
WIN-WIN CHILD CUSTODY

HOW TO OBTAIN A CUSTODY
AGREEMENT THAT IS GOOD
FOR YOU, YOUR CHILDREN
AND YOUR EX

BY: JOE PASTORE



Win-Win Child Custody

**How to Obtain a Custody
Agreement that is good for
you, your children & your ex**

By: Joe Pastore

Acknowledgements

I would like to acknowledge those individuals without whom this book would not be possible. First I would like to acknowledge Jim Artiano of Artiano & Associates, APC for his contributions to this book and guiding me through my divorce. His feedback and calm demure proved invaluable.

I would like also like to acknowledge David Kuroda, LCSW. He has provided mediation services to over 8,000 families. He is a member of: *A Better Divorce*, *LAWCDP*; and the *LA Collaborative Law Association*. He was recognized by the National Association of Social workers (NASW), NSAW in California for the Lifetime Achievement Award in 2003; honored for his contributions to help establish Collaborative Divorce by Collaborative Practice California; and, in 2007, he received the George Nickel Award, awarded by California Social Welfare Archives.

Thank you Chris Moore of Moore, Bryan, Schroff LLP, located in Torrance, California for your time and insight. Chris is a member of Collaborative Divorce by Collaborative Practice California.

I also want to thank Bill Strachan from The Law Offices of William M. Strachan in California. Bill is a Certified Family Law Specialist by the California State Board of Legal Specialization with over 28 years practicing family law.

And finally, I would like to thank Commissioner Glenda Vesey of the Torrance Family Court who presided over my first divorce. Her level handedness and sense of humor made it possible to survive the ordeal.

Copyright © 2017. All Rights Reserved.

Table of Contents

1.	Introduction and Overview	1
2.	Background and Getting Organized.....	5
	• Assessment of the Situation – Be Objective	
	• Custody Changes Over time	
	• Common Custody Arrangements	
	• Are Mothers more likely to get Custody?	
	• Are the Courts Biased against Fathers?	
	• Finances	
	• Scheduling	
	• Getting Organized	
3.	Types of Child Custody Arrangements & Settlement Options	14
	• Sole Physical Custody	
	• Joint Physical Custody	
	• Sole Legal Custody	
	• Joint Legal Custody	
	• Collaborative Divorce	
	• Mediation	
	• Types of Orders	
4.	Win-Win Strategies - A REASONABLE PLAN	29
	• Chose the Right Attorney	
	• Be Reasonable	
	• Educate Yourself on the Process	
	• Avoid Costly Mistakes	
	• Strategy	
	• Being Organized	
	• Negotiate and Compromise	
	• Avoid Negative Strategies	
	• Parenting Classes	
	• Be Involved	
	• Choose the Right Evaluator and Judge	

	<ul style="list-style-type: none"> • Create a Successful Parenting Pla • Know Your Liabilities • Be Available • Never Give Up 	
5.	Choosing the Right Attorney	37
6.	The Importance of Creating a Parenting Plan	41
	<ul style="list-style-type: none"> • What is a Parenting Plan? • Why is a Parenting Plan Important? • What goes into a Parenting Plan? 	
7.	Parenting Plan Preparation	47
	<ul style="list-style-type: none"> • Parenting Plan Worksheet • Sample Parenting Plan Scheduling Worksheet 	
8.	Guidelines for Co-Parenting	80
9.	Eight Common Mistakes of Divorcing Parents	88
10.	Parental Alienation	99
11.	Damaging Custody Strategies or Negative Tactics	102
	<ul style="list-style-type: none"> • Move Away Requests • Involving Children’s Protective Services • False Allegations • Allegations of Substance Abuse • Minor Violations • Guidelines for Combatting Negative Tactics 	
12.	The Custody Evaluation	114
	<ul style="list-style-type: none"> • King Solomon • What to expect • Choosing a Custody Evaluator • Custody Evaluation Preparation 	
13.	Conclusion	127
	APPENDIX	129

A Sample Parenting Plan

Chapter 1

Introduction and Overview

One day you wake up and realize the romance is over; your marriage no longer works. So then you start to think about ending the relationship and the implications. Immediately all kinds of thoughts begin to run through your head. How will this impact my children, my life, and my finances? Where will we live? Will the children live with me or my ex? Will I lose my children? Will I have to go through a custody evaluation? Should I fight for custody or just settle for whatever offer is presented? How much will this cost? If we disagree, will I be able to get a fair custody agreement? How do I deal with my negative emotions? Where do I start? Quickly you become overwhelmed with the magnitude and consequences of the decision and the realization that it will impact virtually every area of your life.

Divorce is right up there with death of loved one, job loss, moving and, of course, ending a relationship as one of life's most stressful events. In fact, with divorce you get a bit of each all rolled up into one perfect storm of stress that can test even the most well-grounded people. While some people thrive on stress, most make less than perfect decisions under such demanding circumstances. During a divorce, you are experiencing many powerful emotions while attempting to comprehend the fallout of ending a relationship, the possible loss of your children and your home and the financial carnage that follows. This is a difficult state of mind for making well thought out decisions. Common sense becomes scarce. And it is magnified knowing that if thought out poorly, it may

haunt you for the rest of your life. It has been said that there are as little as six days or events that define the course of our lives. Divorce is definitely one of them. I have gone through two divorces and subsequently two custody evaluations. I didn't request either but was awarded additional custodial time as a result of both. You may have noticed I did not use the word 'win'. That is because no one really wins custody. But if you focus on what is important, which is your children, take the high road and you are successful, both parents will be given the opportunity to do what is best for your children. Hopefully you will rise to the occasion.

I want to share the lessons that cost me hundreds of thousands of dollars in legal bills and years to learn in an effort to not only reduce your legal bills but also preserve your child's mental health and help you retain your sanity. And you cannot put a price on that! Have you ever heard the saying, 'if you think education is expensive try ignorance' or 'it is much easier to raise a child right than to try to fix a broken adult'? In order to help you avoid these pitfalls, I will cover the key areas you will need to know if you want to have shared custody. Throughout the book I randomly alternate between 'child' and 'children.'

I will guide you through the custody process and give you strategies for obtaining a fair, practical and well thought out custody agreement. I have also included a list of mistakes parents make during divorce and custody and how to avoid them. I will reveal in Chapter 4 one of the most important techniques to influence children to want to spend more time with you.

Let me stress right up front **that nothing is more important than your children**. Your primary goal should be doing what is best for them. If you start with this premise and work backwards, things will fall into place. Do not focus on

timeshares or support payments. Every decision you make should start with the premise of doing what is in the best interest of your children. Take the time to create a Custody Agreement that works for the children and both parents. The more you compromise and work together, then the better off you and your children will be. The more you fight and prolong the process, the more your children will suffer and the more expensive the process will become. So be smart and put your ego and emotions aside. Ask yourself if you would rather use your savings for your children or your attorney's children!

Let's start examining what custody entails and what will have to be done to make it win-win for all of you. You must protect your children from becoming casualties of divorce as much as possible. It is critically important to your child's mental health to allow them to love the other parent and reassure them they are loved. Clarify to your child that the divorce is not their fault.

David Kuroda of LCSW has had a decade's long career as a social worker, counselor and mediator. He has helped some 8,000 families navigate the stress of separation and divorce. He has seen firsthand that dividing a family is never easy, but it doesn't have to come at the cost of a child's well-being. "It's not the divorce that hurts children," he says. "It's the way parents get divorced, and the amount of conflict between them, that harms children."

David Kuroda shares a few tips about how couples with children can "uncouple" in healthy ways. In 2017, he wrote an article in the USC Trojan Family release entitled, "How Parents Can Help Kids with Deal with Divorce." The link to the article is:

<https://tfm.usc.edu/a-social-worker-explains-how-parents-can-help-kids-deal-with-divorce/>

Below is an excerpt from the article ‘8 ways to help kids through a divorce’:

1. Tell your children the divorce is not their fault and remind them of it as often as you need to do this. Reassure them that you will always love them.
2. Even if you’re worried about money and feel uncertain, remember that (as parents) we have to give our children hope for the future. You might tell them that you may live in a smaller house or not take as many vacations, but that you’ll continue to love each other and be a family no matter what.
3. Love your children more than you hate your soon-to-be ex-spouse. Put your children’s needs first, and don’t make them feel like they have to choose sides.
4. Make a Parenting Plan that includes when the children will be with each parent. The plan should spell out where they will live, and should keep their routines for clubs, sports and school.
5. Stay consistent about expectations for school. Try not to let sympathy and sadness persuade you to allow the children to skip their schoolwork.
6. Try to work things out with your spouse by agreement, not by litigation. Keep your money for your children’s college funds and not for your attorney’s children’s funds.
7. Even though the courts can’t require payment of college tuition fees, parents can include this in their agreement.
8. Often attorneys can help with financial resources during divorce, including asking the court to help pay attorneys’ fees. There are some low-cost family law organizations that specialize in helping families who have less money, especially when there are concerns about family violence.

Chapter 2

Background & Getting Organized

Assessing Your Situation

One of the first things you will need to do is to assess your situation. In terms of custody, what are your assets and liabilities? What role do you currently play in your child's life? Are you the primary parent or does the other parent take care of most of the child-related responsibilities such as getting them ready for school and driving them to activities and doing homework? How responsibilities are currently divided between you and the other parent? Once divided into two separate households, how much time can you reasonably spend with your child? What does your work schedule like? Is it flexible? If you get a call from the school because your child is sick, can you get there and - if so - how quickly? Do either of you have substance abuse problems? Is there any history of domestic violence? Do you have good rapport with the child? These are just a few of the questions you need to ask yourself to determine where you are in terms of how a court will look at you as a parent with regard to custody. In Chapter 3, I will define and go over the differences between Physical, Legal, Joint and Sole Custody in detail.

Virtually everything will change once there are two separate households. Will you have the flexibility to be the primary custodial parent? And is that what you want? What is the ideal outcome? Do you want Joint Custody? Can you and the other parent make it work? We all want to enjoy our children and do what is right for them. But do you have the time and energy to be there for them when necessary? Make sure you can answer all these questions and understand the ramifications and commitment of being there for your

children before constructing a custody schedule. Be objective and be reasonable. The following is to give you some perspective and background on the outcome of custody cases over time.

Custody Over Time

Joint legal custody statistics from 1997, gathered from 19 states, found that joint legal custody is awarded to two out of every ten divorce cases involving children.

More than seventy percent of all custody cases result in the mother receiving Primary Physical Custody of the child. Less than ten percent of all child custody cases result in Primary Physical Custody being granted to the father and Joint Legal Custody would rarely be awarded. Initially, there was the ‘Tender Years Doctrine’, in which the courts adhered to the philosophy that during a child’s early years (the ‘tender years’), it was more beneficial for them to be with their mother. Over time, the Tender Years Doctrine began to be replaced by the ‘Best Interests of the Child’ standard.

Today, Joint Legal Custody is very common in child custody cases in most states. Usually a family court will award Joint Legal Custody if it’s requested by both parents, unless there is a persuasive reason why one parent should not be involved in the decision-making process.

Common Custody Arrangements

Sole Custody is the most common type of the Physical Custody arrangement. According to an older study posted on DivorcePeers.com, when parents mediate, Sole Custody occurs 69% of the time (63% to the mother and 6% to the father). When a child custody case goes to trial, Sole Custody is ordered 55% of the time (44% to the mother and 11% to the

father). Joint Custody occurs about 25% of the time if the parents mediate and 40% of the time if they go to court.

Family courts prefer to award Joint Legal Custody, even if Sole Physical Custody is awarded. The reasoning for courts awarding Joint Legal Custody is that it gives both parents a parental voice into the upbringing of the child. Whether to award Joint Physical Custody or not depends a lot on the living arrangements of the parents and the children.

To make Joint Custody work, it is imperative that the parents are able to communicate effectively with each other about issues with their children. If parents are able to co-parent, Joint Custody is the parenting strategy that is likely the most beneficial for the children. If parents are in high-conflict, however, then they may consider parallel parenting (which we will discuss later) as a way to communicate.

Is a Mother more likely to get Custody than the Father?

Statistics from the U.S. Census show that mothers are about 4 to 5 times more likely to have Sole Custody of the children than the father after a divorce. The reasons for this difference are:

- In mediated uncontested divorces, parents agree the mother should have Custody 63% of the time, while parents agree the father should have Custody only 6% of the time.
- In both contested and uncontested divorces, fathers want custody only 33% of the time while mothers want Custody 88% of the time.
- Because fathers are typically the primary income source, they tend to be more career-oriented than

mothers, which can lead to courts finding that mothers with more free time are the best option for child custody.

- Because women are more likely to initiate a divorce than men, they are more likely to be prepared for the divorce litigation than their male partners. This unpreparedness can lead to men signing settlement agreements that lead to them not getting the same custody agreement they might get if the custody case were litigated.

Mediation lets both parties in a divorce work out the details of their divorce decree together, without a family court having to decide. The advantage of mediation is that it gives both parties control over the wording in the divorce decree.

According to a DivorcePeers statistic, when parents mediate, mothers get Sole Custody 63% of the time, while fathers only get Sole Custody 6% of the time if they mediate. Also, in mediation, the parents will elect to have Joint Custody 25% of the time. Contrasted with going to Court, mothers get Sole Custody 44% of the time and fathers get Sole Custody 11% of the time. Joint Custody is awarded 40% of the time if the case goes to trial.

This demonstrates that fathers typically decide they don't want to fight for child custody when they mediate. Why this is the case is unknown, but some possible reasons are:

- Parents who mediate may have one lawyer involved, and that lawyer is only able to represent one party.
- The person who does not initiate the divorce is not prepared to litigate for child Custody, and mothers initiate divorces. According to a study done by AARP, 66 percent of women who divorced say they were the ones who asked for the divorce.

- A father who is career-oriented might decide that the best thing for the children is for the mother to get custody during the week, while the father is able to get visitation on weekends.
- A father might simply assume they are unlikely to win custody in courts, so they settle.

How does going to Court affect who gets child Custody after Divorce?

Ironically, going to court will reduce the number of custody arrangements where the mother is the primary custodial parent. In other words, fathers who mediate will typically not get Sole Custody or Joint Custody. While it is still much more likely that a mother will get custody if a child custody case goes to court in a contested divorce, the chances of a father getting custody almost double when compared to mediation.

Are courts biased against Fathers in Child Custody cases?

Often, the question of bias by judges is brought up because of the discrepancies between men and women getting custody. Yet to understand if bias is or is not occurring, it is first necessary to understand what methodology a court uses to evaluate custody decisions. The best interest of the child doctrine is the standard used in all 50 states and the District of Columbia. The Best Interest of the Child standard replaced ‘The Tender Years Doctrine’, which presumed a child is best raised by his or her mother. Even though courts shifted from the ‘Tender years Doctrine,’ many people, including some father's rights groups argue that the courts remain in the mindset of the Tender Years Doctrine.

It would be impossible to say that bias does not take place. That would be like saying nobody in the United States remained prejudiced after the Civil Rights Movement. The real question is: "How significant is bias toward women by courts, in determining child custody?" To possibly be biased, the court must obviously be in a position to decide on a child custody case. Many cited statistics don't take into account the number of custody situations where the parents mediated. Looking at statistics that simply show how many mothers versus fathers have custody doesn't provide an accurate indication, because most child custody decisions are mediated via an uncontested divorce. But, looking at trials only, a father will be awarded custody one-fourth of the time that a mother would. Bias is one possible explanation, but not the only explanation.

The Best Interest Doctrine forces courts to evaluate how much time each parent will be able to spend with the children. If the father has a career that takes him away from the children more than the mother, this is likely to hurt his chances of getting custody. Also, if the father is not the initiator of the divorce, he may still be going through the grieving process, while the mother is seeking legal counsel and preparing for divorce litigation. Both of these reasons can lead to fathers not becoming the primary custodial parent without court bias being the cause.

Finances

Setting up and maintaining two households may cost virtually double the cost of one household. If you are the primary wage earner, then there is a high probability that you will be paying support. And the court does not take into account your expenses; therefore, you may be required to pay so much that it will be impossible for you maintain your previous lifestyle and spending habits. So in all likelihood, both of you are

going to have to change your lifestyle, create a budget and reevaluate all of your expenses.

In most states, the more custodial time you have with the child, the less you will pay or the more you will receive in support. For this reason, even if not equipped to handle it, most parents will ask for more time with the children. But assuming it is now costing you approximately twice as much to live as prior to separation, how much can you afford to put towards lawyers for custody and divorce related issues? If you have a high level of conflict, it can go into the hundreds of thousands of dollars.

The sad truth is that many couples in a high conflict divorce who are reluctant to compromise will end up filing for bankruptcy. While lawyers know this, often times they do little to reduce the level of conflict. We will talk more about this later on, but you should have a plan for financial survival. Even if it means you have to spend less time with your child and pay more in support. Your single largest expense in a divorce may be your legal bills, so don't underestimate the cost of fighting or prolonging the process and the negative impact it will have on both you and your children. If the divorce goes on for four years and your legal bills average \$4,200 a month that will be over \$200,000! If you don't adapt to your budget and change your spending habits, then you may not survive financially. The sooner you realize your financial reality has drastically changed and you need a new realistic budget, the better you will be able to adapt to your new expense structure. A good financial plan will also help you make the best use of your custodial time. You should ask yourself about every contested issue: "Is it worth fighting over this if I end up having to file for bankruptcy?"

Scheduling

When are you available to be with your child? What time do you get out of work? Can you pick up the children from school and get them to activities? How does this contrast with the other parent's schedule? Do either of you have family or friends who can pick up the child? Will there need to be daycare? What about holidays and vacations? Can you alternate major holidays? You will need to create a worksheet of when you are available. In Appendix 'A,' I have included a sample Parenting Plan and timeshare worksheet in which you should complete before proposing a custody schedule. You should carefully think through the scheduling process. This will be the most challenging part of custody. Be honest and realistic about what is best for your children, as well as what works for you and the other parent.

