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Child Custody and Visitation

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Family Law Practice in Connecticut
650-page practice handbook written by and for Connecticut lawyers on:

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I. Jurisdiction

II. Temporary Custody and Visitation (Pendente Lite)

III. Final Custody and Visitation Orders

I. JURISDICTION

A. [10.1] Introduction

This chapter dealing with the law of Child Custody and Visitation consists of five parts: jurisdiction to enter custody and visitation orders, temporary custody and visitation orders (*pendente lite*), final custody and visitation orders, enforcement of custody and visitation orders, and modification of custody and visitation orders. The important cases which define and give life to the black letter law are discussed throughout the chapter. Some valuable articles involving the role of counsel for the minor child, spousal violence, and jurisdiction are also included. The appendix contains information used by the family relations department to evaluate custodial placements, and should be read by any practicing attorney.

B. [10.2] Subject Matter Jurisdiction over Dissolution of Marriage

Before a dissolution of marriage action can be heard, the Superior Court must have jurisdiction over the subject matter. An attorney should consider whether subject matter jurisdiction exists because the parties may not waive this type of jurisdiction. Jurisdiction is the power of the court to hear and determine the cause of action presented to it. Jurisdiction must exist in three particulars: the subject matter of the case, the parties, and the process. *Brown vs. Cato,* 147 Conn. 418, 422, 162 A.2d, 175 (1960), *McCoy vs. Raucci,* 156 Conn., 117, 117, 239 A.2d, 689 (1968). The doctrine of subject matter jurisdiction must be determined whenever it is raised; and it can be raised at anytime. *Carp vs. Urban Redevelopment Commission,* 162 Conn. 525, 528, 294 A.2d, 633 (1972); *Carten vs. Carten,* 153 Conn. 603, 610, 219 A.2d, 711 (1966). The lack of subject matter jurisdiction cannot be waived. *Potter vs. Applebee,* 136 Conn. 641, 643, 73 A.2d, 819 (1960); *Connecticut Steel Company vs. National Amusements, Inc.,* 166 Conn. 255, 262-63, 348 A.2d, 658 (1974. An attorney may file a general appearance without waiving subject matter jurisdiction. *LaBow vs. LaBow,* 131 Conn. 433, 370 A.2d, 990 (1976).

The prerequisite to subject matter jurisdiction is governed by two (2) statutes. C.G.S. 46b-42 gives the Superior Court exclusive jurisdiction of all dissolution, legal separation, and annulment actions. C.G.S. 46b-44 outlines the residence requirements that must be met before the court may grant temporary relief in a custody matter or enter a decree of dissolution. This statute provides as follows:

> **(a) A complaint for dissolution of a marriage or for legal separation may be filed at any time after either party has established residence in this state.**

(b) Temporary relief pursuant to the complaint may be granted in accordance with sections 46b-56 and 46b-83 at any time after either party has established residence in this state.

(c) A decree dissolving a marriage or granting a legal separation may be entered if: (1) One of the parties to the marriage has been a resident of this state for at least the twelve months next preceding the date of the filing of the complaint or next preceding the date of the decree; or (2) one of the parties was domiciled in this state at the time of the marriage and returned to this state with the intention of permanently remaining before the filing of the complaint; of (3) the cause for the dissolution of the marriage arose after either party moved into this state.

(d) For the purposes of this section, any person who has served or is serving with the armed forces, as defined by section 27-103, or the merchant marine, and who was a resident of this state at the time of his or her entry shall be deemed to have continuously resided in this state during the time he or she has served or is serving with the armed forces or merchant marine.

As the statute indicates, subject matter jurisdiction over the dissolution action will be found as long as one of the parties (1) has been a twelve month resident of the State of Connecticut before the filing of the action or before the final decree, or (2) was domiciled in the State of Connecticut at the time of the marriage, and returned with the intent to permanently remain before the filing of the complaint, or (3) the cause of the dissolution of marriage arose after either party moved into the state. The Supreme Court has interpreted this statute to mean that both domicile and substantially continuous residence must be shown before a dissolution decree may enter. *LaBow vs. LaBow,* 171 Conn. at 437. The elements of domicile are actual residence coupled with the intention of permanently remaining. *Mills vs. Mills,* 119 Conn. 612, 617, 179 A.5, (1935). If a party resides in Connecticut only temporarily, then the court will not find Connecticut to be the domiciliary state. *Craig vs. Craig,* 21 Conn. Sup. 359, 154 A.2d, 581 (1959).

As will be discussed later in this chapter, the jurisdictional determination with respect to custody requires an entirely separate analysis from the determination of whether the court has subject matter jurisdiction over the dissolution of marriage action. While the court may have subject matter jurisdiction over the dissolution of marriage action, other factors must be reviewed before the court determines that it has jurisdiction to enter custody orders.

C. [10.3] Personal Jurisdiction over the Parties

In addition to subject matter jurisdiction, the Superior Court must have personal jurisdiction over the parties (in personam jurisdiction) before it can enter enforceable orders. Personal jurisdiction is distinguishable from subject matter jurisdiction in that a party can waive personal jurisdiction and voluntarily submit to the court's jurisdiction. *Baker vs. Baker,* 166 Conn. 485, 352 A.2d, 277 (1974).

Personal jurisdiction issues normally do not arise where both parties are residents of the same state. Service of process is easy to accomplish. In the case of the nonresident defendant, however, issues concerning proper notice may arise.

The mere notice of an action may not be sufficient to confer personal jurisdiction over a nonresident defendant for purposes of dissolution. There must be personal service. *Robinson vs. Robinson,* 164 Conn. 140, 144, 318 A.2d, 106 (1972). Notice of the institution of suit by registered mail return receipt upon an order of notice is normally sufficient. *Toth vs. Toth,* 23 Conn. Supp. 161, 178 A2d 542 (1962). Personal jurisdiction over a non-resident requires statutory authorization. *Goldstein vs. Fisher,* 200 Conn. 197, 201, 510 A.2d, 184 (1986). Connecticut has a domestic relations long arm statute. Personal jurisdiction may be allowed pursuant to Connecticut General Statute Section 46b-46(b) on matters pertaining to alimony and support. *Jones vs. Jones,* 199 Conn. 287, 290-91, 507 A.2d, 188 (1986). Section 46b-46(b) allows the court to exercise personal jurisdiction only concerning matters of temporary or permanent alimony or support of children, and only if the notice requirements of the statute are met. This statute provides as follows:

> **The court may exercise personal jurisdiction over the nonresident party as to all matters concerning temporary or permanent alimony or support of children, only if: (1) The nonresident party has received actual notice under subsection (a) of this section; and (2) the party requesting alimony or support of children meets the residency requirement of section 46b-44; and (3) this state was the domicile of both parties immediately prior to or at the time of their separation.**

Effective January 1, 1996, the third requirement of section 466-46(b) has been deleted from the statute. P.A. 95-310, Section 1. It will no longer be necessary that the State of Connecticut be the domicile of both parties immediately prior to or at the time of their separation in order to confer jurisdiction over alimony and support matters.

The Appellate Court interprets the personal jurisdiction statute broadly when the non-resident defendant receives actual notice of the suit. Going through the procedure of obtaining an order of notice is not required when the defendant receives actual notice by in-hand service. *Cato vs. Cato,* 27 Conn. App. 142, 147 (1992).

Constitutional due process requires that the defendant have minimum contacts with the State of Connecticut before the court can exercise jurisdiction. The minimum contacts test is the standard that the U.S. Supreme Court articulated in *International Shoe Company vs. Washington,* 326 U.S. 310 (1945). All assertions of state court jurisdiction must be evaluated according to the standard set forth in *International Shoe* and its progeny. The defendant must have minimum contacts with the State of Connecticut such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice." *Hodge vs. Hodge,* 178 Conn. 308; 422 A2d 286 (1979).

When claims for child support are made (and this may be important in custody actions), personal jurisdiction over the nonresident party is required. One superior court case holds, however, that as long as the minimum contacts standard is met, the superior court will have jurisdiction over child support orders, even if the requirements of Section 46b-46(b) are not met. *Cleland vs. Cleland,* 35 Conn. Sup. 215, 404 A.2d, 905 (Superior Court, Hartford, 1979). This conclusion is reinforced by a United States Supreme Court decision in *Burnham vs. Superior Court of California,* County of Marin, 110 S.Ct. 2105 (1990).

The fact that the Superior Court may lack jurisdiction to enter financial orders or make a property distribution, does not mean that the court lacks custody jurisdiction. The criteria used to determine custody jurisdiction are found in the Uniform Child Custody Jurisdiction Act (UCCJA) and the Parental Kidnapping Prevention Act (PKPA). While in financial matters the key question usually involves personal jurisdiction; in custody matters, the key question involves whether the court has jurisdiction over the custodial relationship. *Shaffer vs. Heitner,* 433 U.S. 186, 208, note 30, 97 S.Ct. 2569, 2582, note 30, 53 L.Ed. 2d, 683 (1977).

D. [10.4] Uniform Child Custody Jurisdiction Act (UCCJA)

In any controversy before the Superior Court as to the custody or care of minor children, the court may make or modify any order regarding custody as long as it has jurisdiction under the Uniform Child Custody Jurisdiction Act, or UCCJA. General Statute Section 46b-90 et. seq.

The UCCJA is contained in Sections 46b-90 through 46b-114. It is a code for determining custody jurisdiction. It contains sections concerning purpose, definitions, jurisdiction, notice, parties, and other substantive provisions. It even has international application.

The purpose of the UCCJA is to avoid jurisdictional competition and conflict with the courts of sister states. It aims to promote cooperation with the courts of sister states and assure that the litigation concerning custody will ordinarily take place in the state which has the most significant contacts to the minor child. It is designed to discourage

controversies over child custody, deter abductions, and avoid relitigation of custody decisions of other states. The purposes of the act are clearly set forth in Section 46b-91.

The Superior Court will assume jurisdiction to make a child custody determination in any one (1) of four (4) scenarios. In the first scenario, the Superior Court must determine that Connecticut is the home state of the child. In the second scenario, the Superior Court must determine that it is in the child's best interest that Connecticut assume jurisdiction because of the significant connection between the child and at least one contestant with the State of Connecticut. The third scenario is that the child is physically present in Connecticut and that the child has been abandoned or has been threatened with mistreatment or abuse. The fourth scenario is that no other state would have jurisdiction under substantially similar principles and it is in the best interest of the child that the Connecticut courts assume jurisdiction, Connecticut General Statutes, Section 46b-93. Obviously, all four (4) scenarios involve value judgments (i.e. "home state, and "best interest of the child") on the part of the judge/trier of fact. As a result, these principles can lead to conflicting results.

For a scholarly discussion of the UCCJA and its background, see *Agnelo vs. Becker*, 184 Conn. 421, 440 A.2d, 172 (1981).

The best way to obtain jurisdiction in Connecticut is to show that Connecticut is the home state of the minor child. This seemingly innocent principle has generated much litigation. In *Kioukis vs. Kioukis*, 185 Conn. 249, 440 A.2d, 894 (1981), the defendant mother and the child lived in Connecticut at the time of the divorce and subsequently moved to Tennessee and lived there for three (3) years before the father sought a modification of his visitation rights. The Superior Court found jurisdiction on the basis of the dissolution having been entered in Connecticut. The Supreme Court reversed because Connecticut was not, at the time of the modification proceeding, the "home state" of the child as defined in General Statute Section 46b-93(a) (1) of the UCCJA; hence, the trial court did not have jurisdiction to modify the custody order. The matter was remanded, however, for a determination of whether Connecticut might have jurisdiction under another subsection of Section 46b-93.

Connecticut practitioners have for years (in error) counseled clients that once jurisdiction attaches in a custody matter, Connecticut will continue to have jurisdiction during the minority of the child (even though it might not exercise it on the ground of *forum non-conveniens*). The *Kioukis* case exploded that myth.

A second myth involves the belief that Connecticut will assume jurisdiction as long as the child has lived here for six (6) months. It's appeal comes from the fact that Section 46b-93(a) states that Connecticut will be considered the home state of the child if Connecticut has been the child's home state within six (6) months before the commencement of the proceeding and the child is thereafter absent because of his

removal or retention by a person claiming custody. Case law makes it clear however, that even where the child is residing in the State of Connecticut for six (6) months, Connecticut courts may properly decline jurisdiction. In *Glassman vs. Maccione*, 17 Conn. App. 419, 553 A2d 195 (1989), the trial court declined to find jurisdiction and dismissed a custody petition because of a prior pending custody action in Florida. The earlier Florida divorce decree had awarded custody to the mother. The father sought a modification of that custody order in Florida. Thereafter, the child went to live with the paternal grandparents in Connecticut who brought a petition for custody in Connecticut alleging that the child had been living with them for six (6) months. The trial court dismissed the action because Section 46b-96(a) provides that a Connecticut court shall not exercise jurisdiction while another custody procedure is pending in a sister state court.

As a practice point, it is sometimes important to bring a custody petition in the state of the child's primary residence. A failure to do so may result in a proceeding being conducted in another state. In *Ozkan vs. Ozkan*, 18 Conn. App. 73, 556 A.2d, 628 (1989), a Connecticut decree awarded custody to the mother. She then moved to Michigan and resided there with the minor child. She never obtained a Michigan custody modification. Following a vacation to Yugoslavia, she returned only to find that the father had filed a motion to modify custody in Connecticut and was successful in getting the Connecticut court to take jurisdiction. This was based in part upon the fact that the mother had left the child with the father for the summer and there was evidence of the child receiving care in Connecticut. The *Ozkan* case teaches that the six (6) month rule is merely a rule of thumb, and not one of rigid application.

Jurisdictional problems can arise in proceedings to enforce visitation orders. In *Brown vs. Brown*, 195 Conn. 98, 486 A.2d, 1116 (1985) the plaintiff father who had custody of his minor children under a Florida custody order and who had subsequently moved to Connecticut with his children could not convince his former wife, still a Florida resident, to return the children after the summer visitation was over. The defendant wife had instituted proceedings in Florida to modify the original custody order. Earlier, the Florida court had dismissed the proceeding on the basis of *forum nonconveniens*. She then moved to dismiss the father's Connecticut enforcement action, claiming that Connecticut was an inconvenient forum as defined by Section 46b-97 of the UCCJA. The trial court agreed and granted her motion to dismiss. The Connecticut Supreme Court upheld the ruling of the trial court based upon the finding that Florida had a closer connection with the children than did Connecticut and that substantial evidence concerning the children's present and future care would be more readily available in Florida. The *Brown* case also illustrates the similarity between the UCCJA and the Federal Parental Kidnapping Prevention Act of 1980 (PKPA). The Supreme Court rejected the plaintiff father's PKPA argument.

The home state can usually get jurisdiction (the first statatory basis) when the child is physically present there. Physical presence, alone, however, is not sufficient to

confer jurisdiction. For example, if the child is abducted by one of the parents and brought to Connecticut, jurisdiction will probably not be entertained in Connecticut. *Agnelo vs. Becker,* 184 Conn. 421, 440 A.2d, 172 (1981).

The second basis for obtaining jurisdiction in Connecticut is the "significant connection" basis. If it is in the best interest of the child and at least one parent has a significant connection with the State of Connecticut, and there is substantial evidence concerning the child's present or future care, then the court will exercise jurisdiction. This was the basis on which the *Ozkan, supra,* case was decided.

The third basis for jurisdiction is the "emergency" basis. Connecticut General Statutes, Section 46b-93(a) (3) provides that in an emergency situation, the Connecticut court will assume jurisdiction as long as the child is physically present in the state. This provision is not intended to encompass every situation claimed to be detrimental to the child, as confirmed in the commissioner's note to this section of the UCCJA. There are no reported decisions in Connecticut in which the courts have exercised emergency jurisdiction.

