

A GUIDE FOR PRO BONO ATTORNEYS: FREQUENTLY ASKED QUESTIONS AND ANSWERS ABOUT FAMILY LAW



This informational packet includes a list of frequently asked questions and answers related to family law in North Carolina. Pro Bono Attorneys may find it useful when responding to questions that are raised by their clients. The answers to the questions are formatted in a way that is meant to be accessible to individuals seeking legal services. The packet covers the following topics: Child Custody, Visitation & Support; Divorce and Separation in NC; and Alimony and Equitable Distribution. There is also a supplemental section from the Battered Immigrant Project which addresses the connection between Domestic Violence and Immigration Issues.

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I. CHILD CUSTODY, VISITATION & SUPPORT FREQUENTLY ASKED QUESTIONS

Where will my children live if problems regarding custody arise between me and my children's other parent?

If you and the other parent can agree on who the child(ren) should primarily live with, you may resolve child custody issues without having to litigate in court. If you and the other parent cannot agree, a court proceeding can resolve the issue of custody. Judges will consider many factors in deciding where children should primarily reside. The Judge will decide a custody case between parents by determining what is in the "best interest of the child(ren)". In other words, the Court will decide with which parent the child(ren) will be better off living. Additionally, in some circumstances, grandparents and other third parties may be awarded custody or visitation.

When a parent doesn't get custody, what rights does he or she have to see the child(ren)?

Generally, when a parent is not awarded custody of the child(ren), the Judge will enter an Order which will specify how often the parent without custody can visit with his or her child(ren). Many parents who live near their child(ren) but do not have custody of their child(ren) usually get to visit at least every other weekend and share holidays and other times with the parent who has primary custody. There are no exact rules regarding how much visitation a parent will receive. The amount of visitation Ordered may vary from case to case. Remember that a Judge will decide issues of custody and visitation only when the parents cannot agree on custody and visitation. The Court will always encourage parents to agree on these issues whenever possible.

Can a Custody and/or Visitation Order ever be modified or changed?

Although no custody and/or visitation Court Orders are ever “permanent”, the Court cannot modify or change custody and/or visitation unless the Court first finds that there has been a “substantial change in circumstances” and that this change affects the welfare of the child(ren). In most cases, the Court has power to decide, modify, and/or change custody and visitation Orders until the child(ren) reach 18 years of age. There are complicated issues of law regarding the modification of custody and/or visitation Orders, so, if you have questions regarding how your custody and/or visitation Order may be modified or changed, you need to consult with an attorney.

May I file for custody in North Carolina if I have moved here from another state with my children?

Generally, a child custody case must be filed in the child(ren)’s “home” state which is the state where the child(ren) have lived for a period of six months before the custody case is filed in court. There are however, other factors such as prior court actions and incidents of domestic violence that can determine in which state a custody case will be heard. When you need to know when and where to file a custody case, consultation with an attorney is very important.

May I leave North Carolina with my children without a custody order?

- a. If there is no existing custody case in North Carolina, and you begin residing in another state with your child(ren), the child(ren)’s other parent may file a custody action in North Carolina after you leave. Whether you will have to litigate in North Carolina or your new state of residence will be determined by many factors such as how long you have lived in the “new” state when the custody case is filed in North Carolina, whether there was domestic violence between you and the child(ren)’s other parent in North Carolina, and other factors. You need to consult with an attorney as soon as possible if you are served with “custody” papers. You may lose valuable rights if you do not respond promptly.
- b. If there is an existing North Carolina custody order and you want to leave North Carolina with your children to reside in another state, you should consult with an attorney before leaving to determine if you need to go to court prior to leaving in order to try and modify the North Carolina custody order. The attorney can review the existing custody order and advise you regarding what action(s) the child(ren)’s other parent may take, if you leave North Carolina to reside elsewhere with your child(ren).

What is the difference between “sole” custody and “joint” custody?

