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2019 Caregiver Custody Training Manual

4. Custody and Domestic Violence Law and Procedure in DC

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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 over a custody case, 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 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*. However, CPOs are 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. A case number will be assigned to the case at the time of filing (*e.g.*, 2019 DRB 1245).

- 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 summons and a Family Court cross-reference form.

- All pleadings in Family Court cases are filed 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 Domestic Relations Clerk's Office, Room JM-300.

- Beginning January 2018, Family Court case records will be paperless. Documents filed in hard copy will be scanned and returned to the filer.

- Efiling through CaseFileExpress 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 non-electronically pursuant to the governing rules.

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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 pointers***: 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.

While efiled documents and order will be available through CFX, efiling is not an on-line case file; Family Court dockets and case files are not available on-line

- 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 pleading, 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 directly to the office of Judge in Chambers, Room 4220, where it typically will be ruled on immediately, on the papers and without a hearing. The pleadings will be returned to the plaintiff who can then proceed to the Central Intake Center to file the complaint.[8]

- At the time the complaint is filed, the case will be assigned to one of several "DR-II" calendars. There is also a "DR-I" calendar for more complex cases to which a party can request that a case be certified. 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. D.C. Superior Court judges rotate periodically (DR assignments are at least a year and usually longer).

- At the time the complaint is filed, the clerk will issue a summons for each defendant.

- At the time of filing, a date and time for the initial hearing in the case will be scheduled. 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 a judge the same day, who will decide what action to take.

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 a summons and a copy of the complaint. At the time the complaint is filed, the clerk will issue a summons for each defendant and also a notice of initial hearing. The plaintiff is responsible for effecting service.

[8] An IFP motion 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.

- ***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).

- Withing 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***: an affidavit of service must be filed. *See* SCR-Dom.Rel. 4(h).

    - 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 must file a motion requesting approval for constructive service. D.C. Code §13-336 *et seq*. and SCR-Dom.Rel. 4(c)(3). 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 law is not specific regarding exactly what must be done to attempt to find the defendant, although case law has outlined 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.

The court can order service by publication or by posting. Publication is governed by D.C. Code §13-339, 13-340, and SCR-Dom.Rel. 4(c)(4). The plaintiff is responsible for making arrangements for publication. The newspaper will mail you an appropriate affidavit of service which you then must file.

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 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 will 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.

- Even when a case is by consent/uncontested, the court will usually require a very brief presentation of evidence before entering a custody order.

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

- 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, or pre-trial/trial). The judge may also entertain oral motions for temporary relief.

  In addition, 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 forensic custody evaluation (psychological evaluations of the parties and or child(ren)). Home studies are performed by the court's Custody Assessment Unit; forensic custody evaluations are typically 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), -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). 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 post-judgment motions. SCR-DR 4 and 5.

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Custody Statutes and Rules:

D.C. Code §§16-831.01 – 16-831.13 (third-party custody)

D.C. Code §§ 16-901 – 16-925 (especially § 16-914) (primarily parent v. parent custody)

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

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.)

Current through January 11, 2019

End of Document

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 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

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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)

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

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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Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
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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Title 16. Particular Actions, Proceedings and Matters. (Refs & Annos)
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)

Current through January 11, 2019

End of Document

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 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
Current through January 11, 2019

End of Document

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 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.)

Current through January 11, 2019

End of Document

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 8A. Third-Party Custody.

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.)

Current through January 11, 2019

End of Document

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)

Current through January 11, 2019

End of Document

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 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

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 8A. Third-Party Custody.

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

End of Document

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

Custody Case Overview

March 2019

Case Initiation

- **File Application to Proceed *In Forma Pauperis* (IFP)** directly with the Judge-in-Chambers (with complaint attached).
- **File Custody Complaint** (must be signed under penalty of perjury) at Center Intake Center, with approved IFP or $80 filing fee.
    - **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

- 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.

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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 (brief evidentiary hearing).

↓

What if the Defendant Cannot Be Found?

- Plaintiff files a motion for constructive service (D.C. Code §13-336 et seq., SCR-Dom.Rel. 4).
- Once motion for constructive service is granted and notice is constructively served for the required time period 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 (SCR-Dom.Rel. 26-37), home studies, psychological evaluations, pre-trial statements
- 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,

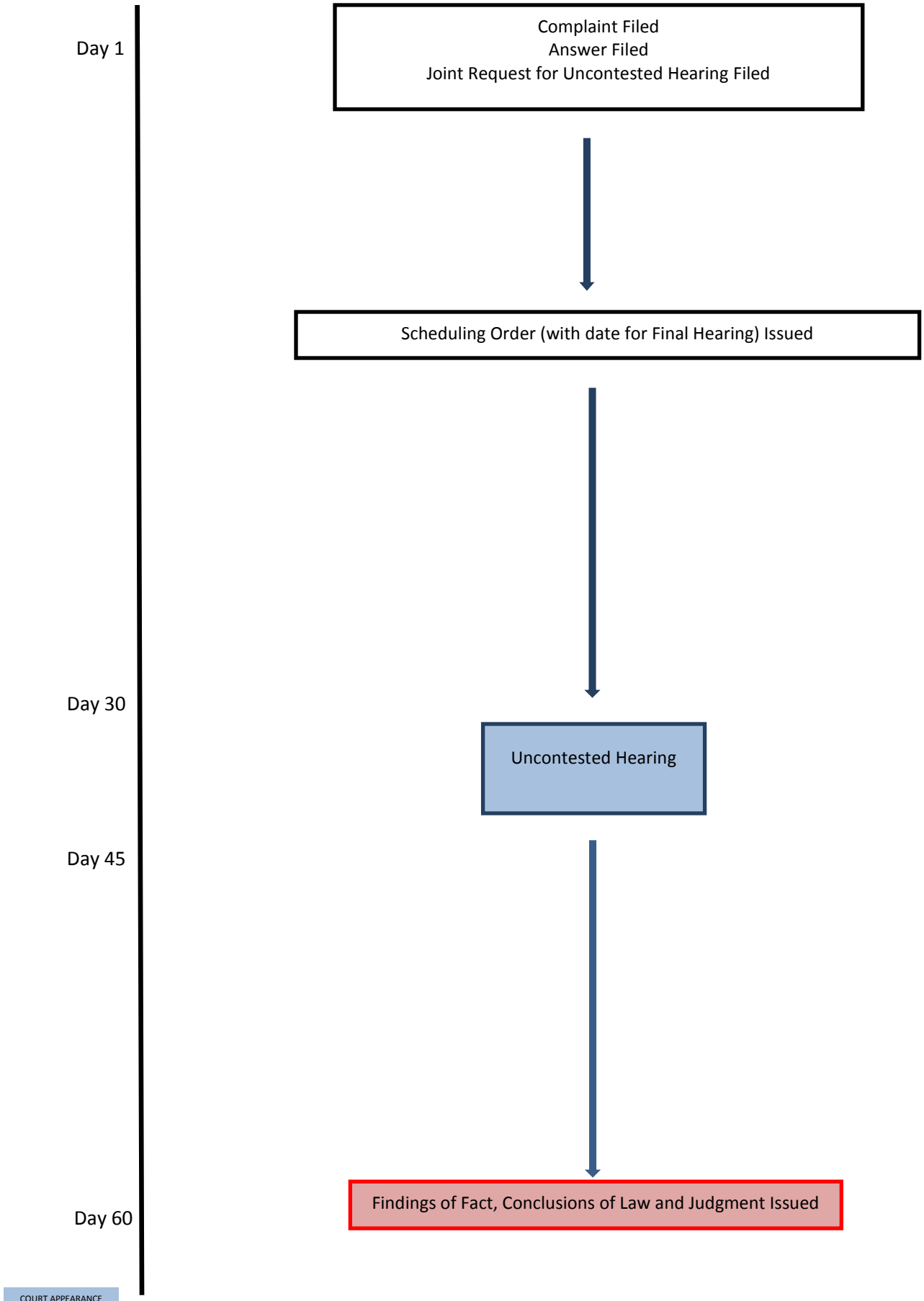
_____
Plaintiff/Defendant (signature)

