



**INN OF COURT -
SEPTEMBER 2020
DOMESTIC RELATIONS
OUTLINE (01622617).DOCX**

Custody, Visitation, Support & Protective Orders

George Mason Inns of Court, September 22, 2020

Presented By:
Hon. Maha-Rebekah Abejuela
Hon. Jonathan Frieden
Joseph Dailey, Esq.
Alex Lewis, Esq.
Gary Molliken, Esq.
Jennifer Stevens, Esq.

I. Judicial Administration

- a. **House Bill 137 (Chapter 21). Va. Code § 16.1-274 amended. Guardians ad litem for children; certification of compliance with certain standards.**
Requires guardians ad litem appointed to represent a child in a matter to conduct an investigation in compliance with the Performance Standards. The bill requires a guardian ad litem to file with the court, with a copy to any attorney representing a party or party proceeding pro se, prior to the commencement of the dispositional hearing, a certification of the guardian ad litem's compliance with such standards, specifically addressing such standards requiring face-to-face contact with the child. The bill further requires the guardian ad litem to document the hours spent satisfying such face-to-face contact requirements and provides that compensation for such contact shall be at the same rate as that for in-court service.
- b. **House Bill 780 (Chapter 158). Va. Code § 8.01-325 amended. Returns of service; acceptance of copies of proofs of service.**
Provides that a photocopy, facsimile, or other copy of the original proof of service shall be accepted by the clerk's office as if it were an original proof of service for the purposes of complying with the return of service process to the clerk's office, provided that the proponent provides a statement that any such copy is a true copy of the original
- c. **House Bill 834 (Chapter 159). Va. Code § 8.01-317 amended. Order of publication; electronic notice.**
Provides that a court may permit notice of an order of publication to be given by electronic means in addition to or in lieu of publication in a newspaper, under such terms and conditions as the court may direct. This bill is a recommendation of the Boyd-Graves Conference.
- d. **House Bill 1378 (Chapter 74)/Senate Bill 229 (Chapter 351). Va. Code § 8.01-271.1 amended. Signature defects on pleadings, motions, and other papers.**
Clarifies that any pleading, motion, or other paper that is not properly signed is defective and voidable. The bill further provides that failure to timely raise signature defects waives any challenge based on such a defect, and that a signature defect shall be cured within 21 days after it is brought to the attention of the pleader or movant, or the pleading, motion, or other paper that contains the signature defect shall be stricken
- e. **Senate Bill 451 (Chapter 185). Va. Code § 16.1-278.19 amended. Juvenile and domestic relations district court; award of attorney fees.**
Permits a juvenile and domestic relations district court judge to take all relevant factors, in addition to the relative financial ability of the parties, into consideration when awarding attorney fees and costs.

II. Custody, Visitation, and Support

- a. **House Bill 436 (Chapter 42). Va. Code § 20-146.20 amended. Uniform Child Custody Jurisdiction and Enforcement Act; disclosure of identifying information; pleading or affidavit.**

Clarifies that a hearing and written finding on disclosure of certain identifying information of a child in a child custody proceeding shall be held and made by the court within 15 days of the filing of an affidavit that the health, safety, or liberty of a child would be jeopardized by disclosure of identifying information. Current law provides that the information sought to be protected may be filed with the court in either an affidavit or a pleading, but the 15-day hearing requirement applies only to pleadings, not to affidavits.
- b. **House Bill 637 (Chapter 213). Va. Code § 63.2-1900 amended. Child support; reasonable cost of health care coverage.**

Modifies the definition of "reasonable cost" for purposes of health care coverage in child support arrangements by capping the maximum amount to five percent of the gross income of the parent responsible for providing health care coverage including where the only health care coverage available exceeds five percent. Under current law, the "reasonable cost" of health care coverage is capped at five percent of the parents' combined gross income.
- c. **House Bill 861 (Chapter 1074)/ Senate Bill 105 (Chapter 1075). Va. Code § 20-124.3 amended. Best interests of the child; act of violence, force, or threat against an intimate partner or the intimate partner's child; history of child abuse.**

Expands the considerations for determining the best interests of a child for purposes of making a child custody or visitation arrangement by amending paragraph 9 to include that any act of violence, force, or threat that occurred no earlier than 10 years prior to the date a petition is filed or any history of child abuse shall be considered by the court.
- d. **House Bill 1490 (Chapter 75)/Senate Bill 17 (Chapter 195). Va. Code §§ 20-45.2 and 20-45.3 repealed. Same-sex marriages; civil unions.**

Repeals the statutory prohibitions on same-sex marriages and civil unions or other arrangements between persons of the same sex purporting to bestow the privileges and obligations of marriage. These prohibitions are no longer valid under the United States Supreme Court decision *Obergefell v. Hodges*, 135 S.Ct. 2584 (June 26, 2015).
- e. **House Bill 1500 (Chapter 651). Va. Code §§ 16.1-278.17:1 and 20-103 amended. Pendente lite spousal support; guidelines.**

Makes current juvenile and domestic relations district court guidelines for the presumptive amount of temporary spousal support applicable in cases filed in circuit court. The bill also adjusts the guidelines to account for changes to the federal tax code that became effective on January 1, 2019.

