

1-3-2012

Clair v. Clair Clerk's Record v. 1 Dckt. 39188

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Vol. 1 of 7

**SUPREME COURT
OF THE
STATE OF IDAHO**

CHARLES MAJCOM CLAIR, JR.

Plaintiff-Respondent

vs.

LAW CLERK
TRACY JO CLAIR

Defendant-Appellant

Honorable Rick Carnaroli Magistrate Judge

Appealed from the District Court of the Sixth
Judicial District of the State of Idaho, in and for
Bannock County.

Nick L. Nielson

Nielson Law Office

Attorney X For Appellant X

Frederick F. Belzer

Attorney at Law

Attorney X For Respondent X

Filed this LED - COPY day of

2008

JAN - 3 2008

Clerk

Deputy

39188

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES MALCOM CLAIR, JR.,)
)
Plaintiff-Respondent,)
)
)
)
vs.) Supreme Court No. 39188-2011
)
TRACY JO CLAIR,)
)
Defendant-Appellant,)
)
)
)
_____)

Volume I

CLERK'S RECORD

Appeal from the District Court of the Sixth Judicial District of the State of
Idaho, in and for the County of Bannock.

Before **HONORABLE** Rick Carnaroli Magistrate Judge.

For Appellant:

**Nick L. Nielson
Nielson Law Office
P.O. Box 6159
Pocatello, Idaho 83205-6159**

For Respondent:

**Frederick F. Belzer
Attorney at Law
P.O. Box 4947
Pocatello, Idaho 83205**

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VOLUME I

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VOLUME III

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
7/19/2010	LOCT	MEGAN	Sent to Nichole / Judge Carnaroli with Order Granting Motion to Expedite on 12-9-11.	Rick Carnaroli
			SUPREME COURT APPEAL.	
	NCDR	MEGAN	New Case Filed-Domestic Relations	Rick Carnaroli
	COMP	MEGAN	Complaint For Divorce- by plaintiff Charles Clair Jr, thru PA May	Rick Carnaroli
	JPRI	MEGAN	Joint Prohibitive Order IRCP (65(G) - ISSUED	Rick Carnaroli
	SMIS	MEGAN	Summons Issued	Rick Carnaroli
	FLIS	MEGAN	Family Law Information Sheet Filed- Child of the parties: Colten Clair (DOB: 5/4/07)	Rick Carnaroli
			Document sealed	
		MEGAN	Filing: B1 - Divorce Paid by: May Rammell & Thompson Receipt number: 0025696 Dated: 7/20/2010 Amount: \$129.00 (Check) For:	Rick Carnaroli
	ATTR	JENNEFER	Plaintiff: Clair, Charles Clair Jr Attorney Retained Gregory C May	Rick Carnaroli
	OAPW	JENNEFER	Order to Attend Focus on Children & Silver Linings- Set for: 8/3/10 @ 6:00 PM	Rick Carnaroli
7/29/2010	STIP	JENNEFER	Stipulation- Signed by: DA Nielson on 7/23/10 & PA May on 7/27/10	Rick Carnaroli
	AFFD	JENNEFER	Affidavit of Service- Defendant, Tracy Clair, was served with summons & complaint on 7/26/10	Rick Carnaroli
7/30/2010	ORDR	JENNEFER	Order on Stipulation- Every term & condition of stipulation is GRANTED. s/ Carnaroli on 7/30/10	Rick Carnaroli
8/3/2010	DNAC	KROMRIEL	Defendant did not attend Parenting Class-lives out of state-not reset	Rick Carnaroli
	PNAC	KROMRIEL	Plaintiff did not attend Parenting Class--did not reset -everything stipulated	Rick Carnaroli
3/4/2010	APPL	JENNEFER	Application For Waiver of Attendance at Parenting Workshop- GRANTED. parties attendance is excused. s/ Carnaroli on 8/4/10	Rick Carnaroli
3/6/2010	STIP	JENNEFER	Stipulation to Consolidate- Signed by: DA Nielson on 8/4/10 & PA May on 8/5/10	Rick Carnaroli
3/10/2010	CONS	JENNEFER	Order Granting Stipulation to Consolidate- Divorce case # CV-2010-778 (Filed by defendant Tracy Clair in Latah County) is to be consolidated with Bannock County case # CV-2010-2989-DR. s/ Carnaroli on 8/10/10	Rick Carnaroli
1/11/2010	ANSW	JENNEFER	Answer to Complaint- by defendant Tracy Clair, thru DA Nielson	Rick Carnaroli
	ATTR	JENNEFER	Defendant: Clair, Tracy Jo Attorney Retained Nick L Nielson	Rick Carnaroli
1/18/2010	NOTC	JENNEFER	Notice of Service- Plaintiff's requests for discovery from defendant was served on defendant Tracy Clair thru DA Nielson on 8/18/10	Rick Carnaroli

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
8/18/2010	ANSW	JENNEFER	Answer to Verified Complaint For Divorce- by plaintiff Charles Clair thru PA May (For Latah County Case # CV-10-778)	Rick Carnaroli
8/24/2010	APPL	JENNEFER	Application For Waiver of Attendance at Parenting Workshop- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
8/25/2010	ORDR	JENNEFER	Order Granting Application For Waiver of Attendance at Parenting Workshop- Defendant Tracy Clair excused from attending parenting workshop. s/ Carnaroli on 8/25/10	Rick Carnaroli
8/27/2010	HRSC	NICHOLE	Hearing Scheduled (Scheduling Conference 09/30/2010 01:30 PM)	Rick Carnaroli
8/30/2010	ORDR	NICHOLE	Order for Scheduling Conference /s/ J Carnaroli 8/27/10	Rick Carnaroli
9/9/2010	STIP	JENNEFER	Stipulation- signed by: PA Belzer & DA Nielson on 9/9/10	Rick Carnaroli
	SUBC	JENNEFER	Notice of Substitution of Counsel- Frederick Belzer substitutes in place of Gregory May as PA	Rick Carnaroli
	ATTR	JENNEFER	Plaintiff: Clair, Charles Malcolm Jr Attorney Retained Frederick F Belzer	Rick Carnaroli
9/10/2010	ORDR	JENNEFER	Order on Stipulation- Terms of stipulation GRANTED. s/ Carnaroli on 9/10/10	Rick Carnaroli
9/30/2010	INHD	NICHOLE	Hearing result for Scheduling Conference held on 09/30/2010 01:30 PM. Interim Hearing Held	Rick Carnaroli
10/1/2010	MOTN	JENNEFER	Motion For Change of Venue IRCP 12(b)(3)- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
	HRSC	JENNEFER	Notice of Hearing- Hearing Scheduled (Motion 10/08/2010 10:00 AM) motion for change of venue- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
10/4/2010	MEOR	NICHOLE	Minute Entry and Order /s/ J Carnaroli 10-1-10 (plaintiff's motion for change of venue nnoticed for hearing on 10/8/10 @10am)	Rick Carnaroli
	AFFD	JENNEFER	Affidavit of Charles Malcolm Clair Jr- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
	MEOR	JENNEFER	Minute Entry and Order- Scheduling Conference held on 9/30/10. Court set hearing on plaintiff's motion for change of venue for: 10/8/10 @ 10:00 am. s/ Carnaroli on 10/1/10	Rick Carnaroli
10/8/2010	INHD	NICHOLE	Hearing result for Motion held on 10/08/2010 10:00 AM: Interim Hearing Held motion for change of venue	Rick Carnaroli
	MEOR	NICHOLE	Minute Entry and Order /s/ J Carnaroli 10-8-10 (court heard oral argument on Plaintiff's motion for change of venue and took the same under advisement)	Rick Carnaroli
		NICHOLE	Defendant Tracy CLair;s Objection to Plaintiff's Motion for Change of Venue IRCP 12(B)(3); aty Nick Nielson	Rick Carnaroli