_____
Street Address

_____
City, State and Zip Code

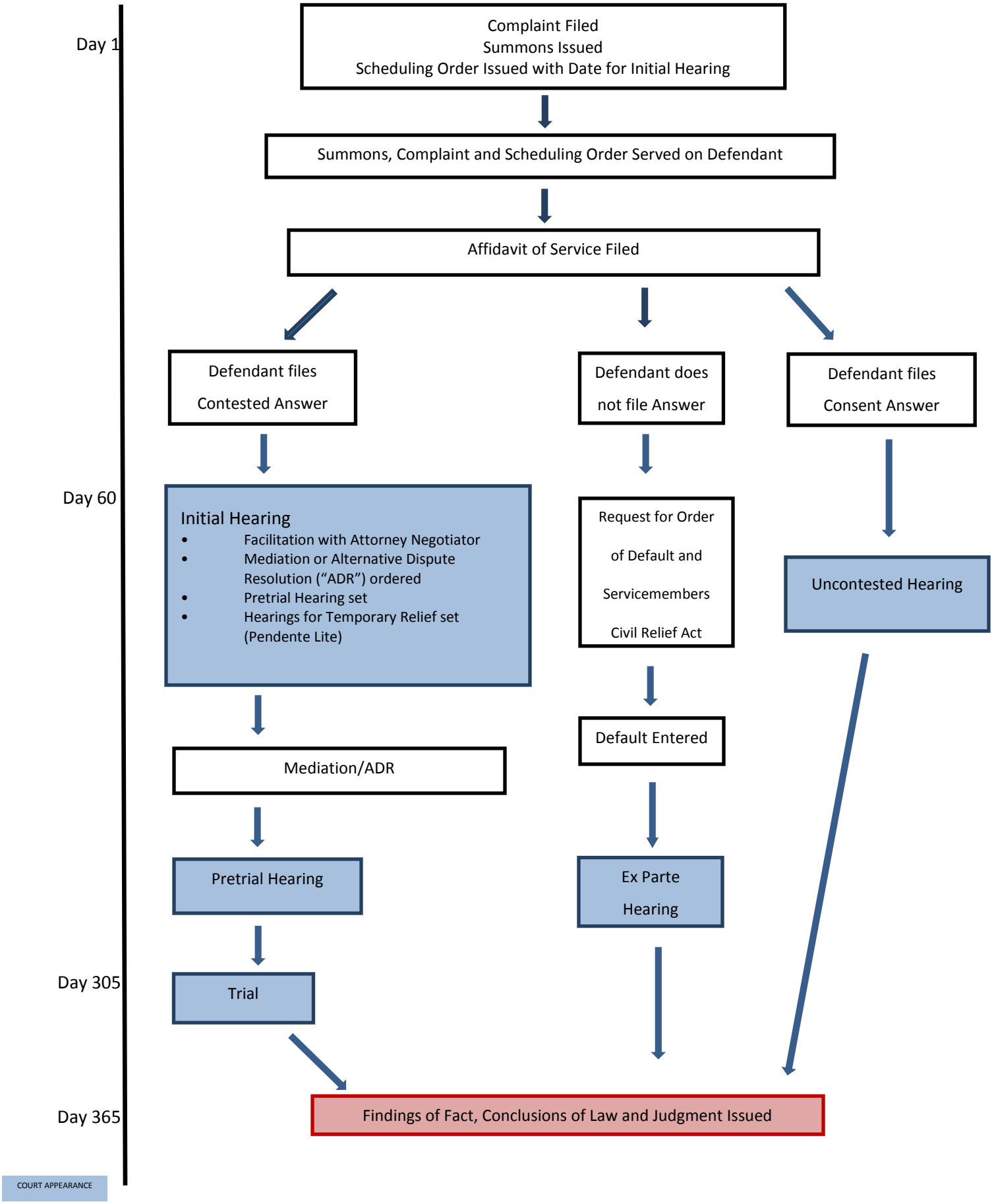
_____
Phone

Uncontested Divorce or Custody



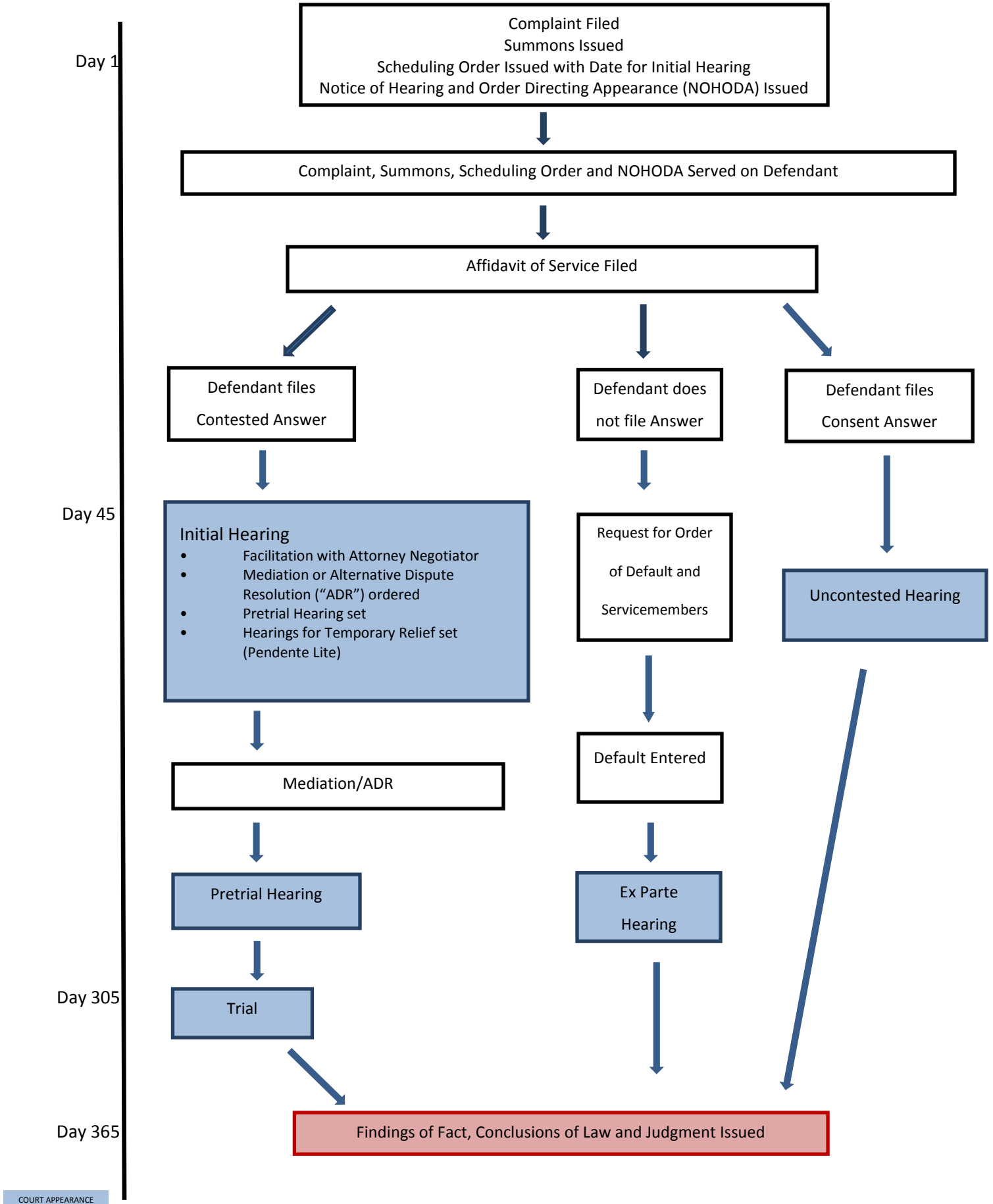
Domestic Relations I

Divorce and/or Custody without Child Support



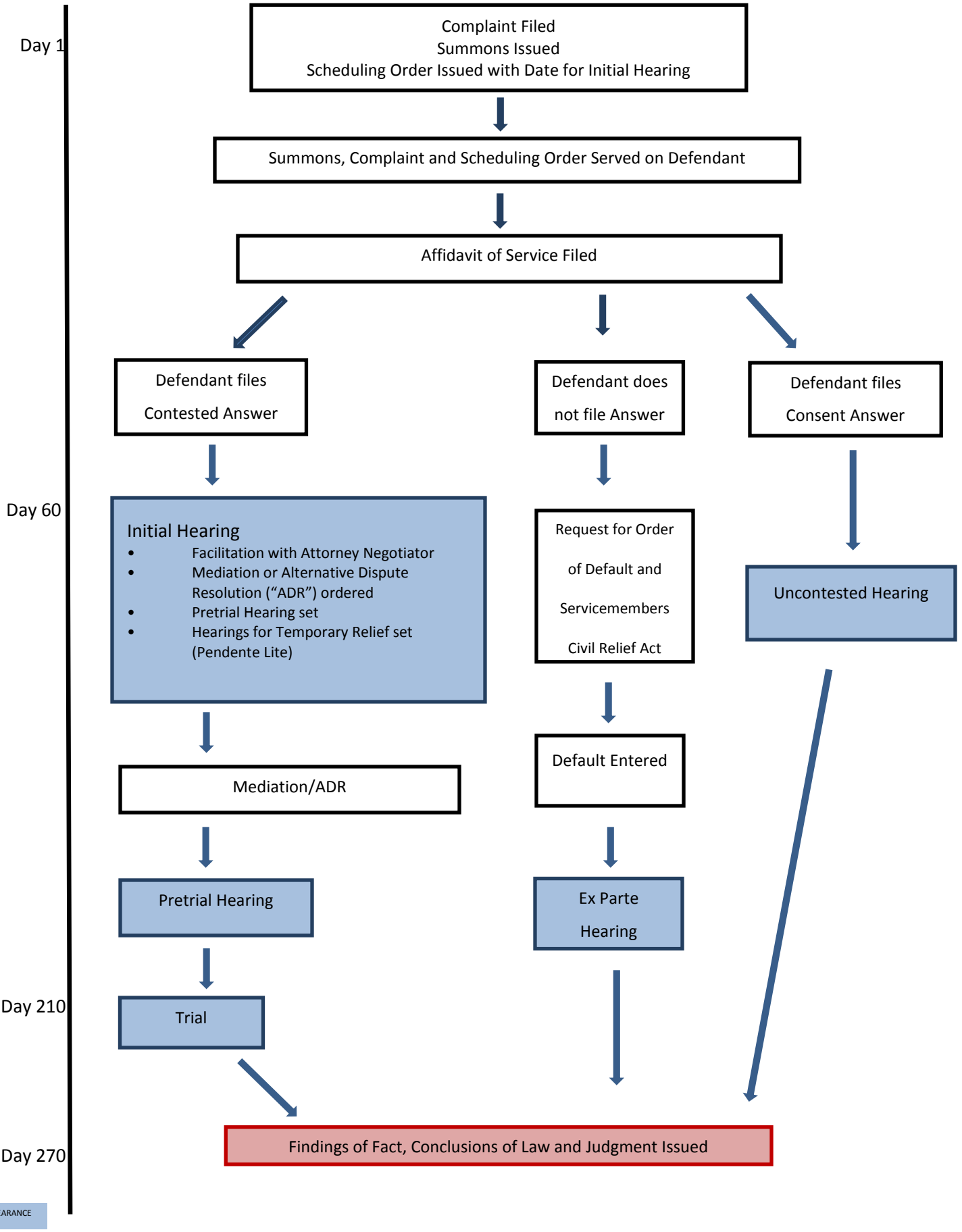
Domestic Relations I

Divorce and/or Custody with Child Support



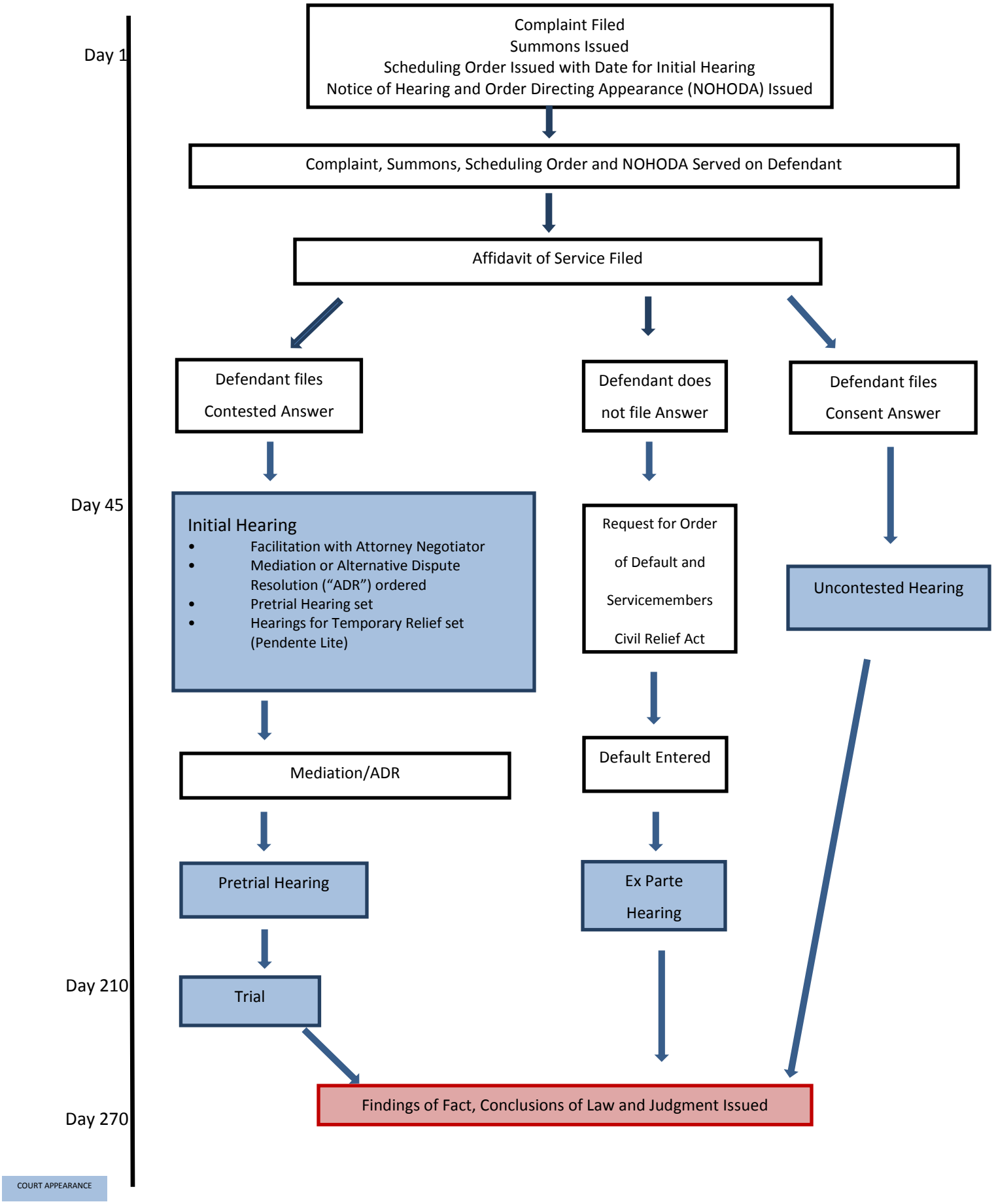
Domestic Relations II

Divorce and/or Custody: No Child Support



Domestic Relations II

Divorce and/or Custody with Child Support



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 statute or case law.

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. See https://www.uniformlaws.org/committees/community-home?communitykey=4cc1b0be-d6c5-4bc2-b157-16b0baf2c56d&tab=groupdetails. 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 means 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.

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 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."

At this time, 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 a final custody order 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. Note that it is the consent that is non-revocable, not the order; custody is always modifiable.

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 – through 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, the court must make the decision, the legal standard is substantial and material change in circumstances/best interests, and no such 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 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.

March 2019

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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)
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. health 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.

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Service of Complaints in Custody Cases

D.C. statutes and court rules addressing custody, parties and notice/service:

D.C. Code §16-4602.5 (Uniform Child Custody Jurisdiction and Enforcement Act)

D.C. Code §16-914(b) (custody – parent v. parent)

D.C. Code §16-831.01 *et seq*. (third-party custody)

D.C. Code §16-336 *et seq*. (service by publication or posting)

SCR-Dom.Rel. 4 (service)

SCR-Dom.Rel. 5 (service)

What is served:

Each defendant must be served with a summons and a copy of the complaint, and any notice of initial hearing. At the time the complaint is filed, the clerk will issue a summons for each defendant. SCR-Dom.Rel. 4.

Methods of service of summons and complaint:

The plaintiff is responsible for effecting service.

See SCR-Dom.Rel. 4(c):

- Personal delivery to the defendant by any person over the age of 18 who is not a party to the action, 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 who lives at the home.
- Certified mail with return receipt mailed to person to be served.
- 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, address to the sender.

- "Alternate means" – amendment to rules as of November 2018. Leave of court required. Court may permit an alternate method of service reasonably calculated to give actual notice of the action if the court determines that, after diligent effort, a plaintiff has been unable to accomplish service by a method prescribed in Rule 4(c)(2) (hand-delivery or certified/return receipt mail).

