

Exercise I

EX PARTE COMMUNICATION SCENARIO

Petitioner files a Complaint for Divorce and Respondent files a Counterclaim and both seek to be named the residential parent and legal custodian of their minor child. An Order of Appointment for a custody evaluator or guardian ad litem is journalized to provide relevant information regarding the child's best interest.

- 1) The judge has a pretrial with the parents and then calls the custody evaluator/guardian ad litem about the case. Under what circumstances can the judge communicate with the custody evaluator or guardian ad litem?
- 2) How should the judge manage communication with the Petitioner's attorney when s/he has a procedural question?
- 3) The judge receives a letter from the paternal grandparent regarding the case. How should the judge proceed?
- 4) The magistrate is hearing the case and the magistrate receives a letter from the school teacher of the child involved in the case. How should the magistrate proceed?
- 5) The Respondent asks the judge to recuse from the case on hearsay grounds because the judge previously conducted an in camera inspection of the records of Children Services. How does the judge proceed?
- 6) The judge attends an afterschool event and introduces herself or himself to the parent sitting beside her or him. Later, the judge discovers that the parent is a litigant in a pending divorce with children case. How does the judge proceed?

References:

Code of Judicial Conduct:

Rule 2.2 Impartiality and Fairness (and Comment)

Rule 2.9(A)(3), (A)(4), (A)(5), and (B) Ex Parte Contacts and Communications with Others

Exercise 2

PROSE DIVORCE SCENARIO

(Reaching Out or Overreaching Judicial Ethics and Self-Represented Litigants, State Justice Institute, Cynthia Gray, American Judicature Society, 2005)

After a contentious 10-year marriage, Peggy and Mark Tyler divorce. Mark went through three or four attorneys during the divorce proceedings, eventually ending up unrepresented at the time a final judgment is agreed to and entered. Peggy is given custody of their two minor children, and Mark is required to pay \$2,000 a month for each child in child support. During their marriage, Peggy worked at home to take care of the children. Mark owns a car dealership, selling Hummers.

- 1) Over a year after the final judgment was entered, without representation by counsel, Mark files in the domestic relations court a document called "Objection from custody decision based on new evidence" and asks for an ex parte hearing. He alleges an emergency requiring a change in custody in conclusory terms and does not cite the rule that allows for ex parte emergencies custody changes or allege that he tried and failed to give the appropriate notice as required by the rule. Do you:
 - a. Deny the "Objection" without explanation
 - b. Deny the "Objection" and explain why
 - c. Deny the "Objection" and explain what he has to do to get his pleadings considered
 - d. Liberally construe the pleading and grant the change in custody
 - e. Liberally construe the pleading as a Motion for Change of Custody and consider it on the merits
- Would you send the parties to ADR? If not, why not? If so, why and how would you explain ADR to Mark?
- 2) Miraculously, the parties reach an agreement as to custody, but now there is a dispute about child support. Mark files a Motion for Modification asking for a reduction in child support due to changed circumstances, namely a reduction in his income due to the distraction from business caused by the divorce and custody disputes. Peggy, who is represented by counsel, files a motion arguing that Mark's obligations should be increased because the original amount was based on tax returns that grossly (and probably illegally) understated Mark's income. At the first hearing, Mark appears without counsel. Do you:
 - a. Say nothing about his decision to proceed pro se
 - b. Tell him the old saying about a person representing himself having a fool for a client and warn him that he cannot look to you for assistance
 - c. Explain to him the disadvantages of not having an attorney, describe the possibilities for obtaining representation, and offer to give him an extension of time to procure an attorney

- 3) Assume Mark insists on proceeding on his own, saying he does not need an attorney to tell the truth. Do you:
 - a. Shrug your shoulders and continue as usual
 - b. Tell him it is his responsibility to familiarize himself with the applicable rules, including the rules of evidence
 - c. Refer him to the court's self-help resources
 - If so, what resources are available to him?
 - d. Explain the process and ground rules
 - If so, what would you explain?

- 4) Mark files a motion to suppress evidence supporting Peggy's claim that the tax returns were incorrect, citing his 5th Amendment right not to incriminate himself. Do you:
 - a. Deny the motion without explanation
 - b. Deny the motion and explain that it is not based on the correct theory
 - c. Liberally construe the motion as a motion in limine and consider it on the merits

- 5) Peggy's attorney notices Mark for a deposition, but he does not show up nor does he show up when the deposition is rescheduled. Peggy's attorney asks for sanctions, including dismissal of Mark's petition. Do you:
 - a. Grant the motion
 - b. Impose sanctions short of dismissal
 - c. Give Mark one more chance
 - d. Give Mark one more chance, explaining clearly and in non-legalese the consequence of his failure to show up for the next scheduled deposition

- 6) Mark files a complaint against you with the Disciplinary Counsel claiming you are biased against him specifically, pro se litigants in general, and pro se fathers most of all and then files a motion to disqualify you based on the complaint. Do you:
 - a. Disqualify yourself with a sigh of relief
 - b. Assure yourself that you feel no subjective partiality and deny the motion to disqualify

