

MONTANA TENTH JUDICIAL DISTRICT SHARED PARENTING GUIDELINES

A powerful cause of stress, suffering, and maladjustment in children of dissolution is not simply the dissolution itself, but continuing conflict between the parents before, during and after the dissolution. There are at least two steps that this Court believes essential in order to minimize conflict over the children:

(1) Upon the filing of a Petition for Dissolution or Legal Separation where there are minor children or the filing of a Petition for Parenting Plan between two unmarried individuals, the parties will be required to undertake an orientation to parenting and divorce class. Except under extraordinary circumstances, each party will attend a separate class. Upon the filing of the Petition, information will be provided to the parties regarding scheduling of these classes. Payments for the classes may be assessed against the parties. Completion of the class is mandatory prior to the Court's adoption of a Parenting Plan or signing of a Decree of Dissolution.

(2) The parents should agree on a shared parenting arrangement that is most conducive to the children's having frequent and meaningful contact with both parents with as little conflict as possible. When parents' maturity, personality and communication skills are adequate, the ideal arrangement is reasonable parental contact upon reasonable notice, since that provides the greatest flexibility. The next best arrangement is a detailed parenting agreement made by the parents to fit their particular needs and, more importantly, the needs of the children. If the parents are unable to agree, however, the following guidelines will help the parents in knowing what the presiding Judge in the Tenth Judicial District believes are generally reasonable parenting periods, unless special circumstances require a different arrangement. Unless these guidelines are incorporated in a Court Order, they are not compulsory rules, only a general direction for parents. In the event parental contact becomes an issue in Court, the Judge reserves the right to set whatever parenting schedule meets the best interests of the children in that case.

1. GENERAL RULES

Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of the children. Each parent should encourage the children to respect the other. Children should never be used by one parent to spy on the other. Parents should establish the basic rules of conduct and discipline to be observed by both parents and step-parents so that the children do not receive mixed signals.

Children will benefit from continued contact with all relatives and family friends on both sides of the family for whom they feel affection. Such relationships should be protected and encouraged. But relatives, like, parents, need to avoid being critical of either parent in front of the children. Parents should have their children maintain ties with both the maternal and paternal relatives. In Montana, grandparents have a legal right to reasonable contact with their grandchildren if it is in their best interests. Usually, the children will visit with the paternal relatives

during times the children are with their father and with the maternal relatives during times they are with their mother.

Parents should be discouraged from making residential changes that are disruptive to a child's lifestyle, where the parents have been or are going through a contentious dissolution/parenting case.

When the parents are sharing in the parenting of a child, or at any time prior to the entry of a decree, and both parents reside in the Tenth Judicial District, the Court will consider a change of the child's residence to a location outside the Tenth Judicial District as having a significant effect upon the child's relationship to family members and others and adjustment to his/her home, school, and community. The Court will also consider and balance the Constitutional right of the parent to travel. When the custodial parent moves out of the Tenth Judicial District, the child's residence shall not be moved outside the Tenth Judicial District without an Order from the Court after hearing or upon written stipulation of the parties that is approved by the Court. The Court will consider keeping the child in the Tenth Judicial District as a positive development for the child based upon legitimate, case-specific circumstances which must be presented to the Court at a hearing with all parties present.

In cases where both parents resided in the same community at the time of separation, and then one parent left the area, thus changing the pattern of parental contact, the Court will consider imposing the travel costs for the children necessary to facilitate future contact, on the parent who moved. The Court will also consider other factors, however, such as the economic circumstances of the parents and the reasons prompting the move.

1.1 Parental Communication. Parents should always keep each other advised of their home and work addresses and telephone numbers. As far as possible, all communication concerning the children shall be conducted between the parents themselves in person, or by telephone at their residences and not at their places of employment. Consistent with our emphasis on improved parental communication, it is suggested that parents communicate well in advance about moves that will impact schooling or visitation.

1.2 Grade Reports and Medical Information. Parents shall provide one another with grade reports and notices from school as they are received. Parents shall communicate independently with the school and with the children's doctors and other professionals regarding the children. Each parent shall immediately notify the other of any medical emergencies or serious illnesses of the children. Each parent shall notify the other of all school or other events (like Church or Scouts) involving parental participation. If the child is taking medications, each parent shall provide or be provided with a sufficient amount of medication and the appropriate instructions in writing delivered to the other parent at the time the children are exchanged.

1.3 Clothing. Parents shall send an appropriate supply of children's clothing with them at parental exchanges, which shall be returned clean (when reasonably possible), with the children at the conclusion of the parenting period. Parents shall

advise, as far in advance as possible, of any special activities so that the appropriate clothing may be sent.

