Creative Solutions to Rights, Powers and Duties of Parents

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I. INTRODUCTION

Why do we need creative solutions to rights, powers and duties? Back in the old
days one parent had custody of a child upon divorce and that person maintained all the
rights and powers associated with that child. That was back in the day when for
example, in January 1974 the original Chapter 14, Title Two of the Texas Family Code
was a mere six sections on four pages! You have seen over the last thirty-five years
how the Family Code has grown, in large part because of the creation of Joint
Managing Conservatorship.

Without Joint Conservatorship, there was no fight over rights and duties and
powers; the fight was over custody itself. But when the Texas Legislature introduced
Joint Managing Conservatorship to Texans in 1979, rights, powers and duties began to
become cloudy. In 1979 of course, JMC was only allowed by agreement and then was blessed by the court. It was in 1987 that the legislature granted the trial court the authority to order Joint Managing Conservatorship on unwilling parents. Thus the battle began.

Today parents are routinely appointed Joint Managing Conservators and in fact in 1995 the Legislature created a legislative presumption that JMC was in the best interest of the child.

The rights and duties conferred by the Court begin with the study of those rights specified for a parent appointed a conservator and for a parent at all times; during his/her period of possession and specific rights and duties apportioned to individual conservators.

In this paper we will look into the rights and duties of a parent appointed as sole managing conservator and a parent appointed possessory conservatory as well as a non-parent and the rights and duties of such non-parent conservators. The study would not be complete without investigating the relatively new rights and duties of persons designated for conservators when a parent is on military duty.

As we all know litigation is no longer over being appointed a Managing Conservator or a Possessory Conservator; it is all about the decision making process. In each suit affecting the parent-child relationship, because both parents will be appointed a JMC as long as they are a fit parent, the real negotiation and fight will be over the specific rights awarded to each parent. These rights and duties are found in Chapter 153 of the Texas Family Code.

A. **Basis or Court Established Rights**

In general the rights and duties of a parent are found at Texas Family Code Section 151.001 wherein the statute sets forth the rights and duties of a parent
which include:

(1) the right to have physical possession, to direct the moral and religious training, and to designate the residence of the child;

(2) the duty of care, control, protection, and reasonable discipline of the child;

(3) the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education;

(4) the duty, except when a guardian of the child’s estate has been appointed, to manage the estate of the child, including the right as an agent of the child to act in relation to the child’s estate if the child’s action is required by a state, the United States, or a foreign government;

(5) except as provided by Section 264.0111, the right to the services and earnings of the child;

(6) the right to consent to the child’s marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment;

(7) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;

(9) the right to inherit from and through the child;

(10) the right to make decisions concerning the child’s education; and
any other right or duty existing between a parent and child by virtue of law.

gives the Court authority to affect these enumerated rights and duties and the practitioner may assume that is predicated on a best interest test although the statute doesn’t specifically say that.

Section 153.071 requires the Court to specify the rights and duties of a parent that are to be exercised either independently or by joint agreement of the parents or exclusively by one parent, if both parents are appointed conservators of the child. We routinely grant a litany of rights to parents at all times and most Court Orders contain those rights without exception. However, keep in mind that with creative drafting those rights don’t necessarily have to be awarded to both parents. Remember that 153.073(a) says that “unless limited by Court order, a parent appointed as a conservator of a child has at all times the right”:

(1) to receive information from any other conservator of the child concerning the health, education, and welfare of the child;

(2) to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;

(3) of access to medical, dental, psychological, and educational records of the child;

(4) to consult with a physician, dentist, or psychologist of the child;

(5) to consult with school officials concerning the child’s welfare and educational status, including school activities;

(6) to attend school activities;
(7) to be designated on the child’s records as a person to be notified in case of an emergency;

(8) to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and

(9) to manage the estate of the child to the extent the estate has been created by the parent or the parent’s family.

(b) The court shall specify in the order the rights that a parent retains at all times.

Perhaps there are times when it would not be best for the child to allow one parent to consult with the dentist, psychologist, or physician or even to consult with school officials about the child’s welfare. I recently had such a case with a Southlake parent. There certainly are times when there has been inappropriate conduct on the part of a parent or domestic violence when a parent should not be awarded the right to attend school activities or, for example, to manage the estate of the child. If the right circumstance presents itself and if your client has legitimate and reasonable concerns about these seldom contested provisions for parents at all times, the creative lawyer will negotiate around or present evidence to the trial court that the court should limit those rights.

Again, most of our orders give both parents rights and duties during their period of possession under 153.074 but the same proviso is contained in this Family Code Section that unless limited by a Court order, the parent conservator has the following duties:

(1) the duty of care, control, protection, and reasonable discipline of the child;

(2) the duty to support the child, including providing the child with clothing,
food, shelter, and medical and dental care not involving an invasive procedure;

(3) the right to consent for the child to medical and dental care not involving an invasive procedure; and

(4) the right to direct the moral and religious training of the child.

Even if a parent is not appointed a Managing or Possessory Conservator Section 153.075 allows the Court, but does not require the Court to order a parent to perform other parental duties including paying child support.

153.076 is distinguished from our preceding Family Code Sections because it applies to conservators and is not specifically limited to parents. That gives authority and application to this section for grandparents, aunts, uncles, etc. appointed conservators. This section requires, if ordered by the court, that the party conservator inform other conservators of significant information on the child concerning health, education, and welfare. It is also the section that imputes a duty on the conservator to inform the other conservator regarding the sex offender provisions and those persons currently charged with an offense for which on conviction the person would be required to register under Chapter 62 of the Code of Criminal Procedure.

