

The AAML Model for a Parenting Plan

by
Mary Kay Kisthardt*

I. Introduction

The American Law Institute's Principles on the Law of Family Dissolution (ALI Principles) were published in 2002.¹ These principles, which were developed over nearly a decade, reflect the thinking of prominent family law scholars, practitioners and judges concerning the legal consequences of marital dissolution: child custody, child support, distribution of marital property and compensatory payments to former spouses.² As a leading voice

* Professor of Law, University of Missouri-Kansas City School of Law. Professor Kisthardt serves as the Reporter for the AAML ALI Commission.

¹ American Law Institute, Principles of the Law of Family Dissolution: Analysis and Recommendations (2002) [hereinafter ALI Principles].

² Commentaries on the Principles have been extensive. See, e.g., *Symposium, the ALI Family Dissolution Principles: Blueprint to Strengthen or Deconstruct Families?* 2001 B.Y.U.L.REV. 857. Included are: Francis J. Catania, Jr., *Learning from the Process of Decision: The Parenting Plan*, p. 857; Craig W. Dallan, *The Likely Impact of the ALI Principles of the Law of Family Dissolution on Property Division*, p. 891; James Herbie DiFonzo, *Toward a Unified Theory of the Family: The American Law Institute's Principles of the Law of Family Dissolution*, p. 923; William C. Duncan, *Domestic Partnership Laws in the United States: A Review and Critique*, p. 961; F. Carolyn Graglia, *A Nonfeminist's Perspectives of Mothers and Homemakers Under Chapter 2 of the ALI Principles of the Law of Family Dissolution*, p. 993; Lino A. Graglia, *Single-Sex "Marriage": The Role of Courts*, p. 1013; Terry S. Kogan, *Competing Approaches to Same-Sex Versus Opposite-Sex, Unmarried Couples in Domestic Partnership Laws and Ordinances*, p. 1023; Gregory A. Loken, *The New "Extended Family"—De Facto Parenthood and Standing Under Chapter 2*, p. 1045; David D. Meyer, *What Constitutional Law Can Learn from the ALI Principles of Family Dissolution*, p. 1075; Janet Leach Richards, *Resolving Relocation Issues Pursuant to the ALI Family Dissolution Principles: Are Children Better Protected?* p. 1105; Mark Strasser, *A Small Step Forward: The ALI Domestic Partners Recommendation*, p. 1135; David M. Wagner, *Balancing "Parents Are" and "Parents Do" in the Supreme Court's Constitutionalized Family Law: Some Implications for the ALI Proposals on De Facto Parenthood*, p. 1175; Lynn D. Wardle, *Deconstructing Family: A Critique of the American Law Institute's "Do-*

in the national arena of family law the American Academy of Matrimonial Lawyers, whose mission it is “[t]o encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law to the end that the welfare of the family and society be preserved” undertook the process of reviewing the ALI Principles. The Principles will have an impact on state legislatures and in turn on the work of members of the Academy. For this reason the leadership of the Academy deemed it important that members be made aware of this important work. Under then Academy President, Sandy Morris an ALI Commission on the ALI Principles was created by the Academy in 2003³ (Commission) and met for the first time in August of

mestic Partners” Proposal, p. 1189; Ralph U. Whitten, *Exporting and Importing Domestic Partnerships: Some Conflict-of-Laws Questions and Concerns*, p. 1235. Symposium, *Gender Issues in Divorce: Commentaries on the American Law Institute’s Principles of the Law of Family Dissolution*, 8 DUKE J. GENDER L. & POL’Y 185 (2001). Included are: Alicia Brokars Kelly, *Explaining Intuitions: Relating Mergers, Contribution, and Loss in the ALI Principles of the Law of Family Dissolution*, p. 185; Peter Nash Swisher, *The ALI Principles: A Farewell to Fault—But What Remedy for the Egregious Marital Misconduct of an Abusive Spouse?* p. 213; Theresa Glennon, *Expendable Children: Defining Belonging in a Broken World*, p.269; J. Thomas Oldham, *Limitations Imposed by Family Law on a Separated Parent’s Ability to Make Significant Life Decisions: A Comparison of Relocation and Income Imputation*, p. 333.