- 7) When the hearing finally proceeds, the animosity between the ex-spouses is palpable. Mark talks directly to Peggy and mutters under his breath a lot. During his examination of his ex-wife, Mark continually asks Peggy about her spending habits, use of alcohol, and friends. Peggy's attorney continually objects on the grounds those matters are irrelevant to the child support dispute, and you continually sustain the objections. Do you:
- a. Do nothing other than respond to objections
 - b. Remind Mark of the rules of courtesy that apply in your court and to address you, not Peggy or her counsel
 - c. Threaten to cut off Mark's cross-examination
 - d. Impose a time limit on Mark's cross-examination
 - e. Cut off Mark's cross-examination
 - f. Call a break

8) When it is his turn, Mark testifies about Peggy's spending habits when they were married, her use of alcohol, and her disreputable friends. After delivering what he clearly thinks is damaging evidence, he says he is done, although he has not given any testimony about the alleged changed circumstances that would justify his request for a decreased child support obligation. Do you:

- a. Do nothing
- b. Ask Mark if he wants to present any evidence on the issue of changed circumstances
- c. Ask Mark questions that would indicate whether there have been changed circumstances
- d. Ask Peggy's attorney if she would like to file a [motion for summary judgment]

• Would any of your answers have been different if both litigants were self-represented?

• Could anything have been done by the court system or by an individual judge in managing the case that would have avoided most if not all of the problems that arose?

References:

Code of Judicial Conduct:

Rule 2.2 Impartiality and Fairness (and Comment)

Rule 2.6 Ensuring the Right to Be Heard (and Comment)

Exercise 3

DOMESTIC VIOLENCE SCENARIO

The judge has noticed that parties, especially pro se Petitioners, often come to the full hearing unprepared. S/he is concerned that parties do not have realistic expectations about court proceedings or understand the purpose of a civil protection order. The judge asks the court administrator to make materials available for pro se litigants to educate them about the court proceeding, domestic violence, and protection orders. The court administrator does not have any domestic violence expertise.

- 1) The court administrator knows of the local domestic violence program, but has no relationship with the program or staff. The court administrator is a bit concerned about approaching the domestic violence program because it has been critical of the judicial response to domestic violence. Notwithstanding the domestic violence program's reputation in the community, the program is the only known source with domestic violence expertise to the court administrator. The local domestic violence program is willing to work with the court on this project.
 - Should the court administrator collaborate with the local domestic violence program? Would the collaboration be perceived as compromising the court's neutrality?
- 2) In speaking with the court administrator, the judge realizes that the court administrator does not have time for an additional project. The judge remains concerned that parties are wasting judicial resources by coming unprepared to their hearings. The judge may have a pocket of time in the coming weeks to work on this project.
 - Should the judge collaborate with the local domestic violence program? Would the collaboration be perceived as compromising the court's neutrality?
- 3) Although the local domestic violence program is glad to prepare the materials to assist pro se litigants, it does not have funds to print them. Court funds may be available to underwrite the cost of printing the materials. Materials could also be useful to other community partners.
 - Should the court's funds be used to print materials? Does it compromise the court's neutrality? If paying directly for the printing of materials is inappropriate, could the court make a donation to the domestic violence program to underwrite the printing costs? Could the court contract with the domestic violence program for the development and printing of the materials?

References:

Code of Judicial Conduct:

Rule 1.2 Promoting Confidence in the Judiciary (and Comment)

Rule 2.1 Giving Precedence to the Duties of Judicial Office (and Comment)

Rule 2.2 Impartiality and Fairness (and Comment)

Rule 2.6 Ensuring the Right to Be Heard (and Comment)

Board of Commissioners on Grievances and Discipline Op. 96-005

Exercise 4

MAGISTRATE APPOINTMENT AND SUPERVISION SCENARIO

In a domestic relations jurisdiction, the judge appoints a magistrate.

- 1) What should the judge consider when appointing a magistrate?
- 2) The judge receives an ex parte complaint from one of the parties about how the magistrate is handling a case? How should the judge supervise the magistrate? Does it matter if it is a jurisdiction where the judge presides over general and domestic relations cases, and the judge appoints a magistrate to hear the domestic relations docket?
- 3) The magistrate alerts the judge that s/he has a potential conflict with a pending divorce with children case. How should the judge manage this situation?
- 4) The judge has a conflict with a visitation case, can the judge assign the case to the magistrate?

References:

Code of Judicial Conduct:

Rule 2.13(A) Administrative Appointments

Rule 2.12 Supervisory Duties

Rule 2.5 Competence, Diligence, and Cooperation (and Comment)

Rule 2.7 Responsibility to Decide (and Comment)

Rule 2.11 Disqualification

Sup. R. 8

Civ.R. 53

Exercise 5

JUSTICE SYSTEM PARTNER RECRUITMENT AND MEETINGS SCENARIO

The judge has been asked to form a team of stakeholders to address system improvement. The judge has been asked to lead a delegation of four additional key leaders from his/her community who has the vision and ability to effect real change in the lives of children and families in transition. Community justice system partners that the judge considers: a member of the bar, guardian ad litem or custody evaluator, child support enforcement agency representative, victim service provider, mediator, and court and/or clerk staff.

- 1) How do you choose a well-rounded team? (so that there is no appearance of favoritism)
- 2) How should the meetings be conducted?

References:

Code of Judicial Conduct:

Rule 1.2 Promoting Confidence in the Judiciary (and Comment)

Rule 3.1 Extrajudicial Activities in General

Rule 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities