North Carolina Family Law Guideline

Child Support

OBLIGATION: In North Carolina, parents are primarily and jointly liable to provide support for their children, but the legal obligation is based on each party's relative ability to provide support. **N.C.G.S. § 50-13.4(a)**

ESTABLISHING CHILD SUPPORT: Many times parents reach an agreement about the amount of child support to pay. If parents cannot reach an agreement, then they can go to court and request for the court to enter an order for support. N.C.G.S. § 50-13.4(c)

Each county has a Child Support Enforcement Office that can help to establish a court support order or enforce existing support orders. Website: https://www.ncchildsupport.com/ecoa/

AMOUNT: Child support shall meet the reasonable needs of the child. There is a presumption that the amount of child support paid as determined by the North Carolina Child Support Guidelines meets the reasonable needs of the child. **N.C.G.S. § 50-13.4(c) .** There are certain situations where the guidelines do not apply or can be deviated.

NC Child Support Guidelines are based on income, the number of overnights the child/ren spend with each parent and take into consideration certain expenses and responsibility for other children.

DURATION: Child support usually ends at 18, but will continue if the child is still in high school as long as the child is not 20 years old. The parties can agree to a higher age for termination of child support.

GARNISHMENT: In non-IV-D cases, you can request the court to garnish or withhold part of the wages for child support if there is an order in place and it has been violated or the other party is in agreement to garnishment. Garnishment requires a court order. Unless good cause is shown, garnishment is mandatory in IV-D cases. **N.C.G.S. § 50-44**

FAILURE TO PAY: The parent who fails to pay child support under an order of the court can be found in contempt of court and the district judge may order the parent to jail for civil or criminal contempt for the nonpayment of child support. **N.C.G.S. § 50-37**

A parent unable to pay the amount established by court order must go to court and ask for the support order to be changed by filing a motion to modify.

MODIFICATION: Child support can be increased or decreased by the court based on a variety of factors.

EFFECT OF CUSTODY AND VISITATION ISSUES: It's not necessary to have a custody order to get a child support order. The obligation to pay support is not connected to the right to visit a child. A parent cannot deny visitation to a parent that fails to pay child support. Equally, the parent who is denied visitation cannot withhold the child's support. **N.C.G.S. § 52C-3-305(d)**

FAQ- Child Support

Who is responsible for payment of child support?

- The parents of a child are primarily responsible for the support of a minor child. **N.C.G.S. § 50-13.4(a)**

How do I get a child support order?

- Only a judge can establish a child support order. **N.C.G.S. § 50-13.4(b)**

Do I need to file for custody or divorce to get a child support order?

- No. The Child Support Enforcement program administered by NC Health and Human Services helps people get child support even when there is no divorce or custody order. **N.C.G.S. § 50-13.4(h)**

If I receive public health benefits, do I have to get a child support order?

- Yes, if you receive Temporary Assistance for Needy Families, you are required to cooperate with the local Child support enforcement offices to establish a child support order. You'll be automatically referred to the local Child support Enforcement Office.

I am a victim of domestic violence and I am afraid of what the other parent would do once I initiate a child support action. What can I do?

- Discuss this specific situation with the caseworker at the Department of Social Services and the local Child Support Enforcement office. It is possible to obtain benefits without pursuing a child support order. There are also protections that may apply to maintain your address confidential. Contact a Domestic Violence shelter or LANC for further advice. https://www.thehotline.org/

Can I get help from the local Child Support Enforcement office if I do not get public assistance?

- Yes, you must complete an application and pay the required fee.
- You can find further info about the application here: https://www.ncdhhs.gov/divisions/social-services/child-support-enforcement

What can the Child Support Enforcement office do?

- They can help you with the following:
  - ✓ Locate the parent who should pay support
  - ✓ Establish paternity
  - ✓ Obtain a child support order for you
  - ✓ Collect and distribute the support payments
  - ✓ Enforce the child support order.

What does a child support order mean?

- A child support order only says who must pay child support and how much. It does not establish rights to custody or who should have visitation, who should pay spousal support or who pays debts. Child support orders deal with child support and child support arrears. **N.C.G.S. § 50-13.9**

What can I do if the child support payments are too high or too low?

- A Motion to Modify should be filed and you must prove that a substantial change in circumstances has occurred which warrants a change in the child support amount.
- If the child support order should be modified, you may visit the Child support Enforcement office and ask that they assess the present income of both parents. They will determine if a modification is necessary.

Can I change a child support order because I have lost my job and can no longer pay the support amount in the order?

- Sometimes changes occur after an order has been entered that may make the amount of the support order no longer correct. Either parent, the one paying child support or the one receiving the child support, can ask the court to change the child support order. **N.C.G.S. § 50-56**
- If the original support order was obtained with the assistance of Child Support Enforcement, they can assist you for free. If not, you will have to pay a small fee.

I have become disabled; do I still have to pay child support?