The fourth basis for jurisdiction is the "last resort" basis for jurisdiction. This is used only if the child does not have a home state and no other state has a significant connection for jurisdiction purposes. This provision is not likely to be used very frequently. This basis incorporates the best interests of the minor child standard in its determination to exercise jurisdiction. This basis for jurisdiction might be used if the parents have moved frequently from state to state and no other state has a particularly compelling interest to exercise jurisdiction. Connecticut courts should assume jurisdiction in this situation to prevent kidnapping.

The UCCJA has resulted in an improved atmosphere of cooperation between sister states and has lessened the dangerous impact of inconsistent state custody decisions upon children. In the *Brown* case, the Florida court let the Connecticut court decide whether it should assume jurisdiction. This cooperation and the beneficial impact upon children of less custody litigation is what the Connecticut legislature had in mind when it passed the UCCJA in 1978. E. Sorokin and K. O'Connor, *Thirteen Years Later, The Impact of the Uniform Child Custody Jurisdiction Act on Connecticut Courts*, 65 Conn. Bar Journal, 452, 460, (1991).

E. [10.5] Parental Kidnapping Prevention Act (PKPA)

The Parental Kidnapping Prevention Act of 1980, 28 U.S. Code, Section 1738A ("PKPA") was enacted to prevent jurisdictional conflict and competition over child custody, and in particular to deter parents from abducting children for the purpose of obtaining custody awards. *Peterson vs. Peterson,* 464 A.2d 202, 204 (ME. 1983). The PKPA provides that the courts of every state should enforce the child custody determination of another state if made consistent with the PKPA provisions. The PKPA

is geared toward establishing national jurisdictional standards that endeavor to reduce interstate child abductions. For this reason, the jurisdictional provisions of the UCCJA are similar (but not identical) to the jurisdictional provisions of the PKPA. The biggest difference between the jurisdictional requirements of the UCCJA and the jurisdictional requirements of the PKPA is that under the UCCJA, a state has greater flexibility to assume jurisdiction. For example, the PKPA does not allow the significant connections and substantial evidence tests to be used in order to obtain jurisdiction. The UCCJA does. If there is a conflict between the jurisdictional requirements of the UCCJA and the PKPA, then the PKPA will prevail based on federal preemption.

F. [10.6] Personal Jurisdiction Under the UCCJA

In order for a Connecticut Court to bind an out of state litigant to a Connecticut custody order, it is necessary that that person receive actual notice of the Connecticut proceeding. Personal jurisdiction under the UCCJA is governed by C.G.S. 46b-95. There are four (4) ways, authorized by statute, to give actual notice. They are:

1. Actual notice by personal delivery of notice outside the state by the manner prescribed for service of process within this state;

2. Actual notice in the manner prescribed by the law of the place where service of process is to take place in an action in any of its courts of general jurisdiction;

3. Actual notice by mail addressed to the person to be served by return receipt; or

4. Actual notice as directed by the court including publication, if other means of notification are ineffective.

In all of the four (4) methods of giving actual notice, the actual notice must take place at least twelve (12) days before the hearing in the Connecticut court section 46b-95(b). Once actual notice takes place, proof of the service of notice outside the State of Connecticut must be made to the court. If service is made individually by a process server, then proof of service may be made by affidavit of the individual who made the service, or in the manner prescribed by Connecticut law, or under the law of the place where the service is made. If service is made by mail, then the return receipt must be given to the court signed by the person who is to be served. It is probably not sufficient if the green card receipt is signed by a person other than the litigant, such as an agent. Of course, if the litigant voluntarily submits to the jurisdiction of the Connecticut court, then notice is not required.

G. [10.7] Simultaneous Proceeding in Another State

If a simultaneous custody proceeding is pending in another state, and that state is exercising jurisdiction substantially in conformity with UCCJA, then the Connecticut court cannot exercise jurisdiction. One exception to this rule exists if the proceeding in the foreign state is stayed by that court because it determines that another state is a more appropriate forum or there is other just cause. General Statute Section 46b-96.

The trial court has an affirmative obligation, which cannot be waived by the parties, to determine whether a custody proceeding is pending in the court of another state. The trial court must examine the pleadings and other information supplied by the parties to determine whether there is another pending custody action in another state. The trial court must also examine the child custody registry established under Section 46b-106 to determine whether there is a custody proceeding pending in another state. If the trial court has reason to believe that there is another pending custody action involving the child in a sister state, it must inquire of the state court administrator or other appropriate official of the sister state to determine whether such an action is pending. If another action is pending in a sister state, then Connecticut cannot exercise jurisdiction. General Statute Section 46b-96.

Once the court has proceeded to hear a custody action, and subsequently learns that there is a prior pending action in the court of a sister state, then the court must stay the proceedings and immediately communicate with the court of the sister state. The purpose of the inquiry is to determine whether that sister state is a more appropriate forum for the litigation of the custody issue. Both courts must exchange information in accordance with sections 46b-109 to 46b-112.

If a Connecticut court has issued a custody decree before learning of the pending custody proceeding in a sister state, then it must immediately inform such court of the fact of the insurance of a custody decree. If the Connecticut court is informed that a proceeding was commenced in another state after it assumed jurisdiction, then it must inform the court of the sister state so that the more appropriate forum actually hears the case.

H. [10.8] Forum Nonconveniens

Even after a Connecticut court has assumed jurisdiction of an interstate custody matter, it may decline to exercise it's jurisdiction at any time before making a final decree if it finds that it is an inconvenient forum to make a custody determination and another state is a more appropriate forum. Either party can move the court at any time to make a finding of forum nonconveniens. In addition, the court on it's own motion can make a finding of inconvenient forum. General Statute Section 4b-97.

It's determination of whether the Connecticut court is an inconvenient forum, the court must consider if it is in the best interest of the child that another state assume jurisdiction. The court must consider the following factors in weighing it's decision:

1. Another state is or recently was the child's home state;

2. Another state has a closer connection with the child and his family or with the child and one or more of the contestants;

3. Substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state;

4. The parties have agreed on another forum which is no less appropriate; and

5. The exercise of jurisdiction by the Connecticut court would contravene one or more of the stated purposes in section 46b-91.

Once the issue of inconvenient forum is raised, the Connecticut trial court should communicate with the court of the sister state and exchange information pertinent to the jurisdiction issue. The two trial judges will discuss the question of which forum is the more convenient or appropriate forum for the litigation to take place.

If the Connecticut court finds that it is an inconvenient forum and that the court of the sister state is a more appropriate forum, it may either dismiss the proceeding, or issue a stay order upon condition that the custody proceeding be commenced in the sister state.

If a custody proceeding is commenced in Connecticut and the Connecticut court determines that it is an inappropriate forum, the moving party could be required to pay the other party's reasonable attorneys fees, costs and expenses. General Statute section 46b-97(g). This section applies not only to proceedings commenced in bad faith, but to all proceedings in which a case is brought to a "clearly" inappropriate forum.

Once it is determined that the custody action must be dismissed or stayed, then the court taking such action must inform the court of the sister state that it is the more appropriate forum in which to continue the custody litigation. Such information must be filed in the custody registry of the appropriate court. Section 46b-97(h).

I. [10.9] Jurisdiction Declined by Reason of Reprehensible Conduct

An example of reprehensible conduct is given in section 46b-98(a). If a petitioner wrongfully takes a child from one state and brings him or her to another state to obtain an initial decree of custody, then this petitioner has engaged in reprehensible conduct. The Connecticut court should decline to exercise jurisdiction if it is just and proper

under the circumstances of the case. A finding of child snatching is not required. The courts of this state are statutorily required to refrain from modifying a custody deeree of a sister state if a child has been wrongfully removed from a custodial parent who is the resident of the sister state. Similarly if the petitioner has violated any provision of a custody decree of a sister state, the Connecticut court may decline to exercise it's jurisdiction if it is just and proper under the circumstances. Section 46-b-98(b).

If a petitioner violates a custody order of a sister state by improperly removing a child in an effort to gain jurisdiction in the Connecticut courts, the petitioner can be ordered to pay the respondent' reasonable attorneys fees, court costs and travel expenses. The purpose of this penalty is to discourage forum shopping Section 46b-98(c)

J. [10.10] Child Custody Affidavit

In every custody proceeding in this state, a party seeking custody must give information under oath in the form of an affidavit concerning the child's present address, the places where the child has lived within the last five years, and the names and present addresses of the persons with whom the child has lived during that period. General Statute Section 46b-99. Although statutorily mandated, Connecticut courts have not been uniform in requiring this information be placed on the record. Each party is required to declare under oath whether:

> **1. He or she has participated as a party, witness or in any other capacity in any other litigation concerning the custody of the same child in this or any other state;**
>
> **2. He or she has information of any custody proceeding concerning the child pending in a court of this or any other state;**
>
> **3. He or she knows of any person not a party to this proceeding who has physical custody of the child or claims to have physical custody or visitation rights with respect to the child.**
>
> **4. If the court finds that either party has information concerning the custody of the said minor child, then the court may examine the parties further under oath as to the details of their information. All parties have a continuing duty to inform the court of any information concerning the custody of the minor child.**

General Statute Section 46b-99(b) and (c).

K. [10.11] Joinder of Additional Parties

It sometimes occurs that a person not a party to a custody proceeding has physical custody of a child or claims to have custody or visitation rights with respect to the minor child. The court is required under the circumstances to order the joinder of that party to the litigation of the case. Any person joined as a party to a custody proceeding is entitled to notice of the pendency of the proceeding and of his or her joinder as a party. If the person joined as a party is outside the State of Connecticut, then he must be served in accordance with the requirements of notice and jurisdiction. See General Statute Section 46b-95. The court has the power to require any party to the proceeding to appear personally before the court. General Statute Section 46b-100, and 46b-101.

L. [10.12] The Force and Effect of Custody Decrees

A custody decree rendered by a Connecticut court which has jurisdiction under the UCCJA section 46b-93 binds all parties who have actual notice and have been served in accordance with section 46b-95. As to these parties, the custody decree is conclusive as to all issues of law and fact. General Statute Section 46b-102.

M. [10.13] Recognition of Out of State Custody Decrees

Connecticut courts must recognize and enforce an initial or modification decree of the court of a sister state which has assumed jurisdiction under statutory provisions substantially similar to the UCCJA. General Statute Section 46b-103.

If the court of a sister state has made a custody decree, the Connecticut court must not modify that decree unless the Connecticut court determines that the sister state no longer has jurisdiction and that the Connecticut court does have jurisdiction. Section 46b-104. Once the Connecticut court determines that it is authorized to modify the custody decree of a sister state, it must give due consideration to the transcript of the record of the proceeding of the sister state, as well as the pleadings, orders, decrees, record of hearings, social studies and other pertinent information of the sister state. It's important to obtain all of these important records before trial and show them to opposing counsel. The courts of Connecticut are required to request a certified copy of the transcript of any court record and other documents of the sister state relevant to the custody determination. General Statute Section 46b-111 and 112.

A party wishing to enforce the terms and conditions of a custody decree of a sister state may file a certified copy of the custody decree of the sister state with the Connecticut Superior Court. The clerk is directed to treat that decree in the same manner as a custody decree of the Connecticut Superior Court. As such, the custody decree has the same force and effect of a decree rendered by the Connecticut Superior

Court. A person violating such a custody decree may be compelled to pay reasonable attorneys fees, travel and other expenses incurred by the opponent. General Statute Section 46b-105.

The clerk of the Superior Court for each judicial district is required to maintain a central registry for the following types of information under Section 46b-106:

1. Certified copies of divorce decrees of sister states;

2. Communications regarding the pendency of custody proceedings in sister states;

3. Communications concerning the finding of an inconvenient forum by a sister state;

4. Other communications or documents concerning a custody proceeding in a sister state which may effect the jurisdiction of the Connecticut Superior Court.

N. [10.14] Procedure for Handling Custody Proceedings Involving Out of State Witnesses and Out of State Hearings

It is not required that all portions of an interstate custody proceeding be held in Connecticut. The court has statutory authority to allow any party, or guardian ad litem, or attorney for the minor child, to adduce testimony of witnesses by deposition in another state. The court may order that the testimony of a person be taken in another state and also prescribe the manner in which the testimony is to be taken. Section 46b-108. Additionally, the Connecticut Superior Court may request the court of a sister state to hold a hearing to produce evidence concerning a custody proceeding in Connecticut. It is common for a Connecticut Superior Court to order a social study to be made in a sister state with respect to a custody proceeding pending in Connecticut. A Connecticut Superior Court may request the court of a sister state to order a party to appear in the Connecticut court when the matter pertains to a custody proceeding. General State Section 46b-109(a). Conversely, upon the request of the court of a sister state, a Connecticut court may order a person in this state to appear at a hearing at a sister state to produce or give evidence for use in a custody proceeding in the sister state. General Statute Section 46b-110(a). In all custody proceedings in this state, the court is required to preserve all pleadings, orders, decrees and records of the custody proceeding until the minor child reaches the age of eighteen (18) years. General Statute Section 46b-111.

II. TEMPORARY CUSTODY AND VISITATION (*PENDENTE LITE*)

A. [10.15] Statutory Basis

A temporary custody and visitation order is also known as a *pendente lite* order. *Pendente Lite* means "while the case is pending". It is a legal term signifying that the order is to last only while the case is in progress. *Black's Law Dictionary* (4th edition 1968); in re *Morrissey's Will,* 91 N.J. Eq. 289, 107 A.70.

The Superior Court is authorized, by statute, to issue temporary orders concerning custody and visitation. General Statute Section 46b-56(a). This authority pertains to any controversy in which custody is in issue, and also at any time after the return date of an annulment, dissolution or legal separation action filed pursuant to General Statute Section 56b-45. In addition, the Superior Court may issue an order affecting custody even prior to the return date of a complaint as long as the party seeking custody files a motion with the issuance of an order to show cause. The power to issue orders affecting custody is extremely broad and is based upon the state's continuing duty to protect children.

B. [10.16] When a Temporary Order Should Be Obtained

The motion for temporary custody is often served along with complaint for dissolution of marriage. This is to ensure that the motion will be heard by the court at the soonest possible time. It is often accompanied by other temporary motions concerning child support, alimony, exclusive possession of the marital home, medical insurance, life insurance and order to restrain disposition of personal property and marital assets. These motions are commonly referred to as the "temporary motions". When orders are entered concerning these temporary motions, the orders remain effective unless modified, terminated or merged into the final order.

It is good practice to obtain temporary orders concerning custody and visitation even in an uncontested custody case. This will prevent any misunderstanding concerning the residence of the minor child and the responsibility for paying child support. Child support can not be ordered unless a custody order is in place. Thus, having a custody order in place prevents gamesmanship by the parties. On the other hand, it is not every case that requires an early order of temporary custody. Some parties are capable of abiding by informal temporary custody and child support agreements that are not incorporated into an order of the court. When these informal agreements can be reached, they should be encouraged as they tend to reduce hostility and avoid needless litigation and expense. It is a good practice point, however, to put all informal agreements in writing with confirming letters directed to all attorneys in the case.

At the other end of the spectrum, is the case in which it is anticipated that there will be a contest over custody and visitation. In these situations, it is good practice to

prepare motions for custody and visitation at the earliest possible time. The earliest method of obtaining a custody order is by way of a petition and order to show cause. Only in the worst case scenario will a court issue an order *ex-parte* directing custody to one of the parties prior to holding a hearing. Usually the court will act upon an order to show cause only after a hearing within seven (7) days after notice is given to the responding party. In these cases, the court will put the matter down for a short calendar day, usually a Monday or Tuesday during the week.

In the vast majority of cases an early order concerning custody and visitation will serve to properly allocate the responsibilities of each parent with the minor child. The parties should be encouraged to reach an agreement through mediation using the services of the family relations department. Officers of the family relations department are on hand during short calendar days to discuss issues concerning temporary custody and visitation. In most cases, the parties are able to agree upon the allocation of time with the child at short calendar.

