

IN THE 32ND JUDICIAL CIRCUIT
STATE OF ALABAMA

FILED IN OFFICE

JUN 14 2013

LISA McSWAIN
CIRCUIT CLERK
CULLMAN COUNTY

ORDER 2013-08

A Standing Order in Domestic Relations Cases

In an attempt to reduce conflict between parties in domestic relations actions and provide some guidance to them and to reduce the harmful and disruptive effects of divorce on minor children of the parties, the Circuit Court judges find that it would be beneficial to adopt a standing order for domestic relations cases filed in Cullman County, Alabama. It is therefore ORDERED as follows:

**PROVISIONS APPLICABLE TO CONTESTED DIVORCE CASES
INVOLVING MINOR CHILDREN**

1. Minimization of Emotional Trauma on Child: **The Court expects children to be insulated to the fullest extent possible from the conflict between their parents.** Neither party shall make any statement either to a minor child of the parties or in the presence or hearing of their minor child that could be construed as derogatory or disparaging of the other parent. Both parents should understand that children often blame themselves when their parents divorce and the parents should reassure their minor children that the divorce is not the children's fault. The minor children should not be made to feel that they should side with one or the other parent regarding the divorce or any issue related to the divorce proceeding. Each parent should encourage their minor children to love, honor and respect the other parent as well as the other parent's family members. The Court will decide all issues regarding custody and visitation and those decisions will not be left up to the child. Furthermore, any attempts by a parent to coach or in any way to manipulate a minor child with respect to any matter at issue in the divorce proceeding will not be looked on favorably by the Court.

2. Injunction against removal of children from State and from School System. All parties to a divorce action are specifically enjoined from removing a minor child of the parties from the State of Alabama without first obtaining an Order of this Court or the written consent of the other party. It is the intent of the Court that the life of children whose parents are seeking a divorce be disrupted as little as possible. Therefore, pending further court order each parent is hereby ordered to continue the enrollment of the children in that school system or daycare that the children were attending at the time of the parties' separation unless both parties agree in writing to a different arrangement.

3. Occupancy of Marital Residence: It is important that a child's life to be disrupted as little as possible during a divorce. To minimize the disruption to minor children, this Court strongly prefers that children be allowed to continue to reside in the parties' marital residence during the pendency of the divorce action, in the custody of the parent who traditionally has provided the child's principal care prior to the parties' separation.

4. Standard custody and visitation. "It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage." Section 30-3-150 ALA CODE. A parent who without good cause unreasonably restricts access of a child to the other parent is a factor which will be considered by the Court in making its custody decision. Generally, in making temporary custody decisions, the Court will place the minor children in the custody of the parent who traditionally has provided the child's principal care and supervision prior to the filing of a complaint for divorce. However, unless there is a valid reason for not doing so, every temporary order entered by the Court will provide for frequent and significant contact between the minor children and both parents regardless of the custody designation.

5. Payment of Child Support: Alabama law provides for payment of child support to the parent with whom the minor children are residing from the date of the filing of a complaint for divorce. To avoid building up an arrearage in child support, the parent with whom the children are not residing on a primary basis should begin making voluntary payments of child support to the parent with whom the children are primarily residing prior to the entry of an order requiring payment of support. Waiting for an order can be very expensive because child support can be ordered from the date of separation. The parties shall *immediately* compute and begin to pay child support in accordance with Rule 32 of the *Alabama Rules of Judicial Administration*, and continue to do so pending a final hearing or further orders of the Court. The party paying child support should pay by check or retain a written receipt for any child support sums paid.

6. Payment of Medical Expenses: During the pendency of this action any medical expenses incurred by or for a minor child of the parties shall be paid by the parties in equal amounts within 30 days of presentment of the bill. The parties shall cooperate fully in obtaining maximum insurance benefits as may be available. Any reimbursement obtained from an insurance carrier shall then be divided equally by the parties, or in the same percentage as paid, within 30 days of receipt.

