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MONTGOMERY COUNTY: PRACTICE AND PROCEDURE

By: *Geraldine Welikson Hess, Esq., updated by Lindsay Parvis, Esq.*

In Montgomery County, the filing fee for divorce is one-hundred sixty-five Dollars (\$165.00). After filing your Proof of Service, the Court will set a Scheduling Hearing. Generally, the Scheduling Hearing is scheduled for either three (3) to four (4) weeks after the Defendant's Answer is due, based on the Proof of Service, or two (2) to three (3) weeks after receiving the Defendant's Answer, whichever happens first. If you are not available on the date that the Court sets for the Scheduling Hearing, you should contact the Family Law Assignment Office to obtain new potential dates (typically, you must reschedule the Conference within a two (2) week period of the original date provided), contact opposing counsel to clear one (1) of the new dates, file a Joint Line to Reschedule the Scheduling Hearing to the new date cleared by Counsel with the Assignment Office, and provide a courtesy copy to the Assignment Office.

The Scheduling Hearings are conducted by Family Division Magistrates. At the Scheduling Hearing, you will be scheduling future court dates and choosing court-provided services.

Scheduling:

If temporary visitation, alimony, child support, attorney fees, suit money, and/or court costs are issues, a Pendente Lite Hearing may be requested. If, at the Scheduling Hearing, you do not request that an issue be heard at the Pendente Lite Hearing, you will not be permitted to present that issue at the Pendente Lite Hearing. In Montgomery County, you need to request both attorney fees and suit money as they are distinguished. You can request anywhere from one (1) to six (6) hours for the Pendente Lite Hearing, but less time will usually get you a quicker hearing date. The Pendente Lite Hearing are scheduled to be heard by a Magistrate. Residential and legal custody will generally not be addressed at a Pendente Lite Hearing. Use and possession and contribution will not typically be addressed at a Pendente Lite Hearing unless the parties have an agreement on residential custody or the parties agree for the court to decide these.

If residential custody of the children is at issue, the case will be bifurcated into two separate trials: Custody Merits and Divorce Merits. If legal custody is at issue, but residential custody is not, then all issues will be heard together. If your case is bifurcated, you should review the online docket entry about the Scheduling Hearing to look for "additional issues to be heard at custody trial." Often, other issues will appear in the docket entry that do not appear on the Scheduling Order.

In addition, the Court will set the following dates and deadlines in a bifurcated case: 1) a custody Settlement/Status Hearing; 2) a custody merits trial date(s); 3) a Settlement/Pretrial Hearing to choose the divorce Merits trial date(s) (if longer than a half day/3

hours) or the Merits trial date if 3 hours or less; 4) expert witness designation deadlines for both trials; and, 5) discovery deadlines for the Custody and Merits portions of the case. The Court will set the following dates and deadlines in cases in which residential custody is not disputed: 1) a Settlement/Pretrial Hearing to choose the divorce Merits trial date (if longer than a half day/3 hours) or the Merits trial date if 3 hours or less; 2) expert witness designation deadlines; and, 5) a discovery deadline.

One Family One Judge (1F1J):

Starting January 1, 2016, instead of assigning cases to "Track 4" (to a specific judge who handles all the scheduling and matters in the case), at the Scheduling Hearing your case may be assigned to 1F1J. This is a team approach, with 1 case manager, 1 Magistrate, and 1 Judge permanently assigned to the case. Criteria that may lead to 1F1J assignment: multiple cases between the parties, length of trial, complexity of issues, litigiousness of one or both parties, mental health issues, abuse, addiction, and so forth.

Services:

If custody and/or visitation issues are involved, the court will order your client to attend Co-Parenting Skills Enhancement Classes, which consist of two (2), three (3) hour classes. These classes are free of charge.