- Yes, but if you have no income because you are unable to work you are entitled to a reduction in the amount of child support you pay. **N.C.G.S. § 50-56**
- If you receive Supplemental Social Security Disability (SSI) payments, your child support payments should be reduced to zero.

My son is receiving Social Security Disability payments because I am disabled. Do I still have to pay child support payments for him?

- You can't automatically stop making payments under a child support order. If your son is entitled to receive benefits from the Social Security Administration because you are disabled, you should make sure that an application has been made to SSA for your son's benefits or child's benefits.
- The amount is included in your income, but the amount of child support payments you should pay must be reduced by the amount your son gets from SSA if the SSA payment is paid directly to the other parent. The amount of support payments you make may be reduced to zero.

I receive child support from my child's other parent but it is not enough to cover the cost of taking care of my child. What can I do?

- The amount of child support a child receives is determined by guidelines. These guidelines take into consideration several factors. You can ask the court to change the support amount. To do this you must convince the court that there are very good reasons to change the child support amount already ordered. **N.C.G.S. § 50-56**
- Judges review the guidelines at least once every four years to determine whether their application results in appropriate child support award amounts. **N.C.G.S. § 50-13.4(c1)**

After the child support order was entered, the other parent of the child and I have reconciled, and we live together. What can we do?

- You can ask the child support enforcement office to suspend the order. This means that the order exists but the parent does not have to pay.
- A support order can also be terminated. This means if you and the parent split again, you would have to reapply for an order.

What is an arrearage?

- An arrearage is the amount of child support a parent has not paid. If someone is paying child support every dollar not paid is added to the arrearage.

Can I forgive the parent who is responsible for child support arrearage?

- Yes, contact the Child Support Enforcement office. You will have to file a written statement saying that you don't want the arrearages.

If I receive public benefits, can I forgive arrearages owed?

- No, the amount of arrearages owed to the state must be paid.

If my child support order is modified because I no longer can pay the amount ordered will any arrearages change?

- No, a change in a child support order will only change the amount paid in the future, not the arrearages.

I am not getting visitation with my child. Can I change the amount of child support I pay?

- No, child support and visitation rights are two different things. You must pay child support even if not allowed to visit.

Custody

HOME STATE JURISDICTION**:** In general, to bring initial custody in North Carolina the child must have lived in North Carolina 6 months immediately before you file an action**. N.C.G.S. § 50A-201(a)(1)**

NO COURT ORDER AND CUSTODY: If there is no court order determining who has custody of the children, each parent has an equal right to live with the child. To obtain formal custody that can be enforced by the court, you must file a custody action in court.

INITIAL CHILD CUSTODY:

1. Two Types of Custody:
   a. Legal Custody: refers to decision making authority. An order may award sole legal custody or joint legal custody.

   b. Physical Custody: refers to physical care and supervision. Physical custody may be sole, joint or primary with the other party having visitation.

2. Best Interest Standard: An order for custody awards the custody of a minor child to the person, agency, organization, institution as will best promote the interest and welfare of the child. **N.C.G.S. § 50-13.2**

In making the best interest determination, the court will consider all relevant factors including (i) acts of domestic violence between the parties, (ii) the safety of the child, (iii) the safety of either party from domestic violence by the other party, (iv) who has primarily taken care of the child, (v) who has the best approach to discipline, (vi) the work schedules of parents, (vii) how each parent can provide for physical emotional educational spiritual needs of the child, and (viii) the character of each parent. **N.C.G.S. § 50-13.2**

Almost everything that is involved in the lives of the child and parents is relevant to the determination of what is the "best interest" of a child. For example, you should provide information to the judge that your home is safe and secure, your parenting abilities, stability in your lifestyle, and why the opposing party should not have custody.

CUSTODY BY NONPARENTS: Parents have a constitutional right to have custody. For a third party nonparent to gain custody they must show the following:

1. Standing: a substantial relationship with the child
2. The natural parents' unfitness, neglect or acts by the parents which are inconsistent with their constitutionally protected status as a parent.
3. It is in the best interest of the minor child.

GRANDPARENT VISITATION: An order for custody can include visitation rights for grandparents, but only if there is ongoing custody litigation. This is different than grandparents seeking custody as a nonparent above. Grandparents cannot have an order for visitation if custody is not at issue between the parents/third parties. If there is litigation between two parents and one parent subsequently dies, grandparents cannot be granted visitation because custody litigation is no longer ongoing.

MODIFICATION: A custody order can be changed. Once the court enters custody order it can be changed if there is substantial change in circumstances affecting the welfare of the child since the court order was entered.

MEDIATION**:** Most counties have a mandatory custody mediation program. In these counties, the parties must attend mediation prior to a hearing on initial custody or modification of custody. Agreements reached in mediation are incorporated into a court order. See below **N.C.G.S. § 50-13.1(b)-(h).**

EFFECT OF CHILD SUPPORT ISSUES: The obligation to pay support is not connected to the right to visit a child. A parent cannot deny court ordered visitation to a parent that fails to pay child support. Equally, the parent who is denied visitation cannot withhold the child's support. **N.C.G.S. § 52C-3-305(d)**

Mediation

Is mediation mandatory?

