dc's CHILDREN'S LAW CENTER family. health. education.

501 3rd Street, NW · 8th Floor
Washington, DC 20001
T 202.467.4900 · F 202.467.4949
www.childrenslawcenter.org

2020 Custody Guardian *ad litem* Training Manual

3. Custody and Domestic Violence Law, Procedure, and Practice in the District of Columbia

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Custody Cases in the District of Columbia – An Overview

What is custody?

- Prior to 2002, there was no statutory definition of custody. In 2002, D.C. Code §16-914 was amended to include a definition of legal custody and physical custody:

> (i) "Legal custody" means legal responsibility for a child. The term "legal custody" includes the right to make decisions regarding that child's health, education, and general welfare, the right to access the child's educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.
>
> (ii) "Physical custody" means a child's living arrangements. The term "physical custody" includes a child's residency or visitation schedule.

See also Ysla v. Lopez 684 A.2d 775, 777 (D.C. 1996).

- The court may award sole legal custody, sole physical custody, joint legal custody, joint physical custody, or any other custody arrangement the court may determine is in the best interests of the child. D.C. Code §16-914.[1]

The basics: law and procedure

- There is no single comprehensive custody statute in the D.C. Code. Many custody-related provisions are found in Title 16, Chapter 9 and were originally part of the Marriage and Divorce Act (§16-901 *et seq.*). In practice, the provisions that were part of the Marriage and Divorce Act have been applied to all custody proceedings between parents. *See Ysla v. Lopez*, 684 A.2d 775, 778 (D.C. 1996). In addition, the "Domestic Relations Laws Clarification Act of 2002" amended several of these provisions so that they more clearly apply not only to divorce proceedings but to any proceeding between parents in which custody is an issue.

  The power of the court to adjudicate custody disputes between parents who are not married to each other stems from its general equitable powers. *Ysla v. Lopez*, 684 A.2d 775 (D.C. 1996).

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[1] Constitutionally and by statute, there is no distinction between children born in wedlock and children born out of wedlock. *See, e.g.*, D.C. Code §16-908. In general, parents of children born out of wedlock have the same rights and duties as parents of children born in wedlock.

Custody cases brought by third parties (non-parents) are governed by "The Safe and Stable Homes for Children and Youth Act of 2007," D.C. Code §16-831.01 *et seq*. The statute addresses standing requirements, the legal standard, burden of proof, and related issues.

- The Uniform Child Custody Jurisdiction and Enforcement Act, D.C. Code §16-4601.01 *et seq*., applies to "custody determinations" as defined in the statute. The UCCJEA addresses which state has jurisdiction to make a custody determination, as well as certain procedural requirements.[2]

- D.C. Code §13-423 governs "long-arm" jurisdiction (personal jurisdiction over individuals outside the District).

- The D.C. Superior Court Domestic Relations Rules apply to custody cases and divorce cases, as do the General Family Division Rules. New rules went into effect on November 26, 2018.

  On December 31, 2014, the court issued Administrative Order 14-23, "Revised Case Management Plan for the Domestic Relations Branch," https://www.dccourts.gov/sites/default/files/2017-03/14-23-Revised-Case-Management-Plan-for-DRB-Dec-31-2014.pdf, replacing the original case management plan set forth in Administrative Order 08-03 (March 2008). While neither plan has been followed rigorously, they may provide some guidance about how domestic relations cases may be handled.

- Custody can be awarded through a complaint for divorce or a complaint for custody.[3] The age of majority in D.C. is 18[4]; thus, in a Family Court proceeding, custody can only be awarded in connection with a child under 18.

- Child support may be requested in the same case (if the court has jurisdiction pursuant to the Uniform Interstate Family Support Act, D.C. Code §46-301.01 *et seq*.). D.C. Code §16-916.03. It is not required that child support be requested; if no request is made, the court will usually not inquire further or may advise the parties regarding the right to support and inquire on the record whether the custodial parent is or is not seeking support.[5] Calculation of child support is governed by D.C. Code §16-916.01, known as the D.C. Child Support Guideline. It will usually be ordered that payment be made through the D.C. Child Support Clearinghouse, Child Support Services Division, Office of the Attorney General; wage-withholding will also be ordered when possible. *See* D.C. Code §46-201 *et seq*.

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[2] Jurisdictional defects under the UCCJEA may be waivable under certain limited circumstances. *Kenda v. Pleskovic,* 39 A.3d 1249 (D.C. 2012).

[3] Temporary custody can also be awarded in a civil protection order proceeding (also known as a domestic violence or intrafamily offenses case). D.C. Code §16-1001 *et seq*. CPOs are also time-limited.

[4] D.C. Code §46-401.

[5] D.C. Code §16-916.0l(b).

Although the age of majority is 18, the duty of the parent to support continues until the child is 21 if D.C. issues the original child support order. D.C. Code §46-101, -401.

Child support orders can be modified. *See* D.C. Code §§16-919.01(o), 46-204.

Starting the case

- Custody cases and divorce cases are filed in the Domestic Relations Branch of the Family Court of D.C. Superior Court.[6]

- Actions for custody are initiated by the filing of a complaint. SCR-DR 3. Complaints are filed at the Family Court Central Intake Center, Room JM-540.

- Complaints must be signed by the plaintiff and either notarized or signed under penalty of perjury using the language set forth in SCR-Dom.Rel. 2. There are a few technical requirements related to the pleading; *see* D.C. Code §16-4601.9, SCR-Dom.Rel. 8.[7] Information need only be provided to the best of the plaintiff's knowledge. Plaintiffs must also fill out a Family Court cross-reference form.

- There is an $80 filing fee for complaints and a $20 filing fee for motions. Parties can file a request for a fee waiver (application to proceed *in forma pauperis*) pursuant to D.C. Code §15-712 and SCR-Dom.Rel. 54-II. IFP applications must be filed on the court's form, available at http://www.dcbar.org/for-the-public/legal-resources/pro-se-pleadings.cfm. The application must be accompanied by the complaint/pleading. Take the application with the complaint/pleading to the Family Court Central Intake Center. The application will be submitted to a judge and ruled on immediately, on the papers and without a hearing.[8] The pleadings will be returned to the plaintiff who can then proceed to file the complaint.[9]

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[6] Until 2002, custody and other domestic relations cases were heard in the Family Division of Superior Court. The "District of Columbia Family Court Act," enacted by Congress in January 2002, abolished the Family Division and created a new Family Court within Superior Court. D.C. Code §§11-902, 11-1101.

[7] ***Practice pointer***: The clerk's office will require that an address be listed on the complaint for each defendant. If the plaintiff does not have a current address, the last known address, however old or approximate, can be listed with "*(last known address)*" included in the caption. In addition, in third-party custody cases, if a parent is deceased, the clerk's office may require that the parent be listed as a defendant, with "*(deceased)*" included in the caption. If paternity is unknown, state that in the complaint.

[8] Some applications can be approved by the clerk at CIC.

[9] An IFP application can also be filed by either party at any time during the case. The order is prospective; filing fees already paid will not be refunded.

- At the time the complaint is filed, a case number will be assigned to the case (*e.g.*, 2019 DRB 1245). The case will be assigned to one of several "DR-II" calendars.[10] All proceedings in a case (initial hearing, status hearings, motions, trial) will be scheduled on the calendar to which the case is assigned, which means the case will be heard by one judge for as long as that judge remains in that assignment. Judges rotate periodically; DRB assignments are at least one to two years and usually longer.

- At the time the complaint is filed, the clerk will provide a summons for each defendant. The clerk will also provide a notice of initial hearing which indicates the judge to whom the case is assigned and the date, time and courtroom number for the initial hearing. The plaintiff will receive two copies of the initial hearing notice, one for the plaintiff and one to be included in the papers to be served on the defendant.

- A motion for temporary (*pendente lite*) custody can be filed together with the complaint or after the complaint has been filed. A motion titled as an emergency motion will be presented to the judge the same day who will decide what action to take.

Filing procedures generally

- All pleadings in Family Court cases are filed at or processed through the Family Court Central Intake Center, Room JM-520 (open from 8:30 a.m. to 5:00 p.m.). Courtview, the court's electronic database, includes the case docket, pleadings and orders. However, information about Domestic Relations Branch cases is <u>not</u> available on-line. Court files are kept in the Family Court Clerk's Office, Room JM-300.

- Beginning January 2019, Family Court case records will be paperless. Any documents filed in hard copy will be scanned and returned to the filer.

- Efiling through CaseFileXpress is mandatory in custody and divorce cases for parties with attorneys (except for case-initiating pleadings, which are filed at the Family Court Central Intake Center). Certain categories of litigants, such as pro se parties and attorneys at 501(c)(3) organizations, are not required to efile. If a party is an efiler, that party is to be eserved through CFX. Non-efilers must be served pursuant to the governing court rules.

- While efiled documents and orders are available electronically through CFX, efiling is <u>not</u> an on-line case file. Family Court dockets and case files are not available on-line

[10] There is also a "DR-I" calendar for more complex cases to which a party can request that a case be certified by the assigned judge.

Service of complaint

- D.C. Code §16-4602.5 and D.C. Code §16-914(b) address who must be given notice of a custody proceeding.

- Each defendant must be served with the summons, the complaint, and the notice of initial hearing. The plaintiff is responsible for effecting service.

- ***How to serve***: *see* SCR-Dom.Rel. 4. Service of a complaint can be effected by:

    - personal delivery (by any person over the age of 18 who is not a party to the action) to the defendant, or by leaving the summons and complaint at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then living there

    - certified mail, return receipt (signed by the defendant, or by a person of suitable age and discretion living at the individual's dwelling house or usual place of abode)

    - by first-class mail, postage prepaid, together with two copies of a notice and acknowledgment conforming substantially to the form maintained by the clerk's office, and a return envelope, postage prepaid, addressed to the sender.

    - SCR-Dom.Rel. 4(c)(3) authorizes the court to permit other forms of alternative service, including delivery to the person's place of employment, transmission by electronic means, posting on the court's website, or any other manner that the court deems just and reasonable, if the court determines that, after diligent effort, the plaintiff has been unable to accomplish service by SCR-Dom.Rel.4(c)(2) (one of the above methods).

- ***Time period for service***: *see* SCR-Dom.Rel. 4(i).

  Within 60 days of the filing of the complaint, proof of service must be filed. Prior to the expiration of the 60-day period, the plaintiff may move to extend time for service.

- ***Proof of service***: *See* SCR-Dom.Rel. 4(h). Written proof of service (affidavit) must be filed.

    - If personally served, the affidavit must be signed by the process server

    - If mailed, the affidavit should be signed by whoever did the mailing (usually the attorney or pro se party) with signed return receipt (green card) attached

- ***Long-arm jurisdiction (personal jurisdiction over and service on an individual outside of the District)***: D.C. Code §§ 13-423, -424; 13-431 *et seq*.

- ***What if the defendant cannot be found?*** Plaintiff can file a motion for service by alternate means (see above). SCR-Dom.Rel.4(c)(3) allows the court to authorize other forms of alternative service, including delivery to the person's place of employment, transmission by electronic means, posting on the court's website, or any other manner that the court deems just and reasonable if, after diligent effort, a plaintiff has been unable to accomplish service by other means authorized by Rule 4(c)(2).

  Plaintiff can also file a motion for service by publication or posting. D.C. Code §13-336 *et seq*. and SCR-Dom.Rel. 4(c)(4). The statute requires a showing, by affidavit, that (1) the defendant cannot be found and is either a non-resident or has been absent from the District for at least six months, or (2) the defendant cannot be found after diligent efforts or has by concealment sought to avoid service of process.

  The statute is not specific regarding what must be done to attempt to find the defendant, although case law has set forth some minimum efforts. See *Cruz v. Sarmiento*, 737 A.2d 1021 (D.C. 1999); *Bearstop v. Bearstop*, 377 A.2d 405 (D.C. 1977). The judge will usually want to see some "generic" efforts to locate the defendant (*e.g.*, checking last known addresses, telephone directories, criminal court case records, D.C. Jail, and a federal Bureau of Prisons on-line locator search) and also any case-specific efforts that can be made (*e.g.*, checking with known family members, and/or providing an explanation as to why you have no information that would allow you to make additional efforts). The form pro se motion for publication/posting and "absent parent worksheet" outlines some of these steps: http://www.dcbar.org/for-the-public/legal-resources/pro-se-pleadings.cfm.

  If the court authorizes publication, the plaintiff is responsible for making arrangements for publication. The newspaper will mail you an appropriate affidavit of service.

  Posting can be authorized if the plaintiff is unable to pay the cost of publishing without substantial hardship. D.C. Code §13-340. If an IFP application was previously granted, that can be referenced in the motion and is usually sufficient. Otherwise, the motion should address the financial hardship requirement. The notice will be posted in the Family Court Clerk's office, Room JM-300; the clerk's office will do this automatically but it is always prudent to confirm that the notice has actually been posted.

What happens after the defendant has been served?

- The defendant has 21 days from the date of service within which to file an answer or responsive pleading. Answers must be notarized or signed under penalty of perjury using the language set forth in SCR-Dom.Rel. 2(b)(5).

What if the defendant has been served and no answer is filed?

- The plaintiff can request the entry of a default. SCR-Dom. Rel. 55. The court has a form that combines the request for default with the required Servicemembers' Civil Relief Act affidavit, http://www.dcbar.org/for-the-public/legal-resources/pro-se-pleadings.cfm. The default can be entered by the clerk (without a hearing). The court can then proceed to make a final determination on the merits. Most judges will require a brief presentation of evidence.

  A defendant can move to set aside a default. SCR-Dom.Rel. 55.

Consents/Settlement

- A defendant can sign a consent/consent answer. Consent answers can be filed with the complaint or later.

- Pursuant to SCR-Dom.Rel. 2, a consent answer can be signed under penalty of perjury without a notarization.

- Regarding consents/settlements in third-party custody cases, see *S.M. v. R.M.*, 92 A.3d 1128 (D.C. 2014) (determining whether consent was revocable).

- If the parties reach a settlement, the court must accept the settlement and enter a consent order unless it finds by clear and convincing evidence that the settlement is not in the best interests of the child. D.C. Code §§ 16-914(h), 16-806.

