

PARENTING PLANS

When you create a parenting plan the most important things to keep in mind are the needs of the children. How old your children are and what special needs they have will be the most important considerations when the parenting plan is put together.

How much time a child spends with one parent or the other is not based on how much they love the child. Both of you will be parenting. A divorce is a big change for your children. They will need to adjust, and the parenting plan needs to take this into consideration. The items listed below are by no means a complete list for all cases. The items listed for consideration are things to keep in mind as you work out a custody plan and order. There are organizations in New Mexico that are available to assist you in putting together a workable plan.

Form 4A-300 NMRA suggests that if the parties cannot agree on a plan you might request the help of a mediator. There are specific forms to request this and additional instructions for requesting mediation can be found in the Stage 2 Instructions on the 7th Judicial District's website.

DISCLAIMER: This instruction set is for informational purposes only. Every effort has been made to ensure that the information available here is correct and up to date. However, this document is not a substitute for legal advice, and nothing contained in the site should be construed as legal advice. If you require legal assistance you should CONSULT AN ATTORNEY. The 7th Judicial District Court of the State of New Mexico is not liable for any errors or omissions in the information provided.

IF YOU DO NOT UNDERSTAND SOMETHING OR YOU ARE NOT SURE WHAT YOU SHOULD PUT IN YOUR DOCUMENTS, PLEASE CONSULT AN ATTORNEY!

Need legal Assistance? The New Mexico State Bar website contains a list of resources for legal assistance and can be found at:

http://www.nmbar.org/nmstatebar/Directory/Other_Legal_Service_Providers/Nmstatebar/For_Public/Other_Legal_Service_Providers.aspx

The 7th Judicial District offers assistance in what documents you need to file in your case. Contact the court clerks for the date of the next clinic or how to arrange an appointment with the 7th District Staff Attorney

IF YOU ARE REPRESENTING YOURSELF YOU MUST USE FORM 4A-302 NMRA

Things to Consider When Drafting a Parenting Plan

- Your child's needs come FIRST.
- The fewer transitions for your child the better, for example if one parent moves to another school district, changing homes as well as schools makes the transition even more stressful on the child. Find a way to have as few changes in your child's life as possible.
- The simpler the plan is the more likely that it will work for the long run. In any case, the plan needs to be one that both parents can stick with. Constantly changing or deviating from the plan causes stress and can lead to less cooperation between you and your spouse, more disagreements, and end up creating a bad environment for your child. As your child matures there will come a time when the plan needs to change, but changes should be based on the changing needs of your child, not just because you feel that you are getting short changed. It is your child's needs that are important.
- Situations will come up as your child grows that require both parents to be flexible. For example your child may join in new activities at school or church. If both parents cannot be flexible and cooperate it can harm the relationship you have with your child. There are too many people that are more than happy to take advantage of a child in a stressful situation.
- You need to make sure that your child's life is as consistent and predictable as possible. Your child deserves a schedule that they can rely on.
- Remember: Your child's needs come 1st. Your needs come 2nd. Your child's primary need is for love from both parents and as little disruption to their life as possible.
- Bonding with both parents is critical in the 1st year of your child's life. Both parents need to spend time with the child. BUT, THAT DOES NOT MEAN 50/50 TIME SHARE. It means that there needs to be consistent and regular time with both parents but one parent needs to be the primary caregiver. The child needs to sleep in the same bed every night. The child needs a safe, loving, very regular and consistent environment.
- There are no set rules for visitation, but there are some common sense guidelines. For example, while your child is an infant the visits with the non-custodial parent should be frequent enough so that the child bonds with the non-custodial parent. The visits should be very regular and in places where the child is comfortable. . The visits should last an hour or so until the child is comfortable being away from the custodial parent. The visits should get longer so that once your child is between 1 and 3 years old, overnight visits with the non-custodial parent will be regular and 1 to 3 times a week. Until the child is in elementary school you need to think about whether they should be any longer than single night visits.
- As the child gets closer to school age the visits with the non-custodial parent should get longer and should also include both weekday and weekend visits. When the child starts school this will keep the child from thinking of one parent as the school parent and the other as the weekend-play parent. When the child starts school it is extremely important that both parents are involved.
- As the child enters middle school and later into high school, parents have to be flexible so that they can introduce cultural, sports, and other recreational activities that children and

parents can enjoy together. Some of those activities will require both parents' participation (such as attending soccer matches and so forth). Maintaining cordial relations with your ex-spouse is a must.

