MOVE AWAY BRIEF

Roy M. Doppelt, Esq. (State Bar No. 134020)
PINKERTON, DOPPELT & ASSOCIATES, L.L.P.
16466 Bernardo Center Drive, Suite 260
Rancho Bernardo, CA 92128
(858) 618-5510, Fax: (858) 618-5511

Attorney for Respondent,

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

In Re the Marriage of:	)	CASE NO. DN 000000
	)	
JANE DOE,	)	
	)	**RESPONDENT'S TRIAL BRIEF**
Petitioner,	)	**POINTS AND AUTHORITIES**
	)	**IN OPPOSITION TO PETITIONER'S**
and	)	**MOVE AWAY REQUEST**
	)	
JOHN DOE	)	Department:
Respondent.	)	Date:
	)	Time:

I. MEET AND CONFER STATEMENT:

A. Date of Conference: numerous

B. Method: correspondence, in person at court

C. Issues Settled Are: List of settled issues in pending case

D. Issues To Be Litigated Are:

1. Custody/Visitation: Move Away Request by Petitioner

II. STATISTICAL DATA

A. Date of Marriage: January 1, 2000

B. Date of Separation: January 1, 2008

C. Length of Marriage: eight years

D. Husband’s Age (50) and Employment: Engineer

E. Husband’s Gross Monthly Income: $$7,000

F. Husband’s Paydays: Monthly

G. Cohabitee or New Spouse’s Monthly Income: n/a Petitioner does not work in this example and is moving for employment

H: Wife’s Age (50) and Employment: unemployed

I: Wife’s Gross Monthly Income:

J: Wife’s Paydays: n/a

K. Cohabitee or New Spouse’s Monthly Income: n/a

L. Minor Children: Petitioner/Respondent: Age 2.0 years old

I. HISTORY

This is the section of the brief where the procedural posture is listed. This will include the dates of the filed pleadings, hearings, results and any other relevant information.

II. LAW

This is the section of the brief where the law is integrated into the facts of each case and the facts of this case compared to the law. For #1 below, an example is prepared.

Summary of Law: Factors to be considered when evaluating a custodial parent’s request to move-away with a minor child

SUMMARY OF LAW: In In re Marriage of LaMusga (2004) 32 Cal.4th 1072, 1101, the Court enumerated the following factors that should consider when deciding whether to modify a custody order in light of the custodial parent’s proposal to change the residence of the child:

1. The reason for the proposed move; In this instant case, the Petitioner is requesting permission to take the 2 year old minor child to the East Coast of the United States due to employment. The Respondent contends that the Petitioner can find employment in San Diego County. The

Petitioner, Respondent contends, has not made sufficient personal job contacts nor provided expert testimony from a vocational evaluator that the Petitioner cannot find employment in San Diego County. As this is a pre judgment case with temporary orders without prejudice, Respondent contends that the legal standard is the best interests of their minor child and that the separation would lead to non frequent and continuing contacts and would break the bond between the Respondent and minor child and is not in the minor child's best interests.

2. The children's interest in stability and continuity in the custodial arrangement;

3. The distance of the move;

4. The age of the children;

5. The children's relationship with both parents; *This child has a relationship with both parents.*

6. The relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests;

7. The wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move;

8. The extent to which the parents currently are sharing custody;

These have become known as the "LaMusga factors" and are routinely recited by courts and evaluators when considering a move-away request. What is often forgotten is that LaMusga did not overrule In re Marriage of Burgess (1996) 13 Cal.4th 25, but "reaffirmed" it.

Burgess also listed factors that are to be considered, albeit not as concisely as LaMusga. Some of the Burgess factors were not mentioned in LaMusga, but are still important and, in many respects, more restrictive. Thus, a more complete analysis would encompass not only the LaMusga Factors, but those listed in Burgess as well.

The following are factors mentioned in Burgess that are either not mentioned in LaMusga or are given a somewhat different emphasis:

< The nature of the child's existing contact with both parents-including de facto as well as de jure

custody arrangements The child’s community ties;

< The child’s health and educational needs;

< The child’s preferences, where appropriate;

< Whether the move is simply to frustrate the noncustodial parent's contact with the minor children;

< The child’s circle of friends; and

< The child’s particular sports or academic activities within a school or community.

In this section, before every case and after, the attorney weaves the facts of their case with the law to argue to the Court that their legal position should be followed. To indicate this, a space is left in front of each case.

Factors to be considered and standard to be applied when a trial court evaluates a custodial parent's relocation request.

In re Marriage of LaMusga (2004) 32 Cal.4th 1072, 12 Cal.Rptr.3d 356, 88 P.3d 81

FACTS: W separated from H in 1996 and sought sole custody of two children, then ages 4 and 2. H requested joint custody. Philip Stahl, Ph.D. (E) was appointed by stipulation to conduct evaluation. Initially, H saw boys only 11 hrs/wk because W felt visitation detrimental. H claimed W was alienating Cs. W sought to move to Ohio with boys. E recommended against move in Report #1 as it would adversely affect Cs’ relationship with H. Mother did not move. In 12/96, trial ct. issued "final custody order" awarding joint legal custody and "primary physical custody" to W. H’s visitation increased to two evenings/wk. and every other weekend. Disso judgment issued 12/97. Both parties remarried.

In 2/01, W filed order to show cause, again seeking to move to Ohio where her family lived and where her new-H had offer of better job. E was already updating his report due to H’s earlier request for increased visitation, but he did not opine on proposed move. In that report (Report #2), E noted H was alleging continued alienation and sought more time whereas W wanted to discontinue midweek visits. E observed disturbing behavior in Cs and opined it was result of

alienation. He believed Cs demonstrated "extreme polarization," "overindulged emotions," "significant struggles emotionally," and "self-image" difficulties. He believed W was contributing to alienation, but that it tended to be "covert and unconscious." E also noted H was "somewhat self-centered and [didn't] seem to deal with boys' feelings that well." E recommended H have longer periods of visitation and raised possibility of transferring primary physical custody to H if situation did not improve. Trial ct. increased H's timeshare per recommendation.

E prepared Report #3 to address proposed move-away. He noted move would improve W's family's standard of living, but would disrupt Cs' relationship with therapist and might result in loss of their relationship with H, which was still tenuous. If they stayed with H and W moved, they would also experience loss. In short, there was "no good solution in this matter."

