

CALIFORNIA

CHILD
CUSTODY
LITIGATION
AND
PRACTICE

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Parenting Plans

Leslie Ellen Shear

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I. INTRODUCTION

§4.1 A. Scope of Chapter

This chapter discusses the creation and use of parenting plans in child custody and visitation proceedings. It examines each of the components of a parenting plan, and identifies the factors that should be considered by parents, those advising parents, mediators, evaluators, special masters, parent educators, and judicial officers when working to develop, implement, or adapt a parenting plan. The chapter emphasizes practical advice in creating workable parenting plans that will be implemented through a court order. For discussion of custody mediation, see chap 8. For discussion of custody evaluations, see chap 9.

§4.2 B. Overview and Purpose of Parenting Plans

Child custody cases are not about which parent “wins” the children, they are about how parental rights and responsibilities will be allocated by the court order governing the coparental relationship. That order is a *parenting plan*.

Every aspect of child custody work entails developing, implementing, adapting, or modifying the parenting plan. Thus, the provisions of the plan or proposed plan are the best way to organize analysis, negotiation, and evidence concerning custody and visitation. The best child custody evaluations, for example, analyze data about the individual family through the lens of research and clinical knowledge to consider the risks and benefits of alternative parenting plan provisions. On evaluations, see chap 9.

§4.3 1. Checks and Balances

In most cases, a parenting plan that establishes a balance of power works best to promote complementary, rather than competitive, parenting. Each parent needs the good will of the other from time to time. A parent who is going to need the other parent’s consent in the future is more likely to find it advantageous to cooperate in requests by that parent. A parent in whom most power is vested may use that power unwisely—either by making less felicitous decisions or by making decisions that minimize the other parent’s role in the children’s lives.

The most robust findings in the child custody research literature point to the dilemma at the heart of this work. Most children flourish after their parents separate, but some do not. Three factors are associated with poor outcomes—the reduced standard of living that often follows divorce, the loss of the active involvement (including authoritative parenting, school involvement, and involvement in peer and mastery activities) of one parent, and unresolved parental conflict about the child. It follows that the challenge is how to preserve involved parenting by both parents, while preventing or containing parental conflict, and not further diminishing the already reduced economic health of the family through the cost of conflict resolution.

With the passage of time, most parents are able to move past the conflict and the distorted views of the other parent that often characterize the period immediately before and after separation. Over the course of childhood, each parent’s strengths usually buffer the

other parent's limitations. However, in some families, for example, one in which a parent is mentally ill or otherwise engages in harmful parenting practices, buffering may not suffice, and the parenting plan should consolidate power in one parent, set boundaries for the children's protection, and define the nature and extent of the relationship, if any, between the children and the noncustodial parent.

§4.4 2. Detailed Plans

In the past 30 years, parenting plans have evolved from a single sentence ("Petitioner is awarded custody of the minor children, subject to Respondent's rights of reasonable visitation") to detailed findings and provisions governing responsibility schedules; holidays, vacations, and special days; parental communication; decision-making processes and authority; and the logistics of coparenting. In an earlier time, the task of the parents and their lawyers or the judge was to pick which parent would raise the children, and protect the other parent's right to visit the children from time to time. While statutes and case law still use the vocabulary of that time (see, e.g., Fam C §§3002-3007), today the heart of custody decision making is the plan itself. See generally Fam C §§3020(b), 3040(a)(1), 3061, 3080.

§4.5 3. Collaborative Process With Interdisciplinary Expertise Needed

Collaborative process. Developing a parenting plan is a collaborative process. Most parents negotiate the terms of their parenting plan, many with the assistance of counsel. Other parents develop their plans in private or court-connected mediation (see chap 8), or adopt the recommendations of a private or court-connected child custody evaluator (see chap 9). A few ultimately litigate the terms of their parenting plans, entrusting the court with the final decisions. In almost every situation, the resulting plan reflects the thoughts and decisions of several people.

Interdisciplinary expertise. Developing a parenting plan requires considering group data (what the growing body of child custody research tells us about children's best interests), professional and life experience, and individualized information about the family. Lawyers doing this work must bring a high level of specialized expertise about parenting plans to the tasks of client counseling, negotiation,

mediation, and advocacy. A lawyer who does not have that expertise should work collaboratively with a consulting expert.

§4.6 4. Need for Individualized Determinations: One Size Does Not Fit All

The genius of the indeterminate “best-interests” standard (see Fam C §3020(a)) is that it produces individualized determinations about the best interest of a particular child, at a particular time in that child’s life. A plan that is optimal for one child may well prove unsuitable for another child. Constance Ahrons’s longitudinal study of binuclear families found that even within a single family and parenting plan, one sibling often flourished while another sibling struggled. Ahrons, *We’re Still Family: What Grown Children Have to Say About Their Parents’ Divorce* (2004); Ahrons, *The Good Divorce* (2000). E. Mavis Hetherington’s landmark longitudinal study of the impact of divorce reached similar conclusions—the particular matters more than the general. Hetherington, *For Better or Worse: Divorce Reconsidered* (2002).

Each parenting plan must be tailored to the needs, circumstances, and traits of the parents and children. Developing a parenting plan that works for a particular family requires substantial knowledge of child development, parent-child relationships, the dynamics of parents who do not live together, and an intimate knowledge of the particulars of the family.

§4.7 5. Anticipating Inevitable Need for Change

Most parenting plans require adaptation over time. Case law distinguishes between “permanent” or “final” and “temporary” orders. Modification of a “permanent” order requires a showing of changed circumstances before the court may consider a child’s best interests. No special showing is required for court modification of a “temporary” order; the trial court addresses the issue of the children’s best interests *de novo*. See *Montenegro v Diaz* (2001) 26 C4th 249, 109 CR2d 575; *Marriage of Rose & Richardson* (2002) 102 CA4th 941, 126 CR2d 45.

Every parenting plan should expressly state whether the order is intended to be temporary or permanent. In *Montenegro v Diaz* (2001) 26 C4th 249, 109 CR2d 575, the supreme court required that there be an affirmative statement in a stipulated judgment that

the plan was intended to be permanent, or it would be deemed temporary. It is not clear whether parenting plans emerging from contested trial or postjudgment modification proceedings must be treated as temporary, absent a clear statement of the court's intention that the order be permanent.

The notion that one parenting plan will serve a child's best interests over his or her entire childhood, or will be practicable as daily life in the family changes, is unrealistic. Change is the nature of childhood. Families are dynamic, not static. Most parenting plans require adaptation or modification from time to time. For a discussion of the need to adapt parenting plans and the public policy in favor of self-ordering, see *Montenegro v Diaz* (2001) 26 C4th 249, 109 CR2d 575.

The "changed-circumstances" test is intended to deter meritless relitigation. However, the doctrine tends to divert family and court resources into costly litigation about whether an existing order was intended to be final, and whether events in the life of the child and family are sufficient to permit the court to reach the question of the child's best interests. In its most extreme permutations, the doctrine can bar consideration of a child's best interests to preclude modification of a parenting plan that does not meet the child's needs.

Drafters of parenting plans need to have one eye on the future because the language of the court's order and the allocation of parental responsibilities will shape the procedural and substantive requirements for modification proceedings.

Relocation cases have been the primary source of case law governing child custody modification, but application of those holdings is not confined to relocation cases. For the standards for modification and relocation cases, see generally *Marriage of LaMusga* (2004) 32 C4th 1072, 12 CR3d 356.

Move-away cases. Move-away cases present modification issues in their starkest form. Courts cannot preclude a parent from moving. Hence, move-away cases present the question of whether the child should move with one parent or remain with the other.

One recent case treats a cross-country move by a parent with joint-custody as merely rearranging the joint physical custody schedule, requiring de novo consideration of the parenting plan. The court of appeal concluded that modifying a 50-50 parenting plan to permit the child to live during the school year with one parent in another state, reducing the child's time with the other parent to summers

and part of the other school vacations, was not an abuse of discretion. *Niko v Foreman* (2006) 144 CA4th 344, 365, 50 CR3d 398.

NOTE► For a persuasive argument for application of the changed-circumstances doctrine when one joint-custody parent wants to move out of state with a child, see Justice Bedsworth's dissent in *Niko*. 144 CA4th at 370.

No change-of-circumstances showing is necessary to modify a joint custody plan when one parent's move precludes continuation of the plan. *Marriage of Seagondollar* (2006) 139 CA4th 1116, 43 CR3d 575 (best interests standard governs modification of joint custody judgment).

The rule is dramatically different when, after a contested hearing, one parent is awarded sole legal and physical custody and the other parent is limited to visitation. In *Marriage of Brown & Yana* (2006) 37 C4th 947, 38 CR3d 610, the California Supreme Court held that it is not an abuse of discretion for a trial court to require a noncustodial parent asking for a change of custody as the result of the custodial parent's announced relocation plan to make a *prima facie* showing that the move would be detrimental to the child.

NOTE► In *Brown & Yana*, as in *Niko*, in upholding the trial court decisions, the appellate courts were not mandating that other courts follow suit. Rather, the decisions merely hold that, under the abuse-of-discretion standard of review, the trial court's procedures and rulings need not be reversed.

In the absence of such a *prima facie* showing, the supreme court held that a trial court may deny requests for a child custody evaluation and an evidentiary hearing. The court rejected the proposition that a noncustodial parent is barred from opposing a child's relocation by seeking a change of custody. 37 C4th at 957.

The child's and family's need for a plan that grows and changes with the family is at odds with the legal system's goals of finality, and limited resources to provide services to families over what often is more than a decade of time. While many families adapt their plans on their own, or with periodic professional assistance, others are unable to do so. Some of those families avoid the economic and emotional costs of revisiting the plan, leaving children trapped in an arrangement that no longer meets their needs. Other families end up in years of litigation, in which adaptation of the plan gets intermingled with unresolved conflicts and power imbalances.

Every parenting plan is inherently speculative; it represents a “best guess” about what will work and how people will behave. Most plans need some fine-tuning, even in the absence of changed circumstances. Some educated guesses fall wide of the mark, and in those cases there may be a need for a radical overhaul.

Change is the essence of childhood; the child’s needs change with his or her age, life situation, and changes in the family and community.

§4.8 6. Need to Determine Goals of Parenting Plan

A lawyer representing a parent, child, or nonparent in a custody-visitation case must begin by collaborating with the client about the adult client’s goals for the parenting plan or the plan that will best meet the needs of the child client. As a result, the attorney explains the alternative parenting arrangements possible and discusses the risks and benefits to the child of alternative approaches to responsibility schedules, exceptions to those schedules, interparental communication, decision-making processes and authority, and all the details that make a plan work. A child custody lawyer uses a variety of parent-education resources (books, articles, handouts, videos, websites, parent-education programs) from the earliest stage of the case. A list of resources for age-appropriate parenting plans is provided at the end of this chapter. See §4.85.

II. DRAFTING PARENTING PLANS

§4.9 A. Drafting Basics

The provisions of a parenting plan must be clear, certain, and directive. The plan operates as a tiebreaker when parents do not agree; therefore, it must be unambiguous, comprehensive, and well organized. The parents themselves, judges, court personnel, and members of the public (such as school personnel, law enforcement officials, and care providers) should be able to find and understand the relevant provisions quickly. Uncertainty and ambiguity feed conflict, lead to unenforceable provisions, and often require litigation to correct.

Below is a listing of drafting tips. Consult references on legal drafting, such as those listed in the resources at the end of this chapter (see §4.85) for more detailed guidelines.

Drafting Tips (Checklist)

Use an outline and label sections with headings.

Use the simplest possible language, never exceeding a 12th-grade vocabulary and avoiding legalese.

Keep sentences short.

Use the present tense.

Use the terms “legal custody,” “physical custody” and “visitation” to increase the probability of recognition and enforcement in other jurisdictions. On avoiding use of the term “primary physical custody,” see §4.46. Generally, this requirement is satisfied by stating:

“The parents are awarded joint legal custody according to the following plan” or

“The parents are awarded joint physical custody according to the following schedule” or similar language that brings the order within the statutory scheme and goes on to provide the specifics.

When using terms of art based on the Family Code, cite the relevant code section and, when appropriate, incorporate the language of the code section into the order.

Distinguish between duties and elective acts by using “must” (or “will”) and “may.” “Shall” creates ambiguity because it has at least eight separate meanings.

Avoid provisos. The phrase “provided that” may be read as an exception, condition, addition, or limitation.

Never use the passive voice; always specify who “must” or “may” do what.

No one ever remembers who is the petitioner and who is the respondent once they get off the caption page. Use “Petitioner-Mother” and “Respondent-Father” (when the parents are opposite sex) or identify the parties in the first paragraph, and then refer to them consistently by name throughout the order.

§4.10 B. Preliminary Information and Findings

Every parenting plan should begin with certain basic facts and findings. These preliminary provisions identify the parties and children governed by the order, act as aids to enforcement of orders, and provide a baseline for future modifications when the “changed circumstances” doctrine applies, or set forth that future modifications will not require a showing of changed circumstances. All California parenting plans must also contain jurisdictional findings (see Fam

C §§2010, 3022, 3429(a); see also Fam C §§3400–3465), and may contain other factual findings. Jurisdictional findings aid, but do not guarantee, enforcement in other jurisdictions (see chaps 19–20).

Factual findings after hearing on joint custody request. The Family Code mandates detailed factual findings if requested by a party after a hearing on a request for joint physical custody. Fam C §3082 (on party’s request after court’s ruling on request for joint custody, court must state reasons for granting or denying request; but statement that joint physical custody is, or is not, in child’s best interest is insufficient).

Statement of decision. Custody litigants also may request a statement of decision following a contested custody hearing, provided that they comply with the strict procedural requirements of CCP §632 and Cal Rules of Ct 3.1590. In addition, under Fam C §3022.3, operative January 1, 2007, on the trial of a fact question in a custody proceeding, a court, on a party’s request, must issue a statement of decision that explains the factual and legal basis for its decision pursuant to CCP §632. Section 3022.3 applies to pre- and posttrial order to show cause (OSC) custody proceedings, not just trials. The phrase “trial of an issue of fact” has been construed broadly to include OSCs.

A statement of decision, however, is not part of the parenting plan order or judgment. It is a separate document. See, *e.g.*, Cal Rules of Ct 3.1590(e) (contemplating issuance of separate judgment and statement of decision).

Involving appellate counsel. Counsel contemplating an appeal of a child custody decision should involve appellate counsel experienced in child custody issues before the stage of the case at which a statement of decision is requested. Appellate counsel’s participation in framing the issues, drafting a proposed statement of decision that will produce the desired outcome on appeal, and objecting to a proposed statement of decision is vital. For example, a statement of decision that fails to adequately consider and balance factors favoring the losing party could result in a reversal on appeal for failure to consider the requisite legal factors, or engage in the meaningful exercise of discretion. Detailed discussion of the impact of the statement of decision in appellate proceedings, and strategies for framing issues, drafting proposed statements of decision, and objecting to proposed statements of decision is beyond the scope of this chapter. See generally CCP §634.

