



# Self Help Center Training

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# What Help Does The Client Want?

1. Custody Ordered by a Court
2. Custodial Power of Attorney
3. Standby Guardianship
4. Other

# Custody Ordered by a Court

## Initial Questions to Ask:

1. Does the Court have jurisdiction?
2. Does the client have standing to file?
3. What type of custody does the client want?
4. Does the client have parental consent or can the client overcome the parental presumption?

# Jurisdiction

When does a DC Court have Jurisdiction to make an **initial** custody determination?

1. **Home State** \*\*
2. Significant Connections
3. More Appropriate Court
4. No Other Court
5. Temporary Emergency Jurisdiction

When does a DC Court have Jurisdiction to **modify** a prior DC custody order? DC Court retains jurisdiction unless all of the parties leave DC.

*See Uniform Child Custody Jurisdiction and Enforcement Act, D.C. Code § 16-4602.01*

# What DC Statute Applies to Third Parties Seeking Custody?

- ▶ Safe and Stable Homes for Children and Youth Emergency Amendment Act of 2007, D.C. Code § 16-831 *et seq.*
  - ▶ Different from statute applicable to parents seeking custody against each other (See D.C. Code § 16-914 *et seq.*)

# Standing: When Can Relatives File for Custody in Court?

A person who is not a parent (*e.g.*, “third party”) has *standing* to file a complaint or motion for custody IF:

- ▶ Primary caregiver parent consents OR
- ▶ Living with child 4 of 6 preceding months and assumed parental duties, OR
- ▶ Currently living with child and exceptional circumstances
  - ▶ Imminent danger to health or safety

# Types of Custody

## ▶ Physical Custody

- ▶ Where the child sleeps/resides
- ▶ Holiday/Vacation schedules
- ▶ Visitation

## ▶ Legal Custody

- ▶ Right to make decisions
- ▶ Right to obtain information
- ▶ Right to speak with professionals/providers

### ABOUT WHAT?

- ▶ Medical
- ▶ Educational
- ▶ Religious

# Types of Custody (cont'd)

## ▶ Sole Custody or Joint Custody

- ▶ Sole custody is when a person has all rights to physical and legal custody of a child
- ▶ Joint custody is when physical and/or legal custody is shared between the parties
- ▶ Many different options

✓ *Estopina v O'Brian*, 68 A.3d 790 (D.C. 2013):  
Joint Custody is not always equal or 50/50



# When Can a Court Award Custody to a Third Party?

- ▶ The court shall enter an order for any custody arrangement that is agreed to by the parents and the proposed custodian or custodians, unless clear and convincing evidence indicates that the arrangement is not in the best interests of the child.

OR

- ▶ The court shall award custody of the child to the third party upon determining:
  - ▶ The presumption in favor of parental custody has been rebutted; AND
  - ▶ Custody with the third party is in the child's best interests.

*D.C. Code § 16-831.06.*

# Revocable or Irrevocable Parental Consent

A parent may respond to a Complaint with a Contested Answer or a Consent Answer.

- ▶ ***Practice tip:*** Parents rarely file Answers. However, the Court will not enter a default judgment unless the parent fails to file an answer AND fails to appear. The Court has an independent obligation to consider the best interests of the child.

If a parent files a Consent Answer or explains to the Court that he or she consents, the consent may be Revokable at Will or Modifiable Only by Agreement or Court Order:

- ❖ **Revokable at Will** means the party may file a revocation for any reason and the court's order immediately will be vacated and of no further force and effect.
  - ▶ ***Practice tip:*** In reality, the court will hold a hearing to determine if the order should be revoked.
- ❖ **Modifiable Only by Agreement or Court Order** means the party may not revoke their consent and may only move to modify the consent order if there has been a substantial change in circumstances and it is in the best interests of the child.
  - ▶ ***Practice tip:*** Parties almost never agree to this. The language in the form reads like a warning label and it scares people off.

# Rebutting the Parental Presumption

## ▶ Third party must show:

- ▶ Parents abandoned, unwilling, or unable to care for child; or
- ▶ Custody with parent would be detrimental to child; or
- ▶ Exceptional circumstances support rebuttal of parental presumption.

**Burden: Third Party**

**Legal standard: Clear and Convincing Evidence**

See D.C. Code § 16–831.07

# Best Interests of Child

- ▶ (a) In determining whether custody with a third party . . . is in the child's best interests, the court shall consider all relevant factors, including:
  - ▶ (1) The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
  - ▶ (2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
  - ▶ (3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the third-party complainant or movant; and
  - ▶ (4) To the extent feasible, the child's opinion of his or her own best interests in the matter.
- ▶ (b) There shall be a rebuttable presumption that granting custody to a third party who has committed an intrafamily offense is not in the best interest of the child.

*See D.C. Code § 16–831.08.*

# Temporary or Permanent Custody?

## ▶ *Pendente Lite* vs. Permanent Custody

- ▶ Pendente Lite Custody is a temporary order that can be modified during the case if it is in the best interests of the child.
  - ▶ Note that you cannot file a Complaint for *Pendente Lite* custody. Temporary custody is only an option during the pendency of a case.
- ▶ Permanent Custody is the final order in a custody case and can be modified until child is 18 when there is a showing of a substantial and material change in circumstance and a determination that modification is in the best interests of child.

