

CHAPTER 9 – MODIFICATION AND EXTENSION OF DOMESTIC VIOLENCE ORDERS

STATUTORY REFERENCES: **RSA 173-B:5 (Relief)**
 RSA 173-B:8 (Notification)

A. MODIFICATIONS

INTRODUCTION

RSA 173-B:5, VIII provides that no order issued under RSA 173-B can be modified other than by court order. Temporary reconciliation of the parties will not revoke an order. A defendant who is restrained from contacting the plaintiff or entering the plaintiff's residence is prohibited from doing so, even if invited by the plaintiff. If either party wishes to have any provision of the order changed, the proper remedy is to request the court to modify the order. It is important for the parties to understand that regardless of any contact, the provisions of the restraining order remain in effect and enforceable against the defendant until they are modified by the court.

RSA 173-B:5, VIII-a provides that upon issuance of a protective order containing a "no-contact" provision, the court shall advise the plaintiff that it would be unwise and possibly unsafe for the plaintiff to contact the defendant. The plaintiff shall be advised that contact should occur only after the plaintiff has requested and obtained a court modification of the existing order. The plaintiff must be advised that in the event of an emergency, the plaintiff or a member of the plaintiff's family may request that the local law enforcement agency contact the defendant and accompany the defendant to a designated meeting place, such as a hospital.

NOTE: Contact by the plaintiff, although ill-advised, does not constitute a violation of the protective order, which is issued against the defendant. It does not subject the plaintiff to criminal liability, but it does subject the defendant to possible criminal prosecution.

PROTOCOL 9-1

At the temporary and/or final hearing where a protective order has been issued, the court should advise the plaintiff of the following: Any contact with the defendant would be unwise and potentially dangerous. If an emergency arises where contact with the defendant is necessary, the plaintiff or a member of the plaintiff's family should request the assistance of the local police department. The plaintiff or family member should ask that a police officer contact the defendant and accompany the defendant to a designated meeting place, where contact can be made in a supervised setting.

PROTOCOL 9-2

The provisions of the protective order remain in effect until the order expires or the court modifies the order. Even if there is contact to which the plaintiff consents, that contact does not void the restraining order. (See RSA 173-B:5, VIII (c))

PROTOCOL 9-3

If either person wishes to have any provision of the order changed, a motion to modify must be filed with the court. Unless the court grants a modification, the existing order will remain in effect as an enforceable order.

PROTOCOL 9-4

If a party seeks to modify the terms of a final order, the court shall send a copy of the request to the opposing party along with a notice that said party has **ten (10) days** within which to object. Such a request for modification shall be in writing. If no objection is received, the court may either schedule a hearing on the request or act on the written request for modification without a hearing.

COMMENT

If the request for modification is from the defendant or is for a change in the contact between the parties, the court should schedule a hearing.

PROTOCOL 9-5

Any court-ordered modification of any order issued under RSA 173-B is effective upon issuance.

PROTOCOL 9-6

Any court-ordered modification shall be provided to the parties and shall be mailed or otherwise provided to the appropriate local law enforcement agency immediately. Similarly, any modification shall be transmitted to the TCC for entry into the registry.

NOTE: RSA 173-B:8, III requires that modification orders be transmitted to the Department of Safety **within 24 hours** of issuance. However, the Department of Safety no longer accepts such orders. It only maintains a registry of emergency telephonic orders. The Trial Court Center is now responsible for entering orders of protection, including for modification, expiration, or withdrawal, into the NCIC Protective Order Registry. The purpose of the statutory provision requiring transmission of the order to the Department of Safety was to make the information readily available to law enforcement officers statewide. That purpose is served when the order is entered into the NCIC Protective Order Registry.

B. EXTENSION OF ORDERS

RSA 173-B:5, VI (Relief) provides that a domestic violence order may be extended upon motion of the plaintiff, showing good cause, with notice to the defendant. A defendant has a right to a hearing on the extension of any order **within 30 days** of the extension.

PROTOCOL 9-7

Upon plaintiff's request that an order be extended, staff should ask the plaintiff to complete an updated Defendant Information Sheet for Law Enforcement to have current information.

PROTOCOL 9-8

A final order may be extended upon written motion of the plaintiff, with notice to the defendant. If the court, in its discretion, finds good cause for the extension, the court may extend the final protective order for one year on the first extension request, and thereafter, each extension may be up to five years. The court shall fashion the order to provide for the safety and well-being of the plaintiff.

COMMENT

A request for extension does not require a showing of a new incident of abuse. The plaintiff must only allege good cause for why there continues to be fear for safety. An example might be the defendant's recent release from incarceration following conviction for assault on the plaintiff. See MacPherson v. Weiner, 158 N.H. 6,11 (2008). The Court must assess whether current conditions are such that there is still a concern for the safety and well-being of the plaintiff. Depaula v. Depaula N.H. (2009)

PROTOCOL 9-9

Upon issuance, the order shall be mailed to the defendant and the local law enforcement agency, and transmitted to the TCC for entry.

PROTOCOL 9-10

If the court determines, based upon the motion, that good cause does not exist to extend the order, the court shall schedule a hearing with notice to both parties.

PROTOCOL 9-11

If the court grants the extension based upon plaintiff's showing of good cause, the court shall send a copy of the plaintiff's motion and the extension order to the defendant. Included with this mailing shall be notice to the defendant of the right to object within ten days, and that if an objection is filed, a hearing will be scheduled on defendant's objection within 30 days of the extension. No hearing is needed unless an objection is timely filed.

NOTE WELL: The extension order must be sent to the Trial Court Center registry immediately upon issuance. If the court schedules a hearing, the court must inform the Trial Court Center registry that the Protection Order is extended to a date certain so that Protection Order does not expire out of NCIC.

PROTOCOL 9-12

If the defendant objects and a hearing is scheduled, the court may either reaffirm the extension order, modify it, or vacate it entirely and dismiss the case. If the order is extended, the court shall articulate in writing its basis for granting plaintiff's motion if so requested by the defendant.

PROTOCOL 9-13

If a plaintiff requests an extension of a final order after the order has expired, the plaintiff should be instructed to file a new petition for temporary *ex parte* relief. It is not necessary that the plaintiff allege new facts in the petition. The court should grant the petition if the plaintiff refers to the original order and shows good cause why that order should be extended, provided the court finds that the defendant continues to present a credible threat to the plaintiff's safety. The court should then proceed in accordance with the protocols set forth in Chapter 5.