- f. **House Bill 1501 (Chapter 585). Va. Code § 20-109 amended. Modification of spousal support.**
Removes requirement that a stipulation or contract that is executed on or after July 1, 2018, contain specific language, as set out in the Code, stating that the amount or duration of spousal support is not modifiable in order for a request for modification of spousal support to be denied solely on the basis of the terms of such stipulation or contract. The bill instead provides that such stipulation or contract need only expressly state that the amount or duration of spousal support is non-modifiable.
- g. **Senate Bill 428 (Chapter 177). Va. Code § 20-108.2 amended. Initial child support order; unreimbursed medical expenses for pregnancy and birth.**
Provides that for any initial child support proceeding that is commenced within six months of the birth of a child, the order shall provide that the parents pay in proportion to their gross incomes any reasonable and necessary unpaid expenses of the mother's pregnancy and the delivery of such child.
- h. **Senate Bill 429 (Chapter 722). Va. Code §§ 16.1-278.16, 20-79.1, 20-79.2, 20-79.3, 63.2-1900, 63.2-1903, 63.2-1929, 63.2-1944, and 63.2-1946 amended. Withholding of income for child support; independent contractors.**
Clarifies that income earned by an independent contractor may be withheld by court order for payment of child support obligations.
- i. **Senate Bill 430 (Chapter 178). Va. Code § 20-124.6 amended. Access to minor's child-care records by parent.**
Provides that, absent a court order, a minor's records from a child day center or family day home shall not be withheld from a parent of such minor, regardless of whether the parent has custody of such child.
- j. **Senate Bill 432 (Chapter 196). Va. Code § 20-107.1 amended. Spousal support; reservation of right to seek; material change of circumstances.**
Provides that, unless otherwise provided by stipulation or contract, or unless otherwise ordered by the court, a party seeking to exercise his reserved right to spousal support shall be required to prove that a material change of circumstances has occurred as a prerequisite for the court to consider exercise of such reservation.
- k. **Senate Bill 433 (Chapter 1062). Va. Code § 8.01-223.1 repealed/amended. Invocation of constitutional rights in domestic relations cases; adverse inference.**
Allows the trier of fact in a civil domestic relations proceeding to draw an adverse inference if a party or witness in such a proceeding refuses to answer a question regarding adultery on the grounds that such testimony might be self-incriminating.
- l. **Senate Bill 434 (Chapter 192). Va. Code § 20-108.1 amended. Child support; assignment of tax credits.**
Provides that the court may assign a party in a child support proceeding the right to claim any credits resulting from the income tax dependency exemption for any child or children of the parties for federal and state income tax purposes.

III. Protective Orders

- a. **House Bill 880 (Chapter 137). Va. Code §§ 16.1-253.1, 16.1-279.1, 19.2-152.9, and 19.2-152.10 amended. Protective orders; motions to dissolve filed by petitioner; ex parte hearing and issuance of order.**

Provides that, upon motion by a petitioner to dissolve a protective order, a dissolution order may be issued on an ex parte basis with or without a hearing and that a hearing on such a motion shall be heard by the court as soon as practicable. The bill further provides that a dissolution order granted on an ex parte basis shall be served upon the respondent.

- b. **House Bill 1004 (Chapter 1221)/Senate Bill 479 (Chapter 1260). Va. Code §§ 18.2-308.1:4 and 18.2-308.2:1 amended. Protective orders; possession of firearms; surrender or transfer of firearms; penalty.**

Prohibits any person subject to a permanent protective order (i.e., a protective order with a maximum duration of two years) from knowingly possessing a firearm while the order is in effect, provided that for a period of 24 hours after being served with a protective order such person may continue to possess such firearm for the purposes of selling or transferring it to any person who is not otherwise prohibited by law from possessing such firearm. A violation of this provision is a Class 6 felony. The bill also provides that a court shall order a person subject to a permanent protective order to (i) within 24 hours, surrender any firearm possessed by such person to a designated local law-enforcement agency or sell or transfer any firearm possessed by such person to a dealer or to any person who is not otherwise prohibited by law from possessing such firearm and (ii) certify in writing that such person does not possess any firearms or that all firearms possessed by such person have been surrendered, sold, or transferred and file such certification with the clerk of the court that entered the protective order within 48 hours after being served with a protective order. The bill provides that the willful failure of any person to certify in writing that all firearms possessed by such person have been surrendered, sold, or transferred or that such person does not possess any firearms shall constitute contempt of court. The bill provides procedures for designating a local law-enforcement agency to receive and store firearms, as well as a process to return such surrendered firearms. The bill also makes it a Class 4 felony for any person to sell, barter, give, or furnish any firearm to any person he knows is prohibited from possessing or transporting a firearm who is subject to a permanent protective order.

- c. **Senate Bill 408 (Chapter 905). Va. Code §§ 16.1-112 and 16.1-296 amended. Appeal from district court; protective orders; notice of hearing.**

Provides that the clerk of the appellate court to which an order of protection is appealed shall have the parties served with notice of the appeal stating the date and time of the hearing and that such a hearing shall not take place unless the appellee has been served or has waived service.



Updates in Domestic Relations Law

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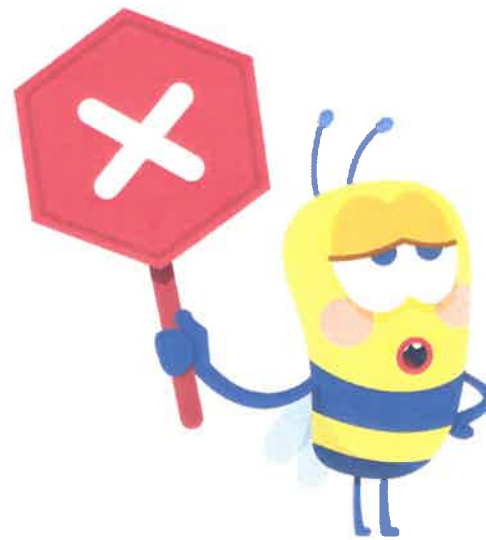
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