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

- Proof of service must be filed within 60 days of the filing of the complaint; time may be extended by court
-

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

- 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 party) with signed return receipt attached
    - *Note: The signed return receipt is often in the form of a "green card." However, signatures captured electronically can be used.*

Long-arm jurisdiction - personal jurisdiction over and service on an individual outside of the District:

See D.C. Code §§ 13-423, -424; 13-431 *et seq*.

- DC may have personal jurisdiction over a person based upon that person's conduct. Jurisdiction over nonresidents established solely by conduct is limited to claims specifically arising from those acts. D.C. Code § 13-423(b).
- For claims arising from the parent/child relationship, (1) the plaintiff must reside in D.C. when the suit is filed; (2) the nonresident must be personally served with process; and (3) one of the following must be true: (i) the child was conceived in D.C. and the nonresident is the parent or alleged parent of the child; (ii) the child resides in D.C.

because or with permission of the nonresident parent; or(iii) the nonresident parent has previously resided with the child in D.C. D.C. Code § 13-423(a)(7).

- In addition to these criteria, "the court may exercise personal jurisdiction if there is any basis consistent with the United States Constitution for the exercise of personal jurisdiction." D.C. Code § 13-423(a)(7)(E). Any method of service must also comport with the Due Process Clause. *See, e.g.*, *Buesgens v. Brown*, 2008, 567 F.Supp.2d 26 (D.D.C. 2008); *Banks v. Lappin*, 539 F.Supp.2d 228, 238 (D.D.C 2008).

Service for long-arm jurisdiction: *See* D.C. Code § 13-424

If the court has personal jurisdiction, parties may be served outside of D.C. Generally, service can be made in the following ways:

- By personal delivery in the manner prescribed for service within D.C.;
- In the manner prescribed by the law of the place where service is made;
- By any form of mail addressed to the person to be served and requiring a signed receipt;
- As directed by the foreign authority in response to a letter rogatory. D.C. Code § 13-431(a).

Proof of service may be made by affidavit in the appropriate method under D.C. law or according to the law of the place where service was made (but proof of service must include a signed receipt for service by mailing, regardless of the other state's requirements). D.C. Code § 13-431(b). *See also* D.C. Code § 13-337 (personal service); D.C. Code § 13-336 (service by publication); D.C. Code § 16-4601.07(a) (notice requirements may comport with D.C. law or the law of the state where served); D.C. Code § 16-4601.07(b) (same, proof of service).

What if the parties cannot be found?

Constructive service by publication or posting is available in custody matters when an individual cannot be located and when there is evidence that an individual is evading service. *See* D.C. Code § 13-336 et seq.; D.C. Code § 13-340(a). Plaintiff must file a motion requesting approval for constructive service. The motion must be supported by an affidavit concerning

efforts made to locate the party. See *Cruz v. Sarmiento*, 737 A.2d 1021 (D.C. 1999); *Bearstop v. Bearstop*, 377 A.2d 405 (D.C. 1977). Such efforts are sometimes called a "diligent search."

