



COVID-19: Updates to Previous Family Law Guidance

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Key developments in the family law arena have taken place since our postings last month. The Courts are closed through May 31, 2020, the Commonwealth's court personnel have been working hard to figure out how to assist the public remotely, and various federal programs are now in effect.

1. My co-parent's behavior keeps getting worse, what can I do?

As the COVID-19 shutdown stretches on, the courts recognize that bad situations do not improve with time. The courts have agreed to address urgent custody situations, such as the unwarranted withholding of children, that fall short of physical harm or threats of harm. Judges are holding conferences by telephone or video and entering temporary orders as needed to resolve these problems.

2. Why didn't the Governor anticipate these problems?

Governor Wolf has issued guidance that parents may not use COVID-19 as an "excuse" to withhold children from a co-parent. Custody orders must be followed. A parent's status as a health care provider, first responder, or essential worker/volunteer may not, in and of itself, serve as the basis for withholding a child.

3. Are the Courts offering any specific guidance?

Some counties, including Montgomery County, have issued guidance admonishing parents to refrain from exercising physical custody if they or anyone in their household is ill with a respiratory problem or has COVID-19 symptoms until the illness has passed. Each household is advised to follow CDC protocols with respect to hand washing, surface cleaning, social distancing, and staying at home. (Presumably, it will also include the new guidance on cloth facial covering.)

Unfortunately, this guidance does not require makeup time for the parent who does the right thing by reporting illness and giving up his or her custody time.

While this guidance is not legally binding on any litigant, a parent who complies with it will fare better than one who ignores it, should post-COVID litigation ensue.

4. That's all mighty interesting, but are the Judges planning to help me, and, if so, how are they going to do that?

In most counties, Judges are making themselves available, by agreement and on a nonbinding basis, to weigh in on disputes by telephone or video conference with legal counsel. (This process has not been offered to litigants who do not have attorneys.) When a Judge provides her or his thinking on an issue that has the parties at odds, attorneys are almost always empowered to resolve disputes without resorting to contentious and expensive litigation.

5. My spouse and I were almost done with our divorce. How much longer do we need to wait before we can claim our freedom?

In order to clear from the looming backlog cases that have been settled, Judges will now process Divorce Decrees, Qualified Domestic Relations Orders, and other Agreed Orders and Agreements, provided that the parties have done all their homework, filed all required documentation with the Court, and complied with local rules.

6. I need to modify my Support Order right now! Must I wait for the Court to reopen?

The Domestic Relations Office is holding support conferences remotely, if all income and other necessary financial information have been exchanged between the parties prior to the conference. Petitions to Modify Support Orders are being processed as usual.

Be advised that the federal "stimulus" checks will be intercepted by PACSES, along with federal tax refunds, if the recipient owes overdue support, even if the check relates to a child who is not covered by the support order and even if the check is issued jointly to that recipient and his or her new spouse. (The new spouse may obtain his/her share by filing IRS Form 8379 and requesting Injured Spouse Allocation status.)

The portion of the check that relates to a child will be issued to the parent who most recently claimed the child as a dependent on his or her federal tax return. That parent is not always the child's primary custodian. Consider giving the check to your custodial co-parent or allocating it by agreement to something special for your children. Does your child deserve a reward for good COVID-19 adaptation?

7. May I tap into my IRA or 401(k)?

COVID-19 has brought about "hardship" that merits withdrawals without penalty, per the CARES legislation. CARES permits a party to withdraw and/or borrow funds from retirement plans, without penalty, under certain circumstances and up to certain limits. For some couples, "borrowing from myself" may be more advantageous than borrowing from a bank or other third-party lender. Parties should consult with their spouses and their financial advisors before engaging in either transaction. For most plans, spousal consent is required for any withdrawal. IRAs are the exception. If you are going through a divorce, however, you should not undertake any transaction from any retirement asset without providing disclosure and obtaining consent of your spouse. Parties who do otherwise may be held responsible for dissipation of the asset.

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About the Author: Ms. De Shong is one of Pennsylvania's leading family law attorneys. She has counseled hundreds of men and women on all aspects of divorce, child custody, distribution of assets, support, and alimony, as well as property settlement agreements, prenuptial agreements, cohabitation and partnership agreements, family business agreements, protection from abuse matters, and more. She is a Fellow of the American Academy of Matrimonial Lawyers, a national organization of approximately 1,600 highly skilled litigators and negotiators who represent individuals in all areas of family law, and the Litigation Counsel of America, a national trial lawyer honorary society. If you would like further information about Ms. De Shong and family law, or if you have a family law matter that you would like to discuss with her, please email Ms. De Shong at adeshong@wispearl.com.

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