- If there is a mandatory mediation program in your county, then both parties must attend mediation before a permanent custody hearing. If you receive notice to attend mediation, you have to go to the scheduled mediation or you can be held in contempt of court.

What is mediation?

- The mediation process will be explained to you at the initial orientation session. Mediation provides the parties with an opportunity to resolve the dispute and to work out the custody and visitation schedule with the help of a court certified mediator. No attorneys are present. Anything said in mediation is considered negotiations and is not admissible in Court. The goal of mediation is to try to get cases resolved amicably without having to go to a full court hearing.

Can the case be settled in mediation?

- If during mediation, you are able to reach an agreement, the mediator will prepare the agreement and have all parties sign it. Depending on the county, the mediator will either give this agreement to the Judge for his/her signature or if the parties are represented, to their attorneys. Once approved, the agreement will go to a judge for his/her signature and the agreement becomes an order of the court. No hearing will be required.

How do I prepare for mediation?

- You should have a plan for custody and visitation. Try to be reasonable. If you want primary custody you should have an idea of how much time the other party should have with the children. Think of what can work for both of you. Be prepared to propose visitation during holidays and school breaks.

What if no agreement is reached?

- You do not have to come to an agreement in mediation. If what the opposing party suggest is completely unreasonable, unworkable, and/or you just do not feel comfortable with it, you can chose not sign an agreement. In that instance, the mediator will notify the Court that the case did not settle, freeing it up for a hearing.

Parenting Coordinators

What type of cases need a Parenting Coordinator? Those cases which are considered "high conflict" custody cases.

In North Carolina a high conflict case is one in which the parents show one or more of the following factors:

1. Excessive litigation
2. Anger
3. Verbal abuse
4. Physical aggression or threats of physical aggression
5. Difficulty communicating about or cooperating with one another
6. Other conditions that the judge believes justify the appointment of a Parenting Coordinator (PC). **N.C.G.S. § 50-92(a)**

How does the Parenting Coordinator Program work?

- A PC is assigned by the Court to teach families to make decisions that are in the best interest of the child, explore possibilities of compromise and reduce misunderstanding and conflict. **N.C.G.S. § 50-91(a)**

What is the process that the court follows to assign a PC?

- A judge may appoint a PC if the parents' consent to a PC. Even if the parents do not consent, a PC may be appointed if the court determines that the case is a high conflict case and also finds that the parties have the ability to pay. If you have received a request to appoint a PC in your case, you should consult with a lawyer. **N.C.G.S. § 50-91(b)**

Is a court order necessary when the court appoints a PC?

- Yes, a court order is necessary to provide the PC authority to make decisions and obtain information. The court order will detail the areas to be addressed by the PC. **N.C.G.S. § 50-91**

Is the order appointing the PC enforced by the court?

- Yes, the court order is like any other order of the court, enforced by the contempt powers of the court. It is very important to understand and follow the order.

Can a PC be assigned at any stage of a custody case?

- Yes, but typically a PC is assigned after a custody order has already been entered.

When can a PC start working on a case?

  - The PC shall not begin any duties until the fee has been paid. **N.C.G.S. § 50-95(b)**

Once a PC is appointed, can the order appointing a PC be terminated or modified?

- Yes, any party for good cause can ask the court to terminate or modify the order assigning a PC. If you need to modify the order you should seek the advice of a lawyer.
  N.C.G.S. § 50-99

Who can be a PC?

- PCs are professionals with a masters degree or a doctorate degree in related areas such as psychology, social work, counseling, medicine or law. They must have at least 5 years of experience in relevant areas. They also receive training in child development and mediation.
  N.C.G.S. § 50-93(a)

How is the PC chosen for a specific case?

- The court has a list of coordinators participating in the program and approved by the court. The parties elect the coordinator from the list. **N.C.G.S. § 50-91(d)**

What issues are decided by the PC?

- The PC often deals with parenting issues not purely legal issues. For example, the time and place of visitation exchanges, changes in day care or schools, holidays and fee-splitting for the children. **N.C.G.S. § 50-92(b)**

Is the information provided to the parent coordinator confidential?

- No, the parent coordinator process is not confidential. The PC reports to the court and can make recommendations regarding modification and clarification of the existing order.
  N.C.G.S. § 50-96

Can the PC decide who will be the primary caretaker for the children?

- No, the PC does not decide which parent will have custody. That decision remains the sole responsibility of the judge.

FAQ-Paternity

How do I become the legal father or establish paternity of a child?

- Paternity is a legal process to establish that a person is the legal parent of a child. In North Carolina, there are several ways to establish paternity.