Getting Organized

Throughout the divorce process, you will accumulate a lot of paper, charts, schedules and legal documents (just to mention a few). You will need to remain organized. It is helpful to put together binders with blank tabs on which you can write. I recommend one binder just for court documents, as they will accumulate and you will need to reference them from time to time. You should also create a second binder for custody-related documents. You should include a preparation checklist for custody that includes: chronology of events, a parent involvement log, calendar, references, times you are available worksheet, your Parenting Plan and any other relevant documents, lists, tables or charts that might be relevant to your situation or the court. You will need to prepare your case. So, if you start thinking through all these custody scheduling-related issues and answer these in an objective and non-emotional way, then you will have taken a huge first step in the right direction.

Divorce and custody will be like another full-time job. First, you need to get organized and think about what is best for your child and what you want. Then, you need to work your way through the process. One of the lessons you will learn is that there is a huge administrative component to the divorce process. It is better to not rely on your lawyer for every detail. The more you do, the less your lawyer does and that will save you thousands of dollars. There will be many documents like Declarations, Income and Expense Statements and Statements of Assets and Liabilities that you can create entirely on your own, or at least create the content for yourself. Do not use your lawyer for this, as you will be needlessly running up legal expenses. There is nothing in these documents that requires preparation by an attorney. One of the things I did that worked very well was ask my attorney for 2 redacted copies of documents they prepared for other clients. I would then prepare it myself and just have the lawyer fine tune it, as opposed to creating it themselves. This is also true for contact logs, timelines, chronology of events, a parent involvement log, calendar, references etc...

Remember, your lawyer works for you. Let them do the legal work. But it is completely unnecessary for them to do the administrative work, which is really the bulk of it. Family law is not rocket science. If you take the initiative and do your part, then you can significantly reduce your legal bills.

What to Expect from a Typical Day in Court?

So you finally get all your paperwork together, your lawyer is prepared, and you have a hearing time of 8:30. Your lawyer agrees to meet you at the courthouse at 7:45 a.m. You check in with the bailiff, only to find out there are fifteen other cases that day. The judge does not come out until 9:15 a.m.; he or she starts calling and hearing cases. You continue to sit

around. The next thing you know, it is lunch time and they have only heard five cases so far. You come back at 1:30, only to have a case which is 'Pro Per,' meaning that one or both parents are representing themselves without legal counsel. As they try to explain what they want, the judge keeps interjecting while explaining the court protocol and procedures to them. You tell your attorney you will be out in the hallway as this is painful to sit through. You hope he will come out to get you soon when it is your turn for your case will be heard. Unfortunately, he never does. After an hour, you go back in. The next thing you know, it is already 4:15 p.m. The judge informs you they will not be able to get to your case that day. They ask when you will be available to come back. The earliest date is two months out. By the time you go back and forth with your ex and the two lawyers, the new mutually agreed upon date is 3 months away. You reluctantly agree and go home. The following week, you get a bill from your attorney for that day for \$4,750. The detail explains that it is for 9 hours (which includes their driving time) at their hourly rate of \$500 per hour. And, you realize that you accomplished absolutely nothing. Moreover you come to the realization that this very well can happen to you next time as well. The simple reality is that you are going to be paying your lawyer to sit around most of the time you go to court. You originally budgeted \$50,000 in legal bills for the entire divorce. Now you are starting to wonder. That may be a colossal understatement, as you are now a victim of the system. You never calculated that you would be paying for the inefficiencies of the court system.

Hopefully this will be your motivation to find a way to mediate, or in some way settle, without a judge having to decide for you. Otherwise, this is likely to be a very expensive process that can be drawn out for years.

Chapter 3

Types of Custody Arrangements & Settlement Options

Before I get into the legal distinctions of child custody, I think it is important to put this in perspective. As I mentioned in the first chapter, you should focus on having a Parenting Plan that works for both parents which is in the best interest of the children. The actual timeshare and legal title is less important. If you start with what is best for the children and what works for both parents, while working backwards to see how the timeshare comes out, then it will ultimately work out better for everyone. If you get too caught up on legal terminology such as ‘Primary Custodial Parent,’ then you will start down the wrong path and it will get very expensive. Your legal bills mount from trying to put a square peg in a round hole. Please keep this in mind as you think about the significance of each of these distinctions. What is really most important to you? Is it the money, the emotions, your ego or your children’s futures?

What is Child Custody?

Child Custody is the Legal term used to describe the living arrangements and the decision-making authority that a parent has over a child following divorce or separation. Child Custody agreements outline a parents rights to make decisions on behalf of their children.

The type of child custody agreement that is ordered by a family court will determine where the child lives, what type of visitation schedule might be used, who will be responsible

for making major decisions on the child's behalf, and how much child support is to be paid by the non-custodial parent. The two different types of Child Custody are **Legal Custody** and **Physical Custody**.

Legal Custody

Legal Custody grants a person authority to make major decisions on a child's behalf. The parent with Legal Custody is the one who makes decisions about school, medical care, religion and other child-rearing, in other words, all the long-term decisions.

Physical Custody

Physical custody determines where and with whom the child will live. It refers to who has the right and responsibility for the day-to-day care of a child. Typically the child lives with the parent who has Physical Custody and that parent is called the Custodial Parent or Primary Custodial Parent. The other parent, called the Non-Custodial Parent, will typically have a visitation schedule and be required to pay child support to the custodial parent.

Legal Custody and Physical Custody together make up Child Custody, but it is also important to realize that it is possible (and common) for parents to share—or not share—both Legal and Physical Custody. This leads to four different custody classifications.

1. Sole Physical Custody

Sole Physical Custody is a child custody arrangement where the child physically resides at one home. As opposed to Joint Custody, where the child has two homes, Sole Custody does

not have the child move from one home to another via the terms of the custody agreement.

Instead, the non-custodial parent will visit the child. This may include sleepovers at the primary custodial parent's home. While there are some benefits to Sole Physical Custody, like a more stable routine for the child, the drawback is that the non-custodial parent feels more like a visitor than a parent. This has the tendency to increase conflict and confuse the child as to what parental say each parent should have in the child's life. Because parenting involves much more than activities during a visit, Sole Physical Custody robs the non-custodial parent of their chance to really parent the child, as would be the case in a Joint Custody arrangement with a co-parenting lifestyle.

2. Joint Physical Custody

Joint Physical Custody (sometimes called ‘shared Physical Custody’, or ‘Joint Custody’) is a type of child Custody arrangement that grants the physical component of child custody to both of the parents after a divorce or separation. When Joint Physical Custody is awarded both parents are considered to be the custodial parents of the child. This also means that neither parent is considered to be the non-custodial parent.

Joint Physical Custody is the preferred option for cooperative parents. But, it's only one of many options that can work for divorced parents and for children. The term Joint Physical Custody is derived from two different terms: 1) Joint Custody, and 2) Physical Custody. Physical Custody refers to where the child resides. But when "Joint" Physical Custody is awarded, both parents share a significant amount of time with the children.

Physical Custody does not imply which parent has the decision-making authority for major decisions. Legal Custody, by contrast, refers to which parent or guardian has the responsibility to make the important decisions about a child's upbringing. If parents have Joint Legal Custody, then they must consult with one another on big decisions such as religion, schooling, medical care and the like.

Parents can have Joint Legal Custody if they don't have Joint Physical Custody. Often divorced parents don't have Joint Physical Custody due to living too far away from each other, yet they share Joint Legal Custody. Even though one parent is the non-custodial parent and has less parenting time, significant decisions regarding the children are to be made together between both parents. Neither parent in a Joint Legal Custody arrangement is able to make long-term decisions unilaterally.

Although rare, divorced parents can have Joint Physical Custody if they don't have Joint Legal Custody. This arrangement occurs where both parents share Physical Custody but one parent has rights under full Legal Custody to make significant decisions regarding the children. This arrangement may allow for parents to avoid conflict, since it is structured around one parent being responsible for significant decisions, rather than both having to reach an agreement.

Because Physical Custody refers to where the child is being cared for, the parent with Physical Custody still must be able to make decisions about the child when they have the child in their care. This brings up an important point about what decisions constitute major decisions vs. the more minor day-to-day decisions that anyone in a child's care would be expected to make.

The simplest way to explain the types of decisions that are made via Physical Custody versus Legal Custody, is to apply

an idea we invented called the 'Babysitter Test'. Essentially, think of the decisions a babysitter might be expected to make as being the same types of decisions that the Physical Custody component of child custody allows. Babysitters would make decisions about daily issues, such as: what to make for dinner, what time the children should go to bed, whether it is too cold to play outside, etc. Physical Custody allows the same types of decisions.

Legal Custody is different. Major decisions—like what religion the child should be brought up - would not be made by a babysitter. If a decision would be inappropriate for a babysitter to make, it is likely a "Legal Custody" decision. If a decision is a Legal Custody decision, and the parents have Joint Legal Custody, then both parents need to be aware of the issues and work out the solution together.

Physical Custody decisions, conversely, do not have to be discussed. It would be impractical for the parent with Physical Custody at the time to call the other parent and ask how to handle every decision.

Joint Physical Custody has its pros and cons. The following are advantages of both parents having shared Physical Custody:

- A child can experience a childhood being raised and influenced with each parent. Children usually want a relationship with both parents, and a Joint Physical Custody arrangement can help maintain the connection children have with both parents.
- Each parent is equal in the eyes of the court; neither parent feels relegated to a lesser parenting role than the other.
- The time each parent has with the children can be approximately equal; however, it is important to understand that Joint Physical Custody does not

automatically mean that both parents have exactly equal time with the children. Instead, both parents have "significant time" with the children, which can be arranged when the child Custody schedule is created.

- The parents are likely to share the expenses of raising the child in a more equitable manner. Child support may be significantly reduced or eliminated since both parents might have the children almost the same amount of time.
- Visitation does not exist with Joint Physical Custody relationships so neither parent is referred to as visitor.
-

The Disadvantages of Joint Physical Custody are:

- Because there will be two homes, the children will need to adapt to two different environments.
- Frequent custody exchanges can create a stressful and disruptive situation for the child.
- If parents do not live very close to one another, then a child's ability to commit to extra-curricular activities, such as sports or social clubs, can be diminished.
- Joint Physical Custody is much easier in low-conflict relationships where the parents can co-parent. In high-conflict relationships, having to communicate often can lead to more arguments and more conflict.

The following are important factors to consider when developing a Joint Physical Custody schedule:

- The distance between you and the other parent
- The distance to your child's school
- Work schedule of both you and the other parent
- Other obligations

- How to handle unexpected matters when they come up
- Who will get the kids if school is cancelled or the child is sick
- Activities or clubs the children participate in regularly
- Vacations

Parents can choose from a variety of shared custody schedules from one week on to one week off, to having children half the week during the week. Note that it may be advantageous to give a schedule a trial period before modifying the divorce decree. This will help each parent identify issues before committing it to writing.

3. Sole Legal Custody

Sole Legal Custody is a court order that grants Legal authority to one parent and one parent only for the right to make major, long-term decisions on a child's behalf. Decisions that fall under the domain of Legal Custody include educational decisions, religious upbringing and health care decisions.

Sole Legal Custody is different from Sole Physical Custody. A parent with Sole Physical Custody is referred to as the custodial parent. They have the Legal authority to decide where a child will live, although some restrictions might apply depending on the state or if a relocation clause has been signed. The custodial parent is the one who primarily cares for the child and makes arrangements to ensure they have adequate shelter and a stable environment. Legal Custody does not deal with where the child lives, but rather how the child lives. It is possible, and fairly common, for one parent to have Sole Physical Custody but have Joint Legal Custody.

The primary custodial parent only applies to the Physical Custody component of child custody. Being the custodial parent does not imply anything about how Legal Custody is applied. Generally, if both parents want Legal Custody and they can demonstrate an ability to cooperate, then they will get Joint Legal Custody. This means they will need to find ways to work together in order to compromise on major decisions that fall under the domain of Legal Custody. This can be easy if the divorced or separated parents have similar beliefs and ideas, but if parents have different opinions on how a child should be raised, then conflict can result if the parents are not able to communicate and compromise.

The advantages of Sole Legal Custody are that you alone get to make major decisions on a child's behalf so conflict may be reduced. Joint Legal Custody can result in more arguments if parents are unable to communicate without high-conflict. The parent with Sole Legal Custody does not have to communicate their decisions with the other parent. This might reduce conflict.

The disadvantages of pursuing Sole Legal Custody are that one person's decision is typically not as good as two. Even those with sound judgement can benefit from hearing another person's opinion. When it comes to children, the two people who are likely to love and care about them more than anyone are their parents. Having two parents, who each want to do what they think is best for the children, is typically will help parents arrive at the best decisions for the children.

Anything that might result in conflict between parents can lead to litigation, and threatening to take away Legal Custody from the other parent can do just that. If the other parent wishes to remain involved in the children's decisions, they are likely to fight for Joint Legal Custody.

Assuming a person decides to litigate for Sole Legal Custody, a family court may order it if there is a history of neglect,

abuse, or some other activity that makes the other parent unfit. Assuming that the other parent is not unfit, it depends on the judge and the jurisdiction. If the jurisdiction has a history of awarding Joint Legal Custody, then the court is likely to order Joint Legal Custody. Assuming Joint Legal Custody is ordered, it is imperative that both parents work to create a detailed Parenting Plan that they can adhere to so future arguments are reduced or prevented regarding Legal Custody decisions. A well thought out Parenting Plan can help alleviate potentially contentious issues in the future.

If you have Joint Legal Custody, you are required to consult and discuss major decisions with the other parent before implementing them. If you fail to do so, you risk being taken back to court and being found in contempt. In such a situation, it is possible that a Family Court could change the court order to give Sole Legal Custody to the other parent.

Again, this is why it is so important to understand the differences between Physical Custody and Legal Custody. Just because a person is the primary custodial parent doesn't mean they are free to make long-term or child-related decisions unilaterally.

4. Joint Legal Custody

Joint Legal Custody is the Legal term used to describe both parents sharing the responsibility of making long-term decisions for the children after a divorce or separation. Joint Legal Custody means that the major decisions about the child's life, must be discussed and worked out by both parents. These major decisions may include education, health and dental care, emergency care, religious practices, and extracurricular activities.

The term Joint Legal Custody is derived from two different terms: 1) Joint Custody, and 2) Legal Custody. Legal Custody is the component of child custody that gives a parent all the rights to make decisions about the child's upbringing. When there is Joint Legal Custody, the decision-making authority is shared equally between the two parents, as if they were still married.

If Joint Legal Custody is ordered, both the custodial parent and non-custodial parent have the same Legal Custody rights. The primary custodial parent has no more decision-making authority than the non-custodial parent.

Having Joint Legal Custody can put a lot of pressure on the primary custodial parent, because they are obligated to consult and collaborate with the non-custodial Parent about all big decisions. For example, if the primary custodial parent wants the children to go to church, but the non-custodial Parent is an atheist, they must work to find a way of collaborating on the issue. This can create major conflict if the parents refuse to cooperate and compromise.

The benefits of Joint Custody are that the child benefits from co-parenting. While not as ideal as a traditional nuclear family, there are significant advantages to Joint Legal Custody when the partners are able to co-parent. Co-parenting requires both parents to communicate about the children after the divorce. This tends to be more beneficial to the children and their relationship with both parents as the children grow into adulthood. It is always better to have two perspectives. Having two parents discuss and compromise on Legal Custody questions typically makes the ultimate decision better than if just one parent acted unilaterally.

The disadvantages of Joint Legal Custody are that because Joint Legal Custody requires that parents to collaborate around significant decisions regarding their children's welfare, in which disagreements can result in conflict. If

parents become too unwavering on certain decisions, they could find themselves in a situation where it is impossible to make a good decision.

Parallel Parenting is an arrangement in which divorced parents are able to co-parent by means of disengaging from each other, limited direct contact, in situations where they have demonstrated that they are unable to communicate with each other in a respectful manner. Parallel Parenting is necessary if the parents are unable to resolve conflict. A detailed Parenting Plan is especially necessary in high conflict situations when there is Joint Legal Custody.

When parents cannot agree, or one parent feels the other violated the terms of the Parenting Plan or Custody Agreement, then one parent may file a complaint and take the other parent back to court. However, depending on the situation, this may have a negative result both legally and financially. It is advisable to try mediation before going to court. Often times the judge may simply force the parents to mediate before hearing a complaint regarding custody. In general, a judge's mandate is to get you through the divorce and out of the system. Coming back after everything is settled rarely produces a good result. It demonstrates that you have difficulty cooperating. In general, you want to avoid going back to court for such issues unless they are critically important or circumstances have changed significantly.

When divorced parents agree to approach decisions by considering what is in the child's best interest, then it can help reduce conflict. The following are common examples of disagreement that affect parents with Joint Legal Custody:

- Where the child is to go to school?
- What religion if any for the child?
- How will a child's health condition be dealt with?
- What activities the child is expected to participate in?

The following are tips to resolving these decisions:

- Seek out support from a neutral party such as a family therapist or professional mediator;
- Have both parents writing down a list of pros and cons about the applicable decision;
- Brainstorm (note when brainstorming, ideas are not to be rejected);
- Identify any options that allow for a compromise;
- Consider if both viewpoints can be implemented (i.e. a child might be exposed to two different religions);

What happens when the parent with Primary Physical Custody moves to a different place with the child when there is Joint Legal Custody? Typically, one parent is awarded primary custodial parent when a Joint Legal Custody arrangement is granted. Usually when a primary custodial parent wants to move with the child to a different place, they will file a petition for a move. The other parent usually is then notified and the Court will make a ruling considering the best interest of the child.

When distance becomes a factor, this will affect certain aspects of Legal Custody. For example, a parent may not be able to enroll the child in sports or extracurricular activities because it would interfere with visitation.

How does a court determine the type of child custody arrangement after a divorce? Typically, dissolution of a marriage involves negotiations and/or disputes over how child custody should be allotted. Child custody is often decided by a Family Court according to the Best Interest of the Child Doctrine or “Best Interest” standard. This means the judge will attempt to determine which type of child custody arrangement would be the most beneficial for the children involved in the child custody case.