Charles Malcolm Clair Jr. vs. Tracy Jo Clair

Date	Code	User	Judge
11/5/2010	ORDR	NICHOLE	Order Denying Motion for Change of Venue /s/ J Carnaroli 11-5-10 (crt concludes that venue is proper in Bannock County)
11/24/2010	STIP	CINDYBF	Stipulation- (re: custody & visitation for 12-10 to 1-11) s/PA Belzer & DA Neilsen.
12/1/2010	ORDR	CINDYBF	Order on Stipulation- s/Carnaroli 11-30-10.
12/13/2010	MOTN	JENNEFER	Motion For Custody Evaluation- by plaintiff Charles Clair thru PA Belzer
	MOTN	JENNEFER	Motion For Temporary Custody- by plaintiff Charles Clair thru PA Belzer
	HRSC	JENNEFER	Notice of Hearing- Hearing Scheduled (Motion 01/07/2011 09:00 AM) motion for temp custody and motion & motion for custody eval- Hearing Scheduled (Motion 01/07/2011 09:00 AM) motion for temp custody & custody eval- by plaintiff Charles Clair thru PA Belzer
12/22/2010	MOTN	JENNEFER	Motion For Temporary Orders- by Defendant Tracy Clair thru PA Nielson,
	AFFD	JENNEFER	Affidavit of Tracy J Clair- by Defendant Tracy Clair thru PA Nielson
	OBJT	JENNEFER	Objection to Plaintiff's Motion For Temporary Custody- by defendant Tracy Clair thru DA Nielson
12/23/2010	HRSC	NICHOLE	Amended Notice of Hearing- Hearing Scheduled (Motion 01/10/2011 02:30 PM)- by plaintiff Charles Clair thru PA Belzer
12/27/2010		JENNEFER	Certificate Of Service- Motion for temporary custody, motion for custody evaluation, & amended notice of hearing was served on defendant Tracy Clair thru DA Neilson on 12/22/10- by plaintiff Charles Clair thru PA Belzer
12/28/2010	CONT	NICHOLE	Notice of Hearing on Defendant's Motion For Temporary Orders- Prior setting continued: (Motion 01/10/2011 10:30 AM) motion for temp custody and motion & motion for custody eval- by defendant Tracy Clair thru DA Nielson
1/4/2011	CONT	NICHOLE	Amended Notice of Hearing- Prior setting continued to: (Motion 01/26/2011 09:00 AM) motion for temp custody and motion & motion for custody eval- by plaintiff Charles Clair thru PA Belzer
1/14/2011	STIP	JENNEFER	Stipulation For Appointment of Custody Evaluator- signed by: PA Belzer on 1/14/11 & DA Nielsen on 1/13/11
1/19/2011	CUSE	JENNEFER	Order Appointing Custody Evaluator- Linwood Vareen appointed as evaluator. Plaintiff Charles Clair shall pay for cost of evaluation. There shall be no ex parte communication between the atty's & evaluator. s/ Carnaroli on 1/19/11

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
1/25/2011	CONT	NICHOLE	Second Amended Notice of Hearing on Defendant's Motion For Temporary Orders- Prior setting continued to: (Motion 02/16/2011 03:00 PM)- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
1/26/2011		JENNEFER	Second Amended Notice of Hearing- Prior setting continued to: (Motion 02/16/2011 03:00 PM)- by plaintiff Charles Malcolm thru PA Belzer	Rick Carnaroli
	STIP	JENNEFER	Stipulation- signed by: PA Belzer & DA Nielson on 1/25/2011	Rick Carnaroli
2/3/2011	CONT	NICHOLE	Third Amended Notice of Hearing- Continued (Motion 03/14/2011 10:00 AM) motion for temporary orders- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
3/11/2011	STIP	NICHOLE	Stipulation to Continue /s/ Nick Nielson and Fred Belzer	Rick Carnaroli
3/14/2011	HRVC	NICHOLE	Hearing result for Motion held on 03/14/2011 10:00 AM. Hearing Vacated motion for temporary orders- stip to continue filed	Rick Carnaroli
3/16/2011	HRSC	NICHOLE	Hearing Scheduled (Motion 04/13/2011 03:00 PM) motion for custody	Rick Carnaroli
	HRSC	NICHOLE	Hearing Scheduled (Motion 04/13/2011 03:00 PM) motion for interim orders	Rick Carnaroli
	CONT	NICHOLE	Third Amended Notice of Hearing on Defendant's Motion For Temporary Orders- Prior setting continued to: (Motion 04/25/2011 01:00 PM)- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
3/17/2011	CONT	NICHOLE	Amended Notice of Hearing- Prior setting continued to: (Motion 04/25/2011 01:00 PM) motion for custody- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
3/30/2011		JENNEFER	Note of Issue & Request For Trial Setting- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
3/31/2011	HRSC	NICHOLE	Hearing Scheduled (Scheduling Conference 04/25/2011 01:00 PM)	Rick Carnaroli
	ORDR	NICHOLE	Order for Scheduling Conference /s/ J Carnaroli 3/31/11	Rick Carnaroli
1/6/2011	RESP	JENNEFER	Response to Note of Issue & Request For Trial Setting- by Defendant Tracy Clair thru DA Nielson	Rick Carnaroli
4/7/2011	AFFD	JENNEFER	Affidavit of Charles M Clair Jr in Support of Motion For Temporary Custody- by plaintiff Charles Clair thru PA Belzer	Rick Carnaroli
1/19/2011	AFFD	JENNEFER	Affidavit of Tracy J Clair in Response to The Affidavit of Charles M Clair, Jr- by defendant Tracy Clair thru DA Nielson	Rick Carnaroli
4/28/2011	HRVC	NICHOLE	Hearing result for Motion held on 04/25/2011 01:00 PM. Hearing Vacated motion for custody-agreement	Rick Carnaroli

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User	Judge
4/28/2011	HRVC	NICHOLE	Hearing result for Motion held on 04/25/2011 01:00 PM: Hearing Vacated motion for interim orders-agreement
	INHD	NICHOLE	Hearing result for Scheduling Conference held on 04/25/2011 01:00 PM: Interim Hearing Held
	HRSC	NICHOLE	Hearing Scheduled (Pre-trial Conference 05/23/2011 01:15 PM)
	HRSC	NICHOLE	Hearing Scheduled (Court Trial 06/01/2011 08:30 AM) 1/2 day (9am -12pm)
	HRSC	NICHOLE	Hearing Scheduled (Court Trial 06/02/2011 08:30 AM)
4/29/2011	MEOR	NICHOLE	Minute Entry and Order /s/ J Carnaroli 4/29/11 (counsel informed the crt the parties reached temporary agreement as to child support & custody & recited the same for the record; matter set for pretrial 5/23/11 @ 1:15pm and trial set 1/2 day on 6/1/11 @ 9am and 6/2/11 @ am)
	MEOR	JENNEFER	Minute Entry and Order- Motion hearing held on 4/25/11. Court set matter for Trial on 6/1/11 @ 9:00 am. Minor child shall be in the physical custody of defendant Tracy Clair at all times not set forth for plaintiff until further order of the court. Plaintiff shall pay defendant temporary child support for the month of May in the amount \$1,586.72 due by 4/29/11 @ noon. s/ Carnaroli on 4/29/11
5/20/2011		NICHOLE	Plaintiff's Pretrial Memorandum: Fred Belzer
	MOTN	NICHOLE	Motion to Compel: Fred Belzer
5/23/2011	INHD	NICHOLE	Hearing result for Pre-trial Conference held on 05/23/2011 01:15 PM: Interim Hearing Held
5/24/2011	MEOR	NICHOLE	Minute Entry and Order Confirming Trial /s/ J Carnaroli 5/24/11
		NICHOLE	Pre-Trial Memorandum, Nick Nielson
6/1/2011	INHD	NICHOLE	Hearing result for Court Trial held on 06/01/2011 08:30 AM: Interim Hearing Held 1/2 day (8:30am -12pm)
6/6/2011	INHD	NICHOLE	Hearing result for Court Trial held on 06/02/2011 08:30 AM: Interim Hearing Held
6/20/2011		JENNEFER	Plaintiff Charles Malcolm Clair Jr's Submission of Proposed Interim Custody Schedule- by PA Belzer
	AFFD	JENNEFER	Affidavit of Charles Malcolm Clair Jr in Support of His Proposed Interim Custody Schedule- by PA Belzer
		JENNEFER	Request For Additional Time to Submit Documentation in Support of Defendant's Proposed Parenting Time Schedule- by DA Nielson