    1. If you were married to the child's mother when the child was born, you are automatically the father of the child. **N.C.G.S. § 103A-101**
    2. If the parents were not married when the child was born, paternity can be established with an affidavit of parentage saying that you are the father. **N.C.G.S. § 103A-101(f)**
    3. By order of the court after an action for paternity is started. If paternity is disputed, then the court may order a genetic test to establish paternity. **N.C.G.S. § 50-13.13(d)**

If I am married to a woman at the time she gives birth to a child, but I am not the father of the child what can I do?

- You must file an action in court to establish that you are not the father. This is complicated and you should consult with a lawyer.

What can I do if I signed an affidavit acknowledging that I am the father but now I believe I am not the father?

- After an affidavit of parentage is signed you have 60 days to cancel the affidavit. Once this time passes, you will have to file a separate court action to change the conclusion that you are the father. This process is complicated and you will need a lawyer.
  N.C.G.S. § 110-132(a)

What happens if I am not sure who the father of my child is?

- When more than one person could be the father of the child, each person named may be required to take a genetic test. **N.C.G.S. § 50-13.13(d)**

ABSOLUTE DIVORCE

Two Grounds for Absolute Divorce

1. Incurable Insanity (rarely used) **N.C.G.S. § 50-5.1**
    a. Spouses must live separate and apart for 3 years as a result of insanity
2. Separation for 1 year/ No fault (most common) **N.C.G.S. § 50-6**
    a. In North Carolina you can obtain a divorce without proving that you or your spouse caused your marriage to fail. The law in NC permits a divorce based upon one year of separation without regard to fault.
    b. To obtain a divorce because of one year of separation or no-fault divorce, you must establish the following requirements:
        1. One spouse has lived in NC for at least 6 months before the divorce is filed;
        2. Valid marriage to the person you are trying to divorce;
        3. Continuous separation for at least 1 year
            a. Lived separately and apart for one year preceding the filing of the divorce
                i. Separate bedrooms or parts of the house will not suffice to establish continuous separation
            b. Living separate and apart essentially means living in separate residences
        4. Intent not to resume marital relationship
            a. You must show that at least one of the spouses has intent not to resume the marriage.
        5. Must include an affidavit of military status under the Service Member Civil Relief Act
        6. If you would like to change your name in the divorce, you must request so in your Complaint or in the Response if you are the defendant.

Major Effect of Divorce: Absolute divorce ends right to claim alimony and equitable distribution unless pending prior to the entry of the judgment of divorce. **N.C.G.S. § 50-11**

Annulment of Marriage

An annulment of marriage invalidates or cancels the marriage. North Carolina Law details the requirements for annulment or cancelling a marriage.

Annulment Grounds **N.C.G.S. § 50-3**:

1. Bigamy: Marriage between persons either of whom has another spouse living whom they are still married to at the time of such marriage.
2. Kinship: Marriage between two persons whose kinship is closer than first cousins or between double first cousins.
3. Age: Marriage in which either spouse is under 16 years of age.
4. Impotence: Marriage between persons either of whom is at the time of such marriage physically impotent; or
5. Incapacity: Marriages between persons either of whom is at the time incapable of contracting because of incapacity, lack of understanding, insanity.
6. Special Pregnancy Rule: If spouse represents to be pregnant, parties separate within 45 days of marriage, separation is continuous for one year, and no child is born within 10 months of separation.

NOTE: Except in a bigamous marriage, a marriage may not be annulled after the birth of a child or death of either spouse. **N.C.G.S. § 50-3**

Effect of Annulment:

1. The marriage is set aside as if it never existed
2. Postseparation support is available but NO alimony
3. Children remain legitimate
4. Child support and custody can be awarded
5. No equitable distribution (property/debts treated as if parties never married)

Separation and Divorce Basics

If you and your spouse are living apart from each other with the intent not to resume the marriage, you are separated.

Sometimes couples put in writing their understanding and agreement as to important decisions such as: who will pay the debts? This mutual understanding is called a "separation agreement."

A separation agreement is a contract between you and your spouse about important decisions. You don't have to have a separation agreement to be separated.

As long as you satisfy the requirements of no-fault divorce, you are still entitled to divorce even if your spouse tells you "I won't give you a divorce." **N.C.G.S. § 50-6**

In addition to the divorce, your spouse may request distribution of property, spousal support, or custody, but you are still entitled to an absolute divorce.

If there is a property which you and your spouse acquired during marriage, and you don't have a separation agreement, you should consult an attorney because any questions about property and spousal support must be resolved before the divorce becomes final. Entry of absolute divorce ends all right to claim equitable distribution or request spousal support unless there are valid claims pending at time of divorce.

If you have entered a separation agreement that is satisfactory, you may want to incorporate it in the divorce decree. This will make a separation part of the order of the court and it can be enforced by the court.

If you want to incorporate a separation agreement into the divorce, it must be part of your complaint, or if you are the defendant it must be part of your answer to the divorce.

