

THE STATE OF NEW HAMPSHIRE



**GOVERNOR'S COMMISSION ON
DOMESTIC VIOLENCE**

**SUPERIOR COURT:
DOMESTIC VIOLENCE GUIDELINES**

**SUPERIOR COURT:
DOMESTIC VIOLENCE GUIDELINES**

**Prepared by the
Governor's Commission on Domestic Violence**

GOVERNOR'S COMMISSION ON DOMESTIC VIOLENCE PROTOCOL COMMITTEE

THE CRIMINAL JUSTICE SUB-COMMITTEE

Capt. William Halacy (Co-Chair)
Concord Police Department

Lincoln Soldati, Esquire (Co-Chair)
Strafford County Attorney

Carole Anderson, Superintendent
Merrimack County House of Corrections

The Honorable Arthur Brennan
Superior Court Justice

Michael Brown, Esquire
Director Field Services
Department of Corrections

Nancy J. Geiger, Esquire
Marital Master

Andrea Goldberg, Administrator
Bureau of Community Corrections & Classification
Department of Corrections

Sgt. David Goldstein
New Hampshire State Police

The Honorable Edwin W. Kelly
Administrative Justice of the District Courts

Sgt. Anita Levine
Manchester Police Department

Chief Daniel Libby
Plymouth Police Department

Major Keith Lohmann
Police Standards & Training Council

The Honorable Robert H. Lynn
Superior Court Justice

Sandra Matheson, Director
Office of Victim/Witness Assistance
Department of Justice

Barbara Sweet, Esquire
Merrimack County Superior Court

Lauren Thorn, Esquire
New Hampshire District Courts

George Wattendorf, Esquire
Dover Police Department

TABLE OF CONTENTS

INTRODUCTION	1
GUIDELINES	1
FILING THE DVP AT THE COUNTER	1
BRINGING THE EX PARTE REQUEST TO A JUDGE	2
ACTION TO BE TAKEN AFTER ENTRY OF EX PARTE ORDER	2
DUAL RESTRAINING ORDERS	3
INQUIRIES BY THE DEFENDANT PRIOR TO TRIAL HEARINGS.....	3
FINAL HEARING.....	4
MODIFICATION REQUESTS	5
CIVIL CONTEMPT	5
CRIMINAL CONTEMPT	5

INTRODUCTION

In the New Hampshire Superior Court, Justices, Masters, clerks and court assistants strive to treat all people fairly and with respect. We serve everyone entering the courthouse equally regardless of sex, race, religion, ethnic background, physical ability, sexual orientation, age or fluency in the English language.

The purpose of these domestic violence guidelines is to provide a set of suggested procedures for court personnel to follow when handling domestic violence petitions. All court personnel who come in contact with people filing or responding to domestic violence petitions are expected to treat the alleged victim and alleged perpetrator with fairness and respect.

Court assistants in particular should be aware they are likely to be the first representatives of the judicial system a petitioner or respondent encounters. In that capacity they will make an impression which is likely to last for a long time. All members of the court staff should be patient, courteous, and use common sense when implementing the procedures described in these guidelines.

GUIDELINES

FILING THE DVP AT THE COUNTER

Anyone coming to the counter requesting to file a DVP should be given the following assistance:

