

Children's Law Center

Caregiver Custody (Part One)

Pro Bono Training

Jen Masi, Pro Bono Director



July 7, 2020



Quick Roadmap



CLC Pro Bono Program



Virtual Training Series



Today's Training



On Demand Resources

About Children's Law Center



WE REACH
1 out of 9 children
IN DC'S POOREST
NEIGHBORHOODS EACH YEAR

WE HAVE LAWYERS ONSITE AT
6 health clinics
ACROSS DC TO HELP FIND
AND FIX BARRIERS TO HEALTH



WE HAVE SERVED
**30,000 children
and families**
SINCE 1996



WE PARTNER WITH MORE THAN
500 pro bono lawyers



WE PARTNER WITH DISTRICT
AGENCIES, THE DC COUNCIL
AND COMMUNITY LEADERS TO
FIND OR IMPLEMENT
city-wide solutions
THAT BENEFIT ALL DC KIDS

Children's Law Center fights so every child in DC can grow up with a loving family, good health and a quality education. Judges, pediatricians and families turn to us to advocate for children who are abused or neglected, who aren't learning in school, or who have health problems that can't be solved by medicine alone.

CLC Pro Bono Cases

Family

- ◆ Caregiver Custody
- ◆ Custody Guardian *ad Litem* (GAL)

Health

- ◆ Housing Conditions

Education

- ◆ Special Education

Supporting Pro Bono Attorneys



Screening

CLC thoroughly screens clients when assessing cases for pro bono placement to ensure the case is a good fit for a pro bono attorney.



Training and Resources

CLC offers in-person and online training and an abundance of resources on our website, including model pleadings, training materials and videos.



Mentoring

Experienced CLC attorneys mentor our pro bono lawyers. Mentors provide initial case recommendations, discuss strategy and legal issues, and remain available throughout the duration of the case.

Virtual Training Series

July 2020				
Monday	Tuesday	Wednesday	Thursday	Friday
6	7	8	9	10
	2:00 p.m. - 3:00 p.m. Caregiver Custody Part One: Custody Law and Practice	9:30 a.m. - 10:30 a.m. Caregiver Custody Part Two: Pretrial and Trial Advocacy		
13	14	15	16	17
12:00 p.m. - 1:00 p.m. Custody GAL - Part One: The Role of the GAL		2:00 p.m. - 3:00 p.m. Custody GAL - Part Two: Custody Law and Procedure		10:00 a.m. - 11:00 a.m. Custody GAL - Part Three: Communicating with Children and Teens; Overview of Domestic Violence, Substance Abuse, and Child Abuse and Neglect
20	21	22	23	24
10:00 a.m. - 11:00 a.m. Special Education - Part One: What is Special Education?		3:00 p.m. - 4:00 p.m. Special Education - Part Two: Handling a Special Education Case	3:30 p.m. - 4:30 p.m. Cultural Humility Training	10:00 a.m. - 11:00 a.m. Special Education - Part Three: The Due Process Hearing
27	28	29	30	31
	12:00 p.m. - 1:30 p.m. Housing Conditions Training			

Today's Training

Content

- Caregiver Custody Law and Practice

Remote Representation

- These cases can be handled remotely.

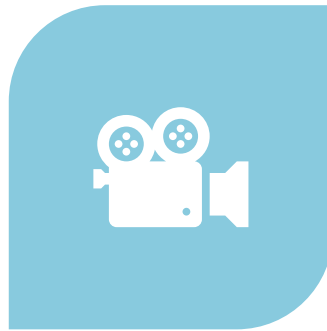
Questions

- Zoom Chat
- Email Jen Masi

On Demand Resources



**Training
Presentations**



**Training
Videos**



**Training
Manuals**

On Demand Resources

Pro Bono



Though Children's Law Center is the largest non-profit legal provider in DC, many more children come to us than we can help. We are honored to partner with more than 500 pro bono attorneys every year from the area's top law firms, in-house legal departments and government agencies to help fill the gap.