- Mediation is available at any time without cost through the court's Multi-Door Dispute Resolution Division.

Initial hearings, status hearings/subsequent proceedings; pre-trial and trial

- At the initial hearing, the judge will start to familiarize her/himself with the case and set further hearings (status, motions, pre-trial/trial). The judge may also entertain oral motions for temporary relief.

- Two dates will usually be scheduled in connection with the court's Program for Agreement and Cooperation (PAC) in Contested Custody Cases program: the PAC seminar and mediation intake appointments. The seminar is a one-session large-group parent education class; there is also a class for children. See Administration Order 16-03, "Establishing the Program for Agreement and Cooperation," https://www.dccourts.gov/sites/default/files/2017-06/16-03-Establishing-PAC-Supersedes-07-06-March-14-2016.pdf.

- Parties may request or the court may order *sua sponte* a home study or brief focused assessment, and/or a custody evaluation (psychological or psychiatric evaluations of the parties

and or child(ren)). Court-ordered home studies/brief focused assessments can be performed by the court's Custody Assessment Unit; court-ordered custody evaluations can be done by the Assessment Center of the D.C. Department of Behavioral Health. There is no charge for these services but a court order is required.

A guardian *ad litem* for the child may also be appointed, upon request or *sua sponte*. D.C. Code §16-914(g), 16-918(b), SCR-Dom.Rel.101(e).

- If the case does not settle, a trial will ultimately be held.

- The legal standard in parent/parent cases is "best interests of the child." *See* D.C. Code §§16-911 and 914 for a non-exclusive list of relevant factors that must be considered by the court. For the standard in third-party custody cases, see §§ 16-831.06 – 831.08.

- §§16-911 and 914 provide that in custody cases between parents ("proceedings under this chapter"), there is a rebuttable presumption that joint custody is in the best interest of the child or children. When a judicial officer has found by a preponderance of the evidence that an intrafamily offense, child abuse, child neglect, or parental kidnapping (as defined) have taken place, there is a rebuttable presumption that joint custody is not in the best interests of the child. *See also* §§16-807 and 808 (third-party cases). If the court finds that an intrafamily offense has been committed, any determination that custody or visitation is to be granted to the abusive parent shall be supported by written findings. *See P.F. v. N.C.*, 953 A.2d 1107 (D.C. 2008).

- Discovery and trials are governed by the Domestic Relations court rules and are comparable in most respects to civil trials generally. The judge may schedule a pre-trial hearing and require the parties to submit a pre-trial statement.

- D.C. is a common law evidence jurisdiction, although there are several D.C. Code provisions and Superior Court rules relating to evidence issues. *See* Graae and Fitzpatrick, *Law of Evidence in the District of Columbia* (4th edition) (LexisNexis). In general, D.C. follows the federal rules of evidence.

Order

- The court must issue written findings of fact and conclusions of law. D.C. Code §16-911(6); SCR-Dom. Rel. 52.

Visitation

- Visitation arrangements and orders can range from "reasonable rights of visitation" to more explicit visitation plans (e.g. specific schedules, pick-up/drop-off arrangements, supervised visitation).

- Pursuant to D.C. Code § 16-914, if the court finds that an intrafamily offense has been committed, the court shall only award visitation if it finds that the child and custodial parent can be adequately protected from harm. *See Wilkins v. Ferguson*, 928 A.2d 655 (D.C. 2007).

- Visitation and child support are not conditional upon each other. *Mohler v. Mohler*, 302 A.2d 737 (D.C. 1973).

- The court operates a supervised visitation center that, upon order of the court, can be used for visits or as a pick-up/drop-off location.

Modification

- Although the term "permanent custody" is frequently used, all custody orders are subject to modification. The basic standard for modification is "substantial and material change in circumstances" and in the best interests of the child. D.C. Code § 16-914(f). However, regarding modification in third-party custody cases, see *S.M v. R.M.*, 92 A.3d 1128 (D.C. 2014).

- Note the service requirements for motions filed 60 days after final judgment. SCR-DR 4 and 5.

January 2020

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D.C. Custody Statutes and Rules

- D.C. Code §§ 16-901 – 16-925 (especially § 16-914) (parent/parent cases)

- D.C. Code §§16-831.01 – 16-831.13 (Safe and Stable Homes for Children and Youth Act – third-party custody statute)

- D.C. Code §§ 16-4601.01 – 16-4604.02 (Uniform Child Custody Jurisdiction and Enforcement Act)

- D.C. Superior Court Domestic Relations Rules can be accessed here: https://www.dccourts.gov/superior-court/rules.
  (Note that new rules were adopted effective November 2018.)

West's District of Columbia Code Annotated 2001 Edition
Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 9. Divorce, Annulment, Separation, Support, Etc. (Refs & Annos)

DC ST § **16-914**
Formerly cited as DC ST 1981 § 16-914

§ **16-914**. Custody of children.

Effective: June 19, 2013

Currentness

(a)(1)(A) In any proceeding between parents in which the custody of a child is raised as an issue, the best interest of the child shall be the primary consideration. The race, color, national origin, political affiliation, sex, sexual orientation, or gender identity or expression of a party, in and of itself, shall not be a conclusive consideration. The Court shall make a determination as to the legal custody and the physical custody of a child. A custody order may include:

(i) sole legal custody;

(ii) sole physical custody;

(iii) joint legal custody;

(iv) joint physical custody; or

(v) any other custody arrangement the Court may determine is in the best interest of the child.

(B) For the purposes of this paragraph, the term:

(i) "Legal custody" means legal responsibility for a child. The term "legal custody" includes the right to make decisions regarding that child's health, education, and general welfare, the right to access the child's educational, medical, psychological, dental, or other records, and the right to speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

(ii) "Physical custody" means a child's living arrangements. The term "physical custody" includes a child's residency or visitation schedule.

(2) Unless the court determines that it is not in the best interest of the child, the court may issue an order that provides for frequent and continuing contact between each parent and the minor child or children and for the sharing of responsibilities of child-rearing and encouraging the love, affection, and contact between the minor child or children and the parents

regardless of marital status. There shall be a rebuttable presumption that joint custody is in the best interest of the child or children, except in instances where a judicial officer has found by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred. There shall be a rebuttable presumption that joint custody is not in the best interest of the child or children if a judicial officer finds by a preponderance of the evidence that an intrafamily offense as defined in § 16-1001(8), an instance of child abuse as defined in section 102 of the Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.02), an instance of child neglect as defined in section 2 of the Child Abuse and Neglect Prevention Children's Trust Fund Act of 1993, effective October 5, 1993 (D.C. Law 10-56; D.C. Official Code § 4-1341.01), or where parental kidnapping as defined in D.C. Official Code section 16-1021 through section 16-1026 has occurred.

(3) In determining the care and custody of a child, the best interest of the child shall be the primary consideration. To determine the best interest of the child, the court shall consider all relevant factors, including, but not limited to:

(A) the wishes of the child as to his or her custodian, where practicable;

(B) the wishes of the child's parent or parents as to the child's custody;

(C) the interaction and interrelationship of the child with his or her parent or parents, his or her siblings, and any other person who may emotionally or psychologically affect the child's best interest;

(D) the child's adjustment to his or her home, school, and community;

(E) the mental and physical health of all individuals involved;

(F) evidence of an intrafamily offense as defined in section 16-1001(5);

(G) the capacity of the parents to communicate and reach shared decisions affecting the child's welfare;

(H) the willingness of the parents to share custody;

(I) the prior involvement of each parent in the child's life;

(J) the potential disruption of the child's social and school life;

(K) the geographic proximity of the parental homes as this relates to the practical considerations of the child's residential schedule;

(L) the demands of parental employment;

(M) the age and number of children;

(N) the sincerity of each parent's request;

(O) the parent's ability to financially support a joint custody arrangement;

(P) the impact on Temporary Assistance for Needy Families, or Program on Work, Employment, and Responsibilities, and medical assistance; and

(Q) the benefit to the parents.

(a-1) For the purposes of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

(a-2) Repealed.

(a-3)(1) A minor parent, or the parent, guardian, or other legal representative of a minor parent on the minor parent's behalf, may initiate a custody proceeding under this chapter.

(2) For the purposes of this subsection, the term "minor" means a person under 18 years of age.

(b) Notice of a custody proceeding shall be given to the child's parents, guardian, or other custodian. The court, upon a showing of good cause, may permit intervention by any interested party.

(c) In any custody proceeding under this chapter, the Court may order each parent to submit a detailed parenting plan which shall delineate each parent's position with respect to the scheduling and allocation of rights and responsibilities that will best serve the interest of the minor child or children. The parenting plan may include, but shall not be limited to, provisions for:

(1) the residence of the child or children;

(2) the financial support based on the needs of the child and the actual resources of the parent;

(3) visitation;

(4) holidays, birthdays, and vacation visitation;

(5) transportation of the child between the residences;

(6) education;

(7) religious training, if any;

(8) access to the child's educational, medical, psychiatric, and dental treatment records;

(9) except in emergencies, the responsibility for medical, psychiatric, and dental treatment decisions;

(10) communication between the child and the parents; and

(11) the resolution of conflict, such as a recognized family counseling or mediation service, before application to the Court to resolve a conflict.

(d) In making its custody determination, the Court:

(1) shall consider the parenting plans submitted by the parents in evaluating the factors set forth in subsection (a)(3) of this section in fashioning a custody order;

(2) shall designate the parent(s) who will make the major decisions concerning the health, safety, and welfare of the child that need immediate attention; and

(3) may order either or both parents to attend parenting classes.

(e) Joint custody shall not eliminate the responsibility for child support in accordance with the applicable child support guideline as set forth in section 16-916.01.

(f)(1) An award of custody may be modified or terminated upon the motion of one or both parents, or on the Court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interest of the child.

(2) When a motion to modify custody is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(3) The provisions of this chapter shall apply to motions to modify or terminate any award of custody filed after April 18, 1996.

(g) The Court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney, or both, to represent the minor child's interests.

(h) The Court shall enter an order for any custody arrangement that is agreed to by both parents unless clear and convincing evidence indicates that the arrangement is not in the best interest of the minor child.

(i) An objection by one parent to any custody arrangement shall not be the sole basis for refusing the entry of an order that the Court determines is in the best interest of the minor child.

(j) The Court shall place on the record the specific factors and findings which justify any custody arrangement not agreed to by both parents.

(k) Notwithstanding any other provision of this section, no person shall be granted legal custody or physical custody of, or visitation with, a child if the person has been convicted of first degree sexual abuse, second degree sexual abuse, or child sexual abuse, and the child was conceived as a result of that violation. Nothing in this subsection shall be construed as abrogating or limiting the responsibility of a person described herein to pay child support.

Credits

(Dec. 23, 1963, 77 Stat. 562, Pub. L. 88-241, § 1; Oct. 1, 1976, D.C. Law 1-87, § 17, 23 DCR 2544; Apr. 7, 1977, D.C. Law 1-107, title I, § 109, 23 DCR 8737; Aug. 25, 1994, D.C. Law 10-154, § 2(b), 41 DCR 4870; Apr. 18, 1996, D.C. Law 11-112, § 2(b), 43 DCR 574; Apr. 20, 1999, D.C. Law 12-241, § 11, 46 DCR 905; Apr. 12, 2000, D.C. Law 13-91, § 142(b), 47 DCR 520; Oct. 19, 2002, D.C. Law 14-207, § 2(i), 49 DCR 7827; June 25, 2008, D.C. Law 17-177, § 10(b), 55 DCR 3696; Mar. 25, 2009, D.C. Law 17-368, § 3(a), 56 DCR 1338; June 19, 2013, D.C. Law 19-320, § 509, 60 DCR 3390.)

Current through January 11, 2019

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Division II. Judiciary and Judicial Procedure
Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
Chapter 8A. Third-Party Custody.

DC ST § 16-831.01

§ 16-831.01. Definitions.

Effective: March 25, 2009

Currentness

For the purposes of this chapter, the term:

(1) "De facto parent" means an individual:

(A) Who:

(i) Lived with the child in the same household at the time of the child's birth or adoption by the child's parent;

(ii) Has taken on full and permanent responsibilities as the child's parent; and

(iii) Has held himself or herself out as the child's parent with the agreement of the child's parent or, if there are 2 parents, both parents; or

(B) Who:

(i) Has lived with the child in the same household for at least 10 of the 12 months immediately preceding the filing of the complaint or motion for custody;

(ii) Has formed a strong emotional bond with the child with the encouragement and intent of the child's parent that a parent-child relationship form between the child and the third party;

(iii) Has taken on full and permanent responsibilities as the child's parent; and

(iv) Has held himself or herself out as the child's parent with the agreement of the child's parent, or if there are 2 parents, both parents.

(2) "Intrafamily offense" shall have the same meaning as provided in § 16-1001(8).

(3) “Legal custody” means legal responsibility for a child, including the right to:

(A) Make decisions regarding the child’s health, education, and general welfare;

(B) Access the child’s educational, medical, psychological, dental, or other records; and

(C) Speak with and obtain information regarding the child from school officials, health care providers, counselors, or other persons interacting with the child.

(4) “Physical custody” means a child’s living arrangements. The term “physical custody” includes a child’s residency or visitation schedule.

(5) “Third party” means a person other than the child’s parent or de facto parent.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(b), 56 DCR 1117; Mar. 25, 2009, D.C. Law 17-368, § 4(f), 56 DCR 1338.)

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Chapter 8A. Third-Party Custody.

DC ST § 16-831.02

§ 16-831.02. Action for custody of child by a third party.

Effective: March 25, 2009

Currentness

(a)(1) A third party may file a complaint for custody of a child or a motion to intervene in any existing action involving custody of the child under any of the following circumstances:

(A) The parent who is or has been the primary caretaker of the child within the past 3 years consents to the complaint or motion for custody by the third party;

(B) The third party has:

(i) Lived in the same household as the child for at least 4 of the 6 months immediately preceding the filing of the complaint or motion for custody, or, if the child is under the age of 6 months, for at least half of the child's life; and

(ii) Primarily assumed the duties and obligations for which a parent is legally responsible, including providing the child with food, clothing, shelter, education, financial support, and other care to meet the child's needs; or

(C) The third party is living with the child and some exceptional circumstance exists such that relief under this chapter is necessary to prevent harm to the child; provided, that the complaint or motion shall specify in detail why the relief is necessary to prevent harm to the child.