Symposium, *Symposium on the American Law Institute’s Principles of the Law of Family Dissolution*, 4 J.L. & FAM STUD. 1 (2002). Included are: Stephen J. Bahr, *Social Science Research on Family Dissolution: What It Shows and How It Might Be of Interest to Family Law Reformers*, p. 5; Margaret F. Brinig, *Domestic Partnership: Missing the Target?* p. 19; June Carbone, *The Futility of Coherence: The ALI’s Principles of the Law of Family Dissolution, Compensatory Spousal Payments*, p. 43; David Orgon Coolidge, *Widening the Lens: Chapter 6 of the ALI Principles, Hawaii and Vermont*, p. 79; Renata Forste, *Prelude to Marriage or Alternative to Marriage? A Social Demographic Look at Cohabitation in the U.S.*, p. 91; Lynne Marie Kohm, *How Will the Proliferation and Recognition of Domestic Partnerships Affect Marriage?* p. 105; Allen M. Parkman, *Property Settlements as the Cornerstone of Financial Arrangements at Divorce*, p. 117; Christine M. Szaj, *The Fine Art of Listening: Children’s Voices in Custody Proceedings*, p. 131; Barbara Bennett Woodhouse, *Horton Looks at the ALI Principles*, p. 151.

³ The original members included Marlene Moses (Tennessee) who serves as chair, Michael Albano (Missouri), Steve Kolodny (California), Guy Ferro (Connecticut), Barbara Handshcu (New York), Joanne Wilder (Pennsylvania) and Thomas Wolfrum (California). Arthur Balbirer (Connecticut) joined the Commission in 2005.

that year. The Commission began its work by defining its purpose as the study and dissemination of the key issues articulated in the Principles. Commission members were also committed to producing material that would assist Academy Fellows in their practices. The Commission decided to begin its study with Chapter Two of the ALI Principles concerning the “Allocation of Custodial Decision-making Responsibilities for Children”.

II. The Evolving Law of Child Custody

A. History

Child custody law has been the subject of major reform efforts since the 1970's. The first was a rejection of the tender years presumption⁴ followed by a shift to shared or joint custody.⁵ Later some states embraced a presumption for a “primary caretaker” although this standard has not been widely embraced.⁶ Currently states use a range of standards although virtually all states now have statutes that authorize orders of shared or joint custody with a smaller number having either a preference or even a presumption that such arrangements are in the best interest of children.⁷

The shift in custodial standards was accompanied by a renewed interest in honoring the tradition of parental autonomy in decision making with respect to children.⁸ Divorcing parents do not share the same level of autonomy in making decisions for

⁴ See Robb Strom, *Comment, The Tender Years Presumption: Is it Presumably Unconstitutional?* 21 *SAN DIEGO L. REV.* 861 (1984); Alan Roth, *The Tender Years Presumption in Child Custody Disputes*, 15 *J. FAM L.* 423 (1976-77).

⁵ See *JOINT CUSTODY AND SHARED PARENTING*, 2d Ed. (Jay Folberg ed. 1991)

⁶ See Robert Cochran Jr., *The Search for Guidance in Determining the Best Interests of the Child at Divorce: Reconciling the Primary Caretaker and Joint Custody Preference*, 20 *U. RICH. L. REV.* 1 (1985); David Chambers, *Rethinking the Substantive Rules for Custody Disputes in Divorce*, 83 *MICH. L. REV.* 447 (1984); Jon Elster, *Solomonic Judgments: Against the Best Interest of the Child*, 54 *U. CHI. L. REV.* 1 (1987).

⁷ See Linda Elrod & Robert Spector, *A Review of the Year in Family Law: of Welfare Reform, Child Support and Relocation*, 30 *FAM. L.Q.* 765, 805 (1997) reporting that all but seven states have some sort of joint custody law.)

