PARENTING PLANS
- THINKING OUTSIDE THE BOX -

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Overview

Oregon statutorily seeks to assure that minor children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child.[1] The legislature has explained that the state's objective is to furnish each parent "sufficient access to the child to provide for quality parenting time." ORS 107.105(1)(b). The judiciary has added its support, stating that extensive time spent between a non-residential parent and a child is preferred if it is practicable and is in the best interest of the child. Ongoing contact between a child and the child's parents serves two purposes: (1) it helps the child to know and share life with both parents; and (2) it recognizes and implements the rights of the parents to know and share the love of the child. *Doty and Doty*, 101 Or App 320, 324, 790 P2d 1167 (1990). Cutting-edge child development research has affirmed that creation of a stable parental relationship is important to the child's mental health and development. Children, even very

[1] **107.149 Policy, generally.** It is the policy of this state to assure minor children of frequent and continuing contact with parents who have shown the ability to act in the best interest of the child and to encourage parents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage.

ORS 107.101 State policy regarding parenting. It is the policy of this state to:

(1) Assure minor children of frequent and continuing contact with parents who have shown the ability to act in the best interests of the child;
(2) Encourage such parents to share in the rights and responsibilities of raising their children after the parents have separated or dissolved their marriage;
(3) Encourage parents to develop their own parenting plan with the assistance of legal and mediation professionals, if necessary;
(4) Grant parents and courts the widest discretion in developing a parenting plan; and
(5) Consider the best interests of the child and the safety of the parties in developing a parenting plan. [1997 c.707 s.1]

young children, who have a consistent schedule that involves overnights with the non-residential parent have fewer social, behavioral, and attention problems.[2]

There is no cookie-cutter methodology for assuring ongoing contact between parent and child through adoption of a parenting plan. Clearly, each family dynamic is unique. However, precedent has been clear on the goal of such plans: the parenting time schedule should be designed to satisfy the children's best interest, which should be distinguished from and will not necessarily conform to the parents' best interest. *Maddox and Maddox*, 56 Or App 345, 349, 641 P2d 665 (1982).

Reported decisions on this topic have been largely fact driven. For example, some cases hold that an incarcerated parent can require that a child be brought to a prison to visit, whereas others hold that such a requirement is inappropriate. See *Harris v. Burns*, 137 Or App 355, 360, 904 P2d 648 (1995). Far less extreme examples, though equally as traumatic on the involved parents, arise in cases wherein one parent seeks to move their residence and children far enough away that regular, frequent contact by the non-custodial parent[3] is simply not practical. See *Teel-King v. King*, 149 Or App 426, 430, 944 P2d 323 (1997).[4]

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[2] *Critical Aspects of Parenting Plans for Young Children (Interjecting Data into the Debate About Overnights)*. Marsha Kline Pruett, Rachel Ebling, and Glendessa Insabella, Family Court Review, Vol. 42 No. 1, January 2004, 39-59.

[3] To be politically correct, the author will refer to the non-custodial parent as the non-residential parent. This is the parent with whom the child spends the *least* amount of time.

[4] In *Teel-King v. King*, 149 Or App 426, 430, 944 P2d 323(1997) the mother had sole custody. Father had 40% of the overnights for his visitation. Mother remarried within months after entry of the judgment and moved from Bend to Bellevue Washington. Father asserted several theories as to why he should be granted custody. The trial court agreed indicating that both parents were competent and gave father custody because it felt he would most likely promote substantially equal access of the child to both parents. The court of appeals reversed finding that while mother's move and remarriage did impact father's visitation rights, that impact was not enough to justify modification of custody. See also *Boone and Boone*, 75 or App 413, 706 P2d 205 (1985) and *Brink and Brink*, 75 Or App 665, 706 P2d 1015 (1985). *Tuttle and Tuttle*, 62 Or App 281, 660 P2d 196 (1083).

Parents are statutorily required to develop and file with the court a parenting plan that is to be included in a final judgment involving children, whether that be as part of the dissolution of a marriage, a paternity action, or a joint living arrangement. The parenting plan may be general or detailed. ORS 107.102.[5] Parents are encouraged (required) to develop their own parenting plan whenever they separate, but many are unable or unwilling to do so. However, the need for a plan is so important that the court is statutorily directed to develop a detailed parenting plan if requested by either party or if the parents are unable to develop a plan on their own. ORS 107.105(1)(b).[6] The Committee on Uniform Court Rules has set aside Supplemental Local Court

[5] ORS 107.102 provides:

(1) In any proceeding to establish or modify a judgment providing for parenting time with a child, except for matters filed under ORS 107.700 to 107.732, there shall be developed and filed with the court a parenting plan to be included in the judgment. A parenting plan may be either general or detailed.

(2) A general parenting plan may include a general outline of how parental responsibilities and parenting time will be shared and may allow the parents to develop a more detailed agreement on an informal basis. However, a general parenting plan must set forth the minimum amount of parenting time and access a non-custodial parent is entitled to have.

(3) A detailed parenting plan may include, but need not be limited to, provisions relating to:

(a Residential schedule;
(b) Holiday, birthday and vacation planning;
(c) Weekends, including holidays, and school in-service days preceding or following weekends;
(d) Decision-making and responsibility;
(e) Information sharing and access;
(f) Relocation of parents;
(g) Telephone access;
(h) Transportation; and
(i) Methods for resolving disputes.

[6] *** When a parenting plan has been developed as required by ORS 107.102, the court shall review the parenting plan and, if approved, incorporate the parenting plan into the court's final order. When incorporated into a final order, the parenting plan is determinative of parenting time rights. If the parents have been unable to develop a parenting plan or if either of the parents requests the court to develop a detailed parenting plan, the court shall develop the parenting plan in the best interest of the child, ensuring the non-custodial parent sufficient access to the child to provide for appropriate quality parenting time and assuring the safety of the parties, if implicated. The court may deny parenting time to the non-custodial parent under this subsection only if the court finds that parenting time would endanger the health or safety of the child. The court shall recognize the value of close contact with both parents and encourage, when practicable, joint responsibility for the welfare of such children and extensive contact between the minor children of the divided marriage and the parties. *** ORS 107.105(1)(b).

Rule 8.075 as the location where each county can place its "standard" (boilerplate) parenting plan drafted to meet the statutory mandate. The "standard" plans run the gamut from being very modest to extremely detailed, but each has the same basic format:

1. Alternating weekends.
2. A division of the holidays in some fashion.
3. A block of time during the summer (non-school time).

The development of the alternating weekend schedule found in most standard parenting plans is an enigma, and its origins are unclear, if not dubious. Though used nationwide, there appears to be no support, whether psychological, child developmental, or otherwise, for its positive impact on the child. Rather, it represents a functionally expeditious method for parents to share time with their children. Historically, most judgments involving children provided the non-custodial parent with "reasonable visitation," a phrase that by social (and later judicial) consensus meant that the non-custodial parent could have his children with him on alternating weekends. Marion County Circuit Court Judge Albin Norblad made the first movement toward a "plan" by developing a specific (and personal) definition of what constituted "reasonable" visitation, expanding on the alternating weekend concept, and creating a document that could be attached to a judgment to prevent confusion between parents. Multnomah County Judge William Riggs (now Justice Riggs) then refined Judge Norblad's model, improving it significantly. The most notable of the Riggs' improvements was to clarify *when* the non-residential parent would have the weekend time. Specifically, the non-residential parent was entitled to have the child on the first and third weekend of each month. Additionally, what constituted a "weekend" was specifically defined:

> "A weekend is defined as commencing at 7:00 p.m. on Friday and ending at 7:00 p.m. on the following Sunday. For the purpose of computing which weekend is the "first" weekend of the month the parties shall consider that the visitation

> weekend will be the first weekend in the month that both Saturday and Sunday fall within the new month. For example, if Saturday is in the old month and Sunday is in the new month, the first weekend for the new month would be the next weekend."

The early written definitions of "reasonable visitation" also typically provided for an even split of the summer (non-school) time with the children. The non-residential parent was to give notice at some point in the preceding spring as to which six-week continuous block of time the children were expected to visit. Modern opinion recognizes that six weeks is an extremely long time for children to be away from either parent. The standard rule in most counties have, therefore, been modified to provide for alternating one-week or two-week blocks of time with each parent.

Mediation

Most counties have now implemented some form of mediation program, under the terms of which parties in a contested proceeding are required to meet with a neutral party/counselor who is assigned the task of assisting the parties in both reaching an agreement as to parenting time and committing the terms of that agreement to paper in the form of a parenting plan. Not surprisingly, most parents leave mediation with their county's standard plan, albeit slightly modified, as their final expression of a "case specific" parenting panacea. Parties in uncontested proceedings on many occasions blindly attach their county's standard plan to the judgment as a way of satisfying the statutory mandate.

Research shows that mediation can reduce litigation over custody and parenting time in that 60-70% of participants reach a final agreement without further court action. Parents are usually much more satisfied with a mediated plan than with litigation, and they are more likely to comply with the terms of the plan due to their hand in crafting it. This investment in effort

pays dividends for children because it reduces friction between parents -- each parent knows the rules and has the same expectations.

The opportunity to provide for the best interests of the child through mediation should, therefore, not be wasted. Client preparation at this point in the proceedings is pivotal. Mandatory parenting classes are designed only to introduce parents to mediation as a process. Too frequently attorneys believe that the class is enough; that all the attorney needs to do is send the client to mediation with little more than a pat on the back and a few words of encouragement. Are you guilty of this practice? When was the last time that you went over with the client the specifics of the standard parenting plan used in your county? Have you talked about the positive and negative points of that standard plan? Have you thought through whether or not additional provisions work to the client's benefit? The client is paying you for advice, so why should they adopt a boilerplate, off-the- shelf plan rather than develop a custom plan with the benefit of your expertise? It has been my experience that a party who prepares for mediation will more likely reach a settlement and, more importantly, that the settlement reached will be more favorable for both parent and child. [7]

Negotiating a Parenting Plan

Mediators almost universally speak briefly to the parties about their respective needs and concerns and then begin the process of modifying the county's standard plan. Some parties (whether the primary residential or the non-residential parent) insist on having the exact terms of the standard plan for the sole reason that it is "what the law allows them to have." Advocates of this position fail to understand the full impact of their righteousness and, as a result, miss an

[7]Tips on how to prepare your client for mediation are provided in Appendix 1, an article by Philip M. Stahl, Ph.D.

opportunity. An experienced domestic relations attorney will understand that this dynamic occurs in mediation and work with the client to:

1. Understand what the client needs, which is not necessarily what the client actually wants. Really listening is perhaps the one thing that attorneys too often fail to do well. For example, many standard plans are simply not practical because of a parent's work schedule, or there may be something about the parent's work schedule that provides the opportunity for innovative use of parenting time.

2. Assure that the client understands that the children are not assets owned or controlled by the client. The court is interested in what is best for the children. Parents may have different concepts of how to most effectively provide for their children. The client does not have absolute power, whether she is the residential or the non-residential parent. An agreement will be reached only if both parents recognize that each will continue to be involved in and be an important part of the children's lives.

3. Educate the client about the available options and explain the positive and negative aspects of those options to the client as it relates to his or her goals for a parenting plan. For example, having father pick the children up from school rather than from mother's house to begin his time allows him to avoid confrontations with an angry former wife.