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User		Judge
6/20/2011	AFFD	JENNEFER	Affidavit of Nick L Nielson- by DA Nielson	Rick Carnaroli
		JENNEFER	Brief Supporting Request For Parenting Time Schedule- by DA Nielson	Rick Carnaroli
	AFFD	JENNEFER	Affidavit of Tracy J Clair- by DA Nielson	Rick Carnaroli
6/21/2011	AFFD	JENNEFER	Affidavit of Linwood G Verreen- by DA Nielson	Rick Carnaroli
	MOTN	JENNEFER	Motion For Entry of Decree of Divorce- by PA Belzer	Rick Carnaroli
	MOTN	JENNEFER	Motion For Expedited Hearing- by PA Belzer	Rick Carnaroli
	OBJT	JENNEFER	Objection to Defendant's Submission & Motion to Strike- by PA Belzer	Rick Carnaroli
6/23/2011	HRSC	JENNEFER	Order For Expedited Hearing- Hearing Scheduled (Motion 06/28/2011 10:30 AM). s/ Carnaroli on 6/23/11	Rick Carnaroli
6/27/2011	MOTN	JENNEFER	Motion to Strike Evidence Submitted With Motion For Entry of Decree of Divorce & Motion to Expedite- by DA Nielson	Rick Carnaroli
		JENNEFER	Decree of Legal Separation- s/ Carnaroli on 6/28/11	Rick Carnaroli
6/28/2011	NOTC	JENNEFER	Notice of Hearing- Motion for entry of decree of divorce & objection to defendant's submission & motion to strike set for: 6/28/11 @ 2:30 PM- by PA Belzer	Rick Carnaroli
	MEOR	JENNEFER	Minute Entry and Order- Motion for entry of decree of divorce held on 6/28/11. Court ordered that the parties are awarded a decree of legal separation. s/ Carnaroli on 6/28/11	Rick Carnaroli
7/18/2011	HRSC	NICHOLE	Hearing Scheduled (Court Trial 07/21/2011 08:30 AM)	Rick Carnaroli
	HRSC	NICHOLE	Hearing Scheduled (Court Trial 07/22/2011 08:30 AM)	Rick Carnaroli
7/21/2011	CTST	NICHOLE	Hearing result for Court Trial scheduled on 07/21/2011 08:30 AM: Court Trial Started	Rick Carnaroli
7/22/2011	HRHD	NICHOLE	Hearing result for Court Trial scheduled on 07/22/2011 08:30 AM: Hearing Held	Rick Carnaroli
8/16/2011		JENNEFER	Findings of Fact Conclusions of Law & Order- s/ Carnaroli on 8/16/11	Rick Carnaroli
	JDMT	JENNEFER	Judgment & Decree of Divorce- s/ Carnaroli on 8/16/11	Rick Carnaroli
8/25/2011		JENNEFER	Amended Findings of Fact Conclusions of Law & Order- s/ Carnaroli on 8/25/11	Rick Carnaroli
	JDMT	JENNEFER	Amended Judgment & Decree of Divorce- s/ Carnaroli on 8/25/11	Rick Carnaroli

Charles Malcolm Clair Jr. vs. Tracy Jo Clair

Date	Code	User	Judge
8/26/2011	MOTN	JENNEFER	Defendant Tracy Clair's Motion to Stay Portions of Rick Carnaroli The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact Conclusions of Law & Order Entered August 25, 2011- by DA Neilsen
	MEMO	JENNEFER	Memorandum in Support of Defendant Tracy Clair's Motion to Stay Portions of The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact Conclusions of Law & Order Entered August 25, 2011- by DA Neilsen
	MOTN	JENNEFER	Defendant Tracy Clair's Motion For Permission to Appeal The Court's Amended Findings of Fact Conclusions of Law & Order & Amended Judgment & Decree of Divorce Entered August 25, 2011- by DA Nielson
	MEMO	JENNEFER	Memorandum in Support of Defendant Tracy Clair's Motion For Permission to Appeal The Court's Amended Findings of Fact Conclusions of Law & Order & Amended Judgment & Decree of Divorce Entered August 25, 2011- by DA Nielson
	AFFD	JENNEFER	Affidavit of Tracy J Clair- by DA Nielson
9/1/2011	MOTN	JENNEFER	Motion to Expedite- by DA Nielson
		JENNEFER	Plaintiff's Opposition to Defendant's Motion to Stay Portions of The Court's Amended Judgment & Decree of Divorce & Amended Findings of Fact, Conclusions of Law & Order Entered August 25, 2011- by PA Belzer
9/2/2011	ORDR	JENNEFER	Order Granting Motion to Expedite- DENIED> s/ Carnaroli on 9/2/11
9/9/2011	ORDR	JENNEFER	Order Denying Motion For Permission to Appeal to The Supreme Court of Idaho- s/ Carnaroli on 9/8/11
9/28/2011	MISC	DCANO	IDAHO SUPREME COURT: Notice of Petition Filing: A Petition for Motion to Permission to Appeal Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusions of Law Entered August 16, 2011.
9/30/2011	MISC	DCANO	IDAHO SUPREME COURT; Document received in SC on behalf of Plaintiff 9-26-11; Statement in Opposition to Motion for Permission to Appeal Amended Judgment and Decree of Divorce and Maended Findings of Fact Conclusions of Law Entered August 16, 2011. This docuemtn will be reviewed by the SC using Docket Number 39188-2011. A subsequent Order will be issued which will grant or deny the Petition.
10/6/2011		MARLEA	Filing: L2 - Appeal, Magistrate Division to District Court Paid by: Nielson, Nick L Receipt number: 0034935 Dated: 10/6/2011 Amount: \$53 00 (Check) For: Clair, Tracy Jo (defendant)