A few of the factors that affect the court's child custody order are:

- the type of work schedules that the parents have
- where the parents live and where the child has lived
- substance abuse history for the parents
- child abuse history for the parents
- a history of abandonment
- the relationship that the parents have with the child

There are many other factors that the court is likely to look at as it evaluates the child custody case, but it will do so within the framework of the Best Interest of the Child Doctrine in the United States.

So what issues should parents consider before signing a Child Custody Agreement? Before signing a Settlement Agreement, both parents should take time to seriously consider the ramifications of the documents of which they are signing, even temporary ones. The documents will likely affect the quality of life for the children and both parents, as well as child support payments until the children reach adulthood. Many parents make a critical mistake of assuming that a temporary Custody Agreement is not important. Sadly, this results in many divorced parents getting into a disagreement later that requires additional litigation.

Joint Custody is something to seriously consider. It can lead to co-parenting and help keep both parents involved in the children's lives. While a parent might not initially consider the idea of Joint Physical Custody as the best option, it does offer some protection against one parent relocating out-of-state. Note that Joint Physical Custody does not necessarily imply that each parent has a 50/50 Custody schedule. It merely implies that neither parent is the non-custodial

parent. Even in the case of Sole Custody, a relocation clause should also be considered as a way to prevent one parent from moving without consent of the other.

What is Collaborative Divorce?

The California Collaborative Association uses a method known as Collaborative Divorce for resolving divorce and custody where divorcing parents work with a team of professionals to craft their own agreements. The parents work together in a respectful way, keeping in mind the importance of protecting their children and other involved people from conflict. Decisions are made by the participants without the involvement of a judge.

By being committed to the Collaborative Process, and an approach to solving problems by reaching mutually agreeable solutions, parents and professionals work together respectfully and in good faith, to gather the information needed to reach an agreement. The goal is a win –win situation for all participants.

Both parents and the Collaborative professionals agree at the outset that the case will be settled, not contested. If the case cannot be settled, the attorneys and other professionals must withdraw, and the attorneys will assist the participants in finding new attorneys to help them settle the case through the traditional court system.

Typically parents and professionals meet together to plan for information gathering, make interim arrangements, and discuss issues. A team will be assembled based on the participants' needs and can include attorneys, custody coaches and child specialists, financial experts, and other professionals

as needed. Information gathered will be shared with the other clients and team members in order to clarify each participant's interests and generate ideas for possible solutions. All communications made during the Collaborative Process remain confidential and cannot be used as evidence if the case later goes to court. A settlement which meets the approval of all clients can then be fashioned. This method of handling conflict is designed to minimize hostility.

This Collaborative approach is becoming more popular. Similar to mediation, in order for it to work, both parties must be committed to resolving the dispute. But if successful it will save both parties time and money.

Mediation

Mediation gives parents trying to decide child custody a chance to resolve disagreements about a parenting plan for their children. In mediation, the parents have the help of an expert (a mediator) in resolving these disagreements. If the parents are able to work out an agreement, the mediator helps the parents write a Parenting Plan that may then become a Custody and Visitation order, if it is signed by a judge. Most judges will require the parents to go to Mediation to see if the parents can reach agreement without the intervention of the court. The goals of mediation are to:

1. Help you make a Parenting Plan that is in the best interest of your children.
2. Help you make Parenting Plan that lets your children spend time with both parents.
3. Help you learn ways to deal with anger or resentment.

It is good to use mediation early. It is a tool, not a concession. Jim Artiano of Artiano & Associates, APC Attorneys says; “The earlier you settle, then the more money you save that can go to your children.” If mediation does not work, you can always litigate later. But it is better to at least give mediation a fair chance.

Mediation is confidential. If the parents cannot reach an agreement, then nothing discussed in mediation can be used in Court. The mediator can only inform the court that no agreement could be reached. It is possible for the mediator to make recommendations with regard to a custody evaluation, restraining order or that the court appoints an attorney for the child.

Types of Orders

There are different types of custody orders that can come about in a variety of ways. In some cases, parents agree or ‘stipulate’ to a Custody Agreement and have it filed with the court. In other cases, the judge makes the decision. It is helpful to understand the different types of orders and their significance.

Temporary Custody Orders

Temporary Orders are meant to be just that, temporary. However, one of the biggest mistakes a parent can make in the family courts is to agree to a temporary order, thinking it will be easy to change it later on. Temporary Custody orders are rarely temporary. They usually establish a precedent that then adds the extra obstacle of again changing the children’s routines later on in future custody proceedings. Often times, these orders become permanent and also influence future Custody determinations. Temporary Custody orders are

commonly implemented at the beginning of a divorce proceeding until a full Custody Hearing takes place, and in some cases, until a Custody Evaluation is completed. A time passes, the temporary arrangement becomes the status quo. If at all possible, you should obtain a favorable temporary Custody Agreement from the outset.

Stipulated Orders

When Parents choose to mutually agree to modify their parenting schedule without the use of the court, it is known as a Stipulated Order. It is best to have their agreement filed with the court in the form of a Stipulated Order so that their agreement can be enforced. Stipulated orders are generally signed by both parties and by the judge; furthermore they include a list of the parental agreements, usually with regard to custody and visitation.

Final Judicial Orders

Final judicial orders or judgments generally result from a decision made by a judge. In terms of custody orders, a Final Judicial Order is also referred to as a Judgment or Permanent Custody order.

Ex Parte Orders

Ex Parte Orders are emergency orders based on one party's request. A parent would make an Ex Parte request when it appears to the court that a child's life or safety is in jeopardy. In some cases, an Ex Parte Order can be granted without hearing from the other side. A hearing is usually set within a day or two, so both parties may be present. Judges typically prefer to avoid Ex Parte hearings, because it is not uncommon for the other side to file an Ex Parte response shortly after presenting its side of the story. Also, realistically, there are

not too many times when the child's life or safety is being threatened that can be averted in at a court hearing two or three days later.

Kick Out Orders

Kick out orders are often initiated during a divorce to remove one party from the family residence. Typically, these judges hold the position that if one party objects to living with the other; they should not be forced to live in the same residence against their will, especially if children are involved.

Chapter 4

Strategies for Win-Win Custody

A R E A S O N A B L E P L A N

I want to point out that I did not entitle this chapter, Strategies for ‘Winning’ custody. I want to reinforce that the concept of ‘winning’ when it comes to custody is a misnomer. There are no winners. And, it is the wrong way to look at it. Divorce and custody is about dividing up a family. Your focus should be doing what is best for your children. That will require you to make compromises when you come up with a plan for dividing your children between parents and households that will not cause them psychological damage in the future, but instead allow them to grow to loving well-adjusted adults that lead meaningful, successful lives.

The following is an outline of most of the major issues which you need to consider to and strategies you should embrace to obtain a fair custody arrangement that is win-win. There are many considerations and steps to the process. Each situation is different. The level of conflict between you and the other parent will determine how much each is willing to compromise. This will be paramount. Even if you both agreed on everything and there were no lawyers involved, the process

would still take six months. If you can't agree on custody, it may take years to get through the process. But no matter what your particular situation may be, there are 15 areas that if you address properly, will prepare you and put you in a favorable position with the judge and evaluator as well as help you do what is best for your children. In an effort to make this easy to remember, I have created an easy to remember acronym.

A R E A S O N A B L E P L A N

'A REASONABLE PLAN' is the acronym for the 15 areas you will need to focus on to obtain a reasonable custody agreement. These are not necessarily in order of importance or order of how they should be implemented. Not every point will apply to every situation. But if you are just starting out and getting organized, you should evaluate where you are on each of these issues. Many of these are so important that I have devoted an entire chapter in this book. This is meant to be a big picture guideline to evaluate where you are and understand what you will need to do to get started in the right direction.

A Attorney – Choosing the right Attorney. Do you know what to look for and what questions to ask? How do you avoid the wrong attorney? This should be one of the first and most

important steps that we will discuss in Chapter 5.

- R Reasonable – Do you have Reasonable Expectations? Do you understand the process? You should do everything possible to settle, mediate, utilize a collaborative divorce team or a private judge. Fighting, refusing to find middle ground to settle and going to trial is the most expensive and least satisfying way to go.

- E Educate – Educate yourself and understand the process. Here is where a Custody Coach can really help. It is better if you don't have to ask your lawyer a hundreds of questions, as that will be the most expensive and least effective solution. Use your lawyer for legal matters. They are not the best resource when it comes to parenting issues.

- A Avoid Costly Mistakes. Be proactive and not reactive. Think of this as a marathon not a sprint. In Chapter 9, I list eight of the most

common mistakes parents make during divorce and custody. Take a moment to become familiar with these so you can avoid making these mistakes.

- S Strategic – What is your strategy? Are you taking the High Road? Are you using inclusive language such as “our child” or “our son” or “our daughter”? You should never use the word “my” when referring to the children in legal documents or when speaking with the judge or custody evaluator. In California, as well as many other states, the parent who is seen to be most likely to encourage “frequent and continuing” contact between the other parent and the children will be the parent who is considered to be more suitable to be the primary custodial parent. If you act in ways to alienate your children from the other parent, you will be adversely affected in court. You will also be doing your children a disservice.

- O Organized – Be Organized and Prepared. You should have binders for court documents and

binders for custody-related documents. You should also have a preparation checklist for custody that includes: chronology of events, parent involvement log, calendar, references and any other relevant documents, lists, table or charts that might be relevant to the Court. Also, clean up your record. Do you have any financial issues pending, which includes tickets or liens against you? Anything you can do to diminish a potential case against you from blemishes you may have from your past can save you time and aggravation later on.

N Negotiate and Compromise – Shockingly, neither parent will receive everything they want. So, by definition, you will have to compromise. First, you should explore Mediation and Collaborative Divorce. These are the best options for you, your children and your financial health. Be open-minded when negotiating. But ultimately, you should understand which issues are most important when negotiating so you can position yourself so you both have some wins.

- A Avoid, but Be Aware of Negative Strategies and Tactics – Many parents will lie and make up stories about Domestic Violence, Substance Abuse and sexual abuse. Do not ever put yourself in a position where such a tactic can legitimately be used against you. Even if it is not true, this causes problems which may give the accusing parent an advantage over you in custody. Also remember that no matter what accusations come up, you must focus on the positive. We will discuss this further in Chapter 11.
- B Be the Better Parent by taking parenting classes. This is a must for all fathers.
- L Be Involved In your Child's Life. – Don't be the Disneyland Dad. This means being involved in daily activities as well as sporting events and major life events.
- E Evaluator – Do you have the right judge and do you know how to choose the right

evaluator? You cannot usually change your Judge unless both parties agree to it, yet this is will be one of the most critically important factors in determining the outcome to your case. You can file a case where the judge may be more favorable to your situation.

P Parenting Plan and Custody Agreement – You will need both. The sooner you start on the Parenting Plan, the better understanding you will have of all the issues in your child’s life. You will have to plan for these, to increase the chances of getting what you want by thinking through all of the issues, ideally before the other parent.

L Liability – What is the downside of every decision you make? Bankruptcy, therapy for the children, loss of job, loss of children and loss of financial security are not uncommon in divorce and custody proceedings. Often these can be avoided or minimized if you try to work through the issues instead of taking a non-compromising or emotional stand. What are

your assets and liabilities as a parent? Do you know what a judge or custody evaluator will consider important?

- A Be Available as a Parent, for time is the secret ingredient. Spend twice as much time and half as much money. This may mean you have to alter your work schedule. Most bosses will understand.

- N Never give up on your child, even if things are looking glum or don't initially go your way. This is especially true if you are being alienated from the child by the other parent. The process is long and arduous. There will be wins and losses. If you do the right thing, then someday you will be rewarded and your child will know the truth. But more importantly, raising your children right will be the most important thing you will ever do.

There is one final strategy I will give you that will motivate your children to spend more time with you.

I say this partially tongue in cheek but sadly there is truth to it. Either consciously or unconsciously, kids will gravitate towards the household with the faster and more reliable internet. It is a sign of the times in which we live. So take that for what it is worth. But keep it in mind if you are setting up your household.

Chapter 5

Choosing the Right Attorney

How do you find the Right Attorney?

To begin your search for the right attorney, you can start with trying to find an attorney that specializes in Family Law, Divorce and Child Custody Cases. Designations to look for are CFLS Certified Family Law Specialist (CFLS) or AAML American Academy of Matrimonial Lawyers (AAML). Lawyers who are part of the AAML must be chosen by their peers. They must have significant experience with large complicated cases. They are members of an elite group of lawyers who are on top of their game.

While designations are significant, that is only part of picking the right lawyer for you. Experience and background are equally as important. When interviewing prospective attorneys, you should find out how much of their practice is dedicated to Family Law and child custody issues. You should ask what type of track record they have and if they have experience in similar cases. Ask their opinion of your case and what they believe are the likely outcomes. You should find out what strategy they would use if retained and what and what are the strengths and weaknesses of your case. You should also know what their plans are for reaching a settlement. And, if a settlement is not possible, then what is their trial experience?

Ideally, you want a lawyer that has experience dealing with your judge. If your lawyer knows and has rapport the judge, then it will make all the difference. It can save you time, money and can give you an advantage. During my divorce, my ex's lawyer did not know the judge and used a tactic that completely backfired. The court changed judges in the middle of the case. Her attorney, without knowing the new judge, tried to dramatically make the case that I was the one dragging out the case and needlessly running up legal fees. The attorney wheeled in a cart with twelve banker's boxes of legal documents. The judge saw this and shouted, "This ends now!" Needless to say that her theatrics helped my case because her attorney did not know the judge.

Another question you should ask when interviewing attorneys is if they have experience dealing with opposing counsel. If so, ask them about their experience with them. If they never worked with opposing counsel, they should at least become familiar with their track record and style.

Aside from gathering information on a prospective attorney's background, reputation and track record for settling cases, you should also take into consideration their attitudes and styles. Some lawyers assume you will 'BK' (file bankruptcy) before it is over, especially if they see a high degree of conflict and a lack of willingness to compromise. They may demand large retainers and, instead of trying to diffuse the tension and negotiate a compromise, they might fan the flames of anger and resentment. "Don't worry; we won't let her get away with that." It is best to avoid this type of lawyer if you want to emerge financially solvent with a reasonable settlement. Also, if they believe you will be forced into bankruptcy, it may influence how they try your case. Once your funds run out, the effort they put forth for you will decrease if not cease completely. Attorneys can and do fire their clients. Now,

while it is in attorney's interest to win your case, your financial position may have a direct relationship on their strategy. Attorneys have an inherent conflict of interest. While on the one hand they want to win, on the other hand they may be pressured by their firm to bill as much as possible.

You are better off with an attorney who is good at negotiating and settling as this will decrease your chances of having to file bankruptcy, even if opposing counsel is overly aggressive. While it is not always possible, it is better to avoid going trial. In fact, most courts will require mandatory settlement conference meetings with mediators to save the court time as well as see if you can work things out between yourselves. Of course, this is the best way to go but if the other parent is unreasonable, this may not work. But you should use this resource to save yourself time and money.

In the end, a divorce is about dividing up families and assets in a reasonable and hopefully fair manner. In other words, it is about compromise. Divorcing parents rarely get everything they want and most divorcing parents feel like they were raked over the coals by their lawyer, the court and the other parent. The longer the divorce and custody drags on, the worse it gets. The judge wants to get you through the process as quickly and fairly as is practical. If the judge perceives you are being unreasonable or dragging your feet, it will reduce your chances for a good settlement and increase your legal fees. The best attorney will help you move through the process at a reasonable pace and in the end make you feel that you reached an equitable compromise or settlement. Choosing the wrong attorney will always cost you more, not just financially but also emotionally and how you feel about the settlement.

Choosing the Wrong Lawyer

While it is important to find the right lawyer, it may be even more important to avoid the wrong lawyer. If you are unreasonable in the eyes of the Court, even if it is on the advice of your lawyer, then it will end up costing you in a variety of ways. You should view your lawyer as an expensive employee. If they are not doing their job properly, it can substantially increase legal fees. You need to choose your lawyer carefully.

You should also make a realistic effort to educate yourself to have at least a basic understanding about how Family Law works with respect to custody. Do not use your lawyer as a therapist or for emotional relief. This will prove to be a very expensive misallocation of resources. That is one reason why it is best to have a Custody Coach who is not an attorney.

Running Up Legal Fees

“I don’t care how much it costs; I want them to suffer for what they did.” Other than to delight your attorney about how much they are going to make from you, this statement demonstrates the wrong attitude and will both get you in trouble as well as cost you in the end. *“I am the Mother so I deserve the bulk of the custodial time.”* *“He makes more than me so he is paying my legal bills so I will accuse him of everything under the sun”.* The legal firm of ‘This is yours and that is mine’ loves to hear statements like these. Many fathers also initiate extensive battles to be the Primary Custodial Parent in an effort to reduce support payments. Unfortunately, many mothers use increased support payments as their motivation for not agreeing to Joint Custody as well. In states like California, it is easy to take this tact as support is based on the amount of custodial time you have with the child. But this is a mistake. I knew a Dad who wanted to be the primary custodial parent, even though he was not available during the week and living in his girlfriend’s trailer with her

kids, just to minimize support payments. Not surprisingly, the judge did not agree.

Some states may make you responsible for paying the other parents legal fees not only based on your ability to pay but also if they feel you are unnecessarily running up the cost of litigation. And this is true, even if you are only following the advice of your attorney. During my divorce, my ex outspent me on litigation 4:1 and I earned double what she made. But in the end, I was only required to pay a fraction of her attorney's fees despite her ongoing request for me to pay 100% of her fees because I always tried to negotiate and compromise. Be sensible, take the high road and try to minimize your legal expenses. And when it is over, you will be very glad you did.

Chapter 6

The Importance of Creating a Parenting Plan

What is a Parenting Plan?

A Parenting Plan is an outline of how parents divide their responsibilities and time with regard to their children. It is one of your most important tools in the custody process. It takes into account both parents and children's obligations and availability for creating a schedule that works for everyone. Parenting Plans define the post separation world in which the children will live and operate, and specifically define the role of each parent. It addresses the challenges of children living in two different homes.

