

CHAPTER 5 – COMMENCEMENT OF PROCEEDINGS AND TEMPORARY RELIEF AVAILABLE

STATUTORY REFERENCES: RSA 169-C (Child Protection Act)
RSA 173-B:1 (Definitions)
RSA 173-B:3 (Commencement of Proceedings; Hearing)
RSA 173-B:4 (Temporary Relief)
RSA 173-B:11 (Notice to the Victim)
RSA 288 (Holidays)
RSA 456-B (Oaths)
RSA 458:17 (Support and Custody of Children)

CROSS REFERENCES: Chapter 14 (Firearms and Other Deadly Weapons)

INTRODUCTION

Pursuant to RSA 173-B:11, staff are charged with the responsibility of advising the plaintiff of specific issues that the plaintiff may ask the judge to consider when issuing an order. The sections below expand upon this basic information, which must be conveyed to the plaintiff, and set policy for assisting the parties in the process.

A. GENERAL STAFF RESPONSIBILITIES

PROTOCOL 5-1

Every court will have a trained staff person on site who is available to assist a plaintiff with a domestic violence or stalking petition and process the case.

COMMENT

Staff may provide a plaintiff with the domestic violence or stalking order of protection checklist that provides information about these types of protection orders.

PROTOCOL 5-2

Trained personnel at the Information Center will be available to respond to any domestic violence or stalking inquiry made by telephone during normal business hours, which may involve a referral to a local courthouse.

PROTOCOL 5-3

Although members of the public may take a petition from a courthouse or download a copy from the New Hampshire Judicial Branch website, all petitions seeking protection orders shall be filed in person at a courthouse by the petitioner unless an administrative order authorizes an alternative means for filing.

PROTOCOL 5-4

Staff shall inform the plaintiff of the statutory relief available under RSA 173-B:11, II.

COMMENT

The petition form lists all of the statutory relief available under RSA 173-B:11. Additionally, staff should inquire as follows:

- a. What type of protection order is the plaintiff seeking?

COMMENT

If the plaintiff is requesting a civil restraining order, staff shall direct the plaintiff to the

kiosk for filing in the appropriate Superior Court and provide the plaintiff with the phone number for the Information Center.

COMMENT

A person who qualifies for a domestic violence order of protection pursuant to RSA 173-B may also qualify for a stalking order of protection pursuant to RSA 633:3-a; thus, staff should inform them of their option to file pursuant to either statute or both.

COMMENT

The role of the staff is to gather information for presentation to the judge and not to determine whether a plaintiff qualifies for an order of protection.

b. Where is the defendant currently?

COMMENT

In the event that the defendant is on the way to the courthouse or arrives during the time the plaintiff is filing a petition, court security personnel should be notified so that appropriate protective measures may be taken.

PROTOCOL 5-5

Every attempt should be made to provide privacy and security to the plaintiff during the inquiry and completion of the petition.

COMMENT

Parties to a protection order case may be under a great deal of stress and may find it difficult or traumatic to disclose the details of what has occurred.

PROTOCOL 5-6

Staff shall provide the plaintiff with information regarding the availability of local crisis centers and inform plaintiffs that an advocate may be able to assist them with completing the petition. Staff shall also inform plaintiffs about the resources available on the Judicial Branch website.

COMMENT

Some advocates may come to the courthouse and some may arrange for another way to speak with the plaintiff. The advocates may also discuss a range of other services that may be available, including assistance with securing legal representation for the final hearing and developing a safety plan. *See* Protocol 5-28.

COMMENT

If the plaintiff indicates they will be in imminent danger upon leaving the courthouse, staff should inform the plaintiff that the plaintiff should call 9-1-1.

PROTOCOL 5-7

Staff shall provide the plaintiff with the following documents, which must all be completed:

a. Petition;

COMMENT

Staff should ask the plaintiff if they checked off all applicable relationships. It is important that final orders of protection document all applicable relationships between the parties to ensure accurate entry into NCIC; certain relationships trigger a federal firearm prohibition. For instance, if a plaintiff indicates that they are former dating partners, staff should inquire whether they have ever cohabitated and if so, have the plaintiff document same.

