

*B.N. Cook's*

SOUTHERN CALIFORNIA EDITION

# GRAND TOUR®

A FOLIO OF PROPERTIES, PEOPLE, AND POSSIBILITIES



APRIL/MAY 2007  
SIX DOLLARS

SAILING AROUND THE GLOBE ON THE WORLD'S LARGEST PRIVATE YACHT  
COME ABOARD "THE WORLD"

# GRAND TOUR

## Family Law

### DIFFERENT TYPES OF CUSTODY ARRANGEMENTS UNDER CALIFORNIA FAMILY LAW

By Nicole Whyte

Partner, Bremer Whyte Brown & O'Meara LLP

**WHEN A COUPLE DECIDES TO DIVORCE**, and minor children are involved, critical decisions must be made regarding custody arrangements for the children. There are two types of custody, legal and physical. Legal custody is the responsibility for making decisions about the health, welfare and education of the child. This includes decisions concerning medical and psychological treatment and religion. Physical custody refers to the time each parent spends with the child.

Legal custody is often awarded jointly to both parents. Joint legal custody means that both parents have the right and responsibility for making decisions regarding the child's health, welfare and education. Usually California courts order that the parents share legal custody. Most courts are hesitant to order sole legal custody to one parent unless it is not in the child's best interest that the parents be ordered to cooperate.

Joint physical custody means both parents share significant periods of physical custody with the child. If sole physical custody is ordered, the child resides primarily with only one parent, subject to the court's ability to order visitation for the other parent. Where there is a primary custodial parent, and the secondary parent spends time with the child every other weekend, California courts consider this a form of joint physical custody, because the secondary parent has significant custodial periods with the child.

The court considers many factors when ordering custody and time sharing arrangements. These factors include the best interest of the child; the health, safety, and welfare of the child; and the public policy goal of the California legislature to ensure frequent and continuing contact of minor children with both parties. Factors that the court cannot consider or can consider only within limitation include race, income, religion, physical disability, sexual preference, and sexual practices (unless there is evidence of harm to the child). Parties in a divorce often ask whether their child's preferences will be taken into consideration in the decision making process. Where a child is considered to be of sufficient age and maturity to make an intelligent preference for one parent over the other, the court must give the child's preference due weight in making the custody decision. The court prefers the child not to appear as a witness in court, but allows for other means of determining the child's preference. This is often done through a report from a mediator, minor's counsel or through a custody evaluation.

In determining a visitation schedule for the secondary custodial parent, there are many different kinds of arrangements that

are recommended for different situations. The most common is known as the primary parenting schedule, where the child resides with one primary parent, and the secondary parent has alternate weekends with the child, including possibly a mid week visit for dinner. However, where the children involved are under 18 months, the child resides with the primary parent and the secondary parent has short, frequent visits of approximately 4 hours per day, no more than 3 days apart. Hours per visit can be increased as the child becomes older and more independent, and comfortable with the separation. Another schedule that is common is known as a 3-4-4-3 schedule, which is ideal for younger children who can tolerate overnight visits and have 2 relatively equal homes with parents who communicate well. There is also a schedule known as a week-to-week schedule, which is good for children who want equal parenting time, and do not mind being away from either parent for a week at a stretch. Mom has one full week following which dad has one full week, and then the cycle repeats. Where a long distance schedule is necessary, such as where one of the parents lives far from the child, the main goal is to incorporate longer periods of visitation with the non-custodial parent during holidays. The goal is also to ensure frequent telephone contact.

A custody and timeshare arrangement must be carefully tailored to meet the unique needs and circumstances of the minor children and both parents. There can never be a "one size fits all" arrangement. Rather, the parties need to work cooperatively to find the best fit for their situation; or, where this is impossible, the court will make the appropriate order. Once a suitable custody and visitation order is in place, this may only be modified by mutual agreement or by order of the court upon a showing of substantial change of circumstance. It is therefore imperative, for the sake of the minor children, that the parties and the court get it right the first time. **GT**

*Nicole Whyte is founding principal of the law firm of Bremer Whyte Brown & O'Meara LLP, located in Newport Beach, California. Admitted to the California State Bar in 1991, and the Nevada State Bar in 2000, Ms. Whyte has extensive experience in all aspects of litigation, including the specialty areas of construction defect litigation, premises liability, personal injury, general liability and intellectual property (trademark and copyright infringement) and family law.*

