

PROMISING PRACTICES FOR DETERMINING TIME-SHARING IN DOMESTIC VIOLENCE CASES

Introduction

In addition to the financial concerns petitioners have as they seek safety for themselves and their children, determining time-sharing is also of the utmost importance. The financial needs are addressed more fully in Section 6 of the 2014 Domestic Violence Benchbook. This guide addresses temporary parenting plans and temporary time-sharing schedules. Time-sharing is the term created by the Legislature in 2008 to refer to the amount of time a minor child spends with each parent; with some exceptions, it replaces the terms custody and visitation.

This promising practices model serves as suggested guidelines for how parental responsibility and time-sharing should be allocated in domestic violence cases. Its purpose is to provide guidance on temporary parenting plans and temporary time-sharing schedules in domestic violence injunction proceedings to enable petitioners to navigate parenting arrangements safely and knowledgably. It is important to recognize that the parental responsibility components of domestic violence injunctions are intended to be temporary in nature; a permanent parenting plan and time-sharing schedule should be established as part of another family law proceeding such as divorce or paternity. It is also important to note that if paternity of the minor children has not been established through either marriage, court order, or an acknowledgment of paternity, the court may deny a request for a temporary parenting plan including a temporary time-sharing schedule with regard to those children.

Before Going into Court

1. The petitioner may or not be represented by an attorney. If he or she has an attorney, the attorney is responsible for advising the petitioner on court proceedings and the importance of following the judge's orders. If the petitioner is not represented by an attorney, then he or she may be receiving information from an assistant state attorney and/or support staff, court staff, a domestic violence coordinator, or a self-help center. Whoever is helping the petitioner prepare for the court proceedings should follow the steps below to ensure that petitioner understands the domestic violence proceedings.
2. Verify that the petitioner understands all parts of the Petition for Injunction for Protection against Domestic Violence.
3. Verify that the petitioner is aware that he or she may seek a temporary parenting plan with a temporary time-sharing schedule, but that a permanent parenting plan and time-sharing schedule must be part of another family law proceeding.
4. Inform petitioner that he or she may request that the temporary parenting plan either prohibit or restrict time-sharing by the other parent including supervision of that parent's

time-sharing by a third party. If petitioner is seeking a no-contact order and/or is awarded 100% of the time-sharing, address whether the other parent may have any contact with the minor children, and if so, how the other parent may be in contact with the children. Discuss options such as www.ourfamilywizard.com or other time-sharing computer programs that allow communication without contact.

5. Explain that a court may deny a request for a temporary parenting plan and temporary time-sharing unless paternity of the minor children has been established either through marriage, court order, or an acknowledgment of paternity. See §§741.30(3)(b)(k) and (d), (5)(a)3, (6)(a)3, and 61.13(2)-(6), Florida Statutes; Florida Supreme Court Approved Family Law Form 12.980(a), Section V.
6. Determine whether paternity has ever been established and if a parenting plan or time-sharing has been established either through marriage, court order, or an acknowledgment of paternity. Also ask whether the mother was legally married to a man who is not the other party in the current case when the child(ren) was conceived or born. If paternity has never been established, inform the petitioner that initiating a paternity case is a way to put a permanent parenting plan in place.
7. If the petitioner fears disclosing his or her address in Section I of the Petition for Injunction for Protection against Domestic Violence, make sure that the petitioner is aware that he or she can keep this information confidential. If desired, have the petitioner write “confidential” in the spaces provided in Section I, number 1 and then have the petitioner complete and file the Florida Supreme Court Approved Form 12.980(h), Request for Confidential Filing of Address.
8. If the petitioner wishes to seek temporary time-sharing and establish a temporary parenting plan, make sure that Section V is filled out completely and accurately. In addition, make sure that the petitioner also completes:
 - a. Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) Affidavit, Florida Supreme Court Approved Family Law Form 12.902(d);
 - b. Parenting Plan, Florida Supreme Court Approved Family Law Forms 12.995(a), or Safety-Focused Parenting Plan, Florida Supreme Court Approved Family Law Form, 12.995(b);
 - c. Notice of Social Security Number, Florida Supreme Court Approved Family Law Form 12.902(j);
 - d. Request for Confidential Filing of Address, Florida Supreme Court Approved Family Law Form 12.980(h), if petitioner fears disclosing his or her address; and
 - e. Notice of Related Cases, Florida Family Law Rules of Procedure Form 12.900(h), if applicable.

