

**A d v i s o r***Where Family Matters*

VOLUME X, NUMBER III

*Shared Parental Responsibility:***IT IS NOT “JOINT” CUSTODY, BUT IT DOES MAINTAIN PARENTAL RIGHTS.**By: *Debra Sutton*

**I**n the past, the question of what to do with the children of divorcing parents was resolved, ordinarily, with one parent, customarily the wife, receiving “custody.” The custodial parent typically made all decisions regarding the children. The other parent, customarily the husband, was directed to pay child support and received “visitation.” Thus, following divorce, one parent always seemed to lose the rights, responsibilities, and privileges they had enjoyed during the marriage regarding the children and their role was reduced to one more akin to that of an aunt or uncle, rather than a parent.

Then, in 1982, the Florida Legislature changed this longstanding law regarding custodial concepts. Now, the traditional concept of “custody” has been divided into one of “shared parental responsibility” and “residential care.” Residential care governs where the child will reside on a day-to-day basis. When spouses, lawyers and the court refer to joint custody, it is a shared residential schedule that they are referring to. Shared parental responsibility, by contrast, governs the decision making for major events impacting the lives of the children, irrespective of where the child may live. Shared parental responsibility must be awarded by the courts unless doing so would be detrimental to the child or children. “Shared parental responsibility” is even directed in some cases where there may be a need to restrict or supervise the visitation of the other parent. Thus, “shared” parental responsibility, as the title implies, means that, even though the parents are no longer going to be married and reside in the same residence, neither parent loses his or her right to participate in major decisions concerning the welfare of the children. The parents have an affirmative duty to discuss with one another matters regarding school (such as school selection, report cards, extra-curricular activities, academic or behavioral problems, parent-teacher conferences, etc.), religion, medical care, and other matters affecting their children.

We are often told by a parent that they have joint custody because of the wording within their final judgment of dissolution of marriage that directs they have shared parental responsibility. Though the policy of shared parental responsibility is not one in the same as joint custody, and does not directly impact the physical residence of the child, it does have significant weight and responsibility, along with benefits to each parent, and maintains parental rights. So, what is meant by “shared parental responsibility?” In other words, how does it work? Perhaps some Dos and Don’ts will make it easier to understand.

**DOs OF SHARED PARENTAL RESPONSIBILITY.****I. Timing is Critical.**

Whatever it is, timing can be one of the most important matters. For example, finding out two months afterward that the child was on the Straight-A Honor Roll deprives the other parent of being in the moment with the child and sharing the joy and excitement of the achievement when it is reached. On the other hand, take a situation where a child is taken to the emergency room during visitation only to discover that all is well, but the residential parent is not told for multiple months. The failure to timely inform of the minor child’s emergency room visit, irrespective of the outcome, is not acceptable. The parent should be called as promptly as possible under this circumstance. When in doubt, ask when you would want to be informed of an incident or event if you were that parent. Err on the side of disclosure rather than non-disclosure.

**II. Scheduling and Contact.** Discuss and attempt to agree on a schedule of contact and visitation. Make the other parent aware of your preferences, places where there is flexibility and areas where you are less flexible, particularly if it involves the best interests of the child, such as an established bedtime. Do not assume anything and do not relay the information through a child. Develop a workable plan that gives the child(ren) access to both parents. This means encouraging visitation and contact with the other parent—even if it is not that parent’s scheduled day of contact.

**III. Communication & Discussion.**

Provide and maintain communication with the other parent. Discuss where the children will



*Custody...cont.*

attend school, the activities they will and will not be participating in, their treating physician(s), the selection of their dentist, etc. Timely provide copies of report cards, important papers, school picture information, and other documents. Remember to share and discuss not only the children's shortcomings, but their achievements as well. Keep lines of communication with the other party open so that any problems can be easily resolved. Any important matters concerning the child can be made together after input of both parents, and any other matters concerning the child can be addressed.

**IV. Discipline.** Attempt to agree on matters of discipline, curfew, chores, and other rules or guidelines established for the children.

**V. Education.** At the beginning of the school year, provide the other parent with the school schedule, information concerning parent-teacher conferences, extra-curricular activities, copies of report cards as such are released, and any other school or educational matters involving the children. Mailing them a card or letter or sending e-mails during the week is also recommended as a means of keeping the other parent advised of all that is going on with the children. When in doubt as to whether to provide information, a good guideline is to ask if you would have provided the information if still married. If the answer is "yes," then it should be provided after the marriage has been dissolved.

