

Minor Parties in 50B Cases

It is not uncommon for persons under 18 to commit acts of domestic violence or need protection from domestic violence. Common questions that arise include:

- Can a minor be a defendant in a 50B proceeding?
- If so, how is the child served and what happens when the child violates the DVPO?
- Can a minor be a plaintiff?
- Does a minor need to be a plaintiff to be protected by a DVPO?

Minor defendants

The general rule is that any minor can sue or be sued in a civil proceeding, as long as the court appoints a [Rule 17 GAL](#). This rule applies in 50B cases, with only one limitation. A defendant must be at least 16 years old when the personal relationship supporting the domestic violence claim is that found in [GS 50B-1\(b\)\(3\)](#), parties related as parents and children, or as grandparents and grandchildren.

When defendant is a minor, process must be served both upon the minor and also upon the child's parent, guardian or "person having care and control" of the minor. If defendant has none of those, service also must be made upon the GAL. [GS 1A-1, Rule 4\(j\)\(2\)](#).

The clerk may appoint the GAL for a defendant if requested. If no request is made, the court must appoint a GAL on its own motion before proceeding with the trial. [GS 1A-1, Rule 17\(c\) and \(e\)](#).

The role of the Rule 17 GAL is one of substitution. See [In re P.D.R., 737 S.E.2d 152 \(2012\)](#). A minor is legally incompetent, so the GAL 'substitutes' for the minor party. Obviously this raises many issues about the specific duties of the GAL; a topic for a future blog post. Case law does not provide much guidance. However, appellate courts have stated that "[a]ppointment of a GAL under [Rule 17](#) for an incompetent person 'will divest the [incompetent party] of their fundamental right to conduct his or her litigation according to their own judgment and inclination.'" [In re J.A.A. & S.A.A., 175 N.C.App. 66, 71\(2005\)](#)".

It is clear that a Rule 17 GAL is **not** the child's lawyer, see *NC State Bar Formal Ethics Opinion 04 FEO 11*, and any adult can serve in the role.

The cost of a Rule 17 GAL is apportioned as court costs between the parties. See *Van Every v. McGuire*, 125 N.C. App. 578 (1997). While [GS 50B-2\(a\)](#) states that "no court costs shall be assessed for the filing, issuance, registration, or service of a protective order or petition for a protective order or witness subpoena," this provision does not prohibit the award of other costs authorized by [GS 7A-305\(d\)\(7\)](#).

How is a DVPO enforced against a minor?

A DVPO can be enforced by contempt. [GS 50B-4](#). Children age 16 and above are treated the same as adults for contempt. [GS 5A-34](#). However, violations by children at least 6 but not yet 16 must be addressed in the juvenile justice system, unless the child:

- Is emancipated, or
- Before the act, has been convicted in superior court for any criminal offense.

[GS 5A-34](#).

Violation of a DVPO also is a crime. [GS 50B-4.1](#). Delinquent acts by a child under the age of 16 will be prosecuted through the juvenile justice process while a child 16 or 17 years old is prosecuted as an adult.

Minor plaintiffs

A minor can be a plaintiff in a Chapter 50 proceeding if the minor:

- Is an aggrieved party, meaning someone with a personal relationship with the defendant; and
- Is an alleged victim of domestic violence, or has a minor child residing with or in her custody who is an alleged victim of domestic violence.

[GS 50B-1\(a\)](#).

A [Rule 17 GAL](#) must be appointed for the minor plaintiff and, as in the case where defendant is a minor, the role of the GAL is one of substitution.

Generally, the clerk appoints the GAL at the time the complaint is filed. [AOC Form CV-318](#).

It is important that the complaint show the name of the child as plaintiff rather than the name of the GAL. Significant confusion results when a DVPO refers to 'plaintiff' but the person listed on the face of the complaint is not actually the plaintiff. There is no need for the name of the GAL to appear anywhere on the face of the complaint. The order appointing the GAL is sufficient to inform the court and any other interested person that the appointment has been made.

Does a minor need to be a plaintiff to be protected by a DVPO?

Not always.

Chapter 50B allows an adult aggrieved party to seek protection for herself **and** a minor child

residing with her or in her custody, **or just for a minor child** residing with her or in her custody. [GS 50B-1\(a\)](#).

This allows an adult – a parent for example – to be the only plaintiff in a 50B action filed due to acts committed against both the parent and child or just against the child. As long as defendant is someone with whom the adult plaintiff has a personal relationship, the child does not need to be named as a party to be protected by the DVPO.

If the child is not a party, there is no need for a GAL.

However, in some circumstances the child must be a plaintiff to be protected by the DVPO.

If the parent does **not** have a relationship with the defendant, the parent does not meet the definition of aggrieved party and cannot file a 50B action. Then the child must be the party to receive protection. The most common example is teenagers in a dating relationship. Mom of teenager cannot be plaintiff because she is not an aggrieved party. However, mom can be appointed GAL for the teenager. In that situation, mom is NOT a party. To avoid confusion, the child should be named clearly as plaintiff rather than mom.