1.4 Withholding Support or Parental Contact. Neither parental contact nor child support is to be withheld because of either parent's failure to comply with a Court Order. Only the Court may enter sanctions for non-compliance. Children have a right both to support and parental contact, neither of which is dependent upon the other. In other words, no support does not mean no parental contact, and no parental contact does not mean no support. If there is a violation of either a parenting or a support order, the exclusive remedy is to apply to the Court for appropriate sanctions.

1.5 Adjustments in Parental Contact Schedule. Although there is or there may be a specific schedule, the parties are expected to fairly modify parental contact when family necessities, illnesses or commitments reasonably so require. The requesting parent shall act in good faith and give as much notice as circumstances permit.

1.6 Parent's Vacation. Unless otherwise specified in a Court Order or agreed by the parties, each parent is entitled to a reasonable period of vacation time, usually equal to that of the other parent. In the instance of extended vacation periods, i.e., summer vacations, the parents shall communicate in writing on or before May 1 of each year their choices of vacation periods.

1.7 Insurance Forms. The parent who has medical insurance coverage on the children shall supply, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing. A parent who, except in an emergency, takes the children to a doctor, dentist or other provider not so approved or qualified should pay the additional cost thus created. However, when there is a change in insurance which requires a change in medical care providers and a child has a chronic illness, thoughtful consideration should be given by the parties to what is more important: allowing the child to remain with the original provider or the economic consequences of changing. When there is an obligation to pay medical expenses, the parent responsible therefor shall be promptly furnished with the bill by the other. The parents shall cooperate in submitting bills to the appropriate insurance carrier. Thereafter, the parent responsible for paying the balance of the bill shall make arrangements directly with the health care provider and shall inform the other parent of such arrangements. Insurance refunds should be promptly turned over to the parent who paid the bill for which the refund was paid.

1.8 Child Support Modification. Child support, once ordered, shall not change unless a Court Order otherwise provides. The only way child support can be changed is by Court Order. Parents cannot agree to a change in support without Court approval. The purchase of clothing, food or other necessities does not constitute a deduction from Court-ordered child support.

1.9 Missed Parental Contact. When scheduled parental contact cannot occur due to events beyond either parents' control, such as illness of the child or of the parent exercising contact with the child, a mutually agreeable substituted parental contact

date shall be arranged as quickly as possible. Each parent shall timely advise the other when parental contact cannot be exercised. Missed parental contact should not be unreasonably accumulated.

1.10 Parental Contact a Shared Experience. Because it is intended that parental contact be a shared experience between siblings and, unless these Guidelines, a Court Order, or circumstances, such as age, illness, or the particular event, suggest otherwise, all of the children shall participate in any particular contact.

1.11 Telephone Communication. Telephone calls between parent and child shall be liberally permitted at reasonable hours and at the expense of the calling parent. Parents may call the children at reasonable hours during those periods the children are with the other parent. The children may, of course, call either parent, though at reasonable hours, frequencies and at the cost of the parent called if it is a long distance call. During long vacations the parent with whom the child is on vacation is only required to make the child available to telephone calls every five days. At all other times, the parent the child is with shall not refuse to answer the phone or turn off the phone in order to deny the other parent telephone contact. If a parent uses an answering machine, messages left on the machine for the child should be returned. Parents should agree on a specified time for calls to the children so that the children will be made available.

1.12 Mail Contact. Parents have an unrestricted right to send cards, letters and packages to their children. The children also have the same right with their parents. Neither parent should interfere with this right.

1.13 Privacy of Residence. A parent may not enter the residence of the other except by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, the children shall be picked up and returned to the front entrance of the appropriate residence or other appropriate pick up/drop off location. The parent dropping the children off should not leave until the children are safely inside. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

1.14 Divorce Education Program. Except in unusually amicable dissolutions, if there are children involved, both parents will be required to attend and complete an approved Divorce Education Program.

TERMINOLOGY IN THE FOLLOWING SECTIONS INCLUDES RESIDENTIAL PARENT, DESIGNATING THAT PERSON WITH WHOM THE CHILD SPENDS THE GREATER PROPORTION OF TIME AND NON-RESIDENTIAL PARENT, DESIGNATING THAT PERSON WITH WHOM THE CHILD SPENDS A LESSER AMOUNT OF TIME.

