CHAPTER 1. HISTORICAL PERSPECTIVE

§ 1:1 Introduction

I. EVOLUTION OF LAW

- § 1:2 Parental preference
- § 1:3 Presumption of legitimacy—Biological father's rights
- § 1:4 Agreement of parents
- § 1:5 Presumption for father
- § 1:6 Tender years doctrine
- § 1:7 Best interests test

II. CURRENT PRESUMPTIONS

- § 1:8 Joint custody, shared parenting
- § 1:9 Primary caretaker

III. CHANGING NATURE OF CHILD CUSTODY DISPUTES

- § 1:10 Terminology
- § 1:11 Children's rights
- § 1:12 Alternative dispute resolution
- § 1:13 Family courts
- § 1:14 Parent education programs
- § 1:15 Collaborative law
- § 1:16 Therapeutic jurisprudence

CHAPTER 2. ESTABLISHING THE ATTORNEY-CLIENT RELATIONSHIP

§ 2:1 Introduction

I. INITIAL CLIENT CONTACT

- § 2:2 In general
- § 2:3 Sample brief intake form

II. OBTAINING INFORMATION

- § 2:4 The interview
- § 2:5 Evaluation—Prospective client
- § 2:6 —Case
- § 2:7 Educating the client
- § 2:8 Representation—Child
- § 2:9 Representation—Client in mediation
- § 2:10 Detailed child custody questionnaire

III. CONTRACTING FOR SERVICES OF ATTORNEY

§ 2:11 Fees and expenses

IV. HANDOUTS FOR CLIENTS

- § 2:12 In general
- § 2:13 General Custody Law Handout
- § 2:14 Children in divorce

V. ETHICAL CONSIDERATIONS

- § 2:15 In general
- § 2:16 Dealings with other party
- § 2:17 Neglect of case
- § 2:18 Improper conduct
- § 2:19 Confidentiality
- § 2:20 Frivolous actions
- § 2:21 Sex with clients
- § 2:22 Malpractice
- § 2:23 Unbundling of legal services
- § 2:24 Termination of relationship
- APPENDIX 2A. American Academy of Matrimonial

Lawyers Bounds of Advocacy 2000:

Goals for Family Lawyers

APPENDIX 2B. American Bar Association Family Law

Section Civility Standards for Family

Lawyers

CHAPTER 3. JURISDICTIONAL ISSUES

- § 3:1 Introduction
- § 3:2 Jurisdiction—Checklist
- § 3:3 Uniform Child Custody Jurisdiction Act
- § 3:4 Parental Kidnapping Prevention Act of 1980

§ 3:5	Indian Child Welfare Act of 1978
§ 3:6	Hague Convention on the Civil Aspects of
	International Child Abduction
§ 3:7	Initial assumption of jurisdiction—UCCJEA
§ 3:8	—Home state
§ 3:9	—Significant connections and substantial
0 - 1 -	evidence
§ 3:10	—No other state has jurisdiction
§ 3:11	Temporary emergency jurisdiction
§ 3:12	Declining to exercise jurisdiction
§ 3:13	—Simultaneous proceedings
§ 3:14	—Unjustifiable conduct
§ 3:15	—Inconvenient forum
§ 3:16	Pleadings
§ 3:17	—Sample affidavit
§ 3:18	Notice requirements
§ 3:19	Continuing jurisdiction of initial decree state
§ 3:20	Jurisdiction to modify—Effect of PKPA
§ 3:21	—Decree state—Retention of continuing exclusive
	jurisdiction
§ 3:22	——Declining jurisdiction
§ 3:23	— —Loss of jurisdiction
§ 3:24	—Petitioned court—Lack of jurisdiction
§ 3:25	——Assumption of jurisdiction
§ 3:26	—Movement of all parties from state
§ 3:27	Agreement of parties as to jurisdiction
§ 3:28	Child custody registration—Certified copy of
	custody decrees
§ 3:29	Foreign country decrees
§ 3:30	Extradition
§ 3:31	Enforcement of custody and visitation orders
§ 3:32	Appeal of jurisdictional decision
APPEN	DIX 3A. Parental Kidnapping Prevention Act
APPEN	DIX 3B. Indian Child Welfare Act of 1978
APPEN	DIX 3C. Affidavit of Notice to Tribe

