

## When can the court order surrender of a firearm in a 50C Civil No-Contact Order?

A couple of years ago, I posted about orders to surrender firearms in [Chapter 50B](#) domestic violence protective orders. See <https://civil.sog.unc.edu/when-can-the-court-order-surrender-of-firearms-in-a-dvpo/>. Earlier this summer, the NC Court of Appeals addressed orders to surrender firearms in [Chapter 50C Civil No-Contact Orders](#). In [Russell v. Wofford](#), (NC App June 19, 2018), the court held that a trial court has “no authority under NCGS Chapter 50C to order defendant not to possess or purchases any firearms, to surrender his firearms, or to revoke his concealed carry permit.”

### ***Russell v. Wofford***

Plaintiff’s complaint for relief pursuant to [Chapter 50C](#) alleged that defendant committed acts of unlawful conduct by touching plaintiff’s breasts without her consent, coming to her home without invitation and refusing to leave, and mailing offensive items to her home. While plaintiff did not request that the court order defendant to surrender his firearms, the defendant testified during the hearing on the request for the civil no-contact order that he was a former FBI agent, a retired police officer, and a veteran, that he owned a firearm and “was authorized to be armed in fifty states, twenty-four seven.” The trial court concluded defendant committed an act of nonconsensual sexual conduct against plaintiff and entered a civil no-contact order. Along with other relief, the trial court ordered defendant to surrender all firearms and not to purchase or possess any firearm for the duration of the order and revoked his concealed carry permit.

Defendant appealed, arguing the trial court erred in concluding he had committed an act of unlawful conduct and that the court exceeded its authority when it ordered him to surrender his firearms and permit and not to possess firearms. The court of appeals upheld the entry of the no-contact order but agreed that the trial court had no authority to order defendant not to possess or purchase firearms, to surrender all firearms or to revoke his concealed carry permit.

### **Relief Authorized in GS 50C-5**

When a trial court concludes that a defendant has committed an act of unlawful contact, [GS 50C-7](#) allows the court to enter a civil no-contact order. [GS 50C-5](#) further provides:

“(b) The court may grant one or more of the following forms of relief in its orders under this Chapter:

- (1) Order the respondent not to visit, assault, molest, or otherwise interfere with the victim.

- (2) Order the respondent to cease stalking the victim, including at the victim's workplace.
- (3) Order the respondent to cease harassment of the victim.
- (4) Order the respondent not to abuse or injure the victim.
- (5) Order the respondent not to contact the victim by telephone, written communication, or electronic means.
- (6) Order the respondent to refrain from entering or remaining present at the victim's residence, school, place of employment, or other specified places at times when the victim is present.
- (7) Order other relief deemed necessary and appropriate by the court, including assessing attorneys' fees to either party.

In addition, [GS 50C-11](#) provides that “[t]he remedies provided by this Chapter are not exclusive but are additional to other remedies provided by law.”

### **Interpretation of the “catch-all” provision**

Plaintiff in [Russell](#) argued that the broad language in [GS 50C-5\(b\)\(7\)](#) and [GS 50C-11](#) authorizes trial courts to order any type of relief the court deems necessary to protect the victim of unlawful contact. The appellate court acknowledged that “the motivation of the trial court was simply to protect plaintiff,” but held that [Chapter 50C](#) does not give a judge “unfettered discretion” to order any relief the judge believes necessary.

To support this conclusion, the court of appeals pointed to the similarities between [Chapter 50C](#) and [Chapter 50B](#) which authorizes Domestic Violence Protective Orders and cited the decision in [State v. Elder, 368 NC 70 \(2015\)](#), wherein the supreme court interpreted a similar “catch-all” relief provision found in [GS 50B-3\(a\)\(13\)](#)(the court can order “any additional prohibitions or requirements the court deems necessary to protect any party or minor child”). In [Elder](#), the court refused to interpret that provision broadly enough to support the trial court’s order that law enforcement officers search a defendant’s residence and seize any firearms found therein. The [Elder](#) court stated “[w]e disagree with the State’s contention that the General Assembly intended a broad interpretation of the word ‘any’” and held that the trial court had no authority to order the search or to order the seizure of firearms without the making the findings required by [GS 50B-3.1](#).

The court in [Russell](#) reasoned that because the remedies provided in [Chapter 50C](#) are much more narrow than those authorized in [Chapter 50B](#), it would not make sense to interpret the catch-all provision in [Chapter 50C](#) to allow an order that would be beyond the authority of a court in a Chapter 50B proceeding. [The court stated:](#)

If we were to interpret Chapter 50C to allow the district court to order, *sua sponte*, surrender of firearms, revocation of a concealed carry permit, and forbidding the purchase or possession of firearms, even with no evidence of threatened use of a firearm or any threat of physical harm, this interpretation would allow far broader relief than North Carolina General Statute Chapter 50B does, with no notice to a defendant that he may be required to surrender or not possess firearms. [citation omitted] Even if this order had been entered under Chapter 50B, the order requiring surrender of firearms would have been in error because there was no evidence to support the required findings of fact under North Carolina General Statute § 50B-3.1.

In [Elder](#), the court explained that the catch-all provision in [Chapter 50B](#) allows the court to order the parties “to act or to refrain from acting” in ways otherwise consistent with the list of explicit remedies found in [GS 50B-3\(a\)](#). The court in [Russell](#) does not offer any similar guidance on the interpretation of the catch-all language in [Chapter 50C](#), other than to say the provision did not support the order in that case.