1.15 Tender Years. The Tenth Judicial District Court conforms to the now longstanding precedent of the Montana Supreme Court abolishing the "tender

years doctrine.” *In Re the Marriage of Markegard* (1980), 189 Mont. 374, 377, 616 P.2d 323, ___. Prior to this holding, mothers were entitled to a presumption that they should have custody of a child of tender years. As noted by the court, “this presumption is outdated in light of the enactment of the Uniform Marriage and Divorce Act in this state.” This Court will not presume either parent is entitled to be the residential parent of a child simply based on the sex of the parent.

1.16 Children Under Age Five. Infants (children under eighteen months of age) have a great need for continuous contact with the residential parent who provides a sense of security, nurturing and predictability. Generally, overnight visits for infants are not recommended unless the secondary caretaker is very closely attached to the child and is able to provide primary care. Older preschool-age children (eighteen months to five years) are able to tolerate some separations from the residential parent. The following guidelines for children under age five are designed to take into account the child’s developmental milestones as a basis for parenting. Since children mature at different rates, these may need to be adjusted to fit the child’s unique circumstances. These guidelines may not apply to those instances where the parents are truly sharing equally all the caretaking responsibilities for the child and the child is equally attached to both parents. In the majority of situations, the following guidelines should generally apply:

A. Infants Birth to Six Months. Bonding is important at this age.

Children need to have affectionate bonds with both parents. Overnight parenting by the non-residential parent is not usually granted. The infant’s eating and sleeping routine should not be interrupted. Alternate parenting plans: (1) Three two-hour visits per week, with one weekend day for six hours; or (2) three two-hour visits per week, with one overnight on a weekend for no longer than a twelve hour period, if the child is not breast feeding and the non-residential parent is capable of providing primary care.

B. Infants Six to Eighteen Months. Predictability and routine are important at this age. Overnight visits may be considered such as when an infant is going with older brothers or sisters the infant knows and trusts. Alternate parenting plans: (1) Three, three-hour visits per week with one weekend day for six hours; or (2) same as (1), but with one overnight not to exceed twelve hours, if the child is not breast feeding and the non-residential parent is capable of providing primary care; or (3) child spends time in alternate homes, but spends significantly more time at one of them and no more than two twelve-hour overnights per week at the other. This arrangement should be considered only for mature, adaptable children and very cooperative parents.

C. Toddlers Eighteen to Thirty-Six Months. Children start to learn that things and people continue to exist even when the child can’t see them. A common fear is that the residential parent will disappear and they may cry when a parent leaves them. Longer periods with the non-residential parent are generally appropriate. Overnight visits (2-4 days) away from the child’s home are permissible, however, the child needs to take favorite things with him/her (blanket or stuffed animal or pacifier, etc.). At this age children do not understand time, or days of the week, or that they will see mother or father “tomorrow” or in “two days” or on “Sunday.” When away from the residential parent, they may feel anger

and a powerful sense of loss and often do not understand why mother or father isn't there. Alternate parenting plans: (1) the non-residential parent has the child up to three times per week for several hours on each visit, on a predictable schedule; or (2) same as (1) but with one overnight per week; or (3) child spends time in alternate homes, but with more time in one than the other with two or three overnights spaced regularly throughout the week. This requires an adaptable child and cooperative parents.

D. Preschoolers (Three to Five Years Old). The most important thing is predictability. Children can usually tolerate more extensive time away from the residential parent and they should see the other parent at least once each week. Children still have a strong need to take familiar things with them. Alternate parenting plans: (1) one weekend parenting period (i.e. Friday evening to Sunday evening) on alternate weekends and one midweek visit or overnight; or (2) two or three nights at one home, spaced throughout the week, the remaining time at the other home. In addition, for preschoolers, a vacation period for a number of weeks with the non-residential parent is appropriate.

1.17 Pre-Teens and Teenagers.

A. Six to Twelve Years. School age children need to see the non-residential parent one or more times each week, and seem happiest with several visits each week. Children this age will want their own things at each home, but will wish to take some things back and forth with them for their own security. At about age seven, a child can cope better with longer periods of parental contact during summer months because they understand about time and can count and can understand what a week or month is.

B. Thirteen Years and Up. Friends and social activities are very important at this age. A decrease in the number of parental exchanges may be helpful. Teenagers have less need for long visits and once or twice a week for a few hours may be sufficient. One of the things teenagers need to do is learn to "separate" from parents and to achieve autonomy. They still need predictability, routine and structure for their visits. Teens should be consulted in deciding on time-sharing plans. Teenagers tend to want one home base.

