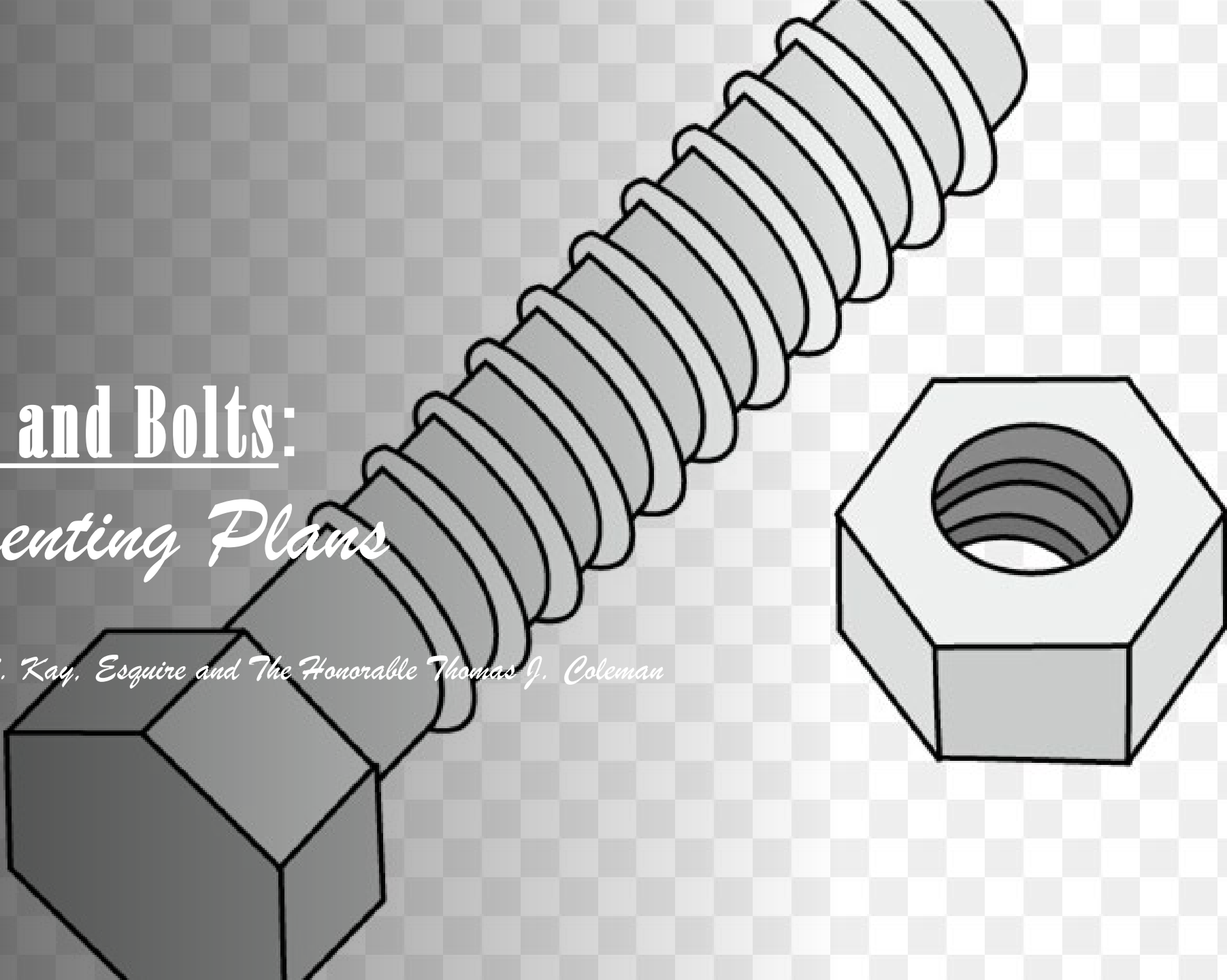


Nuts and Bolts: *Parenting Plans*

Natalie S. Kay, Esquire and The Honorable Thomas J. Coleman



Natalie S. Kay Bio

Natalie Kay is a Partner at Kelley Kronenberg, focusing her practice on Family and Marital Law. Natalie represents clients in all areas of Family Law including Dissolution of Marriage, Distribution of Marital Assets and Liabilities, Alimony, Time-Sharing, Parenting, Child Support, Modifications and Enforcement, Pre/Postnuptial Agreements, Adoption services, Paternity Actions, Parental Relocation, and many other issues. Natalie also handles Commercial Litigation matters including “separations” or business “divorces” and serving as general counsel for franchise owners and corporations. Natalie also represents parties in family appellate matters and has published opinions in the Fourth District Court of Appeal in Florida.

