

**MILITARY CUSTODY
AND VISITATION
OVERVIEW**

MARK SULLIVAN
COL, USAR (Ret.)
mark.sullivan@ncfamilylaw.com

VISITATION STRATEGIES

**WHAT IS
“REASONABLE
VISITATION”?**

VISITATION STRATEGIES


- **VISITATION “BY MUTUAL CONSENT”**
- **BUT IF PARTIES CAN'T AGREE ...?**
- **“BACKUP” OR DEFAULT SCHEDULE OF VISITATION**

A TYPICAL LOCAL SCHEDULE

- ☞ **ALTERNATING WEEKENDS**
- ☞ **ONE WEEK EACH CHRISTMAS**
- ☞ **ONE MONTH EACH SUMMER**
- ☞ **ALTERNATING HOLIDAYS**

SFC = Sergeant First Class??


or...

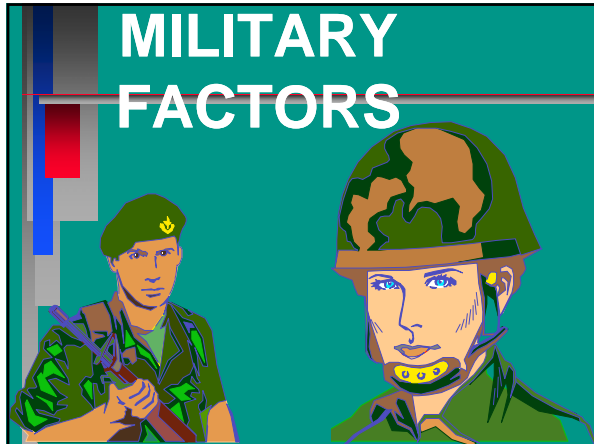


“SITTER OF FIRST CHOICE”?!!

WHAT CAN DAD DO?

- **DOCUMENT THOSE REFUSALS**
- **GO TO COURT FOR VISITATION RIGHTS**
- **SELF-HELP??**





FACTORS

- IRREGULAR CH. CARE SCHEDULES, "FULL-TIME DUTY," PCS MOVES, ALERTS, DEPLOYMENTS -vs.-
- QUALITY OF SCHOOLS ON BASE
- RECREATIONAL FACILITIES
- DEPENDENT YOUTH ACTIVITIES
- DAY CARE FACILITIES
- TRAVEL TO OTHER STATES & COUNTRIES -- "ENRICHMENT"



THE VOICE OF THE CHILD

REMEMBER -- THIS BLADE CUTS BOTH WAYS...

FORECASTING LONG-DISTANCE VISITATION

- SUMMERTIME
- CHRISTMAS

LONG-DISTANCE VISITATION

- LOGISTICS...
 - Who accompanies child?
 - What about "mileage points"?
- Travel costs, child supt.

SUPERVISED VISITATION...?

■ **MYTH vs. REALITY**



CHANGING CUSTODY

Factors and Scenarios

Factors for Custody Modification

- *Since the last custody order...*
- *Change of circumstances*
- *Substantial*
- *Unforeseeable*
- *Having an impact on child's welfare*
- *Impact is adverse, harmful*
- *So as to require change of custody*

Factors for Custody Modification

The "Usual Suspects" --
OBJECTIVE and VERIFIABLE

- **HEALTH**
- **EDUCATION**
- **BEHAVIOR**

SCENARIOS

■ *"She's started living with her boyfriend."*

SCENARIOS

- *"She's started living with her boyfriend."*
- **MARITAL FAULT vs.
PARENTAL MISCONDUCT**
- **EFFECT ON CHILD?**
- **JARRETT CASE IN ILL. '79**
- **ALMOND CASE IN N.C. '79**

SCENARIOS

■ *"I've remarried and I'm able to take care of Johnnie now."*

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■ **NO SHOWING OF HARM,
ADVERSITY**

SCENARIOS

■ *"I just gave up custody to join the Army."*

SCENARIOS

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■ **NOTHING
UNFORESEEABLE!**

SCENARIOS

■ *"She won't let me visit Johnnie."*

SCENARIOS

■ *"She won't let me visit Johnnie."*

■ **IS A CHANGE OF
CUSTODY REQUIRED?**
■ **WHY NOT JUST REQUEST
AND ENFORCE
VISITATION RIGHTS?**

SCENARIOS

“Johnnie says he wants to live with me now.”

SCENARIOS

- “Johnnie says he wants to live with me now.”
- **POTENTIALLY DYNAMITE IF CHILD IS OF SUITABLE AGE & MATURITY**
- **NEED OTHER FACTS TO MAKE IT WORK; OTHERWISE...**
- **LIKE A GREAT BOMB WITH NO DELIVERY SYSTEM!**

CUSTODY TRIALS

**“DON’T LET HIM GET AWAY WITH THAT...
DEMAND YOUR SETTLEMENT!”**



The Ann Landers Theory of Lawsuits

Sometimes
NEITHER
parent is
willing to give
up custody!



