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### News For April 2017

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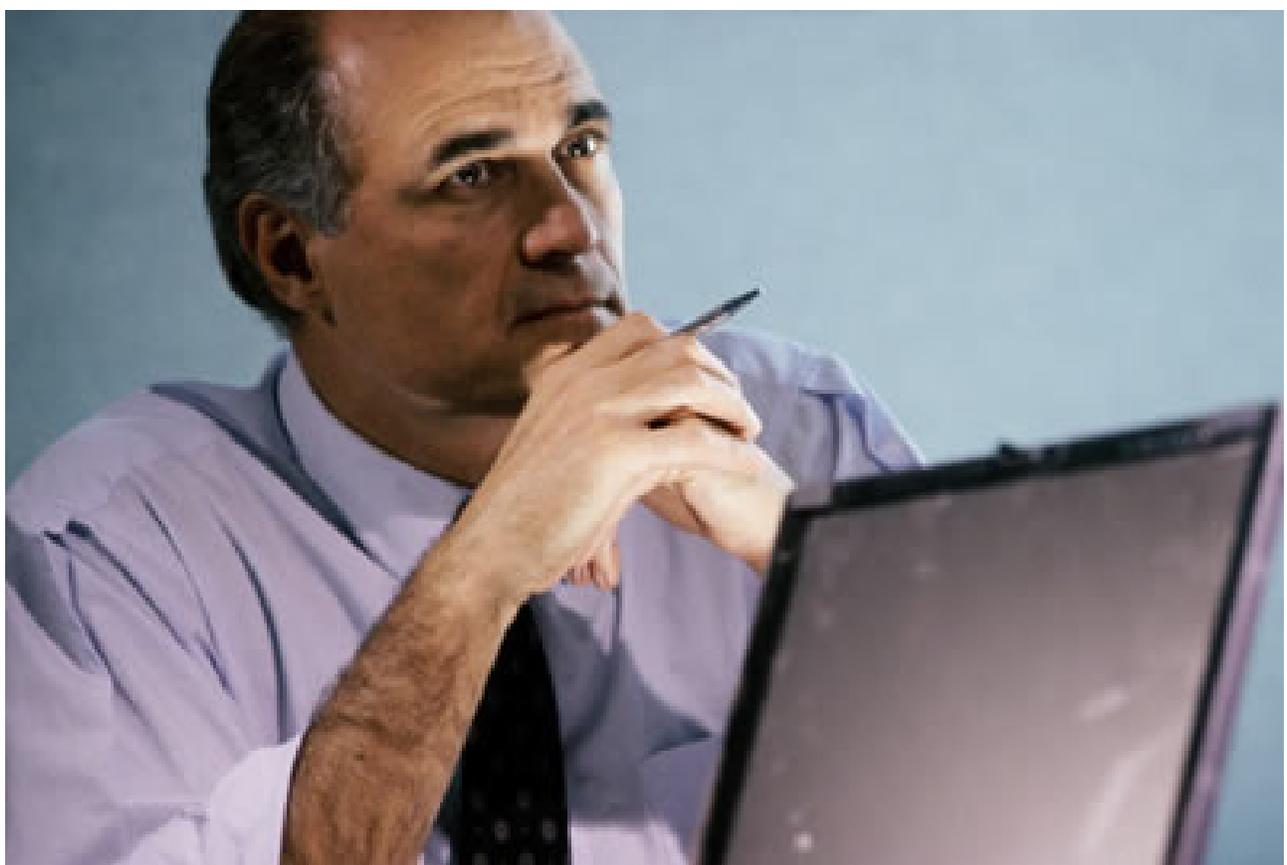
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## **What Do You Want Out of the Divorce Process?**

By Amy A. Edwards

People don't live their lives expecting litigation, a terrible separation or the other parent taking their children away from them. Although it is not always the case, people often find themselves overwhelmed by unexpected circumstances by the time they make it to the attorney's office. It is not uncommon for a client to schedule an appointment after recently discovering the other spouse (or the other parent) has been making plans to separate for some time. Almost all cases begin in the "triage" stage, when someone's day to day life has just been turned upside down. The "emergency phase" of a case usually involves necessary arrangements for the short-term, such as where to live, what to do about immediate financial support, and when a parent has visitation with a child. Once that emergency phase of the case settles down, perhaps there is a temporary agreement or temporary court order in place.

