

Family Court Relief

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Types of Cases we will discuss

- Divorce
- Separate Maintenance
- Custody/Visitation
- Restraining Order
- Rule to Show Cause

What may happen after an Order of Protection hearing:

- Abuser may file a case for divorce, separation, custody or visitation
- Client would be served with the papers
- Have 30 days to “answer” the complaint or in default
- May have an emergency hearing or temporary hearing scheduled that client MUST attend

IF YOUR CLIENT IS SERVED WITH PAPERS, YOU SHOULD IMMEDIATELY REFER THEM TO AN ATTORNEY

Available Relief in a Divorce Action

- Temporary Relief
- Divorce
- Name Change
- Division of Property
- Division of Debt
- Alimony
- Attorney's Fees
- Paternity Determination
- Custody
- Visitation
- Child Support
- Restraining Orders
- Children's medical insurance
- Uncovered medical expenses for children

Separate Maintenance

- An Order by the Court that can determine every issue available in a divorce action EXCEPT the actual divorce.
- Unlike a Temporary Order, this will not expire once it is final.
- Adultery after the Separate Maintenance Order is entered is NOT a bar to alimony as long as Order says parties are free to have other relationship.

Emergency or Temporary Hearings

- The abuser may have an “Ex Parte” Order requiring the victim to do something (e.g. return child, return to jurisdiction) – Victim must comply
- Emergency hearing – less than 5 days notice required
- Temporary hearing – 5 days notice required
- Hearing is based on affidavits and brief testimony by parties only – advocates , counselors and other witnesses can help here

Affidavits

- Sworn, notarized statement that attests to something of the person's own knowledge
- Victim advocates, counselors, doctors and other witnesses can help by writing an affidavit
- Should be based on person's own knowledge or observations, not what they have been told
- Can attach any pictures or other documents (pictures of injuries, Order of Protection, record of arrest or conviction, doctor records, counseling records, etc.)
- Must file original with court and bring copies (one to keep, one to give to other lawyer)

Temporary Relief

- “Temporary Order” granted after an Emergency or Temporary hearing (in divorce, separation, custody or visitation cases)
- Usually addresses most or all issues on a temporary basis
- Sets the tone for the rest of the case – important to have good result
- Can and usually will supersede an Order of Protection unless Order specifically says it is preserved

Divorce Grounds

- One Year Separation
- Physical Cruelty
- Adultery
- Habitual Drunkenness (includes drug use)
- Desertion (no longer used)

Must be a cause of the breakup and not condoned
(forgiven)

Physical Cruelty

Must have:

1. Actual personal violence or course of treatment that endangers the life, limb or health of the victim *and*
2. Renders cohabitation unsafe
3. Single act of violence is usually insufficient.

A physical cruelty divorce cannot be granted on a mental, verbal or emotional abuse or a threat of abuse.

Custody

- This can be an action on its own or part of a divorce or separate maintenance action.
- Unmarried mothers automatically have custody until the father brings a Court action to determine paternity and custody.
- There is no preference in South Carolina between married mothers and fathers as primary custodians.
- “Best Interests of the children” is the standard for custody and visitation decisions
- Judge Brown’s Restraining Orders

DV and Custody

- Law specifically says the court must give weight to evidence of physical abuse or sexual abuse
- Action of leaving the home by a victim after an incident of violence is not enough, by itself, to deny custody of child to the victim

Visitation

- “Joint Custody” means that the parents divide major decision-making for the child. One parent will have primary custody.
- “Shared Custody” refers to the parents sharing the time with the children about 50-50. Courts cannot order this arrangement unless the parents agree to it.
- “Standard Visitation” usually refers to every other weekend from Friday evening through Sunday evening, shared holidays, and a few weeks during the summer.

DV and Visitation

- Court can award visitation to person who has been found guilty of CDV
- Court can order that
 - Exchange happen in safe place
 - Visitation be supervised by another person or agency
 - The abuser to attend counseling
 - The abuser to pay for a supervising service
 - Overnight visitation is not allowed
 - Any other condition for safety of child
 - Abuser pay for cost of medical or psychological treatment for child who was harmed from violence

Guardians Ad Litem

- Represent the child/children
- Private Guardians are paid by the parents on an hourly basis.
- Will make a report based on observations, interviews.
- Costs are usually split evenly, but can be redistributed.
- Both parents should cooperate with the Guardian ad Litem.

Child Support

- The amount is almost always based on South Carolina's Child Support Calculation.
- Could be paid by wage withdrawal and/or through the Clerk of Court.
- Could be paid weekly or monthly.
- All parents are required to support their children.
- Visitation and child support are NOT connected.

Contempt

- Failure to follow Court's Order
- Could be addressed at the next hearing or a Rule to Show Cause action
- Penalties include loss of custody, visitation, community service, fines, and jail time
- FOLLOW YOUR ORDER!!!

Restraining Order

- “You can’t do something”
- Examples include restraints against selling property, immoral behavior, or harassment.
- This type would be part of a Divorce/Custody order
- Especially helpful if the parties do not fit S.C.’s definition of household member.
- Different from an Order of Protection

Tips for your Clients

- Immediately refer your client to an attorney if s/he is served with papers
- In a divorce or custody action, make sure the Judge and the Guardian Ad Litem know about an existing Order of Protection and the history of abuse.
- Suggest alternative locations to exchange the children.
- Request a Restraining Order to prevent harassment.
- Request child support to be paid weekly and to be withheld from wages.
- FOLLOW the ORDER!
- If your client believes it is truly unsafe to follow the Order, she must have proof.