Charles Malcolm Clair Jr vs. Tracy Jo Clair

Date	Code	User	Judge
10/6/2011	NOTC	JENNEFER	Notice of Appeal From Magistrate Court to District Court- by DA Nielson
10/20/2011		JENNEFER	Appellant's Statement of Issues on Appeal- by DA Nielson
11/3/2011	MISC	DCANO	IDAHO SUPREME COURT; It hereby is Order that Defendant's Motion for Permission to Appeal Amended Judgment and Decree of Divorce and Amended Findings of Fact Conclusion of Law be, and hereby is, GRANTED and Defendant is granted leave to Appeal by permission from the magistrate court's Amended Findings of Fact Conclusion of Law and Order filed 8-25-11 in Bannock County Case No. CV-2010-2989-DR. It further Order that counsel for Defendant shall file a Notice of Appeal with the Clerk of The Dist Court within 21 days from the date of this Order, which is dated 10-31-11.
11/10/2011	ORDR	JENNEFER	Second Amended Findings of Fact Conclusions of Law & Order- s/ Carnaroli on 11/9/11
	JDMT	JENNEFER	Second Amended Judgment & Decree of Divorce- s/ Carnaroli on 11/9/11
	CSTS	JENNEFER	Case Status Changed: Closed
11/18/2011		DCANO	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Nick L. Nielson Receipt number: 0040484 Dated: 11/21/2011 Amount: \$101.00 (Check) For: Clair, Tracy Jo (defendant)
	APSC	DCANO	Appealed To The Supreme Court
		DCANO	Received check # 2054 for \$100.00 for deposit on Clerk's Record.
11/21/2011	MISC	DCANO	CLERK'S CERTIFICATE OF APPEAL; Signed and Mailed to SC and Counsel on 11-21-11.
11/23/2011	MISC	DCANO	Notice of Request for Additional Documents in the Record in the Appeal from Magistrate Court to Idaho Supreme Court; Frederick F. Belzer. Atty for Respondent/Plaintiff.
11/29/2011	MISC	DCANO	Notice of Dismissal of Appeal from Magistrate Court to District Court: The reason for this dismissal is that this matter has been accepted on appeal to the Idaho Supreme Court.; Nick L. Nielson. Atty for Appellant.
12/7/2011	MISC	DCANO	IDAHO SUPREME COURT; Notice of Appeal received in SC on 11-25-11. Docket Number 39188-2011. Clerk's Record and Reporter's Transcripts must be filed in SC by 12-23-11. The Following Transcripts shall be Lodged: Court Trial 6-1-11 thru 6-3-11, Court Trial 7-21-11 thru 7-22-11, Hearing on Errors 8-24-11. Motion to Permission to Appeal 9-7-11 and Motion to Stay 9-30-11.

Charles Malcolm Clair Jr. vs. Tracy Jo Clair

Date	Code	User		Judge
12/7/2011	MISC	DCANO	IDAHO SUPREME COURT: Order Expediting Appeal. s/Stephen Kenyon on 12-1-11.	David C Nye
	MISC	DCANO	IDAHO SUPREME COURT: Clerk's Cert. received in SC on 11-25-11. Please carefully examine the Title and the Cert. and advise the Dist. Court Clerk of any errors. The title in the Cert. must appear on all Documents filed in SC.	David C Nye
12/8/2011	HRSC	NICHOLE	Hearing Scheduled (Motion 12/15/2011 03:30 PM)	Rick Carnaroli
	CSTS	NICHOLE	Case Status Changed: Closed pending clerk action	David C Nye
12/9/2011	MOTN	DCANO	Defendant's Motion for Clarification of the Court's Second Amended Findings of Fact Conclusions of Law and Order and Motion to Expedite.; Nick L. Nielson, Atty for Dfdt.	Rick Carnaroli
	MEMO	DCANO	Memorandum In Support of Defendant's Motion for Clarification of the Court's Second Amended Findings of Fact Conclusion of Law and Order and Motion to Expedite: Nick L. Nielson, Atty for Dfdt.	Rick Carnaroli
	AFFD	DCANO	Affidavit of Tracy J. Clair in Support of Her Motion for Clarification: Nick L. Nielson, Atty for Dfdt.	Rick Carnaroli
	AFFD	DCANO	Affidavit of Nick L. Nielson: Nick L. Nielson, Atty for Dfdt.	Rick Carnaroli
12/12/2011	MISC	DCANO	CLERK'S RECORD received in Court Records on 12-12-11.	Rick Carnaroli

In the Supreme Court of the State of Idaho



IN THE MATTER OF THE MOTION FOR)
PERMISSION TO APPEAL.)

-----)
CHARLES MALCOM CLAIR, JR.,)

Plaintiff,)

v.)

TRACY JO CLAIR,)

Defendant.)

ORDER GRANTING MOTION FOR
PERMISSION TO APPEAL

Supreme Court Docket No. 39188-2011
Bannock County Docket No. 2010-2989

Ref. No. 11-487

1. A MOTION FOR PERMISSION TO APPEAL AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW ENTERED AUGUST 16, 2011, a MEMORANDUM IN SUPPORT OF MOTION FOR PERMISSION TO APPEAL AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW ENTERED AUGUST 25, 2011, an AFFIDAVIT OF TRACY JO CLAIR and an AFFIDAVIT OF NICK L. NIELSON with attachments, were filed by counsel for Defendant on September 20, 2011, requesting permission to file an appeal from the magistrate court's Amended Findings of Fact Conclusions of Law and Order filed August 25, 2011 in Bannock County case no. CV-2010-2989-DR.
2. A STATEMENT IN OPPOSITION TO MOTION FOR PERMISSION TO APPEAL AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW ENTERED AUGUST 25, 2011, a BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR PERMISSION TO APPEAL AMENDED JUDGMENT AND DECREE OF DIVORCE AND AMENDED FINDINGS OF FACT CONCLUSIONS OF LAW ENTERED AUGUST 25, 2011, an AFFIDAVIT OF PLAINTIFF CHARLES MALCOLM CLAIR, JR., with attachments and an AFFIDAVIT OF FREDERICK F. BELZER, ATTORNEY FOR PLAINTIFF CHARLES MALCOLM CLAIR, JR., with attachments, were filed by counsel for Plaintiff on September 26, 2011.

The Court is fully advised; therefore, good cause appearing.

In the Supreme Court of the State of Idaho

FILED
2011 DEC 7 PM 1:27

CHARLES MALCOM CLAIR, JR.,)

Plaintiff-Respondent,)

v.)

TRACY JO CLAIR,)

Defendant-Appellant.)

ORDER EXPEDITING APPEAL

Supreme Court Docket No. 39188-2011

Bannock County Docket No. 2010-2989

This appeal involves the welfare of a minor child; therefore,
IT HEREBY IS ORDERED that proceedings in this appeal shall be expedited as follows:

1. The Clerk's Record and Magistrate Transcript shall be filed with this Court within **twenty-one (21) days** from the date of this Order. Settlement shall occur in this Court pursuant to Idaho Appellate Rule 30.1.
2. Appellant's Brief shall be due and filed with the Court within twenty-one (21) days from the date the Clerk's Record and Magistrate Transcript is filed with this Court.
3. Respondent's Brief shall be due and filed with the Court within twenty-one (21) days from the date of filing of Appellant's Brief.
4. Any Reply Brief shall be due and filed with the Court within fourteen (14) days from the date of filing of Respondent's Brief.

Further, no request for an extension of time to file any brief shall be granted, nor shall this appeal be suspended by the filing of any motion for the reason the Court has expedited consideration of this appeal

DATED this 12 day of December 2011.

For the Supreme Court

Stephen W. Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Reporter

ORDER EXPEDITING APPEAL – Docket No. 39188-2011

11/11/10

Gregory C. May, Esq.
MAY, RAMMELL & THOMPSON, CHARTERED
216 West Whitman
P.O. Box 370
Pocatello, Idaho 83204-0370
Telephone: (208) 233-0132
Facsimile: (208) 234-2961
Idaho State Bar No. 1941

FILED
MAY 11 2010
CLERK OF DISTRICT COURT
IDAHO STATE BAR NO. 1941

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES M. CLAIR, JR.,
Plaintiff.

vs.

TRACY J. CLAIR,
Defendant.