C. [10.17] The Significance of a *Pendente Lite* Order

The temporary order of custody and visitation sets the tone for the handling of the custody case. If the custody case is complicated, then the trial court may well refer it to the regional custody docket. This is especially the case where experts are expected to be called to testify concerning the best interests of the child. The reference is usually made after the orders of temporary custody are entered. The regional custody docket is a special court for the hearing of contested custody matters. For example, the case receives handling at the commencement of trial by "special masters" who work with the parties to reach settlement before trial. The significance of a temporary custody order should never be underestimated. If a parent concedes physical custody at the *pendente lite* stage, then it is likely that pressure will be put on that parent to concede physical custody at the final hearing. On the other hand, if the parents are not agreeable on the question of who will have primary custody *pendente lite*, the court will have to determine that question. Courts have shown a great willingness to enter a "shared custody" order in which case neither parent is given primary custody. By avoiding labels such as primary custody or primary physical residence, the court avoids "posturing " by the parties and focuses on what is truly in the best interest of the minor child.

In the case in which one parent is guilty of cruelty or misconduct to the minor child, it is imperative that the other party immediately seek an order of primary or physical custody of the minor child *pendente lite*. Some practitioners may well seek an order for sole custody pendente lite. While it is important to obtain primary or physical custody in this situation, it is almost never wise to seek an order of sole custody when an order of primary physical custody, coupled with joint legal custody, will do. The purpose of

joint custody is to assure the visiting parent that he or she to has custodial rights and responsibilities too, and to help foster a good relationship between the child and each parent.

The tactical problem of being the noncustodial parent is that he or she must be ready to react to the problems or difficulties of custody and visitation during the pendency of the case. Sometimes this may seem like an uphill battle. Other times, the noncustodial parent will be in a better position to show that the temporary orders are inherently unworkable. The noncustodial parent who has been denied visitation should be always ready to show that he or she would be more likely to promote continuing contact and foster a better relationship between the child and each parent. Most parties would prefer to be the custodial parent so as to exert greater control and influence over the outcome of the case. The noncustodial party should be ready at any time to file motions modifying custody and visitation *pendente lite* to more nearly level the playing field. For example, it may be important to file a motion for shared parenting in order to gain greater access to the minor child. Shared parenting plans can also take better advantage of flexible work schedules and summer vacations.

It is customary for the court to have the parties meet with the family relations officer before hearing a contested *pendente lite* custody matter. The family relations officer will try to help the parties reach agreement by serving as a mediator. The officer will make suggestions, or offer alternative plans for custody arrangements. The court can also ask the mediator for a recommendation on a *pendente lite* basis. Connecticut Practice Book Section 481A (1995).

Pendente lite custody and visitation orders are immediately appealable to the appellate court. *Madigan vs. Madigan,* 224 Conn. 749, 620 A.2d 1276 (1993). An immediate appeal may be the only reasonable method of ensuring that the important rights surrounding the parent-child relationship are adequately protected. *Madigan,* 224 Conn. at 755. As such, these orders are similar to temporary alimony and support orders which are also immediately appealable. *Litvaitis vs. Litvaitis,* 162 Conn. 540, 295 A.2d 519 (1972).

D. [10.18] Modification of Pendente Lite Orders

Temporary custody and visitation orders are modifiable during the *pendente lite* phase of the case. *Hall vs. Hall,* 186 Conn. 118, 439 A2d 447 (1982). It is not necessary to show a material change in circumstances since the time of the previous order, although the Judge will want to know from the parties what has changed or transpired since the initial order to warrant a change in the *pendente lite* custody order. It is customary for the court to use a family relations officer to mediate a *pendente lite* dispute. This officer will probably be asked to give advice to the court on this question. The Superior Court may modify temporary custody according to the best interest of the minor child at any time. Although increased litigation during the pendency of a case

may well be detrimental to the parent- child relationship, the visiting parent should be prepared to file a motion for modification of custody if it is in the best interest of the child to do so. Situations calling for this tactic include a change in the residence of the primary custodial parent, a change of work hours of either parent, misconduct on the part of the custodial parent, or an intelligent and knowing preference on the part of the minor child. There are countless situations which may suggest that a change is warranted during the *pendente lite* phase of the case. The counter productive effects of generating litigation should be carefully weighed by counsel and client before a motion for modification is filed with the court.

III. FINAL CUSTODY AND VISITATION ORDERS

E. [10.19] Statutory Basis

The court's authority over the issue of custody and care of minor children in controversies is governed by statute. General Statute section 46b-56 provides that the court may at any time make or modify any proper order regarding the education and support of children and of the care, custody and visitation of children. The court has the power to assign custody of any child to the parents jointly, to either parent solely, or to a third party according to the court's best judgment. The court may also make any order granting the right of visitation to grandparents. General Statute Section 46b-56 (a). There is no presumption in favor of either the mother or the father as a custodial parent. *Macker vs. Macker,* 24 Conn. App. 804, 585 A2d 102 (1991). The court has broad discretion to award custody based upon what is in the best interest of the minor child. *Cappetta vs. Cappetta,* 196 Conn. 10, 490 A2d 996 (1985). *Weinstein vs. Weinstein,* 18 Conn. App. 622, 561 A2d 443 (1989).

The court is also authorized to grant the right of visitation of a child to any third party. This right has been extended to include even a former foster parent. *In re Jennifer P.* 17 Conn. App. 427, 553 A2d 196, Cert. denied 211 Conn. 801, 559 A2d 1136 (1989). The only criterion is the best interests of the minor child. *Michael vs. Wawruck,* 209 Conn. 907, 551 A2d 738 (1988).

The court must be guided by two (2) primary considerations in establishing or modifying a custody order: (1) it must consider the best interest of the minor child, and (2) it must consider whether the parenting education program has been satisfactorily completed by the parents. General Statute Section 46b-56 (b). Under the best interest test, the court is required to give consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference. Contrary to popular opinion, there is no statutorily defined age limit for determining a child of sufficient age. For example, an intelligent and capable twelve year old child may be entitled to greater weight then an immature sixteen (16) year old child. A parent, may be denied custody even where the child indicates a preference for that parent. *Dubicki vs. Dubicki,* 186 Conn. 709, 443 A2d 1268

(1982). In making an initial order of custody, the court may also take into consideration the causes for the dissolution of the marriage or legal separation if such causes are relevant to a determination of the child's best interest. For example, the fact that a spouse has been battered and suffers from battered spouse syndrome, may support the claim for awarding custody. This is because the effect of battering, in the household, has an effect upon parenting skills of both parents and the child's response to the parents even after their separation. *Knock vs. Knock,* 224 Conn. 776, 621 A2d 267 (1993).

The parenting education program act became effective on January 1, 1994. P. A. 93-319. The primary goal of this program is to make sure that parents are aware of the many issues and problems children face when their family situation changes. It is designed to educate parents about how to help children handle changes in their family during divorce or separation. The law requires judges to order any person directly involved in a court case to attend the program when a minor child is involved in the case. The program cost is $100.00 per person and may be waived if the participant is indigent. The program consists of six hours and usually can be completed in two or three classes. The program is now ordered as a matter of course in all first appearances before the court. If a parent does not satisfactorily complete the course, or if a parent refuses to take the course, then the court will have authority to deny custody to that person.

All parents have the right to receive information concerning the child's academic, medical, hospital or other health records. There is a presumption that the noncustodial parent may receive such information. In almost all cases, the noncustodial parent will be entitled to receive the child's school report cards and mental and medical health records. See General Statute Section 46b-56.

F. [10.20] Standing

The question of standing normally does not occur in a contest over custody. This is because the parties in a contest over custody normally have an on-going interest in the minor child. The concept of standing is a practical and functional one designed to assure that only those with a genuine and legitimate interest are made parties. *Beckish vs. Manafort,* 175 Conn. 415, 399 A2d 1274 (1978).

Since the court may grant visitation to any person based upon the best interest of the child standard, standing will not be a barrier in most visitation matters. *In re Jennifer P,* 17 Conn. App. 427, 553 A2d 196 (1989), cert denied 211 Conn. 801, 559 A2d 1136 (1989) (a former foster parent has standing to petition for visitation rights even where the State of Connecticut (DCYS) has custody of the children and opposes the petition). Since the standard for granting visitation rights is broad (the best interest of the child), nearly any person alleging a relationship to the child has standing to petition for visitation rights. *Michaud vs. Wawruck,* 209 Conn. 407, 551 A2d 738 (1988).

G. [10.21] Custody in Dissolution, Separation, Annulment and Non-Married Situations

The power of the court to affect custodial placement applies in all controversies before the court, including dissolution proceedings, legal separation proceedings and annulment cases. General Statutes 46b-56 (a). The only limitation upon this power is the requirement that the court have jurisdiction under the UCCJA. In addition, the court has the power to allow any interested third party to intervene in a case concerning custody of minor children. General Statute Section 46b-57. The power to make and enforce custody orders extends to adopted children. General Statute Section 46b-58. Since the child of any void or voidable marriage is legitimate by statute, the court can make custody determinations even in annulment petitions. General Statutes Section 46b-60.

Children born to parents who are unmarried and separated are frequently the subject of custody and visitation disagreements. In all cases in which the parents live separately, the Superior Court may make any order as to custody, care, education, visitation and support of any minor child upon the complaint of either party. General Statute Section 46b-61. In such a case a complaint and summons should be filed along with a citation to appear in court on a date certain to determine custody and visitation *pendente lite*.

H. [10.22] Joint Custody

Joint custody is an order awarding legal custody of a minor child to both parents, providing for joint decision making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents. The court may award joint legal custody without awarding joint physical custody where the parents have so agreed. General Statute Section 46b-56a (a). In separation agreements and dissolution agreements, attorneys frequently use the terms "joint legal custody" and "joint custody" interchangeably. Joint legal custody or joint custody both refer to the fact that the parties have agreed to joint custody without specifying which parent is to have the primary residence of the child. Agreements incident to a dissolution of marriage will include the term "physical custody" to refer to the parent who has primary residence with the child. Since the parent with physical custody (custodial parent) controls the actual day to day activities of the minor child, that parent truly has control over the child. The term "joint custody" is probably a misnomer because in the typical separation or dissolution agreement, the noncustodial parent is given reasonable rights of visitation just like any other parent without joint custody. See *Tabackman vs. Tabackman*, 25 Conn. App. 366, 593 A2d 526 (1991); and *Emerick vs. Emerick*, 5 Conn. App. 649, 502 A2d 933 (1985)

Joint custody cannot be awarded in a dissolution action where neither party requests it. *Tabackman vs. Tabackman*, 25 Conn. App. 366, 593 A2d 526 (1991). A court may award joint legal custody, with or without joint physical custody, if the parties agree to

joint custody or if one party seeks joint custody. *Emerick vs Emerick,* 5 Conn. App. 649, 657, 502 A2d 933 (1985), cert. denied, 200 Conn. 804, 510 A2d 192 (1986). A court may also award joint legal custody upon the filing of a motion for conciliation after a party has made a motion seeking joint custody. *Emerick vs. Emerick, Id.* As long as one of the parties to a dissolution seeks joint custody, it is not error for the court to award joint legal custody. *Giordano vs. Giordano,* 9 Conn. App. 641, 645, 520 A2d 1290 (1987).

As a practice point, it is wise to evaluate on an on-going basis, the custody pleadings that have been filed. If a claim for joint custody has not been made, and the party seeking sole custody has not included a request for joint custody as an alternative pleadings he might want to amend the complaint to seek joint legal custody. In *Cabrera vs. Cabrera,* 23 Conn. App. 330, 580 A2d 1227, cert. denied, 216 Conn. 828, 582 A2d 205 (1990), the defendant father's claim for joint custody was defeated on appeal because he had not included a request for joint custody in his pleadings. *Cabrera vs. Cabrera,* 23 Conn. App. at 346-347.

The court has the authority to award joint legal custody while denying joint physical custody. *Blake vs. Blake,* 207 Conn. 217, 541 A2d 1988. Joint legal custody ordinarily entitles the noncustodial parent only to be consulted about the child's education, health care and religious training; while physical custody involves much more, such as the residence of the child, control over his extra curricular activities, disciplinary rules, and primary access to the child. Connecticut statutes do not make this differentiation but it is well known that this differentiation exists in practice. Separation agreements can provide for the division of responsibilities and access to the child without the need to apply labels and epithets. In emergency medical situations, each parent generally has the authority to make necessary decisions to obtain emergency medical treatment.

There is a presumption that joint custody is in the best interest of the minor child where the parents have agreed to an award of joint custody. The agreement to have joint custody affects the burden of proof. General Statute Section 46b-56a (b). If the court declines to award joint legal custody, then the court is required to state it's reasons for denial.

Even if only one parent seeks an order of joint custody, then the court may order both parties to submit to conciliation at their own expense. General Statute Section 46b-56a (c). Where a temporary joint custody arrangement is in place, if the mother and father evidence an unwillingness to cooperate and communicate, and each desire sole custody of the child, it is unlikely that an award of joint custody would be in the best interest of the child. *Faria vs. Faria,* 38 Conn. Supp. 37, 456 A2d 1205 (1982).

I. [10.23] Split Custody

Split custody is not mentioned in any of the custody statutes although it is becoming increasingly common. It refers to the situation when there is more than one (1) child and each parent obtains physical custody of at least one (1) child. Split custody can be a basis for a deviation of the child support guidelines. This is because each parent has primary custodial and financial responsibilities of one or more children. In split custody situations, it is not uncommon for the more financially advantaged spouse to pay a proportionately greater support amount to the lesser monied spouse. Split custody arrangements usually arise when the children are of sufficient age to make a preference to be with one or the other parent. Sometimes the preference may be based upon illusory objectives of the minor child. Split custody arrangements must be analyzed very carefully in order to guard against manipulation and gamesmanship. A parent can be unwittingly manipulated by the children or by the other parent. It is not uncommon for one parent to acquiesce to a split custody arrangement in order to avoid losing the farm. Most family relations officers will try to keep the children together in a custodial placement, or in the alternative, arrange a visitation schedule to maximize the children's time together.

J. [10.24] Counsel for the Minor Child

It is appropriate in most cases to appoint counsel for the minor child in a contested custody dispute. An alternative to the appointment of counsel is the appointment of a guardian ad litem. The appointment of counsel for the minor child is governed by General Statute Section 46b-54. It is not mandatory. This statute provides that the court may appoint counsel for the minor child if it is in the best interest of the child to do so. The court can appoint counsel on it's own motion or upon the motion of either party or upon the request of any child who is of sufficient age and intelligence. General Statute Section 46b-54 (a).

The purpose of appointing counsel for the minor child is to ensure independent representation of the child's interest. *Knock vs. Knock,* 224 Conn. 776, 621 A2d 267 (1993). Legal commentators have advocated the appointment of counsel for minor child in contested custody proceedings for years. K. Landsman and M. Minow, *"Lawyering for the Child; Principles of Representation and Custody and Visitation Disputes Arising from Divorce"*, 87 Yale L. J. 1126, 1129-34 (1978); R. Berdon, *"Child Custody Litigation; Some Relevant Considerations"*, 53 Conn. B. J. 279, 286-88 (1979). In *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981), the Supreme Court stopped short of reversing a custody decision for lack of the appointment of counsel for the minor child, finding no abuse of discretion. But in *G. S. vs. T. S.*, 23 Conn. App. 509, 582 A2d 467 (1990), the Appellate Court reversed the custody order of the trial court and ordered further proceedings solely because the trial court should have appointed counsel for the minor children on the basis of allegations of child abuse and sexual molestation.

