

CUSTODY AND VISITATION RECOMMENDATIONS DURING COVID-19

From the North Carolina Family Court Advisory Commission:

To provide guidance to families with existing Chapter 50 custody and/or visitation orders during the COVID-19 pandemic, commonly referred to as the novel coronavirus, the Family Court Advisory Commission issues the following recommendations, which were approved by Chief Justice Cheri Beasley on April 13, 2020. The goal of these recommendations is to encourage the parties to follow their parenting plan and/or custody order as closely as possible to ensure a level of consistency and stability that is in the best interest of the child(ren). Families should work together to ensure the best interest of the child(ren) while also following the advice of their healthcare provider(s).

Parties can utilize the North Carolina Custody Mediation Program by contacting the local district court office where the custody order was entered.

Please note that these recommendations are not intended to apply to child custody orders entered pursuant to a Chapter 50B Domestic Violence Protective Order. If you need assistance with a custody order entered as a part of a Domestic Violence Protective Order, please contact your attorney or, if you are a protected party, your local Domestic Violence Service Provider. You can find an interactive list of local Domestic Violence Service Providers at <https://ncadmin.nc.gov/advocacy/women/interactive-programs-directory>. A list of NC Legal Aid Service providers is available at <https://ncprobono.org/volunteer/view-legal-service-providers/>.

Governor Cooper's March 27, 2020 "stay at home" order prohibits nonessential travel but allows for "travel between one's place or places of residence for purposes including, but not limited to, child custody or visitation arrangements." Parties should continue to follow their parenting plan or custody order as written while such orders are in effect, unless otherwise directed by the Governor or other executive or judicial order. All parties should adhere to local "stay at home" orders, to the extent they impose greater restrictions on the population, while they remain in effect. Parents are encouraged to check travel restrictions that may exist between states and counties before traveling.

Recommendations for preventive measures and dealing with potential illness have been changing frequently since coronavirus appeared in North Carolina. Parents and those with custody rights or visitation with a child should stay informed of the most recent recommendations for caring for children and protecting others who may be at higher risk. To the extent possible, parents and parties with custody or visitation should follow recommendations from the Centers for Disease Control and Prevention (CDC). Up-to-date recommendations regarding caring for children may be found at: <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/children.html>.

Denial of Parenting Time. The spread of COVID-19, in and of itself, is not a reason to deny parenting time. Unless otherwise ordered by the court, parents are considered fit to care for their child(ren) and make decisions regarding the day-to-day aspects of parenting while the child(ren) are in their care. This day-to-day care includes following both local and state health directives regarding travel, social distancing, and hygienic measures (e.g., frequent hand-washing).

Supervised Parenting Time. If parenting time is ordered to be supervised and the supervisor is unavailable due to pandemic-related issues or other government orders, parenting time should be conducted virtually via videoconferencing (e.g., WebEx, Skype, or FaceTime) or by telephone.

Examples of supervisor unavailability may include suspension of a facility's services due to the pandemic or the supervisor is self-quarantined. Parties should review their custody order or consult with their attorney concerning alternate and appropriate supervisors for supervised parenting time.

Exchanges. Parties should review their custody order or consult with their attorney concerning exchanges. Additional circumstances may exist that would alter each party's responsibilities as they relate to custody (e.g., if the parties are ordered to exchange a child through a facility that has suspended services due to the pandemic). During the exchange of the child(ren), all parties should follow the CDC guidelines for limiting the spread of the virus, which may mean choosing an alternate location for the exchanges that has fewer people congregating and less touching of public items (e.g., moving exchanges from a restaurant to a grocery store parking lot).

Parenting Time in Public Places. If the parenting plan states that parenting time will occur in a public place, parenting time should continue at locations that are permitted under Governor Cooper's order and in accordance with health and safety guidelines, such as a large park. In accordance with Governor Cooper's Order, individuals may engage in outdoor activity, provided they comply with social distancing requirements and the prohibition against mass gatherings, as defined in the order. Where available, individuals may go to public parks and open outdoor recreation areas. However, public playgrounds are closed since touching the equipment may increase the spread of COVID-19. Other public places where people routinely touch common contact surfaces should be avoided. Activities where parents and child(ren) can maintain social distancing and avoid such surfaces are encouraged. If following these orders and guidelines is not possible, parenting time should be conducted virtually via videoconferencing (e.g., WebEx, Skype, or FaceTime) or by telephone.

Definition of Spring Break, Summer Break, Vacation, and Holidays. While the schools are closed, parenting time shall continue as if the child(ren) are still attending school in accordance with the regular school calendar of the relevant district. School closure for public health purposes will not be considered an extension of any break/vacation/holiday period or weekend. "Spring break", "summer break/vacation", or other designated holidays means the regularly calendared breaks/vacations or holidays in the school district where the child(ren) attend school (or would attend school if they were school aged).

Safety-Related Issues. If a parent or party with custody or visitation rights is diagnosed with COVID-19 or displays symptoms related to COVID-19, or a member of his or her household is diagnosed with or displays symptoms related to COVID-19, the other party should be notified as soon as possible. If a current court order prohibits communications between the parties, the other party should be notified by some method other than direct contact between the parties. The parties should work together to protect the health and safety of the child(ren) by following the advice of their healthcare provider(s). Again, parties and families should work together to ensure the best interest of the child(ren) while also following the advice of their healthcare provider(s).

First responders must remain available for true emergencies and for support related to the COVID-19 outbreak. Please do not contact them for parenting-related disputes unless you are experiencing domestic violence, or you or your child(ren)'s immediate health and safety is at risk.

Transparency. Unless the parties are restrained from communicating by a court order, parents are encouraged to communicate about precautions they are taking to slow the spread of COVID-19 and to ensure the safety of the child(ren). A parent is not permitted to deny parenting time based upon the other parent's unwillingness to discuss their precautionary measures taken, or a parent's belief that the other parent's precautions are insufficient.

Attorneys Representing Clients with Custody and/or Visitation Orders. Attorneys should encourage their clients to work together with their child(ren)'s best interests in mind, to have a pandemic plan in place in case someone gets sick or must be quarantined, and to remotely mediate any disputes over custody exchanges, or negotiate reasonable terms with opposing counsel, so that court intervention is not required.

Attorneys should remember to review the requirements of G.S. 50-13.5(d) before deciding to file a motion for emergency custody. Notably, *ex parte* motions under G.S. 50-13.5(d)(3) that would change the living arrangements of a child or change custody require that a child be exposed to "a substantial risk of bodily injury or sexual abuse or that there is a substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts."

Attorneys should carefully review their client's parenting plan or custody order before giving any legal advice about exchanges. Additional circumstances may exist that would alter each party's responsibilities as they relate to custody (e.g., if the parties are ordered to exchange a child through a facility that has suspended services due to the pandemic).