Natalie also has international experience. During law school, Natalie was a legal assistant to two partners at the prestigious law firm of Reynolds, Porter and Chamberlin, LLP, a recognized Top 50 Largest UK-based law firm. Additionally, during her final year of law school, she worked as a Certified Legal Intern for the Nova Southeastern University Children & Family Law Clinic and gained extensive litigation experience while focusing on the legal needs of individuals, with particular emphasis on the economically disadvantaged and served as a legal intern with the Public Defender’s office of Broward County, sitting second chair to the senior attorney of the murder and sex crimes division.

Natalie earned her Bachelor of Arts in Criminal Justice and Criminology from Florida Atlantic University. She went on to earn her Juris Doctor degree from Nova Southeastern University Shepard Broad Law Center, where she was on the Dean’s List and received the American Academy of Matrimonial Lawyers Association Scholarship for Excellence in Matrimonial Law.

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The Honorable Thomas J. Coleman



Undergraduate School: State University of Albany

Undergraduate Degree: Political Science

Law School: St. Thomas University

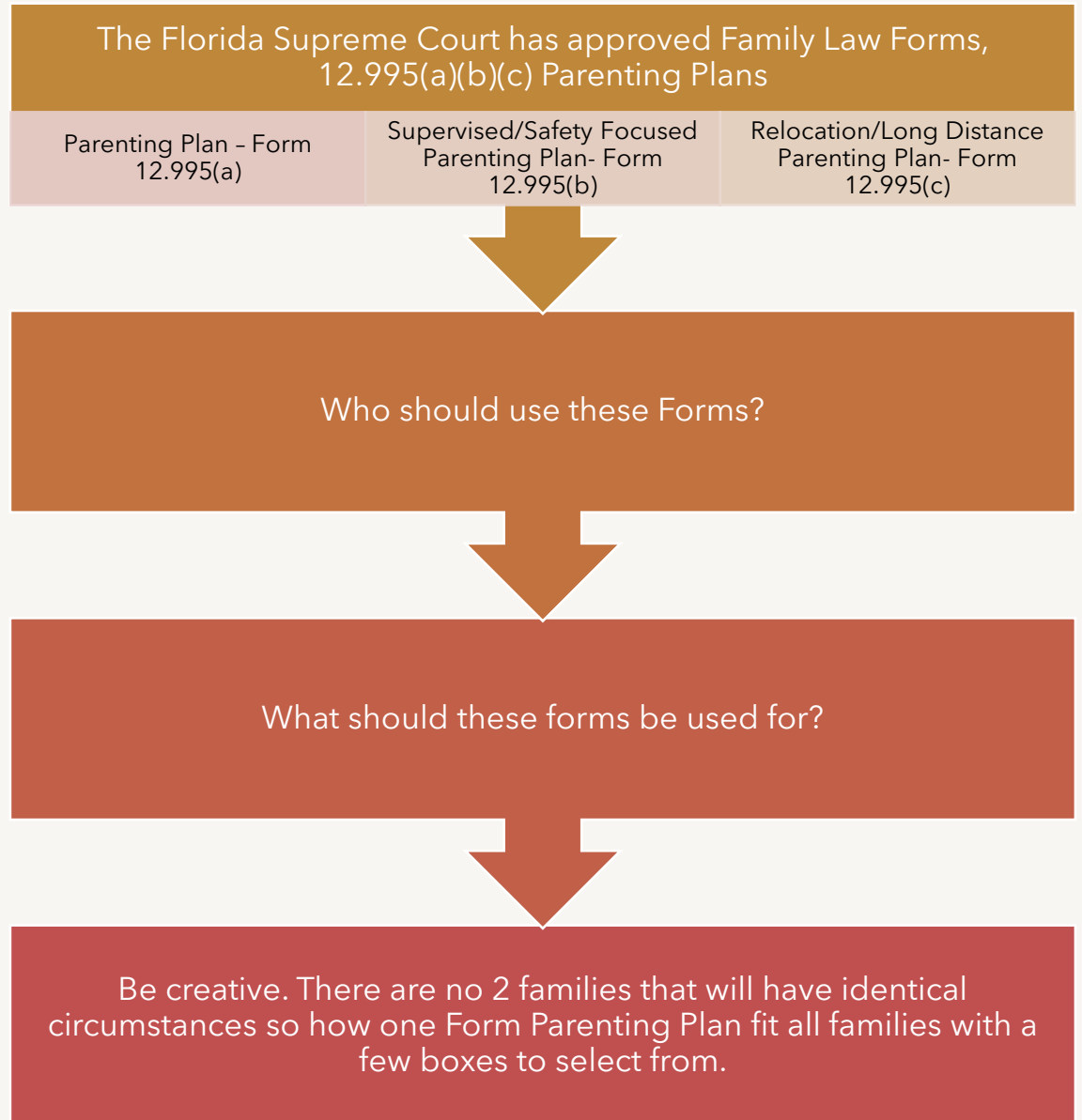
Prior Position: Assistant State Attorney (May 1998 – June 2017)