W assured Court that if permitted to move she would support H's relationship with Cs. E noted that in 5 years he had followed family he had not seen any evidence that W would follow through with this pledge.

After trial, judge made lengthy oral statement denying W's request. It found that although W's proposed move not in bad faith and she was not purposely trying to alienate Cs, she was trying to "align" them with her. Of primary importance was the need to reinforce the "tenuous and somewhat detached relationship with the boys and their father. . ." and that disrupting Cs' relationship with therapist would be "extremely detrimental." It found proposed relocation would be "detrimental" to Cs and ordered that if W relocated, it would implement E's recommendation and transfer custody to H for school year and then reevaluate. If she decided not to relocate, then existing custody order would continue. W appealed and Court of Appeal reversed. Supreme Ct. granted review and reversed Court of Appeal, finding trial ct.'s ruling was not an abuse of discretion.

HOLDINGS: (1) "[J]ust as a custodial parent does not have to establish that a planned move is 'necessary,' neither does the noncustodial parent have to establish that a change of custody is

‘essential’ to prevent detriment to the children from the planned move." (Id. at p. 1078.)

(2)" [T]he noncustodial parent bears the initial burden of showing that the proposed relocation of the children’s residence would cause detriment to the children, requiring a reevaluation of the children’s custody." (Ibid.)

(3) "The likely impact of the proposed move on the noncustodial parent’s relationship with the children is a relevant factor in determining whether the move would cause detriment to the children and, when considered in light of all of the relevant factors, may be sufficient to justify a change in custody." (Ibid.)

(4) "If the noncustodial parent makes such an initial showing of detriment, the court must perform the delicate and difficult task of determining whether a change in custody is in the best interests of the children." (Ibid.)

(5) "A change in custody is ‘essential or expedient’ within the meaning of Burgess . . . if it is in the best interests of the child." (Id. at p. 1098.)

(6) Conditional change of custody orders are permissible so long as their primary purpose is not to coerce a custodial parent into abandoning a proposed move.

(7) "[T]he court must consider the past conduct of the parents in fashioning a custody order that serves the best interests of the children." (Id. at p. 1094.)

(8) A move may constitute a change of circumstances for the purposes of modifying custody.

(9) Judges must be free to exercise discretion to fashion orders that best serve the interests of Cs.

(10) The reasons for a proposed move are relevant even if the custodial parent is acting in good faith.

(11) "[T]his area of law is not amenable to inflexible rules." (Id. at p. 1101.)

Court began by reaffirming the fundamental holdings of In re Marriage of Burgess (1996) 13 Cal.4th 25, 51 Cal.Rptr.2d 444, including that custodial parents have a presumptive right to move with their children subject to the power of the court to restrain a removal that would prejudice

the rights or welfare of the child and that bright line rules are inappropriate because trial courts have wide discretion in fashioning custody plans that are in the best interests of the children. It also said:

"We reaffirm our statement in Burgess that 'the paramount need for continuity and stability in custody arrangements—and the harm that may result from disruption of established patterns of care and emotional bonds with the primary caretaker—weigh heavily in favor of maintaining ongoing custody arrangements. [Citations.]" (In re Marriage of LaMusga, supra, 32 Cal.4th at p. 1093.)

Court reviewed previously published opinions and found they had been correctly decided, as most had affirmed trial ct.'s discretion.

STABILITY: Court reaffirmed its prior holdings that Cs' need for stability in custody arrangements and found nothing to indicate that trial ct. had failed to give this proper weight. It carefully considered E's reports and evidence submitted by both parties. In a tip to trial courts, Court suggested: "In future cases, courts would do well to state on the record that they have considered this interest in stability. . . ." (Ibid.)

RELATIONSHIP WITH FATHER: Contrary to Court of Appeal's opinion, trial ct. did not place "undue emphasis" on detriment to Cs' relationship with H that would be caused by proposed move.

"The weight to be accorded to such factors must be left to the court's sound discretion. The Court of Appeal erred in substituting its judgment for that of the superior court." (Ibid.)

Supreme Ct. agreed that move cannot be denied simply because move will cause some detriment to relationship with noncustodial parent.

"We do not suggest that a showing that a proposed move will cause detriment to the relationship between the children and the noncustodial parent mandates a change in custody. But it is within the wide discretion of the superior court to order a change of custody based upon such detriment, if such a change is in the best interests of the children in light of all the relevant

factors." (Id. at p. 1095)

W's PAST CONDUCT: Court of Appeal correctly noted that:

"[T]he superior court's function in determining custody is not to reward or punish the parents for their past conduct, but to determine what is in the best interests of the children. [Citation.] But this does not mean that the court may not consider the past conduct of the parents in determining what future arrangement will be best for the children. . . . Clearly, the court must consider the past conduct of the parents in fashioning a custody order that serves the best interests of the children." (Id. at p. 1094.)

There was nothing in the record that indicated the trial ct. acted out of a desire to punish or reward either parent. But W's past conduct indicated it was unlikely she would follow through on her promises to encourage Cs' relationship with their father if they moved to Ohio.

W's PRESUMPTIVE RIGHT TO MOVE: Supreme Ct. held that trial ct. did misspeak when it said that W might have had a presumptive right to relocate with the children if the parents had co-parented cooperatively.

"The mother—as the parent with primary physical custody of the children—had a presumptive right to change the children's residence unless the proposed move 'would result in "prejudice" to [the children's] "rights or welfare." [Citation.]' [Citation.]" (Id. at p. 1094.)

However, after an examination of the record, it was clear the trial ct.'s "imperfect choice of words in this single regard" did not indicate that it misperceived the correct standard.

"The court was correct that the situation might have been far different had the parents shown a history of cooperative parenting. If that had been the case, it might have appeared more likely that the detrimental effects of the proposed move on the children's relationship with their father could have been ameliorated by the mother's efforts to foster and encourage frequent, positive contact between the children and their father." (Id. at p. 1095.)

Unfortunately, this case presented the opposite situation as W's consistent attempts to limit contact between Cs and H indicated the proposed move would be detrimental.

"Essentially, the court concluded that the mother's past conduct made it unlikely that she would facilitate the difficult task of maintaining the father's long-distance relationship with the boys." (Ibid.)

