

## ASSOCIATE MANAGING EDITOR'S COLUMN

# Where is Pima County, New Jersey?

## (Who Knew We Had Parenting Guidelines in New Jersey?)

*by Amy Sara Cores*

**A**lthough I am known for my inability to navigate most of New Jersey without the assistance of a GPS, I was pretty sure that there was no Pima County in New Jersey, when my client handed me the Pima County parenting time guidelines. He had just attended custody/parenting time mediation at the courthouse. I was a bit perplexed. I looked at it and noted the title: Pima County, Arizona Parent/Child Access Guidelines. It was Pima County, Arizona! So why are the mediators in some county in New Jersey using the Pima County, Arizona guidelines?

My client was advised that these were the guidelines that were followed by the courts and judges of our state. He was also told that the current shared physical and legal custody arrangement was not in his children's best interest, based on these guidelines. The best he could hope for was every other weekend and a three-hour dinner during the week. After calming down my client, I realized that I may have been more upset about the situation than he was.

The Pima County guidelines provide a breakdown of how parenting time should be structured based on the age of the child(ren). For children up to nine months old, the guidelines provide the nonresidential parent three visits per week for two hours each visit. Up to four months of age, these two-hour visits should occur in the custodial parent's home. From four to nine

months of age, the visits may occur outside the custodial home or in an established child care setting. There is no vacation time for the noncustodial parent and no overnights are recommended.<sup>1</sup> The problems inherent in such a plan should be patently clear.

Rule 5:8-1 provides that if the court finds "that either the custody of children or parenting time issues, or both, are a genuine and substantial issue, the court shall refer the case to mediation." As family law practitioners, we recognize the flaws in this system. First, if the parties were going to be able to amicably resolve a custody or parenting time dispute, they usually would have already done so through counsel. Second, fathers traditionally are relegated to being the noncustodial or weekend parent. The mediators seem to reinforce the false assumption that this is a universal result. Yet we send our clients with the advice not to sign anything and to make sure they clearly indicate that an attorney must review any agreement.

The rule does not provide that the mediation is to occur through any particular person or agency. Many counties, however, use probation officers or other court staff to handle this process in both FM and FD cases. It is unclear what qualifications are necessary to become a court mediator for custody/parenting time. What training do they have? What experience do they have? Moreover, each county seems to have different methods of com-

plying with the rule. In North Jersey, one county has a program similar to that suggested herein below already in place, while other counties use court staff to mediate.

New Jersey is not a 'guidelines' state when it comes to parental time-sharing. While we may use the child support guidelines, they are not applicable in all matters. We do not have alimony guidelines, and we do not have custody guidelines. From a lawyer's perspective, we prefer the absence of guidelines, since we are able to be true advocates for our clients. With respect to custody/parenting time guidelines, the circumstances of the individual family must always be considered. Therefore, any guidelines would be instructive rather than mandatory under any circumstance. Indeed, even the Pima County guidelines are just that—a guide and not mandatory.

The Pima County guidelines assume the following: One parent has sole custody or primary physical custody; time needs to be identified for the non-custody parent and the child; both parents are fit and proper; both parents are willing and able to parent the child. Interestingly, the Pima County guidelines have not been adopted by the courts in Arizona and are meant to be suggestive. The Arizona courts further require that a parenting plan must include the following<sup>2</sup>:

- Provisions for how the parents will be involved in caring for the child and how the big deci-

sions—such as education, religion, and healthcare—will be made (usually jointly).

- A residential plan (schedule of physical custody).
- A method of mediating or resolving disputes.
- A provision for periodic review of the parenting plan. (Every one or two years is common.) The law does not require any particular type of review, and the review required by the parenting plan could range from a single discussion between the parents to a series of formal sessions with a mediator.
- A statement that the parties realize joint custody does not necessarily mean equal parenting time.

N.J.S.A. 9:2-4 provides guidance with respect to custody determinations:

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

- a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;
- b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or
- c. Any other custody arrangement as the court may determine to be in the best interests of the child.

There are no statutory standards or guidelines for a 'parenting time' schedule. The clear statutory purpose is that we consider each family individually when assisting our

clients to fix a parenting time arrangement. Indeed, the statute is gender neutral, and the rights of mothers and fathers are *equal*.

As advocates, we often turn to experts to assist us in the more complicated custody/parenting time cases. In my professional experience, I have seen cases in which the mother was the 'primary caretaker' during the marriage, but the expert recommended that the father have physical custody after the divorce/physical separation of the parties. The recommendation was in the best interest of the child. Thus, nothing can be assumed.

The Legislature and courts of this state have not set forth custody/parenting time guidelines by which we must be bound in family law cases. This author believes that many family lawyers would fight against the imposition of any mandatory guidelines for parenting plans. So why are our clients being handed guidelines and told that guidelines must be followed, when the guidelines are not even binding in Pima County? Even one occurrence of this is too many. Although I was aware that there were 'guidelines' being used by some of the same mediators, I was not aware that they were guidelines from another state. Certainly, I was not aware that mediators told our clients that the judges apply these guidelines in all matters. Aside from undermining our advocacy skills, the use of these guidelines violates our statutory scheme and is contrary to the best interests of the children, who become the charges of our judges in contested matters.

