



Suggestions for Creating Parenting Plans that Reduce Conflict

Marion County Circuit Court

March 9, 2001



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I. Introduction.

The following checklist of suggestions was created to help professionals and parents create parenting plans that reduce conflict. It is written primarily for cases involving parents who have had continuing conflicts over their child/ren, and is based on the recognition that conflict can have a negative impact on a child's adjustment and development.

Divorce is likely the most traumatic event in a child's life. Children look to the family for stability and security as well as support and nurturing. When that stability is threatened, the child's development is threatened. Children develop rapidly and the more interference that occurs, the more likely a child is going to have developmental problems.

Children who function best following a divorce are those children whose parents have been able to adjust well and go on with their own lives. This does not mean the parents have to be good friends, but it does mean they have to exhibit adequate adjustment and the ability to work together to assure the child continues to have a good relationship with both parents.

One of the most serious and common burdens for children at any age is emotional and physical conflict involving one or both parents. Some parents may try to persuade their children that the other parent is a villain or the sole cause of the problems. The loser of this emotional war is the child. Children of all ages need to be protected from their parent's disappointment, anger, frustration and confusion.

Consequently, it is important that divorcing and separating parents attempt to resolve disputes at the time the parenting plan is created, and follow its provisions to avoid further conflict. Generally speaking, detailed parenting plans that minimize contact between parents tend to reduce conflict. In addition, parenting plans that use language that can only be interpreted one way, such as the use of the word "shall" rather than "will," tend to reduce conflict over what the parenting plan means.

The basic provisions of Marion County Circuit Court Supplemental Local Rule 8.075 may be used as a foundation for building the parenting plan, provided that the plan is modified to take into consideration the circumstances of each family. The suggestions below reference provisions in SLR 8.075 that may not be appropriate for cases involving high levels of conflict.

II Items to Consider when Drafting a Parenting Plan.

◆ Parenting time provisions.

The schedule should specify the exact days and times in which the child will be with each parent. Also, consideration should be given to how holidays, vacations and special occasions will be treated.

Conflict will be reduced by drafting the schedule in a way to minimize the number of transfers that have to occur from parent to parent. Parents may want to have weekend parenting time begin on Friday afternoon, with the non-residential parent picking up the child from school or daycare. Similarly, the child could be dropped off at school or daycare Monday morning to end the weekend. In this example, the parents are able to avoid contact with each other. Parents might also benefit from eliminating mid week parenting times and insignificant holidays, and adding an extra overnight to the weekend. For example, Halloween, July 4th, parents' birthdays, etc. could be eliminated, and replaced with a requirement that a weekend start on Thursday afternoon instead of Friday afternoon.

The parents may want to consider keeping the school year schedule in effect during the summer as well with a shorter period, such as two weeks, of "summer vacation" allotted to the non-residential parent. This will decrease the chance that the child's regularly scheduled activities will be disrupted by the transfers back and forth. It may also be attractive to non-residential parents who don't get more than a couple of weeks off anyway. There is no magic about completing the rule's contemplated extended time periods during the summer. For example, limit the non-residential parent to two weeks during the summer but then give him/her a week in the months of October, February and May. This gives the non-residential parent a true opportunity to parent in that he/she has to deal with getting the child to and from school, homework, activities, etc. The summer day care burdens are removed because the child will be in school much of the day. This shifting of "summer" benefits the residential parent as well because it gives the non-residential parent a better sense of what the residential parent does on a daily basis.

SLR Reference. Parenting time provisions contained in sections (3) and (4) of SLR 8.075 are specific enough for use in high conflict cases, but may need to be modified if a different schedule is desired or if safety issues are implicated.

◆ **Pick up, drop off.**

The plan should specify the exact time and location for pick up and drop off, allowing a short grace period. The best plans are fashioned to avoid face to face contact between the parents during the exchange of the children. For example, the driving parent may use a cell phone to call from the curb if the transfer occurs at Mom's or Dad's house. The other parent can stay inside if the child is old enough to walk to the car. Marion County's plan anticipates that the non-residential parent will pick up the child at school at the end of the day and return the child to school on Monday. Thus, neither parent is required to see or deal with the other parent. Just a few words need to be changed in the standard "starting time" language of the rule to accomplish this result.