“Sole” custody and “Joint” custody generally refer to a parent’s rights to make decisions regarding the child or children. A parent with “sole” custody generally has more decision making authority than does a parent with “joint” custody. These terms however may be defined in a custody agreement document or may be defined by a Judge if your custody matter is in court.

Who is responsible for the support of my children and how do I collect child support?

Both the mother and the father are generally required to contribute to the support of their child(ren), even if the parents are not married. In North Carolina there are child support guidelines that are used in almost all cases to determine the amount of child support that one parent pays to the other. A parent seeking child support may contact their local department of social services for assistance.

II. DIVORCE AND SEPARATION IN NC FREQUENTLY ASKED QUESTIONS

My spouse and I have separated. Do we have to get a “legal separation?”

No. In NC you do not have to do anything to be “legally” separated. Simply living apart from each other with intent by at least one of you not to resume the marriage is enough to be what most people refer to as “legally” separated. After one year of separation, either party is eligible to file for absolute divorce.

You can, however, get what is called a “divorce from bed and board” or execute a “separation agreement” during your separation period if you feel that you need something done while you wait for your absolute divorce.

What is a separation agreement?

A separation agreement is an agreement signed by both spouses after separation governing distribution of the marital estate and cutting off the possibility that there will be future debts or assets considered part of the marital estate. In the separation agreement, you and your spouse may agree on and settle such common questions as: “Who will pay what debts?” “Who will keep what property?” “Who will keep the kids?” and “When will the non-custodial spouse get visitation?” A separation agreement is a kind of contract between you and your spouse on these issues.

Do I have to sign a separation agreement?

No. You are under no obligation to sign a separation agreement. Many people believe that you have to have a separation agreement to be “legally” separated, but this is not true.

What are the requirements for getting a divorce?

For an absolute divorce, the parties have to live separate and apart for at least one (1) year and at least one of the parties must have intended the separation to be permanent when the parties separated. Additionally, one of the spouses has to have lived in North Carolina for at least six (6) months immediately prior to the filing of the petition for divorce. You may file for a “divorce from bed and board” at any time with no designated separation period.

What if my spouse tells me that he/she won’t agree to a divorce?

Often when discussing the possibility of divorce with your spouse he/she may say something like,

“I won’t give you a divorce.” You should know, however, that you are entitled to a divorce after you have been separated for one (1) year. Your spouse does not have to consent to the divorce. He/she may file an answer to your complaint for absolute divorce and request certain things, such as a property distribution or alimony, but you are entitled to your divorce if you have been separated for one year.

When a spouse says he/she won’t “give” you a divorce, often he/she is saying that he/she will try to bring up “fault” issues, such as abuse and/or abandonment. However, there is no fault considered in obtaining an absolute divorce. Fault is considered in a “divorce from bed and board,” but most separated couples in NC do not get this type of divorce.

Is my separation agreement still good after my divorce?

You can “incorporate” your separation agreement into your divorce decree. Doing this causes the separation agreement to become an order of the court and is, therefore, enforceable by contempt. To incorporate your separation agreement into the divorce decree you will need to ask for that in your complaint for divorce, or if you are the defendant, request it in your answer to the complaint.

If you do not incorporate your separation agreement into the divorce decree, the issues that are not addressed in the divorce decree or in another court order are still valid as a contract and should be enforceable under contract law. If you had provisions in the separation agreement that were addressed under a court order, those provisions are no longer what controls—the court order controls. For example, if you and your spouse agreed that the spouse would get visitation every weekend but later in a custody action the Court ordered that the spouse get visitation only every other weekend, the Court order replaces the visitation agreed upon in the separation agreement.

STATEMENT OF THE LAW ON DIVORCE AND SEPARATION

A. DIVORCE

In North Carolina, there are two grounds for an absolute divorce: incurable insanity and separation for one year. The typical ground used is the one-year period of separation. During this one-year separation, the parties are still considered to be married, although separated, and may still be held liable for each other’s debts even if incurred after the date of separation. This is why many separated couples choose to execute separation agreements. Additionally, many people choose to seek what is called a “divorce from bed and board” during the one-year period of separation. Typically, after the one year separation period, the person who filed for a divorce from bed and board will then file for an absolute divorce, although either party may file for an absolute divorce after the one year period of separation is over.