4. Make sure to talk to the client about alienation, specifically, how to avoid alienating the children regardless of your legal status as the residential or the non-residential parent.

5. Separate parenting issues (decision-making opportunities) from parenting time. These are two different concerns. A non-residential parent's right to spend time with the children is far different from his right to make parenting decisions on their behalf. Concerns about one area can easily, and unnecessarily, prevent an agreement in the other areas. For example, the anger generated by a disagreement as to whether or not a child's ears can be pierced without both parents' approval could flow over and prevent the residential parent from agreeing that weekends will end on Monday morning rather than Sunday night, even though the two issues have nothing to do with each other. This is an important area in which client education can go a long way to cut short the natural tendency that separating parents have to hurt each other whenever possible.

6. Make sure the client recognizes that the plan may (and likely should) be altered as the children grow older and their needs change. Most parents are able to accommodate such changes without having to return to the court system, but others cannot. The most difficult time for non-residential parents is when the children reach the age where they want to spend their time with peers rather than

parents, which means not visiting with Father every other weekend because it interferes with Friday night football games and the dance that follows, etc. Again, education of your own client is key.

Specific Plan Provisions

There are concerns that arise that often you, as the attorney, should be able to easily address. The following discussion, as well as the sample parenting plan in Appendix 2, provides some examples of optional structure and provisions. For illustration purposes, the sample parenting plan assumes that Father acts as the non-residential parent.

1. **Plan Format.** The format of the plan is intentional. Specifically:

   A. The plan is divided into three sections. The first is the actual parenting schedule. The second contains provisions that involve implementation of the schedule and logistics relating thereto. The third section deals with the responsibilities that each parent will have as a parent, not necessarily relating to the schedule itself.

   B. Put headings on each section and number the paragraphs. Such formatting makes it easier for each parent to find the part of the plan that speaks to a specific issue of concern. Remember, this will be the rule book under which each parent will be operating until it is changed or the child turns 18 years of age. Make it as user-friendly as possible.

   C. Personalize the plan by using the children's names. Yes, it takes a few extra minutes to do, but your computer's merge program should make this step easy. This is the document to which your client will most likely frequently refer in the future. The client is paying you good money for your assistance in writing the plan, so provide a good-looking, personalized product rather than a form. After all, if the client merely wanted boilerplate language, he could use the county's standard plan. In personalizing the form, be cognizant of personal pronouns. For example, using a plural personal pronoun (or references such as "his or her") when there is a single male child makes it appear as though you are using a form.

   D. The plan is designed to delete paragraphs that might be unwanted without having to renumber all of the paragraphs. For example, the provision that requires both parents to share in the cost of a child's extracurricular activities in section 2.5 is the last subparagraph (2.5.4) because most support-paying parents will want it deleted, believing that such expenses

should be paid for with the support the residential parent is receiving. The specific provisions may or may not be what your client needs, but they are worth discussing.

2. **Joint Custody.** Most fathers ask why they cannot get joint custody of their children. They do not understand the legal concept or its significance, but they still want and will fight for it based on the general belief that they are somehow "less of a dad" because mom received "sole custody" while they were relegated to "visitation." The discussion below suggests language that may be of use in such situations. Note that the plan provision makes an award of "joint custody" but it specifically eliminates the statutory definition. In actual (and practical) effect, the judgment gives mother sole custody. Mother retains full control with no legal detriment while father receives the psychological benefit afforded by being able to tell his friends that he has "joint custody." It becomes a win/win for both parents.

> *1. **Custody of Children**. Mother and Father shall have joint legal custody of Wendy, Jonathan and Michael as said term is described herein, not as defined by ORS 107.169.*
>
> *1.1 **Primary Parent.** Mother shall provide Wendy, Jonathan and Michael with their primary physical residence and be considered as the primary residential parent. Mother shall have the full and exclusive authority for making all decisions that impact the children as if she had sole custody. She shall consult with Father on issues that may arise, but she shall decide how all issues are to be dealt with.*

3. **Parenting Schedule.** There are a number of variations and modifications that can be made to the typical alternating weekend schedule. The sample plan in Appendix 2 describes the provision that I prefer and have found to be most suitable for the majority of my clients. Note the following key provisions of the plan:

A. **Exchanges.** The children are exchanged at school. Parenting conflicts occur when parents have contact with each other, most often during exchanges. This language eliminates that opportunity. In addition, children avoid being emotionally pulled between their two parents. This provision thus

reduces the possibility of creating a scene wherein every week mother gives the child a lot of hugs and kisses as she leads him to father. The child gets weepy and does not want to leave mother, thereby upsetting father or making him angry. This situation is then reversed when father returns the child. Note that other individuals known to the children can actually pick up the children if father is unavailable.

2.4.2 The children shall be picked by Father or his designee from the children's school if his first day to have the children is a school day. The children shall be picked up from the front steps of Mother's residence during periods that Father's time to have the children begins on a non-school day. Father shall be responsible for returning the children to their school or daycare if his period ends on a school day or to the front steps of Mother's residence if his period ends on a non-school day.

2.4.3 Other individuals known to the children such as grandparents, step-parents, live in girl\boyfriends, etc., are authorized to transport them.

B. **Start Time.** The weekends start after school rather than at the more typical 7:00 p.m. on Friday. Again, this is in large part to avoid the interaction between parents during an exchange, but it also gives father the opportunity to participate in the school process. Mother is obviously capable of picking the child up after school (or at the daycare provider's location), so why should father have a problem? It gives father the opportunity to get involved. He has to do it only twice each month so he can plan ahead.

*1.1 Father shall have Wendy, Jonathan, and Michael with him on **alternating weekends**.*

1.1.1 A weekend is defined as commencing after school on Friday and ending the following Monday morning. Weekends shall begin at 4:00 p.m. on the Fridays the children have no school.

There are occasions when there is no school for students on Friday, although the school is open.[8] It is common to draft a plan that starts the "weekend" on Thursday after school on those weekends. This places

[8]The second Friday in October is a statewide teacher in-service day in Oregon. Always check the school calendar in your district for early dismissal days, school conferences, grading days, staff development days, etc. where the students are not in school although it is not officially a holiday.

responsibility for the child's care (often a chore) on the non-residential parent.

C. **End Time.** Parenting time ends on Monday morning. This gives father an extra night and allows him to really have an enjoyable weekend. It places an extra burden on father, but is that not part of being a parent? Again, the child is transitioned without the parents coming into contact with each other. This procedure has worked well in Marion County since it was implemented in 2000.

1.1.1.1 Father shall feed the children breakfast on Monday morning and deliver them no later than 9:00 a.m. to Mother's home, daycare, or the school, as may be appropriate. Delivery to the school must be in time for the child's first class.

1.1.1.2 Father shall either provide the children with lunch money for that day or pack them a lunch and snack if he is delivering them to school on Monday.

D. **Elimination of Holidays.** The plan follows the pattern adopted in the last few years in many counties by eliminating most named holidays in favor of an extension of a weekend by one day if the holiday happens to fall on a Monday.

1.1.2 Father shall be entitled to retain the children until Tuesday morning if his weekend to have the children falls on a weekend during the school year on which the next Monday is a state or federally recognized holiday on which there is no school.

Other specific occasions such as Halloween, Easter, July 4th, a parent's birthday, etc., are not mentioned. Special occasions can be specifically addressed if a parent believes the occasion to be important. It is my experience that any benefit enjoyed by including such an occasion is diminished by the problems created by exchange issues for the parents and children and the disruption to the orderly and predictable flow of the schedule. The goal is to create a constant and predictable schedule that does not require looking at a calendar or to the plan to determine if the children are to be with father or with mother for a particular weekend or event.

*2.10 **Conflicting Dates**. The holiday schedule in this parenting plan takes precedence over the alternating weekend schedule. The holiday schedule may create times when the children will be with the same parent for three weekends in a row.*

This happens when a vacation or holiday defined in this plan replaces the normal schedule for a given weekend or time period.

E. **Keep Alternating Weekends**. The plan is drafted so as to eliminate as many occasions as possible in which one parent has the children for three weekends in a row. Most of that is accomplished by extending the weekend to include a Monday holiday, but there are other, less obvious times when that occurs such as:

*1.4.2 **Thanksgiving** holiday, beginning on Wednesday at 7:00 p.m. and ending on the following Friday at 7:00 p.m. The parent having Thanksgiving shall be entitled to keep Wendy, Jonathan, and Michael until Monday morning if it is that parent's weekend to have the children on the normal alternating weekend schedule.*

*1.5 Wendy, Jonathan, and Michael shall be with Father during the period of school **Spring vacation** in the school district in which they reside in odd-numbered years. This period begins at 7:00 p.m. on the Sunday immediately following the school's adjournment and ends at 7:00 p.m. on the Friday immediately prior to the resumption of school. Father shall have the children with him during this period in even-numbered years. The normal, alternating weekend schedule shall remain in effect which means that a parent will either be able to add his or her weekend onto the beginning or the end of the Spring vacation period depending on the normal alternating weekend schedule.*

F. **Annual Shift of Weekends.** The weekends shift one week every year beginning when school starts. The Labor Day weekend start period (as opposed to January 1) makes sense because most parents focus their own schedules around the school's schedule.

1.1.3 The alternate weekend parenting time schedule shall rotate each year as follows:

1.1.3.1 Father's first weekend in even-numbered years shall begin at 7:00 p.m. on the Friday of Labor Day weekend and end Monday night at 7:00 p.m.

1.1.3.2 Father's first weekend in odd-numbered years shall begin on the first Friday following the Labor Day weekend.

G. **Summer.** Marion County's Rule 8.075 (and many other counties' rules) give father alternating, two-week blocks of time during the summer with the children. Unfortunately, most fathers do not have six weeks worth of vacation time during the summer. Mothers worry constantly about where the child is and who is providing care while father is at work. The child (especially as he or she gets older) loves father dearly but is bored at father's house because the child's toys are not there, friends do not know where he is, etc. The existing summer provisions foster the notion that father is a "Disneyland Dad" because he truly does have the child only during vacation periods, whether those vacations are weekends, holidays, or summer breaks. There should be interaction between father and the school schedule if he truly wants to be involved with his child. Hence the following alternative that spreads the traditional summer vacation throughout the school year.

1.3 ***Extended time.***

1.3.1 Wendy, Jonathan, and Michael shall be with Father for a seven-day period during the months of February, April, May, July, August, and October. This period is in lieu of the traditional "summer vacation." The alternating weekend parenting schedule shall remain in effect for the remainder of the year.

1.3.2 Father's extended time shall begin on the Friday of his first weekend with the children during the specified month unless the parties agree on a different week. The time shall last until the next Friday when school recesses or at 7:00 p.m. if the children are not in school.

The initial reaction of most mothers is to object to spreading "summer" throughout the school year. She is concerned the child's homework will never be done, he will be late for school, etc. However, after thinking about it, most mothers find this proposal far superior to the traditional summer vacation. After all, mother now knows where the child is all day long (in a school chosen by mother). In fact, mother can spend time with the child at school each day, something she cannot do if the child is with father for an extended time during the summer. Additionally, not only does mother get a break, but father gets to step up and be a real dad: making arrangements to pick up the child after school, getting the child to school on time, helping with homework, meeting the child's friends and parents of friends, etc. In addition, it is less stressful on the child because he gets to spend her day with friends while father is at work. It is far better than staying home alone (or worse yet - staying home with the wicked step-monster).

