

### *Coronavirus: How It Affects Child Visitation*

For the past couple of months, everyone has been dealing with living in quarantine because of the coronavirus pandemic. Now, as states decide what their next steps will be, divorced parents are tackling how to navigate child visitation. SmolenPlevy family law attorneys Alan Plevy and Kyung (Kathryn) Dickerson provide insight on how COVID-19 can affect child visitation and tips for divorced parents.



Alan Plevy



Kyung (Kathryn) Dickerson

#### **What if the other parent lives in a different state?**

There are many issues that play a factor

in considering visitation during the coronavirus pandemic, a major one being each parent's location. Depending on where the parents live, the child may have to travel to visit the other parent. Normally, that isn't a huge issue, but it has recently become exasperated due to the variation of rules states have as a result of COVID-19 protections. "The most important thing to keep in mind is you want to maintain the child's safety," says Plevy. Plevy suggests you follow the rules of the city or state where the child primarily resides.

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### *Accolades*

Principals Jason Smolen, Alan Plevy, Daniel Ruttenberg and Kyung (Kathryn) Dickerson all received the honor of being named Best Lawyers® for 2021. They are recognized by their peers for their professional excellence in the following legal practice areas:

- Best Lawyers® 2021 Business Organizations (*Smolen and Ruttenberg*)
- Best Lawyers® 2021 Family Law (*Plevy and Dickerson*)
- Best Lawyers® 2021 Family Law Mediation (*Plevy and Dickerson*)
- Best Lawyers® 2021 Family Law Arbitration (*Plevy*)

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### *A Message from SmolenPlevy on the Coronavirus*

Dear Clients, Colleagues and Friends:

As we all work to meet this challenge and ensure that our families are safe, please know that SmolenPlevy is here to assist you. Each day brings news of different changes in how our local governments and courts will be operating and how the federal government is responding.

As we all struggle to keep abreast of the changes and adapt, please know that SmolenPlevy is working to ensure that your matters receive the attention they require while, at the same time, ensuring our attorneys and staff are taking precautions to be safe.

During this period of flux, our priorities are the needs of our clients, family, and employees and we may not necessarily timely update our Facebook page or other social media platforms. If you have any questions on how we are addressing your matter, please contact us directly. We do not have automated voicemail, but we have a live answering service. Our attorneys have been responding to our clients directly, either by phone or email.

We hope that all of you stay safe.

Sincerely,  
SmolenPlevy

## Estate Planning during COVID-19

The COVID-19 crisis offers us a reminder to be prepared and provides an opportunity to take control in these uncertain times. “A lot of people put off estate planning, but now is the time to take care of some of the things you have been putting off,” says Dan Ruttenberg. Now is an ideal time to protect yourself and your loved ones by preparing or updating your will and estate plan. Estate planning is essential to protecting your family and your assets. Good planning can reduce conflicts and tax liability later while ensuring that your assets are distributed in the way that you desire.



Daniel  
Ruttenberg

SmolenPlevy Principals Dan Ruttenberg and Jason Smolen say it's important to review key estate planning topics during the coronavirus pandemic, including:

- Avoiding probate
- Protecting children from creditors and themselves
- Avoiding federal and state estate taxes

- Avoiding court involvement in the event of your disability
- Avoiding traps for the unwary associated with asset titles and beneficiary designations
- Signing the documents virtually

Below is a list of documents SmolenPlevy suggests you have updated:



Jason  
Smolen

- **Power of Attorney:** A power of attorney is a legal document that gives an agent the authority to carry on a person's financial affairs and act on their behalf in the case of incapacitation.

- **Health Care Proxy:** This legal document gives an agent the authority to make health care decisions on a person's behalf if they are incompetent or incapacitated.
- **Last Will and Testament:** This is a legal document that allows a person to direct distributions of property at the time of death. A will also allows you

to appoint an executor who oversees the distribution. Now is the time to ensure your Last Will and Testament and your executor, who will protect and oversee your assets.

- **Revocable Trust:** Many clients employ revocable trusts to do the “heavy lifting” of their estates. Like a will mentioned above, a pour-over will and revocable trust need regular review to ensure your plan matches your current objectives.

“We are seeing more people looking to update their estate plan than ever before,” says Smolen. “Now is the time to make sure your assets and beneficiaries are protected.”

For more information on estate planning during COVID-19, watch Dan Ruttenberg's webinar on Smolenplevy.com or at <https://bit.ly/EstatePlanWebinarCOVID19>. If you have questions about estate planning, contact Dan Ruttenberg at [dhruttenberg@smolenplevy.com](mailto:dhruttenberg@smolenplevy.com) or Jason Smolen at [jdsmlen@smolenplevy.com](mailto:jdsmlen@smolenplevy.com).

