

Anju D. Jessani, MBA, APM
Accredited Professional Mediator
Web: www.dwdmediation.org
Email: ajessani@dwdmediation.org

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Ten Co-parenting Recommendations for the COVID-19 Crisis, A Mediator's Perspective

By Anju D. Jessani, MBA, APM, Accredited Professional Mediator

Courts look to prior events or precedents in establishing policy, and also in measuring reasonableness, when parties are in a dispute. COVID-19 presents a challenge; the last time we dealt with a pandemic of this magnitude was in 1918 with the Spanish Flu. Times, divorce rates and the roles of parents are vastly different a century ago. Thus, we cannot really rely on that event for guidance in dealing with COVID-19 in parenting matters when clients are separated or divorced.

Hopefully, the COVID-19 crisis will end soon. In the interim, as we navigate uncharted waters, lawyers, mediators, parenting coordinators, other family law practitioners, as well as separated and divorced parents, are seeking guidance.

Based on information from the Association of Family and Conciliation Courts (www.afccnet.org), the Academy of Professional Family Mediators (www.apfmnet.org), the New Jersey Association of Professional Mediators (www.njapm.org), various webinars I have attended including the April 1st AFCC presentation with Judge Geri Wong (Ontario) and family law attorney, Annette Burn, a March 27th article from New York Family Law Journal from Judge Sunshine, the state of Maryland and Oregon's guidance to parties, I have prepared a summary of recommendations to my clients, recognizing New Jersey's as well as other states' policies of assuring a child of frequent and continuing contact with parents who have shown the ability to act in the child's best interests.

Many family law practitioners in the United States are also referencing the March 24th decision by the Ontario Superior Court of Justice, Family Court, Ribeiro v. Wright 2020 ONSC 1829. In this case, the parents had joint custody with the mother having primary residential custody. The mother was practicing social-isolation and did not want the child to leave her home for any reason. The father wanted to be able to exercise his parenting time. While the court ruled that while in some cases, a parent's personal risk factors (through employment or associations, for example) may require controls with respect to their direct contact with a child, COVID-19, for these clients, "this is a very good time for both custodial and access parents to spend time with their child at home." I have attached the link to the case:

<https://www.canlii.org/en/on/onsc/doc/2020/2020canlii23204/2020canlii23204.html?resultIndex=1> Clearly, things are changing daily regarding COVID-19. New Jersey's and other states' courts may provide their own recommendations which will take precedence over any guidance provided below. Nevertheless, these recommendations provide an opening for a conversation, and I welcome our feedback on how we can keep separated and divorced families and children emotionally and physically safer at this time:

1. **Current orders remain in place until modified, either by consent or by the court:** While government and health officials have stressed the need to stay at home, the presumption is that existing parenting arrangements should continue in the majority of cases because access to both parents is vital for a child's emotional well being. There is a presumption that the existing order reflects a determination that meaningful personal contact with both parents is in the best interests of the child. Parents do need to ensure that transportation and exchange arrangements do not put the child or the parties in harm's way.
2. **What about special COVID-19 risk situations?** These may include where a child has special needs or an underlying conditions that makes them vulnerable, where one or both parents is an essential worker or medical professional, where a household has a confirmed case of the virus, or a household where someone in either home is immunocompromised or quarantined. In these situations, it may not make sense to the

child to have physical time with that parent or the other or their respective household(s). If the parents cannot agree on how to proceed, family law attorneys are urged to try and assist their clients by bringing these issues to mediation and parenting coordination, before filing motions in court.

3. **Online school means school is still in session as well as the school schedule:** Unless mutually agreed, except for drop-offs and pickups at the parents' homes instead of at school, parties should continue to exercise their parenting schedules as before. School is still in session, albeit online.
4. **Modifying parenting schedules for less transitions:** If the parties can agree to modify their parenting schedule so that there are less transitions for the child such a week with each party, it is a temporary measure worthy of consideration to allow for more social distancing between the parents' households.
5. **Be transparent about health issues:** Provide honest information to the other parent of any suspected or confirmed exposure to COVID-19 where you or the child has had access to that person, and try to agree on what steps you each need to take to protect the child from exposure. Do not wait to be asked for this information; be transparent and share it proactively. It goes without saying that if you or the child are exhibiting any symptoms, inform the other parent immediately.
6. **Courts are looking for parents to behave reasonably during this crisis:** The custody agreement exists to prevent endless back-and-forth over the details of time sharing. Courts are looking for reasonable behavior during this time, which includes compliance with that order. It behooves both parents to behave reasonably during the crisis including compliance with orders, practicing social distancing, and attempting to take the high road in disputes at this difficult time. Eventually, the crisis will be over and courts will not look kindly upon parents who took advantage of COVID-19 or who behaved badly during the crisis.
7. **Exercise social distancing and government directives:** President Trump has asked Americans to stay at home at least until the end of April, to work or engage in school from home if possible, to avoid discretionary travel, social visits, and to not visit nursing homes or long-term care facilities unless to provide critical assistance, among other directives. See www.coronavirus.gov. Courts such as Oregon and Maryland are urging parents to address social distancing concerns with each other, and if needed to utilize the services of mediators and parenting coordinators to help address concerns before turning to the courts to address these concerns.
8. **Make-up time because of COVID-19 is reasonable but may not be a one-for one proposition:** Among people who participated in the April 1 AFCC webinar, this was by far the most frequently asked question. If a child is wrongfully withheld, then a request for make-up time is valid. If parenting time is missed due to COVID-19-related issues or government orders, parents are encouraged to work collaboratively to schedule makeup parenting time that promotes their child's safety and well being. Family law judges expect reasonable accommodations and will take seriously concerns raised in later filings about parents who are inflexible in this regard. In the webinar, the question was asked how you could make up three months of lost parenting time due to COVID-19. The answer was, with extended lost time, not to expect a day, for a day lost.
9. **Video/phone contact if parenting time cannot be exercised:** If a parent cannot physically see the child during their scheduled parenting time due to COVID-19 issues, at a minimum, they should have reasonable video and phone contact with the child.
10. **Family courts are open as place of last resort for disputes:** Most family courts are open for online hearings, but resources are stretched and should be used with extreme discretion. Judges will want to know you tried to resolve your case through negotiate or mediation, and are going to triage and hear the cases that they feel are true emergencies.