

Circuit Court for Cecil County

Differentiated Case Management Plan

Family Cases

June 23, 2017



The Second Judicial Circuit of Maryland
Circuit Court for Cecil County


KEITH A. BAYNES
COUNTY ADMINISTRATIVE JUDGE

COURTHOUSE
129 EAST MAIN STREET
ELKTON, MARYLAND 21921
PHONE 410-996-5317
FAX 410-996-1054

ADMINISTRATIVE ORDER

In accordance with Maryland Rule §16-302(b), the Case Management Plan attached hereto shall be applied and interpreted in such a manner as to effect the prompt and efficient scheduling and disposition of all actions now pending or hereafter filed in the Circuit Court for Cecil County.

7-17-17
Date



Hon. Keith A. Baynes
County Administrative Judge
Circuit Court for Cecil County, Maryland

PART III FAMILY DIFFERENTIATED CASE MANAGEMENT PLAN

1. General Information

1.1 Types of Cases. This Family (Civil – Domestic) Differentiated Case Management (DCM) Plan outlines policies and procedures for the management of family law cases at the Circuit Court for Cecil County.

1.2 Assignment of Magistrate

The Family Magistrate of this Court is assigned to hear family law cases and others by Special Assignment by the Administrative Judge.

1.3 Pleadings

Domestic Case Information Report (DCIR). Pursuant to Maryland Rule §2-111, a DCIR shall be filed with all original pleadings in the case, and a copy shall be served on the defendant/respondent. The DCIR shall be filed in all cases subject to the Family DCM. When any new or additional relief is sought subsequent to the filing of the original complaint or petition, a DCIR shall be filed with the pleading or paper seeking the relief.

1.4 Responsive Pleadings

A DCIR should be filed with the responsive pleadings. If no DCIR is filed by the opposing attorney or party, agreement with the plaintiff's DCIR shall be presumed, pursuant to Md. Rule §2-323(h).

2. Scheduling Conference, Pre-Trial Conference, and Settlement Conference

2.1 Who Shall Attend

All parties and counsel are required to attend the scheduling conference, pre-trial conference, and settlement conference. Failure to attend may result in sanctions being imposed by the Court.

2.2 Setting of Scheduling Conference

Once a case is at issue, i.e., once the first responsive pleading has been filed or the response time has run with no response having been filed, the case is forwarded to the Domestic Relations Magistrate. The Magistrate will review and forward to the Assignment Office if the case is ripe for scheduling, and the Assignment Office will generally schedule contested cases for a Domestic scheduling conference within 45 days of when the case is at issue. An expedited status/scheduling conference may be scheduled sooner than 30 days.

The Magistrate may issue a deficiency order with 30 days to make corrections, and recommend dismissal for non-compliance with said deadline. If necessary pleadings are not filed within 30 days, the case shall be dismissed.

2.3 The Scheduling Conference Pre-Trial Conference, and Settlement Conference

Domestic scheduling conferences are generally held before a Magistrate. At the scheduling conference, the Magistrate will attempt to assist the parties in reaching an agreement on all contested matters. If an agreement can be reached, the Magistrate may place the agreement on the record, and recommend a final order be issued in the case. If it is a divorce matter, brief testimony may be taken on the grounds for divorce. The Magistrate may also direct one of the attorneys to prepare and submit a judgment of divorce including any applicable consent agreement. The Magistrate shall direct an attorney to submit the proposed Judgment within a set number of days.

If it is clear that there remain contested issues, the Magistrate will identify those issues and complete a scheduling order setting in discovery and filing deadlines and schedule a settlement conference. The Magistrate may also schedule a pre-trial conference, and a trial. This order is presented to a judge for review and signature and sent to all parties and attorneys by the Clerk of Court.

The Magistrate will also identify and recommend any preliminary orders required in the matter. Preliminary orders may include the following:

- order to attend “Children’s First Group”
- order to attend parenting seminar
- order for custody/visitation alternative dispute resolution (ADR)
- order for property ADR, if agreed
- other alternative dispute resolution orders
- orders appointing counsel for a minor child or party
- order for home study/custody investigation
- order for mental health evaluation(s)
- order for pendente lite hearing
- order for substance abuse assessment
- any other investigations or orders the Magistrate feels may be necessary to expedite the case.

At the time of the scheduling conference, the Magistrate will use her/his discretion to determine the appropriate scheduling order to be recommended for the case.

