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Time-sharing in the Time of COVID 19

When parents divorce, few consider adding provisions to their parenting plan that addresses what happens when a State of Emergency is declared. Where will the children stay? How will joint parental decisions be made?

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Thanks to hurricanes, Florida families are no strangers to emergencies that disrupt their children's lives. And yet, when parents divorce, few consider adding provisions to their parenting plan that addresses what happens when a State of Emergency is declared. Where will the children stay? How will joint parental decisions be made? What if the children need to evacuate? Considering that the period in which a hurricane disrupts normal time-sharing is relatively brief, most parents presumably amicably work this out without seeking judicial intervention. What happens when the emergency is a

pandemic? What happens when a state, county or municipality institutes a shelter-in-place order? We are living in a time where parents are asking those very questions.

Communication and cooperation is key. Both parents should remember that Florida Statute Section 61.13(3) states that the best interest of the children should always be the primary consideration. In attempting to decide where a child should remain during a pandemic, the parties should consider the elements laid out in that statutory section such as the ability of each parent to provide for the needs of the children, the stability of each parent's home environment for the children, the geographical viability of a time-sharing schedule during a pandemic, and the health of the parents. However, when the parties cannot agree, judicial intervention may be necessary.

First, when speaking to an attorney, ask him whether the "emergency" is actually deemed an "emergency" warranting immediate judicial intervention. For example, in the 17th Judicial Circuit, Administrative Order 2015-10-UFC states in pertinent part that a "child emergency is a matter of imminent or impending abuse, neglect or abandonment affecting the health, safety or welfare of a child." In the 15th Judicial Circuit, Administrative Order 5.203-1/17 states, in pertinent part that "Motions for emergency hearings will be denied unless there are sufficient allegations to establish that there is … an imminent risk of substantial physical harm to a minor child … or a child is about to be illegally removed from this court's jurisdiction."

If a parent is advised that a court will not consider this an emergency warranting a temporary suspension or abatement of time-sharing, a parent may be faced with considering a more drawn out modification of time-sharing. However, a parent should be made aware that a modification of time-sharing requires a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. If a pandemic only requires a brief period of disruption, a modification of time-sharing could be a long shot.

Alternatively, a failure to agree on how to proceed with time-sharing and parental responsibility during a pandemic may evidence deeper problems that do require judicial intervention.

Parents should distinguish good faith disputes from a parent willfully and wantonly ignoring the safety needs of the children. For example, in *Winters v. Brown*, 51 So. 3d 656 (Fla. 4th DCA 2011), the court affirmed a trial court's decision awarding a father ultimate decision-making authority over the children's health care and vaccinations because the mother believed that anything introduced into the body to prevent disease or treat illness is against the will of God. Nor is this case a lone wolf. Modifications can occur, but the facts need to warrant it.

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