B. The Real Fight

The rights enumerated in 153.132 (Rights and Duties of a Parent Appointed Sole Managing Conservator) encompass the fertile ground for creative lawyering in a child custody case. Those rights may be exclusively held; jointly held or independently held, They are:

(1) the right to designate the primary residence of the child;
(2) the right to consent to medical, dental, and surgical treatment involving invasive procedures;

(3) the right to consent to psychiatric and psychological treatment;

(4) the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;

(5) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(6) the right to consent to marriage and to enlistment in the armed forces of the United States;

(7) the right to make decisions concerning the child’s education;

(8) the right to the services and earnings of the child; and

(9) except when a guardian of the child’s estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child’s estate if the child’s action is required by a state, the United States, or a foreign government.

When the object of negotiation is to determine which of the above rights will be exclusively exercised by a parent or only by the joint agreement of both parents or independently by either parent, it is helpful to remember that, although it is not located in the Texas Family Code, you may certainly add notice or consultation requirements to any of the stated rights. For example, one parent might have the right to consent to psychiatric and psychological treatment but it would only be after consultation with the other parent or upon notice to the other parent.
The real difficulty in our cases surround the right to designate the primary residence of the child;

The right to make decisions concerning education;

The right to consent to medical, dental, and surgical treatment involving invasive procedure; and

The right to consent to psychiatric and psychological treatment.

Even if the parents were still together but had differing opinions about education, medical, and psychological decisions, they would have to have a tie breaker or some way to work out their differences. Those tie breaking mechanisms can be incorporated into your Court Orders or a process by which a tie may be broken can also be worked into your Court Orders.

C. Educational Decisions

Beginning in September 2009, parents could agree that the child’s residence would be within a specified geographical area and therefore neither parent would have the exclusive right to designate the primary residence of the child. Our Fort Worth Family Courts allow this provision. While this provision often placates parents regarding the designation of a primary residence it raises questions about the school, the child shall attend. As you know, the Texas Education Code, allows a child to attend a school in the school district in which either parent resides therefore the next real hurdles for parents in conflict is that of who shall make the educational decisions.

If one parent has the exclusive right to designate the primary residence of the child the educational decisions are a no brainer. However, the right to make educational decisions for the child is a paramount one when the primary residence is established by agreement or Court Order within a particular geographical area. Which
school will the child attend? How can two people, by joint agreement when they are in disagreement, make educational decisions? If the parties cannot agree that one person will exclusively make the educational decisions either directly or after consultation with the other parent, some way to break the tie is necessary. If the child has a therapist who is familiar with the child, perhaps the parties can agree that the therapist will select the school at the beginning of each school year, for that specific child. Other trusted care givers of the child can also be used as a “tie breaker”. The pediatrician is a good source for such decisions because they are almost always trusted by both parents (unless the parents can’t agree on medical decisions!) Also, during the year of the divorce or modification an often used method of selecting a school is to allow the current principal to select the curriculum/school which best suits the student. Finally, if none of the above are effective you might consider appointing an arbitrator for that decision and work in the mechanics of the arbitration. A simple arbitration of thirty minutes per side to make his and her presentation and a small time for rebuttal along with school records and recommendations from school counselors, etc. would be all the tools an arbitrator would need to determine which school the child would attend for the school year. Upon agreement of the parties, Tarrant County Family Courts will make these agreements into Orders.

D. Invasive Medical Decisions

The first question that parents argue about with invasive medical decisions is what in the heck is an invasive medical decision? Is it a new tattoo? Is it a piercing of the ears or other appendage or body part? Is it implants and braces? Is it a needle biopsy? The best practice is to define and delineate what invasive procedures are in your MSA and Court Order. That way you have a meeting of the minds as to what invasive medical decisions entail. Are immunizations an invasive medical procedure according to both parents or only one?

In addition to the making of the invasive medical decisions there is the making and scheduling of all manner of doctor appointments for kids. Everything from annual
physicals to participate in sports and extra-curricular activities to annual wellness exams or testing for a potential genetic disease should be considered. Provisions have to be considered as to how the primary physician is selected and how specialists are selected as well as the actual medical procedure decisions. Many people pose that if the parents are satisfied with the child’s primary care physician at the time of divorce or modification that the parties stipulate that physician/pediatrician/specialist shall continue to be the child’s primary physician and if that primary physician is unable to continue in that roll, that such primary physician/pediatrician/specialist select their successor. Again, try to take the parties back to what they would do if they were still in the same household unit and had a disagreement on the subject. They would have to sit down, gather information from the experts and come to an agreement or decide which one of them was going to make the decision, exclusively.

E. Consent to Psychological and Psychiatric Treatment

The same problem exists in determining whether psychological and psychiatric treatment decisions, very important rights are going to be exercised exclusively by one parent; by the joint agreement of the parents only or by one parent after notification or consultation with the other parent. In this day and time doctors prescribe medications routinely for such things as ADD or ADHD and parents will have varying views on whether a child’s behavior should be modified with medication or discipline or structure, etc. Chances are that the medical treatment or psychological or psychiatric treatment of the children may well have been one of the significant disagreements that led to the break-up of the parents in the first place. While they are not ordinarily the disagreements that lead to the actual break-up they are in fact the “straw that broke the camel’s back” often times. Another area of disagreement is what to do with the teenager who has been smoking dope or popping pills. One parent may see this as purely experimental and a “phase” the child is going through while the other parent believes this could lead to hell and damnation for the child and immediately wants to check the child into a psychiatric treatment facility. As a practitioner you want to avoid the situation where one parent checks the patient in to a $25,000.00 care unit and a
week later the other parent checks the child out! Who makes the decision to evaluate the child? Who makes the decision after evaluation to treat the child? Who makes the decision to institutionalize the child or put the child in a residential treatment facility? Like the educational and medical decisions considered above, a tie breaking mechanism needs to be in place when the parents simply cannot see eye to eye on this delicate situation.