However, if face-to-face encounters during exchanges are unavoidable, the exchange should occur in a public place, such as a restaurant, library or day care. For younger children, fast food restaurants with covered playgrounds are particularly good because it is easy for a parent to wait inside for the other parent to arrive while the children are playing. In most such locations, there is only one exit from the playground. In addition, waiting inside is more comfortable than waiting in a parking lot.

SLR Reference. Provisions contained in section (6.2) of SLR 8.075 are generally appropriate.

However, consideration should be given to paragraph (6.2.4) regarding who is authorized to transport the child. Conflict may be reduced by working out exactly who may transport the child in advance.

◆ **School and extracurricular events.**

The parents should not attend these events at the same time. The parenting plan should specify which events each parent shall attend, or should specify a method by which this determination will be made. Make it easy to understand. For example, Mom goes if the event is on an even-numbered day and Dad goes if it is on an odd-numbered day. This should not be applicable to major events such as graduation, baptisms, etc. and should be imposed only when parents demonstrate that they cannot resist the temptation to create conflict between each other when they both attend such events.

Consideration should be given to whether this is an issue involving both parents or just one. For example, Father may go to an event and just watch, but Mother cannot resist the temptation to cross the gym and get in his face. Make the rule fit the crime. Mother should be restricted in this example, not Father.

SLR Reference. Paragraphs (7.3) and (6.4) of SLR 8.075, providing that either parent may attend school conferences and activities are not appropriate for high conflict cases unless modified based on the discussion above. Schools will schedule separate conferences.

SLR 8.075 paragraph (6.9.1) contemplates that one parent cannot be forced to take a child to an event that the other arranged to occur during that parent's time. However, parents are encouraged to be reasonable in scheduling activities to provide for some normalcy for the child. This provision may need to be modified in high conflict cases to ensure that one parent doesn't unreasonably restrict the child's activities because of the parents' inability to cooperate. For example, a child who plays softball attends practices during the week and games on weekends. The residential parent has the right to register the child for softball. The other parent should be required to take the child to practices and games which occur during that parent's time. To do otherwise deprives the child of the benefit of the program and also puts the child in a position where the child feels bad for letting down other members of the team. The key is to assure that the residential parent is not overdoing the number of activities or acting with a bad motive when registering the child.

Another common example involving older children is the non-residential parent's refusal to allow the child to go to the Friday night football game and the dance which follows because the rule contemplates the child will be with the parent beginning at 7 p.m. that Friday. The non-residential parent should assure that the child gets to the game and should pick up the child from the dance just as that parent would had the child been living in his or her home. The child can go directly to the non-residential parent's home after the dance rather than to the residential parent's home.

In sum, the non-residential parent is just as capable of taking the child to birthday parties and other activities as is the residential parent. In fact, this should be encouraged as a way of integrating the non-residential parent into the child's life and activities.

◆ **Anti-Move Provision.**

A residential parent who dislikes the children having contact with the other parent or who dislikes a court ordered parenting plan can effectively negate its impact by simply moving far enough away from the other parent to make the plan provisions unfeasible. For example, it would be difficult for a father living in Salem to get to Portland on Friday when school recesses to pick up the child. The statutory language requiring “reasonable notice” before a move of 60 miles can be modified in several ways to avoid this problem. First, there should be a clear definition of what constitutes “reasonable notice.” In addition, the geographic distance could be shortened to something less than sixty miles. Restrictions which prevent a parent from moving the child to a residence outside of the Salem/Keizer school district boundaries are common. Finally, consider shifting the burden of proof. Under the current scheme, the non-moving parent would have to prove that the move would be detrimental to the child. Why not, by order, place the burden on the moving parent of proving that the move will be in the child’s best interest?

SLR Reference. Paragraph 7.8 of SLR 8.075 requires a parent to give reasonable advance notification before moving more than 60 miles further distant from the other parent. The goal is actually to provide notice that the child is moving but it has been made a reciprocal obligation for political reasons. This provision is consistent with the requirements of ORS 107.159.

◆ **Safety Considerations.**

Safety concerns may be implicated in a number of situations. Special attention should be paid in cases involving drugs, alcohol and/or domestic violence. Referral to the Court’s Parental Access Program may be appropriate for supervised visitation services, supervised pick up and drop off, drug and alcohol evaluation, testing and treatment and/or batterer intervention classes. If a referral is made, a form of order available from the Parental Access Coordinator should be filled out and presented to the assigned judge. If the case is not appropriate for the Parental Access Program but drug testing is desired, the sample language in the last section of this document may be helpful.

