appointed shall be instructed to meet with their attorneys before their court date. See Appendix D for procedures an attorney should follow for a client with an outstanding domestic violence warrant.

## E. BOND ISSUES:

1. LOCATION: Initial appearances for in-custody defendants charged with one of the domestic violence offenses will be handled in Courtroom 1101, if the defendant was processed by the magistrate after 4:00 p.m. Sunday until midnight Thursday. For persons charged with certain domestic violence crimes listed in N.C.G.S. § 15A-534.1, and who were processed by the magistrate after 12:01 a.m. Friday until Sunday at 4:00 p.m., the conditions of pretrial release will be established by a judge assigned for that purpose. See Second Amended Administrative Order Setting Bond in Certain Domestic Violence Cases, and Judge Lanning's October 3, 1997 memorandum ("Frequently Asked Questions About Setting Bond in Certain Domestic Violence Cases"), updated, Fall 2000, at Appendix D.

2. CONDITIONS OF BOND: The safety of the alleged victim should be of primary concern in setting bond, in both misdemeanor and felony domestic violence cases. Conditions of any bond may include:

- a. no contact with the alleged victim
- b. compliance with the conditions of the civil protective order
- c. other criteria deemed appropriate by the court

3. ASSISTING DOCUMENTATION: The assistant district attorney scheduled to be in Courtroom 1101 should ensure that the affidavit (the pink sheet) is available to assist the judge. Also, a copy of the current 50B order should be made available by the assistant district attorney whenever possible.

4. SUBSEQUENT MOTIONS TO MODIFY BOND: Subsequent motions to modify the bond must either be initiated by defense counsel or by the district attorney with notice to



opposing counsel and the alleged victim. Motions for review will be heard in Courtroom 2202.

5. VICTIM INPUT: It is the policy of the bench to receive input from the alleged victims at bond hearings; rarely will bond be reduced in the absence of such input. If the assistant district attorney has not spoken with the alleged victim, the judge may telephone him or her in the presence of counsel. However, if the alleged victim has contacted defense counsel, the contact may be reported to the court.

#### F. APPOINTMENT OF COUNSEL:

The appointment of counsel for indigent defendants charged with a criminal domestic violence offense or probation violation will follow the same procedure as for any other criminal charge. Because of the policy against continuances, counsel who meet clients for the first time on the trial date should not expect a continuance.

#### G. GAL APPOINTMENT:

Rule 7.1 of the General Rules of Practice allows for appointment of an attorney guardian as litem when “any person charged with a crime wherein the victim is a minor, or a minor is a potential witness to such a crime.” Upon motion by the district attorney in 2202 or upon the court’s motion, the judge will consider making such appointments, but such appointment should not delay trial of the case. See also Section IV, CHILDREN AND DOMESTIC VIOLENCE.

#### H. DEFERRED PROSECUTION:

Defendants may be eligible for deferred prosecution in Courtroom 2202. Since continuances are disfavored, eligible defendants should apply for this program in a timely fashion. If they are accepted for deferred prosecution and successfully complete the program (of which NOVA is usually a required condition), the charges against them will be dismissed. See N.C. G.S. 15A- 1341(a).

#### I. PROSECUTION AGAINST THE WISHES OF THE ALLEGED VICTIM:

1. THE RELUCTANT VICTIM: In a criminal proceeding, the State--not the alleged victim--decides whether a case should be prosecuted. Some cases will be prosecuted despite the alleged victim’s absence or reluctance. Judges may allow the district attorney to cross-examine reluctant witnesses.

2. THE ABSENT VICTIM: A Sixth Amendment issue may be raised when the alleged victim is absent. The controlling U.S. Supreme Court case on this issue is White v. Illinois, 112 S. Ct. 736 (1992), which held that, at least for the firmly rooted hearsay exceptions, if a statement is admissible hearsay, then the confrontation clause is satisfied

and there is no need to inquire into the witness' unavailability. Accord, State v. Jackson, 348 N.C. 644 (1988).

J. ADD-ON FOR PLEA:

If a case with an incarcerated defendant is added on earlier than its scheduled trial date for a guilty plea, the judge may consider whether judgment should be entered in the absence of the victim, victim input, and/or the responding officer. It is the policy of the bench to receive victim input before entering judgment, and if the assistant district attorney has not spoken with the victim, the judge may telephone her or him in the presence of counsel. However, if the victim has contacted the defense counsel, that contact may be reported to the court.

