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Avoiding Conflict During the Holiday Season

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In the world of family law, holidays can be especially stressful. Clients in the midst of litigation over child custody are faced with the uncertainty and changes of divided holiday share time. Parents, who intend to provide their children with a joyful holiday, instead quickly succumb to the pressure and fall back into

the vicious cycle of adversarial patterns and escalated warfare.

If the custodial timeshare and the parents' expectations are not agreed upon well in advance, the holidays will likely become a crisis for everyone, especially the children. Family law practitioners need to advise the client as early as possible about different holiday parenting plans and begin negotiating as early as Back-to-School night.

If the parents can begin to discuss, negotiate and (if need be) litigate the holiday timeshare upon receipt of the school calendar, they will have a better chance of working out these issues in a calm and civil manner. The early bird can avoid some unwanted drama. When parents are trying to make flight arrangements, book hotels and coordinate with family, the frustration of an uncertain holiday arrangement adds to the panic. And, obviously, in this panic mode, the parties' patience and tolerance for co-parenting becomes strained.

Further, it is no secret that our family law courts are overcrowded with limited resources. Some litigants have faced numerous continuances before their matters are heard. And, the litigants in child custody matters are required to attend mediation before the hearing, except in very limited circumstances. Many family court services have limited availability for mediation appointments. This is especially true as the holidays approach. Therefore, if litigation of a child custody holiday issue is being sought, the earlier you can file for the relief, the better.

Moreover, last minute hearings and requests for orders are usually discouraged by the court without exigent circumstances. See California Family Code Section 3064 (making it mandatory for the court to deny such requests that do not meet the standard for immediate harm or immediate risk of removal from the state).

So, without statutorily mandated exigent circumstances, a request to visit Aunt Suzy in Atlanta would not qualify for ex parte relief for custody orders. While some attorneys may threaten and even attempt to bring such actions on an ex parte basis, their chance of success is not very high and could potentially expose their client to sanctions. Instead, such requests should be planned well in advance and filed on a properly noticed motion. However, in many cases, the holiday requests are contemplated too late for a noticed motion. If you anticipate time is an issue, consider bringing a motion to shorten time for the hearing on the requested relief as an alternative to ex parte holiday timeshare request.

In cases where the last minute request has missed the litigation boat, here are some tips for working out a parenting plan for the holidays:

Out of state travel requires a written agreement or court order: Upon the filing of a paternity/child custody, divorce or legal separation action, there are automatic restraining orders (ATROs) issued with the summons. One of the ATROs is that the parties are not permitted to remove the minor children from the state of California without a court order or written agreement with the other party. If your client's holiday



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plans include travel outside of California, they must have a court order or written agreement authorizing such travel. Advise your client of this right away (preferably in writing). Travel in violation of this can be interpreted as kidnapping and warrant an Amber Alert.

Identify which holidays are important to each side and preferred dates of travel:

The more specific you are with your client's priorities, the more efficient you can be with an agreement. Attempting to negotiate winter break without information as to where and when your client wants time with the children can be cumbersome. And, the other side will lose patience if an agreed plan needs to be tweaked because you're not fully informed about your client's desires and schedule. Specifically, know the dates and times your client wants and what is negotiable. The more specific you are in the agreement, the less chance that the parties' expectations will be misconstrued.

Holiday proposals should respect the other side's family and cultural traditions as much as possible: During the last minute scramble for an agreement, your bargaining power may be compromised. If you demonstrate to the other side that the agreement is beneficial for them, you are more likely to obtain cooperation. If Christmas does not fall on your client's regularly scheduled timeshare and the client desperately wants time on Christmas, knowing the other party's family and cultural holiday traditions could make the negotiation much smoother. A proposal that includes time for the other parent to celebrate their own traditions with the children is more attractive. For example, some families celebrate Christmas Eve and Christmas Day is reserved for football. Some prefer to attend midnight services. These little concessions, which recognize the other parent's personal traditions, sometimes go a long way.

If both parties want the same day each year, alternate: In most cases, it is not realistic that the parents will spend an important holiday together with the children. And, if they both cherish the same day, clearly one person will feel like they have "lost" if they cannot be with the kids. Instead, designate the day with one parent in even years and the other parent in odd years. Likewise, for vacation designation, if there is a conflict in choice dates, designate the preference in alternate years. While an off-year can be difficult, it's more tolerable if the parties see the agreement as fair.

Include a travel itinerary and phone/Skype visitation: The agreement should contain a provision that notifies the other parent of the itinerary of travel for the kids, the address where the children will be staying and a telephone number to reach them. If your client intends to bring a laptop or otherwise has computer access, offering Skype or other video conference visits during the travel is an attractive carrot to encourage the other parent that they will have contact with their children.

Propose methods of travel that is comfortable for the children: A proposal that is uncomfortable or inconvenient for the children is likely to receive a negative reaction from the other parent. Encourage your client to make a proposal for travel that considers the child's comfort level. Advise the client to try to find direct flights to avoid lengthy layovers and added hours to the trip. Also, recommend that the children will travel with them personally or with a friend/family member that the other parent trusts. Also, the added comfort of televisions during flight can help a parent feel comfortable that the child will be relaxed and entertained on a long trip. The added expense for the direct flight or the added amenity of comfort could save your client much more in attorney fees and/or canceled travel arrangements later.

Prepare and research out of country travel: Last minute requests to travel out of the country with the children are likely to be scrutinized. The client should research the passport and visa requirements, required vaccines and security issues well before negotiating this issue. Advise the client to contact the State Department, travel agencies and research on the Internet for recommendations for travel to the proposed country. If a child is prone to ear infections, seasickness or other travel medical discomforts, be sure the client consults with the pediatrician prior to discussing the issue with the other parent. Also, discuss with your client an alternate plan for travel should there be a security alert and cancelled flights. Most parents plan for warm holiday family time filled with happy memories. However, unprepared last minute attempts to arrange custodial timeshare can quickly turn holidays into explosive drama. A family law practitioner who is prepared and willing to work out an agreement that addresses the other parent's concerns is more likely to be successful in helping their client enjoy a happy holiday season with his or her children. And, ultimately, such tactics may even lead the parties on a new path to work together for the children in the New Year.

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