If you are a pro bono attorney, we hope you will partner with us. We provide world class mentorship, training and written materials to help attorneys feel more comfortable navigating new areas of law. In addition to gaining valuable trial skills, we promise that you will be deeply touched by your experience – because our cases are life changing.

Want to learn more about becoming a pro bono lawyer for Children's Law Center? [Check out our FAQs](#) and sign up to [join our mailing list](#)! Closing a case? [Click here](#).

For information on how to partner with us, please contact Jen at JMasi@ChildrensLawCenter.org.

Resources >

Fact Sheets

Pleadings

Training Manuals

Training Presentations & Videos

Other



Meet Our Mentors



Pro Bono Partners

Interested in a case?

◆ **Email me!**

jmasi@childrenslawcenter.org



Custody Law and Practice

Lauren Birzon Harriman, Senior Attorney



July 7, 2020



Materials in Manual

- ◆ **Tab 3**
 - ◆ **Overview and Beginning Steps**
- ◆ **Tab 4**
 - ◆ **Custody and Domestic Violence Law and Procedure in D.C.**
- ◆ **Tab 5**
 - ◆ **Sample Third-Party Custody Complaint and Answer**
- ◆ **Tab 6**
 - ◆ **Services and Resources Available in Domestic Relations Cases**
- ◆ **Tab 7**
 - ◆ **Grandparent Caregiver Resources**



Roadmap

- ◆ Jurisdiction
- ◆ Custody
- ◆ Standing
- ◆ Legal Standard
 - ◆ Parental Presumption
 - ◆ Best Interest Factors
 - ◆ Parental Consent
- ◆ Filing the Case
- ◆ Service
- ◆ Next Steps
- ◆ Caregiver Resources



Roadmap

- ◆ **COVID-19 Updates**



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Jurisdiction

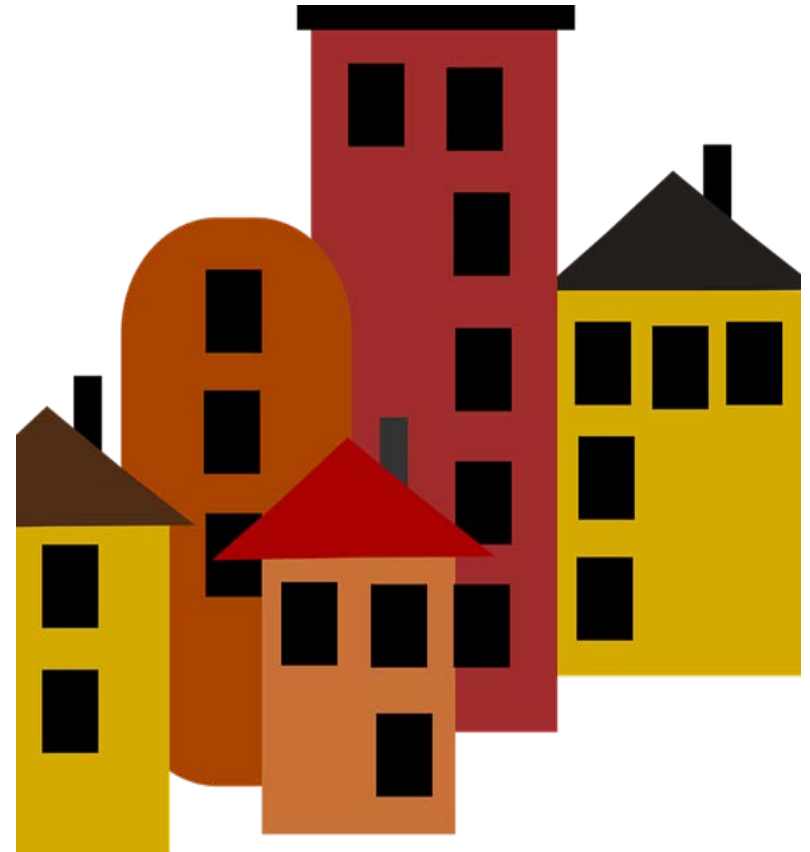
Jurisdiction: Can Client File in DC?