Separation/Divorce and Credit Accounts

There are two types of credit accounts: Individual and Joint

Individual account:

- An individual account is provided relying only on the applicant's income, assets and credit history.
- Whether married or single, you alone are responsible paying off the debt of your individual account.

Joint account:

- In a joint account the income, assets and credit history of both spouses are taken into consideration.
- In a joint account each spouse is legally responsible to the creditor for the entire debt.
- No matter who actually pays the household bills, both spouses are liable for any debt that is on a joint account.

Liability: You are liable for paying any debt incurred on an account in your individual name by any authorized user. You and your spouse are both liable to the creditor for any jointly titled debts.
What can the Court do: Regardless if the debt is in your individual name or in your joint names, the debt itself could be considered a marital debt if incurred during marriage for a marital purpose, but in the eyes of the creditor, you remain liable if your name is on the account. A judge can distribute certain debts to a party for payment in an action for equitable distribution, but only if a valid claim is filed. In order to keep your credit in good standing, it is important to keep credit accounts current pending distribution of that debt/refinancing into one party's name.
What if unpaid: You credit can be affected by nonpayment of debts in your individual name or joint names. Judgments obtained by creditors for unpaid debts can also attach to certain property. Entry of absolute divorce can affect what judgments can attach to jointly titled property, even those judgements in the individual name of the other spouse.

Termination of Parental Rights

Who can file a petition to terminate parental rights?
The person seeking to terminate the parental rights of another has the responsibility of convincing the court that there are specific reasons authorized by NC law to terminate the parental rights of a Respondent. The person who files the Petition to Terminate Parental Rights is called the "Petitioner," and the person filed against is called the "Respondent." Petitions are filed in juvenile court which is a division of district court in North Carolina.

Under what circumstances, can a person's parental rights be terminated? Some of the reasons to terminate the parental rights of someone are:

1. A court has found that the child has been abused or neglected by the person whose rights are being terminated. **N.C.G.S. § 7B-1111(a)(1)**
2. One parent has been granted legal custody and the other parent, without justification, failed to pay child support. **N.C.G.S. § 7B-1111(a)(3)**
3. If the child was born out of wedlock and the parent failed to acknowledge the child. **N.C.G.S. § 7B-1111(a)(5)**
4. The parent is incapable of providing proper care and supervision of the child because of mental illness, substance abuse or other condition. **N.C.G.S. § 7B-1111(a)(6)**
5. The parent has abandoned the child for at least 6 consecutive months prior to filing the petition. **N.C.G.S. § 7B-1111(a)(7)**

To determine if your specific circumstances meet the requirements of NC law for termination of parental rights, you should consult with a lawyer.

Is there a right to a court-appointed attorney?

- The Respondent is appointed "provisional" counsel at the filing of the Petition. If the Respondent is indigent, the provisional counsel may continue as appointed counsel for the Petitioner. The Court may also appoint a Guardian Ad Litem for the minor child subject to the action.

Who can bring a petition to terminate parental rights?

1. Either parent to terminate the parental rights of the other parent. **N.C.G.S. § 7B-1103(a)(1)**
2. A person appointed guardian of the person of the child. **N.C.G.S. § 7B-1103(a)(2)**
3. A person with whom the child has lived for 2 continuous years preceding the filing of the petition. **N.C.G.S. § 7B-1103(a)(5)**
4. Others, such as the County Department of Social Services. **N.C.G.S. § 7B-1103(b)**

What if I do not know the name of the other parent? If the name or identity of the parent whose rights are being terminated is not known, the Court will conduct a hearing to determine the name or identity of the parent and decide how the case should proceed.

What happens at the hearing? A Termination for Parental Rights hearing is a bifurcated hearing. The Court must first find that grounds exist to terminate parental rights. This is called the adjudication phase of the hearing. If the Court finds that grounds exist to terminate parental rights, the Court must then determine whether it is in the best interests of the minor child to terminate parental rights. This is called the disposition phase of the hearing.

Appeals from a Termination of Parental Rights hearing are appealed to the Supreme Court of North Carolina as of January 1, 2019.

Legal Name Change

Adult Name Change—

- An adult individual in North Carolina, for good cause shown, may change his or her name by filing an application before the Clerk of Superior Court of the county in which they reside. **N.C.G.S. §101-2**

- Adult name changes are special procedures heard by the Clerk of Court's office

- Filing Fee: $120.00
- Documents required:
    1. Notice of Name Change
    2. Certified Petition for Legal Name Change
    3. Sworn Statement
    4. Affidavits of Character- (2) from people who live in the same county as person requesting name change
    5. Birth Certificate-certified copy
    6. Records Check-federal and state criminal background check
    7. Order for Adult Name Change
- Before filing an application for name change, the applicant must post the Notice of Name Change for 10 days consecutive days at the courthouse in the county where the applicant resides.