1.18 Children in Day Care. In families where a child has been in day care prior to the parental separation, the child may be able to tolerate flexible visits earlier because the child is more accustomed to separations from both parents. It is generally not acceptable during a period of parental contact to place the child with a babysitter or daycare provider if the other parent is available and willing to take the child personally. Visiting for short periods with relatives may be appropriate, if the relatives are not merely serving as babysitters.

1.19 Parental Contact with Adolescents. Within reason the parents should honestly and fairly consider their teenager's wishes regarding parental contact. Neither parent should attempt to pressure their teenager to make a parental contact decision adverse to the other parent. Teenagers should explain the reasons for their wishes directly to the affected parent, without intervention by the other parent.

1.20 Daycare Providers. When parents reside in the same community, they should use the same daycare provider.

1.21 Special Circumstances.

A. Child Abuse. When child abuse has been established and a continuing danger is shown to exist, all parental contact with the perpetrator of said abuse should cease or only be allowed under supervision, depending on the circumstances. Court intervention is usually required in child abuse cases.

B. Spouse Abuse. Witnessing spouse abuse has long-term, emotionally detrimental effects on children. Furthermore, a person who loses control and acts impulsively with a spouse, may be capable of doing so with children as well. Depending on the nature of the spouse abuse and when it occurred, the Court may require an abusive spouse to successfully complete appropriate counseling before being permitted unsupervised parental contact.

C. Substance Abuse. Parental contact should not occur when a parent is abusing drugs/alcohol.

D. Long Interruption of Contact. In those situations where a parent has not had an ongoing relationship for an extended period, parental contact should begin with brief visits and a very gradual transition to the parental contact in these guidelines.

E. Kidnapping/Threats. Parents who have kidnapped or hidden the children or threatened to do so should have no parental contact or only supervised parental contact.

F. Breast Feeding Child. Forcibly weaning a child, whether breast feeding or bottle feeding, during the upheaval of parental separation is not appropriate for the physical health or emotional well-being of the child. Until weaning has occurred without forcing, a nursing infant should still have substantial parental contact. A parent should not use breast feeding beyond the normal weaning age as a means to deprive the other parent of parental contact.

G. A Parent's New Relationship. Parents should be sensitive to the danger of exposing the children too quickly to new relationships while they are still adjusting to the trauma of their parent's separation and dissolution.

H. Religious Holidays and Native American Ceremonies. Parents should respect their children's needs to be raised in their faith and in keeping with their cultural heritage and cooperate with each other on parental contact to achieve these goals. These goals should not be used to deprive a parent of parental contact.

I. Other. The Court may limit or deny parental contact to parents who show neglectful, impulsive, immoral, criminal, assaultive or risk-taking behavior with or in the presence of the children.

2. PARENTAL CONTACT WITH CHILDREN OVER AGE FIVE WHEN PARENTS RESIDE NO MORE THAN 200 MILES APART

2.1 Weekends. Alternate weekends from Friday at 5:30 P.M. to Sunday at 7 P.M.; the starting and ending times may change to fit the parents' schedules. Or an equivalent period of time if the non-residential parent is not available on weekends and the child does not miss school. In addition, if time and distance allow, one or two midweek visits of two to three hours. All transportation for the midweek visits is the responsibility of the non-residential parent.

2.2 Mother's Day and Father's Day. The alternate weekends will be shifted, exchanged or arranged so that the children are with their mother each Mother's Day weekend and with their father each Father's Day weekend. Conflicts between these special weekends and regular parental contact shall be resolved pursuant to Paragraph 1.9.

2.3 Extended Parental Contact. One-half of the school summer vacation. At the option of the non-residential parent, the time may be consecutive or it may be split into two blocks of time. If the child goes to summer school and it is impossible for the non-residential parent to schedule this contact time other than during summer school, that parent may elect to take the time when the child is in summer school and transport the child to the summer school session at the child's school or an equivalent summer school session in the community. Summer school may not be used to deprive the non-residential parent of parenting time.

2.4 Winter (Christmas) Vacation. One-half the school winter vacation, a period which begins the evening the child is released from school and continues to the evening of the day before the child will return to school. If the parents cannot agree on the division of this period, the non-residential parent shall have the first half in even-number years. If the parents live in the same community, in those years when Christmas does not fall in a parent's week, that parent shall have from noon to 9 P.M. on Christmas Day. For toddlers and preschool age children, when the parents live in the same community, the parents should alternate each year Christmas Eve and Christmas Day so that the children spend equal time with each parent during this holiday period.

