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Family Law Issues Resulting from the Coronavirus Pandemic – April 2020

The COVID-19 pandemic has impacted every facet of our lives. It has also presented families with unique circumstances and dilemmas. From a family law perspective, there are several issues that could arise for which you may need legal guidance. Below is a list of common inquiries that we anticipate addressing while we continue to navigate these uncharted waters. However, every situation is fact specific, and you should discuss the circumstances of your case with one of our attorneys as the information contained herein is intended only to provide general guidance.

CHILD CUSTODY

1. Do I still have to return my children at the end of my custodial period if I am not comfortable with the safety precautions the other parent is taking?

Philadelphia and the surrounding counties have issued specific guidance concerning existing custody orders. As a general rule, custody orders must be complied with unless and until there is an agreement or court order modifying the existing arrangement. Therefore, even if parents are taking different approaches with regard to COVID-19 related precautions, the terms any custody order or agreement, including the physical custody schedule, must be followed until that custody order or agreement is modified or suspended. However, if the other parent isn't following CDC recommended guidelines, you may be able to file for emergency custody to temporarily suspend the other parent's custodial time.

2. Do Stay-At-Home Orders affect my custody agreement?

Although Governor Wolf has issued a "stay at home" order, travel to pick up or drop off a child pursuant to a custody agreement is exempt from the order.

3. Are the courts open? Can a custody order be changed during the pandemic?

While the courts across the region are closed for regular business, they are accepting emergency custody filings and are generally handling hearings for such filings by telephone. Emergencies typically concern the physical safety of a child or his/her removal from the state without permission. During the COVID-19 pandemic, the courts have expanded their definition of what constitutes an emergency to protect the safety, health or well-being of a child.

If you have concerns as to the other party's actions during the COVID-19 pandemic, please contact our office to discuss your legal options.

4. What if I have been exposed to COVID-19?

You are required to notify the other party promptly if you believe you, or your child, has been exposed to COVID-19. Depending on the location of your child during your diagnosis, you may need to temporarily alter your physical schedule and place your child and yourself under quarantine. The child's physical well-being is paramount and withholding a COVID-19 diagnosis or exposure could have serious long-term consequences in a custody matter.

5. If the other parent and I have been sharing a residence, is it possible to move out?

Yes, you are free to move out of the residence prior to filing any court actions. However, there are important facts that should be taken into consideration prior to making such a decision. For example, it is important to consider the custody ramifications. With limited access to courts, you should have a written custody agreement before either party moves out of the residence. This will help avoid significant periods of uncertainty as the court is unlikely to regard the lack of a custody agreement as an emergency.

6. Can I force the other party to move out?

Having the other party excluded from the marital residence is viewed as a harsh remedy by the court and such relief can be difficult to obtain. However, if you are a victim of physical abuse, or in fear of physical abuse, please immediately speak with one of our attorneys to discuss whether to remove yourself from the home and/or to file a petition for protection from abuse as the courts are still open to handle emergency abuse filings.

7. Can my conduct as a parent during the COVID-19 pandemic be raised in future litigation?

Yes, it is always important to act reasonably, especially during uncertain time like these.

Try to be flexible with the other party. Although custody orders should be followed, these times require greater flexibility than what might ordinarily be expected.

Try to maintain an open channel of communication with the other party to discuss safety measures including, but not limited to, social distancing.

Do not take risks with the personal safety of you or your child. If one party requests increased safety measures, please call one of our attorneys to discuss what standards should be followed.

Work together on your child's schooling. Many area schools are encouraging and/or requiring virtual learning. Try to ensure that both households have appropriate technology so that there are as few disruptions as possible with school lessons.

Stay informed and keep the other parent informed. Make sure that you are sharing any information received from school or healthcare providers as it pertains to your child's health, safety and welfare.

CHILD SUPPORT AND ALIMONY

1. If I am earning less because of the pandemic, can I pay less support/receive more support?

All support orders must be followed as written unless or until a court modifies the same.

COVID-19 has caused financial turmoil across many industries. If you experience a loss in income, even if it is temporary, it could serve as the basis for a change in your support obligation. It is important to take appropriate measures if you have a reduction in income due to the pandemic. Initial support orders and modifications are generally retroactive to the date that they are filed. If you have experienced a reduction in your income, contact one of our attorneys to determine whether an appropriate petition should be filed before the courts have reopened.

2. Are the government stimulus funds considered income for child support?

Although the courts have yet to address this issue specifically, government funds, such as social security, are generally considered income available for support. Therefore, while your employment income may have been reduced, if it has been replaced by government funds, your support payments would likely remain the same. Of course, if your income, including any government funds, is still lower than the amount indicated in your support order or agreement, you may want to pursue a modification.

DIVORCE

1. Can my case still move forward even if the courts are closed?

It depends on whether court intervention is necessary. As far as litigation, public access to all of the courts has been limited and hearings have been postponed. However, these times may present an opportunity to prepare for future litigation, negotiate with the other party, or to resolve the matter altogether. During the COVID-19 pandemic, Property Settlement Agreements can be negotiated, drafted and signed without court involvement.

The attorneys and staff of McEldrew Young are working remotely, with full access to all client files and firm resources. We are available to answer any questions and address any concerns, whether related to your legal matter or in any other way. Please do not hesitate to give us a call at (215) 367-5151.