

## CHAPTER 4 – WHERE TO FILE

**STATUTORY REFERENCES:**     **RSA 173-B:2 (Jurisdiction and Venue)**  
  **RSA 173-B:3 (Commencement of Proceedings; Hearing)**  
  **RSA 490:27(a) (Validity of Faxed Warrants and Orders)**  
  **RSA 490-D:2 (Jurisdiction of the Family Division)**

### INTRODUCTION

Pursuant to RSA 173-B:2 and RSA 490-D:2, the Family Division has jurisdiction over all domestic violence cases in counties where it has been implemented. The jurisdiction is concurrent with the district court and superior court for ex parte and temporary hearings only; otherwise, it is exclusively vested in the Family Division. In all other counties, there is concurrent jurisdiction between the District and Superior courts. .

#### *COMMENT*

The legislature's intention in providing for concurrent jurisdiction was to offer victims of domestic violence the greatest possible accessibility. The statute clearly contemplates, however, that except in unusual circumstances, the District Court or Family Division will be the court in which petitions are initially filed.

### A. WHICH COUNTY OR DISTRICT?

#### **PROTOCOL 4-1**

RSA 173-B:3, I provides that a petition may be filed in the county or district where the plaintiff or defendant resides. RSA 173-B:2, II also provides that if the plaintiff has left the household or premises to avoid further abuse, the plaintiff shall have the option to commence proceedings pursuant to RSA 173-B:3 in the county or district where the plaintiff *temporarily* resides. Thus, the plaintiff may file the petition in the Family Division, District Court or Superior Court in the county where s/he resides, even if temporarily or where the defendant resides.

**NOTE:** The intent of the legislature is to provide greatest accessibility to domestic violence plaintiffs. Thus, the plaintiff should be permitted to file at *any* court location. If necessary the case should thereafter be transferred to the appropriate court. A plaintiff should *never* be told to go to a different court location.

#### **PROTOCOL 4-2**

Staff shall be available for the filing of domestic violence petitions during normal business hours, as established by the Supreme Court, and at such other times as set forth by administrative order.

#### **PROTOCOL 4-3**

When a plaintiff seeks a protective order during normal business hours, staff, should process the petition in the following manner:

- a. Ask the plaintiff to complete the domestic violence petition. If advocates are available to come to the courthouse, ask the plaintiff if s/he would like their assistance and make contact as appropriate.
- b. While the plaintiff is working on the petition, staff should locate the presiding judge. If the judge is not available, staff should locate any judge to review the petition, starting with another judge in the building first, then within the county or, if needed, at another court location.

- c. If the judge is not located in the building arrangements should be made to FAX the petition and temporary order form to the judge for review.
- d. The judge should review the petition and decide whether to grant a temporary order. The judge should complete the appropriate paperwork and FAX it back to the court.
- e. Once received at court, the paperwork should be processed in the usual manner.

*COMMENT*

RSA 490:27-a provides that domestic violence temporary orders may be applied for and issued by facsimile transmission. Any oath required for the issuance of these orders may be taken telephonically.

**NOTE:** Under no circumstances shall staff send a plaintiff to another court because of the unavailability of a judge in the building.

**PROTOCOL 4-4**

Notwithstanding the process as set out in Protocol 4-3, the plaintiff may choose to have the petition heard at another court location.. If so, staff shall contact the court and make such other arrangements as may be necessary to effectuate the speedy review of the petition.

**PROTOCOL 4-5**

If a plaintiff is not temporarily or permanently residing within the jurisdiction of the court in which the petition is filed or, failing that, if the defendant is not a resident thereof, the court should refer the case to the appropriate jurisdiction after completion of the temporary orders. Prior to completing the orders, staff should contact the transferee-court to obtain the hearing date to be included in the orders of notice. The paperwork supporting a petition and order should be transferred to the court of appropriate jurisdiction immediately by fax and then sent by mail within the next day. In the event of a referral to another jurisdiction, the court shall follow the process outlined above in Protocol 4-3. Court staff shall fax the transfer order to the AOC.

**B. TRANSFER TO ANOTHER COURT**

RSA 173-B:2, III provides that any case under this chapter may be transferred to another court on motion by either party or the court, as the interests of justice or the convenience of the parties may require. The receiving court must nonetheless have jurisdiction to hear the case.