**VI. Preparation for Contact and Visitation.** If you are the residential parent, strive to have the children appropriately dressed and ready on time for the other parent. Any delays on your part will take away from the child's time with the other parent. If you are the nonresidential parent, make certain that you are at the designated place of exchange for the children at the appointed time for pickup and delivery. If clothing or other personal items accompanied the children, make every effort to insure that those items are returned with the children.

If for any reason you will be late for the visitation exchange or unable to make it at all, do all that you can to notify the other parent as promptly as possible. If you are unable to reach the other parent, contact someone who may be able to reach your former spouse to relay your message. Follow up to insure that any messages given were relayed. If visitation is missed, make every effort to permit and to exercise make-up visitation. To fail to do so usually hurts the children more than the other parent.

**VII. Consistency.** Establish both homes as that of the child, providing him or her with a room, clothes, school books, and toys. Assist the child in meeting other children in the absent parent's neighborhood and do that which you can to ease

the child's transition into the two-home arrangement. Helping to arrange social events with neighborhood children (for example grilling out, a game of basketball, a trip to the movies, etc.) can be a good way to begin these relationships.

## DON'Ts OF SHARED PARENTAL RESPONSIBILITY.

**I. Timing.** Avoid delay in relaying important information regarding the children—whether good or bad. Moping around, whining, or carrying on in the presence of the children about the separation to consciously or unconsciously obtain sympathy from the children is not acceptable. Further, children should not be introduced into a relationship between one spouse and a third party, before the children have adequately adjusted to the separation of the parents. Like initially telling the children of the dissolution of the marriage, make an effort to timely advise them, and the other parent, of all relevant matters that impact the child, directly or indirectly.

**II. Scheduling and Contact.** Be sure to schedule events for the children around visitation, rather than in a manner that would compete with the children's time with the other parent. Visitation should be primary, not secondary, to other extra-curricular activities.

**III. Communication & Discussion.** Do not argue in front of the children; use the child to deliver child support or other adult messages to the other parent; nor question the child for information about the other parent, such as that parent's activities, visitors, etc. The children are not spies. Do not speak derogatorily about the other parent or permit any other person in the presence of the children to speak badly about the other parent. Do not talk with the children or in their presence about matters in the dissolution of marriage action or any other litigation which may be pending concerning the separation of the parties. Do not leave legal documents, letters from counsel, or other such material in open view for children to review on their own. Do not try to justify your divorce to your children. Teach your child(ren) that both parents love them, even though the marriage has not worked out the way you each had hoped it would. Assure your children that they are not the cause of the difficulties in or the dissolution of your marriage.

**IV. Discipline.** Avoid undermining or criticizing the discipline imposed by the other parent with the children. Reserve any debate in this area for your former spouse, exclusive of the children. It is helpful to discuss major problems with children that require discipline with the other parent and attempt to agree on a punishment that can be imposed in both homes.

**V. Education.** Never hoard information from the other parent. Parents should freely share and discuss all information ranging from the selection of the child's school, to standardized testing, promotion to the next grade, and extra-curricular activities.

**VI. Preparation for Contact and Visitation.** Do not engage in conduct that is disrespectful of the other parent's time with the children.

**VII. Consistency.** Do not put the child in the position of having to take sides between the parents. The closer the rules can be established and maintained at both homes, the less likelihood there is of the children having the parents compete.

These DOs and DON'Ts will not cover every situation in every household and some will have more application than others to your family. Nonetheless, while these guidelines will not address every question or crisis you will face, they will assist you with many and are worthy of your consideration. In some cases, intervention by mental health professionals is recommended. Also, the Tenth Judicial Circuit has adopted a standardized schedule for visitation to assist in visitation conflicts. A positive co-parenting course that can be beneficial to parents is available on line and at various locations throughout the county. In addition, particularly with regard to matters of parenting, family mediation is available through the office of the clerk of court or through private counsel.

Always at the heart of the shared parental responsibility concept is the best interests of the minor children. Every effort should be utilized by you to approach all parenting decisions with that in mind—rather than being motivated by negative personal feelings you may have toward the other parent or his or her new mate. Maintain a view toward doing all that you can to be involved in the major decisions of your children's life, and encourage the other parent to do so, to give your child the assurance that he or she is loved by both parents. It is a demonstration to the children that both parents are doing all that they can to minimize the impact of their separation upon the children, and that each parent is committed to the best interests of the minor children.

The law permits, and we strongly recommend, that you take advantage of shared parental responsibility to give your children the benefit of both a mother and father, despite the dissolution of his or her parents' marriage. The family will surely benefit from these adjustments.



## Changes to Child Support Guidelines

Child support in Florida is governed by child support guidelines which establish a presumptive amount of support to be paid based upon the combined net income of both parents. In computing the net income of each parent, Chapter 61, Florida Statutes (2005) identifies various matters



that should be taken into consideration when varying upward or downward from the presumptive child support amount. Such factors include, but are not limited to, the costs of transportation associated with visitation, independent income of the child, and other relevant considerations.