Benefits of judicial explanations of rulings. In addition to their impact in appellate proceedings, judicial explanations of the factual and legal bases for a child custody decision offer many benefits. Understanding the reasons for a decision can help parents accept the decision, make productive changes in parenting and co-parenting behavior, or avoid subsequent conduct that might result in a loss of custody. *Marriage of Melville* (2004) 122 CA4th 601, 18 CR3d 685 includes a detailed account of a well-crafted statement of decision that supported a trial court's decision to change custody. *Melville* also illustrates the risk of disregarding the reasons for a prior custody decision and the existence of significant changed circumstances: the mother's conduct and move deprived the child of the benefits of school stability, a relationship with his older sibling, and a network of care providers familiar with his special needs that had supported an earlier decision making the mother the school-year custodial parent following the father's move.

§4.11 1. Basic Facts: Nature of Proceeding and Order; Identity of Court and Participants

The nature of the proceeding and order and the identity of the court and participants should be readily ascertainable from the caption and opening paragraphs of the order. The order should indicate the stage of the proceedings at which it was issued, and whether it is the product of a stipulation under Fam C §3061, ex parte proceedings, contested order to show cause proceedings, or trial. Ex parte orders should set forth the basis for the emergency order. Fam C §§242, 3062-3064.

§4.12 a. Duration of Order; Triggering Events

Specify the commencement date, duration of the order, and duration of any provisions that will become operative or terminate at a future date, or that will be triggered by a future event. Even when it is expected that an order will be of short duration, usually the order should provide guidance for what will happen until a new order is issued, bearing in mind that continuances or other events may delay entry of a new order beyond the date contemplated. Avoid the risk of leaving the family with no parenting plan when this order expires, or with an order that identifies what is to happen only up to a certain date; counsel cannot be certain that a new order will be made in time to avoid a gap.

§4.13 b. Prior Orders

If the order was preceded by other orders, identify them, and indicate whether and how this order modifies or supersedes those orders. Make sure to clearly state which prior provisions are superseded and which remain in effect. It is not enough to say “modified in the following particulars only” without identifying whether the new provisions replace specified prior provisions or merely augment them. Whenever possible, avoid piecemeal modifications; replace the entire order, incorporating the new provisions and deleting terminated proceedings so that there is a single, comprehensive parenting plan order at all times. Forcing families and others to compare and contrast two or three successive documents is a recipe for uncertainty, error, and conflict, defeating the core purposes of a parenting plan.

§4.14 c. Consequences of Violation

Every custody-visitation order must include “[a] provision stating that a violation of the order may subject the party in violation to civil or criminal penalties, or both.” Fam C §3048(a)(4).

Consider placing this language in boldface type in a text box at the beginning of the order. Certain Judicial Council forms include this language. See, *e.g.*, Judicial Council Form FL-305 (Temporary Orders).

§4.15 d. Identification of Parties and Children

The order must identify the parties and children by full name (and any aliases). Clear and certain identification is necessary for law enforcement and other courts to make sure the order actually applies to specific individuals.

EXAMPLE► “This parenting plan governs child custody and visitation for Petitioner-Father John Ralph Smith, aka Jack Smith [Jack], and Respondent-Mother Susan Leila Jones, aka Sue Jones, Susie Jones, Susan Leila Smith, Sue Smith, Susie Smith, Susan Leila Smith-Jones [Sue], and their daughter, Jacki Sue Smith-Jones (born January 1, 2000; age 6) [Jacki].”

§4.16 e. Other Identifying Information

Enforcement is eased by including other identifying information, such as driver’s license and social security numbers, and by including

photographs of the parties and children. Unfortunately, because these orders are public records, the risks of identity theft, interference with family privacy, and even abduction may outweigh the benefits of including such information. However, in cases involving a history of abduction or realistic concerns about abduction risk, the balance may well tip in favor of including as much identifying information as possible.

§4.17 2. Basis for Exercise of Jurisdiction

Family Code §3048(a) requires detailed jurisdictional findings in *every* custody or visitation order, including but not limited to, ex parte orders, pendente lite orders, judgments, and postjudgment modification orders

§4.18 a. Purpose

Detailed jurisdictional findings make California orders more likely to be registered and enforced in other states, and more likely to be adopted and enforced by other countries. On interstate and international jurisdiction and enforcement, see chaps 20–21.

When an order sets forth the factual and legal basis on which the court exercised jurisdiction, and sets forth the details confirming that each party had actual notice and an opportunity to be heard, that order is less likely to be challenged when a parent or law enforcement attempts to enforce it outside of California. The pro forma conclusory findings in the Judicial Council forms fail to meet this standard, and fail to serve the purpose of the statute.

Outline for Detailed Jurisdictional Findings (Checklist)

1. UCCJEA/PKPA
 - a. Initial, modification, emergency, or enforcement?
 - b. Factual/legal basis for exercise of jurisdiction
 - c. No other jurisdiction has exercised jurisdiction; no other proceedings
 - d. Exclusivity of jurisdiction
 - e. Means by which notice and opportunity to be heard provided
2. Consequences of violation
3. Enforcement by any peace officer

4. Hague Convention on the Civil Aspects of International Child Abduction (see also Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children; not yet adopted by United States)
 - a. Applicability of Hague Convention
 - (1) Age of child (Hague Abduction Convention governs children under age 16 only)
 - (2) Signatory or accessory nation to the Hague Abduction-Convention
 - b. Habitual residence (detailed factual/legal basis)
 - c. Grave risk or basis for not ordering return to habitual residence
 - d. Order creates rights of custody versus access (visitation) under convention
 - (1) Legal and physical
 - (2) Right to choose habitual residence for child
 - e. No acquiescence or consent to new habitual residence other than in writing signed by both parents, or further order of this court
 - f. “Registration and nonmodifiable enforcement” outside U.S. See *Marriage of Abargil* (2003) 106 CA4th 1294, 131 CR2d 429; *Marriage of Lasich* (2002) 99 CA4th 702, 121 CR2d 356; *Marriage of Condon* (1998) 62 CA4th 533, 73 CR2d 33 (all decided before supreme court clarification of “move-away” guidelines in *Marriage of LaMusga* (2004) 32 C4th 1072, 12 CR3d 356) and *Marriage of Brown & Yana* (2006) 37 C4th 947, 38 CR3d 610.

§4.19 b. Content of UCCJEA Findings

The jurisdiction of California courts over child custody is governed by California’s version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), discussed in chap 5, which differs from the model statute in some important particulars. (Fam C §§3400–3465). The order should set forth the facts giving rise to jurisdiction, indicate whether the court is exercising initial or modification jurisdiction, and cite the specific Family Code section that

gives rise to jurisdiction. The order should expressly state that no court other than the Superior Court of California will have jurisdiction to modify the order unless both parents and all of the children no longer reside in the state, or a California court has issued an order relinquishing jurisdiction.

§4.20 3. Due Process Findings

The order must describe how notice of the case itself (service of the petition or filing a response) and of the hearing or proceeding that produced the order was given. Except in defaults, the order should state that both parties participated (either through counsel or were self-represented) in the proceeding that led to the orders. See generally Fam C §§2330-2331, 2336, 3048.

§4.21 4. International Custody Jurisdiction Findings

Family Code §3048(a)(5) requires “[i]dentification of the country of habitual residence of the child or children.” Such identification can increase the chances that a foreign country will refuse to exercise child custody jurisdiction, and will return wrongfully removed or retained children to the United States.

There is no international equivalent of California’s UCCJEA. Foreign nations are not obligated to “register” or enforce United States custody decrees. While some nations may adopt a foreign decree, all countries other than the United States exercise custody jurisdiction over children who are habitually residing in that nation. Even if they adopt a U.S. order, they retain the authority to modify that order.

The Hague Convention on the Civil Aspects of International Child Abduction (see chap 20) provides limited remedies for return of children under age 16 who have been wrongfully removed or retained abroad in derogation of a left-behind parent’s rights of custody. The treaty represents a compromise between the goal of preventing parents from international forum shopping and maintaining substantial power in the courts of signatory and accessory nations. California courts and left-behind parents cannot rely on the Abduction Convention; fewer than half of the children are actually returned. The U.S. State Department maintains information about compliance with the Convention and related issues on its website.

As discussed more fully in the chapter on enforcement under the UCCJEA and the Hague Convention (see chap 20), habitual

residence is a mixed question of law and fact, determined by the courts of the country where the child is present when a custodial parent petitions for the child's return under the Abduction Convention. A foreign court will not be bound by the provisions of a California court order; it will make an independent determination. To the extent that a California order contains the factual and legal details establishing that California is the child's habitual residence within the meaning of the convention, a foreign court may be influenced by the terms of the California order.

Habitual residence analysis often contains an intent component. By defining who has the authority to make decisions about the child's nation of residence, the drafter of a California parenting plan can increase the chances that other countries will treat the United States as the child's habitual residence. Most orders need to provide that any stays abroad must be treated as temporary sojourns, that the written consent of both parents or further order of a California court is required for a change of habitual residence, and that neither parent may be deemed to have acquiesced to a change of habitual residence by conduct.

§4.22 5. Abduction Risk Findings

When "the court becomes aware of facts which may indicate that there is a risk of abduction of a child," the court must hear evidence about abduction risk, obstacles to location, recovery, and return if the child is abducted, and potential harm to the child if he or she is abducted. See Fam C §3048(b).

Family Code §3048 sets forth specific abduction risk factors derived from research into the characteristics of parents who abduct. Those studies did not include control groups of nonabducting parents. It is impossible to predict abduction risk with certainty, and consideration of these factors can produce "false positives," while missing other potential abductions. After hearing evidence, the court must make abduction risk findings. Those findings may be incorporated in an order, or in a statement of decision. When the court finds a risk of abduction, Fam C §3048(c) sets forth abduction risk remedies.

§4.23 C. Legal Custody Provisions

Parenting plan drafters should group provisions governing access to information, parental communication, and decision-making author-

ity together in the “legal custody” section of the parenting plan, with subheadings. On the definition of “legal custody,” see Fam C §§3003, 3006. See also chap 1.

§4.24 1. Parental Right of Access to Information

Family Code §3025 protects the right of all parents, regardless of custodial status, to information about their children, including, but not limited to, medical and educational records.

Noncustodial parents frequently encounter obstacles to obtaining information about their children. Custodial parents sometimes instruct schools or care providers to deny information to noncustodial parents. Some schools and care providers deny access on their own; most are unaware of the legal requirement.

The statute establishes a right to access, but provides no remedy or consequence for the refusal of a school, medical care provider, or other person or entity to provide information. One means to enforce the right would be by subpoena, but that is impractical for day-to-day purposes.

By including a recitation that each parent is entitled to information, and incorporating the language of the statute, the drafter makes sure both parents know that the noncustodial parent is entitled to information, and gives the noncustodial parent an order to show when requesting information. It may be helpful for the order to require parents to instruct schools, health care providers, and others to provide information to the other parent.

It is unclear whether the family court has the power to restrict a parent’s Fam C §3025 rights. In some situations, parental access to information presents a threat to the child or the other parent. Some records may contain addresses, telephone numbers, or other information that could place the child or parent at risk of harm. For example, domestic violence victims are entitled to maintain a confidential address. See, *e.g.*, Fam C §§3030(e), 3100(d). In some cases, a parent has been prohibited from having contact (or unmonitored contact) with the child, for example. See generally Fam C §3100(b). Some parents have a history of showing little or no regard for court orders.

§4.25 2. Information Exchange and Communication Guidelines

The legal custody provisions of a parenting plan govern how

the parents interact, and what information they must share with one another, as well as who has the authority to make parental decisions. The level of detail in regarding information will differ from family to family.

Including provisions about communication in the parenting plan creates a set of common expectations. Taking the time to develop explicit provisions governing communication and information exchange can prevent future problems. Negotiating those provisions can help parents learn about each other's preferences and expectations, and find an acceptable *modus vivendi*.

Communication guidelines also foster coparenting while protecting each parent's right to family privacy and need for separateness from an ex-partner. Even the most friendly and cooperative former life partners want to move on and not have daily interactions with a former intimate partner. When relationships are painful or conflicted, having guidelines and replacing nonemergency direct conversation with email or other means that are less stressful can help parents work more cooperatively.

§4.26 a. “Ex” Etiquette; Civility Guidelines

The transition from an intimate partnership in which the parents share a personal relationship to the more distant *coparent* relationship is difficult for many people to manage. Moreover, some parents have never lived together. There are few social norms and cues for parents living apart. The difficulty is compounded because often each parent has different preferences and expectations for coparenting.

When advising parents, it is helpful to suggest that they act neither like business acquaintances nor like strangers—instead they should aim for a friendly but restrained style. Many parents need to be reminded that they should keep their opinions about each other's choices, actions, and character to themselves. Positive exchanges must be far more frequent than complaints, and complaints should invite problem-solving rather than carry blame and recrimination.

PRACTICE TIP► Civility guidelines serve a parent-education function. Tone can be as important as content. Coparents should use first names and everyday language. Correspondence between some parents takes on a litigious or hostile tone in which “Mr. Jones” “informs” “Ms. Smith,” for example, that the children “seem to prefer chocolate ice cream to vanilla.” Parents “tell”

each other things; they don't "inform." Such language can be intimidating and authoritarian, and does not foster cooperation or shared pride in beloved offspring. Imagine the discomfort a child may feel to have parents communicate with (and discuss) one another in cold or disparaging language. Ideally, parents "tell" each other news about their children, and "ask" for ideas about how to handle parenting situations that arise, or what plans would work best for the other parent.

Shared parental memories, shared pride, and gracious appreciation for the other's efforts create a better atmosphere for daily life, and make resolving occasional complaints and conflicts more likely. A parent should not have to dread hearing from the child's other parent. When it is necessary to voice a complaint, the parent should make it clear that his or her purpose is to solve the problem in the future, not to allocate blame. The complaining parent should explain the difficulties that arose from the other parent's decision or conduct, suggest possible solutions, and invite the other parent's suggestions and perspective.

§4.27 b. Importance of Describing Information To Be Exchanged

A parenting plan must contain a detailed description of what information each parent *must* give the other, and when and how the parent must share that information. Typically, such provisions include all communications from providers of education, health care, childcare, and ongoing activities. The order should also describe what contact information the parents are to give one another (including a method for emergency communication). Most orders require advance notice of changes of address and phone numbers and immediate notice of changes in email and fax contact information. To avoid harassment or intrusiveness, some cases require giving only limited information. Some families exchange all access information, communicating by mail, fax, email, home phone, office phone, mobile phone, internet messaging, and mobile text messaging. Typically those parents have shared views about frequency and content of coparenting communication.

Travel itineraries. Parenting plans often require the exchange of detailed travel itineraries when a parent is traveling with the children. Travel itineraries ensure that parents can reach traveling children for

periodic phone calls or in cases of emergency. They let the nontraveling parent know generally what the children will be doing, which can be helpful to make phone calls more meaningful. Itineraries with flight numbers, hotel information, and similar details can give a parent peace of mind when there are news reports of plane crashes or dangerous events. On occasion, advance notice of a dangerous itinerary can give a parent an opportunity to object, or even seek court orders governing destinations or providing safeguards.