MOVE MAY CONSTITUTE A CHANGE OF CIRCUMSTANCES: Court criticized In re Marriage of Edlund and Hales (1998) 66 Cal.App.4th 1454, 1472, to the extent that its language was construed to mean that a move could not be considered a change of circumstances for the purposes of modifying custody.

"The likely consequences of a proposed change in the residence of a child, when considered in the light of all the relevant factors, may constitute a change of circumstances that warrants a change in custody, and the detriment to the child's relationship with the noncustodial parent that will be caused by the proposed move, when considered in light of all the relevant factors, may warrant denying a request to change the child's residence or changing custody." (Id. at p. 1097.)

As the extent of the detrimental impact on Cs will vary from case to case, this is best left to the discretion of trial judges to determine what is in Cs' best interests.

"ESSENTIAL AND EXPEDIENT" = BEST INTERESTS: Court of Appeal placed burden on H to show that a change of custody was "essential" for Cs' welfare. This is an artificial requirement that puts too great a burden on the noncustodial parent.

"A change in custody is "essential or expedient" within the meaning of Burgess, ... if it is in the best interests of the child." (Id. at p. 1098.)

CONDITIONAL CHANGE OF CUSTODY ORDERS: Although Supreme Ct. agreed that courts may not use conditional orders for the purpose of coercing the custodial parent into abandoning plans to relocate or expecting that the order will not take effect because s/he will choose not to relocate rather than lose primary physical custody of the children. But, where there is evidence to support the change of custody if the custodial parent leaves, then the order is within the trial ct.'s discretion.

REASONS FOR THE MOVE: While the trial ct. need not evaluate the wisdom of the

custodial parent’s decision making, the reasons for a proposed move are relevant even if the custodial parent is acting in good faith.

BAD FAITH: The Court recognized that: "Absolute concepts of good faith versus bad faith often are difficult to apply because human beings may act for a complex variety of sometimes conflicting motives." (Id. at p. 1100.) Here, mother had numerous reasons for move that Court agreed were in good faith. Nevertheless, there was an undercurrent that suggested one reason for the move was to lessen contact with H. This is a factor trial courts can consider.

"Even if the custodial parent has legitimate reasons for the proposed change in the child’s residence and is not acting simply to frustrate the noncustodial parent’s contact with the child, the court still may consider whether one reason for the move is to lessen the child’s contact with the noncustodial parent and whether that indicates, when considered in light of all the relevant factors, that a change in custody would be in the child’s best interests." (Ibid.)

FACTORS FOR TRIAL COURTS TO CONSIDER: This area of law is not amenable to inflexible rules. Family law judges, guided by statute and the principles we announced in Burgess and affirmed in LaMusga, must be free to exercise their discretion to fashion orders that best serve the interests of children.

"Among the factors that the court ordinarily should consider when deciding whether to modify a custody order in light of the custodial parent’s proposal to change the residence of the child are the following: the children’s interest in stability and continuity in the custodial arrangement; the distance of the move; the age of the children; the children’s relationship with both parents; the relationship between the parents including, but not limited to, their ability to communicate and cooperate effectively and their willingness to put the interests of the children above their individual interests; the wishes of the children if they are mature enough for such an inquiry to be appropriate; the reasons for the proposed move; and the extent to which the parents currently are sharing custody." (Id. at p. 1101.)

Case was remanded with directions to affirm the order transferring custody of Cs’ to H if W

moves to Ohio. On remand, trial ct. may consider parties' present circumstances in issuing any further custody and visitation order.

An evidentiary hearing is only required if the noncustodial parent can make a prima facie showing of prejudice from the planned move; absent such a showing the presumptive right to move controls.

<u>In re Marriage of Brown & Yana (2006) 37 Cal.4th 947, 38 Cal.Rptr.3d 610, 127 P.3d 28</u>

FACTS: In 1999, W was awarded sole legal and physical custody of C. W remarried and had two children with H2. In 6/03, H filed motion seeking joint custody and an attorney for C. H alleged that C, now 12, was doing well and that C had expressed a desire to spend more time with him. Shortly thereafter, W informed H that she would be moving to Las Vegas where H2 had taken a job.

H obtained an ex parte TRO temporarily restraining move. At hearing, H disclaimed any obligation to show prejudice before setting an evidentiary hearing. H requested an evaluation of C. and alleged Las Vegas had a poor school system, high crime and a transient community.

Trial ct. noted C was not comfortable with the move, but denied H's request for a full evidentiary hearing. It noted that there had been full psychological exams in 1999 that resulted in W's having full legal and physical custody. H was entitled to a hearing on visitation modification.

The Court of Appeal reversed in a split decision. The majority held that the non-custodial parent was always entitled to a full evidentiary hearing when opposing a move-away request. Justice Yegan dissented, arguing that a showing of detriment was required and none had been shown.

The Supreme Court reversed Court of Appeal.

HELD: An evidentiary hearing is only required if the noncustodial parent can make a prima facie showing of prejudice from the planned move; absent such a showing the presumptive right

to move controls.

Supreme Ct. began by disagreeing with a number of W’s contentions:

(1) A CUSTODIAL PARENT’S RIGHT TO RELOCATE IS NOT ABSOLUTE: Supreme Ct. firmly rejected W’s claim that because she had full custody, she was absolutely entitled to move.

"[S]ection 7501 unambiguously provides the right is not absolute and may be curtailed if the move would result in detriment to the child: ‘A parent entitled to the custody of a child has a right to change the residence of the child, ••subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child••.’ [Fam. Code §7501 (a), italics added.] ... [T]he statute contains no qualifying language purporting to limit its application to parents with only certain custodial rights.... [E]ven a parent with sole legal and sole physical custody may be restrained from changing a child’s residence, if a court determines the change would be detrimental to the child’s rights or welfare." (Id. at p. 957.)

(2) CUSTODY MAY BE MODIFIED IF MOVE WILL CAUSE DETRIMENT:

Although the Court reiterated the "the paramount need for continuity and stability in custody arrangements," it nevertheless made clear that "an order for sole physical custody may be modified, despite the general importance of maintaining ongoing physical custody arrangements, if relocation with the custodial parent will cause the child to suffer detriment, thus rendering it essential or expedient for the child’s welfare that there be a custody change." (Id. at p. 958.)