There are some definitions you need to be aware of. For example, there is a difference between legal and physical custody. With legal custody there is only sole or joint custody. Either you both have an equal say in the matters involving your child or only one of you does. Physical custody has to do with how much time the child lives with you or your spouse. What follows are definitions of several terms you need to know.

Contested: In any of the property, support or child custody proceedings in a divorce where one party objects to a proposed agreement it is said to be contested. If the parties cannot come to an agreement the parties can request mediation, the court can order mediation, or the court can simply tell the parties what will happen. It is usually best if the parties can come to an agreement.

Mediation: This is a process where the parties sit down with someone that is impartial, knows what the law is, and is trained to help people with different opinions come to an agreement. The court sets how much each party pays, but it is usually split equally.

CUSTODY:

Custodial Parent: Parent that child resides with most of the time.

Non-Custodial Parent: Parent with visitation. For example, child spends 4 nights a week with Parent A, (Sunday, Monday, Tuesday and Thursday). Child spends Friday, Saturday and Wednesday nights with Parent B. Parent A is Custodial Parent, Parent B is Non-Custodial Parent. Parent A has primary physical custody.

Legal Custody: Power to make decisions regarding the major aspects of a child's life, such as medical decisions, religion and education. **Joint legal custody** means that both parents have an equal say in these matters. **Sole legal custody** means that one parent determines these matters.

Physical Custody: Where child is physically, where the child lives. **Joint physical custody** *does not* mean that the child will spend 50% of the time with each parent. Normally, one parent will be the **primary** custodial parent. This is the parent whose residence is the place where the child spends most of her/his time. §40-10A-102 NMSA 1978 defines physical custody as "...the physical care and supervision of a child."

Guardian: There are two meanings for guardian, but both have to have the best interests of the child in mind. One meaning has to do with the Kinship

Guardianship Act, where a person that is not a biological parent takes physical custody of the child. That is normally not what is talked about in a Domestic Relations proceeding. In a Domestic Relations case it is normally a Guardian Ad Litem under §40-4-8 NMSA 1978. A guardian ad litem is appointed when custody of a child is contested or objected to by one of the parties. The guardian ad litem is an attorney that is supposed to represent the interests of the child in the custody proceeding.

Hearing Officer: When the parties have an issue that requires a hearing the court normally sets the hearing in front of a Hearing Officer. The hearing officer is an attorney with experience in family law that makes reports and recommendations to the judge. The hearing officer is like a judge in that they run the hearing, it is in a courtroom, and all the rules for how you are supposed to act in court are enforced by a bailiff. The hearing officer can order the parties to produce paystubs, bank statements, or any other documents that are relevant. They can ask questions and take testimony. They can determine if something is admissible. The hearing officer makes a report to the judge and if the judge agrees can issue and order. If you disagree with the hearing officer you can file an objection that tells the judge what you disagree with and why.

SUPPORT:

Child Support: Child support is set by the New Mexico State Legislature guidelines. There is a worksheet that is online where you answer questions about how much money each parent makes, where the child or children live, how much time is spent with each parent and who pays how much for the health insurance. You can fill out the worksheet [here](#).

Spousal Support: This is covered in §40-4-7 NMSA 1978. It is basically alimony, but it can be in several different forms. It can be temporary and for the purpose of allowing one party to finish an education so that they can support themselves. It can be because the parties were married for more than twenty years and one party worked while the other took care of raising the children. It is a complicated topic that has many factors, including the respective spouses' abilities to support themselves, their educations, property and length of the marriage. It can be ordered for a short time, long time, until the person receiving gets remarried or dies, or not at all. If you think spousal support is something you need to look into **consult an attorney**.

