

**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. (Often one deputy must divert his or her attention from the gallery to potential disputes between parties, tension between a party and the court, to take a person into custody or to transport an inmate and the second deputy is required to continue constant monitoring of the potentially explosive situations in and around the courtroom.)
- b. All deputies serving in a domestic violence focused courtroom should receive specialized training about the dynamics of domestic violence and the procedures to be followed by the court and clerk in the handling of these cases.
- c. There will always be at least one deputy in the courtroom, even if the judge is temporarily off the bench.
- d. Deputies shall follow procedure to seek relief for breaks as needed.
- e. There should be a deputy in the hallway outside each Domestic Violence Courtroom well in advance of each scheduled session.
- f. Deputies should be prepared to follow parties out of the courtroom at the end of cases that are potentially explosive. Training will include how to identify cases in which this action should be taken.
- g. Deputies should not answer the telephone for the clerk or run errands for judges, and judges should not make such requests.
- h. Deputies are responsible for ensuring that prisoners are transported to court for hearings.
- i. 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.
- j. All persons will report any deviations from these standards to their immediate supervisor.
- k. Hearings in 4110 are scheduled from 9 a.m. until noon and from 1:30 p.m. until 5:00 p.m. Assigned staff should make arrangements with their superiors if they have commitments which would prevent them from being available at the assigned hours. Staff should not be required to remain in court past 12:30 or 5:00 p.m. without sufficient notice for them to make alternative arrangements for lunch, after-hours obligations (i.e., picking up children from day care) and the like.

**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 courtroom procedures, and committed to the goal of reducing domestic violence in our community. They are 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 routinely assigned Domestic Violence Court judges is available, the Chief District Court Judge will preside over the session; if she 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. A listing of judges, with contact information, will be maintained at the magistrates' office and they will be contacted prior to entry or denial of a request for relief. While magistrates should be knowledgeable about domestic violence, they perform a judicial function and do not advocate for either side. At least a quarterly lunch meeting of Domestic Court judges and magistrates will be arranged by a designee of the District Court judges. The chair of the Domestic Violence Committee, operating under the auspices of the District Court, will have responsibility for assuring this meeting occurs.
  
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, if Judge requests.
    5. Follow up on service of process consistent with 50B-2(c) 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. Be knowledgeable about referral services available in the community.
    7. Maintain a supply of current 50B forms in the courtroom.
    8. Place in the NOVA OR IMPACT and/or IMPACT basket copies of all orders requiring participation in a batterer intervention program.
    9. Maintain supplies of child support forms (child support orders, wage withholding orders and notices) in the courtroom.

10. Arrange for interpreters, as needed.
- b. The criminal clerk will perform the following duties:
    1. Complete the probation judgment and present same for the presiding judge's signature.
    2. Maintain a supply of forms in the courtroom, including continuance forms and indigency forms.
    3. Ensure that the judge's copy of the docket is on the bench before the judge takes the bench.
    4. Write word for word what the judge says on disposition, both on the clerk's docket and (when applicable) on the jail cards.
    5. When jail cases are done, give paperwork to deputy as quickly as possible so prisoners can be returned to lock-up.
    6. When Defendants are placed on supervised probation, give paperwork 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. BAILLIFFS: 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 OR IMPACT 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 IMPACT 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 4130 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. Escort the new, non-custody probationer to the Post-judgment Center for completion of probation intake process.
  - b. Direct probationer to the appropriate agencies in the Post-judgment Center that are ordered by the court.
  - c. Provide the court, probationer, victim, and any other authorized persons with the 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 OR IMPACT or IMPACT program requirement.
  - d. Be knowledgeable about referral services available in the community.
  - e. Promptly cite violators back to court, especially for non-compliance with NOVA OR IMPACT or IMPACT, or continued contact with the victim.
  - f. Appear at review hearings in 4130, as well as at revocation hearings.
  - g. Be prepared to serve violation reports on probationers who the officer presents to the judge at a review with an unfavorable report.
  - h. Provide NOVA OR IMPACT or IMPACT notice of probation violation hearings, when NOVA OR IMPACT or IMPACT presence is needed, in 4130 or Superior Court.
  