- ◆ Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), D.C. Code § 16-4601.01 *et seq.*
- ◆ Custody Jurisdiction Decision Tree
 - ◆ www.dccourts.gov/decisiontree



Jurisdiction: Some Things to Consider

- ◆ Parents' residences
- ◆ Child's residence
- ◆ Third-party's residence
- ◆ Any previous custody determinations



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Custody

Custody Defined

Physical Custody

Child's living arrangements, including child's residency or visitation schedule

Legal Custody

Right to make decisions regarding child's health, education, and general welfare

Right to access child's educational, medical, psychological, dental, or other records and obtain information about the child from persons who interact with the child

Custody

Allocate

Involves the allocation of rights.

Retain

Parents retain some rights (e.g., visitation).

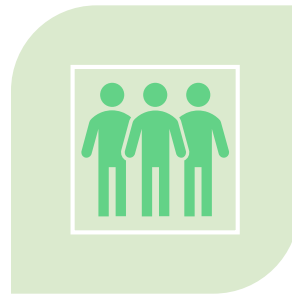
Modify

Custody orders can be modified after a final order.

A Custody Order Can Grant...



Sole physical or legal
custody



Joint physical or legal
custody



Any other
arrangement that the
court determines is in
the child's best
interest

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Third-Party Custody

Third-Party Custody in DC

- ◆ Authorized by the Safe and Stable Homes for Children and Youth Act of 2007, D.C. Code § 16-831.01 *et seq.*
 - ◆ When a third-party can file for custody or to intervene in an existing custody matter (standing).
 - ◆ The legal standard for third-parties.
 - ◆ Custody modifications.

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Standing

When Does a Third-Party Have Standing?

- ◆ D.C. Code § 16-831.02(a)(1)
 - ◆ Consent of a parent who has been primary caretaker during past 3 years or
 - ◆ Lived in the same household as the child for 4 of the past 6 months and assumed primary caregiving responsibilities or
 - ◆ Third-party lives with child and “exceptional circumstances” detailed in writing)

OR...

When Does a Third-Party Have Standing?

- ◆ D.C. Code § 16-831.01(1) – De facto parent status
 - ◆ Lived with child at birth/adoption, has taken full and permanent parental responsibilities, and held out as the child's parent or
 - ◆ Lived with the child for 10 of the past 12 months, formed strong emotional bond with child with intent of parent, has taken full and permanent parental responsibilities, and held out as child's parent.
 - ▶ *Note:* de facto parent is entitled to the same legal standard as a parent (set forth in D.C. Code § 16-914)

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Legal Standard

Legal Standard

- ◆ D.C. Code §§ 16-831.06(a)(1) and (2)
 - ◆ Rebut presumption in favor of parental custody by clear and convincing evidence (§ 16-831.07),
and
 - ◆ Prove that custody with the third-party is in the child's best interest
 - ▶ Four non-exclusive best interest factors (§ 16-831.08 (a) (1-4))
 - ▶ *cf.* D.C. Code § 16-914 – factors to be considered in custody cases between parents

Parental Presumption

- ◆ To rebut, court must find by clear and convincing evidence one or more following factors:
 - ◆ That parents have abandoned the child or are unable to care for the child;
 - ◆ That custody with a parent is detrimental to the physical or emotional well-being of the child; or
 - ◆ That exceptional circumstances, detailed in writing, support rebuttal. (D.C. Code § 16-831.07(a)).
- ◆ Written finding required if there is no parental consent. (D.C. Code § 16-831.05(b)).

Best Interest Factors

In determining whether custody with a third-party is in the child's best interest, the court will consider all relevant factors, including:

The child's need for continuity of care and caretakers, and for timely integration into a stable and permanent home

The physical, mental, and emotional health of all individuals involved as it relates to the needs of the child

The quality of the interaction and interrelationship of the child with relevant adults (parent, third-party, siblings, other caretakers)

To the extent feasible, the child's opinion of his or her own best interests in the matter

If Parent(s) Consent:

- ◆ Court must award custody pursuant to the agreement unless clear and convincing evidence shows that it is not in the best interest of the child. D.C. Code § 16-831.06 (d)(1).
- ◆ Timing
 - ◆ Consent can be filed with the complaint or any time after the filing of the complaint.