CASE NO: CV-2010- 2989-DR

COMPLAINT FOR DIVORCE

Category: B(1)
Fee: \$129.00 *pd.*

Plaintiff complains:

1. Plaintiff is now, and for more than six weeks preceding the filing of this Complaint, has been a continuous resident of the State of Idaho.
2. The Plaintiff and Defendant were married on the 19th of day of November, 1993, in the City of Ely, County of White Pine, State of Nevada.
3. Irreconcilable differences of a substantial nature have arisen between the Parties, making a further continuance of the marriage impossible, pursuant to IDAHO CODE § 32-616, and as a result, the Parties have been separated since on or about the 20th day of June, 2010.
4. One Child (herein "Child") has been born as issue of this marriage, namely:
Colten Clair, born May 4, 2007, and he is dependent upon the Parties.
5. Both Parties are fit and proper persons to have the joint legal and physical custody of the Parties' Child. The Parties' Child should reside equally with both Parents, and the ~~Father~~ should pay support for the Child as set out in the Prayer.

6. This Court has jurisdiction to make a child custody determination in this action because Idaho is the "home state" of the Child, as defined by IDAHO CODE § 32-11-102(g). The status of pending custody proceedings or litigation involving the Child is set out below.
 - A. There has been no other child custody litigation involving this Child in this or any other state. There are no persons claiming custody or visitation rights with this Child other than Plaintiff and Defendant.
 - B. Plaintiff has no knowledge of any proceeding for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions that could affect this proceeding.
 - C. This Child's present address is 626 Britton Lane, Moscow, Idaho when he resides with the Father; and 349 Ely Ave., Ely, Nevada when he resides with the Mother. Prior to this, the Child resided at 1045 Concord, Chubbuck, Idaho where he resided with both Parents.
 - D. There is not any person who has physical custody of this Child or claims rights of legal custody or physical custody of, or visitation with, this Child, other than the Plaintiff and Defendant.
7. The Parties have acquired Community Property and incurred Community Debt which should be divided and allocated as set out in the Prayer.
8. The Plaintiff and Defendant have Separate Property which should be confirmed as set out in the Prayer.
9. Plaintiff has had to obtain the services of May, Rammell & Thompson, Chartered in order to pursue this matter. Defendant should be required to pay Plaintiff's attorney's fees and costs incurred in this matter, pursuant to IDAHO CODE §§ 32-704, 32-705, IDAHO CODE § 12-121, and I.R.C.P. Rule 54(e), in the minimum amount of \$1,500 and/or such other fees and costs as may be incurred by Plaintiff.
10. The Parties may enter into a Marital Dissolution Agreement resolving their rights with regards to the Child, property, and debt. A copy of the Marital Dissolution Agreement will be submitted to the Court for its approval.

WHEREFORE, Plaintiff prays the Court enter a Judgment ordering as hereafter set out.

- A. That the bonds of matrimony presently existing the Parties be dissolved; that the Plaintiff be granted a Decree of Divorce from the Defendant; and that the Parties be restored to the status of single persons.
- B. Defendant pay to the Plaintiff the Plaintiff's attorney's fees and costs in the sum of \$1,500, but should this matter be contested such other additional amounts as the Court deems equitable.
- C. That the Court approve the Marital Dissolution Agreement to be submitted to the Court at the time and place set for the final hearing in the above matter.

COLTEN CLAIR

D. Physical Custody: The Parents have joint legal and physical custody of the Parties' minor Child subject to the *Parenting Conduct and Performance* attached as *Addendum A*. Until the Child begins kindergarten, he will reside equally with both Parents for two (2) months durations as follows:

- 1. Weekends and Weekends: Each Parent shall have the Child for two continuous months.
- 2. Holidays: The Parents shall alternate being with the Child every other holiday so that the Child is not with the same Parent on the same Holiday two consecutive years, which are defined as New Years Eve and New Years Day; Thanksgiving; and Christmas Eve and Christmas Day as follows:

<u>Holiday</u>	<u>Even Years</u>	<u>Odd Years</u>
New Years Eve and Day	Father	Mother
*Thanksgiving	Father	Mother
Christmas Eve and Day	Mother	Father

- 3. Thanksgiving: If the Mother's birthday falls on Thanksgiving Day, she shall have Colten, regardless of the year.
- 4. Special Days: The Parents shall celebrate Colten's birthday together, or in the alternative, allow each Parent a reasonable period of time with the Child; Father's Day weekend shall be spent with the Father and Mother's Day weekend with the Mother.

- a. Extended Weekends: Whenever a holiday or special day occurs during a weekend, or falls upon the Thursday or Friday preceding, or a Monday or Tuesday following a weekend, the Parent who has physical custody for the holiday or special day shall also have physical custody for that weekend.
5. Long Distance: Any time a Parent learns that he or she will, or probably will, move more than 50 miles from his or her current place of residence, that Parent shall immediately give notice thereof to the other Parent.
6. Transportation: As long as the Mother resides in Ely, Nevada and the Father resides in Moscow, Idaho, the Parties shall meet at a mutually agreeable location in Twin Falls, Idaho for all custody/visitation exchanges. Each Party shall bear their own costs of transportation.
- E. Physical Custody: When the Child begins kindergarten, he shall reside with the Father subject to the Mother's visitation and access at such reasonable times and places as the Parents agree. If the Parents cannot agree, then the Mother shall have visitation as follows:
 1. Holidays: Except for Christmas and New Years, the Parents shall alternate being with the Child every other holiday so that the Child is not with the same Parent on the same Holiday two consecutive years.
 2. Spring Break: The Mother shall have the Child every year during his Spring Break from school every year.
 3. Christmas and New Years: The Child's Christmas Break from school shall be divided equally between the Parents, with the Father having the Child the first week in even-numbered years; and the Mother having the first week in odd-numbered years.
 4. Thanksgiving: If the Mother's birthday falls on Thanksgiving Day, she shall have Colten, regardless of the year.
 5. Special Days: The Parents shall celebrate Colten's birthday together, or in the alternative, allow each Parent a reasonable period of time with the Child: Father's Day weekend shall be spent with the Father and Mother's Day weekend with the Mother.

- a. Extended Weekends: Whenever a holiday or special day occurs during a weekend, or falls upon the Thursday or Friday preceding, or a Monday or Tuesday following a weekend, the Parent who has physical custody for the holiday or special day shall also have physical custody for that weekend.
6. Summer Visitation: For the Child's summer vacation from school.
 - a. If the Parents cannot agree as to when the summer visitation shall commence, it shall commence one week after school has ended.
 - b. Except as provided for in the immediately following sub-paragraph, Father shall have the same parental access, custody and visitation rights during the summer as Mother has during the remaining months of the year.
 - c. During the summer, each Parent shall have at least 14 consecutive days with the Child during the summer to allow time for an extended vacation away from home.
7. Long Distance: Any time a Parent learns that he or she will, or probably will, move more than 50 miles from his or her current place of residence, that Parent shall immediately give notice thereof to the other Parent.
8. Transportation: As long as the Mother resides in Ely, Nevada and the Father resides in Moscow, Idaho, the Parties shall meet at a mutually agreeable location in Twin Falls, Idaho for all custody/visitation exchanges. Each Party shall bear their own costs of transportation.
- F. Child Support: The Child shall be supported by each Parent and Child Support shall be calculated pursuant to the Idaho Child Support Guidelines.
 1. Payment of Support: If the Child is actively pursuing a high school education after reaching the age of 18 years, the support shall continue until the time the Child attains 19 years of age or ceases pursuing a high school education, whichever occurs first.
 2. Payments: All Child Support payments shall be paid to the Idaho Department of Health & Welfare by cash, cashier's check, or as otherwise allowed by law.