Why is a Parenting Plan Important?

1. It helps parents think through the process of shared custody and outlines the responsibilities of each parent.
2. A carefully crafted Parenting Plan can help parents avoid future misunderstandings and conflict which ultimately is better for the child.
3. It will demonstrate to the Court that you are organized and have thought through all the relevant issues. If you are the first to prepare a reasonable Parenting Plan,

it may it may provide the basis for negotiations or even put the other parent in the position of having to show why your plan is not in the best interest of the child.

4. Children do better when both parents have consistent and meaningful involvement in their lives. The Parenting Plan is the guideline for allowing this to happen.
5. It will ultimately become the nucleus of the Custody Agreement. So you will want to be on top of every issue in it. And, your writing of this, instead of your lawyer, will of course save you in legal fees. If you don't create a Parenting Plan, then you are relying on the courts, your lawyer or the other parent to create one for you. Take the initiative and opportunity to create a Parenting Plan that you believe reflects your child's best interest.

What goes into a Parenting Plan?

A Parenting Plan details the role of each parent. It outlines Physical Custody which is the time each parent will have the child. It will serve as the blueprint for vacations, as well as what happens on holidays and special days. It will detail how and where exchanges will take place. It should also define Legal Custody as to which parent has responsibility for making decisions about the child. If the parents have Joint Legal Custody, then it usually requires both parents to communicate and agree about major decisions. This section provides a framework for making decisions about the child when both parents are not available or the parents cannot agree.

The outline of the time the children will spend with each parent is the most important part of the Parenting Plan. You

will need to construct a schedule to allocate normal time during the Weekday and Weekend Schedule. It must also address the Summer Schedule, Holiday Schedule, Thanksgiving schedule, Winter Break (including Christmas, New Year's, and School Vacation). The Parenting Plan should also address contingencies so there are no misunderstandings later on as well as include the system for the exchange of the children.

It should also include: information about the children's education such as which Parent makes the decisions; extra circular activities; religious training; medical care; mental health care; medical and dental insurance. It should outline procedures for: communication between parent and child; communication between parents; when one parent wants to move and safety issues.

Parenting Plans should take into consideration factors like: the age and temperament of the children, each child's daily schedule, availability of each parent as a caregiver, and the flexibility of the parent's schedules, The distance between each parents home, workplace, and the children's school should be considered as well as the, ability and mode for parents to communicate. It also addresses the ability and willingness of both parents to learn and administer basic caregiving and daily tasks like feeding, bathing, preparing a child for school, helping with homework and dealing with dealing with a variety of problems as they arise such as social, emotional and logistical hurdles. Before completing a Parenting Plan, you should think through issues like:

- How do you want to share responsibilities?
- What are your strengths as a parent?

- How has each of you been involved in each child's recreational activities such as music, sports, and dance or after school activities prior to separation?
- How do the siblings get along?
- What are the child's preferences?
- What are the most important challenges facing each child?

Children need predictability, stability, structure and consistency in their lives. With so much change going on with the children's households, the more consistency and stability you can provide for the child, they better off they will be. And a detailed Parenting Plan is the way to establish a solid foundation.

Parenting Plans should also address the issues financial support including child support. It should also define where the child is going to school and who is paying for it. Healthcare is another topic that must be addressed for the child, as well as insurance. Other issues to be included are communication between parent and child, religious training, discipline and communication between parents.

Other issues you should consider prior to completing the Parenting Plan are:

- Who will be responsible for pick-ups and drop-offs?
- How will vacations work?

- Who will handle and pay for routine medical and dental appointments?
- Who will handle and pay for non-routine medical and dental appointments?
- What happens when one parent is unavailable for their scheduled time?
- Who will be responsible for childcare when a child is sick and unable to go to school?

As you can see, there are many factors that need to be considered and clarified other than the parenting schedule. Either the Court or your lawyer might require you to prepare a Parenting Plan. The Court will certainly require a Custody Agreement. It may prompt you to consider issues that might you may not have considered before. In the some instances, it gives the Judge and custody Evaluator an opportunity to see where each party stands with regard to parenting issues. Chances are that, if you're litigating, then you are not in agreement. Therefore, the Parenting Plan gives you chance to make your case for each aspect of Custody before the Judge or Evaluator.

With regards to your attorney, it's a huge time and money saver. You eliminate the time spent speaking of hurt feelings and emotions and instead focus on your ultimate goal of how and when to spend quality parenting time with your children.

Some other positive benefits of a creating a Parenting Plan is that:

1. It reveals your level of commitment to being an important part of your children's lives.

2. It demonstrates your understanding of the issues involved in parenting such as: activities, health, well-being, education, religion, etc....
3. It also illustrates to the Court that you are committed to working with the other parent in a reasonable manner for the sake of your children.

A well thought out and clearly written Parenting Plan will also help you avoid common problems that often occur after custody is settled, as well as conflict between the parents after the Custody Order is put into place. This happens because often the Parenting Schedule is vague or not clearly defined. This is especially true around the holidays or when you are in a high conflict situation with the other parent. Normally you may have all your pick-ups and drop-offs through school during the year. But then, when school is not in session for the summer or the holidays, you need to have a clearly defined time and place for pick-ups and drop-offs. Otherwise, there is the potential for massive conflict and misunderstandings. You may know what you meant when you wrote the Parenting Plan, but if it was not specific enough, the other parent may have a different interpretation. So be precise when you write it. It is often best to have someone objective review this to see if it is clear and how they understand it.

Creating a Parenting Plan is the first step to establishing a Custody Agreement. It is important that you think through and detail all the issues of parenting your children and reasonably divide up the responsibilities between the two parents in a way that makes sense for both parents and the children. This will be your road map for your children's lives after divorce. It may be the most task of the entire divorce so give it the time it deserves and seek objective advice before submitting it.

Chapter 7

Creating a Successful Parenting Plan

In the last chapter we discussed the ‘Importance of Creating a Parenting Plan’. This chapter is where the rubber meets the road. We will go through a sample Parenting Plan Questionnaire. There will be a lot of information that should be included in a Parenting Plan. Not all of it may be relevant to your particular circumstances and there may be other topics that need to be added depending on your situation and relationship with the other parent and the children. But this is a good starting point for developing your own customized Parenting Plan.

First you will be required to include your Legal Information such as your Case Number and who is the Petitioner and who is the Respondent. You will also need to include information about the children. Then there will be topics that should be included or addressed in your Parenting Plan. The more detail and the more precise the better. A well-crafted Parenting Plan and Custody Agreement will help alleviate potentially contentious issues and restore routine & a sense of security to your child.

I have then included a Parenting Plan and Scheduling worksheet in Appendix ‘A’. This is probably the most important document you will complete throughout the custody

process so please give it the time and thought it deserves. You probably won't be able to complete it in one sitting and that is OK. That will give you time to think through all of the issues about rearing your children that perhaps, you have not yet thought about.

Parenting Plan Worksheet

This Parenting Plan is between

_____ (Mother) and
_____ (Father).

The agreement is for the period from

_____ to _____.

The parenting responsibilities shall be reviewed annually at the following time: _____.

If a new version of this Plan is not agreed upon at this time, then the preceding agreement shall remain in effect.

Legal Custody

Decision making about the child's non-emergency medical care and general welfare shall be:

Joint (both parents), Sole (one parent)

Mother Father

Physical Custody

This means where the child is any given time and which parent is responsible for everyday decisions.

Joint (both parents), Sole (one parent)

Mother Father

Our child's primary residence shall be with:

Mother Father Both equally

Three Day Weekends

Yes No

 Whenever a Monday is a school holiday (during the school year) or a legal holiday, the preceding weekend shall be extended by 24 hours to include that holiday.

Vacations

Each parent shall have up to _____ days/weeks' vacation with the children each year subject to the following conditions:

Yes No

 Vacation time shall be exercised in increments of ____ days/weeks

 The vacationing parent shall deliver written notice to the other parent designating the vacation at least ____ days in advance and no more than none year in advance.

 Vacations shall not be scheduled so as to separate the child from the other parent for more than ____ days/weeks

 If the vacation falls in the schedule so as to create a longer separation; the vacationing parent shall offer the other parent a 24 hour period with the children just before or just after the vacation

Father shall have first choice for vacation in odd years and Mother shall have first choice in even number years. The parent who has first choice must notify the other parent in writing by May 1st. The parent who has second choice must notify the other parent in writing by May 15th of their vacation choices.

Vacation choices cannot supersede holidays. For example if the Mother has July 4th that year, the Father can choose July 4th as one of his vacation days unless Mother waives her right for that day.

Each parent shall provide the other with a basic itinerary for the vacation at least one week prior to departure to include travel dates, destination and telephone numbers for emergency purposes. If there is a change in plans, the new information shall be provided promptly.

Parents shall be entitled to travel with the child outside of the United States for purpose of

vacations during Court ordered times with consent of the other party.

If a holiday is not specified as even, odd or every year with one parent, then the children will remain with the parent they are normally scheduled to be with.

Special Days

Yes No

Parents shall have Special Days, which are an exception to the usual schedule

In such cases a parent may change the usual schedule for up to 24 hours. This shall occur ___ times each calendar year according to the following agreements:

Written notice shall be delivered to the other parent no less than ___ days and no more than one year in advance.

The notice shall designate the specific time period of the Special Day (i.e. dates and pick-up times and drop off times).

Special Days shall not be scheduled on the other parent's holidays including three day weekends, birthday celebrations for vacations. Special days shall not be scheduled for events in the child's life in which both parents would ordinarily participate such as graduation, performances, or athletic championships.

Special Days shall not be combined so as to separate the child from the other parent for more than the maximum amount of time permitted for vacations.

No more than two special days shall be used together.

The Parent exercising the Special Day privileges shall provide all transportation unless the transition occurs at regular school, day camp or after-school care transition times.

Transportation and Exchanges

Yes No

 On days when one parent picks up the children from the other parent after 6:00 p.m., the parent who was with the child before 6:00 shall ensure that the children have completed their homework and has eaten dinner.

 Parents shall alternate transportation responsibilities to and from exchanges when not done through school or after school care.

 Pick-ups and Drop-offs not through school or after school care shall be at:

Other people who may share the driving responsibilities are:

In the event that the child is ill at transition time, the other parent shall be notified and appropriate plans made for how to care for the child.

The parent with whom the child spends the first part of a major holiday such as Thanksgiving or Christmas shall, at least one week prior to the holiday, notify the other parent in writing of the location at which they shall meet to exchange the children. This location shall be within 25 miles of the other parents' home if no other arrangement is in place.

Right of Refusal

Yes No

When a parent intends to leave the child in the care of someone else for a period of overnight or longer, that parent shall first offer the other parent the opportunity for additional time with the child. Exceptions are: sleepovers at the homes of relatives or friends or similar activities of a primarily social nature.

After School Care

The daycare or after-school care programs in which the child shall be enrolled are:

Yes No

Each parent shall be notified as to where the child will be after school while in the care of the other parent.

Each parent shall remove the child from after-school care if the other parent is not available. The other parent shall be notified promptly as to where the child is and where the exchange shall be.

Education

The children's education requirements shall be determined by:

Mother Father Both Parents

The recommended school for now is:

Other schools to consider in the future are:

The parent(s) who shall attend parent /teacher conferences is (are):

Mother Father Both Parents

Yes No

Both Parents shall have access to school records and personnel

Both Parents shall confer concerning major educational issues such as repeating or skipping a grade, assessing for special education programs or gifted programs.

Written consent shall be provided to remove the child from an existing school or place the child in another school.

Mother Father Both Parents shall be listed as person (s) to be notified in case of sickness or an emergency. Their names, telephone numbers and address shall be listed on all school, caretaker, healthcare provider and activity records.

Enrichment and Extracurricular Activities

Yes No

 The parent who has responsibility for the child on a particular day shall participate in activities such as field trips or athletics.

 Each parent shall get approval from the other parent before planning enrichment activities such as music lessons or sporting activities, when these activities fall on the other parent's time.

 Parents shall consult one another about summer sleep- away camps or day camps by May 1st of each year.

Special needs or talents that need to be addressed in order to supplement the children's education are:

Extracurricular activities that are important for our child are:

Our child shall attend organized activities such as: Soccer, Boy Scouts such as:

Religious Training

The Religion the child shall be raised in is:

The child's religious training shall be handled by:

Medical Care

The parent who shall take the child for medical checkups and treatment is:

Mother Father Other

Receipts for shared medical expenses and an itemized list shall be provided to:

Mother Father Other

Our children's healthcare providers are:

Medical:

Name:

Address:

Phone:

Dental:

Name:

Address:

Phone:

Vision:

Name:

Address:

Phone:

Yes No

 In case of emergency, either parent shall have permission to take the child for treatment. The other parent shall be notified within _____ hours of the incident. Details shall be provided such as the child's condition, location, how to locate a physician, hospital or other healthcare provider.

 Parents shall make medical decisions by consulting with the other parent. If there is a lack of agreement, parents shall seek help for deciding

from:

Information about the child's medication shall be exchanged by:

In case of emergency, the care-providing parent shall contact the other parent. If not available, then the following additional person shall be contacted:

For Mother contact:

Name:

Cell Phone:

Home Phone:

Work Phone:

For Father contact:

Name:

Cell Phone:

Home Phone:

Work Phone:

Yes No

Each parent shall seek routine healthcare for minor or ongoing conditions from the child's regular healthcare provider.

Parents shall coordinate medical, dental and vision care by deciding with the other parent. If no, who will decide?

If there is insurance available for a particular type of healthcare, neither parent shall

select or utilize a healthcare provider who is not a preferred provider under the terms of the policy without the written consent of the other parent.

Mental Health Care

The parent who will decide what mental health professional to go to and who will determine how long the treatment with last shall be:

- Mother Father Both

Payment for the child's therapy shall be made by:

- Mother Father
 Both (Shared _____)

Yes No

 Both parents shall be able to speak with the mental health professional regarding the child's progress or to address ongoing concerns.

 Written consent shall be provided to change or terminate therapy for the child.

Medical and Dental Insurance

Medical insurance for the child shall be carried by:

- Mother Father Both Other
-

Dental insurance for the child shall be carried by:

- Mother Father Both Other
-

A vision care plan shall be paid for by:

- Mother Father Both Other
-

Medical, dental or vision care costs not covered by insurance shall be paid for by:

- Mother Father Both (Shared

)

Financial Support for Our Child

The amount of money that shall be paid in child support:

\$_____ per _____ (week, month)

By: Mother to Father Father to Mother

Support shall be paid according to the following schedule: (example: \$1,000 on the 1st and 15th of each month)

Support shall be delivered:

By Mail In Person Other (Never Use the Child) _____

The Child's Education shall be paid for by:

Mother Father Shared Other

Extracurricular activities shall be paid for by:

Mother Father Shared

Other

State and Federal Tax Deductions for the child shall be claimed by:

Mother Father

Both: Alternate Years

Other financial arrangements that shall be made for the child's future education after high school are:

Assuring Future Support

Yes No

 Parents shall maintain a \$ _____
life insurance policy.

 Parents shall set up a fund/savings
account to be used toward the child's college
education. If yes, describe in detail.

Yes No

 Each Parent shall maintain adequate
clothing and accessories for the child's use with the
understanding that as long as it fits, clothing shall be

used in both households. The child's clothing belongs to the child and shall be used in both households. Clothing purchased by one parent shall either be worn back to that parent's home in the natural course of events within a few days or shall be returned laundered. Items such as jackets, tennis shoes and boots, which do not exist in duplicate in the child's wardrobe, shall move between households with the child. When moving back and forth between the households, the child shall be dressed in properly fitted clothing that is in good condition.

Surname

The child's surname (last name) shall be:

Yes No

 When a parent marries, the child shall be allowed to call the new person "Mom" or "Dad".

(Generally speaking, in most Courts will not allow you to change the surname of your child, even if you change your own name so it probably better to avoid this all together)

Extended Family & Special Friends

Yes No

The child shall maintain contact with grandparents and extended family on both sides. Exceptions to this are:

Other people who are encouraged to be available to the child are:

Communication Between parent and Child

Yes No

Each parent shall provide continuous contact for the other parent by telephone at a specified time.

Parents shall make the utmost effort to facilitate comfortable communication between the child and the other parent. So as to cause minimal

disruption, the following hours are agreed upon:

The parents shall allow the child privacy for telephone conversations with the other parent. No recordings of these conversations shall be made. Conversations shall be no longer than 10 -15 minutes unless it is convenient and agreeable to the other parent.

The parent with whom the child is residing is responsible for ensuring a return call to the other parent within a reasonable amount of time in the event that a message is left or a call is initiated at an inconvenient time.

Parents shall not call the child earlier than 8:00 a.m. or later than 9:00 p.m except in case of emergency.

Parents shall protect the child from exposure to animosity toward or disparagement of the other parent including by family members or associates.

Parents shall not make any negative remarks about the other parent within hearing distance of the child, including the possibility of the child to overhear personal or unflattering telephone conversations of a parent either with or about the other parent.

Communication Between Parents

Parents shall communicate with each other:

Yes No

- | | | |
|--------------------------|--------------------------|--------------|
| <input type="checkbox"/> | <input type="checkbox"/> | In person |
| <input type="checkbox"/> | <input type="checkbox"/> | By Telephone |
| <input type="checkbox"/> | <input type="checkbox"/> | By Email |
| <input type="checkbox"/> | <input type="checkbox"/> | By Log Book |
| <input type="checkbox"/> | <input type="checkbox"/> | Other |
-

Parents shall reach mutual decisions about the child's care by:

Yes No

When one parent makes an important decision affecting the child's life, that parent shall inform the other parent by:

Each parent shall provide the other parent with the address and phone number at which the child lives and notify the other parent within 48 hours of any temporary changes of address and/or phone number.

Each parent shall provide advance notification to the other parent of proposed and forthcoming medical care and shall notify the other parent immediately of any illnesses requiring medical attention or any medical emergencies involving the child.

Each parent shall promote respect for the other parent by not talking in a demeaning way about the other parent in front of or within earshot of the child.