2.4 The Scheduling Order

A single, uniform scheduling order shall be used for family cases. At the scheduling conference, the Magistrate will also discuss with counsel or parties whether other preliminary orders might be appropriate in the case. If one party requests a preliminary order and the other party objects, the Magistrate may hear brief argument on the issue and render a decision.

Providers of family support services including ADR, evaluations, or any other service shall receive from the Family Support Services office an electronic notice of services ordered or requested with applicable deadlines when necessary.

2.5 Discovery Deadlines

During the scheduling conference, the Magistrate will set discovery deadlines considering both the requests of the parties and the necessity to expedite the case in order to complete the case within the Maryland Standards. Subsequent event dates will be scheduled correspondingly. Pursuant to the Maryland Rules, all discovery is continuing in nature and the parties have a duty to update their discovery responses to stay current to the date of trial.

2.6 Preparation for Settlement/Pre-Trial Conference

Prior to settlement/pre-trial Conference, the parties MUST:

- Have completed all discovery
- Have identified all experts
- Have attended the required court ordered classes and or completed all court ordered evaluations and services, if ordered to do so
- Have taken all depositions
- Have filed their pre-trial statements at least five (5) days prior to the settlement conference in accordance with Rule §2-504.2
- Have filed a Joint Marital and Non-Marital Property Statement pursuant to Md. Rule §9-206, if there are any property issues
- Have completed a financial statement pursuant to Md. Rule §9-203(f) if not yet filed
- Have exchanged income information and documents verifying that income
- Have prepared a Child Support Guidelines Worksheet, if child support is at issue

Any vendor providing evaluation or other forensic services must complete its report and provide copies to the parties at least 30 days prior to the settlement/pre-trial conference. If reports are not provided 30 days prior to the settlement conference, then the service provider shall be required to attend the trial.

2.6.1 Failure of Attorney to Attend Settlement/Pre-Trial Conference

If an attorney for a party in a case does not appear at settlement/pre-trial conference, thereby preventing settlement discussions, an order may be passed requiring the attorney who failed to appear to make payment of expenses to attorney(s) who appear.

2.6.2 Settlement/Pre-Trial Conference Procedure

The settlement/pre-trial conference, which shall be conducted by a Magistrate or Judge, will meet with counsel and/or the parties in an attempt to facilitate a settlement in the case. All parties and their counsel must be prepared to discuss all aspects of their case in anticipation of a possible settlement. If settlement of all issues does not occur, the Magistrate or Judge will attempt to narrow the areas at issue and will proceed to trial as scheduled.

2.7 Parenting Seminars

In divorce actions or other actions between two natural parents where custody or visitation is at issue, the Court will order the parties to attend parenting education.

2.8 Children's First Group (Ages 5-17)

In divorce actions, or other actions between two parents where custody or visitation is at issue and there is high conflict, the Court may order the parties' children to attend the Children's First Group, or the parties may voluntarily register their children for the Children's First Group.

3. Alternative Dispute Resolution

After determining what issues are contested in each case, the Magistrate or Judge will determine whether to recommend or order participation in an alternative dispute resolution program.

3.1 Custody/Visitation Alternative Dispute Resolution. Parties involved in contested custody and/or visitation matters where there are no allegations of abuse will be ordered to attend mediation, neutral case evaluation, or other ADR. The actual dates of ADR will be ordered at the Scheduling Conference.

When ADR is ordered, when possible, Family Support Services shall notify the service provider through electronic means.

The ADR provider will attempt to facilitate an agreement between the parties. If the parties are unable to reach an agreement, the ADR provider may request that the Court extend the ADR order to include more sessions. Pursuant to Md. Rule §9-205(c), the Court may order up to two additional mediation sessions. The parties may also voluntarily continue with further ADR at their mutual election. Any additional costs of ADR will be paid for by the parties.

Pursuant to Md. Rule §9-205(c)(2), the parties may extend the scope of ADR beyond the issues of custody and visitation, only if both they and their attorneys agree to do so in writing. The ADR provider shall submit a consent form to that effect with the signatures of both parties and their counsel at the time a completed written agreement is forwarded to the Court.

3.1.1 Costs

The established fees for court-certified alternative dispute resolution providers in Cecil County shall be provided to the parties by the Family Services Coordinator. Each party must bring his/her total payment to the first session. Payment is to be by cash, money order or certified check payable to the provider. Personal checks and credit cards may be accepted by prior arrangement with the provider. Each party must pay for any session he or she misses. If a party feels he/she is unable to afford the cost of ADR, he or she may apply for a waiver of the fee by filing a motion for waiver of fee of ADR services available from the Family Services Coordinator.