This extended schedule does not give father additional time that will reduce his child support under the Oregon guidelines. In fact, it may actually give him less time due to the fact that he must select his seven day block during times that he would have had the child for the weekend anyway. This means that father is really adding only four days to the monthly schedule since he was already entitled to three for the weekend.

H. **Calender.** One parent should be given the task of preparing an annual calendar so that everyone (including the child) will know what the schedule is. Creation of the calendar itself should be a simple task because the schedule is simply alternating weekends for most of the year. The benefit of this step, however, is enormous. Having a calendar allows parents to plan. For example, mother and father now know when to schedule the family reunion, what week to take a trip, etc.

> *1.8* ***Calendar.*** *Mother shall prepare a calendar each year of the weekly and holiday schedule and send it to Father. The purpose of the calendar is to visually illustrate how the parenting schedule described in this parenting plan is to be implemented during the upcoming year. Mother shall immediately prepare a calendar that covers the period through August 2005. Thereafter the calendar shall be provided on an annual basis covering the period September 1 to the following August 31. The calendar must be consistent with this parenting plan. Father shall have two weeks within which to object to Mother's recitation of the schedule set forth in the calendar. Once finalized, the calendar shall, by agreement, be binding upon both parties. Father's right to spend time with the children will not be affected if Mother fails to promptly prepare a calendar.*

I. **Activities.** Parents sometimes lose sight of the fact that the child has a life of his own. The goal is to build around the child's schedule, not around the parents' schedules. That often creates problems, especially for non-cooperative parents. For example, it is not unusual for the residential parent to heavily schedule a child for activities to the point where the non-residential parent's time is forced to occur during those activities rather than during activities that the non-residential parent would have selected and/or wanted to take part in. This conflict is to be expected to a certain extent because, as a member of the baseball team, the child should attend games on father's Saturdays just as he would on Saturdays that he is in mother's care. However, the attorney needs to draft a plan that prevents blatant attempts at interference with the other parent's time. This model plan deals with the issue in two ways. First, it is clear that a parent need not take a child to an activity if the parent does not want to. Second, the non-residential parent is given the opportunity to be the activity leader,

thereby forcing the residential parent into assuring that the child is actually present at that activity.

Perhaps the most controversial aspect of a child's activities is who is going to pay for it. Non-residential parents most often feel that the child support he or she pays should be used. The reality is that a child's activities are far more expensive now than when we were children. The provision requiring the parents to share in the cost of agreed-upon activities was intentionally placed last in the sequence so that it can be deleted without having to renumber the other provisions.

2.5 ***Children's Activities.*** *Each parent has the right to visit with the children at school, attend their school activities (such as an open house or sports activities), and have full access to school teachers and administrators for complete information about the children in school. This includes parent-teacher conferences, although there is no requirement that the conference be held jointly with the other parent. Each parent shall be responsible for keeping himself or herself advised of each child's activities and events.*

2.5.1 Mother shall have the right to register the children for activities, but she shall not over-schedule them thereby depriving Father of the right to select his own activities for the children during his time with them.

2.5.2 Although neither parent is required to take a child to any activity, each parent is encouraged to use his or her best effort to keep them involved in athletic events, school functions, lessons, birthday parties of friends, etc., even though those activities may fall during a parenting time period. To do otherwise would deprive the children of valuable growing opportunities. Each parent is encouraged to use the children's activities as an opportunity for that parent to participate with the children, meet their friends and other families, and to have a quality experience with the children.

2.5.3 Father anticipates that Wendy, Jonathan, and Michael will be involved in a number of extracurricular activities such as sports, Girl Scouts or Boy Scouts, musical endeavors, etc., as they grow older. Father has the right to register the children for such activities and act as the coach or adult leader of the activity. Father has priority over all others to serve in such leadership roles

(except for Mother), including any step-parent. Mother shall take no action that interferes with Father's right to be involved with the children in this manner.

2.5.4 The cost of any activity in which the parents have agreed a child should participate shall be equally shared by the parents. This includes registration fees, specialized equipment, special photographs and similar expenses. Each parent shall promptly pay his or her share of the activity cost so that problems do not develop for the child.

J. **Clothes.** Father is required to maintain a supply of basic clothing and toiletry items at his residence as a way of avoiding the arguments about dirty clothes being returned and all of the similar complaints that attorneys so often hear. This includes socks, underwear, shirts, etc.

*2.8 **Clothes**. Father shall maintain a supply of basic clothing (socks, underwear, a shirt, a pair of pants, etc.) and toiletry items for Wendy, Jonathan, and Michael at his residence. Mother shall make sure that the children have with them any specialized clothing (coats, sport uniforms, etc.) or equipment needed for the time they are to be with Father. Father shall advise Mother in advance if special items are needed for an activity such as providing warm clothing for a ski trip. Each parent shall return all clothing that the child came with.*

Toiletry items include toothbrushes, feminine hygiene products, etc.

K. **Daily Care.** This provision speaks to a highly emotional topic, one that attorneys abhor hearing about.

*3.2 **Daily Care**. Mother is responsible for the children's primary care. Father shall provide care for the children only while they are staying with him and will make only emergency medical or dental decisions on their behalf. Decisions about bedtime, hygiene, minor disciplinary actions, curfew, chores, allowances, social dress, etc., may be different in each parent's home. Neither parent is required to follow the other parent's rules on these issues.*

L. **Safety Issues.** This is a "feel good" provision for residential parents that has no real muscle. Each of the provisions makes sense, but the residential parent will most likely never be able to enforce them. After all, the only person that can testify that a parent did not make the child wear a

seatbelt (or had too much alcohol to drink) is the child, and what parent wants to call a child to the stand to testify against the other parent in a contempt proceeding?

The State of Oregon Judicial Department maintains a website designed to assist parents in crafting their own parenting plan. One of the options is a safety focused parenting plan developed to deal with special concerns about domestic violence, abuse and neglect, substance abuse or mental health concerns.[9]

M. **School.** There are a number of potential issues here. The provision assumes that the residential parent has chosen the school because that is what residential parents do. The first paragraph is perhaps too Draconian in that it does not allow a child to stay home for a "mental health day" (something particularly popular with high school students), nor is either parent allowed to take the child out of school other than under limited circumstances.

The school provisions speak to issues that occur repeatedly and are designed to give parents the benefit of the practitioner's experience as to what problems they can expect to face. Having the answer in advance helps.

Home schooling is a hot button for non-residential parents.

> *3.4* ***School Attendance.*** *A child shall attend all regular sessions of school until graduation, unless excused by medical reasons, an emergency (such as a funeral), the school, the Court, or both parents. A child shall not miss any time from school for vacation with either parent unless agreed to by both parents in writing.*
>
> > *3.4.1 Unless Mother and Father otherwise agree, the parent at whose home the child slept the night before an illness is responsible for staying home with that child the next morning if the child is too ill to return to school or daycare.*
> >
> > *3.4.2 All school registration forms shall reflect the name, address and telephone number of both parents. Father's shall be listed with the school as an emergency*

[9]Three versions of a safety focused parenting plan can be downloaded at *http://www.ojd.state.or.us/osca/cpsd/courtimprovement/familylaw/parentingplan.htm.*

contact resource for a child if it is reasonable to assume that Father can get to the school to provide assistance to the child in the event of an emergency.

3.4.3 No child shall be home schooled without the expressed, written consent of both parents.

N. **Health Care.** How much do parents want to micro-manage their children's lives and what the other parent is or is not doing? That is the real question to be considered before including the following provision. The provision gives a very involved non-residential parent a voice that he otherwise would not have, but too much control for a parent that is uninvolved. The issue that most often comes up is orthodontic care since the support provisions of the judgment normally require that parents share in that cost. Theoretically, this consent provision could be used by a parent to prevent the orthodontic care from taking place since it is usually cosmetic rather than mandatory. I leave this provision out when I represent the residential parent.

3.7.4 Father and Mother shall use their best effort to discuss and resolve all matters calling for non-emergency or elective medical, dental, psychological/psychiatric or other physical or mental health-related treatment for a child. Either parent has the right to obtain a second opinion, at his or her own expense, on any non-emergency medical, mental health or dental matter, but consent to the treatment shall not be unreasonably withheld. Mother and Father shall cooperate with each other in making the children available for a second opinion.

O. **Joint Agreement.** Some issues regarding children should only occur by joint agreement of the parents. For example, a tattoo, while currently trendy, is a lifetime decision. What would you do if your daughter came home from a weekend with dad sporting a new tattoo? As with health care, this provision gives the non-residential parent appropriate authority if he is an involved parent, but too much authority if he is not. Note that no mention is made of body piercing in the "joint agreement" section since those holes will heal over eventually.

Sending a child into the other parent's house to scavenge items of personal property is most often an issue during the early stages of the separation. "While you are in there, would you mind picking up the bowling trophy that your mother has refused to give to me?" Once parents have settled into a routine it becomes a matter of common courtesy.

3.12 ***Joint Agreement Required.*** *The following shall not occur without the consent of both parents:*

3.12.1 Neither parent shall allow a child to undergo cosmetic surgery, get a tattoo, marry, or enlist in the armed services without the other parent's written consent. Father shall not allow a child to pierce any body part or make any substantial changes in a child's physical appearance (for example changing the way a child's hair is cut) without Mother's prior written permission.

3.12.2 Neither parent shall enter the other parent's home without that parent's permission. Neither a child nor a child care provider have authority to invite a parent to enter the other parent's home.

3.12.3 A parent shall not direct a child to enter the other parent's home to take possession of any item other than items that the child needs for that parenting period and even then, only after trying to contact the parent to arrange a time for the missing item to be picked up or delivered. This provision contemplates a child needing but having neglected to bring along an important item such as medication, sports gear needed for a sporting event that is scheduled to occur during the parenting period, or homework. Non-essential items such as a video game, music CD, a DVD, etc. are not items that justify a child entering one parent's home during the other parent's time with that child without specific permission to do so.

P. **Stepparents.** I never cease to be amazed at how often a request that the following provision be included creates controversy. At the very least, it is a topic that the parties should discuss.

3.14 ***Stepparents.*** *Stepparents and live-in spousal equivalents are not to assume parenting responsibilities over the children and shall never be allowed to use physical discipline or physically strike a child. Issues regarding the children are to be dealt with by his or her parents. Mother and Father shall provide each other with the name of any non-related person who resides with or is visiting that parent for a period of more than three weeks.*

Q. **How Do You Change It?** Most people make informal changes to their parenting plan along the way and then are surprised to learn that the changes are not

binding. There is some benefit to setting forth the mechanism for changing the plan in the plan itself.