II. NON-STATUTORY RIGHTS

While the Family Code requires the rights discussed above to be enumerated as exclusive, joint or independent, there are non-statutory rights that parents choose to include in their Court Orders. The enumeration and explanation of non-statutory rights can be especially helpful to high conflict parents even though these rights may not be enforceable by contempt because they are non-statutory. They can certainly be a road map to a process to arrive at a decision and at worst, as Johnny Depp said in Pirates of the Caribbean, “Ay, matie, these are but mere guidelines!”

A. The Right of First Refusal

Parents divorcing each other or divorced parents who now have boy friends, girl friends, or new spouses tend to be very territorial about their children. As such, if it is the father’s time to have the child, he typically wants to exercise every minute of his time even if he is not personally present. He believes that there is nothing wrong with his mother or his new spouse or his sister exercising his periods of possession if he cannot. On the other hand, mom sees it a colossal waste for the child to have stepmom, paternal grandmother or aunt exercising the dad’s periods of possession because they are not the father. Many parents say that since the Code allows them to designate a competent adult to pick up and return the child that also means that a competent adult can exercise his or her periods of possession when he or she cannot. The other side of that argument is that although the Code allows a competent adult to pick up and return the child when the parent cannot, it does not expand the right to
allowing some other competent adult to exercise the parent’s periods of possession when that parent cannot.

The creative lawyer will first define what the right of first refusal is and designate the period of time a parent will not be with the child for the right of first refusal to be applicable. Often times the parties can negotiate that if a parent or step-parent is not available for a set period of time, usually more than four (4) hours and typically eight (8) hours, then that non-exercising parent or step-parent must give the other parent the right to come and pick up the child, keep the child and then return the child at a designated time. Both the beginning of the right of first refusal and the end of the right of first refusal are crucial to be included in your Court Order. For example if the non-exercising parent arrives home at midnight does the parent in possession immediately have to wake the child up, dress the child and return the child home at 12:15? A reasonable interpretation of a right of first refusal, seems to me, would be that if the parent not able to exercise possession returns to his/her home after 10:00 P.M. then the parent exercising possession returns the child the next morning by 8:00 A.M. or to school. The big battle may be over whether the parent can designate a step-parent, boyfriend/girlfriend or grandparent or other family member to step into his or her place such that the right of first refusal doesn’t occur as long as there is a step-parent, grandparent, uncle or aunt available. The big question should be “is the child comfortable with any of these other care givers?” No one wants to see a child goes over and sit for four (4) or more hours with a grandparent or step-parent the child does not get along with and no one wants to see the child sit in front of a TV all those hours because the non-able-to-exercise his/her periods of possession parent can’t be present for one of the possession periods. Convince the client that the comfort as well as safety of the child should be paramount in making this right of first refusal decision and provisions in your order.

B. Extra Curricular Activities

A major area of conflict for parents often is the school and non-school extra
curricular activities. Usually there is a parent who thinks his or her child is the next Van Cliburn or Terry Bradshaw and wants to sign the kid up for every conceivable camp, training session, special instruction known to man. The other parent believes the child deserves a normal childhood and wants moderation in all of these areas or puts his foot down and demands that there be no pressure to attend sports or music camps or special instruction. Agreement can sometimes be reached if each parent is awarded the right to select one extra curricular activity per semester as long as that parent pays for all the cost attendant to that extra curricular activity. Rules still have to be obtained as to whether the parent not signing the child up must take the child to the extra curricular activity or practice or rehearsal if it occurs during his/her possession time. Usually agreement can be reached on any school extra curricular activities by reciting that both parents have to take the children to all school associated extra curriculars and usually the parents put in a provision in the decree to divide those costs equally or in proportion to their incomes. Sadly enough, attention should also be paid to who is allowed to attend rehearsals, practices and games when you are not the parent selecting the extra curricular activity. In a perfect world and as a practitioner I am sure you will strive to convince both parents that both parents should always be allowed to attend rehearsals, practices and extra curricular activities regardless of who scheduled or paid for the activities.

C. Duty to Manage the Estate

When you draw up your inventories you will determine that one or both parents have signed up for the Texas Tomorrow Fund or TUGMA or UGMA accounts. As you have found out through the years of doing sworn inventories, those accounts are in one parent’s name for tax purposes. But as you have also found out at mediation, the parents want to split up control of those accounts because of trust issues. Usually the accounts cannot be placed in both names of the parents and some accounts cannot even be changed from the current parent on the account. Perhaps the easiest way to ensure that the funds are protected and used for the sole purpose of educating the child is to create an order that the parent whose name is on the account shall manage
the account and restrict the use of the funds to the higher education purpose of the plan and further, order that the managing parent of the account give quarterly or semi-annually statements to the other parent on the accounts.