- (a) If the staff person knows that there will be a substantial wait for a judge to become available, the staff person should let the plaintiff know and offer to call the local district court to ascertain the availability of a judge there. The staff should take care to make it clear to plaintiffs that they are welcome to file the DVP in superior court and wait for the next available judge.
- (b) Court staff should give the plaintiff the domestic violence petition and offer to be of assistance if anything on the form is not clear. Staff should encourage plaintiff to read the entire form carefully and to be as specific as possible about the facts of the claimed abuse. If there is a location in the courthouse where the plaintiff can sit down to fill out the form this should be pointed out to the plaintiff.
- (c) Staff should provide plaintiff with a brief explanation of the ex parte procedure, explaining what will take place at the courthouse on the day the petition is filed.
- (d) The staff person should provide plaintiff with any information sheets available in the courthouse concerning the DVP process.
- (e) The court staff should point out to the plaintiff any display rack with pamphlets detailing community support services.
- (f) If the plaintiff has problems reading the form it should be read by the court staff. (It is not required that staff do this if the plaintiff is accompanied by a friend or an advocate willing to provide this service.)
- (g) Court staff should be sure the plaintiff is aware of the different relief that can be requested. This can be done by pointing out the types of relief and the check off boxes contained on the petition.
- (h) Court staff should present plaintiff with any separate "additional information sheet" being used by the superior court and ask that it be filled out.

- (i) If plaintiff indicates s/he has a lawyer, staff should inquire further to find out the name of the lawyer and the type of case. If the case type is marital and it is active, the plaintiff should be asked why the lawyer isn't present now. The answers should be written on a piece of paper by the staff person to be given to the judge. **(NOTE: the DVP form is being revised to include this information so this step and step "h" above may become unnecessary in the near future.)**
- (j) If plaintiff indicates that there is a related pending case or that there are outstanding orders issued from another court, court staff should make a call to that court to inquire about the orders. Whenever possible court staff should ask the court to fax the relevant order(s). (Relevant orders are orders dealing with custody, restraining orders and the like.) If that is not possible, staff should make a note concerning who they spoke with and what was said about the case and any relevant order(s). A copy of the fax or the note should be attached to the DVP.
- (k) Court staff should run a check on the court's computer to see if any case has been filed in their court between the parties. If such a case is located, the file should be pulled and presented to the judge along with the rest of the paperwork.
- (l) When the paperwork has been completed the staff person should give the paperwork to a clerk and find out when a judge will be available to review the petition.
- (m) The staff person should tell the plaintiff when a judge may be available. If there is going to be a long wait for a judge, the staff person may tell the plaintiff s/he can also go to a district court. If the plaintiff is interested in pursuing this alternative the staff person should offer to call the nearest district court to learn when a judge might be available there.

BRINGING THE EX PARTE REQUEST TO A JUDGE

- (a) Before bringing the paperwork to a judge, court staff should review the petition so any unusual matters can be brought to the attention of the judge. (This could be anything from the fact that there is a question about jurisdiction to the fact that the plaintiff had a black eye but did not allege any physical injury.) If it is clear to the clerk that the plaintiff is in the wrong jurisdiction, the clerk should explain this to the plaintiff and indicate where else the plaintiff can file the paperwork. The clerk should make clear that if the plaintiff still wants to file the DVP in this superior court it will be brought to the judge.
- (b) The clerk or court assistant should bring all completed paperwork (the DVP, the additional information sheet, any fax etc.), along with a temporary order form to the next available justice.
- (c) The judge should review all of the paperwork.
- (d) If the judge has questions or is not intending to grant all of the relief requested, the plaintiff should be brought into the courtroom/chambers and given an opportunity to answer the judge's questions. A record should be made of these proceedings. Any advocate, family member or friend accompanying the plaintiff may be present in the courtroom or chambers for this hearing as support for the plaintiff. This person shall not take part in the proceedings unless requested to do so by the judge.
- (e) If the plaintiff has been brought into chambers or the courtroom, the judge should read the ruling/order being made to the plaintiff.

ACTION TO BE TAKEN AFTER ENTRY OF EX PARTE ORDER

- (a) A clerk or court assistant should bring all paperwork back to the office to open a file. (If the judge did not meet with the plaintiff, the plaintiff should be told the result.)
- (b) If the ex parte order was granted, a hearing date should be scheduled immediately to be held within 30 days.

