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The Maryland House of Delegates

ANNAPOLIS, MARYLAND 21401

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Testimony in Support of House Bill 1328 – Child Custody – Legal Decision Making and Parenting Time

Good afternoon Mr. Chairman and members of the Committee. Thank you for the opportunity to speak to you on behalf of **House Bill 1328 – Child Custody – Legal Decision Making and Parenting Time**.

This legislation is a result of the Commission on Child Custody Decision-Making, which was established by the General Assembly in 2013 and tasked with studying child custody practices and policies in Maryland and making recommendations based on its findings. House Bill 1328, if enacted, will create a child custody statute that provides a clear, predictable and consistent guide for parents, lawyers, and courts.

The bill tracks Maryland Rule 9-204.1 and 9-204.2 that was approved by the Court of Appeals in September 2019 and became effective December 1, 2019. The new Rules require parties in a contested custody case to submit proposed Parenting Plans prior to the start of any custody trial. The Rules improve procedure and list factors for the parties and the Court to consider in the determination of the best interest of the child or children.

First, the new Rules and HB1328 change the dynamics of custody determinations by using neutral, positive terms – instead of the traditional “custody” or “visitation.” This reflects an important finding of the Commission that determinations in these cases should be child-focused. Specifically,

1. Decision-making authority is used instead of legal custody. Decision-Making Authority refers to how to make major long-term decisions about a child’s medical care, mental health, education, religious training, and extracurricular activities.
2. Parenting time is used instead of physical custody, visitation, or access. Parenting time refers to where a child lives and the amount of time he or she spends with each parent.

The new Rules and House Bill 1328 provide that in determining what decision-making authority and parenting time arrangement is in the best interest of the child, the parties (and subsequently the Court) may consider the following factors:

- (1) Stability and the foreseeable health and welfare of the child;
- (2) Frequent, regular, and continuing contact with parties who can act in the child's best interest;
- (3) Whether and how parties who do not live together will share the rights and responsibilities of raising the child;
- (4) The child's relationship with each party, any siblings, other relatives, and individuals who are or may become important in the child's life;
- (5) The child's physical and emotional security and protection from conflict and violence;
- (6) The child's developmental needs, including physical safety, emotional security, positive self-image, interpersonal skills, and intellectual and cognitive growth;
- (7) The day-to-day needs of the child, including education, socialization, culture and religion, food, shelter, clothing, and mental and physical health;
- (8) How to:
 - (A) place the child's needs above the parties' needs;
 - (B) protect the child from the negative effects of any conflict between the parties; and
 - (C) maintain the child's relationship with the parties, siblings, other relatives, or other individuals who have or likely may have a significant relationship with the child;
- (9) Age of the child;
- (10) Any military deployment of a party and its effect, if any, on the parent-child relationship;
- (11) Any prior court orders or agreements;
- (12) Each party's role and tasks related to the child and how, if at all, those roles and tasks have changed;
- (13) The location of each party's home as it relates to their ability to coordinate parenting time, school, and activities;
- (14) The parties' relationship with each other, including:
 - (A) how they communicate with each other;
 - (B) whether they can co-parent without disrupting the child's social and school life; and
 - (C) how the parties will resolve any disputes in the future without the need for court intervention;
- (15) The child's preference, if age-appropriate.

These factors include significant regular contact with each parent, consideration of a child's developmental needs, the level of conflict that exists in the relationship between the parents, the parents' psychological adjustment, and a child's need to maintain significant relationships. The legislation specifically stipulates that neither parent is presumed to have any right to legal decision making or parenting time that is superior to the right of the other parent. The bill rejects the concept of a presumed schedule of parenting time. Court rulings concerning legal decision making and parenting time must be guided by the best interest of the child.

I respectfully request a favorable report for House Bill 1328.

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WESTLAW Maryland Code and Court Rules

[Home Table of Contents](#)**RULE 9-204.1. PARENTING PLANS**

West's Annotated Code of Maryland
Maryland Rules
Effective: December 1, 2019

West's Annotated Code of Maryland
Maryland Rules
Title 9. Family Law Actions
Chapter 200. Divorce, Annulment, Alimony, Child Support, and Child Custody (Refs & Annos)

Effective: December 1, 2019

MD Rules, Rule 9-204.1

RULE 9-204.1. PARENTING PLANSCurrentness

(a) Definitions. The following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(1) *Decision-Making Authority (Legal Custody).* Decision-Making Authority, also called legal custody, refers to how major long-term decisions about a child's medical care, mental health, education, religious training, and extracurricular activities are made.

(2) *Parenting Plan.* Parenting Plan means a written agreement about how parties will work together to take care of a child.