## Powers of Attorney: Springing vs. Non-Springing

Estate planning typically focuses on what happens to your assets when you die. But it's equally important (some might say more important) to have a plan for making critical financial and medical decisions if you're unable to make those decisions yourself.

SmolenPlevy Principals Jason Smolen and Dan Ruttenberg say that's where the power of attorney (POA) comes in. A POA appoints a trusted representative (the “agent”) who can make medical or financial decisions on your behalf in the event an accident or illness renders you unconscious or mentally incapacitated. Typically, separate POAs are executed for health care and property. Without them, your loved ones would have to

petition a court for guardianship or conservatorship, a costly process that can delay urgent decisions. “Depending on the state you live in,” says Ruttenberg, “the health care POA document may also be known as a ‘medical power of attorney’ or ‘health care proxy.’”

A question that people often struggle with is whether a POA should be springing or non-springing.

### To spring or not to spring

A *springing* POA is effective on the occurrence of specified conditions; a non-springing, or “durable,” POA is effective immediately. Typically, springing powers would take effect if you were to become mentally incapacitated, comatose or otherwise unable to act for yourself.

A *non-springing* POA offers two advantages:

**It allows your agent to act on your behalf for your convenience, not just when you're incapacitated.** “For example, if you're traveling out of the country for an extended period of time, your POA for property agent could pay bills and handle other financial matters for you in your absence,” explains Smolen.

**It avoids the need for a determination that you've become incapacitated, which can result in delays, disputes or even litigation.** This allows your agent to act quickly in an emergency, making critical medical decisions or handling urgent financial matters without having to wait, for example, for one or more

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# Powers of Attorney: Springing vs. Non-Springing

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treating physicians to examine you and certify that you're incapacitated.

A potential disadvantage to a non-springing POA — and a common reason people opt for a springing POA — is the concern that the agent may be tempted to commit fraud or otherwise abuse his or her authority. “If you don't trust your agent enough to give him or

her a POA that takes effect immediately, how does delaying its effect until you're incapacitated solve the problem?” asks Ruttenberg. Arguably, the risk of fraud or abuse would be even greater at that time because you'd be unable to monitor what the agent is doing.

## **What to do?**

Given the advantages of a non-springing

POA, and the potential delays associated with a springing POA, a non-springing POA is generally preferable. Just make sure the person you name as an agent is someone you trust unconditionally. Contact Jason Smolen at [jdsmolen@smolenplevy.com](mailto:jdsmolen@smolenplevy.com) and Dan Ruttenberg at [dh Ruttenberg@smolenplevy.com](mailto:dh Ruttenberg@smolenplevy.com) with any questions regarding POAs.

## *Five Issues to Consider before Adopting a Stepchild*

Good intentions might seem so simple at first, but human relationships (not to mention the law) can complicate your best-laid plans. Such is the case with adopting the child of your new spouse or partner. As SmolenPlevy family law attorneys Alan Plevy and Kyung (Kathryn) Dickerson explain, there are several questions and steps to think through and discuss before moving forward with a stepchild's adoption.

### **Understand the pros and cons**

Adopting can provide some financial benefits for your stepchild, such as automatically receiving your life insurance and Social Security payments if you pass away. They will also be eligible to inherit other property from you, depending on their age. Adoption allows you to make important medical decisions for them and access their medical records during an emergency (until they turn 18).

“Adoption literally turns you into that child's legal parent, which means you will have responsibilities under the law that you need to fully understand and accept,” explains Dickerson. Moreover, if you adopt your spouse's child, but you and your spouse eventually divorce or your spouse passes away, you will still have legal and financial responsibilities for that child as his/her parent.

### **Is everyone ready?**

It's 2020 and blended families are far

more common. But you and your family need to really be comfortable and ready for adoption. Adoption may strengthen emotional bonds with your stepchild, if your relationship with the child is healthy. If the relationship is shaky, or the child is older and doesn't want to be adopted, adoption could make things worse. “Make sure that you, your spouse, your stepchild, and possibly other children are all emotionally ready to take such a big step,” advises Plevy.

### **Does your counterpart approve?**

Your spouse's ex will need to waive his or her parental rights before you can become the child's adoptive parent. For some families, this may be very straightforward while, in others, this can be fraught with difficulty. It gets even more complicated if your spouse has more than one ex, especially if the most recent ex is cooperative (or deceased), but the earlier one isn't willing to terminate his or her parental rights to the child. “Proceeding without consent could end up causing the adoption to be revoked, which would likely be upsetting to the child and possibly other family members,” warns Dickerson.