CHAPTER 4. FINDING THE BEST INTERESTS OF THE CHILD

§ 4:1 In general

I. ENUMERATED CRITERIA

§ 4:2 Uniform Marriage and Divorce Act

- § 4:3 Statutory criteria
- § 4:4 Court developed criteria

II. PRESUMPTIONS

- § 4:5 Tender years
- § 4:6 Parental preference
- § 4:7 Agreement of parents
- § 4:8 Primary caretaker
- § 4:9 —Determination
- § 4:10 ——Checklist
- § 4:11 Child's preference
- § 4:12 —Child of sufficient age and maturity
- § 4:13 —Ascertaining preference
- § 4:14 —Presence of counsel
- § 4:15 —Record made
- § 4:16 —Questions asked
- § 4:17 —Weight to be given preference—"A Voice Not a Choice"
- § 4:18 —The case of alienation
- § 4:19 —Preference checklist

III. HEALTH ISSUES

- § 4:20 Health of child
- § 4:21 Health of parents—Physical
- § 4:22 Health of parents—Mental

IV. MORALITY ISSUES

- § 4:23 Moral fitness
- § 4:24 —Adultery
- § 4:25 —Nonmarital sexual conduct
- § 4:26 —Homosexuality
- § 4:27 —Abuse

V. OTHER FACTORS

- § 4:28 Religion
- § 4:29 Employment
- § 4:30 —Checklist
- § 4:31 Race
- § 4:32 Friendly parent
- § 4:33 Keeping siblings together

VI. CUSTODY ARRANGEMENTS

§ 4:34 Types of custody arrangements

xviii

§ 4:35 Travel restrictions

APPENDIX 4A. Child Custody Factors

APPENDIX 4B. Relocation Standards

CHAPTER 5. JOINT CUSTODY

§ 5:1 Introduction

I. DEFINING JOINT CUSTODY

- § 5:2 In general
- § 5:3 Joint legal custody
- § 5:4 Joint physical custody

II. AUTHORITY FOR JOINT CUSTODY

- § 5:5 Agreed upon joint custody
- § 5:6 Optional joint custody
- § 5:7 Presumption favoring joint custody

III. CRITERIA FOR AWARDING JOINT CUSTODY

- § 5:8 Statutory criteria
- § 5:9 Court-developed criteria
- § 5:10 Parenting plans
- § 5:11 Joint custody—Checklist

IV. PRACTICAL CONSIDERATIONS

- § 5:12 Types of joint physical custody
- § 5:13 Contraindications for joint custody
- § 5:14 —Domestic violence
- § 5:15 Restrictions on parental mobility
- § 5:16 Sample shared custody agreement

V. MODIFYING JOINT CUSTODY

- § 5:17 In general
- § 5:18 Standard for modification
- § 5:19 Reasons for modification

CHAPTER 6. NONRESIDENTIAL PARENT'S RIGHT TO PARENTING TIME

§ 6:1 In general

I. RIGHTS OF PARENT AND CHILD

- § 6:2 Parent's right to access
- § 6:3 Parent's right to name child
- § 6:4 Putative father's right to access
- § 6:5 Child's right to access
- § 6:6 Guidelines for parents

II. DEFINING REASONABLE PARENTING TIME

- § 6:7 Reasonable parenting time
- § 6:8 —Sample clause
- § 6:9 Structured parenting time
- § 6:10 Overnight visitation

III. DRAFTING VISITATION SCHEDULES

- § 6:11 Age appropriate parenting time
- § 6:12 Visitation/Parenting Time—Checklist
- § 6:13 Sample structured parenting plan
- § 6:14 Sample holiday visitation schedule