COMMENT

Staff should show the plaintiff where the plaintiff may request an order for the removal of any and all firearms, ammunition, or deadly weapons in the control, ownership, or possession of the defendant, or any other person on behalf of the defendant for the duration of the protective order. If such a request is being made, staff should tell the plaintiff to list any specific firearm or weapons. Deadly weapons should be listed on the protection order. RSA 173-B:4, I(a)(9).

- b. Defendant Confidential Information Sheet for Law Enforcement;

COMMENT

This document contains information provided by the plaintiff about the defendant that may be helpful to the law enforcement officer at the time of service of a temporary order of protection. Such information includes the defendant's physical identifiers, contact information, and any known information about the defendant's firearms or deadly weapons. Staff should ask the plaintiff to complete this form in its entirety. This document will be provided to the judge, serving law enforcement agency, and defendant; it is otherwise confidential. *Cir. Ct. Electronic Filing R. 11.*

- c. Plaintiff Confidential Information sheet; and

COMMENT

This document contains the plaintiff's name, contact information, and information about what will happen with the petition if the plaintiff leaves the courthouse prior to a decision being made. This document will not be provided to any law enforcement agency unless the plaintiff specifically requests it. This document will not be shared with the defendant or the public.

- d. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) form, if the parties have children in common.

COMMENT

This document is required in a child custody proceeding, as defined by RSA 458-A:1, IV. It contains information about the child's present address or whereabouts, the places where the child has lived during the last five years, and the names and present addresses of the persons with whom the child has lived during that period. RSA 458-A:20, I.

COMMENT

If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice. RSA 458-A:20, V.

Staff should also provide any other informational brochures including lists of community support services, local crisis center information, and/or information pertaining to the Address Confidentiality Program if available.

PROTOCOL 5-8

Staff shall instruct the plaintiff to be specific about the facts causing fear for safety, including dates and times at which events occurred, if known, when completing the petition.

COMMENT

The plaintiff may submit a copy of a telephonic emergency order of protection with their petition for a temporary order of protection.

PROTOCOL 5-9

In addition to the responsibilities under the Language Access Plan, if the plaintiff has difficulty reading, hearing, writing, or understanding the English language, staff shall assist with completing the petition or provide an interpreter, as appropriate. A note should be included on the petition, indicating that the information was written by the staff member as dictated by the plaintiff. If staff is filling out the petition for the plaintiff, it shall be a word-for-word transcription of what the plaintiff says. The plaintiff shall still sign the petition.

COMMENT

Staff shall refer to the Language Access Plan for complete guidance on how to determine when an interpreter or a reasonable accommodation, pursuant to the American Disabilities Act, is needed and the proper procedures to follow.

COMMENT

It is possible that a non-staff support person will assist the plaintiff with filling out the petition. If this occurs, the plaintiff shall still sign the petition. The non-staff support person does not need to put their name on the petition.

PROTOCOL 5-10

If an interpreter is required, staff should follow regular court procedure, including contact with the Language Bank. When processing the order, if granted, staff shall arrange to have an interpreter available for the final hearing.

COMMENT

It is important to immediately arrange for an interpreter for the final hearing to ensure their presence and avoid the possibility of needing to continue the hearing if one is not available. Confirmation should also be immediately obtained and noted in the file.

PROTOCOL 5-11

Upon completing the petition, the plaintiff's oath shall be taken, using the statutorily required language: "I swear that the foregoing information is true and correct to the best of my knowledge; I understand that making a false statement on this petition will subject me to criminal penalties." RSA 173-B:3, IV. *See* RSA 456-B.