It cannot be said that the appointment of counsel for the minor child should be made in every contested custody case. The appointment of legal counsel for a minor child can often have damaging psychological affects upon the child and also upon the child's perception of the parents who are going through a legal battle. When financial resources of the parents are tight, the cost factor can weigh in. In these cases, the Superior Court should wait until the completion of a custody evaluation before appointing counsel for the minor children (at least where the parties are able to work out child sharing arrangements themselves). In cases where allegations of child abuse exist, it is preferable to appoint counsel for the minor child at an early interval. This will serve not only to protect the minor child, but also to insulate the accused parent from further accusations and to lower the legal expectations of the competing litigants.

The role of the counsel for the minor child in custody matters is to abide by the child/client's decisions concerning the objectives of the representation. Rule 2.1 of the Rules of Professional Conduct requires that a lawyer "shall abide by a client's decisions concerning the objective of representation." A lawyer who is appointed to represent the interest of a minor child in a contested custody proceeding should review the Guidelines for Counsel for Children prepared by the family law section of the Connecticut Bar Association. These guidelines are published in the Connecticut Bar Journal. 56 Connecticut Bar Journal 484 (1982). The guidelines clearly indicate that the role of counsel is to advocate on behalf of the minor child, determining in advance what the child wants, and taking a course of action consistent with the child's objectives.

The role of the guardian ad litem is more difficult. The court has authority to appoint a guardian ad litem in a contested custody proceeding. General Statute Section 45a-132. The appointment of a guardian ad litem is mandatory in the case of an abused or neglected child. Connecticut Practice Book Section 484 (1995). The appointment of the guardian ad litem in any other family relation proceeding is permissive. It is not uncommon for a family relations officer to be designated as guardian ad litem. The guardian ad litem makes an independent review of what is in the child's best interest and advocates on behalf of that best interest even it is conflicts with the child's wishes.

It is dangerous to view the roles of counsel for the child and guardian ad litem as being identical. They are entirely different roles. The guardian ad litem is entitled to consider what is in child's best interest, and not necessarily the child's stated preference. The counsel for the minor child is always an advocate for the child's preference.

K. [10.25] Family Relations Office Investigations

The court may order an investigation into a custody matter as long as it may be helpful or material to a proper disposition of the case. General Statute Section 46b-6. The investigation may include an examination of the parentage and surroundings of the child, his age, habits and history, inquiry into the home conditions, habits and character of his parents or guardians and evaluation of his mental or physical condition. The

investigation also includes an examination of the causes of the marital discord and the financial ability of the parties to furnish support. General Statute Section 46b-6. Once an evaluation is ordered, the case cannot be disposed of until the report has been filed with the court and the parties have had an opportunity to examine it. General Statute Section 46b-7. Although Practice Book Section 479 takes a more liberal approach in permitting the disposition of cases prior to the filing of the case study report, it is better practice to wait until after the investigation report has been filed before proceeding with a contested custody case. One would not wish to relitigate a custody matter based upon a subsequent filing of a case study report. A recent Appellate Court decision indicates that the trial court may proceed to hear a contested custody matter even before the family relations evaluation is filed as long as the court retains jurisdiction to modify the custody order. *Duve vs. Duve*, 25 Conn. App. 262, 594 A2d 473, cert. denied 220 Conn. 911 (1991). One could argue that this decision elevates speed of adjudication over quality of adjudication.

The function of the Family Relations Office is to conduct an investigation for the benefit of the court. The Family Relations Office is not an advocate for any party, although the family relations officers often see themselves as advocates for the child. The report of the Family Relations Office can often determine the outcome of a case. Unless the parties can afford to hire outside evaluators to impeach the conclusions of the family relations officer rendering the report, the report can serve as the basis of a court's custody determination. Since personality conflicts can often influence custody evaluations, it is important that a party be honest and factual with the family relations officer. The attorney can help by giving a written narrative of the case to the family relations officer in support of the client's position. Ultimately, it would be up to the client to persuade the family relations officer that his version of the facts is the more credible.

The Family Relations Office investigation follows the general philosophy contained in the report of the Program Evaluation Committee. This report is contained in the appendix attached at the end of this chapter. The basic philosophy is predicated on three principles: 1) the final custodial evaluation is a form of alternate dispute resolution; 2) the family should be assisted by the evaluation process; and 3) the evaluation must be flexible enough to respond to the unique capacities of each family. Since the stated goal of the evaluation process is to seek resolution of the dispute, it is not uncommon for the Family Relations Office investigators to see themselves as mediators. Sometimes the distinction between mediators and evaluators can become blurred and result in some unusual evaluations. The practicing attorney must be ever vigilant to spot inaccuracies, inattentiveness, and even favoritism in the final evaluation report.

There exists a list of unofficial suggested criteria for child custody evaluations utilized by the Family Relations Department. A copy of the suggested criteria for determining custody is contained in the appendix following this chapter.

L. [10.26] Factors in Awarding Custody and Visitation

The trial court is vested with broad discretion in making determinations as to custody and visitation. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005; *Simons vs. Simons,* 172 Conn. 341, 342, 374 A2d 1040 (1977). Probably the most difficult cases are the ones in which both parents are found to be good nurturing parents. *Seymour vs. Seymour, Id.* at 708 (the court has a Solomonic responsibility). The criteria for awarding custody is contained in General Statute Section 46b-56 (b). This section states:

> **In making or modifying any order with respect to custody or visitation, the court shall be guided by the best interest of the child giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference, provided in making the initial order, the court may take into consideration the causes of the dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interest of the child.**

This statute is not unconstitutionally vague. *Seymour vs. Seymour, Id.* at 710. There are no objective guidelines which the court must follow in awarding custody, and the court is not required to make specific findings on each of the factors that it considers important. *Seymour vs. Seymour, Id.* at 710.

> **We continue to adhere to the view that the legislature was acting wisely in leaving the delicate difficult process of fact-finding in family matters to flexible, individualized adjudication of the particular facts of each case without the constraint of objective guidelines. See Mnookin, *Child-Custody Adjudication Judicial Functions in the Face of Indeterminacy* 39 Law and Contemporary Problems. 226, 249-68 (Summer 1975); Foster & Freed, *Child Custody,* 39 New York U. Law Rev. 423, 441 (1964).**

The Connecticut Practice Book on Family Law and Practice by A. Rutkin, E. Effron, and K. Hogan gives a list of useful criteria in determining custody:

> **1. Parenting skills. *Cappetta vs. Cappetta,* 196 Conn. 10, 490 A2d 996 (1985) (1980).**
>
> **2. Each parent's relationship and psychological or emotional ties with the child. *Cappetta vs. Cappetta,* 196 Conn. 10, 490 A2d 996 (1985); *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005.**

3. Parental character with respect to wilful disobedience of court orders. *Hall vs. Hall,* 186 Conn. 118, 439 A2d 447 (1982); *Stuart vs. Stuart,* 177 Conn. 401, 418 A2d 62 (1979); *Simons vs. Simons,* 172 Conn. 341, 374 A2d 1040 (1977).

4. Willingness to facilitate visitation with the other parent. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005 (1980).

5. Past behavior as it relates to the parenting ability. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005 (1980); *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981).

6. Recommendations in the family relations report. *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981).

7. Advise of the attorney for the child. *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981).

8. Credibility. *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981).

9. Each parent's manipulative or coercive behavior through efforts to involve the child in the marital dispute. *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981).

10. The parent's behavior and it's effect on the child. *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981).

11. Continuity and stability of environment. *Cappetta vs. Cappetta,* 196 Conn. 10, 490 A2d 996 (1985).

12. The flexibility of each parent to best serve the psychological development and growth of the child. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005 (1980).

13. Which parent is more willing and able to address medical and educational problems of the child and to take appropriate steps to have them treated and corrected. *Faria vs. Faria,* 38 Conn. Supp. 37, 456 A2d 1205 (1982).

14. Stable and familiar environment with love and attention from the grandparents. *Ridgeway vs. Ridgeway,* 180 Conn. 533, 529 A2d 801 (1980).

15. The psychological instability of one parent posing a threat to the child's well being. *Ridgeway vs. Ridgeway,* 180 Conn. 533, 529 A2d 801 (1980).

16. The recommendation that one parent immediately commence in-patient treatment. *Ridgeway vs. Ridgeway,* 180 Conn. 533, 529 A2d 801 (1980).

17. Visitation having an adverse effect on a child at the time, *Ridgeway vs. Ridgeway,* 180 Conn. 533, 529 A2d 801 (1980).

18. Remarriage of either parent. *Trunik vs. Trunik,* 179 Conn. 287, 426 A2d 274 (1979).

19. Parental sexual activity. *Trunik vs. Trunik,* 179 Conn. 287, 426 A2d 274 (1979).

20. Consistency in parenting and life style, insofar as these factors might effect the child's growth, development and well being. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005 (1977).

21. The time each parent would be able to devote to the child on a day to day basis. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005 (1977).

22. Untidy condition of the home, alcoholism, leaving the home unattended, and emotional problems. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005 (1977).

8 Conn. Practice Book Section 41.24 (1991)

1. [10.27] The Focus of the Court

It is the duty of the trial court to determine "not which parent was the better custodian in the past but which is the better custodian now." *Yontef vs. Yontef,* 185 Conn. 275, 440 A2d 899 (1981). In *Yontef,* the court found evidence that the plaintiff's involvement in activities outside of the home resulted in neglect of the children's personal needs. *Yontef,* 185 Conn. at 282. Where both parents qualify as good parents and are psychologically connected to the minor child, the parent with the best present record of custodianship will prevail. See also, *Trunik vs. Trunik,* 179 Conn. 287, 290, 426 A2d 274 (1974); and *Spicer vs.Spicer,* 173 Conn. 161, 162, 377 A2d 259 (1979).

2. [10.28] Psychological Parent

Child psychologists point out that a child may become deeply attached to one or both parents (the "psychological parent"). This attachment may occur even though one parent has serious problems and inadequacies. In such cases it can be to the disadvantage of the child to be placed in the primary custody of such a parent. Leonard and Provence, *The Development of Parent-Child Relationships and the Psychological Parent,* 53 Connecticut Bar Journal 320, 327 (1979). Goldstein, Freud, and Solnit maintain that a child may have a continuous, unconditional, and permanent relationship with at least one adult who will become the child's psychosocial parent. Goldstein, Freud, and Solnit, *Beyond the Best Interest of the Child,* p.79 (1979). It is common for the court to look into the psychological relationship between the parent and the minor child to determine whether a strong psychological relationship exists. If a strong psychological relationship exists in both parents, then the court will look to other factors. *Seymour vs. Seymour,* 180 Conn. 705, 433 A2d 1005 (1977).

3. [10.29] More Cognizant Parent

The more cognizant parent is the one which the trial court believes would be more willing to recognize the importance of the noncustodial parent in the child's life. All things being equal, this factor alone can be outcome determinative. *Savage vs. Savage,* 25 Conn. App. 693, 596 A2d 23 (1991). In the *Savage* case, a psychologist testified that he was unable to recommend which party would be the more suitable custodial parent. The trial court gave custody of the child to the defendant father because it believed him to be the more cognizant parent. In connection with the final decree, however, the Appellate Court reversed the court's order that the parties engage in post-judgment psychological consultations. There is no statutory authority for the order compelling post-judgment evaluation. *Savage, Id.* at 701.

4. [10.30] Battered Women's Syndrome

There is scientific evidence that it is detrimental to place a minor child in the custody of a parent who batters the other parent. L. Walker and G. Edwall, *Determination of Visitation and Custody in Divorce,* Domestic Violence on Trial pp. 127-52 (Sonkin Ed., 1987) ; L. Crites and D. Coker, *What Therapists See That Judges May Miss,* The Judges Journal 8,42 (Spring 1988). In 1990, the United States Congress recommended that "for purposes of determining child custody, credible evidence of physical abuse of one's spouse should create a statutory presumption that it is detrimental to the child to be placed in the custody of the abusive parent." H.R. Cong/ Rec. 172, 1001 Congress, 2d Sess. (1990). In 1990, the National Council of Juvenile and Family Court Judges adopted official recommendations on improving court practice with respect to family violence. "When the issue of family violence is found to exist in the context of a dissolution of marriage, domestic relations case of any kind, or in a juvenile court case the violent conduct should

be weighed and considered in making custody and visitation orders...." National Counsel of Juvenile and Family Court Judges, "Family Violence Project, Family Violence: Improving Court Practice." 41 Juvenile and Family Court Journal 19-20 (1990).

In *Knock vs. Knock*, 224 Conn. 776, 621 A2d 267 (1993), the Supreme Court upheld a trial court decree granting custody of the minor child to the battered spouse. Holding that the trial court did not abuse it's discretion, the Supreme Court stated that testimony concerning battered women's syndrome is relevant to the best interest of the child in determining custody. *Knock, Id.* at 786.

5. [10.31] Evaluation by the Family Relations Office

The trial court is free to accept or reject in whole or in part, the evidence presented by or on behalf of either party. *Brey vs. Brey*, 1 Conn. App. 397, 399, 472 A2d 354 (1984). The court is not bound to accept the testimony of expert witnesses. *Yontef vs. Yontef* 185 Conn. 275, 440 A2d 899 (1981). Similarly, the court is not bound to accept the recommendation of the family relations officer concerning custody. *Evans vs. Santoro*, 6 Conn. App. 707, 507 A2d 116 (1986).

6. [10.32] Child's Preference

If a child is of sufficient age and capable of informing an intelligent preference, the trial court must give some weight to the wishes of the minor child to live with one or the other parent. General Statute Section 46b-56 (b). The weight which is to be given this preference depends upon the case and upon the age and intelligence of the child. The value and danger associated with a child's preference is best expressed by the Appellate Court in the case of *Gennarini vs. Gennarini*, 2 Conn. App. 132, 477 A2d 674 (1984). The court may not always want or need to hear the child's preference. The child's preference may be of questionable accuracy due to the psychological distortion involved in custody litigation. The child's demeanor may sometimes speak volumes about the child's true intention. For these reasons, the trial court may glean the child's preferences and feelings from the contents of family relations case studies and through the testimony of psychological experts. The child's counsel can also be instrumental in articulating the child's preference.

A child of tender years may not be of sufficient age or intelligence to form a preference as to whether he should be placed in the custody of one parent or the other. *Faria vs. Faria*, 38 Conn. Supp. 37, 456 A2d 1205 (1982). Even where the preference is articulated, the court need not give controlling weight to it. In *Knock vs. Knock*, 224 Conn. 776, 621 A2d 267 (1993), the trial court expressed a concern with the child's articulated preference and ultimately decided that it would not be in the best interest of the child to follow that preference. Similarly, a preference coerced by one parent is not going to be effective. In *Blake vs. Blake*, 207 Conn. 217, 541 A2d 1201 (1988), the trial court found that the defendant father had coerced his children into opposing a move to

California with their mother saying that they would lose their father if they were to change their residence to California. The Supreme Court affirmed the trial court's order awarding custody to the mother notwithstanding the contrary preference of the minor children (ages 5, 7, and 9).

7. [10.33] Fitness of the Parents

Each parent's mental fitness to serve as primary custodial parent is clearly a relevant consideration for the court. Where a parent's emotional instability is a threat to the well being of the minor child, that parent may be denied physical custody. *Ridgway vs. Ridgeway,* 180 Conn. 533, 429 A2d 801 (1980). The fact that a parent has some mental instability does not necessarily mean that the mentally stronger parent will win custody. The most important factor is whether that mental instability has an adverse effect upon that party's parenting ability. *Wolk vs. Wolk,* 191 Conn. 328, 464 A2d 780 (1983); and *Cabrera vs. Cabrera,* 23 Conn. App. 330, 580 A2d 1227 (1990).

Moral fitness of the parents can also play a significant part in the ultimate custody determination. In *Weinstein vs. Weinstein,* 18 Conn. App. 622, 561 A2d 443 (1989), the trial court cited four examples of incidents reflecting the plaintiff wife's questionable morality. These incidents included staying in the same motel room with a boyfriend while her children were present, regularly arranging to leave the children with relatives and friends rather than with their father, taking the children out of school and ignoring court visitation orders whenever they conflicted with her personal plans. Although the court noted that both parents were loving and caring parents, one parent had exhibited better parenting skills than the other. *Weinstein vs. Weinstein,* 18 Conn. App. at 626.