D. Right to be Reimbursed Uninsured Medical Costs

Problematic is the parent who saves up all of the uninsured medical costs and presents them to the other parent five (5) or ten (10) years later! It is generally impossible for the non-paying (and non-informed, I would add) parent to pay a lump sum upon demand years later. Therefore perhaps the creative lawyer can limit the right to reimbursement of uninsured medical expenses to one hundred eighty (180) days or three hundred sixty-five (365) days from the time the services were provided and thereafter if the bills are submitted they will be barred from recovery by the incurring parent. This helps everyone manage their budget and keeps the other parent abreast of the medical concerns and expenses of the child.

E. Pets

Sometimes you have the case where the parents have animals and no children or children and animals/pets. Ordinarily I wouldn’t think that you would need rights to pets in your orders but when the Fort Worth Court of Appeals came down with Medlen v Strickland on November 3, 2011 I had to amend my way of thinking. In that case the dog owners brought an action against an employee of an animal shelter regarding the alleged negligence resulting in the euthanasian of their dog. The Court of Appeals held that dog owners could indeed be awarded damages based on sentimental value of a euthanised dog. The dog owners sued for the sentimental or intrinsic value of the dog, Avery, because he had little or no market value and was irreplaceable. The Court held that sentimental damages may be recovered for the loss or destruction of all types of personal property including dogs even though the Texas law in a similar case in 1891 had held one could not recover for sentimental value of a dog. (The 1891 Supreme Court case that held that dogs were treated differently under the law than other
personal property and for dogs, a party could only recover the market value if any
determined by the usefulness or services of the dog) *Heiligmann v Rose* 81 Tex.222,
16SW 931 (Tex 1891).

With this new case, perhaps judges will begin routinely making Court Orders
about the rights and duties to pets! If so, think about where the exchange of the pet will
be, the periods of possession, holidays, medical care for the pet, the expenses
associated with the insurance or medical needs of the pet, the grooming and feeding of
the pet as well as the discipline and extra curricular activities such as obedience and
agility classes!

### III. RIGHTS AND DUTIES OF NONPARENT

Section 153.371 points out the rights and duties of a nonparent conservator
unless limited by the court as follows:

1. the right to have physical possession and to direct the moral and religious
   training of the child;

2. the duty of care, control, protection, and reasonable discipline of the child;

3. the duty to provide the child with clothing, food, shelter, education, and
   medical, psychological, and dental care;

4. the right to consent for the child to medical, psychiatric, psychological,
   dental, and surgical treatment and to have access to the child’s medical
   records;

5. the right to receive and give receipt for payments for the support of the
   child and to hold or disburse funds for the benefit of the child;
(6) the right to the services and earnings of the child;

(7) the right to consent to marriage and to enlistment in the armed forces of the United States;

(8) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(9) except when a guardian of the child’s estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child’s estate if the child’s action is required by a state, the United States, or a foreign government;

(10) the right to designate the primary residence of the child and to make decisions regarding the child’s education; and

(11) if the parent-child relationship has been terminated with respect to the parents, or only living parent, or if there is no living parent, the right to consent to the adoption of the child and to make any other decision concerning the child that a parent could make.

Section 153.375 requires the duty of a nonparent managing conservator to file with the court a report of facts concerning the child’s welfare including the child’s whereabouts and physical condition.

IV. MILITARY DUTY RIGHTS

With many of our service men and women doing extended terms of duty in far away places such Afghanistan, Iraq, etc. the eighty-second legislative session brought a new subchapter 153.703 to the Family Code. This subchapter gave the conservator
who has the exclusive right to designate the primary residence and who was ordered to
military deployment, military mobilization or temporary military duty, the right to appoint
a designated person to exercise the exclusive right to designate the primary residence
of the child during those periods of deployment, mobilization or temporary military duty. The military person could bestow that right in the following order of preference:

(1) the conservator who does not have the exclusive right to designate the primary residence of the child;

(2) if appointing the conservator in (1) is not in the best interest of the child then another person could be appointed;

(3) if the appointing conservator in (1) or person chosen in (2) is not in the best interest then the court would chose the person. If a nonparent was appointed the designated person then they would have the same rights and duties of a nonparent appointed as a sole conservator under 153.371. In addition, the court can limit or expand the rights of a nonparent designated by the military person as appropriate to the best interest of the child.

V. SPECIAL NEEDS CHILDREN

Keith Maples, an attorney in Austin who has lectured numerous times on special needs children’s issues has said that when handling a case involving a special needs child there may be a need for more attention to detail in the area of rights and duties for the conservators. Specifically, the circumstances of a special needs child might require the Court to issue orders delineating rights and duties that cover issues not normally covered in typical orders. An order that sets out the rights and duties of the parents of a special needs child may need to address the rights and duties that are not specifically set out in Chapter 153 of the Family Code. It may need to be pointed out to the Court that the obligation to expand upon the typical rights and duties set out in the usual form
book orders are insufficient for the special needs child. The Family Code already provides for a more expansive and detailed order, if required. Section 151.001(a)(11) states that the Family Code provides that “a parent of a child has ...any...right or duty existing between a parent and child by virtue of law.” The Code goes on to provide that when “rendering an order appointing joint managing conservators, the court shall:

(2) specify the rights and duties of each parent regarding the child’s physical care, support and education;

(3) include provisions to minimize disruption of the child’s education, daily routine, and association with friends;

(4) allocate between the parents, independently, jointly, or exclusively, all of the remaining rights and duties of a parent as provided by Chapter 151....”

(These provisions set out in 153.134(b) give the court the authority to set out rights and duties that go beyond the rights and duties of 153.073, 153.074, 153.076 and 153.132 and which must be addressed in every order).