Parents shall assist the child in remembering the other parent on special occasions like birthday or when the other parent is ill.

Both parents agree to never use the child to carry adult messages to the other parent.

Parents shall ask permission before scheduling events involving the child during the other parents custodial time.

Each parent shall provide for the other parent promptly all communications and information regarding the following:

- Healthcare Providers
- Report Cards
- Lunch Orders and menus
- Order Forms for school pictures
- Invitations to special events including school, birthday parties or other activities that fall on the other parent's time
- Notice of other activities involving the child

- Results of all standardized or diagnostic tests or evaluations of child progress, performance and /or ability
 - Other
-

Yes No

 Agreements shall be written in a business style letter and a copy shall be sent to the other parent.

 Parents shall harmonize the child's routines and schedule from house to house. Each parent shall let the other parent know about bed times, nap times and other routines.

 Samples of child's schoolwork and other projects shall be shared with both parents.

Corporal Punishment

Yes No

 Parents shall not use corporal punishment. The expectations parents have on

disciplining are:

(As most Courts restrict or prohibit corporal punishment, you need to as well.)

Parenting Classes

Yes No

Both parents shall be required to finish an advanced skill building parent education program. If yes, what program is suggested?

—

Proof of completion shall be provided to the other parent

When One Parent Wants to Move

Yes No

Each parent shall be restrained from changing the child's residence to outside a 15 mile distance from the child's current school/residence without the written consent of the other parent or orders from the Court.

The other parent shall receive 45 day notice about a pending move away.

Consent

Written consent of both parents is required for:

- Change of the child's regular Healthcare Providers
 - Major non-emergency surgery
 - Participation in dangerous activities
 - Change of child's surname
 - Issuance of a work permit
 - Signing for a driver's license
 - Enlistment in the armed forces
 - Other
-

Safety Issues

Safety Issues that need to be addressed are:

Yes No

 Parents shall not use alcohol or drugs eight (8) hours before assuming responsibility of the child or while the child is in their care

 Firearms shall be safely locked away or stored off premises.

 Samples of child's schoolwork and other projects shall be shared with both parents.

Travel and Passports

Yes No

 The child shall not be allowed to leave the state or country without written approval from the other parent

 The child's passport shall be available to both parents. If no, which parent shall keep the passport? Mother Father

Describe circumstances under which the child shall be permitted to leave the country.

Failure to Comply

Yes No

 Failure to comply with the agreements set forth in this Parenting Plan shall be grounds for taking legal action to correct the situation. If the parent who violates the terms of this agreement such

that the other parent is required to take that parent to Court to enforce the agreement, that the violating parent shall pay the non-violating parent's attorney fees.

Please note, this worksheet does not include every possible issue you may want to address. If you need more space than is provided, attach additional pages. If there are significant safety concerns for children or parents because of domestic violence, child abuse, or alcohol/drug abuse, you should develop a Safety Focused Parenting Plan. If you are afraid for yourself or your children, seek help from others before writing your plan. This Parenting Plan does not change existing Court safety orders which remain in effect until expired or changed by a court order.

Chapter 8

Guidelines for Co-Parenting

Parenting is never easy. When parents' divorce and there are two different households, these difficulties become magnified. Inconsistencies in parenting styles, combined with the emotions associated with divorce, separation and the unknown cause additional stress. In order to help both parents and children through this difficult time, "The Guidelines for Co-parenting" were developed. The Guidelines help divorcing parents learn how to avoid the pitfalls of divorce as well as become more effective parents. If most parents knew how to make their children's lives better, they would. Because of the negative emotions involved in divorce, communication and cooperation between parents often breaks down. The Guidelines for Co-parenting helps parents learn to communicate effectively in a business-like fashion and leave out the emotions involved, and solely focus on the child because often time's parents lose sight of what is important. Instead they get caught up in what the other parent is saying or doing that may seem unfair.

The Guidelines for Co-parenting help parents restructure the way they communicate so they can safely and effectively approach each other. It also gives parents the tools to address outstanding issues involving their children that can range from behavioral problems to scheduling difficulties, etc. It is important that parents learn to communicate effectively after separation as it has been shown that if the communication between parents is impaired, then it will have a negative impact on the child.

When parents follow the Guidelines successfully, often times many of the child's problems dissipate or are greatly diminished. This is because many of the problems that children experience in divorce are either caused or exacerbated by parents who can't or won't cooperate with each other. Children do better when both parents work together and have meaningful involvement in their lives. Each parent has different valuable contributions they make to their child's lives. Parents that work together for their children will not only be pleasantly surprised by how positively the children respond but will ultimately be less likely to have their children experience stress related disorders that require counseling. Children of parents who are hostile and resentful often times require a therapist as a result of the divorce.

For most children, divorce or separation is a traumatic event that requires time, effort and support from both parents in order to heal. The single best thing that parents can do to help their children through this process is to learn to cooperate for the sake of the children by reaffirming and maintaining a commitment to their parental obligations and responsibilities.

Divorce or separation is perhaps hardest on children as they are usually forced to transition between two different households. It is also useful to keep in mind that, while each parent is missing the children some percentages of time, the children are missing one parent all of the time. Don't make it worse on them. Do your best to shield them from the details of the divorce that have nothing to do with them.

Understand that things WILL go wrong. Someone will be late, children will get hurt or in trouble, and the routine in the other parents household will be different than yours. None of these things make either of you a bad parent. But chronic violations of the court order; however, they are serious and should be addressed.

Guidelines for Co-Parenting

- 1) Frequently remind your children that the divorce was not their fault in any way and that you will always love them and remain a part of their lives.
- 2) Learn to view your current relationship with your ex-partner as a business-like, co-parent relationship that focuses only on matters directly involved with the ongoing lives of the children. Refrain from speaking about any other personal or divorce related matters.
- 3) Always communicate about matters involving the children directly with the other parent and never put the child in the middle or use them as a messenger. Asking children to deliver messages to the other parent, however inconsequential those messages might appear, can generate significant anxiety for children, especially if conflict already exists.
- 4) Never speak disparagingly about the other parent to the children, as this causes a loyalty conflict within a child. Your children love BOTH of you equally. Most states specifically prohibit parents making disparaging remarks about the other parent.
- 5) Try to convert your complaints of the other parent into requests for behavioral change from that parent. Beginning requests by using phrases such as, "Would you be willing to:" "I'm wondering if it is possible for you to:" etc., demonstrates both respect and politeness to the other parent, which will go a long way toward establishing cooperation and softening anticipated resistance.

- 6) Never engage in conflict with the other parent in front of the children. Keep all communication with the other parent business-like and positive or at least, neutral.
- 7) When conflicts occur between parents that involve the children, learn to focus on the facts surrounding the actual problems as reported by the children (using their exact words as much as possible), rather than editorializing or exaggerating the events.
- 8) Don't involve your children in your new personal, intimate relationships unless you are certain that the relationship is a committed one that will become an important and integral part of their lives.
- 9) Don't encourage or allow your co-parent to encourage your children to call your co-parent by their first name nor to call a step-parent "Mom" or "Dad".

BILL OF RIGHTS FOR CHILDREN IN DIVORCE AND DISSOLUTION ACTIONS

by The New Jersey Chapter of the Association of
Family and Conciliation Courts

1. The right to be treated as important and separate human beings with unique feelings, needs, ideas, and desires, not existing solely to gratify the needs of their parents.
2. The right to not participate in the painful games parents play to hurt each other, or be put in the middle of their battles.
3. The right not to be a go-between or a message courier for their parents.
4. The right to a continuing, relaxed, and secure relationship with both parents.
5. The right to express love and affection for, and receive love and affection from both parents.

6. The right to know that expressions of love between children and parents will not cause fear, disapproval, or other negative consequences.
7. The right to know that their parent's decision to divorce is not their fault.
8. The right to know that it is not their responsibility to keep their parents together.
9. The right to continuing care and guidance from both parents.
10. The right to age-appropriate answers to questions about the changing family relationships, without placing blame on either parent.
11. The right to know and appreciate what is good in each parent.
12. The right to be protected from hearing degrading or bad comments about either parent.
13. The right to be able to experience regular, consistent and flexible shared parenting time with both parents, and the right to know the reason for changes in the parenting schedule.

14. The right to have neither parent interfere with, or undermine, parenting time with the other parent.

15. The right to not be forced to choose one parent over the other.

16. The right to express their feelings, concerns, and ideas about the divorce.

17. The right to remain a child without being asked to take on parental responsibilities or to be an adult friend or companion to either parent.

18. The right to the most adequate level of economic support that can be provided from the best efforts of both parents.

19. The right to continue ongoing positive relationships with the people (friends, neighbors, grandparents and extended family) who were an important part of their lives before parental divorce.

This Bill of Rights was adopted from "The Children's Bill of Rights" developed by the American Bar

Association, Section of Family Law, and was modified and expanded by the NJ-AFCC Special Projects Committee (Jeannette DeVaris, Sam Forlenza, Donald Franklin, Sandra Saul, Phil Sobel, Frank Weiss.)

Chapter 9

The 8 Biggest Mistakes Parents Make During Divorce and How to Avoid Them

1. Not Acting in Your Child's Best Interest
2. Not Making Your Child a Priority
3. Allowing Your Emotions to get the Best of You
4. Running up Legal Fees
5. Losing Control of Your Finances and Expenses
6. Not Spending Your Custodial time with Your Child
7. Violating the Support Order
8. Parent Alienation or Bad Mouthing the Other Parent

Introduction

It is important to do the right thing. But it is equally important to refrain from doing the wrong thing. If divorce and custody are uncharted territory, you may experience a steep learning curve. As a two-time veteran of this process, I want to share the lessons that cost me hundreds of thousands of dollars in legal bills to learn, which should help you not only to improve your parenting and reduce your legal bills. Likewise these lessons should help preserve your child's mental health as well as help you retain your sanity. And you cannot put a price on that! Have you ever heard the saying, 'if you think education is expensive try ignorance?' In order to help you avoid these pitfalls, I have comprised a list of mistakes parents make during divorce and custody which can be expensive both financially and mentally and how to avoid them.

1. Not Acting for Your Child's Best Interest

'Best Interest of the Child' doctrine is the standard that the court uses for determining how much time the child should spend with each parent. It is important to understand what this means and how to apply it. While it is the standard for custody determinations in most states, not every state uses the same criteria. The courts look at multiple factors in making custody determinations that are in 'the best interest of the child.' While you may think that your child's 'best interest' seems obvious, more often than not parents during a divorce do the opposite of what is best for their children. We almost automatically assume that we are the better parent and the child spending more time with you IS their best interest. Often time's parents miss the forest because of the trees and fail to see the bigger picture. While it is easy to get bogged down in the details and distracted by negative emotions, we must strive

to look at ourselves objectively and make decisions that are best for our children's lives. For example, if you work until 7:00 p.m. yet you want time with your child during the week, it is not realistic or in the best interest of the child to spend all those in between hours in daycare or alone when they could be with the other parent.

Often times we confuse what is in our child's best interest with what is best for us. It is not just my opinion but this is the conclusion of many studies and psychologists that **children need both parents in their lives**. But even more important is how many states now view custody. Frequent and regular contact with parents keeps that bond strong. I cannot say this enough: a child needs both parents. Don't make the mistake of thinking you are the only good parent. Even if you are completely convinced that your parenting style is far superior to that of the other parent and you are right, your child will still benefit from time with both of you due to differences in your personalities, experiences and styles. So take a deep breath and try not to be so critical of what happens when the child is the other parent's household. As long as it does not negatively impact the child in an obvious and verifiable manner, (in other words, not just your opinion) what happens in the other parents household should not be your primary concern. You may feel the need to run back to court to complain about your ex's 'bad parenting,' but you must resist the urge. After all, is there any parent who doesn't feel they are the better parent? Unless the other parent is endangering the health and welfare of your child (once again in an obvious and verifiable manner), you need to accept that parenting styles differ. And this can even be good for your child. We all make mistakes. But the truth is, we tend to learn more from our mistakes than from our successes. The same goes for parenting. Try to stay focused on the big picture. At the end of the day, your job is to raise a well-adjusted, self-actualized, independent adult. It takes a village to raise a child. If you

try to do it alone, or without the coordination of the other parent, you are most likely not acting in your child's best interest.

2. Not Making your Child a Priority

Often times to avoid prolonged litigation, some father's give in to the mother's demands for the majority of custodial time with the child. While keeping the peace is important and minimizing court time is generally a wise strategy, you don't want it to be at the expense of your child. You may not be looking out for your child's best interest if you concede too much custodial time. As mentioned above, children need frequent and regular contact with each parent to form deep and lasting bonds. While you don't want a judge to decide down to the minute which parent gets more custodial time, assuming you are available to spend quality time with your child when it is scheduled, it is a good idea to work towards a reasonable custodial split that works for both parents and the child. Don't give away your kids and miss out on being a significant part of their lives just to compromise.

Temporary custody orders and schedules are very important. If you initially have an agreement that the child is to reside primarily or exclusively with the mother, there is a strong probability that the final court order may be comparable. As soon as you decide to separate, you should request and work out an agreement where you have significant custodial time with your child. Don't make the mistake of thinking that it will change significantly once the court gets involved. Temporary orders set precedents and often times become permanent orders.

But it is also important to keep everything in perspective and remember that quality is more than quantity when it comes to time with the child. It is essential to 'engage' the child. Just

because you are in the same space at the same time, does not mean you spending quality time together. You need to engage in activities that both of you enjoy while maintaining structure and balance in the child's life. Don't be a 'Disneyland Dad' but don't make it all work and no play either. Balance and making your child a priority is the key to raising a well-adjusted child. And making and spending quality time with your child is the best way to make your child a priority. At the Los Angeles Department of Children and Family Services office in Pomona, there is a quote on the wall which reads: *"If you want your children to turn out well, spend twice as much time with them, and half as much money"* - Abigail Van Buren.

3. Allowing Your Emotions to get the Best of You

There are multiple ways emotions can get the best of us during a divorce and custody evaluation. But there are certain people around which it is most important to control your emotions. These are the judge, the custody evaluator, your children and the other parent.

Judge and Evaluator

Often times a judge will form an opinion about a parent by their facial expressions and body language during proceedings. Anger and negativity can hurt your prospects for a favorable outcome in a custody evaluation. Aside from controlling your temper, you need to be mindful of the tone of your voice, facial expressions and body language. You also need to monitor what you say. For example, *"My ex is a horrible person"*, *"she never does the right thing"*, *"he cheated on me"*, *"she is an alcoholic"*, *"he is lazy"*, *"she is destroying our child"* etc... Do any of these sound familiar? Unsubstantiated allegations can damage your credibility in

court. And all of these things are equally, if not more important, when dealing with custody evaluators.

Judges and evaluators have heard it all. They assume you will lie, exaggerate and generally bad mouth the other parent. So not only will these declarations fall upon skeptical ears, but it may hurt your cause as well. A good rule of thumb is ‘Always take the high road’. I had to serve my ex with court papers on a day we happened to be in a courtroom together on a related matter. The judge asked her if she was willing to be served there. She responded, “Absolutely not”. The judge then simply handed the bailiff the papers and served her there in the courtroom. And in the process, my ex helped my case by displaying her anger and demonstrating she was uncooperative.

It is always better to explain why you are a good parent as opposed to why the other parent is the bad parent. I have met many Dads who could write volumes on why their ex was a horrible mother, but had very little to say as to why they were a good father. You don’t have to be a judge to see who is going to be favored in that custody evaluation. An evaluator or judge may ask you about the parenting skills of the other parent. That should not be viewed as the opportunity of a lifetime to blast the other parent. You need to stick to the facts and always present it as a concern. Stay calm and point to examples that can be documented. For example, *I am concerned that my child’s education is suffering because my son has been absent 8 times and late 17 times while in her custody. Here is the report card and the schedule so you can see all of these lateness and absences occurred on her custodial days.* Don’t try to be a psychologist projecting the potential damage to the child of your ex’s poor parenting skills. If you are not an expert, don’t pretend to be one!

Another important characteristic that judges and evaluators look for in parents is the willingness to share. One simple way to demonstrate that you are willing to share the child with other parent is to use ‘Inclusive’ language with words such as ‘our’ child and not ‘my’ child. It goes a long way towards influencing how the judge will view you as a parent.

Child

Usually there are feelings of hurt, resentment and anger at the end of a relationship. This is to be understood. And when there are children involved, these feelings are magnified. But what should be obvious is that it is not your child’s fault! We need to be careful not to transfer the anger, resentment, disappointment we feel toward the other parent to the child. Especially when they deliver some piece of news that we don’t agree with – “*Mom said you have to...*” Our children may remind us of the other parent and sometimes even take their side when they are caught in the middle delivering information we do not agree with or want to hear. But it is imperative that we control our emotions and what we say. When a relationship is over, it is important to change the way you interact with the other parent. Your relationship with the other parent should become more like that of a business partner and conducted professionally and NOT through your child. The child should be shielded as much as possible from your feelings of hurt and anger as well as details of the divorce that are not relevant to them.

The Other Parent

It is critically important that we control our emotions when around the other parent. If you know or believe you will be getting divorced and still living together this is even more important. A negative tactic that is used to gain the advantage before custody is settled is known as the ‘Silver Bullet’. This is when a parent will accuse the other parent of domestic violence. Even if it’s not true, this will put you at a

disadvantage when custody is being determined. You should always be vigilant to stay calm and not put yourself in a position where this tactic can be used against you. No matter how difficult it may be, you should be on your best behavior when interacting with the other parent. Sadly, many parents take the exact opposite approach. We will discuss more negative tactics you must be aware of in later chapter.

