

To: Attorneys practicing in the 23rd Judicial District
From: Judges of the Juvenile and Domestic Relations District Court
Re: Custody and visitation cases
Date: November 12, 2008

PURPOSE

The purpose of this memo is to provide information to the bar about the practice of custody and visitation cases in the J&DR Courts of this District. This memo is offered to address certain issues and is not intended to be a comprehensive guide to practice.

FILING

If no previous court order has been entered, a case is commenced by the filing of a petition with the intake office (Code section 16.1-260.) The filing fee must be paid to the clerk, unless it is waived by the court (Code section 16.1-69.48:5.)

If a previous court order exists, the appropriate pleading is a motion filed with the clerk. A copy of the previous court order should accompany the motion if that order was entered by another court. (It is not necessary that the order be certified.) A copy of the motion for service on the other party to the case is to be provided to the clerk.

Separate custody or visitation pleadings must be filed for each child involved. (The clerk assigns each child a separate case number.) The issues of custody/visitation and support cannot be combined in the same pleading. (Custody and visitation cases are filed in our case management system under the name of the child; child and spousal support cases are filed under the name of the payor.)

REPRESENTATION

If an attorney files the pleading, the court will, of course, assume that the attorney will represent the moving party. If the client files the pleading, the attorney is expected to advise the court of his or her representation. This should be done by letter (if time allows), by fax (if necessary) or by advising the courtroom clerk in person before the docket begins if the representation was not arranged in time for prior notice.

The attorney representing the moving party is expected to do the following:

- 1) Advise the other party to the case of his/her representation;
- 2) Advise the clerk if it is anticipated that the case will take more court time than the standard allotment (see below);
- 3) Advise the court if there is a request for a home study (or some other type of involvement by the Department of Social Services; see below), a request for the appointment of a guardian *ad litem* or a request for mediation services; and
- 4) Review the court file in advance of the hearing, allowing time to confer with any other attorney of record (see below).

If an attorney is retained to represent the respondent, that attorney is expected to:

- 1) Advise the clerk and any other counsel of his/her representation and confirm availability for the scheduled court date and time;
- 2) Advise the clerk if it is anticipated that the case will take more court time than the standard allotment;
- 3) Advise the court if there is a request for a home study (or some other type of involvement by the Department of Social Services), a request for the appointment of a guardian *ad litem* or a request for mediation services; and
- 4) Review the court file in advance of the hearing, allowing time to confer with any other attorney of record.

EMERGENCY HEARINGS

Ex parte communication with the court is discouraged. (Canons of Judicial Conduct, Canon 3)

If there is sufficient evidence that a preliminary order is necessary to “protect a child’s life, health, safety or normal development,” a motion or petition for a Preliminary Protective Order may be filed. (Code section 16.1-253)

If there is sufficient evidence that a child is being “abused or neglected” (Code section 16.1-228), a complaint may be made to the appropriate Department of Social Services Child-Protective Services Unit. (Code sections 63.2-1501 *et seq.*) If there is then sufficient evidence that a child is being subjected to “an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result” if immediate action is not taken, an Emergency Removal order (Code section 16.1-251) may be entered.

If a party wishes to seek enforcement of an existing child custody order prior to the scheduled hearing, a petition may be filed requesting an *ex parte* order if there is sufficient evidence that “the child is likely to suffer serious physical harm or be removed from the Commonwealth.” (Code section 20-146.32)

If any type of *ex parte* order is sought, the moving party is to attempt by all reasonable forms of communication to provide notice to the respondent.

COURT TIME

At the direction of the Supreme Court of Virginia, the default time period for one custody or visitation petition or motion is 10 minutes. (If multiple pleadings concerning siblings are filed at the same time, the default time period is still the minimum.) If an attorney anticipates that more time will be needed for a case, the attorney shall so advise the clerk. The clerk will schedule the case accordingly, or reschedule the case, and it will not be necessary for counsel, the parties and witnesses to come to court unnecessarily. If the clerk is not so advised, it will be assumed that the attorney is representing to the court that the minimum time allotment is satisfactory. If, when the case is called in court, it is apparent that insufficient time has been allowed, it may be necessary for the case to then be continued to another date.

PRE-TRIAL DISCUSSIONS

Attorneys are expected to attempt to settle, or at least narrow, the contested issues. If a guardian *ad litem* has been appointed, he or she is expected to participate in such settlement discussions. As a general rule, this settlement discussion should take place prior to the date of trial. If this has not occurred, the court may continue the case to another date so as to allow time for proper settlement discussions to be conducted. If all issues are settled prior to court, the clerk should be promptly notified so that the scheduled court time may be used for other cases.

DSS HOME STUDIES

As stated above, attorneys are expected to advise the court prior to the court date if a DSS home study is requested. If counsel for the other party agrees to the request, a home study or custody/visitation assessment may be ordered by the court and the case will be rescheduled, if necessary, to allow time for the completion of the report. If an attorney believes that a full home study is not necessary, but that input from DSS on an issue or limited number of specific issues would help resolve the case, the attorney is to so notify the court. If the attorneys are not able to agree on the necessity of a home study, the court should be promptly so advised in writing.

ORDERS

If, prior to a hearing, the court is advised that a case has been settled or if, following a hearing, the court directs that counsel prepare the order, the date by which the order is to be submitted will be set. The wording of the order should be clarified before the hearing is concluded. If, following the hearing, it is necessary to contact the court regarding the wording of an order, that is to be done in writing, with copies to the other parties. Issues addressed during the original hearing will not be relitigated, nor may new issues be raised. If the order is not received by the court in a timely manner, and no extension is granted, the court will expect counsel to return to court for resolution of the matter. Again, the case will not be reopened for issues to be litigated. Custody/visitation issues and support issues must be addressed in separate orders.