7. Parenting Class. All parties in a divorce action with minor children are required to complete a parenting course before a final divorce judgment will be entered. The parties in every contested divorce case must complete the class within 60 days after the filing of the Defendant's answer to the complaint for divorce. If the divorce is non-contested and the parties have filed an agreement resolving all issues then the certificate of completion must be filed within 30 days of the filing of the settlement agreement. A final divorce decree will not be granted unless a certificate of completion has been filed, absent good cause shown.

**GENERAL PROVISIONS APPLICABLE
TO EVERY CONTESTED DIVORCE CASE**

8. Preservation of Assets: The parties are ordered and directed to preserve, in their present form and location, all assets owned by them either jointly or individually, and are expressly ordered not to sell, assign, transfer, conceal, remove from the jurisdiction of the Court, or in any manner dispose of,

liquidate, conceal, encumber, dissipate or convert any assets of the parties, or change beneficiaries upon any life insurance policies, or alter any medical, hospitalization, or automobile insurance policies, or in any way alter the current cash value of any life insurance policy. However, this Order shall not prohibit the use of earned income to pay reasonable and lawful debts and living expenses of the parties, nor prohibit the use of physical assets in the same manner as the same had been used in the ordinary and customary activities of the parties prior to the filing of the action for divorce. Each party should be prepared to explain and justify their use of money, property or other income after the date of separation and each party will be accountable for all money or property in their possession or under their control both during the marriage and after the date of separation.

9. Insurance. Any insurance policy in effect at the time the filing of a complaint for divorce may not be cancelled, allowed to lapse, modified, borrowed against or otherwise encumbered by either of the parties, and the beneficiary shall not be changed except by written agreement signed by the parties or by Court order. The parties shall continue to pay all premiums on a timely basis as had been done prior to their separation unless there is a written agreement to the contrary signed by the parties or an order of the Court.

10. Debts. Generally, a party paying a marital debt prior to the separation should continue timely paying that debt until ordered by the Court to do otherwise or the parties agree in writing to a different arrangement. Neither party shall incur additional debt which would obligate the other party and shall take no action to encumber personal or marital assets, unless agreed to in writing by the parties or order of this Court.

**GENERAL PROVISIONS APPLICABLE
TO EVERY DOMESTIC RELATIONS CASE
(Divorce, Modification, Contempt proceedings)**

11. Injunction Against Harassment. All parties are restrained and enjoined from contacting or going about one another at their respective residences or places of employment, or elsewhere, for the purpose of harassing, threatening, intimidating, or assaulting the other, directly or indirectly, in person or by means of telephone, computer, mail, or otherwise.

12. Preservation of records. Neither party shall, directly or indirectly conceal from the other party or destroy any personal, family records, business records, or any records of income, debt, or other financial obligation.

13. Discovery. The law allows each party to submit questions to the other party which must be responded to in a timely manner and also authorizes the production of financial and other records. If a party fails to timely answer interrogatories or does not comply with the rules of discovery, the noncomplying party may be sanctioned by the Court. Sanctions may include a monetary payment to the other party for additional attorneys fees incurred in obtaining the requested discovery.

Discovery Deadline. All discovery shall be completed no later than **180 days** after the filing of an answer or other responsive pleading unless the Court grants an extension of time for good cause shown. Any request for an extension must be filed before the discovery deadline.

Attorney Certification. Any motion filed by an attorney requesting the Court to resolve a discovery matter shall certify in the motion all efforts made to resolve the issue with the other attorney prior to filing the motion.

14. *Amendment to Pleadings.* Any amendment to the pleadings must be filed no later than 42 days prior to the initial trial date. For good cause shown an amendment may be granted after this date by leave of Court.

15. *Pendente Lite Orders.* As a general rule only one *pendente lite* or temporary hearing will be held in a divorce case prior to a trial on the merits. A motion for temporary relief will generally not be granted in a modification or contempt case unless there is a bona fide emergency situation that warrants immediate relief.

16. *Mediation.* The Court strongly encourages all parties, especially those with minor children, to consider mediation as a way to resolve their dispute. Without an agreement of the parties some divorce cases may take more than a year before a trial can be held and a divorce decree entered. Mediation is a voluntary process in which a neutral third party will attempt to help the parties, with their lawyers, resolve issues amicably without the need for a lengthy court battle that can result in delays, increasing tension and undue stress for the parents and their children. Mediation is a way you to have more direct input into important decisions that will impact your life for years to come.

