New Year, New Rule, Joint Parenting Plans Have Arrived

By: Magistrate Paul B. Eason, Circuit Court for Prince George's County

A few years ago, I penned an article for our acclaimed PGCBA News Journal, entitled, "The Parenting Plans are Coming! The Parenting Plans are Coming!" My article anticipated the adoption of a new rule, requiring the submission of a joint statement addressing decision-making and parenting time, if custody and/or access remained disputed prior to a Settlement Conference or Merits Hearing.

The proposed Rule (9-204.2) has wended itself through various committees, was adopted by our Court of Appeals, and became effective January 1, 2020.

To assist the distinguished members of our Bar Association, the entire Rule is reprinted below.

MD Rules, Rule 9-204.2

RULE 9-204.2. JOINT STATEMENT OF THE PARTIES CONCERNING DECISION-MAKING AUTHORITY AND PARENTING TIME

Effective: January 1, 2020

(a) When Required. If the parties are not able to reach a comprehensive parenting plan, the parties shall file a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time.

Cross reference: For the authority of a mediator to assist the parties with the completion of a Joint Statement, see Rule 9-205.

(b) Form of Joint Statement. The statement shall be substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the offices of the clerks of the circuit courts.

(c) Time for Filing; Procedure. The Joint Statement shall be filed at least ten days before any scheduled settlement conference or if none, 20 days before the scheduled trial date or by any other date fixed by the court. At least 30 days before the Joint Statement is due to be filed, each party shall prepare and serve on the other party a proposed Joint Statement in the form set forth in section (b) of this Rule. At least 15 days before the Joint Statement is due, the plaintiff shall sign and serve on the defendant for approval and signature a proposed Joint Statement that fairly reflects the positions of the parties. The defendant shall timely file the Joint Statement, which shall be signed by the defendant or shall be accompanied by a written statement of the specific reasons why the defendant did not sign.

(d) Review of Joint Statement. Prior to rendering its decision, the court shall consider the entire Joint Statement. As to the provisions upon which the parties agree as well as those upon which the court must decide, the court may consider the factors listed in Rule 9-204.1 (c).

(e) Sanctions. If a party willfully fails to comply with this Rule, the court, on motion or on its own initiative, after the opportunity for a hearing, may enter any appropriate order in regard to the noncompliance.

Committee note: Failure to comply with this Rule cannot be the basis upon which to deny a party's request for decision-making authority or parenting time.

The attentive reader will immediately note Rule 9-204.2 is only applicable, **"If the parties are not able to reach a comprehensive parenting plan..."** Ergo, if the parties are successful in establishing a custody/access agreement (whether "bare bones" or extremely copious) no Joint Statement is required.

How is all of this going to play out? It requires a return to the basics of our DCM procedures.

Plaintiffs who file pleadings involving custody and access issues **with the assistance of a lawyer,** will encounter one of three scenarios:

1. An Order of Default is entered against the defendant for failure to respond in a timely manner. Litigation will proceed to trial in an "uncontested" posture. No Joint Statement required.

2. An "uncontested" Answer is filed. No Joint Statement required.

3. A "contested" Answer (and possibly a Counter-Complaint) is filed, prompting a Scheduling Conference. The Scheduling Conference will generate a Scheduling Order, which includes a trial date for (option 1) three (3) hours or less, in which case there will be no Settlement Conference, or for (option 2) more than three (3) hours, requiring the parties and their counsel to appear for a Settlement Conference. The Scheduling Order will also specify the contested matters ("if properly pled and at issue") and set various deadlines. **At the parties' first appearance in court**, MD Rule 9-204.1(b) requires the Court to provide "each party a paper copy of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool and direct them to an electronic version [posted on the Judiciary website] of these documents." This allows parties to begin thinking about how they will "care for and make decisions about their children." Deadlines for preparing and exchanging the 9-204.2 Joint Statement should be added to the Scheduling Order.

On the morning of the Scheduling Conference, parties are asked to complete an intake form. Based on their answers to the questions on this form, they may or may not be sent to Family Support Services for a more in-depth screening to evaluate the appropriateness for mediation. Mediation is deemed inappropriate when there is an active no contact Protective Order, significant substance abuse issues, or when one or both parties make credible claims of "intimidation."

If the parties are referred to mediation, it is possible they may appear with the Maryland Parenting Plan Tool (CC-DR-DR-109(01/2020 comprising nine (9) pages) already filled out and if executed, then it becomes their Parenting Plan. If parties have not completed the Parenting Plan Tool prior to mediation or have not come to an agreement, then the mediator moves through the standard mediation process.

If the mediation is unsuccessful, the mediator may assist the parties in filling out the Joint Statement. If the parties were deemed "inappropriate" or failed to attend mediation, then, pursuant to the Rule, **the parties, (whether represented by counsel or not) must prepare it and thereafter, it is the Defendant's responsibility to file it with the Court.** It is all a work in progress but in time, hopefully, the process will become streamlined and routine.