Another influential factor is whether a parent has a strong ability to exercise discipline and control over a child. *Anderson vs. Anderson,* 122 Conn. 600, 191 A2d 534 (1937).

The trial court will usually respond more favorably to the parent who is better able to meet the child's needs. In *Faria vs. Faria,* 38 Conn. Supp. 37 456 A2d 1205 (1982), the court awarded custody to the father who exhibited greater willingness to address the child's leaning disability. Sometimes the court is required to make fine distinctions in awarding custody. In *Brennan vs. Hill,* 9 Conn. App. 86, 516 A2d 149 (1986) custody was awarded to the mother who had successfully raised, loved and cared for the minor child his entire life despite the court's seemingly inconsistent finding that the father could more adequately meet the child's physical needs and the recommendation of the family relations officer that custody be awarded to the father.

8. [10.34] Causes for the Dissolution

General Statute Section 46b-56(b) gives the court authority to consider the cause of dissolution of marriage if the cause is relevant to a determination of the best interest of

the child. This factor only applies to the initial order of custody. In *Wolk vs. Wolk*, 191 Conn. 328, 464 A2d 780 (1983), the trial court found that nonwithstanding the wife's emotional instability as a factor in the breakdown of the marriage, custody of the minor children would go to the wife. Evidence of misdeeds or adultery may often adversely affect the outcome of a custody determination. *Elldrissi vs. Elldrissi*, 173 Conn. 295; 377 A2d 330 (1977). Such evidence should not result in an adverse determination unless the misconduct has had a direct effect upon the minor children. *Cabrera vs. Cabrera*, 23 Conn. App. 330, 580 A2d 1227 (1990). An award of custody should not be a reward or punishment to either parent. *Faria vs. Faria*, 38 Conn. Supp. 37 456 A2d 1205 (1982).

9. [10.35] Unusual Situations

Unusual situations can arise which will have an effect upon the court's ultimate determination of custody. In *Charpentier vs. Charpentier*, 206 Conn. 150, 536 A2d 945 (1988), the wife became involved in a lesbian relationship in which the wife's sexual partner moved into the family home to live with her and the five (5) minor children. Custody of the children was ultimately awarded to the father. This determination was not based upon homophobia. The trial court was concerned with abusive behavior directed toward the children and the fact that the lover had been twice institutionalized for mental problems. In so holding, the court reinforced the principle that the unusual situations must have a direct bearing on the child's best interests.

10. [10.36] Parental Relocation Outside of the State of Connecticut

A determination by one parent to relocate outside of the State of Connecticut is clearly an important factor for the court to consider in awarding custody. In *Blake vs. Blake*, 207 Conn. 217, 541 A2d 1201 (1988), both parents agreed upon joint legal custody but disagreed about whether the plaintiff mother should be permitted to take the children to California for permanent residence. The defendant claimed that to do so would be contrary to the concept of joint custody. The Supreme Court rejected this argument and allowed the plaintiff to move to California with the minor children. The trial court found that it would be in the best interest of the children to allow the plaintiff to live near her family in California where all the children were born and had lived for a period of time. The court also granted visitation rights and found that the defendant father had ample financial resources to enable him to exercise them.

In *Presutti vs. Presutti*, 181 Conn. 622, 437 A2d 299 (1980), the defendant wife moved to Italy during the dissolution proceeding and took the child with her. In upholding the ruling of the trial court granting custody to the mother, the Supreme Court stated that the trial court has great discretion under the circumstances of the case to grant custody to the mother. Its decision cannot be reversed on appeal unless an

abuse of that discretion is clear. *Presutti vs. Presutti,* 181 Conn. at 626. The fact that the father would have difficulty enforcing his right of visitation in Italy was of no moment. *Presutti vs Presutti,* 181 Conn. at 629.

M. [10.37] Authority to Enter Orders Concerning Visitation

The authority for entering visitation orders is contained in General Statute Section 46b-56. The court may make or modify any proper order regarding visitation of a minor child as long as it has jurisdiction. General Statute Section 46b-56(a). The court may also make any order granting the right of visitation of any child to a third party, not limited to grandparents. In making or modifying any order with respect to visitation, the court is required to consider the child's best interest, giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference. When making an initial order, the court may also take into consideration the cause for the dissolution of marriage or legal separation. General Statute Section 46b-56(b).

Under General Statute Section 46b-57, the court may allow third parties to intervene upon motion for the purpose of establishing visitation rights. In making any visitation order under this section, the court must be guided by the best interest of the child, giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference. As a condition precedent to an intervention by a third party, there must exist a controversy independent of the visitation motion. *Manter s. Manter,* 185 Conn. 502, 441 A2d 146 (1981).

The court may grant the right of visitation to any person. General Statute Section 46b-59. Such an order must be according to the court's best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The granting of visitation rights is not contingent upon any order of financial support by the court. Under this statute, any party may petition the court for visitation as long as that party shows a substantial interest in the outcome of the controversy. *Temple vs. Meyer,* 208 Conn. 404, 544 A2d 629 (1988) (stranger); *In re Jennifer P.* 17 Conn. App. 427, 553 A2d 196, cert. den. 211 Conn. 801, 559 A2d 1136 (1989); (former stepmother). While some other jurisdictions have granted visitation only to parties who share a blood or legal relationship with the minor child, *Bryan vs. Bryan,* 132 Ariz, 359, 645 Pac.2d, 1267 (1982) (stepparent); *Looper vs. McManus,* 581 P.2d 487, 489 Okla. App. (1978) (grandparents); *Spells vs. Spells,* 250 PA. Supra. 168, 175, 378, A2d 879 (1977) (stepfather); Connecticut is not so limited. Visitation is not an infringement upon the parents' right to privacy. *Lebrer vs. Davis,* 214 Conn. 571 A2d 691 (1990); *Pollard vs. Pollard,* 1 Conn. Ops. 1046 (Sept. 25, 1995) (Teller, J. presiding).

N. [10.38] Limitations on Visitation

Minor children are entitled to the love and companionship of both parents. *Raymond vs. Raymond,* 165 Conn. 735, 345 A2d 48 (1974). Unless a parent is completely unfit,

a decree should allow a parent deprived of custody to have visitation rights with the minor children under such restrictions as the circumstances warrant. *Raymond vs. Raymond,* 165 Conn. at 741. The law is clear, however, that a parent's visitation right is not an absolute right but one which is dependent upon what is in the best interest of the minor child. Visitation rights can be restricted, or terminated under proper circumstances. *Raymond vs. Raymond,* 165 Conn. at 741. In *Elldrissi vs. Elldrissi,* 173 Conn. 295, 377 A2d 330 (1977) the Supreme Court upheld a trial court order prohibiting visitation rights to the defendant father. In this case there was evidence that the defendant had been intolerably cruel to the plaintiff during the marriage and had made threats that he would harm the minor child. *Elldrissi vs. Elldrissi,* 173 Conn. at 301. The court is vested with broad discretion and it's ruling will be reversed only upon a showing that some legal principle or right has been violated or that the discretion has been abused. *Palmieri vs. Palmieri,* 171 Conn. 289, 290 370 A2d 926 (1976).

It has become increasingly common to impose restrictions on visitation rights where there is some evidence that the visitation would have a harmful effect upon the child. One example of his would be supervised visitation. Connecticut follows the majority approach which has been to uphold visitation restrictions where is there some proof of detriment to the minor child. In *Gallo vs. Gallo,* 184 Conn. 36, 440 A2d 782 (1981), the Supreme Court left intact a trial court visitation restriction which banded overnight visitation at the father's home as long as he continued to reside with a particular woman out of wedlock. The court did not say that unmarried cohabitation was presumptively bad for the child; but the child was not allowed any overnight visitation with his father as long as he remained in an unmarried state.

O. [10.39] General Considerations Involving Visitation

Major hostilities can arise out of the process of determining the quantity, quality and extent of visitation. There is no set formula what is ample visitation. A true shared parenting arrangement, however, would envision each parent spending nearly equal time each week parenting the child. From that theme numerous variations emerge. Each case presents its own unique challenges. At one end of the spectrum are cases in which visitation is liberal and flexible without any need to specify in detail the dates and times of visitation. At the other end of the spectrum are those cases in which every hour of the day is accounted for including holidays, summer vacations, birthdays, and child activities. Human nature dictates that visitation cannot be subject to a strict or rigid formula. People change and their activities also change. The focus must be on what is best for the chid and the court will not tolerate any posturing by the parents.

An order granting reasonable, liberal and flexible visitation rights assumes that the parties have the communication skills necessary to make their own schedules. In cases where communication between the parties is impaired, it becomes important to specify the visitation rights of the parties. The parties can draft written agreements that visitation occur on alternate weekends or every weekend depending upon the

circumstances of the parties and on certain weekdays, holidays, and vacations. A sample form of visitation order is attached in the appendix following this chapter.

IV. ENFORCEMENT OF CUSTODY AND VISITATION ORDERS

A. [10.40] Contempt Proceeding

The ordinary method of enforcing custody and visitation rights is a contempt proceeding. *Tufano vs. Tufano,* 18 Conn. App. 119, 556 A2d 1036 (1989); 24 Am.Jur. 2d *Divorce and Separation,* Section 996 (1983). For example, where a party has been denied access to visitation by another party, a contempt action can be maintained. *Tufano vs. Tufano,* 18 Conn. App. at 119. The right to bring a contempt action extends even to third parties, such as grandparent interveners in a marital dissolution action. *Tufano vs. Tufano,* 18 Conn. App. at 119.

The object of a civil contempt action is to obtain compliance of a court order. "The interests of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and wilfully refuses his obedience, does so at his peril. *United States vs. United Mine Workers,* 330 U.S. 258, 303, 67 7.CT. 677, 91 L. Ed. 884 (1997). An order issued by a court against a person must be obeyed until it is reversed by orderly and proper proceedings. *W. R. Grace & Company, vs. Rubber Workers,* 461 U.S. 757, 766-67, 103 S.CT. 2177, 76 L.ED. 2d. 298 (1983); *DeMartino vs. Monroe Little League, Inc.*, 192 Conn. 271, 471 A2d 638 (1984). There is no privilege to disobey a court because the alleged contemnor believes that it is invalid. This duty to obey also applies to attorneys. *Cologne vs. West Farms Assoc.*, 197 Conn. 141, 496 A2d 476 (1985).

Where a wife refuses to permit her husband to exercise his visitation rights she is guilty of an indirect contempt of court. 24 Am.Jur. 2d *Divorce and Separation,* Section 997 (1983). An indirect contempt is one which occurs outside of the presence of the court. 17 Am. Jur. 2d, *Contempt* Section 6 (1990). A court may properly refuse to enforce an order, however, if the order has become impossible to perform. This can happen when a child no longer desires to see the visiting parent. *Kelly vs. Kelly,* 73 So. 2d 829.

Numerous defenses to contempt motions based on custody and visitation violations can be successfully maintained. Successful defenses include: illness, *Tufano vs. Tufano,* 18 Conn. App. 119, 556 A2d 1036 (1989); disagreement, *Niles vs. Niles,* 9 Conn. App. 240, 518 A2d 932, (1986); inability to perform, *Turgeon vs. Turgeon,* 190 Conn. 269, 460 A2d 1260 (1983); mistaken belief, *Marcil vs. Marcil,* 4 Conn. App. 403, 494 A2d 620 (1985); and honest difference of opinion, *Cogan vs. Cogan,* 186 Conn. 592, 442 A2d 1342 (1982).

The law is settled that a party cannot withhold alimony or support payments as a punishment for the intentional withholding of visitation rights. *Kioukis vs. Kioukis,* 185 Conn. 249, 440 A2d 894 (1981). The obligation to meet financial orders is deemed independent from the right to exercise custody or visitation rights. *Kioukis vs. Kioukis,* 185 Conn. at 259. On the other hand, a party who refuses to permit visitation as provided in a decree, is not entitled to the aid of the court in collecting alimony until that party has complied with the decree or offered to do so in good faith. *Craig vs. Craig,* 157 Fla. 710, 26 So.2d 881; *Morris vs. Shffield,* 214 Ga. 63, 102 S.E. 2d 595; *Williams vs. Williams;* 167 Miss. 115, 148 So. 358. The doctrine of "clean hands" is not applied as a means of punishment, but rather for the advancement of right and justice. *Pappas vs. Pappas,* 164 Conn. 242, 320 809 (1973).

Even in the absence of a finding of contempt, the trial court has broad discretion to make whole any party who has suffered as a result of another party's failure to comply with a court order. *Nelson vs. Nelson,* 13 Conn. App. 355, 536 A2d 985 (1988); and *Sardilli vs. Sardilli,* 16 Conn. App. 114, 546 A2d 926 (1988). Thus, a court may allow makeup time to a visiting parent who has been denied access contrary to a court ordered visitation schedule. *Tufano vs. Tufano, supra.*

The prevailing view is that the failure of a parent to permit visitation will not in and of itself warrant a change in custody as a punishment. 24 Am.Jur. 2d *Divorce and Separation,* Section 996 (1983). A showing of parental unfitness is required in order to warrant a change of custody. Although the court has the power to modify custody in any "controversy" before the court, it would probably take longstanding contemptuous conduct implicating moral fitness to warrant a change in custody.

B. [10.41] Enforcement Through Habeas Corpus Proceeding

The writ of habeas corpus has long been recognized as a proper method of determining the right to the custody of a minor child. The welfare of the child is the paramount consideration, whether the controversy is between the parents or between the parent and a stranger. *Antedomenico vs. Antedomenico,* 142 Conn. 558, 562, 115 A2d. 659 (1955); *Pfeiffer vs. Pfeiffer,* 99 Conn. 154, 121 A2d 174 (1923). When the concept of habeas corpus is adapted to custody proceedings, the issue is not the illegality of confinement as is normally the case but rather what is in the best interest of the minor child. 2 Stevenson, *Conn. Civil Procedure,* Section 259 (a); *Kearney vs. State,* 174 Conn. 244, 386 A2d 223 (1978). Child custody proceedings implicate the natural equity jurisdiction of the court. The very nature and scope of the inquiry into what is best for the welfare of the child and the result sought to be accomplished call for the exercise of jurisdiction of the court of equity. "In an equitable action, the court endeavors to do complete justice.... Equity never does anything by halves." *Howarth vs. Northcott,* 152 Conn. 460, 465, 208 A2d 540 (1965).

The habeas corpus petition is appropriate for use by a third party, and can be used by a father to obtain custody of his child from this maternal grandparent. *McGaffin vs. Roberts,* 193 Conn. 393, 479 A2d 176 (1984). The habeas corpus petition is commonly used in custody proceedings when the claim is that the child is being illegally detained by a parent or some other third person. Accordingly, such a proceeding would be useful where a noncustodial parent refuses to return a child at the conclusion of a visitation. Habeas corpus also provides a method by which initial orders of custody can be established. *Doe vs. Doe,* 163 Conn. 340., 307 A2d 166 (1972).

C. [10.42] Criminal and Tort Claims

There are criminal penalties for holding a child against the wishes of the custodial parent. Custodial interference in the first degree is a class D felony. General Statute Section 53a-97. This carries a sentence of not less than one year and up to five years. General Statutes Section 53a-35a. A person is guilty of custodial interference in the first degree when he exposes the child to a danger or health risk or entices the child out of the State of Connecticut. Custodial interference in the second decree if a class A misdemeanor. General Statute Section 53a-98. This carries a sentence of up to one year. General Statutes Section 53a-36. A person is guilty of custodial interference in the second decree when: (1) being a relative of a child who is less than sixteen years old and intending to hold such child permanently or for a protracted period and knowing that he has no legal right to do so, takes or entices the child from his lawful custodian; or (2) knowing that he has no legal right to do so takes or entices from lawful custody any incompetent person or any person entrusted by authority of law to the custody of another person or institution; or (3) knowing that he has no legal right to do so hold, keeps or otherwise refuses to return a child who is less than sixteen years old to the child's lawful custodian after request has been made. General Statute Section 53a-98.

