

# **DOMESTIC VIOLENCE RESTRAINING ORDERS & 50Bs**

In North Carolina Divorce Law there is a special section referred to as “50B” or “Domestic Violence” or “50B Restraining Orders”. This is a relatively new area of law that took off by and large in the 1980s. Domestic Violence is a unique court procedure in that it is one of the few civil actions that you do not have thirty (30) days to answer, and as applied in our courts, a person has apparently no right to do discovery. My belief is the rationale behind this is to get the matters resolved in an expedited fashion seemingly without regard for the rights of the accused, or on the other view, to get Orders in place as quickly as possible.

## **HOW IT WORKS**

Domestic Violence is defined in the North Carolina Statutes as an act upon an aggrieved party or a minor child residing with an aggrieved party, not including acts of self-defense, which attempt to cause bodily injury or intentionally cause bodily injury, placing the aggrieved party or a member of the aggrieved party’s family in fear of imminent serious bodily injury, harassment as defined in the Criminal Statutes, or any act as defined in the Criminal Statute as rape or a sex offense. For Chapter 50 to apply making it appropriate for the issuance of Restraining Orders and expedited resolutions, a personal relationship has to exist between the parties in which they are current or former spouses or persons of the opposite sex who live together or have lived together, or are parents and children, or have a child in common, or are current or former household members, or persons of the opposite sex who are in a dating relationship or have been in a dating relationship.

What normally happens is the aggrieved party believes that the accused person has committed one or more of the acts described hereinabove as Domestic Violence upon their person. They then have the option of going to the Magistrate or the Clerk of Court and filling out the necessary paperwork and requesting *ex parte* relief. “*Ex parte*” means “one party” and is simply defined as one party presenting their side of the story to the Judge and getting a Court Order without the other side having the opportunity to tell his or her side of the story. This in reality means that if a person alleging Domestic Violence can make out a satisfactory legal basis in their allegations against the accused person, the Court will issue an *ex parte* Domestic Violence Restraining Order, also called a “Domestic Violence Order” or a “50B *ex parte* Order” or just “50B” or “D.V.”

In most cases this is done by the person going to the Clerk of Court’s office and filling out the necessary pre-printed forms, swearing to the facts under oath, filing the documents with the Clerk, and then a Judge reviewing their allegations, and signing an Order if the Judge deems appropriate. A lot of times persons do not actually go before the Judge but have their paperwork presented to the Judge.

The next step is the paperwork is clocked in. In today's time of increased filing fees and court costs on almost all cases, it is interesting to note that one does not have to pay a filing fee to file a 50B Domestic Violence action. These actions are now free, whereas they formerly had filing fees.

At the same time the person requesting the Restraining Order fills out the paperwork, they fill out an informational sheet on the accused person, including things like the accused person's appearance, employment, whereabouts, ownership of firearms, identifying tattoos, *etc.* After the Restraining Order, if granted, is signed then the paperwork is delivered to the Sheriff's office who then immediately goes out to find the accused person and serve the papers on him/her. In most cases the accused is served with the Restraining Order the very day that the papers are filled out and the Order signed, although there are occasions where it takes quite a long time to find the accused to serve them.

These *ex parte* Restraining Orders are valid for only ten (10) days without a new Order being issued by a Judge. In New Hanover County, 50B cases are scheduled for hearing on Friday mornings in Courtroom 302. As soon as the Order is signed, a court date is assigned within ten (10) days so that the case will be heard either on the Friday of the week the case is filed or the Friday of the following week.

Once this *ex parte* Order is in effect the Defendant (the accused person) is prohibited from doing certain things. Most notably from having any contact whatsoever with the Plaintiff (person filing the papers) and any family members that have been identified in the Order. Further, any efforts to call, visit, email, text, communicate by Facebook, any social networking contact, or have friends pass notes is considered a violation of the Order and is punishable by civil contempt and is a crime. In other words, the Defendant could go to jail.