- Petition for Legal Name Change-Must be notarized and contain the following:
    - True Name (see birth certificate)
    - County of Birth
    - Date of Birth
    - Parents full name as shown on the birth certificate
    - Name applicant seeks to adopt
    - Reason for desiring name change
    - Whether the applicant has changed his/her name before and, if so, why?

- Good Cause needed: The Clerk will approve a petition for name changes for good cause only. **N.C.G.S.§101-4**
    - A person cannot change their name to avoid creditors, criminal charges, or civil lawsuits
    - Sufficient reason for a name change must be given

- Sworn Statement—The statement must include the following:
    - Applicant is a bona fide resident of and domiciled in the county where the name change is sought; and
    - Whether or not the applicant has outstanding tax or child support obligations.

- Affidavits of Character- Two (2) affidavits of character by citizens in the county where the applicant resides, who are over the age of 18 years old, and who are not related by blood or marriage and who know the applicant. **N.C.G.S.§101-1 through 101-8**

- Birth Certificate-Must have an original, certified copy or photocopy of Birth Certificate

- Records Checks—

    - State—Contact North Carolina State Bureau of Investigation
    - Federal-Contact the Federal Bureau of Investigation
    - Finger printing is required.

- Order for Adult Name Change—Must contain the following--
    - Applicant's true name
    - Applicant's county of birth
    - Applicant's date of birth
    - Applicant's parents full name as shown on birth certificate
    - Name sought to be adopted by applicant
    - Summary of the forms reviewed

Minor Child Name Change—(Less than 18 years of age)

- Who can file?
    - Minor child's parent or parents
    - Minor child's guardian or Guardian Ad Litem
- If Minor Child is under age of 16 years old—
    - Both parents must consent to the name change unless one parent has abandoned the minor child **N.C.G.S. §101-2**
    - A consent form by the biological father is required if:
        - The father's name is listed on the birth certificate
        - Paternity has been established by a court order
        - The father is under a court order to pay child support
- Filing Fee: $120.00
- Documents required:
    1. Notice of Minor Child Name Change
    2. Certified Petition for Legal Name Change of Minor Child
    3. Sworn Statement—Petitioning Mother Name Change Verification, Petitioning Father Name Change Verification
    4. Consent to Name Change of Minor Child
    5. Affidavit of Character for Minor Child Name Change
    6. Birth Certificate-certified copy
    6. Records Check-federal and state criminal background check, IF, the minor child is over age of 16 years old
    7. Order for Minor Child Name Change

Guardianship

Is it necessary?

- Protects a person who is incapable of caring for himself and/or his financial affairs when other methods have not been arranged. **N.C.G.S. § 35A-1107(b)**

Hire an attorney or not?

- No need for an attorney. Petitioner can hire an attorney or if respondent is in need of protective services.
- Respondent can hire his/her own attorney or will be appointed a Guardian Ad Litem who is an attorney.

Petition – Special Proceedings

- Proof that the Respondent lacks sufficient capacity to manage his/her own affairs or to make or communicate important decisions concerning his/her person, family, or property.
- Standard of proof: Clear, cogent, and convincing evidence. **N.C.G.S. § 35A-1112(d)**
    - Difficult burden to prove
- Heard by the Clerk of Courts. **N.C.G.S. § 35A-1112(c)**
- Petition will not be granted merely because the respondent is difficult, disagreeable, mean, depressed, disorganized, or occasionally disoriented.
- Much more of a focus on protecting Respondent's rights to continue to exercise rights, powers and privileges and limit guardianship to those area respondent lacks capacity.
- Filing fee: $50.00
- If the Respondent does not have any money, then only a guardian of the person is appointed. **N.C.G.S. § 35A-1116(c2)**
- If the Respondent has money, then a general guardianship, limited general guardianship, or guardianship of the estate will be appointed. **N.C.G.S. § 35A-1116(c2)**

Preparing for the hearing and attending the hearing

- Anyone with information about the respondent should fill out a Guardianship Capacity Questionnaire. (AOC-SP-208)
- The Petitioner does not need a medical records release to proceed.
- Any party or the Clerk may request a Multidisciplinary Evaluation (MDE). **N.C.G.S. § 35A-1111**
- Proceedings are very informal.
- At the end of the hearing, Clerk appoints Guardians and designates their authority and signs the written Order on Application for Appointment of Guardian (AOC-E-406)
- The matter then goes to the Estates Department.
- Appeal is to Superior Court for a de novo hearing.
- General hearing procedure info can be found in **N.C.G.S. § 35A-1112**

Application for Letters of Guardianship

- Prospective guardian should be bonded prior to filing if a general guardian or a guardian of the estate is sought.
- Will need to take oath.
- Begin completing the Application for Letters of Guardianship
    - Form: (AOC-E-206) which includes itemization of the ward's estate. Information may be limited until the guardian is able to presentthe Letters of Guardianship which comes later. Guardians just need to do the best they can to complete this form and set their sights on completing an accurate inventory within 90 days.