- (c) When issuing a temporary restraining order court staff should explain to the plaintiff that a hearing must be set in 5 days if the defendant so requests. The staff person should then obtain sufficient information to contact plaintiff in the event the defendant makes such a request. Staff should tell plaintiff to contact the court if the information changes. (All such information is confidential.)
- (d) The staff person should review all copies of the petition and temporary orders to assure that the plaintiff's address and phone number is not contained in the paperwork.
- (e) If the plaintiff is requesting child support, staff should give plaintiff a financial affidavit form and ask that it be completed and brought to the final hearing.
- (f) Staff should explain that if the plaintiff does not appear for the final hearing the court will have to dismiss the case and the restraining order will no longer be in effect.
- (g) The staff person should explain that the defendant may be present at the final hearing and the plaintiff should be prepared to present evidence to support the allegations.

Staff should also state that if the plaintiff is concerned about his/her safety at this hearing s/he should contact the court two or three days before the hearing to alert the court about his/her concerns.

- (h) The staff person should tell the plaintiff to return to court on the date of the final hearing even if the defendant has not been served, so that new temporary orders may be reissued with a new court date.
- (i) The staff person should explain the service process to the plaintiff. If a TRO Service Information questionnaire (see attached form at end of these guidelines) is available, one should be given to the plaintiff.
- (j) The staff person should tell the plaintiff to keep his/her copy of the restraining order on his/her person.
- (k) The staff person should inquire about the plaintiff's need for additional certified copies of the restraining order (i.e. for day care, school, a babysitter, etc.) and provide such copies free of charge.
- (l) The staff person should explain to the plaintiff how to notify law enforcement about the restraining order. The plaintiff should be asked whether there is a need for a police department other than the department serving the defendant to have a copy of the order. If so an extra certified copy(s) should be given to the plaintiff free of charge. Make sure the plaintiff knows that a copy of the order should be given to the police department where the plaintiff lives so that department can enforce the order if the need arises.
- (m) If a docket number has been assigned to the case, the staff person should point it out to the plaintiff and ask that future inquiries refer to the docket number if possible.

DUAL RESTRAINING ORDERS

If a staff person learns a conflicting order was granted by another court to the other party at almost the same time, the appropriate person in that other court should be contacted and a final decision made as to which court will retain jurisdiction and whether a new, earlier hearing date is needed.

INQUIRIES BY THE DEFENDANT PRIOR TO FINAL HEARING

If the defendant calls or comes to the counter with questions court staff should respond appropriately.

- (a) Staff should explain that the defendant should come to the final hearing prepared to present evidence in defense of the plaintiff's allegations.

- (b) Staff should explain to the defendant that s/he has a right to have a hearing on the temporary orders within 5 days and if s/he files a written request, a hearing will be set in five days counting from the day after the request is received. (If the fifth day is a Saturday, Sunday or legal holiday the hearing may be held on the next day thereafter that is not a Saturday, Sunday or legal holiday.)
- (c) Staff should explain that if the defendant does not appear at the scheduled hearing the court will enter an order without input from the defendant.
- (d) If the defendant is at the courthouse counter with questions s/he should be given any court information sheet explaining the DVP process.
- (e) Staff should explain that the temporary order is in effect until such time as a judge or master enters an order stating otherwise and if a judge/master dismisses an order the court will send a copy of the dismissal to the police department that served the temporary order, provided the file contains a return of service or other indication that a particular police department received a copy of the temporary order.
- (f) Staff should check the address the court has on file for the defendant and make any corrections. The defendant should be told to keep the court informed of any address changes.
- (g) Before giving the defendant the court file to review, the staff person should check and remove anything in the file that indicates plaintiff's address or phone number.