A parent deprived of custody under an order of the court, can also sue in tort for intentional infliction of emotional distress. Under this theory, the parent wrongfully deprived of custody may seek recovery of damages for mental pain and suffering. Connecticut also recognizes that a cause of action may exist for the tort of child abduction. *Marshak vs. Marshak,* 226 Conn. 652, 628 A2d 964 (1993). One who, with knowledge that the parent does not consent, abducts of otherwise compels or induces a minor child to leave a parent legally entitled to it's custody or not to return to the parent after it has been left with him, is subject to liability to the parent. *Restatement (Second) of Torts,* Section 700 (1977). Comment G of Section 700 of the Restatement (Second) of Torts states that a parent may recover money damages for loss of society, emotional distress, loss of service, and reasonable expenses of regaining the custody. This section, however, has been held not to apply to third parties acting at the direction of a parent legally entitled to joint custody. *Marshak vs. Marshak,* 226 Conn. at 663.

V. MODIFICATION OF CUSTODY AND VISITATION ORDERS

A. [10.43] Modification Statute

The authority to enter modification orders concerning custody and visitation is governed by General Statute Section 46b-56. This statute provides that a court may make or modify any proper order regarding the education, care, custody and visitation of a minor child. The court is required to consider the same factors in modifying a court order as it would in making an initial court order. The court may assign custody to the parties jointly, or to either parent, or to a third party according to it's best judgment upon the facts of the case and subject to such conditions and limitations as it may impose. In addition, the court is required to be guided by the best interest of the minor child giving consideration to the wishes of the child if he is of sufficient age and capable of forming an intelligent preference. The court does not take into consideration the causes for the dissolution of marriage or legal separation in the case of a modification. General Statute Section 46b-56 (b).

B. [10.44] The Standards for Modification of Custody and Visitation

A custodial determination is not a "final and irrevocable" order and may be modified upon a proper showing. *Santosky vs. Kramer,* 455 U.S. 745, 787, 102 S.Ct. 1388, 1411-12, 71 L.Ed. 2d 599 (1982). The court has continuing jurisdiction over a custody decree, and the noncustodial parent always retains the option to modify custody. *Hall vs. Hall,* 186 Conn. 118, at 122, 439 A2d 447 (1982).

There are two (2) primary bases for modification of a custody order. The first is that there must be a material change in circumstances since the original order was issued. *Raymond vs. Raymond,* 165 Conn. 735, 345 A2d 48 (1974); *Skubas vs. Skubas,* 31 Conn. Supp. 340, 330 A2d 105 (1974). "To limit the use of the power given by General Statute Section 46b-23 and to give effect to the principle of res judicata, there has developed a rule, which is accepted by the court, that before an order as to custody of support of children may be modified there must have been a material change of circumstances after the order was issued." *Cleveland vs. Cleveland,* 161 Conn. 452, 459-60, 289 A2d 909 (1971); *Tippin vs. Tippin,* 148 Conn. 1, 3, 166 A2d 448 (1960); *Sullivan vs. Sullivan,* 141 Conn. 235, 239, 104 A2d 898 (1954). In *Cleveland vs. Cleveland,* 161 Conn. at 452, the Supreme Court found error and ordered further proceedings in a case where the trial court modified an original divorce decree without finding a material change in circumstances. Bitterness between parents and a demonstrated inability to cooperate in the choice of schools, under the circumstances of *Cleveland,* were insufficient to establish a material change in circumstances.

In *Trunik vs. Trunik,* 179 Conn. 287, 426 A2d 274 (1979), the Supreme Court upheld a trial court order modifying an earlier custody order of a minor child on the basis of a material change in circumstances. There, the trial court found that the

defendant mother frequently entertained a variety of nocturnal male visitors. The Supreme Court stated that this finding constituted a substantial change of circumstances. The only question was whether the trial court abused it's discretion in deciding that the best interest of the children would be served by awarding custody to the father. An abuse of discretion is a much higher burden to meet on appeal.

The second standard for modification of a custody and visitation order is that at the time of the dissolution the court had focused it's attention primarily on the termination of the marriage and not on the best interest of the child. *Stewart vs. Stewart,* 177 Conn. 401, 407, 418 A2d 62 (1979); *Simons vs. Simons,* 172 Conn. 341, 348, 374 A2d 1040 (1977); *Hall vs. Hall,* 186 Conn. 118, 122, 439 A2d 447 (1982). In *Stewart,* the mother appealed to the Supreme Court from the trial court's judgment transferring custody of the two (2) minor children to the father. She had previously given the children to the father stating that "the children were his:" *Stewart,* 177 Conn. at 406. The Supreme Court found no error and held that in all cases concerning the custody of minor children, the ultimate test is the best interest of the child. Since the trial court never focused on the original custodial placement, the father was not required to prove a change in circumstances. Curiously, however, the Supreme Court also stated that the act of turning the children over to the father would have constituted substantial change in circumstances. *Stewart vs. Stewart,* 177 Conn. at 408. In *Simons vs. Simons,* 172 Conn. at 341, the Supreme Court found no error with the conclusion of the trial court that a change in custody would be in the child's best interest because of the mother's erratic behavior. *Simons vs. Simons,* 172 Conn. at 344.

A variation on this second ground of modification is that where there is an agreement concerning custody and visitation, and the agreement can be shown to have resulted from either fraud or mutual mistake, then it is possible to attack the court order if it can be proven that it is not in the best interest of the child. *Barnett vs. Barnett,* 26 Conn. App. 355, 600 A2d 1055 (1992). Although the *Barnett* case, involves financial orders, the principle would appear to be applicable in custody matters. It is difficult to conceive that a court would not hear a claim of modification of custody based upon fraud or mutual mistake.

No change in circumstances need be proven, however, between the time that a pendente lite custody order is entered and the time that a final custody order is entered. *Hall vs. Hall,* 186 Conn. 118, 439 A2d 447 (1982). Until the entry of a final decree dissolving the marriage, the custody of minor children is not finally determined. *Hall vs. Hall,* 186 Conn. at 122.

C. [10.45] Procedure for Obtaining a Modification

The procedure for seeking a modification of custody will vary depending upon the status of the case. If a dissolution action is pending, then a simple motion for

modification of custody can be filed by either party at any time. The motion will come up on short calendar for a hearing.

Where a final judgment has been entered and there are no other proceedings before the court, then the method for obtaining a modification of custody is by way of an application to reopen the judgment and for modification of custody and/or visitation. Care must be taken to draft the pleadings with an order of notice and summons so that the party can be ordered to appear in court. It is customary for the moving party to submit a citation to appear in court to the court so that the clerk can set the matter down for a date certain. The citation is then returned to the moving party for service of process. The papers are served in the same manner service of civil process. Once the respondent has received notice, then the court may issue a capias if the responding party does not appear at court. *Smith vs. Smith,* 150 Conn. 15, 183 A2d 848 (1962).

D. [10.46] Reasons for Modification of Custody and Visitation

The court has broad discretion in making custody modifications. The court is not obligated to make express findings when it decides to modify custody. *Benson vs. Benson,* 5 Conn. App. 95, 497 A2d 64 (1985). There are no hard and fast rules for determining when a custody modification should be granted. Modifications of custody and visitation are handled on a case by case basis.

There are some common reasons for seeking a custody modification. A court can decide to modify custody based upon the preference of the minor child. The preference of an intelligent nine (9) year old, however, will have greater weight than the preference of an immature nine (9) year old. In *LeTize vs. LeTize,* 10 Conn. Supp. 396 (1942) the trial court did not satisfy the desire of a nine (9) year old girl to live with her father. Similarly, where the child's preference can be impeached, the preference will have little weight. *Knock vs. Knock,* 224 Conn. 776, 621 A2d (1993); *Blake vs. Blake,* 207 Conn. 217, 541 A2d 201 (1988). The trial court is vested with broad discretion in determining what is in the best interest of the child in determining custody. *G.S. vs. T.S.,* 23 Conn. App. 509, 582 A2d 467 (1990).

The character and conduct of the parents can affect the trial court's discretion in making a custody modification. Where an exhusband had remarried and he and his present wife were capable of caring for his children, and the former wife had exercised poor judgment by frequently entertaining a variety of male visitors at night, the changing of child custody was held not an abuse of discretion. *Trunik vs. Trunik,* 179 Conn. 287, 426 A2d 274 (1979). Where a custodial parent suffered from emotional and drinking problems and maintained a dirty and untidy home, such facts were held to warrant a change in custody. *Simons vs. Simons,* 172 Conn. 341, 374 A2d 1040 (1977). In *Simons vs. Simons,* the defendant mother argued that her emotional distress and use of alcohol both predated the dissolution of marriage. The Supreme Court upheld the trial court's change in custody based upon the finding that it would be in the best interest of

the child to modify custody notwithstanding the mental condition of the parent which predated the dissolution of marriage.

The effect of remarriage upon a minor child can be held to constitute a material change in circumstances. In *Tipin vs. Tipin,* 148 Conn. 1 166 A2d 448 (1961) the Supreme Court stated, in *dicta,* that evidence of a basic lack of moral character on the part of a new stepparent could be raised in a motion for modification. Similarly, a character transformation by the noncustodial parent can also warrant a change in custody. *Sullivan vs. Sullivan,* 141 Conn. 235, 104 A2d 898 (1954). In *Sullivan vs. Sullivan,* the noncustodial mother had made changes in her character and home surroundings, while the custodial father remarried, changed homes, and was not providing proper care for the minor child. A modification of custody under these circumstances was not held to constitute error. *Sullivan vs. Sullivan,* 141 Conn. at 242.

The question of stability of environment is an issue in many modification proceedings. A change in the routines and standards of discipline exercised by a parent may be declared undesirable, except in cases of necessity. *McLoughlin vs. McLoughlin,* 20 Conn. Supp. 278, 132 A2d 420 (1957). Where a custodial mother voluntarily surrenders custody to the non-custodial father, and the child becomes established in the household of his father who maintains good care, custody will be granted to the father. *Cozzolino vs. Cozzolino,* 5 Conn. Supp. 243 (1937).

Financial considerations, while important, are not the only factors to be examined in determining whether there has been a substantial change in circumstances which would warrant a modification of custody. *Cleveland vs. Cleveland,* 165 Conn. 95, 328 A2d 691 (1973).

Religious or moral training can have an affect upon a custody modification. In *Murphy vs. Murphy,* 143 Conn. 600 124 A2d 891 (1956), the divorce decree awarded split custody of two (2) minor children. The daughter went to the father and the son went to the mother. The mother was thereafter excommunicated from her church and upon her remarriage made no provision for the religious education of her son. The Supreme Court upheld a modification of custody to the father based upon the best interest of the son. *Murphy vs. Murphy,* 143 Conn. at 603.

When there is evidence that the parties are in conflict over educational choices for the minor children, the trial court has authority to modify provisions concerning the payment of private education or the attendance of children at private school. *Hardisty vs. Hardisty,* 183 Conn. 251, 439 A2d 307 (1981); *Cleveland vs. Cleveland,* 165 Conn. 95, 328 A2d 691 (1973); and *Cleveland vs. Cleveland,* 161 Conn 452, 289 A2d 909 (1971). While there is technically no material change in circumstances, the adherence to conflicting views regarding the educational needs of the children is held to warrant a modification of an earlier judgment. *Cleveland vs. Cleveland,* 165 Conn. 95, 328 A2d 691 (1973); *Schwab vs. Schwab,* CSCR D.N. FA 81-8990S (J/D of Ansonia/Milford at

Milford, Dec. 29, 1993)(Jones, J); and *Slarby vs. Slarby,* CSCR, D.N. FA 88090 (J/D of Fairfield at Bridgeport Nov. 7, 1991) (Pellegrino, J).

The removal of a child from the State of Connecticut can provide the basis for a motion for modification. The initial custody decree cannot mandate an automatic change in custody by reason of a change of residence. *Guss vs. Guss,* 1 Conn. App. 356, 472 A2d 790 (1984). A change in residence of the minor children, however, would constitute a material change in circumstances of the parties. *Guss vs. Guss,* 1 Conn. App. at 360. Where the initial decree of dissolution does not expressly restrict the residence of the minor child, the action of one parent in removing the child from the State of Connecticut does not constitute a violation of the law. *Raymond vs. Raymond,* 165 Conn. 735, 345 A2d 48 (1974). The practice in Connecticut is to adjust the rights of the parties, taking into consideration that welfare of the child, the financial resources of both parents, and the rights of all parties involved. *Raymond vs. Raymond,* 165 Conn. at 740. If circumstances have placed a financial burden on the parent in relation to visitation, the court may consider whether a reduction of support is in the best interest of the children to allow the expenditure of funds saved from the reduced payments to be spent on securing visitation. *Raymond vs. Raymond,* 165 Conn. at 741. The child support guidelines recognize that "significant visitation expenses" constitute a basis for deviation from the child support guidelines. See *Child Support Guidelines,* Section 46b-215 a-3 (1994). A contest relative to custody, such as visitation rights, is not one primarily to determine the rights of the respective parties, but rather a determination of the best interest of the minor child. *Antedomenico vs. Antedomenico,* 142 Conn. 558, 562, 115 A2d 659 (1955). A removal of the minor children to the state of California has been upheld even where the parties had been granted joint custody and substantial contacts remained in the State of Connecticut where the father lived. *Blake vs. Blake,* 207 Conn. 217, 541 A2d 1201 (1988).

The parties cannot by mere agreement alone enter into a modification of custody. Only the court can enter a binding order concerning custody and visitation. *Krasnow vs. Krasnow,* 140 Conn. 254, 99 A2d 104 (1953); *Grabstein vs. Grabstein,* 14 Conn. Supp. 378 (1946).

E. [10.47] Standard of Review

The standard of review of a modification of custody order is very narrow. In general, a custody determination will not be reversed unless the court incorrectly applied the law or could not reasonably have concluded as it did. *Timm vs. Timm,* 195 Conn. 202, 210, 487 A2d 191 (1985); *Duve vs. Duve,* 25 Conn. App. 262, 594 A2d 473, cert. denied 220 Conn. 911 597 A2d 332 (1991). The Appellate Court is not privileged to usurp the authority of the trial court or substitute it's judgment for that of the trial court. *G.S. vs. T.S.,* 23 Conn. App. 509 582 A2d 467 (1990). A mere difference of opinion by the Appellate Court on the issue of custody does not justify intervention. *Trunik vs. Trunik,* 179 Conn. 287, 626 A2d 274 (1979). Nothing short of a conviction that the trial

court abused it's discretion will warrant Appellate Court interference. *Morrill vs. Morrill,* 83 Conn. 479, 491, 77 A2d 1 (1910).

In *G.S. vs. T.S., supra,* the Appellate Court reversed the custody decision of the trial court for failing to appoint counsel for the minor child. The Appellate Court specifically found that if counsel had been appointed for the minor child, then that counsel could have requested that Family Relations prepare a custody study, and further could have argued that the child was competent to testify about issues involving sexual abuse. The court held that the trial court is not an advocate for the child, but rather the arbiter of the dispute and of the best interests of the child. *G.S. vs. T.S.,* 23 Conn. App. at 518 (1990).

In *Gallo vs. Gallo,* 184 Conn. 36, 440 A2d 782(1981), the Supreme Court modified the trial court order creating a moral restriction on visitation. The trial court banned overnight visits by a child so long as the father continued the reside with a woman without the benefit of marriage. The Supreme Court modified the order to apply specifically to the father's significant other.