PROTOCOL 5-12

If the plaintiff does not have a government-issued photo ID when they complete the petition, staff should ask for some other form of identification, such as school or employment ID. If not personally known to any staff member, the oath or affirmation of another credible witness who knows the plaintiff may suffice. Failing this, the plaintiff should appear before a judge who may make the appropriate inquiry.

COMMENT

Facts such as the individual's address, family background, place of employment, and other biographical information such as schools attended are suggested areas of inquiry to assist in making the determination of credibility as to the identity of the plaintiff. Other less formal forms of identification such as mail delivered to the named individual, library cards, or credit cards may also be reviewed and considered in properly identifying the individual. The line of inquiry should not be asked of the plaintiff on the record for safety reasons, particularly if it will reveal the plaintiff's whereabouts contrary to RSA 173-B:3. RSA 456-B does not establish a burden to

be met by the individual seeking an acknowledgment. Judicial officers and staff are encouraged to liberally construe the statute to allow full access to the courts.

B. EX PARTE TEMPORARY ORDERS

As indicated above, it is very important that domestic violence cases be accorded prompt, efficient and dignified treatment. The protocol for the issuance of *ex parte* orders is designed to encourage that treatment.

PROTOCOL 5-13

The petition shall be presented to the judge for review. If the allegations are unclear, missing dates or other critical information, or are purely summary in nature, the plaintiff should be requested and allowed to provide more detail.

PROTOCOL 5-14

The judge may review the petition and issue temporary orders without conducting a hearing if it appears on the face of the petition that temporary orders are warranted. The judge may nonetheless conduct a hearing in the courtroom on the record prior to issuing orders. Any advocate assisting the plaintiff shall be allowed to accompany the plaintiff into the courtroom. Many times, orders are issued electronically or by facsimile so that an in-person hearing with the plaintiff is not possible. In these cases, a phone conversation with the plaintiff may suffice.

COMMENT

If the judge relies upon oral testimony presented during the *ex parte* hearing, which is not reflected in the plaintiff's written petition, the judge shall make note of those facts on the face of the petition or on an order appended to the petition prior to service upon the defendant.

PROTOCOL 5-15

A. After initial review of the domestic violence petition, if the judge intends to deny the request for a temporary order and **dismiss the case** without allowing for a final hearing, it is strongly encouraged that the judge have contact with the plaintiff in person or by telephone, on the record, before making a decision.

COMMENT

The purpose of contact with the plaintiff is to explain that the judge did not find that there was an immediate and present danger of abuse to the plaintiff and to ask whether there is any additional information that the plaintiff would like to include.

COMMENT

As with Protocol 5-14, if the judge relies upon oral testimony presented during the *ex parte* hearing, which is not reflected in the plaintiff's written petition, the judge shall make note of those facts on the face of the petition or on an order appended to the petition prior to service upon the defendant.

B. After initial review of the domestic violence petition, if the judge finds that abuse has been alleged but that the facts do not support a finding of an immediate and present danger of abuse, the judge may schedule the matter for a final hearing, with notice to the defendant, without issuing temporary orders. If a judge intends to deny the request for a temporary order, but schedule a final hearing, the judge **shall** have contact with the plaintiff in person or by telephone, on the record, before making the decision.

COMMENT

Allowing for a final hearing without issuing a temporary order of protection can lead to a potentially volatile situation. The plaintiff may be placed in danger if the defendant is served

with notice of a hearing but no protection orders are in place. The judge shall encourage the plaintiff to contact the crisis center so that an advocate may assist the plaintiff with a safety plan. Staff shall also explain to the plaintiff that the petition may be withdrawn without prejudice. If the plaintiff withdraws the petition, the pleadings shall not be served, any orders issued shall be vacated, and the case shall be immediately closed.

NOTE: The case file and any audio recording that may exist are not sealed from public inspection and the plaintiff shall be informed of this.

PROTOCOL 5-16

If the plaintiff leaves the courthouse prior to the judge making a decision and if the plaintiff cannot be reached by telephone at the safe number provided on the Confidential Information Sheet, the judge will proceed with issuing a ruling on the petition.