> *2.11* ***Changes to the Parenting Schedule.*** *Changes to the parenting plan are allowed whenever both parents agree to a change. Agreed upon changes will be temporary and will not be enforced by the court unless the change is in writing, dated, signed by both parents before a notary public, and submitted to the court leaving a space for the judge's signature. See ORS 107.174.*

4. **Alternate Schedules.** Parents should consider carefully their family's particular background, circumstances, needs and preferences when setting a schedule. Other frequently encountered options for parenting plans for school-aged children have been described by Joan B. Kelly, Ph.D., a leading researcher, writer and lecturer on a child's adjustment to divorce, child custody and access issues. [10] Dr. Kelly's breakdown and comments, modified based on my own experience, follow:

Option 1. **Every Other Weekend.**
(Friday 7:00 p.m. to Sunday 7:00 p.m.) 4 out of 28 overnights

This parenting plan option establishes 12 days' separation from the non-residential parent. Divorce research indicates that this is too long for many children and may diminish the non-residential parent's importance to the children -- with fewer opportunities for involvement in their day-to-day, school and homework activities. In addition, this option provides little relief to the residential parent from responsibilities for children. This parenting plan option may be preferred, however, given the parent's history of involvement with the children, available time for parenting, present parenting resources, or as a transitional approach to timesharing.

Option 2. **Every Other Weekend Plus Midweek Visit**
(Friday 7:00 p.m. to Sunday 7:00 p.m.,
with every Wednesday 5:00 p.m. to 8:00 p.m.) 4 out of 28 overnights

[10] For more information on Dr. Kelly's research and a list of her publications can be obtained directly from Dr. Kelly at *jbkellyphd@mindspring.com*

This parenting plan option limits separation from the non-residential parent to seven days. Adding the midweek transition could allow for more conflict in the transition to the residential parent's home. Some non-residential parents describe the evening visit as too rushed with less time to adequately supervise homework and to "settle in." This option may be one of a few workable plans with non-residential parents having difficult work schedules, especially those with very early hours.

Option 3. **Every Other Extended Weekend**
(Friday 7:00 p.m. to Monday 9:00 a.m.) 6 out of 28 overnights

This parenting plan option reduces the opportunity for parental conflict with its more expansive weekend for the non-residential parent. Additionally, one less transition minimizes stress for the children. This option generally is not workable if the non-residential parent resides far from the child's school.

Option 4. **Every Other Extended Weekend Plus Midweek Overnight**
(Friday 7:00 p.m. to Monday 9:00 a.m., with
Wednesday 5:00 p.m. to Thursday 9:00 a.m.) 8 out of 28 overnights

This parenting plan option limits separation from the non-residential parent to six days. It also allows for a broader opportunity for the non-residential parent to supervise homework and to participate in bedtime and waking rituals. The option's transition at school after the midweek overnights avoids parental conflict. The midweek overnight also affords the residential parent a regularly scheduled break in caretaking responsibilities.

Option 5. **Every Other Extended Weekend With Split Midweeks**.
(Friday 7:00 p.m. to Monday 9:00 a.m., alternating; plus with
Parent A, every Monday after school to Wednesday 9:00 a.m.;
with Parent B, every Wednesday after school to Friday 9:00 a.m.)14 out of 28 overnights

This parenting plan option presents a two day/two day/five day/five day approach to timesharing and limits separation from the other parent to five days (generally tolerated by children ages five or older). All transitions can take place at school or daycare to eliminate the opportunity for parental conflict. By establishing a consistent midweek residence routine, both parents get both midweek and weekend time, allowing full involvement in their children's work and play, and permitting relief from parenting on a predictable basis.

With this option (and with options 4 and 6), it is important and desirable for the children to have clothing at both homes as well as the materials and equipment that make their lives work well without having to live out of a suitcase. Despite the number of transitions, many school-age children (especially those six years of age or older) like this schedule because they see both parents frequently, their

friends can keep better track of where they are, the same parent can be involved in some of the same activities scheduled on those days, and there is never a transition where they are "leaving home." The schedule may be inappropriate with children with difficult temperament or learning disabilities.

Option 6. **Every Other Week**
(Friday 7:00 p.m. to following Friday 7:00 p.m.) 14 out of 28 overnights

This parenting plan option imposes seven days' separation from the other parent, often quite difficult for children younger than six or seven years of age. It eliminates the opportunity for face-to-face parental conflict by minimizing transitions and allows both parents and mature children to settle into a routine. The children's cyclical residence can, of course, complicate management of scheduled lessons, activity commitments and daycare arrangements. Some adolescents may even prefer a schedule with two week blocks at each household.

• Note: changing households on *Friday* after school often works better than on the traditional Monday after school approach (allowing for a "winding-down" at the time of transition, rather than requiring a "gearing-up" at that time).

Miscellaneous Issues and Plan Provisions

1. **Young Children and Unmarried Couples**. The heading of this section is perhaps misleading. The message to be conveyed is that parents who have not had much exposure to a child (such as an unwed couple where the father has never lived with the mother and child) perhaps should not jump automatically into the alternating weekend parenting schedule with the child. The reason for this restriction is the child's lack of contact with the non-residential parent more than the child's age. After all, while he may be the biological father, he is a stranger in the child's eyes.

Most parenting plans are designed to limit contact between a very young child and the non-residential parent. Schedules such as the following are typical:

Infants - a few hours every two to three days to build a bond with the parent who does not have physical custody of the child. Overnight visits are usually too traumatic.

1-year olds - One day a week.

18 Months - One day plus a night.

2 to 3 years - Two days plus a night

Elementary School age - Alternating weekends, plus extended visits during school breaks

Marsha Kline Pruett's cutting-edge research refutes the basis for the above schedule. Her preliminary research shows that children have fewer social, behavioral and attention problems if they spend overnights with the non-residential parent on a consistent schedule. The converse is also true. Children with inconsistent schedules tend to internalize their problems. With young children in particular (pre-school to age six) the involvement of the non-residential parent is related to higher adaptive developmental skills relevant to the external world. Overnights offer opportunities for adaption to different household routines and exposure to different parenting styles around bedtime, meals, and other intimate activities that may help foster external world orientation. This is particularly true in girls, possibly because they develop verbal and social skills at an earlier age than boys. Boys simply identify more with their fathers' action-focused problem-solving styles on the basis of gender alone.[11]

The key to Dr. Pruett's research is that a young child's schedule must remain consistent across weeks and months and not be subject to change based on parental work schedule or other adult needs. Parents who cannot (or choose not to) maintain consistent schedules may have a more difficult time supporting their child's social and emotional development in other ways as well.

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[11] *Critical Aspects of Parenting Plans for Young Children (Interjecting Data into the Debate About Overnights)*. Marsha Kline Pruett, Rachel Ebling, and Glendessa Insabella, Family Court Review, Vol. 42 No. 1, January 2004, 39-59.

2. **Religious Events.** Religious events and occasions create a tremendous amount of emotion. Most parenting plans are written with Christian families in mind (note that the Christmas break is referred to as Winter Vacation in the model parenting plan); however, a practitioner needs to be cognizant of what the client wants. For example, note that there is no mention of Easter in the model plan. This religious holiday floats and disrupts the goal of providing an easy schedule for the parents and children alike to follow. The following provisions may be of use:

> *3.5* ***Religion.*** *The children shall be raised in the _____ faith. Neither parent shall encourage a child to convert to a different religion. The parent having custodial rights on Sunday or Sabbath, has the right to bring the children to the parent's Church, Temple, or Assembly Hall.*

Jewish Holiday Schedule

> ***Hanukkah:*** *(a) If the holiday does not coincide with the Christmas recess visitation schedule, or does not fall on a regular weekend or weekday scheduled visitation period, then during even-numbered years from sundown the night before the first day of Hanukkah until sundown on the fourth day of Hanukkah. (b) During odd-numbered years, from sundown on the fourth day of Hanukkah, until sundown on the eighth day of Hanukkah.*
>
> ***Rosh Hashanah****: If the holiday does not fall on a regular scheduled visitation weekend or weekday, then during even-numbered years from sundown the night before Rosh Hashanah, until 8:00 p.m. the following day.*
>
> ***Yom Kippur:*** *If the holiday does not fall on a regular scheduled visitation weekend or weekday, then during odd-numbered years from sundown the night before Yom Kippur, until 8:00 p.m. the following day.*
>
> ***Passover:*** *If the holiday does not coincide with the Easter recess visitation schedule, or does not fall on a regular weekend or weekday scheduled visitation period, then: (1) during odd-numbered years, first Seder night; (2) during even-numbered years, second Seder night.*

Jehovah's Witnesses Visitation Schedule:

Non-celebration of Secular Holidays: *In order to respect the (Mother's) (Father's) religious beliefs, the (Mother) (Father) shall not permit the minor child to celebrate in any fashion any holiday whatsoever, including but not limited to, Christmas, Thanksgiving, Easter, Fourth of July, Valentine's Day, Birthday, Halloween, Mother's Day, Father's Day, etc.*

Non-celebration in Non-Jehovah's Witnesses Observances: *Furthermore, (Mother) (Father) shall not allow the minor child to participate in any way whatsoever in prayers, christening, baptizing, religious holidays, or any kind of religious observance or celebration unless agreed to by the minor's (Mother) (Father).*

3. **Child Abduction.** This is an emotional issue that, while important, seldom in my experience is of any real concern. In fact, including such a provision can create problems that are unexpected and not of the type the language was intended to prevent. For example, the restriction on passports allows a parent to prevent a child from going on a field trip to Mexico with the child's Spanish class. However, there are some cases in which this is a very real issue.

3.10 ***Passport.*** *Neither parent shall remove a child from the United States without the express written permission of the other parent or an order of the court. Neither parent shall apply for a passport for a child without the express permission of the other parent or an order of the court. A parent's permission for a child to obtain a passport shall not be unreasonably withheld.*

3.10.1 A parent who wishes to travel with a child to a foreign country shall 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 of abduction.

3.10.2 A parent is prohibited from traveling with a child to a foreign country that is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction.

4. **Exchanging Parenting Information**. Some parents are simply not able to communicate with each other even though that inability is detrimental to the child. One way to get around the issue is to utilize a notebook that travels with the child from parent to parent.

3.8 ***Exchanging Parenting Information****. Mother and Father shall keep a notebook that goes back and forth with the child that provides information*

about the child's schedule, problems, eating, sleeping, cute stories, new experiences, medications, if any, and other information for the other parent. Mother and Father may stop using the notebook when both parents agree that it is no longer necessary to do so.