A. Conservator Rights

With a special needs child each conservator will necessarily need more detailed information regarding the health, education, welfare of the child from the other parent. A mechanism needs to be incorporated into your orders to allow as much detail as possible under the specific circumstances to be exchanged between the parents. This can be accomplished through such things as Our Family Wizard, e-mails or snail mail and can be dictated to be required weekly, monthly or at other intervals. The key is learning from your client what information, given the child’s very special needs, should and therefore must be provided to the other parent.
Rights during periods of possession may also need to be adjusted for special needs kids. For example, the duty to support a child during periods of possession including food and medical care not involving invasive procedures may need to be expanded. Some children with special needs are on special diets or receive various medical treatments or medications. As is often the case, parents may not agree about a diet or treatment plan and therefore your orders need to have the mechanism in place so that the child’s needs are met. Either one parent is going to have exclusive rights or your tie breaking procedure must be in place. It is important to note that not only may a child be required to be on a specific diet during his/her periods of possession but the child may also be restricted from eating certain foods. For example, many people believe that children on the autism spectrum benefit from a gluten free and casein free diet. Basically this is no wheat and no dairy. While it is challenging to restrict a kid’s diet to keep it wheat and dairy free it must be addressed in your negotiations if the parents are not in accord. Likewise there will be physical therapy treatments that are effective only if they are performed at both houses, not just at one house. There must be duties imposed in your orders on the parent who perhaps does not believe the treatment is effective, beneficial or necessary, to nonetheless, see that the therapies are followed even in his/her home during his/her periods of possession. With most special needs children the parents must deal with the federal and state governments. It is essential that you draft your order setting forth the rights and duties of one or both parents relative to who is the voice with the authority to deal with the state or federal government regarding the child’s state and federal benefits. Likewise if one parent is designated the person to interface with federal and state authorities, there should be a duty imposed on that parent to keep the other parent fully and completely informed of the status of the child as well as the status of the federal and state benefits.

B. Legal Decisions

In our typical form book way we usually give each parent the independent right to make legal decisions for children. However, with a special needs child these decisions
may be critical. If the special needs child has had a catastrophic injury, for example, there is a potential tort claim and the outcome will be crucial to the family of the special needs child. Incorporate in your orders the procedure for making such legal decisions including filing and prosecuting tort claims, appeals of state or federal assistance benefits, social security, disability, etc.

C. Educational Decisions

Again, as Mr. Keith Maples points out in his paper presented at the 2012 Marriage Dissolution Institute, the right to make educational decisions will be even more significant when a special needs child is involved. The parents of a special needs child will probably be very involved with the school system in implementing an educational plan for the child. The practitioner must bear in mind that the school system would rather not spend money providing for the needs of special needs children. The school system receives funds to provide services for special needs children and if those funds are not used for that purpose then they are available for other purposes. Federal law requires that the school provide the child what the child needs which might include a one on one aide for the entire school day. As you can surmise, the costs to a school district for a special needs child can be extraordinary. Your court order must be very clear as to who makes the decisions so that the school can rely on that court order. If there is not one person with the exclusive right to makes these educational decisions and the parents do not agree on the school plan, then the services and benefits will not be made available to the child. The parents’ request and consent come up when the parents first seek services and accommodations from the school. Additionally, the parents must consent to have the child evaluated by the school and after the evaluation the decisions will need to be made about the creation and implementation of a plan for the child. If the parents cannot agree to the services and the plan your court order could require that they hire and utilize an education specialist to make the decisions for them.

VI. MOBILE DEVICES AND SOCIAL MEDIA
In this day and age of texting, sending tweets, sexting, skyping and instant messaging, it is important for a parent to keep up with what his or her child is doing on mobile devices and social media. Because the accounts funding all of these activities will be in the parent’s name and not a minor child’s name the lawyer is going to have to fashion an order to obtain information from the divorcing parent. Almost every kid has a Smartphone, an iPad, laptop and an iTunes account they download from. The iTunes account will be in the parent’s name and if your client’s child participates in iTunes and it is in the other parent’s name, your order will need to require that parent to provide to your client the login ID as well as the pass word for iTunes. Remember that iTunes does more than merely serve as a source for downloading music. The child can download and save on iTunes pictures, music, video and even tv shows. If your client wants to know what his or her child is up to and what content the child is viewing, the iTunes account is critical.

With the Smartphone your client is going to need the user name and password for the child’s Smartphone so that they can login and again determine what the child is listening to and viewing as well as texts and web sites they are visiting on their Smartphone. Same with the iPad and laptop, your client will need an order that orders the parent to provide them the user name and the password and will require them to update that information when there is any change. Remember that all of these devices can save content whether it’s sexting, pictures, or various downloads and it will be important to your client to know when the child is at the other parent’s home or when the account is in the other parent’s name, all of the information necessary to access what the child is doing.

In this era of a May 2012 IPO for Facebook, half of the world participates! Your client’s child will no doubt have a public page on Facebook, as does almost every child, but there will also be a private page for “friends” only. Once again it will be important for your client to be able to access the private pages to know who the child is contacting and what is on the site in order to protect the child and properly supervise the child. You will want the password for the Facebook account as well as the email address
assigned to the Facebook account.

Skyping is all the rage! Kids love to Skype from their laptop, iPad or Smartphone and your client needs to be aware that Skype can save pictures of the person the child is talking with and messaging on Skype as well. You will need the login ID number and the password in order to access your client’s Skype account.

Attached to this paper are numerous appendix addressing many of the situations discussed in this papers to add to your forms library. I hope this paper has been of service to you and that you will utilize some or all of the forms.