The law is not specific regarding what must be done to satisfy a diligent search. The judge will usually want to see "generic" efforts (e.g., checking last known addresses, telephone directories, criminal court case records, D.C. Jail, and the Federal Bureau of Prisons) and also any situation-specific efforts that can be made (e.g., checking with known family members or former employees). A form motion for pro se litigants in D.C. Family Court has a worksheet to demonstrate attempts made to serve the party: http://www.lawhelp.org/files/7C92C43F-9283-A7E0-5931-E57134E903FB/attachments/959918D5-DB2B-4F1B-A70A160C074BBD8B/service_of_process_motion_to_serve_by_publication_or_postingsept2011.pdf

To demonstrate to the court that a serious effort has been made to find the party, the movant must conduct a diligent search to locate the party**.** Be sure to keep a detailed list of all efforts that includes the date, the search performed, and the name(s) and contact information of any person(s) contacted or spoken to in the course of the investigation, and the outcome of the effort.

The following is an informal checklist for performing a diligent search in a custody case:

1. Call the last known phone number.
2. Visit the last known address.
3. Complete a Google search on the individual and his/her last known address.
4. Contact the last known employment.
5. Contact any known family members.
6. Check yellowpages.com, whitepages.com, yellowbook.com, switchboard.com, 411.com and other directory services.
7. Check social networking sites like Twitter and Facebook.

8. Conduct a criminal, civil and family court records check in D.C., Maryland, and Virginia.
9. Send a copy of the complaint via certified mail return receipt requested and/or regular mail to all last known addresses.
10. Check inmate locator(s) both at a local and at a federal level. Local jurisdictions speaking may have an online site through their department of corrections or may be able to be contacted by telephone. In D.C., individuals in pre-trial detention or serving short sentences are incarcerated at D.C. Jail or the D.C. Correctional Treatment Facility, both of which can be telephoned. Individuals sentenced to longer terms are incarcerated in the federal system and the federal Bureau of Prisons has an inmate locator service available here: http://www.bop.gov.
    - Also check DC Vinelink to see if someone is locked up prior to sentencing: https://www.vinelink.com/vinelink/siteInfoAction.do?siteId=9900
11. Call hospitals. (Many judges will not require this.) Below is a non-exhaustive list of local D.C. hospitals:
    - Georgetown University Hospital: 202-444-2000
    - GW University Hospital: 202-715-4000
    - Howard University Hospital: 202-865-6100
    - National Rehabilitation Hospital: 202-877-1000
    - Providence Hospital: 202-269-7000
    - Sibley Memorial Hospital: 202-537-4000
    - Washington Hospital Center: 202-877-7000
    - Greater Southeast Community Hospital: 202-574-6000
    - Hadley Memorial Hospital: 202-574-5700
12. Call shelters. (Many judges will not require this.) When calling, keep in mind that some shelters are only open during the evening as they only provide shelter on an overnight basis, thus you may need to call at varying times. If the shelter will not disclose any information then you should make a note of that. The website Shelter Listings,

http://www.shelterlistings.org/city/washington-dc.html, offers information on local area shelters. The following is a non-exhaustive list of local area shelters:

Shelters for Males and Females:

- Jobs Have Priority (JHP, Inc.): 202-393-7117
- Community for Creative Non-Violence (CCNV): 202-393-1909
- Gospel Rescue Ministries: 202-842-1731
- Jeremiah House: 202-543-4901
- Prince Georges House: 301-808-5317
- Stepping Stones Shelter: 301-251-0567
- Community Based Shelter: 301-770-2413
- Carpenter Shelter: 703-548-7500
- Mondloch House: 703-768-3400

Females only:

- Calvary Shelter: 202-678-2341
- Luther Place Night Shelter (N Street Village): 202-939-2060
- Isaiah House: 202-797-8806
- Rachael's Women's Center: 202-682-1005
- Doorways for Women and Families: 703-237-0881
- House of Ruth: 202-667-7001
- Open Door Shelter: 202-639-8093
- Harriet Tubman Shelter: 202-574-1924
- Nativity Shelter: 202-487-2012

Males only:

- 801 East Shelter: 202-561-4014
- Adams Place Shelter: 202-832-8317
- New York Avenue Shelter: 202-832-2359

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 those cases or 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 Court of Appeals reversed. "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 goes on to analyze the balancing test criteria in more detail as well as alternatives to traditional testimony.

***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."

These materials are for information only. They do not provide legal advice. If you have questions about whether a custodial power of attorney is right for you or your family, or about how to prepare a custodial power of attorney, you should seek legal advice.

INFORMATION ABOUT CUSTODIAL POWERS OF ATTORNEY

What is a custodial power of attorney?
Under District of Columbia law, a parent can sign a custodial power of attorney that authorizes a third party (a person other than a parent) to make decisions on the child's behalf and/or designate with whom his/her child will live. A custodial power of attorney can also authorize the third party to obtain services for the child, like medical care or mental health care. You can give such authority to a third party if you cannot take care of your child due to, for instance, a physical or mental health condition, extended hospitalization, incarceration, military deployment, or for any reason. You do not have to say why you are granting a custodial power of attorney, but you may do so if you wish. Either the parent or the third party or both can seek legal advice regarding this kind of document.

What powers does a custodial power of attorney grant?
The parent decides what powers to grant to the third party when preparing the custodial power of attorney. The attached sample power of attorney lists various powers that a parent may wish to grant. To grant the *most* power to a third party, a parent should check all of the lines in paragraph 5, especially the last line.

A parent may also limit the powers granted by the power of attorney. A parent may do so by writing specific limitations in paragraph 7.

Do I have to get a custodial power of attorney notarized?
Although notarization is not required, it may be helpful. Notarization may make it easier to use the form to obtain services for the child.

How should a third party use a custodial power of attorney?
When the third party seeks to enroll a child in school, obtain medical care for the child, or obtain any other service or benefit for the child, the third party should bring the custodial power of attorney. It may also help to bring a copy of the law.

Can a parent revoke or withdraw the custodial power of attorney?
Yes. A parent can revoke the custodial power of attorney at any time after signing it. The custodial power of attorney form itself may describe *how* a parent can revoke the custodial power of attorney. A sample revocation form is also attached.

How long does a custodial power of attorney last?
Generally, if the custodial power of attorney does not include a time limit, it lasts until the parent revokes it. The sample form provides that you can revoke it in writing at any time, and a sample revocation form is also attached.

A parent can also specify a time limit for the power of attorney. For example, the parent could write in the form "This custodial power of attorney shall take effect on [date] and shall remain in effect until [date]."

What is the difference between a custodial power of attorney and a court custody order?
A custodial power of attorney is a legal document signed by a parent. It is not a court order. Generally, it is easier to revoke a custodial power of attorney than to change a court custody order. Every case is different and you should seek legal advice if you have questions about which option to use.

DISTRICT OF COLUMBIA CUSTODIAL POWER OF ATTORNEY PURSUANT TO D.C. CODE § 21-2301

1. I, _____, am the parent of the child(ren) listed below. There
Parent's name
are no court orders now in effect which would prohibit me from exercising the power that I now seek to convey.

2. My address is:

_____

_____

_____

3. _____ is an adult whose address is:
Third party's name

_____

_____

_____

4. I grant to _____ the parental rights and responsibilities listed
Third party's name
below regarding care, physical custody, and control of the following child(ren):

Name: _____ Date of Birth:_____

Name: _____ Date of Birth:_____

Name: _____ Date of Birth:_____

Name: _____ Date of Birth:_____

5. I grant to _____ the following parental rights and
Third party's name
responsibilities regarding the above-listed child(ren):

INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING. IF YOU DO NOT WISH TO GRANT A SPECIFIC POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER THAT YOU DO NOT WISH TO GRANT.

___ physical custody of the child(ren) listed above;
___ the authority to enroll the child(ren) listed above in school;
___ the authority to obtain educational records regarding the child(ren) listed above;
___ the authority to make all school-related decisions for the child(ren) listed above;
___ the authority to obtain medical, mental health, or dental records regarding the child(ren) listed above;
___ the authority to consent to medical, mental health, or dental treatment for the child(ren) listed above;
___ the authority to act as representative payee for any Social Security benefits for which the child(ren) listed above may be eligible;
___ the authority to receive any other benefits for which the child(ren) listed above may be eligible; and

___ all of the rights and responsibilities listed above and, to the greatest extent possible by law, the authority to make any other decision or obtain any other benefits necessary for the welfare of the child(ren) listed above.

6. This custodial power of attorney does not include authority to consent to the marriage or adoption of the child. In addition, unless otherwise agreed by the parties in writing, the custodial power of attorney granted in this form does not affect:

   A) the right of the above-listed child(ren) to inherit from his or her (their) parent;
   B) the parent's right to visit or contact the child(ren);
   C) the parent's right to determine the child(ren)'s religious affiliation;
   D) the parent's responsibility to provide financial, medical, and other support for the child(ren).

7. The custodial power of attorney granted in this form is further limited by these instructions:

_____

_____

_____

8. As set forth in D.C. Code § 21-2301, the custodial power of attorney granted in this form does not affect my rights in any future proceeding concerning custody of or the allocation of parental rights and responsibilities for the child(ren) listed above.

9. The custodial power of attorney granted in this form shall take effect immediately. It shall continue to be effective even if I become disabled, incapacitated, or incompetent.

10. The custodial power of attorney granted in this form shall continue until I revoke it in writing and notify _____ in writing of my revocation.
Third party's name

11. A person or entity that relies on this custodial power of attorney in good faith has no obligation to make any further inquiry or investigation into the authority of the attorney to act as described in this document. Revocation of this custodial power of attorney is not effective as to a person or entity that relies on it in good faith until that person or entity learns of the revocation.

Signed this _____ day of _____, 20_____.