9. In addition to the required forms, it will be helpful for the establishment of a temporary parenting plan with temporary time-sharing if the petitioner states whether the minor children: saw the domestic violence described in the petition happen; were present when the domestic violence happened but did not see it; were not present when the domestic violence described in the petition took place, but witnessed previous acts of domestic violence by respondent; or have not witnessed acts of domestic violence by respondent. Explain to petitioner that if minor children witnessed the domestic violence, it is possible that the judge will contact the Department of Children and Families (DCF) Hotline.

In Court

1. If the petitioner requests a temporary parenting plan in the petition, the judge must address the issue in the domestic violence hearing pursuant to §741.2902(2)(e), Florida Statutes, regardless of whether other paternity, divorce, or related cases are pending. (Note: §741.2902(2)(e) uses the term visitation instead of time-sharing; however, the issue—the amount of time the minor child spends with each parent and whether supervision of that time is required—is the same.) It is the best practice for the presiding judge to consider parenting issues at the injunction hearing and to establish a temporary parenting plan with a temporary time-sharing schedule to alleviate the need for the petitioner to return to court, prevent additional contacts between the petitioner and the respondent, and to temporarily resolve parenting issues between petitioner and respondent until those issues can be resolved on a permanent basis. Lastly, a temporary parenting plan and temporary time-sharing schedule become ineffective upon the entry of an order establishing a permanent parenting plan in a pending or subsequent civil case pursuant to §§741.30(5)(a)3 and (6)(a)(3), Florida Statutes, so no two orders will conflict.
2. When establishing a temporary parenting plan and a temporary time-sharing schedule the judge should explain the following to both parties:
 - a. This is a *temporary* parenting plan and time-sharing schedule which will end when the injunction expires, or when a permanent parenting plan with a time-sharing schedule is established in another case;
 - b. That he or she may award 100% time-sharing to either parent or may award time-sharing to both parents; either award is on a temporary basis;
 - c. That if both parents are awarded time-sharing, certain conditions may be placed on that time-sharing, such as supervision by a third person;
 - d. That he or she may allow the parents to share parental responsibility or may award sole parental responsibility to one parent; either award is on a temporary basis.
3. Before leaving court, petitioner and respondent should understand the judge's decision on the temporary parenting arrangements which will be in place until the injunction expires, is modified, or a permanent parenting plan is established in another case. The

temporary parenting plan may award one parent 100% time-sharing and prohibit the other parent from having any contact with the minor children, or it may award time-sharing to both parents based on a temporary time-sharing schedule included in the order. Even if both parents are awarded time-sharing, the judge may place conditions on that time-sharing such as: limiting the amount of time-sharing afforded to a parent; requiring that a parent's time with the minor children be supervised by a third person or take place at a family time-sharing center; or requiring that one or the other parent not be present during exchange of the minor children.

Extensions, Modifications and Termination

1. Either the petitioner or the respondent may request modification or dismissal of an injunction using the appropriate Florida Supreme Court Approved Family Law Form. (See Form 12.980(j) for the Motion for Modification of an Injunction.) The petitioner may also request an extension of an injunction by filing Florida Supreme Court Approved Family Law Form 12.980(i). A motion for extension of an injunction must be filed before the previously entered order expires.
2. If requested, domestic violence coordinators or other court staff should provide information and referrals to both the petitioner and the respondent regarding changes to or termination of the injunction. It should be emphasized to both petitioner and respondent that only the judge can extend, modify, or terminate an injunction.
3. Upon filing, the motion to extend, modify or terminate the injunction will be sent to the signing judge for review and a hearing will be scheduled if necessary.

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