5. **Failure to Spend Time With The Child.** Interestingly, I have a far greater number of parents who complain because the non-residential parent is not spending time with the child than parents who complain that their former spouse is spending too much time with the child. That failure is particularly frustrating when the written parenting plan requires consultation on specific issues. Consider including some variation of the following:

2.12 ***Failure of Exercise - Abatement:*** *Father's right to spent time with a child on the schedule set forth in this parenting plan shall be suspended should Father fail to arrive on two consecutive occasions within a period of 90 days without having given Mother reasonable prior notice that he will not be present. Father's right to spend time with a child shall only be reinstated either by order of the court or if Mother receives written notification from Father sent by registered mail, return-receipt requested, advising that Father wishes to resume the schedule as of a specified date (but not less than two weeks after such notification is sent) and that he agrees to exercise diligence in attending future contact with the child.*

6. **Daycare.** Some parents insist that he or she be given first option to provide care if the other parent is not going to be spending personal time with the child. This is often a poor idea for a number of reasons, not the least of which is that it is difficult on the child. Most child development specialists agree that the fewer transitions a child must go through, the better. Some are obvious and of no concern, such as going from a parent's home to the school. However, problems occur when a child transitions, especially in the same day, from one parent's home to the other several times. For example, the child spends the night with father who takes him to school in the morning. Mother picks him up at the end of the school day and keeps him until father arrives later that afternoon. This is not a problem for cooperative parents, but it is a

very real trauma for most children because it is exceedingly difficult to keep the dynamic/rules/expectations, etc., straight between each parent's home. In addition, father should be making his own daycare arrangements rather than relying on mother. For those that insist on such a provision, consider:

> *2.11* ***Day Care****. Father shall be responsible for arranging day care for the children during his time with them. A child under the age of 11 shall not be left unsupervised. Mother shall allow Father the first choice of providing daycare for the children if daycare is needed because it is better for the children to spend time with their father than it is for them to spend time in daycare. Grandparents have second priority to provide daycare after a parent. Daycare is defined to cover placement of the children with a third party on a regular basis while the parent who is then caring for them is at work. This provision does not apply to babysitting. Babysitting is an occasional need to have someone watch the children while the responsible parent is temporarily away. Hiring a teenager to watch the children so Mother can go to a movie is an example of Babysitting.*

7. **Long Distance Parenting.** There is no more difficult an issue than long distance parenting. This is not limited to the situation in which parents live in different states. A very well thought out and functional parenting plan becomes a mess if one parent moves a mere 20 miles away. Pickups and drop offs at school are no longer an option. It becomes difficult for the non-residential parent to know about, much less attend, the elementary school Thanksgiving pageant in the middle of the afternoon, nor can he make time to be the child's Little League coach.

One way to deal with the issue is to strictly prohibit the move. The following is the statutory restriction that must, at a minimum, be included in every judgment. Consider, however, the alternative anti-move provision. The anti-move provision shifts the burden of proof from the parent seeking to prevent the move to the parent who wants to move. That shift seems reasonable as the moving parent is in a better position to explain how a move would be in

the child's best interest than is the non-moving parent to prove that a move would be detrimental.

> *2.4* ***Statutory Notice****. Neither parent shall move to a residence that is more than 60 miles further distant from the other parent without giving the other parent reasonable notice of the change of residence and providing a copy of such notice to the court. ORS 107.159*

ALTERNATE 2.4

> *2.4* ***Moving.*** *Neither parent shall move the children primary residence outside the boundaries of the Salem/Keizer School District 24J without prior written approval of the other parent or an order of the court. An order of the court shall not be entered without a hearing at which the non-consenting parent may present testimony. The parent desiring to move the children shall have the burden of proving to the court that the move is in the children's best interest.*

Every long-distance parenting plan must be custom drafted to fit the fact situation. An issue that should be considered in shorter moves concerns which parent provides the transportation to carry out the schedule set forth in the parenting plan. The distance to be traveled can sometimes be completed in a car, with each parent sharing the burden of transportation. This can be accomplished by meeting at a halfway point or as follows:

> *2.2.2 Father or his designee shall pick up the children from the front steps of Mother's residence to begin their time with him. Mother or her designee shall pick up the children from Father's residence to end the parenting time if that time ends in the evening.*

It becomes more difficult when air transport is required. See Appendix 3 for a sample long-distance plan that includes air travel. Practitioners should make the client aware of airline regulations for a child traveling without an adult. Note that this plan, like all good long-distance plans, builds in the possibility that a parent may move to negate the distance. In addition, there are no specific times set to start or end the non-residential parent's time. It simply is not a

manageable aspect of the plan. Instead, parents are encouraged to keep in contact by cell phone while in transit.

Modern technology allows long distance parents to have frequent face-to-face contact with a child, albeit electronically. AOL, MSN and Yahoo! provide both instant message programs and free video services for those with a high speed connection such as digital subscriber line (DSL) or cable. While clever, a video conference will never replace a live interaction between a parent and child. What it does, however, is highlight the need for the long-distance, non-residential parent to stay connected to the child. That is not always as easy as it may seem because a young child's response to a parent's question about what happened during a day is often "nuthin'." Think about ways to give the parent and child common areas of interest and information such as:

1. Audio-Video tapes -- Homemade audio-video tapes of a parent telling jokes, reading stories, etc., will keep the child occupied, create memories and provide a topic that can be discussed during electronic communication (e-mail, instant messaging, etc.) and on the telephone.

2. Movies -- Send the child a ticket to a movie that the parent also attends. This creates a common topic that can be discussed.

3. Books and magazines -- Provide a child the opportunity to practice reading and to gain information. The non-residential parent should have available magazines that the child can or does already read so that they can discuss the articles.

4. Letters -- It may seem old fashioned, but children love to get mail. Writing frequently (send postcards!) is more important that writing long letters. Do not expect to receive frequent return letters. Clever postcards are also a topic that can be discussed on the telephone.

5. Send things -- The items sent do not need to (or should not) be big gifts because that creates conflict with the residential parent. Pictures, cartoons, stickers, jokes, a ticket stub from a ball game that the parent and child attended together, etc., all convey a positive message.

The inappropriate contact between a parent and a child is to convey the message that "I'm so sad without you." Instead, physically absent parents should focus on "I love you and I miss you."[12]

8. **Renegotiation of the Parenting Plan.** It is difficult (if not impossible) to draft a parenting plan that will work until the child reaches adulthood, especially when the child is a preschooler. A good settlement technique is to include a provision that provides for renegotiation of the plan provisions. There is often a triggering event such as when the preschooler starts first grade, two years after the plan first goes into effect, etc. A built-in renegotiation provision gives parents the opportunity to redraft the plan based upon their personal experiences. Typically, divorced parents are much more capable of both creating and following such a renegotiated plan than are parents who have separated more recently. After all, they have just spent years working under parenting plan guidelines. This particular provision is perhaps too strict in that sending the parents to arbitration to resolve a dispute gives the non-residential parent authority he may not otherwise have.

> *3.20* ***Renegotiation.*** *Mother and Father shall review the provisions of this plan when Jonathan enters the first grade to determine whether it still meets his and their needs. The parties shall mediate any conflict they may have over what provisions, if any, should be modified. The mediator shall be a professional person skilled in the area of conflict resolution. The parties shall submit to binding arbitration if mediation does not resolve a conflict within 10 days. The arbitrator shall have the power and authority to grant a judgment in favor of one party and against the other for that party's attorney fees and costs should the arbitrator find that a party took an unreasonable position in law or with the facts in the area of dispute. The existing plan shall remain in force until a change is agreed upon.*

Conclusion

[12]For additional suggestions see *Parenting From a Distance*, Cindy Strasheim, *http://ianrpubs.unl.edu/family/nf567.htm*.

The parenting plan is the portion of the judgment that continues to impact both parents and their children on a daily basis for years into the future. Forcing parents to adopt the "standard rule" does them a great disservice because it may or may not meet their specific needs. At the very least, the terms of that standard parenting plan should be explained to each party in addition to a thorough discussion of other available options. Further, this explanation should take place before mediation even begins so as to give the client the necessary tools and background to make mediation effective. In fact, I highly recommend sending the client to the first mediation session with his own suggestion for a parenting plan in hand. It is far easier on both the parent and mediator to edit an existing document than it is to create a new one from scratch. After all, it is that principal that causes most parties to end up with a slightly modified version of the standard plan.

TIPS TO PREPARE FOR CHILD CUSTODY MEDIATION

by: Philip M. Stahl, Ph.D.

Since the early 1980's, parents have increasingly used the process of divorce mediation to help them resolve their differences and reduce the scars of battle. Child custody mediation is a process in which parents work together to develop a plan for parenting their children after divorce with the help of a neutral third party. While mediation can be done privately, the use of court-connected mediation has rapidly grown over the last ten years. In many states, the use of such mediation is mandatory before parents can litigate custody issues.

The mediation process is one in which parents work together to devise a parenting plan that is mutually acceptable to both parents. This parenting plan may be quite structured, specifying the day-to-day time share of the children, as well as plans for holidays, vacations, and other special issues of the family. By working together in mediation to develop a parenting plan, parents can avoid the battles which are so damaging in an adversarial process, and can include their children in the decision-making in a way that empowers them in a healthy way.

When parents use mediation and develop a parenting plan on their own, their children will be able to avoid loyalty conflicts and are less likely to feel the stress of battling parents. When children are included in the decision-making process, they benefit because they can express their feelings and know that their parents are listening to them. Mediation gives children a much greater sense that they have a say in their lives and a freedom to contribute to the decisions that affect their lives.

Courts that offer mediation services do their clients a big service. Research shows that mediation can reduce litigation over custody. When parents participate in mediation, they are likely to reach a settlement 60 to 70 % of the time. Parents are usually much more satisfied with mediation than with litigation. Most important, however, if parents use mediation, they will have control over the parenting plan, whereas in adversarial litigation, the judge determines how parents will spend time with their children. With the improved satisfaction, the increased mutual decision-making, and the decreased hostility, mediation is clearly a healthier alternative than litigation. For those parents who live in an area where court-connected mediation is not available, private mediation services are usually available and are typically well worth the investment, especially in comparison to the alternative of litigation. Parents will probably save money and have more control over the outcome if they use mediation.

Approaching Mediation

First, approach mediation with an open mind, willing to listen. Parents who are open and listen to the mediator and their ex-spouse are the ones who are able to reach a settlement and develop a mutually satisfactory parenting plan. Those who believe there is only one solution to custody and visitation issues are

usually fairly stubborn and generally refuse to compromise. If parents come prepared to be open, they can brainstorm options until they find a solution that works for everyone, especially their children.

Next, parents should come prepared with several options. Do homework before mediation. Think about and write out proposals so that they can be referred to in the mediation session. A parent will not want to forget to discuss something that is important in the mediation. Parents need to make sure they understand their child's needs and stay focused on their child and his needs. Parents need to be aware of the impact of conflict on their child.

Third, mediation is not the place to focus on the other parent. Mediation usually breaks down when parents argue about the "he said - she said" issues between them. This is not a place to rehash marital problems but a place to solve parenting problems after divorce. Parents need to communicate about their child and their perception of her needs. If a parent is concerned about the other parent's anger, he should talk about their child's need for peace. If a parent is concerned about the fact that the other parent lets his daughter stay up too late, talk about her need for routine and structure. Parents need to be open to what they might need to change for their child's benefit. Parents should always avoid character assassinations.

Finally, parents need to bring a sense of balance and humor. At times during mediation, things get tense. Parents need to maintain a perspective that balances their desires, the other parent's desires, and their child's needs. While this is the goal, it may not be easy. If things get tense, parents need to remember that they are there for the children, not themselves. Parents do not have to like their ex-spouse to make an agreement on behalf of their children, they just have to love the children more than they hate the ex-spouse. Take a brief time-out from the mediation session if necessary. Some parents need several mediation sessions to reach a satisfactory settlement.

Listen to the mediator's advice and consider it. He/she will most likely have the child's best interests in mind, even if the parents cannot agree on what that is. Parents need to recognize that the mediator's job is to try and balance the child's needs and each parent's desires. The mediator does this while encouraging parents to reach a parenting solution. If nothing else works, sometimes a humorous, but not rude, comment can break this tension, and help everyone get back to work. While any parent will want to hold firm to their major beliefs and values, there may be many ways to satisfy these beliefs.

Parents should be open to different ideas, keep working to satisfy their goals, and be willing to compromise to reach a peaceful solution on behalf of their children.

Do's and Don'ts for Mediation:

Do focus on the child's needs.

Do not focus on parental needs.