IV. RESTRICTIONS ON PARENTING TIME

- § 6:15 In general
- § 6:16 Sexual conduct of parent
- § 6:17 Abuse
- § 6:18 Emotional harm
- § 6:19 Child's preference
- § 6:20 Health of parent
- § 6:21 Religious disputes
- § 6:22 Incarcerated parent
- § 6:23 Removing restrictions

V. PROBLEMS WITH PARENTING TIME

- § 6:24 Suspension of parenting time
- § 6:25 Visitation bond
- § 6:26 Interference with visitation
- § 6:27 —Motion to enforce visitation
- § 6:28 Interrelationship of visitation and support
- § 6:29 —Independent considerations

CHAPTER 7. VISITATION RIGHTS OF THIRD PARTIES

§ 7:1 Introduction

I. INITIAL CONSIDERATIONS

- § 7:2 Parental autonomy
- § 7:3 Interview with nonparent
- § 7:4 Nonparent visitation—Checklist
- § 7:5 Procedure

II. GRANDPARENT VISITATION

- § 7:6 In general
- § 7:7 Authority
- § 7:8 Out-of-wedlock child
- § 7:9 After adoption by nonrelative
- § 7:10 After stepparent adoption
- § 7:11 Intact family

III. STEPPARENT RIGHTS

- § 7:12 In general
- § 7:13 Custody
- § 7:14 Visitation

IV. VISITATION RIGHTS OF OTHERS

- § 7:15 Domestic partners
- § 7:16 Sperm donors
- § 7:17 Surrogate parents
- § 7:18 Foster parents
- § 7:19 Other third parties and Uniform Nonparent Custody and Visitation Act

V. STANDARDS FOR AWARDING

- § 7:20 Best interests test
- § 7:21 ABA Family Law Section Model Third Party Custody and Visitation Act
- § 7:22 Substantial relationship test
- § 7:23 Effect of hostility
- § 7:24 Evidence

VI. DRAFTING CONSIDERATIONS

- § 7:25 In general
- § 7:26 Mediation
- § 7:27 Uniform Nonparent Custody and Visitation Act
- § 7:28 Sample petition

- § 7:29 Sample order
- § 7:30 Enforcing nonparent visitation rights
- § 7:31 Modification of existing orders

APPENDIX 7A. Grandparent Visitation

APPENDIX 7B. Third-Party Visitation

CHAPTER 8. PRETRIAL STRATEGIES AND TEMPORARY ORDERS

- § 8:1 In general
- § 8:2 Importance of temporary custody

I. AUTOMATIC AND EX PARTE ORDERS

- § 8:3 Automatic temporary orders
- § 8:4 Ex parte orders
- § 8:5 Motion for ex parte interlocutory orders

II. PLEADINGS

- § 8:6 Pleadings and notice
- § 8:7 Petition (or motion) for temporary custody
- § 8:8 Sample affidavit of parent in support of petition (or motion) for temporary custody pending divorce

III. TEMPORARY HEARING

- § 8:9 In general
- § 8:10 Basis for granting temporary custody
- § 8:11 Conditions on temporary custody
- § 8:12 Temporary restraining order
- § 8:13 Temporary child custody and support order

IV. POST-TEMPORARY HEARING CONSIDERATIONS

- § 8:14 Temporary order—Appeal
- § 8:15 Temporary order—Stay
- § 8:16 —Enforcement
- § 8:17 —Motion to modify
- § 8:18 —Modification
- § 8:19 Preparing for final hearing

CHAPTER 9. DISCOVERY PRACTICE

§ 9:1 In general

xxii

§ 9:2 Discovery—Checklist

I. INFORMAL DISCOVERY

- § 9:3 Types of informal discovery
- § 9:4 Pleadings
- § 9:5 Local library
- § 9:6 Government documents
- § 9:7 Genealogical information

