

CHAPTER 4 – WHERE TO FILE

STATUTORY REFERENCES: RSA 169-B (Delinquent Children)
RSA 169-C (Child Protection Act)
RSA 169-D (Children in Need of Services)
RSA 173-B:2 (Jurisdiction and Venue)
RSA 173-B:3 (Commencement of Proceedings;
Hearing)
RSA 458 (Annulment, Divorce and Separation)
RSA 461-A (Parental Rights and Responsibilities)
RSA 490:27(a) (Validity of Faxed Warrants and
Orders)
RSA 490-D:2 (Jurisdiction of the Family Division)
RSA 633:3-a (Stalking)

INTRODUCTION

Pursuant to RSA 173-B:2 and RSA 490-D:2, the Circuit Court has jurisdiction over all domestic violence cases. Such cases may be heard in either the Family Division or the District Division of the Circuit Court. The Circuit Court also has jurisdiction over stalking cases brought under RSA 633:3-a; stalking cases are heard in the District Division of the Circuit Court. The procedures that apply to domestic violence cases under RSA 173-B apply to stalking cases as well. RSA 633:3-a, III-a. *See also* Chapter 18- Stalking.

A. WHICH COUNTY OR DISTRICT?

PROTOCOL 4-1

RSA 173-B:3, I, provides that a petition may be filed in the county or district where the plaintiff or defendant resides. RSA 173-B:2, II also provides that if the plaintiff has left the household or premises to avoid further abuse, the plaintiff shall have the option to commence proceedings pursuant to RSA 173-B:3 in the county or district where the plaintiff *temporarily* resides. Thus, the plaintiff has the option to file the petition in the Circuit Court Family or District Division in the county where they reside, even if temporarily, or in the county or district where the defendant resides.

NOTE: The intent of the legislature was to provide broad accessibility to domestic violence plaintiffs. Thus, the plaintiff shall be permitted to submit a petition at *any* courthouse. In the event that the courthouse is not located in an appropriate county or district, court staff in both locations shall coordinate so that the case is commenced in an appropriate jurisdiction.

PROTOCOL 4-2

Staff shall be available for processing domestic violence and stalking petitions during the hours of 8AM and 4PM, unless restricted by administrative order. Petitions will not be accepted after 4PM.

COMMENT

For individuals who have not filed by 4PM, staff shall refer them to a local crisis center and advise them that they may contact a local law enforcement agency to apply for an emergency telephonic order of protection.

PROTOCOL 4-3

When a plaintiff seeks a protection order during business hours, staff shall locate a judge to

review the petition. Under no circumstances should staff send a plaintiff to another court because of the unavailability of a judge in the building.

COMMENT

RSA 490:27-a provides that domestic violence temporary orders may be applied for and issued by facsimile or electronic transmission. Any oath required for the issuance of these orders may be taken telephonically.

PROTOCOL 4-4

When the petition is filed, staff should ask the plaintiff whether another action involving the parties is presently pending in any other court. Additionally, staff should browse the case management system to determine whether there are any active protection or restraining orders on file, or any pending criminal or civil cases involving the same parties, including marital and/or parenting cases. If a civil or criminal action is pending in another court, staff should ascertain certain basic information including:

- a. Names of the parties and their children, if any;
- b. Names of all children residing within the home and the identity of the children's parents;
- c. The nature and status of the action; and
- d. What, if any, outstanding orders regarding contact between parties, custody, support, visitation, use of premises, and use of property have been issued.

COMMENT

Staff should also inquire whether there are pending actions in any other court *outside* of New Hampshire.

The information shall be relayed to the judge. If feasible, the applicable case(s) or protection orders should be pulled or obtained and presented to the judge to ensure inconsistent orders are not issued. If orders exist in other pending cases that the domestic violence orders may supersede, contact should be made with the other court or judge for purposes of modification if necessary.

COMMENT

Under no circumstances should the presence of prior filings or orders be considered in determining whether the presently pending petition for protection should be granted unless the petition alleges the exact same set of facts alleged in a prior civil protection order case.

B. TRANSFER TO ANOTHER COURT

RSA 173-B:2, III provides that any case under that chapter may be transferred to another court upon motion by either party or the court, as the interests of justice or the convenience of the parties may require. The receiving court must nonetheless have jurisdiction to hear the case.

COMMENT

Although this section would appear to authorize the free transfer of domestic violence cases, such a broad interpretation is discouraged. The possibility of delay resulting from transfer and the myriad other problems resulting from moving cases from court to court are more serious in domestic violence cases due to their potential volatility.

PROTOCOL 4-5

Regardless of whether there are existing orders issued pursuant to RSA 169-B, -C, or -D, RSA 169-C:7-a, RSA 458, or RSA 461-A in another court, the judge shall review the petition. If a temporary order is granted, the case should not be transferred unless a judge makes written findings of fact that indicate the interests of justice or convenience of the parties requires transfer. Such facts may include

the existence of a divorce or parenting case.

PROTOCOL 4-6

In the event a party files a motion to transfer a petition to another court, the judge should review the motion and issue a transfer order if appropriate.

Transfer may be appropriate in the following circumstances:

- I. Where both parties reside in a district other than where the domestic violence is alleged to have occurred; or
- II. Where related matters are pending in another court.

COMMENT

The court should consider whether the transfer of a case would limit the ability of a plaintiff to prosecute their case in such a way that it would undermine the intent of RSA 173-B, which is to provide protection.

COMMENT

From time to time, parties may file and be granted conflicting orders from two courts. On those occasions, there should be communication between the courts and a final decision made with respect to the most appropriate venue for the proceedings.

PROTOCOL 4-7

Once the decision is made to transfer the case, the case should be sent to the receiving court as soon as possible.

PROTOCOL 4-8

The Protection Order Registry shall be notified of the transfer of the case and the order to transfer shall specify the court to which transfer is being made.