Consents

- ◆ Revocable vs. Non-revocable consent
 - ◆ **Revocable**: upon filing a revocation with the court, the custody order shall be void. D.C. Code § 16-831.11(c). Complaint is pending, statutory standard/presumption applies.
 - ◆ **Non-revocable**: non-revocable consent waives parental presumption in future proceedings; modification only by agreement of the parties or a court order based on modification standard (substantial and material circumstances and in the best interests of the child)

“Knowing and intelligent” waiver – for consent to be non-revocable, the parent’s consent must be “given with full knowledge and understanding of what [the parent] is consenting to and the consequences of that consent.”
S.M. v. R.M., 92 A.3d 1128, 1131 (D.C. 2014).

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Filing the Case

Filing the Case: What to File

- ◆ Complaint
 - ◆ *See Tab 5 of training manual for sample*
 - ◆ If there was a prior case to which third-party was not a party, motion to intervene and motion to modify.
- ◆ Summons for each defendant (will be prepared by filing clerk)
- ◆ Family Court cross-reference form
 - ◆ Identifying information for all parties and child if known
 - ◆ Not in public record

Filing Fees

- ◆ Application to Proceed *In Forma Pauperis* (IFP) – fee waiver – will waive all filing fees in case going forward.
 - ◆ IFP Application should be sent with other paperwork to the Central Intake Center (CIC) at FamilyCourtCIC@dcsc.gov

Filing the Case: How to File, COVID-19

- ◆ E-mail documents to CIC at FamilyCourtCIC@dcsc.gov
 - ◆ If IFP status is requested, CIC will process the application and filing of the complaint
 - ◆ If IFP status is not requested, CIC will assist with the process of initiating the case through CaseFileXpress
- ◆ CIC issues a summons
- ◆ Initial Hearing set after service (see below)

<https://www.dccourts.gov/sites/default/files/DRB-Case-Initiation-Instructions-for-filers.pdf>

Practice Pointers

- ◆ You must provide an address in the caption for all known parties.
 - ◆ Include and designate the last known address if that is all you have.
 - ◆ Known parties must be served, even if you don't have a current address.
 - ◆ Constructive service only after diligent efforts to locate the party (**but see COVID-19 caveats**).
- ◆ If the identity of a parent (usually the father) is unknown, state that in the complaint.

Practice Pointers

- ◆ Clients can e-sign pleadings (e.g., /s/ Jane Doe)
- ◆ Although not required by law, some judges want birth certificates for the child(ren).
 - ◆ Copies can be filed with initial pleading or at a hearing
- ◆ For deceased parents, judges often want some proof or documentation of death other than testimony (death certificate, funeral program, news report or publication).

At the Time You File Your Complaint:



Case will be assigned to a judge.



The Clerk will issue a summons for opposing parties but an initial hearing date/time will not be scheduled.



If you are filing a motion to intervene and modify custody, the case will be before the currently assigned calendar judge.

Program for Agreement and Cooperation in Contested Custody Cases (PAC)

- ◆ *Contested custody cases are referred to the PAC program at the initial hearing.*
 - ◆ Educate parents/caregivers about harm that conflict has on children
 - ◆ Includes a group seminar on effective communication (3-4 hours on a Saturday) and a mediation intake two weeks later
 - ◆ Children between 6 and 15 attend a separate class on understanding custody conflict and dealing with related stress

Program for Agreement and Cooperation in Contested Custody Cases (PAC)

- ◆ If domestic violence issues exist, call (202) 879-1851 to arrange for client to attend separate seminar and to request to opt out of mediation or to request appropriate conditions for mediation (e.g., separate rooms).
- ◆ If parties consent after scheduling, contact PAC prior to seminar date to opt out.

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Service

Service in Custody Cases

- ◆ SCR-Dom. Rel. R. 4
 - ◆ Each defendant must be served with a summons, a copy of the complaint (unless a consent answer has been signed and filed) and the initial hearing notice.
 - ◆ Plaintiff or intervenor is responsible for ensuring service and filing proof of service within sixty days (court may extend time).