Do think of custody as a separate issue relating only to what is best for the child.

Do not discuss child support or property when trying to resolve a parenting plan.

Do acknowledge a child's special needs according to her age, temperament, and development.

Do not assume there is a standard plan that fits the needs of all children.

Do acknowledge the other parent's strengths and bring up only valid concerns about the other parent's ability to care for the child.

Do not bad-mouth the other parent.

Do acknowledge that a child needs time with both parents, in a safe environment, developed by a parenting plan.

Do not punish the other parent by withholding children.

Do go to mediation prepared with:

1. A proposal for custody and a time-sharing plan

2. A calendar which identifies school holidays, work schedules, the schedule for the child's activities

3. A flexible and business-like attitude

Do not go to mediation unprepared.

References:

Ahrons, C. (1994). The Good Divorce. New York: Harper Collins.

Emery, R. (1999). Marriage, Divorce, and Children's Adjustment, 2nd Edition. Thousand Oaks: Sage Publications.

Ricci, I. (1997). Mom's House, Dad's House: A Complete Guide for Parents Who are Separated, Divorced, or Remarried (2nd edition). New York: Simon & Schuster.

http://www.selfhelpmagazine.com/articles/divorce/custody.html

Parenting Plan

1. **Parenting Schedule.** Father shall have the right to have Wendy, Jonathan, and Michael with him at such times and places as the parties may mutually agree upon, but not less than is set forth in the following schedule. Mother shall have the children with her at all times not specifically designated for them to be with Father.

1.1 Father shall have Wendy, Jonathan, and Michael with him on **alternating weekends**.

1.1.1 A weekend is defined as commencing after school on Friday and ending the following Monday morning. Weekends shall begin at 4:00 p.m. on the Fridays the children have no school.

1.1.1.1 Father shall feed the children breakfast on Monday morning and deliver them no later than 9:00 a.m. to Mother's home, daycare, or the school, as may be appropriate. Delivery to the school must be in time for the child's first class.

1.1.1.2 Father shall either provide the children with lunch money for that day or pack them a lunch and snack if he is delivering them to school on Monday.

1.1.2 Father shall be entitled to retain the children until Tuesday morning if his weekend to have the children falls on a weekend during the school year on which the next Monday is a state or federally recognized holiday on which there is no school.

1.1.3 The alternate weekend parenting time schedule shall rotate each year as follows:

1.1.3.1 Father's first weekend in *even numbered years* shall begin at 7:00 p.m. on the Friday of Labor Day weekend and end Monday night at 7:00 p.m.

1.1.3.2 Father's first weekend in *odd numbered years* shall begin on the first Friday *following* the Labor Day weekend.

1.2 Father shall have Wendy, Jonathan, and Michael with him during **Winter vacation**:

1.2.1 Every *even-numbered year* beginning when school recesses for the holidays until 10:00 a.m. on December 25. Mother shall have Wendy, Jonathan, and Michael during the remainder of the vacation period.

1.2.2 Every *odd-numbered year* for the second half of the winter vacation as determined in paragraph 1.2.1. The vacation period will begin at 10:00 a.m. on December 25 and continue until school resumes. Mother shall have the first half of the winter vacation period up to 10:00 a.m. on December 25.

1.2.3 The alternate weekend parenting schedule shall not operate during the winter vacation period. The children shall spend the first weekend following the resumption of school with the parent whose

weekend it would have been to have the children had the winter vacation period not intervened. The goal of this schedule is to maintain the alternating weekend format.

1.2.4 The winter vacation schedule in the public school district in which the children live shall be followed as the standard unless the children attend a private school which has a different schedule.

1.3 **Extended time.**

1.3.1 Wendy, Jonathan, and Michael shall be with Father for a seven-day period during the months of February, April, May, July, August, and October. This period is in lieu of the traditional "summer vacation." The alternating weekend parenting schedule shall remain in effect for the remainder of the year.

1.3.2 Father's extended time shall begin on the Friday of his first weekend with the children during the specified month unless the parties agree on a different week. The time shall last until the next Friday when school recesses or at 7:00 p.m. if the children are not in school.

1.4 Wendy, Jonathan, and Michael shall be with Father on the following holidays or during the following holiday periods in *even-numbered years*. Mother shall have the children with her during these times in *odd-numbered years*.

1.4.1 **A child's birthday**, from 9:00 a.m. to 7:00 p.m. if the birthday falls on a non-school day, or from 5:00 p.m. to 8:30 p.m. if the child is in school on that day. All of the children shall be together on the birthday.

1.4.2 **Thanksgiving** holiday, beginning on Wednesday at 7:00 p.m. and ending on the following Friday at 7:00 p.m. The parent having Thanksgiving shall be entitled to keep Wendy, Jonathan, and Michael until Monday morning if it is that parent's weekend to have the children on the normal alternating weekend schedule.

1.5 Wendy, Jonathan, and Michael shall be with Father during the period of school **Spring vacation** in the school district in which they reside in *odd-numbered years*. This period begins at 7:00 p.m. on the Sunday immediately following the school's adjournment and ends at 7:00 p.m. on the Friday immediately prior to the resumption of school. Mother shall have the children with her during this period in *even-numbered years*. The normal, alternating weekend schedule shall remain in effect which means that a parent will either be able to add his or her weekend onto the beginning or the end of the Spring vacation period, depending on the normal alternating weekend schedule.

1.6 Wendy, Jonathan, and Michael shall be with Father on **Father's Day** weekend each year commencing at 7:00 p.m. on Friday and ending Monday morning.

1.7 Wendy, Jonathan, and Michael shall be with Mother on **Mother's Day** weekend each year commencing at 7:00 p.m. on Friday and ending Monday morning.

1.8 **Calendar.** Mother shall prepare a calendar each year of the weekly and holiday schedule and send it to Father. The purpose of the calendar is to visually illustrate how the parenting schedule described in this parenting plan is to be implemented during the upcoming year. Mother shall immediately prepare a calendar that covers the period through August 2005. Thereafter the calendar shall be provided on an annual basis covering the period September 1 to the following August 31. The calendar must be consistent with this parenting plan. Father shall have two weeks within which to object to Mother's recitation of the schedule set forth in the calendar. Once finalized, the calendar shall, by agreement, be binding upon both parties. Father's right to spend time with the children will not be affected if Mother fails to promptly prepare a calendar.

2. **Rules For Use Of Parenting Time.** The following rules shall apply to the use of parenting time:

2.1 **Flexibility**. This parenting plan shall be construed and implemented in a way that fosters the children's best interests by providing liberal, predictable, and wholesome time between the children and both parents. While a written plan promotes stability for the children, each parent acknowledges that reasonable adjustments will be needed from time to time and that an element of flexibility will be required in administering the plan. Each parent shall be flexible in arranging dates and times with the children so important family events and the children's activities are maintained with minimal disruption or hard feelings.

2.2 **Personal Plans**. Neither a parent's nor the children's personal plans (for example, school or church activities) justify a parent's failure to follow the parenting time schedule.

2.3 **Child's Input.** A child *is not* permitted to determine whether he or she spends time with Father. However, older teenagers are often involved in their own activities and are unable (or unwilling) to spend time with their parents on a regular schedule as they did when they were younger. Both parents shall be considerate of older teenagers and recognize that they wish (and need) to spend more time with their peers rather than their parents. Both Mother and Father will need to make adjustments to accommodate these life changes.

2.4 **Delivery and Pick-up**. All parenting time shall take place in a prompt manner.

2.4.1 Unless otherwise agreed or ordered by the court, pick-up and delivery shall occur no more than 15 minutes before or 15 minutes after the time set for parenting time to begin and end.

2.4.2 The children shall be picked by Father or his designee from the children's school if his first day to have the children is a school day. The children shall be picked up from the front steps of Mother's residence during periods that Father's time to have the children begins on a non-school day. Father shall be responsible for returning the children to their school or daycare if his period ends on a school day or to the front steps of Mother's residence if his period ends on a non-school day.

2.4.3 Other individuals known to the children such as grandparents, step-parents, live in girl\boyfriends, etc., are authorized to transport them.

2.5 **Children's Activities.** Each parent has the right to visit with the children at school, attend their school activities (such as an open house or sports activities), and have full access to school teachers and administrators for complete information about the children in school. This includes parent-teacher conferences, although there is no requirement that the conference be held jointly with the other parent. Each parent shall be responsible for keeping himself or herself advised of each child's activities and events.

2.5.1 Mother shall have the right to register the children for activities, but she shall not over-schedule them thereby depriving Father of the right to select his own activities for the children during his time with them.

2.5.2 Although neither parent is required to take a child to any activity, each parent is encouraged to use his or her best effort to keep them involved in athletic events, school functions, lessons, birthday parties of friends, etc., even though those activities may fall during a parenting time period. To do otherwise would deprive the children of valuable growing opportunities. Each parent is encouraged to use the children's activities as an opportunity for that parent to participate with the children, meet their friends and other families, and to have a quality experience with the children.

2.5.3 Father anticipates that Wendy, Jonathan, and Michael will be involved in a number of extracurricular activities such as sports, Girl Scouts or Boy Scouts, musical endeavors, etc., as they grow older. Father has the right to register the children for such activities and act as the coach or adult leader of the activity. Father has priority over all others to serve in such leadership roles (except for Mother), including any step-parent. Mother shall take no action that interferes with Father's right to be involved with the children in this manner.

2.5.4 The cost of any activity in which the parents have agreed a child should participate shall be equally shared by the parents. This includes registration fees, specialized equipment, special photographs and similar expenses. Each parent shall promptly pay his or her share of the activity cost so that problems do not develop for the child.

2.6 **No Shows and Make-Ups**. Only medical reasons will be considered sufficient for postponement or cancellation of parenting time. A makeup time shall occur on the following weekend if a child is ill and unable to visit. There will be no makeup parenting time if Father misses a scheduled parenting opportunity. The illness of one child does not mean that another child's time with Father is also canceled.

2.7 **Non-assigned time**. Unless otherwise agreed in writing, Mother is responsible for the children during all times that they are not scheduled to be with Father. This does *not* mean that either parent is restricted from attending public events where the children are in attendance such as school programs and athletic events.

2.8 **Clothes**. Father shall maintain a supply of basic clothing (socks, underwear, a shirt, a pair of pants, etc.) and toiletry items for Wendy, Jonathan, and Michael at his residence. Mother shall make sure that the children have with them any specialized clothing (coats, sport uniforms, etc.), medications, or equipment needed for the time

they are to be with Father. Father shall advise Mother in advance if special items are needed for an activity such as providing warm clothing for a ski trip. Each parent shall return *all* clothing that the child came with.

2.9 **Writing and Telephoning**. Each parent shall have the right to correspond with the children during reasonable hours without monitoring by the other parent or anyone else. This correspondence may take the form of letters, fax transmissions, E-mail, Instant Messenger (or a similar computer program) or telephone calls. Neither parent shall read, censor or otherwise interfere with the other parent's correspondence or listen in on a child's telephone conversation with a parent, either directly or on an extension.

2.9.1 Unless otherwise agreed, a parent shall make no more than three telephone calls per week to the children. The calls shall not last later than 8:00 p.m. A parent at whose residence a message has been left for a child shall make every reasonable effort to assist the child in returning the call.