⁸ Linda Jellum, *Parents Know Best: Revising Our Approach to Parental Custody Agreements*, 65 *OHIO ST. L. J.* 615 (2004)

their children because their agreements are subject to judicial view. However, there is value in encouraging and honoring parents' active involvement in the process of arriving at an agreement with respect to the continued care of their children after divorce. First, parents are in the best position to know what will work for their families. Second, in most cases they will have continuing contact with each other and the very process of working together on a child care agreement will help set the stage for future positive interactions. Finally, there is some evidence to suggest that parties will comply more readily with plans that they have created as opposed to ones that have been imposed upon them.⁹

B. *Parenting Plans*

These considerations have led to the introduction of various forms of "parenting plans" which are detailed descriptions of the manner in which parents intend to continue caring for their children after divorce.¹⁰ Several jurisdictions require a parenting plan in all cases.¹¹ Additional states require such detailed plans before a joint custody order is entered.¹² A third group of statutes give the court discretion to require a parenting plan in any case.¹³ The requirements for the plans vary significantly with greater detail required when joint custody is to be ordered. The ALI Commission believed that the formulation of a comprehensive Model for a Parenting Plan for use by Academy members and their clients would be a valuable contribution towards the well-being of children and their families. This mission was also consistent with the Academy's previous pronouncements concerning an attorney's duty to advise clients to take into consider-

⁹ Joan B. Kelly, *Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice*, 10 VA. SOC. POL'Y & L 129, 139 *citing* DESMOND ELLIS & NOREEN STUCKLESS, *MEDIATING AND NEGOTIATING MARITAL CONFLICTS* 59, 106-107 (1996) (concerning mediated agreements).

¹⁰ *See, generally* Robert Tompkins, *Parenting Plans: A Concept whose Time Has Come*, 33 FAM. & CONCILIATION CTS. Rev. 286 (1995);

¹¹ *See, e.g.* MO. REV. STAT. 452.310 (2004); MT ST 40-4-105 (1999); O.R.S. § 107.102 (1997) W. VA. CODE, § 48-9-205(2001).

¹² *See, e.g.* A.R.S. 25-403.2 (2005); N. M. S. A. 1978, § 40-4-9.1;

¹³ C.R.S.A. § 14-10-124 (2004); DC ST § 16-914 (2002); M.S.A. § 518.1705 (2000).

ation the needs of children found in the Academy's standards of practice known as the "Bounds of Advocacy."¹⁴

C. Parenting Plans under the ALI Principles

The parenting plan is the heart of Chapter Two of the ALI Principles. The Principles require parents to submit a plan to the court.¹⁵ The parents are encouraged to file a joint plan and if they do so the court should adopt their plan unless it finds that the agreement was not knowing or voluntary or would be harmful to the child.¹⁶ If the parties are not in agreement they are each to file a proposed plan for consideration by the court.

Because the court will use the plan proposed under this section as a guide in making its determination as to custody, Section 2.05 incorporates the ALI Principles that relate to the standards the court should consider in making its decision. These include: 1) the standards for determining physical¹⁷ and legal custody;¹⁸ 2) limiting factors such as the presence of abuse and other forms of domestic violence that require protective measures;¹⁹ 3) prohibited factors that cannot be considered such as race, gender and sexual orientation;²⁰ and 4) provisions for the resolution of future disputes.²¹

III. The AAML Plan

After reviewing the ALI Principles relating to the parenting plan, the Commission solicited input from its members concerning the proposal. After an open meeting in which views of Academy members were aired the Commission determined that rather than focus on the substantive standards inherent in the ALI principles, it would begin work on drafting a model parenting plan that would reflect the spirit of the ALI Principles relating to

¹⁴ American Academy of Matrimonial Lawyers, *Bounds of Advocacy* S2.33 (1991) ("In representing a parent, an attorney should consider the welfare of children.") reprinted at 9 J. AM. ACAD. MATRIM. LAW. 257 (1992).