3.2 Property/Financial ADR. Parties whose case involves contested property issues may be ordered to participate in the property ADR program, and will be ordered to complete ADR of all property issues by the time of the settlement conference or pre-trial conference.

3.2.1 Objections to Property ADR

The order referring the case to property ADR shall specify that the parties have thirty (30) days within which to: 1) object to the referral; 2) offer an alternative proposal; and 3) agree on a person to conduct the proceeding. If the parties wish to object, they must file a written request stating their objection.

If one or more party files a timely objection to the referral, the Court shall attempt to identify a property ADR provider mutually agreeable to the parties. If a party objects to participation in the alternative dispute resolution process, the Court shall vacate the order pursuant to Maryland Rule §17-103.

3.2.2 Property Agreements

When the parties have been able to reach an agreement on some or all issues, counsel will prepare a written draft of the agreement for signature. In the alternative, the agreement may be incorporated into a consent order resolving all outstanding issues in the case and presented to the Court at or before the settlement conference or pre-trial conference.

4. **Merits Hearings**

In most cases, merits hearings will be scheduled at the time of the Scheduling Conference. Counsel and parties must be ready to proceed at the time the case is called.

5. **Child Support**

5.1 General Information. Parties and their attorneys litigating child support shall be prepared to provide the Court with the necessary financial data for a Maryland Child Support Guidelines calculation.

5.2 Civil and Criminal Enforcement of Child Support Awards. At regular intervals a docket is devoted to cases involving the civil and criminal enforcement of child support awards. Civil enforcement may be initiated by either party or the Child Support Enforcement Administration. Criminal enforcement shall only be initiated by the State's Attorney's Office (SAO), and/or a special prosecutor working in conjunction with the Child Support Enforcement Administration.

6. **Pendente Lite Relief**

Requests for *pendente lite* relief may be made by motion or in original pleadings. All *pendente lite* hearings are presumed to take two (2) hours, and will be limited to that amount of time, **unless counsel notifies the Assignment Office or Magistrate of need of additional time, at the time of requesting *pendente lite* hearing, and upon ruling by the court.** Only parties will be permitted to testify at these hearings, unless requested and ruled on by the court, or on the court's own initiative. Normally *pendente lite* hearings will be set at the time of the scheduling conference. If a need for *pendente lite* hearing arises after the scheduling conference, the party seeking a hearing must do so by motion. Once the time has passed for a response, the motion will be considered by a judge and scheduled by the Assignment Office, if the request for hearing is granted. *Pendente lite* matters are generally heard by the Family Magistrate.

Requests for "Expedited *Pendente Lite* Hearings" will be handled as in Paragraph 7.1.

7. **Expedited Relief**

7.1 **Requests for Expedited Scheduling**

Emergency hearings are not explicitly contemplated by the Maryland Rules, and this Court will not hold "emergency hearings." The rules do however explicitly contemplate expedited scheduling in

certain kinds of cases. Procedures, including notice and an opportunity to be heard, for conducting such expedited proceedings, are spelled out in the rules. Four examples, not intended to be exclusive, are domestic violence, allegations of child abuse or neglect, requests for ex parte action, including temporary restraining orders, and actions under the Petition for Enforcement under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA, see Family Law, Section 9.5-308). Each of the four actions has its own statute, its own scheduling track, and its own rules.

7.1.1 Where domestic violence is alleged. If expedited scheduling is required or requested a domestic violence petition is what should be filed and the domestic violence procedure is the procedure that will be followed.

7.1.2 Allegations of child abuse and/or neglect. The legislature has created and funded an organization, the Department of Social Services, with the resources and the legal mandate to conduct an immediate investigation of allegations of child abuse or neglect. There is a statute and accompanying rules providing for shelter care hearings on very short notice followed by notice and appropriate due process. Upon receiving a complaint alleging child abuse or neglect, the Department of Social Services is mandated to employ its staff, which now includes prosecutors and law enforcement officers, to immediately conduct an investigation into the safety of the child, and the agency has the authority immediately to take custody of the child to assure the child's safety before a hearing the next day a Judge is available. The court has neither the staff nor the authority to do those things which are mandated to the Department of Social Services. Where child abuse and neglect is alleged, the appropriate channel, if expedited handling and investigation is required or requested, is to make a complaint to the Department of Social Services for investigation.