K. CONTINUANCE POLICY:

As a matter of policy, the court will avoid continuances absent exigent circumstances or manifest injustice. This policy applies to joint requests for continuances, as well as contested requests. ALL motions to continue must be made in writing. No case shall be continued without a written order of the court. The clerk shall keep continuance forms in the courtroom.

L. PROBATION ISSUES:

1. PROBATION: A special unit within the Probation Department has been established to focus on domestic violence offenses. A probation officer will be present in Courtroom 2202 at all times. Probation judgments will be provided for the judge's signature the day that the judgment is announced. The defendant, as well as the victim, will be provided with the name and phone number of the probation officer assigned to their case. Until a case is formally assigned, contact should be with Chief Probation/Parole Officer.

2. PROBATION VIOLATIONS: Probation violations for incarcerated defendants shall be scheduled for hearing in 2202 within seven working days of the defendant's first appearance. The hearing does not have to be held before the original sentencing judge, unless specifically provided for in the original judgment.

3. NOVA REFERRALS: When an action is referred to NOVA from the Criminal Domestic Violence Court, the probation officer should include the following language in the judgment:

*Immediately submit yourself to screening for participation in the NOVA program. If accepted, you are to comply and cooperate with program rules and staff, punctually attend and participate in all sessions, and pay the program fee. You will be terminated from NOVA and immediately brought to court for not cooperating with program staff, violation of program rules, not attending sessions, or for not paying the program fee.*

## M. NOVA:

1. BACKGROUND: NOVA is a 52-week psycho-educational intervention program. Groups are available for women, men and Spanish-speaking only defendants. Currently defendants under the age of 18 are not admitted to NOVA; however, there is no upper age limit. Sessions are available on several different days and evenings each week, including Saturdays, to accommodate differing work schedules. Defendants required to complete NOVA will be required to pay for the program; the current cost being \$505. Fees will not be waived.

2. SCREENING: Before requiring NOVA as a condition of judgment, DV judges should consider whether they are appropriate. Persons who are in these categories, or who exhibit these characteristics, should be screened by NOVA staff to determine whether they are appropriate for NOVA:

- stalking and other obsessive behaviors directed toward victim
- offenders with multiple offenses, especially domestic violence and other assaults
- offenders who have lived in multiple places
- those in custody
- those who adamantly deny any abuse behavior
- those for whom a single, minor incident seems out of character and unlikely to be repeated
- with mental illness
- defendants with limited intellectual capacity
- anyone else who may not need, or may not benefit from the program

3. USE: Defendants may be required to successfully complete the NOVA program when convicted of a criminal offense. Almost without exception, such a defendant will be placed on supervised probation, and compliance with the court's sentence to attend NOVA will be monitored by the probation officer. A NOVA staff person will be available, either in the courtroom or by telephone, to advise the judge of a defendant's suitability for the program and/or of a defendant's performance in the program. Defendants with prior serious violent felony convictions should typically not be referred to NOVA without pre-screening by NOVA staff. Defendants with potentially severe mental health issues, and defendants currently abusing alcohol and/or drugs, will be referred for assessment and/or treatment prior to going to NOVA.

N. POSTJUDGMENT SERVICES CENTER:

The terms of the sentence received by defendants convicted of a domestic violence-related offense shall be coordinated through the Postjudgment Services Center. The ability of Community Service, Fine Collection, NOVA, Probation, and other agencies to serve these defendants will be enhanced through this process.

O. POST-TRIAL ISSUES:

The sentencing judge should advise victims that defendants who were sentenced may for a while be angry and abusive. Information about, for example, Victim Assistance, the Shelter for Battered Women, the Women's Commission, the HERO program, Child Support Enforcement, Community Link, Probation, NOVA, the civil clerk's office, etc., should be provided as needed by the courtroom clerk. Supplies of these materials shall be maintained in the courtroom by Victim Assistance.

P. APPEALS:

Appeals from the Criminal Domestic Violence Court to Superior Court will be prosecuted by an Assistant District Attorney from the Domestic Violence Project in the District Attorney's Office. These Assistant District Attorneys are trained in issues peculiar to domestic violence cases and have developed a level of expertise in prosecuting domestic violence cases. Criminal Domestic Violence cases appealed to the Superior Court should be tried on a docket separate from other misdemeanor appeals matters, and currently are.

