

February 23, 2010

Child Custody and Timesharing in Domestic Violence Actions

The essential component of a Domestic Violence Order of Protection under the New Mexico Family Violence Protection Act is the issuance of a restraining order prohibiting the restrained party from having any contact with the protected party/alleged victim. However, when the restrained party and the protected party have children together the domestic violence hearing officer can also issue short-term decisions regarding child custody, timesharing and child support. In Albuquerque, Rio Rancho and Santa Fe, the hearing officer will often refer the parties to the court clinic or family court services in order to evaluate custody and advise the court as to what is in the best interest of the children involved in the domestic violence case.

Albuquerque, Rio Rancho and Santa Fe each have a variety of court clinic and/or family court services for addressing child custody and time-sharing issues. These offices are staffed by trained psychologists, therapists and social workers who are often called court clinicians. The purpose of a court clinician is to help the judges and hearing officers make custody determinations by conducting an investigation into a child's living situation. This investigation, often referred to as a child custody evaluation, includes interviews of the parents, the child (if the child is old enough) and others involved in the child's daily life such as grandparents, teachers, doctors, counselors and even coaches.

Sometimes a hearing officer will ask a court clinician to appear at a hearing on an Order of Protection on very short notice for an on-call child custody evaluation. This is typically the case in custody matters related to domestic violence actions. In these situations, the hearing officer will call a recess from the hearing in order to allow the on-call clinician to speak to all of the parties present and make a child custody and timesharing recommendation that is in the child's best interest. If the on-call clinician determines that more investigation needs to be done they may ask the hearing officer to order a priority consultation which is a more thorough but expedited custody evaluation. However, the on-call clinician will make interim recommendations based upon preliminary findings that will stand pending the priority consultation.

A priority consultation is a more in-depth evaluation by the court clinician and will usually be held sometime after the domestic violence hearing. It may include interviewing others in the child's life not present in court at the domestic violence hearing and reviewing any relevant documentation about the parents' or the child's mental health. If the court clinician feels like still more investigation is needed, there may be a request that the hearing officer or the judge order that the parties participate in an advisory consultation, which often requires all the parties involved to undergo psychological testing and may span a period of months, often many months due to the heavy caseload in the court clinic.

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At the end of an on-call, priority or advisory consultation, the court clinician will make recommendations to the hearing officer or judge as to what the parties' timesharing arrangement should be. Each party has ten (10) days to object to the recommendations issued by the court clinician. If no objections are filed within the 10 day time period, the recommendations are adopted as an order of the Court.

A hearing on an Order of Protection can have lasting effects on a restrained party's liberty and their right to see their children, which make is extremely important that you consult an attorney if a Petition for Order of Protection is filed against you. Every case is unique and requires individual analysis to protect both your interests and the interests of your children. No matter which side you are on, it is typically inadvisable to attend these hearings without an attorney.

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