_____
Parent's Signature

[*Notarization is not required for this document to be effective although it can be helpful.*]

REVOCATION OF A DISTRICT OF COLUMBIA CUSTODIAL POWER OF ATTORNEY PURSUANT TO D.C. CODE § 21-2301

1. I, _____, am the parent of the child(ren) listed below.
Parent's name

My address is:

_____

_____

_____

2. _____ is an adult whose address is:
Third party's name

_____

_____

_____

3. On _____ I signed a custodial power of attorney granting to
Date

_____ parental rights and responsibilities regarding the care,
Third party's name

physical custody and control of the following child(ren):

Name: _____ Date of Birth:_____

Name: _____ Date of Birth:_____

Name: _____ Date of Birth:_____

Name: _____ Date of Birth:_____

4. I hereby revoke the above-reference custodial power of attorney. I have sent written notice of this revocation in person, by regular mail, or by fax to _____ on
Third party's name

_____. This revocation will take effect upon that person's receipt of that
Date

written notice.

Signed this _____ day of _____, 20_____.

_____

Parent's Signature

[*Notarization is not required for this document to be effective although it can be helpful.]*

Superior Court of the District of Columbia

Practice Standards for Guardians ad Litem in Custody and Related Consolidated Cases

Pursuant to D.C. Code Sections 16-918(b) and 16-831.06(c), the court is permitted to appoint an attorney to act as a guardian *ad litem* "to appear on behalf of the child and represent his best interests" in any proceeding "wherein the custody of a child is in question."[1] D.C. Code Section 11-1103 directs the Superior Court to adopt practice standards for all court-appointed attorneys in the Family Court. The following practice standards shall apply, therefore, to guardians *ad litem* who are appointed by the court to represent and advocate for the child's best interests in custody and related consolidated cases involving domestic violence, the dissolution of a marriage, separation, and parentage proceedings, where issues of legal and/or physical custody/placement, parenting plans, access and/or visitation, and related issues involving child support and maintenance shall be adjudicated. These standards do not apply to attorneys appointed as guardians *ad litem* for children in neglect proceedings pursuant to D.C. Code Title 16, Chapter 23.

These standards reflect the unique role of the guardian *ad litem* and the imperative that the standards foster zealous, effective, and competent legal representation of the child's best interests.

I. Appointment of a Guardian *ad Litem*.

A. **Cases Where Appointment is Appropriate**. The court is not required to appoint a guardian *ad litem* but may, in the exercise of its discretion, appoint a guardian *ad litem* to advocate for the child's best interests in cases where the following condition or conditions exist:

1. One or both parties request the appointment;

2. There is a high level of conflict and acrimony between the parties or between a party(ies) and the child;

3. There is a reasonable basis to believe that there is undue parental influence or manipulation;

4. A child has substantial assets/trusts (property or income) and/or will inherit substantial assets; or is receiving Child Support, Temporary Assistance to Needy

[1] These Standards do not apply to attorneys appointed to represent a child's expressed wishes. *See* D.C. Bar Ethics Comm., Op. 295, n.1 (2000), *Restriction on Communications by a Lawyer Acting as Guardian ad Litem in a Child Abuse and Neglect Proceeding, available at* http://www.dcbar.org/for_lawyers/ethics/legal_ethics/opinions/opinion295.cfm.

Families (TANF), Supplemental Security Income (SSI), or Social Security Disability Insurance (SSDI);

5. There are past or present allegations of neglect and/or abuse of the child or a sibling, or there is a past or pending case involving the neglect and/or abuse of the child or involving a sibling;

6. There are past or present allegations of domestic violence, or there is a past or pending domestic violence case, involving any party or involving a significant other, spouse or family member where substantive issues involving placement, supervision, interaction, and access are implicated;

7. There are present and/or past mental health and/or substance abuse issues involving the child, a sibling and/or a parent(s) or others with significant access or interaction with the child;

8. There are special needs, disabilities or medical conditions involving the child and/or parent(s) or others with significant access to the child;

9. There is a party, significant other, spouse, or family member with considerable interaction and/or access to the child who has a criminal conviction that may reasonably implicate the health, safety, and/or welfare of the child;

10. There is a plan to relocate that will have a substantial impact upon the child's placement, access to, and/or visitation with the child;

11. There are issues involving a change in access to the child;

12. The action involves a third-party complaint (family member or other) where one or both parents oppose the action;

13. The child is of a developmentally appropriate age with reasoned judgment and has voiced a consistent desire to participate in the subject proceedings or has otherwise expressed certain views and concerns;

14. The appointment shall facilitate the judge's ability to decide the case with full knowledge of and access to relevant and material information, which is necessary to a best interests analysis, as required by case law and pertinent statute;

15. There have been attempts to abduct the child or otherwise remove the child from the jurisdiction of the court, from the state, or from the country; and/or there is a history of actual parental kidnapping or removal of the child from the jurisdiction without the consent of a parent; and/or there is the present likelihood that attempts in that regard will be made; and/or

16. Any other reason that the court deems appropriate.

B. **Qualifications for Appointment**.

1. The lawyer appointed to serve as the guardian *ad litem* shall be a member in good standing of the District of Columbia Bar or authorized to practice law in the District of Columbia pursuant to D.C. Court of Appeals Rule 49, and otherwise satisfies the requirements for an appointment as set forth herein.

2. Prior to appearing as a guardian *ad litem*, the attorney shall receive the necessary training to provide competent representation, which includes familiarity with the following topics:

   a. Relevant local and federal laws, court decisions and rules, administrative orders, and applicable legal standards;
   b. The role of the guardian *ad litem* in custody cases;
   c. District of Columbia Rules of Professional Conduct;
   d. Evidence and court procedure;
   e. Basic trial skills;
   f. Information pertaining to recognizing, evaluating, and understanding evidence of child neglect and abuse;
   g. Information regarding family dynamics and dysfunction, domestic violence, and substance abuse; and
   h. Information on competence with regard to cultural, racial, ethnic, economic, or other differences among the guardian *ad litem*, parties, and the child.

As part of the training process, guardians *ad litem* shall be assigned as determined appropriate by the referring or sponsoring agency or organization to mentors or supervisors with family law experience who have represented parties in domestic relations cases. Guardians *ad litem* should seek the advice and input of these more experienced lawyers.

II. Appointment Order:

A. **Provisions of Appointment Order**.[2] The court shall issue a written order that:

1. Identifies the guardian *ad litem* and his or her contact information;

2. Specifies the nature, scope and duration of appointment;

[2] A form guardian *ad litem* appointment order is attached hereto, which is subject to revision at the discretion of the judge presiding over the instant case.

3. Authorizes access by the guardian *ad litem* to the child and, as appropriate to the case and consistent with the best interest of the child, to all significant persons and relevant environments, including but not limited to, the parent's home(s), other home(s) where the child has access and spends significant time, the school placement, academic providers, and a nanny or other childcare provider;

4. Requires the parties to cooperate fully with the guardian *ad litem*, which cooperation shall include, but not be limited to, completing and signing release forms authorizing the guardian *ad litem* to obtain health care, education, and other information related to the child; providing the guardian *ad litem* with requested information; answering the guardian *ad litem*'s questions truthfully; and making the child available to the guardian *ad litem* upon the receipt of reasonable notice, except where reasonable notice is not possible due to an emergency;

5. Provides for payment by the parties for services rendered and expenses incurred by the guardian *ad litem*, if not provided by a pro bono attorney or by an attorney employed by a legal services organization or non-profit entity;

6. For pro bono appointments, provides for the guardian *ad litem* to serve without compensation and without the payment of court costs, filing and other fees, and directs the clerk's office to furnish to the guardian *ad litem* free of charge a copy of all pertinent documents in the court's file in the instant case or any other case involving a party or the child;

7. Provides for the guardian *ad litem* to obtain confidential court files upon appropriate waiver(s) and/or leave of court in accordance with court rules;

8. Requires that whenever the guardian *ad litem* prepares a written report, it shall be submitted to chambers (not filed in the public case file) with copies served upon the parties; unless there is good cause, the report shall be submitted at least five business days before the next scheduled hearing or proceeding;

9. Terminates the appointment 30 days after completion of the case ending in a judgment, adjudication, decree, or final order from which no appeal has been taken and the time allowed for an appeal has expired;

10. Requires the parties to serve the guardian *ad litem* with all papers filed in the case; and

11. Contains any other provisions as the court may determine appropriate, including provisions that a guardian *ad litem* may request the court to include.

B. **Contempt Powers**. The court may enforce its orders under this subsection by use of its contempt powers.

C. **Continuation of Appointment Post-Judgment Proceedings**. A guardian *ad litem*'s appointment may be extended to authorize representation of the child's best interests in post-judgment proceedings, consistent with the guardian *ad litem*'s assessment of the child's best interests and with the guardian *ad litem*'s willingness to continue to serve.

D. **Appointment on Appeal**. If notice of appeal has been entered, the guardian *ad litem* may seek an appointment on appeal, subject to any Rules of the D.C. Court of Appeals.

III. Role of the Guardian *ad Litem*.

A. **Attorney Appointed to Represent the Child's Best Interests**. The guardian *ad litem* is an attorney appointed by the court to represent the child's best interests in domestic relations proceedings. The guardian *ad litem* shall represent the child's best interests at any hearing and during all stages of the proceedings, unless relieved, replaced, or the appointment terminates. The guardian *ad litem* shall function independently and is a full and active participant in the proceedings who shall investigate, assess, and evaluate the issues, and shall zealously advocate for the child's best interests. In determining what is in the child's best interests, the guardian *ad litem* should use objective criteria and avoid relying on personal life experiences or stereotypical views of individuals whose backgrounds differ from that of the guardian *ad litem*.

