



**This is a message from Sean Musgrove regarding custody disputes during the Court's temporary closures. DATED 3/24/2020**

In the past few days, we have received constant inquiries about custody disputes during the COVID-19 crisis.

This email serves to give a general announcement regarding how to act, and not to act, in a custody dispute during the COVID-19 crisis.

In response to COVID-19, California Courts have essentially closed their doors to everything except for emergencies. By focusing on protecting those who will be facing 'irreparable harm,' the Courts are attempting to minimize any suffering that anyone that might be caused by a Court's closure.

If you are going through a custody dispute in the family law court system while COVID-19 is affecting society, it is important that you approach your dispute rationally. To approach your dispute rationally, you will need to go through the following questions:

- A. Can I work this out with the other parent?
- B. Have I tried to work this out with the other parent?
- C. Do I want to go to court during the COVID-19 crisis?
- D. What happens if I have to wait for a Court to issue an order?

**1. First consideration: Can I work this out with the other parent?**

Working out custody disputes outside of the judicial system is always best. It is

a better idea now, more than ever, because the courts are closed under COVID-19 for nonemergency hearings.

Just because you do not see eye to eye with the other parent, it does not mean that you cannot compromise and find a middle ground. You do not have to like the person to co-parent. You have to both agree that you are working together to parent the child you have together. This is co-parenting.

If you are unsure about the concept of 'co-parenting,' I would suggest you both read about co-parenting and/or take a class online. There are a number of online resources that could be helpful. These resources are there to help you learn how to get along, and more importantly, to show how not to act and behave.

If you go to court over your dispute, the Courts are very much looking for which parent is co-parenting, and which one is not. It is best to get the skills so you can portray yourself as the reasonable parent in a dispute.

## **2. Second Consideration: Have I tried to work this out with the other parent?**

You should always try to communicate with the other parent. Even in cases where you think the other parent will not cooperate with anything just out of spite. In my opinion, the Courts will look favorably on you for at least informally trying. This is a rule, regardless of COVID-19.

The following is a cardinal rule: When approaching the other parent to come to us compromise regarding custody, the first piece of advice I have is to put all of your efforts to resolve the issues in writing, either email or text messaging.

This is critical when you think about what evidence you will need when we go to court in the future. Text messages and emails are often used as evidence in court to prove what somebody said or did. It is important to keep the entire

conversation and not just a screenshot of what you want the judge to see. This is because the rules on evidence require that you show the complete document and not the snippet.

If you try to show just a snippet of a text message, the Court may prevent you from using it as it would be objectionable under the “rule of completeness.” Therefore, save everything you want to use and delete nothing. Also, when you write your messages, act as if a judge is going to read them. This is because if you use vulgarity or say something “bad”, the other side is sure to use it against you in court later on.

***--Tips about communicating with the parent by talking... follow up with a ‘confirming written message’***

The best co-parenting occurs when two people actually talk. This creates a problem because in court, an oral conversation is worth the paper it was written on. (Since there was no paper, it was worth nothing!) Therefore, it is really important to put down a summary of the conversation in a writing.

If you have an oral conversation, you should send a “confirming written message” to the other side. A “confirming written message” memorializes the oral conversation into writing. It tells the other side what you talked about and what you believe the agreements were. If the other side does not respond by correcting you, that message can be used as evidence later on if the dispute comes up.

For example, parents will often discuss going on vacation with the children during the other’s parenting time. Both parents will orally agree to the vacation that this may be done when nothing is going on, all is well and the oral conversation is good. However, the first conflict that arises makes that oral agreement go out the window.

In above example, one parent would simply write something to the effect:

“It was good talking to you tonight. I appreciate you agreeing to let me take our child to Disneyland (after the COVID-19 crisis ends) during your parenting time. If I misunderstood you in any way, let me know right away, as I am buying tickets for later this year since they are really affordable! Of course, you will get make up time the following week after I get back.”

This message does several things. First, it states that there is an agreement between the two parents. Second, it asks for the other parent to correct them if the other parent is wrong. Third, it advises the other parent that they are spending money. Fourth, it states what the other parent will get in exchange.