VII. FORMS

1. Appendix 1 Allocation of Parental Rights and Duties
2. Appendix 2 No Primary But Use One Parent’s Address for School Purpose
3. Appendix 3 Tie-Breaker Provision - Educational
4. Appendix 4 Tie-Breaker Provision - Invasive Medical
5. Appendix 5 Tie-Breaker Provision - Psychiatric/Psychological
6. Appendix 6 Tie-Breaker Provision - Choice of Health-Care Provider
7. Appendix 7 Right to Select Extracurricular Activities - Agreement if During Both Parent’s Times
8. Appendix 8 Right to Select Extracurricular Activities - Joint Agreement
9. Appendix 9 Right to Select Summer Camp
10. Appendix 10 Right of First Refusal - Long Form with Two Hours
11. Appendix 11 Right of First Refusal - Short Form with Two Overnights
12. Appendix 12 Right of First Refusal Only When Other Parent is Working
13. Appendix 13 Right to Provide Child Care
14. Appendix 14 Mobile Device Order
15. Appendix 15 Social Media Order
# APPENDIX 1

## ALLOCATION OF PARENTAL RIGHTS AND DUTIES

<table>
<thead>
<tr>
<th>Rights and Duties</th>
<th>Each Has at All Times</th>
<th>Each Has During Possession</th>
<th>Solely Mother</th>
<th>Solely Father</th>
<th>Joint</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duty to inform the other parent in a timely manner of significant information concerning the health, education, and welfare of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to receive information from the other parent concerning the health, education, and welfare of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to confer with the other parent, to the extent possible, before making a decision concerning the health, education, and welfare of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right of access to medical, dental, psychological, and educational records of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to consult with a physician, dentist, or psychologist of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to consult with school officials concerning the child’s welfare and educational status, including school activities</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to attend school activities</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to be designated on the child’s records as a person to be notified in case of an emergency</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to consent to medical, dental and surgical treatment during an emergency involving immediate danger to the health and safety of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to manage the child’s estate to the extent the estate has been created by the parent or the parent’s family</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty of care, control, protection, and reasonable discipline of the child</td>
<td></td>
<td>X</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Duty to support the child, including providing the child with clothing, food, shelter and medical and dental care not involving an invasive procedure</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to consent for the child to medical and dental care not involving an invasive procedure</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to direct the moral and religious training of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty to make periodic child-support payments</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to establish the primary residence of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to consent to medical, dental, and surgical treatment involving invasive procedures and to psychiatric and psychological treatment</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to receive and give receipt for periodic payments for the support of the child and hold or disburse the funds for the benefit of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Right to consent to marriage and enlistment in armed services of US.</td>
<td></td>
<td>X</td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Right to make decisions concerning the child’s education</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Right to services and earnings of the child</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Except when a guardian of the child’s estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child’s estate if the child’s action is required by a state, the U.S., or a foreign government</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Duty to manage the child’s estate to the extent the estate has been created by community property or the joint property of the parents.</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX 2

NO PRIMARY BUT USE ONE PARENT’S ADDRESS FOR SCHOOL PURPOSES

_Domicile Restriction_

The Court finds that, in accordance with section 153.001 of the Texas Family Code, it is the public policy of Texas to assume that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the children, to provide a safe, stable, and nonviolent environment for the children, and to encourage parents to share in the rights and duties of raising their children after the parents have separated or dissolved their marriage. IT IS ORDERED that the primary residence of the children shall be within ______ County, Texas and counties contiguous to __________________ County, Texas and the parties shall not remove the children from _______ County, Texas and counties contiguous to _________ County, Texas for the purpose of changing the primary residence of the children until modified by further order of the court of continuing jurisdiction or by written agreement signed by the parties and filed with the court. IT IS FURTHER ORDERED that for school residency purposes, MOTHER’S primary residence address shall be used.

IT IS FURTHER ORDERED that this geographical restriction on the residence of the children shall be lifted if, at the time either parent wishes to remove the children from _________ county or a county contiguous to _________ county for the purpose of changing the primary residence of the children, the other parent does not reside in __________ county or county contiguous to ___________ county.
APPENDIX 3

TIE-BREAKER PROVISION - EDUCATIONAL

the right, subject to the agreement of the other parent conservator, to make decisions concerning the child’s education and in the absence of a mutual agreement of the parties, the recommendation of (individual’s name and contact info), or any other individual the parties can mutually agree upon, shall control in all instances, costs of said recommendation (if any) to be split equally by the parties;
TIE-BREAKER PROVISION - INVASIVE MEDICAL

the right, subject to the agreement of the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures and in the absence of mutual agreement the recommendation of the child’s primary care physician shall control in all instances;
the right, subject to the agreement of the other parent conservator, to consent to psychiatric and psychological treatment of the child and in the absence of mutual agreement the recommendation of the child’s primary care physician shall control in all instances;
APPENDIX 6

TIE-BREAKER PROVISION - CHOICE OF HEALTH-CARE PROVIDER

the right, subject to the agreement of the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures and in the absence of mutual agreement the recommendation of the child’s primary care physician shall control in all instances. In the event the parties cannot mutually agree on the choice of a physician and/or health care provider for the child, the parties will each select a health care provider and the two health care providers will select a third health care provider whose recommendation shall be binding.
IT IS ORDERED that each parent may independently enroll the child in extracurricular/school activities provided that such activities do not impact the other parent’s possession time.