(2) A third party who is employed by the child's parent to provide child care duties for that child may not file, under this chapter, a complaint for custody of that child or intervene in any existing action under this chapter involving custody of that child.

(b)(1) At any time after the filing of a third-party complaint for custody or a motion to intervene, a parent may move to dismiss an action filed by a third party on the grounds that the third party has committed an intrafamily offense against the child, the child's parent, or any other member of the child's family, or that the third party does not meet the characteristics set forth in subsection (a) of this section.

(2) The court shall dismiss the action within 30 days of receiving proof that a court of competent jurisdiction has found

that the third party has committed an intrafamily offense against the child, the child's parent, or any other member of the child's family.

(3) Whenever the parent alleges that the plaintiff has committed an intrafamily offense against the child, the child's parent, or any other member of the child's family, but no previous adjudication has been issued, the court shall schedule a hearing on the motion to dismiss within 30 days of receiving the allegation.

(c)(1) The court may decide a third-party complaint or motion to intervene filed under this chapter notwithstanding any other matters pending before the court involving the child, except that any complaint or motion filed under this chapter involving a child who is the subject of a pending action brought under Chapter 23 of Title 16 shall be consolidated with that pending action for resolution by the judicial officer there presiding.

(2) In a proceeding under this chapter consolidated with a neglect or termination of parental rights proceeding under Chapter 23 of Title 16, the parent of the child is entitled to be represented by counsel at all critical stages of the proceeding, and, if financially unable to obtain adequate representation, to have counsel appointed in accordance with § 16-2304(b) and the rules established by the Superior Court of the District of Columbia.

(3) The court, in its discretion, may appoint counsel for the third party.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(c), 56 DCR 1117.)

Notes of Decisions (4)

Current through January 11, 2019

End of Document

DC ST § 16-831.03

§ 16-831.03. Action for custody of a child by a de facto parent.

Effective: March 25, 2009

Currentness

(a) A de facto parent may file a complaint for custody of a child or a motion to intervene in any existing action involving custody of the child.

(b) An individual who establishes that he or she is a de facto parent by clear and convincing evidence shall be deemed a parent for the purposes of §§ 16-911, 16-914, 16-914.01, and 16-916, and for the purposes of this chapter if a third party is seeking custody of the child of the de facto parent.

(c)(1) All proceedings involving a parent and a de facto parent, including an action for child support, shall be governed by §§ 16-911, 16-914, 16-914.01, and 16-916.

(2) A custody proceeding involving a third party and a de facto parent shall be governed by the provisions of this chapter.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(d), 56 DCR 1117.)

Notes of Decisions (1)

Current through January 11, 2019

End of Document

DC ST § 16-831.04

§ 16-831.04. Third-party custody orders.

Effective: March 25, 2009

Currentness

(a) A custody order entered under this chapter may include any of the following:

(1) Sole legal custody to the third party;

(2) Sole physical custody to the third party;

(3) Joint legal custody between the third party and a parent;

(4) Joint physical custody between the third party and a parent; or

(5) Any other custody arrangement the court determines is in the best interests of the child.

(b) An order granting relief under this chapter shall be in writing and shall recite the findings upon which the order is based.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(e), 56 DCR 1117.)

Notes of Decisions (1)

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Chapter 8A. Third-Party Custody.

DC ST § 16-831.05

§ 16-831.05. Parental presumption.

Effective: March 25, 2009

Currentness

(a) Except when a parent consents to the relief sought by the third party, there is a rebuttable presumption in all proceedings under this chapter that custody with the parent is in the child's best interests.

(b) If the court grants custody of the child to a third party over parental objection, the court order shall include written findings of fact supporting the rebuttal of the parental presumption.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(f), 56 DCR 1117.)

Notes of Decisions (3)

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Chapter 8A. Third-Party Custody.

DC ST § 16-831.06

§ 16-831.06. Award of custody to third party.

Effective: March 25, 2009

Currentness

(a) The court shall award custody of the child to the third party upon determining:

(1) The presumption in favor of parental custody has been rebutted; and

(2) Custody with the third party is in the child's best interests.

(b) The third party seeking custody shall bear the burden of rebutting the parental presumption by clear and convincing evidence.

(c) In any proceeding under this chapter, the court may appoint counsel for the parent of the child should the court deem it appropriate in the interest of justice. The court also may appoint a guardian ad litem for the child and counsel for the third party.

(d)(1) Notwithstanding any other provision of this chapter, the court shall enter an order for any custody arrangement that is agreed to by the parents and the proposed custodian or custodians, including custody based on revocable parental consent, unless clear and convincing evidence indicates that the arrangement is not in the best interests of the child.

(2) If one parent agrees and the other parent does not timely object after having been properly served with process and the proposed arrangement, the arrangement shall be deemed to be agreed to by the parents.

(3) In any proceeding to assess a proposed arrangement under this subsection, the proposed custodian or custodians shall be full parties.

(e) If custody is awarded under this chapter to a third party, the court shall issue an order that provides for frequent and continuing contact between the parents and the child and encouraging love, affection, and contact between the child and the parents, unless the court determines that such an order is not in the best interest of the child.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(g), 56 DCR 1117.)

Notes of Decisions (2)

Current through January 11, 2019

DC ST § 16-831.07

§ 16-831.07. Findings necessary to rebut the parental presumption by clear and convincing evidence.

Effective: March 25, 2009

Currentness

(a) To determine that the presumption favoring parental custody has been rebutted, the court must find, by clear and convincing evidence, one or more of the following factors:

(1) That the parents have abandoned the child or are unwilling or unable to care for the child;

(2) That custody with a parent is or would be detrimental to the physical or emotional well-being of the child; or

(3) That exceptional circumstances, detailed in writing by the court, support rebuttal of the presumption favoring parental custody.

(b) The court shall not consider a parent's lack of financial means in determining whether the presumption favoring parental custody has been rebutted.

(c) The court shall not use the fact that a parent has been the victim of an intrafamily offense against the parent in determining whether the presumption favoring parental custody has been rebutted.

(d) If the court concludes that the parental presumption has not been rebutted by clear and convincing evidence, the court shall dismiss the third-party complaint and enter any appropriate judgment in favor of the parent. The court shall only address the factors set forth in § 16-831.08 once the presumption favoring parental custody has been rebutted.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(h), 56 DCR 1117.)

Notes of Decisions (4)

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Division II. Judiciary and Judicial Procedure
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Chapter 8A. Third-Party Custody.

DC ST § 16-831.08

§ 16-831.08. Factors to consider in determining best interests of child.

Effective: March 25, 2009

Currentness

(a) In determining whether custody with a third party, pursuant to this chapter, is in the child's best interests, the court shall consider all relevant factors, including:

(1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;

(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the third-party complainant or movant; and

(4) To the extent feasible, the child's opinion of his or her own best interests in the matter.

(b) There shall be a rebuttable presumption that granting custody to a third party who has committed an intrafamily offense is not in the best interest of the child.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(i), 56 DCR 1117.)

Notes of Decisions (2)

DC CODE § 16-831.08
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Chapter 8A. Third-Party Custody.

DC ST § 16-831.09

§ 16-831.09. Pendente lite relief.

Effective: March 25, 2009

Currentness

(a)(1) During the pendency of any proceeding under this chapter, the court may determine, in accordance with the provisions of this chapter, the custody of the child pending final determination of that issue.

(2) The pendente lite hearing shall be held no later than 30 days after a party requests a pendente lite custody determination by the court.

(3) The court may enter any appropriate pendente lite relief pursuant to the provisions of this chapter.

(4) Except when all parties consent to the pendente lite order, the court shall issue written findings.

(b)(1) Unless the parties agree otherwise, any pendente lite order shall include a date certain for trial on the complaint or motion, not to exceed 120 days from issuance of the pendente lite order.

(2) Extensions of the trial date will not be routinely granted. Only upon motion of a party or on the court's own motion and a showing of good cause may the trial date be extended. Any order extending the trial date shall be accompanied by written findings.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(j), 56 DCR 1117.)

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DC ST § 16-831.10

§ 16-831.10. Effect of a third-party custody order.

Effective: March 25, 2009

Currentness

An order awarding physical or legal custody of a child to a third party shall not terminate the parent and child relationship, including:

(1) The right of the child to inherit from his or her parent;

(2) The parent's right to visit or contact the child, except as limited by court order;

(3) The parent's right to consent to the child's adoption;

(4) The parent's right to determine the child's religious affiliation; and

(5) The parent's responsibility to provide financial, medical, and other support for the child.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(k), 56 DCR 1117.)

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Chapter 8A. Third-Party Custody.

DC ST § 16-831.11

§ 16-831.11. Modification or termination of orders.

Effective: March 25, 2009

Currentness

(a) An award of custody to a third party under this chapter may be modified or terminated upon the motion of any party, or on the court's own motion, upon a determination that there has been a substantial and material change in circumstances and that the modification or termination is in the best interests of the child.

(b) When a motion to modify an award of custody to a third party under this chapter is filed, the burden of proof is on the party seeking a change, and the standard of proof shall be by a preponderance of the evidence.

(c) Any award of custody based on revocable parental consent entered pursuant to the agreement of all parties under § 16-831.06(d) shall be immediately vacated and of no further effect upon the filing of a revocation by the consenting parent or the third party.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(l), 56 DCR 1117.)

Notes of Decisions (2)

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Chapter 8A. Third-Party Custody.

DC ST § 16-831.12

§ 16-831.12. Jurisdiction.

Effective: March 25, 2009

Currentness

The court shall retain jurisdiction to enforce, modify, or terminate a custody order issued under this chapter, subject to the provisions of Chapter 46 of this title, until the child reaches 18 years of age.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(m), 56 DCR 1117.)

Current through January 11, 2019

End of Document

DC ST § 16-831.13

§ 16-831.13. Other actions for custody not abolished, diminished, or preempted.

Effective: March 25, 2009

Currentness

Nothing in this chapter shall be construed to limit the ability of any person to seek custody of a child under any other statutory, common law, or equitable cause of action or to preempt any authority of the court to hear and adjudicate custody claims under the court's common law or equitable jurisdiction.

Credits

(Sept. 20, 2007, D.C. Law 17-21, § 2(b), 54 DCR 6835; Mar. 25, 2009, D.C. Law 17-353, § 217(n), 56 DCR 1117.)

Current through January 11, 2019

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Custody Case Overview

September 2019

Case Initiation

- **File Custody Complaint** (must be signed under penalty of perjury) at Center Intake Center, with $80 filing fee (or submit IFP application with complaint).
    - **File Consent Answer(s)** (signed by birth parent(s) under penalty of perjury) (with complaint (or if and when consents are secured later).
- At the time of filing, the case will be assigned to a Domestic Relations (DR) judge and an **initial status hearing date** will be set.

↓

Service of Complaint - SCR-Dom. Rel. 4(c)

- Each defendant must be served with a **complaint** together with a **summons** and a **notice of initial hearing** (issued by clerk at the time of filing).
- **The plaintiff is responsible for effecting service within 60 days** (may be extended on motion).
- **Proof of service (affidavit of service)** must be filed with the Court.

↓

At the **initial hearing**, the court will schedule the parties to attend the Program for Agreement and Cooperation in Custody cases (PAC) and mediation intake.

↓

What Happens After the Defendant Has Been Served?

- Defendant(s) has 21 days from the date served to file an answer (signed under penalty of perjury).
- **If no answer is filed**, plaintiff files for the entry of a default (SCR-Dom.Rel. 55); then a final default custody hearing will be held (typically a brief evidentiary hearing).

↓

What if the Defendant Cannot Be Found?

- Plaintiff files a motion for service by alternative means or service by publication/posting (D.C. Code §13-336 et seq., SCR-Dom.Rel. 4).
- Once motion for is granted, notice is served as authorized and no responsive pleading is filed, plaintiff may file for default. (SCR-Dom.Rel.55).

↓

Settlement or Contested Trial

- Court must accept a settlement and enter a consent order for custody (unless, by clear and convincing evidence, not in child's best interest) (D.C. Code §§ 16-831.06(d)(1), 16-914(h)).
- Discovery is available (SCR-Dom.Rel. 26-37); home studies and psychological evaluations can be ordered.
- If case doesn't settle, trial.
    - Final order (written findings of fact, conclusions of law and order (SCR-Dom.Rel. 52).

↓

Modification

- Motion to modify
- Legal standard: substantial and material change in circumstances and in the best interests of the child (D.C. Code §§ 16-831.11(a), 16-914(f)(1); but see *S.M. v. R.M.*, 92 A.3d 1128 (D.C. 2014) (revocable consent in third-party custody cases).

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 14-23

Revised Case Management Plan for the Domestic Relations Branch

WHEREAS, the 2013-2017 Strategic Plan of the District of Columbia Courts, *Open to All, Trusted by All, Justice for All,* seeks to promote timely case resolution by implementing performance standards, case management plans, and other best practices; and

WHEREAS, performance standards for all Superior Court operating divisions were adopted in 2009 and revised in 2012; and

WHEREAS, a case management plan serves as a management tool to promote achievement of performance standards; and

WHEREAS, a case management plan details the actions that a court takes to monitor and control the progress of a case, from initiation through final disposition, to ensure prompt resolution consistent with the individual circumstances of the case; and

WHEREAS, consistent with the mission of the Family Court, as set forth in the Family Court Transition Plan submitted to the President and Congress on April 5, 2002, the Domestic Relations Branch Subcommittee of the Family Court Implementation Committee established goals to guide the implementation of a comprehensive case management plan for the Domestic Relations Branch; and

WHEREAS, Administrative Order 08-03, issued on March 21, 2008, established a comprehensive case management plan for the Domestic Relations Branch; and

WHEREAS, the Domestic Relations Branch Subcommittee has met with Family Court stakeholders – including representatives from the Legal Aid Society of the District of Columbia, the Family Law bar, the Family Law Section Steering Committee, the D.C. Bar Pro Bono Program, the Neighborhood Legal Services Program, Bread for the City, the Children's Law Center, the D.C. Volunteers Lawyers Project and the academic community – and their input, knowledge and expertise was sought and included in the development of a revised case management plan; and

WHEREAS, a revised case management plan for the Domestic Relations Branch will promote the mission and goals of the Family Court as well as the fair and efficient administration of justice;

NOW, THEREFORE, it is, by the Court,

ORDERED, that the revised case management plan for the Domestic Relations Branch, which is attached hereto, is effective January 1, 2015; and it is further

ORDERED, that this order shall remain in effect until further order of the Court.