SLR Reference. In cases involving domestic violence, the victim may want to keep his or her residential address confidential. In this circumstance, paragraph (7.1) of SLR 8.075 providing for disclosure of residential addresses is inappropriate, and a contact address and telephone number should be provided.

◆ **Communication.**

Generally speaking, the parents should not communicate about the child in the child’s presence. Also, the plan should specify that the parents are not to communicate orally through the child. Depending on the preferences and resources of the parents, e-mail or telephone contact between the parents may be appropriate. E-mail is particularly beneficial because it provides a written record. Recording of telephone conversations may be appropriate as a way of assuring that inappropriate (as determined in advance by the court) subjects are not discussed if this is an issue.

A method for the child to communicate with the parents should also be specified. In some cases, one parent may attempt to interfere with the other parent's communication with the child. Consider building in a time for telephone calls in which this cannot occur, such as after school but prior to the time the interfering parent gets home from work.

SLR Reference. Paragraph (6.10) of SLR 8.075 specifies methods of communication between the child and each parent and is appropriate for use in most cases. Note that the parent receiving long distance telephone calls from the child is responsible for the bill. Potential conflicts about coordinating payment can be reduced by giving the child prepaid telephone cards as gifts.

◆ **Decision making.**

Decision making responsibility should be specified in the parenting plan. Generally speaking, the less cooperation that is required to make decisions, the less conflict there will be. Areas subject to joint decision making should be specified. Decisions that affect the non-residential parent's time with the child, such as participation in extracurricular activities, may require some consultation between parents. Appointment of a Parenting Referee may be appropriate to assist with these decisions.

There are some areas of dispute that occur so often that they should be contemplated in advance. Responsibility for decisions regarding which musical concerts are appropriate, who buys the daughter's first bra, religious events, dietary restrictions, etc. should be explored at the time the parenting plan is drafted. The parents should be asked about specific items and the parenting plan should specifically address which parent is responsible for each event/activity/issue.

SLR Reference. SLR 8.075 paragraph (7.6) states that the residential parent is responsible for major decision making, but encourages cooperative consultation between parents. This type of wording is usually not effective for high conflict parents.

SLR 8.075 paragraph (7.4) provides that the non-residential parent may make decisions regarding daily care and emergency medical and dental care when the child is with that parent, and states that this does not include giving haircuts, permanents, or making any substantial change in the child's appearance (i.e., tattoos, ear piercing, etc.) unless authorized to do so by the residential parent. This provision should be discussed when the parenting plan is drafted to determine if it is appropriate.

◆ **Flexibility.**

It is important to specify the degree of flexibility that will be allowed. Some high conflict parents need a highly structured plan that is not flexible.

SLR Reference. If flexibility is not desired, paragraphs (3.1.2) and (6.9) of SLR 8.075 should be modified.

◆ **Child's toys and possessions.**

Resources permitting, it is preferable for each parent to have their own toys, clothing, car seats and other personal items for the child. If that is not possible, the plan should specify what items are to be transferred with the child. Non-residential parents may want to consider purchasing some used clothing which can be kept at his or her house recognizing the convenience that provides and that younger children usually outgrow clothing before it is worn out.

The parents need to have the rules on this subject explained to them directly and with particularity so that there is no confusion. For example, there will always be some dirty clothes returned with the child but the residential parent is not the other parent's maid service. In addition, parents often have problems when specialized clothing is needed for a one time event (snow suits, clothes for attending a wedding, etc.).

◆ **Child's refusal to spend time with a parent.**

The plan should specify how to handle a child's refusal to spend time with a parent. In most cases, a child should not be permitted to decide if he or she is going to spend time with the non-residential parent. There needs to be rapid and direct intervention by an authoritarian person (the judge) with possible direct contact with the child if parental alienation has been established. Children should be advised that they have no option but to spend time with the parent and that a refusal to do so may place the residential parent in jeopardy. Therapy is usually less effective in such situations than is a clear understanding of the consequence of the refusal to spend time with a parent. Refusals to spend time cannot be rewarded by terminating parenting time. This does not apply if there is a true problem in the non-residential parent's home because that is not a case of parental alienation.