B. DIVORCE FROM BED AND BOARD

A divorce from bed and board is different from an absolute divorce. There is no one-year waiting period, like there is with an absolute divorce. Basically, a divorce from bed and board is a judicial decree that states that the parties are legally separated. Unlike an absolute divorce, the

parties are not free to remarry. However, the prevailing spouse may still get post-separation support, permanent alimony, custody, child support, and attorney's fees. The grounds for granting a divorce from bed and board are "fault based" grounds. This means that a hearing will be held in which the judge or jury, whichever the case may be, decides who was at fault in causing the marriage to end. This is very different from an absolute divorce, which does not consider fault. The court may grant the divorce from bed and board if either party "abandons the family" or "maliciously turns the other out of doors." There are elements to each of these grounds that will be need to be met and there are also defenses available. Usually, after a year since separation has passed one of the parties will then file for an absolute divorce.

C. ANNULMENT

In North Carolina a spouse may bring an action to annul the marriage if: (1) the parties are nearer of kin than first cousins; (2) either party is under the age of 16 at the time of the marriage; (3) the marriage was contracted under a representation and belief that the female partner is pregnant, the parties separate within 45 days of the marriage, the separation is continuous for one year, and no child is born to the parties within 10 months of the date of separation; (4) either party is physically impotent at the time of the marriage; (5) either party is incapable of contracting from want of will or understanding at the time of the marriage. Fraudulent misrepresentation is not a ground for annulment in North Carolina, despite the fact that it is one of the most popular grounds for an annulment in other states.

D. SEPARATION

When married couples separate in North Carolina they have three options in regard to the division of the marital estate (property). The marital estate is presumed to include all of the assets and liabilities (debts) acquired during the marriage. First, they may enter into a separation agreement. A separation agreement is an agreement signed by both parties governing distribution of the marital estate and cutting off the possibility that there will be future debts or assets considered part of the marital estate. Second, if they cannot agree to the distribution of the marital estate they may seek the assistance of a judge. This is known as "equitable distribution" and requires court action. Third, they may choose to do nothing.

You do not need a separation agreement or court order to be legally separated. The act of separating itself, together with the intent by at least one of the parties to remain separate and apart from their spouse permanently, is enough to effect a legal separation. After one year of separation, either party is eligible to file for absolute divorce.

In North Carolina, the law presumes that all assets and liabilities from a marriage should be divided equally between the parties. However, that is just the starting point of the analysis. The law further provides that the court take into consideration various 'distributional' factors. These factors include the needs of each party based upon their income, the contributions made by each party throughout the marriage, marital fault impacting on value of marital estate, etc. These distributional factors are used to determine whether the property should indeed actually be divided equally or whether one spouse really should have more than half of the property.

You are under no obligation to sign a separation agreement. If you do not, either your husband or you have the option to sue the other for equitable distribution. There are some attorneys in this area that will represent you in equitable distribution for a contingency fee, that is, a percentage of the value of what you win in court. In order to make such an arrangement with an attorney, you will probably have to have some equity value in a home or land.

You should be aware, however, of the major risk you run if you do not have a separation agreement or court order regarding your separation. That is, your husband may incur debts for which his creditor would hold you equally responsible. Eventually, this could result in your being sued and your credit record being damaged.

If you choose not to sign a separation agreement and neither you nor your husband files for equitable distribution prior to obtaining an absolute divorce, then the right to equitable distribution is cut off.

III. ALIMONY AND EQUITABLE DISTRIBUTION FREQUENTLY ASKED QUESTIONS

A. SPOUSAL SUPPORT

How much will I get/will I have to pay?