SO ORDERED.

DATE: December 31, 2014

/s/
Lee F. Satterfield
Chief Judge

Copies to:

All Judges
Executive Officer
Clerk of the Court
Division Directors
Librarian

Domestic Relations Branch
Revised Case Management Plan
(Effective January 1, 2015)

HISTORY

"The Mission of the Family Court of the Superior Court of the District of Columbia is to protect and support children brought before it, strengthen families in trouble, provide permanency for children and decide disputes involving families fairly and expeditiously while treating all parties with dignity and respect." Family Court Transition Plan, Vol. 1, page 7 (April 5, 2002). Consistent with the mission and goals set forth in the Family Court Transition Plan, the Family Court adopts the following goals to implement a comprehensive case management and scheduling plan for domestic relations matters:

GOALS

- To provide prompt and efficient resolution of cases and to minimize the number of trips to court required for resolution.
- To provide prompt access to justice by providing for earlier initial hearings, pre-hearing information gathering, substantive initial hearings (with appropriate notice) and access to facilitation services at the time of initial hearings.
- To maximize court resources and better serve the public by creating uniformity and predictable schedules, when feasible, and resolving cases fairly and efficiently.
- To provide centralization of domestic relations case scheduling in one location and with uniform scheduling parameters and requirements (consistent with the Family Court implementation plan of centralized intake).

- To promote earlier use of alternative dispute resolution (ADR) in appropriate cases involving children and families to resolve disputes in a non-adversarial manner and with the most effective means.
- To obtain and maintain manageable caseloads with resolution within nationally accepted time frames/standards with a goal to permit judicial officers adequate time to devote to each child and/or family.

METHODS

To accomplish these goals, the Family Court Central Intake Center (CIC), the Domestic Relations Branch (DRB) and the Family Court judges work hand-in-hand to facilitate a fair, efficient, seamless system to provide services to the court's customers.

PERFORMANCE MEASURES

In 2012, the Superior Court of the District of Columbia adopted performance standards for resolving cases fairly and timely.[1] The standards reflect an adaptation of national best practices to the caseloads and circumstances unique to the Superior Court. In domestic relations cases, the court is guided by the following performance measures:

(a) Ninety-five percent (95%) of uncontested custody and uncontested divorce cases should be disposed within 60 days of filing.

(b) Ninety-eight percent (98%) of contested custody and divorce cases on the Domestic Relations I (DR-I) calendar[2] should be disposed within 365 days of filing.

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[1] *See* Administrative Order 12-04 (March 23, 2012).

[2] Pursuant to Super. Ct. Dom. Rel. R. 40(c), it is the presiding judge's responsibility to designate cases to the DR-I calendar. The factors considered in the determination are "the estimated length of trial, the number of witnesses

(c) Ninety-eight percent (98%) of contested custody and divorce cases on the Domestic Relations II (DR-II) calendar[3] should be disposed within 270 days of filing.

(d) Ninety-five percent (95%) of contested custody and divorce cases should be heard within two trial settings.

CASE INITIATION

The Central Intake Center (CIC) is the depository for all Family Court filings. Upon accepting filings for divorce, custody, and visitation/access, the deputy clerks in CIC will issue a notice of hearing, and the cases will be set within 60 days or less for initial hearing from the date of filing. However, cases involving child support will be set within 45 days or less, as required by statute. If the case involves both child support and other issues, then the support hearing date will serve as the initial hearing date as well. The judges will have set times and dates for the CIC to select and schedule initial hearings. The CIC will also issue an initiation packet that includes a brochure for the Family Court Self-Help Center and information on where to access other legal resources.

UNCONTESTED MATTERS

At the time of filing an uncontested divorce or uncontested custody case -- which includes a complaint for absolute divorce or custody, a consent answer or answers, and/or an uncontested praecipe -- the matter will be assigned to the uncontested judicial officer by the deputy clerks in CIC. In collaboration with the DRB clerk's office and judicial staff, these matters will be scheduled within 30 to 45 days of filing. Pursuant to the Family Court's performance measures, written findings of

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who may appear and the exhibits that may be introduced, the nature of the factual and legal issues involved, the extent to which discovery may require supervision by the Court, the number of motions that may be filed and any other relevant factor appropriate for the orderly administration of justice."

[3] DR-II cases make up the vast majority of all domestic relations cases.

fact and conclusions of law will be entered within 60 days of filing. If an uncontested praecipe and/or consent answer are received after initial filing, the case will remain on the originally assigned calendar, but will be scheduled for hearing by the assigned judicial officer within 30 days from the filing of the uncontested praecipe. If a matter becomes uncontested at the time of the initial hearing, then the assigned judicial officer shall hear the matter on that date.

CONTESTED MATTERS

Initial Hearing: At the initial hearing, the judge shall issue a scheduling order which will provide dates for, among other things, discovery deadlines, motions, pretrial statements, and a pretrial conference. The judge shall also schedule the dates the parties will attend the Program for Agreement and Cooperation (PAC) Seminar and the mediation intake date. The judge may issue a separate order setting forth the procedure and requirements for the pretrial hearing as well as the required content of the pretrial statement. The following guidelines shall be used when issuing a scheduling order, although a judge may determine that a different timetable is more appropriate:

- The *pendente lite* (temporary) hearing should list the issues to be tried and should be held within six weeks of the initial hearing.
- Discovery deadlines should be set for custody, child support, and divorces from 45 to 120 days after the initial hearing, depending on the complexity of the case.
- A deadline for naming experts should be set at least 45 days prior to close of discovery.
- A deadline for completing mediation or ADR should be set no later than two weeks before the pretrial hearing.
- A deadline for discovery motions should be set no later than two weeks before the pretrial hearing.

- A date for filing of a pretrial statement should be set at least one week before the pretrial hearing.
- The pretrial hearing should be set within two to four weeks after the discovery deadline and two weeks before trial.
- The trial should be set within six to nine months after a custody case is filed, but not less than 210 days from that date. To the extent possible, every effort should be made to hear trials on consecutive days.

Multi-Door Dispute Resolution Division/ADR: At the conclusion of the initial hearing, all litigants will be mandated to participate in mediation at the Multi-Door Dispute Resolution Division[4] or ADR.[5]

Attorney Negotiator Program: At the initial hearing, the parties are encouraged to meet with an attorney negotiator. The attorney negotiator is responsible for meeting with all parties and attempting to resolve any issues on which the parties can agree. The attorney negotiator may provide the parties with legal information, but not advice, and can also explain the court process.

Program for Agreement and Cooperation (PAC) Seminar: Parties in contested custody cases will be required to attend a PAC Seminar. The PAC Seminar is designed to help parties co-parent, improve communication, and understand the impact that conflict has on children. The judge may

[4] Where there has been previous domestic violence between the parties, the Multi-Door Dispute Resolution Division may determine mediation is not appropriate.
[5] Parties who have *in forma pauperis* status, or who otherwise qualify as low-income, may not be mandated to participate in paid ADR sessions.

consider the unexcused failure of a party to attend and complete the PAC program when making a final custody determination.

Status Hearings: Judicial officers should avoid automatically scheduling status hearings, but may schedule such hearings as they deem necessary.

Bifurcated divorces: A judge may grant a request to bifurcate a divorce case and resolve the issue of child custody prior to considering contested financial matters. In bifurcated divorce cases, when necessary, the following deadlines may be established:

- The discovery deadline for financial issues will be 45 days after the custody trial.
- The date for naming financial experts for the plaintiff will be three weeks after the custody trial; for the defendant it will be four weeks after custody trial.
- The date for filing a pretrial statement regarding financial issues will be one week before the pretrial hearing.
- The deadline for completing ADR will be two to three weeks after discovery closes and two weeks before trial.
- The trial on financial issues should be held not more than 12 months after case is filed.

MOTIONS SCHEDULING

Upon filing, motions are forwarded to the DRB clerk's office and then submitted to chambers for a ruling or scheduling of a hearing date. When a judge makes a determination on the record regarding a scheduling or consent issue – including, but not limited to, orders appointing *guardians ad litem*,

and orders for mental health evaluations and/or home studies – that order shall be reduced to writing within five business days and mailed to the parties.

For pre-judgment motions, if a motion is not ruled on within 60 days of filing of proof of service on the parties, the DRB clerk's office shall set a date for a hearing on the motion regardless of whether or not a hearing has previously been held. Parties shall be given at least 14 days notice of the hearing. If the motion is ruled on in the interim, the hearing shall be vacated.

Post-judgment motions to modify support will be set for hearing within 45 days, as required by statute. CIC will coordinate selection of a date with chambers in accordance with the calendar judge's schedule. Other post-judgment motions, if not already set by chambers, shall be set for hearing by the DRB clerk's office within 60 days of filing of proof of service on the parties.

EMERGENCY HEARINGS

The following may be considered "emergencies" requiring an *ex parte* hearing: a child in imminent danger, a child who has been kidnapped, a complete denial of access to a child, and other extraordinary situations that the court deems appropriate. Emergency motions will be handled according to the following protocol:

1. Party or attorney advises the deputy clerk at the CIC that he or she is filing an "emergency" pleading and is requesting an emergency hearing.
2. CIC first will contact the chambers of the judge assigned to the case and will advise the chambers' staff of the filing. If the assigned judge is unavailable, CIC will contact the

chamber's staff of the DRB daily emergency judge. Any request for an emergency hearing must be e-filed or submitted to CIC on or before 4:00 p.m. EST.

3. If the judge determines an emergency hearing is required, the chambers' staff will advise the party (or counsel) of the scheduling of the hearing. Unless it would be inconsistent with Super. Ct. Dom. Rel. R. 65(b), the chambers' staff will attempt to call the opposing party (or counsel) to advise him or her of the filing and the time and place of the hearing. Failure to reach the opposing party by phone will not prevent the judge from ruling. In the event that the judge holds an emergency hearing and enters an order granting relief, the judge's order will include the following: (a) a date for a follow-up hearing within ten business days of the order; (b) a date certain by which the adverse party must be served with the motion and the order(s) (if granted *ex parte*); and (c) a statement that failure to appear at the further hearing date or to serve the opposing party may result in termination of the order and dismissal of the case.
4. If the judge determines that an emergency hearing is not required, the judge will issue an order. If appropriate the judge may set an expedited hearing within two weeks. In the event that the judge determines that a hearing should be held on an expedited basis, the judge may enter an order and set the matter to be heard, requiring the presence of the adverse party at said hearing if served with the order; this order may include language that if the adverse party, once served, fails to appear, a decision may be made in their absence.

CONTINUANCES: Continuances are governed by D.C. Fam. Ct. R. G. The judicial officers will make every effort to limit the granting of continuances, especially when it may negatively impact the children involved. Pursuant to the Family Court's performance measures relating to trial date certainty, judicial officers will strive to hear all matters within two trial date settings.

HANDBOOK FOR SELF-REPRESENTED LITIGANTS: In 2014, the Domestic Relations Subcommittee prepared a handbook to assist people who represent themselves in divorce, custody, and child support cases. The handbook is available on the court's website at: www.dccourts.gov/internet/documents/DR-Handbook-for-Self-Represented-Parties.pdf. The handbook provides a great deal of information about domestic relations law and procedures, including filing, service of process, preparation for court, and many other useful topics. It also contains information about other legal resources available to parties in such cases, including the Family Court Self-Help Center, a free, walk-in clinic located in the courthouse that provides assistance to self-represented parties in their family law cases.

RECOURSE FOR FAILURE TO FOLLOW THE COMPREHENSIVE CASE MANAGEMENT AND SCHEDULING PLAN: Litigants whose cases are beyond the timeframes set forth in this document may file a praecipe requesting that judicial action be taken. Said praecipes will aid in alerting both the judicial officer and the clerk's office of the deficiency and will expedite the processing of such cases. A sample praecipe is attached.