Florida Bar Admission: April 1998

Parenting Plans...the basics

- PARENTING PLAN is defined as “a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and the child.” Fla. Stat. 61.046(14)
- Parenting Plans are required in ALL cases involving minor children (even when time-sharing of the child(ren) is not in dispute.
- The best interests of the child(ren) will ALWAYS be the primary consideration of the Parenting Plan.
- Start with the Statute. Fla. Stat. §61.13
- A Parenting Plan approved by the court must, at a minimum:
 - 1. Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child;
 - 2. Include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;
 - 3. Designate who will be responsible for:
 - A) any and all forms of health care. If the court orders shared parental responsibility over health care decisions, the parenting plan must provide that either parent may consent to mental health treatment for the child.
 - B) School-related matters, including the address to be used for school-boundary determination and registration.
 - C) Other activities; and
 - 4. Describe in adequate detail the methods and technologies that the parents will use to communicate with the child.

Should I use the Supreme Court Form Parenting Plan?



Jurisdiction

- What does the Form Parenting Plan provide:

III. JURISDICTION

The United States is the country of habitual residence of the child(ren).

The State of Florida is the child(ren)'s home state for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act.

This Parenting Plan is a child custody determination for the purposes of the Uniform Child Custody Jurisdiction and Enforcement Act, the International Child Abduction Remedies Act, 42 U.S.C. Sections 11601 et seq., the Parental Kidnapping Prevention Act, and the Convention on the Civil Aspects of International Child Abduction enacted at the Hague on October 25, 1980, and for all other state and federal laws.

Other: _____.

Jurisdiction Continued...

- That's all the SC Form gives us?
 - Silent on the County;
 - Silent temporary absences from the State;
 - Silent as to continuing jurisdiction to modify.
- Go as far as adding language regarding remedies in the event of wrongful removal?

PP Jurisdiction Language Example

ARTICLE I JURISDICTIONAL ISSUES

1.1 The Seventeenth Judicial Circuit in Broward County, Florida has continuing jurisdiction over the children pursuant to the applicable Florida Statutes and the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

1.2 Florida is the home state and the state of habitual residence of the children. Accordingly, Florida is the sole jurisdictional state to determine child custody, parental responsibility, time-sharing, rights of custody, and rights of access concerning the children under the Parental Kidnapping Prevention Act (PKPA), under the International Child Abduction Remedies Act (ICARA), and under the Convention on the Civil Aspects of International Child Abduction enacted at The Hague on October 25, 1980.

1.3 The children have established significant connections with the State of Florida and there is available in the State of Florida substantial evidence concerning present or future care, protection, training and personal relationships of the children.

1.4 Any absence from the State of Florida by the children shall be a "temporary absence" within the meaning of the UCCJEA and the Convention. Absent a Court Order in the Seventeenth Judicial Circuit Court in and for Broward County Florida or written agreement of the parties to the contrary, any absence from the State of Florida shall not cause the State of Florida, United States, to lose its status as the "Habitual Residence" of the children within the meaning of Articles 3 and 4 of the Convention.