Service in Custody Cases

- ◆ Motions to intervene and modify custody
 - ◆ Must be served pursuant to Dom. Rel. R. 4 if 60 or more days have passed since entry of judgment and the party to be served was not represented at the time the judgment was entered, or
 - ◆ The party was represented at the time of judgment, but appearance of counsel has been terminated under Dom. Rel. R. 101

Methods of Service in Custody Cases

- ◆ Personal service:
 - ◆ Delivering to the defendant, or
 - ◆ Delivery to a person of suitable age and discretion residing at defendant's dwelling or usual place of abode
 - ◆ Server must be an adult but not the plaintiff

Methods of Service in Custody Cases

- ◆ Certified mail, return receipt requested
 - ◆ Signed by defendant or person of suitable age and discretion residing at defendant's dwelling or usual place of abode

Methods of Service in Custody Cases

- ◆ First-class mail with acknowledgement
 - ◆ Mail postage pre-paid together with:
 - ▶ two copies of a Notice and Acknowledgment conforming substantially to the form maintained by the clerk's office
 - ▶ return envelope, postage prepaid, addressed to sender.
 - Except for good cause shown, the court must order the party served to pay the costs of another method of service if the person served does not complete and return, within 21 days after mailing, the Notice and Acknowledgment.

Service by “Alternative Means”

- ◆ If unable to accomplish service under Rule 4(c)(2) after “diligent efforts,” court can authorize service by a means “reasonably calculated to give actual notice”
 - ◆ Copy left with individual’s employer
 - ◆ Electronic means
 - ◆ Posting on the court’s website; or
 - ◆ Any other manner that the court deems just and reasonable

Constructive Service

- ◆ If a defendant or party cannot be found, the court can authorize service by publication or posting
 - ◆ D.C. Code § 13-336 et seq.; SCR-Dom.Rel. 4; *Cruz v. Sarmiento*, 737 A.2d 1021 (D.C. 1999); *Bearstop v. Bearstop*, 377 A.2d 405 (D.C. 1977)
- ◆ Motion for constructive service
 - ◆ Supporting affidavit(s)/documentation of efforts to locate
 - ◆ Include both generic and specific efforts
 - ◆ *Contact your CLC mentor if your client has IFP status and is ordered to publish*

Service: COVID-19

- ◆ Alternative service permitted without “diligent efforts” and leave of the court. ([6/19/2020 Superior Court Order](#)).
- ◆ Text message
- ◆ E-mail
- ◆ See 6/19/2020 Order for exceptions.

Affidavit of Service



Personal service:
affidavit signed by person who served the complaint, summons and notice of hearing, or motions to intervene and modify custody



Certified mail:
affidavit of person who mailed (which can be you) with signed return receipt



Posting:
court staff will take care of it (but monitor)



Publication:
newspaper will mail you an affidavit

After Effecting Service

- ◆ Defendant or other party has 21 days from the date of service to file an answer to the complaint.
- ◆ Answer may:
 - ◆ Admit the complaint allegations to be true and consent to relief requested, or
 - ◆ Deny allegations and contest (and usually counterclaim)

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Next Steps

Court Process: COVID-19

- ◆ The court will set an initial hearing after
 - ◆ a responsive pleading is filed, or
 - ◆ an affidavit of service is filed, and
 - ◆ is feasible given the status of court operations.

Court Process

- ◆ Initial hearing
 - ◆ Request temporary order?
- ◆ Status hearing(s)
 - ◆ Request temporary order?
- ◆ Potential requests
 - ◆ Home study, forensic custody evaluation, guardian *ad litem*?
- ◆ If trial
 - ◆ Pre-trial statement/exchange of witness and exhibit lists?

Practice Pointers: COVID-19

- ◆ Limited court resources = elongated timelines
- ◆ Hearings held by WebEx (video and phone)
 - ◆ Read instructions.
 - ◆ Counsel clients.
 - ◆ Keep in touch.
 - ◆ Mute!