LET’S GO TO COURT!

Becoming involved in a lawsuit is like “being ground to bits in a slow mill; it’s being drowned by drops; it’s going mad by grains. Hundreds of thousands of people are exposed to such torture each year, some of them actually choosing to initiate the process. They invariably find the experience painful, protracted and expensive. When it has run its course, they often realize that it was futile. Yet there remains a queue of victims impatient for their turn....”

--Charles Dickens


CUSTODY TRIALS

- *Enforcement [ct. order]*
- *Clearing the air*
- *No need to wrestle with compromises, give-&-take*



CUSTODY TRIALS

- *Harder to change ct. order*
- *Bad blood, hard feelings*
- *Time and MONEY*




CUSTODY TRIALS

WHAT IS THE COST?



CUSTODY TRIALS

WHAT IS THE COST? -- ASSESSMENT OF ATTORNEY FEES?



Custody Trials

A Role for Mediation?




*WHAT TH' & *%# \$ @ % ! ! ? ? IS JOINT CUSTODY?*




JOINT CUSTODY

- LABELS
- "The ZERO-SUM Game"



JOINT PHYSICAL CUSTODY

A TIME-SHARE PROBLEM?




JOINT LEGAL CUSTODY



SHARED DECISION-MAKING?

THE "ROADBLOCK PROBLEM"




THE OVERSEAS CLIENT...


*(OR ONE THAT'S JUST FAR
FROM THE COURTROOM!)*



*PEREMPTORY
SETTING!!*



**DEPLOYMENT AND
CHANGE OF CUSTODY**



Custody & the Military

- *FCP isn't a court order*
- *Giving custody to a non-parent -*
 - *...when the other parent is not disqualified*
 - *Abandonment*
 - *Abuse*
 - *Neglect*
 - *Other "unfit" conduct*
- *...or hasn't relinquished custody or waived rights*

Typical Scenario

- Jane Doe prepares her FCP
- Does not refer to the dad
- She receives orders
 - Deployment
 - Mobilization for Guard/Reserve
 - TDY
 - Unaccompanied tour
- She departs
- Johnny left with her new husband
- Johnny's dad, John Doe, finds out!

Typical Scenario (cont'd)

WHAT HAPPENS NEXT?

- Self-help... OR
- Dad gets a lawyer
 - Civil HABEAS
 - Motion for return of Johnny

Typical Scenario (cont'd)

WHAT HAPPENS NEXT?

- Dad files in court...
 - Locating mom?
 - Service on mom?
- Mom requests stay of proceedings
- How will judge react?

Typical Scenario (cont'd)

- When Johnny's with dad – what next?
- Child support –
 - Locating mom
 - Serving mom
 - SCRA

Typical Scenario (cont'd)

- Mom returns, asks for dad to return Johnny
- Dad asks for "permanent custody" (Crouch case)
- Diffin v. Towne

Representing the Military Custodian

- Temporary consent order
- Deadline and mandated return
- Detail present circumstance
- s
- "Satisfactory" or EXCELLENT
- Silent Partner: "Good to Go"



State Statutes...

- Over 40 states... the BEST = Georgia, Louisiana, Alaska and Washington State
- Protections for military personnel –
 - Custody
 - Visitation
 - Timing
 - Testimony

Uniform Deployed Parents Custody and Visitation Act [UDPCVA]

- New MODEL Act
- Present already in NV, OK, ND, NC and CO
- Overview of terms [Co-Counsel Bulletin]
- Effective Oct. 1, 2013 in NC

Schools and Custody

- Co-Counsel Bulletin
- Need for a court order, not just POA
- Cannot just file ANYWHERE – rules set out in UCCJEA
- Difficulties of 3rd-party custody

BAH and Custody

- See text in two-page outline... taken from web page of Defense Travel Mgt Office

UDPCVA

Custody Protections

- Absence not held against mil. parent
- ...in motion to change custody
- Ending point for temp. custody order

UDPCVA

Visitation protections

- Delegation of vist. rts.
 - to family member
 - with close and substantial rel'nship
 - if in best interest of child

UDPCVA

Timing

Military orders, material effect on p'pation in court



PEREMPTORY SETTING!!

UDPCVA

Testimony

Military orders, material effect on p'pation in court

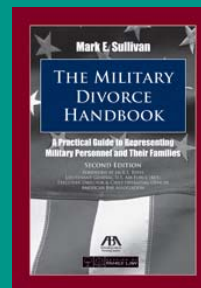


Electronic Testimony & Evidence

Jurisdiction 101 - UCCJEA

- 6 MONTHS = home state, 1st priority
- 2d choice if no home state: significant connection, substantial evidence
- When everyone has left the original-order state...
- Registration of State A's order in State B
- Need ct. order, not unincorporated S/A

"Who ya' gonna call?"



"Whoooo ya' gonna call???"



THE END

...and THANK YOU!