If the judge grants the petition and issues a temporary order of protection, the temporary order of protection, notice of hearing, and the petition will be forwarded to the appropriate police department for service upon the defendant and mailed to the plaintiff at the mailing address provided on the Plaintiff Confidential Information Sheet.

If the judge denies the request for a temporary order of protection but schedules a final hearing on the merits of the petition, the petition and notice of hearing will be forwarded to the appropriate police department for service upon the defendant and mailed to the plaintiff at the mailing address provided on the Plaintiff Confidential Information Sheet. In this instance, no temporary orders of protection will be in place.

COMMENT

The Plaintiff Confidential Information Sheet contains information relative to each potential outcome so that a plaintiff will know what will happen should the plaintiff leave the courthouse prior to the judge making a decision.

PROTOCOL 5-17

Under no circumstances should the plaintiff's address, telephone number, or whereabouts be part of the public record, except by order of the court for good cause shown. RSA 173-B:3, I.

C. PROOF REQUIRED

PROTOCOL 5-18

If, based upon a review of the allegations in the petition and, if needed, discussion with the plaintiff, the court is satisfied that it has jurisdiction and that credible facts amounting to abuse, as defined by the statute, have been alleged, and that there is an immediate and present danger of abuse, the court shall issue such temporary orders as it deems necessary to protect the plaintiff.

COMMENT

The court may consider evidence of any predicate criminal acts, "regardless of their proximity in time to the filing of the petition, which, in combination with recent conduct, reflects an ongoing pattern of behavior which reasonably causes or has caused the petitioner to fear for his or her safety or well-being". RSA 173-B:1, I.

PROTOCOL 5-19

If, upon review of the plaintiff's petition, the court denies relief and dismisses the case, no pleadings shall be sent or served upon the defendant. The case shall be closed forthwith. Pursuant to Protocol 5-15, the case file and any audio recording that may exist are not sealed from public inspection.

Therefore, either party or member of the public may request a copy of the audio hearing. Staff shall also inform the plaintiff that if the plaintiff will be in immediate danger upon leaving the courthouse, the plaintiff should call 9-1-1.

D. TEMPORARY RELIEF AVAILABLE

PROTOCOL 5-20

RSA 173-B:4 sets out the temporary protection orders and other relief that the court may consider once the appropriate findings have been made. Note that the list of orders is non-exhaustive. The judge can include appropriate orders as required by the circumstances of the case and add orders not printed on the form. The following orders are set out in the statute:

- a. The court may restrain the defendant from abusing the plaintiff.
- b. The court may restrain the defendant from entering the premises and curtilage where the plaintiff resides, except when the defendant is accompanied by a peace officer and upon reasonable notice to the plaintiff, is allowed entry by the plaintiff for the sole purpose of retrieving toiletries, medication, clothing, business equipment, and any other items as determined by the court.
- c. The court may restrain the defendant from withholding items of the plaintiff's personal property that are specified in the order. A peace officer shall accompany the plaintiff in retrieving such property to protect the plaintiff.

COMMENT

The court should inform the plaintiff that if the defendant seeks to take possession of the personal property that the plaintiff feels is the plaintiff's, the property should be left in the possession of the plaintiff and a written request made to the court to decide the issue.

- d. The court may award custody of minor children to either party, or, upon actual notice, to the Division for Children, Youth and Families (DCYF) when it is in the best interest of a child.

COMMENT

Custody shall not be given to DCYF unless DCYF is given an opportunity to consult with the court and written findings are made that:

- i. The child's health or life is in imminent danger if immediate action is not taken, and the protective order would not correct the situation; and
- ii. There is no parent, relative or friend capable of providing care for the child.

COMMENT

When findings sufficient to form the basis for the issuance of an *ex parte* order are made, custody of the children should generally be given to the plaintiff except in extraordinary circumstances. If custody is given to the defendant, the court shall state its reasons for doing so in writing.