MISCELLANEOUS:

- Jurisdiction:** The power or authority to make legal decisions and judgments. What this means in a child custody case is the court's authority to decide who gets visitation and how much, where the child is going to live, and who pays who child support. For child custody cases jurisdiction is covered for the most part in §40-10A-201 NMSA 1978. (There are exceptions.) Basically this statute says that as long as the child has lived in New Mexico for 6 months or more, at least one parent has connections to New Mexico beyond simply being here, and no other court would be more appropriate, then the district court in the county where the child lives has jurisdiction.
- Venue:** This is similar to jurisdiction. It describes the proper place to take the case. §38-3-1 NMSA 1978 says that the proper place to file a civil suit is in the county where the parties reside. (There are exceptions.) §40-4-4 NMSA 1978 says that for a divorce, property settlement, child custody or alimony the case can be filed in the county where one of the parties reside. That court will have jurisdiction over the property involved no matter where in the state the property is located.
- Residency:** Where a party lives. As normal, there can be exceptions such as a duty station or assignment in the military. For a divorce the requirement for the court to have jurisdiction, and for venue to be proper, one of you needs to have lived in the county where you file for the divorce for at least 6 months prior to filing for the divorce. This is covered in §40-4-5 NMSA 1978.
- Third Party:** This is a person other than the petitioner or respondent that can be affected by the divorce. For example, your soon to be ex-brother-in-law was going to buy a trailer from you and your spouse. He gave you a down payment. Now that you are getting a divorce the property settlement might affect whether he can still get the trailer. Your soon to be ex-brother-in-law is a third party with respect to the property settlement.

The following is an example of a Parenting Plan. It is intended to demonstrate *how* the information should be put in to the form. It is *not* intended as advice regarding *what* information should be included.

YOU CAN DOWNLOAD AND PRINT A COPY OF THE REQUIRED FORM AT
7TH DISTRICT COURT WEBSITE

4A-302. Custody plan and order

STATE OF NEW MEXICO
COUNTY OF TORRANCE
SEVENTH JUDICIAL DISTRICT

Jane Smith,
Petitioner,

vs.

No. D-0722-DM- 2019-55898

John R. Smith,
Respondent.

CUSTODY PLAN AND ORDER¹

Jane Smith and John R. Smith are the parents of the children listed below. This document is the custody plan and is in the best interests of the children.

I. IDENTIFICATION AND CONTACT INFORMATION

Parent's name	Physical address and phone number	Place of employment and phone number
<u>Jane Smith</u>	<u>308 Winchester Dr.</u> <u>Tajique, NM 87016</u> <u>(505) 555-1212</u>	<u>Unemployed</u>
<u>John R. Smith</u>	<u>2052 Rockafeller Dr.</u> <u>Los Lunas, NM 87031</u> <u>(505) 555-1313</u>	<u>King T. Bakery 555-1234</u> <u>2973 NM-47</u> <u>Tome, NM 87031</u>
Child's name	Year of birth	Age
<u>John Smith Jr.</u>	<u>October 12, 2003</u>	<u>12</u>
_____	_____	_____
_____	_____	_____

The parties shall advise each other of any change to this contact information within ten (10) days of new information becoming available.

II. CUSTODY OF THE CHILDREN²

(Choose either Option A, Sole legal custody, or Option B, Joint legal custody)

A. Sole legal custody and visitation plan. *(Do not fill out Option B if you choose this option) (Complete 1, 2, and 3)*

1. _____ *(name of parent with sole custody)* shall have sole legal custody of the children. The parent with sole custody shall make the important decisions regarding the children.

2. The reason that sole custody is in the best interest of the children is because:

3. This is the visitation plan: *(Choose a, b, or c)*

a. There shall be **no visitation** until further order of the Court.