2.9.2 A child may telephone a parent whenever the child wants but not more than two times per day. Long distance telephone calls made by a child shall be paid for by the parent receiving the call.

2.10 **Conflicting Dates**. The holiday schedule in this parenting plan takes precedence over the alternating weekend schedule. The holiday schedule may create times when the children will be with the same parent for three weekends in a row. This happens when a vacation or holiday defined in this plan replaces the normal schedule for a given weekend or time period.

2.11 **Changes to the Parenting Schedule.** Changes to the parenting plan are allowed whenever both parents agree to a change. Agreed upon changes will be temporary and will not be enforced by the court unless the change is in writing, dated, signed by both parents before a notary public, and submitted to the court leaving a space for the judge's signature. See ORS 107.174.

3. **Parental Responsibilities.** The following rules shall apply regarding the custodial relationship and each parent's responsibilities to Wendy, Jonathan, and Michael.

3.1 **Parental Rights**. Each parent shall continue to have the following authority, to the same extent as the other parent has:

3.1.1 To inspect and receive school records, and to consult with school staff concerning Wendy, Jonathan and Michael's welfare and education.

3.1.2 To inspect and receive governmental agency and law enforcement records concerning the children.

3.1.3 To consult with any person who may provide care or treatment for Wendy, Jonathan and Michael and to inspect and receive their medical, dental and psychological records.

3.1.4 To authorize emergency medical, dental, psychological, psychiatric or other health care for the children if the custodial parent is, for practical purposes, unavailable.

3.1.5 To apply to be Wendy, Jonathan and Michaels' guardian ad litem, conservator, or both.

3.2 **Daily Care**. Mother is responsible for the children's primary care. Father shall provide care for the children only while they are staying with him and will make only *emergency* medical or dental decisions on their behalf. Decisions about bedtime, hygiene, minor disciplinary actions, curfew, chores, allowances, social dress, etc., may be different in each parent's home. Neither parent is required to follow the other parent's rules on these issues.

3.3 **Safety**. The following rules apply to each parent and are designed to protect a child:

3.3.1 Neither parent shall leave a child under the age of 11 unattended or unsupervised. Each parent shall be responsible for arranging daycare during his or her time with the child.

3.3.2 Neither parent shall operate a vehicle after using alcohol or drugs when a child is in the car or use alcohol carelessly when a child is in the parent's care.

3.3.3 Each parent shall assure that the child uses a child safety seat or a seat belt at all times in accordance with Oregon law when being transported in a vehicle.

3.3.4 Neither parent shall allow a child to be a passenger in a car unless the operator has a valid driver's license and vehicle insurance liability coverage.

3.3.5 Neither parent shall smoke cigarettes in the presence of the children or allow anyone else to do so because of the general danger associated with second-hand smoke.

3.4 **School Attendance.** A child shall attend all regular sessions of school until graduation unless excused by medical reasons, an emergency (such as a funeral), the school, the Court, or both parents. A child shall not miss any time from school for vacation with either parent unless agreed to by both parents in writing.

3.4.1 Unless Mother and Father otherwise agree, the parent at whose home the child slept the night before an illness is responsible for staying home with that child the next morning if the child is too ill to return to school or daycare.

3.4.2 All school registration forms shall reflect the name, address and telephone number of both parents. Father shall be listed with the school as an emergency contact resource for a child if it is reasonable to assume that Father can get to the school to provide assistance to the child in the event of an emergency.

3.4.3 No child shall be home schooled without the expressed, written consent of both parents.

3.5 **Religious Freedom**. Unless otherwise agreed, each parent shall have the right to involve the children in that parent's religious belief and practices during that parent's scheduled time with them. Each child has the right to make his or her own religious choices as that child matures.

3.6 **Notice Requirements**. Each parent shall have a continuing responsibility to:

3.6.1 Provide their home (not just mailing) address; home, work and cellular telephone numbers; and e-mail address to the other parent.

3.6.2 Notify the other parent of any emergency circumstances or substantial changes in a child's health, as well as any major disciplinary action, educational difficulties, vehicle accidents involving a child, awards or any other such occurrences.

3.6.3 Neither parent shall contact the other at work without permission to do so unless it is an emergency. Neither parent shall directly contact the other's employer.

3.7 **Health Care.** Mother shall be responsible for providing for a child's primary health and dental care, including regular examinations, dental check-ups, required immunizations, etc.

3.7.1 Each parent has authority to consent to emergency health care treatment for a child. The parent providing the emergency care shall notify the other parent of the emergency as soon as reasonably possible. Reasonable shall be determined based on the circumstances of the emergency.

3.7.2 The children shall use the same health, dental, vision and mental health care providers that they currently use unless both parents agree to a change. Neither parent shall unreasonably withhold consent to make a change, particularly if the change is necessitated by a change in applicable health insurance coverage.

3.7.3 Mother shall supply any prescription glasses as well as prescription or over-the-counter medications that a child will need while in Father's care.

3.7.4 Mother and Father shall use their best effort to discuss and resolve all matters calling for non-emergency or elective medical, dental, psychological/psychiatric or other physical or mental health-related treatment for a child. Either parent has the right to obtain a second opinion, at his or her own expense, on any non-emergency medical, mental health or dental matter, but consent to the treatment shall not be unreasonably withheld. Mother and Father shall cooperate with each other in making the children available for a second opinion.

3.8 **Exchanging Parenting Information**. Mother and Father shall make plans and exchange information directly with each other rather than through the children. It is unfair for the children to serve as the message carrier for two parents who find it difficult to communicate directly with each other. Children who find themselves in this position learn to manipulate and play one parent against the other.

3.9 **Child's Name**. Neither parent shall at any time or for any reason allow a child to be known, identified, or designated by any surname other than _____. Neither parent shall initiate or cause the designation of "father" or "mother" or their equivalents to be used by a child with reference to any person other than the child's natural mother and father.

3.10 **Support of Parenting time**. Neither parent shall discourage a child from spending time with the other parent. Contrary to common belief, Oregon does not allow a child to determine where he or she is going to live at any age.

3.11 **Parenting Time is Independent From Support**. Father's right to spend time with the children is not dependent on his payment of child support. It is not permissible to withhold the children from Father as a way to encourage the payment of support.

3.12 **Joint Agreement Required.** The following shall not occur without the consent of both parents:

3.12.1 Neither parent shall allow a child to undergo cosmetic surgery, get a tattoo, marry, or enlist in the armed services without the other parent's written consent. Father shall not allow a child to pierce any body part or make any substantial change in a child's physical appearance (for example changing the way a child's hair is cut) without Mother's prior written permission.

3.12.2 Neither parent shall enter the other parent's home without that parent's permission. Neither a child nor a childcare provider have authority to invite a parent to enter the other parent's home.

3.12.3 A parent shall not direct a child to enter the other parent's home to take possession of any item other than items that the child needs for that parenting period and even then, only after trying to contact the parent to arrange a time for the missing item to be picked up or delivered. This provision contemplates a child needing but having neglected to bring along an important item such as medication, sports gear needed for a sporting event that is scheduled to occur during the parenting period, or homework. Non-essential items such as a video game, music CD, a DVD, etc., are not items that justify a child entering one parent's home during the other parent's time with that child without specific permission to do so.

3.13 **Mutual Respect Toward the Other Parent**. Neither parent shall make bad or unflattering comments about the other parent or in any way try to diminish the love, respect and affection that the children have for the other parent.

3.14 **Step-parents.** Step-parents and live-in spousal equivalents are not to assume parenting responsibilities over the children and shall never be allowed to use physical discipline or physically strike a child. Issues regarding the children are to be dealt with by his or her parents. Mother and Father shall provide each other with the name of any non-related person who resides with or is visiting that parent for a period of more than three weeks.

3.15 **Mediation.** Mother and Father shall seek appropriate, competent assistance if they cannot by themselves resolve a conflict involving Wendy, Jonathan, and Michael. The matter shall be referred for mediation to a counselor or professional person skilled in the area of resolution of the problems of children and their families unless an emergency exists. It may be appropriate for a party to initiate a modification proceeding so as to benefit from court approved and sponsored mediation services.

WARNING: One parent's failure to comply with the rules does not excuse the other party from following the rules. Each party has been put on notice that an intentional failure to follow the rules of this parenting plan is punishable through the contempt powers of the court.

Parenting Plan

1. **Parenting Schedule.** Father shall have the right to have Wendy, Jonathan, and Michael with him at such times and places as the parties may mutually agree upon, but not less than is set forth in the following schedule.

1.1 Monthly visits.

1.1.1 **Local plan - Alternating weekends** during the school year if Father lives within a geographic proximity to Mother where such a schedule is practicable.

1.1.1.1 A weekend is defined as commencing after school but not later than 7:00 p.m. on Friday and ending at 7:00 p.m. on the following Sunday.

1.1.1.2 Father shall be entitled to retain the children visitation until 7:00 p.m. on Monday if the visitation weekend falls on a weekend during the school year on which the next Monday **is a state or federally recognized holiday** on which there is no school.

1.1.1.3 The alternate weekend parenting time schedule shall rotate each year as follows:

1.1.1.3.1 Father's first weekend in *even numbered years* shall begin at 7:00 p.m. on the Friday of Labor Day Weekend and end Monday night at 7:00 p.m.

1.1.1.3.2 Father's first weekend in *odd numbered years* shall begin on the first Friday *following* the Labor Day Weekend.

1.1.2 **Long Distance Plan - One weekend per month** during the school year if Father lives too far from Mother to make alternating weekends with the children practicable.

1.1.2.1 It is anticipated Father shall choose as his monthly weekend a weekend on which Friday is a Teacher's in-service Day on which there is no school, or on which the next Monday is a state or federally recognized holiday on which there is no school. This will give Father the opportunity to have a three-day weekend with the children. Father shall be entitled to start his weekend on Thursday night if the children have no school on Friday.

1.1.2.2 Father shall notify Mother at least one month in advance of the weekend he intends to utilize for his monthly parenting time after the initial schedule is established.

1.1.2.3 Father shall also have the right to spend time with the children on other occasions when he may be in the area. Mother shall use every reasonable effort to adjust her schedule so that Father can spend time with the children.

1.1.2.4 There shall be no weekend parenting time in December.

1.2 **Winter vacation** every:

1.2.1 *Even-numbered year* beginning the day the children's school recesses for Winter vacation. The exact number of days shall be one-half the number of days the public school district in which the children reside is recessed for the Winter holiday. For example, if the school recesses on December 19 and resumes January 4, Father shall have parenting time for eight days (one-half the 16 day vacation period equals eight days). Mother shall have the children during the remainder of the vacation period.

1.2.2 *Odd-numbered year* for the second half of the winter vacation as determined in paragraph 1.2.1. The vacation shall begin on the first day and continuing until the evening prior to the resumption of the children school. Mother shall have the children during the first half of the winter vacation period.

1.3 **Spring vacation.**

1.3.1 **Local Plan**. Wendy, Jonathan, and Michael shall be with Father during the period of school **Spring vacation** in the school district in which the children reside in *even-numbered years* if the Local Plan is in effect. This period begins at 7:00 p.m. the day school adjourns and ends at 7:00 p.m. the day before school resumes. Mother shall have the children with her during this period in *odd-numbered years*.