Parties who remain unrepresented throughout the custody/access litigation (at least 60% of the Magistrates' docket) will likely not have the Joint Statement prepared and filed twenty (20) days before the scheduled trial date (especially if the mediator does not fill it out). Consequently, the parties will be filling it out prior to the taking of testimony at the merits hearing, as Rule 9-204.2 requires, **"Prior to rendering its decision, the court shall consider the entire Joint Statement."** Stated otherwise, the Court cannot "consider" a Joint Statement that **does not exist.**

So, what is one to make of this new rule? From my humble perspective, it's a good news/bad news development.

The upshot is parents will be required to discuss many more eventualities and contingencies **upfront,** which may result in less agreements and more litigation. On the other hand, Magistrates hear many modifications on topics frequently omitted from most boilerplate Parenting Plans, such as the issuance of passports, out of country travel, parental relocations, military deployments, unilateral changes in daycare and extra-curricular activities, etc. The new rule will require more "front-end" negotiations, hopefully leading to less Court time spent on modifying what could and should have been considered by parents at the outset of the litigation.

MD Rule 9-204.1 (also reprinted in its entirety below) is equally as important as MD Rule 9-204.2.

For the first time, there is a Rule which sets forth sixteen (16) different factors to be utilized in determining the best interests of the child. Previously, Maryland had no rule or statute governing the methodology for ascertaining the best interest of a child, only case law i.e. *Montgomery County v Sanders and the Taylor factors.* Now, we have a specific rule which should be applied in conjunction with case law. This new rule should be quite helpful to practitioners and the Court and we should welcome its adoption.

MD Rules, Rule 9-204.1

RULE 9-204.1. PARENTING PLANS

Effective: December 1, 2019

(a) Definitions. The following definitions apply, except as expressly otherwise provided or as necessary implication requires:

(1) *Decision-Making Authority (Legal Custody).* Decision-Making Authority, also called legal custody, refers to how

major long-term decisions about a child's medical care, mental health, education, religious training, and extracurricular activities are made.

(2) *Parenting Plan.* Parenting Plan means a written agreement about how parties will work together to take care of a child.

(3) *Parenting Time (Physical Custody).* Parenting Time, also called physical custody, refers to where a child lives and the amount of time he or she spends with each party.

(b) Introduction of Parenting Plan. At the parties' first appearance in court on a decision-making authority or parenting time matter, the court shall provide to each party a paper copy of the Maryland Parenting Plan Instructions and Maryland Parenting Plan Tool and direct them to an electronic version of these documents. The court shall advise the parties that they may work separately, together, or with a mediator to develop a parenting plan they believe is in the best interest of their child.

(c) Best Interest of the Child. In determining what decision-making authority and parenting time arrangement is in the best interest of the child, the parties may consider the following factors:

(1) Stability and the foreseeable health and welfare of the child;

(2) Frequent, regular, and continuing contact with parties who can act in the child's best interest;

(3) Whether and how parties who do not live together will share the rights and responsibilities of raising the child;

(4) The child's relationship with each party, any siblings, other relatives, and individuals who are or may become important in the child's life;

(5) The child's physical and emotional security and protection from conflict and violence;

(6) The child's developmental needs, including physical safety, emotional security, positive self-image, interpersonal skills, and intellectual and cognitive growth;

(7) The day-to-day needs of the child, including education, socialization, culture and religion, food, shelter, clothing, and mental and physical health;

(8) How to:

(A) place the child's needs above the parties' needs;

(B) protect the child from the negative effects of any conflict between the parties; and

(C) maintain the child's relationship with the parties, siblings, other relatives, or other individuals who have or likely may have a significant relationship with the child;

(9) Age of the child;

(10) Any military deployment of a party and its effect, if any, on the parent-child relationship;

(11) Any prior court orders or agreements;

(12) Each party's role and tasks related to the child and how, if at all, those roles and tasks have changed;

(13) The location of each party's home as it relates to their ability to coordinate parenting time, school, and activities;

(14) The parties' relationship with each other, including:

(A) how they communicate with each other;

(B) whether they can co-parent without disrupting the child's social and school life; and

(C) how the parties will resolve any disputes in the future without the need for court intervention;

(15) The child's preference, if age-appropriate; and

(16) Any other factor deemed appropriate by the parties.

(d) No Agreement Reached. If the parties do not reach a comprehensive parenting plan, they shall complete a Joint Statement of the Parties Concerning Decision-Making Authority and Parenting Time pursuant to Md. Rule 9-204.2.

I will conclude this article by republishing some "Final Thoughts" from my original piece written in 2017, which still ring true.

In custody disputes, the focus is on the children and what is in their "best interests." The Court's inquiry is not about the competence of the parents but the needs of the children. Notions of "equality" (while appealing on the surface) are not dispositive or particularly helpful, otherwise all parents would share 50/50 physical custody. The needs of a six (6) month-old are totally different from the needs of a sixteen (16) year-old. Parenting Plans should address each child separately and should not be a "one size fits all" document. When all is said and done, the goal and end result of all childrearing should be happy and healthy adults, who can form positive relationships, are confident, moral, and economically self-sufficient individuals. The Court has a vital role in this endeavor.