### **Contested adoptions**

If the non-custodial biological parent has been out of contact for at least six months with the child you're trying to adopt, you may be able to have that parent's rights terminated on the grounds that they

have abandoned that child. You'll have to show clear and convincing evidence of this abandonment to the court during a hearing.

Another scenario, potentially even more complicated, would be that the child's birth parent objects to the adoption and shows up at the consent hearing to contest the adoption. The court will likely set an evidentiary hearing, at which you would need to convince a judge that the birth parent's objection to the adoption is contrary to the child's best interests. “This might sound like a television drama, but, in real life, a contested hearing is a worst-case scenario you should strive to avoid,” says Plevy.

### **Navigating Virginia law**

Assistance from a family law attorney is highly recommended so you can adhere to the requirements of Virginia law pertaining to a stepchild's adoption. Here is a brief overview of the actions you will need to take per Virginia Code §63.2-1241:

- You have to first file a petition in the circuit court for the county where the other birth parent and spouse live, or the county where your stepchild lives.
- The petition will be a joint filing with your spouse because you need your spouse's (the biological parent's) verified approval.
- You need to obtain consent from

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## Accolades

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- Best Lawyers® 2021 Tax Law (*Smolen and Ruttenberg*)
- Best Lawyers® 2021 Trusts and Estates (*Smolen and Ruttenberg*)

Best Lawyers® is the oldest and most respected peer-reviewed publication in the legal profession. The firm has provided high-quality legal representation to individuals, families and businesses since 1977. SmolenPlevy's individualized and zealous representation of its clients has earned them the respect of their clients, the community, the legal field and their adversaries.

SmolenPlevy is pleased to announce Principals Jason Smolen, Alan Plevy, Daniel Ruttenberg and Kyung (Kathryn) Dickerson have been named to the SuperLawyers® list for 2020. They were recognized by their peers for their professional excellence in the following legal practice areas:

- Business organizations (*Smolen and Ruttenberg*)
- Family law (*Plevy and Dickerson*)
- Family law mediation (*Plevy*)
- Family law arbitration (*Plevy*)
- Tax law (*Ruttenberg*)
- Trusts and estates (*Ruttenberg*)

## In the Community

SmolenPlevy Principal Dan Ruttenberg, Vice President of Devotion To Children, is proud to announce the firm is the Chip Sponsor for Cards 4 Kids™. The event raises funds for child care services for economically disadvantaged families in the Washington, D.C. metropolitan area. This Fall, SmolenPlevy Principal Dan Ruttenberg was recognized by the Tysons Chamber for his dedicated service to Cards 4 Kids.

## Five Issues to Consider before Adopting a Stepchild

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the non-custodial biological parent, unless their rights have already been terminated.

- Once the paperwork is filed and the consent is obtained, the court will set a finalization hearing, and the judge will grant official parental rights.
- If the parent objects, however, the adoption will be deemed contested, and the court will have to set an evidentiary hearing. All parties will offer evidence and testimony on why the adoption is or is not in the best interests of the child.

- Once the process is completed, you can file for a new or amended birth certificate that lists you as the parent and/or a name change, if so desired.

If you're considering adopting your significant other's child, we suggest that you contact Alan Plevy at [ablevy@smolenplevy.com](mailto:ablevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [kindickerson@smolenplevy.com](mailto:kindickerson@smolenplevy.com) to talk through the issues and steps, and make sure you understand how Virginia state law might apply to your situation.

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### What if state regulations stop me from being able to visit my child?

"Throughout this difficult situation, under all circumstances, both parties should keep constantly communicating with the child," urges Dickerson. Communication can be through telephone, email, or videoconferencing. If contact is lost with the child for as long as the pandemic lasts, professional help might be needed to help mend the relationship.

### What if I have a protective order on the other parent?

In many cases, protective orders require supervision during a child's visit. Unfortunately, supervisors are not working face-to-face right now because of the coronavirus. However, videoconferencing on Zoom or FaceTime can be a great way for the child to still visit with the parent and supervisor. The supervisor can monitor the situation and communication, so you have the same protections as before, but keep the communication.

### What if I'm worried about my child becoming immunocompromised?

A unique issue that has been brought to light is whether or not a child should quarantine for a two-week period after visiting the other parent. For information regarding the health and procedures recommended for your child, please contact your doctors.

"During this time, parents need to work together. There are no rules, so you have to make up rules that work best for you and your child," says Plevy.

Do what's best for the child's safety. Maintain a healthy and communicative relationship. The primary importance of it all is that both parents get to spend time with the child.

If you have questions about how to navigate visitation issues during the COVID-19 pandemic, please contact Alan Plevy at [ablevy@smolenplevy.com](mailto:ablevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [kindickerson@smolenplevy.com](mailto:kindickerson@smolenplevy.com).

*Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*