Sample Praecipe Requesting Judicial Action

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
FAMILY COURT
DOMESTIC RELATIONS BRANCH

_____	:	
Plaintiff,	:	Jacket No. _____
v.	:	Judge _____
_____	:	
Defendant.	:	

REQUEST FOR JUDICIAL ACTION

Plaintiff/Defendant, _____, hereby requests that judicial action be taken on the above-captioned case and in support states:

1. This request for judicial action is made pursuant to the Case Management Plan for the Domestic Relations Branch, Administrative Order 14-23 (Dec. 31, 2014).
2. _____

_____

_____

Respectfully submitted,

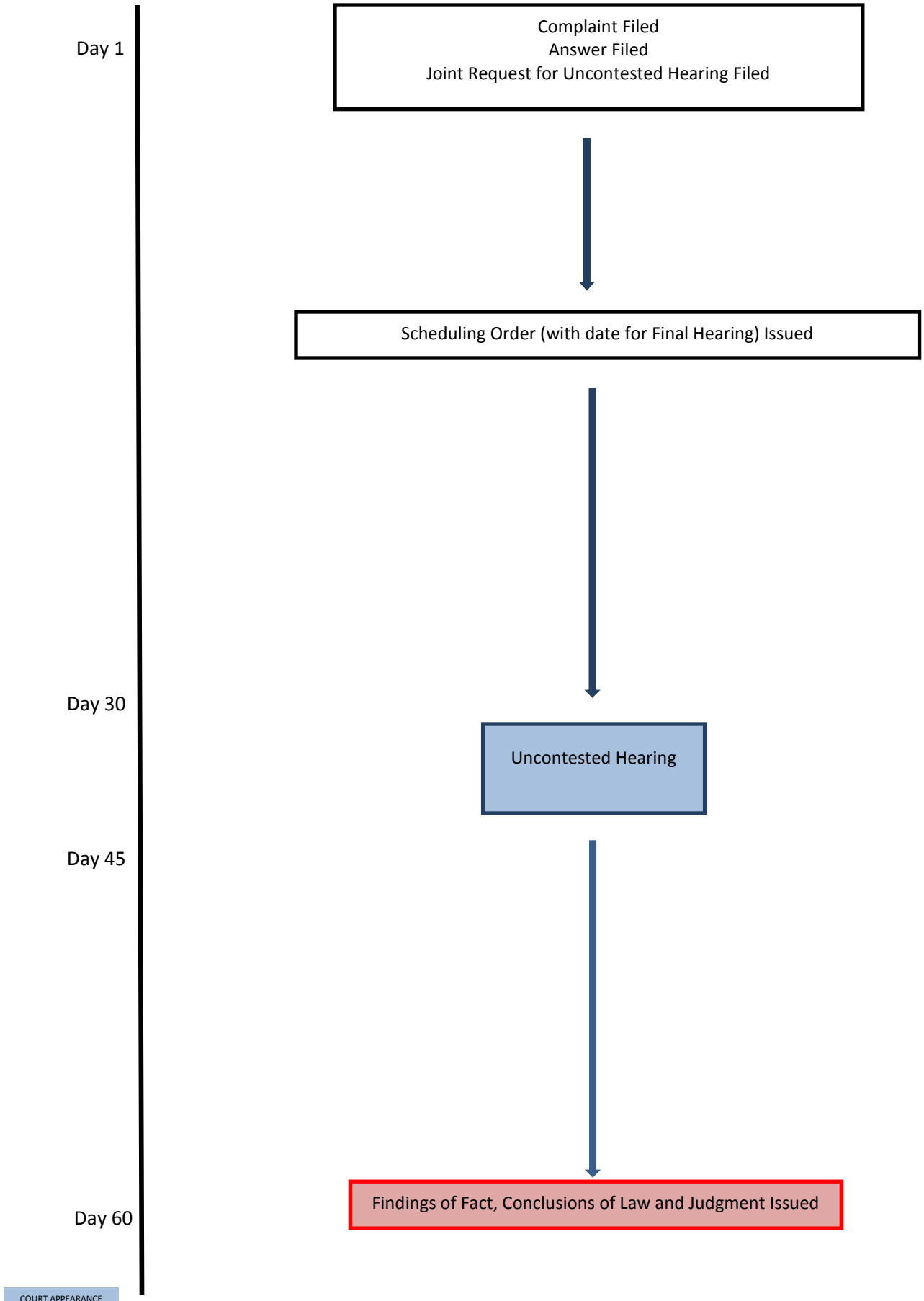
_____
Plaintiff/Defendant (signature)