The Court also may require Custody Mediation. This will only be ordered if both parties are self-represented or both parties have attorneys; it will not be ordered if one party is represented and the other is not. Additionally, it will not be ordered if there is has been a DV protective order between the parties. Attorneys must attend and participate in the Custody Mediation, which is one (1) three (3) hour session at the courthouse (Room 1500), starting either at 9:00 a.m. or 1:00 p.m. The custody mediator is provided free of charge. The custody mediation concludes with the parties, attorneys, and mediator meeting with a settlement Magistrate. Any agreement will be put on the record or, if in writing, received by the Magistrate. The purpose of the Custody Mediation is to see whether the parents can resolve custody and visitation by way of a Parenting Plan, rather than litigating the issues.

In contested custody and/or visitation cases, the court provides assessments or evaluations by court staff evaluators. This will not be ordered in every case. The difference between the assessment and evaluation is that the evaluation will include a home study and the contacting of collateral witnesses, whereas the assessment will not include these items. Please note that a home study will not be performed if the home is located outside of Montgomery County. Also, courthouse evaluators do not conduct psychological testing. These court evaluations and assessments are free of charge. The results of your court

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assessment or court evaluation will be presented orally on the record by the evaluator at the Custody Settlement/Status or Settlement/Pretrial Hearing. A transcript serves as the evaluator's formal report. If you want psychological testing, or prefer a private custody evaluation, you must to file a Motion requesting these services for which the parties will pay.

If your divorce Merits trial will take more than a half day/3 hours, the parties and Counsel will be ordered to attend Alternative Dispute Resolution (ADR). You are required to participate in a minimum three (3) hours of ADR, and the cost to each party is Two Hundred Dollars (\$200.00) per hour. The court usually directs that the costs be split equally between the parties. If everyone agrees, ADR can be extended beyond the three (3) hours, and the hourly costs remains the same for the additional time. ADR is scheduled directly with the court-appointed ADR facilitator/mediator and usually held at his/her office.

If you want the court to appoint a Best Interest Attorney, the court rate is \$250.00 per hour. Court-appointed BIAs (not by agreement of the parties) must be from the Court's approved list (which is on the Circuit Court's website). The parties can agree to the appointment of a BIA who is not on the list. There is a standard form BIA order for all appointments (also on the Circuit Court's website).

On the day of the Scheduling Hearing, prior to leaving the courthouse, if Custody Mediation or a court custody evaluation or visitation assessment were ordered, your client must complete a Confidential Mediation Questionnaire and participate in an evaluation/assessment intake in Family Division Services, Room 1500. If your case is screened out and Custody Mediation cancelled, you will receive notice in the mail.

Lastly, the court often offers Facilitation, free of charge, immediately following the Scheduling Hearing and on a first-come, first-served basis. The purpose of Facilitation

is to resolve, if possible, pendente lite issues or interim issues until the Pendente Lite Hearing. Family law attorneys serve as the Facilitator. This is provided in Room 1500.

Emergencies:

If you have an emergency, you will need to file a Motion for Emergency Hearing. You should have the Family Law Clerk set up the Court file so that you can walk the file through to the Family Law Duty Judge. You must have contacted opposing counsel or the opposing party and notified counsel or the opposing party that you will be going to the duty judge on an emergency and work out a date and time to appear before the duty judge. Generally, the duty judge will not hear the matter unless notice has been given to opposing counsel or to the opposing party and the judge considers the issue to be a true emergency. A true emergency might be a complete denial of visitation. If your client is getting visitation, but the visitation is limited or is not on a regular and consistent schedule, that issue will not be an emergency. An example of an emergency is one parent completely denying visitation of a newborn or infant child to the other party. Another example is one parent trying to remove the child or children from the state or country. Failure to pay the mortgage or potential foreclosure on the marital home has not been considered an emergency. If the case is not considered an emergency and is not heard by the duty judge, the duty judge may give you an Order for an expedited Scheduling Hearing.

The Family Law Duty Judge changes every week. You can find out who the Family Law Duty Judge is by checking the Montgomery County Bar Association Newsletter on the Bar Association's website or by calling the Clerk's or Assignment Office.