(3) SOLE CUSTODY DOES NOT "TERMINATE" NONCUSTODIAL PARENT’S RIGHTS: "[A]n award of sole legal and sole physical custody of a child to one parent does not serve to ‘terminate’ the other’s parental rights or due process interest in parenting." (Id. at p. 958.)

NONCUSTODIAL PARENT MAY SEEK CHANGE OF CUSTODY BASED ON MOVE: The Court summarized its preliminary holdings, as follows:

"[W]here a final custody order had awarded sole legal and sole physical custody to the parent seeking to relocate with a child, the noncustodial parent opposing the relocation may seek and obtain a custody modification based on a proper showing pursuant to the changed circumstance

rule." (Id. at p. 959.)

RIGHT TO EVIDENTIARY HEARING: The Court rejected H's argument that he was absolutely entitled to a full evidentiary hearing.

"[A]n evidentiary hearing in a move-away situation should be held only if necessary. Where, as here, one parent has been awarded sole legal and sole physical custody of a child, and the noncustodial parent opposes the custodial parent's decision to relocate with the child, a trial court may deny the noncustodial parent's requests to modify custody based on the relocation without holding an evidentiary hearing to take oral evidence if the noncustodial parent's allegation or showing of detriment to the child is insubstantial in light of all the circumstances presented in the case, or is otherwise legally insufficient to warrant relief. [¶] ... [A]n evidentiary hearing serves no legitimate purpose or function where the noncustodial parent is unable to make a prima facie showing of detriment in the first instance, or has failed to identify a material but contested factual issue that should be resolved through the taking of oral testimony." (Id. at p. 962.)

Since H's moving papers failed to identify any detriment from the proposed move, there was no basis to justify an evidentiary hearing.

All that H offered were generalities concerning the standard of living and schooling in Las Vegas. This showing merely showed "detriment in the abstract." (Id. at p. 964.) This was insufficient.

Likewise, although the Court was not prepared to hold that a child's discomfort with a proposed move would never suffice to establish or support a finding of detriment for purposes of the changed circumstance rule, here it did not rise to such a level.

DUTIES OF TRIAL COURT: "Where ... a trial court in a move-away case diligently inquires into the matter of detriment in a formal court hearing, and duly considers the noncustodial parent's claims, evidence, and offers of proof but properly finds them insufficient to establish the detriment required for a custody modification under the changed circumstance rule, the court does not err or abuse its discretion in denying custody modification without taking the further

step of holding an evidentiary hearing with live testimony." (Id. at p. 965.)

Trial court deprived H of opportunity to be meaningfully heard before granting W's "move-away" request; rules of procedure governing FL matters are commands which ensure fairness by their enforcement.

In re Marriage of Seagondollar (2006) 139 Cal.App.4th 1116, 43 Cal.Rptr.3d 575

FACTS: 2003 judgment awarded parents joint legal and physical custody of 4 children; H awarded custody on those days on which W "'on call'" or available to work as a flight attendant, with W having custody rest of time. W later remarried.

In 3/04, H brought OSC (March OSC) asking for sole physical custody of all Cs and awarding W reasonable visitation. Hearing on March OSC set for May.

W did not file response, but in 4/04, filed OSC seeking an Evid. Code §730 evaluation of Cs. H opposed. Trial ct. initially denied request for evaluation. Trial ct. appointed counsel for children. Both OSCs continued and mediation ordered.

In 6/04, H brought ex parte application and OSC requesting an immediate temporary award giving him physical custody and prohibiting removal of the children from SoCal without written agreement or court order. At hearing, Cs' counsel "extremely concerned" Cs' emotional well-being and requested court appoint Evaluator (E) to conduct "a limited 730" evaluation. Cs' counsel explained W seeking to relocate with Cs to VA. W's counsel stated W had no intention of moving or relocating to VA residence until after July hearing on matter. Court appointed E to conduct "limited" section 730 evaluation and modified custody schedule to provide equal visitation, and to allow W to take Cs out of state until 7/5. Hearing continued to October by stipulation.

E conducted evaluation and recommended allowing Cs to relocate to VA to live with W and her husband, and an expanded visitation schedule for H.

As W had not filed a response, H dropped his OSC from calendar. W filed ex parte application

to restore custody case to calendar, and filed OSC requesting modification of custody order (October OSC) and brought an ex parte application to have it heard on shortened notice. W's October OSC not personally served on H.

After further litigation, court concluded it was in Cs' best interest to award W primary physical custody and authorize her to relocate to VA with Cs. H appealed and Court of Appeal reversed.

HELD: Trial court deprived H of opportunity to be meaningfully heard before granting W's "move-away" request; rules of procedure governing FL matters are commands which ensure fairness by their enforcement.

1. W's Failure to File a Response to H's March OSC:

W did not file a response to H's March OSC and did not request affirmative modification relief. She did file an OSC requesting evaluator, but not her own OSC seeking custody modification.

Trial ct. expressed its belief a 730 evaluation was unnecessary because "it's not a move-away case[,] . . . at least that's not the way it's presented." Trial ct. made clear W would have to file her own OSC to present the move-away issue, whereupon her counsel said she had no intention of moving at that point. During summer, E conducted his evaluation, W never sought affirmative relief and never filed a response to March OSC.

As of 9/28/04, only H's March OSC requesting sole custody of the children was set for hearing. Because W requested no affirmative relief, trial ct. could either grant H's March OSC and give him sole custody, or deny it and keep the current joint custody order in place. "A move-away with [Wife] receiving sole custody was not an option." (Id. at p. 1128.)

H within his rights to withdraw his March OSC scheduled for October. (See Code Civ. Proc. §581 ©.) Effect of withdrawing H's March OSC was to keep the current custody order in place.

2. Lack of Good Cause to Hear W's October OSC on Shortened Notice:

W first sought affirmative relief asking for primary physical custody and a move-away with

the children to VA when she filed the October OSC. She applied ex parte for order shortening time (OST) when she filed her October OSC seeking modification of custody. As evidence in support of application, Court of Appeal noted she used facts which merely restated basis for modification: "They do not constitute good cause for shortening time to hear such an important matter as an OSC to modify custody and approve a move-away." Yet, trial ct. granted application and set hearing for 10/13/04, only 8 days away. Trial ct. thus erred.