¹⁵ ALI Principles 2.05

¹⁶ ALI Principles 2.06

¹⁷ ALI Principles 2.08

¹⁸ ALI Principles 2.09

¹⁹ ALI Principles 2.10

²⁰ ALI Principles 2.11

²¹ ALI Principles 2.12

parenting plans without reference to the substantive law proposed for making child custody and visitation decisions.

The proposed model parenting plan can be used to comply with state laws or court rules that require submission of a comprehensive plan. It can also be used in other states as a tool to help parents make plans for their children. The model plan requires parents to think about a myriad of options for the continued care of their children with the hope that planning in advance of the custody order will help to avoid post divorce conflicts. The plan is also useful as a means of preparing for eventual litigation as it helps to narrow the issues in the dispute making any judicial proceeding more focused and efficient.

The model plan also reflects the theory that in order to best serve the needs of children, plans must be age appropriate. Thus, the model plan encourages parents to think about the needs of their children at different development stages. Options for care of children are grouped according to what the social science research supports as appropriate for meeting the needs of children at different stages in their development.

In beginning its work the Commission reviewed several existing state plans.²² These plans contained many of the features the members viewed as essential. An interim report was prepared and additional comments were received at the November 2004 meeting.

In preparing the plan numerous issues were discussed relating to the scope of the plan and assumptions that would underlie various choices. The Commission decided to include as many options as possible for families in order to provide the opportunity for discussion and assist in developing plans that were uniquely suited to a family.

A. *Key Provisions*

The plan begins with a description concerning its use. The plan is intended to be used by parents in consultation with their attorneys. Attorneys are advised to be aware of any state mandated provisions. There is also a cautionary note concerning spe-

²² ALASKA COURT SYSTEM MODEL PARENTING AGREEMENT found at <http://www.state.ak.us/courts/forms/dr-475.pdf>; <http://www.state.ak.us/courts/dr-475.doc>; ALASKA MODEL PARENTING PLAN found at www.supreme.state.ak.us.

cial circumstances such as the existence of domestic violence in a family. Many states have instituted particular rules for addressing this issue which include a more careful review of parent-initiated plans. The underlying assumption of the plan is one of shared parental responsibility and that is reflected in the ordering of options under the plan.

1. *Jurisdiction*

The plan contains provisions for complying with all aspects of the UCCJA²³, UCCJEA²⁴ and The Hague Convention.²⁵ For instance, it allows for parents to agree on the residency, domicile and habitual residence of the children. It also provides for the disclosure of previous or pending orders that would affect the court's jurisdiction.

2. *Decision-making Rights*

At the heart of the model plan is the allocation for responsibility for decision making. At the outset clients will notice that the language of the plan does not include term such as "custody" or "visitation". This is consistent with both the ALI Principles²⁶ and legislation enacted in many jurisdictions.²⁷ It attempts to send an important message to parents about their ongoing responsibility and is more reflective of what actually happens in families. Provisions are included for joint decision-making in all

²³ UNIF. CHILD CUSTODY JURISDICTION ACT, 9 PART 1A U.L.A. (1999).

²⁴ UNIF. CHILD CUSTODY JURISDICTION and Enforcement Act, 9 PART 1A U.L.A. (Supp. 2004-2005) As of June 2005, 42 states, the District of Columbia and the Virgin Islands had enacted the UCCJEA. National Conference of Commissioners on Uniform State Laws, *A Few Facts About the Uniform Child Custody Jurisdiction and Enforcement Act*, at http://www.nccusl.org/nccusl/uniformact_factsheets/uniformacts-fs-uccjea.asp.

²⁵ Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89, Hague Conf. Priv. Int'l L. Collection of Conventions (1951-1996). The Hague Abduction Convention entered into force for the United States on July 1, 1988. Implementing legislation for the Convention is the International Child Abduction Remedies Act (ICARA), 42 U.S.C. §11601 et seq. (2002).

²⁶ The Introduction to the Principles indicates that this change was made to express "the ordinary expectation that both parents have meaningful responsibilities for their child at divorce". Principles (Tentative Draft) Catania, *supra* note 2 at 87.