1.5 The State of Florida retains the exclusive right to modify its own custody decrees pursuant to the terms of PKPA and the UCCJEA. This Parenting Plan is a "right of custody" under Article 3 of the Convention. Therefore, only a court in the State of Florida would have subject matter jurisdiction to modify a decree entered pursuant to this Parenting Plan; unless and until it is determined by the UCCJEA and/or the court that another state would have such subject matter jurisdiction. A court within the State of Florida has subject matter jurisdiction to enforce each of the parties' rights of custody and time-sharing as provided in this Agreement. The court which currently has, and retains exclusive jurisdiction of the children, and all custody, parenting, time-sharing and access issues of the children, pursuant to the UCCJEA, is the Seventeenth Judicial Circuit, in and for Broward County, Florida, unless otherwise agreed to by the parties in writing.

Parental Responsibility and Decision Making

- Supreme Court Form is a simple, broad designation (“education, healthcare, and other responsibilities unique to this family”)
- Consider defining the types of decisions that the parents are required to make together under a designation of shared parental responsibility.
 - Health
 - Medical
 - Dental
 - Selection of Doctors
 - Medical Procedures
 - Education (religious and secular)
 - Sports
 - Extra-curricular activities
 - Learning Disabilities
 - Behavior Problems
 - Moral, social, recreational, legal matters, private lessons, welfare and upbringing.
- Therapy exception – what does it really mean in reality? “either parent may consent to mental health treatment for the child(ren)”
 - Does the exception make shared parental responsibility irrelevant when it comes to therapy?

Time~Sharing Schedule

- Florida is NOT a 50/50 State.
- No presumption for or against any time-sharing schedule. Fla. Stat. 61.13(2)(c)(1)
- BEST INTERESTS CONTROLS
- No outdated terminology (2008)
- Could the Supreme Court time-sharing schedule designations be any more confusing?!
- Consider instead using a written detailed plan, along with a 4 week block table to illustrate the schedule visually.

1. Weekday and Weekend Schedule

The following schedule shall apply beginning on _____ with Parent {name or designation} _____ and continue as follows:

The child(ren) shall spend time with Parent _____ on the following dates and times:

WEEKENDS: ☐ Every ☐ Every Other ☐ Other {specify} _____

From _____ to _____

WEEKDAYS: {Specify days} _____

From _____ to _____

OTHER: {Specify} _____

The child(ren) shall spend time with the Parent _____ on the following dates and times:

WEEKENDS: ☐ Every ☐ Every Other ☐ Other {specify} _____

From _____ to _____

WEEKDAYS: {Specify days} _____

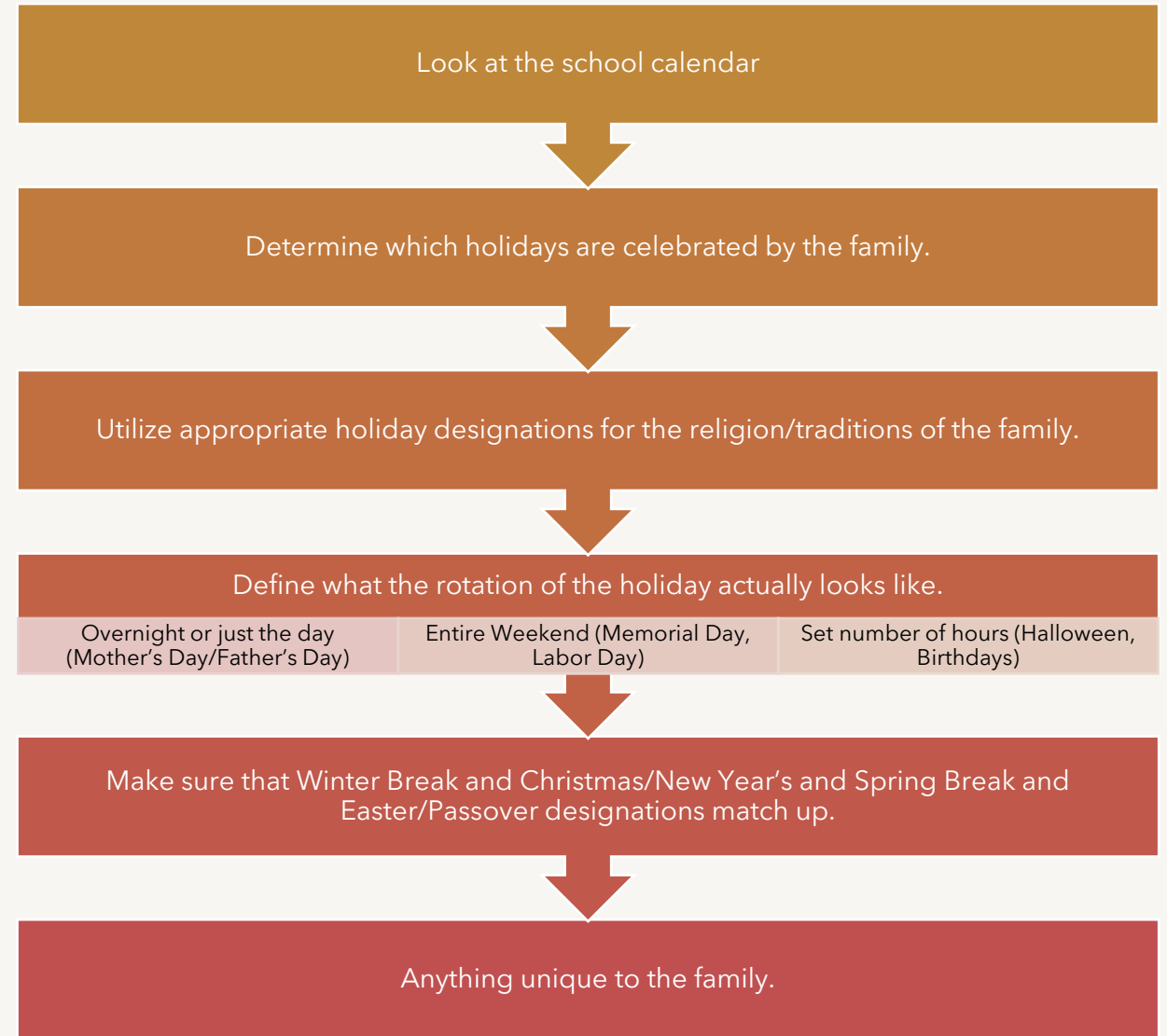
From _____ to _____

OTHER: {Specify} _____

Time-Sharing Paragraph Example

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Mother	Mother	Father	Father	Mother	Mother	Mother
Father	Father	Mother	Mother	Father	Father	Father
Mother	Mother	Father	Father	Mother	Mother	Mother
Father	Father	Mother	Mother	Father	Father	Father

Holiday Timesharing



ROFR

- Right of First Refusal – does it really exist?
 - The Supreme Court Form has an option: “Each parent must offer the other parent the opportunity to care for the child(ren) before using a child care provider for any period exceeding ____ hours”.
- But what happens when the parents cannot agree on an ROFR?
 - Is there statutory authority to support the “Right” or
 - Is this just creative drafting that lawyers created, that made its way into the Supreme Court form.
- Should you/shouldn’t you use it?
 - Can be a recipe for disaster.
 - Can be helpful in other situations.
- If ROFR is included, be sure to carefully define when the “Right” kicks in, and if there any exceptions, such as sleepovers or grandparents.

Transportation and Exchange

- Who handles the transportation?
 - The parent starting or ending their time-sharing
 - One or Both parents
- Exchange Locations
 - School
 - Camp
 - Parents' Homes
 - Midway point



Education/School Boundary

- The troublemaker provision. Everybody always wants to be designated...
- Supreme Court Form:
 - 1. Parent's address
 - 2. Private or Home Schooling
 - 3. Other.
- How is the district selected if the parent's cannot agree?
 - Higher Rated School District (how is that defined)
 - Stability (home ownership, length of time etc.)
 - Longevity

Communication

See Fla. Stat. §61.13003 – Court-ordered electronic communication between a parent and a child

Fla. Stat. 61.13003(1)(a) – In connection with proceedings under this chapter, a court may order electronic communication between a parent and a child. Before ordering electronic communication, a court must consider:

- 1. Whether electronic communication is in a child's best interests;
- 2. Whether communication equipment and technology to provide electronic communication is reasonably available, accessible, and affordable;
- 3. Each parent's history of substance abuse or domestic violence; and
- 4. Any other factor that the court considers material.