W justified OST by arguing H had known since 4/04 she had remarried and intended to move to VA. Court of Appeal reviewed facts and found H could not be charged with knowledge of a move-away request that W did not make and commit herself to until filing her October OSC.

3. Failure to Serve H with October OSC:

Court of Appeal noted that 10/13, trial ct. continued hearing on W's October OSC to 11/04, so error in granting her ex parte application might be considered harmless. But in addition, her October OSC was not properly served on H.

An OSC requesting modification of a custody order must be served on the party; service on the party's attorney not sufficient. A postjudgment modification issued without proper service of the OSC is void on its face and subject to collateral attack. It was not personally served on H here.

4. Refusing to Hear H's Motion to Quash Before Hearing on W's October OSC:

On 10/6/04, H moved to quash service of October OSC on shortened notice. Even though court ••granted•• W's request to have her OSC heard on shortened notice, court ••denied•• H's request. As a result, H's motion to quash set for hearing ••over one month after•• initial hearing date of W's October OSC, and after the hearing on the OSC actually took place. That was an abuse of discretion because trial ct. should have granted H's motion to quash had the court heard the motion before W's October OSC. Had that occurred, it is possible the hearing on W's October OSC would have been held at a time when H's rebuttal expert would have been able to testify, and result would be different.

Basic requirements not met in granting W's move-away request.

"Virtually from start to finish, the trial court handling this matter failed to follow or evenly apply the rules and procedures governing family law matters and, by failing to do so, denied [husband] the opportunity to be meaningfully heard. The rules of procedure for reaching family law decisions-contained in the Family Code, the Code of Civil Procedure, the California Rules of Court, and local court rules-are not mere suggestions. The rules of procedure are commands which ensure fairness by their enforcement." (Id. at p. 1120.)

Evidence Code §730

Court may appoint expert

When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court.
Nothing in this section shall be construed to permit a person to perform any act for which a license is required unless the person holds the appropriate license to lawfully perform that act.
(Am Stats 1990, C 295)

Trial court's findings made clear the court determined that relocating to Oregon would cause detriment to child: This finding alone, supported by substantial evidence, required affirmance.

In re Marriage of Melville (2004) 122 Cal.App.4th 601, 18 Cal.Rptr.3d 685

FACTS: Parties were married in 1981 and separated in 1994, at which time their residence was in

San Mateo; for most of the marriage they lived in San Diego. After separation, H moved to San Diego and remarried. W continued living in San Mateo and had primary physical custody of both children after 1995. C generally stayed with H in summer. Older brother was 19 at time of appeal.

In late 2001, H requested full custody of C, who had Down's Syndrome and a heart condition. Per court order, custody evaluation performed by psychologist (E) and, in 5/02, parties accepted E's recommendations: Parties would share legal custody of C and parent with whom C resided during designated period would have decision-making authority about his educational needs and day-to-day routine health care during that period; parent to share and discuss in a timely fashion with other parent prior to making any such decisions.

In 12/02, W laid off from AOL and told H she planned to relocate and take C1 to Klamath Falls, Oregon, where she bought a house in 2000, and began work as a mortgage broker. H obtained order barring any change of C's residence pending court hearing for modification due to this change of circumstance. W violated order by taking C to Oregon. Trial ct. made 2d order giving H "immediate, temporary custody" pending further evaluation by E and the hearing. Court of Appeal summarily denied W's petition to have orders set aside. Trial ct. then made order that "[child] will reside primarily with Father subject to Mother's visitation."

At time of hearing, W had sold San Mateo home and lived in Klamath Falls. Trial ct. ordered parties would share legal custody, and H would continue to have the majority of physical custody; W would have custody during summer, with regular visitation rest of year. W appealed and Court of Appeal affirmed.

HELD: Trial court determined that relocating to Oregon would cause detriment to child: This finding alone, supported by substantial evidence, required affirmance.

W contended trial ct. showed improper enmity toward her for decision to relocate, requiring reversal of custody order. Court of Appeal "conceded that some of the court's language might have been more diplomatically expressed," but found no basis for discerning "enmity" or

"antipathy."

"A parent's move is in effect presumed to be in good faith unless it is shown to have an improper motive-such as impairing visitation with the other parent-or will have an adverse effect on the child. (See In re Marriage of LaMusga (2004) 32 Cal.4th 1072, 1098-1099 ; In re Marriage of Burgess [(1996)] 13 Cal.4th 25, 32, 36, fn. 5.) As is clear from the court's statement of decision, it was [wife] who requested the court to make the determination whether her move was in good faith." (In re Marriage of Melville, supra, 122 Cal.App.4th at p. 611.)

Court of Appeal noted trial ct. also concluded W should have known the likely impact on C if they moved. From this and other findings, it was clear the court determined that relocating to Oregon would cause detriment to C. This finding alone, supported by substantial evidence, required affirmance. (Fam. Code §7501 (a).)

"It is this finding of detriment, and not the question of good faith or bad faith, that is dispositive." (Id. at p. 612.)

"Our Supreme Court recently held that 'just as a custodial parent does not have to establish that a planned move is "necessary," neither does the noncustodial parent have to establish that a change of custody is "essential" to prevent detriment to the children from the planned move. Rather, the noncustodial parent bears the initial burden of showing that the proposed relocation of the children's residence would cause detriment to the children, requiring a reevaluation of the children's custody. The likely impact of the proposed move on the noncustodial parent's relationship with the children is a relevant factor in determining whether the move would cause detriment to the children and, when considered in light of all the relevant factors, may be sufficient to justify a change in custody. If the noncustodial parent makes such an initial showing of detriment, the court must perform the delicate and difficult task of determining whether a change in custody is in the best interests of the children.' (In re Marriage of LaMusga, supra, 32 Cal.4th 1072, 1078.)" (In re Marriage of Melville, supra, 122 Cal.App.4th at p. 612.)

Court of Appeal found the reasoning behind trial ct. order here fully compatible with LaMusga

principles. Trial ct. also adhered to Burgess standards.