9. NOVA OR IMPACT STAFF: A NOVA OR IMPACT 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 OR IMPACT, and/or of a Defendant's performance in the program. The NOVA OR IMPACT staff shall be trained in the area of domestic violence and in assessing for the appropriateness for the program. If no one from NOVA OR IMPACT is present in the courtroom, the Court Administrator's Office will be notified, and a back-up plan will be put in place for handling referrals to NOVA OR IMPACT. NOVA OR IMPACT staff will also be available to provide education on domestic violence and offenders. The clerk in Courtroom 4110 shall notify NOVA OR IMPACT and IMPACT of orders directing NOVA OR IMPACT or IMPACT participation. NOVA OR IMPACT staff is expected to be in Courtroom 4110 or 4130 for reviews involving participants in their programs, and to advise probation officers, in

advance of reviews in Courtroom 4130, whether the Defendant is in compliance with NOVA OR IMPACT conditions.

C. VOLUNTEER LAWYERS:

One or more agencies (i.e., Women’s Commission, County Bar) provide volunteer attorneys to represent parties in civil domestic violence cases. Most of the clients are screened and referred to volunteers by the initiating agency, which offers training and support to the volunteers. Generally, this representation is limited to one hearing. Lawyers who volunteer in this way should familiarize themselves with the procedures in Courtroom 4110, with Chapter 50B, with basic child support laws, including application of the guidelines, and with this manual. They should advise the presiding judge that they are volunteering, so that their cases can be given priority. There is a presumption that the judgment entered in one of these cases will include a provision allowing withdrawal of counsel, though counsel may elect to remain as attorney for the party.

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 to all persons who may suffer from acts of domestic violence. While the majority of victims in these courtrooms have proven to be women, services are also provided to male victims.
  - 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. Contact with Complaining Party: The Victim Assistance volunteer shall make every effort to make contact with each complaining party at the time of their first court appearance.
  - d. Child Custody and Support: All custody or child support orders entered as part of a 50B judgment are of limited duration. Victim Assistance volunteers may provide direction to a party on filing a Chapter 50 custody or child support action.
  - e. Magistrate’s Office: Victim Assistance currently offers services to Plaintiffs seeking help with the 50B process at the Magistrate’s office, Monday-Thursday. Their services should be valued and encouraged.
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 play, and comply with whatever directives individual judges may give about their role in the courtroom. 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:

This agency is located at:

5800 Executive Center Drive  
Suite 200  
Charlotte, NC 28212  
(704) 566-2800

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 appropriate supervisor or unit coordinator.

G. FAMILY COURT:

1. When the Family Court becomes 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 and knowledgeable about its dynamics and courtroom procedures.
2. Conversely, when a Family Court case is filed after filing of a complaint in a 50B matter, all cases should be assigned to the same Family Court judge. That judge should hear the 50B matter if at all possible. If the judge is unable to arrange time for such a hearing, the matter will be heard by the judge assigned to Courtroom 4110.

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 an 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. PSYCHIATRIC EVALUATIONS

There are many circumstances where a psychological evaluation of a convicted party will be helpful to the court in sentencing. The Center for Behavioral Health will conduct these evaluations at what for them is a minimal cost. Forms for these referrals and contact information for the Center should be kept in 4110, 4130 and Family Court courtrooms.

K. 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, IMPACT or progress by Defendants ordered to one of those programs in Courtrooms 4110 or 4130; reviews of substance abuse assessments and treatment progress and mental health evaluations; and other issues on a case-by-case basis. 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 4110 of the Mecklenburg County Courthouse, 832 East Fourth Street, Monday – Friday, at 9:00 a.m. and 1:30 p.m. This court is considered an emergency court that 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 4110. The magistrate may on occasion enter an *ex parte* order without a judge’s authorization. These orders are entered for a 72-hour period. It shall be the magistrate’s responsibility to ensure that the paper work from *ex parte* orders 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 4110 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 **if at all possible** the entire action shall be heard by the assigned judge, including any request for *ex parte* 50B relief. Scheduling should begin with the clerk in Courtroom 4110 as all such cases and orders are coordinated through that courtroom. Any orders issued in another courtroom should be passed immediately to the clerk in 4110 to assure appropriate filings. The matter **must** be set for hearing at a time, date and courtroom certain when the *ex parte* order is executed.
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 that 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 4110 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 4110 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:

- (a) The Plaintiff is expected to appear for *ex parte* hearings. If the court finds a verified pleading has been filed, good cause for non-appearance is determined and there is 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.

- (b) Service of a summons, complaint and/or *ex parte* order, and notice of hearing must be made in proper form consistent with Rule 4 of the Rules of Civil Procedure and with Chapter 50B. (N.C.G.S. §50B-2 states that where the Plaintiff is proceeding *pro se* the clerk should (attempt to) have the process [Summons, Complaint) *Ex Parte* Order, Notice of Hearing, Affidavit of Status of Minor Child, etc.] served and it must normally be done through a law enforcement agency). At least until these documents have been properly served on a Defendant, no permanent order can be entered. This edict does not apply where the party is represented. Litigants should understand, however, that if the clerk's efforts fail, the one-year order cannot be entered. Accordingly, even where the clerk has the responsibility for attempting service and does attempt, the Plaintiff would be well advised to attempt service on their own.