Types of Communication can include:

- Telephonic
- Email
- Online/chat/instant messenger
- Social networking (Facebook, Instagram)
- Web videoconferencing (Zoom)
- Blogging
- Websites
- Apps

How specific or restrictive should the provisions on communication in a PP be?



2020 Nuisances

- Pandemic language used in Parenting Plans post March 2020
 - Example: “During any Pandemic or other health emergency or concerns, the parents shall follow the orders and directives of all governmental (worldwide, federal, state or local) authorities, including but limited to the World Health Organization, the Center for Disease Control, the Florida governor or local municipality in which either parent resides.”
- Should we still include this type of language?

Natural Disaster Language

Nothing in the Supreme Court Form to define what happens if an exchange becomes dangerous.

Sample Language:

“In the event of a hurricane or other natural disaster affecting South Florida, the children shall remain with the parent who has regularly scheduled time-sharing, unless that parent is in an evacuation zone and refuses to evacuate. In such case, the other parent shall be entitled to remove the children from the evacuation zone. In such an instance, the party refusing to evacuate an evacuation zone will not be entitled to make-up timesharing.”



Great PP Cases

***Montalvo v. Montalvo*, 949 So. 2d 350 (Fla. 4th DCA 2007)** – Court allowed Father two nights a week if he tells the Mother “in advance” which days he intends to take the child. The timesharing schedule is unreasonable and overturned. Normal planning for weekend and other leisure activities between Mother and child together could be difficult and easily disrupted.

***Lovell v. Lovell*, 14 So. 3d 1111 (Fla. 5th DCA 2009)** – The trial court limited father’s timesharing as follows: “The Husband shall not expose the minor children to his paramour... until such time as the minor children’s therapist... deems appropriate.” The 5th DCA held that this provision was an inappropriate delegation of an important part of the visitation regime to a third party.

The difference between ultimate responsibility and sole parental responsibility is that ultimate responsibility still requires the parents to confer and cooperate and attempt to reach a joint decision and the later requires no such communication. With ultimate responsibility, if a joint decision cannot be reached, one parent has the “final word.” In sole parental responsibility, the parent does not need to make the effort to attempt to reach a joint decision. *See Roque v. Paskow*, 812 So. 2d 500 (Fla. 4th DCA 2002).

***Winters v. Brown*, 51 So. 3d 656 (Fla. 4th DCA 2011)** – Competent substantial evidence to affirm trial court’s order for father to have ultimate responsibility for child’s health care, specifically relating to vaccinations, when mother was holistic medicine practitioner and believed vaccinations to be against God’s will.



***Pagliaro v. Pagliaro*, 264 So. 3d 196 (Fla. 4th DCA 2019)** – While parents may agree about child custody, "a trial court's responsibility to the child cannot be abdicated to any parent, [or] any expert," and "a court is not bound by any agreement between parents, nor by the opinions of any expert or group of experts." *Lane v. Lane*, 599 So. 2d 218, 219 (Fla. 4th DCA 1992) (citing *Sedell v. Sedell*, 100 So. 2d 639 (Fla. 1st DCA 1958); *Bolton v. Gordon*, 201 So. 2d 754 (Fla. 4th DCA 1967)); *see also Trang Ngoan Le v. Tung Phuong Nguyen*, 98 So. 3d 600, 601 (Fla. 5th DCA 2012).

***Lanza v. Lanza*, 804 So. 2d 408 (Fla. 4th DCA 2001)** – A court cannot enforce a timesharing schedule unless it is specific; terms such as “reasonable access” and “liberal contact” are not enforceable. *See also Buttermore v. Meyer*, 559 So. 2d 357 (Fla. 1st DCA 1990); *Kranis v. Kranis*, 313 So. 2d 135 (Fla. 3d DCA 1975).

***Rescigno v. Annino*, 869 So. 2d 741 (Fla. 4th DCA 2004)** – 4th DCA upheld the trial court's order prohibiting timesharing at father’s home when father had eight cats because of children’s severe allergy and asthma. *See also Sohrabi v. Sohrabi*, 568 So. 2d 940 (Fla. 2d DCA 1990) (Iranian father’s timesharing limited to one country because of abduction threats).