**What Happens Now?**

After the emergency phase of a case, the real work begins. Take inventory of what matters in your life. Clients who seek counseling or therapy tend to uncover important goals, especially when they've made accommodations for their mates over many years. Turmoil can provide new opportunities. You might decide to return to school or consider relocating to another city or state. Or, you want to make healthy long term co-parenting a priority not only for you children but your future grandchildren so your family won't have to endure drama at events such as graduations and weddings. A career change might also be an option based on your new situation.

## **Talk To Your Attorney**

Like any other relationships, attorney-client relationships involve all kinds of personalities. Some clients have clear objectives and take an active role in their case, others don't. By default, your attorney should be advocating for as much of the marital property as possible, and if you are a parent, the goal is to get as much time with the child or children as possible. That's obvious. But there's so much more than that. Make sure to share your personal goals with your attorney if he or she doesn't specifically ask. Although our job is to advocate for you, we will do a better job of advocating if you clearly express your plans. For example, we could try to structure alimony to coincide with the completion of college, or maybe it makes sense for one parent to remain in the family home until the youngest child reaches eighteen. If you are considering a new job one hundred and fifty miles away, we should take that into account when we analyze the visitation time with the children and the calculation of child support. After all, it is your life and although we advocate for you, the decisions are yours to make.

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 April 2017. [www.AmyEdwardsFamilyLaw.com](http://www.AmyEdwardsFamilyLaw.com) © 2017.

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## ***Ex Parte* Orders: When Will I Have My Day in Court?**

By Amy A. Edwards

The Courts and due process rights in the United States Constitution are built upon the right of each person to a fair trial. Fundamentally, a person who is served with a lawsuit has the right to respond in writing, by testimony and by evidence offered during the trial. Both parties may exercise the right to file motions asking the court to do something, seek documents in the possession of the other party (called discovery), and have an attorney issue a subpoena compelling a witness to testify or provide evidence to the court. The law gives each person his or her day in court.

## Exceptions to the General Rule

While this holds true with family law cases, there are times when there is an extreme emergency serious enough to warrant the court entering a temporary order based only on one side of the story. If you've been in court maybe you've heard the term *ex parte* but no one ever explained it. It is a Latin term that means something takes place based on only one side of the story. In this context, it means the court makes a ruling without the other party being present. EPOs are generally disfavored in court. The judge must weigh the seriousness of the allegations and decide whether they justify delaying the due process rights of the other party.

Judges take the facts of each individual situation into account on a case by case basis. There is no "one size fits all" approach to deciding whether an EPO is justified. For example, when a spouse or other family member attempts to cause bodily injury to the other, or intentionally causes bodily injury to him or her, the court might enter a *ex parte* order (EPO) in the form of a domestic violence order. When the judge grants the EPO, it is served on the other party who must obey the order even though he or she didn't have an opportunity to tell his or her version of what happened. But, he or she will be entitled to his or her day in court shortly.

### How Does the *Ex Parte* Order Play Out?

If someone is served with an *ex parte* order, time is of the essence. An EPO is usually served with several documents, and includes notice of the date and time for the trial. People are often upset because there is a hearing date of only about ten days from the date they were served. Ironically, a short time before having a trial is meant to help the person who gets served with an EPO. The policy of the law is to give that person the opportunity to be heard in court as soon as possible. At the hearing, both sides are given the chance to tell the judge what happened and offer any evidence. For example, in a domestic violence case, the person against whom an EPO was entered might offer testimony about what happened and a photo or e-mail explaining that version of what happened. In family law cases,

EPOs might be entered in child custody cases or even in certain equitable distribution cases when one party begins liquidating marital assets.

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## Is Your Custody Order Out of Date?

By Amy A. Edwards

When it comes to custody cases, most parents usually either sign a separation agreement, sign a consent order (order by agreement) or they go to court and have an order entered by the court after the trial. The drama dies down and hopefully life goes back to normal, at least as normal as things can get after a dispute of this nature. Life changes. As the years pass, children grow, parents get married or remarried and maybe a few more kids are added along the way. Especially when parents are young, they become more mature. Once the threat of on-going court battle has subsided, parents may stabilize as co-parents and begin to trust each other. The best parents simply do what needs to be done. They might not rely on the custody order after a couple of years because they develop a

co-parenting routine.

