

What to do when the DVPO Case Involves a Minor

This document does not apply to actions filed pursuant to Chapter 50C of the NC General Statutes.

When does a Guardian ad Litem need to be appointed for a DVPO¹?

A Is the victim under the age of 18? If yes, then go through a two-part analysis.

PART 1:

Does the person filing the DVPO complaint have a personal relationship² with the Defendant?

AND

PART 2:

Does the minor child, who is the victim, live with or is in the custody of the parent filing the DVPO?

If both are yes, the adult can file as plaintiff seeking protection for the minor victim, no GAL³ needed.

If either answer is no, go to Step 2.

STEP 2:

If either answer is no, the person filing the DVPO does not have a personal relationship with Defendant, and/or the person filing the DVPO does not have custody and does not live with the minor child, then minor child is the plaintiff, AND GAL must be appointed using form CV-318.

<http://www.nccourts.org/Forms/Documents/240.pdf>

Fill out the complete form.

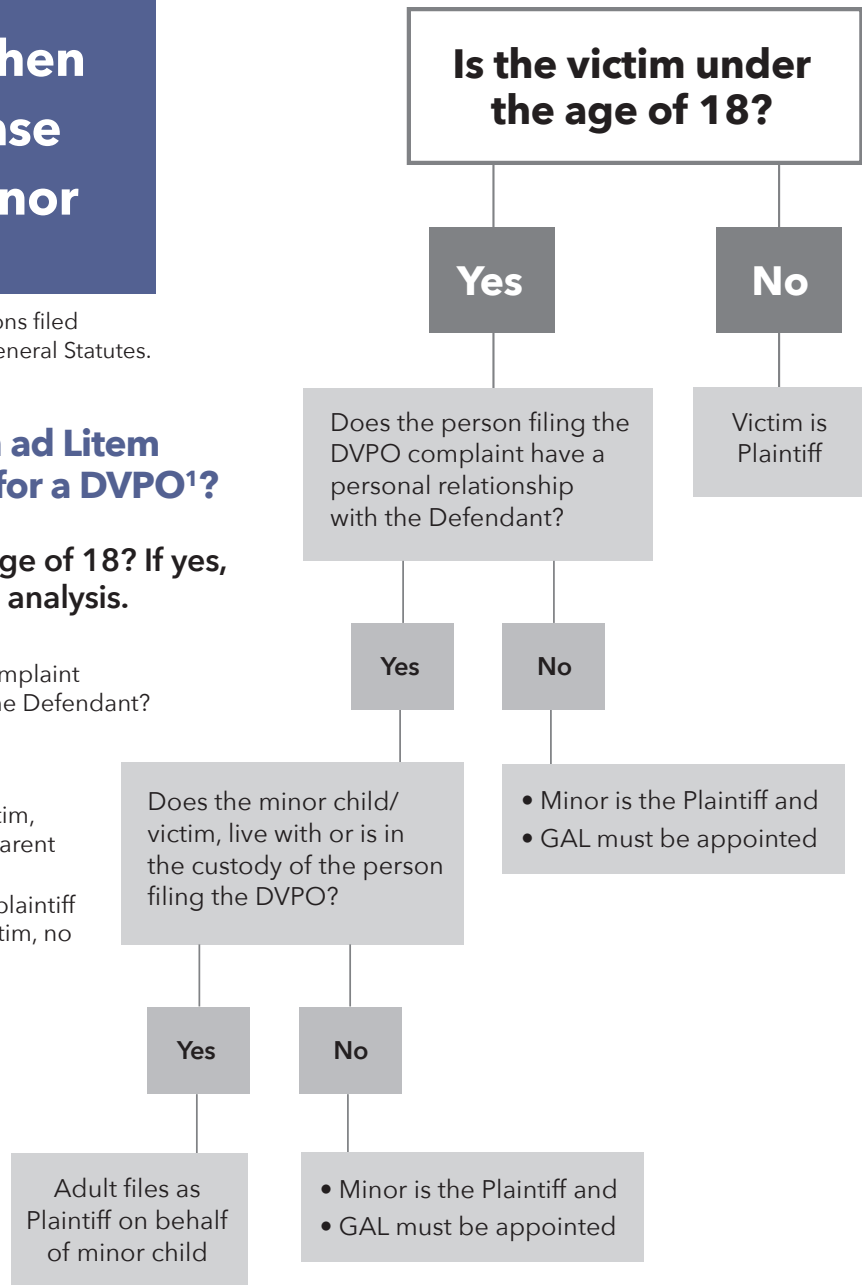
Note that if the child is the plaintiff, then the child cannot ask for custody of his/herself (nor can the child ask for custody of the child's siblings). Do not check or fill in any boxes related to custody when the minor child is the plaintiff.

The GAL who is appointed does not have to be the custodial adult. The GAL is NOT the Plaintiff.

DVPO¹: Refers to a domestic violence protective order pursuant to N.C.G.S. §50B-3.

Personal relationship²: As defined in N.C.G.S. §50B-1(b).

GAL³: Guardian ad Litem



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B Is the Defendant under the age of 18? Again, apply a two part analysis:

PART 1:

Is the Defendant under the age of 16 AND is the Plaintiff the parent or grandparent of the Defendant?
If yes to both questions, then no DVPO¹ is allowed.

PART 2:

In all other cases where the Defendant is under the age of 18, the court must appoint a GAL³ for the defendant prior to trial. The court can either appoint a custodial parent as general guardian for the minor defendant or another adult as GAL using the AOC form. To appoint another adult as the GAL, fill out form AOC-DV-318, leave the name of the guardian ad litem blank for the court to fill in.

<http://www.nccourts.org/Forms/Documents/240.pdf>

Note that service of process on a minor has specific requirements.

See http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_1A/GS_1A-1_Rule_4.html

Rule 4 (j) Process - Manner of service to exercise personal jurisdiction -

In any action commenced in a court of this State having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in G.S. 1-75.4, the manner of service of process within or without the State shall be as follows:

(2) Natural Person under Disability - Upon a natural person under disability by serving process in any manner prescribed in this section (j) for service upon a natural person and, in addition, where required by paragraph a or b below, upon a person therein designated.

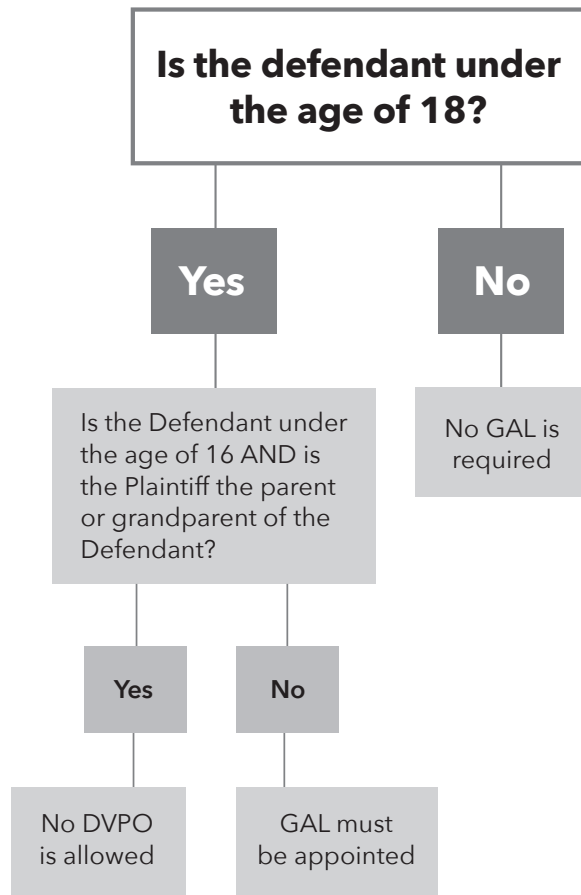
a. Where the person under disability is a minor, process shall be served separately in any manner prescribed for service upon a natural person upon a parent or guardian having custody of the child, or if there be none, upon any other person having the care and control of the child. If there is no parent, guardian, or other person having care and control of the child when service is made upon the child, then service of process must also be made upon a guardian ad litem who has been appointed pursuant to Rule 17.

In other words, in the rare cases in which the minor defendant does not have a parent, guardian or other adult having the care and control of the minor defendant when the minor defendant is served, then after the GAL is approached by the court, the GAL must then be served as well.

DVPO¹: Refers to a domestic violence protective order pursuant to N.C.G.S. §50B-3.

Personal relationship²: As defined in N.C.G.S. §50B-1(b).

GAL³: Guardian ad Litem



In summary:

So while the plaintiff must always be an “aggrieved party,” there are situations where the plaintiff was not the victim of the domestic violence. When a minor child is the victim of domestic violence, then the “aggrieved party”/plaintiff may be the custodial parent or joint custodial parent of the victim.