COMMENT

The presumption in favor of joint rights and responsibilities found in RSA 461-A does not apply in domestic violence cases.

COMMENT

If appropriate, the court may provide for visitation with the children.

- e. The court may deny the defendant visitation, order that visitation take place at a supervised visitation center, order supervised drop-offs and pick-ups at a secure

location, or order a specific visitation schedule. Visitation shall only be ordered on an *ex parte* basis where such order can be entered consistent with the following requirements. In determining whether visitation can be safely ordered, the court shall consider the following factors:

- i. The degree to which visitation exposes the plaintiff or the children to physical or psychological harm;
- ii. Whether the risk of physical or psychological harm can be removed by ordering supervised visitation; and
- iii. Whether visitation can be ordered without requiring the plaintiff and defendant to have contact regarding the exchange of the children.

COMMENT

If the plaintiff feels threatened by this contact, the court should discuss with the plaintiff the possibility of establishing a location, safe for the plaintiff, for the transfer of the children, for purposes of visitation with the defendant. Consideration should be given by the court as to whether it may be appropriate to prohibit visitation, pending the final hearing.

- f. The court may restrain the defendant from contacting the plaintiff or entering the plaintiff's place of employment, school, or any specified place frequented regularly by the plaintiff or by any family or household member.

COMMENT

If the court issues a "no contact" order, the plaintiff should be informed that any contact by the defendant with the plaintiff shall constitute a violation of this protection order and may subject the defendant to criminal prosecution.

NOTE: Part E below concerns permissible contact.

- g. The court may restrain the defendant from abusing the plaintiff, plaintiff's relatives, regardless of their place of residence, or plaintiff's household members in any way.
- h. The court may restrain the defendant from taking, converting, or damaging property in which the plaintiff may have a legal or equitable interest.
- i. The court may direct the defendant to relinquish to a peace officer any and all firearms, ammunition and deadly weapons in the control, ownership and possession of the defendant, or any other person on behalf of the defendant, for the duration of the protective order. RSA 173-B:4, I and 173-B:4, I(a)(9).

COMMENT

Court staff should inquire of the plaintiff whether the defendant possesses, controls, or owns any firearms, ammunition, or other deadly weapons. If the plaintiff answers in the affirmative, the court should, in its discretion, order relinquishment of the weapons to a peace officer. *See* Chapter 14- Firearms and Other Deadly Weapons.

COMMENT

In addition to the Defendant Information Sheet for Law Enforcement, the plaintiff should list, on the petition, all firearms, ammunition, and deadly weapons within the defendant's ownership or possession, or within the possession of another person on behalf of the defendant, along with a description and location if possible.

COMMENT

The court may subsequently issue a search warrant authorizing the peace officer to

seize any deadly weapons specified in the protective order and any and all firearms and ammunition, if there is probable cause to believe such firearms and ammunition and specified deadly weapons are kept on the premises or curtilage of the defendant and if the court has reason to believe that all such firearms and ammunition and specified deadly weapons have not been relinquished by the defendant. RSA 173-B:4, II.

j. The court may prohibit the defendant from purchasing, receiving, or possessing any deadly weapons, firearms, or ammunition for the duration of the order. RSA 173-B:4, II.

k. The court may grant the plaintiff exclusive care, custody, or control of any animal owned, possessed, leased, kept or held by the plaintiff, the defendant or a minor child in either household, and order the defendant to stay away from the animal. The court may also order the defendant to refrain from taking, transferring, encumbering, concealing, committing an act of cruelty or neglect, or disposing of the animal. RSA 173-B:4, I(a)(10).

l. Other relief may include, but is not limited to:

i. Awarding the plaintiff the temporary exclusive use of an automobile;

ii. Awarding the plaintiff the temporary exclusive use and possession of the parties' home and household furniture, if the defendant has the legal duty to support the plaintiff or the plaintiff's minor children, or the plaintiff has contributed to the household expenses. The court shall consider the type and amount of the contribution to be a factor; and

iii. Restraining the defendant from taking any action which would lead to the disconnection of any and all utilities and services to the parties' household, or the discontinuance of existing business or service contracts, including, but not limited to, mortgage or rental agreements. RSA 173-B:4, I(b).

