

Family Law 101

VOCA Lawyer Training

3/14/2017

Family Law

- Common legal problem for victims of crime
- Addresses physical safety, financial security and stability
- Outcomes improved for represented parties

Issues Faced By Victims

- Child custody
- Restraining Orders/Protection Orders
- Paternity
- Child Support
- Property/Debt Division
- Maintenance

Primary Title 26 Causes of Action

- Dissolution
 - Legal Separation
 - Invalidity
- Parentage
 - Establishing paternity
 - Establishing parenting plan & child support
- Nonparental Custody
- DVPO

Secondary Causes of Action

- Modifications
 - Parenting Plan
 - Child Support
- Contempt
 - Financial
 - Parenting Related
- Relocation
- Writ of Habeas Corpus

Relief Available in Various Actions

	Safety Restraints	Parenting/ Custody	Child Support	Property/ Debt Division	Main- tenance	Use of Property
Dis- solu- tion	YES	YES	YES	YES	YES	YES
Par- en- tage	YES	YES	YES	NO	NO	NO
NPC	YES	YES	YES	NO	NO	NO
PO	YES	YES	NO	NO	NO	YES

Life of a Family Law Case

- Filing
- Case Schedule (some counties)
- Mandatory Seminars/classes (check your local rules)
- Service
- Response (Default)
- Ex Parte Orders
- Temporary Orders
- Discovery
- Evaluations
- Settlement Conference
- Trial

DVPO (RCW 26.50)

- Provides significant personal restraints and use of property
- Violations of DVPO restraints are crimes
- Can provide temporary (1-year) restraints on contact with children
 - Unless issued within a family law case
- Pro se friendly process
 - DV legal advocates authorized to help
 - Rules of evidence do not apply

DVPO v. Restraining Order v. No Contact Order

DV Protection Order	Restraining Order	No Contact Order
Civil	Civil	Criminal
Victim is Petitioner	Victim is Petitioner	State is Petitioner
Issued as an independent case or within family law case	Issued within a family law case	Issued within a criminal case

Dissolutions (RCW 26.09)

- Dissolves marriage or domestic partnership
 - No fault
 - Legal Separation
 - Declaration of Invalidity and defenses
 - Inquire about the marriage. Was it legal, cultural, religious, or some combination. Ask open-ended questions to new clients about their perception of the marriage.
- Can you file in WA?
 - Need Personal Jurisdiction for restraints, property/debt, maintenance and child support
 - Need SMJ for child custody and child support

UCCJEA

- Must have SMJ under UCCJEA to enter order re child custody/visitation
 - Purpose is to avoid conflicting orders from different states
- Watch for:
 - Previous custody order from another state
 - CL and kids recently moved to WA from another state

Parentage (RCW 26.26)

- Establish/Dis-establish Paternity
 - Judicially, or
 - By Acknowledgement of Paternity (Paternity Affidavit)
- Establish Parenting Plan & Child Support
 - Either through Parentage Action (Petition to Establish Parentage), or
 - Court action based on Paternity Affidavit (Petition to Establish PP)
 - Child support: judicial or administrative

Paternity Affidavit

- Notarized and Filed with Department of Vital Statistics
- Equivalent to a judicial adjudication of paternity
- Binding unless rescinded w/in 60 days, or revoked by court action w/in 2 years*
- Binding on a minor signatory w/o GAL
- Can disestablish a husband as legal father if both bio dad and husband sign

Nonparental Custody (RCW 26.10)

- Clients may call it something else: “guardianship,” “Third party custody,” etc.
- High standard for Nonparent:
 - To file requires allegation that child is not in the physical custody of either parent, or that neither parent is a suitable custodian.
 - To proceed must pass threshold adequate cause hearing.
 - To succeed requires finding that both parents are unfit, or that to reside with otherwise fit parent would be detrimental to child’s growth and development.