4. Running Up Legal Fees

Fighting over things that don't matter in the long run is a very common and costly mistake made by divorcing parents. *"I don't care how much it costs; I want them to suffer for what they did."* Other than to delight your attorney about how much they are going to make from you, this statement demonstrates the wrong attitude and will both get you in trouble as well as cost you in the end. *"I am the Mother so not only will I get full custody, but he will be lucky if he ever sees my kids again."* *"I picked out that dining room set and I am keeping it no matter how much it costs."* *"He makes more than me so he will have to pay my legal bills so I am going to hit him with everything"*. The legal firm of 'This is yours and that is mine' loves to hear statements like these. Many fathers also initiate extensive battles to be the primary custodial parent in an effort to reduce support payments. Unfortunately, many mothers use increased support payments as their motivation for not agreeing to joint custody as well. In states like California, it is easy to take this tact as support is based on the amount of custodial time you have with the child. But this is a mistake. I knew a Dad who wanted to be the primary custodial parent, even though he was not available during the week and living in his girlfriend's trailer with her kids, just to avoid paying child support. Not surprisingly, the judge did not agree.

Some states may make you responsible for paying the other parent's legal fees, not only based on your ability to pay but also if they feel you are unnecessarily running up the cost of litigation. And this is true even if you are only following the advice of your attorney. My ex's attorney wheeled in 12 banker's boxes of legal documents and case files when a new judge was appointed in the 4th year of our divorce to be dramatic. But instead, when the judge saw this, she became enraged and shouted, "*This ends now!*" The reality was that ex outspent me on litigation 4:1 and I earned double what she made. But in the end, I was only required to pay a fraction of her attorney's fees, despite her ongoing request for me to pay 100%. Be sensible, take the high road and try to minimize your legal expenses. When it is all over, you will be glad you did!

5. Losing Control of your Finances and your Expenses

When you divorce, your combined expenses may virtually double as you may need two of many things, especially once you start adding in a second furnished home, child support, alimony payments and legal bills. You are going to have to objectively evaluate your finances and most likely have to change your lifestyle. If you don't adapt your budget and spending habits, then you may not survive financially. The sad truth is many divorcing couples who refuse to compromise may end up filing for bankruptcy. The sooner you realize your financial reality has drastically changed and you need a new realistic budget, then the better you will be able to adapt as you adjust to your new expense structure. A good financial plan will also help you make the best use of your custodial time. You should ask yourself about every contested issue, 'is it worth fighting over this if I end up having to file for bankruptcy?' In fact, you can use a variation of this question as rule of thumb for many issues in divorce, "is it worth

fighting over this it increases the probability of my child ending up in therapy?”

6. Not Spending Your Custodial Time with your Child

If you do not have a significant other at the time of the divorce, it is better to leave it that way until after custody is settled. If you do have one, when you have your custodial time with your child, make sure that you spend it with them and not hand your child off to new significant other or anyone else for that matter. In fact, wherever possible, it may be better if your significant other is not there at all unless you are absolutely certain they will be a permanent part of your children’s lives. Otherwise, she will be dragged into the custody evaluation increasing its complexity thereby making it more difficult to obtain a favorable outcome. I worked with a Dad who wanted to be the primary custodial parent, even though he was not available during the week and living with his girlfriend. He would have his children stay with his girlfriend while he was not even there. Once the judge found out, he ended up having his custodial time decreased. Don’t make this mistake.

7. Violating the Support Order

Once you have a support order in place, you must pay it. If you have a change in your financial circumstances, for example you lose your job or your income decreases significantly, then you cannot simply stop paying support. The order stays in force until the court modifies it. If your financial situation has changed since your last court order, you should check with your lawyer as to what you need to do. You may have to file a modification request to preserve your rights and change the support order. But you cannot just stop paying support without the approval of the court. You can be held in *Contempt of Court* for violating a support order. And this can

cause your custody order to be modified in favor of the other parent.

Now, if you have a good relationship with the other parent, and you believe it is temporary, or if the two of you agree on the change and they will put it in writing, then it is possible to go to avoid going to court to get a modification. But this is fraught with risk so it is better to avoid this scenario. But should you go down this road, make sure you have it in writing and it is clear and well written so there can be no reasonable misinterpretation of the meaning. A better solution is to write up the new or temporary agreement; both sign it and file it with the court without having to appear before a judge.

8. Parent Alienation – or Bad Mouthing the other Parent

Sometimes little things can have significant and unintended consequences. A negative comment about the other parent cannot only have negative impact on your child but also damage or outright violate your custody agreement. In fact, most custody orders will explicitly prohibit making disparaging remarks about the other parent. Just remember, your child is half of both of you. When you make negative remarks about the other parent that your child can hear, either directly or indirectly, it is equivocal to your making those remarks about your child. This is one of the most damaging things you can do, as it can cause the child to feel sad, responsible or the need to side with or protect the other parent. Other potential negative consequences are that they may end up hating or fearing the other parent or the parent who made the remarks. It could also cause the child to feel depressed or to act out at home, during exchanges or towards others.

Parents need to be careful not to speak poorly of the other parent, even when it is not obvious or intentional. Of course

you are going to have negative feelings. And you should express those feelings at the appropriate time and place. But you must be mindful not to do it in front of your children. Especially as this can be a violation your custody order or damaging to your child. Friends, family, therapists, religious or even a bartender is a better to choice for venting your feelings than to your child. You should always try to be positive in front of the children. In fact, outside of custody and divorce, this is always good parenting advice.

Akin to Parental Alienation is putting your child in the middle. Why would you want to cause additional stress to your son or daughter? There are some parents who overtly try to use their child to agitate or get back at the other parent. In other situations, parents may not think about the consequences of using the child for the delivery of messages, even on minor issues such as temporary schedule changes. For example, there is a birthday party for your parents and you want your son to be there, but it falls on your non-custodial weekend. Do not put your child in the middle by making them deliver this message. It puts them in an uncomfortable position. Plus, how often do people react poorly to unexpected news and want to kill the messenger! It is better if you never ask your child to deliver verbal messages. You can phone, text, email or write a note to the other parent. You must shield your child as much as possible from the business of divorce even when you consider them minor insignificant changes. Some parents use a notebook that goes back and forth with the child for this purpose. If you use a notebook just be aware that there is the possibility that child may end up reading it and once again that could cause confusion, guilt, anger or a multitude of other unintended consequences. But if you are careful about how it is done, it can be a useful tool. So be mindful not to ever intentionally put your child in the middle of your divorce. They already have enough to contend with in this process.

Summary

You should attempt to approach divorce and custody in a logical and objective manner. While of course it is very emotional, it is the court's mandate to fairly terminate and divide up a legal partnership. Regardless of what surprises and accusations the other parent throws your way, you should remain positive and take the high road. Try to view it through the court's eyes. The best offense is a good defense. And that begins by not making mistakes that are easily avoidable. Your judgment may be clouded by emotion which is why it is helpful to have a Custody Coach or someone knowledgeable other than an attorney guide you through the process. A Custody Coach can save you money, improve your parenting and help you keep your sanity. At the end of the day, it is in the child's best interest to spend time with both parents. So, hopefully this will help you to avoid some of the common mistakes parents make during divorce which can potentially increase the amount of time you spend with your child. And, ultimately you will be happy you did. There is nothing more important than your child. And while you may harbor anger towards the other parent, don't ever let that misguide you to make bad decisions for your child.

Chapter 10

Parental Alienation

Parental Alienation is a group of behaviors that manipulate the child with the goal of interfering with the relationship with the other parent. It is often damaging to the emotional health of the child. The most common form is when one parent makes negative comments or disparaging remarks about the other parent to the child. The behavior can be verbal or non-verbal. Sometimes it is done as an attempt to manipulate the child into believing that one parent is the cause of all their problems and should be avoided, feared or disrespected. Parental Alienation is not always intentional. When it is deliberate, it is usually an attempt to turn the child against the other parent. Unfortunately, it is quite common in custody disputes.

Parental Alienation can have a serious negative impact on the child. Parents who deliberately brainwash their children often demonstrate other related questionable behaviors as well, which might include: unsubstantiated or unfounded reports of child abuse; interfering with the other parent's contact with the child; telling lies about the other parent; speaking poorly about the other parent to other people in front of the child; questioning the children often about the other parent's care-taking of the child; convincing the child that the other parent is no longer needed and other behaviors that create conflict or damage the child's relationship with the other parent.

If left unaddressed, the effects of Parental Alienation can be damaging to child and difficult to reverse. It can have a permanent negative impact on the relationship between the child and the other parent. Over time, it usually becomes clear when one parent is speaking detrimentally of the other parent. Should you find this to be directed toward you, you may need

professional intervention but whatever you do, don't give up. No matter what happens, you should always be engaging your child and making every effort to spend time with them. Even if the other parent tries to hinder or prevent contact, always keep trying. If helpful, keep a contact journal that details your efforts. Ultimately, the truth usually comes out.

Should you be the target of Parental Alienation, don't resent the children for the things they say or do! Remember that children are young and impressionable. It is not their fault they are being manipulated. You are still their parent and one of the most important authority figures they will ever have in their life. It's natural to feel frustrated, angry, sad, and even depressed about the situation. You may find it helpful to work with a counselor or therapist to manage your feelings so that they don't spill out towards the children when you interact with them. Keep your contact with your children positive. And always strive to be 'child focused' and act in their best interest.

If you feel the other parent is deliberately trying to alienate you from your child, you should document everything and save the proof. At some point, if you collect enough evidence and feel that you can make a compelling case that the other parent is deliberately working to destroy the relationship between you and the child that could be grounds for a change in custody. You should keep a child custody journal or diary and save all emails and voice mails. You can petition the court for a modification in the custody arrangement. It may even be necessary to completely remove the child from the alienating parent to allow the targeted parent the opportunity to work to re-establish a relationship with the child. Professional assistance with someone with specific experience dealing with parental Alienation child custody cases may be necessary.

Parental Alienation can also be unintentional. It is natural to have negative feelings towards the other parent when the

relationship is over. Expressing your feelings is quite appropriate. It's where and how you express those feelings that matters. You must be vigilant to never expose your children to these negative thoughts and feelings. Disparaging comments about the other parent whether intentional or not can violate your child custody order and cause emotional damage to your child. Friends, therapists, counselors, religious or even bartenders are more appropriate for discussing your negative feelings about the other parent.

Your failure to control your feelings when within the presence of your children will have potentially negative consequences, even if it is unintentional. You need to understand that children love both parents and your negative comments may cause them to feel hurt for both of you. They may come to dislike the other parent due to the lack of self-control. The child may develop a fear of the other parent and start acting out during child custody exchanges or at one or both households. But worse yet, the child may become depressed or act out physically towards others at home or at school.

Children are part of each of their parents. When you degrade the other parent where the child can hear it, they may feel are speaking poorly of them. They may begin to identify with whatever criticism you make of the other parent.

If the other parent is deliberately trying to sabotage your relationship with your child, it complicates matters. Parental Alienation takes a lot of work to counteract and can cause a great deal of frustration and damage. When you divorce, along with all of the other changes in your life, more self-control becomes necessary. You must change the way you view your relationship with the other parent from an intimate one to that of a business partner. Even if those feelings are negative, you still have to deal with them and should never share those feeling with the child. Always remain positive in front of the child, as the damage that can be caused by parental Alienation could be permanent. So the best tact is to always

take the high road. Look forward instead of backwards, and consider what is in the best interest of the children. It may very well be the difference between your son or daughter getting side-tracked on road of life and needing therapy or becoming a healthy, independent self-actualized adult.

Chapter 11

Protecting Yourself Against Negative Custody Tactics

It is sad to say, but divorce and custody bring out the worst in some parents. Instead of thinking about what is in the best interest of their children, many parents instead decide to go after and try to smear or hurt the other parent regardless of the damage it can do to the children. The following are some of the more common tactics used to obtain custody:

- Domestic Violence Allegations
- Move Away Requests
- Involving Children's Protective Services
- False Allegations
- Allegations of Substance Abuse
- Minor Custody Violations
- Parental Alienation

As I repeatedly said throughout this book, always take the high road and avoid anything that is negative or damaging to the child. But you should be aware of these tactics and what to do if you are falsely accused. The last chapter was entirely devoted to parental Alienation, as it happens so often.

Domestic Violence and Abuse

Accusations of Domestic Violence and abuse have become so prevalent in custody cases that it has become known as the 'Silver Bullet'. I am combining them together as the impact, outcome and the way the court views them is comparable. If you make an accusation of domestic violence or abuse against your spouse during custody, you immediately have a huge advantage. It is even listed as a tactic in books such as 'Divorce for Dummies' by John Ventura and Mary Reed.

Courts take allegations of domestic violence in child custody cases very seriously. There is always the concern that if the court does not take strong action, the accused parent could wind up later harming the child. For this reason, courts do tend to be conservative when it comes to granting custody or visitation following accusations of abuse. Here's what you need to know about domestic violence and child custody cases.

The reality is at least three million children witness acts of domestic violence annually. Domestic violence in relationships is often the catalyst for one spouse to file for a divorce or to leave a relationship. If there are children involved, the issue of child custody then arises. In such cases, the court must determine which parent will be granted physical custody of the children: the alleged abuser, the alleged victim of domestic violence, or both. Ultimately, it is the court's responsibility to consider the "best interests of the child" regarding incidents of domestic violence in child custody cases. This means that they must defer to what is best for the child's well-being and safety.

The court will consider evidence of recent, and even long-since-past accusations of domestic violence. These are regularly considered in child custody determinations. The court may deny custody to a parent who has been accused of domestic violence if it determines that the parent poses a danger to the child or to the child's other parent, the victim.

Now the problem is that not all accusations of Domestic Violence are true. The good news is that the Courts do not simply take a parent's word for it when considering accusations of domestic violence and child custody. This is especially true when there is no history of domestic violence prior to the time leading up to separation.

Judges generally consider:

- Whether the alleged instances of domestic violence had an effect on, or were directed at, the child
- Whether the accused continues to pose a danger to the child or the other parent
- The severity and frequency of the domestic violence (which the courts may consider to be a strong indicator of future behavior)
- Whether there's a pending criminal case against the accused
- Any physical evidence of abuse, including photographs
- Police reports documenting incidents of alleged abuse

Incidents of domestic violence don't just impact child custody determinations. They also impact whether the accused will have access to visitation. The court may choose to:

- Revoke the accused parent's visitation rights, temporarily or long-term
- Order supervised visitation
- Revise the accused parent's existing visitation order (for example, by revoking overnight visits)
- Order parenting classes or anger management classes
- Order the accused parent to participate in domestic violence counseling
- Issue a restraining order or order of protection

Move Away Requests

Child custody move away cases can be emotional and expensive. Whether you are the one seeking a move away or the one opposing it, most experienced custody lawyers would tell you that move away cases are some of the most emotionally difficult for divorce and family law clients. More than perhaps any other area of family law, move away case creates a bitter division between parents. The parent who seeks to move looks at the challenge to start a new life elsewhere while the parent who opposes the move vows to fight to the end to keep the children from leaving.

Parental relocation clauses are extremely important to consider. According to Vijai Sharma, Ph.D, approximately 17 percent to 25 percent of divorced parents will relocate within one year of being divorced. Parental relocation is one of the top reasons that divorced parents return to court years after a divorce. Furthermore, parental relocation can have drastic effects on the children's quality of life if it interferes with their ability to engage in the same extracurricular

activities that their peers growing up in nuclear families might be able to participate in.

A move away is a serious disruption of most child custody schedules. Having a stable and continuous custody arrangement is one of the most important factors in any custody case. Whenever courts are in doubt as to what custody arrangement is best, they will look to the status quo as the fallback if it has been working, although not perfectly, but well enough for the children. Move away cases are the most disruptive to the status quo because it is a rare instance that the parents can maintain the same visitation schedule if one of the parents seeks to move out of or to another part of the State.

How does Sole Custody versus Joint Physical Custody factor into move away cases? First, the attorney must look at whether or not the parent who wants to move has Sole Custody or Joint Physical Custody of the children. If there has already been a Final Judgment of custody in the case, and the parent who seeks to move has been given Sole Physical Custody, then the non-custodial parent who wants to avoid the move away generally has the initial burden to show that the move would cause a detriment to the children. That is because a parent that has Sole Physical Custody is presumed to be able to relocate with the children so long as he or she gives a proper and legal notice to the other parent of the intent, although there may be exceptions to this rule in certain cases.

What happens if the court order does not allow a move away absent written agreement or further order? In such a situation,

the parent who proposes to move must file a formal request with the court and obtain a move away order. The non-custodial parent still has the initial burden to show a detriment to the children with regard to the proposed move if there has been a Final Judgement and the parents don't have Joint Physical Custody. If the parents share Joint Physical Custody, then a careful analysis should take place as to whether or not the move is or is not in the children's best interest. Family law judges look at this best interest standard with fresh eyes and assume that the parent who requests the move really does intend to move with the children.

If the move away is denied, the judge cannot assume the requesting parent will stay. Parents think that if their move away is denied, no big deal – they will just change their mind. It usually does not work that way, although this issue is not always straightforward. If the move away request is denied, the court should make orders consistent with the requesting parent moving without the children (although not all courts do). That is because the court generally should not assume that parent will stay and judges have specifically stated to a parent proposing to move that they better know what they are asking, because if the judge denies the move away, then the judge is going to give custody to the other parent.

The complexity and sometimes confusion over such issues highlights one point – it is critical that the attorney educate his or her client who seeks a move away that if the move away is denied, there may be a change in custody such that the parent who opposed the move away will attain primary and possibly even Sole Physical Custody of the children.

In addition, the law on move away cases can and does change. Courts don't enact laws but they do interpret them and how they should be understood and applied. That is also why seeking the advice of a family law attorney is important because laws are constantly changing.

How important is the labels of Joint Custody and Sole Physical Custody in the Court order? What actually qualifies as Joint Custody versus Sole Custody? Is it enough that a custody judgment simply lists the parents as having one or the other? The short answer is no. Labels in custody judgments are not final and determinative as to whether or not parents have Joint or Sole Custody. Courts focus on the actual timeshare with the children, regardless of what the custody judgment may say.

What happens when there has not been a Final Custody Order and one parent seeks a move away? In such a situation, the court simply uses the "best interest of the children" standard and does not presume anything for or against either parent when determining whether a move away should be allowed. However, the court will still proceed as if the parent that requests to move away actually intends to do so.