§4.28 c. Communication Methods

Parenting plan orders can set norms for the time, place, and manner of oral or written communication. For example, orders can limit nonemergency calls to certain hours or phone numbers, require that a fax machine be in “receive” mode during certain hours and be checked a few times a day, and require that email be checked at regular intervals. Orders should set out methods for insulating adult communication from the children’s eyes, ears, and awareness.

Often it is best for most communication to be shared by fax or email. Written communication allows each parent to choose when to receive the information, and allows each to take time to give a thoughtful response, rather than just react by, *e.g.*, acquiescing to something that he or she really does not want to do, or reflexively rejecting proposals. Because written communication is subject to court scrutiny in the event of litigation, parents who might become intemperate in live communication often edit their written communication to voice things more diplomatically.

Internet services such as www.ourfamilywizard.com offer valuable tools for parents to communicate and collaborate on schedules.

Some parenting plans provide for periodic coparenting meetings or phone calls, sometimes moderated by a mediator or family therapist. An order can even describe a method for developing an agenda for such calls, so that neither parent is caught by surprise.

Journals. Parents of infants and young children need to communicate significant amounts of detailed, daily information about such matters as health, sleep patterns, eating patterns, and developmental changes so that they can maintain consistency, and recognize immediate needs. Parents of *special needs* children may also need to share detailed information at each exchange of the children. This is best accomplished by a journal that travels between homes with the child

in a backpack or even a diaper bag. A parenting plan order can provide that the pages of the journal be numbered, and that no pages may be removed and no entries obscured. Each parent should be free to photocopy entries. Photocopies should be admissible. The order might require certain types of information to be shared. One advantage of the journals (besides avoiding prolonged interaction at exchanges of children) is that parents can learn to share information in a style that treats them as equal partners, rather than making one parent feel like the other is directing his or her parenting. Some parents use the journals with coparenting counselors.

The advent of mobile e-mail and text messaging allows immediate written communication between parents who can afford such devices. Use of e-mail and text messaging can reduce emotional intensity and can be accomplished discreetly without the child's awareness. For example, the OurFamilyWizard® service has a method by which e-mails can be preserved and accessed by the court, minor's counsel, or a child custody special master. This feature makes it impossible for either parent to edit the record of their communications.

Information boxes at each home. A "Daddy-" or "Mommy Box" in each home can also help with information exchange. A parent can set up a box in which the child and parent put samples of school work, drawings, notices, report cards, and other items to be sent or given to the other parent at frequent, regular intervals.

§4.29 3. Decision-Making Authority

A parenting plan must clearly allocate decision-making authority, describing what power each parent has when acting alone and what decisions must be made jointly. Nothing in the Family Code gives the court the power to make decisions for the child, yet courts frequently make orders choosing, *e.g.*, schools, therapists, and health care providers. The better practice, absent stipulation of the parents, is for the court order to determine which parent has the authority to make the decision, rather than what decision is made.

§4.30 a. Importance of Specific Orders

Specific orders within parenting plans not only provide guidance to parents about the scope and limits of each parent's authority, but educators, health care providers, and others who often rely on such orders to establish whether the consent of a parent acting alone

is valid. Every parenting plan should unambiguously allocate decision-making authority.

Developing a legal custody plan that is in a child's best interests takes careful consideration of many factors. If the case is to be tried, the attorney must present evidence relating to the risks and benefits of different legal custody plans.

Unilateral authority in joint legal custody cases. In the absence of clear directives, an order of joint legal custody leaves each parent free to engage in unilateral decision making. In making an order of joint legal custody, the court must specify the circumstances under which the consent of both parents is required for exercise of legal control of the child and the consequences of the failure to obtain mutual consent. In all other circumstances, either parent acting alone may exercise legal control of the child. An order of joint legal custody must not be construed to permit an action that is inconsistent with the physical custody order unless the action is expressly authorized by the court. Fam C §3083. See §4.33.

§4.31 b. Variations in Level of Authority Based on Type of Legal Custody

Decision-making authority in parenting plans typically falls into one of several categories, depending on how the order allocates power. Orders can:

- Vest authority in one parent;
- Allow either parent to act unilaterally;
- Require joint consent for particular categories of decisions;
or
- Allocate decision-making authority between the parents so that each parent has sole authority over some decisions.

In making such orders, the parenting plan can also address whether and how consultation with the other parent must be made before a parent may act. The order can also specify whether a parent must advise the other parent of specific decisions.

§4.32 (1) Sole Legal Custody

A sole legal custody order vests all decision-making authority in one of the parents. See Fam C §3006 ("sole legal custody" means

that “one parent shall have the right and the responsibility to make the decisions relating to the health, education, and welfare of a child”). See also chap 1.

PRACTICE TIP► In many cases, it is wiser to label the order “joint legal custody,” include detailed provisions for information exchange and consultation regarding all nonemergency decisions, and then designate one parent the “tiebreaker” in the event of a conflict. This option does not leave one parent feeling disregarded. By including the other parent in information exchange and consultation, it gives the decision-making parent the benefit of another point of view before making a decision. This arrangement provides important checks and balances by giving the non-decision-making parent an opportunity to seek court intervention when a decision under consideration appears to be unwise. See *Marriage of Brown & Yana* (2006) 37 C4th 947, 38 CR3d 610 (supreme court affirmed standing of noncustodial parent to question custodial parent’s relocation decision).

§4.33 (2) Joint Legal Custody

A joint legal custody order is any order that provides for shared parental authority. See Fam C §3003 (“joint legal custody” means that “both parents shall share the right and the responsibility to make the decisions relating to the health, education, and welfare of a child”). See also chap 1. There are many ways in which the right and responsibility to make decisions can be shared. Plans allocating legal custody are as important to the child’s well-being as are physical custody schedules.

Avoiding joint legal custody without additional orders. Family Code §3003 creates a trap for the unwary, creating the illusion of shared authority while permitting unilateral parental action (see §4.30). Either parent may act alone, but cannot make decisions that are inconsistent with the physical custody orders. Joint legal custody awards without detailed provisions allocating authority are essentially cosmetic orders that can leave a parent disenfranchised. These orders often lead to modification proceedings. At that point, one parent has felt empowered for a period of time, and is apt to resent sharing authority. Such orders can create deep resentment against the court system in the minds of both parents. It is better for parents to start out with clear orders and accurate expectations.

In most cases, counsel should avoid purely “cosmetic” joint legal custody provisions. Cosmetic joint legal custody orders leave a parent who does not have a lot of physical custody time without any real influence over important decisions like school and medical care. Cosmetic joint legal custody orders can also create problems for parents who do have more physical custody days during the school year, because they cannot influence camp, day care, summer school, or health care decisions when the children are with the other parent for summers and holidays.

c. Developing Legal Custody Plan

§4.34 (1) Allocating Authority

One method to keep both parents actively involved and sharing parental authority without creating frequent impasses is to give each parent *categories* of decisions over which he or she has the ultimate authority, after consultation. In some cases, one parent has specialized medical, educational, or other expertise that makes that parent better equipped to make wise decisions in a particular circumstance. In other cases, one parent may have impaired parental decision-making ability, a history of unsound decisions, or little interest in this aspect of parenthood.

§4.35 (2) Factors to Consider

Clearly the first, and most important, goal of a legal custody plan is to ensure that wise decisions are made for the child. However, the legal custody plan also has other ramifications. There are many other important factors to consider.

§4.36 (a) Quality of Decisions; Ability to Marshal Resources

In most cases, both parents have knowledge, insight, and life experiences that, when combined, will produce better decisions. The give-and-take of sharing information and exploring options collaboratively leads to more thoughtful decision making. For most childrearing decisions, there are several equal or nearly equal alternatives. Including both parents creates a richer blend of ideas, can expose the child to a broader range of experiences, and may stretch each parent’s thinking and experience over time. Allocations of authority that either re-

quire most major decisions to be joint or give each parent areas of authority, but require meaningful consultation before decisions are made, can enrich the quality of parental decision making.

Even when one parent has a dramatically better history of decision-making capacities, that parent will inevitably have blind spots that the other parent may recognize. In those cases, requiring meaningful advance cooperation ensures that the parent making the ultimate decision considers a broader menu of choices and factors. An advance consultation requirement also provides the ultimate safety net by permitting recourse to the court with serious concerns *before* the decision is implemented.

Each parent may have different areas of expertise, knowledge, and sophistication that can affect the quality of decision making. Consider each parent's ability to recognize each child's psychological, social, medical, educational, cultural, and other needs and then look at each parent's ability to marshal resources for the child to meet those needs. In most cases, the ability to make wise decisions will also be affected by the degree of the parent's involvement in the child's daily life. A long-distance parent who is not regularly traveling to the child's community and is not involved in the child's daily life may not have enough information to make wise decisions. That parent also will not have to deal with the practical and logistical ramifications of choices, for example, selection of a school that requires a longer commute.

§4.37 (b) Importance of Cooperation and Compromise and Respecting Parental Identity

Cooperation and compromise. A parenting plan that preserves a balance of power (for both decision making and the schedule) encourages cooperation and compromise. When each parent is going to need the other's consent for some future decision, each is more likely to recognize the importance of compromise, or of accepting a choice that is not his or her preferred outcome for a particular decision.

Respecting parental identity. Parenthood is an important part of most people's self-concept and identity. A parent who is excluded from information and decision-making authority suffers a grave blow that can have a variety of unintended ramifications for the child.

A parent who feels undervalued and powerless may drift away from involvement with the child and from parental responsibilities. A disenfranchised parent may feel resentful and act in ways that undermine the other parent's decisions and parenting, or disrespect court orders. The parent may feel a need to protect his or her parental identity by relitigating, humiliating the other parent, or establishing dominance.

Moreover, the parenting plan sends a signal from the state to both parents about their respective worth. A parenting plan that fails to treat both with respect can signal to one parent that it is fine to disregard the other parent, treat that parent as insignificant, or treat that parent with contempt. Because the parenting plan is a court order, it is important for the court to communicate that both parents are worthy of respect and that each parent's contribution to parental decision making is important.

The absence of a legal custody plan can lead the parent who has actually done more of the decision making to develop an undeserved sense of entitlement. The longer one parent informally dominates, the harder a transition to a system of checks and balances may become.

Not every parent wants the same level of involvement in decision making, however. Many parents voluntarily choose a less active role. Consultation and information provisions treat such parents with respect, give them an opportunity to play a larger role from time to time, and occasionally provide essential checks and balances.

Thus, it is important for almost all parenting plans to include a respected and important role for each parent and to include some checks and balances even when most power is consolidated in one parent.

§4.38 (c) Modeling Gender Roles and Shared Decision Making for Children

A factor to consider when allocating legal custody is what the children will learn from that allocation of power. When one parent is relatively powerless, that parent may appear less important to the children, and less worthy of their respect. Allocation of most power to one parent may also teach an unintended lesson about the relative importance of mothers over fathers, or vice versa. Children who observe parents resolving conflicts in a collaborative, respectful fashion learn lessons that will benefit them throughout their lives.

§4.39 (d) Ability to Work Well With Third Parties

Legal custody requires the ability of parents to work well with teachers, doctors, activity leaders, care providers, and other parents. When a parent cannot do so, his or her role in legal custody may need to be reduced—particularly when that parent is aggressive and confrontational or irrational and disruptive.

PRACTICE TIP► If a parent really cannot work in a collegial way with the other adults in the child’s life, the child may suffer painful embarrassment and may lose opportunities to be included. Private schools often refuse to accept children when one parent is apt to disrupt school life or overentangle the school in custody disputes. Similarly, rather than get caught in the middle, pediatricians will ask such families to find a new doctor. Children whose parents lack social skills and graces often do not get invited to out-of-school events. It is important, however, to be careful not to brand a parent as “overly aggressive and confrontational” when the custodial parent and the caregivers have acted inappropriately to exclude a parent, and the parent diplomatically and appropriately seeks to remedy that problem.

§4.40 (e) Power Imbalances; Abuses of Power

A parent who has dominated parenting historically is not necessarily the wisest or most competent parent. One parent may just have a stronger personality, or a greater psychological need to be the dominant or “better” parent. In many cases, the parent who has had more physical custody time has dominated decision-making. It is important to look at the quality of decisions historically made for the children, not just who has made them in crafting the parenting plan.

Using mediator to help passive parents. Some parents are passive or avoid conflict to the point that they will allow bad decisions (or no decisions) rather than risk conflict or litigation. Some parents feel less articulate or able to hold their own in any give-and-take. In such situations, consider a legal custody plan that includes at least quarterly sessions with a mediator who will caucus with each parent and help maintain a safe setting in which a less confident parent can voice concerns and work with the other parent to resolve them.

Domestic violence. Special safeguards are essential in cases of true battering, *i.e.*, domination by one parent for purposes of maintaining control over the other parent and the children. This kind

of domestic violence does not necessarily entail physical violence, but may include great intrusiveness, threats of violence, extreme financial control, verbal humiliation, and other behaviors with or without physical abuse. In such cases, careful assessment is essential.

A joint legal custody plan can provide the vehicle for continuing such domination and control. In some cases, the parent who was the victim of the abuse may be unaccustomed to decision making. Some victims have also absorbed their abusive partner's world views and approaches to parenting, and may act unwisely or abusively. A parent who has been the victim of this kind of abuse may need supportive services (parent education and ongoing parenting coaching, for example) to assist in making wise decisions and fending off an abusive parent's continuing efforts to dominate and control. Allowing the legal custody plan to be used in this fashion presents special risks to children. See Bancroft & Silverman, *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics* (Sage Publishing 2002); Barber, *Intrusive Parenting: How Psychological Control Affects Children and Adolescents* (APA 2001); Dutton, *The Abusive Personality: Violence and Control in Intimate Relationships*, 2d ed (Guilford Press, 2006); Dutton, *Rethinking Domestic Violence* (Guilford Press, 2006); Gottman & Jacobson, *When Men Batter Women: New Insights Into Ending Abusive Relationships* (1998).

(f) Special Issues

§4.41 (i) Children's Enrichment Activities

Importance of enrichment activities. Enrichment activities are often lightning rods for parental conflict. One parent will complain that the other parent's decisions to enroll a child in various activities either limits the child's availability for time with the parent or infringes on the parent's ability to make decisions about how family time is spent when the child is with him or her. Both may be right. After all, play is a critical part of human development.

Enrichment activities help children develop a sense of mastery and competence, explore and extend the range of their talents and interests, and develop more fully as individuals. Enrichment activities are also an important part of the child's peer and social life, and are opportunities to learn how to get along with a broader variety of individuals and groups. Those social skills are as important to life success and satisfaction as academic achievement.

Enrichment activities may also be the way in which families pass on cultural heritage and traditions, or other family affinities. When a parent and child share an interest or skill, the connections between them can be strengthened. On the other hand, too many structured enrichment activities can leave a child overscheduled, pressured, and deprived of any free time for less formal endeavors, daydreaming, reading, drawing, exploring, or just spending time with family and friends. Children need the opportunity to learn how to organize their own time, and develop resourcefulness about finding things to do that they find interesting and rewarding. Too many scheduled activities can interfere with their development of independence, autonomy, and self-sufficiency.