17. *Sanctions for Failure to Comply with Court Order.* The wilful failure of a party to obey this Order may result in contempt proceedings and upon a finding of contempt a party may be sentenced to serve time in the county jail, pay a fine, cost and/or incur other sanction.

18. *Communication between lawyers.* Attorneys shall communicate with each other in a civil, professional and courteous manner. Attorneys shall communicate personally with each other by telephone or in person if a problem arises and make a good faith effort to resolve the dispute before filing a motion with the Court. All motions must include a certification that the movant has conferred or attempted to confer with opposing counsel or self-represented litigants in an effort to resolve a dispute in issue without court involvement.

19. *Continuances.* Every motion to continue shall state with specificity the reason(s) for the requested continuance. Further, prior to filing any motion to continue, counsel for the moving party shall first attempt to communicate with counsel for all other parties (or directly with a party if they are unrepresented litigants) and attempt to obtain an agreement regarding the continuance of the case. The motion to continue shall state all attempts made to communicate with counsel or unrepresented litigants regarding the motion to continue. A case is not continued merely by the filing of a motion to continue and the case will be deemed continued only after the Court has entered a written order continuing the case. **Motions to continue shall be filed at least five days prior to the hearing or trial date.** Motions for continuance filed within five days of the hearing or trial will be granted only in the event of a bona fide emergency.

20. *Motions to Withdraw.* Motions by counsel to withdraw shall be filed at least 30 days prior to any scheduled motion or trial date. A motion to withdraw as counsel for a party shall contain a certification that the attorney has notified his or her client of the withdrawal, that the client has been

informed of all pending hearing or trial dates and that the attorney has notified the client that it is the client's responsibility to immediately contact the circuit clerk to provide a current address for future court notices.


21. *Expedited Hearing Docket.* It is the desire of the Court to resolve all domestic cases in a timely manner. Unfortunately, due to a variety of issues, including the need to conduct discovery, heavy case loads and conflicts with other trial settings, to name but a few, not all cases can be set for a final hearing as quickly as the parties, their attorneys or the Court would like. In an effort to resolve these older cases in a timely manner, the Court has set aside one day each month to hear older domestic relation cases. In the event a domestic case has been pending more than one year, the case shall be eligible for a special setting upon the filing of a motion by one or more of the parties. Cases shall then be heard in the order the motions requesting a special setting have been filed and continuances will not be granted except for extraordinarily good cause shown.

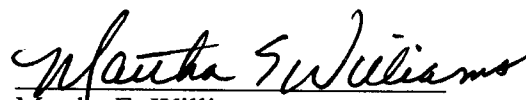
22. *Trial Setting.* The Circuit Court Clerk shall set all domestic cases for trial on the first available docket 180 days after the filing of the answer or other responsive pleading without the need of a motion to set trial date being filed by a party or the entry of any other court order. If discovery has not been completed by that date or if other good cause exists, a motion to continue may be filed requesting a different trial setting. Any motion to continue shall comply with the requirements set out in paragraph nineteen of this order.

23. *Notice.* The Circuit Court Clerk shall provide counsel for the Plaintiff/Petitioner (and all pro se Plaintiffs/Petitioners) with a copy of this Standing Order at the time the complaint/petition is filed in a Domestic Relations case. The Plaintiff/Petitioner shall cause a copy of this standing order to also be served on the Defendant/Respondent with the summons and complaint/petition. This Standing Order shall remain in full force until it is amended by *pendente lite* order of this Court or the action is dismissed or a final judgment has been entered.

This Order shall not supersede or modify any existing protection from abuse order or any other order that has been entered by a court having jurisdiction over the parties or minor children.

Done this the 13th day of June, 2013.


Greg Nicholas
Circuit Judge
32nd Judicial Circuit
State of Alabama


Martha E. Williams
Circuit Judge
32nd Judicial Circuit
State of Alabama

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