

## Renewal of a DVPO

[Chapter 50B](#) requires that all civil domestic violence protective orders be of limited duration. [GS 50B-3\(b\)](#). However, that statute also allows the court to extend the life of a DVPO by renewing it at the request of the aggrieved party. Is a court required to renew the DVPO when requested? Is there a limit on the number of times an order can be renewed? Can a court change the terms of the order when it is renewed? Unfortunately, [Chapter 50B](#) provides very little guidance on these and other issues that arise regarding the renewal process.

### Must the court renew a DVPO when requested?

When a DVPO is first requested by an aggrieved party, the court is required to enter the order if an act of domestic violence has occurred. [GS 50B-3](#). The decision to renew appears to be more discretionary. [GS 50B-3\(b\)](#) states:

“The court may renew a protective order for a fixed period of time not to exceed two years, including an order that has been previously renewed, upon a motion by the aggrieved party filed before the expiration of the current order . . . . The court may renew a protective order for good cause.”

Rather than being mandatory, the statute allows the court to *consider* renewal (it says “may” rather than “shall”) only when the court finds good cause. The court of appeals has held in an unpublished opinion that an order renewing a domestic violence protective order must be based on sufficient findings of fact to support a conclusion that good cause exists. *Basden v. Basden*, 154 N.C. App. 520 (2002) (**unpublished**) (AOC form renewal order contained only one preprinted finding of fact but order upheld because it incorporated the original protective order); see also [Forehand v. Forehand, 767 SE2d 125 \(NC App 2014\)](#) (findings of fact were sufficient to support order renewing the DVPO).

In the recent case of [Comstock v. Comstock, NC App \(November 17, 2015\)](#), the court held that the fact that plaintiff no longer resided in North Carolina when she requested renewal did not mean the court could not consider her request. According to the court, while a plaintiff must be a resident of NC at the time of filing the initial complaint, plaintiff is not required to reside in NC at the time of the request for renewal of the order.

### What is “Good Cause”?

The statute does not define “good cause” except to say that a new act of domestic violence is not required. The court of appeals relied on this provision in the unpublished opinion in *Metts v. Metts*, 223 N.C.App.210 (2012) (unpublished), to affirm a conclusion of good cause based on findings of fact indicating defendant had violated the DVPO since it was entered and that plaintiff remained in fear of defendant for her and her family.

[Forehand](#) is the only published case to date addressing good cause. In addition to plaintiff's testimony that she continued to fear defendant, the trial court supported the conclusion of good cause with findings regarding the acts that supported entry of the original DVPO. The court of appeals stated:

"Although the order renewing the DVPO rests, in large part, on defendant's acts from 2012 that served as the basis for the original 2013 DVPO, there is nothing in [50B-3](#) nor in our caselaw prohibiting the trial court from basing its decision whether to renew a DVPO on acts that happened in the past which served as the basis for issuance of the original DVPO."

### **Can a DVPO be renewed an unlimited number of times?**

[GS 50B-3\(a1\)\(4\)](#) provides that temporary custody provisions in a DVPO cannot exceed one year total duration, but there is no similar limitation placed on any other form of relief.

[GS 50B-3\(b\)](#) seems to say any DVPO, "including an order that has previously been renewed," can be renewed for an unlimited number terms of up to 2 years duration each. But an alternative interpretation of that statute is that it allows an unlimited number of renewals but only for a total time period of two years.

While not addressing the issue directly, the decision in [Comstock](#) appears to support the view that protective orders can be renewed for an unlimited number of 2-year terms. The DVPO in that case had been renewed three times; initially effective September 8, 2010, the order on appeal was set to expire October 14, 2016.

### **Can the terms of the DVPO be changed?**

The statute also does not address this issue and there is no case law on point in NC. The statute simply states that the court can "renew" the order.

Black's Law Dictionary defines 'renewal' as: "The act of renewing or reviving. The substitution of a new grant, engagement, or right, in place of one which has expired, *of the same character and on the same terms and conditions as before*; as, the renewal of a note, a lease, a patent." This definition indicates renew means to keep the same terms.

However, [GS 50B-3](#) provides broad relief that can be granted in any protective order, and [GS 50B-1\(c\)](#) provides that the term "protective order" includes *any* order entered pursuant to [Chapter 50B](#). This seems to indicate all forms of relief are available anytime a court enters a DVPO, including one that is renewing an existing order.

### **Violation after expiration but while motion to renew pending.**

[GS 50B-3\(b\)](#) requires that a request to renew be made before the expiration of the existing order but there is no requirement that the order of renewal be entered before expiration of the existing order. [Comstock](#).

What if a violation occurs after the motion to renew is filed and after the term of the DVPO expires but before the court grants the motion to renew? Is there a violation of a valid DVPO punishable by contempt or as a crime?

All DVPOs are required to be for a fixed term, so every DVPO will expire by its own terms. The statute does not provide for the extension of an order when a motion to renew is pending so absent some action by the court, the DVPO will not remain in effect after expiration and before renewal.

To maintain protection for a victim, it may be that the trial court can enter an ex parte or emergency order while the motion to renew is pending. See [GS 50B-2\(b\)](#) (“a party may move the court for emergency relief if he or she believes there is a danger of serious and immediate injury to himself or herself or a minor child”); [GS 50B-2\(c\)\(1\)](#) (“Prior to hearing, if it clearly appears to the court from specific facts shown, that there is a danger of acts of domestic violence against the aggrieved party or a minor child, the court may enter orders as it deems necessary to protect...”). But there has been no appellate opinion to date addressing the use of these temporary DVPOs in a context other than a proceeding for an initial DVPO.