The process of accommodating these activities gets even more complicated when parents' households include children of new relationships, or additional stepchildren. The logistics of maintaining all of the children's activities and other demands on parents' time can be daunting.

The premise that children are more likely to flourish when both parents are actively involved in their daily care does not mean there should be disruptions in their social lives and enrichment activities as they move between parental homes. It also does not mean that a child should have so many activities that time with another parent vanishes. Parents frequently disregard the significant impact that their decisions to move some distance from the centers of their children's lives have on those children. Children should not have to choose between family life, relationships with parents, and their friends and activities.

Many parents fail to recognize the importance of this kind of continuity for their children in making decisions about where to live. The costs of such disruptions in the child's life are high. The costs of the loss of a close relationship with one parent are equally high. In assessing the quality of parental decision making in contested custody cases, evaluators and judicial officers should look closely at this aspect of parental decision-making.

When one parent lives at a distance, that parent should be encouraged to spend as much time as possible in the child's community, to maximize familiarity and involvement in the child's school activities and social life.

Choosing activities. When both parents have a good understanding of the child's needs for enrichment activities, free time, and the importance of both families in the child's life, the parents should

make decisions about enrichment activities jointly. Sadly, that is not always the case. When it is not, allocating authority to make decisions about activities is a starting place.

It is not enough to allocate the power to select an activity for the child. The parenting plan should specify what percentage of the sessions may be missed when the child is with the other parent, how information about the activity will be shared with both parents, and whether the parent who selected the activity must provide transportation when the child is in the home of the other parent and that parent is unwilling or unable to do so.

One way to create a balance of power about enrichment activities is to break the year up into three activity “seasons” and either alternate responsibility for choosing an activity for each season or permit each parent to choose one activity (with precautions about scheduling conflicts) for those seasons. Most often, the year will break down into summer and the two school semesters, and many activities track that schedule.

A base parenting schedule in which the child spends the same days each week with the same parent can reduce the need for collaboration about enrichment activities. If a child spends every Tuesday in the mother’s home and every Thursday in the father’s home, the mother can schedule gymnastics classes for Tuesdays and the father can schedule flute lessons for Thursdays. However some activities that entail skill building require practice time (and sometimes equipment) in each home. Piano lessons, for instance, require that the child have access to a keyboard in each home.

Decision-making about enrichment activities can entail other concerns. Sometimes a parent pushes a child into an activity the parent enjoys without regard to the child’s own talents, interests, or affinities. Some activities entail higher levels of risk of physical harm (such as ballet classes that require children with immature feet to wear toe shoes, or allowing a child to pitch a baseball too much) and should require joint consent.

Parental involvement in an activity can be gratifying to children, but sometimes parents take over and the children’s activities become the parents’ whole world. To develop independence, autonomy, and individuality, children need experiences when their parents are not present. Moreover, when one parent is deeply involved in a particular activity, the other parent may feel less at home, less welcome, and consequently less supportive of the activity.

Parent education and counseling about these issues is essential. No matter how well crafted the order, a parent can sabotage a child's interest in a formerly beloved activity by making disparaging remarks about it, showing little or no interest in it, or planning competing activities and either inviting the child to choose or making the child feel bad about missing the competing activity. Parents who value their own autonomy over their children's well-being frequently undermine enrichment activities. The result can have long-term adverse consequences for children's sense of competence, development of a broad range of interests, and development of social skills.

§4.42 (ii) Children With Special Needs

Attorneys see an increasing number of custody cases involving children with special needs. Whenever possible, counsel should maximize both parents' participation in the Individualized Education Plan (IEP) process, work with the California Department of Developmental Services Regional Centers, and in meetings with doctors, educators, and therapists so that both parents have the opportunity to develop an in-depth understanding of the child's needs and how to meet those needs in each home.

Families having children with special needs require very detailed parenting plans. They face issues such as the continuity of care and routines in each home, and use of special medical or educational equipment. Decisions about parenting plans for special needs children should be based on careful assessment of each parent's ability to recognize the child's needs and challenges, and to help the child reach the highest level of functioning possible for that child. Decision makers in child custody cases should watch out for parents who have unreasonable expectations and place children in situations they cannot cope with, and for parents who infantilize their special needs children and do not help them achieve as much independence and autonomy as possible.

§4.43 (iii) Religious and Cultural Issues

Honoring both parents' traditions. Both parents of a child sometimes have materially different religious and cultural traditions that they want their child to share. They should be encouraged to do so in ways that communicate to the child that both cultures and religious traditions are of equal value and merit, and not force the

child to make choices between them. The challenge transcends tolerance, and requires affirmative appreciation of the child's dual cultural or religious heritage, and each parents' belief systems. See *Marriage of Weiss* (1996) 42 CA4th 106, 49 CR2d 339.

Some children get caught up in conflict between different religious practices in each home. Parents should be encouraged to permit the children to adopt the practices of each home while in that home free of comment or criticism from the other household. As children grow older, they start making personal choices about religious practices, and those choices should be honored in each home.

Provisions about a child's schedule should take religious practices into account. For example, in one case a child custody evaluator failed to ask a Jewish father about Sabbath observances. Her recommendations for Friday exchanges of the child proved completely unworkable. The father did not drive after sundown on Fridays, and his household's Sabbath dinner took place each Friday night at sundown. He simply could not drive to pick up the children after work in a different county on Friday evenings, and late pickups would have excluded the children from participating in this important part of family life in that household.

Religious ceremonies such as a bar or bat mitzvah, christening, baptism, bris, confirmation, or first communion, for instance, require careful attention in the parenting plan so that a child's entire family is honored, and so that the occasion is not tarnished by conflict. The order needs to address how those decisions are made, who attends, who participates, and who pays the costs associated with the event. It may be helpful for parents to work with a mediator in making these plans well in advance of the events.

Consent issues affecting religious practices. The legal custody provisions of a parenting plan should address whether joint consent is needed for decisions like the child's participation in formal religious education, or ceremonies that mark the child's formal membership or affiliation with a particular religion.

Constitutional limitations. The First Amendment to the U.S. Constitution limits the authority of courts (and court-ordered parenting plans) to restrict each parent's right to share religious beliefs, traditions, and practices with children. The state can limit parental authority in matters of religious upbringing only on a showing of a substantial threat of harm to the physical or mental health of the child or to the public safety, peace, order, or welfare. *Wisconsin*

v Yoder (1972) 406 US 205, 230, 32 L Ed 2d 15, 92 S Ct 1526; *Marriage of Weiss* (1996) 42 CA4th 106, 49 CR2d 339; *Marriage of Birdsall* (1988) 197 CA3d 1024, 243 CR 287; *Marriage of Murga* (1980) 103 CA3d 498, 163 CR 79; *Marriage of Mentry* (1983) 142 CA3d 260, 190 CR 843. See also *Elk Grove USD v Newdow* (2004) 542 US 1, 159 L Ed 2d 98, 124 S Ct 2301.

This showing might be met if a parent provides religious education that condemns the other parent's beliefs, religion, or sexual orientation. It might also be met when a place of worship or a congregation formally shuns one parent, or aligns with the parent who remains in the congregation against the other parent.

§4.44 (iv) Impasse Resolution

A legal custody plan may contain provisions for impasse resolution, including use of court-connected mediation, private mediation, appointment of a child custody special master (also termed "parenting plan coordinator"), or appointment of a child custody evaluator to assess a particular issue (such as school choice). Use of the informal processes and more focused attention of the mediator, child custody special master, parenting plan coordinator, or evaluator can help families reach resolution outside of court.

Long-term incremental decision-making models have many advantages. Small issues get resolved before they blow up into large ones. The parenting plan can be fine-tuned based on ever-changing circumstances and experiences. A neutral professional working with a family gets to know the family members well over time. Decisions are made promptly and in a less adversarial setting.

With the exception of court-connected child custody mediation (in counties that provide this service), however, the alternative dispute resolution (ADR) services are often beyond the economic means of a family. In addition, the trade-off for the informality of ADR can be fairness and due process. It is important to maintain a system of checks and balances, and accountability.

Orders for ADR processes require careful drafting and attention to the statutory basis for the process chosen. When alternative processes will replace adjudication, the orders must include explicit informed waivers of due process rights and should ensure that the court, on request of either parent or minor's counsel, can address an issue de novo. They must address the admissibility of the findings of the ADR professional and the weight they are to be afforded in the superior court.

There is no statutory authority for a child custody special master-parenting plan coordinator process. The family law bar and bench have been experimenting with this model for more than a decade but many vexing questions remain.

Orders appointing child custody special masters typically invoke aspects of three statutorily created processes: mediation (Evid C §§1115-1128), child custody evaluation (Fam C §3111, Cal Rules of Ct 5.220) and reference (CCP §638), while disregarding essential safeguards and principle features of each model.

For example, orders by child custody special masters typically invoke Fam C §§3110-3118 and Evid C §730, but child custody special masters do not comply with the requirements of Rule 5.220 governing child custody evaluators; their data-gathering methods do not have the reliability or validity of a child custody evaluation. Moreover, attorneys and others who do not meet the requirements of Cal Rules of Ct 5.225 are often appointed as child custody special masters.

The hybrid mediation-arbitration model for the child custody special master process discards the two defining features of mediation-confidentiality and the absence of coercion. It discards the due process protections of a civil reference.

Until the legislature or the Judicial Council acts, there is a high burden for family lawyers in drafting special master appointment orders. The Guidelines for Parenting Coordination promulgated in 2005 by the Association of Family and Conciliation Courts are an excellent starting point. They may be found at: <http://www.afccnet.org/pdfs/AFCCGuidelinesforParentingcoordinationnew.pdf>.

Because of the state's independent interest in protecting children's best interests (see generally Fam C §3020(a)), a process that does not protect de novo review may not protect children. It is unclear whether parents can limit or terminate the court's jurisdiction by such stipulations.

§4.45 D. Parenting Schedules (Physical Custody and Visitation) and Related Plan Provisions

When most people think about a parenting plan, they focus first on the schedule for physical custody or physical custody and visitation. The schedule typically includes a base (usually school year) schedule, and special provisions for vacations, holidays, and other special days.

Developing a workable schedule for a family requires a great deal of particularized information about that family's life. Such schedules

inevitably require adaptation over time to reflect changes in the child's age, stage of development, and in all other aspects of family life.

Resources. The best resource for examples of age-appropriate schedules is the Model Parenting Time Plans for Parent/Child Access booklet posted on the Arizona Supreme Court's website in PDF format (http://www.supreme.state.az.us/dr/Pdf/Parenting_Time_Plan_Final.pdf). The booklet includes alternative schedules, and model language for parenting plans. See also Hartson and Payne, *Creating Effective Parenting Plans: A Developmental Approach for Lawyers and Divorce Professionals* (ABA 2006); Lyster, *Child Custody: Building Parenting Agreements That Work: How to Put Your Kids First When Your Marriage Doesn't Last*, Nolo Press (4th ed 2004).

§4.46 1. Distinguishing Physical Custody From Visitation

The Family Code includes definitions of joint and sole physical custody (see Fam C §§3004, 3007), as discussed in chap 1, but fails to define visitation. The Family Code, however, provides that in making a custody order, the court must grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. Also, in the discretion of the court, reasonable visitation rights may be granted to any other person having an interest in the welfare of the child. Fam C §3100(a). However, §3100(a) does not establish jurisdiction for an independent third-party visitation action. See *Huffman v Grob* (1985) 172 CA3d 1153, 218 CR 659; *Marckwardt v Superior Court (Soto)* (1984) 150 CA3d 471, 198 CR 41. For further discussion of nonparent visitation, see chap 13.

The use of the terms “physical custody” and “visitation” reflect the historical bright line between the parent with whom the child resided, and the parent with whom the child spent briefer periods of time. In the past three decades, the bright line between the two has blurred for most families. The term “visitation” is offensive to many, and communicates to the child, the family, and the world that the visiting parent is less important, has less status, and is entitled to less respect. Similarly, the term “primary physical custody” not only fails to communicate anything meaningful about the schedule, but communicates an unnecessary ranking of parental status.

Terms like “parenting time,” or “responsibility periods” can avoid

the stigma. However, as discussed below, use of such euphemisms can have unintended legal consequences. The best practice for most families is to refer to the child's time in the care of each parent as "physical custody" or "joint physical custody." The term "visitation" is increasingly being reserved for limited or problematic parent-child relationships.

Legal consequences of labels. The law continues to ascribe special rights to parents with custody that are not provided to parents with mere visitation rights. For example, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Fam C §§3400–3465) contains vastly different provisions for enforcement of foreign (out of state or country) custody and visitation orders. Enforcement of custody orders is mandatory under the UCCJEA, while enforcement of visitation rights is discretionary and limited.

Similarly, only a parent with rights of physical custody has standing to seek return of a child who has been wrongfully removed from or retained outside of the country of habitual residence under the Hague Convention on the Civil Aspects of International Child Abduction.

In addition, Family Code §7501 creates a presumptive right of a custodial parent to relocate with a child that has left courts in a quandary about whether there is a bright line defining true joint custody. Is it purely the percentage of time spent with each parent or does the frequency and significance of that time to the child's welfare have a bearing? Physical custody also can be a condition precedent to other rights, such as receipt of public assistance benefits for the child.

§4.47 2. Restrictions on Visitation

A child's relationship to each parent is of such great importance that restrictions on visitation must be seen as a last resort. *Hoversten v Superior Court (Hoversten)* (1999) 74 CA4th 636, 88 CR2d 197. In developing a visitation schedule, it is essential to identify what benefits this particular child is expected to get from a relationship with this particular parent and to tailor the schedule to maximize those benefits while minimizing any risks to the child that a parent might present.

§4.48 3. Physical Responsibility Periods

The parenting plan must describe the parent's respective periods of responsibility (physical custody) with specificity so that the order is enforceable, and serves as a clear tiebreaker when parents disagree.

Counsel should draft carefully so that a person who has access only to the language of the order and a calendar can determine which parent is responsible for the children at any given time. This requires identifying commencement dates, times for exchange of the child, and how the base schedule resumes after interruptions for holidays, vacations, and other special days.

The order typically would begin:

The parents are awarded joint physical custody, commencing __[date]__, according to the schedules set forth below until further order of court, except as agreed between them in writing for a particular period.

§4.49 4. Geographic Restrictions or Relocation Notice

Every parenting plan schedule is based on assumptions about the distance and travel time between parental homes. For each family, a move of either parent will inevitably trigger a need to adjust the schedule. While there is no way to restrict a parent's own right to move, most parenting plans should require written consent of both parents or further order of court *before* a change of the child's residence outside geographic parameters that would make the existing plan impractical or unworkable.

This can be accomplished by banning moves that increase the distance (or long-distance travel time) between homes, outside a defined geographic radius from the child's school, or some other objective and plan-related criteria. When geographic restrictions are inappropriate, the parenting plan should include the statutorily authorized relocation notice requirement (Fam C §3024) so that a parent receiving notice has an opportunity to ask the court to bar the child's move, or adapt the schedule before the move.