2. TEN-DAY HEARINGS:

- 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 judge so requests. If the Plaintiff cannot 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. (A Defendant in federal custody for deportation proceedings is often unavailable for appearance, even if they are at the local jail. Judges will follow the law, based on the facts of each case, in deciding whether to enter an order in this circumstance.)
- 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 the judge so requests. If no contact is made, the sitting judge shall take action as she or he deems appropriate.

H. SERVICE ON OUT-OF-STATE DEFENDANTS:

It is the Clerk's responsibility to arrange for service 50B pleadings where Plaintiff is proceeding *pro se* on any Defendant. However, it is expected that all Plaintiffs will seek to assure service by any means provided in N.C.G.S. §1A-1, Rule 4, including certified mail or other means.

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. (But see N.C.G.S. §50B-2 for mandatory 10 or seven-day time frames for hearing.) It is the responsibility of attorneys representing parties in Courtroom 4110 to check in with the clerk at 9:00 a.m. or 1:30 p.m. If an initial hearing is continued upon motion of the Defendant that Defendant should consent on the record to be bound by terms of any outstanding *ex parte* order. Any continuance order not otherwise amending the *ex parte* order is entered without prejudice to either party contesting disputed facts at a later hearing.

K. DURATION OF ORDERS:

50B orders entered after notice to the Defendant and a hearing are usually for one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to two additional years, except that temporary custody awards may not be extended beyond one year from entry of the original protective order. N.C.G.S. 50B-3(b).

L. VOLUNTARY DISMISSALS/AMENDED ORDERS:

Plaintiffs who contact the clerk's office seeking to dismiss their 50B actions before entry of a final order should be encouraged to appear at the trial setting. There the judge may 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 order. If no one-year order has been entered, however, neither the clerk nor the judge may prohibit filing of a voluntary dismissal by the Plaintiff. Judges will not be responsible for entering a dismissal. It is the responsibility of the party. 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.

Some judges consider it appropriate to convert a motion to dismiss to a motion to modify the order and change terms in order to achieve the goal of the original order. Wherever possible the judge who entered the original order should be consulted prior to entry of an amendment or termination of an order. A form for use at the time of entry of an Amendment to 50B is available in courtroom 4110 and in the Family Law courtrooms. This form should be transmitted after entry on the day entered to the clerk assigned to Courtroom 4110. The amendment would then go into the repository for such orders. **The protected parties will not be provided that protection until this document is given to the clerk and then the repository.**

M. "BOTH-WAY" ORDERS AND INJUNCTIONS:

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.

There is no authority in §50B for prohibition in a §50B order of conduct by the Plaintiff. §50B-2 lists the remedies available to the Plaintiff in these actions. Injunctions are not listed. The majority view is that injunctions may not be issued, even on consent, against

either party unless the matter is joined with a claim under N.C.G.S. §50 and the relief is entered pursuant to those claims.

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 appropriate authority with copies of all 50B orders.

P. CUSTODY AND VISITATION:

No domestic violence cases shall be referred to the custody mediation program from Courtroom 4110. Any custody/visitation order entered must assure the safety of the child and should not result in the parties having direct contact, or indirect contact which might be used to influence the Plaintiff. If there is a pending Chapter 50 domestic case the 10-day hearing and subsequent events should be scheduled wherever possible before the assigned Family Court judge. The court will take the time to hear these matters and enter the appropriate order at the time of the one year 50B hearing. As to custody terms entered in the Chapter 50 case the terms should be entered either in or attached to the Amendment to 50B form so law enforcement will be aware of terms of the Amendment which may alter terms of the original Order. Preparation of the standard Chapter 50 custody and visitation order may not be accepted for filing by all authorities and thus police officers may not be able to access the new terms.

Q. NOVA OR IMPACT:

1. USE: At present, NOVA and IMPACT are the only programs in Mecklenburg County certified for abuser treatment by the Department of Administration. NOVA and IMPACT 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 OR IMPACT to the Postjudgment Services Center.
2. REVIEW: History indicates that compliance with the court's 50B order to attend NOVA or IMPACT will be accomplished only through the scheduling of review dates. At each review date, the Defendant must provide a letter from NOVA or IMPACT 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 and clerk.

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, and any related criminal charges have been resolved, 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.