Letters of Guardianship

- After bond is posted
- Duties to begin

Rights Reserved to Ward

- To marry
- To be a witness
- Make a will
- Privilege to drive
- To contact

Domestic Violence Protective Orders

What is it?

- A DVPO is an Order of the Court granting a victim of domestic violence protection from his/her abuser. Many people refer to it as a "restraining order" or a "50B."

Who can file for a DVPO?

- The Plaintiff must have a "personal relationship" with the Defendant. **N.C.G.S §50B-1**
  - Current or former spouses
  - Persons of the opposite sex who live together or have lived together
  - Related as parents and children, including grandparents and grandchildren
  - Have a child in common
  - Are current or former household members
  - Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship

What does "domestic violence" mean and what do I have to prove? **N.C.G.S. §50B-1**

- Domestic violence is defined as the commission of one or more of the following:
  - Attempting to cause bodily injury, or intentionally causing bodily injury
  - Placing the Plaintiff or a member of the Plaintiff's family or household in fear of imminent serious bodily injury or continued harassment which rises to the level as to inflict substantial emotional distress
  - Committing one or more of the following sex acts: first degree rape, second degree rape, first degree sexual offense, second degree sexual offense, sexual battery, intercourse or sexual offenses with certain victims, or statutory rape

- What do I have to prove to obtain a DVPO?
  - That a "personal relationship" exists
  - That an "act of domestic violence" occurred

What type of relief can I ask for from the Court: **N.C.G.S. §50B-3(a)**

- A Protective Order may include certain acts of relief, such as:
  - Direct a party to refrain from such acts
  - Grant possession of a home or vehicle
  - Spousal support or child support
  - Award temporary child custody
  - Award possession of a pet
  - Order the eviction of a party from the residence
  - Award attorney's fees to either party
  - Prohibit a party from purchasing or owning a firearm
  - Order an offender to attend and complete an abuser treatment program

What is the process for obtaining a DVPO?

- Filing the Complaint.
    - Many counties have dedicated domestic violence agencies that can assist with the filing of a Complaint. Some counties have electronic filing systems.
    - The forms will be provided to you at the Clerk's office for filing.
    - When filing the Complaint, you will also make a request for an Emergency Ex Parte Order. **N.C.G.S. § 50B-2(c)**
    - A request for an Ex Parte Order will either be granted or denied and a hearing will be set within ten (10) days for all parties to return to court and have a hearing on the allegations from the underlying Complaint. This is often referred to as the "10-day hearing."

- Service of the Complaint on the Defendant—
    - This is typically served by the sheriff's office.
    - In order to have a hearing on the Ex Parte Order and Complaint, the Defendant must be served.

- "10-day hearing" **N.C.G.S. § 50B-2(c)(5)**
    - If the Defendant has been served by the hearing date, there are several possible scenarios:
        - You (Plaintiff) does not go to Court.
            - In this scenario the Ex Parte Order will be dropped and will no longer be valid. The Complaint will be dismissed.
        - The Defendant does not come to Court.
            - If this happens, typically the judge will extend the DVPO for one year.
            - The Plaintiff will have to present some sworn testimony as to the "relationship" with the Defendant and the "acts of domestic violence."
        - The Defendant comes to Court but does not want to contest the order.
            - The parties may reach a consent agreement which is called a "Consent Order." The order can be entered with findings of fact and conclusions of law regarding the acts of domestic violence alleged.
            - Or, the parties may agree to findings of fact and conclusions of law, and the Order will be drafted with the same, or similar, terms as the Ex Parte order. There will not be a hearing.
        - The Defendant comes to Court and contests the Order.
            - There will be a hearing on the Complaint filed. After the evidence is presented by both sides, the judge decides whether to keep the order in effect or dismiss it.

Are there any filing fees? No filing fees

Can a DVPO be modified after its entered? Yes, upon written request. **N.C.G.S. 50B-3(b2)**

- A Motion to Modify must be filed
- The Plaintiff or Defendant must be served with the Motion to Modify
- The Court must find "good cause" to modify the DVPO

Can I renew a DVPO? Yes, upon written request. **N.C.G.S. 50B-3(4)(b)**

- A Motion to Modify must be filed prior to the expiration of the DVPO
- The Defendant must be served
- The Court must find "good cause" to renew the DVPO
    - A DVPO can be renewed up to two (2) years at a time
    - Temporary custody within a DVPO cannot be renewed

Can I get a court appointed attorney?

- An action for a Domestic Violence Protective Order is a civil action so there is no right to a court appointed attorney for either party
- Legal Aid of North Carolina, Inc. does have dedicated domestic violence attorneys that assist with representation of Plaintiffs
- Contact Legal Aid of North Carolina, Inc. in your county for further assistance

Guidelines to the Service Members' Civil Relief Act ("SCRA")

Purpose:

- This is a guideline to use when parties to a lawsuit are on active duty in the armed forces.