1.3.2 **Long Distance Plan.** The children will be with Father for Spring vacation every year if the Long Distance Plan is in effect. This period shall be deemed as Father's weekend during the month that it occurs.

1.4 **Summer vacation**.

1.4.1 Wendy, Jonathan, and Michael shall be with Father for a period beginning one week after school recesses for the summer holiday and lasting until one week prior to the resumption of school in the fall.

1.4.2 Mother shall be entitled to one week of time with the children during Father's summer vacation parenting time. Mother shall select and notify Father by April 1 of each year in writing of the time during which she chooses to have the children.

1.5 Wendy, Jonathan, and Michael shall be with Father on the following holidays or during the following holiday periods in *even-numbered years*. Mother shall have the children with her during these times during *odd-numbered years*.

1.5.1 **Wendy, Jonathan, and Michael's birthdays**, from 9:00 a.m. to 7:00 p.m. if the birthday falls on a non-school day and 5:00 p.m. to 8:30 p.m. if the birthday falls on a school day. All of the children shall be together on the birthday.

1.5.2 **Thanksgiving** holiday, commencing on Wednesday and ending on the following Sunday. This shall be Father's weekend during November during *even-numbered years* if the Long Distance Plan is in effect.

1.6 Wendy, Jonathan, and Michael shall be with Father on **Father's Day** weekend each year.

1.7 Wendy, Jonathan, and Michael shall be with Mother on **Mother's Day** weekend each year.

2. **Rules For Use Of Parenting Time.** The following rules shall apply to the use of parenting time:

2.1 **Flexibility**. This parenting plan shall be construed and implemented in a way that fosters the children's best interests by providing liberal, predictable, and wholesome time between the children and both parents. While a written plan promotes stability for the children, each parent acknowledges that reasonable adjustments will be needed from time to time and that an element of flexibility will be required in administering the plan. Each parent shall be flexible in arranging dates and times with the children so important family events and the children's activities are maintained with minimal disruption or hard feelings.

2.2 **Personal Plans**. Neither a parent's nor the children's personal plans (for example, school or church activities) justify a parent's failure to follow the parenting time schedule.

2.3 **Promptness required.** All parenting time shall be exercised in a prompt manner so both parents can make their plans accordingly.

2.4 **Transportation.** Each party acknowledges it is a _____ mile round trip between Mother's and Father's residence over highway which is greatly impacted by weather and other unforeseeable conditions. As a result, it is not possible to set precise departure and arrival times. However, each parent shall strive to be considerate of the other as much as possible by using a cellular telephone to give notices prior to departure (and in route if practicable) of delays or other problems which may arise.

2.4.1 Parenting times shall begin as closely to the time the children are recessed from school as practicable on the first day of a parenting period and shall end in the evening on the last parenting period day.

2.4.2 Unless the parties agree to exchange the children at a point which is halfway between each of the parents' residences, Father shall pick up the children from the front steps of Mother's residence to begin his time with them and Mother shall pick the children up from the front steps of Father's residence to end the parenting period.

2.4.3 Each parent shall cooperate in using air travel as a method of accomplishing visitation. This requires each parent to take and pick up the children from the airport and to coordinate travel schedules.

2.4.3.1 Only recognized major air carriers will be used. Timing of the flights shall be reasonable, taking into consideration a child's age. For example, it is unreasonable for a nine year old to arrive at his destination at 11:00 p.m.

2.4.3.2 Mother and Father shall alternate responsibility for the purchase of the airline ticket with Father purchasing the first ticket. Father's failure to purchase a ticket shall be deemed a forfeiture of his right to spend time with the children on that occasion. Mother's failure to purchase a ticket shall be grounds for Father to file a contempt charge against her and recover, as liquidated damages, any expense for travel that he may have incurred on that occasion and for the next two parenting times that he would otherwise have been required to pay for.

2.4.3.3 Each parent is entitled to retain for his or her own use any frequent flier miles that may be earned on the child's ticket.

2.5 **Child's Input.** A child *is not* permitted to determine whether he or she spends time with Father. However, older teenagers are often involved in their own activities and are unable (or unwilling) to spend time with their parents on a regular schedule as they did when they were younger. Both parents shall be considerate of older teenagers and recognize that they wish (and need) to spend more time with their peers rather than their parents. Both Mother and Father will need to make adjustments to accommodate these life changes.

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2.7 **No Shows and Make-Ups**. Only medical reasons will be considered sufficient for postponement or cancellation of parenting time. A makeup time shall occur on the following weekend if a child is ill and unable to visit. There will be no makeup parenting time if Father misses a scheduled parenting opportunity. The illness of one child does not mean that another child's time with Father is also canceled.

2.8 **Non-assigned time**. Unless otherwise agreed in writing, Mother is responsible for the children during all times that they are not scheduled to be with Father. This does *not* mean that either parent is restricted from attending public events where the children are in attendance such as school programs and athletic events.

2.9 **Clothes**. Father shall maintain a supply of basic clothing (socks, underwear, a shirt, a pair of pants, etc.) and toiletry items for Wendy, Jonathan, and Michael at his residence. Mother shall make sure that the children have with them any specialized clothing (coats, sport uniforms, etc.) or equipment needed for the time they are to be with Father. Father shall advise Mother in advance if special items are needed for an activity such as providing warm clothing for a ski trip. Each parent shall return *all* clothing that the child came with.

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3.1.1 To inspect and receive school records, and to consult with school staff concerning Wendy, Jonathan, and Michael's welfare and education.

3.1.2 To inspect and receive governmental agency and law enforcement records concerning the children.

3.1.3 To consult with any person who may provide care or treatment for Wendy, Jonathan, and Michael and to inspect and receive their medical, dental and psychological records.

3.1.4 To authorize emergency medical, dental, psychological, psychiatric or other health care for the children if the custodial parent is, for practical purposes, unavailable.

3.1.5 To apply to be Wendy, Jonathan, and Michael' guardian ad litem, conservator, or both.

3.2 **Daily Care**. Mother is responsible for the children's primary care. Father shall provide care for the children only while they are staying with him and will make only *emergency* medical or dental decisions on their behalf. Decisions about bedtime, hygiene, minor disciplinary actions, curfew, chores, allowances, social dress, etc., may be different in each parent's home. Neither parent is required to follow the other parent's rules on these issues.

3.3 **Safety**. The following rules apply to each parent and are designed to protect a child:

3.3.1 Neither parent shall leave a child under the age of 11 unattended or unsupervised. Each

parent shall be responsible for arranging daycare during his or her time with the child.

3.3.2 Neither parent shall operate a vehicle after using alcohol or drugs when a child is in the car or use alcohol carelessly when a child is in the parent's care.

3.3.3 Each parent shall assure that the child uses a child safety seat or a seat belt at all times in accordance with Oregon law when being transported in a vehicle.

3.3.4 Neither parent shall allow a child to be a passenger in a car unless the operator has a valid driver's license and vehicle insurance liability coverage.

3.3.5 Neither parent shall smoke cigarettes in the presence of the children or allow anyone else to do so because of the general danger associated with second-hand smoke.

3.5 **Religious Freedom**. Unless otherwise agreed, each parent shall have the right to involve the children in that parent's religious belief and practices during that parent's scheduled time with them. Each child has the right to make his or her own religious choices as that child matures.

3.6 **Notice Requirements**. Each parent shall have a continuing responsibility to:

3.6.1 Provide their home (not just mailing) address; home, work and cellular telephone numbers; and e-mail address to the other parent.

3.6.2 Notify the other parent of any emergency circumstances or substantial changes in a child's health, as well as any disciplinary action, educational difficulties, vehicle accidents involving a child, awards or any other such occurrences.

3.6.3 Neither parent shall contact the other at work without permission to do so unless it is an emergency. Neither parent shall directly contact the other's employer.

3.7 **Health Care.** Mother shall be responsible for providing for a child's primary health and dental care, including regular examinations, dental check-ups, required immunizations, etc.

3.7.1 Each parent has authority to consent to emergency health care treatment for a child. The parent providing the emergency care shall notify the other parent of the emergency as soon as reasonably possible. Reasonable shall be determined based on the circumstances of the emergency.

3.7.2 The children shall use the same health, dental, vision and mental health care providers that they currently use unless both parents agree to a change. Neither parent shall unreasonably withhold consent to make a change, particularly if the change is necessitated by a change in applicable health insurance coverage.

3.7.3 Mother shall supply any prescription glasses as well as prescription or over-the-counter medications that a child will need while in Father's care.

3.7.4 Mother and Father shall use their best effort to discuss and resolve all matters calling for non-emergency or elective medical, dental, psychological/psychiatric or other physical or mental health-related treatment for a child. Either parent has the right to obtain a second opinion, at his or her own expense, on any non-emergency medical, mental health or dental matter, but consent to the treatment shall not be unreasonably withheld. Mother and Father shall cooperate with each other in making the children available for a second opinion.

3.8 **Exchanging Parenting Information**. Mother and Father shall make plans and exchange information directly with each other rather than through the children. It is unfair for the children to serve as the message carrier for two parents who find it difficult to communicate directly with each other. Children who find themselves in this position learn to manipulate and play one parent off against the other.

3.9 **Child's Name**. Neither parent shall at any time or for any reason allow a child to be known, identified, or designated by any surname other than Darling. Neither parent shall initiate or cause the designation of "father" or "mother" or their equivalents to be used by a child with reference to any person other than the child's natural mother and father.

3.10 **Support of Parenting time**. Neither parent shall discourage a child from spending time with the other parent. Contrary to common belief, Oregon does not allow a child to determine where he or she is going to live at any age.

3.11 **Parenting Time is Independent From Support**. Father's right to spend time with the children is not dependent on his payment of child support. It is not permissible to withhold the children from Father as a way to encourage the payment of support.

3.12 **Joint Agreement Required.** The following shall not occur without the consent of both parents:

3.12.1 Neither parent shall allow a child to undergo cosmetic surgery, get a tattoo, marry, or enlist in the armed services without the other parent's written consent. Father shall not allow a child to pierce any body part or make any substantial change in a child's physical appearance (for example changing the way a child's hair is cut) without Mother's prior written permission.

3.12.2 Neither parent shall enter the other parent's home without that parent's permission. Neither a child nor a childcare provider have authority to invite a parent to enter the other parent's home.

3.13 **Mutual Respect Toward the Other Parent**. Neither parent shall make bad or unflattering comments about the other parent or in any way try to diminish the love, respect and affection that the children have for the other parent.

3.14 **Step-parents.** Step-parents and live-in spousal equivalents are not to assume parenting responsibilities over the children and shall never be allowed to use physical discipline or physically strike a child. Issues regarding the children are to be dealt with by his or her parents. Mother and Father shall provide each other with the name of any non-related person who resides with or is visiting that parent for a period of more than three weeks.

3.15 **Mediation.** Mother and Father shall seek appropriate, competent assistance if they cannot by themselves resolve a conflict involving Wendy, Jonathan, and Michael. The matter shall be referred for mediation to a counselor or professional person skilled in the area of resolution of the problems of children and their families unless an emergency exists. It may be appropriate for a party to initiate a modification proceeding so as to benefit from court approved and sponsored mediation services.

WARNING: One parent's failure to comply with the rules does not excuse the other party from following the rules. Each party has been put on notice that an intentional failure to follow the rules of this parenting plan is punishable through the contempt powers of the court.

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