Court of Appeal found H presented ample evidence that W's move to Oregon constituted a material change in circumstances warranting modification of custody order. If C spent majority of his time in Klamath Falls he would lose adequate educational opportunities and access to medical care in San Diego. He had not transitioned well to the school in Klamath Falls, "having only been there a couple of days." Moving him back there from San Diego would only disturb a child with an "inability to transition well" to new surroundings. As between Klamath Falls and San Diego, trial ct. concluded the former would not "meet his needs as efficiently and completely as San Diego." Whereas the older child used to live with C in San Mateo, he would not be near C in Klamath Falls but he would in San Diego. C knew San Diego but would be a virtual stranger to Klamath Falls. Court noted if C's needs were the most important consideration, W did have a "duty" to stay in San Mateo, as opposed to moving to Klamath Falls, where those needs would not be so well served. Although W did have "an unquestioned right to relocate to Oregon," that did not affect trial ct.'s obligation to consider the consequences of that move to C.

"As the trial court pointed out, the 'support system' [the child] had in San Mateo was the decisive factor in the previous decision to award primary custody to [wife]." (Ibid.)

Where no final permanent custody determination made, trial ct. must use best interests analysis and consider all circumstances; it need not make detriment finding.

<u>Ragghanti v. Reyes (2004) 123 Cal.App.4th 989, 20 Cal.Rptr.3d 522</u>

FACTS: Unmarried parents of minor ©, born 4/97, lived together only brief period. C lived primarily with mother for her first 6 years and visited father (F) regularly. There was substantial evidence in the record that mother had been acting in bad faith and attempting to limit father’s access to C. Third time mother sought to move away with C, F sought sole custody.

Prior to trial on custody issue, parties agreed no final permanent custody determination ever made so that trial ct. was to use "best interests" analysis and consider all circumstances. Based in

large part on custody evaluation by neutral evaluator (E), trial ct. concluded it was in C's best interest to live primarily with F and awarded him sole physical custody. Mother appealed, contending trial ct. erred in applying best interests analysis as typically used for initial custody determinations. She argued that given length of time C lived primarily with her, court was required to find either that mother's care was deficient or that her planned relocation would be detrimental to C, before awarding custody to F. Court of Appeal affirmed.

HELD: Where no final permanent custody determination made, trial ct. must use best interests analysis and consider all circumstances; it need not make detriment finding.

Court of Appeal noted parties stipulated to no existing final custody order and best interests analysis, and trial ct. was correct in applying best interests standard and considering ••all•• pertinent circumstances bearing upon C's best interest. Mother acknowledged standard appropriate, but argued trial ct. erred in finding prior custody arrangement was true joint custody, that the court should have taken into consideration her "presumptive right" to relocate, which required F to show that the move would be detrimental to C, and that C's interest in continuity and stability demanded court find mother's care was deficient before a change in custody was warranted.

Court of Appeal found no error in true joint custody finding, which has import only where there is an existing final custody order. Although the changed circumstances test usually applies after a final custody order is in place, "where parents share custody 'under an existing order and in fact' and one of the parents wants to move away, the changed circumstances analysis is not appropriate since the existing order becomes a practical impossibility. In that case, '[t]he trial court must determine de novo what arrangement for primary custody is in the best interest of the minor children.' ([In re Marriage of] Burgess (1996) 13 Cal.4th 25, 40, fn. 12.) Here, since parties agreed there was no existing final custody order, the best interests analysis applied regardless of how preexisting custody arrangement characterized.

Court of Appeal found no legal support for mother's argument that F had the burden to show

proof of detriment because of planned relocation. Burgess explained how trial ct. was to analyze move-away cases in two situations: first, when making an initial custody decision, and second, when decision involves changing an existing final custody order. Mother's argument erroneously merged passages taken from these two separate discussions.

"In other words, when there is an existing final custody order in a move-away case, the changed circumstances test applies just as it would in any other case. Unless the move will result in detriment that makes a change in custody 'essential or expedient' for the child's welfare, the existing order must stand. But in an initial custody decision, although the trial court must 'take into account' a planned move and any resulting prejudice to the child, those considerations do not preclude the court from also considering all the other circumstances bearing upon the child's best interest. The noncustodial parent does not have a burden to show that the move will be detrimental. To be sure, under the best interests analysis, even if the detriment resulting from a planned move is insufficient by itself to warrant changing a temporary custody order, other circumstances can support the finding that a change in custody is in the child's best interest." (Ragghanti v. Reyes, supra, 123 Cal.App.4th at p. 998.)

Mother further argued that where there is a long established custody arrangement the noncustodial parent has the burden to prove that the custodial parent's care is deficient or that the child's welfare has suffered. Court of Appeal disagreed.

"'When custody continues over a significant period, the child's need for continuity and stability assumes an increasingly important role.' (Burchard v. Garay (1986) 42 Cal.3d 536, 538. Indeed, where one custody arrangement has been in place for a significant period of time, the noncustodial parent has the 'burden of persuading the trier of fact that a change is in the child's best interest.' (Id. at p. 536.) But while the child's interest in continuity and stability is a factor that weighs heavily in the equation, it does not change the fact that if there was no existing final determination of what custody arrangement was in the child's best interest, the noncustodial parent does not have a burden to show that an existing arrangement is detrimental. In this case,

that means that father had the burden of proving that even considering the length of time [the child] had lived with mother, [the child's] interest would be best served by awarding custody to him. He might have met that burden by showing that mother's care was seriously deficient, but under the best interest standard, the trial court's consideration of all the circumstances was not dependent upon such proof." (Id. at p. 999.)

Trial court erroneously denied H the opportunity to present evidence on whether W's move with children 2 hours away would cause detriment to the children.

In re Marriage of Brown and Campos (2003) 108 Cal.App.4th 839, 134 Cal.Rptr.2d 300

FACTS: H and W had 2 sons, ages 15 and 12. They lived in Santa Barbara, CA. Parties had joint legal custody and W had sole physical custody. H had alternate weekends, 3 hrs twice a week and 3 wks in summer. In 8/02, W announced she was moving to Moorpark (2 hours away) with H2. H sought to modify custody so boys could stay in Santa Barbara. H alleged that boys did not want to move from Santa Barbara and leave behind extended family and life-long friends and classmates. He alleged boys wanted to start new schools with old friends rather than strangers. Cs told psychologist they did not want to move.

Trial ct., finding no bad faith motive, denied H's request for an evidentiary hearing. It stated: "[T]he law is clear. Burgess is the law. And Burgess requires nothing further than a look into whether there's an allegation of bad faith in the move.... [T]he Court really doesn't have to look much beyond Burgess."