Miscellaneous:

Kid Spot: The courthouse provides a child waiting area where children ages 2-12 can be dropped off and supervised, while parents conduct business at the courthouse. Kid Spot is located in Room 1440.

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Check out our newsletter and more online at the
Family & Juvenile Law Section's
portion of MSBA's website at:
www.msba.org/sections/family

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Divorce based on Mutual Consent Ground: Third party corroboration is not required; both parties can testify to corroborate the ground. You must submit a Joint Request for Uncontested Divorce Hearing uniquely for Mutual Consent grounds. The form can be found on the Circuit Court's website.

Supervised Visitation: The Court has a supervised visitation program, which is free of charge. It requires a court order. Only the ordered parent can attend. Six supervised visitations are scheduled every other weekend for a three-month period. Each visit is 1.5 hours. The visitation supervisor will provide an observation report to the Court after each visit.

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CASE NOTE: ATTORNEY GRIEVANCE COMMISSION OF MARYLAND V. FRAMM, 449 MD. 620 (2016)

By: Sally B. Gold, Esq.

This case began in 2010 when Framm took on the representation of Mr. Wilson after his divorce. On June 17, 2010, the Wilsons, both represented, had put an agreement on the record which required Mr. Wilson to pay Mrs. Wilson a significant sum of money. Five days later, Mr. Wilson met with Framm to assist him in setting aside that agreement because he didn't understand it and was dissatisfied with its terms. He retained Framm on June 24th and paid her retainer on June 25th. Framm, after meeting with Mr. Wilson concluded that 1) Mr. Wilson could have a claim to property in his ex-wife's name (whether his claim would have simply reduced or eliminated the payment he had agreed to make or whether he could be the recipient himself of a monetary award is not clear from the opinion) and 2) Mr. Wilson was limited in his capacity to understand and process information. Framm promptly referred him to a psychologist, who opined that Mr. Wilson had a disorder that affected his ability to comprehend complex information. Framm quickly filed a motion to vacate the judgment based on the psychologist's assessment. The psychologist then performed a complete evaluation, after which he opined that Wilson needed a legal guardian.

Eight months later, Framm filed the first of three guardianship petitions. Mr. Wilson initially consented (did he have that capacity?), but Framm's first two petitions were rejected because they did not comply with the statutory requirements. Finally, in January 2012, Framm's third petition was accepted. Counsel appointed to represent Mr. Wilson in those proceedings denied that he was suffering from any disability and requested that the petition be denied. Framm, in addition to representing Mr. Wilson in the post-divorce proceedings, was also representing Mr. Wilson's friend, the petitioner seeking guardianship. On behalf of the petitioner, Framm responded that Wilson suffered from a mental disability. However, when Mr. Wilson and his friend decided they no longer wanted to pursue a guardianship, Framm moved to withdraw the petition, which was granted.

In the meantime, the trial judge scheduled a hearing on Framm's motion to vacate the divorce judgment. Upon being advised that Framm intended to admit the psychologist's reports at that hearing (without, apparently, calling him as a witness), Mrs. Wilson objected. As a result, Framm scheduled a de bene esse deposition of the psychologist. However, counsel could not agree on a date. Framm nevertheless conducted the deposition on the date of her choosing; Mrs. Wilson's counsel was not present. After lots of legal skirmishing, the trial judge prohibited Framm from using the deposition at trial. The Court, however, the postponed the matter to allow the parties to retake the deposition. By the time of the rescheduled hearing, some 6 months later, the deposition