Nonparental Custody (cont'd)

- Pitfalls for parents:
 - No court appointed attorney (unlike dependencies initiated by State to terminate parental rights)
 - No requirement to offer services to parent to rehabilitate
 - Very hard to modify a Nonparental Custody Decree once finalized.
 - 26.09 Disso P-Plan modification standard applies.

Nonparental Visitation

- NOT A THING.
- What about grandparents?
- NOT A THING.

De Facto Parent

- Common law claim created by recent case
 - *In re Parentage of L.B.*, 155 Wash.2d 679 (2005)
- Requires consent and participation of legal parent to creation of parent-child relationship with Petitioner
- If De Facto Parentage is found, then that parent has all the same rights and responsibilities as a bio/legal parent.

Parenting Plans

Another word for a custody order.

Issued in various types of actions according to standards set out in RCW 26.09

- Parenting Act of 1987
 - Replaces “physical custody/visitation” and “legal custody” with “residential time” and “decision-making authority”

HERE COMES A
BUNCH OF WORDS,
TRY TO GUESS
THE IMPORTANT ONES.

Parenting Act Policy (RCW 26.09.002):

“Parents have the responsibility to make decisions and perform other parental functions necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The state recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and that the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. Residential time and financial support are equally important components of parenting arrangements. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care. Further, the best interest of the child is ordinarily served when the existing pattern of interaction between a parent and child is altered only to the extent necessitated by the changed relationship of the parents or as required to protect the child from physical, mental, or emotional harm.”

Parenting Plans (FL 140)

- Parenting Plans set forth:

 - I. General Info
 - II. Reasons for Limitations
 - III. Terms of Limitations
 - IV. Decision-Making
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 - V. Dispute Resolution
 - VI. Legal Custodian
 - VII. Residential Provisions (school year, summer, holidays, transportation)
 - VIII. Relocation
 - IX. Proposal/Order by the Court

Reasons for Limitations (Part 3 of Parenting Plan)

- RCW 26.09.191 – limiting factors (Part 3 of Parenting Plan)
- (1)-(2) *Mandatory* Restrictions (including decision-making) if:
 - History of acts of DV, or assault or sexual assault causing grievous bodily harm or fear or such harm.
 - Physical, sexual, or pattern of emotional abuse of a child
 - Willful abandonment for extended time or substantial refusal to perform parenting functions
 - Convicted of a sex offense (very specific rules on this)
- Court must impose restrictions unless:
 - Conduct won't cause harm to child &
 - Probability that bad conduct will recur is so remote that limitations on parent's contact not in child's best interest
- 2007 Legislation requires some “screening”
 - “Allegations” of DV or child abuse trigger need for both parties to be “screened” to determine appropriateness of a “comprehensive assessment” regarding the “impact of the limiting factor” on the parties and the child

Reasons for Limitations (cont'd)

- RCW 26.09.191(3) *Permissive* Restrictions if:
 - Neglect or substantial nonperformance of parenting functions
 - Long term mental or physical illness that interferes with performance of parenting functions
 - Long-term impairment from alcohol or drug abuse that interferes with performance of parenting functions
 - Absence or substantial impairment of emotional ties between parent and child
 - **Abusive use of conflict which creates the danger of serious damage to the child's psychological development**
 - Withholding access to child from other parent for protracted period without good cause
 - Other factors Court expressly finds adverse to best interests of child

Limitations on a Parent

- Located in **Section 4** of the Parenting Plan
- Restrictions designed to protect child *and* non-offending parent
 - RCW 26.09.191(2)(m)(i)
- Restrictions may include:
 - Supervised (professional or not)
 - Choice of having a full schedule or just a summary in pt. 4
 - Conditioned on treatment (drug, DV, psych)
 - Be creative and specific.
 - Form allows for no visits at all. Choose your own adventure!

Get out your glasses.

