

Chicago Daily Law Bulletin.

VOLUME 166, NO. 59

LAW BULLETIN MEDIA.

Counseling family law clients during a pandemic

If the last week has proven anything, it is that there is no playbook for advising clients during a global pandemic with such unprecedented reach and ramifications. The closing of schools, remote working from home, social distancing, and the suspension of normal court access is quickly becoming the new normal.

But for families involved in a family law dispute such as a divorce, parentage matter, or victims of domestic violence, the massive disruption of their routine and access to courts is more than an inconvenience — it may be a hardship or a situation which adds enormous stress to an already tense situation.

During this difficult time lawyers should remember that they are counselors engaged to render wise counsel. Being calm, thoughtful and reassuring when giving advice will convey to clients that you understand that they are stressed, but that you are ready and available to them. It is also important to advise them that the access to the courts is not completely shut

off, just significantly limited so that judges can be available to address emergency situations.

As of the writing of this article, the presiding judge of Cook County's Domestic Relations Division, Circuit Judge Grace G. Dickler, has issued 10 Domestic Relations Division general orders addressing the administrative aspects of the division from now until April 15. Under the general orders, orders of protections set to expire between March 17 and April 15 are extended and continued to a date set forth in the order (2020 D 2). There are also procedures in place to submit emergency motions to the court for an initial finding of an emergency before the merits of the pleading are heard (2020 D 3); procedures to submit agreed temporary orders electronically (2020 D 4); provisions for temporary restraining orders and preliminary injunctions to be extended 30 days from the original return date (2020 D 5); procedures to appoint a special process server (2020 D 6);



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procedures to request an extension of a plenary order of protection (2020 D 7); parenting time guidelines (2020 D 8); procedures for rescheduling Cook County state's attorney cases (2020 D 9); guidelines for

obtaining a remote oral prove-up (2020 D 10); and procedures for submitting agreed final orders (2020 D 11).

All general orders can all be found on the Cook County Domestic Relations website.

Given the limited access to courts for the near future, and possibly longer, engaging in the dispute resolution process may be worth exploring in certain cases. Several mediators are offering remote mediation services to deal with emergency temporary issues. The use of video conferencing in an attorney-assisted mediation model allows clients the opportunity to attempt to resolve their case with the advice of counsel while not having to engage in an in-person meeting.

Parenting issues are experiencing the most impact during this COVID-19 outbreak. Allocation judgments (formerly known as custody judgments) were entered into without the lens of a global pandemic. Reviewing the judgments now and assessing what

provisions specifically are affected will help to avoid confusion. Travel provisions, rights of first refusal, attendance at extracurricular activities and school events, and the pick-up and drop-off point for parenting time may all be affected.

Co-parenting skills are critically important as parents need to be able to communicate quickly about the rapidly changing information that emerges each day. Parenting time transitions at a neutral location such as school or extracurricular activities may no longer be feasible so arrangements will need to be made for transitions at a parents' house.

Travel restrictions set by the government will impact vacation plans. If one parent typically saw a child at a regular sporting event or school-sponsored activity which is now suspended, is there another avenue for the

parent to see the child electronically or just check-in with the child for a brief period during the time period which generally encompassed the activity? If parties generally use third parties as caregivers, it would be wise to discuss and consider what possible back-up plans are available in the event the caregiver is no longer able to care for the children.

Based on Cook County General Order 2020 D 8, which applies to both temporary parenting schedules and permanent judgments "the parties' regular parenting time schedule shall control in all instances." The order further states, "Unless otherwise directed by further order of Court, the parties shall continue to follow their respective parenting time schedules." The parties are not prevented from altering such schedule by agreement, but are strongly encouraged

to act in the best interest of their children and are strongly admonished from taking acts that would imperil the physical health of any child, including unnecessary or discretionary travel. Parties should continue to use best judgment and reasonableness when encountering unfamiliar situations.

There may also be several effects COVID-19 has on the financial aspect of a case. If a party loses his or her job during this period, he or she may be eligible for an abatement or modification in child support and spousal support, which should be filed immediately to preserve the ability of the court to grant retroactive relief at the hearing. A party may be at risk of not receiving the correct amount of support if the money they have access to is inadequate and they are not able to get a hearing.

The negative impacts on business and Wall Street may also directly affect valuations of assets. If a business is being valued, special care should be paid attention to first quarter 2020 financial records and the impact that they may have on the overall valuation of the business depending on the selected valuation time frame. It is also wise to consider the virtually daily volatility in the current market when settling on a final valuation date for investment assets and retirement accounts if the parties wish to prove-up a case during the next several weeks.

The next few weeks will be rocky for family law cases during this period where we try to harness the pandemic. All lawyers should realize that they can be either side of the coin with their cases due to limited access to the courts.