N.J.S.A. 9:2-4(c) provides:

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the

child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

Our courts have further addressed these factors over the years in a litany of custody cases. In a case involving the custody of a minor child, the paramount consideration is the safety, happiness, physical, mental and moral welfare of the child, and neither parent has a superior right to custody.<sup>3</sup> Custody issues are resolved by using a best interests analysis that gives weight to the child custody statutory factors.<sup>4</sup> The focus on the child's best interest is paramount, and a child's interest can come before a parent's.<sup>5</sup> The best interest of child standard is more than a statement of primary criterion for custody decision or factors to be considered; it is an expression of the court's special responsibility to safeguard the interests of a child at the center of a custody dispute because the child cannot be presumed to be protected by adversarial process.<sup>6</sup>

The information given to our clients by these mediators is incorrect, and action should be taken to put an end to this practice. The first and most important action that must be taken is that these guidelines should be immediately removed from the arsenal available to the mediators. Indeed, the New

Jersey judiciary website provides access to an informational pamphlet, which in general terms provides information about the laws of the state of New Jersey, as well as suggestions for parenting plans.<sup>7</sup> These suggestions are also broken down by the age of the child. For example, parents are informed that for infants, regularity is key. Both parents need to be able to attend to the daily needs of the infant child. As opposed to the Pima County guidelines, there are no suggestions made for the number of days or amount of time to which the non-residential parent is entitled. Thus, the Pima County guidelines are antithetical to the guidance provided by our Supreme Court. The pamphlet available on the Court website is in accord with our statutory scheme and case law.

This author believes that there is an opportunity for the courts and family law practitioners to turn a program, which has mixed results

in the real world, into a more productive program. Attorneys volunteer to be early settlement panelists, and now economic mediators. So why not use the family law practitioners of this state as custody/parenting time mediators, along the same model as economic mediation? Attorneys would take a mandatory course in custody/parenting time mediation. They could sign up for the program in the county in which they primarily practice. The first two hours with the mediator would be at no charge to the litigants. Thereafter, the attorney would fix his or her hourly rate.

Certainly, this suggestion is merely that—a suggestion. In this author's opinion, the current mediation program used in several counties is not effective. Fathers are discouraged from asserting their equal rights to their children. Mothers become entrenched in positions when they attend mediation with a

sympathetic mediator. Parties spend thousands of dollars on attorneys and experts as a result of a single mediation session resulting in an order that does not fully express the rights and obligations of the parties relative to their child(ren). Most attorneys have seen a non-dissolution order initially entered after mediation, which results in years of litigation to ensure the access rights of the noncustodial parent.

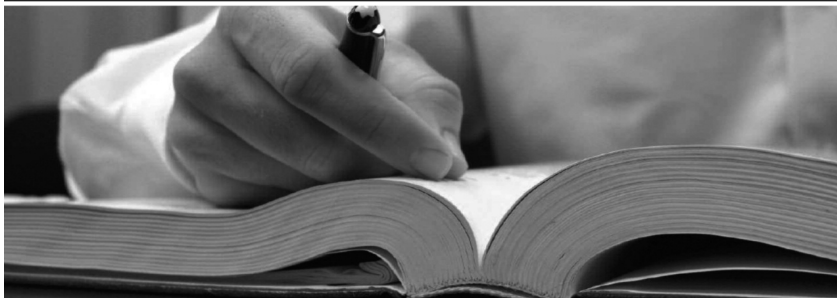
It may seem like a radical idea to use educated professionals in this capacity who have taken a course to assist litigants in resolving custody disputes and who devote their professional life to the field of family law. Or, it may be that we better serve the litigants who avail themselves of our courts and provide to them the most qualified people to assist them, rather than an eight-page booklet from Pima County, Arizona. ■

#### ENDNOTES

1. [www.sc.pima.gov/?tabid=203](http://www.sc.pima.gov/?tabid=203).
2. [www.sc.pima.gov/SC\\_Web/Portals/0/Library/Child\\_Custody\\_&Parenting\\_\(PimaSC09\).pdf](http://www.sc.pima.gov/SC_Web/Portals/0/Library/Child_Custody_&Parenting_(PimaSC09).pdf). The pamphlet is titled "Child Custody and Parenting Time Packet #9." It was revised in August 2004, with sample forms revised in January 2008.
3. *Fantony v. Fantony*, 21 N.J. 525 (1956).
4. *Hand v. Hand*, 391 N.J. Super. 102 (App. Div. 2007).
5. *In re Parentage of Robinson*, 383 N.J. Super. 165 (Ch. Div. 2005).
6. *Kinsella v. Kinsella*, 150 N.J. 276 (1997).
7. <https://njcourts.judiciary.state.nj.us/web0/family/paretime.pdf>.

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