²⁷ For instance, in Maine the statute refers to parental rights and responsibilities. 19-A M.R.S.A. § 1653 (2005)

areas or for just some which will be specifically designated. It also addresses access to medical and school records and how those will be obtained.²⁸

3. *Education*

The options under this category are numerous because of the many choices parents will face as the children get older. All decisions will not always be able to be made in advance. However to the extent that there is a preference for home schooling or private schools, the parents can discuss it and perhaps agree in principle concerning this issue. It also includes a provision that again reflects a preference for joint decision-making by prohibiting changes in enrollment unless there is consent of both parties.

4. *Medical Care*

Continued medical care often is a source of dispute between parents. The sources of the conflict are selection of health care providers, notice of and inclusion of each parent in routine physical exams and decisions regarding elective treatment. All of these are covered in this section of the plan.

5. *Extracurricular Activities*

Children are increasingly busy.²⁹ Their schedules can be taxing on parents who live together and can rely on each other for assistance. Parents in different households can find the responsibility for the activity schedule overwhelming especially where there are multiple children. This section alerts parents to the problem of scheduling of activities during the time the child is with the other parent. Parents are given a number of possible ways to address these circumstances. There is also a provision for notification so that both parents can attend events in which the children participate.

²⁸ Some states statutorily require schools to provide such reports. *See, e.g., MO. REV. STAT.* 452.376 (1998).

²⁹ Recent publications respond to this perceived change in the lives of young people. *See, ALVIN ROSENFELD AND NICOLE WISE, THE OVER-SCHEDULED CHILD* (2001).

6. Religion

To the extent applicable, parents can choose how and when their children will be exposed to or participate in religious activities. The problems faced by courts in resolving issues related to religious upbringing³⁰ can be avoided when the parents agree.

7. Other Issues

This section contains many of the issues that are not generally included under the realm of “legal custody” but which can be vitally important to parents as they continue to raise their children. These include the names by which children are called as well as names that will be used to refer to others such as step-parents or other adults involved in the children’s lives. Several refer to circumstances that require parental consent such as driving, marrying, enlisting in the military service or obtaining employment under a certain age. Others which generally don’t occupy much of the court’s time but which are nevertheless very important to parents are restrictions on entertainment (“R-rated” movies and access to the internet) as well as the use of firearms and all-terrain vehicles.

8. Scheduling

Aside from the ability to make major decisions for the child the other most important aspect of the plan is the schedule, which includes not just the daily schedule but holidays, special days and vacations. What parents are most likely to recognize first about this section is its emphasis on scheduling according to age.

The Commission took to heart the suggestions of many mental health specialists that there is a need for addressing different developmental stages when crafting a plan. The importance of this consideration is supported in another article in this issue³¹ by Dr. Joan Kelly who was kind enough to address the Academy on this issue and whose ideas were incorporated into

³⁰ See Martin Weiss & Robert Abramhoff, *The Enforceability of Religious Upbringing Agreements*, 25 J. MARSHALL L. REV. 655 (1992); Rebecca Korzec, *A Tale of Two Religions: A Contractual Approach to Religion as a Factor in Child Custody and Visitation Disputes*, 25 NEW ENG. L. REV. 1121 (1991).

³¹ Joan Kelly, *Developing Beneficial Parenting Plan Models for Children Following Separation and Divorce*, 19 J. AM. ACAD. MATRIM. LAW. 237 (2005).

the plan. The significance of considering different developmental stages then will not be re-iterated here except to say that the members of the Commission felt that consideration of developmental stages should be emphasized to parents when assisting them in developing a parenting plan.³²

The plan includes numerous variations for a weekly schedule as well as holidays and other special days. The next section also includes a number of options for arranging changes in the schedule, which are inevitable and often conflict producing. Parents are asked to consider in advance how request for changes will be made and appropriate time frames for doing so. It also includes a provision that will encourage parents to think of time with the children not just as a “right” but also as a responsibility that they share. A final section dealing with scheduling addresses issues of transportation and how exchanges of the children will be addressed. Unfortunately, for many highly conflictual parents, meetings to exchange the children offer the potential for a conflict. It seems obvious that such behavior in front of the children is not in their best interest. For this reason numerous options are offered which allow for safe transfers between parents that may include having one parent drop off the children at school or day care and having the other parent pick the children up from those locations obviating the need for direct contact between the parents.