Residential Schedule Factors (if no reasons for limitations)

- Standard in 26.09.187(3)(a)
 - i. The relative strength, nature, and stability of the child's relationship with each parent.*
 - ii. Knowing and voluntary agreements of the parties.
 - iii. Each parent's past and potential for future performance of parenting functions, including whether a parent has taken greater responsibility for performing parenting functions relating to child's daily needs.
 - iv. Emotional needs and developmental level of the child
 - v. Child's relationship with siblings and with other significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities
 - vi. Wishes of the parents and the wishes of a child who is sufficiently mature to express reasoned and independent preferences as to his or her residential schedule; and
 - vii. Each parent's employment schedule shall be accommodated

School/Pre-School Schedule

- Part 8 of the Parenting Plan.
- This will be the “default” schedule.
- Consider needs of very small v. older children
- Consider school schedules and transport
- Consider weekend activities
- Include cultural considerations (weekend activities, religious activities, etc.)

Summer and Holidays

- Consider vacation time
- Consider the cost of summer child care
- Consider the interaction of holidays with school breaks
- Consider travel needs
- Consider holidays/occasions not included in the form. These forms are normative for the dominant culture. Increase your competency at every opportunity. Listen to your client.

Transportation

- Make it clear: Time and place of exchanges
- Consider school and day care options
- Consider SAFETY: interaction of restraints or protection orders
- Consider your client's abilities and potential barriers
- Consider specific directives regarding contact at exchanges.

Relocation

- We'll get to it.

GALs or Family Court Evaluations

- Court may appoint a Guardian ad Litem or Family Court Evaluator to investigate and report back with recommendations for parenting plan
 - Either party may request or court may appoint sua sponte
 - GALs become parties to the case and operate under a statutory framework
 - Mandatory training
 - Grievance process
 - In-house Family Court Evaluators are not parties to the case and are unregulated
 - GALs and Evaluators are very powerful
 - Prepare your client in advance to maximize impact.

Evaluators and Cultural Competence

- Don't assume they have it
- Take advantage of the written materials required
- Discuss with your client how to address these issues during interviews
- Home visits
- Monitor your own attitudes

Settlement

- Once the report is received from an evaluator, plan for a settlement conference
- DV Victims can opt out of ADR, but clients should balance the trauma of settlement against the trauma of trial.
- Consider free resources
- Discuss negotiations with your client in advance. Establish a vocabulary for agreement. Language, cultural and ability barriers may affect how your client participates or responds to you, the settlement judge, or the other attorney.

Child Support

- Washington State Child Support Schedule RCW 26.19
- Support established based on income of both parties
- Support may be set judicially or administratively (DCS)
- Income may be imputed if:
 - Voluntarily unemployed or underemployed
- Protections for low-income obligors:
 - Self-support Reserve (125% FPL)
 - 45% net income limitation
 - Presumptive minimum support obligation is \$50/child
- If child ever on public assistance, need to involve prosecuting attorney representing State's interests
- Can be modified regularly.

Child Support (cont'd)

- Division of Child Support (DCS) will:
 - Enforce child support order through:
 - Wage garnishments
 - Tax refund intercepts
 - License suspensions
 - liens
 - Establish child support if requested or if child on state assistance
 - May require establishing paternity
 - DV victim may claim good cause to ask DCS not to establish or collect support if would jeopardize safety

Temporary Orders

- Available in almost all causes of action
- Can address a wide range of issues
- Standard for Temporary Parenting Plan?
 - Same 26.09.187 factors (i.e., .191 factors first), plus
 - what arrangement will cause the least disruption to the child's emotional stability while the action is pending.
- Should be tailored to the client's actual needs
- Require a lot of documentation
- Establish a "status quo" pending trial or settlement
- Governed by local rules.

Property and Debts

- Tend to be limited in low-income cases
- Debts: Issue spot during interviews re credit cards, student loans, repossessed cars, foreclosure, etc.
- Assess income (judgment proof v. vulnerable to enforcement)
- Consider safety: clients often recant testimony or reconcile in order to attain financial stability.
- Temporary orders can assign responsibility for bills. Consider auto insurance, car payment, mortgage, etc.

Property and Debts, con't.

Property: Issue-spot with clients re vehicles, property, tools of the trade, important documents related to the children, immigration, and/or taxes.

