



PACE

Parents And Children for Equality

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The "Best Parent" is Both Parents

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Creating True Shared Parenting: Strategies for Dealing with Legal Lapses

It is no secret among Ohio divorce attorneys that 'shared parenting' is not a well-defined notion in Ohio law. In a case of shared parenting, the presumption is that both parents are residential parents and legal custodians of the child(ren). However, even this presumption is weak; it is overridden when "the context clearly requires otherwise" [R.C. 3109.04(K)(5) and (6)].

As one prominent domestic relations attorney has described it, "a shared parenting plan is an 'empty vessel' into which anything can be poured." This is confusing for courts and frustrating for clients. Many clients, untutored in the details of Ohio law, go to their attorneys seeking shared parenting. They often leave the court with a plan that has the words 'shared parenting' in the title but is really sole custody in shared parenting clothing.

Justice Pfeifer of the Ohio Supreme Court noted this in oral argumentation of a case before the Court earlier this year. There are cases, he pointed out, "where it's just shared parenting mostly for the benefit of the cocktail hour where you can say you have shared parenting, where in reality mom's taking care of the kids and father, if he doesn't have a golf game, he shows up and spends some time with his kids" [Hubin (2001), 92 Ohio St.3d 240]. (A transcript is available at www.hubincase.homestead.com/OralArguments.html.)

The "empty vessel" nature of shared parenting in Ohio makes it relatively easy to provide this "cocktail hour benefit" to parents who want only this. It makes it relatively difficult to craft a shared parenting plan that will really protect both parents' status as residential parents and legal custodians of the children where this is what the client truly desires.

Parents And Children for Equality is devoted to the promotion of *true* shared parenting. Research shows that children of divorced and never-married parents are benefited by this approach to parenting. Children are certainly not benefited by a form of shared parenting that provides only for "cocktail hour bragging rights".

Because it can be difficult to draft shared parenting plans that equally protect the rights of both parents, PACE offers some strategies that have worked in Ohio courts. There is, of course, no guarantee that any particular court will accept each of these strategies. The objective of these strategies is to ensure that the shared parenting

plan achieves the legal *effect* of true shared parenting.

The Basics

- *Explicit Designation of Residential Parent and Legal Custodian Status*—Every plan for true shared parenting should designate both parents residential parents and legal custodians of the minor children. The language doing this should be entirely symmetric. Avoid language such as "Father is the residential parent and legal custodian of the children except when the children are with Mother." Instead, say, "Father and Mother are each designated residential parent and legal custodian of the children while the children are in their care."
- *Avoid Asymmetric Language in General*—Do not speak of the children "residing with" one parent and "visiting" the other parent. (Senate Bill 180 removed the concept of "visiting" with one's children. Use of this language in a shared parenting plan is not only obsolete, it risks creating a "context that clearly requires" a court not to treat both parents as residential parents and legal custodians.)
- *If Asymmetric Language is Necessary, Explicitly Limit Its Implication*—When absolutely required to designate one parent "residential" for school placement purposes or for purposes of receiving public assistance benefits, explicitly limit the asymmetry to this function. PACE has found that merely saying that one parent is "designated the residential parent for school placement purposes only" is often insufficient to make clear to courts the limitation of this designation. We recommend the addition of a sentence or clause making it explicit that this asymmetric designation is to be used for no other purpose.

Pro-Active Strategies

Because Ohio courts have struggled with the issue of how to calculate presumptive (guideline) child support in shared parenting cases, special attention needs to be given to crafting a shared parenting plan so that it will work as intended. Courts always retain the authority to adjust child support levels, and a victory for true shared parenting in the initial decree of divorce can be partially undone by later administrative and court actions if the shared parenting plan and other court documents are not carefully drafted.

- *Maintain Symmetry in Child Support Worksheets and Deviation Entry*—One respect in which Ohio law has lagged in implementing true shared parenting is the absence of a separate shared parenting worksheet for calculating child support. Because parents engaging in shared parenting must use the same worksheet used in sole custody cases, this presents an opportunity for asymmetries to enter and the equality of the shared parenting to be undermined. The child support amounts agreed pursuant to a deviation from *one* parents' child support obligation at one time may be very inappropriate at a later time when child support is recalculated.

One strategy for dealing with this problem is to complete and submit two child support worksheets. They will be identical up to line 23 of the new worksheet. On line 23, one worksheet will carry down the Mother's "Obligations After Adjustments" (Line 22) and continue as if she is the obligor. The other worksheet will carry down Father's Line 22 obligation and continue as if he is the obligor. Then, the Journal Entry justifying the deviation is written to cite each parent's child support obligation and note the amount that the agreed upon child support deviates from *each* parent's obligation and the reasons for such deviation.

- *Use "Nominal" Split Custody to Create "Real" Shared Parenting*—When more than one child is subject to the parenting plan, it is possible to effect true shared parenting by employing a split custody decree. The split custody worksheet recognizes each parent's status as a residential parent of at least one child. If this is combined with a parenting plan that does not divide the children for parenting time and requires agreement between the two parents on all major decision concerning the children, the effect can be true shared parenting despite the fact that one parent is designated the sole residential parent and legal custodian for at least one child and the other parent is so designated for at least one child.

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