COMMENT

The judge should specifically ask the plaintiff whether there are any additional orders required including an order requiring the defendant to turn over keys.

E. PERMISSIBLE CONTACT

INTRODUCTION

RSA 173-B:5-a was adopted by the New Hampshire legislature in 2006 to authorize certain forms of legitimate and necessary contact between the parties or their representatives, under limited and controlled circumstances, designed to maintain safety for the plaintiff. This statute is an exception to the general rule barring contact between a defendant, or one acting on the defendant's behalf and the plaintiff.

PROTOCOL 5-21

An attorney or any person acting on the attorney's behalf who is representing the defendant in either a domestic violence case or in any criminal proceeding concerning the abuse alleged under RSA 173-B shall not be prohibited from contacting the plaintiff for a legitimate purpose within the scope of the civil or criminal proceeding; provided, however, that the attorney or person acting on behalf of the attorney: identifies himself or herself as a representative of the defendant; acknowledges the existence of the protection order; and informs the plaintiff that they have no obligation to speak; terminates contact with the plaintiff if the plaintiff expresses an unwillingness to talk; and ensures that any personal contact with the plaintiff occur outside of the defendant's presence, unless the court has modified the protection order to permit such contact. *State v. Kidder*, 150 N.H. 600 (2004); see RSA 173-B:5-a.

PROTOCOL 5-22

A no contact provision in a temporary order issued pursuant to RSA 173-B:4 shall not be construed to: (a) prevent contact between counsel for represented parties; (b) prevent a party from appearing at a scheduled court or administrative hearing; or (c) prevent a defendant or defendant's counsel from sending the plaintiff copies of any legal pleadings filed in court relating to the domestic violence petition or related civil or criminal matters.

F. INSTRUCTIONS TO PLAINTIFF FOR FINAL HEARING

PROTOCOL 5-23

In every case, staff must:

- a. Give the plaintiff a certified copy of the petition with attachments, and a certified copy of the temporary order;
- b. Inform the plaintiff of the defendant's right to request an expedited hearing (within 3-5 business days of the court's receipt of the request);
- c. Explain that the defendant has the right to be present at the final hearing and may be represented by an attorney;
- d. Obtain satisfactory information from the plaintiff for contact in the event a request is made for an expedited hearing;
- e. Review the temporary order with the plaintiff and make certain the plaintiff understands the need to return to court for a final hearing (the hearing date on the order should be specifically shown to the plaintiff);

COMMENT

The plaintiff should be instructed to return to court on the final hearing date, and to keep the court apprised of a current address and phone number, even if the defendant has not been served so that new temporary orders may be issued with a new court date. If a request for an expedited hearing is received, the court shall notify the plaintiff of the hearing by telephone and by written mailed notice.

- f. Make available the phone number of the local crisis center or legal service organization for the opportunity to have a court advocate or attorney present during the final hearing;

COMMENT

Plaintiffs should be apprised of the high risk of violence when the defendant is served with the temporary protection order and that the plaintiffs must act with an increased sense of awareness regarding their own safety. Furthermore, courts should advise and refer plaintiffs to local crisis centers (if an advocate is not already present) for safety planning. Plaintiffs may assume that obtaining a protection order will automatically provide greater safety, when, in reality, a plaintiff may be faced with greater danger at the time of obtaining an order. If the defendant violates the order, the plaintiff should immediately contact the police.