§4.50 5. Use of Two- or Four-Week Scheduling Charts

Long, wordy descriptions of a parenting plan schedule are not only unintelligible to the reader, but often conceal flaws in the schedule that make it impractical or undesirable. When the drafters and the parents can look at the plan, they can think about it in more practical ways. A graphic depiction of the base schedule can be understood at a glance. Use preprinted grids and a set of highlighting pens or specialized custody calendaring software, such as Shared Ground® or

OurFamilyWizard® to create and compare alternate schedules. For online access, see www.ourfamilywizard.com; www.sharedground.com. Writing in recurring events such as scout meetings or nights parents have to work makes it is easy to see the impact of the schedule on family life. The examples below depict three variations in schedules of shared physical custody between parents, using four-week periods.

§4.51 a. Example 1

The four-week schedule that follows would be accompanied by a general order of the court, such as:

The parents will share physical custody according to the following schedule, except as agreed between them in writing for a particular period, or provided here, commencing [date] and continuing in rotation until further order of court.

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Week 1	Dad	Dad	Dad til close of school* then Mom.	Mom	Mom	Mom	Mom
Week 2	Mom til close of school* then Dad	Dad	Dad til close of school* then Mom.	Mom	Mom til close of school* then Dad	Dad	Dad
Week 3	Dad	Dad	Dad til close of school* then Mom.	Mom	Mom	Mom	Mom
Week 4	Mom til close of school* then Dad	Dad	Dad til close of school* then Mom.	Mom	Mom til close of school* then Dad	Dad	Dad

A footnote to the printed schedule would read:

*During the summer, exchanges will take place at the close of day camp. When school is not in session or the child is ill, exchanges will take place at 6 p.m. with the parent commencing a physical custody period picking up the child.

Examination of the graphic schedule shown above reveals that the flow of the plan is much clearer as a graphic than it would be as a verbal description. One can see that this child will always spend at least two overnights in each home per week, and never more than five consecutive overnights in each home. In an alternate-

week plan, the child is always separated from one parent for seven full days (more than most children, even as late as junior high or high school, find comfortable). One can also see that the child will spend alternate weekends with each parent.

The father knows he can plan activities for the child on Mondays and Tuesdays, and that he can count on Wednesdays and Thursdays for adult plans. The mother knows that she has Mondays and Tuesdays free, and that she can schedule events for the child on Wednesdays and Thursdays.

If this family followed an alternate-week schedule, the parents would have to agree on the selection of all activities, and would participate in all activities. There are eight transitions between parental homes, all of which are buffered by school or day camp, so that there are no face-to-face exchanges except when the child is not attending school or day camp.

§4.52 b. Example 2

The four-week schedule that follows would be accompanied by a general order of the court, such as:

The parents will share physical custody according to the following schedule, except as agreed between them in writing for a particular period, or provided here, commencing [date] and continuing in rotation until further order of court.

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Week 1	Dad	Dad til close of school* then Mom.	Mom til close of school*, then Dad.	Dad	Dad til close of school* then Mom.	Mom	Mom
Week 2	Mom til close of school, then Dad.	Dad til close of school* then Mom.	Mom til close of school*, then Dad.	Dad	Dad	Dad til 6 p.m. then Mom	Mom
Week 3	Mom til close of school, then Dad.	Dad til close of school* then Mom.	Mom til close of school*, then Dad.	Dad	Dad	Dad	Dad
Week 4	Dad	Dad til close of school* then Mom.	Mom til close of school*, then Dad.	Dad	Dad til close of school* then Mom.	Mom til 6 p.m. then Dad	Dad

A footnote to the printed schedule would read:

*During the summer, exchanges will take place at the close of day camp. When school is not in session or the child is ill, exchanges will take place at 6 p.m. with the parent commencing a physical custody period picking up the child.

In examining the schedule for this example, counsel can more easily see how the plan works, and decide whether it is appropriate for the child. The plan has the child spending every Tuesday overnight with the mother, while spending more time with the father. Each parent has one long weekend with the child, two split weekends, and one child-free weekend. Looking at the plan this way, one can see that it might not work well for a preschooler, because in Week 3 the child is separated from one parent (the mother, in this example) for seven consecutive overnights.

Note that in the 50-50 timeshare depicted in Example 1 (§4.51), there were only eight transitions, while this schedule has 14 shifts between homes. Most of the child's time with the mother is broken into brief stays—six single overnights. There is a single two-overnight stay at the end of Week 2, and a four-overnight stay in Week 1. While weekdays are predictable under this plan, no two weekends are the same. As in Example 1 (§4.51), this schedule makes sure that each parent has significant direct contact with the child's school, and can develop familiarity with teachers, friends, and parents of the child's classmates.

§4.53 c. Example 3

The four-week schedule that follows would be accompanied by a general order of the court, such as:

The parents will share physical custody according to the following schedule, except as agreed between them in writing for a particular period, or provided here, commencing [date] and continuing in rotation until further order of court.

	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
Week 1	Mom	Mom	Mom til close of school*, then Dad til 7 p.m., then Mom.	Mom	Mom til 7 p.m., then Dad	Dad	Dad til 7 p.m., then Mom.
Week 2	Mom	Mom	Mom til close of school*, then Dad til 7 p.m., then Mom.	Mom	Mom	Mom	Mom
Week 3	Mom	Mom	Mom til close of school*, then Dad til 7 p.m., then Mom.	Mom	Mom til 7 p.m., then Dad	Dad	Dad til 7 p.m., then Mom.
Week 4	Mom	Mom	Mom til close of school*, then Dad til 7 p.m., then Mom.	Mom	Mom	Mom	Mom

A footnote to the printed schedule would read:

*During the summer, exchanges will take place at the close of day camp. When school is not in session or the child is ill, exchanges will take place at 6 p.m. with the parent commencing a physical custody period picking up the child.

This child spends four out of every 24 overnights in his or her father’s home. The child has four after-school-through-dinner visits with him in that same four-week cycle, but the child frequently goes seven days without seeing the father. Although the child spends only a small amount of time with him, there are 12 exchanges (four more than the 50-50 timeshare in Example 1 (see §4.51)), and both parents are present for each exchange. The father has weekly direct contact with the child’s school, teachers, friends, and the parents of classmates. The mother can make after-school plans for Mondays, Tuesdays, and Thursdays. The father can plan one weekly activity with the child.

This schedule works for a family in which one parent lives too far away to take the child to school. If he or she has enough flexibility to leave work early on Wednesdays, that parent can take the child for a snack, do homework with the child at a public library or take him or her to swim class, and have dinner with the child once a week. The parent becomes a familiar face to other parents, making it more likely that the child can have a friend spend an after-school-through-dinner time with them or come to that parent’s home for a weekend, from time to time.

§4.54 6. Weekends

The commonly seen provision for a child to spend alternate weekends in the care of one parent is often too vague to be enforceable. After a year or so, it is almost impossible to count back to the starting date. Such orders provide no guidance about whether a weekend is lost if interrupted by a holiday, or if the alternation merely resumes by reference to which parent had the children for the last regularly scheduled weekend.

The clearest way to avoid that conclusion (and allow parents to make future plans knowing whether they will have the children on a particular date) is to provide that the children are with the parent on every weekend in which Friday is an odd-numbered (or even-numbered) calendar date. A glance at any calendar will make it clear which parent is responsible for the children on any particular future weekend.

Some orders specify the first, third, and fifth weekends of a month. These orders should define the “first weekend” as the first weekend in which the Friday (or the Saturday) falls in that calendar month. Merely referring to “weekends” does not provide sufficient specificity. The order must describe the day and time for exchange of the child; for example, “Friday from the close of school (or 4 p.m. if the child is not in school that day) to Monday at the start of school (or 8 a.m. if the child is not to attend school that day).”

§4.55 7. General Factors in Creating Base Schedule and “Step-Ups” in Parenting Time

Child’s age and stage of development. Schedules need to take into account a child’s age and developmental stage (and understanding of time), parental availability, the quality of the child’s relationship with each parent, the quality of care each parent provides, the nature of the child’s experience in each household, the child’s temperament, distance, continuity of activities and relationships, the schedules of other children in each household, and numerous other realities of daily life.

Child’s concept of time. Try to balance the child’s understanding of *time* with giving the child an opportunity to settle into each household and be part of its daily life, and minimizing the number of transitions. Until about age 6 or 7, children have only the vaguest concepts of time. For infants, toddlers, and preschoolers, “today,

tomorrow, and yesterday” do not have much meaning. Until about age 12, a child’s ability to understand longer stretches of time—such as months—is immature.

One need only remember the vast expanse of summer vacation from childhood to remember that adults and children experience time very differently. Infants, toddlers, and preschoolers have difficulty if separated from either parent for more than two or three days, and need predictable routines. Older children also need frequent time with each parent. Weeklong separations can leave the absent parent without an understanding of events in the child’s life, and do not provide opportunities to work through conflicts and misunderstandings that might take place just before a transition. On the other hand, frequent shifts back and forth without time to settle in are rarely pleasurable for children age two and older.

Child’s age at separation or when overnight stays began. Knowing a child’s age is not enough. Research has shown that the age of the child at the time of the parents’ separation, or the time that overnight stays are added to the schedule can make a significant difference. One study concluded that infants can flourish with overnight stays in each home, but that, if the overnights were not introduced at that stage of life, the child might do better waiting until later in childhood to try them.

Child’s attachment based on parents’ living arrangements. A child whose parents lived together is likely to have developed equal attachments to each parent (even if the amount of time spent with each parent differed), while a child whose parents never lived together or separated when the child was very young may need gradual step-ups in parental time, and regular, frequent time with the parent to develop familiarity and comfort.

Importance of “one-on-one” time. Children love regular one-on-one time with each parent. Counsel should try to build in at least one “close-of-school overnight” (or till “shortly before bedtime”) period of contact with each parent into the monthly schedule, and encourage parents to let the children have a strong voice in planning the activity. Children love developing traditions like “pizza and movie Thursdays,” or “shopping and cooking Mondays” together that build closeness and memories.

Even identical twins crave time alone with each parent. When children’s ages and interests are different, it is even more important

to build one-on-one time into the schedule at least once a month. Counsel might also consider including an opportunity for each child to take a long weekend (or longer) trip with each parent at least once or twice a year, even if it requires missing a day or two of school. When a parent's new household includes other children, that parent should not expect his or her children from a former relationship to spend all their time with the full household. One-on-one time in which a child can enjoy a parent's focused attention and companionship is crucial.

§4.56 8. Parenting Plan Provisions Related to Base Schedule

Providing a base schedule rarely addresses all of the issues relating to a child's daily care and supervision. It is best to work out in advance how some of the more predictable issues will be handled.

§4.57 a. Child's Care in Parent's Absence

The parenting plan should address who cares for a child in the event that one of the parents would otherwise use a babysitter, friend, or relative. Counsel should carefully draft this provision to describe when and how each parent must give the other the option to care for the children before making other child care arrangements.

In thinking through whether and how to incorporate such a provision, balance the benefits of increasing time in the care of a parent over the intrusiveness of requiring one parent to provide ongoing information to the other parent about plans and whereabouts. In most cases, it would be undesirable to provide that use of a babysitter for a few hours would trigger this option, or to permit a parent to be free to go on a several-week business trip and arrange for a nonparent to care for the child when the other parent is available and willing to do so.

The decision about where to draw the line between those two extremes will be different from case to case, and at different stages of childhood. In some families, two working parents are "dividing scarcity" and there are too few waking, nonworking hours to satisfy the needs of children and parents for family life. In those cases, an extra evening or overnight stay with an available parent can be particularly valuable for the child and the parent.

§4.58 b. Balancing Care by Parents With Other Experiences

Counsel should take care to not make a provision limiting nonparent care (see §4.57) so broad that a child cannot enjoy an occasional overnight stay with a grandparent or a friend. When a child has a close relationship with a stepparent, for example, preserving the base schedule when a parent is away for a brief period may also be best.

The issue is more complex when it comes to day care or preschool. Research is increasingly suggesting that while part-time preschool and day care is highly beneficial, very young children also need significant amounts of time in the family setting. When a child is in a true preschool or Head Start setting, counsel should avoid drafting a schedule that has the child regularly missing sessions that his classmates are attending. The child will never finish his clay pot, will not know the words to the song everyone else is singing, and may find him or herself socially marginalized at play-

time. However, most programs for young children have times of day when some of the children leave with parents—typically just before or after lunch, or in the early afternoon. In such cases when one parent is working and the other is available, it can be beneficial to give the child and available parent more time together.

One of the many hardships that children face when parents live in different communities is an increase in the time that they spend in the care of third party caregivers, rather than parents working collaboratively to maximize parental care. This is yet another area in which balance is key. Young children benefit from good quality child care that provides intellectual stimulation, social skills, and a growing sense of independence. At the same time, young children need the richness and complexity of family life, and deep relationships with a few caregivers who truly value them.

§4.59 c. Telephone Contact With Child

For children to benefit from telephone contact with an absent parent, the atmosphere surrounding the call must be relaxed and comfortable at both ends. How a parent handles the telephone contact between the children and the other parent is critical, and much of what matters most is attitude, not logistics. Many families do not need special telephone contact provisions in court orders. In other cases, telephone call orders may need a fair amount of specificity, and must be carefully constructed.

When the calling parent is not unduly intrusive, insensitive, or demanding, and the other parent is not unduly restrictive, curious, or reactive to the calls, children benefit the most. In these families, the parents often share information about optimal times to call. When one parent is far away or has infrequent parenting time, the other parent may provide frequent emails about what the child is doing, so that the calling parent has enough information to spark a conversation. When calls are relaxed, a parent's feelings are not hurt if he or she calls at an inconvenient time, or if every call is not returned. Calls are not so frequent that they disrupt life in the household where the child is, and the calls are seen as normal and valued. Young children are encouraged to come to the phone, and slightly older children are reminded when interesting things happen that they might want to remember to mention them at the next call.

Some children need the protection of detailed orders ensuring

that they can enjoy a reasonable amount of phone contact with an absent parent, without being burdened by intrusive calls or adherence to a written schedule.

When phone-calling arrangements are not working, they can make life miserable for children. Very young children often have little or no interest in phone calls, and may have brief attention spans. An absent parent who is feeling left out may blame the other parent for sabotaging the call. An absent parent may want phone calls, but may not know how to engage the child in conversation that the child finds pleasurable or interesting.

When one parent says, “Mommy’s on the phone,” a child may be able to read the announcing parent’s enthusiasm, upset, or disdain. When the parent who is present is upset or hostile to the call, the child’s experience may not be positive.

It is impossible to structure family life so that a child is always available or motivated to chat at the time of scheduled calls. When an order provides for such calls, it should have a provision for makeup calls, and a target success rate (compliance might mean that about 70 percent of scheduled calls actually happen). Orders for telephone conduct might provide for giving the child privacy for the call whenever possible.