_____
Street Address

_____
City, State and Zip Code

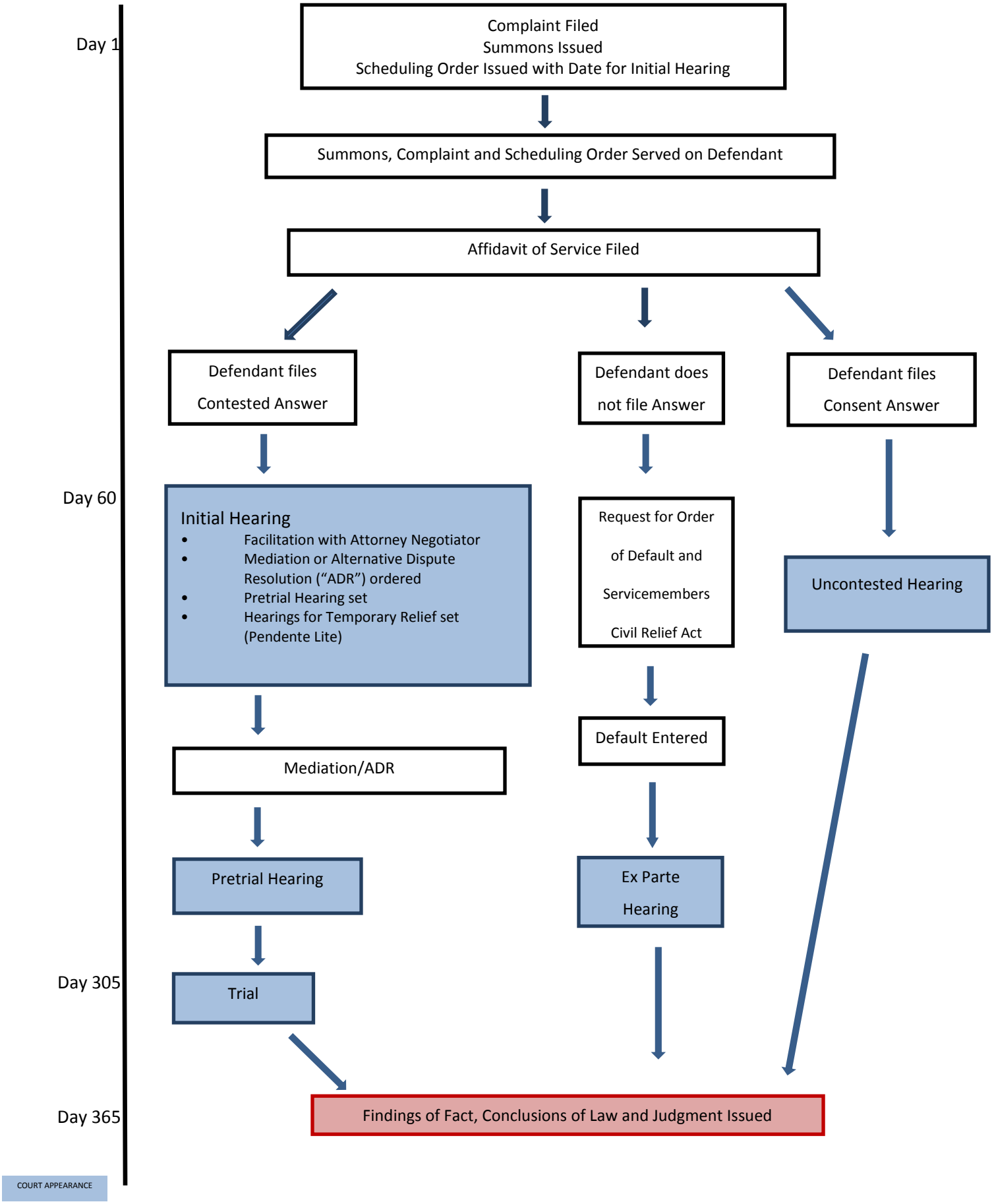
_____
Phone

Uncontested Divorce or Custody



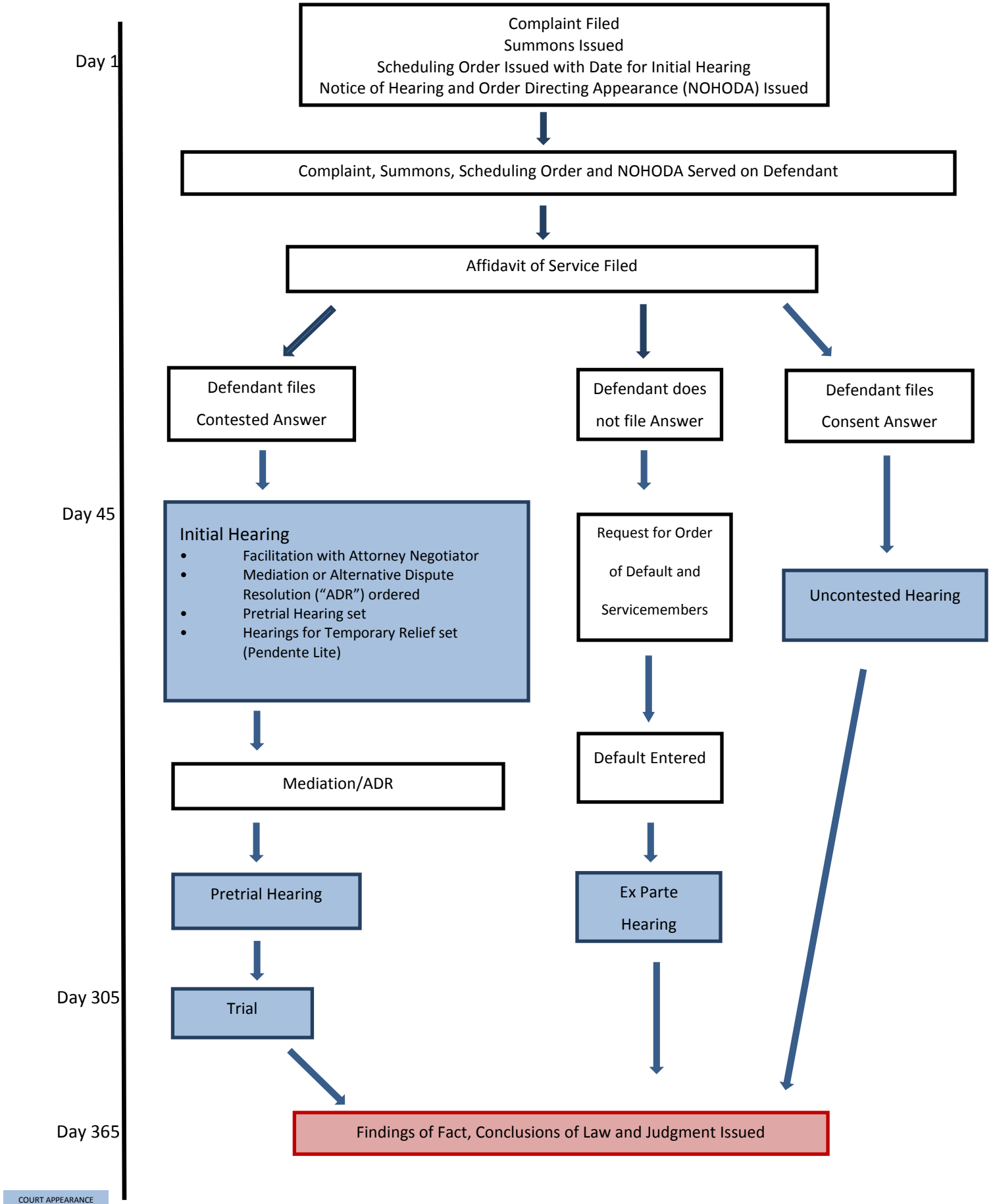
Domestic Relations I

Divorce and/or Custody without Child Support



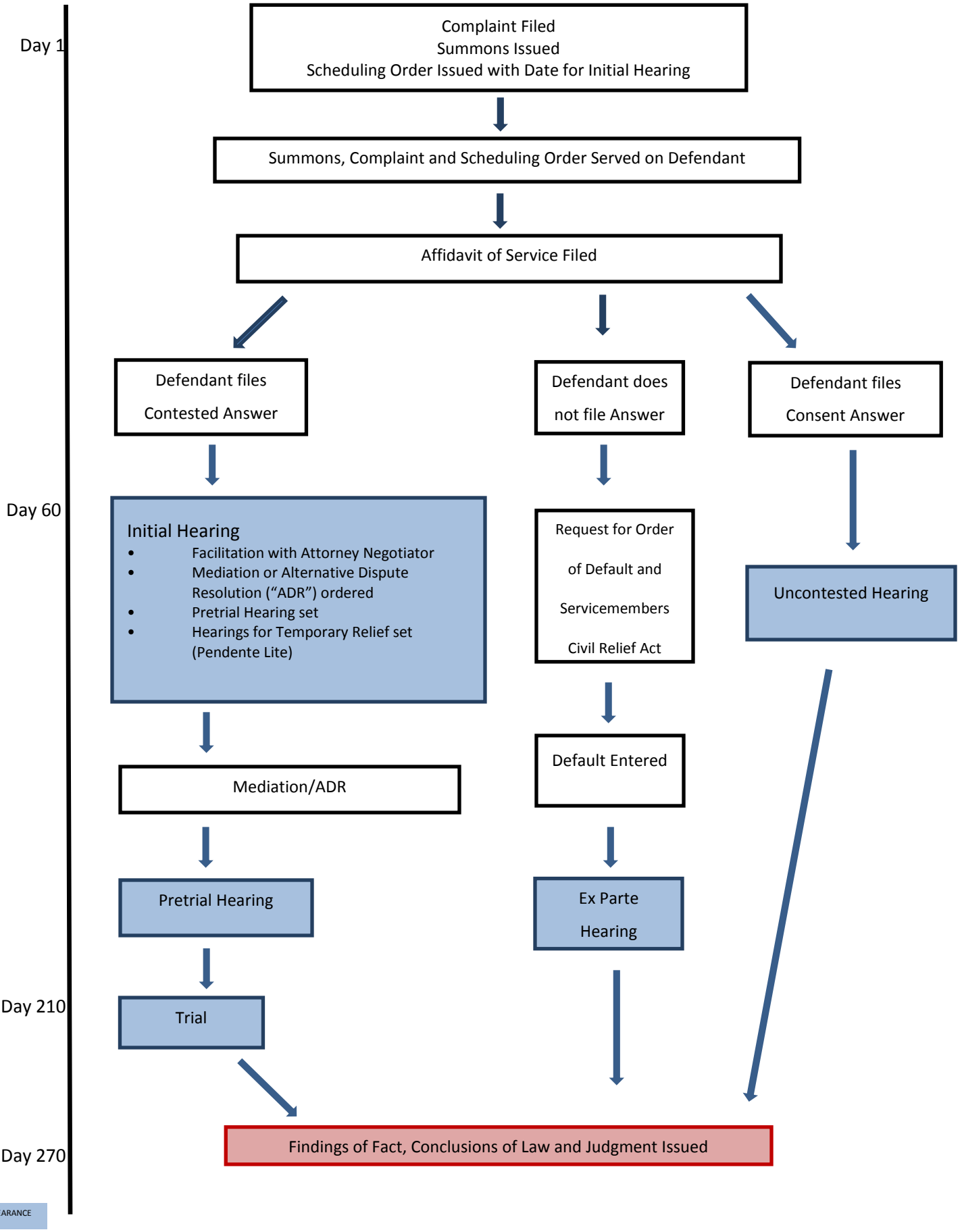
Domestic Relations I

Divorce and/or Custody with Child Support



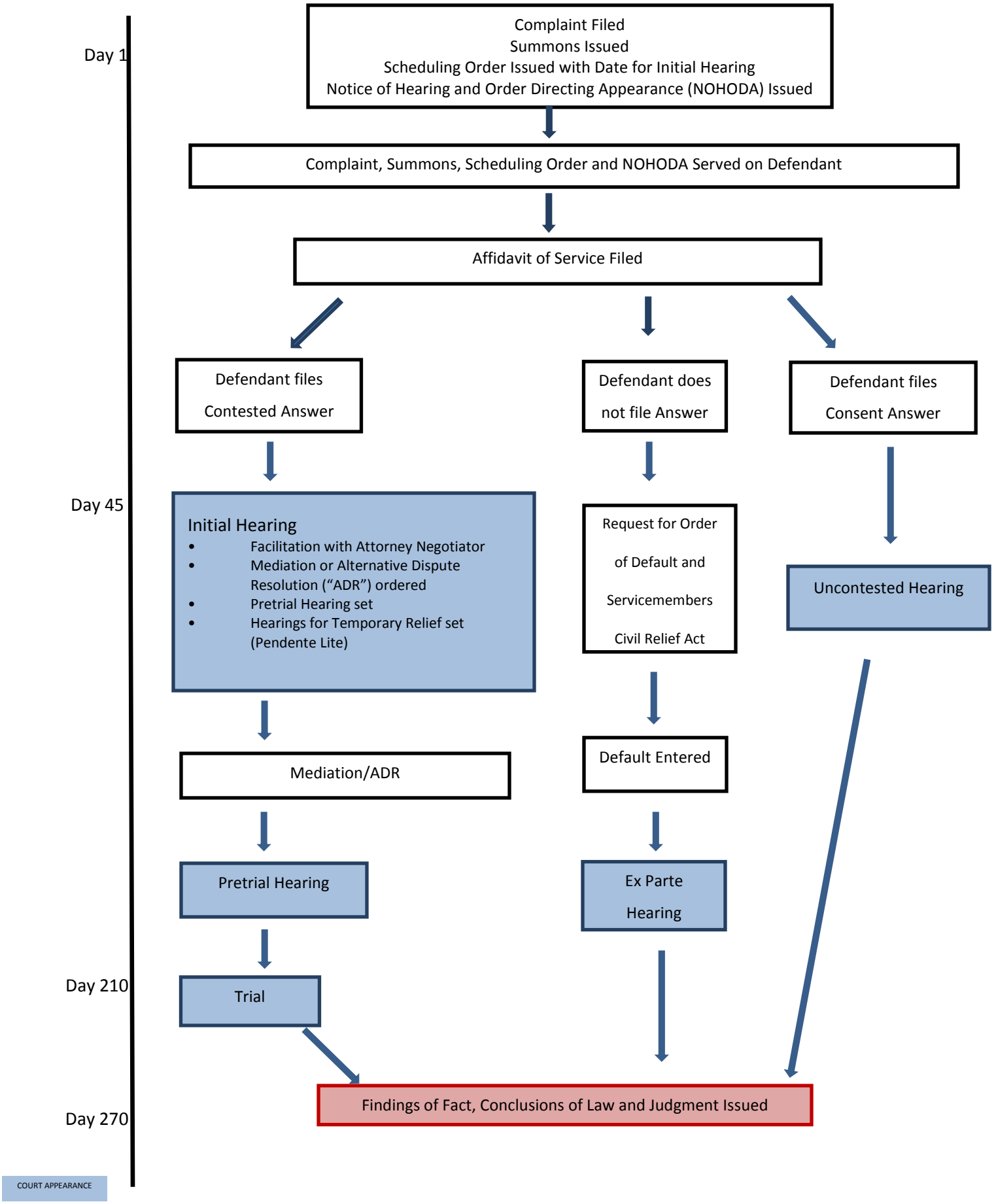
Domestic Relations II

Divorce and/or Custody: No Child Support



Domestic Relations II

Divorce and/or Custody with Child Support



dc's CHILDREN'S LAW CENTER family. health. education.

Select Custody Case Law from the D.C. Court of Appeals*

COMMONLY ARISING LEGAL ISSUES	
Child Testimony/Child's Wishes	• Duguma v. Ayalew, 145 A.3d 517 (D.C. 2016) • Fields v. Mayo, 982 A.2d 809 (D.C. 2009) • N.D. v. R.J.H., 979 A.2d 1195 (D.C. 2009) • P.F. v. N.C., 953 A.2d 1107 (D.C. 2008)
Third Party Custody/Visitation	• S.M. v. R.M., 92 A.3d 1128 (D.C. 2014) • Ruffin v. Roberts, 89 A.3d 502 (D.C. 2014) • W.H. v. D.W., 78 A.3d 327, (D.C. 2013) • K.R. v. C.N., 969 A.2d 257 (D.C. 2009)
De Facto Parents	• Fields v. Mayo, 982 A.2d 809 (D.C. 2009)
Relocation of a Party/Child	• Estopina v. O'Brian, 68 A.3d 790 (D.C. 2013)
Modification of Custody	• A.C. v. N.W., 160 A.3d 509 (D.C. 2017) • Downing v. Perry, 123 A.3d 474 (D.C. 2015) • S.M. v. R.M., 92 A.3d 1128 (D.C. 2014) • Wilson v. Craig, 987 A.2d 1160 (D.C. 2010) • Cheek v. Edwards, 215 A.3d 209 (D.C. 2019)
Intrafamily Offenses	• Jordan v. Jordan, 14 A.3d 1136 (D.C. 2011) • P.F. v. N.C., 953 A.2d 1107 (D.C. 2008) • Wilkins v. Ferguson, 928 A.2d 655 (D.C. 2007)
Court's Obligation to Make Written Findings	• A.C. v. N.W., 160 A.3d 509 (D.C. 2017) • Maybin v. Stewart, 885A.2d 284 (D.C. 2005)
Court's Authority to Order Services (e.g. evaluations, counseling, parent coordination)	• Downing v. Perry, 123 A.3d 474 (D.C. 2015) • Jordan v. Jordan, 14 A.3d 1136 (D.C. 2011) • Maybin v. Stewart, 885A.2d 284 (D.C. 2005)
Special Immigrant Juvenile Status	• J.U. v. J.C.P.C., 176 A.3d 136

* This guide indexes and summarizes select D.C. Court of Appeals opinions related to custody. It is not exhaustive and is not a substitute for independent legal research.
Last update: May 2018

CASE SUMMARIES

A.C. v. N.W., 160 A.3d 509 (D.C. 2017)

In 2012 the mother and father agreed to a consent custody order awarding them shared legal and physical custody of their minor child. In 2015 the mother requested a temporary cessation in contact between the father and child pending police investigation into allegations that the father sexually abused the child. After the investigation the father filed a motion to vacate the temporary order. The court held an evidentiary hearing and granted the father's motion, with the condition that visits between the father and child would be supervised. The mother appealed. In response to the mother's arguments the court held:

1. The father did not bear the burden of proving that the temporary custody order should be vacated. The basis for the temporary order ended with the police investigation. Therefore if the mother sought to convert the temporary order into a permanent modification of the 2012 custody arrangement then she bore the burden of proving such modification was warranted.
2. The trial court had an adequate factual basis, and thus did not err, in giving little weight to the testimony of the child's therapist, whom the mother presented as an expert witness.
3. The trial court did not err in failing to make explicit findings on each of the "best interest" factors set forth in D.C. Code § 16-914(a)(3). Although the trial court is required to make such findings when making a custody award, vacating the temporary custody order did not constitute a custody award. Instead the trial court restored the 2012 custody order that had already been in place. Also, the trial court's inquiry in this case was limited: whether the circumstances justifying the temporary custody order (i.e. the police investigation) still existed; the court was not required to make a broader inquiry into the child's best interests.
4. The trial court's findings of fact, however, did not explain the court's reasons for its decision in a manner sufficient to permit meaningful appelate review. The Court of Appeals therefore remanded the record.

Duguma v. Ayalew, 145 A.3d 517 (D.C. 2016)

D.C. courts must primarily consider the child's best interest when making custody determinations. The D.C. Code provides a non-exhaustive list of factors to be considered. One factor is the child's wishes as to his or her custodian, when practicable. To determine a child's preference, courts traditionally look to the child's testimony, evidence from a guardian *ad litem* (GAL), or circumstantial and anecdotal evidence that speaks to the children's desires. On July 13th, 2016, the D.C. Court of Appeals issued a decision that changes a party's thinking when litigating these issues. The decision, *Duguma v. Ayalew*, provided insight into the court's required process for determining the child's best interest. The case involved a custody dispute between divorced parents regarding three children, ages fourteen, nine, and seven. The custody trial consisted of only one witness: the children's father. The children did not testify as to their desired custodian, the court did not elicit GAL testimony, and no evidence was presented that speaks to the children's custodial desires. The court ultimately awarded physical and joint legal custody to the father and the mother appealed.

This decision is not a departure from previous case law, however there is language that affects how advocates should litigate custody cases. The statute remains the same; the standard remain the same. However as advocates we should react to *Duguma* by 1) ensuring we build a record that explicitly addresses a child's wishes, and 2) educate a judge when necessary that children need not testify directly about their wishes. Advocates must make conscious efforts to produce explicit evidence regarding the child's wishes when practicable. The D.C. Code does not assign weight to each custody factor, however it requires a court to consider all factors. Presenting explicit testimony during a trial will allow a party to accurately and specifically identify evidence in the record as proof that the court considered all necessary factors. Therefore building an explicit record will ensure a court considers all required factors and advocates will survive an appeal. *Duguma* also gives advocates an opportunity to educate the court. Judges interpreting this decision could incorrectly read it as a mandate for child testimony. The court remanded "to hear from the parties' children and consider their wishes respecting custody," which could be used as authority to require children to testify. That order, however, was case-specific. The decision later explicitly confirmed that it remains within the court's discretion to determine whether interviewing children *in camera* is required. The *Duguma* court did not fault appellee for failing to call his children as witnesses; the court remanded because of the "dearth" of evidence as to their wishes. Understanding this distinction will allow advocates to best represent their client's interests without potentially causing harm to children.

Downing v. Perry, 123 A.3d 474 (D.C. 2015)

In 2009 the mother and father agreed to share legal custody of their two children. They also committed to work with a Family Treatment Coordinator (FTC) who would issue binding recommendations when the parties could not make joint parenting decisions under the agreement. In a 2012 modification the parties agreed to continue sharing legal custody but agreed that the father, rather than the FTC, would have final tie-breaking authority to resolve disputes between the mother and father. In 2013 the father filed a motion to modify custody seeking sole legal custody of the children. The trial court held an evidentiary hearing after which it denied the father's request for sole custody but determined, at the suggestion of the mother, that there had been a substantial and material change in circumstances and that it was in the children's best interests to restore the FTC's tie-breaking powers. The father appealed, arguing that there had been no material change in circumstances, that the court abdicated its responsibility to decide "core issues" of legal custody by assigning those rights to the FTC, and that the father did not receive proper notice of the mother's request to modify custody. The Court of Appeals disagreed.

With respect to the substantial and material change in custody, the record reflected that the father was given tie-breaking authority in an effort to enable more effective communication between the parties, so that the father would feel more comfortable authorizing extracurricular activities for the children. Instead the father exercised *de facto* legal custody of the children. He used his tie-breaking authority to unilaterally refuse the children preventative medical care, forbid them from attending a summer camp during time with the mother, and remove them from extracurricular activities. The Court of Appeals held that the trial court did not abuse its discretion in concluding that these actions were not foreseen at the time of the 2012 custody agreement and that the current framework was not in the best interests of the minor children.

The Court of Appeals also held that the trial court's restoration of the FTC's tie-breaking authority was not an improper delegation of its responsibility to decide the "core issues" of custody. The trial court merely delegated decision-making authority over day-to-day issues to the FTC.

Finally the Court of Appeals held that even though the mother did not file a counterclaim to the father's request for sole custody, because the mother proposed changing tie-breaking authority to the FTC in advance of the evidentiary hearing the father was on notice of the proposed change.

S.M. v. R.M., 92 A.3d 1128 (D.C. 2014)

In this appeal addressing the third party custody statute, D.C. Code §§ 16-831.01-13, the DC Court of Appeals answered the question: does the statutory presumption that custody with a parent is in the child's best interest apply after an initial award of custody to a third party?

In the underlying case, the court awarded custody of the minor child to the maternal aunt. The mother consented to this custody award with the understanding that when she completed a drug treatment program she would regain custody of the child. The mother successfully completed drug treatment and subsequently filed four motions to modify custody. The trial court denied each motion to modify without applying the parental presumption.

On appeal, the Court of Appeals held that if a parent knowingly and intelligently gives his or her *irrevocable* consent to custody with a non-parent, the parent waives his or her parental presumption and the presumption will not apply in subsequent modification proceedings. ("If a parent's statutory presumption has already been rebutted (pursuant to D.C. Code § 16-831.06) or waived after a parent gives her irrevocable consent to the custody transfer (pursuant to D.C. Code § 16-831.05 (a)), there is no need to revive the parental presumption at the modification stage. To do so would seem contrary to the clear legislative intent to give parents heightened protection when initial custody transfer decisions are made, but to make determinative the best interest of the child after custody has been transferred to a third party." S.M. v. R.M., 92 A.3d at 1137.) If, however, the parent preserves the presumption by entering into a revocable custody agreement with a third party, or if the parent does not *knowingly and intelligently* provide irrevocable consent to third party custody, then the parental presumption must be applied in the modification proceeding.

Ruffin v. Roberts, 89 A.3d 502 (D.C. 2014)

Trial court awarded the father sole physical and sole legal custody of the child with the consent of the mother. The mother asked the trial court to order visitation between the child and her maternal aunts. The father objected. The trial court concluded that it was not authorized to order third party visitation between the child and her maternal relatives over the objection of the father, the custodial parent. The mother argued on appeal (1) that her consent to custody with the father was conditioned on visitation between the child and her maternal aunts, and (2) that the court erred in concluding it could not order such visitation. The DC Court of Appeals held that the trial court did not err in concluding that the mother's consent was unconditional and in concluding that it lacked authority to order third party visitation over the objection of the custodial parent.