# What Kinds of Services Can a Party Request the Court to Order in a Custody Case?

- ▶ Drug Testing
- ▶ Home Studies
- ▶ Mental Health Evaluations: Psychological, Psychiatric and Interactive Evaluations
- ▶ Appointment of a Guardian *Ad Litem*
- ▶ Supervised Visitation (at the Court Supervised Visitation Center or otherwise)
  - ▶ This especially relevant if there are allegations of abuse or neglect, or domestic violence
    - ▶ You can find CPO cases (domestic violence) in the DV Clerk's Office on the 4<sup>th</sup> Floor (they are not online)
    - ▶ Criminal Cases are online or you can obtain them from the Criminal Clerk's Office on the 4<sup>th</sup> Floor

# Filing Logistics

- ▶ To Initiate a new Custody Case: File Complaint and Motion for Temporary Custody.
- ▶ If the father's name is known, he should be listed on the complaint, whether or not he is listed on the birth certificate.
- ▶ If the father's name is known but his whereabouts are unknown, his last known address should be listed on the complaint. (After service has been unsuccessfully attempted at the last known address, a Motion for Alternative Service may be filed.)
- ▶ If the father's name is unknown, DO NOT list "unknown father" on the complaint as the central intake will not accept a complaint that does not list a name and address for a party.
- ▶ If a parent is deceased, he or she must still be listed as a party to the Complaint but to the right of the party's name add the word "deceased" in parentheses. e.g. Jane Doe (deceased). Note that a death certificate ultimately will need to be filed with the Court but need not be filed at the time of filing the Complaint.
  - ▶ ***Practice tip:*** The filing person may not have legal access to the parent's death certificate. It is helpful to do an internet search for the deceased party's name and "obituary" to find information to include in and/or attach to the Complaint.

# Filing Logistics (Cont'd)

- ▶ To participate in an already existing case, the third party must file a Motion to Intervene.
- ▶ A Motion to Intervene cannot be filed by itself; it is usually accompanied by a Cross-Complaint or a Motion to Modify Custody.
- ▶ A Cross-Complaint is filed when a case has already begun but no custody order has yet been issued.
- ▶ A Motion to Modify is filed when either a *pendente lite* or permanent custody order previously has been issued.
- ▶ Note that when a third party files a Cross-Complaint or Motion to Modify Custody in an existing case, the third party is NOT listed as the Petitioner. The original Petitioner remains as the Petitioner and the third party is listed as the Intervenor after the Defendants.



# Filing Logistics (see attached service primer)

- ▶ If client receives public benefits, have client complete and file Motion for Fee Waiver with Complaint or Motion to Intervene at Central Intake Center (CIC).
- ▶ Tell client that that they should have received service packets from CIC for every other party in the case besides themselves unless party is deceased.
- ▶ Service packets should consist of everything that was filed, plus a summons if one of the documents is a Complaint or Cross-Complaint, or a notice if one of the documents is a Motion to Intervene.
- ▶ Tell clients that if they have filed a Complaint or Cross-Complaint, service must be in person or via certified mail with delivery restricted to addressee. As a practical matter, certified mail is almost never successful as a means of service but clients like it.
- ▶ For personal service, anyone 18 or older *who is not a party* to the case can serve a party. If party refuses to take the documents from the server's hands, it is ok to leave it at their feet. If client is willing/able to pay, Capitol Process Service will do three attempts for \$65.
- ▶ **During COVID, service may be accomplished through text or email. Email is the easier of the two options.**
- ▶ An Affidavit of Service (personal, certified mail **or electronic**) must be filed with the Court once service is accomplished.

# What if the Client Cannot Serve a Party?

- ▶ If the client cannot find a party to serve them, the party may file a Motion for Alternative Service.
- ▶ The Motion outlines the steps the client has already taken to effect service.
- ▶ The Motion allows the client to request the Court approve a variety of different service methods, including by electronic means.
- ▶ Until recently, the options were publication (in a local newspaper of general circulation) or posting (of a notice in the clerk's office).
- ▶ Now the Court may consider alternative means, such as service through social media messaging, that have a much greater chance of providing actual notice:
  - ▶ If a client is aware that the party has a social media presence, knows the specific account, and that there has been recent activity by the party on the account, the client should include that information in the motion.
    - ▶ **Practice tip**: It helps to include screenshots of the account, especially ones that include recent activity and/or photographs of the party.

# Modification of a Permanent Custody Order

- ▶ Motion to Modify:
  - ▶ Anytime up until the Child is 18 years old
  - ▶ Must Show a Substantial and Material Change in Circumstances
  - ▶ Must Show Change is in the Best Interests of the Child

**Practice Tip:** Do not need to show substantial change in circumstances if it is a modification of a temporary order or if parental consent to permanent custody order was revokable.