Obvious "game playing" should be dealt with swiftly and surely. For example, if one child is too ill to go to make the exchange, just that child stays home, not the other two children. If the child just has a cold or is mildly ill, the non-residential parent should be capable of caring for the child. Caring for an ill child is part of being a parent.

◆ **Dispute resolution.**

It is important to include a provision regarding disputes that arise during implementation of the parenting plan. A Parenting Referee appointed to resolve implementation disputes can help parents settle into the plan and teach them how to communicate with each other more effectively.

III. Sample Provisions.

This section contains sample provisions that may be included in a parenting plan. Gender specific language is used only to provide the reader with an example, and should be modified to fit the special circumstances of each family.

◆ **Conflict Reduction.** The parenting plan is an avenue to remind parents about the effect conflict has on their child. Some examples of language that might be helpful are listed below.

When the marital relationship deteriorates, parents sometimes overlook the fact that the child loves each parent. It is stressful for the child when the parents disagree, particularly about parenting time and other parenting issues. The child wants the parents to agree on parenting time and wants the parents to be mutually supporting parents.

The child needs to have regular ongoing contact with both parents. The residential parent needs to support the non-residential parent's role in the child's life. Likewise, the non-residential parent needs to maintain regular, ongoing contact with the child as specified in this parenting plan. The court expects the non-residential parent to exercise all the parenting time provided for in this parenting plan.

The child needs to be able to express love for both parents. Each parent needs to create an atmosphere that allows the child to freely express their love for the other parent without making the child feel guilty. Parents often subconsciously or otherwise convey to the child dislike of the other parent. This causes conflict for the child and is detrimental to the child's relationship with both parents.

◆ **Calendaring the Schedule.** Many parents have difficulty reading the parenting plan. The following language forces the parents to sit down early in the process and work out a calendar. That way, issues such as who has the child on Christmas are not dealt with at the last minute. It also allows parents to visualize the yearly schedule in advance so they can plan vacations and other events without interfering with the other parent's time.

Mother shall prepare a calendar of the weekly and holiday schedule each year and shall send it to Father. The purpose of the calendar is to visually illustrate how the schedule described in this parenting plan is to be implemented during the upcoming year. Mother shall immediately prepare a calendar which covers the period through August 2001. Thereafter the calendar shall be provided on an annual basis covering the period of September 1 to the following August 31. The calendar must be consistent with this parenting plan. Father shall have two weeks within which to object to Mother's recitation of the schedule as set forth in the calendar. Once finalized, the calendar shall be binding upon both parties. Father's right to spend time with the children shall not be affected by Mother's failure to promptly prepare a calendar.

◆ **Drug Testing (with no referral to the Parental Access Program).**

3. *Neither party shall use illegal drugs in the presence of the child. Violation of this provision shall automatically terminate the violating parent's right to have the child until such time as a court reinstates contact. Father and Mother shall each submit to random urine tests at the following times and under the following conditions:*

3.1 *Each party shall have the continuing authority to require that the other party submit to a random urine test by making the request verbally or in writing. The verbal request can be made face-to-face or by telephone.*

3.2 *The party to be tested shall go to the Salem Hospital for the self-referral urine test within 24 hours of having received notice.*

3.2.1 *Salem Hospital is located at 665 Winter Street, Salem, Oregon. Its telephone number is 503-561-5288.*

3.2.2 *Salem Hospital shall be instructed to conduct a self-referral test which utilizes the drugs of abuse panel (including alcohol).*

3.2.3 *The party being tested shall sign a release at the Salem Hospital authorizing the requesting party to be provided with a written statement of the test results. The requesting party will need to go in person to the Laboratory Department at the Salem Hospital and present photo identification to obtain the test results.*

3.2.4 *The party being tested shall pay for the test at the time it is being conducted. Salem Hospital currently charges \$32 to conduct this self-referral test. The requesting party shall promptly reimburse the tested party the cost of having the urinalysis performed if the test is negative. The tested party's obligation to submit to a urine test shall be suspended until the tested party has been repaid by the requesting party for the cost of any previous test for which the results were negative.*

3.3 *Failure to timely complete the requested test or any act of the party being tested which invalidates the test shall be considered by the court as an admission that the test result would have shown evidence of prohibited drug use.*

3.4 *Neither party may request a urine test more than _____ time(s) per month.*

3.5 *The test results shall be admissible in court without the necessity of laying any further foundation.*