R. VOLUNTEER LAWYERS:

Litigants in 50B cases may qualify for attorneys under the VLP "Project 100." If a volunteer lawyer appears in Courtroom 4110 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 704-336-4126 or Legal Aid of North Carolina at 704-971-2583.

S. 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 5" form developed for Mecklenburg County (see Appendix A)** - are available either in Room 3725 (Civil Filing) or Courtroom 4110. Some forms are also available in Spanish and English.

PSYCHIATRIC EVALUATIONS

Forms should be available in 4110 and 4130 (as well as family courtrooms) for use in referring to the Center for Behavioral Health a party for a psychiatric assessment regarding domestic violence issues. These evaluations carry a pricetag of \$600 or more, a fact the judge should consider in ordering such evaluations. Upon request through the form, the evaluation can be forwarded to the defense attorney and referring judge. The document might also be released to a probation officer and/or the district attorney, but these releases require the consent of the defendant.

T. DURATION OF ORDERS:

50B orders entered after notice to the Defendant and a hearing are usually for one year. Upon application of the aggrieved party, a judge may renew the original or any succeeding order for up to two additional years, except that temporary custody awards may not be

extended beyond one year from entry of the original protective order. N.C.G.S. 50B-3(b). Such application must be made prior to 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 the self-help center for this purpose.

### III. CRIMINAL DOMESTIC VIOLENCE COURT

#### A. PLACE AND TIME:

Adult domestic violence misdemeanor cases are heard in Courtroom 4130. 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 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.
  - s. Sexual battery.

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
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 SCHEDULING ERRORS: Criminal domestic violence cases which are inadvertently scheduled in a courtroom other than 4130 shall first be referred to the Criminal Domestic Violence Court if it is in session. If 4130 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 that are mistakenly set in 4130 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 misdemeanor domestic violence offenses shall make their first appearance in Courtroom 4130. Defendants charged by summons may make their first appearance in Courtroom 1130. Felony charges must be handled in Courtroom 1150. Defendants in 4130 or 1130 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.

E. BOND ISSUES:

1. LOCATION: Initial appearances for in-custody Defendants charged with one of the domestic violence offenses will be handled in Courtroom 4130.
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 or other prosecuting witness;
  - 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 4130 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 of bond will be heard in Courtroom 4130.

- F. 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.
- G. 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.
- H. GAL APPOINTMENT:  
Rule 7.1 of the General Rules of Practice allows for appointment of an attorney guardian *ad 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 8370 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.
- I. DEFERRED PROSECUTION:  
Defendants meeting the written criteria may be eligible in a limited number of cases for deferred prosecution in Courtroom 4130. 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 OR IMPACT or IIMPACT is usually a required condition), the charges against them will be dismissed. See N.C. G.S. 15A- 1341(a).
- J. 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. Cases may be prosecuted despite the alleged victim’s absence or reluctance. Consistent with the rules of evidence, judges may declare a witness to be adverse and 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 Crawford v. Washington, 124 S.Ct. 1354 (2004). Crawford set limits on the use of out-of-court statements at trial (i.e., an alleged victim’s statements to a responding officer during an investigatory stage). Generally stated, if such statements are found to be “testimonial,” they are admissible only if the witness is unavailable and the Defendant had a prior opportunity for cross-examination. However, if the statement is



deemed “non-testimonial” and a hearsay exception applies, it might meet the standard for admissibility noted in Crawford.

3. 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 4130 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 4130 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 OR IMPACT REFERRALS: Effective December 1, 2004 a Defendant found responsible for acts of domestic violence must be ordered, as a condition of regular probation, to attend and complete an abuser treatment program, if “there is a program, approved by the Domestic Violence Commission, reasonably available to the Defendant, unless the court finds that such would not be in the best interests of justice.” N.C.G.S. 15A-1343 (b)(12). Currently the NOVA and IMPACT programs are the only such programs in Mecklenburg County. When an action is referred to NOVA OR IMPACT 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 OR IMPACT 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 OR IMPACT 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 OR IMPACT:

1. BACKGROUND: NOVA OR IMPACT is a psycho-educational intervention program. These are not “anger management” programs. Groups are available for women, men and Defendants who speak only Spanish. Currently Defendants under the age of 18 are not admitted to NOVA OR IMPACT; 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 OR IMPACT will be required to pay for the program; the current cost being \$505. Fees will not be waived, but a Defendant may elect to enter a Community Service program where they would perform 144 hours of community service over a six-month period in exchange for a waiver of the NOVA fee. It is the responsibility of the attorney for the Defendant to assure they or someone appropriate has explained this alternative to the Defendant before they leave the courtroom. If the judge elects to inform the Defendant, a sample explanation is attached to this document and marked Exhibit 1.
  