- a. Child Support shall commence the month after the Decree of Divorce is entered. All payments are due by the tenth (10th) of the month.
3. Notice of Income Withholding: The Parent paying support shall take notice that an order to support the Child is enforceable by income withholding under Chapter 12, Title 32, Idaho Code. A mandatory income withholding order may be issued by the Court to your employer or other person who pays you income, without prior notice to you. It is not necessary for a spouse to apply for support enforcement services under Title IV-D of the Social Security Act (42 U.S.C. 652 et. seq.) to obtain enforcement of a support order by means of income withholding.
- G. Child Care: Each of the Parents will pay their prorated share (Father: 81% and Mother 19%), pursuant to the Idaho Child Support Guidelines, of the Child's work-related day care expenses.
- H. Health Care: The Father, who has health insurance available through an employer, shall maintain health insurance for the Child.
1. Each of the Parents will pay their prorated share (Father: 81% and Mother 19%), pursuant to the Idaho Child Support Guidelines, of the Child's noninsured health care expenses. Health care expenses are those for physical, mental, optical and dental care.
 2. Any claimed health care expense for the Child (whether denominated as psychiatric, psychological, special education, addiction treatment, or counseling in any form, and including regular medical or dental care), whether or not covered by insurance, which would result in an actual out-of-pocket expense to the parent who did not incur or consent to the expense of over \$500, must be approved in advance, in writing, by both Parties or by prior Court order. Relief may be granted by the Court for failure to comply under extraordinary circumstances, and the Court in its discretion apportion the incurred expense in some percentage other than that in the existing support order, and in so doing, may consider whether consent was unreasonably requested or withheld. Each Parent will pay his

or her prorated share of the Child's uninsured health care expenses. The prorated share shall be that Parent's percentage of gross income as calculated by the Idaho Child Support Guidelines. Health care expenses are those for physical, mental, optical and dental care.

3. The Parents shall cooperate to make claims for insurance, and proof of insurance shall be provided upon request.

a. The provisions for Health Care shall be in effect for the Child so long as Child Support is payable for him.

4. If the Parent carrying health insurance no longer has it available through the place of employment and the other Parent does, then it shall be maintained by the other Parent. The Child Support payments shall then be adjusted according to the Idaho Child Support Guidelines to reflect a reduction from gross income for the amount of any health insurance premium paid by a Parent.

5. Notice of Medical Enforcement: This Order is enforceable by allowing obligee to enforce medical coverage. Whenever an obligor parent who has been ordered to provide health insurance coverage for a dependent child(ren) fails to provide such coverage or lets it lapse, the obligee may seek enforcement of the coverage order as of the effective date of this order or the Decree herein, under Chapter 12, Title 32, Idaho Code.

The Court shall retain jurisdiction to amend any order as may be necessary to establish or maintain a *QUALIFIED MEDICAL CHILD SUPPORT ORDER*. Furthermore, the Parties shall be required to execute any and all appropriate documents to ensure that the terms of a *QUALIFIED MEDICAL CHILD SUPPORT ORDER* are duly adhered to and honored.

I. Dependency Exemption & Tax Credit: The Parents shall alternate claiming Colten as a dependent for Federal and State Income Tax purposes, with the Father claiming Colten in even-numbered tax years, and the Mother claiming Colten in odd-numbered years.

A. Each Party shall sign any document required to implement this dependency exemption. If a Party fails to sign the required document, the

Court reserves jurisdiction to make appropriate adjustments in the amount of the Child Support.

- B. A Parent who is making Child Support may not claim the Child as an exemption if there are any Child Support payments delinquent at the time the tax return is filed.

TAXATION

J. 2010 Year Taxes: For the year in which a Decree of Divorce is entered, each Party shall file their own tax returns, and be responsible to pay any taxes due on the income they have earned, and will be entitled to receive any refunds for excess amounts withheld from that income.

1. Prior Years: Each Party will be equally responsible for all taxes due or to become due for years prior to the year in which a Decree of Divorce is entered, and they will share equally any refunds attributable to said income.
2. If there are any penalties or interest assessed for delinquent taxes, they shall be shared equally unless one spouse can show that the penalties and interest were not as a result of his or her conduct. In the latter case, all penalties and interest will be the sole responsibility of the Party whose actions or inactions resulted in the assessment.
3. Unchanged Tax Basis: The Parties tax basis of each asset allocated to him or her is not intended to, and will not change by reason of the equitable division of the community property. The Parties shall not assert or seek any new tax basis for any asset allocated under a Decree of Divorce.
 - a. If a Party violates this provision, he or she shall reimburse the other Party for the amount of any tax liability, penalties, fees and interest expenses arising from the changed basis.
 - b. When a Party disposes of an asset, any resulting tax shall be the sole liability of the Party disposing of the asset.

PROPERTY AND DEBT

K. Community Property: Each Party shall receive the Community Property as set out in Exhibit "B".

1. The Parties shall receive all of the clothing and miscellaneous personal effects which they now have in their possession, and the property which each has acquired since the date of separation.
 2. The Parent with whom the Child resides shall be the Trustee for all property of the Child, including, without limitation, furniture, toys and clothing. This property is not included as Community Property distributed to the Parties.
 3. If the division of Community Property provides that one Party shall share in the retirement benefits payable to another Party, then the appropriate Qualified Domestic Relations Order (QDRO) shall be prepared to comply with the requirements of the retirement plan and law. Until the QDRO has been approved by the Court and the Plan Administrator, the Court shall retain jurisdiction over all Community Property.
 - a. After the QDRO is drafted and approved by the Court and the Plan Administrator, the Court will continue to retain jurisdiction over the distribution of the funds of the retirement plan, until all amounts payable have been paid in full.
 4. Toyota Highlander: The Wife shall be awarded the Toyota Highlander and the Husband shall make all payments on said Highlander. If the Wife trades in or sells the Highlander, Husband's obligation to said debt shall cease.
- L. Community Debts: Each Party shall assume and pay those debts allocated to be paid by them as set out in Exhibit "C". The amounts listed therein are believed to be close to the actual remaining principal balance due, but the Parties shall be responsible to pay the actual amount owed.
1. The Party assuming the payment of a Community Debt shall indemnify and hold the other Party entirely harmless for failure to pay the debt assumed. Additionally, the Party assuming payment of a debt shall exert reasonable effort to have the creditor release the other Party from the debt.
 2. Any debts incurred since the date of separation shall be assumed and paid by the Party incurring it.

3. Delivery: Within ten (10) days after the Decree of Divorce, each Party shall take all actions reasonable or necessary to deliver to the other Party all property, documents and information which are necessary or reasonable to carry out the division of property and debts provided for the Decree of Divorce.

4. Credit Card: Each Party shall remove the other Parties' name from their credit card accounts and/or any line of credit from any banking institution.

M. For such other relief as the Court deems just and fair under the premises.

DATED this 19 day of July, 2010.

MAY, RAMMELL & THOMPSON, CHARTERED
Attorneys for Plaintiff



GREGORY C. MAY

ADDENDUM "A"

PARENTING PERFORMANCE AND CONDUCT

A. Communication:

1. The Parties shall confer by telephone or mail to inform the other about the needs, activities, discipline, welfare, education, health, religious upbringing, and development of Colten. The objective is, so far as possible, to adopt a mutually harmonious policy for Colten's upbringing. The Parties shall discuss these matters with a goal of shared decision-making.
2. Each Parent shall be entitled to telephone, email, video conferencing, and any other electronic communication with Colten at reasonable times, frequency and duration. The other Parent will respect the right to private conversations.
3. Each Parent shall be entitled to correspond with Colten through the mail or email, and the other Parent shall not read, censor or otherwise interfere with such correspondence. However, a Parent may read the correspondence to Colten, if he does not have the reading skills to read it without the Parent's assistance.
4. The Parents will not use Colten as a messenger.