- g. Explain to the plaintiff that they should be prepared to present evidence, including witnesses, photographs, medical and/or police reports, and any other evidence supporting the allegations of domestic violence at that time (and advise the plaintiff to bring copies of any photographs, text messages or other written correspondence they would like the judge to see rather than trying to hand a phone to the judge).
- h. Explain that the plaintiff may hire an attorney if desired or contact a crisis center for assistance with seeking legal representation.
- i. Explain to the plaintiff that they should bring in evidence of any damages as provided in

Protocol 7-29 on compensatory damages; and

COMMENT

This will enable a plaintiff to be more prepared at the hearing and possibly avoid further hearings or motions on the issue of damages.

- j. Refer the plaintiff to the New Hampshire Judicial Branch website which includes relevant videos and other resources.

G. SCHEDULING A FINAL HEARING

INTRODUCTION

RSA 173-B:3, VII provides that the final hearing shall be held **within 30 calendar days** of the filing of the petition or **within 10 days** of service of process on the defendant, whichever occurs later. RSA 173-B:3, VII allows this time limit to be extended for 10 days upon motion filed by either party, for good cause shown. The statute further provides that any recusals, acts of God, or closing of the court that interferes with scheduling shall not be cause for dismissal of the petition. However, rescheduling must be done in an expeditious manner.

PROTOCOL 5-24

Staff shall assign a case number and a PNO number to the case, select a hearing date for the final hearing and enter the data into the court's case management system. Staff should ensure that the victim's telephone number is in the court records in the event the court needs to make contact with the plaintiff.

PROTOCOL 5-25

Unless an expedited hearing request is made, final hearings should be scheduled near the end of the 30-calendar-day period.

COMMENT

Scheduling of domestic violence cases takes priority over other cases without statutory or other time limitations.

PROTOCOL 5-26

A defendant may request an expedited hearing. If so, pursuant to RSA 173-B:4, I, such a hearing shall be held **no less than three (3) nor more than five (5) business days** after a written request is received by the court from the defendant in response to temporary orders issued *ex parte*. This hearing may, in the discretion of the court, constitute the final hearing in the case.

COMMENT

These time frames are to be strictly interpreted, regardless of the court's schedule. Time frames for scheduling expedited hearings should be computed according to Family Division Rule 1.13. Pursuant to that rule, the day the petition is filed shall not be included. Likewise, the day the written request from the defendant is received by the court shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period shall extend until the end of the next day that is not a Saturday, Sunday, or legal holiday, as specified in RSA 288, as amended.

PROTOCOL 5-27

If a continuance of the final hearing is granted, the case should be expeditiously rescheduled, but in all cases, **within 10 days**. The temporary order should be extended until disposition of the final order. If the temporary order of protection is extended, courts shall put the extension date in the court order or on the granted motion. The continuance and extension shall be faxed to the Protection Order Registry on the same day that the continuance is granted.

COMMENT

If a request to continue a final hearing is granted upon grounds that there is a companion civil or criminal case pending, the final hearing should be expeditiously rescheduled. RSA 173-B:3, VII, (b); *see S.C. v. G.C.*, 175 N.H. 158, 166 (2022) (stressing “statutory requirement that the court hold a hearing within thirty days of the filing of the petition... is for the benefit of both parties” and as such, necessary to protect due process rights of defendant and to advance the purpose of the statutory scheme “to preserve and protect the safety of the family unit for all family or household members by entitling victims of domestic violence to immediate and effective police protection and judicial relief”).

COMMENT

Per Protocol 6-8, if service has not been made by the time of the final hearing, the temporary order should be extended by issuing a narrative order explaining that the case is being continued due to lack of service or reissued by reissuing a new order in its entirety.

PROTOCOL 5-28

Court staff should advise the plaintiff that either party may be represented by an attorney at the hearing, although an attorney is not required. Court staff should also advise the plaintiff that, because there is no right to counsel in these proceedings, the court has no authority to appoint an attorney for either the plaintiff or the defendant in a domestic violence case. If the plaintiff wishes to have an attorney, the plaintiff should contact the local crisis center; an advocate may assist them with obtaining legal representation.