

Coronavirus and Custody: What You Need to Know During the Crisis



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The recent pandemic has fundamentally changed virtually every aspect of our society. On the health, education, business, and economic levels, COVID-19 is dramatically impacting us in many ways. Family law attorneys and their clients are also confronted with novel and different challenges. Parents have many questions about how COVID-19 impacts existing custody agreements and whether and how to account for these challenges in the future. The following are some of the **frequently asked questions** in this new environment.

COURT STATUS

- **What are the courts doing? If I need help, when or how can I get into court?**

Currently, most courts have suspended their civil non-emergency dockets until April 26, 2020 (family law cases are civil cases). It is possible that this suspension could be longer.

What is an emergency? Certain courts have defined an emergency as a dire situation in which the physical, mental, or emotional safety of the child or party would be at risk if the matter is not imminently heard by the court. This will be a case-by-case assessment by the sitting judge, but it is believed that the scope of what constitutes an emergency is probably narrowing given the high volume of cases being pushed off and the likely increasing number of emergencies claimed.

Given this, the action plan to address new issues must change, at least in the short term. What facts may have given you the ability to request a hearing or appear in court is not likely to do so now. Clients should not lose hope, however; you can proactively raise issues and if your child's other parent and his/her attorney are not willing to resolve such issues, motions can still be filed and heard once this stay is lifted by the court.

CUSTODY

- **Can I prevent my ex from travelling with our child or children during the pandemic? Can I prevent contact between the child and the other parent if such parent has recently travelled or is not practicing social distancing?**

Currently, the answer is probably no. Unless and until travel is prohibited on either a state or national level, such travel with the child or children most likely cannot be prohibited. Further, while social distancing is strongly encouraged, and in some places required, the direct threat to the child or children is unclear, difficult to prove, and not currently grounds to violate an existing agreement or court order.

Coronavirus and Custody: What You Need to Know During the Crisis (Cont.)

Obviously, most agreements or court orders don't contemplate unique situations like this one, but we have begun adding provisions like the following to future court orders and agreements:

"Travel/Conduct During Health Crisis/Pandemic: In the event of a health crisis, pandemic, or epidemic, the parties agree to follow all prescribed recommendations of the Centers for Disease Control and World Health Organization, as well as state and federal laws, regulations, orders, or guidelines with respect to travel or general conduct while the child/children is/are in his/her custody."

- **If my order or agreement provides that the party who has the children for the weekend will have extended time in the event that there is no school on Monday, does this apply given that the school building itself is closed but "distance learning" is in effect?**

Frankly, this is a tough one. First, this type of issue only arises if the language simply provides that time is extended if there is "no school," vs. a situation in which the weekend is extended due to a federal or school "holiday," as is written in many orders and agreements. The latter situation obviously is not contemplated in this circumstance.

As to the former, there is an argument that the weekend does extend through and including Monday because there is no school. However, as more schools are adapting to this situation and providing online and hard copy resources for the children to use at home, there is an increasing sense that the children are "going to school" at each parent's home, and therefore that the weekend does not extend through Monday. This author believes that the second argument is probably correct. Trying to provide as much consistency in the children's regular custodial routine may give them some comfort that everything is 'ok' and thus, more likely to be the position adopted by others and, ultimately, the Court.

This article does not constitute legal advice. This situation is rapidly evolving, so these answers may change with time. If you have questions regarding your specific case or set of circumstances, consult with your family law attorney. We are here to answer your questions and field your concerns. As always, please stay safe.