(Or)

b. _____ *(name of other parent)* shall have **unsupervised visitation** with the children as follows: *(Fully describe visitation plan to include who shall transport the children and where and when the visitation shall occur. Attach additional sheets if necessary.)*

(Or)

c. _____ *(name of other parent)* shall have **supervised visitation** with the children as follows: *(Fully describe visitation plan to include who shall supervise the visitation, who shall transport the children and where and when the visitation shall occur. Attach additional sheets if necessary.)*

[X] **B. Joint legal custody and parenting plan.** (*Do not fill out Option A if you choose this option*)

1. **Important decisions.** The parents shall share joint legal custody of the children and shall make important decisions about the children together. No change regarding any of the following shall happen unless the parents both agree to the change in writing or the court changes it:

- a. City and county of residence: Tajique, NM, Torrance County
- b. Religion: Catholic
- c. Activities: 4-H, Pee-Wee Football

	Name	Address and telephone
d. Doctor:	<u>J. Sawbones</u>	<u>4208 Paseo del Norte</u> <u>ABQ, NM (505) 555-2929</u>
e. Dentist:	<u>T. DeKay</u>	<u>1238 Wyoming NE</u> <u>ABQ, NM (505) 555-3003</u>
f. School:	<u>Estancia Jr. High</u>	<u>Estancia, NM</u>
g. Child care:	_____	_____
h. Other:	_____	_____

2. **Solving arguments.** The parents shall resolve any parenting or time-sharing dispute regarding the children in this way (*steps continue until problem solved*):

- a. Talk together; or
- b. Communicate in writing as follows:
 - i. parent requests change, and gives reasons for the change; and
 - ii. answering parent sends response within 4 days.

If the answering parent does not agree to the change, that parent must say why, and, if possible, make a new proposal.

c. Take the following steps:

(check all that apply and number them if there is a particular order)

- _____. Go to couple, family, or other counseling;
- 2. Go to mediation with a neutral party;
- 1. Other: Talk to Father Julian;
- 3. Go to court.

3. **Timesharing schedule.**

(Complete "Schedule 1" or "Schedule 2" below.)

Schedule 1. Same schedule each week or every two weeks. (Set out the time that each parent shall have the children for that day.)

Week 1	<u>Jane</u> <i>(name of parent)</i> 's time	<u>John</u> <i>(name of parent)</i> 's time
Monday	<u>All Day</u>	_____
Tuesday	<u>All Day</u>	_____
Wednesday	<u>All Day</u>	_____
Thursday	<u>All Day</u>	_____
Friday	<u>until 6:00pm</u>	<u>after 6:00pm</u>
Saturday	_____	<u>All Day</u>
Sunday	<u>after 4:00pm</u>	<u>until 4:00pm</u>

Week 2	<u>Jane</u> _____ 's time <i>(name of parent)</i>	<u>John</u> _____ 's time <i>(name of parent)</i>
Monday	<u>All Day</u> _____	_____
Tuesday	<u>All Day</u> _____	_____
Wednesday	<u>All Day</u> _____	_____
Thursday	<u>All Day</u> _____	_____
Friday	<u>until 6:00pm</u> _____	<u>after 6:00pm</u> _____
Saturday	_____	<u>All Day</u> _____
Sunday	<u>after 4:00pm</u> _____	<u>until 4:00pm</u> _____

[] **Schedule 2. Write your own schedule.** (*Write your own schedule here or attach a separate sheet or calendar or make additions to Schedule 1.*)

4. ***Vacation and holiday plan.***

a. **Vacations.** The parents shall each have 2 [days] [weeks] (*circle one*) of uninterrupted time with the children each year. Each parent shall give the other parent at least 4 [days] [weeks] (*circle one*) notice of the vacation time.

b. **Holidays.** Regardless of the day of the week, the children shall spend holidays as follows: (*Insert name of parent who will have the children on each holiday*)

Holidays:	Even year	Odd year	Times (<i>if split</i>)
Mother's Day	<u>Jane</u> _____	<u>Jane</u> _____	From <u>6pm Sat</u> _____ To <u>8am Mon</u> _____
Father's Day	<u>John</u> _____	<u>John</u> _____	From <u>All weekend</u> _____ To _____