B. Location:

1. The Parents shall notify each other of their home and work address, telephone number, and where Colten will be. Each shall also keep the other informed of Colten's school address and telephone and all child care providers.
2. The Parent caring for Colten shall not allow him to be absent from that Parent's residence for more than 24 hours without first providing to the other Parent information about how Colten can be reached during the period of absence.

- C. Relocation: Any time a Parent learns that he or she will, or probably will, move from his or her current place of residence, then that Parent shall give written notice thereof to the other Parent. Notice shall be given no later than the sixtieth (60th) day before the date of the intended move or the tenth (10th) day of the date the relocating Parent decides to move, whichever occurs first. The written notice shall contain: (a) the new intended address; (b) the mailing address, if not the same; (c) the telephone number, if known; (d) the date of the intended move; (e) specific reasons for the move; and (g) a proposed custody and visitation schedule, if changes are required.

D. Activities:

1. If Colten is invited or desires to participate in any activities which may interfere with one Parent's rights, the other Parent will not encourage, permit, or consent to such activities without approval from the other Parent, and will not deprecate the denial of such approval.
2. While Colten is in a Parent's care and control, either Parent may take him to any reasonable place and participate in any reasonable activity.

E. Readiness: Colten shall be ready and promptly available for all visits or exchanges. Colten shall be sent with sufficient clean clothing appropriate for ordinary activities, and, if informed in advance, with special or additional clothing appropriate for any special activities. However, neither Parent shall be obligated to purchase new clothing solely to comply with this provision. Any items and clothing sent with Colten shall be returned at the conclusion of the visitation.

F. Care & Supervision: While Colten is with a Parent:

1. Parent shall provide Colten with: (1) regular and nutritious food, (2) clean and appropriate clothing, (3) sanitary and reasonable living and sleeping quarters, (4) appropriate medical examinations and treatment, and (5) guidance and counseling in worldly and spiritual matters.
2. That Parent shall: (1) teach Colten to obey and respect his teachers and the law, (2) require Colten to attend all regular sessions of school until graduation, unless excused by medical reasons, the school, unusual circumstances or the Court, and (3) personally supervise and control the conduct and activities of Colten except when he is at school, in usual recreational activities, immediate care of another competent person.
3. That Parent will not engage in, nor permit in the presence of Colten any excessive alcohol consumption, unlawful drug use, violence, participate in inappropriate sexual activities with Colten or in his presence, permit any sexually explicit or suggestive photos, videos, movies or magazines to be left where Colten may see them, or disrespect for law and order.

G. Custody: Should either Parent die before Colten reaches the age of majority, then the surviving Parent shall assume sole physical and legal custody of Colten

- H. Name: Colten shall continue to be known legally and publicly under his present surname, "Clair". Colten shall not, for any purpose or reason, use or assume the name of any subsequent spouse of either Parent, or any other surname.
- I. Records: Each Parent shall inform the other of, and respond to reasonable inquires from the other concerning, all significant health, educational, law enforcement and religious information relating to Colten. Each Parent has an equal right to all records containing such information. Upon the request of the other Parent, each shall sign and deliver consents or releases necessary to enable the other Parent to obtain such information and records.
- J. Parent-Teacher Conference/School Activities: Each Parent will be responsible for arranging meetings with teachers. However, each Parent should inform the other of all major school activities/events as soon as reasonably possible so the other Parent will have the opportunity to attend the activity or special event.
- K. Health Care: Except in emergency situations, the Parents shall select all health care providers and counselors jointly. Each Parent is empowered to obtain emergency health care for Colten without the consent of the other. However, each Parent shall promptly notify the other, as soon as possible, if an illness or injury requires a physician's care. All matters for elective surgery, major medical, dental, optic, or orthodontic work shall be discussed before work is started.
- L. Parental Conduct: The Parents will conduct themselves for the best interests of Colten. The Parents will not make Colten feel responsible for any disagreements between the Parents.
- M. Restraints:
1. The Parents, and any persons under their direction and control, shall not attempt, or threaten to injure, maltreat, vilify, malign, defame, or molest the other Parent, Colten, or any person supervising Colten.
 2. Each Parent shall treat the other with dignity and respect in the presence or hearing of Colten.
 3. Neither Parent shall engage in any angry or emotional discussions, conduct, or displays that are intended, or may be reasonably expected, to cause Colten to feel reluctant, unwilling, or guilty about leaving the Parent or spending time with the

other Parent. Nor shall either Parent criticize or speak badly about the other Parent in the presence or hearing of Colten, nor allow others to do so.

4. Neither Parent shall intrude upon or invade the privacy of the other, nor interfere with the lifestyle differences, which may exist in each home, except to the extent that such lifestyle is harmful to Colten.

N. Love and Affection: Each Parent shall exert every effort to maintain free access between Colten and the other Parent, and shall foster love and affection between Colten and the other Parent. Neither Parent will do anything, which would estrange Colten from, would distort Colten's opinion of, or would impair Colten's love and affection for the other Parent.

O. Grandparents: Each Parent shall cooperate with the other in order to ensure that the grandparents have reasonable access to, communication with, and visitation with Colten, so as to assure, to a reasonable extent, the continuation of Grandparent-Grandchild relationships.

EXHIBIT "B"
COMMUNITY PROPERTY

HUSBAND

2006 Chevy Silverado
Firearms (excepting .32 pistol)
Power tools
Lawn and garden tools
Bed
Laptop computer
Freezer

WIFE

2008 Toyota Highlander
.32 Pistol
Wife's jewelry
Art objects
Washer
Dryer
Couch
Bed

EXHIBIT "C"
COMMUNITY DEBTS

HUSBAND

All debt incurred by Husband since the Parties' date of separation

Idaho Central Credit Union debt (\$25,000)

Toyota Credit Services debt (\$27,000)

Discover credit card debt (\$2,000)

Husband's student loan debt (\$240,000)

WIFE

All debt incurred by Wife since the Parties' date of separation


Wife's student loan debt (\$13,000)

EXHIBIT "D"
SEPARATE PROPERTY

HUSBAND

WIFE

NICK L. NIELSON - Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Avenue, Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

CLERK OF DISTRICT COURT
COUNTY OF BANNOCK
2010 JUL 29 PM 12:19
BY 
DEPUTY CLERK

Attorney for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

CHARLES M. CLAIR, JR.,
Plaintiff,

vs.

TRACY J. CLAIR,
Defendant.

CASE NO: CV-2010-2989-DR

STIPULATION

COMES NOW Charles M. Clair, Jr., Plaintiff, ("Father") in the above-captioned matter, by and through his attorney of record, Gregory C. May, and Tracy J. Clair, Defendant, ("Mother"), by and through her attorney of record, Nick L. Nielson, and stipulate as follows:

1. The parties have one minor child, Colten Clair, DOB: 05/04/2007.
2. The parties agree that Colten is currently residing with Mother in Ely, Nevada.

There is currently two pending divorce actions in both Bannock County and Latah County. The parties agree that they will address the possible consolidation of those two separate actions at a later date.

3. Father is planning on going to Ely, Nevada and will be there from Saturday afternoon, July 24, through Wednesday morning, July 28.

