

Pandemic spurs Md. family attorneys to search for creative solutions

By: Daily Record Staff Samantha J. Subin ◉ July 22, 2020



The pandemic 'is driving people to have to communicate with each other or reach agreements, even if it's just a temporary month-to-month thing,' says Shelly D. McKeon, a Montgomery County family lawyer. (Submitted Photo)

On March 25, Brian Pearlstein and his client filed for a modification hearing in Baltimore County. After months of waiting and anticipation, the hearing is scheduled for August 31.

His client, a nurse anesthetist based in Texas with a child and ex-spouse residing in Maryland, filed the motion after the state restricted elective procedures. Although Texas has begun to reopen, COVID-19 infections are on the rise, and Pearlstein is bracing his client for the unknown.

"It really is a day-by-day decision," said Pearlstein, a family law attorney at Brodsky Renehan Pearlstein & Bouquet. "We think we're trending down and then all of a sudden, the numbers start coming back up again. We're trying to do the best we can under the circumstances."

Pearlstein's case is just one example of the hundreds of nonemergency Maryland child support and alimony cases left in limbo amid the pandemic.

With courts largely closed for nonemergency matters, a backlog of court proceedings is piling up statewide and a rise in coronavirus cases amid efforts to reopen will only further complicate matters. Some cases have been pushed as far back as 2021, leaving attorneys to creatively resolve alimony and child support issues exacerbated by the economic downturn.

With income fluctuating and stock portfolios, investment accounts and retirement funds in limbo, some clients are settling for less just to resolve cases, said Kathryn E. Deckert, a family law attorney at Stein Sperling.

"In some ways, it's making this calculated decision to say I'm accepting less than I want on the alimony side right now, but this may ultimately be better," she said.

One of her clients ended up settling for less than she probably would have accepted prior to COVID-19. Another case, pending since last July, and scheduled to go to trial in March before the pandemic got in the way, was recently resolved in mediation, Deckert said.

Shelly D. McKeon, a Montgomery County family lawyer, said the courts have already rescheduled one of her five trials to April 2021, and the longer time a trial needs, the more likely it will be pushed.

However, the backlog and closures has made a number of McKeon's clients more willing to discuss and resolve alimony and child support issues together, she said.

"It's driving people to have to communicate with each other or reach agreements, even if it's just a temporary month-to-month thing," she said.



Reaching a compromise on requested reductions to child support is more cost-effective than litigation fees, says Brian Pearlstein, of Brodsky Renehan Pearlstein & Bouquet. (Submitted Photo)

Uncertainty surrounding court hearings and reopening has ultimately left lawyers questioning how to properly advise their clients. While scheduling conferences and hearings have begun remotely, many lawyers are encouraging mediation or resolutions either through counsel or directly between the two parties.

Pearlstein was able to negotiate a temporary four-month reduction in one of his cases, while McKeon has negotiated terms where the individual will take a loan from retirement if available funds aren't at hand.

Deckert said she is building in protective language — like a catastrophic clause — into agreements where clients are concerned with the impact of COVID-19 on their career. Some built-in clauses could allow reductions in payments based on income declines.

Many payees are also accepting temporary reductions in child support, with the understanding that as income increases, so will support. In most cases, reaching a compromise is more cost-effective than litigation fees, Pearlstein said.

"We are in unprecedented times and you have to think creatively and outside the box," agreed Sharon Diamant, a Rockville-based family lawyer. "You don't really have any other option."

Diamant, who said she typically discourages litigation and filings except for extreme and dire circumstances, has filed one modification, that's yet to be given a court date.

Delayed court proceedings are giving payors more leverage in negotiations, some lawyers said. Whereas a payee could typically file contempt motions in court if payments were neglected, getting a court date now can take months.



'In some ways, it's making this calculated decision to say I'm accepting less than I want on the alimony side right now, but this may ultimately be better,' says Kathleen Deckert, of Stein Sperling.
(Submitted Photo)

"(Payors) know that they are controlling the purse strings right now and so they don't have the same vested interest in expediting things," Deckert said. "I think it allows them to have more leverage in negotiations."

While lawyers are urging some clients to file, inconsistencies among jurisdictions — some jurisdictions fail to utilize electronic filing systems — are also pushing out hearings, Pearlstein said. For a large portion of the shutdown, many courthouses were operating or continue to operate at limited capacity.

"You would file and it would just be the kind of a black hole until someone got around to documenting it," he said. "Nothing was moving forward."

Electronic filing is currently available in at least 21 Maryland counties. Both Montgomery County and Prince George's County are not currently set up to handle electronic filing options.

For now, Diamant is continuing to advise clients to pay what they can. Deckert is continuing to push mediation.

"I had an attorney call me the other day and tell me that she's advising her clients that hearings are a year out," Diamant said. "I don't know how far out they are, but that doesn't sound unreasonable to me."