There is no formula that the court uses to determine this. In fact, there are many variables that can influence the amount and duration of alimony. The court first determines who is a “supporting” party and who is a “dependent” party. That really means who makes more income than the other party. Next, the court determines whether there was “fault” to be ascribed to one or the other of the parties (think of this as a balancing test, all else being equal – what tips the scale one way or another?). If a dependent spouse has committed adultery during the intact marriage, alimony is barred. But if the other spouse (the supporting one) also did, it may be granted. If one party was particularly abusive or troubled, this “misconduct” may alter the amount awarded.

The court considers many things when arriving at the amount, including the standard of living during the marriage, the relative educational level and employment options of the parties, the assets, liabilities and debts of the parties, the duration of the marriage and the dependent party’s contributions as a homemaker/caregiver during the marriage.

How long will I receive it/have to pay it?

There is no such thing as “permanent” alimony, and the duration often varies. Factors influencing it are how long the parties were married, the education levels of the parties and their respective employment opportunities, and the health of the parties, among other things.

What about before the divorce? What if I can’t live without financial assistance?

The court may award post-separation support if it finds that one spouse is actually financially dependent on the other and marital fault does not bar this kind of support, but can be considered in the amount awarded. Again, the standard of living during the intact marriage is considered in setting the award. It lasts until alimony is either awarded or denied or until a specific date set by

the court.

B. PROPERTY ISSUES

How does the court determine how property is divided?

For married couples, the court uses the guidelines provided under chapter 50-20 of the North Carolina statutes (laws). These guidelines generally describe what property is classified as marital and as separate and what is “divisible” – that is, changes in value of property occurring after separation but before the court distributes the property. The court only allocates marital and divisible property between the parties. Things such as bank accounts, retirement plans, homes, and cars may be allocated by the court. Generally, things that are inherited or are gifts from someone other than a spouse are considered “separate” and cannot be allocated by the court. The gifts made between spouses, however, are considered marital and are subject to distribution by the court.

Can the court divide debts?

Yes. The court can divide debts and must consider them as part of the property distribution.

How does the court make its decision regarding what is the fair division of property?

There is a presumption (a legal assumption) that equal division is the right outcome. However, a court can decide that equal “is not equitable” (not fair under the circumstances); and can divide the property unevenly. A whole list of factors must be considered when doing this, including increases to the value of the property during the marriage, the duration of the marriage and the physical health of the parties, any support obligations from prior marriages, the need of a parent who has child custody to occupy a residence, and so on.

What if I need some money before the final order?

The court may order an interim distribution of marital property where sufficient need is shown.

BATTERED IMMIGRANT PROJECT INTRODUCTION

LANC’s Battered Immigrant Project primarily provides immigration assistance to immigrants who have been abused in the United States by their spouse or parent. The Project also handles immigration cases for victims of trafficking.

IV. BATTERED IMMIGRANT PROJECT: DOMESTIC VIOLENCE FREQUENTLY ASKED QUESTIONS

What can I do if my husband or boyfriend is hurting or threatening me or my children?

There are several things you can do if you believe you are a victim of [domestic violence](#). There

are organizations that can provide counseling, housing, and other assistance, and there are organizations, like Legal Aid, that can help you get legal protection.

If you want help getting away and staying safe or if you would like counseling, you should contact your local domestic violence program. You can find the phone number for your local program at the following website:

http://nccadv.org/service_providers.htm

or by calling the North Carolina Coalition against Domestic Violence's toll-free number: 1-888-232-9124.

If you are in immediate danger, you should call 911.

If you want an abusive boyfriend, husband, or partner to stay away from you, you can go to court and ask for what is called a "Domestic Violence Protective Order."

What is a Domestic Violence Protective Order?

A Domestic Violence Protective Order is sometimes called a DVPO or a 50B or a restraining order, and it is a document signed by a judge usually telling the person who is abusing you to stop abusing your and/or your children and to stay away from you and/or your children.

How do I know if I may apply for a Domestic Violence Protective Order?

Anyone who is in a [personal relationship](#) with someone who is committing [acts of domestic violence](#) against them or their children may apply for a Domestic Violence Protective Order.