B. **Guardian *ad Litem* to Have Rights of a Party**. Unless excluded by statute, rule, or case law, the guardian *ad litem* shall have certain rights of a party and fully participate in every court proceeding, at any stage, and shall receive court notice of the same. The guardian *ad litem* shall be authorized to: participate in pre-trial conferences, trial, mediations and negotiations; propound discovery; call witnesses; cross-examine witnesses; submit evidence; give an opening statement and closing argument; submit findings of fact and conclusions of law; preserve issues for appeal; file pleadings and motions; apply for protective orders; and take such actions during the pre-trial, trial and post-trial proceedings as are necessary to zealously advocate for the best interests of the child.

C. **Duties of the Guardian *ad Litem***. In fulfilling his or her role, the guardian *ad litem* shall have the following duties:

1. **Initial Tasks**. Immediately after being appointed, the guardian *ad litem* shall review the case file. The guardian *ad litem* shall inform other parties or counsel of the appointment, and that as guardian *ad litem*, he or she should be served with copies of all pleadings filed in the case and any discovery exchanges, and is entitled to notice of and to fully participate in all hearings related to the appointment.

Building a Relationship with the Child.

a. When the guardian *ad litem* meets with the child, all communications should be adapted to the child's age, level of education, cognitive and emotional development, cultural background, and degree of language acquisition, using an interpreter if necessary.

b. The guardian *ad litem* should inform the child, in a developmentally appropriate manner, about the court system, the proceedings, and the guardian *ad litem*'s role and responsibilities.

c. The guardian *ad litem* should consider meeting with the child in an environment familiar to the child, including the child's home(s) where appropriate. It is important for the guardian *ad litem* to recognize that children may not be comfortable talking to the guardian *ad litem* in an office. Further, it is generally important for the guardian *ad litem* to observe a child's home(s) and current circumstances to be confident that the child's surroundings are safe and appropriate. While not a mandated reporter of abuse or neglect,[3] the guardian *ad litem* should consider making a report to the court and/or appropriate child protection authorities when the guardian *ad litem* has concerns about the safety of the child.

d. The guardian *ad litem* should be prepared to spend meaningful time with the child. The guardian *ad litem* should, when appropriate, meet with the child outside the presence of the parties to ensure the child has a safe space to discuss the case and other matters with the guardian *ad litem*. Even preverbal children can provide valuable information about their needs through their behavior, including their interactions with their caretakers and other adults.

3. **Investigations**. The guardian *ad litem* shall conduct thorough, continuing, and independent investigations in accordance with the zealous representation of the child's best interests, with an awareness of and sensitivity to how his or her actions may impact the child's social, emotional, and educational well-being, including as appropriate:

a. reviewing any non-confidential court files of the child, siblings, parties to the case, and household members; reviewing relevant confidential court files with special court authorization; and reviewing case-related records of any social service agency and other service providers;

[3] *See* D.C. Code § 4-1321.01 *et seq.*; D.C. Code § 22-3020.52; *see also* D.C. Code § 16-2301 *et seq. (statutory definition of "neglected child" and related definitions). But see* D.C. Code § 4-1321.02(b); D.C. Code § 22-3020.52(c)(1).

b. reviewing the child's medical, social, educational, psychiatric, and psychological evaluations and/or records to which the guardian *ad litem* will be granted access;

c. contacting lawyers for the parties;

d. contacting and meeting with the parties, with permission of their lawyers if the parties are represented by counsel;

e. interviewing individuals who are significantly involved with the child;

f. reviewing evidence related to the statutory custody factors set forth in D.C. Code Section 16-914(a)(3) directly, rather than relying principally upon other descriptions and characterizations from parties, counsel, witnesses, or other individuals;

g. ascertaining and assessing the child's views in a developmentally appropriate manner;

h. staying apprised of other relevant court proceedings affecting the child; and

i. where feasible, assisting the parties in identifying and accessing services for the child and family and verifying implementation of such services.

4. **Pre-trial Responsibilities**. The guardian *ad litem* shall:

a. conduct thorough, continuing, and independent investigations as set forth more fully in paragraph 3 above;

b. conduct discovery when appropriate;

c. develop a theory and strategy of the case to implement at hearings, including presentation of factual and legal issues;

d. stay apprised of other relevant court proceedings affecting the child, the parties, and other household members;

e. attend meetings involving issues within the scope of the appointment;

f. take action to expedite the proceedings when appropriate;

g. participate in and, when appropriate, initiate negotiations and mediation. When necessary, the guardian *ad litem* should clarify that he or she is not acting as a mediator; and a guardian *ad litem* who participates in a mediation should be bound by the confidentiality and privilege rules governing the mediation. If a settlement agreement is reached by the

parties and submitted to the court, the guardian *ad litem* may notify the court of the guardian *ad litem*'s position with respect to whether it is in the child's best interests;

h. participate in depositions, pre-trial conferences, and hearings; and

i. file or make petitions, motions, responses, or objections when necessary.

5. **Hearings**. The guardian *ad litem* shall appear in court on the dates and times scheduled for hearings and proceedings, and shall be prepared to represent fully and zealously the child's best interests. Although the guardian *ad litem*'s position regarding the child's best interests may align with positions of other parties, the guardian *ad litem* shall be prepared to participate fully and shall not simply defer to or endorse the positions of other parties. Specifically, the guardian *ad litem* shall:

   a. identify herself or himself as the guardian *ad litem* at the beginning of any court hearing;

   b. make appropriate motions, file briefs, and preserve issues for appeal as appropriate;

   c. present and cross-examine witnesses and offer exhibits as necessary;

   d. if a child is to meet with the judge or testify, prepare the child by familiarizing the child with the places, people, procedures, and questioning to which the child will be exposed, and seek to minimize any harm to the child from the process;

   e. make an opening statement and a closing argument proposing specific findings of fact and conclusions of law; and

   f. advocate for a written order that conforms to the court's oral rulings and includes all statutorily required findings and notices.

6. **Child's Interview or Testimony**. The guardian *ad litem* shall take a position based on the child's best interests regarding whether the child should be interviewed by the judge or testify and shall file any necessary motions to further that position.[4] Children, if they do testify, can be determined to be competent.[5]

[4] *See N.D. McN. v. R.J.H., Sr.*, 979 A.2d 1195 (D.C. 2009); *In re Jam.J.*, 825 A.2d 902 (D.C. 2003).

[5] *See e.g., Barnes v. United States*, 600 A.2d 821 (D.C. 1991); *Smith v. United States*, 414 A.2d 1189 (D.C. 1980); *Robinson v. United States*, 357 A.2d 412 (D.C. 1976); *Edmondson v. United States*, 346 A.2d 515 (D.C. 1975); *In re Lewis*, 88 A.2d 582 (D.C. 1952).

The guardian *ad litem* should seek to minimize any adverse consequences that may arise from a child being interviewed by a judge or called as a witness by seeking all appropriate accommodations permitted by law. The child should be told in advance that in-chambers or court testimony will be shared with the parties. The guardian *ad litem* should be cognizant that the trial court can limit questions and should request that all parties submit questions to chambers in advance.[6]

7. **Reports**. The guardian *ad litem* may prepare written and/or oral reports during the *pendente lite*, pre-trial, trial, and post-trial stages of the proceedings. Whenever the guardian *ad litem* submits a written report, it shall be provided directly to the judge's chambers and to the parties at least five business days before the next scheduled hearing or proceeding, unless good cause is shown. All written reports shall be served upon the parties by first class mail or e-service as appropriate and shall be accompanied by a certificate of service in conformity with court rules. All written reports should be limited to information the guardian *ad litem*: (a) believes to be supported by admissible evidence; and (b) intends to introduce at trial or an evidentiary hearing. The judge shall make a docket entry in the court's official case file that the written report was submitted and the date of submission.

IV. Applicability of District of Columbia Rules of Professional Conduct.

The District of Columbia Rules of Professional Conduct apply to guardians *ad litem* just as they do to all other attorneys practicing before the court, and specifically with respect to the following ethical issues that often arise for guardians *ad litem*:

A. **Zealous Representation of Child's Best Interests**.[7] A guardian *ad litem* shall represent the child's best interests zealously and diligently within the bounds of the law. In doing so, the guardian *ad litem* has professional discretion in determining the means by which the matter should be pursued. Because the guardian *ad litem* represents the child's best interests, and not the child's expressed wishes, the guardian *ad litem* is not bound by the explicit direction of the child and may make recommendations to the court that are different from the child's expressed wishes. However, the guardian *ad litem* should inform the court if the child's wishes are different from the guardian *ad litem*'s recommendations and, in some instances as set forth in paragraph C below, an expressed wishes attorney may be appointed.

B. **Confidentiality of Communications**.[8] The guardian *ad litem* shall comply with applicable District of Columbia Rules of Professional Conduct and ethics opinions

[6] *See e.g., Jam.J.*, 825 A.2d 902; *In re T.W.*, 623 A.2d 116 (D.C. 1993). For further case law on children's testimony, *see generally* Ravdin & Brenneman, *Domestic Relations Manual for the District of Columbia* (Matthew Bender 2012).
[7] D.C. Rules of Prof'l Conduct R. 1.3.
[8] D.C. Rules of Prof'l Conduct R. 1.6, R. 1.14.

with respect to the confidentiality of communications between the guardian *ad litem* and the child and other confidential information obtained during the representation. The guardian *ad litem* may disclose the child's confidential information if the child consents or if the guardian *ad litem* believes doing so would be in the best interests of the child. The guardian *ad litem* shall consider the potential impact upon the child of any such disclosures to the court and the parties.