7.1.3 *Ex Parte* actions. Maryland Statutes and Rules provide, in a situation where an immediate and irreparable harm is likely to result unless the court intervenes immediately, that the party seeking assistance can file a pleading requesting *ex parte* action. This is an extraordinary and seldom used and/or granted action. It requires, in order for the court to entertain the request, among other things, an affidavit under oath under Rule §1-351. The pleading must also be under oath and must set forth the reason that immediate, substantial, and irreparable harm will result if the court does not act immediately.

7.1.4 Family Law Article Section 9.5-308 Petition for Enforcement under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

This section provides for enforcement of an existing foreign order under the UCCJEA, and provides for special pleading requirements and expedited scheduling. In a UCCJEA case, where the appropriate pleading is filed, the Court will follow the mandate of the statute.

Given these provisions and others of the Maryland Rules and Statutes this Court will not act precipitously on one-sided pleadings not filed under oath, not complying with the notice requirements of the rules and not setting forth the harm which will result if the court does not act right away. The Court will not hold "emergency hearings". What the court will do, when the request is made for expedited scheduling other than as set forth above, is set an expedited pendente lite hearing following notice to the adverse party and an opportunity to respond in writing, or an expedited status/scheduling conference.

7.2 Standard for Immediate *Ex Parte* Relief.

Requests for immediate *ex parte* relief will be denied unless there is a sufficient showing that there is an imminent risk of substantial and immediate and irreparable harm to a party or minor child, or unless there is a sufficient showing that there will be an imminent loss of jurisdiction or removal of a child from the State.

If an application for *ex parte* relief relies upon facts not contained in the record or presented in live testimony, the application must be “based on a verified affidavit.” *Magness v. Magness*, 79 Md. App. 668, appeal dismissed, 317 Md. 641 (1989). In accordance with *Magness* and other case law, the affiants must certify their personal knowledge of facts upon which they rely to support their claim for relief.

Purely speculative evidence of harm will not be considered sufficient for *ex parte* relief. See *Magness*, 79 Md. App. 668.

8. **Sanctions**

The Circuit Court for Cecil County will take appropriate steps to assure compliance with all scheduling orders and other orders issued by this Court in accordance with this Family DCM Plan. If an attorney and/or party fail to comply with a scheduling order, or fails to appear for ADR, hearings or other proceedings as ordered without having first obtained a postponement or other waiver of this Court, a show cause order may be issued. A show cause hearing may then be held before the presiding Judge, or Family Magistrate, as to why sanctions should not be imposed on the offending person. Only the party (and counsel) against whom the show cause order was issued need appear for this hearing. Monetary or other sanctions may be imposed on any attorney or party who fails to comply with an order of this Court issued in accordance with the Family DCM Plan.

9. **Postponement Policy**

This policy reflects Maryland Judicial Council’s definitions, as follows:

Postponement – a proceeding that was not held and is being rescheduled

Continuance – a proceeding that has begun and is extended for additional day(s)

9.1 The purpose of this policy is to promote timely disposition and the avoidance of unnecessary delay of cases in the Circuit Court for Cecil County in accordance with the Maryland Annotated Code and the Maryland Rules of Procedure.

Postponement of any previously set court date greatly increases the challenge to the court in managing its cases expeditiously. It has a rippling effect on the court staff, assignment of judicial time, and allocation of resources generally. All dates, once set, are important dates. Trial/hearing dates which take the case beyond the Maryland Time Performance Standards are violations by the court of the Standards. Postponements will be granted only for substantial, unforeseen and unforeseeable reasons which reasons make the possibility of a fair trial/hearing remote or non-existent.

In consideration of all postponement requests, the Court shall carefully apply all relevant sections of the Maryland Annotated Code and the Maryland Rules of Procedure, review possible

effects of a postponement on the parties and witnesses, and evaluate future scheduling issues. The Court will meet the Maryland Circuit Court Time Standards for processing cases. This will require a strict and uniformly applied postponement policy.

Attorneys are expected to know their schedules prior to entering their appearance in any case.

9.2 Requirements for Litigants in Making a Request for Postponement

- Requests for postponements shall be made as soon as counsel/party is aware that a reason for postponement exists.
- Requests, except those involving an emergency, shall be made within fifteen (15) days of the receipt of the Assignment notice.
- Requests made prior to the hearing or trial date shall be filed with the Clerk of the Court, and include a certificate of service.
- Requests shall include a statement that indicates the position of the opposing party and/or parties, on the request for postponement.
- Requests for postponements made by counsel as a result of a conflicting court date shall be accompanied by a copy of the assignment notice of the conflicting case. A conflicting case scheduled subsequently to the scheduling in Cecil County will not be a basis for postponement. (See Court of Appeals Administrative Order by then Chief Judge Murphy)
- Unless impossible due to emergency, requests shall include an alternate date agreed upon by the parties and the Assignment Office which is within the applicable Maryland Circuit Court Time Performance Standards. No request for postponement which does not include the alternate date will be considered. Requests for postponement which include the alternate date will not, by that fact alone, be successful; the reason(s) for the postponement must still meet the other criteria set forth herein. Requests to reschedule a court date to a date sooner than the original date will be granted when possible.