The Service Members' Civil Relief Act (50 USC § 501, et seq.)

- In 1940, Congress enacted the Soldiers and Sailors Civil Relief Act (SSCRA). Its purpose was to protect those called to serve in the armed forces.
- In 2003, the SSCRA was amended by the Service Members' Civil Relief Act (SCRA). Different from SSCRA it provides protections to those on active duty, reservists and members of the National Guard when activated.

Who is covered?

- Members of the Army, Navy, Air Forces and Marine Corps on active duty.
- Members of the National Guard called to active duty as authorized by the President or Secretary of Defense for over thirty days.
- Commissioned member of the Public Health Service and National Oceanographic Atmospheric Administration.
  50 USC § 511(2)

When does SM's coverage under SCRA begin?

- A Service Member (SM) is covered from time of receipt of orders to report.
  50 USC § 516

What tribunals/proceeding?

- Any court or administrative agency of the United States, state or a political subdivision.
  50 USC § 512

How is the court alerted to the fact that a party is in the military?

- Any person can alert the court even if the SM has not made an appearance. It is the duty of the court to determine whether that party is in the military. **50 USC § 521(a)**
- Without an appearance, an affidavit is required. **50 USC § 521(b)**

How can someone show whether a person is in the military?

- The Department of Defense must issue a statement of military service.
  https://www.defense.gov/Contact/
- If you have the last name and Social Security Number of the individual, you can obtain a report showing the branch of service and beginning date of active duty service.
  https://www.dmdc.osd.mil/scrs
- If the Social Security Number is unavailable, the request can be made with the date of birth by mail.

What is the immediate result of a finding that a party is in the military on active duty?

- First: the court may not enter a default judgment without appointing an attorney for the SM. This immediately postpones the proceeding. **50 USC § 521(b)(2)**
- Second: the SM's attorney, or the SM, or the court itself may stay the proceedings for at least 90 days if the court determines that: there may be a defense or counsel has been unable to contact the SM or determine if a meritorious defense exists. **50 USC § 521(d)**

If judgment has already been entered and the court determines that a party was in military service?

- Judgment entered against a SM or within 60 days after the end of service must be reopened if:
  - ✓ SM has a meritorious defense;
  - ✓ SM has been prejudiced by the judgment;
  - ✓ Application is filed within 90 days after end of service.

  50 USC § 521(g)

What happens if SM receives notice of an action and makes an application to the court for a stay?

- Upon application of a SM, the court SHALL stay the proceeding for 90 days.
  50 USC § 521(f)

What must be part of a valid application/motion for stay?

- A statement of how the SM's current military duties affect the SM's ability to appear.
- State a date when SM will be available to appear.
- A statement from SM's commanding officer that the SM's current military duty prevents his appearance.
- A statement from commanding officer that military leave is not authorized.
  50 USC § 522(b)

Tip: Statement does NOT need to be under oath. Stay can be extended upon application.

Is the initial 90 day stay mandatory?

- Yes

Is any additional stay discretionary?

- Yes. The court must find that the SM's ability to present a defense is "materially affected" by reason of his active duty of service. Once the court makes this finding, the SM is entitled to a stay. **50 USC § 524(a)**

Once the court makes a finding that the SM's defense is materially affected, for how long is the proceeding stayed?

- The proceeding is stayed for such time as is necessary.
-

If a judgment has been entered, can the execution of a judgment be stayed?

- Yes. In an action started against a SM during military service or within 90 days after the end of service, the court SHALL stay the execution of any judgment or order against him.
- The court can also vacate or stay any attachment or garnishment of property, money or debts. **50 USC § 524(a)**

Is the Statute of Limitation tolled during the period of military service?

- Yes, once the period of military service is shown, the period is automatically tolled. **50 USC § 526(a)**

What is the effect of the SCRA on leases?

- The SM can terminate a lease signed before the member entered active duty. **50 USC § 521(a)**

What must the SM do to terminate a lease?

- The SM must give written notice to the landlord with a copy of his military orders. **50 USC § 535(c)(1)(A)**

Tip: SM can get a refund of security deposit.

Can the Act stop an eviction?

- Yes, it depends on the amount of rent paid and requires a court order. **50 USC § 531(a)**

Does the Act apply to time payments/installment contracts and mortgage foreclosures?

- Yes. If the SM can show that their ability to meet the financial obligations is materially affected, the court can stay the proceeding, prohibit the vendor/lender from exercising any right or option under the contract, extend period of redemption and extend the maturity date to allow for reduce monthly payments. **50 USC § 532(a)(2), 50 USC § 533(a)**

What is the easiest way to serve a party in military service?

- If the SM is in a base in the US:
  - ✓ The easiest service is by certified mail, registered, return receipt requested.
- If the SM is stationed overseas:
  - ✓ Can use registered or certified mail if host nation does not object.