C. **Conflicts of Interest**.[9] The guardian *ad litem* should always give careful consideration to potential conflicts and seek guidance as necessary. When the guardian *ad litem*'s assessment of the child's best interests conflicts with the views of the child, the guardian *ad litem* shall notify the court of the conflict and in some circumstances, an attorney may be appointed to represent the child's expressed wishes. The new attorney for the child will represent the child's expressed wishes, while the guardian *ad litem* will advocate with regard to the child's best interests. As soon as the court resolves the issue that caused the conflict, the attorney for the child representing the child's expressed wishes may request leave of court to withdraw. The guardian *ad litem* also shall consider if a conflict of interest exists with regard to serving as the guardian *ad litem* for more than one child or sibling. The guardian *ad litem* shall not represent two or more siblings when their interests are adverse and shall never represent siblings when it is alleged that one sibling has physically or sexually abused the other. If the guardian *ad litem* determines that representation of multiple children could result in taking two or more adverse positions in the case, he or she shall make a request to the court for the appointment of a second guardian *ad litem* or may have to withdraw from representation of all of the children.

D. **Dealing with Represented and Unrepresented Parties**.[10] The guardian *ad litem* shall not contact or interview represented parties without permission from the party's attorney; provided that, the guardian *ad litem* may contact represented parties without such consent for the limited purpose of scheduling visits with the child. The guardian *ad litem* may not circumvent the District of Columbia Rules of Professional Conduct concerning communication with a represented party by requesting that a third party ask a represented party for information. In dealing with a person who is not represented by counsel, the guardian *ad litem* shall not state or imply that he or she is disinterested, and if the unrepresented person misunderstands the guardian *ad litem*'s role, he or she shall make reasonable efforts to correct the misunderstanding.

E. ***Ex-Parte* Communications**.[11] The guardian *ad litem* shall not engage in *ex-parte* communications with the court except: (1) in the event that a request for an emergency hearing is necessary to prevent imminent harm to the minor child, or (2) as authorized by the parties or counsel on behalf of the parties.

[9] D.C. Rules of Prof'l Conduct R. 1.7; D.C. Bar Ethics Comm., Op. 295 (2000); *In re. A.S. & J.S.*, 118 Daily Wash. L. Rptr. 2221, 2227 n.15 (D.C. Super. Ct. Oct. 11, 1990).
[10] D.C. Rules of Prof'l Conduct R. 4.3; D.C. Bar Ethics Comm., Op. 295 (2000).
[11] D.C. Rules of Prof'l Conduct R. 3.5(b).

F. **Independence and Objectivity**.[12] The guardian *ad litem* shall maintain independence, objectivity, and fairness, as well as the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom. It is important to the fulfillment of the guardian *ad litem*'s role and duties to make every effort to develop and maintain a professional working relationship with all parties, their counsel, and others who have significant access and/or interaction with the child, and to do so without sacrificing independence and focus.

G. **Guardian *ad Litem* as Witness or to Provide Testimony**.[13] Unless required by law, a guardian *ad litem* shall not be called as a witness nor shall a guardian *ad litem* testify, orally or in writing, in any hearing or evidentiary proceeding.

[12] D.C. Rules of Prof'l Conduct R. 3.4, R. 4.1; D.C. Bar, *Voluntary Standards for Civility in Professional Conduct*, *available at* http://www.dcbar.org/for_lawyers/ethics/legal_ethics/voluntary_standards_for_civility/index.cfm.
[13] D.C. Rules of Prof'l Conduct R. 3.7; *S.S. v D.M.*, 597 A.2d 870 (D.C. 1991).

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

FAMILY COURT
DOMESTIC RELATIONS BRANCH

,	**)**	
	)	**Case Number**
Plaintiff	**)**	**Judge**
	)	**Next Hearing Date:**
v.	**)**	
	)	
,	**)**	
	)	**Related Cases:**
Defendant.	**)**	
_____	**)**	

ORDER APPOINTING GUARDIAN *AD LITEM*

It is this _____ day of _____, 20__, by the District of Columbia Superior Court,

ORDERED that _____ is hereby appointed as the guardian *ad litem* ("GAL") for the minor child(ren): _____, born _____, and _____, born _____; and it is further

ORDERED that the GAL shall represent the best interests of said child(ren) in the above-captioned case in all matters relating to custody and visitation; and it is further

ORDERED that the GAL shall undertake his or her duties hereunder in accordance with the *Practice Standards for the Appointment of Guardians ad Litem in Custody and Related Consolidated Cases;* and it is further

ORDERED that the GAL shall have access to the child(ren) and, as appropriate to the case and consistent with the best interest of the child(ren), to all significant persons and relevant environments, including but not limited to, the parent's home(s), other home(s) where the child(ren) has access and spends significant time, the school placement, related academic providers, a nanny or other childcare provider; and it is further

ORDERED that the parties shall cooperate fully with the GAL, which cooperation shall include but not be limited to: completing and signing release forms authorizing the GAL to obtain health care, education, and other information related to the minor child(ren); providing the GAL with requested information; answering the GAL's questions truthfully; and making the minor child(ren) available to the GAL upon the receipt of reasonable notice, except where reasonable notice is not possible due to an emergency; and it is further

[ORDERED that the parties shall provide payment for services rendered and expenses incurred by the GAL, if not provided by a pro bono attorney or by an attorney employed by a legal services organization or non-profit entity; and it is further]

[ORDERED that if the GAL serves without compensation, the GAL shall be permitted to participate in this case without the payment of court costs, filing and other fees, and the clerk's office shall provide to the GAL free of charge a copy of all pertinent documents in the court's file in the instant case or in any other case involving the parties or the child(ren); and it is further]

ORDERED that the GAL may obtain confidential court files upon appropriate waiver(s) and/or leave of court in accordance with court rules; and it is further

ORDERED that unless there is good cause, whenever the GAL writes a report, it shall be submitted to chambers five business days before the next scheduled hearing or proceeding, with copies served upon parties; and it is further

ORDERED that this appointment shall terminate 30 days after completion of the case ending in a judgment, adjudication, decree, or final order from which no appeal has been taken, and the time allowed for an appeal has expired; and it is further

ORDERED that all parties shall serve the GAL with any papers filed in this case at the address set forth below.

_____
Judge

Copies to:

Names and Addresses of Parties/Attorneys

Name and Address of GAL

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
ADMINISTRATIVE ORDER 14-01

Practice Standards for Guardians ad Litem (GAL) in Custody and Related Consolidated Cases

WHEREAS, the Superior Court has authority under D.C. Code §§ 16-918(b) and 16-831.06(c), to appoint attorneys to act as guardians *ad litem* "to appear on behalf of the child and represent his [or her] best interests" in any proceeding "wherein the custody of a child is in question"; and

WHEREAS, D.C. Code § 11-1103 directs the Superior Court to adopt practice standards for all court-appointed attorneys in the Family Court; and

WHEREAS, the Family Court Domestic Relations GAL Standards Committee has developed Practice Standards for Guardians ad Litem in Custody and Related Consolidated Cases, in consultation with representatives from the bench, the bar and local community-based organizations that provide legal representation in Family Court; and

WHEREAS, the proposed Practice Standards are intended to apply to guardians *ad litem* who are court-appointed to represent and advocate for the child's best interests in custody and related consolidated cases involving domestic violence, the dissolution of a marriage, separation, and parentage proceedings, where issues of legal and/or physical custody/placement, parenting plans, access and/or visitation, and related issues involving child support and maintenance shall be adjudicated; and

WHEREAS, these standards do not apply to attorneys appointed as guardians *ad litem* for children in neglect proceedings under D.C. Code Title 16, Chapter 23, whose standards of practice were previously adopted through Administrative Order 13-06;

NOW, THEREFORE, it is by this Court,

ORDERED, that the attached Practice Standards for Guardians ad Litem in Custody and Related Consolidated Cases are adopted pursuant to this Administrative Order, shall take effect on the date of this order, and shall govern representation in custody and related consolidated cases as defined above; and it is further

ORDERED, that this Order shall take effect on January 24, 2014.

SO ORDERED.

BY THE COURT

/s/

January 24, 2014 **Lee F. Satterfield**
Chief Judge

Copies to:

Judges
Senior Judges
Magistrate Judges
Division Directors
Executive Officer
Clerk of the Court
Family Court Director
CCAN Office Director
Library
DC Bar Family Law Section
Children's Law Center
Legal Aid Society
Bread for the City
DCVLP
Council for Court Excellence
Daily Washington Law Reporter

March 2019

ACCESSING PUBLIC BENEFITS IN DC AND ENROLLING A CHILD IN A DC PUBLIC SCHOOL WITHOUT A CUSTODY ORDER

Temporary Assistance for Needy Families (TANF)

- **"Caretaker relatives" may be eligible to receive cash assistance for themselves and for children in their care through TANF even if the caretaker does not have a custody order**
    - A "caretaker relative" is a family member who is caring for a child and who is related to the child by blood, half-blood or adoption. Most, but not all family relationships establish "caretaker relative" status. *See* DC Code § 4-201.01(1C) (2001).
  - Additional eligibility requirem**e**nts for all TANF applicants can be found at DC Code § 4-205 *et. Seq.*, and include the following:
    - DC residency
    - Pregnant or caring for a child under 19
    - US citizen, legal alien, or permanent resident
    - Low or very low income
    - Under employed, unemploy**e**d, or about to become unemployed

- **The relative caretaker must ask to be included in the "assistance unit" to receive benefits for themselves *and* the child**
  - The "assistance unit" is "all individual whose needs, income and resources are considered in determining eligibility for, and the amount of, public assistance." *See* DC Code § 4-201.01(1B) (2001)
  - A caretaker relative's income and resources will be considered in the assistance unit's eligibility determination. Therefore, a caretaker relative that does not have very low income and resources might consider applying for General Assistance for Children (GAC) because GAC does not take into account the caretaker's income and resources. See section on GAC eligibility below

General Assistance for Children (GAC)

- **When a person is not a "caretaker relative" or is unable to show that they are a "caretaker relative," the caregiver may still be able to receive cash assistance for a child through GAC, even if the caretaker does not have a custody order**

    - The caretaker will be asked provide authorization from the child's parent or other responsible relative, or a court order designating the applicant as the temporary or permanent caretaker for the child. *See* D.C. Code §4-205.05a(c-1)(1)(2001)

If the caretaker cannot reasonably obtain such authorization, proof that the caregiver is caring for the child must be provided. Acceptable forms of proof can be found at D.C. Code §4-205.05a(c-1)(2) (2001). They include but are not limited to the following:

- Leases indicating that the child lives with the caretaker
- Medical records or school records bearing the caretaker's signature
- Affidavits from teachers, social workers, medical staff or other professionals involved in the family's life

    - The Income Maintenance Administration (IMA), the DC agency that manages and distributes GAC funds, has stated that a grandmother could provide the birth mother's birth certificate and the child's birth certificates to establish "caretaker relative" eligibility.