FINAL HEARING

- (a) Court staff should expeditiously reschedule any hearing that has been continued.
- (b) If plaintiff calls the court prior to the hearing with safety concerns, court staff should take down the concerns and have a procedure in place whereby the head bailiff and other appropriate people are notified of the situation.
- (b) If, at any time prior to the final hearing, plaintiff requests staff to have the petition dismissed, s/he should be told that only the judge/master can dismiss the petition. The hearing should remain on the docket and the case called for action by the judge/master.
- (c) The hearing should be in a courtroom, with sworn testimony and should be on the record before a judge or master.
- (d) If the plaintiff sustains the burden of proof by a preponderance of the evidence the judge/master should make such orders as are necessary;
 - to bring about the cessation of the abuse due to circumstances surrounding the case (i.e. restraining orders, injunction against entering premises etc.)
 - regarding the use and possession of property
 - regarding custody and visitation for minor children

(NOTE: the presumption of joint custody does not exist in domestic violence cases - RSA 173-D)

 - for the support of minor children and
 - to pay the plaintiff for proven specific damages.
- (e) At the end of the hearing a master should inform parties the temporary order remains in effect until the final order is received and the master should reiterate the temporary order. A judge may proceed this way or, if prepared to enter an order at the close of evidence, may proceed as follows:
 - Read the Court's order,
 - If the plaintiff sustains the burden of proof the judge should indicate that if plaintiff wants to have contacts with defendant a motion to modify should be filed, otherwise any contact with plaintiff is a violation of the order,

- If the plaintiff sustains the burden of proof, the court should tell the parties that this final order is in effect for 1 year and can be extended if plaintiff requests this in writing, and
 - If plaintiff sustains the burden, the judge should explain that plaintiff should call the police if any part of the order is violated by the defendant.
- (f) Before commencing any final hearing the master/judge should check to see that the defendant has filed an appearance form. If no such form was filed, one should be presented to the defendant to complete before continuing with the hearing. If the defendant is not present, the master/judge should ask the plaintiff for the defendant's mailing address.
 - (g) At the end of the hearing the master/judge should ask the defendant to remain in the courtroom to allow the plaintiff sufficient time to leave the building.
 - (h) Any order issued at the final hearing should be sent to the parties and to any police department who has received notice of the temporary order on a priority basis.

MODIFICATION REQUESTS

If the plaintiff files a motion to modify/dismiss the final DVP order the following steps should be taken;

- (a) A hearing should be scheduled in order for the court to inquire why the plaintiff is seeking to modify the order, regardless of whether the defendant objects or not. (This hearing may be held in chambers or at the bench if the defendant is not present, otherwise it should be held in the courtroom. In either event it should be on the record.)
- (b) After the hearing, the court should explain that the earlier order remains in effect until the order on this modification request has been received. The prior order should then be reiterated. In the event the court wishes to rule from the bench, it may do so.
- (c) The court staff should send any modified order to the defendant and to the police who received the earlier order, if the court has the police department information in the file.

CIVIL CONTEMPT

- (a) Staff should tell plaintiffs of their right to bring any action for contempt to the local police department for prosecution. If staff determines an action complained of is a civil contempt, and the plaintiff chooses to file the motion in the marital department rather than going to the local police department, the motion should be accepted.
- (b) The motion should be filed in the marital department. If the original domestic violence case has been closed, it should be reopened as a brought forward. No fee should be charged.
- (c) AOC form #273-045 (5/85) "Order of Notice: Contempt Hearing" should be filled out by the court. A hearing date on the motion should be set within 14 days. (RSA 173-B:8 II).
- (d) A copy of the motion should be attached to the order of notice and given to the plaintiff to bring to the police for service on the defendant. [Service should be "in-hand", although evidence of actual notice will be accepted. New Hampshire v. Linsky, et al., 379 A.2d 813 (1977).]

CRIMINAL CONTEMPT

If staff believes there may be sufficient facts to warrant prosecution for criminal contempt, plaintiff should be told s/he can go to the police, the police prosecutor's office or the county attorney's office and request that a complaint be filed against the defendant. **(NOTE: as of Jan. 1, 1995, RSA 173-B:8 III makes any violation of a domestic violence protective order a misdemeanor.)**