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had not yet been taken. At that rescheduled hearing, Framm sought to withdraw, claiming that Mr. Wilson had diminished capacity, and, in the absence of a guardian, she could not represent him. The court ordered that Mr. Wilson be evaluated by the court psychiatrist. In February 2013, one year after the originally scheduled hearing date, the court took testimony from Mr. Wilson's impairments. Framm's motion to withdraw was granted, as was her motion to vacate the judgment of divorce. If the story had simply ended there, it might have, in fact, ended. But then Framm filed suit against Mr. Wilson for unpaid fees in both the guardianship and divorce cases. Wilson did not have counsel in the District Court fee suit. Framm testified that Mr. Wilson could deal with day-to-day events and simple contracts and that he had a fairly good capacity to understand agreements (presumably, she meant her engagement letter). She testified that when opposing counsel did not show up at the psychologist's deposition, she happily volunteered to reschedule. Framm was granted a judgment; she garnished Mr. Wilson's accounts to collect.

This matter then came to the attention of the Attorney Grievance Commission (from the client? from the judge? the opposing counsel?) The initial hearing took three days. The Court of Appeals remanded for additional fact finding. The hearing judge found that Framm's conduct, in the divorce case, was sufficiently competent (although aggressive) because she accomplished the objective of getting the divorce judgment vacated. He further found that Framm had no prior disciplinary record, did not display a selfish motive, cooperated fully throughout the disciplinary process, provided evidence of good character and reputation, and demonstrated remorse.

The Court of Appeals, without dissent, disbarred Framm. Why?

1. Framm violated MLRPC 1.1 by not providing competent representation. 449 Md. at 644-46.
 - a. Framm did not advise Mr. Wilson that the cost of pursuing litigation could outweigh the benefits.
 - b. Framm had to file the guardianship petition 3 times because of her failure to comply with the rules.
 - c. Framm failed to recognize the inherent conflict in simultaneously representing Mr. Wilson in his divorce case and the petitioner in Mr. Wilson's guardianship case.
2. Framm violated MLRPC 1.2 by simultaneously representing Mr. Wilson and the petitioner in the guardianship case. Id. at 646-47.
3. Framm violated MLRPC 1.4 in her communication with Mr. Wilson. Id. at 648-51.
 - a. Framm failed to communicate with Mr.

Wilson in writing, the form by which he could best understand, in light of his limitations.

- b. Framm was not candid with her client with regard to whether opposing counsel had timely objected to the deposition of the psychologist.
 4. Framm violated MLRPC 1.5 by charging an unreasonable fee. Id. at 651-54.
 - a. Framm charged and collected approximately \$ 55,000 to set aside a \$55,000 judgment.
 - b. Framm charged Mr. Wilson for obtaining the psychologist's testimony, even though it was her "discovery misconduct" which caused his testimony to be excluded. Id. at 653.
 - c. Framm billed Mr. Wilson for filing the guardianship petition which Mr. Wilson opposed.
 - d. Framm billed Mr. Wilson for her "numerous defective filings." Id. at 654.
 5. Framm violated MLRPC 1.7 by representing Wilson in the divorce case and the petitioner in the guardianship case. Id. at 654-56.
 6. Framm violated MLRPC 1.15 and Maryland Rule 16.606.1 by failing to create and maintain records of fees collected and disbursed. Framm did not disagree. Id. at 656.
 7. Framm violated MLRPC 3.3 by making repeated misstatements in the fee case. Id. at 656-62.
 - a. The Court of Appeals found Framm made both material misrepresentations as well as omissions.
 - b. Framm's position in the fee case was in direct opposition to the position she took in both the divorce and guardianship cases, i.e., that her client was capable of understanding complicated legal issues. "She did so knowing that her adversary was a former client with diminished capacity who was representing himself in that litigation." Id. at 658-59.
 8. Framm violated MLRPC 8.4(c) by making numerous intentional misrepresentations to her client, the divorce trial judge, and the judge hearing the fee dispute. Id. at 662-63.
 9. Framm violated MLRPC 8.4(d) by intentionally misrepresenting to the District Court judge in the fee suit her client's mental capacity, as well as all of the other intentional misrepresentations previously mentioned. Id. at 663-64.
- The Court of Appeals held that the mitigating factors were

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