#### IV. CHILDREN AND DOMESTIC VIOLENCE

##### A. CHILDREN IN THE COURTROOM.

The presence of children in either domestic violence courtroom is discouraged, even if a child is a potential witness. Until child care is available on-site, persons who bring children to court will be encouraged to take them outside, and to make arrangements for their care elsewhere.

##### B. SUPERVISED VISITATION AND SUPERVISED VISITATION EXCHANGES.

As of this printing, two community programs offer some services: "Access Family Services" (Suite 100, 4415 Monroe Road, Charlotte 28205, 414-4600 (fax 414-4603), Director, Derek Bullard), and "Connections" (1516 Elizabeth Avenue, P.O. Box 35458, Charlotte, N.C. 28235, 704-376-7180). Both programs charge for assessments and for supervising exchanges of children, and visitation with children, when they offer these services; charges vary according to the level of service provided, and Connections has made many changes to the types of services they provide. The days and hours for which these services are available also vary. It is advisable to call ahead. Brochures and form orders are available in the courtrooms.

##### C. CHILD PROTECTIVE SERVICES REFERRALS.

When children have been actual victims of domestic violence, or when domestic violence against a parent has created an environment which is injurious to a child, North Carolina law requires persons with knowledge of these circumstances to report same to Child Protective Services (CPS). Referrals can be, and are, made by various persons in the justice system: police officers, assistant district attorneys, judges, NOVA assessors and others. The reporter may advise the parents that the referral is being made. CPS will investigate the referral, and notify the reporter whether the allegations have been "substantiated" as abuse or neglect, or "unsubstantiated."

##### D. "HERO" PROGRAM (DOMESTIC VIOLENCE CHILD OBSERVER'S PROGRAM).

The "HERO" program, a project of the Mecklenburg County Women's Commission, provides psycho-educational sessions for child observers of domestic violence. "HERO" staff is often available in Courtrooms 203 and 2202 for referrals. When appropriate, a judge may order a party to have children participate in the "HERO" program.

##### E. CRIMINAL CHILD NEGLECT, ABUSE AND TRUANCY CASES.

These cases presently are set in 2202 once a month, on Fridays. The Council for Children has agreed to act as guardians ad litem for child witnesses who are involved in these cases. Contact Larry King, executive director, at 372-7961.

#### F. MINOR PARTIES IN CIVIL CASES.

Rule 17, North Carolina Rules of Civil Procedure, provides the framework for minor parties in civil cases, such as a Chapter 50B action. When a minor plaintiff is accompanied by a parent or other caretaker relative, the judge in Courtroom 203, or the magistrate considering the ex parte request, should appoint that person as guardian ad litem for the minor. When there is no such person, the Council for Children has agreed to act in this role (see paragraph E, above). Similarly, when the 50B defendant is a minor, a guardian ad litem should be appointed: either a parent or other relative, or in the absence of such a person, the Council for Children.

#### G. CHILD CUSTODY IN 50B CASES.

At the ex parte stage, a judge may award custody only if an act of domestic violence has been committed, or threatened, against a child. At the ten-day hearing, temporary custody can be awarded as in any custody case, if the court has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), *see* N.C.G.S. 50A, and the best interests of the child would be served by an award of custody. The Family Court bench acknowledges the importance of determining custody in 50B cases, and will take the time to hear these cases and enter appropriate orders. If a custody claim is pending in another case (usually a Chapter 50 case), the two cases will be consolidated and one Family Court judge will hear the custody claims. *See* Rule 3, “Local Rules in Domestic Cases,” and Administrative Order of December 21, 2000, amending Rule 4.5, “Local Rules in Domestic Cases” (Appendix E). Judges should be mindful of the following language in N.C.G.S. 50-13.2(a): “In making the [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 and shall make findings accordingly.”

Additionally, judges will consider the following, in making custody decisions in a 50B case:

1. how the child can be exchanged—via family or friends? if so, who? a community resource such as Connections? some other way?
2. should visits be supervised, or just the exchanges? if so, by whom? a community resource such as Access?
3. is there a concern about the non-violent parent’s ability to care for/protect the child?
4. child’s special needs?
5. who has been caring for the child?
6. how the domestic violence has affected the child
7. history of child support paid by either party to the other
8. each parent’s housing arrangements
9. any other information relevant to making a good decision for the child.