II. FORMAL DISCOVERY

- § 9:8 Interrogatories
- § 9:9 Production of documents
- § 9:10 Physical or mental examinations
- § 9:11 —Motion for psychiatric and psychological evaluation
- § 9:12 Request for admissions
- § 9:13 —Respondent's request for admissions

III. DEPOSITIONS

- § 9:14 In general
- § 9:15 Client preparation
- § 9:16 —Predeposition instructions to client
- § 9:17 Written instructions for witness
- § 9:18 —Deposition explanation for witness

IV. PRIVILEGES AND SANCTIONS

- § 9:19 Privileges
- § 9:20 Sanctions for noncompliance
- § 9:21 —Motion

V. PRETRIAL CONSIDERATIONS

- § 9:22 Pretrial conference
- § 9:23 —Notice
- § 9:24 ——Pretrial questionnaire
- § 9:25 Pretrial motion in limine
- § 9:26 —Notice

VI. OUT-OF-STATE DISCOVERY

- § 9:27 Uniform Child Custody Jurisdiction and Enforcement Act
- § 9:28 Registration of out-of-state decrees

VII. APPEALS

§ 9:29 Appeal of discovery order

CHAPTER 10. COURT ORDERED INVESTIGATIONS/CUSTODY EVALUATIONS

- § 10:1 Introduction
- § 10:2 Preparing client for investigation

I. PROCEDURE

- § 10:3 Request for investigation
- § 10:4 Stipulation for court ordered investigation
- § 10:5 Order for child custody investigation

II. SCOPE OF INVESTIGATION

- § 10:6 In general
- § 10:7 Interview with parents
- § 10:8 Interview with child
- § 10:9 Interview with others

III. THE REPORT

- § 10:10 Contents
- § 10:11 Availability to counsel and parties
- § 10:12 Review
- § 10:13 —Checklist

IV. ADMISSIBILITY OF THE REPORT

- § 10:14 In general
- § 10:15 Examination of investigator
- § 10:16 Weight given to report
- § 10:17 Immunity

CHAPTER 11. USING EXPERTS: CHILD CUSTODY EVALUATIONS

- § 11:1 Introduction
- § 11:2 Types of experts
- § 11:3 Expert witnesses—Checklist
- § 11:4 Child custody evaluations
- § 11:5 Finding the expert
- § 11:6 Selecting the expert

xxiv

§ 11:7 Defining the expert's role § 11:8 Expert's role in discovery stage § 11:9 Clinical interview § 11:10 Psychological testing § 11:11 —Types of tests § 11:12 — —Personality ——Cognitive function or intelligence § 11:13 — — Relationships within family § 11:14 Diagnostic and statistical manual § 11:15 § 11:16 Expert's report § 11:17 Preparing for trial § 11:18 Qualifying the expert Direct examination § 11:19 Cross-examination § 11:20 § 11:21 -Goals § 11:22 —Preparing expert § 11:23 Privilege § 11:24 Paying expert § 11:25 Immunity

CHAPTER 12. REPRESENTATION OF MINOR CHILD

§ 12:1	Introduction
§ 12:2	Representation for child—Checklist
§ 12:3	Brief history of representation for children
§ 12:4	Statutory authority
§ 12:5	Court appointed special advocates (CASAs)
§ 12:6	—Standards for CASA programs/volunteers
§ 12:7	Traditional guardian ad litem
§ 12:8	—Best Interests of Child vs. Child's Preference
§ 12:9	—Report
§ 12:10	—Role at trial
§ 12:11	—Immunity
§ 12:12	Traditional GAL—Criticisms
§ 12:13	Attorney for child
§ 12:14	—Gathering information
§ 12:15	——Release of information
§ 12:16	—Meeting with child
§ 12:17	—Pretrial
§ 12:18	—Trial
§ 12:19	Costs and expenses
§ 12:20	Terminating the relationship
APPEND	IX 12A. American Bar Association Family Law