(3) *Parenting Time (Physical Custody).* Parenting Time, also called physical custody, refers to where a child lives and the amount of time he or she spends with each party.

(b) Introduction of Parenting Plan. At the parties' first appearance in court on a decision-making authority or parenting time matter, the court shall provide to each party a paper copy of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool and direct them to an electronic version of these documents. The court shall advise the parties that they may work separately, together, or with a mediator to develop a parenting plan they believe is in the best interest of their child.

(c) Best Interest of the Child. In determining what decision-making authority and parenting time arrangement is in the best interest of the child, the parties may consider the following factors:

(1) Stability and the foreseeable health and welfare of the child;

(2) Frequent, regular, and continuing contact with parties who can act in the child's best interest;

(3) Whether and how parties who do not live together will share the rights and responsibilities of raising the child;

(4) The child's relationship with each party, any siblings, other relatives, and individuals who are or may become important in the child's life;

(5) The child's physical and emotional security and protection from conflict and violence;

(6) The child's developmental needs, including physical safety, emotional security, positive self-image, interpersonal skills, and intellectual and cognitive growth;

(7) The day-to-day needs of the child, including education, socialization, culture and religion, food, shelter, clothing, and mental and physical health;

(8) How to:

(A) place the child's needs above the parties' needs;

(B) protect the child from the negative effects of any conflict between the parties; and

(C) maintain the child's relationship with the parties, siblings, other relatives, or other individuals who have or likely may have a significant relationship with the child;

(9) Age of the child;

- (10) Any military deployment of a party and its effect, if any, on the parent-child relationship;
- (11) Any prior court orders or agreements;
- (12) Each party's role and tasks related to the child and how, if at all, those roles and tasks have changed;
- (13) The location of each party's home as it relates to their ability to coordinate parenting time, school, and activities;
- (14) The parties' relationship with each other, including:
 - (A) how they communicate with each other;
 - (B) whether they can co-parent without disrupting the child's social and school life; and
 - (C) how the parties will resolve any disputes in the future without the need for court intervention;
- (15) The child's preference, if age-appropriate; and
- (16) Any other factor deemed appropriate by the parties.

(d) No Agreement Reached. If the parties do not reach a comprehensive parenting plan, they shall complete a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time pursuant to Md. Rule 9-204.2.

Source: This Rule is new.

Credits

[Adopted Nov. 19, 2019, eff. Jan. 1, 2020.]

MD Rules, Rule 9-204.1, MD R FAM LAW ACT Rule 9-204.1
Current with amendments received through December 15, 2019.

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WESTLAW Maryland Code and Court Rules

[Home Table of Contents](#)**RULE 9-204.2. JOINT STATEMENT OF THE PARTIES CONCERNING DECISION-MAKING AUTHORITY AND PARENTING...**

West's Annotated Code of Maryland
Maryland Rules
Effective: January 1, 2020

West's Annotated Code of Maryland
Maryland Rules
Title 9. Family Law Actions
Chapter 200. Divorce, Annulment, Alimony, Child Support, and Child Custody (Refs & Annos)

Effective: January 1, 2020

MD Rules, Rule 9-204.2

RULE 9-204.2. JOINT STATEMENT OF THE PARTIES CONCERNING DECISION-MAKING AUTHORITY AND PARENTING TIME

[Currentness](#)

(a) When Required. If the parties are not able to reach a comprehensive parenting plan, the parties shall file a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time.

Cross reference: For the authority of a mediator to assist the parties with the completion of a Joint Statement, see Rule 9-205.

(b) Form of Joint Statement. The statement shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(c) Time for Filing; Procedure. The Joint Statement shall be filed at least ten days before any scheduled settlement conference or if none, 20 days before the scheduled trial date or by any other date fixed by the court. At least 30 days before the Joint Statement is due to be filed, each party shall prepare and serve on the other party a proposed Joint Statement in the form set forth in section (b) of this Rule. At least 15 days before the Joint Statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed Joint Statement that fairly reflects the positions of the parties. The defendant shall timely file the Joint Statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) Review of Joint Statement. Prior to rendering its decision, the court shall consider the entire Joint Statement. As to the provisions upon which the parties agree as well as those upon which the court must decide, the court may consider the factors listed in Rule 9-204.1 (c).

(e) Sanctions. If a party willfully fails to comply with this Rule, the court, on motion or on its own initiative, after the opportunity for a hearing, may enter any appropriate order in regard to the noncompliance.

Committee note: Failure to comply with this Rule cannot be the basis upon which to deny a party's request for decision-making authority or parenting time.

Credits

[Adopted Nov. 19, 2019, eff. Jan. 1, 2020.]

MD Rules, Rule 9-204.2, MD R FAM LAW ACT Rule 9-204.2
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