Custody hearings in Courtroom 203 will necessarily be brief, especially if the docket is crowded; at times, the judge may continue the matter until later in the week. A judge may also enter a custody order for less than a year, or schedule a review. As with all 50B orders, custody orders are limited to one year in duration unless they are extended. They are superseded by a Chapter 50 or Chapter 7B custody order.

#### H. CHILD SUPPORT. *See* Appendix A.

MEMORANDUM

TO: Domestic Violence Judges, Magistrates, Clerk of Superior Court, Victim Assistance, Child Support Enforcement, Sheriff Pendergraph, Legal Services of Southern Piedmont, and Project 100

FROM: William G. Jones  
Chief District Court Judge

DATE: February 5, 2001

RE: Child Support Enforcement

Child Support Enforcement services for 50B litigants and their children are available in Room 209 of the Civil Courts Building. The hours of operation are from 8:00 a.m. to 4:30 p.m., Monday through Friday. Please review and comply with the procedures set forth below so that this valuable service can be utilized effectively.

- *Magistrates* and *Victim Assistance Advocates* will provide all 50B plaintiffs who have children (whether by the defendant or another partner) with a copy of the attached Handbook on Child Support Enforcement (Appendix A-1) and the attached form application for child support services entitled *Application Supplemental Data Child Support Enforcement* (Appendix A-2).
- *Magistrates* and *Victim Assistance Advocates* will advise all 50B plaintiffs who are parents of minor children to complete the form application if they seek the establishment of paternity or child support, and to deliver it to the Child Support Office in Room 209 of the Civil Courts Building, or bring it completed to the 10-day hearing.
- The *Magistrates* and *Victim Assistance* will obtain copies of Appendices will A-1 and A-2 from Room 209 as needed.
- At both the ex-parte and 10-day hearings, parties (including defendants and those who have not already received Appendices A-1 and A-2 from the Magistrates or Victim Assistance) who request paternity/child support services or orders will be referred by the Court to Room 209, using the attached form (Appendix A-3).
- A one-time fee of \$10-25 will be required of all parents who are not TANF or Medicaid recipients.
- At the ex parte hearing, *the Court* should determine whether to require compliance with any existing court order to pay child support or any separation agreement providing for child support.

- **The Court** should also award child support in other appropriate cases at the ex parte hearing.
- **The Sheriff** will be responsible for assuring the safety of both parties and the Child Support Enforcement staff in Room 209.
- The 209 staff will attempt to establish a voluntary support agreement (VSA) based on the child support guidelines and present it to the judge for entry as a court order.
- The staff will also determine, pursuant to state policy, whether to affix a DV indicator to the file.
- **Judges, clerks** and **magistrates** can take affidavits for the verification of child support and paternity documents, NCGS 1-148.
- **Judges** should stay at the courtroom or be available in their offices until the Child Support Enforcement staff completes all cases referred to it.
- If the obligor declines to sign a VSA, **the Court** should order temporary child support and order the defendant to appear at the next Tuesday morning session of IV-D court in 204. The **Clerk** should deliver that day a copy of the order to Room 209.
- Parents not wanting to be represented by Child Support Enforcement are entitled to have child support heard and determined by the **Judge**, including, if appropriate, a wage withholding order. The **Clerk** in Courtroom 203 should keep a stock of guidelines, worksheets and wage withholding notices and orders.

WGJ/pc



## I. Standing: Persons Authorized to Initiate Show Cause Orders

Anyone with reliable information of willful violation(s) of a 50B Order may make application for a Show Cause Order; the complaining person(s) are not required to have first-hand knowledge of the alleged violations. However, the complainant(s) must have an “interest” in enforcing the order. N.C.G.S. 5A-23(a). Complaining person(s) may include probation officers, NOVA representatives, district attorneys, Victim Assistance workers and/or civilians.

## II. Initiating Process: Making Applications

### A. During Clerk of Court Business Hours: Room 214 Civil Courts Building

During normal business hours, complainants shall initiate a Show Cause Order in Room 214 of the Civil Courts Building (hereinafter “214”). Consequently, individuals who make inquiries in the Magistrate’s Office while the Clerk is available shall be referred to 214. Ordinarily, the Clerk will issue Show Cause Orders which do not require arrest or a bond to secure his/her appearance; these Show Cause Orders shall be served consistent with Rule 4 of the North Carolina Rules of Civil Procedure. In limited circumstances, however, Show Cause Orders may direct that the named Defendant be arrested and post a bond when a District Court Judge makes a finding that the “person ordered to appear will not appear in response to the order.” N.C.G.S. 5A-16(b)(regarding criminal contempt); *see* 15A-305. This latter order for arrest, upon issuance, may specify a bond. Upon arrest, the procedures in Section IV, below, must be followed.