9. *Special Circumstances*

All states consider the presence of child abuse or neglect as a factor in making a child custody award. Until fairly recently however, the presence of domestic violence has not been given the same level of consideration. However, over the last several decades there has been an increased recognition of both the ex-

³² For other thoughtful approaches to this issue see Francis Catania, Jr. *Learning from the Process of Decision: The Parenting Plan*, 2001 B.Y.U.L. REV. 857; Risa Garon, Danielle Donner and Kristen Peacock, *From Infants to Adolescents: A Developmental Approach to Parenting Plans*, 38 FAM. & CONCILIATION COURTS REV. 168 (2000); Michael E. Lamb, *Placing Children's Interests First: Developmentally Appropriate Parenting Plans*, 10 VA. SOC. POL'Y & L. 98 (2002).

tent of domestic violence³³ and its negative effects on the children who witness it.³⁴ Many states have amended their child custody statutes to specifically take into consideration the presence of domestic violence as a factor in making an order for custody or visitation.³⁵ The plan contains a lengthy section for addressing these potentially dangerous situations. It includes the standard “supervised visitation” restrictions as well as additional consideration such as notification of caregivers concerning restrictions and the agreement of the abusive parent to participate in counseling.³⁶

The other potentially dangerous situation for children, that of alcohol and substance abuse by a parent is addressed in this section as well. It mirrors many of the considerations present in the domestic violence situation with additional protections concerning the modification of behavior concerning alcohol and other substances when caring for the children.

10. Relocation

Perhaps one of the most difficult circumstances facing separating or divorcing parents is the possibility that one of the parents will desire to move and take the child with him or her. In our highly mobile society this issue has become so common that many states now have separate statutory schemes for addressing it,³⁷ while others simply consider the issue under a general modification statute.³⁸ It is anticipated that a state’s substantive standard regarding the issue will be explained to parents at the time the plan is developed and can be incorporated in the document.

³³ See, e.g., Report of the American Bar Association Commission on Domestic Violence found at <http://www.abanet.org/domviol/stats.html>.

³⁴ David A. Wolfe et al., *The Effects of Children’s Exposure to Domestic Violence*, 6 CLINICAL CHILD & FAM. PSYCH. REV. 171, 184 (2003); LUNDY BANCROFT & JAY SILVERMAN, THE BATTERER AS PARENT, 110 (2002); Cosandra McNeal & Paul R. Amato, *Parents’ Marital Violence: Long Term Consequences for Children*, 19 J. FAM. ISSUES 123, 135 (1998).

³⁵ See Martha Albertson Fineman, *Domestic Violence, Custody and Visitation*, 36 FAM.L.Q. 211 (2002).

³⁶ Katherine M. Reihing, *Protecting Victims of Domestic Violence and Their Children After Divorce: The American Law Institute’s Model*, 37 FAM. & CONCILIATION CTS. REV. 393 (1999).

³⁷ See e.g., MO. REV. STAT. 452.375 (2004).

³⁸ See e.g., K.S.A. 60-1610 (2005).

Alternatively the parents may want to consider agreeing to a standard that differs from the relevant statutory one. While their ability to do so ultimately may be limited by the court, an agreement is at least some indication of how the parents wish to handle the situation. The Academy has formulated a set of standards regarding relocation to which clients and attorneys can be referred.³⁹

11. *Travel*

Because families are now presented with many opportunities to travel with their children, the plan also includes a section on how the other parent will be notified of travel plans as well as how and what information is to be shared about the itinerary. Foreign travel presents unique issues relating to abduction and so a separate section is devoted to it. It includes a discussion of the requirements of both parents' consent for obtaining a passport as well as written consent for the child to leave the country that is now required by many international travel carriers.

