

December 5, 2013 Presentation on SJ 22 by P. Mars Scott, Esq. Missoula, MT

Madam Chairperson, Members of the committee,

Thanks for the opportunity to comment on the idea of implementing statewide parenting guidelines. I read the overview of parenting plan guidelines prepared by Rachel Weiss and she did a great job summarizing what parenting plan guidelines are, and providing a summary of the Montana district courts that incorporate parenting plan guidelines into their local court rules. Basically, 32% of the 22 judicial districts have adopted formal parenting guidelines. I think that number is significant in that obviously some judges have found parenting guidelines helpful in resolving parenting disputes, and with providing parents with resources to assist them in developing a parenting plan that meets their child's developmental interests. I know of no judicial district that adopted parenting guidelines and then rescinded them.

When it comes to parenting and best interest based decisions, there are vast differences in the amount and types of training individuals in the legal system have in child development and attachment theory that are critical for making consistently appropriate decisions for children and families. I know of no lawyer who endured three years of law school and a bar examination just to learn how to write a provision delegating which parent picks a child up from school at what time, and yet finalizing a parenting plan is a critical part in ending a divorce case and getting people out of the legal system; and yet, as a rule, lawyers and judges have no specific training in this area.

In the 4<sup>th</sup> judicial district, we have had parenting guidelines since at least 1997. Those guidelines are not binding on the judges and the guidelines reserve to the judge all discretionary powers to finally determine a parenting plan if that becomes necessary, which is good. For the most part, they have worked well. In my office, we have approximately 100 parenting cases at any one time. In every case, we use these guidelines, and other generally accepted child development principles, to help our clients develop a parenting plan that is realistic, good for

their children and tailored to their family's specifications. Sometimes we use the guidelines to "gear down", if you will, our own clients. In a divorce situation, there can be hidden agendas associated with various issues, and children can be used in a power struggle between parties. Often times, we're able to discuss with our clients the importance of thinking about what their children actually need in way of contact with both parents and more times than not, we can convince parents that using the children as pawns only hurts the children and in the end can achieve no good. Having the authority of "court issued guidelines" helps us achieve what's right for the children because we can honestly say to the client, "if you want to know how the judge is actually thinking about your parenting case, read these guidelines". I must say that most of our clients are not looking for a court experience before they die. They just want to know what the rules are and what's good for their children, and having parenting guidelines is a tremendous help in this regard. We estimate that we have to litigate a parenting case about 10 to 12% of the time; that means over 88% of our cases are resolved without court involvement.

To the extent the court system is overburdened with pro se litigants, uniform guidelines could be an extremely useful tool in educating first timers to the legal system on the important concepts that apply to raising a child in the context that their parents are divorced. The basic premise for parents is that even though you're no longer husband and wife, you're still mom and dad and as moms and dads you should raise your children, not the State.

Another benefit to having uniform guidelines is that it reduces costs to the clients in that they do not need to hire a psychologist as an expert witness and pay for an attorney to ask questions on child development principles that are basically universally known and accepted. Why should litigants have to pay tremendous amounts of money to present the same testimony, time and time again, about universally accepted child rearing principles? In my opinion, there is no reason for first time parties to reinvent the wheel in their parenting case. I think having uniform guidelines could help litigants avoid these types of costs.

In summary, there are three points to make.

1. Parenting guidelines work in helping develop child centered parenting plans
2. Parenting guidelines reduce costs to litigants by saving them from spending time, energy and money on reinventing the parenting plan wheel
3. Parenting guidelines are not binding courts and in no way infringe upon the ultimate decision making powers of the court, nor should they

Thank you.