However, IT IS ORDERED that if any extracurricular/school activity shall occur during both parent’s possession of the child, then the parents must mutually agree on the selection of the activity before either parent is permitted to enroll the child in said activity. IT IS ORDERED that the parent who is exercising his or her possession with the child when the activity begins shall be responsible for transporting the child to and from those activities.

IT IS ORDERED that each parent shall insure that the other parent has been provided information about the extracurricular/school activity including schedules, contact information for the coaches and leaders, and any other documents or notices.
APPENDIX 8

RIGHT TO SELECT EXTRACURRICULAR ACTIVITIES - JOINT AGREEMENT

IT IS ORDERED that the parents must mutually agree on the selection of any extracurricular/school activity before either parent is permitted to enroll the child in said activity. IT IS ORDERED that the parent who is exercising his or her possession with the child when the activity begins shall be responsible for transporting the child to and from those activities.

IT IS ORDERED that each parent shall insure that the other parent has been provided information about the extracurricular/school activity insuring schedules, contact information for the coaches and leaders, and any other documents or notices.
Orders Regarding Summer Camp

The Court finds the parties anticipate that the child(ren) may attend summer camp from year to year.

IT IS ORDERED that in the event any child will be attending summer camp during the summer of any year, MOTHER shall notify FATHER of the name, location, mailing address, and telephone number of the summer camp each child will attend, which child will attend each particular summer camp, and the exact dates and times when each summer camp session begins and ends.

IT IS ORDERED that MOTHER shall not enroll a child in more than one summer camp during any year without FATHER’s advance written consent, and that the summer camp session attended by each child shall not exceed two consecutive weeks in any year.

IT IS ORDERED that the parent in possession of the child on the date upon which the child’s summer camp session is scheduled to begin, shall deliver the child to the summer camp at the beginning time of the session. IT IS ORDERED that the parent entitled to possession of the child on the date upon which the child’s summer camp session concludes, shall pick up the child from summer camp at the ending time of the session.

Note: Be sure to provide that FATHER’s periods of weekend and extended summer possession in the regular possession order are “subject to” these provisions regarding summer camp or that FATHER’s periods of weekend and extended summer possession will control provided he delivers and picks up the children to and from camp.
APPENDIX 10

RIGHT OF FIRST REFUSAL - LONG FORM WITH TWO HOURS

Note: If you use the Standard Possession Order, you can simply add the following paragraph (with any duration you choose) to the form for the Standard Possession Order between “(f) Undesignated Periods of Possession” and “(g) General Terms and Conditions:”

(G) Right of First Refusal

The following provisions giving each parent a mutual right of first refusal are hereby incorporated into the possession orders contained in this order:

In the event FATHER will not be personally present with the child during any period of two hours or longer that falls within his scheduled periods of possession of the child, IT IS ORDERED that FATHER shall notify MOTHER as soon as possible after he discovers he will not be personally present with the child for such period of two hours or longer, and FATHER shall give MOTHER the option to take possession of the child during any portion of that period of possession during which he will not be personally present with the child. In the event MOTHER wishes to exercise this right to possession of the child, MOTHER shall notify FATHER that she will exercise such right within two hours of her receipt of FATHER’s notification that he will not be personally present with the child for that period. In the event MOTHER exercises this right to possession of the child, then MOTHER shall pick up the child from FATHER’S residence if FATHER is in possession of the child prior to being absent for the period of two hours or longer; otherwise, from school if the child is in school. If FATHER returns during his period of possession and has given MOTHER advance notice of his intent to resume possession of the child, MOTHER shall surrender the child to FATHER at MOTHER’S residence at the time specified so that he may complete his period of possession.
In the event MOTHER will not be personally present with the child during any period of two hours or longer that falls within her scheduled periods of possession of the child, IT IS ORDERED that MOTHER shall notify FATHER as soon as possible after she discovers she will not be personally present with the child for such period of two hours or longer, and MOTHER shall give FATHER the option to take possession of the child during any portion of that period of possession during which she will not be personally present with the child. In the event FATHER wishes to exercise this right to possession of the child, FATHER shall notify MOTHER that he will exercise such right within two hours of his receipt of MOTHER’s notification that she will not be personally present with the child for that period. In the event FATHER exercises this right to possession of the child, then FATHER shall pick up the child from MOTHER’s residence if MOTHER is in possession of the child prior to being absent for the period of two hours or longer; otherwise, from school if the child is in school. If MOTHER returns during her schedule period of possession and has given FATHER advance notice of her intent to resume possession of the child, FATHER shall surrender the child to MOTHER at FATHER’s residence at the time specified so that she may complete her period of possession.

IT IS FURTHER ORDERED that if either parent notifies the other parent that they will exercise a right of first refusal under the terms of this order, the parent providing such notification shall not cancel such agreement, and shall be responsible for the arrangement and expense of any child care if they later determine they are unable to exercise the right of first refusal.
APPENDIX 11

RIGHT OF FIRST REFUSAL - SHORT FORM WITH TWO OVERNIGHTS

Note: If you use the Standard Possession Order, you can simply add the following paragraph (with any duration you choose) to the form for the Standard Possession Order between “(f) Undesignated Periods of Possession” and “(g) General Terms and Conditions:”

(g) Right of First Refusal

If the parent entitled to possession of the child pursuant to this order will be away from the child for two consecutive overnights, that parent (“absent parent”) is ORDERED to contact the other parent as soon as possible and offer the other parent the opportunity to pick up the child and have possession of the child during the absence of the parent entitled to possession of the child. The parent exercising this right of first refusal (“exercising parent”) is ORDERED to relinquish the child to the absent parent at the exercising parent’s residence (or at school, if the child is in school) immediately upon the absent parent’s return and request, if the absent parent is still entitled to possession of the child under this order, provided the absent parent has given advance notice to the exercising parent of the absent parent’s intent to resume possession of the child.

