

# Distinctions Between Visitation Disputes involving and not involving allegations of abuse

| ISSUES                        | VISITATION DISPUTES WITHOUT ALLEGATIONS OF VIOLENCE  | VISITATION DISPUTES WITH ALLEGATIONS OF VIOLENCE  |
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| <b>Central Issue</b>          | Promoting children's relationship with visiting parent   | Safety for mother and children  |
| <b>Focus of Court Hearing</b> | Reducing hostilities   | Assessing lethality of violence   |
| <b>Planning for Future</b>    | Visitation schedule that meets needs of children   | Consider no (suspended) visitation or supervised visitation/transfer  |
| <b>Assessment Issues</b>      | Children's stage of development, needs, preferences<br><br>Parents' abilities                                  | Impact of violence on mother and children<br><br>Father's level of responsibility<br><br>Mother's safety plan   |
| <b>Resources Required</b>     | Mediation Services<br><br>Divorce counseling for parents and children<br><br>Independent assessment/evaluation | Specialized services with knowledge about domestic violence<br><br>Supervised visitation center<br><br>Co-ordination of court and community services<br><br>Lawyers well-informed about domestic violence |

## Checklist: Considerations in Visitation Decisions

- Is the perpetrator likely to kill or commit life-endangering violence? (See lethality checklist)<sup>1</sup>
- Should the court order an evaluation by a domestic violence expert regarding the effect on the children of contact with the perpetrator? (See N.J. Stat. Ann. § 2C: 25-29(b)(3), supra; see also discussion of Evaluations in Chapter 8, infra.)
- Should the court order the perpetrator to satisfy certain conditions before permitting visitation (e.g. completion of batterer's counseling, alcohol or drug counseling, parenting counseling)? (See 23 Pa. Cons. Stat. Ann. § 5303(c), supra.).

- Are there criminal charges pending against the perpetrator? Is the court authorized to take judicial notice of these in making its determination? (See, e.g., Ariz. Rev. Stat. Ann. § 25-337, discussed supra).
- If the evidence suggests that the violence may have been mutual, is more investigation needed to determine whether a party acted in self-defense or to protect the children?
- Can the order be crafted in a manner that promotes the safety and well being of the children and the abused party?
- Does the order ensure that contact between the parties is conducted in a manner such that the abused party feels and is safe?
- Does the order compromise or conflict with orders issued by another court?
- Does the order contain specific language that will enable law enforcement to properly enforce it?
- Is someone available to meet with the children and help them create a safety plan, in case the perpetrator becomes dangerous during visitation?
- Does the order keep the address of the abused party and the child confidential?

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<sup>1</sup> If the court concludes that the perpetrator is likely to kill or commit life-endangering violence, visitation should be suspended or denied.

## Conditions of Visitation to Consider in Domestic Violence Cases

The National Council of Juvenile and Family Court Judges recommends the following conditions of visitation in cases involving domestic and family violence (NCJFCJ. Family Violence: A Model State Code, 1994 pg. 34).

- Do not require or encourage contact between the parties.
- Order visitation in a location physically separate from the abused party (whether supervised or unsupervised).
- Require transfer of children between the parents in the presence of a third party and in a protected setting. (e.g. police station or visitation center).
- Start with short, daytime visits in a public place, and increase length only if things are going well.
- Include "no alcohol or drug" provisions for the visiting parent, and direction as to the immediate consequences of violation (e.g. other parent should call police).

- Place limits on overnight visitation.
- Require the perpetrator to successfully complete a batterer's intervention program, drug/alcohol program, or parenting education program before being allowed visitation.
- Require a bond from the batterer to ensure the child's safe return.
- Build in automatic return dates for court to review how order is working.
- Do not order the victim into counseling with the perpetrator as a precondition of custody or visitation.

## Examples of Specifically-Worded Visitation Orders

Specific language describing conditions of an order and how future disputes between the parties will be resolved prevents either party from taking advantage of any loopholes or ambiguities that may otherwise result. Law enforcement officers report that they have difficulty enforcing orders with ambiguous conditions.

Vague clauses such as "reasonable visitation" are not effective. Similarly, the court should not order that visitation be "as agreed upon by the parties," or "to be determined later." A subsequent negotiation process between the parties could lead to further violence, often in front of the children who may wrongfully see themselves as the cause of the turmoil.

Examples of specifically worded conditions include:

- Visitation shall take place every first and third Saturday from 10 a.m. to 3 p.m., at the home of and in the presence of Mary Smith, plaintiff's aunt, at 123 Main St., City. The plaintiff is responsible for dropping off the child by 9:45 a.m. and picking up the child at 3:15 p.m. In the event that visitation cannot take place, the party must telephone Mary Smith at (000)123-4567 by 8:30 a.m., and visitation shall then take place the following Saturday with the same provisions.
- If respondent wishes to exercise visitation rights, he must call Mary Smith at (000) 123-4567 by 10 a.m. the day before a scheduled visitation. Mary Smith shall then call the plaintiff.
- Respondent shall consume no alcohol or illegal drugs during the 12 hours prior to and during visitation. If he appears to have violated this provision, Mary Smith is authorized to deny him visitation that week.
- Visitation is conditioned upon respondent receiving weekly batterer's counseling from X organization, for a certain period of time, e.g., 1 year.
- Visitation may be denied if the respondent is more than 30 minutes late and does not call by 8:30 a.m. to alert Mary Smith to this (to prevent custodial parent and child from waiting for the other parent).
- (If there is a third party available for pick-up and drop-off, or supervised visitation): Plaintiff must arrive at the drop-off location 20 minutes before respondent, and then leave before respondent arrives. At the end of visitation, respondent must remain at the location for 20 minutes while plaintiff leaves with the children. (This prevents respondent following plaintiff to harass her or ascertain the location of plaintiff's new residence.)
- (If there is no third party available, even for exchanging the children): Drop-off and pick-up of the

children shall occur at the local police department, in the lobby. Respondent shall leave with the children immediately; plaintiff may request a police escort to her car or to public transportation. At the end of visitation, respondent shall wait in the lobby at least 20 minutes while plaintiff leaves with the children. (See above comment.)

## **Checklist: Recommended Procedures when Other Professionals Are Involved in the Custody Determination Process**

- Ensure that professionals referred by the court have received comprehensive training on domestic violence, including how to develop safety plans.
- Periodically evaluate the viewpoints of these professionals to ensure that they do not harbor misconceptions about domestic violence that would impede their ability to be fair and impartial.
- Ensure that professionals working with custody and visitation cases have adequate procedures in place for identifying and screening for domestic violence and for conducting risk assessment in these cases.
- Encourage professionals to include development of safety plans as a routine step in working with domestic violence victims.
- Require that offices where parties meet with professionals are adequately secure.
- Provide for separate sessions between the professional and the battered party, and the professional and the perpetrator.
- Ensure that parties are referred to professionals who meet the linguistic and cultural needs of the litigants.