W.H. v. D.W., 78 A.3d 327, (D.C. 2013)

The DC Court of Appeals affirmed the trial court's decision to grant custody of the minor children to their older brother and grandmother, after the biological father of the children, W.H., appealed claiming that the brother and grandmother lacked standing to bring a claim for third party custody. Specifically, the Court found that D.W., the older half-brother of the minor children, satisfied the standing requirements of the Safe and Stable Homes Act, pursuant to D.C. Code § 16-831.02(a)(1)(B)(i)-(ii), because the children had lived with him their entire lives and he had been their primary caregiver for more than four out of the preceding six months. While the grandmother J.W. did not independently have standing to file for custody, the Court found that the trial court had not erred in granting joint custody to her and D.W. based on the best interests of the children. Lastly, the Court found that D.W. and J.W. had rebutted the presumption in favor of custody with a biological parent by clear and convincing evidence.

Estopina v. O'Brian, 68 A.3d 790 (D.C. 2013)

Father appealed trial court's decision that awarding the mother primary physical custody and permitting her to relocate out of the jurisdiction was in the child's best interest. The DC Court of Appeals upheld the decision finding that an arrangement that grants primary physical custody to one parent and visitation to another is joint custody and therefore the trial court did not fail to acknowledge the presumption in favor of joint custody. The trial court's decision was not an abuse of discretion because the court weighed all of the enumerated best interest factors in DC Code §16-914 (a)(3) (2001), and no improper factors, in determining the child's best interests. The trial court also properly considered several additional factors given the mother's request to relocate with the child.

Jordan v. Jordan, 14 A.3d 1136 (D.C. 2011)

In this appeal from an award of joint custody, the DC Court of Appeals ruled on two subjects: awarding custody in spite of intrafamily offenses, and the appointment of a parent coordinator. First, the DC Court of Appeals held that a trial court does not have to make express findings under DC Code § 16–914 (a–1) (an award of custody or visitation to a parent found to have committed an intrafamily offense "shall be supported by a written statement… specifying factors and findings which support" the award) when the record plainly supports the conclusion that the requisite findings were made. Here, unlike in P.F. v. N.C., below, the trial court order explicitly noted the offenses and found the presumption against the parent who committed them was rebutted by a balancing of the other statutory factors.

Second, the DC Court of Appeals held that Domestic Relations Rule 53 (on special masters) gives trial courts the authority to both appoint a parent coordinator over a party's objection when the case presents exceptional circumstances, and to delegate to the parenting coordinator the authority to make decisions on day-to-day issues that do not implicate the court's exclusive responsibility to adjudicate the parties' custody and visitation rights.

Wilson v. Craig, 987 A.2d 1160 (D.C. 2010)

The DC Court of Appeals found that the trial court did not err in modifying an agreement for joint child custody where high levels of conflict between the parents rendered the joint custody agreement unworkable. The trial judge held an evidentiary hearing and appointed a parenting coordinator to investigate the custody arrangement. Although the parties had expected the agreement would reduce hostility between them, the trial judge made exhaustive and well-supported findings that "excessive

levels of discord" between the parents and psychological and emotional distress of the children warranted modification of the custody agreement.

Fields v. Mayo, 982 A.2d 809 (D.C. 2009)

The DC Court of Appeals upheld the trial court's ruling granting a biological father sole legal and physical custody of his son, who had been cared for by a maternal great aunt for over nine years. In rejecting the great aunt's arguments that the trial court abused its discretion, the DC Court of Appeals made three important observations: (1) although not necessarily applicable in this case, under the recently codified Safe and Stable Homes for Children and Youth Act, a person who is shown by clear and convincing evidence to be a "de facto parent" shall be considered a parent for the purposes of custody proceedings. Unlike any other third party custodian, therefore, a "de facto parent" does not have to rebut by clear and convincing evidence the presumption that custody of a child by a biological parent is in the child's best interests; (2) the trial court properly found that the birth mother forfeited her right to parent the child because of her continued lack of involvement in the child's life--a parent's liberty interest in designating a caretaker (in this case the great aunt) is not absolute and yields to the child's best interest; and (3) regarding the role of the guardian *ad litem* in custody matters, the position taken by the guardian *ad litem* as an advocate for the child can serve as an inference of the child's preference.

K.R. v. C.N., 969 A.2d 257 (D.C. 2009)

A father appealed the trial court's award of child custody to his child's maternal aunt, arguing that the court did not have jurisdiction to hear the aunt's complaint for custody. The DC Court of Appeals agreed that at the time of the lower court's decision, there was no statutory provision giving the lower court jurisdiction to hear the aunt's complaint. Since that time, however, the DC Council enacted the Safe and Stable Homes for Children and Youth Amendment Act. The Act gave "standing to file a custody action to a third party 'with whom a child has established a strong emotional tie' and 'who has assumed parental responsibilities.'" The Act did not establish whether that standing should be applied retroactively, and the Court did not resolve that open issue. The parties agreed that given the lapse of time and the absence of a record to support third-party standing under the Act, it was not clear whether the child should remain with the maternal aunt. The case was therefore remanded for a determination of whether the prerequisites of the new statute had been satisfied and whether custody with the aunt remained in the child's best interest.

N.D. v. R.J.H., 979 A.2d 1195 (D.C. 2009)

In camera interviews with children, even if permitted, must be recorded. The DC Court of Appeals concluded, however, that the lack of record did not prejudice the appellant and the Court affirmed the child custody order. The Court cites the guardian *ad litem*'s pre-trial report as part of the record of the case in evaluating harmlessness.

P.F. v. N.C., 953 A.2d 1107 (D.C. 2008)

The D.C. Court of Appeals remanded a trial court's award of custody to the father in spite of his commission of two intrafamily offenses on the mother where the record did not make clear those offenses were sufficiently considered. The trial court order contained "little explicit discussion… regarding the

part that the father's abusive conduct played in the judge's calculus," and instead consisted primarily of balancing the other statutory factors. Though the findings made by the trial judge in balancing the other factors were extensive enough that they "could persuade a reasonable fact-finder that notwithstanding the father's abusive conduct, the boys would be better off with their father," because the intrafamily offenses were not explicitly discussed, the Court remanded.

Wilkins v. Ferguson, 928 A.2d 655 (D.C. 2007)

The mother appealed the trial court's decision modifying custody to permit visits between the child and father where the trial court had made previous findings that the father committed an intrafamily offense. The D.C. Court of Appeals reversed the decision. It held that because of the previous findings of intrafamily offenses, before awarding the father visitation the trial court was required—and failed—to find that the father met his burden to prove that visitation would not endanger the child or mother.

Maybin v. Stewart, 885A.2d 284 (D.C. 2005)

The D.C. Court of Appeals held: (1) the trial court did not abuse its discretion by requiring the parties to attend counseling sessions before visits between the father and child take place when the father had not seen the child for three years, (2) the trial court did not abuse its discretion in awarding the mother attorneys fees, and (3) the trial court did not need to issue written findings of fact and conclusions of law under Superior Court Domestic Relations Rule 52 because the father had filed a motion to enforce an abandoned custody order rather than a motion to modify the custody order.

Fundamentals of the Uniform Child Custody Jurisdiction and Enforcement Act

This is a very abbreviated summary of some of the basic provisions of the UCCJEA and is not intended to be a comprehensive review of the entire statute.

The UCCJEA (D.C. Code § 16-4601.01 *et seq*.)

The UCCJEA is a uniform law that has been passed by 49 states, the District of Columbia, and the Virgin Islands. Although it is intended to be a uniform law, there are occasionally variations from state to state.

The UCCJEA governs the issue of which state has jurisdiction to make a custody determination. "Custody determination" is defined by the statute.

The governing principle of the UCCJEA is that only one state at a time has jurisdiction to make a custody determination.

The UCCJEA also addresses certain procedural aspects of custody cases.

Initial jurisdiction (D.C. Code § 16-4602.01)

If there has been no previous custody determination/order, the child's "home state" has jurisdiction. Home state is defined as the state in which a child lived with a parent or a person acting as a parent for at least 6 consecutive months immediately before the commencement of a child-custody proceeding. In the case of a child less than 6 months of age, the term is defined as the state in which the child lived form birth with any of the persons mentioned. A state is also the home state if it was the home state within 6 months of the commencement of the proceeding and the child is absent from the state, but a parent or person acting as a parent continues to live in the state (known as a "left-behind" parent).

If there is no home state, the statute sets out a further hierarchy of bases for jurisdiction:

- "significant connections" as defined
- all courts with jurisdiction have declined jurisdiction on the ground that the instant state is the more appropriate forum
- no other state would have jurisdiction

Modification jurisdiction (D.C. Code §§ 16-4602.02, 4602.03)

If there has been previous custody determination/order, the initial decree state has exclusive continuing jurisdiction unless that state loses jurisdiction. The statute sets forth the circumstances under which the initial decree state loses jurisdiction. The most common basis for loss of jurisdiction is that the child, the child's parents, and any person acting as a parent do not presently reside in the initial decree state.

If the initial decree state has lost jurisdiction, jurisdiction is determined based on a new initial jurisdiction analysis.

Any state has the authority to determine whether jurisdiction has been lost. The state with jurisdiction can also decline jurisdiction based on a forum non conveniens standard as set forth in the statute, but only the state with jurisdiction can make that determination.

Enforcement jurisdiction (D.C. Code § 16-4603.01)

Any court may enforce a custody determination issued by another court. Enforcement is an exception to the "one state only" principle.

Temporary emergency jurisdiction (D.C. Code § 16-4602.04)

A state may exercise temporary emergency jurisdiction under certain circumstances. See also D.C. Code § 16-4603.07 (simultaneous proceedings).

Simultaneous proceedings (D.C. Code § 16-4603.07)

This provision addresses the procedure to be followed when there are simultaneous proceedings in two different states.

Custody Jurisdiction Interactive Decision Tree

This interactive website may be able to do a UCCJEA analysis: https://www.dccourts.gov/a2j-viewer/viewer/viewer.html#!view/pages/page/1-Introduction. If it can't, the website will indicate that. Note that any UCCJEA analysis is fact-based.

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Consent/Settlement in Third-Party Custody Cases

The third-party custody statute allows a parent to give "revocable consent" to a custody order. D.C. Code § 16-831.06(d) states, "Any award of custody based on revocable parental consent entered pursuant to the agreement of all parties under §16-831.06(d) shall be immediately vacated and of no further effect upon the filing of a revocation by the consenting parent or the third party."

Currently, this provision typically is interpreted to mean that, if the consent is revocable, the custody case resumes upon revocation as if the order had not been entered. The legal standard for third-party custody will then apply, as set forth in the statute, and the burden of proof is on the third party. The current protocol followed by the court is to schedule a status hearing upon the filing of a revocation or request for revocation. Because the complaint is still pending, the court could then enter a temporary custody order.

If, however, consent is not revocable, D.C. Code §16-831.11 provides that the legal standard for modification of the custody order (unless the parties reach an agreement) is that there has been a substantial and material change in circumstances and the modification is in the child's best interest. The burden of proof is on the moving party.

There is no clear definition of what makes consent "non-revocable." *S.M. v. R.M.*, 92 A.3d 1128 (D.C. 2014) provides some guidance. In order for consent to be non-revocable, the parent must knowingly give up the right to what is called the "parental presumption." D.C. Code § 18-831.05 states, "Except when a parent consents to the relief sought by the third party, there is a rebuttable presumption in all proceedings under this chapter that custody with the parent is in the child's best interests." This presumption is grounded in the constitution. See, e.g. *S.M. v. R. M.* at 1138, n. 13; *Appeal of H.R.,* 581 A.2d 1141 (D.C. 1990). Lawyers and judges have gravitated towards language – in written consent answers or in an oral colloquy in open court – by which the parent acknowledges that they are giving up the right to trial. A knowing waiver may also call for an acknowledgement that the parent is giving up the presumption that the child should be with them and/or that the third party would have to prove that they should have custody. It is also very common to include an acknowledgment that in order to modify the custody order (if the parties don't agree on modification) the court must make the decision, the legal standard is substantial and material change in circumstances/best interests, and no presumption would apply at that point.

The following non-revocable consent language is from a form consent answer developed by the D.C. Bar and the court for use by pro se litigants.

> I am giving up my right to have a custody trial in which there could be a presumption that I should have custody of the child[ren] and Plaintiff would have to prove that s/he should have custody. If I want greater custody rights in the future, and Plaintiff does not agree, I will have to prove that a change in circumstances justifies changing the custody arrangement, and in deciding my request, the judge would not presume that I should have custody of the child[ren].

In the absence of some kind of explicit acknowledgment by the parent of the impact of consent, *S.M. v. R.M.* seems to stand for the proposition that the consent is revocable.

When considering settlement, attorneys will want to counsel their clients on the pros and cons of revocable consent versus non-revocable consent in light of the specific facts and circumstances of the case.

January 2020

Children's Testimony in Family Court Cases

Note: this is an overview of selected cases and is not intended to be a comprehensive review of the law.

***In re Jam.J.*, 825 A.2d 902 (D.C. 2003).**

In a neglect proceeding, the trial court refused to let the mother and her boyfriend call the children as witnesses and examine them. "The trial court does have power to protect a child from the harmful effects of forced testimony. In most cases, the court can exercise that power effectively and appropriately by imposing reasonable conditions and restrictions on the conduct and scope of the child's examination. When such conditions and restrictions are sufficient to safeguard the child's welfare, there is no warrant for the court to go further and preclude the child's examination altogether. In the extreme case, however, where a demonstrated risk of serious psychological or emotional harm to the child is not adequately mitigable by other means and substantially outweighs the parent's need for the child's testimony, the trial court has discretion to exclude the child as a witness."

The opinion sets forth the balancing test/factors to be considered (risk of harm, possible ameliorative measures, materiality/probative value of child's testimony, parent's need for it) and alternatives to traditional testimony ("the trial court may place appropriate limitations on the examination of the child witness in order to protect the child from emotional or psychological injury").