The legislature recently adjourned its session without amending Florida's child support guidelines. Various proposals were presented, the most recent of which included reductions in the amount of support to be paid where the nonresidential parent has contact with the children a "substantial" period of time. Currently, that amount of time has been most commonly defined as a total of over 140 overnight visitations during a calendar year. The proposed legislation would have reduced this requirement and would have further reduced the amount of support to be paid. Although the respective house and senate bills, H.B. 1571, 2007 Leg., 109th Reg. Sess. (Fla. 2007) and S.B. 1996, 2007 Leg., 109th Reg. Sess. (Fla. 2007), did not pass, it is anticipated that some version will be proposed during the upcoming session.



### *Supporting One of our Elected Leaders*

Attorney Sutton was privileged to open the Mann Manor to host Bartow's recent reception for Congressman Adam Putnam, who was in town from Washington, D.C. Congressman Putnam met with those in attendance and provided updated information regarding the state of the union, the war in Iraq, national security and economics. It was a unique opportunity for local business leaders and citizens to ask questions in a group setting, or later to simply relax on the porch of this historic Bartow home and more casually discuss matters of local and national concern. Congressman Putnam is seeking re-election and asked for the support of those attending to enable him to continue to protect our local concerns on a national level, which request was met with enthusiasm by the citizens in attendance. Any questions regarding Congressman Putnam's re-election campaign should be directed to [www.putnamforcongress.com](http://www.putnamforcongress.com).



## KEEPING CURRENT FOR TODAY'S LAW PRACTICE

Attorney Palmer traveled to Miami to participate in a seminar directed toward the continual development and evolution of a contemporary law practice. The seminar concentrated on the various facets of the practice of law in today's legal climate, including assisting clients with special needs and implementing the more innovative and current methods for keeping clients informed and involved in their litigation. The seminar also covered the utilization of the firm's technological resources to better serve our clients' needs for maximum results. Attendance was in keeping with the firm's policy of maintaining a high level of continuing legal education of its attorneys, particularly since our firm focuses on representation of individuals in complex areas and issues of family law and cases involving appellate litigation.

Additionally, Attorneys Sutton and Palmer, along with the firm's senior legal assistant, Ms. Beeson, attended a seminar in Sarasota regarding the gathering, preparation and presentation of financial information within family law litigation. The seminar provided advanced training regarding the computation of child support guidelines under various scenarios, the preparation of financial affidavits, and the preparation of equitable distribution computations. Included, as well, was advanced instruction on the preparation of various pretrial and trial documentation and pleadings using the firm's financial litigation software.

# Real Property - Protect Your Interests

Most dissolution cases involve the need to resolve the use, possession and ownership of one or more parcels of real property. Commonly, parties believe they are aware of the status of the title to the property, the amount of monies due and owing to a mortgage holder, and whether there are any judgments against the property. Unfortunately, this presumption is not always accurate.

Thus, it is recommended that, at a minimum, an ownership and encumbrance report, commonly referred to as an "O & E" report, be obtained. This report will identify the current record holder(s) of title to the property and any actual or potential liens against the property. For example, does either party owe any money to the IRS, to a repairman, to the county commission for payment of a public defender fee, to the

clerk's office for payment of filing fees associated with an action for injunction for protection from domestic violence, or the like? Did the other spouse transfer the real property or their interest in it to a friend, relative, close business associate, or an entity they may have created? The costs for these reports vary depending upon the services to be performed, but they customarily range from \$100 to \$500 for each parcel of property and ordinarily are completed within a week to ten days. To obtain an "O & E" report, you simply need to contact our office to authorize the procurement of the report.



The home of the Sutton Law Firm in Bartow, FL

The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Before you decide, ask us to send you written information about our qualifications and experience.

  
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## *Attention:* **ALL TENTH CIRCUIT STETSON COLLEGE OF LAW ALUMNI**

Stetson College of Law, in conjunction with its advisory board, is looking to establish alumni associations in counties or judicial circuits where they do not currently exist. The vast programs available to its alumni, and the ability to work with, market to, and network with colleagues are invaluable professional experiences. Attorney Sutton, through her work with the advisory board, has been impressed with all that the college is now able to make available to its alumni. A representative from the various classes is desired to form a steering committee. We need newer members to the bar, as well as our more experienced colleagues! Anyone interested, please give Debra a call at (863) 533-8912 or e-mail your interest to: [sutton@suttonlawfirm.net](mailto:sutton@suttonlawfirm.net).

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