Routinely Defendants who have had a Domestic Violence Order entered against them are ordered out of any residence they share with the Plaintiff requesting the Restraining Order. This usually means that the Sheriff will accompany the Defendant to the residence and allow him/her to pack an overnight bag and then they must leave and not return until further orders of the Court. Any return to a residence that has been awarded to the Plaintiff, whether they are present or not, is a violation of the Restraining Order and can result in civil contempt and criminal prosecution. Often times the person requesting the Domestic Violence Restraining Order will obtain an attorney but not in every case. In reality it is much more important for the person accused of the Domestic Violence to obtain an attorney in order to have any chance at winning this type of case.

At the "ten (10) day hearing" the Defendant has the option of: (i) consenting to the Domestic Violence Restraining Order to be entered for one year or two (2) years; (ii) objecting to the entry of the Order and having a hearing; or (iii) requesting time to hire an attorney if the requisite time of ten (10) days to answer from the date of service has not expired. When a case is continued in which an *ex parte* Order has been issued, the Court will require that the Restraining Order remain in effect for the period of the continuance so that the party requesting the continuance will still have to abide by the Restraining Order until the case is tried or resolved.

Domestic Violence cases are usually tried without as much time and preparation as occurs in other civil cases. The ramifications to a party who has a Domestic Violence Order entered against them are usually as follows:

1. They are usually ordered out of any residence they share with the Plaintiff, regardless of whether it is a rental or owned by either party.
2. They are ordered not to contact the Plaintiff or to go around any place where the Plaintiff works, goes to school, or regularly does business.
3. They cannot own or possess any firearms for the period of the Restraining Order.
4. Normally, if children are involved, the Plaintiff will request custody of the children and may request that the Restraining Order apply to contact with the children as well.

As one might expect, this opens a wide door to abuse in order to gain the upper hand in custody or divorce cases. In order to avoid having to have a court battle for temporary custody, a less than scrupulous spouse will apply for a 50B. A Domestic Violence Restraining Order is a good way to get the upper hand and temporary custody of the children. Unfortunately, I believe this Statute is abused quite often.

Likewise, Domestic Violence Orders can result in the seizure of any firearms owned by the accused party. If the person being accused of Domestic Violence is in the military or law enforcement, the prohibition against possession of firearms while the subject of a Domestic Violence Restraining Order will normally result in discharge from the military or loss of employment with law enforcement. Furthermore, entry of a Domestic Violence Order against a person is provided to the National Crime Information Center Registry and therefore follows the Defendant in a manner not unlike a criminal conviction.

When the temporary Restraining Order comes on for hearing, the Court generally has two (2) options: (i) denial of the Order being enlarged to a Permanent Order and dismissal of the action; or (ii) entry of a Permanent Order. By and away, most courts tend to favor entering Restraining Orders versus not. There are several theories put forward to support this position, however, there are far more Domestic Violence Restraining Orders of a temporary basis that are enlarged to a Permanent Order than there are dismissed. The routine reasons for a dismissal of a Domestic Violence Order is when the Plaintiff does not show up for court or occasionally when the Plaintiff does not wish to follow through. The Restraining Orders are made permanent far more often than the Defendant actually wins. Once the Restraining Order is permanent, then the Defendant cannot own a gun; cannot contact the Plaintiff for the period of the Restraining Order; has the information that the Order was entered against him/her on the National Criminal Registry; and, is subject to immediate arrest and being held for up to 48 hours without bond if they have been "alleged" to have violated the Restraining Order. A violation becomes a criminal offense.

In the vast majority of cases, the persons accused of a Domestic Violence will need legal counsel. Even if they actually committed the acts alleged and are going to consent to the Order, any Defendant would be well-advised to have legal counsel so they do not inadvertently find themselves behind bars for some unknowing violation of this most punitive Statute. The system is not set up to explain to individuals what anything means. Trusting the Clerk, the Judge, the police, or your opponent's attorney to help you is just foolish.