Need for specific times and frequency of calls. Some parents need boundaries governing the timing or frequency of the calls, and the content of what is said. Parents who have not accomplished an amicable divorce may undermine family life through calls in which children are cross-examined about what is happening in the other household—with an emphasis on complaints—and encouraged to see things in the most negative light possible, taunted with missed treats and activities in the other home, or distracted from homework, dinner, or family activities. Such calls clearly do not benefit children. Some parents also chastise children for not calling them, or regale their children with tales of their own loneliness or distress. Some parents call at dinner time, bath time, homework time, late at night, early in the morning, or in other ways that disrupt the rhythms and routines of family life.

Orders permitting children to place calls to an absent parent whenever they like undermine parental authority by allowing a child to escape a “time-out,” homework time, chores, or other unwanted activities by invoking the right to call an absent parent. The key is reasonableness at both ends. The parent whom the child is with

should not have to always defer to incoming calls from an absent parent, and should not be able to isolate the children from an absent parent. If the child is not finding the calls pleasurable and positive, then it is time for a second look and some fine-tuning, or counseling and coaching of parents.

Planning for “safe arrival” calls during travel. Some families need orders governing calls that other families would anticipate receiving as a matter of course. For example, a traveling child should be helped to make a safe arrival call, and a parent traveling with a child should let the other parent know of any delays or itinerary changes. When a child is traveling, the left-behind parent should have a way to check in with the child at reasonable intervals during the trip, and should have a way to reach the traveling parent and child in the case of emergencies. Some families actually need orders protecting calls to a child on birthdays and other special occasions, and some parents are so shortsighted that they do not teach children to call their fathers on Father’s Day, call to wish an absent parent a happy birthday, or call to share news of a triumph or interesting experience.

Child’s own phone line. It may help for a child to have a phone and answering machine in the child’s room with a separate line for making and receiving calls from the other parent if otherwise appropriate to the child’s age and maturity. Older children should have the freedom to decide whether and when (within reason) to return calls, and should be encouraged to be courteous enough to return calls, when the calls are not too frequent or intrusive.

§4.60 d. Effect of Child’s Illness on Schedule

The parenting plan order should describe what happens when a child is sick, so that the uncertainty and conflict surrounding this issue do not complicate the stress of caring for a sick child. Some parenting plans provide for sharing the burden of days off work in a fair way—often by alternation. The three examples in §§4.51-4.53 used “close of school” as the standard transition time so that the parent in whose home the child wakes up sick is responsible for caring for the child for the day (such an order also keeps the child in the care of that parent until the usual time school lets out if there is a nonschool day).

By contrast, an order that correlates exchanges of a child to the start of school requires reaching the other parent and working out an

exchange at the start of the day when a child wakes up sick on a day when the other parent would start a responsibility period. Close-of-school is usually more practical, because children are rarely suddenly sick—a parent watching the onset of symptoms can start planning for the eventuality that the child will be too sick to attend school.

In most cases, if both parents are available to care for a sick child (and can take the time off work), the family should maintain the regular schedule unless the child is so ill that travel between homes would exacerbate his or her illness. Some orders make the pediatrician the arbiter of whether the child is too ill to move between homes—especially in long-distance cases. When the pediatrician is going to play that role, it is essential that the pediatrician be a true neutral party—jointly selected and sensitive to the potential that a parent could manipulate claims of illness or reports of symptoms to sabotage the child’s time with the other parent.

Caring for a sick child requires careful information exchange about the course of the illness, medication schedule and reactions, and medical advice. When a child is seriously ill, hospitalized, or in some other residential therapeutic setting or placement, care and thought must go into keeping the atmosphere in the hospital, clinic or other facility calm, making sure both parents are well informed about the child’s well-being, and ensuring that one parent is not unreasonably excluded from contact with the child. When there is a history of overt conflict, orders can make sure that the parents and other family members are physically separated, so that there are no scenes or struggles disrupting the facility or distressing the child.

§4.61 e. “Makeup” Time

When a child spends less than about 40 percent of his or her time with one parent, or time in the care of one of his or her parents is infrequent, there may be a need for orders governing makeup time when the child misses time in the care of that parent. When both parents have frequent custody periods, and the child’s time in the care of each parent is at least 40 percent, makeup time may be more disruptive than beneficial.

Makeup time should not be used to punish a parent for denying access to the other parent, although the probability of makeup time can sometimes deter such conduct. Makeup time is to protect the child’s relationship with a parent when the child does not spend

a great deal of time with that parent, or would otherwise be separated from that parent for a detrimentally long period of time.

While there is a relationship between having enough time in the care of a parent to protect involved parenting, and to develop and sustain an attached, attuned parent-child relationship, there is no need or particular benefit for mathematically equal amounts of time in each household. More thought should be given to the flow of the child's life than to computing the occasional missed hours or days. Such differences will make no difference in the quality of the parent-child relationship, but undue concern about equality or fighting over makeup time can create unnecessary family stress. Consequently, when each parent spends substantial time with the child and there are no long separations, makeup time does not provide significant benefit to the child.

When the missed parenting time further reduces a child's already limited time with a parent, or lengthens a separation, then the parenting plan should provide for makeup time. Makeup time should not be scheduled in a way that separates the child from the primary parent longer than is appropriate for the child's age or stage of development.

The reasons for the missed parenting time are also relevant. For example, a parent should not be able to use voluntary scheduling of business or personal trips to allow that parent to disrupt the other household's plans. Similarly, when a parent's work or other obligations produce an irregular schedule, the parenting plan should balance between meeting the child's need for that parent's involved parenting and meeting the child's need for his other household's routines and major plans to be respected. As in most aspects of coparenting, parental attitude is key. Parents who do not overreact to every perceived social slight and who treat the other household's needs and interests as worthy of respect and accommodation will do a better job of adapting the schedule to the inevitable unpredictable events.

§4.62 f. "Step-Ups" and "Sunset" Provisions

Many parenting plans anticipate developmental gains, and include "step-up" plans that typically reduce the frequency, while increasing the duration, of the child's time in the care of a parent. When a parent has been absent from a child's life for some time, a parenting plan may include a gradual introduction or reintroduction of the parent into the child's life by stages. Long-distance parenting plans

often assume that all of the custody periods will be exercised, because they are the minimum believed necessary to sustain a relationship between the parent and child.

Step-ups and staged orders. Use of step-ups and staged orders can avoid the need for repeated negotiation or litigation, and can protect children from being confined to schedules that they have outgrown. Step-ups and staged orders assume that both parents will observe all or most of the custody periods provided for in the plan. When that does not happen, the parent and child may not develop sufficient familiarity and security so that the child will feel comfortable. Sometimes parents drop out of a child's life for months or years at a time, despite an order that provides for a substantial parenting role.

Sunset provisions. A sunset provision identifies the circumstances under which the schedule in the parenting plan should be suspended, subject to a retention of court jurisdiction to make new orders reflecting the present circumstances.

If the parenting plan does not contain a sunset provision, the child may suddenly have to spend extended periods of time with an unfamiliar parent. For example, if Susie's father moved away when she was five years old, and turns up five years later with the old court order that says he has custody of her for six weeks every summer, starting when she reaches age 8, law enforcement personnel would be obliged to enforce that order.

§4.63 g. Attendance at Events

Sometimes the parenting plan needs to expressly address when a parent may attend the child's events, volunteer in a classroom or at an activity, or otherwise participate in the child's life during the time that the child is in the other parent's physical custody. This issue arises when a parent wants to volunteer at school, act as a coach or den mother, attend a performance, ceremony, or athletic event, or otherwise spend time in situations in which the child will be present during the other parent's custody periods.

Ideally, parents will cultivate a relaxed attitude, be friendly and noncompetitive when they encounter one another, and welcome each other in these circumstances. When parents have a positive attitude towards one another as parents, and welcome each other's involvement, the child flourishes.

In other families, parents are competitive rather than complementary. Some are openly hostile. Others are intrusive or territorial. Some behave badly in the child's presence, so that the child is focused on the tensions between his or her parents rather than the pleasures of the event. In such cases, the parenting plan needs to describe when a parent may or may not appear at events while the child is in the care of the other parent.

Volunteering in school or day care classrooms when the other parent is not going to be present and the school or day care center welcomes parent volunteers usually should be encouraged. Communication is necessary, so that both parents know the schedule, and so that the parent responsible for the child under the schedule has first choice and priority.

§4.64 h. Holidays, Vacations, and Other Special Days

To plan thoughtfully for holidays, vacations, and other special days, it is important to think about why people usually deviate from the base schedule for these events. What importance do they have in the child's life? How do they differ from ordinary weeks in the school year? What makes for positive experiences for children and what makes for tension or distress? What is going on in the child's two households, and in the community during these times?

§4.65 (1) Importance of Context and Planning

In virtually every society, holidays, vacations, and special days are associated with family togetherness, traditions, and rituals. Individuals spend more time with immediate and extended families on those days, and often eat traditional foods, engage in traditional activities, tell stories about family history, and strengthen a sense of connectedness to families, cultures, and religions. Parenting plans tend to reflect beliefs about the importance of those events in children's lives, but often seem more concerned with dividing up the time equally than about the quality of the children's experiences.

To receive the benefits of holidays, vacations, and other special days, children need to experience the recurring cycle, participate in planning and preparation for the event, and not have the event disrupted by exchanges, family tensions, or upset parents. Children need to know well in advance what the holiday schedule is so that

plans and anticipation are not marred by anxiety and uncertainty. Parents need the parenting plan to have a clear, indisputable tiebreaker schedule, because emotions are tend to be high concerning these events, and even the most cooperative and flexible parents may have high emotional investment and extended-family pressure associated with competing plans for these events.

Dividing up the day of the holiday is almost always a poor solution. The child's pleasure is marred by the imminence of the exchange. Plans with extended family and friends need to be scheduled around the exchange times. Christmas can be the worst—just after a child opens his or her presents and wants to play with them, or a grandparent arrives, it is time to go to the other parent's home. Two Christmas or Thanksgiving dinners will stretch a child's ability to sit still and maintain good table manners. Tensions between parents get further strained with the emotions of holidays, and the last people most parents want to see on such an occasion are a former partner and his or her new partner.

Because children generally have only a limited sense of time, it is almost impossible for them to develop strong memories of family traditions when they experience them only every two years. So much of the experience of a holiday is bringing out the familiar decorations, singing the same songs, preparing and feasting on the same foods, seeing the same people, and celebrating in the same way, year after year. Separation, divorce, and remarriage also lead to blended traditions and introduction of new traditions, and the need to accommodate even more people's schedules, traditions, and wishes.

Not every parent is able to organize a joyous holiday celebration in the years after divorce or separation. Some children spend bleak holidays alone with a depressed or socially isolated parent. Others might accompany a single parent to an all-adult event at which they feel uncomfortable. A child may be acutely aware that siblings, stepsiblings, cousins, and others are attending festivities that the child cannot attend. Some children spend the day meeting the emotional needs of a distraught or mentally ill parent who does not want to be left alone on the holiday.

Families often travel at holiday time, or have other family members whom the child may have few opportunities to see come stay with them. Chopping up a holiday or vacation period may prevent travel or chances to get to know visiting family members. While young children should not be separated from either parent for more

than a few days, older children may do better spending a full winter, Thanksgiving, or spring break with one parent.

Parents may differ in their observance of religious holidays. It makes no sense to divide Passover, Sukkoth, Kwanza, Eid, or Palm Sunday between two households if only one of those households actually observes the holiday. The goal is not for the child to have identical experiences with each parent, but to enjoy the richest experience available with each parent. Holiday planning should not be about dividing up the child's time fairly between parents, but about allocating holiday time in the child's best interests.

Planning and preparation for the holiday, vacation, or other special day is as important as participating in the event itself. The parenting plan should try to include opportunities for the child to be present for planning, decorating, shopping, and cooking.

§4.66 (2) Major and Child-Focused Holidays

Consider creating a plan in which the child spends some holidays with the same parent each year. For example, every year a child might spend the entire Thanksgiving week (including missing a few days of school) with one parent and the entire spring vacation with the other parent. The child benefits from continuity of traditions in each home, and builds stronger memories. Travel during those school vacations becomes more feasible and less rushed.

Another allocation of holidays that works well is for the child to spend 24 or 48 hours for Halloween festivities with one parent every year, and the same amount of time for Independence Day celebrations with the other parent every year. Again, the child builds memories of these child-centered occasions, and enjoys anticipating familiar pleasures and activities. For example, in some families, the children spend the Jewish high holidays with an observant parent, and Halloween and July 4 with the more secular parent.

Some Jewish holidays last several days. Because Hanukkah is eight nights long, and does not always coincide with school vacations, there are many ways to ensure that the children enjoy preparations and celebrations in each home. Some plans allocate the first night of Hanukkah (from close of school till start of school) to one parent, and the last night to the other. Parents might alternate having the children join them for the first and second seders (overnight) at Passover. They might also alternate Yom Kippur and Rosh

Hashanah. Purim and Sukkoth might work better as traditions celebrated with the same household each year—perhaps Purim festivals, costumes, and hamantaschen with their mother, and building and living in a sukkah with their father, or vice versa.

Because the Jewish holidays begin at sundown the day before (Erev), scheduling should include the Erev afternoon (for preparations) and evening and usually an overnight experience.

When possible, holiday time should be allocated in at least 24-hour increments, so that celebrations are not delayed until a child arrives, or rushed to ensure an exchange.

When one of the parents belongs to a minority culture, creating opportunities for the child to develop a sense of connection with that culture may become particularly important. Consider allocating enough time for the child to always enjoy the Persian New Year, Cinco de Mayo, Chinese New Year, St. Lucia's Day, and other holidays and festivals with the parent who grew up with that tradition, and with family and other members of the cultural-ethnic community.

Some holidays and special days often involve both school and home celebrations. Parents might share Halloween so that one parent participates in the school Halloween party and costume parade, and the other takes over for dinner and a trip to a haunted house or trick or treating. Similarly, one parent might bring cupcakes and party favors to school on the child's birthday, while the other sponsors a weekend party for the child's friends. Each parent would be free to have a special family party when the child is with that parent, but they should not invite the same child guests to competing birthday parties.

Children should be able to celebrate the birthdays of their stepsiblings, half-siblings, and cousins with those families. Some families celebrate parents' birthdays on the day of the birthday; others do so on the nearest weekend that falls in that parent's scheduled responsibility time.

§4.67 (3) Long Weekends and No-School Days

Working parents often rely on the various long weekends to spend time with their children. Many schools schedule several pupil-free days a year for teacher training or parent-teacher conferences. Some parents do not have to work on those days, and others do. Thus, sometimes allocating pupil-free days entails giving the children the day with whichever parent can get the day off, and sometimes it

just entails the responsibility for making child care arrangements for the day.

To meet commonly held expectations, Mother's Day weekend should be spent with the child's mother, and Father's Day weekend should be spent with the child's father in most families. The full weekend avoids stress or conflicts about exchange times on the day of the holiday, enabling the celebration to go smoothly. It also allows the child to participate on Saturday in preparation for Sunday's celebration. Parents should help children make special gifts for the other parent in anticipation of Mother's and Father's Days (as well as for birthdays, Christmas, or other holidays on which gifts are exchanged in the family) and ensure that anything the child made in school for the event is kept in good condition and brought to the event. Parents should also teach children to call grandmothers and stepmothers on Mother's Day, and grandfathers and stepfathers on Father's Day.