The statute says:

“Domestic violence means the commission of one or more of the following acts ***upon an aggrieved party or upon a minor child residing with or in the custody of the aggrieved party by a person with whom the aggrieved party has or has had a personal relationship***” NCGS 50B-1(a)

But for non-lawyer DV advocate purposes, NCGS 50B-1(a) could be read this way:

Domestic violence means the commission of one or more of the following acts ***upon a plaintiff or upon a minor child residing with or in the custody of the plaintiff by a person with whom the plaintiff has or has had a personal relationship,***

Personal relationship means:

§ 50B-1. (b) For purposes of this section, the term “personal relationship” means a relationship wherein the parties involved:

- (1) Are current or former spouses;
- (2) Are persons of opposite sex who live together or have lived together;
- (3) Are related as parents and children, including others acting in loco parentis to a minor child, or as grandparents and grandchildren. For purposes of this subdivision, an aggrieved party may not obtain an order of protection against a child or grandchild under the age of 16;
- (4) Have a child in common;
- (5) Are current or former household members;
- (6) Are persons of the opposite sex who are in a dating relationship or have been in a dating relationship. For purposes of this subdivision, a dating relationship is one wherein the parties are romantically involved over time and on a continuous basis during the course of the relationship. A casual acquaintance or ordinary fraternization between persons in a business or social context is not a dating relationship. <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=50B-1>

Parties. Rule 17.

Parties plaintiff and defendant; capacity.

(b) Infants, incompetents, etc. -

- (1) Infants, etc., Sue by Guardian or Guardian Ad Litem. - In actions or special proceedings when any of the parties are infants ..., whether residents or nonresidents of this State, they must appear by general or testamentary guardian, if they have any within the State or by guardian ad litem appointed as hereinafter provided; but if the action or proceeding is against such guardian, or if there is no such known guardian, then such persons may appear by guardian ad litem.
- (2) Infants, etc., Defend by Guardian Ad Litem. - In actions or special proceedings when any of the defendants are infants or incompetent persons, whether residents or nonresidents of this State, they must defend by general or testamentary guardian, if they have any within this State or by guardian ad litem appointed as hereinafter provided; and if they have no known general or testamentary guardian in the State, and any of them have been summoned, the court in which said action or special proceeding is pending, upon motion of any of the parties, may appoint some discreet person to act as guardian ad litem, to defend in behalf of such infants, or incompetent persons, and fix and tax his fee as part of the costs....
- (3) Appointment of Guardian Ad Litem Notwithstanding the Existence of a General or Testamentary Guardian. - Notwithstanding the provisions of subsections (b)(1) and (b)(2), a guardian ad litem for an infant or incompetent person may be appointed in any case when it is deemed by the court in which the action is pending expedient to have the infant, ...so represented, notwithstanding such person may have a general or testamentary guardian.

- (c) Guardian ad litem for infants...; appointment procedure. – When a guardian ad litem is appointed to represent an infant, ...he must be appointed as follows:
- (1) When an infant ... is plaintiff, the appointment shall be made at any time prior to or at the time of the commencement of the action, upon the written application of any relative or friend of said infant or insane or incompetent person or by the court on its own motion.
 - (2) When an infant is defendant and service under Rule 4(j)(1)a is made upon him the appointment may be made upon the written application of any relative or friend of said infant, or, if no such application is made within 10 days after service of summons, upon the written application of any other party to the action or, at any time by the court on its own motion.
 - (3) When an infant ... is defendant and service can be made upon him only by publication, the appointment may be made upon the written application of any relative or friend of said infant, or upon the written application of any other party to the action, or by the court on its own motion, before completion of publication, whereupon service of the summons with copy of the complaint shall be made forthwith upon said guardian so appointed requiring him to make defense at the same time that the defendant is required to make defense in the notice of publication.
- (e) Duty of guardian ad litem; effect of judgment or decree where party represented by guardian ad litem. – Any guardian ad litem appointed for any party pursuant to any of the provisions of this rule shall file and serve such pleadings as may be required within the times specified by these rules, unless extension of time is obtained. After the appointment of a G.S. 1a-1. Rule 17 guardian ad litem under any provision of this rule and after the service and filing of such pleadings as may be required by such guardian ad litem, the court may proceed to final judgment, order or decree against any party so represented as effectually and in the same manner as if said party had been under no legal disability, had been ascertained and in being, and had been present in court after legal notice in the action in which such final judgment, order or decree is entered.
- http://www.ncga.state.nc.us/EnactedLegislation/Statutes/PDF/BySection/Chapter_1A/GS_1A-1,_Rule_17.pdf

Definitions:

Guardian ad Litem: “Guardian ad litem” or GAL means a guardian appointed pursuant to G.S. 1A-1, Rule 17, Rules of Civil Procedure. Note that a GAL in other contexts, such as in a Child protective services case or custody case, has a different definition.

General Guardian: The general guardian is someone who has the power to make personal decisions for and handle the finances of the minor child.

Infants: Statutory term for a minor child, i.e. a child under the age or 18

Natural Guardian: The custodial parents of a minor child who have the authority to make legal, financial and medical decisions for the child.