



# Custody, Parenting Time and the New PEA: The Private Attorney Perspective

## Who Are We?



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|--|---|--|
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## Goals for Today



- We are here to:
  - Demystify why private attorneys do the things they do
  - Encourage communication
  - Eliminate some assumptions
  - Learn from all of you
  - Talk about our “Please ask...” questions and let us ask questions
  - Share and hear perspectives of the new Parenting Expense Adjustment law and how this might play out in cases

## Issues



- |  |  |
|--|--|
| 1. Vague and Ambiguous Orders            | 6. Why Does It Take so Long?                           |
| 2. Ignoring the Child Support Guidelines | 7. Trial Phobia  |
| 3. Not Following Agency Policy           | 8. The Invisible Party, a/k/a the Public Authority     |
| 4. Lack of Client Control                | 9. Change is Hard: Why Did You Make us Change the PEA? |
| 5. Too Much Drama                        | 10. What the “bleep” is an Overnight Equivalent?       |



## Issue #1

### Vague and Ambiguous Orders



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## Vague and Ambiguous Orders



- Reasonable as agreed upon by the parties
  - Parties are getting along and specificity may change that relationship
  - Parties say they don't want or need a set schedule
  - One party is unreliable, so it is easier to not have a schedule
  - Parties can't agree to a set schedule because one person travels for work or has a rotating schedule, so the schedule is constantly changing

# Vague and Ambiguous Orders



- Flexibility reduces litigation
- Specific order cause unnecessary fights
- Lazy lawyers
- Parties are tired of fighting
- Parties believe they can work it out
- Reliance on mediation and Parenting Consultants to work out the details

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# Issue #2

## Ignoring Child Support Guidelines



## Ignoring the Child Support Guidelines



- Parties have a different number in mind
- One party bullies the other into a different number
- Parties agree that one parent will pay for more expenses, so guideline support isn't appropriate
- Unusual living arrangements
- The standard of living they had when they were together
- The cost of litigating the difference is greater than the difference it makes

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## Issue #3

## Not Following Agency Policy



## Not Following Agency Policy



- Where would private attorneys find the agency policy?
- Policies vary from county to county or CSO to CSO or County Attorney to County Attorney
- Some policies may prevent settlement
- All cases are not "one size fits all"
- The responsibility to advocate for a client, which is different than the county's responsibility

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## Issue #4

## Lack of Client Control



International Bipolar Society

## Lack of Client Control



- Not a skill they taught us in law school!
- Mental health and chemical dependency issues
- Stress limits rational thought
- Inability to understand the issues
- Even though they're paying a lot of money in attorneys fees, they won't settle because they don't like the advice
- Trying to stick it to the other party by being difficult

## Lack of Client Control

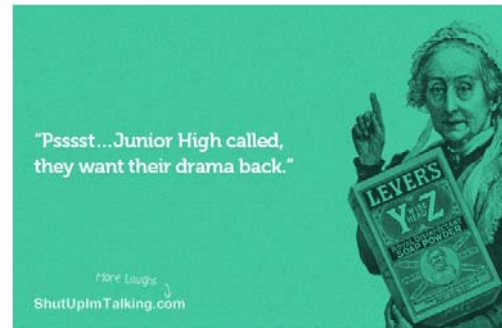


- Lawyers
  - Some are terrible!
  - Some think family law is easy and are uninformed
  - Some give bad advice
  - Some think they understand and don't
  - Some tell their clients what they want to hear
  - Some know that continuing the fight means they can bill more hours
- This is some lawyers, not all lawyers



## Issue #5

### Too Much Drama



## Too Much Drama

- Some attorneys get pulled into client conflict
- Some attorneys have a purposefully difficult style
- Good people in bad times
- Bad people in bad times
- It can be a matter of survival
- Some people (attorneys or clients) just need to be right
- Some cases involve physical and emotional abuse
- ...and, engineers and lawyers for clients. Enough said.