The easiest way to address minor holidays is to provide that whenever the Friday preceding or the Monday following a weekend is a school or legal holiday not specifically allocated by the parenting plan, the weekend is extended by 24 hours to include the holiday. If one household attends an annual Labor Day picnic or has another tradition associated with a particular three-day weekend, then the plan should allocate that holiday to that parent and a different three-day weekend to the other parent.

When parents and children live in different communities, these long weekends are opportunities for the child to travel to the home of an absent parent. In most cases, missing a day or two of school so the child is not traveling two days to enjoy a single day with a distant parent makes sense. If distant parents have few days off from work per year, long weekends are also an opportunity for a parent to travel to his or her child's school year community for a visit. When possible, the parent should stay for a school day or two to meet teachers and other important people in the child's life.

Most school months include a three-day weekend, or school holiday, as follows

January	New Year's Day and MLK Day
February	President's Day (or both Washington's and Lincoln's birthdays separately)
March	Easter or spring break in some years
April	Easter or spring break in some years

May	Memorial Day
June	Flag Day, end of school year
July	Independence Day
August	Labor Day in some years
September	Labor Day in some years
October	None
November	Veteran's Day and Thanksgiving
December	Christmas

§4.68 (4) Special "Short-Notice" Days

No parenting plan can anticipate a relative's unexpected visit, a father's wedding, a mother's award ceremony, a stepsibling's graduation, or a fiftieth anniversary party for grandparents. While some parents are sufficiently cooperative to work out schedule adjustments for special events, others need this kind of flexibility built into the schedule.

A special-days provision empowers each parent to reserve or preempt up to five 24-hour periods each year on short (usually 10 days) written notice. Special-days provisions reduce the need to go back to court for relief, and make sure that neither parent can prevent the children from participating in a special event. A special-days provision can provide that each parent may reserve (block from preemption) or preempt up to five 24-hour periods per year on at least 10 days' written notice, and no more than one year's advance written notice, to the other parent. Special days may not be scheduled on the other parent's holidays, vacations or reserved special days. They may not be used to separate a baby or young child from the other parent for more than the maximum separation permitted by the order (see §§4.55, 4.69). The parent exercising a special day typically provides all transportation.

§4.69 (5) Vacations and Vacation Travel

Most parenting plans allocate a certain number of days per year to each parent for vacations, and set forth the conditions for the exercise of vacation time. Such orders range from the very simple—dividing the summer school vacation in half or providing that one parent has the first three weeks in July and the other has the first three weeks in August—to complex notice and other requirements.

The parenting plan should state that vacation schedules supersede the base schedule, and should include clear provisions about how

the base schedule should resume at the end of the vacation. While resumption is easy in plans that use the odd-even date or first, third, and fifth weekend formulas, it is less clear when a two- or four-week cycle resumes.

In long-distance parenting plans, the child typically spends most of the summer school vacation with the non-school-year parent, with a brief period allocated for a vacation with the school-year parent. Many families in which the parents have approximately equal custody timeshares, maintain the same schedule year round, and provide that each may designate vacation times on a specified amount of notice to the other parent. Every vacation plan needs to consider and address the following key factors:

Scheduling. How many days a year may be reserved for vacations? Must the time be used in blocks, or may the days be added individually to the base schedule? Is there a maximum separation between the child and the other parent that is permissible? Step-up provisions work well here. May the child miss school for vacations?

Notice. How much advance notice must be given? How is notice given? Who has priority in the event that the parents want to schedule vacations for the same weeks? In developing the notice provisions, consider how long in advance reservations for vacation travel and ticket purchases are typically made, when summer school schedules are known, and when reservations and payment for summer day camp and sleep-away camp must be made.

Itinerary and phone contact. Even without the special travel anxieties the twenty-first century has brought, parents feel more secure if they know where their children are and how to reach them. See the discussions about sharing itineraries, making safe-arrival calls, and arranging for telephone contact in §§4.27, 4.59. When families travel with digital cameras, parents should consider helping children take photos and email them to the other parent at intervals during the trip.

Destinations. The parenting plan should describe whether there are any restrictions on travel destinations—distance, outside the state, or outside the country. Temporary parenting plans need to expressly address the automatic temporary restraining orders that bar removal of the children from California. See Fam C §2040. Typically the plan should provide that the parent may travel with the child outside California during the defined custodial periods, and must return the children to California at the end of that time.

Most airlines require a parent traveling outside of the U.S. with

a child to have the other parent's written consent. If foreign travel is permitted, the order should expressly state that the parent may take the child out of the country for his defined custodial periods, and must return the child to California at the end of that time. If there are any destinations that the child may not visit, that should be stated expressly in the order. The State Department website posts travel warnings about conditions in other nations. That information can be useful in developing ground rules about international travel. It is also important to remember that overseas enforcement of American custody orders can be costly and uncertain, even in Hague Convention countries, and virtually impossible in non-Hague countries. When the parenting plan permits international travel, counsel must use great care in fashioning orders under Fam C §3048 (see §4.79).

§4.70 i. Exchanges of Child and Transportation Issues

The parenting plan should describe who is responsible for transporting the children between homes, where exchanges take place, and how the parents conduct themselves at exchanges. Even the most friendly coparents do better without frequent face-to-face encounters with each other. Some parents cannot relinquish the emotional intensity of their relationships with a former partner, and exchanges become tense, cold, or even violent.

In most cases, responsibility for transporting children should be shared equally. Children benefit from seeing that both parents extend themselves to sustain a parenting plan in which the children spend time in the care of each parent. Depending on the circumstances, shared transportation responsibility can mean meeting at a halfway or neutral location, picking up the children from the other parent's home or a nearby neutral location (chain bookstores are ideal for this), making flight arrangements, flying with children, transporting children to or from airports, or arranging for a nanny or other caregiver to travel with a child.

§4.71 (1) School and Day-Care Pickups

Structuring the parenting plan to avoid or minimize parent-to-parent exchanges has many advantages. Children watch the faces for parents for cues about how to interpret events. Most parents are not actors, and their faces and body language signal their feelings about the other parent. Children may have greater difficulty separat-

ing from a parent than from another caregiver, and many parents unconsciously increase those difficulties by their own demeanor and anxieties at exchanges. When the parent starting a custody period picks the child up directly from school, camp, day care, or babysitter, things go more smoothly. That parent also has an opportunity to get to know teachers, classmates, parents of classmates, and other caregivers, and to become more involved in the child's school or day-care life. Sometimes it is necessary to include an order barring the other parent from being present at the time scheduled for a pickup or return of a child to school or day care.

§4.72 (2) Parent-to-Parent Exchanges and Transport

Exchanges. Most schedules will have to include some parent-to-parent exchanges of children for holidays, vacations, sick days, or other times when school or day care exchanges are not feasible. It helps to have explicit orders governing parental conduct at exchanges, so that parents share a common view of “ex” etiquette. Parents should be encouraged to keep exchanges friendly, and brief. A parent should never enter another parent's home unless invited by that parent or an adult household member.

Young children need to be escorted to the door or vehicle, not dropped at a curbside. The parenting plan should indicate whether a parent may delegate someone else to pick up the child, and how that parent should let the other parent know who will be picking up the child. Only people the child knows well should pick up the child. Except in emergencies, the child should always know whom to expect at pickup.

Civility orders can require polite greetings and limit nonemergency communication at exchanges to small talk. Parents should not discuss coparenting business at exchanges (or in other situations in which children can watch, hear, or read the interparental coparenting communications). Exchanges are not the place to exchange information other than such matters as immediate health issues or to try to make future plans. Such conversations can quickly shift from polite discussion into tense exchanges or open conflict. Sometimes it is necessary for the order to specify that a particular individual with a history of provoking conflict or other untoward conduct at exchanges not be present when the children are exchanged. In other situations, it may be helpful for a parent to bring a friend to observe the exchange, and be able to testify in the event of a dispute about what occurred.

Transportation. It works best for the parent beginning a custody period to provide transportation. That way the children remain comfortably at home, rather than on a front porch or in a car, if a parent is delayed. Some parenting plans require the common courtesy of calling if one party is delayed. Some plans also provide that if the parent does not arrive within a particular window of time, the exchange will not take place or will take place 24 hours later.

Some older children can travel unaccompanied by train or light rail (and may be able to supervise younger siblings). A parenting plan might also provide for parents to accompany children on short train rides, with exchanges taking place at the station. Families in which parents live a few hours apart often find train rides more enjoyable than long drives because the parent is free to do things with the children during the train ride.

Some teenagers are mature and responsible enough to drive relatively short distances between parental homes and even to transport younger siblings. Adult children may also be willing to help out. Some families employ nannies or drivers to travel with children between homes. Children often complain about the loss of that time with their parents. Some of the best conversations between parents and teenagers take place during car rides, when there are few distractions.

§4.73 (3) Public Neutral Exchange Locations

When there is any history of allegations of domestic violence, hostility, or intrusive behavior, exchanges should take place in public places. Most people are better able to control their behavior in public. Witnesses are more likely to be available—which can be valuable both when an incident occurs or to refute false allegations about conduct at exchanges.

For public exchanges, large bookstores or public libraries can be optimal locations, because they unusually have sufficient items of interest to keep children and parents occupied if they have to wait. While the hours of many public libraries are somewhat restricted, bookstores usually open early and stay open well past children's bed-times. Most have public address systems so a parent who does not have a mobile phone can be paged if the other parent is delayed. Bookstores often serve refreshments, and have clean restrooms. While not as hushed as old-fashioned libraries, bookstores are fairly quiet places where loud or unruly behavior would feel uncomfortable, and

would be noticed if it occurred. When parents and children spend time around books, they may even bring some home to read. If there are accusations that a parent is chronically late for exchanges, that parent can purchase a small item in the bookstore on arrival, and the receipt will document the time of arrival.

Fast-food restaurants make less suitable places for exchanges because they are noisier, and parents are pressured to buy unhealthy snacks. They often do have play facilities and clean restrooms, and may be the only practical alternative. Avoid situations in which a parent and children have to wait in a vehicle. Even the most efficient parent can be delayed in traffic or have a vehicle breakdown.

Police stations are not safe or comfortable places for parents to exchange children. Police bring suspects and arrestees to police stations, and release them there as well. Children may witness distressing behavior in such settings. Police are already overworked and should not be forced into the role of unpaid exchange monitors. Exchanging children at a police station communicates to the child that at least one parent or the court views one of his parents as dangerous.

§4.74 (4) Supervised Exchange Centers

Some federal and local funding has been available for supervised exchange centers. Fam C §§3200-3201. Such centers typically keep parents separated for exchanges, and have one parent wait to depart until after the other parent has left. While using such a center reinforces children's perceptions that their parents lack sufficient judgment and self-control to avoid conflict at exchanges, they are better than repeatedly exposing the children to conflict or violence. Use of a supervised exchange center can also protect a parent from false or exaggerated allegations about events at exchanges.

§4.75 (5) Tracking Exchange Transitions

When there is a history of conflicting accounts about parental conduct at exchanges, some parenting plans authorize video or audio recording of the exchange. If the plan includes such a provision, it should require the recording to take place discretely, so that the children remain unaware that it is occurring. One father documented the comfortable way that he prepared his young son for exchanges, and the way the child's mother conducted herself when she came to pick him up by always having his video camera on a tripod in his living

room. He could turn it on quietly, without letting his son know what was going on. The recordings showed that the mother, not the father, was triggering the child's distress by broadcasting her own anxiety when she came to pick him up, and that the boy was happy and comfortable in his father's home. These recordings rebutted the mother's claims that the father was doing something that distressed the child.

§4.76 (6) Long-Distance Travel

Long-distance travel presents special difficulties. Ideally, a distant parent (whether the parent has moved or the child has moved) should come to care for the child in the child's community as often as possible, in addition to the child traveling to the parent's home.

Long-distance travel requires considering when a child will be safe and comfortable flying alone (considering the possibility of long flight delays, missed connections, or unscheduled landings in strange cities), or who will accompany the child. International travel also entails visas, passports, and whether the foreign parent can gain entry to the U.S.

Long-distance travel plans involve a great many details that affect costs, departure, and arrival times, duration of travel, airport layovers and transfers, comfort and ease, and airport choice and accessibility. These decisions have real-world consequences for both parent and the child. The parenting plan needs to describe who makes these decisions, how the decisions are made, and who bears the costs of long-distance travel.

Long-distance travel can be difficult for both children and adults. Stress, fatigue, being confined to a seat for long period of time, time zone changes, exposure to colds and flus, and boredom have to be taken into account. Some children are more anxious than others. Most children need lots of physical activity. Whether a parent has moved with a child or away from a child, the child can no longer take his or her relationships with each parent for granted. Instead, time with a parent requires effort and sacrifice. Parents differ about whether, for example, it is in children's best interests to take a "red-eye" flight, or to awaken children at dawn for a long drive to an airport.

§4.77 9. Prebirth Custody and Visitation Provisions

When parents are not living together as a child's birth approaches,

the family may benefit from having prebirth orders spelling out what will happen at the hospital, and who will bring the baby home. Such orders can allocate authority for medical decisions starting from birth, ensure that both parents have a chance to hold the baby and enjoy opportunities for bonding, and can include a plan for the baby's care on release from the hospital. Prebirth orders help preserve a calm environment, and can help keep the hospital from having to play referee. When a baby is premature, or has serious medical problems after birth, there may not be time enough to get emergency court orders. Prebirth orders also may be invaluable to ensure that a father, for example, has a chance to see and hold a baby who may not survive.

Deciding whether and how to raise the question of a prebirth parenting plan requires balancing risks. Counsel should take great care to ensure that any negotiations, mediation, or litigation during pregnancy is conducted in the most gracious, respectful fashion possible under the circumstances. Without an order, an expectant father may not even know when the mother goes into labor, or when his child is born.

Note that the decision in *Lester v Lenanne* (2000) 84 CA4th 536, 101 CR2d 86, upheld a trial court that declined to make custody orders for an unborn child, despite the requests for such orders by both parents. The case did not address the jurisdictional issue, because the appeal was focused on a claim of gender bias. The Family Code is silent on the issue.

In *Kristine H. v Lisa R.* (2005) 37 C4th 156, 33 CR3d 81, the California Supreme Court held that a trial court had subject matter jurisdiction to enter a prebirth parentage judgment recognizing a same-sex couple as parents, and awarding them joint legal and physical custody of their unborn child. That jurisdiction derived from the jurisdictional provisions of California's Uniform Parentage Act (UPA) (Fam C §7633) allowing an action to be brought before the child's birth. Arguably that holding does not just apply to unwed parents. Dissolution petitions frequently purport to invoke jurisdiction over an unborn "child of the marriage." See *Marriage of Buzzanca* (1998) 61 CA4th 1410, 72 CR2d 280 (marital dissolution pleadings invoked jurisdiction over unborn child carried by surrogate mother). Surrogacy cases may require prebirth orders awarding legal and physical custody to *intended* parents.