IT IS FURTHER ORDERED that if the exercising parent notifies the absent parent that the exercising parent will exercise a right of first refusal under the terms of this order, the exercising parent shall not cancel such agreement, and shall be responsible for the arrangement and expense of any child care if the exercising parent later determines he or she is unable to exercise the right of first refusal.
RIGHT OF FIRST REFUSAL ONLY WHEN OTHER PARENT IS WORKING

Note: This is useful when one or both parents have work schedules that change frequently.

Use the Standard Possession Order but include a “right of first refusal” when the other parent is working and the child is not in school. You can simply add one or both of the following paragraphs to the form for the Standard Possession Order between “(f) Undesignated Periods of Possession” and “(g) General Terms and Conditions:”

(g) Right of Possession During Work Hours of Other Conservator

Notwithstanding any periods of possession ORDERED for FATHER, it is explicitly ORDERED that MOTHER shall have a superior right of possession of the child as follows:

MOTHER shall have the right to possession of the child while FATHER is working, except for the hours during which the child is attending classes in kindergarten or any grade level above kindergarten. FATHER is ORDERED to give written notice to MOTHER of FATHER’s work schedule within 24 hours of FATHER’s receipt of each such work schedule. MOTHER shall have the right to possession of the child during the times FATHER works, beginning 30 minutes prior to the start of FATHER’s work hours, and ending 30 minutes after the end of FATHER’s work hours. In order to exercise this right of possession, MOTHER shall give written notice to FATHER of MOTHER’s intent to exercise a period of possession during which FATHER is working on or before the third day after MOTHER receives FATHER’s work schedule covering that period. If MOTHER exercises this right of possession, MOTHER shall pick up the child from FATHER’s residence, if the child is not in school (or from the school if the child is in school). If FATHER’s work hours end during a scheduled period of possession granted to FATHER under the terms of this order, FATHER may resume his period of
possession after the end of his work hours by picking up the child from MOTHER’S residence, if the child is not in school (or from the school if the child is in school).

Notwithstanding any periods of possession ORDERED for MOTHER, it is explicitly ORDERED that FATHER shall have a superior right of possession of the child as follows:

FATHER shall have the right to possession of the child while MOTHER is working, except for the hours during which the child is attending classes in kindergarten or any grade level above kindergarten. MOTHER is ORDERED to give written notice to FATHER of MOTHER’s work schedule within 24 hours of MOTHER’s receipt of each such work schedule. FATHER shall have the right to possession of the child during the time MOTHER works, beginning 30 minutes prior to the start of MOTHER’s work hours, and ending 30 minutes after the end of MOTHER’s work hours. In order to exercise this right of possession, FATHER shall give written notice to MOTHER of FATHER’s intent to exercise a period of possession during which MOTHER is working on or before the third day after FATHER receives MOTHER’s work schedule covering that period. If FATHER exercises this right of possession, FATHER shall pick up the child from MOTHER’s residence, if the child is not in school (or from the school if the child is in school). If MOTHER’s work hours end during a scheduled period of possession granted to MOTHER under the terms of this order, MOTHER may resume her period of possession after the end of her work hours by picking up the child from FATHER’s residence, if the child is not in school (or from the school if the child is in school).
APPENDIX 13

RIGHT TO PROVIDE CHILD CARE

IT IS ORDERED that during FATHER's periods of possession of the child until the child reaches _____ years of age, MOTHER shall be allowed to provide the child care during the day if FATHER has to work, hire a sitter, or use another type of child care. If MOTHER is not available to care for the child, IT IS ORDERED that FATHER shall use MOTHER's designated child care provider, except that FATHER may utilize his family members as a child care providers if the family member so utilized is present in the town where FATHER or MOTHER resides.

[OR USE THIS ONE FOR EXTENDED SUMMER ONLY:]

IT IS ORDERED that during FATHER's periods of extended summer possession of the child in the summers of 2000__ and 2000__, MOTHER shall be allowed to provide the child care during the day if FATHER has to work, hire a sitter, or use another type of child care. If MOTHER is not available to care for the child, IT IS ORDERED that FATHER shall use MOTHER's designated child care provider, except that FATHER may utilize his family members as child care providers if the family member so utilized is present in the town where FATHER or MOTHER resides.
IT IS ORDERED that ________________________ (Mother) shall furnish to ___________________________ (Father) all user names and passwords for all mobile devices the child is allowed to use including but not limited to Smartphone, iPads, laptops. IT IS FURTHER ORDERED that ___________________________ furnish to ___________________________ the parent’s iTunes login ID and password for the iTunes accounts utilized by the child. All user name, passwords, login ID’s shall be furnished to the other parent via email within twenty-four (24) hours of establishing or modifying such user names, passwords, login ID’s.
SOCIAL MEDIA ORDER

IT IS ORDERED that _______________________________ (Mother) shall furnish to _____________________________(Father) the password and email address of the child’s Facebook account within twenty-four (24) hours of establishing or modifying said password or email address.

Skype

IT IS ORDERED that _______________________________ (Mother) shall furnish to _____________________________(Father) the child’s Skype’s login ID and password within twenty-four (24) hours of establishing or modifying said login ID and password.