## **As Time Goes By . . .**

Assume you and the other parent reach an agreement about your 4 year old son. It calls for him to be with you every other weekend from Friday at 6:00 p.m. until Sunday night at 6:00 p.m., every other Wednesday night, and two weeks during the summer. For a number of reasons, when your son is 6 and starts school, both of you agree it would be in his best interest to live with you and reverse the visitation schedule. This works great for years.

## **What's The Problem?**

The problem is that the old custody order remains in effect as is unless and until it is changed, or it "expires" when a child reaches the age of 18. Now assume that your son is 11, and the other parent suddenly tells you he or she will now be going back to the court-ordered visitation schedule, and your son will be staying there full time until further notice. You rush home, dig up the custody order, blow the dust off and see that it only gives you visitation every other weekend and Wednesday nights. From that messy situation, it is obvious you have a real problem. If the order had been updated, this problem could've been avoided. When you no longer agree with the other parent, you risk being held in contempt of court if you fail to abide by the custody order. Ultimately, a judge has the ability to enforce the order by whatever means is necessary, including incarceration. If you suddenly need to rely on your custody order in a situation like the one described above, you aren't protected. This often rears its ugly head when one of the parents has a new romantic relationship, remarries and/or has a new child.

## **How Do You Update a Custody Order?**

In North Carolina, when both parents agree that they need a revised custody order (*i.e.*, an "updated" order), the process is fairly straight-forward. After an attorney prepares a motion and consent order, or two lawyers negotiate about what is included in it, the parties sign it and voila, a new order is entered by the court. Sometimes, the judge requires both parents to appear briefly to tell him or her that consent is given to enter the new agreement as a court order.

In our example above, not only would an updated order have clarified the living arrangement, but it might've also addressed new parenting concerns for an 11 year old child. Parents are sometimes inclined to spell out the responsibilities of the child's extracurricular activities and sports. They might agree on a host of things, such as enrolling a child in camps or similar activities only with the consent of the other. Or the agreement might specify that neither parent will schedule trips or activities during the other parent's visitation time. When the parents don't

agree on the need for a new custody order, the parent who seeks to update the order must file a motion for the judge to decide whether to change the custody order.

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# Man's (and Woman's) Best Friend

By Jennifer Jackson Bell \*

Whoever said "diamonds are a girl's best friend" obviously never owned a pet. Many people, myself included, think of their pets as their fur-babies or fur-children and dote on them as such. There is no doubt that pets hold a special place in our hearts but they also hold a special place in our wallets as well. Owning and caring for a pet takes love, and time, as well as financial responsibility. After we are no longer capable of caring for our beloved fur-children we want to make sure they are taken care of, as we would our human children. However there is one major problem we face: pets are seen as property in the eyes of the state, especially when dealing with wills and probate. This means that you cannot leave money or any type of property to your pet after your death. The only way to ensure that your fur-child is doted on and spoiled as much as he/she was when you cared for him/her is to create a Pet Trust.

## **What Exactly is a Pet Trust?**

A pet trust is a legally sanctioned arrangement providing for the care and maintenance of one or more companion animals (or fur-children) in the event of a grantor's (owner's) disability or death. A pet trust is created like every other form of trust, with a Grantor (the owner), Grantee and Trustee (the pet). Typically, you will appoint someone you trust first and foremost and whom you would want to love and care for your pet after your incapability as Trustee. The trustee will hold property (cash, for example) "in trust" for the benefit of your pet(s). The trust will continue for the life of the pet or until the death of the last living pet included in the trust.

## **Why Should I Have One?**

Trusts are legally enforceable arrangements. A Pet Trust ensures that your wishes for your fur-children will be carried out, and any and all directions regarding your fur-children will be followed. A trust can be very specific. For example, if your cat only likes a particular brand of food or your dog looks forward to daily romps in the park, this can be specified in a trust agreement. If you want your pet to visit the veterinarian four times a year, this can also be included. Since as pet owners, we know the particular habits of our companion animals better than anyone else, we can describe the kind of care our fur-children should have and list the person(s) who would be willing to provide that care.

Establishing a Pet Trust gives owners peace of mind. By establishing a Pet Trust an

owner can ensure their beloved animals will be given the care and resources they are accustomed to even when the owner is no longer capable of doing so herself. Without a pet trust, sometimes animals end up at the local shelter or even on the streets. Without a solid plan to care for your pets you may be risking their lives or their care.

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