

Family Matters e-Newsletter



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NEWS FOR FEBRUARY 2016

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Parenting Coordination in North Carolina

Guest feature by David J. Irvine, Jr.

The goal of a custody order is to define the co-parenting relationship between separated or divorced parents. The order should specify the custodial schedule and define the rights and responsibilities of each parent. Unfortunately, a custody order cannot address every issue and question that may arise. Parents who are still experiencing conflict even after the entry of a custody order may benefit from a Parenting Coordinator.

What is a Parenting Coordinator?

The Parenting Coordinator (PC) role is defined in the North Carolina statutes (N.C.G.S. 50-90, et seq.). The statutes allow a judge to appoint a PC in "high conflict" custody cases, or in cases where the parties and

their attorneys agree to the appointment of a PC. The PC cannot modify a custody order. Rather, he or she helps the parents implement their custody order.

For instance, suppose a custody order provides that Dad's visitation begins every other Friday when the children are released from school. Is it permissible for Dad's new wife to pick up the children at school? The Mother hates the idea and says that the custody order does not authorize new wife to pick up the children. Dad says that the order is silent on that point and Mom cannot micro manage his time with the children. Without a PC, these people may have a nasty confrontation at the school, and they may end up in court dealing with contempt charges. However, the PC can work with the parents to resolve this issue without the stress, time and expense of a court appearance.

What are the qualifications for Parenting Coordinators?

PCs are appointed by the Court by Court Order. In North Carolina, PCs are required to have an advanced degree with related experience and education. Most PCs are lawyers, psychologists or social workers, and PCs must hold a current license in his or her area of practice. Although not required, it is especially helpful if the PC has experience as a certified Mediator. PCs must participate in 24 hours of training in topics related to child development, dynamics of high-conflict families, the effects of divorce and problem-solving techniques such as mediation. In order to remain eligible as a PC, the person must attend parenting coordination seminars and participate in other continuing education.

The goal of Parenting Coordination is not merely to have a less expensive, more accessible substitute for a judge. The goal is for the parents to learn to co-parent without the need for intervention by the court or a PC. The goal is to raise happy, healthy, well-adjusted children. If your child custody arrangement is difficult and stressful, using a PC might be right for you.



The Spirit of the Law: Enforcing Orders in Family Law Cases

By Amy A. Edwards

When someone willfully disobeys an order, the other party has the right to file a motion asking the court to hold him or her in contempt of court. If

the judge decides the person has willfully disobeyed the order, he or she has numerous remedies to correct the problem, up to and including incarceration. When it comes to enforcing court orders, there is a distinction among attorneys and judges concerning the letter of the law and the spirit of the law. The letter of the law is the actual printed word used in the court order. The spirit of the law measures how sincerely someone makes efforts to comply with the order when the written terms of the order (*i.e.*, the letter of the law) is not necessarily clear.

The Letter of the Law

Suppose a parent is obligated by court order to pay \$750.00 per month in child support. That is the letter of the law, the writing that spells out what is required. Sounds simple, right? Everyone knows what is required. But what happens if the parent was just laid off from his or her job for reasons other than employee performance? The court order does specifically say what happens in that situation. The letter of the law in that scenario isn't necessarily obvious.

The Spirit of the Law

Court orders in family law cases can't spell out what a person must do in every single circumstance or contingency that might arise. This is especially true when orders are in effect for years and years, such as child custody cases. A child custody order might specify things clearly when a child is four years old, but not so clearly when the same child is fifteen years old.

Let's assume the unemployed parent in our example files a motion to reduce the monthly child support obligation, based on his or her job loss. It may be five or six months before the case reaches a judge for a trial, but the child support order remains in effect unless and until the judge changes it. The parent who truly cannot make the entire child support obligation of \$750.00 per month should in good faith pay as much as he or she possibly can.

For example, if the parent received a \$3,500.00 tax refund after filing the motion to reduce support, the court will expect that parent to contribute some amount of that money to the other parent for child support before the trial, depending on that parent's situation. Paying \$600.00 a month, which the parent actually has the ability to pay in our example, instead of paying nothing, is an example of what the court usually expects from parents in this scenario. Doing so follows the purpose of the order, the spirit of the law, which is support of a child. Following the spirit of the law goes a long way when seeking the benefit of the doubt from the judge who is enforcing the order. Ignoring the spirit of the law is done at your peril.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of February 2016. www.AmyEdwardsFamilyLaw.com © 2016.



Getting Attorney's Fees in Family Law Cases

By Amy A. Edwards

In North Carolina family law cases, a party may seek attorney's fees in court cases involving child custody and support, and for temporary and permanent alimony, among other claims. With a couple of rare and unique exceptions to the rule, attorney's fees aren't usually available to be awarded by the court in equitable distribution cases for division of marital assets and debts.

Child Custody and Support Claims

The law permits parents to ask the court to award attorney's fees in child custody and support cases, including cases when a parent files a motion to modify the order that is already in place. There are three requirements. First, the person asking for fees must be an "interested party" meaning he or she is someone entitled to exercise the legal right to participate in the lawsuit. Second, the person must be acting in good faith, not filing a frivolous claim. The third requirement for the court to address is whether the person "has insufficient means to defray the expense of the suit." In other words, the person had to turn to the courts to get help, which has created a financial hardship. If the claim was for child support there is a fourth requirement. The parent who should be paying support "has refused to provide support which is adequate under the circumstances." If the parent files a frivolous claim, the court is also entitled to award fees to the other parent. NC Gen. Stat. §50-13.5

Alimony and Temporary Alimony

If the court awards alimony or temporary alimony, called postseparation support, the judge has the authority to award attorney's fees if the financially dependent spouse doesn't have sufficient means to subsist during the pending case. That means the dependent spouse can't meet living expenses until the judge enters an order for alimony. As is the case

with children's claims, the court must rule on whether the dependent spouse "has insufficient means to defray the expense of the suit." These requirements also apply when the dependent spouse files a motion to modify the alimony. NC Gen. Stat. §50-16.4.

How does it actually work in court?

At the trial, the attorney submits an affidavit about the fees, along with billing statements to show what has been paid. The judge generally confirms the fee is reasonable, considering the attorney's skills and qualifications, and the type of work the attorney performed. Customarily, the client has to pay the attorney at the beginning of the case. If the fees are awarded, they are either reimbursed to the client or applied to any outstanding balance the client owes to the attorney. As is the case in so many family law cases in North Carolina, the judge has broad discretion when ruling on fees. A judge is free to order some, none or part of the fees requested.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of February 2016. www.AmyEdwardsFamilyLaw.com © 2016.

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Sincerely,
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