Section Standards of Practice for Lawyers Representing Children in Custody Cases (2003)

CHAPTER 13. TRIAL

§ 13:1 Introduction

I. PRELIMINARY CONSIDERATIONS

§ 13:2 Knowledge of ju	udge's philos	sophy
------------------------	---------------	-------

- § 13:3 Last attempt to settle
- § 13:4 Preparing client for trial
- § 13:5 Trial—Checklist
- § 13:6 Trial folder, manual, or electronic notebook

II. TRIAL

- § 13:7 Opening statements
- § 13:8 Witnesses
- § 13:9 Direct examination
- § 13:10 —Sample questions
- § 13:11 Evidence
- § 13:12 —Objections
- § 13:13 Cross-examination
- § 13:14 Closing arguments
- § 13:15 Attorney's fees

III. POSTTRIAL MOTIONS

- § 13:16 In general
- § 13:17 Motion for reconsideration
- § 13:18 Motion for new trial
- § 13:19 Request for findings

CHAPTER 14. APPEALS

§ 14:1 Introduction

I. INITIAL CONSIDERATIONS

- § 14:2 Decision to appeal
- § 14:3 Appealable orders
- § 14:4 Standing

II. WAIVER OF RIGHT TO APPEAL

§ 14:5 In general

xxvi

- § 14:6 Contemporaneous objection
- § 14:7 Accepting benefits of judgment
- § 14:8 Timeliness
- § 14:9 Unclean hands

III. PROCEDURE

- § 14:10 Notice of appeal
- § 14:11 —Form
- § 14:12 —Service
- § 14:13 Docketing statement
- § 14:14 Record on appeal
- § 14:15 Stay of judgment
- § 14:16 —Notice of motion for stay of enforcement
- § 14:17 Modification of custody pending appeal
- § 14:18 Motion for extension of time or to dismiss

IV. APPELLATE BRIEF AND ARGUMENT

- § 14:19 Appellate brief—In general
- § 14:20 —Cover page
- § 14:21 —Table of contents
- § 14:22 —Table of authorities
- § 14:23 —Nature of case
- § 14:24 —Questions presented
- § 14:25 —Statement of facts
- § 14:26 —Arguments and authority
- § 14:27 Oral argument

V. STANDARD FOR REVIEW

- § 14:28 Abuse of discretion
- § 14:29 Decision contrary to evidence
- § 14:30 No or inadequate findings of fact
- § 14:31 Applying erroneous rule of law
- § 14:32 Harmless error
- § 14:33 De novo review
- § 14:34 Mootness
- § 14:35 Costs of appeal

CHAPTER 15. ENFORCEMENT OF CUSTODY AND VISITATION

§ 15:1 Introduction

I. CONTEMPT

§ 15:2 In general

§ 15:3	Procedure	
§ 15:4	Civil contempt	
§ 15:5	Criminal contempt	
§ 15:6	Defenses to contempt	
II. REMEDIES FOR CONTEMPT		
§ 15:7	Incarceration	
§ 15:8	Fines	
§ 15:9	Bond	
§ 15:10		
§ 15:11	Interrelationship of visitation and support	
§ 15:12	Injunctive relief	
§ 15:13	Money damages	
III. I	NTERSTATE ENFORCEMENT	
§ 15:14	The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)	
§ 15:15	Full faith and credit	
§ 15:16	Habeas corpus	
IV. DOMESTIC CHILD SNATCHING		
§ 15:17	In general	
§ 15:18	Petition under the Uniform Child Abduction	
	Prevention Act	
§ 15:19	Criminal actions for interference with parental custody	
§ 15:20		
§ 15:21		
§ 15:22	Ethical problems for attorneys	
V. INTERNATIONAL ENFORCEMENT		
§ 15:23	In general	
§ 15:24	Hague Convention on the Civil Aspects of International Child Abduction	
§ 15:25	—Key definitions	
§ 15:26	Hague Abduction Convention	
§ 15:27	Hague Convention on the Civil Aspects of	
-	International Child Abduction—Time periods	
§ 15:28	—United States Central Authority	
§ 15:29	—Costs and fees	
§ 15:30	—Defenses to return	

APPENDIX 15A. International Child Abduction

xxviii

Remedies Act, 22 U.S.C.A. §§ 9001 et

seq.