In *Weinstein vs. Weinstein,* 18 Conn. App. 622, 561 A2d 443(1989), the Appellate Court found error not with the joint custody order, but, with the order that the children's counsel resolve disputes between the parties concerning the children's educational and other expenses, and visitation schedule. This was an improper delegation of judicial authority. *Weinstein,* 18 CA at 628. The court remanded for further proceedings the questions left unresolved by the court, but did not touch the custody order (which was a basis of the plaintiff's appeal).

As long as the trial court's decision is supportable in law, logic, or reason, and not inconsistent with the subordinate facts, it will likely be upheld on appeal. *Spicer vs. Spicer,* 173 Conn. 161, 377 A2d 259 (1977).

VI. [10.48] PROGRAM EVALUATION COMMITTEE REPORT AND RECOMMENDATIONS RE: CUSTODY EVALUATION PROCEDURES

GENERAL EVALUATION PHILOSOPHY

The basic philosophy guiding the custody and visitation evaluation policies and procedures for the Family Services Unit is predicated on three basic principles.

The first principle derives from the fact that the vast majority of disputes involving a custody or visitation evaluation do not result in a trial. Instead, the dispute ends in a negotiated settlement with the evaluation playing a pivotal role in the resolution of the dispute. It provides parents and their attorneys with the information needed to reach a resolution at some point between the initiation of the evaluation and the beginning of

the trial. In this manner, evaluations become a legitimate form of alternate dispute resolution in most situations. Parents view them as an opportunity to express their concerns and fears to someone who will listen, assess their family situation objectively and then provide them with an analysis of their situation, including recommendations concerning the future parenting of their children. Attorneys view them as a form of a mental health pretrial process resulting in an opportunity to obtain objective and professional information that is useful in advising their clients regarding their parenting conflict.

If evaluations are accepted as a form of alternate dispute resolution, we then need to consider how this impacts the evaluation process itself. We must consider such significant components of the evaluation as its format, the relationship of the evaluator to the parents and attorneys and the method of presenting the analysis to the parents and attorneys. When viewed from this perspective an evaluation should and can become something quite different from the traditional series of informational interviews and collateral contacts culminating in an eagerly anticipated written report with a surprise recommendation.

The second principle relates to the question all evaluators should be asking themselves, "Who is our client? The court, the attorneys or the parents and children?" While an evaluation must always have the capacity to result in a product that will provide needed information and professional judgement to the court and attorneys, we must not lose sight of the fact that the family is our client first and foremost. In the end is is the family members that must be assisted by an evaluation that provides them with meaningful information and professional analysis. It is they, in consultation with their attorneys, who are the first users of the information since this information never reaches the judge in most cases.

In this regard, an evaluation should be designed to meet the needs of the family while maintaining the capacity to meet the needs of the court. Both goals can be accomplished by restructuring the evaluation process to provide an opportunity to assist parents in evaluating their own situation while at the same time retaining its ultimate product, a cogent written report. Evaluations should be family focused by engaging parents in the process and by framing the evaluation as an opportunity for the parents to join the evaluator in a journey that helps them look at their family historically, currently and prospectively. This experience should begin with the parents conjointly identifying, with the help of the evaluator, the specific issues that constitute their dispute, mutually agreeing what information needs to be obtained to examine those issues, understanding the basis on which the issues will be evaluated and agreeing on how the information will be shared and used.

The third basic principle underlying the evaluation policies and procedures is the simple yet meaningful notion that all families and parents are different. Although they share a common struggle with the trauma and disruption of divorce, parents and their

children differ in their levels of adjustment to the divorce, their capacities to manage the changes in their lives and their responsiveness to various professional interventions. Therefore, an evaluation should not be a rigid and regimented process in which all families are forced through the same mold. Rather, it should be a flexible process, capable of responding, to the unique capacities and needs of each family. Clearly, the basic components needed to assess a custody or visitation dispute must remain intact. However, an evaluation can also include other components that correspond to the individual circumstances and personalities of the family members. Viewed this way, an evaluation can include, in varying degrees and combinations, counseling, educational and mediative components as well as the traditional evaluative component.

The professionalism and expertise of the evaluator are truly challenged when the evaluation process is accepted as a form of alternate dispute resolution, designed to be family focused and adaptable to a variety of situations and family types. In meeting this challenge the evaluator, in conjunction with his or her supervisor, is called upon to make a series of crucial decisions throughout the evaluation process far beyond where the children should live. Evaluators must also determine and establish the appropriate nature of their relationship with the parents, when to introduce other than evaluative components to the process, the extent of working with the family conjointly, and the best method of sharing with the parents the assessment of the family and their dispute.

It is far too seductive and comfortable for an evaluator to maintain a detached and judgmental posture in each and every case. It is much more difficult to roll up your sleeves and enter the world of the clients and their conflicts by managing a process based on a continuum of intervention options with evaluators constantly assessing which form of intervention would be most effective (and least damaging) for the family and balancing these choices with the need of the court to expeditiously move the case to a conclusion. The evaluator has the opportunity to move the evaluation beyond being just another component of the adversarial process, the mental health trial if you will, to becoming an interactive, educational and healing experience for the family. It is when an evaluation and the role of the evaluator are viewed in this manner that the full potential of the evaluation process is maximized.

GENERAL ISSUES

I. Uniformity of Philosophy, Process and Procedures

The Program Evaluation Committee felt it was important that all offices and staff subscribe to a uniform philosophy concerning custody evaluations and conduct custody evaluations in a manner that conforms to generally similar procedures. It was determined that current practice varies greatly from office to office. For example, the survey of 1992 evaluations showed a wide range of practice from one office to another in terms of the usage of initial joint conferences and final oral presentations. Concerning the initial joint conference, the range was a high of 85% in one office to a low of 25%

in another office. Final oral presentations fluctuated from a high of 81% of the cases to a low of 9%. While the Committee realized that one should allow for the fact that counselors have different skills and experience as well as the fact offices may screen out potential referrals differently, the significant discrepancy needs to be addressed. An appropriate mechanism to address this would be through the Managers' communication with each office.

II. Bridge Between Mediation and Evaluation

The Program Evaluation Committee spent considerable time and effort discussing the idea of creating a bridge or middle step between mediation and a full evaluation. The impetus for this discussion was the feeling that not all unsuccessful mediations needed or warranted a full and comprehensive evaluation together with the feeling that the mediators often possessed valuable information that could be of assistance to the evaluator, particularly in defining and limiting the scope of an evaluation. Several possibilities were discussed including using mediators as non-binding arbitrators as well as one of the mediators becoming the evaluator. In the end the committee was concerned these options would tend to compromise both the integrity of the mediation process and the esteem that our mediation program has attained with the bench and the bar. The committee, however, is recommending two specific policy or procedural changes that address this issue:

A. The Program Evaluation Committee recommends that unsuccessful mediations when appropriate result in a written report that is more expansive than simply indicating mediation was unsuccessful in resolving the dispute. In many cases mediation resolves some but not all of the issues. These partial agreements should be communicated to the court and the attorneys. In some cases it may be appropriate to discuss with the clients various options available to them for resolving their remaining disputes. Agreements reached concerning these options should also be communicated to the court and attorneys.

The Committee recommends that mediation reports be utilized to include appropriate information in cases in which the parenting issues were substantially resolved or in which a trial agreement was reached. Examples of situations in which parenting issues are substantially resolved are when primary residence is agreed but the semantics of sole versus joint custody remain in dispute or when everything but Christmas visitation is agreed. Mediation reports in these situations should include the following:

1. All agreements concerning the substantive issues resolved in mediation.

2. A list or description of the specific issues remaining in dispute.

3. An indication of any agreement reached as to the next step in resolving the dispute, such as conducting a limited evaluation of the remaining issues, involving the lawyers in a four-way meeting (with or without a Family Relations Counselor) to attempt a negotiated solution, or returning the dispute to the court for a determination of the next steps.

4. A description of the trial agreement.

B. The Program Evaluation Committee recommends that, under certain conditions and criteria, mediation clients be allowed to agree that either of the mediators conduct a subsequent evaluation of the disputed issues. This recommendation is made with the caution that counselors and supervisors will need to be extremely vigilant in ensuring that the integrity of each process is not compromised. It is anticipated mediators will inform clients of this option in a limited number of cases. The conditions and criteria for presenting this option to clients are as follows:

1. This option is to be presented to clients by the mediators at the conclusion of an unsuccessful mediation when both mediators feel it would be appropriate. Situations where this option would be appropriate include:

   a. When the mediation process has limited the issues in dispute to the point they could be dealt with most expeditiously and efficiently in this manner.

   b. When the mediators feel confident in their own ability to conduct a thorough and objective evaluation.

   c. In offices with limited staff.

2. After being given the option of having the evaluation of the remaining disputed issues conducted by one of the mediators, the clients are to be instructed to discuss this with their attorneys, if applicable, and then put in writing their request that either mediator conduct the evaluation. The clients are not to choose which of the mediators will conduct the evaluation.

3. The issues in dispute are to be evaluated thoroughly in accordance with agency policies and procedures governing evaluations (joint and separate interviews, child interviews, observation of parent-child interactions, collateral contacts, etc.).

4. The supervisor must approve of this option being selected on a cast by case basis and provide supervision to ensure that the integrity of the evaluation process is preserved.

SPECIFIC RECOMMENDATIONS CONCERNING THE EVALUATION PROCESS

I. INTAKE PROCESS

The Program Evaluation Committee concluded that our agency needed to emphasize the fact that an evaluation begins not at the initial joint conference but at the point of intake. Accordingly, the Committee felt our intake procedures must be enhanced in several areas.

A. Intake Interviews In All Referrals.

All offices need to institute measures or procedures with their local judges and attorneys to ensure that referrals occur only after the lawyers and clients have met with a member of our staff. Supervisors need to be aggressive and firm in implementing this policy. In those situations where referrals are received which have not been screened by our staff we should immediately submit a report to the court and attorneys indicating we cannot conduct an evaluation because we were not afforded the opportunity to screen the case to determine appropriate services and procedures. Primary among the reasons for returning the case to court is the fact we were unable to screen the case for the existence of family violence.

B. Content Of Intake Interviews.

Since the evaluation process (as well as the mediation process) begins at intake, the Committee felt the intake process should include several standardized and uniform steps.

1. Screening for Family Violence.

The presence of family violence is an issue with significant relevance to both our mediation and evaluation services in terms of appropriate strategies and procedures. Counselors need to be diligent in exploring with clients and their attorneys the existence of family violence in each intake situation. Questions should focus on past violence and threats that impact on the ability of the clients to comfortably meet together without fear or intimidation.

2. Distribute Custody Evaluation Informational Brochure Including Mutual Responsibility Statement

The Custody Evaluation Informational Brochure will be revised to reflect our procedures as articulated in this document. Included in the brochure will be a Mutual Responsibility Statement. This statement will underscore the professionalism of our services, the need for the cooperation of the clients and our responsibility to the clients. In this document clients would be informed of the need to attend all appointments, make the children available to us as needed, not bring the children to appointments unless specifically requested, sign authorizations to obtain needed information and otherwise cooperate in the evaluation process. This should have a positive impact on the number of missed appointments, therefore speeding up the completion of evaluations. Regarding our responsibility, the document will state that the agency will provide services that are objective, thorough and expeditious with the focus being the best interest of the children.

3. Identify the General Issues

This is necessary on several accounts. First, it will assist us in determining whether the case should be mediated. Second, it will be helpful in defining and limiting the scope of an evaluation. Third, it will allow us to identify sources of needed and relevant information at the very beginning of the evaluation. In those cases in which the intake counselor identifies obvious sources or needed information he or she should obtain signed Release of Information Forms from the clients to facilitate the early gathering of this information.

4. Determine the need (if any), scope, payment responsibilities and dissemination of psychological evaluations.

In determining the need for outside psychological evaluations counselors should be guided by the following criteria.

a. Is there information or assessments needed that fall outside the normal expectations and expertise of Family Relations Counselors?

b. Is there a reasonable expectation that the evaluation will provide the information?

In those situations in which an outside evaluation has been requested or arranged by the attorneys without our input, counselors should conduct and complete our evaluation without delaying the process to await the results of the outside evaluation, unless it is anticipated the outside evaluation will

provide information that is otherwise unavailable. Counselors should be guided by the principal of "what is the evaluation going to tell me that I don't already know?" We should not wait for the results of the evaluation to confirm what we already know. In most cases involving an outside evaluation not requested by us, we should complete our own independent evaluation and submit it to the court.

C. Establish Continuance Date At Time Of Referral

The Program Committee recommends setting a continuance date with the Court at the time of all referrals to the Family Service Unit. This recommendation is consistent with the recommendation of the **Judicial Task Force on Family Law, Subcommittee Services Unit.** The continuance date would reflect an agency standard (four months from the referral date for evaluation referrals and two months for mediation referrals) and would become the target completion date. These timeframes could vary in certain cases based on the complexity or urgency of the issues. It was felt such a procedure would be attractive to the court in maintaining contact with cases and would be helpful to staff in the management of their caseloads. The final oral presentation or feedback session should occur prior to the continuance date in most cases, thereby allowing the continuance date to be used to enter any agreements into the court record or to become the occasion for a Case Status Conference with a judge to explore settlement options or to determine the future course of the case, including a date certain for trial.

The effective implementation of continuance dates necessitates the elimination of referrals for mediation followed by an automatic evaluation if mediation is unsuccessful. Therefore, **all cases referred to the Family Service Unit are to be either for mediation only or evaluation only.**

In mediation cases a continuance date of two months should be obtained at the time of referral. If the mediation is not completed by the continuance date the Family Services Unit can obtain another appropriate continuance date without the parents and their attorneys appearing in court. In cases of successful mediation the continuance date becomes an opportunity to incorporate the agreement into a court order. If the mediation is unsuccessful and the mediators and parents agree the case needs an evaluation, the continuance date (without requiring the presence of the parents) can be used to request an evaluation referral and a new continuance date in four months. If the mediation is unsuccessful and it is unclear an evaluation is necessary or there are issues relative to the evaluation that need to be clarified, the parents and their attorneys should be present at the continuance date. If an evaluation is subsequently

ordered it should be accompanied by a new continuance date. **Regardless of when an evaluation is ordered (with or without a prior mediation) all evaluation referrals should include a continuance date.**

It is also recommended that the continuance date be emphasized by referencing it, **in bold letters**, in our appointment letters to clients with a copy to their attorneys. Our appointment letters should remind clients and their attorneys that our evaluation is targeted for completion by the continuance date and they should be prepared to appear m court on that date.

II. Initial Joint Conference

The Program Evaluation Committee recommends the retention and expansion of the use of the initial joint conference as the first comprehensive interview of an evaluation. The initial joint conference provides vital information concerning the nature of the relationship between parents, their communication and cooperation abilities, and their perceptions of the issues in dispute. It was felt the vast majority of evaluations should include an initial joint conference. Those situations that would contraindicate its usage would be the presence of family violence as an operative issue, severe mental illness, one party residing out of state or the failure of one client to appear at a scheduled joint appointment. However, the simple preference of one client not to meet jointly with their spouse should not in and of itself preclude an initial joint conference just as a reluctance to mediate does not automatically preclude mediation. Staff should use their professional judgement in those situations. In the case of one client not appearing for the initial joint conference, staff should conduct an interview with the appearing client, meeting later on in the evaluation jointly with both clients.

III. Expanded Client Autobiographical Questionnaire

The Committee recommends the development of an expanded client autobiographical questionnaire in all evaluations. The questionnaire would include space for clients to develop a statement of what they believe to be the unresolved issues as well as their suggestions for an appropriate resolution. It was felt this would assist clients in clarifying the issues for themselves as well as for us. Also, it would establish and reinforce the notion that the evaluation is not a passive process for the clients.