12. *Parent Behaviors*

The plan also includes provisions that are generally not required by statute nor generally included in most court orders, but are nevertheless vital to a child's emotional well being. These include parental behaviors that demean the other parent or are otherwise alienating. Other behaviors harmful to children such as using them as messengers are also addressed. The Commission intended that the plan would also serve an educational function alerting parents to the negative effect of some behaviors upon children.⁴⁰ Other parental behaviors such as appropriate means of discipline are also included.

³⁹ *American Academy of Matrimonial Lawyers Proposed Model Relocation Act*, 10 J. AM. ACAD. MATRIM. LAW. 1 (1998).

⁴⁰ The Commission plans to prepare a brochure that includes additional resources for parents on this topic. Suggested reading might include: *PLANNING FOR SHARED PARENTING: A GUIDE FOR PARENTS LIVING APART* available from the Association of Family and Conciliation Courts at www.afccnet.org; SUSAN BOYAN & ANN TERMINI, *COOPERATIVE PARENTING AND DIVORCE – SHIELDING YOUR CHILD FROM CONFLICT* (1995) available from the Cooperative Parenting Institute at www.cooperativeparenting.com; CHET MUKLEWICZ, *KIDS FIRST: CHILDREN COPING WITH DIVORCE AND FAMILY CONFLICT* available from Kids First at www.kdisfirst.cc.

13. *Parent Contact*

The plan lays out options for how parents will communicate as well as how and when a parent will communicate with the children when they are with the other parent. Again, one would hope that these would not be issues in well functioning post-divorce families. The experiences of members of the Commission as well as other members of the Academy, however suggest that these situations provide opportunities for parents to continue to create conflict.

14. *Care by Others*

Child care by other than a parent is a frequent topic of discussion among divorcing families. The default position would be that each parent would arrange for substitute care when he or she was not available and was responsible for the children. Other provisions may be more appropriate for families and can be included under the “other” option. A word of caution is advisable when a parent wants to include a “first option” clause which provides that when a parent is not available, the other parent will be given first option to care for the child. While such a provision sounds practical in theory, the result is often an entanglement in the parents’ social life that can cause difficulties. For instance, such a clause would require one of the parents to notify the other every time he or she had a date and needed someone to care for the child. While some parents might find this acceptable, it is likely that most would not. There is also a provision regarding continued relationships with extended family members.

15. *Modification of the Agreement*

Child care plans by the very nature of their subject matter are likely to change. The plan anticipates such changes by including an option for an automatic review. It also addresses the manner in which parents will seek to make a change when a dispute occurs by referring specifically to the section on dispute resolution.

16. *Disputes*

An important component of any child care plan is a provision dealing with how disputes will be handled. The plan provides numerous alternatives for addressing disputes that progress

from an agreement by the parents to simply discuss the matter to counseling, mediation, and ultimately judicial resolution. If mediation is chosen there is also a provision for choosing the mediator. The plan also includes an option for arbitration while indicating that this may not be permitted by state law.⁴¹

17. *Child Support*

The sections on child support are comprehensive. They begin with a reference to the presumed support amount found under the state guidelines. They also cover how and to whom payments are to be made. Specific areas addressed include health care, extracurricular activities, educational expenses, expenses related to special events, pets, and auto insurance. There is also a provision for prior approval of all expenses not contemplated by the agreement. Finally a section on tax allows parents to choose how to allocate expected tax benefits.

18. *Breach*

The final section of the plan refers to the consequences of a breach. It is designed to elicit discussion about the importance of compliance with the plan.

IV. Conclusion

The ALI Commission is very proud of its work on the Model Plan. The Commission sincerely hopes that the plan will be a useful tool for attorneys, but more importantly, will make a difference in the lives of children and families experiencing divorce.⁴²

⁴¹ Christine Albano, *Binding Arbitration: A Proper Forum for Child Custody?* 14 J. AM. ACAD. MATRIM. LAW. 419 (1997).

⁴² The plan is available at the Academy website. The address is www.aaml.org.