What kind of protection can I get from a Domestic Violence Protective Order?

The most common things ordered in a Domestic Violence Protective Order are the following:

1. abuser must have no contact with victims – no contact means not in person, by telephone, but email, by fax, by regular mail;
2. abuser must stay away from where victim lives, works, goes to school, and 500 feet away in public places.
3. abuser must leave the home;
4. abuser may not purchase or possess a firearm.

Sometimes the court will also award possession of a car to the victim as well as financial support or other things that will help you stay safe.

How long do Domestic Violence Protective Orders last?

A Domestic Violence Protective Order may last for up to one year. It is renewable.

Will a Domestic Violence Protective Order give me legal custody of my children?

A Domestic Violence Protective Order is not a way to get custody of your children. In order to get permanent custody of your children, you will need to file a separate court case for [child custody](#). However, you may ask that a judge make a temporary award of child custody when you file for a Domestic Violence Protective Order. If the judge decides that it is in your children's best interest, a custody order may be entered as part of your Domestic Violence Protective Order, but only for one year. It is not renewable. You will need to file another court case to get permanent custody.

How do I get a Domestic Violence Protective Order and does it cost any money?

You can file for a Domestic Violence Protective Order by filing what is called a Complaint and Motion for Domestic Violence Protective Order at your local courthouse. *It is absolutely free to file for a Domestic Violence Protective Order.* Forms are available at the courthouse in all counties. They are also available online at the NC Courts' website. Instructions can be found at: <http://www.nccourts.org/Forms/Documents/220.pdf>

Many local domestic violence programs can help you figure out what you need to do, and in some cases our Legal Aid offices will help you as well.

After you file the papers, you will be assigned a date to appear in court and you will probably get what is called an [Ex Parte Domestic Violence Protective Order](#) that will be valid until your court date. The local sheriff's department will then try to locate your abuser and give him a copy of all the paperwork so that he knows when the court date is and that he has to do what the order says until that court date.

Usually sometime before that court date, you will contact either Legal Aid or a private attorney to help you on your court date.

What is going to happen on my court date?

One of five things can happen on your court date:

1. If the sheriff's department has not been able to locate the abuser to give him the paperwork, the judge will "continue" your case for a period of time to give the sheriff's department more time to do that. You will get a new court date, and your emergency order will be extended to that new date.
2. If the sheriff's department has given the abuser his copies of the paperwork, and he does not show up, you are eligible for a Domestic Violence Protective Order to be entered at that time.
3. If the abuser shows up without an attorney, he may ask the judge to "continue" your case for a period of time so that he can hire an attorney. You will get a new court date, and your emergency order will be extended to that new date.

4. The judge may ask the abuser if he will agree or “consent” to what you are asking for in your complaint, and if he does agree, then an order will be entered without a hearing.
5. The abuser may ask for a hearing on that day.

Will I have to testify in court?

If you have a hearing, you will get a chance to tell the judge about any domestic violence you have written about in your complaint. You will also tell the judge why you want the protective order. Your attorney, if you have one, will help you prepare for how you tell your story, and will help you prepare for the kinds of questions the other side may ask you. The abuser will also get a chance to tell their side of the story and you or your attorney will have a chance to ask them questions before the judge makes a decision.

What should I wear to court?

It is best to dress as you would for a job interview.

I have a protective order, now what do I do if the other side violates it?

There are two things you can do if a defendant violates an order:

1. You can file a Motion for Order to Show Cause with the court. This will require the defendant to come in and explain to the court why he has violated the order. If you prove that he has violated the order, the judge may hold him in contempt of court. The clerk’s office has forms for you to fill out and file with the court. They are also available on line at:

<http://www.nccourts.org/Forms/Documents/228.pdf>

2. You can file criminal charges. You can call 911 at the time of the violation and tell the law enforcement that you have a Domestic Violence Protective Order that is being violated. The abuser may be arrested immediately. If he is not arrested on the spot, or if you decide to wait to seek criminal charges, you can go to the magistrate and ask for a criminal warrant for the violation. The warrant will direct law enforcement to make the arrest. Although a Domestic Violence Protective Order is a civil order, it is a crime to violate an order, so you can ask that the abuser be arrested, and the District Attorney may seek a criminal conviction and jail time.