IV. Expanded Use Of Clients as Information Gatherers

Consistent with the idea that clients need to be actively involved in the evaluation process, the Committee recommends that counselors use the clients as active resources in gathering needed information in an evaluation. There are many situations when it is just as easy, if not easier, for the clients to obtain, or arrange for us to receive, information relevant to our evaluation This would include information from schools, doctors, therapists, etc. This should not only be encouraged but should become part of

our overall evaluation philosophy. When needed information is identified at intake clients should be instructed to begin this information gathering process as soon as possible.

V. Expanded Attention To Stepparents And Significant Others

The committee recommends evaluations devote expanded attention to stepparents and significant others who are or may assume important roles in the lives of the children. This would include new spouses, boyfriends, girlfriends, grandparents, aunts, uncles, step-siblings, etc. As a family restructures itself these individuals become significant factors in determining the best interests of the children. The committee also recommends training in this area.

VI. Expanded And Formalized Observation Of Parent-Child Interactions

Just as observation of the interaction and relationship between parents is vital to an evaluation, so too is the observation of the interactions between parents and the children. While this currently occurs in most evaluations, it is the feeling of the Committee that this component of the evaluation needs to be enhanced. It was also felt that home visits to both parents are the preferred format for parent-child observations. Perhaps special training in this area is needed, both for counselors in the techniques and nuances of observation, and for supervisors in the area of supervisory techniques regarding parent-child observation. The parents and attorneys should be informed at the beginning of the evaluation of our need to see the children in both homes which will perhaps necessitate making the children available to the noncustodial parent outside of the regular visitation schedule.

VII. Home Visits

The Committee recommends that home visits be conducted in every evaluation, unless there are extremely narrowly defined issues. Meeting the Family Relations Counselor in the comfort and security of their own home is much less stressful for the children. The home is a less contrived atmosphere to observe parent-child interactions. In addition, the home is a source of considerable valuable information beyond just the physical environment, such as whether the house and parent reflects the presence and identity of the child through pictures, decorations, toys, child-proofing and play areas. It is suggested that the child meet the counselor for the first time at the home where the child spends most of its time, followed by a visit to the non-custodial home when the child is there. If after meeting and speaking with the child in both homes it is necessary to meet with the child a third time in a more private setting, an office visit may be considered.

VIII. Oral Feedback

The Committee favored and recommends the retention of the oral presentation or feedback method of conveying the results and recommendations of the evaluation, with the understanding that counselors and supervisors have a variety of options as to the format. It should be emphasized that the decision when and how to use this method is a matter of professional judgment that should involve the supervisory process. Decisions in this area should be guided by the general philosophy of our evaluations as stated earlier. The oral feedback options include the same options that exist currently:

- Both clients and all attorneys conjointly
- Both clients conjointly, no attorneys
- Clients separately, no attorneys
- Clients separately, with attorneys
- Attorneys only, together
- Attorneys only, separately

The Committee realizes that oral feedback may be the most difficult, and certainly the most controversial, component of the evaluation process. Therefore, it is an area that may require special training, attention and clarification. In an effort to enhance the effectiveness of the oral feedback process of the evaluation the Committee recommends the following practices be implemented:

- Incorporate into the final phases of the evaluation the practice or technique of sharing with the clients how the evaluator is beginning to view the dispute and what might seem like a reasonable solution. This provides the counselor with the opportunity to test the response and receptiveness of the client to both the ideas presented as well as the method of oral feedback. It also provides the client with the opportunity to develop a sense of how the evaluator is beginning to see the situation, thus reducing or eliminating the drama and anxiety of hearing our final and full recommendations at the conclusion of our evaluation. In most cases the results of our evaluation should not come as a complete surprise to our clients. Counselors are cautioned, however, not to begin to provide feedback too early in the evaluation or in too rigid a manner. Parents need to feel their concerns were objectively heard and thoroughly addressed before they will give credibility to the assessments and recommendations of the evaluator

- Distribute a List of Contacts and brief, written Case Assessment to the clients and their attorneys immediately following the oral feedback session. The Case Assessment would be similar to the current "Evaluation" section of our present report format. It is felt this will be helpful to clients and their attorneys as they contemplate our evaluation and recommendations. It may also serve as our report to the court in certain cases that proceed to a trial.

It should be noted that irrespective of whether the oral feedback method is utilized or when it is utilized (before or at the continuance date), **the Case Assessment should be the first written product of our evaluation** in the vast majority of our cases. If, as the result of discussions and a case status conference at the continuance date, it is determined that a full Evaluation Report is needed, our traditional report can be written prior to a trial. However, given our current caseloads and the fact that the vast majority of our reports do not result in a trial, it seems prudent to alter our standard written product to reflect these facts. In those majority of cases in which the full Evaluation Report becomes unnecessary the Case Assessment will serve as the case summary that we should be preparing currently for our file in cases that reach an agreement.

CUSTODY STUDY

I. MARITAL AND COURT STATUS

a. Date and Place of Marriage

b. Children Issue of Marriage (childrens' names, ages, and d.o.b.)

c. Date of Separation or Divorce (alimony, support, custody, visitation, etc.)

d. Previous Court Activity and Current Orders

II. LIVING ARRANGEMENTS

a. Residence of mother, father and anyone else who lives in the home

b. Brief description of physical living arrangement of child (example: how many rooms, who sleeps where).

c. Description of current child care plans (babysitters, custodial, hours of employment, transportation to school). Hours that parent is/is not working during school times.

d. Current visitation schedule with non-custodial parent

e. What is the problem! State issues briefly

III. FATHER/MOTHER (depending upon which is plaintiff)

a. Age (d.o.b. and where):

b. General statement of family background:

- Mother's name and Father's name (lead into family origin)
- How many siblings and what place they are in the family
- What was father's occupation and mother's occupation. (Was Mom in home / Did she work? Who was in home?)
- How would you describe your parents' relationship?
- Were there any major problems in the home (alcohol - money)?
- How did they relate to their siblings?

c. Socio-economic status (brief summary of health, education, occupation, current employment and income):

- Work history, specifics since High School graduation (gives you an idea of how they can cope with life's appropriate responsibilities).
- Annual income of present job
- Where did you go to school - (grammar, high school, college, etc.)?
- What degrees did you receive - from what schools?
- How would you describe your present health (are you taking any medication - what kind? Organical problems - physical problems)?
- Did you serve in the military - are you a veteran? Were you honorably discharged?

d. Personality and pattern of behavior (limit personal history to the extent that it is pertinent to the present and future.

** 1. Summarize criminal record (previous arrests, were charges pressed, disposition of arrest, dates).

2. Summarize previous marriages:

- To whom were they married (name, address).
- Date of marriage
- Date of divorce
- Children of that marriage
- Any contact with children of that marriage. (interested in functional relationship with first children).
- Reason for dissolution (their thoughts of why the breakdown).

3. Summarize psychiatric or alcohol problems:

- Have you ever seen a psychologist, psychiatrist, social worker, counselor, minister, priest, rabbi)?

- Were you ever hospitalized for psychiatric or emotional illness (dates, places of hospitalization/treatment)?
- Treatment dates for any of the above - Release Forms

- Last time you had a drink?
- Approximately how much do you drink in a week/month?
- Does the other person think that it is a problem?
- Do you take any drugs / if so, which ones?
- Do you consider yourself drug addicted?

** 4. Summarize unstable behavior, etc.:

e. Relationship with child and other parent:

- How did you and your spouse meet?
- What was the marriage like?
- What did you feel the problems of the marriage were (ask them to highlight) (When did they begin - what were they)?
- How did these problems effect the parenting?
- What is the relationship between you and your ex-spouse at the present time? Is there any communication?
- How would you describe your relationship with the children? (Do you and the child/children get along?)
- What types of things do you do when you get together?
* - What problems do the children have in their present environment that have caused you to file for custody?
- View of child's relationship to the other parent
- Was the house usually clean when you came home (when babies were first born)?
* - Looking for signs of depression and inability to cope
- Was baby clean when you came home?
- Was baby fed and did it eat o.k.?
- Would you describe the baby's disposition as generally happy?
* - Looking for functional level of mother (baby clean/house clean, functional mother).
- Was there diaper rash?
- Was mother interested in child? What was father's involvement in the child?
- Traditional home - who is responsible for child care?
* - Who is Primary Object in home? - Look at Bonding.

f. Attitudes and Desires

a. Claims for custody

1. Reasons other parent should not have custody
2. Reason child should be with them

g. Plan for Custody

a. Practical Day to Day arrangement
b. How will child remain involved with the other parent?

IV. MOTHER/FATHER (depending upon which is defendant)

Same as for Section III

V. ALTERNATE CUSTODIAN (if applicable)

Grandparents, Aunts, Uncles, etc.
Same as for Sections III and IV

VI. CHILD/CHILDREN

a. Include a commentary as to any children of other marriages or circumstances who may be in the home or whose involvement, whether in the home or not, may have a bearing on the present action.

b. Age of child

c. Length of time in current living arrangement

d. Summary of medical and school status (Releases must be signed).

e. Emotional and/or disciplinary problems (with family members and teachers).

f. Commentary on child's/children's relationship with parents, peers, siblings and other significant others:

- Peer group at school
- Friends in neighborhood
- Any change in relationship between siblings
- Any medical problems - be specific

g. Wishes of child (evaluation of maturity and basis for expressed preferences):

- Have parents discussed custody issue with children and what did they say?

h. Observations of Counselor (although it may not be appropriate in all situations to observe or interview the child, it is of immeasurable help to see the child in interaction with yourself and with significant others).

VII. EVALUATION:

This section presents a meaningful analysis of the body of the report, presented in a logical sequence and building to a reasonable conclusion. It is an Opportunity to provide evaluative comments on the significance of material in the body of the report if there are such that you did not find suitable elsewhere in the report.

THE EVALUATION IS NOT A REPETITION OR SUMMARY OF WHAT HAS GONE BEFORE AND NO NEW INFORMATION SHOULD BE INTRODUCED.

The writer is assumed to be an expert and is expected to draw logical and reasonable conclusions from the material gathered. The purpose of this section is to characterize the parties and the children, attaching appropriate significance to their actions and to tie together the significance of background, behavior and current situation of all involved. The immediate problems are identified and solutions proposed and evaluated.

The officer should avoid expressing preconceived ideas or philosophies and should not moralize. The language used should be clear and concise, subject to no reasonable misinterpretation by the reader.

THE EVALUATION SHOULD NOT BE CONSTRUCTED IN A MANNER WHICH SERVES ONLY TO JUSTIFY THE RECOMMENDATION.

The length of the evaluation will vary according to the complexity of the circumstances involved but should clearly state the problems and logical solutions to the problems.

VII. RECOMMENDATION:

This section will state the officer's recommendation, although there may be occasional cases where no recommendation is made by direction of the court.

The court has the responsibility for making the final determination. The Family Relations Division assists the court in reaching an informed decision by providing a comprehensive view of the situation in dispute and by offering solutions or alternatives based on professional evaluation of those circumstances. The failure to make proper recommendations defeats the purposes and value of the Division.

The recommendation will appear in this section and in the appropriate section o the face sheet If more than one recommendation is made they will be listed numerically in both sections.

VII. [10.49] SUGGESTED CRITERIA FOR CHILD CUSTODY EVALUATIONS

I. PHYSICAL FACTORS (EXTERNAL)

CHILDREN

1. Age
2. Physical development in relation to chronological age
3. Disabilities
4. General health
5. Length of time in a given environment

PARENTS

1. Age
2. General health
3. Disabilities
4. Home environment (availability of food, clothes and adequate housing)
5. Geographical location

II. EMOTIONAL FACTORS (INTRAPERSONAL)

CHILDREN

6. Mental status:
   a) Emotional state
   b) Behavior
   c) Thought content
   d) Judgment
   e) Impulse control
   f) Intelligence
   g) Personality traits
7. Relative attachment to parents (psychological parents)
8. Emotional age
9. Extent to which emotional needs are met
10. The child's reasonable preference
11. Behavioral history

PARENTS

6. Mental status:
   a) Emotional state
   b) Behavior
   c) Thought content
   d) Judgment
   e) Impulse control
   f) Intelligence
   g) Personality traits
   h) Objectivity, insightfulness, etc.
7. Feelings about the other parent (stage of divorce)
8. Capacity to allow the child a relationship with the other parent
9. Capacity to tolerate changing behavioral patterns of the child during the maturation process

10. Capacity to perceive the needs of the child at different stages of development
11. Quality of relationship with child (interest, knowledge, involvement)
12. Capacity to separate needs of child from own needs
13. Problem-solving ability (ability to be objective)
14. Ability to refrain from "using" the child for personal purposes
15. Motives for wanting to be the custodial parent
16. Psychiatric history

III. SOCIAL FACTORS (INTERPERSONAL)

CHILDREN

12. Sibling relationships
13. Peer relationships
14. Communication with adults
15. School performance (academic and behavioral)
16. Community involvement (interests and hobbies)
17. Support systems available to child
18. Life style of parents as related to the needs of the child.

PARENTS

17. Criminal history
18. Employment history
19. Degree of social isolation
20. Ability to make adequate supervision plans for child
21. Ability to encourage child to reach educational goals
22. Community involvement
23. Frequency and quality of interaction with friends and family
24. Capacity to form new relationships
25. Use of leisure time
26. Ability to provide a healthy role model for child
27. Life style as it affects the child (attitudes toward society)
28. Attitudes toward discipline and means of discipline

VIII. [10.50] SAMPLE VISITATION ORDER

1. The regular visitation schedule shall be as follows:

   (a) The father shall have visitation with the minor child every other weekend from Friday at 5:00 p.m. until Sunday at 7:00 p.m.; and also on each Wednesday and Friday from 3:00 p.m. until 7:00 p.m.

   (b) If on the Monday following the father's weekend for visitation there shall be a school holiday, then the father's weekend shall be extended to include that holiday, and the child shall be returned to the mother at 5:00 p.m.

2. The holiday visitation schedule shall be as follows:

   (a) The parties shall alternate the following holidays: Memorial Day and Labor Day, so that if the Husband has the child for Labor Day in an odd-numbered year, the Wife will have the child for Memorial Day, and in the following even-numbered year Labor Day will be with the Wife and Memorial Day with the Husband. In the event that Easter and/or Presidents' Day is not included in one of the longer school breaks dealt with below, those holidays shall also be alternated as set forth herein. In the event that any of the above-referenced holidays involves a 3-day weekend, the parent entitled to have the child for the holiday shall have the entire weekend.

   (b) Thanksgiving, from Wednesday after school until Monday morning, shall be with the Husband in odd-numbered years and with the Wife in even-numbered years.

   (c) Christmas shall be with the Wife in odd-numbered years and with the Husband in even numbered years. For purposes of this Agreement, Christmas shall consist of the entire school holiday. The parties understand that this will likely also include the New Years holiday so no separate arrangement is made for that holiday.

   (d) Apart from the foregoing, the parties will alternate the Winter and Spring school recesses. Winter recess will be with the Husband in odd-numbered years and with the Wife in even-numbered years. Spring recess will be with the Wife on odd-numbered years and with the Husband in even-numbered years. The party who has the child for a school vacation shall be entitled to take the child on vacation for the entire holiday.

   (e) In addition to the foregoing, the Husband shall have the child with him on Father's Day, and the child shall be with the Wife on Mother's Day.

(f) Apart from the visitation described above, the Husband shall have the child for the month of July and the Wife shall have the child for the month of August. The parent who does not have the child for the month in question shall be entitled to alternating weekends with the child as described above, unless the child and parent will be staying outside Connecticut during the entire period.

(g) In the event there is a conflict between the regular visitation schedule described in Paragraph 1a and b and the holiday, vacation and birthday schedules referred to in Paragraphs 2a through f, then the holiday vacation schedule shall prevail.

With regard to the visitation schedule, the parties agree to maintain flexibility to accommodate the business and personal commitments of each.

SOURCE: adapted from 8 Connecticut Practice Series, Family Law and Practice with forms Section 49.25(1991)