Bank accounts: Discuss opening a separate account or withdrawing a reasonable amount from a joint account.

Retirement: Discuss union membership, or other paths to retirement funds.

Temporary Orders can assign use of property even without determining ownership of that property.

Client Priorities

- Discuss highest priorities with the client re property and debts. If the client is judgment proof, she may not be as concerned. If the client wants to cut all ties to the other party, she may not care at all about a house but may need a vehicle to keep her job.
- Division of property and debts does not have to be 50-50; just equitable and fair. Listen closely to the client.
- Consider cultural/religious implications. Seek the client's perspective.

Secondary Causes of Action

- Modifications
 - Parenting Plan
 - Child Support
- Contempt
 - Financial
 - Parenting Related
- Relocation
- Writ of Habeas Corpus

Modifications: Changing the parenting plan you already have.

- Filed within the existing action, caption remains the same.
 - unless modifying another county or state's order → consider venue/jurisdiction first
- Standards for Modification
 - Parenting Plan: Narrow Grounds for Major Mod
 - Generally substantial change of circumstances + either agreed, due to integration with consent, or detrimental environment...
 - Child Support
 - Can only modify prospectively
 - Can be modified administratively or judicially

Major Modifications

- Extremely difficult. Make your case, then file it.
- Requires finding of Adequate Cause
- “Something more” than allegations- not a fishing expedition
- Temporary Orders/Ex Parte Relief Available
- Likely to include the same evaluative steps as an initial parenting plan.

Contempt

- Valuable enforcement tool for Parenting Plan or Child Support violations
- Requires personal service of Order to Show Cause
- Requires a showing of willfulness (Party in contempt knew about the order, and violated it anyway)
- KNOW YOUR JURISDICTION.
- Remedies: make up visitation, repayment plans, etc.
- Jail time is possible, but must give means to purge contempt and get out of jail. Triggers entitlement to a public defender.
- Automatic civil penalty if found in contempt.

Relocation with Children (Part 13 of EVERY Parenting Plan)

- Must give advance notice to anyone entitled to residential time with the child
 - Mandatory form/timelines if moving out of child's school district
 - 60 days notice preferred
 - 5 days notice acceptable if move unforeseen
 - Can delay notice 21 days if moving into DV shelter or clear, immediate and unreasonable risk to health and safety
 - Can ask Court to waive notice requirements
 - Temporary order available- including for relocation!

Pathway to modification- if you move far enough, you'll need a new parenting plan. The burden to accommodate the relocation will be on the relocating parent to mitigate the impact.

Relocation (cont'd)

- Other parent may object to move w/in 30 days of receiving notice. Objecting parent files the new action, not the relocating parent.
- Contempt or modification possible if moving parent failed to give notice.
- If no objection, new parenting plan may be entered.
- Relocation Standard RCW 26.09.520. :
 - *Rebuttable presumption* that the intended relocation of the child will be permitted
 - Rebut presumption by showing that the detrimental effect of the relocation outweighs the benefit of the change to the child and the relocating person, based upon the itemized factors.

Relocation Factors

- Relationships
- Agreements
- Would disrupting contact with the moving party be more detrimental than disrupting contact with the non-moving party?
- Are there .191 limitations (how did this get all the way down here?)
- Reasons for moving
- Reasons for objecting.
- How would moving (or not moving) affect the children?
- Quality of life in new location
- Alternatives (can non-relocating parent move too?)
- Financial Impact of relocation

Writ of Habeas Corpus

- Orders Law Enforcement to pick up child and deliver child to Court. Then Court decides who gets the child.
 - Very disruptive and potentially scary process for child.
- Last resort tool for recovering child who has been snatched
 - Try contempt, negotiation, civil standby, safe self-help first
- Must have valid court order granting you custody that other party is violating
- Must be filed in County where it will need to be enforced.
- Consider creative alternatives. Be prepared to prove you did.

Resources

- www.courts.wa.gov
- Washingtonlawhelp.org
- Family Law Task Force
- Court observation