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# Issue #6

## Why Does It Take so Long?

## Why Does It Take so Long?

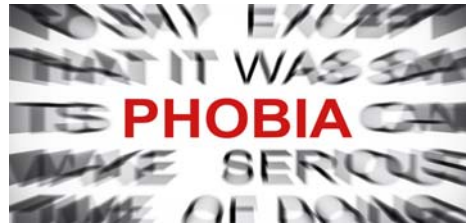
- Takes clients a long time to respond
- Some clients "play ostrich"
  - Hide head in sand to avoid a stressful situation
- A case has a crisis, so back burner other cases
- Some clients lie or hide information from their lawyers
- Sometimes it's strategic
- Sometimes the other side doesn't cooperate
- Sometimes it is the ADR or court schedule





## Issue #7

### Trial Phobia



## Trial Phobia

- Concerns about not getting paid
  - A lot of prep work and no money in retainer, but it is too late to withdraw ethically
- The old adage – never ask a question you don't know the answer to
  - Sometimes you don't know what a client will say/do at trial
  - Sometimes you know exactly what the client will say/do at trial, and it's not good

## Trial Phobia



- Judges require numerous forms of ADR before trial
- Likely trial outcome does not favor your client
- Trial outcomes resemble a sledgehammer when the clients need a scalpel

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## Issue #8

The Invisible Party, a/k/a the Public Authority

## The Invisible Party, a/k/a the Public Authority



- Attorneys may not know there is public assistance in place
  - Heck, some clients don't know they get public assistance
- Some attorneys don't understand which forms of assistance trigger county participation
  - What about the "client is open on Medical Assistance, but the county not knowing about it" situation?
- Some attorneys just don't understand that the county is actually a party, usually when there is not public assistance in place, but the case is still open IV-D
- It is easy to "forget" if not used to working with the county

## The Invisible Party, a/k/a the Public Authority

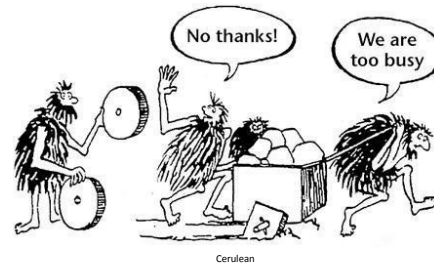


- Sometimes attorneys serve the county:
  - When it is not a IV-D case
    - And the attorney doesn't understand that they then need to serve the county if the case becomes a IV-D case
  - And the county elects to not participate this time
    - The attorney assumes the county does not want to participate the next time because they waived their participation last time
    - The attorney forgets that the county waived its participation because it was not a IV-D issue, and now there is a IV-D issue
- Sometimes the county can't support a deal

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## Issue #9

Change is Hard: Why Did You  
Make Us Change the PEA?

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Change is Hard: Why Did You  
Make Us Change the PEA?

- Because a person with 3 overnights a month was treated the same as a person with 13 overnights a month
- Because of the "cliff" effect
- Because of the need to balance fixed and variable expenses
- Because of the duplication of fixed expenses
- Because of fairness and the perception of fairness
- Because of the unnecessary litigation it caused

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## Issue #10

### What the "Bleep" is an Overnight Equivalent?

## What the "Bleep" is an Overnight Equivalent?



- What the "bleep" does this mean:
  - For purposes of this section, overnight equivalents are calculated by using a method other than overnights if the parent has significant time periods on separate days where the child is in the parent's physical custody and under the direct care of the parent but does not stay overnight. The court may consider the age of the child in determining whether a child is with a parent for a significant period of time.
    - Minn. Stat. § 518A.36, subd. 1(b)

## What the “Bleep” is an Overnight Equivalent?



- Time will tell...
- Consideration of shift work
- Cost of active time vs. sleep time
- Does Sunday count as an equivalent?
- Can we apply a formula and should we?
- A solution for *this* family and not all families
- Appellate decisions will force specificity
  - Other state definitions and appellate decisions

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## Issue #11

Yep, It Goes to 11



This is Spinal Tap

## Yep, It Goes to 11....



There isn't enough time to discuss all of the things that could or will go wrong.....

## Yep, It Goes to 11....



- Here are some we thought of:
  - Parenting consultant decisions
  - Double dipping overnights on a schedule
  - Dealing with old orders
  - Dealing with old deviations
  - Families without a formal parenting schedule/plan
  - Deviations under the new formula
  - Orders that don't include a specific number of overnights
  - Lawyers who don't understand
  - Lawyers and clients who can't see the big picture
  - Misapplication of the formula



# Thank you!



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