- **Even though the caretaker does not have to be a "caretaker relative" as defined above, the caretaker must meet some requirements for TANF eligibility, including D.C. residency. *See* D.C. Code §4-205.05a(c) (2001).**

- **The caretaker is not included in the "assistance unit" under GAC, and the caretaker should make it clear when applying for GAC that they do not wish to be included in the "assistance unit," and that the caretaker is only applying for the child.**

    - Exclusion from the assistance unit prevents the caretaker's financial situation from being a factor in the eligibility determination. *See* D.C. Code §4-205.05a(c)(1) (2001).

MEDICAID/DC HEALTHY FAMILIES

- **A child who is part of an "assistance unit" that receives TANF or GAC should be eligible for health insurance through Medicaid/D.C. Healthy Families even if the caretaker does not have a custody order.**

- **The caretaker for the child may also be eligible, depending on the caretaker's income and whether s/he has private insurance.**

- **To apply for Medicaid and not TANF or GAC, a DC Healthy Families Application should be filled out – visit the links below for information and to access the DC Healthy Families application:**
    - Information about Medicaid: http://dhcf.dc.gov/service/medicaid
    - Information about DC Healthy Families: http://dhcf.dc.gov/service/dc-healthy-families
    - DC Health Families Application: http://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/hf_english_application.pdf

THE COMBINED APPLICATION

- **Caretakers can apply for cash assistance through TANF or GAC and Medicaid all at once by using the "combined application."**
    - The caretaker will need to go to an Economic Security Administration (ESA) (formerly known as the IMA) service center and fill out a "combined application." The application can be found here:
        - Combined Application (English): http://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/combinedform_eng1.pdf
        - Combined Application (Spanish): http://dhs.dc.gov/sites/default/files/dc/sites/dhs/publication/attachments/combinedform_spa_0.pdf
- **The Economic Security Administration (ESA) (formerly known as the Income Maintenance Administration or IMA) determines eligibility for benefits, including Temporary Cash Assistance for Needy Families (TANF), Medical Assistance, Supplemental Nutrition Assistance Program (SNAP). For more information about public benefits and to find the nearest ESA services center, visit the ESA website**: http://dhs.dc.gov/page/economic-security

SCHOOL ENROLLMENT

- **A court custody order is not required to enroll a child at DC Public school if the caretaker is an "other primary caregiver" and is a DC resident.**

- An "other primary caregiver" is a person other than a parent or court-appointed custodian or guardian who is the primary provider of care and support to a child who resides with him or her, and whose parent, custodian, or guardian is unable to supply such care and support. *See* D.C. Code § 38-301(10) (2001); D.C. MUN. REGS. TIT. 5, § 5004.1 (2011)

- DC Code §38-310(b) (2001) and D.C. MUN. REGS. TIT. 5, § 5003.1 (2011) provide that a caretaker can prove other primary caregiver status by providing ONE of the following documents:
  - Previous school records indicating that the student is in the care of the caregiver; or
  - Immunization or medical records indicating that the student is in the care of the caregiver; or
  - Proof that the caregiver receives public or medical benefits on behalf of the student; or
  - A signed statement, sworn under penalty of perjury, that he or she is the primary caregiver for the student (submitted on a standard form); or
  - An attestation from a legal, medical or social service professional attesting to the caregiver's status relevant to the student (also on a standard form)

➢

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Domestic Violence (Interfamily Offenses) Statutes and Rules

D.C. Code §§ 16-1001—16-1026
(Intrafamily Proceedings; Parental Kidnapping)

D.C. Superior Court Domestic Violence Division Rules can be accessed here:

https://www.dccourts.gov/superior-court/rules

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Civil Protection Order Cases in the District of Columbia - A Primer

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 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 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 7A. A hearing is help on the TPO request on the same day it is filed. 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(c). TPOs can be extended beyond the initial 14-day period as provided by the statute and rules.

- 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 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 (formerly Greater Southeast Community Hospital) and there is also an emergency after-hours procedure coordinated by D.C. SAFE and the 7th District of the Metropolitan Police Department

- CPO cases are heard by judges sitting 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 within 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).

- TPOs are heard based on oral motion on the day that the CPO petition is filed.
    - They can be and routinely are heard *ex parte*, without notice to the respondent. SCR-DV 7A.

- Service of process is governed by SCR-DV 3. 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.

  If the respondent does not appear at the hearing after proper service of the NOHODA, the court can issue a bench warrant. SCR-DV 5.

- 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. Although the respondent is in default, the petitioner will typically be required to present evidence that an intra-family offense has been committed (most commonly the petitioner's own testimony). *See* SCR-DV 5(c) and (d), 11(c). 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(c).

  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 12.

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

- 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 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 visitation if the judicial officer finds that the child and custodial parent

[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.

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 issues.

- 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., https://www.dccourts.gov/services/domestic-violence-matters/supervised-visitation

  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).

Consolidation with related cases

- When there is a finding of an intrafamily offense, SCR-DV 2 provides that all divorce, custody, paternity and child support cases shall be consolidated and heard in the Domestic Violence Unit. SCR-DV 2 also specifies that a judge in the Domestic Violence Unit may also certify a matter to another appropriate division of the court for a trial or hearing under certain circumstances. In practice, cases are not automatically consolidated; but a party may request consolidation. When cases are consolidated, they are more typically heard by the Family Court judge rather than the Domestic Violence Unit judge.

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

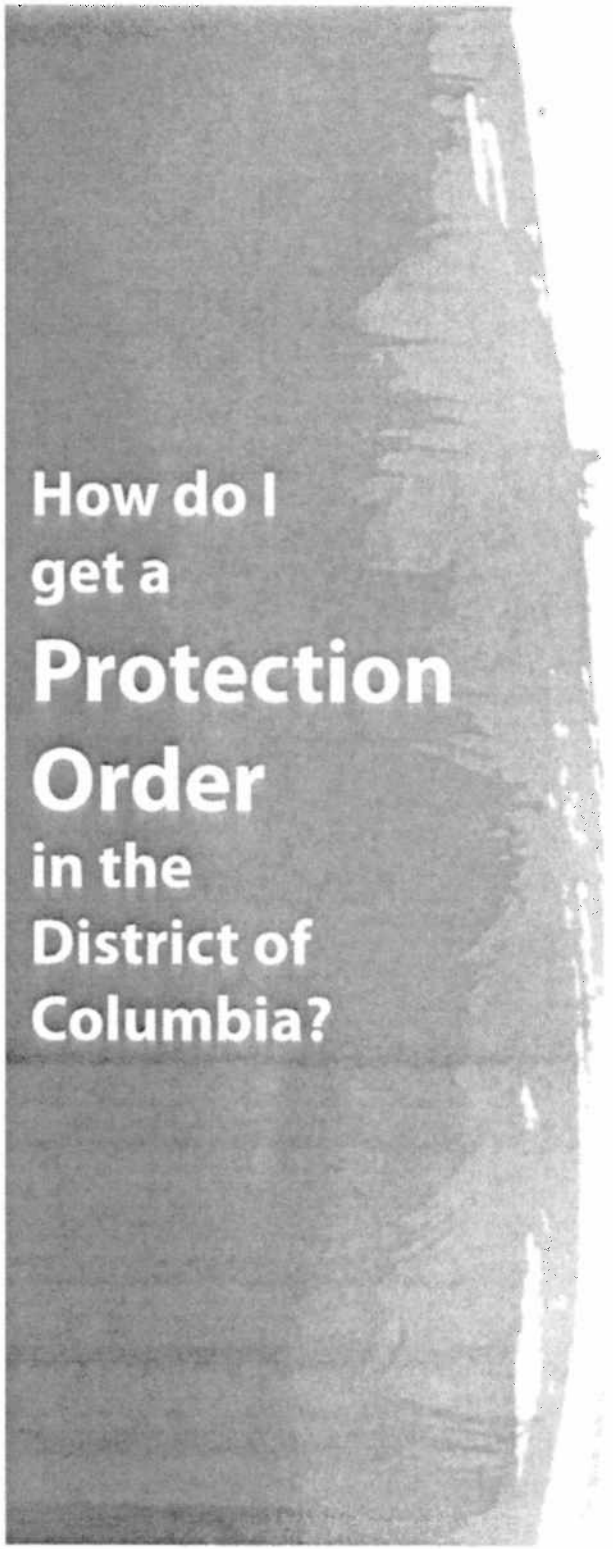
Interpersonal Violence

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?