Defaults

- ◆ If defendant or party is served and no answer is filed
 - ◆ The plaintiff or intervenor can file a request for an entry of default. SCR-Dom.Rel. 55
 - ▶ File “Affidavit in Support of Default and Compliance with Servicemembers Civil Relief Act”
- ◆ After a default is entered, the court can proceed to rule on the merits.
- ◆ Typically, the court expects a brief presentation of evidence.

Defaults - Servicemembers Civil Relief Act

- ◆ Protects parties in the military
- ◆ There is a court form
 - ◆ Affidavit from client
 - ◆ Can do a search but often not required
 - ▶ Search is sometimes also done as part of the efforts in support of a motion for constructive service
- ◆ Two websites with information:
 - ◆ http://dcp.psc.gov/ad_search.asp
 - ◆ <http://www.defense.gov/faq/pis/PC04MLTR.html>

Trial

- ◆ If the case is contested and does not settle, a bench trial will be held.
- ◆ Discovery and trials are governed by the Domestic Relations court rules and are comparable in most respects to civil trials.
- ◆ Most cases involve pro se parties; thus formal discovery may be less useful.



Order

- ◆ Court must issue written findings of fact.
 - ◆ SCR-Dom. Rel. 52
- ◆ All custody awards are subject to modification or termination.



Modification Standard in Third-Party Custody Cases

- ◆ **Revocable consent:**
 - ◆ Burden is on third-party; parental presumption and best interests. See *S.M. v. R.M.*, 92 A.3d 1128 (D.C. 2014)
- ◆ **Non-revocable consent:**
 - ◆ Burden is on moving party; substantial and material change in circumstances and best interests. See *S.M. v. R.M.*, 92 A.3d 1128 (D.C. 2014); D.C. Code § 16-831.1
- ◆ **Trial:**
 - ◆ Substantial and material change in circumstances and best interests. D.C. Code § 16-831.11

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Caregiver Resources

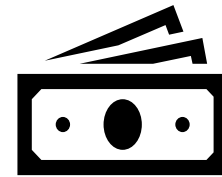
Grandparent Caregivers Program Subsidy: Eligibility Requirements

- ◆ Only grandparents, great-grandparents, great-aunts and great uncles
- ◆ Must be a DC resident
- ◆ Child under 18 and living with the GP for past six months
- ◆ The parent cannot have lived with the GP or child for past six months.
 - ◆ Exceptions: if parent gave GP standby guardianship, is a minor enrolled in school, or is a minor with a medically verifiable disability
- ◆ Household income below 200% of federal poverty level
- ◆ A court award of custody is NOT required



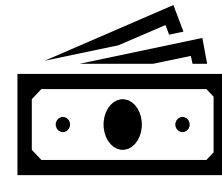
NEW! Close Relative Caregiver Program Subsidy: Eligibility Requirements

- ◆ Adult brother, sister, aunt, uncle, nephew, niece, or cousin of a child
- ◆ Must be a DC resident
- ◆ Must be child's primary caregiver for past six months
- ◆ The parent cannot have lived with relative or child for past six months.
 - ◆ Exceptions: if parent gave relative standby guardianship, is a minor enrolled in school, or is a minor with a medically verifiable disability
- ◆ Household income below 200% of federal poverty level
- ◆ Relative applied for TANF and received eligibility determination
- ◆ A court award of custody is NOT required



TANF, SNAP, GAC, MEDICAID

- ◆ DHS now has a mobile app!
<https://dhs.dc.gov/dcaccess>



Other Provisions of Safe and Stable Homes for Children and Youth Act

- ◆ Creates a revocable custodial power of attorney by which a parent may delegate most of his or her rights/responsibilities to a third-party without going to court.
 - ◆ D.C. Code § 21-2301

Training Part One – Complete!

- ◆ What's next?
 - ◆ Caregiver Custody Training Part Two
 - ▶ Pretrial and Trial Advocacy

**Questions?
Interested in a case?**

Email Jen Masi

jmasi@childrenslawcenter.org



Thank You!



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