### K. After Clerk of Court Business Hours: Process Through the Magistrate’s Office

#### 1. *Arrest by Police Officer Without a Warrant*

Whenever a police officer has probable cause to effect a warrantless arrest for violation of a 50B order, N.C.G.S. 50B-4(b), such individual shall be taken before a Magistrate, who will review the sufficiency of the allegations and ensure the bail requirements of N.C.G.S. 15A-534, *et. seq.* Are met. The Magistrate shall use AOC Form CV-310 in these circumstances. Finally, these arrestees are to be processed consistent with Section IV, below.

#### 2. *Complaining Person(s) Request Show Cause Order in Magistrate’s Office, but Putative Defendant is not in Police Custody.*

When a person requests a Show Cause Order in the Magistrate’s Office while the Clerk of Court’s office is closed and the person against whom the 50B Order is directed is not in police custody, the complaining person should be sent to 214 during regular business hours. However, when there is a “clear danger of acts of domestic violence against the aggrieved party or minor child”, the Magistrate may issue a Show Cause Order in the form of a summons; the Magistrate

is not authorized to issue the same as an order for arrest in these circumstances. N.C.G.S. 50B-4(a); *see* 5A-15, 16. When it appears the putative defendant creates a safety risk to the complaining person(s), the Magistrate may refer the matter to the police for further investigation and potential arrest. In addition, the Magistrate may issue warrants for the alleged criminal conduct of the putative Defendant. N.C.G.S. 50B-4(b).

### **III. Procedures When Defendant Fails to Appear in Court**

When the Defendant fails to appear in court, an Order for Arrest shall issue. This latter Order will specify conditions of release at the discretion of the District Court Judge then presiding in Civil Domestic Violence court. *See* N.C.G.S. 15A-534, *et. seq.*. Victims' Assistance representatives will make an effort to provide criminal histories for the Court to assist the same in setting appropriate bond conditions.

### **IV. Procedures When Defendant is Arrested**

Upon any arrest for alleged violations of 50B orders or failures to appear in court for the same, the following procedures apply.

1. Magistrate. First, Defendant shall be taken before a Magistrate.
2. Bail. Second, each arrestee is entitled to bail as provided in Article 26, Bail, of Chapter 15A. *See* G.S. 15A-534, *et. seq.*; *see* also 50B-4. Consistent with the one-case, one-bond policy, the bond conditions set on a Show Cause Order shall never be consolidated with any other pending charges. Bond may again be addressed by a District Court Judge at a later date, as needed, upon proper motion and after the Clerk of Court has notified the opposing party (1) a motion has been made to modify conditions of release; and (2) the opposing party may appear in Court.
3. Scheduling the Case. Third, no arrestee for contempt shall be processed through Courtroom 1101; rather these individuals are to be promptly scheduled to Courtroom 203. Specifically, the Magistrate shall schedule the Show Cause matter for the next available afternoon session of Civil Domestic Violence Court, 203. If the Defendant is arrested on a Friday, Saturday or Sunday, the contempt matter shall be scheduled for the afternoon session of the Monday immediately following the date of arrest. When the Defendant is arrested outside Mecklenburg County, the Magistrate shall schedule the contempt matter for an afternoon session of Courtroom 203 as soon as practicable. If the Defendant is charged with criminal offenses in addition to the contempt/show cause matter, these shall be scheduled for the next available session of Courtroom 1101.
4. Paperwork. Fourth, for each Show Cause matter, the Magistrate shall ensure the Clerk in 214 receives all the appropriate paperwork and is promptly notified of Defendant's scheduled court appearance.

5. Mandatory Appearance. Fifth, the Defendant shall be informed that he/she must appear whether the same has made bond or not and whether or not he/she has retained private counsel.

## **V. First Appearance and Subsequent Hearing**

### **A. Advice of Counsel for Defendant**

In every case, the Defendant shall be advised of his/her right to counsel. The District Court Judge shall make an effort to complete this task as soon as practicable during the course of the court session. When the Defendant waives his/her right to court-appointed counsel, the Judge shall have the same execute a Waiver of Counsel form to be placed in the court file. When the Court appoints the Public Defenders' Office to represent the Defendant, a copy of the appointment shall be placed into the PD's "out" box in Room 214 by the next business date.

