

From Judge Hoy:

To the San Diego Family Law Community:

Pursuant to Presiding Judge Alksne's authority and at her request, I want to provide the San Diego family law community with some information on best practices during the court closure resulting from the COVID 19 Pandemic.

The goal of the court is to provide best practices to the community, but recognizes that each case is unique and all issues shall be adjudicated on a case by case basis.

Here are some of the issues that have been arising:

Q: Does the COVID-19 Pandemic and related orders of the Governor, to reduce the spread of the virus, cause a child custody and visitation order to be modified or altered?

A: All child custody and visitation orders from the court remain in full force and effect until and unless modified by the court.

Q: Since schools are closed for children, what schedule is in place?

A: Due to the COVID-19 Pandemic, all schools in San Diego County and throughout the State of California are closed for an extended period of time to reduce the spread of the virus. While the schools are physically closed to students, they are still enrolled full time and participating in "distance learning" to varying degrees. Parenting time and schedules shall continue as if the children were still physically attending school with same start and end times. School calendar for each district and/or school shall be referenced for the specific holidays or vacation schedule (spring break, summer vacation etc.)

Q: Since there is no school to attend Monday morning does that mean my weekend is extended by 24 hours?

A: Parenting schedules should continue in accordance with the school calendar, which shall be referenced for any specific holiday or extended weekend time granted in the court order.

Q: Is there make-up parenting time if it is missed due to COVID-19?

A: The existence COVID-19, in and of itself, is not a basis to modify parenting time. However, make-up time may be addressed by the judicial officer on a case by case basis once the court re-opens. Parties are encouraged to work together collaboratively in following the existing court ordered parenting plans.

Q: How will the court handle a parent that uses COVID-19 to withhold visitation or violate the court order?

A: Parents are encouraged to work together collaboratively to insure that they are acting in the best interest of the minor children and sharing the rights and responsibilities of raising their children. The court may or could consider a parent's wrongful use of the COVID-19 Pandemic to violate court orders in any future matter before the court regarding child custody and visitation. Parents are encouraged to be flexible in identifying and determining alternate exchange locations for the exchange of children in accordance with the court order in the event there are closures due to COVID-19 and the CDC guidelines in place.

Q: How do I get a copy of my court order if I do not have one?

A: The court is closed and there is no mechanism at this time to obtain a copy of a court order.

Q: What constitutes a family law emergency for ex parte appearance?

A: The determination of an emergency family law ex parte order will be done on a case by case basis. The court will hear emergency family law ex parte matters in accordance with the general orders of the presiding department. Everyone is encouraged to work together to resolve disputes and comply with existing orders of the court. Filing routine documents, entering stipulations or scheduling requests/changes are not emergency matters that will be heard during the closure. Please refer to Family Code Section 3064 for further guidance.

Q: If I receive notice from the opposing party for an emergency family law ex parte how can I provide the court with my response to the request?

A: A response to an emergency family law ex parte request can be filed with the court up to one hour prior to the scheduled ex parte hearing. Refer to the San Diego Superior Court website under Family Court Procedures During Emergency Conditions.

Q: Do I have to tell my co-parent or do they have to tell me, if they or someone in their household, is believed to have been exposed to COVID-19?

A: Parents are encouraged to communicate, unless otherwise restrained from communicating, regarding the health, safety and welfare of the minor children. Parents are to follow all legal custody orders in effect.