# What if the Client Needs a Custody Order Right Away?

- ▶ The client may ask the court to hear the complaint or motion to intervene and to modify custody on an emergency basis the same day the client files.
- ▶ An emergency hearing is available when there is “a child in imminent danger, a child who has been kidnapped, a complete denial of access to a child, and other extraordinary situations that the court deems appropriate.” Superior Court of the District of Columbia Administrative Order 14-23: *Revised Case Management Plan for the Domestic Relations Branch*, available at <https://www.dccourts.gov/sites/default/files/2017-03/14-23-Revised-Case-Management-Plan-for-DRB-Dec-31-2014.pdf>.
- ▶ In practice, the Court does not like *ex parte* emergency hearings and generally does not grant them if the child is currently safe with a relative caregiver, even if there is a risk that an abusive parent may come back and take the child.
- ▶ If granted, the Court ***must*** schedule a hearing on the Motion within 10 business days of the emergency order.
- ▶ The client may also request a hearing on an expedited basis. The Court will grant such an expedited hearing in its discretion.

# Custodial Power of Attorney

## D.C. Code § 21-2301

- ▶ A parent can share physical and/or legal custody of their child with any third party adult and can limit that third party's authority, *i.e.* third party could make medical decisions but not educational ones.
- ▶ CPOAs are not filed in or approved by any court and can be revoked in writing at any time by a parent.
- ▶ No termination of parental rights.
- ▶ A parent cannot take away the other parent's rights or modify a court order using a CPOA.
- ▶ CPOAs can be limited by time such as by listing a starting date or condition and/or an ending date for the third party's authority; however, typically, the third party's authority begins at signing and ends with the child's majority or with written revocation by the parent.
- ▶ CPOAs are useful in safety planning for children of undocumented parents, and for giving relative caregivers authority to care for children without having to go to court.
- ▶ CPOAs cannot be used to get passports or birth certificates for a child.

# Standby Guardianship

## D.C. Code § 16-4801 *et seq.*

- ▶ If a parent is facing illness that may result in death or incapacity, he or she may designate a third party adult to be a standby guardian to take care of the child. The third party must also sign the designation.
- ▶ Standby Guardianships do NOT begin at signing but rather start when there is a “triggering event.” *e.g.* the parent’s death or incapacity.
- ▶ Recently passed legislation has added “adverse immigration action” and COVID-19 to the list of “triggering events” so that a parent who is facing detention or deportation or is sick from COVID-19 can also designate a standby guardian.
- ▶ A parent can designate a standby guardian without court involvement. However, a petition must be filed in court within 90 days of the triggering event and the court must grant the guardianship petition for the guardianship to continue.
- ▶ Standby guardianships are useful for undocumented parents to safety plan for their children in case of detention or deportation, as well as when a parent anticipates death or incapacity. Because standby guardianship results in the issuance of a court custody order, they are useful for non-parents who may need to obtain things like the child’s birth certificate or a passport, and it is accepted in other states. A custody order is also often needed to obtain a larger public housing unit, or to obtain SSI for the child.

# Legal Custody And Public Benefits

- ▶ TANF (eligibility/relatedness issues)
- ▶ SNAP
- ▶ Medicaid
- ▶ Grandparent Caregiver Subsidy
- ▶ Close Relative Caregiver Subsidy
- ▶ Foster Care
- ▶ SSI
- ▶ School Lunch
- ▶ Application for Birth Certificate

# CFSA Involvement & Kinship Diversion

- ▶ Often a relative takes custody of a child after child abuse or neglect in parental home
- ▶ A call is made to the CPS hotline alleging abuse or neglect of a child
- ▶ CPS investigates the allegation of abuse or neglect
- ▶ CFSA substantiates abuse or neglect and determines the child is at high risk and cannot be protected in the home through the provision of services
- ▶ A relative agrees to care for the child with the birth parent's apparent consent (this agreement typically occurs at a family team meeting or similar meeting where CFSA is present and still involved with the family)
- ▶ CFSA drafts a safety plan delineating the terms of the arrangement
- ▶ CFSA tells the relative to file for custody of the child
- ▶ CFSA closes its internal case
- ▶ CFSA does not tell the relative that he or she can become a foster parent and receive the foster care subsidy
  - ▶ CFSA tells the relative and parents that if the relative does not take the child, CFSA will have to place the child in foster care with a stranger



# DC KinCare Alliance Legal Helpline

**202-505-5803**

- Helpline fliers are provided to the SHC
- Central Intake for New Clients
- Brief Legal Advice
- Attorney-client relationship during phone call
- Relationship ends when call is over
- Client can ask for more intensive representation

# DC KinCare Alliance Relative Caregiver Resource Guide

- ▶ This Guide provides information about the legal options and financial resources to consider when it becomes necessary for a relative caregiver to care for a DC child
- ▶ Hard copies are provided to the SHC
- ▶ Access online on our website

## A RESOURCE GUIDE FOR RELATIVES RAISING D.C. CHILDREN:

Helping You Find the Best Path Forward