### **B. Complaining Witness(es)**

VLP and/or LSSP representation may be available to those complainants who meet income eligibility requirements; individuals must make contact with these groups as soon as practicable to be considered for representation. The Clerk shall make a good faith effort to notice complaining person(s) to court for all hearings. When the complaining person(s) are not present, the Court will make an inquiry of the Clerk to determine whether the same have been notified to appear.

### **C. Miscellaneous**

Ideally, hearings on contempt will be resolved during the first-scheduled appearance. However, absent consent or "good cause", Defendant may be entitled to a five (5) day grace period before the hearing may proceed. N.C.G.S. 5A-23(a). Requests for continuance will be examined on a case-by-case basis. When the Court continues a contempt matter, it may, when appropriate, modify conditions of release. Victims' Assistance will make an effort to provide criminal histories for consideration by the court in these circumstances. Further, the Court will strive to ensure all individuals' rights to due process are protected. When the alleged contempt involves failure to pay child support, the Court shall transfer the matter to Courtroom 204 for resolution.

## **VI. Findings of Contempt**

### **A. Double Jeopardy**

The moving party should carefully weigh his/her options before pursuing a contempt motion if criminal charges arising out of the same incident are pending or contemplated. *See* discussion regarding double jeopardy, page 7, *supra*. The Court cannot take upon itself the responsibility of making a double jeopardy analysis and, subsequently, recommending an election to the complainant. Consequently, the Court will resolve all contempt matters not dismissed in favor of a separate criminal action.

B. Civil vs. Criminal Contempt

Ordinarily, findings of contempt made in Civil Domestic Violence Court will be in the nature of criminal contempt. Findings of civil contempt may be appropriate when, for example, the named party has not surrendered firearms to the Sheriff's Office or has not paid monies for NOVA or otherwise complied with the monetary conditions of a 50B Order.

C. Disposition

Criminal contempt is punishable by up to 30 days in jail, and/or a fine of up to \$500. There is a dispute as to whether probation may be utilized as a sentencing mechanism. See M.G. Newell Co. v. Wyrick, 91 N.C. App. 98 (1988); Brower v. Brower, 70 N.C. App. 131 (1984). If the final disposition requires Post-Judgment Services (2204) and/or supervised probation, the Clerk shall call the appropriate person(s) from these entities to the courtroom.

File Number: \_\_\_\_\_ CVD \_\_\_\_\_

EX PARTE/  
DOMESTIC VIOLENCE  
PROTECTIVE ORDER  
-PAGE 3

Appendix C

Plaintiff: \_\_\_\_\_

Defendant: \_\_\_\_\_

19. (a) The law enforcement officer serving this order shall seize from the defendant any and all keys to: plaintiff's/parties' residence plaintiff's/parties' vehicles

and the garage door opener.

(b) The defendant shall not disconnect any utilities at plaintiff's residence.

(c) The law enforcement officer serving this order upon the defendant shall seize from the defendant any and all firearms in his/her possession or control, and hold them pending a hearing and further order. (Defendant is known to have the following firearms in his/her ( ) house, ( ) car:

\_\_\_\_\_  
\_\_\_\_\_ )

(d) Defendant shall pay emergency child support of \$ \_\_\_\_\_ per \_\_\_\_\_, beginning \_\_\_\_\_, and continuing thereafter every \_\_\_\_\_ until further order, through the NC Child Support Centralized Collections, P.O. Box 900006, Raleigh, NC 27675-0577, by cashier's check, money order or cash.

(e) Child support will be addressed at the next hearing in Courtroom 204 on \_\_\_\_\_ at \_\_\_\_\_. Each party shall bring three pay stubs.

(f) Defendant shall pay emergency spousal support of \$ \_\_\_\_\_ per \_\_\_\_\_, beginning \_\_\_\_\_, and continuing thereafter every \_\_\_\_\_ until further order, through the office of the Clerk of Superior Court for Mecklenburg County, 800 East Fourth Street, Charlotte, NC 28202, by cashier's check, money order or cash.

(g) Spousal support will be addressed at the next hearing.

(h) From the parties' residence, defendant/plaintiff may retrieve the following items, under the following circumstances:

\_\_\_\_\_  
\_\_\_\_\_

(i) This case will be reviewed on \_\_\_\_\_ in Courtroom 203 at \_\_\_\_\_, and the parties are ordered to appear for the scheduled hearing.