2.5 Holidays. Parents shall alternate the following holiday weekends: Easter, Memorial Day, the 4th of July, Labor Day and Thanksgiving. Thanksgiving will begin on Wednesday evening and end on Sunday evening; Memorial Day and Labor Day Weekends will begin on Friday and end on Monday evening; Easter weekend will begin on Thursday evening and end on Sunday evening; while the 4th of July, when it does not fall on a weekend, shall include the weekend closest to the 4th. Holiday weekends begin at 5:30 P.M. and end at 7 P.M. on the appropriate days.

2.6 Children's Birthdays. Like the holidays, a child's birthday shall be alternated annually between the parents. If the birthday falls on a weekend, it shall extend to the full weekend, and any resulting conflict with regular visitation shall be resolved pursuant to Paragraph 1.9. If the birthday falls on a weekday, it shall

be celebrated from 3 P.M. to 9 P.M. (or so much of that period as the non-residential parent elects to use).

2.7 Parents' Birthdays. The children should spend the day with the parent who is celebrating their birthday, unless it interferes with a non-residential parent's extended visitation during vacation.

2.8 Conflicts Between Regular and Holiday Weekends. When there is a conflict between a holiday weekend and the regular weekend parenting, the holiday takes precedence. Thus, if the non-residential parent misses a regular weekend because it is the residential parent's holiday, the regular alternating parenting schedule will resume following the holiday. If the non-residential parent receives two consecutive weekends because of a holiday, regular alternating parenting will resume the following weekend with the residential parent. The parents should agree to make up missed weekends due to holiday conflicts.

2.9 Parental Contact Before and During Vacations. There will be no parental contact the weekend(s) before the beginning of the non-residential parent's summer vacation parenting period(s), regardless of whose weekend it may be. Similarly, that parent's alternating weekend parenting period(s) shall resume the second weekend after each period of summer vacation that year. Weekend parenting "missed" during the summer vacation period will not be "made up." During any extended summer parenting of more than three consecutive weeks, it will be the non-residential parent's duty to arrange, for a time mutually convenient, a 48-hour continuous parenting period for the residential parent unless impracticable because of distance.

2.10 Notice of Canceled Parental Contact. Whenever possible, the non-residential parent shall give a minimum of three days' notice of intent not to exercise all or part of the scheduled parental contact. When such notice is not reasonably possible, the maximum notice permitted by the circumstances, and the reason therefor, shall be given. The residential parent shall give the same type of notice when events beyond their control make the cancellation or modification of scheduled parental contact necessary. If the residential parent cancels or modifies a visit because the child has a schedule conflict, the non-residential parent should be given the opportunity to take the child to the scheduled event or appointment.

2.11 Pick Up and Return of Children. When the parents live in the same community, the responsibility of picking up and returning the children should be shared. Usually, the non-residential parent will pick up and the residential parent will return the children to that parent's residence. The person picking up or returning the children during times of parental contact has an obligation to be punctual: to arrive at the agreed time and not substantially earlier or later. Repeated, unjustified, violations of this provision may subject the offender to Court sanctions.

2.12 Additional Parental Contact. Parental contact should be liberal and flexible. For many parents these guidelines should be considered a minimum direction for interaction with the children. These guidelines are not meant to foreclose the

parents from agreeing to such additional parental contact as they find reasonable at any given time.

3. PARENTAL CONTACT OF CHILDREN OVER AGE THREE WHEN SOLE PARENTING OR SHARED PARENTING AND PARENTS RESIDE MORE THAN 200 MILES APART

3.1 Extended Parental Contact. All but two weeks of the school summer vacation period and, on an alternating basis, the school winter (Christmas) vacation and spring break.

3.2 Priority of Summer Break. Summer break with the non-residential caretaker takes precedence over summer activities (such as Little League) when the parental contact cannot be reasonably scheduled around such events. Even so, the conscientious non-residential parent will often be able to enroll the child in a similar activity.

3.3 Notice. At least 60 days' notice should be given of the date for commencing extended parental contact, so that the most efficient means of transportation may be obtained and the parties and the children may arrange their schedules. Failure to give the precise number of days' notice does not entitle the residential parent the right to deny visitation.

3.4 Additional Parental Contact. Where distance and finances permit, additional parental contact, such as for holiday weekends or special events, are encouraged. When the non-residential parent is in the area where the child resides, or the child is in the area where the non-residential parent resides, liberal visitation shall be allowed and because the non-residential parent does not get regular visitation, the child can miss some school during the visits so long as it does not substantially impair the child's scholastic progress.

**ADOPTED BY THE TENTH JUDICIAL DISTRICT COURT
SEPTEMBER 7, 2004**

E. Wayne Phillips, Presiding Judge