I have a protective order that is going to expire soon, what should I do?

At least 2 weeks prior to the expiration of your order, you can file a motion to have it renewed. The clerk’s office has those forms for you to fill out and file with the court. They are also available on line at: <http://www.nccourts.org/Forms/Documents/234.pdf>

V. BATTERED IMMIGRANT PROJECT: IMMIGRATION ISSUES FREQUENTLY ASKED QUESTIONS

I am married to a US citizen or a legal permanent resident, but I have been a victim of domestic violence and my abusive spouse will not help me with immigration. What can I do?

Depending on your circumstances, you *may* be eligible to file a self-petition under the Violence Against Women Act without any help from your spouse. In order to self-petition, you must prove that you are married to a US citizen or legal permanent resident, that you married your spouse in good faith, that you have resided with your spouse in the United States, that you have been physically abused or subjected to extreme mental cruelty by your spouse, and that you have good moral character. This remedy would allow you to remain in the US, apply for work authorization, become eligible for some public benefits, and eventually get a “green card,” which is a card that indicates that you have become a legal permanent resident.

For more detailed information about VAWA, please visit [womenslaw.org](http://www.womenslaw.org) (link: <http://www.womenslaw.org/immigrantsVAWA.htm>)

I am a conditional resident of the United States (i.e., I have a green card that expires in two years.), but my US citizen spouse has abused me and will not help me file the petition to remove the conditions on my residence. What can I do?

Depending on your circumstances, you *may* be eligible to file for a waiver of the joint filing requirement to remove the conditions on your residence. In order to qualify for a waiver of the joint filing requirement based on being abused by your spouse, you have to prove that you are a conditional resident, that you married your husband in good faith, and that you have been physically abused or subjected to extreme mental cruelty by your husband.

I am married to an undocumented person who has committed a crime of domestic violence against me, and I have suffered as a result of being a victim of this crime. What can I do?

Depending on your circumstances, you *may* be eligible to apply for a U-Visa (also called Crime Victim Visa) to remain in the US, get work authorization, and possibly get a “green card” later on. To qualify for a U visa, you have to prove that a crime of domestic violence or one of the other listed crimes was committed against you in the United States, that you suffered substantially as a result of being a victim of this crime, that you possess information concerning the crime committed against you, and that you have cooperated, are cooperating, or will cooperate with the authorities in the investigation and/or prosecution of the crime. In order to apply for a U visa, you also have to obtain a certification from law enforcement to this effect.

For more detailed information about U-Visas, please visit [womenslaw.org](http://www.womenslaw.org) (link: <http://www.womenslaw.org/immigrantsUvisa.htm>)

I have been a victim of a crime of domestic violence committed by my boyfriend, not my spouse? Can I still qualify for a U visa?

In order to qualify for a U visa, you do not have to be married to the person who committed the

crime of domestic violence against you. However, due to federal restrictions, the BIP can only assist victims of crimes who have been abused by their spouses. If you have been abused by a boyfriend and think that you may qualify for a U visa, the North Carolina Justice Center may be able to visit you. Please visit their website and review the information under “Immigrant Issues”: (<http://www.ncjustice.org/cms/index.php?pid=67>). Their contact information is listed on their website.

I have been forced to perform labor, services, or sex acts by force, fraud, or coercion. What can I do?

Depending on your circumstances, you *may* be able to qualify for a Trafficking visa (T visa). The T visa is a remedy that helps make services available for victims of severe forms of human trafficking, regardless of immigration status. Victims of severe forms of human trafficking are people who, by force, fraud or coercion, have been made to perform labor, services, or commercial sex acts, often after being transported to and harbored in the United States without proper documentation. In order to qualify for a trafficking visa, you have to prove that you are a victim of a severe form of trafficking, that you are present in the United States on account of trafficking, that you have complied with any reasonable request for assistance in the investigation or prosecution of the trafficker (or you are less than 15 years of age) , and that you would suffer extreme hardship involving unusual and severe harm upon removal.