If the other parent were to renege on this agreement, this email now can become a piece of evidence of the Court to review. This strengthens your case along with the other evidence you would present to the Court.

### **3. Do I want to go to court during the COVID-19 crisis?**

If talking to the other parent does not get you the resolution that you want, you need to ask yourself “Do I you want to go to court over the dispute?”

If the child’s physical or mental health is in immediate risk of irreparable harm, then you need go to court on an emergency basis. During this COVID-19 crisis, the Court is accepting only emergencies where there is an immediate risk of irreparable harm.

How will I know if my child is immediate risk of irreparable harm? This is a personal question and depends on so many factors. However, you should consult with an attorney to see if your situation applies. I cannot give you a list of what constitutes an immediate risk of irreparable harm, however, I know it when I see it. If you can make me see it, I can then explain it to a judge why they should see it.

With the COVID-19 crisis, the Courts are only allowing emergency hearings while they wait for crisis to end. It is imperative that during this COVID-19 crisis, your request clearly explains why the Court should grant you your orders. If it is not clear by your paperwork submitted to the Courts, considering the with the increased emergency workload from COVID-19 crisis, the Court may likely deny your request.

#### **4. What happens if I have to wait for a court to issue an order?**

Because of the COVID-19 crisis, if you filed for an emergency hearing and were denied, or, you feel you do not have enough to ask for emergency custody orders, then you should draft and file your motion.

As of 3/23/2020, it is unclear if the Court is going to accept any filings other than emergency hearings. There are three possibilities that I see:

- A. The Court will accept the filings, return them immediately with a court date, and set a hearing as if all is normal. I do not think this to be very likely.
- B. The Court will accept the filings, hold on to them until they can give a court date, and then return them the papers when they know when the next available court date can be set. I think this is likely dependent on which county system you are in.
- C. The Court will flat out reject the filings, and you will have to wait until another event develops in regards to custody, or, wait until the courts reopen, . If something new does happen, you may have enough to file for an emergency hearing.

#### **Final Advice**

During the COVID-19 crisis, it is important to stay calm. We are all stressed, and when people are under stress, they tend to overreact. This is especially true in a custody situation during the COVID-19 crisis. If a situation arises, stop and think before you react.

I have seen too many times where good people react without thinking. When a person acts without thinking, it may feel good at that instant, but it causes problems that can last for years.

During the COVID-19 crisis, you need to follow any court orders as if the Court was open. If you decide to solve the custody problem yourself by making up your own rules, that will be used against you. A good attorney will make you look as if you are trying to destroy the relationship between the children and the other parenting. That is called alienation and is considered abuse.

During the COVID-19 crisis, it is important that you communicate with the other parent, and memorialize your communications in writing. This can be either email or text. This will be evidence later on.

During the COVID-19 crisis, you will have limited access to the Court. If you truly have an emergency, you can file for emergency orders. If you do not have an emergency, then you will have to wait. If this is the case, be patient and document everything so when you go to Court, you can be the parent that the judge is most likely to favor.

Most importantly, if a custody situation is getting tense, walk away. Do not resort to violence, and do not put yourself in a position to be a victim of violence. If you or your child are threatened or are afraid for your safety, call the police.

Facing COVID-19, we are all scared to one degree or another. Some are scared about the illness. Some are scared about the impact on the economy. Others are just afraid because this COVID-19 creates a large unknown on a global scale. Just remember, be good to one another. If we all do that, there will be a huge payout for us after this historical time passes.

Please feel free to call the office and talk to me if you have any questions or

concerns.

Cordially,



Sean Musgrove

**DISCLAIMER: This is meant to be general advice and not legal advice. If you have a custody situation, please consult an attorney familiar with family law issues because each case is individual in nature.**



LAW OFFICES OF  
**SEAN MUSGROVE**  
FAMILY LAW &  
PERSONAL INJURY

FREE ATTORNEY  
CONSULTS,  
ALWAYS...

**WE FIGHT**  
TO MAKE LIVES BETTER...