On its own initiative, or if all parties are not in agreement to the postponement and/or dates for rescheduling the case, the Court may act upon the request without a hearing or issue an order requiring the parties to attend a scheduling conference.

9.3 Postponement

No postponement requests in civil cases shall be granted except by the County Administrative Judge unless pursuant to specific written authorization issued by the Administrative Judge.

9.3.1 All postponement requests will be considered in accordance with Rule §2-508 in civil matters, as justice may require, for good cause shown. The Court will also apply the *Administrative Order for Continuances for Conflicting Case Assignment or Legislative Duties of the Court of Appeals*.

9.3.2 Any trial Judge or Magistrate, including a visiting Judge, has the authority to deny a postponement. Only the Administrative Judge has the authority to grant one in any case, criminal, civil, or juvenile, except pursuant to specific, advance, written authorization issued by the Administrative Judge, to grant postponements.

9.3.3 Requests for postponement which would take the trial date beyond the Maryland Time Performance Standard will generally be denied. Postponements will not be granted for failures of discovery, vacation or training plans made after the trial date was set or not made known to the Court when the trial date was set, conflicts with other cases set after the trial date was scheduled, and/or last minute entry of appearance by counsel which creates a conflict with a previously set case in this or another jurisdiction.

9.3.4 There will be no indefinite postponements of any case. If and when a postponement is granted, the Judge granting the postponement shall sign an order setting the new date. If the need for the postponement or continuance arises in open court or, because of emergency circumstances, an approved alternate date could not be provided in the request for postponement or continuance, the Court shall direct the parties to get a new trial date from the Assignment Office before leaving the Courthouse or, if, because of the emergency one of the attorneys is not present, within 48 hours.

9.4 Continuance

Trial Judges and Magistrates have authority to deny a continuance and limited authority to grant one.

9.4.1 Cases which start but do not finish as scheduled should be continued by the trial Judge or Magistrate to the next trial day and from day to day thereafter until completed unless impossible because of the unavailability of the trial Judge or Magistrate or the specific, substantial reason for the continuance. The next days' dockets do not create unavailability, with one exception. Where a case commenced on a Friday before a Judge does not finish it will be continued to Tuesday so that all Judges are available for Monday jury prayer dockets. As soon as the trial Judge or Magistrate knows the case will carry over, he or she will notify the Assignment Office so that planning for the next days' docket can commence as soon as possible.

9.4.2 Where a continuance is granted for a specific, substantial reason other than not finishing, it must be continued to a date certain, unless a body attachment has been issued, and approved by all counsel and the Assignment office and expressed in a written order, signed by the Judge, which date will permit the case to conclude within the original Time Performance Standard for that case.

9.4.3 The parties have ample pre-trial time to conduct discovery, investigate and prepare their cases, including selection of expert and lay witnesses. Doing additional discovery and/or investigations is not a reason for continuance.

9.4.4 Only the Administrative Judge has the authority to grant a continuance for any reason other than carry over if the case is already outside the applicable time standard or the continuance will cause the case to conclude beyond the time standard.

9.4.5 The Judge granting the continuance will communicate with Judges in other cases as necessary to deal with conflicts. Where a carried over case creates a conflict with a case scheduled for trial in another court, the Circuit Court Judge will communicate with the Judge in the other court, to reach an

accommodation which creates the least inconvenience for the parties and witnesses involved in the two cases.

9.5 Twenty-Five Day Postponement Plan

On motion of any party for a postponement filed within twenty-five (25) days of the scheduled hearing and/or trial, such motion shall fully comply with all requirements for requesting a postponement outlined herein. Upon receipt such motion shall immediately be forwarded to the Assignment Office for verification of the proposed alternative date(s) submitted by counsel. Once the alternative date(s) has/have been verified, the Assignment Office will forward the request to the appropriate judge for consideration and ruling. Opposing Counsel is encouraged to file an immediate response to the request for postponement. The Court may grant or deny such request, with or without a hearing, as justice may require.

If a postponement is granted, all other provisions of the scheduling order shall remain in effect.