Will a LANC attorney help me with a VAWA self-petition (I-360), Petition to Remove Conditions on my Residence (I-751), U-Visa or T-Visa?

LANC BIP attorneys assist eligible clients with VAWA self-petitions (I-360), Petitions to Remove Conditions (I-751), U-Visas, T-Visas, Applications to Adjust Status (I-485) and Applications for Work Authorization (I-765). For more information or to request that an attorney represent you in one of these matters, please call Roselle Margolis in the Wilmington office of LANC at (800) 672-9304.

If your case is assigned to an attorney, you will be sent forms that you will need to sign and return. These will include a retainer agreement and a FOIA (Freedom of Information Act) form that will allow LANC to request a copy of anything that USCIS (United States Citizenship and Immigration Services) already has on file related to your case. LANC attorneys may not be able to start your case immediately due to a backlog of cases; however, returning the FOIA and retainer agreement promptly will allow your attorney to begin gathering information needed for your case right away. You may also be sent a list of documents that help support your case and should begin gathering any of these documents that are available to you.

Can the LANC BIP help me with another type of immigration case, other than the ones listed above?

If you are an agricultural worker who has become a temporary resident alien or an H-2 worker and have problems with your employer, you should contact the LANC Farmworker’s Unit. .

If you are seeking assistance with asylum, temporary protected status, family-based petitions,

removal proceedings, naturalization or other types of “problem” immigration cases that Legal Aid may not handle, please visit the North Carolina Justice Center website and review the information under “Immigrant Issues”: (<http://www.ncjustice.org/cms/index.php?pid=67>)

Useful Links:

United States Immigration and Citizenship Services: <http://uscis.gov/graphics/index.htm>

North Carolina Justice and Community Development Center’s “Immigrant Issues” site: <http://www.ncjustice.org/cms/index.php?pid=67>

VI. DOMESTIC VIOLENCE DEFINITIONS

Domestic Violence: Domestic violence is behavior perpetrated by adults or older adolescents against intimate partners. There are a lot of definitions of domestic violence. You might recognize domestic violence as a pattern of behavior that is controlling, assaultive, abusive, or coercive. It may be physical, sexual, or psychological.

Some acts of domestic violence leave physical injuries and some do not. Some acts of domestic violence put victims in fear that they may be physically injured even if there is no direct act or threat to physical safety. Sometimes domestic violence involves intense control and supervision: a perpetrator of domestic violence may assert control over who you can be friends with, which family members you are allowed to talk to, where you can go, and how or even if you can spend any money.

Personal Relationship: In order to get a Domestic Violence Protective Order, there must be a “personal relationship” between the victim and the abuser. “Personal relationship” means any one of the following:

- Current or former spouses;
- Persons of the opposite sex who live together or have lived together;
- Former or current household members;
- Parents/children; grandparents/children; or others acting as parents;
- Persons with a child in common;
- Current or former household members (can be of the same sex)
- Persons of the opposite sex in a dating relationship where the parties have been romantically involved on a continuous basis.

Acts of Domestic Violence: The law in North Carolina defines domestic violence as one of four things: actions that cause bodily injury or attempt to cause bodily injury; actions that cause fear of serious bodily injury; continued harassment that might cause substantial emotional distress; and sexual assault.

Ex Parte Domestic Violence Protective Order: An Ex Parte Domestic Violence Protective Order is a court order which will provide you and your family with immediate protection from your abuser. A judge may issue an Ex Parte Domestic Violence Protective Order on the

day you file your Complaint for a Domestic Violence Protective Order if the judge believes that there is a serious and immediate danger to you or your children. An Ex Parte Domestic Violence Protective Order is usually issued without the abuser present. An Ex Parte Domestic Violence Protective Order will protect you from the time you file your complaint until your court date.