H appealed, arguing he was entitled to an evidentiary hearing on the question whether the move would be so detrimental that a change in the custody arrangement was essential for Cs' welfare. Court of Appeal agreed and reversed.

HELD: Trial ct. adopted too narrow an interpretation of Burgess and erroneously denied H the opportunity to present evidence on whether the move would cause detriment to the children.

In re Marriage of Burgess (1996) 13 Cal.4th 25, 51 Cal.Rptr.2d 444, 913 P.2d 473, holds that

a substantial showing is required to change an existing custody order.

"'In a "move-away" case, a change of custody is not justified simply because the custodial parent has chosen, for any sound good faith reason, to reside in a different location, but only if, as a result of relocation with that parent, the child will suffer detriment rendering it "'essential or expedient for the welfare of the child that there be a change.'"' (Burgess, supra, at p. 38 quoting In re Marriage of Carney (1979) 24 Cal.3d. 725, 730.)" (In re Marriage of Brown and Campos, supra, 108 Cal.App.4th at p. 843.)

"This standard of proof is admittedly very high. Nevertheless, a non-custodial parent opposing a 'move away' order has the right to present evidence on both of the relevant issues: bad faith and detriment to the child. Here, the trial court erred because it refused to consider the second issue, concluding instead that wife's good faith was the only relevant consideration. It is not. As Burgess expressly holds, a change of custody may be ordered in a 'move away' case where, as a result of the move, the children will suffer detriment rendering a change of custody essential or expedient for their welfare. [Citations.] Husband proffered evidence that the move would cause detriment to the children because they were opposed to the move and because it would separate them from their extended family, friends and classmates. Before the trial court ruled on this order to show cause, it should have heard evidence on this issue." (Ibid.)

Court of Appeal disagreed that this contradicted its recent opinion in In re Marriage of Bryant (2001) 91 Cal.App.4th 789, 110 Cal.Rptr.2d 791.

"First, we conclude here that the trial court erred in failing to hold an evidentiary hearing on the question whether moving with wife would cause detriment to the children. The parties in Bryant, by contrast, had such a hearing. Second, Bryant held that, in the absence of bad faith, a trial court should not inquire into or evaluate the custodial parent's reasons for moving. (Id. at pp. 793-794.) Here, after it determined that wife was not acting in bad faith, the trial court properly refused to inquire further into her reasons for moving. It erred, however, by failing to consider the second half of the Burgess analysis: whether the move will cause detriment to the children

rendering a change in custody essential for their welfare. Nothing in Bryant gives the trial court license to ignore that question. To the contrary, Bryant counsels trial courts to shift their focus away from evaluating a custodial parent's reasons for moving and toward evaluating the effect moving will have on the children. We reiterate that advice here. In a move away case, the trial court must always consider whether a custodial parent is acting in bad faith. (Burgess, supra, 13 Cal.4th at p. 38.) It must also always consider whether 'as a result of relocation with [the custodial] parent, the child will suffer detriment rendering it "'essential or expedient for the welfare of the child that there be a change.'"'" (In re Marriage of Brown and Campos, supra, 108 Cal.App.4th at p. 844.)

Custodial parent denied right to move with child when she had no plans for employment and move seemed designed to frustrate visitation.

Cassady v. Signorelli (1996) 49 Cal.App.4th 55, 56 Cal.Rptr.2d 545

FACTS: C was born to unmarried mother (M) and father (F). When attempts to agree on issues relating to C broke down, trial ct. initially ordered joint custody and restrained M from removing C from S.F. Bay Area. These orders reiterated in 5/94 and 5/95 along with other orders, including orders regarding medical care and that C attend school instead of being home schooled by M.

M had been a jeweler but wanted to move to Florida (FL) to build a career as a "parapsychologist." Trial ct. found that there were no jobs available in this field anywhere in world and that M had no realistic employment options in FL. As M had not seriously sought employment in Bay Area, trial ct. concluded that M wished to move to frustrate F's visitation.

M appealed 5/95 orders. Court of Appeal first noted that appropriate standard of review was deferential abuse of authority, citing In re Marriage of Burgess (1996) 13 Cal.4th 25, 51 Cal.Rptr.2d 444, 913 P.2d 473. Finding none, it affirmed.

Trial ct. did not fail to give proper weight, as required by Burgess, to presumption that M, as primary physical caretaker, should be permitted to relocate unless move not in C's best interests.

Court of Appeal felt trial ct. could properly have concluded that it was in C's best interests to have continued regular visitation with F, with whom she had a good relationship, and that a move to Florida would almost entirely frustrate this interest in a continued parental relationship. Also, it could have found that a relocation of C's residence based only upon M's "somewhat whimsical plans and very uncertain prospects" in FL were not in C's best interest.

HOME SCHOOLING: Trial ct.'s orders also supported by M's "flaky and somewhat delusional quality in her thinking." Because of M's problems, trial ct. ordered that C be sent to regular school and not permitted to be home schooled by M.

"The trial court did not err in concluding [child] would be better off in a regular school with peers her age to interact with, and teachers to provide a necessary and proper education, rather than being forced to stay home all day with the mother." (Id. at p. 62.)

MEDICAL DECISIONS: For same reasons, court felt that M's ability to make medical decisions for C might be impaired and ordered that final authority to make medical decisions relating to C would rest with F.

RIGHT TO TRAVEL: The Court summarily dismissed M's argument that the order impaired her constitutional right to travel.

Custodial parent may be prevented from removing child from state when result would be detrimental to relationship between child and noncustodial parent.

In re Marriage of Carlson (1991) 229 Cal.App.3d 1330, 280 Cal.Rptr. 264, disapproved In re Marriage of Burgess (1996) 13 Cal.4th 25, 51 Cal.Rptr.2d 444, 913 P.2d 473

FACTS: During marriage, H and W lived alternately in Pa. and Cal., but at time of dissolution lived near H's family in Cal. W desired to take children (Cs), ages 6 and 8, to Pa., where she would have emotional support of her family and their help with Cs while W attended college. Both parties had close, loving relationship with Cs. At dissolution, W unemployed and H had sporadic history of employment. Trial ct. awarded parties joint legal custody with primary

physical custody to W, and restrained each party from removing Cs from Cal. Court of Appeal affirmed, holding former Civil Code section 4600 [replaced in part by Fam. Code §3020] [Cal. policy is to assure minors of frequent and continuing contact with both parents] and former Civil Code section 4600.5 [replaced in part by Fam. Code §3024] [notice by custodial parent required before changing minor's residence], make it clear that every reasonable effort should be made to preserve the relationship of children and both parents.