2. SCREENING: Before requiring NOVA OR IMPACT as a condition of judgment, DV judges should consider whether the best interests of justice would be served by this condition. Some Defendants are not appropriate for NOVA OR IMPACT. Persons who are in these categories, or who exhibit these characteristics, should be screened by NOVA OR IMPACT staff, or the court should enter a judgment without requiring NOVA OR IMPACT:
  - 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.
  - Defendants with chronic, severe mental illness.
  - Defendants with limited intellectual capacity.
  - Anyone else who may not need, or may not benefit from the program.
  
3. USE: Defendants generally will be required to successfully complete the NOVA OR IMPACT 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 OR IMPACT will be monitored by the probation officer. A NOVA OR IMPACT 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 OR IMPACT without pre-screening by NOVA OR IMPACT staff. Defendants with potentially significant mental health issues, and Defendants currently abusing alcohol and/or drugs, will be referred for assessment and/or treatment prior to going to NOVA OR IMPACT. Judges should be careful to schedule review dates in open court, and all concerned – Defendants, defense counsel, probation officers and NOVA OR IMPACT staff – should make note of these dates. At the first review date, if Defendant is in compliance, another review may or may not be set. If Defendant is not in compliance, unless the probation officer has already served him with revocation documents, another review will be set.

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 OR IMPACT, 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 or IMPACT, the civil clerk's office, etc., should be provided as needed by a District Attorney. 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. Currently, child care is available on-site. If/when that facility is unavailable, persons who bring children to court will be encouraged to take them outside, and to make arrangements for their care elsewhere. The deputy sheriff, courtroom clerks and judges share equally in the responsibility to assure those below 16 years of age are not present in the courtroom unless authorized by the trial judge.

B. SUPERVISED VISITATION AND SUPERVISED VISITATION EXCHANGES.

Currently, no such programs are available in this area.

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 that 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 OR IMPACT assessors and others. The reporter may advise the parents that the referral is being made. CPS will investigate the referral, and notify the reporter of the case decision.

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 4110 and 4130 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.

Update to come.

F. MINOR PARTIES IN CIVIL CASES.

Rule 17, North Carolina Rules of Civil Procedure, provides the framework for application of 50B rulings to minor parties. The judge in Courtroom 4110, or the magistrate considering the ex parte request, should appoint a person as guardian ad litem for the minor. When a minor Plaintiff is accompanied by a parent or other caretaker relative the official making the assignment may appoint that person. When there is no appropriate person, an inquiry should be made to locate an appropriate person. Where the minor is the Plaintiff and a parent a Defendant, care should be taken prior to appointment of the other parent as guardian. Similarly, when the 50B Defendant is a minor, a guardian *ad litem* should be appointed: either a parent or other relative, or some other non-interested party.

G. CHILD CUSTODY IN 50B CASES.

At the ex parte stage, a judge or magistrate may award custody only if a child is exposed to a substantial risk of physical or emotional injury or sexual abuse. 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, if an Affidavit of Status of Minor Child has been filed, if a request for a custody order was included in the complaint and the Defendant was noticed, 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 in most circumstances and enter appropriate orders.

Judges are required to consider a number of factors in awarding custody and visitation. See N.C.G.S. 50B-3(a1) (2004 amendments). If custody is awarded, the judge may consider a separate list of factors regarding visitation. Id. The primary concern in awarding custody/visitation must be “the best interest of the minor child with particular consideration given to the safety of the minor child.” Id. See also AOC form AOC-CV-306A, which is part of any 50B order when custody is requested.

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 C). In Chapter 50 cases, when a finding of domestic violence has been made, judges must follow the same procedure set out in N.C.G.S. 50B-3(a1). *See* above.

Custody hearings in Courtroom 4110 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. These 50B custody orders are limited to a maximum of one year in duration. They are superceded by a Chapter 50 or Chapter 7B custody order providing the Chapter 50 order references the 50B order. Any custody order entered in another courtroom and which would alter the terms of the original temporary custody order under 50B, must be entered with the form Amendment to 50B Order and delivered to the clerk in 4110 on the day of entry. In the absence of this form order, the police may enforce the original order and may not acknowledge the amendment.

#### H. CHILD SUPPORT.

When a 50B order is entered and child support requested, the presiding judge should address that claim and order temporary support when possible. Additionally or alternatively, the parties may be referred to the Child Support Enforcement Agency at:

5800 Executive Center Drive  
Suite 200  
Charlotte, NC 28212  
(704) 566-2800