*COMMENT*

While this section would appear to authorize the free transfer of domestic violence cases, such a broad interpretation is discouraged. The possibility of delay resulting from transfer and the myriad other problems resulting from moving cases from court to court are more serious in cases as potentially volatile as these.

**PROTOCOL 4-6**

No domestic violence case should be transferred to another court absent a written finding by the transferring court of the facts which indicate that the interests of justice or convenience of the parties require such transfer.

**PROTOCOL 4-7**

When a case is transferred to another court, staff of the sending court shall notify the staff of the receiving court by phone on the date of the order and obtain a date and time for hearing in the receiving court. Staff shall send the transfer order and all original documents to the receiving court, keeping copies at the transferring court. Staff shall confirm all addresses of parties and send or give each party a notice of the next-scheduled hearing at the receiving court. The transfer order must be faxed to the AOC to update the Registry the same day.

**PROTOCOL 4-8**

Transfer may be appropriate in the following circumstances:

- a. where both parties reside in a district other than where the domestic violence is alleged to have occurred;
- b. where the evidence or witnesses are more easily accessed in another district; or
- c. where related matters are pending in another court.

**C. TRANSFER TO THE SUPERIOR COURT FOR NON-FAMILY DIVISION COUNTIES**

In counties where the family division has not yet been implemented, RSA 173-B:3, V requires the court, at the time a petition is filed, to determine whether there is an action pending in Superior Court arising out of the same situation for which the plaintiff is seeking the restraining order in the District Court. If such an action is pending in the Superior Court, the matter shall be transferred to the superior court unless justice or expediency require that the District Court act on the petition. This process will become moot as the family division expands statewide, because the family division will have jurisdiction of both proceedings, thus avoiding the need for transfer.

**NOTE:** In any case where the plaintiff satisfies the burden of proof for issuance of a temporary restraining order, the court must issue the order regardless of the pendency of a Superior Court action.

**PROTOCOL 4-9**

At the time the petition is filed, the plaintiff should be asked whether an action involving the parties is presently pending in the superior court. If an action is pending, court staff should call the other court to ascertain certain basic information regarding the action including:

- a. names of the parties and children of the parties;
- b. the nature and status of the action; and
- c. what, if any, outstanding orders regarding contact between parties, custody, support, visitation, use of premises and use of property have been issued.

**NOTE:** The court should inquire whether there are pending actions in any other court, including within or outside New Hampshire.

**PROTOCOL 4-10**

When the District Court determines that there are existing orders issued pursuant to RSA 169-B, C or D, RSA 458, or 461-A, the court should conduct the temporary hearing on the allegations contained in the petition. If an order is granted, the case should be transferred to the appropriate court.

**PROTOCOL 4-11**

In the event a motion is filed to transfer a petition to the Superior Court, the motion should be reviewed by the judge and a written finding made as to whether justice and expediency require the District Court to retain jurisdiction over the case, or whether transfer is appropriate.

*COMMENT*

Appropriate considerations in determining whether to transfer include, but are not limited to, the following:

- a. imminence of danger to the plaintiff;
- b. geographic accessibility to the Superior Court;
- c. whether the previously pending case in the Superior Court is scheduled for hearing within thirty days;
- d. existence of any Superior Court orders; or
- e. whether the Superior Court has had an opportunity to hear the plaintiff's allegations in the context of the case pending in that court.

*COMMENT*

Fichtner v. Pittsley, 146 NH 512 (2001), suggests that where there is an existing order on custody, the district court should transfer the case to Superior Court, presumably after conducting the temporary hearing and issuing protective orders.

**PROTOCOL 4-12**

Once the decision is made to transfer the case, it should be sent to a designated department or individual in the appropriate superior court within forty-eight hours.

**PROTOCOL 4-13**

The AOC shall be notified of the transfer of the case and the order to transfer shall specify the court to which transfer is being made.

*COMMENT*

From time to time, parties may file and be granted conflicting orders from two courts. On these occasions, there should be communication between the courts and a final decision made with respect to the most appropriate venue for the proceedings.