(j) Defendant shall not approach within \_\_\_\_\_ feet of plaintiff.

20. (a) Visitation will be addressed at the next hearing.

(b) Visitation with the parties' child(ren) shall occur every other weekend from \_\_\_\_\_ at \_\_\_\_\_ a.m. p.m. until \_\_\_\_\_ at \_\_\_\_\_ a.m. p.m. The parties shall exchange the child(ren) for visitation as follows:

\_\_\_\_\_  
\_\_\_\_\_ (c) The parties shall utilize (Connections) (Access) for visitation and a separate order to that effect will be entered.

21. Other: \_\_\_\_\_

22. The parties are referred as follows:

VLP	Plaintiff	Defendant	CSE	Plaintiff	Defendant
Lawyers Referral	Plaintiff	Defendant	HERO	Plaintiff	Defendant
Children Cope with Divorce	Plaintiff	Defendant	CDC	Plaintiff	Defendant
District Attorney	Plaintiff	Defendant	CMPD DV Unit	Plaintiff	Defendant
Connections	Plaintiff	Defendant	Other	Plaintiff	Defendant
Access	Plaintiff	Defendant			

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Date

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Judge Presiding

# MEMORANDUM

TO: Persons Involved In Criminal Domestic Violence Cases

FROM: Judge Jim Lanning

DATE: October 3, 1997

RE: Frequently Asked Questions about Setting Bond in Certain Domestic Violence Cases

Updated, Fall 2000, by Domestic Violence Committee.

Q. What is the 48 hour rule?

A. There is no 48 hour rule for the setting of bond in a domestic violence case or any other case.

Q. When is bond set in a domestic violence case?

A. Bond is usually set by the magistrate at the time the defendant is taken to jail. In some cases the law does not allow the magistrate to set bond when the defendant is taken to jail. Bond is then set by a judge a few hours after the defendant has been taken to jail.

Q. In what type cases is bond delayed for a judge to set it?

A. When the defendant is charged with violating a 50B order, criminal domestic trespass, assault or communicating threats and the defendant and the victim, at sometime, have lived together as if married. It does not matter whether they were really married or when they lived together.

Q. Doesn't this include most domestic violence cases?

A. No, not really. The magistrate must set bond if the parties were or are just boyfriend and girlfriend, or simply have a child together, or are parent and child. Also, even if the parties had lived together as if married, the law requires the magistrate to set the bond when the defendant is taken to jail for such common crimes of domestic violence as stalking, injury to property, harassing phone calls, and breaking and entering. Remember, it is only for the specific crimes listed above that bond will be delayed so that a judge can set it and then only when the parties have acted like they were married by living together.

- Q. Okay, but exactly when does a judge set a bond for one spouse who has been arrested for assaulting or threatening the other?
- A. Usually on the morning of the next business day following the arrest. This is when the defendant appears in Courtroom 1101. Since there is no court on the weekends, a judge is assigned to contact the magistrates' office at 9:00 a.m. Saturday, and 6:00 p.m. Sunday and review each case awaiting the setting of bond.
- Q. So, what is the longest period of time the setting of bond is delayed?
- A. On the weekends, it is possible that a defendant might not have a bond set for 32 hours. But considering when arrests are made in most cases, the delay in most cases is much shorter. The thing to remember is that bond will be set by the assigned judge on Saturday mornings and Sunday afternoons.
- Q. What about during the week?
- A. If a defendant were taken to jail shortly after midnight, the delay might be as long as eight or nine hours before seeing a judge and having a bond set in Courtroom 1101.
- Q. Isn't this different than other cases? I know that the computer makes up the 1101 docket from defendants arrested before midnight.
- A. It is different. These defendants receive special handling in order to appear before the judge in 1101 at the next session. If we did not do this, a defendant might not get before a judge for the setting of a bond for about twenty hours. Getting these defendants before the 1101 judge at the next session required some changes by the sheriff, magistrates, clerk, and court services.
- Q. Well, what can I tell people about when a bond will be set in a domestic violence case.
- A. Usually when the defendant appears before the magistrate after being taken to jail. But if the parties have lived together and the crime charged is violating a 50B order, domestic criminal trespass, assault or communicating threats then the bond will be set the next morning in Courtroom 1101 or at 9:00 a.m. on Saturday and Sunday 6:00 p.m. See also "Second Amended Administrative Order Setting Bond in Certain Domestic Violence Cases."