Children's Protective Services

Children's Protective Services should be there to protect the children. Unfortunately, sometimes the other parent will threaten filing a complaint with Children's Protective Services. This is a serious problem as their complaint may be completely unfounded, but nonetheless, the court will take it

very seriously. If you are doing your best to be a good parent, you should not let these threats undermine your resolve to be a parent.

Luckily, there are penalties for false reporting. Approximately 29 states carry penalties in their civil child protection laws for any person who willfully or intentionally makes a report of child abuse or neglect that the reporter knows to be false:

Arizona, Arkansas, California, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, and Wyoming.

In New York, Ohio, Pennsylvania, and the Virgin Islands, making false reports of child maltreatment is made illegal in criminal sections of state code. There are nineteen states and the Virgin Islands classify false reporting as a misdemeanor or similar charge:

Arizona, Arkansas, Colorado, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, New York, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Virginia, Washington, and Wyoming.

In Florida, Illinois, Tennessee, and Texas, false reporting is a felony; while in Arkansas, Indiana, Missouri, and Virginia, second or subsequent offenses are upgraded to felonies. In

Michigan, false reporting can be either a misdemeanor or a felony, depending on the seriousness of the alleged abuse in the report. No criminal penalties are imposed in California, Maine, Minnesota, Montana, and Nebraska; however, the immunity from civil or criminal action that is provided to reporters of abuse or neglect is not extended to those who make a false report.

In South Carolina, in addition to any criminal penalties, the Department of Social Services may bring civil action against the person to recover the costs of investigation and any proceedings related to the investigation. Eleven States and the Virgin Islands specify the penalties for making a false report:

Connecticut, Florida, Louisiana, Massachusetts, Michigan, Oklahoma, Rhode Island, South Carolina, Texas, Washington, and Wyoming.

Upon conviction, the reporter can face jail terms ranging from 90 days to 5 years or fines ranging from \$500 to \$5,000. Florida imposes the most severe penalties: In addition to a court sentence of 5 years and \$5,000, the Department of Children and Family Services may fine the reporter up to \$10,000. In six States, the reporter may be civilly liable for any damages caused by the report.

False Allegations

Often times there will be a variety of false allegations. The severity of the allegation will determine your response. For anything that does not involve the police, abuse or Children's Protective Services, the best response is to simply state, "That is not accurate". If they want to push the issue, then it will shift the burden of proof onto the accusing party. If the court wants to hear more about it, they will ask you. But in general, judge's really do not want to get involved in 'he said, she

said,' especially on matters that do not directly impact the best interest of the child.

Substance Abuse

If either parent has a history of substance abuse, it will most likely be brought to the attention of the court. It should be documented. If the court believes there may be some merit to the claim, then they may order testing either one time or on a continual basis over a period of time.

Minor Custody Violations

Situations may arise where the other parent does not abide by the custody agreement. Once again, depending on the severity of the violation, you must determine the best course of action. The court does not want either of you taking up court time for minor issues. Running back to court for every minor violation will not win you favor with the judge. In fact it is most likely to incur their wrath. It is better to document all violations and then present them to the judge when you have an existing court date. Make sure, however, that you get it on the agenda as when you have a hearing it is for a specific purpose. The judge will not allow you to just speak everything on your mind.

Guidelines for Combatting Negative Tactics

If you're fighting a custody battle with someone who is using negative tactics, below are some guidelines that will help you.

1. Document as much as possible

Keep a journal of everything that happens. When people are lying, they should not be able to document it. When they fail to have detailed records, the Court will take notice. Also, sometimes we are so busy that you may not remember every detail of what happened. Keeping a journal will be important when you need to tell a cohesive story of what has been going on - especially if you need to tell it long after events have transpired. Save every scrap of paper, every e-mail, every text, and every receipt. Develop a way of organizing the information, whether chronological or by topic. It is always good to have a binder or file. Keep copies in a safe place.

2. Have witnesses

It is best not to deal with the chronic liars alone. Otherwise, every interaction then becomes he said/she said. Have a trusted friend or relative present during child exchanges or other interactions as often as possible. You may even want to consider recording and videotaping some of what goes on. However, be aware there are rules to videotaping or recording without consent so it may not be admissible in Court.

3. Get your own information

Do not allow the other parent to control information about your children. Make sure you get information directly from schools, doctors and others.

4. Hire an experienced, competent attorney

Child custody cases with negative tactics are complicated. The other parent may not play by the rules. Your attorney must understand this. The other parent may lie in court, although his or her performance will appear heartfelt like he or she is “just concerned with the welfare of the children.” They may make outrageous accusations. They are also likely to retain an aggressive attorney. Therefore, your attorney must have experience in dealing with such situations.

5. Do not allow lies to become part of the court record

Angry parents lie and may do so convincingly. You should not allow unchallenged lies to become part of the court records. Once they are, they may be considered truth, and put you in a very bad position. Some lies, like accusations of child abuse, may haunt you forever.

6. If you are not a licensed therapist, do not pretend to be one

Do not accuse the other parent of being a sociopath, or having personality disorders etc... Let the facts speak for themselves. If you truly believe they have psychological issues, then have a licensed professional test them and document it. A good custody evaluator should be able to see through the facade of many of the disingenuous tactics. Focus on proving the behavior.

7. Stay calm in court

You must present a calm, professional image when you go to court, even as the other parent may lie or distort the truth. Do not allow the allegations of the other parent, no matter how outrageous, to make you emotional. The other parent may accuse you of being unstable, and you might just confirm it by your behavior in court. Keep your emotions in check, at least in front of the judge and of course the evaluator.

8. Make sure court orders are explicit

Insist on detailed court orders. The order should not say, “Parent has visitation every other weekend.” It should specify exactly which weekends, starting at what times, returning at what times, who is responsible for transporting children, and who is responsible for bathing and feeding them, everything should be spelled out in detail. If there is any ambiguity, the other parent may exploit it or create confusion.

9. Make the other parent abide by court orders

If the other parent fails to honor the orders, document it and report it at the appropriate time. Record any violation. Call the police, if necessary. Continue to document everything that happens, because you may need to go to court again. If you ever decide that you need to change the custody order, you will need evidence to do it.

10. Take care of yourself

You will need all your resources to deal with these negative tactics. Therefore, make healthy decisions in your own life. Eat right, avoid drugs and alcohol, get enough sleep, exercise and develop a support network. In order to care for your children, you must care for yourself. It may be a long road and a test of your physical and mental stamina, but there is a light at the end of the tunnel.

Chapter 12

The Custody Evaluation

Solomon Makes a Difficult Decision

The following story is straight out of the Bible. It can be found in ‘1 Kings 3:16-28’ in the Contemporary English Version.

¹⁶ One day two women came to King Solomon, ¹⁷ and one of them said:

Your Majesty, this woman and I live in the same house. Not long ago my baby was born at home, ¹⁸ and three days later her baby was born. Nobody else was there with us.

¹⁹ One night while we were all asleep, she rolled over on her baby, and he died. ²⁰ Then while I was still asleep, she got up and took my son out of my bed. She put him in her bed, then, she put her dead baby next to me.

²¹ In the morning when I got up to feed my son, I saw that he was dead. But when I looked at him in the light, I knew he wasn’t my son.

²² “No!” the other woman shouted. “He was your son. My baby is alive!”

“The dead baby is yours,” the first woman yelled. “Mine is alive!”

They argued back and forth in front of Solomon, ²³ until finally he said, “Both of you say this live baby is yours.

²⁴ Someone bring me a sword.”

A sword was brought and Solomon ordered, ²⁵“Cut the baby in half! That way each of you can have part of him.”

²⁶“Please don’t kill my son,” the baby’s mother screamed. “Your Majesty, I love him very much, but give him to her. Just don’t kill him.”

The other woman shouted, “Go ahead and cut him in half. Then neither of us will have the baby.”

²⁷ Solomon said, “Don’t kill the baby.” Then he pointed to the first woman, “She is his real mother. Give the baby to her.”

²⁸ Everyone in Israel was amazed when they heard how Solomon had made his decision. They realized that God had given him wisdom to Judge fairly.

There are many lessons we can take from this story. The first is that both the judge and custody evaluator are trying to look out for the best interest of the child, not your best interest. And while you may think that you, as a parent, the child being with you all or the majority of the time is in the child’s best interest, the court may not see it that way. Both the Judge and the Evaluator will be looking to see who the parent that is willing to share and act in the best interest of the child. Think of both the judge and the custody evaluator as King Solomon and you need to make your case why you are a good parent.

If you have major disagreements on child custody or allegations that one of you is a bad parent, or may be doing something that is putting the child in harm’s way, most likely the judge will order a custody evaluation. A judge will rarely rule on who is the better parent without getting an expert’s opinion, such as that of a custody evaluator.

What is a Custody Evaluation and what should you expect?

Child custody evaluations frequently are ordered by courts when the parents disagree about custody, or the judge believes that a detailed assessment of the family would be helpful in determining the children's best interests. The Child Custody Evaluator (also called the custody evaluator or just evaluator) works with the family as a neutral and impartial professional. The evaluator is not an advocate for either parent. The evaluator's primary responsibility is to assist the court. Qualified evaluators are mental health professionals who have specialized training and experience in family law matters in addition to their basic professional qualifications.

The 730 evaluation is a study of the family, its members and their relationship with the intent of restructuring parental rights and responsibilities concerning their children. An evaluation may requested by the parents or ordered by a judge when parties cannot decide on the best custody arrangements for their child. There must be evidence to support a position and a judge, not knowing the family, will depend on the opinion of a mental health professional to describe the parties involved and the nature of their interaction. The evaluation usually includes a recommendation for what would be 'in the best interests of the children' and the court is inclined to accept that opinion. The evaluator can be called into court to testify, either to defend or explain the recommendations and sometimes, they be ordered to conduct further study into the matter. Qualified persons to conduct the evaluation include a Marriage, Family and Child Counselor, a Licensed Clinical Social Worker and a psychologist.

Child custody evaluations consist of several elements. These include interviews of each parent, interviews of each child (depending on age), observations of interactions between each parent and the children, psychological testing of each parent, psychological testing of the children in certain cases, review of collateral documents (such as school and health records), review of case-related documents (such as pleadings and depositions), and interviews of other people who may know the family well such as teachers or physicians. Detailed questionnaires covering the parents' personal histories and relationship with the children often are included also. Child custody evaluations are thorough, because the stakes are high. It is critical that the court obtain relevant and reliable information to assist its determination of the children's best interests. Comprehensive child custody evaluations take place over several weeks, sometimes even several months, and usually cost \$5,000 - \$25,000, depending on the scope of the evaluation. Costs are usually split in some fashion between the two parents.

Child custody evaluations focus on assessing the psychological and parenting strengths and weaknesses of each parent, the psychological status and needs of each child, the quality of each parent's relationship with the children, and other factors specific to the individual case. Evaluators assess factors such as the psychological health of each parent and the impact of any psychological problems on parenting ability; each parent's ability to accurately understand and meet the children's needs; each parent's ability to support the children's relationship with the other parent; the children's perception of each parent and the quality of relationship with each parent; the presence or absence of any special needs in the children and each parent's ability and willingness to address those needs; and how the children's development status impacts an age appropriate parenting plan. The overall

goal is to achieve an in-depth understanding of the family and to offer conclusions and recommendations to assist the court in determining the best parenting plan for the children involved. In most cases, the evaluator will offer specific recommendations to the court for Legal and Physical Custody of the children. Judges are not required to follow the evaluator's recommendations, but usually give significant weight to their opinions. The information obtained in a comprehensive child custody evaluation usually is summarized in a detailed written report issued by the evaluator to the judge and the attorneys. Evaluators also may testify in depositions or court hearings to offer their conclusions and recommendations.

Generally, a custody evaluation will take into account:

- Past and present relationships between the parents and children.
- Each parent's ability and willingness to provide for their children's financial, physical, and emotional well-being.
- Determine if there are any shortcomings or roadblocks that will potentially interfere with a parent's ability to care for or maintain a healthy relationship with the children.
- The willingness of the parents to encourage good communication between the children and the other parent, no matter who has custody. (Fostering a good relationship.)

- Collateral contacts, oftentimes a new relationship between one parent or the other (or both) with a new romantic partner. Close extended family may be part of this process as well.

It's hard to define all of the elements that any specific custody evaluation will cover. There are no guarantees of a 'fair' outcome. You can expect that a comprehensive custody evaluation will include most, if not all, of the following experiences:

1. Detailed interviews. These interview will typically include parents, children, step-parents (or new significant others in either/both parent's lives currently). It may also include extended family members. These are often referred to as "collateral interviews" and will involve persons who would have meaningful knowledge of the children and of the parents in their parenting roles.
2. Psychological testing of both parents. This could extend to step-parents (or significant others) of either/both parents.
3. Observations of the interactions between the children and each parent in a neutral setting using various techniques. More often than not, the technique of choice will involve some sort of play time.

4. Joint-sessions to observe how the parents interact with one another in a controlled environment. They will listen to how you speak, your tone, your gestures, your language, your body language, etc.
5. Home visits at each parent's residence.
6. Review of all of the relevant court documents and materials related to the case.
7. If the children attend school, expect a review of report cards, attendance records, behavioral records, etc. during the current year and possibly prior years.

In reading the official Custody Evaluation report, you will experience a myriad of emotions, many of which may not be good. No matter how qualified of a parent you are, there will be notes in the final Custody Evaluation Report that will point out your weaknesses as a parent and as person. It may be quite upsetting. There will be a lot of “psychobabble”. Try not to get caught up too much in the detail. Focus on the conclusion. They you can inspect for errors although there is not usually much recourse. Once you receive it you will most likely not have any more contact with the evaluator. Look for negative portions about other parent that may be useful in court. Listen to what your lawyer has to say about the strategy coming out of it. But don't let it get under your skin. The good and bad news is that the judge will most likely accept the conclusion. And most likely, some negative elements about both of you will be exposed.

Choosing a Custody Evaluator

As is true in any profession, there are good evaluators and bad evaluators. There is huge variability in the training and experience that of evaluators. Unfortunately, having an Evaluator recommended by the court does not guarantee that he or she has the necessary experience to conduct a thorough and comprehensive custody evaluation in your case. In some instances, being on a family court list may mean little more than having the minimum credentials and that too varies from jurisdiction to jurisdiction.

Since an evaluator has almost unlimited authority in writing his report which essentially decides the outcome of a custody dispute, you should take time to choose one who is both qualified and experienced. How do you find a competent and experienced custody evaluator? Be prepared to do some research by having your divorce attorney contact the evaluator. A good place to start is with evaluators your divorce attorney has previously worked with. Remember, as well, that both parents need to be in agreement on the evaluator. This being the case, it is important to research all evaluators being proposed. The following are some of the things you and your divorce attorney should do in advance:

- Carefully review the evaluator's background
- Find out how many custody evaluations the evaluator has conducted
- Find out if and/or how many times the custody evaluator has testified at a custody trial
- Find out if the evaluator favors Joint Custody or writes recommendations that are favorable toward mothers, or fathers or both parents.

- If parental Alienation or other special circumstances are an issue in your custody case (i.e., addictions, domestic violence, religion, relocation), find out if the Evaluator has had experience in these areas, as well as his or her leanings.

Whenever possible, choose an Evaluator who is a member of PACE, the Professional Academy of Custody Evaluators. PACE is a private, non-profit corporation and membership organization whose primary goal is to register custody evaluators based on specific criteria and to disseminate information concerning the education, training, and experience of Registered Custody Evaluators. Contact PACE at 1-800-633-7223, or send e-mail to pace@pace-custody.org to find out if your Evaluator is a registered member.

Using a "Private Practice" evaluator who is not part of any group or team, and who does not "answer" to anyone, can be a problematic if personal bias or incompetency becomes an issue. Being in business for themselves and having no authority to answer to means they also have no "oversight" applied to their report and recommendations.

Have your attorney request information from the evaluator about his professional credentials. Ask for particulars on:

- How many years of experience they have
- Educational background & the type of degree
- Their opinion on joint custody arrangements
- Their ratio of father/mother recommendations

Pay particular attention to the information on which parent the evaluator has recommended for custody in the past. Does the evaluator consistently find that the mother is the "preferred

parent"? How often does s/he find that the father should be the primary parent? An impartial parenting evaluator should not favor either gender in their decisions. If the past record suggests that his or her determinations are historically lopsided or gender-biased, then you may want to avoid this particular evaluator.

Custody Evaluation Preparation

So what should you do to prepare for the custody evaluation? First the obvious, take a deep breath and don't panic. Be honest and be yourself. Of course, you want to make a good impression. This means being your true self, both at the evaluator's office and when they come to your home. Don't try to manipulate the evaluator or coach your children. However, you should talk to your children about what to expect from the custody evaluator. They may be frightened or confused by the evaluation process. They may even wonder if the decision will be determined by what they say. Just explain to the children that the evaluator is trying to learn about your family in order to help both parents work together in different households. Encourage them to tell the truth. The following are some more specific ways in which to prepare for the evaluation:

1. Listen to your Lawyer

Make sure you understand the process and the role of the evaluator. The evaluator is an independent expert.

They are not your friend, counselor or advocate. Do not assume they are "on your side." Their job is to objectively assess what is best for your children. Remember the King Solomon story.

2. Be prepared for your Meeting

This includes meetings at the evaluator's office, as well as the one at your home. Do not cancel and try to arrive early or on time. First impressions are important. You should prepare a list of questions which you have. This can help you stay focused during the conversation and not forget to ask something. Make sure when they come to your home that it is clean, orderly and child friendly. You should also get names of collateral witnesses early so you can vet them before providing the news to the evaluator.

3. Have a Positive Attitude

No one wants to listen to a complainer. You will have an opportunity to express any concerns you have regarding the other parent. Be sure that you are not "bad mouthing" them in any way. You need to make the case why you are good parent, not why the other parent is a bad one. Make an effort to objectively share the strengths and weaknesses you observe. Try to couch it as *'I am concerned about'* and how it may impact the children. If the other parent has made questionable parenting decisions, it should be stated as how it affects the children's welfare. In addition, do not make any allegations against the other parent that cannot be supported with specific evidence. Be

mindful when coming up with strengths and weaknesses and how these reflect upon your custody goals.

