

THE “NEW NORMAL” DOMESTIC RELATIONS PRACTICE IN A POST-COVID-19 WORLD

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No doubt we are living in strange times. Unlike many professions and vocations, we are essential workers, and in our roles as Family Law practitioners and court personnel we have continued with our work throughout this pandemic. We have modified the ways in which we communicate with each other, with our clients, and with the courts, but we otherwise have maintained “business as usual” as much as possible. Yet even as the economy and our courts continue to “open up” again, the novel coronavirus pandemic has brought with it a number of different Family Law issues, leaving an indelible mark on our profession for the foreseeable future.

What advice to offer Domestic Relations clients regarding parenting at this time?

By the end of March 2020 Governor Mike DeWine and Ohio Department of Health Director Amy Acton had issued Ohio’s stay-at-home order. That order specifically carved out travel to and from parenting time as acceptable, or “essential,” travel. Even as the state is reopening, parenting time continues to be specifically enumerated as acceptable travel. In Cuyahoga County, Domestic Relations Court Administrative Judge Leslie Ann Celebrezze issued a blanket judgment entry stating that parenting time orders were still effective — and expected to be followed — during the pandemic.

General guidance should be that parenting time continues in line with existing parenting orders, and should respect all local, state, and national guidelines.

If a parent or someone in that parent’s household has tested positive for COVID-19, clearly parenting time needs to be postponed.

Many existing shared parenting plans may have provisions to address illness, and those should be followed. However, it is also quite common for those plans to have a line that states, in essence, that common sense must prevail when dealing with an ill child, and the answer is likely never going to be to do something that unreasonably exposes the child to more risk of harm.

But parenting time should proceed even if a parent happens to work in a “higher risk” job, such as a front line medical worker. It should happen even if the parenting time requires some travel. The idea is to reasonably mitigate risk, while still permitting the child to enjoy time with both parents. In extraneous situations, such as if mandatory quarantines are imposed, parents must be encouraged to work together to devise plans that make sense.

Financial issues that have and will be encountered

Beyond parenting issues, Domestic Relations courts and practitioners will doubtless see a litany of financial disputes arising from this pandemic. Many workers have been furloughed or have lost jobs.

What is to happen with support obligations? To the extent that a support payor or recipient is facing long-term unemployment, there is every reason to presume that the standards for modification will look like they always have. However, we may see an uptick in requests for relief from support arrearages that may have accumulated based upon short-term income loss experienced. Logically, these will have to be addressed on a case-by-case basis, as no one general piece of advice is going to be sufficient to address every situation. But these arguments may be given some credence, and parties may be encouraged to compromise to account for the economic results of the pandemic.

Numerous questions have arisen about division of the stimulus checks sent out under the Coronavirus Aid, Relief, and Economic Security (CARES) Act. As yet, we have no formal guidance. But, although the payments are considered as advances of tax credit for the 2020 tax year, the IRS has clarified that taxpayers will not be responsible for repaying overpayments. Treatment may vary slightly from case to case. But, the currently prevailing wisdom is that divorcing parties — or already divorced parties, in the event that the IRS directed joint payment to only one party — should each receive their individual portion of the stimulus payment. Payments for the children would generally go to the parent(s) providing the bulk of the support. Thus, if the parents are otherwise exercising shared parenting and supporting the children, it would be reasonable to likewise split those payments. Otherwise, if only one parent is supporting the children, that parent should benefit from the stimulus funds intended for the dependents. Some interesting true-up issues are already arising as well, as some support obligees have found that their portion of a joint check was garnished to cover support owed by their spouse to them. Courts and practitioners must remain mindful of this issue in the final property division and when determining arrearages post decree.

Case tolling and court deadlines

The Rules of Superintendence for the Courts of Ohio dictate that all divorce matters involving minor children should be finalized within 18 months of the filing of the initial Complaint for Divorce; matters that do not involve minor children should be finalized within 12 months of the same.¹

As practitioners in Domestic Relations courts are aware, these guidelines are closely adhered to by the courts. Under normal circumstances, the guidelines may be tolled for various reasons (for example, if the parties to a contested divorce case are referred to mediation for issues relating to parenting, the court will toll the 18-month guideline for the period in which the mediation takes place). However, the COVID-19 pandemic presented an unprecedented problem: how can you complete a contested divorce case or post-decree matter if you cannot require the parties to physically appear at trial?

On March 27, 2020, Governor DeWine signed into law House Bill 197, which immediately tolled, retroactive to March 9, 2020, all statutes of limitations, time limitations and deadlines in the Ohio Revised Code and Ohio Administrative Code, until the expiration of Governor DeWine's Executive Order 2020-01D (the declaration of emergency) or July 30, 2020, whichever is sooner. Since the Ohio Constitution creates a separation of powers between our judicial and legislative branches, House Bill 197 only addressed judicial deadlines which were created by the legislature. The Ohio Supreme Court then issued an Order on March 27, 2020, which tolled all deadlines contained within the rules promulgated by the Ohio Supreme Court, including time limitations and case time limits under Sup.R. 39 (the "March 27th Order"). The Supreme Court's March 27th Order is retroactive to March 9, 2020, which was the date of Executive Order 2020-01D.

To implement the tolling of case time limits, local courts may either continue to maintain their cases in their traditional manner within their respective case management systems (noting the time tolled due to the March 27th Order) or place their cases on temporary inactive status.² Obviously, the cases still exist, regardless of the March 27th Order; local courts will still face the practical reality of temporary increases of over-age cases or cases placed on

inactive status, as well as dockets that are packed with cases that could otherwise not move forward during the COVID-19 emergency and new cases filed thereafter.

Pursuant to the March 27th Order, any scheduling orders issued by the local courts on or after March 9, 2020 remain in effect. Additionally, the March 27th Order dictates that a local court may issue orders setting its own specific filing schedule. This gives the local courts discretion to address situations requiring immediate attention, such as cases involving a Domestic Violence Civil Protection Order. For example, the Cuyahoga County Domestic Relations Court issued several of its own orders after the issuance of the March 27th Order, including: the April 4, 2020 Order which directed that answers must be filed within 28 days of the service of a complaint, unless a leave to plead is properly filed pursuant to Local Rule 2; and the April 23rd Order which directed that discovery rules and timelines pursuant to Civil Rules 26 through 37 would continue to apply, but that "individual timelines in specific cases may be excepted from completing discovery as set forth in the rules upon application to the judge or magistrate and approval thereof." It is critical for any Domestic Relations practitioner to be aware of up-to-date orders set forth by the various local courts.

How will we modify our practices moving forward?

As the Supreme Court of Ohio allows the local courts a great deal of discretion to deal with their own dockets, there will likely be different ways that these courts will carry out their day-to-day business during the COVID-19 emergency and thereafter. As it is expected that social distancing guidelines will continue indefinitely, the local courts will need to determine how to proceed with trials and other evidentiary hearings considering

those guidelines. Policies regarding the use of face coverings in the courthouses will need to be created, in line with federal, state, and local guidelines. Domestic Relations practitioners will need to embrace the role that videoconferencing and teleconferencing will play in those situations and adjust accordingly.

Practitioners will face similar questions and will need to devise their own best practices in their offices, in conducting depositions, client meetings, and mediation and other collaborative and cooperative processes. All of us will face certain challenges, and we will need to be flexible and agile as we, collectively, adjust to the new normal.

¹ Sup.R. 39; The Supreme Court of Ohio Form B, Domestic Relations Division.

² The Supreme Court of Ohio, Tolling Legislation and Court Orders/ Frequently Asked Questions, <http://www.supremecourt.ohio.gov/tolling/>.



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