APPENDIX 15B. Hague Convention on the Civil Aspects

of International Child Abduction

APPENDIX 15C. Uniform Child Abduction Prevention

Act

CHAPTER 16. ALTERNATIVE DISPUTE RESOLUTION

§ 16:1 Introduction

I. TYPES OF ALTERNATIVE DISPUTE RESOLUTION

- § 16:2 Negotiation
- § 16:3 Collaborative law
- § 16:4 Conciliation
- § 16:5 Arbitration
- § 16:6 Mediation

II. MEDIATION PROCESS

- § 16:7 In general
- § 16:8 Role of mediator
- § 16:9 Role of lawyer for parent
- § 16:10 Ethical considerations for lawyer as mediator
- § 16:11 Confidentiality
- § 16:12 Training
- § 16:13 Costs
- § 16:14 Time frame
- § 16:15 Models
- § 16:16 Mediation agreement—Contents
- § 16:17 —Sample agreement
- § 16:18 Termination
- § 16:19 Settlement agreement
- § 16:20 Contraindications
- § 16:21 Mediation/Arbitration or Arbitration/Mediation
- APPENDIX 16A. ABA Standards of Practice for Lawyer

Mediators in Family Disputes

APPENDIX 16B. Model Standards of Practice for Family

and Divorce Mediation

APPENDIX 16C. Special Policy Considerations for State

Regulation of Family Mediators and

Court Affiliated Programs

APPENDIX 16D. Collaborative Law Agreement

CHAPTER 17. MODIFICATION OF CUSTODY AND VISITATION

- § 17:1 Introduction
- § 17:2 Lawyer's role

I. STANDARDS FOR MODIFICATION

- § 17:3 Uniform Marriage and Divorce Act
- § 17:4 Material change of circumstances
- § 17:5 Exceptions for decrees by default or agreement
- § 17:6 Best interests of child

II. PROCEDURE

- § 17:7 Filing motion to modify
- § 17:8 Jurisdiction to modify
- § 17:9 Declining jurisdiction
- § 17:10 Notice of motion to dismiss based upon lack of jurisdiction
- § 17:11 Notice requirements
- § 17:12 Hearing
- § 17:13 Fees and costs

III. FACTORS INFLUENCING MODIFICATION OF EXISTING ORDER

- § 17:14 Stability for child
- § 17:15 Child's preference
- § 17:16 Remarriage of parent
- § 17:17 Parent's morality
- § 17:18 Parent's Sexuality
- § 17:19 Parent's age and health
- § 17:20 Child's health
- § 17:21 Substance abuse
- § 17:22 Separation of siblings
- § 17:23 Religious conflict
- § 17:24 Child abuse
- § 17:25 Disruption of parent-child relationship

IV. RELOCATION CASES

- $\S 17:26$ In general
- § 17:27 Travel restrictions

§ 17:28	Contemplated move as change in circumstances
§ 17:29	Factors affecting decision to allow relocation
§ 17:30	Factors—Stability
§ 17:31	—General quality of life
§ 17:32	—Motives for move
§ 17:33	—Motives for resisting move
§ 17:34	—Alternative visitation opportunities
§ 17:35	Relocation and joint custody
§ 17:36	Sample schedule for long distance visitation

V. MODIFYING JOINT CUSTODY

- § 17:37 Standard applied
- § 17:38 Reasons for modification

APPENDIX 17A. Relocation Standards

Table of Laws and Rules

Table of Cases

Index