§4.78 10. Supervised Visitation

Purposes. Supervised (monitored) visitation orders are used for a variety of purposes ranging from protecting a child's safety or reducing abduction risk to helping a parent and child develop or restore their relationship with one another. See generally Fam C §3100(a). Decisions about how to structure the supervision, and what authority to give the monitor, require tailoring the order to the purposes that supervision is intended to serve. A case in which a monitor is required because a parent has a poor understanding of child development, and poor judgment about child safety is playing a very different role than that played by a monitor who is supervising a parent who has a history of violence. A monitor who is present because there is a risk that a parent with chronic mental illness may decompensate or that a parent with a history of substance abuse may relapse is playing a different role than a monitor who is reducing abduction risk. A therapeutic monitor who is providing family counseling to a parent and child as they move towards a more normal relationship is playing a different role from a monitor who is protecting the child from a parent's abusive remarks about the child or the other parent.

Supervised visitation orders are sometimes used while allegations of potential risks to a child are assessed and adjudicated. Interim monitored visitation orders not only protect the child against possible threats, but they protect the parent from false allegations, and provide a witness to the quality of the parent-child relationship and of the parent's skills and judgment.

The recommended standards for supervised visitation (Cal Rules of Ct, Standards of J Admin 5.20) are recommendations, not mandatory rules. Some aspects of them, including the formal intake process, may be impractical for professional monitors not working in an institutional or visitation center setting. Nonetheless, the standards are a helpful resource to review when developing a monitored visitation order. See also the publications and website of the Supervised Visitation Network (<http://www.svnetwork.net>) a nonprofit organization that promulgates a set of Standards and Guidelines for Supervised Visitation Practice, conducts trainings, and serves as a clearinghouse for information about supervised visitation.

Contents of order; selecting a monitor. Counsel should endeavor to structure supervised visitation so that the experience for both

child and parent is as natural, normal, pleasurable, and comfortable as possible, while protecting against the risks that led to monitoring in the first place.

An order for supervised visitation should set forth the purposes of monitoring, so that the monitor and the parties know why the order is in place, and the monitor is aware of what to watch for. The order should also identify additional information to be provided to the monitor, such as the report of a child custody evaluator, a parent's criminal history, or other information that will assist the monitor. The monitor should not have to rely on the reports and claims of the parties and counsel for such information.

Ideally, the order should appoint a particular individual or agency to provide monitoring. The order must specify whether a lay monitor, professional monitor, supervised visitation center, or therapeutic monitor is to be employed. In some circumstances, the order may call for employment of an off-duty law enforcement officer as a monitor. The order should also specify who is to pay the monitor (and the monitor's expenses), and the consequences of failing to do so.

In most cases, the monitor should be a neutral party. No matter how highly motivated, family members, friends, and new romantic partners are rarely able to see a loved one as presenting a real threat to the child. Moreover, their own relationship with the monitored parent can be adversely affected if they strictly follow the monitoring order.

When possible, consult directly with the monitor when developing the terms of the orders. Some monitors and centers have their own model orders or require certain provision in the orders before they will accept the case.

The order must describe the circumstances in which the visit will take place. Must the parent and child stay in one location, or will the monitor accompany them wherever they go (if so, who drives?). Are there any restrictions on where they can go during the visit? How close must the monitor stay to the child or children during the visit? Must the monitor always be in earshot? Must all conversation be in a language known to the monitor? If the monitor believes that the parent is under the influence of drugs or alcohol, may the monitor cancel or end the visit? Are there things that the parent is not permitted to do or say during the visit? If the parent violates the rules for the visit, must the monitor terminate the visit? Who else can be present during the visit? What authority does the monitor have to create rules for visits?

If the visits include overnights, the details of the sleeping and security arrangements must be explicit.

The monitor will often be asked to share information with the parties or counsel, to submit reports or declarations in the event of litigation, to be interviewed by a child custody evaluator, and to testify at deposition or in court. The parenting plan should indicate whether the monitor is to prepare written summary reports of the events of each visit, the level of detail those reports should contain, and who receives the reports. Note that the monitor is unlikely to qualify as an expert witness. The order should specify that reports and declarations are those of the monitor as a percipient witness, and generally should avoid opinions.

Often the order must provide parameters for scheduling, rather than a firm schedule, because the availability of the monitor must be considered. The order should indicate the ground rules for makeup visits, and whether or how a substitute monitor should be used if the monitor is ill or otherwise unavailable for a particular visit.

The order should also indicate whether the monitor is to maintain a strict observer role, or whether the monitor may give directions or coaching to the parent, and interact more freely with the child. The order may also include explicit provisions to ensure safe exchanges of the child, and other logistical arrangements. Sometimes monitoring is augmented through the use of private security professionals. The order might also set out the expected duration of monitored visits, and the goals to be achieved before moving to unmonitored parenting time.

§4.79 11. Abduction Prevention Provisions

The Family Code authorizes specific abduction prevention measures in cases in which the court has determined there may be a risk of abduction, and these may be made part of the parenting plan order. See Fam C §3048. Below is an excerpt from Fam C §3048, annotated with comments by this author (see Notes below).

Family Code §3048(b)(2) provides:

If the court makes a finding that there is a need for preventative measures after considering the factors listed in paragraph (1), the court shall consider taking one or more of the following measures to prevent the abduction of the child:

- A. Ordering supervised visitation.
- B. Requiring a parent to post a bond in an amount sufficient

to serve as a financial deterrent to abduction, the proceeds of which may be used to offset the cost of recovery of the child in the event there is an abduction.

C. Restricting the right of the custodial or noncustodial parent to remove the child from the county, the state, or the country.

NOTE►

1. To serve as a true deterrent, the amount of the bond (and the assets to be forfeited by the party in the event of abduction) must be substantial. Parents often spend tens or hundreds of thousands of dollars in litigation expenses over the issue of an international relocation, and may be willing to forfeit a like amount.
2. Similarly, the costs of litigation by the left-behind parent in two countries and travel in connection with that litigation in an effort to recover a child can quickly reach similar amounts.
3. It may be difficult or impossible to find a surety willing to issue such a bond. Before the amount is determined, facts about the availability, costs, and necessary security for a bond must be known.
4. The order must expressly require that the bond be posted (and its terms and adequacy reviewed by the court in a hearing process) before the child can leave the country.
5. The order must unambiguously set forth what facts trigger forfeiture of the bond and be structured to avoid any delay or impediments to the left-behind parent's access to the funds for immediate efforts to obtain the child's return.

D. Restricting the right of the custodial parent to relocate with the child, unless the custodial parent provides advance notice to, and obtains the written agreement of, the noncustodial parent, or obtains the approval of the court, before relocating with the child.

E. Requiring the surrender of passports and other travel documents.

NOTE► The order should require surrender of the passports (child's and parent's) to the court, the U.S. Embassy (on arrival in

the destination country), opposing counsel (who is ordered to hold it), or a court-appointed neutral party. The court has no power to order surrender of the passports of others, even if the court fears that a relative or friend might assist in an abduction.

F. Prohibiting a parent from applying for a new or replacement passport for the child.

NOTE► Orders are not self-executing. A parent who is willing to commit the felony of child abduction is unlikely to voluntarily comply with an order not to replace a passport. The State Department does not inspect orders of state family courts before replacing a passport that a citizen reports has been lost. It is easy to obtain replacement passports, particularly from foreign countries. A parent may surrender an American passport and then travel on a passport from another country.

G. Requiring a parent to notify a relevant foreign consulate or embassy of passport restrictions and to provide the court with proof of that notification.

NOTE► Nations differ in the level of cooperation they give to the U.S. State Department in child custody matters. Many align with the interests of their own nationals. It is far from certain that notifying a foreign government that an American state court has issued orders purporting to restrict use of a passport issued by the U.S. federal government would have any force or effect. Passports are governed by federal law, and issued by the federal government, so it is unclear whether California has any jurisdiction over passports.

H. Requiring a party to register a California order in another state as a prerequisite to allowing a child to travel to that state for visits, or to obtain an order from another country containing terms identical to the custody and visitation order issued in the United States (recognizing that these orders may be modified or enforced pursuant to the laws of the other country), as a prerequisite to allowing a child to travel to that country for visits.

NOTE► No nation other than the United States has a procedure for mandatory registration, recognition, and enforcement of foreign child custody decrees. Recognition and enforcement of foreign decrees is discretionary in most legal systems. No for-

eign legal system has laws requiring it to refrain from modifying a foreign custody decree if the child is present or residing in that nation.

Some countries will adopt “mirror” orders containing terms that are the same as those of the California order. However, such countries retain jurisdiction to subsequently modify those orders. Moreover, not every country has an effective process for enforcing its own custody decrees, much less foreign decrees.

An order for “registration” of a foreign order abroad should require a postregistration hearing at which the parent who wants to remove the child from the U.S. must prove that the order contains the same terms as the California order, that the foreign court has agreed to defer to California for all modification proceedings, and that practical enforcement of the order can be achieved in the foreign country.

I. Obtaining assurances that a party will return from foreign visits by requiring the traveling parent to provide the court or the other parent or guardian with any of the following:

- (i.) The travel itinerary of the child
- (ii.) Copies of round trip airline tickets.
- (iii.) A list of addresses and telephone numbers where the child can be reached at all times.
- (iv.) An open airline ticket for the left-behind parent in case the child is not returned.

NOTE► While each of these provisions could potentially prove helpful, they provide little protection if a parent truly intends for a child to remain abroad in violation of the terms of a California order. While a parent who expects or wishes to travel in the United States is apt to comply with a California custody order, a parent who cannot or does not intend to return to the United States may well be able to retain the child abroad despite such orders. Bear in mind that, once abroad, the parent and child may not necessarily remain in the country originally identified as the destination.

§4.80 12. Other Parenting Plan Provisions

A parenting plan may contain other provisions, including ones for therapeutic, education, or dispute resolution services; compensa-

tion for not exercising parenting time, review of the parenting plan, and terminating or retaining minor's counsel.

§4.81 a. Support Services; Therapeutic Jurisprudence

Parenting plans frequently contain provisions ordering parent education, parenting or coparenting coaching, divorce or coparenting education, individual therapy, family therapy, coparenting counseling, domestic violence or anger management programs, substance abuse treatment, and various hybrid programs.

The first challenge is to match the type of intervention ordered to the problem that it is intended to address. Drafters of parenting plans tend to use the terms describing various interventions loosely. The result is a program that is unlikely to serve the intended purpose.

Another common failing is assuming that the order referring the family to the program will be obeyed, and that the benefits of the intervention will be immediate and successful. An order for supportive services should clearly identify the purpose of the service, and the goals that the parent or parents are expected to achieve. The order should provide that a parent must prove he or she has met participation and behavioral goals (including showing what the parent has learned and what the parent has changed, rather than proving merely that he or she showed up) before getting the benefit of a larger role in parenting, unmonitored visitation, or some other step-up or modification. Change takes time and effort.

Some parenting plans set a date for a review evaluation to determine whether the intervention has succeeded.

In cases involving substance abuse and major mental illness, relapses are common and expected. In those cases, the plan should invite a parent to prove how long he or she has sustained recovery or sobriety, that he or she is currently participating in an effective treatment program, that he or she can be trusted to remain in treatment, and what steps he or she is taking for relapse prevention. The plan should also provide protections for the child in the event of relapse.

§4.82 b. Compensation for Nonexercise of Parenting Time or Thwarting Exercise of That Time

In cases in which a parent has a history of not exercising parenting time or thwarting the other parent's opportunities to parent, consider

including orders for compensation as authorized by Fam C §3028. If the costs of child care services are known, such a provision can require reimbursement of child care and other expenses associated with missed or thwarted parenting time. For additional discussion of Fam C §3028, see chap 19.

§4.83 c. Minor's Counsel

When minor's counsel has been appointed (see Fam C §3150), the order should either expressly terminate the appointment (subject to reappointment in the event of future proceedings), or expressly retain minor's counsel in place. On appointment of minor's counsel, see chap 10.

§4.84 d. Review and Modification

In many cases, a parenting plan is intended to address the child's needs during a particular stage of development, or until an anticipated event occurs. Sometimes the plan is intended to be a trial, subject to review and modification after a certain period of time passes. The parenting plan can provide that the parties will participate in mediation or a review evaluation to consider how the plan has worked out, and adapt the parenting plan at key points in time (such as a few months before the start of kindergarten, the start of middle school, and the start of high school), after the passage of a specified period of time, or when a particular event occurs (for example, when a parent returns from the military, or finishes school and starts a job).

§4.85 III. SELECTED REFERENCES

Adams, Kenneth, *A Manual of Style for Contract Drafting* (ABA, 2005)

Association of Family and Conciliation Courts, *Guidelines for Parent Coordination* <http://www.afccnet.org/pdfs/AFCCGuidelinesforParentingcoordinationnew.pdf>

Barber, Brian K. *Intrusive Parenting: How Psychological Control Affects Children and Adolescents*. Washington, D.C. (APA 2001)

Bancroft, Lundy and Jay G. Silverman. *The Batterer as Parent: Addressing the Impact of Domestic Violence on Family Dynamics*. Thousand Oaks, Calif., Sage Publishing, 2002

Dutton, Donald G. *The Abusive Personality: Violence and Control in Intimate Relationships*, 2d ed. New York, Guilford Press, 2006

Garner, Bryan A. *Advanced Legal Drafting*. LawProse Coursebook, 2004

Garner, Bryan A. *Legal Writing in Plain English: A Text with Exercises*. Chicago, Ill., University of Chicago Press, 2001

Gottman & Jacobson, *When Men Batter Women: New Insights Into Ending Abusive Relationships*. New York, Simon & Schuster, 1998

Hartson, John and Payne, Brenda, *Creating Effective Parenting Plans: A Developmental Approach for Lawyers and Divorce Professionals* (ABA 2006)

Kelly, Joan B. and Pallin-Hill, Leah, *Model Parenting Time Plans for Parent/Child Access*, Arizona Supreme Court <http://www.supreme.state.az.us/dr/pdf/parenttime/parenttime1.pdf>

Lye, Diane N. *Washington State Parenting Plan Study* (1999) http://www.courts.wa.gov/newsinfo/newsinfo_reports/?fa=newsinfo_reports.parent

Lyster, Mimi. *Building a Parenting Agreement That Works: How to Put Your Kids First When Your Marriage Doesn't Last* (2005) Acrobat version available for download at <http://www.amazon.com/exec/obidos/tg/detail/-/B000BVYKRM/qid=1133298831/sr=12-1/104-4285146-2966304?v=glance&s=books>

Oregon Judicial Department, *Basic Parenting Plan Guide for Parents* <http://www.ojd.state.or.us/osca/cpsd/courtimprovement/familylaw/documents/PPWGGUIDE-ENTIREVer07-123103.pdf>

Oregon Judicial Department, *Safety Focused Parenting Plan Guide* <http://www.ojd.state.or.us/osca/cpsd/courtimprovement/familylaw/documents/SFPPGEntireVer04-091003.pdf>

OurFamilyWizard® calendaring software: www.ourfamilywizard.com

Shared Ground® calendaring software: www.sharedground.com

Superior Court of California, County of Orange <http://www.occourts.org/family/parenting.pdf>