"The new provisions manifest a legislative determination that 'regular and continuing contact' is in the best interests of the child." (Id. at p. 1336.)

Court of Appeal concluded trial ct. did not err in considering effect of W's contemplated move on Cs, and H did not have affirmative burden to prove detriment from move to obtain order restraining it.

"[W]e do not make the noncustodial parent's ability to exercise visitation the sole or preeminent factor in cases such as this. We do, however, call attention to it as one of the significant considerations the trial court must take into account in evaluating the best interests of the child in light of all the evidence before the court." (Id. at p. 1336.)

Movement of residence by custodial parent to frustrate visitation should be considered in decision to change custody.

In re Marriage of Ciganovich (1976) 61 Cal.App.3d 289, 132 Cal.Rptr. 261 dissaproved in La Musga

FACTS: Following dissolution in Cal., without apparent reason except to avoid H, W moved with the children to Nev., where she changed residences several times without notice and used a "blind" address. Trial ct. refused to change custody, citing W's constitutional right to travel. Court of Appeal reversed and remanded for retrial, finding that trial ct. did not appear to have considered the frustration of visitation issue.

"As a general rule a parent having child custody is entitled to change residence unless the

move is detrimental to the child. [Citations.] That the child's removal from the state practically deprives the father of his visitation rights is 'generally' insufficient to justify restraint on the mother's free movement. [Citations.] [¶] The general rule does not govern when the mother acts with an intent to frustrate or destroy the father's visitation right." (Id. at p. 293.)

"Confronted with such a situation, a trial court should be concerned with the child's welfare as the paramount consideration. The court should bear in mind that preservation of parental relationships is in the best interest of the child as well as the parent. [Citations.] The court should also bear in mind that a custodial parent's attempt to frustrate the court's order has a bearing upon the fitness of that parent." (Id. at p. 294.)

Frustration of visitation is a proper ground for change of custody order.

In re Marriage of Wood (1983) 141 Cal.App.3d 671, 190 Cal.Rptr. 469

FACTS: W had moved from Bakersfield, where H lived, to Oakland, and failed to reveal her address or telephone number. Trial ct. ordered custody changed to H, holding W had substantially interfered with H's visitation. W appealed and Court of Appeal affirmed that portion of the trial court's decision.

"[I]t does not appear ... that her change of residence was the reason for the modification. The trial court expressed with reasonable clarity that it was placing the children in the custody of the father because it was in their best interest to maintain a good relationship with both parents, and that Mother had been attempting to sever the children's relationship with their father." (Id. at p. 682.)

Maintenance of frequent and continuing contact between child and both parents is proper consideration in custody decision.

In re Marriage of Lewin (1986) 186 Cal.App.3d 1482, 231 Cal.Rptr. 433

FACTS: Trial ct., after hearing evidence that W had engaged in conduct designed to destroy

relationship between child and H (and H's new wife), awarded custody to H and visitation to W. Court of Appeal sustained. After ruling that it was not necessary to prove changed circumstances at trial following stipulated temporary custody order, court reviewed the factual basis for the custody decision.

"In enacting [former Civil Code section 4600 (b)(1), replaced by Fam. Code §3040 (a)(1)], the Legislature acknowledged the importance of a child's need to maintain frequent and continuing contact with the noncustodial parent. This is the only way a child may grow up knowing both parents." (Id. at p. 1491.)

Court concluded that evidence that W had interfered with H's relationship with child and with visitation rights (W moved, failed to notify H of her whereabouts, and desired that child regard another man as her father) proved that she would not be parent most likely to allow frequent and continuing contact.

Whenever support at issue, court may order "a party" to be tested by vocational training consultant.

Fam. Code §4331

STATUTE PROVIDES: "(a) In a proceeding for dissolution of marriage or for legal separation of the parties, the court may order a party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history,

and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain herself or himself at the marital standard of living.

(b) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of

the examination, and the person or persons by whom it is to be made.

[Remainder of statute omitted.]" (Fam. Code §4331.)

Family Code §4331

Examination by vocational training counselor

(a) In a proceeding for dissolution of marriage or for legal separation of the parties, the court may order a party to submit to an examination by a vocational training counselor. The examination shall include an assessment of the party's ability to obtain employment based upon the party's age, health, education, marketable skills, employment history, and the current availability of employment opportunities. The focus of the examination shall be on an assessment of the party's ability to obtain employment that would allow the party to maintain herself or himself at the marital standard of living.

(b) The order may be made only on motion, for good cause, and on notice to the party to be examined and to all parties. The order shall specify the time, place, manner, conditions, scope of the examination, and the person or persons by whom it is to be made.

© A party who does not comply with an order under this section is subject to the same consequences provided for failure to comply with an examination ordered pursuant to Chapter 15 (commencing with Section 2032.010) of Title 4 of Part 4 of the Code of Civil Procedure.

(d) "Vocational training counselor" for the purpose of this section means an individual with sufficient knowledge, skill, experience, training, or education in interviewing, administering, and interpreting tests for analysis of marketable skills, formulating career goals, planning courses of training and study, and assessing the job market, to qualify as an expert in vocational training under Section 720 of the Evidence Code.

(e) A vocational training counselor shall have at least the following qualifications:

(1) A master's degree in the behavioral sciences.

(2) Be qualified to administer and interpret inventories for assessing career potential.

(3) Demonstrated ability in interviewing clients and assessing marketable skills with understanding of age constraints, physical and mental health, previous education and experience, and time and geographic mobility constraints.

(4) Knowledge of current employment conditions, job market, and wages in the indicated geographic area.

(5) Knowledge of education and training programs in the area with costs and time plans for these programs.

(f) The court may order the supporting spouse to pay, in addition to spousal support, the necessary expenses and costs of the counseling, retraining, or education. (Am Stats 2004, C182)

III. CONCLUSION AND ARGUMENT

In this section, the facts and law are argued together in a lengthy summary.

Date:____________ ______________________________

Roy M. Doppelt, Esq.
Attorney for Respondent