4. Stick to Parenting Issues

Don't mix marital concerns with parenting concerns. Acknowledge both your strengths and your weaknesses as a parent. Being a poor spouse doesn't make a person a bad parent. Using your interview with the evaluator to recount the other parent's poor choices and insensitivity in your marriage will not help you gain custody of your children. It could even create an impression that you would be reluctant to support their interaction with the other parent. You should also make an effort to answer the question that is asked, rather than using it as a jumping off point to state your case or bash the other parent.

5. Cooperate

Be cooperative and answer all of the questions asked by the evaluator. Also, make sure that you follow through on anything and everything that the evaluator asks of you prior to your next meeting. Most likely, you will need to provide the contact information for several people who know you and your family very well, and you will need to sign releases to permit the evaluator to speak with these individuals. Follow up promptly with any requests for additional information.

6. Focus on What is in the Best Interests of Your Children

Keep your focus on the wellbeing of your children and what's best for them. You should acknowledge the benefits of having a positive relationship with both parents. Be prepared to genuinely discuss what is in the best interests of your children. It may be helpful to role play this experience with a friend who can point out areas where your phrasing may reveal self-interest instead of the best interest of your children. Remember, they are looking to confirm that you as a parent are willing to share and support a relationship between the children and the other parent.

7. Be Yourself

Don't forget to be yourself! Interact warmly with your children. Also, have some of your children's favorite activities, such as board games and coloring books, handy for them during the custody evaluation home visit. Seeing the kids thriving in your home setting, as opposed to being glued to the TV or video game system, will leave the Evaluator with a real sense of home and family that you have created.

8. Do Not Provide Unnecessary Information

Less is more! Pay attention to what the evaluator says and answer questions without going off topic. If you have something that you feel the evaluator must know,

he or she will most likely ask you for that information at the end of the evaluation. Wait until that point and do not force your views on the evaluator without their asking for you to provide information.

9. Don't try to Manipulate the Evaluator

Most child custody evaluations include an observation with you and your children. During this observation you will want to be attentive to your children but you must never prep them to say certain things. If you do, chances are the Evaluator will detect this and it will have a negative impact on your case. You and your spouse are already in a highly polarized situation. You will best serve your children by recognizing that the help of an experienced professional might be what you and the other parent need. That means you need to cooperate with the Evaluator, rather than trying to get something out of the evaluation. Look at the Evaluator as the person who may actually be able to help you and your spouse come to a better understanding of your children's needs and your family's best course of action.

10. Be Flexible to different Custody and Visitation Arrangements

Make sure you can articulate a specific plan. You can clearly explain your preference for a particular schedule. But do not go over it again and again. Not every parent has an ideal living arrangement or situation for the custody they seek. You can put

yourself in a better light by creating a realistic, detailed plan with different options.

Chapter 13

Conclusion

At the end of the day, it is in the child's best interest to spend time with both parents. Most states have moved toward having 'Joint Custody' provisions. So unless there is something really wrong with one of you, (i.e., chemical dependency problems, anger management issues, documented mental illness, inability to meet the child's basic needs, physical danger to the child, history of abuse etc., the court in most states will grant Joint, or at least Shared, custody if requested. Parents often have different styles and will not agree with everything the other parent does when it comes to the child. But that does not mean it is not in the child's best interest to spend significant amounts of time with both parents. Joint custody does not mean 50/50%. The actual timeshare will depend on your schedules, the ages of the child, the court's perception of the circumstances and what each parent asks for as they conduct themselves during the proceedings. Courts often grant more time to the mother when there are younger children. But that varies from case to case and it can be modified. Once again, don't get hung up on the percentage. Focus on a schedule that works for the children and both parents and most likely everything else will fall into place.

There is a light at the end of the tunnel. But even if you still have a long way to go in your divorce, never forget what is best for your child, even if that means they will be spending more time with the other parent. Having a Custody Coach can keep you on the right path and help you to make the right decisions. Someday, when you are ready to leave this world

and you look back on what you accomplished, you will realize that being a parent is almost universally acknowledged as one of life's most important and meaningful experiences. Conversely, if you make bad decisions during a divorce, this could potentially damage your child forever. And you may never forgive yourself. So please, avoid these pitfalls and you will be happy you did. There is nothing more important than your child. And while you may harbor anger towards the other parent, don't ever let that influence you to do make bad decisions for your child.

Remember, your relationship did not break up because of your child. Your son or daughter still needs love from both of you. So go ahead and tell them you love them. When age appropriate, assure them that the breakup had nothing to do with them. Remember, your mission as a parent is to give your child the tools and experiences to become well-adjusted, self-actualized independent adults. While divorce is definitely a bump in the road, it does not mean you cannot accomplish this goal. And if you take the high road, avoid the pitfalls, it will help you to keep your child on the right path so one day you will look back and be happy that you were able to rise above the conflict.

God Bless and Good Luck!

Appendix A

Sample Parenting Plan

Parenting Plan for Our Son John

This proposed parenting agreement is between Father and Mother. The agreement is for the period from January 1, 2018 through September 28, 2028. All revisions to this plan must be in writing. The parenting responsibilities shall be reviewed annually at the end of May. If a new version of this parenting plan is not agreed upon at that time, then the existing agreement shall remain in effect. If significant changes need to be made and an agreement cannot be reached, then the parents will employ the services of a mediator.

Legal Custody

*Decision-making power about the child's non-emergency medical care, education and general welfare shall be made **Jointly** by both parents.*

Physical Custody

*Physical custody shall be **Joint**, meaning that both parents are responsible for everyday decisions, as well as where the child is at any given time. Our child's primary residence shall be shared with both parents.*

Transportation/Exchanges

The parents shall alternate transportation responsibilities to and from exchanges. Pick-up/drop-off shall be at a daycare, school or the Manhattan Beach Police Station. The dropping off parent shall be responsible for driving the child to the receiving parent.

When our son is ill at a transition time, the other parent shall be notified and appropriate plans made for how to care for him. If he is too sick for the transition, then the receiving parent shall be permitted to visit with the sick child for a reasonable period of time not to exceed one hour.

On those days when one parent picks up our son from the other parent after 6 p.m., the parent who was with him before 6 p.m. shall ensure that he has completed his homework and eaten dinner.

Education

Our son's shall continue to attend American Martyrs School through 8th grade. Both parents shall attend parent/teacher conferences. Parents shall keep each other informed about school events, mail, e-mail or logbook.

Both parents shall have access to school records and school personnel. Parents shall confer concerning major educational issues such as repeating or skipping a grade, assessing for special education programs or gifted programs. Both Mother and Father need to be notified in case of an emergency. Together, they shall they decide who will pick up the sick child. Both Mother's and Father's names, telephone numbers and addresses shall be listed on all school, caretaker, healthcare provider and activity records. If one parent cannot be reached, it is the other parent's responsibility to contact the parent who cannot be reached within twelve hours. They should leave messages at both work and home immediately.

Diet

Both parents shall make a reasonable effort to ensure that the child eat well. This includes three meals per day, vitamins and minimum of junk food.

Enrichment Activities

The parent who has responsibility for our son on a particular day shall participate in activities such as field trips or athletics. If that parent is not available, then the other parent may substitute.

Each parent shall get approval from the other parent before planning enrichment activities, such as music lessons or sporting activities, when these activities fall on the other parent's time. If these activities occur during the other parent's time, then the other parent has the option of having that time made up to them. Parents shall consult one another about summer sleep-away camps or day camps by May 1st of each year.

Surname

Our son's surname will remain _____.

Extracurricular activities that are important for our son are: music, tennis, basketball, swimming, soccer, as well as any other athletics or activity that either child shows any interest or talent.

Our child shall attend organized activities such as: Soccer, Boy Scouts and other activities to be specified at a later date.

Corporal Punishment

Parents shall not use corporal punishment. They may discipline (which means teaching with love) as opposed to punishing which is the inflicting either physical or emotional pain. If a child complains about discipline in one parent's home, that parent shall communicate this to the other parent. Extended family members and friends are not to be punishing or disciplining the child unless agreed to by both parents in writing.

When One Parent Wants to Move

Each parent shall not change the child's residence to outside of a 15-mile distance from the child's school/current residence without the written consent of the other parent or orders from the court. The other parent shall receive a 45-day notice about a pending move away.

Religious Training

The religion the child shall be raised in is: Catholicism. Both parents shall share in the child's religious training. Our son shall receive the sacraments and attend Sunday school.

Medical Care

The Mother shall take the child for routine medical check-ups and treatments. The Mother shall pay all regular medical expenses. Exceptional medical expenses shared equally by both parents only if approved by the Father in advance. Receipts for shared medical expenses and an itemized list shall be provided to the Father. If the child requests it, the Father may accompany the child to the doctor.

Our child's Medical healthcare provider is Aetna.

In the case of an emergency, either parent shall have permission to take the child for treatment. The other parent shall be notified within 12 hours of the incident. Details shall be provided such as the child's condition, location, and information regarding how to locate a physician, hospital or other healthcare provider.

Parents shall make medical decisions by consulting with the other parent. If there is a lack of agreement, parents shall seek help for deciding from mediation and if necessary, the courts.

Information about the child's medication shall be exchanged by e-mail, logbook or in person.

Each parent shall seek routine healthcare for minor or ongoing conditions from the child's regular healthcare provider.

Parents shall coordinate medical, dental and vision care by deciding with the other parent. If there is insurance available for a particular type of healthcare, neither parent shall select or utilize a healthcare provider who is not a preferred provider under the terms of the policy without the written consent of the other parent.

Mental Health Care

Both parents will decide what mental health professional to go to and determine how long the treatment will last. Both parents shall share equally for the child's therapy as well as be able to speak with the mental health professional regarding the child's progress or to address ongoing concerns. Written consent shall be provided to change or terminate therapy for the child.

Medical and Dental Insurance

The Father shall carry medical and dental insurance and a vision care plan for the child. Exceptional medical, dental or vision care costs not covered by the Father's insurance shall be shared equally by both parents.

Financial Support for Our Child

The amount of money that shall be paid by the Father to the Mother for child support:

- *\$1,000 per month for child support and any other child related needs. This support payment shall be paid directly to the Mother, half on the 1st of the month and half of the 15th of the month.*
- *Both parents shall share half of all exceptional medical, dental or vision care expenses as long as they are approved in advance.*
- *The support money shall be delivered either by mail or in person.*
- *The Mother shall pay 40% for the child's education beginning with American Martyrs School and ending with high school.*
- *Both parents shall share equally extracurricular activity expenses.*

Both parents shall obtain and maintain life insurance policy, payable to our son.

Clothing

Each parent shall maintain adequate clothing and accessories for the child's use with the expectation that as long as it fits, clothing shall be used in both households. Neither parent shall be responsible for reimbursing the other parent for clothes purchased by the other parent. The child's clothing belongs to the child and shall be used in both households. Clothing purchased by one parent shall either be worn back to that parent's home in the natural course of events within a few days or shall be returned laundered. Items such as jackets, tennis shoes and boots, which do not exist in duplicate in the child's wardrobe, shall move between households with the child.

When moving back and forth between households, the child shall be dressed in properly fitted clothing that is in good condition. Both parents shall equally share the responsibility for making sure that the child are dressed appropriately, they are well groomed (which includes making sure they are clean, their hair is combed and they brush their teeth) and that their wardrobes are maintained.

Vacations

Each parent shall have up to 3 weeks of vacation with our son per year, subject to the following conditions:

- Vacation time shall be scheduled for periods in which school is not in session (exceptions can be made if both parents agree).*
- The vacationing parent shall deliver written notice to the other parent,*

designating the vacation, by May 1st and May 15th respectively. Mother gets first pick during odd years and Father gets first pick during odd years.

- *Vacations shall not be scheduled so as to separate the child from the other parent for more than 2 weeks without mutual agreement.*
- *Vacations shall be scheduled in a minimum of one week blocks.*
- *If the vacation falls in the schedule so as to create a longer separation; the vacationing parent shall offer the other parent a 24-hour period with the child just before or just after the vacation.*
- *Each parent shall provide the other with a basic itinerary for the vacation at least one week prior to departure to include travel dates, destination and telephone numbers for emergency purposes. If there is a change in plans, the new information shall be provided promptly.*
- *Parents are not entitled to travel with the child outside of the United States for purpose of vacations during court ordered times without consent of the other party.*

- *The vacationing parent is responsible for paying for the vacation.*

Special Days

Parents shall have Special Days, which are an exception to the usual schedule. In such cases a parent may request to change the usual schedule for up to 24 hours. This may occur no more than 3 times each calendar year, according to the following agreements:

- *Written notice shall be delivered to the other parent no less than 7 days and no more than one year in advance and shall designate the specific time period of the Special Day (i.e. dates and pick-up and drop-off times).*
- *Special Days shall not be scheduled on the other parent's holidays (including three-day weekends), birthday celebrations or vacations.*
- *Special Days shall not be scheduled for events in the child's life in which both parents would ordinarily participate, such as graduations, performances or athletic championships.*

- *Special Days shall not be combined so as to separate the child from the other parent for more than the maximum amount of time permitted for vacations and no more than 2 Special Days shall be used together.*
- *The parent exercising Special Day privileges shall provide all transportation unless the transitions occur at regular school, day camp or after-school care transition times.*

Right of Refusal

When a parent intends to leave the child in the care of someone else for a period of overnight or longer, that parent shall first offer the other parent the opportunity for additional time with the child.

Sleepovers visits, which are primarily social in nature, at the homes of relatives or friends, are only allowed if both parents agree that the caretaker is deemed to be responsible. If a friend or family member is not deemed responsible by both parents, then that sleepover is not permitted unless one of the parents is willing to stay with the child for the duration of the visit. Alternative caretakers are not permitted to drink around the child or discipline the child.

Three-Day Weekends

Whenever a Monday is a school holiday or legal holiday, the preceding weekend shall be extended by 24 hours to include that holiday.

After-school Care

After-school programs, in which our son may be enrolled in, will be determined at a later date. Each parent shall be notified as to where the child will be after school while in the care of the other parent. Either parent can remove the child from after-school care if the other parent is not available to spend time with them. The other parent shall be notified promptly as to where the child is and where the exchange shall be made.

International Travel and Passports

The child's passport shall be available to both parents. Once a passport is obtained, the Father shall keep the child's passport. The child shall be allowed to leave the country on vacation with the other parent only if written approval is obtained from the other parent and the details of the trip are disclosed.

Communication Between Parents

Parents may communicate with each other

by e-mail except during emergency or at events for our son such as school or sporting events. Neither parent shall make any important decisions affecting the child's lives without consulting the other parent.

Each parent shall advise the other parent of his or her current address, residence telephone number and employment telephone number. Each parent shall notify the other parent of any change of address or telephone, which the child may be staying within 48 hours of the change.

Each parent shall provide advance notification to the other parent of proposed and forthcoming medical care and shall notify the other parent immediately of illnesses requiring medical attention or any medical emergencies involving child.

Each parent shall promote respect and affection for the other parent by not talking in a demeaning way about the other parent in front of the child.

Parents may assist the child in remembering the other parent and grandparents on special occasions, birthdays or when the other parent is ill. The dollar value of presents from the child to the other parent for any occasion shall not exceed \$50.00.

Both parents agree to never use the child

to carry adult messages to the other parent.

Each parent shall provide for the other parent promptly all communications and information regarding the following:

- *Healthcare providers*
- *Report cards*
- *Order forms for school pictures*
- *Invitations to special events including school, birthday parties or other activities that fall on the other parent's time*
- *Notice of activities involving the child*
- *Results of all standardized or diagnostic tests or evaluations of child progress, performance and/or ability*

Agreements shall be written in a business letter style, and a copy shall be sent to the other parent.

Samples of child's schoolwork and other projects shall be shared with both parents. Parents shall harmonize the child's routines and schedule from house to house.

Safety Issues

Parent shall not use alcohol or drugs eight hours before assuming responsibility of the child or while the child is in his or her care.

Consent

Written consent of both parents is required for:

- *Change of child's regular healthcare provider*
- *Major non-emergency surgery*
- *Participation in dangerous activities (which includes any activity that can be considered life threatening, i.e. skydiving, scuba diving, skiing and anything else that involves jumping out of an airplane or excessive speed etc...).*

Failure to Comply

Both parents will make every effort to cooperate for the sake of our son. We both EQUALLY share the responsibility of the raising of our child. All major decisions will continue to be made jointly and it is understood that neither parent is more important than the other when making these decisions. Therefore, communication is encouraged. However,

if we cannot reach an agreement regarding important issues or there is a consistent pattern of one parent failing to comply with the agreements set forth in this parenting plan that shall be grounds for taking legal action to correct the situation.

HOLIDAY / VACATION SCHEDULE

Holidays & vacations replace the usual schedule.

HOLIDAY SCHEDULE			
HOLIDAY	TIME	EVEN YEARS	ODD YEARS
New Year's Eve		DAD	MOM
New Year's Day		DAD	MOM
Martin Luther King Day	Continuation of weekend		
President's Birthday	Continuation of weekend		
Easter Sunday		DAD	MOM
Mother's Day		MOM	MOM
Memorial Day	Continuation of weekend		
Father's Day		DAD	DAD

July 4 th		DAD	MOM
Labor Day	Continuation of Weekend	DAD	MOM
Halloween		DAD	MOM
Thanksgiving	Wednesday school pick till Friday at 5:00	MOM	DAD
Thanksgiving Weekend	Regular Schedule		
Christmas Day	Pick Up at 10:00 A.M.	MOM	DAD
Mother's Birthday	Regular Schedule	MOM	MOM
Father's Birthday	Regular Schedule	DAD	DAD
Our son's Birthday	Regular Schedule	DAD	MOM

VACATION SCHEDULE			
Winter Vacation – 1 st Half	Includes Christmas day	DAD	MOM
Winter Vacation – 2 nd Half	Includes New Year's Day	MOM	DAD
Spring Vacation – 1 st Half		MOM	DAD
Spring Vacation – 2 nd Half		DAD	MOM
Summer Vacation	Parent who has first pick	DAD	MOM