Child's Birthday	<u>Jane</u>	<u>John</u>	From <u>6pm day before</u>
			To <u>6pm on birthday</u>
Halloween	<u>John</u>	<u>Jane</u>	From _____
			To _____
			6pm to 8:30pm, exchange in ABQ
Thanksgiving break	<u>Jane</u>	<u>John</u>	From <u>6 pm Wednesday</u>
			To <u>next regular exchange</u>
Winter religious holidays	<u>John</u>	<u>Jane</u>	From <u>6pm Christmas eve</u>
			To <u>next regular exchange</u>
1st 1/2 winter break	_____	_____	From _____
			To _____
2nd 1/2 winter break	_____	_____	From _____
			To _____
Spring Break	_____	_____	From _____
			To _____
July 4th	<u>Jane</u>	<u>John</u>	From <u>6pm on 4th</u>
			To <u>6pm on 5th</u>
Other religious holidays	_____	_____	From _____
			To _____
Others:	_____	_____	From _____
			To _____

The Monday of a 3-day weekend due to a school, federal, or state holiday is the same as the Sunday schedule unless we agree differently.

5. *Details about the timesharing.*

a. **Communication.** Each parent may have reasonable communication with the children at all times. Neither parent shall unreasonably interfere with the children's communications with the other parent.

b. **Transfer of children.** Responsibility for transferring the children from one parent to the other shall be as follows (*write what you will do here*):

We will make the exchanges at the Mcdonald's on Central at Tramway in ABQ

c. **Long-distance transfer of children.** Responsibility for transferring the children from one parent to the other in long-distance arrangements shall be as follows (*write down what you will do here*):

d. **Emergencies.** If there is a medical emergency, the parent with the children shall try to call the other parent about the emergency. If the other parent cannot be reached, any decision for emergency medical treatment shall be made by the available parent in the best interest of the children.

e. **Changes.** Each parent may ask the other for changes to this schedule. The other parent has the right to say "no." If the other parent says "no," the parent asking for changes shall not argue or criticize the other parent's decision.

f. **Review of plan.** The parents agree to meet [] every year (*or*) [] every 2 years to make sure this plan continues to work well.

VERIFICATION

I affirm under oath and penalty of perjury under the laws of the State of New Mexico that I have read this document, that I agree with everything in it, and that the statements in it are true and correct to the best of my knowledge and belief.

_____	_____
Name of parent (<i>print</i>)	Name of parent (<i>print</i>)
_____	_____
Parent's signature	Parent's signature
_____	_____
Date	Date
_____	_____
Mailing address	Mailing address
_____	_____
Physical address	Physical address
_____	_____
Telephone	Telephone

STATE OF NEW MEXICO)
COUNTY OF _____) ss

Acknowledged, signed and sworn to before me this ____ day of _____, ____ by _____, the parent.

Notary public

My commission expires: _____.

STATE OF NEW MEXICO)
COUNTY OF _____) ss

Acknowledged, signed and sworn to before me this ____ day of _____, ____ by _____, the parent.

Notary public

My commission expires: _____.

Approved, adopted, and ordered by the District Court

Date

District Court Judge

USE NOTE

1. A custody plan must be filed in every dissolution of marriage case if the parties have minor children or a child under nineteen years of age who is attending high school. For more information about filling out this form, *see* Form 4A-300 NMRA.

2. The parties should understand the difference between the rights and obligations of joint custodians and a sole custodian. Descriptions of these terms are set out in NMSA 1978, Section 40-4-9.1. See an attorney with questions you may have. Joint custody does not imply an equal division of the child's time between the parents or an equal division of financial responsibility for the child.

[Approved by Supreme Court Order No. 13-8300-010, effective for all pleadings and papers filed on or after May 31, 2013, in all cases pending or filed on or after May 31, 2013; as amended by Supreme Court Order No. 14-8300-011, effective for all pleadings and papers filed on or after December 31, 2014, in all cases filed or pending on or after December 31, 2014; as amended by Supreme Court Order No. 15-8300-024, effective for all pleadings and papers filed after November 18, 2015.]