***N.D. McN. V. R.J.H, Sr.*, 979 A.2d 1195 (D.C. 2009).**

In a custody case, the appellant argued that the trial court erred in basing its decision on an *in camera* interview with the children outside the presence of the appellant or her counsel, and without any recording of the interview available to them or to appellate court. The Court of Appeals, referencing the balancing test and criteria in *Jam.J.*, said "The same rationale supports the use of *in camera* interviews of children in custody disputes between parents . . . . The fact that a judge obtains information *in camera* does not mean, however, that the interview may be conducted in a completely informal way, without 'due regard' for the rights of the parent and the creation of an adequate record . . . . Therefore, although trial judges are permitted, in certain circumstances, to interview children *in camera* out of the glare and pressure of the courtroom, because the interview is still part of a court proceeding, we conclude that it must be recorded, and that the record must be made available to the parties and the appellate court."

***Duguma v. Ayalew*, 145 A.3d 517 (D.C. 2016).**

During pre-trial hearings in a custody case, the appellant asked the trial court to interview the children. The court deferred making a decision until after it heard the evidence at trial and ultimately did not interview or otherwise hear from them; the mother did not renew her request at that time. The Court of Appeals ruled that the court should have interviewed the children. "When determining a child's best interest in a custody proceeding, the court is required by statute to consider 'all relevant factors,' specifically including 'the wishes of the child as to his or her custodian, where practicable.' In this case, however, the court received no evidence relating to the children's wishes . . . . So far as appears from the record, it was 'practicable' for the court to consider their wishes by interviewing them."

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Civil Protection Order Cases in the District of Columbia – An Overview

Note: this is an overview and does not address every aspect of the statute, court rules and case law.

Jurisdiction

- Civil protection order (CPO) cases, also known as intrafamily offenses cases, are governed by D.C. Code §16-1001 *et seq*. The D.C. Superior Court Domestic Violence Unit rules (SCR-DV) apply to these proceedings.

- The court can enter a civil protection order if it finds good cause to believe that the respondent has committed or is threatening an intrafamily offense (as defined by the statute) or stalking, sexual assault or sexual abuse. D.C. Code §§16-1001, 16-2005(c).

  An intrafamily offense is defined as:

  (1) an act punishable as a criminal offense that is

  (2) committed or threatened to be committed by an offender upon a person with whom the offender has a particular relationship as defined by the statute; *e.g.*, blood, marriage, domestic partnership, child in common, sharing or having shared a residence, having or having had a romantic, dating or sexual relationship

  D.C. Code §§16-1001, 16-1003. Note that stalking, sexual assault or sexual abuse do not require a qualifying relationship.

- The court can enter a temporary protection order *ex parte* (without notice to the respondent) for an initial period not to exceed 14 days if it finds that the safety or welfare of a family member is immediately endangered by the respondent. D.C. Code §16-1004; SCR-DV 6. A hearing is held on the TPO request on the same day it is filed. SCR-DV 11(c). TPOs can be extended beyond the initial 14-day period. SCR-DV 7(c)(3).

- The statute addresses when minors can file for CPOs on her/his own behalf, and also addresses issues relating to minor respondents.

Relief

- A CPO can be entered for a period up to one year. D.C. Code §16-1005(d).

- The relief that can be ordered in a CPO is set forth in D.C. Code §16-1005(c).

    - CPOs can direct the respondent to refrain from the conduct committed or threatened, and "to keep the peace" towards the family member. CPOs commonly provide that the respondent is to refrain from assaulting, threatening, harassing or physically abusing the petitioner.

    - Requests for stay-away orders (from the person, home, workplace, school, etc.) are routinely granted. A CPO can also include a no-contact provision (including by phone, letter, social media, or through third parties) and, under certain circumstances, a move-out provision directing the respondent to move out of the residence.

    - The court can require the respondent to participate in counseling.

- The court can award temporary custody (and visitation) of children. D.C. Code §§ 16-1005(c)(6), (c-1). The court can also award child support. *Powell v. Powell*, 547 A.2d 973 (D.C. 1988).

Procedure

- Pleadings are filed through the Domestic Violence Unit Clerk's Office, Room 4510. The clerk's office is open from 8:30 a.m. to 5:00 p.m. Pro se litigants can be assisted by the Domestic Violence Intake Center (D.C. SAFE) located in Room 4550. CPOs can also be filed at United Medical Center. There is also an emergency after-hours procedure coordinated through D.C. SAFE and the 7th District of the Metropolitan Police Department for incidents taking place after business hours.

- CPO cases are heard in the Domestic Violence Unit of D.C. Superior Court.

- There are court forms available in the clerk's office for many commonly filed CPO pleadings.

- CPOs are initiated by the filing of a petition. SCR-DV 2. There are no filing fees.

- When the petition is filed, the clerk will issue a Notice of Hearing and Order Directing Appearance (NOHODA) requiring the respondent to appear at a date and time certain

for the hearing on the petition. The hearing date is set at the time of filing. If no temporary protection order is requested, the hearing will usually be scheduled on a date two to four weeks (usually two weeks unless otherwise requested). If a TPO is issued, the CPO hearing will be scheduled within 14 days of the TPO hearing (usually the 14th day).

- TPO requests can be made on the day the CPO is filed and will be heard that day.
    - They can be and typically are heard *ex parte*, without notice to the respondent. SCR-DV 6.

- Service of process is governed by SCR-DV 5. The petitioner is responsible for effecting service; however, upon request at the time of filing (or in court), the D.C. police department will attempt to effect service of process on the respondent. That request should be made to the clerk's office or the judge. The clerk's office will provide a copy of the service packet to the police department.

  If the respondent does not appear at the hearing after proper service of the NOHODA, the court can issue a bench warrant. SCR-DV 11.

- A CPO can be entered if, after a hearing, the court finds that there is good cause to believe that the respondent has committed or is threatening an intrafamily offense. D.C. Code §16-1005(c).

  A CPO can be entered without the respondent present. SCR-DV 11. Although the respondent is in default, the petitioner will be required to present evidence that an intra-family offense has been committed (most commonly the petitioner's testimony). CPOs (and TPOs) are valid and effective when issued but if the order was issued in the respondent's absence, the respondent cannot be held in contempt without proper service of the order upon the respondent. SCR-DV 11.

- CPO cases are frequently settled by the entry of a consent order "without admissions." In other words, the respondent consents to the entry of a negotiated CPO without admitting that an intrafamily offense was committed. There are attorney-negotiators employed by the court who, on the day of the hearing, will ask the parties if they would like the attorney-negotiator's assistance with regard to exploring a mutually agreed-upon resolution, which is typically a CPO by consent without admissions. The attorney-negotiator will communicate with each party separately and the parties will not have to communicate directly with each other.

Modification and extension

- Upon motion and for good cause shown, CPOs can be modified. D.C. Code §16-1005(d).

- CPOs can be extended upon motion and for good cause shown. D.C. Code §16-1005(d); *Cruz-Foster v. Foster*, 597 A.2d 927 (D.C. 1991).

Enforcement

- Violation of any temporary or permanent order issued under the CPO statute is punishable as criminal contempt. D.C. Code §16-1005(f); *Mabry v. Demery*, 707 A.2d 49 (D.C. 1998). *See also* D.C. Code §11-944; SCR-DV 14.

- Certain provisions of CPOs may be enforceable by means of civil contempt (e.g. custody and visitation). SCR-DV 14.

- Criminal contempt proceedings can be requested by the filing of a motion by the petitioner. However, only the government (the U.S. Attorney's Office or the Office of the D.C. Attorney General) or a court-appointed independent prosecutor can actually initiate and prosecute criminal contempt proceedings. *In re Jackson*, 51 A.3d 529 (D.C. 2012).

Custody and visitation

- The court can award temporary custody and visitation of children in a CPO case. D.C. Code §§ 16-1005(c)(6), (7).[1] The court can also award child support. *Powell v. Powell*, 547 A.2d 973 (D.C. 1988).

- D.C. Code §16-1005(c-1) provides:

> For the purposes of subsection (c)(6) and (7) of this section, if the judicial officer finds by a preponderance of evidence that a contestant for custody has committed an intrafamily offense, any determination that custody or visitation is to be granted to the abusive parent shall be supported by a written statement by the judicial officer specifying factors and findings which support that determination. In determining visitation arrangements, if the judicial officer finds that an intrafamily offense has occurred, the judicial officer shall only award

[1] For a definition of custody, see D.C. Code §16-914. The court may award sole legal custody, sole physical custody, joint legal custody, joint physical custody, or any other custody arrangement the court may determine is in the best interests of the child. D.C. Code §16-914.

visitation if the judicial officer finds that the child and custodial parent can be adequately protected from harm inflicted by the other party. The party found to have committed an intrafamily offense has the burden of proving that visitation will not endanger the child or significantly impair the child's emotional development.

See also D.C. Code §16-914.

- Although judges typically resolve custody requests at the time the petition is adjudicated, upon request of a party or *sua sponte*, a judge may decide to "bifurcate" the CPO proceeding, first resolving the merits of whether an intrafamily offense was committed and then setting a separate hearing on custody.

- The court will entertain requests for supervised visitation. The court has a supervised visitation center located in Court Building A, 515 5th Street, N.W.,

  The court will also entertain requests that pick-up or drop-off for visitation take place through a third party or at a specified location other than the parties' homes (the Supervised Visitation Center can be used for this purpose). https://www.dccourts.gov/superior-court/domestic-violence-unit/supervised-visitation-centers

Consolidation with related cases

- SCR-DV 2 provides that the court may consolidate a CPO case with a related case pending in Family Court.

October 2018

What is a...

CPO?

CPO stands for Civil Protection Order, which is a court order that prohibits a person from abusing, threatening or harassing another. It can also include stay away, no contact and other important safety measures. A CPO is usually valid for one year but can be extended.

TPO?

TPO stands for Temporary Protection Order, which is a court order that can include many of the same things as a CPO but is only valid for two weeks and is in place while you wait for your CPO hearing (but can be extended by a judge). To get a TPO you must demonstrate to the judge that you fear immediate danger from your abuser.

Petitioner?

A petitioner is the person who is asking for a protection order. See "Who may be eligible for a CPO?" section.

Respondent?

A respondent is the person you want protection from.

What is service?

Service is how you let your abuser (the "respondent") know you are seeking a CPO. The respondent must be given official papers provided by the court.

Note—if you are the petitioner, or person seeking the protection order, you cannot give the respondent the papers yourself.

Ask the police to help and/or ask a friend or family member over the age of 18 to give the papers to the respondent. Whoever delivers the papers must sign a Return of Service (a confirmation that the documents have been delivered) which you must bring to court at your next hearing.

DC COALITION AGAINST DOMESTIC VIOLENCE

Who may be eligible for a CPO?

You may get a CPO if you are a victim of. . .

Sexual Assault

Stalking

Sexual Abuse

Intimate Partner Violence

A criminal act was committed against you by someone who is or was:

- A spouse OR
- A domestic partner OR
- Someone you date/dated
- Someone you have/had a sexual relationship with

Intrafamily Violence

A criminal act was committed against you by someone with whom you have a child in common OR by someone you are or/were related to by:

- Marriage
- Adoption
- Legal custody
- Blood
- Domestic Partnership

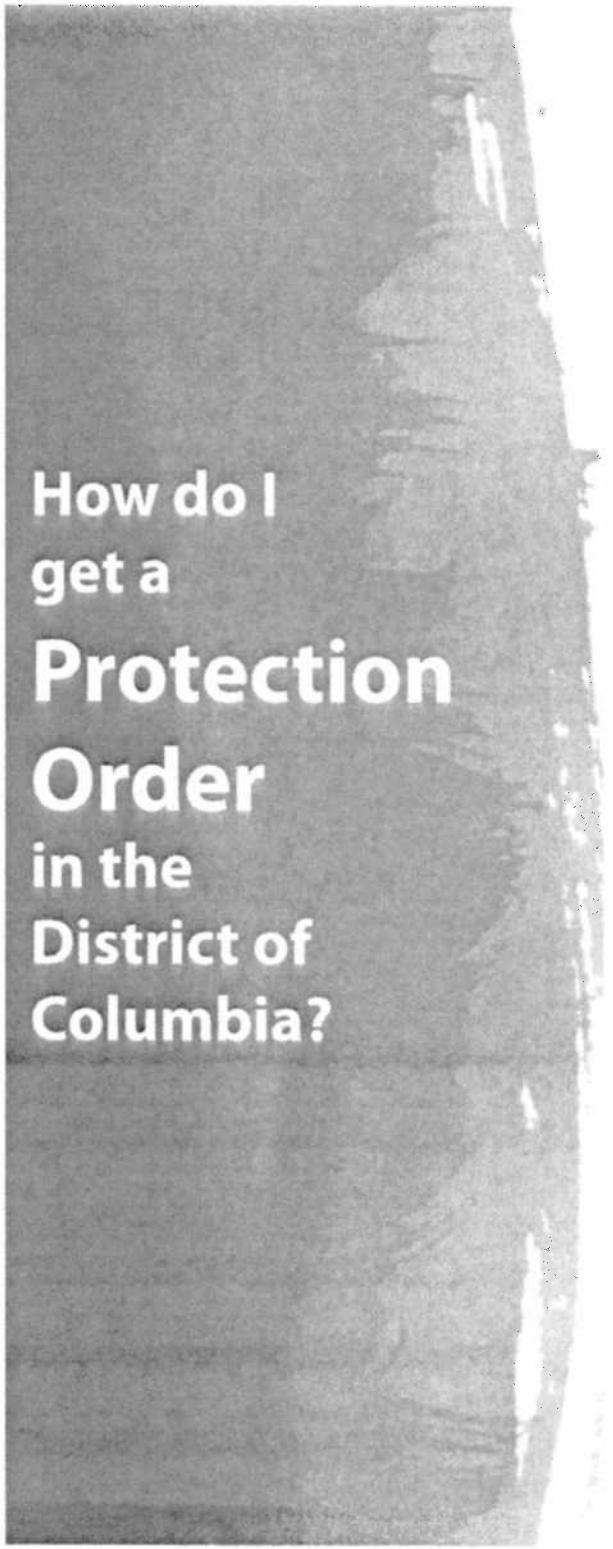
Interpersonal Violence

A criminal act was committed against you by someone:

- who shares a mutual residence (like roommates), OR
- who shares a common intimate partner (like a current or former boyfriend / girlfriend / spouse in common)

Women Empowered Against Violence

WEAVE



How do I get a Temporary and/or Civil Protection Order?