4. The parties agree that Father shall be able to take Colten with him Saturday afternoon when he arrives in Ely, Nevada, and keep Colten in his care and custody until Wednesday morning at 10:00 a.m., at which time he will return Colten to Mother's home.

5. This Stipulation is for purposes of July 2010 custody only and does not acquiesce any claims either parent has for custody of Colten.

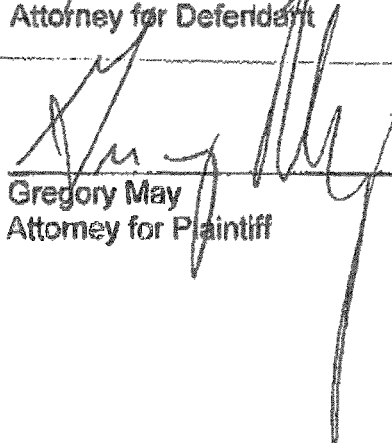
6. The parties agree to incorporate this Stipulation into an Order.

DATED this 23 day of July, 2010.



Nick L. Nielson
Attorney for Defendant

DATED this 27 day of July, 2009.



Gregory May
Attorney for Plaintiff

FILED
BANNOCK COUNTY
2010 JUL 30 12:41
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES M. CLAIR, JR.,
Plaintiff,

vs.

TRACY J. CLAIR,
Defendant.

CASE NO: CV-2010-2989-DR

ORDER ON STIPULATION

This matter having come before the Court upon the filing of the parties' **Stipulation** filed on July 28, 2010, the Court having reviewed the Stipulation, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. The parties have one minor child, Colten Clair, DOB: 05/04/2007.
2. Colten is currently residing with Mother in Ely, Nevada. There is currently two pending divorce actions one in Bannock County and the other in Latah County. The parties will address the possible consolidation of those two separate actions at a later date.
3. Father will be in Ely, Nevada from Saturday afternoon, July 24, through Wednesday morning, July 28.
4. Father shall take Colten with him Saturday afternoon when he arrives in Ely, Nevada, and keep Colten in his care and custody until Wednesday morning at 10:00 a.m., at which time he will return Colten to Mother's home.

5. This Order addresses July 2010 custody only and does not acquiesce any claims either parent has for custody of Colten.

DATED this 30 day of July, 2010.


Rick Carnaroli, Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of July, 2010, I served a true and correct copy of the foregoing **ORDER ON STIPULATION** upon the following, by U.S. Mail, postage prepaid:

Gregory May, Esq.
MAY, RAMMEL & THOMPSON, CHARTERED
P.O. Box 370
Pocatello, Idaho 83204

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205-6159

By: 
Deputy Clerk

NICK L. NIELSON - Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Avenue, Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

2010 AUG -6 PM 4:21
DEPUTY CLERK

Attorney for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

CHARLES M. CLAIR, JR.,

Plaintiff,

vs.

TRACY J. CLAIR,

Defendant.

CASE NO: CV-2010-2989-DR

STIPULATION TO CONSOLIDATE

COMES NOW Charles M. Clair, Jr., Plaintiff, ("Charles") in the above-captioned matter, by and through his attorney of record, Gregory C. May, and Tracy J. Clair, Defendant, ("Tracy"), by and through her attorney of record, Nick L. Nielson, and hereby stipulate to a request that this Court enter an Order consolidating the cases listed below, pursuant to Rule 42(a) Idaho Rules of Civil Procedure, as follows:

1. Charles filed a Complaint for Divorce on Monday, July 19, 2010, in Bannock County, Idaho. This case was assigned Case Number CV-2010-2989-DR.
2. Tracy filed a Verified Complaint for Divorce on Thursday, July 22, 2010, in Latah County, Idaho. This case was assigned Case Number CV-2010-00778.
3. Tracy was served with Charles' Complaint on Monday, July 26, 2010.

4. Charles was served with Tracy's Complaint on Sunday, August 1, 2010.

5. It would be in the best interest of the parties to consolidate these causes of action in Bannock County because all issues are common to both cases. Tracy's Verified Complaint for Divorce will be treated as a Counterclaim to Charles' Complaint for Divorce.

WHEREFORE, the parties respectfully request the Court enter an Order consolidating the two causes of action herein in Bannock County, under the Case Number CV-2010-2989-DR.


WHEREFORE, the parties further agree that after the Consolidation Order is issued, the following shall apply:

1. Tracy's Verified Complaint for Divorce shall be treated as a Counterclaim to Charles' Complaint for Divorce.

2. Tracy shall file an Answer to Charles' Complaint for Divorce by August 13, 2010.

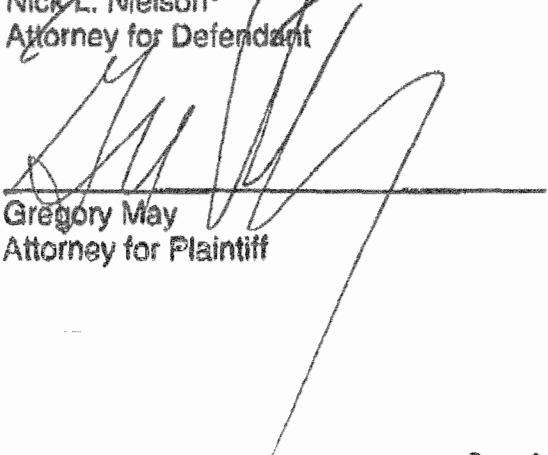
3. Charles shall file a Response to Tracy's Verified Complaint for Divorce (Counterclaim) by August 20, 2010.

DATED this 4 day of August, 2010.



Nick L. Nielson
Attorney for Defendant

DATED this 5 day of August, 2010.



Gregory May
Attorney for Plaintiff

FILED
BANNOCK COUNTY
CLERK

2010 AUG 10 AM 10:21

BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES M. CLAIR, JR.,

Plaintiff,

vs.

TRACY J. CLAIR,

Defendant.

CASE NO: CV-2010-2989-DR

ORDER GRANTING STIPULATION
TO CONSOLIDATE

This matter having come before the Court on the parties' Stipulation to Consolidate filed on August 6, 2010, the court reviewing the same, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Divorce case filed by Tracy in Latah County with the Case Number CV-2010-00778, shall be consolidated with the Divorce case filed by Charles in Bannock County, with the Case No. CV-2010-2989-DR. The Divorce matter shall continue under the jurisdiction of Bannock County, Case No. CV-2010-2989-DR.

IT IS HEREBY FURTHER ORDERED that:

1. Tracy's Verified Complaint for Divorce shall be considered a Counterclaim to Charles' Complaint for Divorce.
2. Tracy shall file an Answer to Charles' Complaint for Divorce by August 13, 2010.

3. Charles shall file an Answer to Tracy's Verified Complaint for Divorce (Counterclaim) by August 20, 2010.

DATED this 10 day of August, 2010.



Rick Carnaroli, Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of August, 2010, I served a true and correct copy of the foregoing **ORDER GRANTING STIPULATION TO CONSOLIDATE** upon the following, by U.S. Mail, postage prepaid:

Gregory May, Esq.
MAY, RAMMEL & THOMPSON, CHARTERED
P.O. Box 370
Pocatello, Idaho 83204

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205-6159

By: 
Deputy Clerk

NICK L. NIELSON- Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Ave., Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

CLERK OF DISTRICT COURT
AUG 11 PM 3:45

DEPUTY CLERK

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION**

CHARLES M. CLAIR, JR.,

Plaintiff,

vs.

TRACY J. CLAIR,

Defendant.

CASE NO. CV-2010-2989-DR
ANSWER TO COMPLAINT

COMES NOW Defendant, Tracy J. Clair ("Tracy" or "Mother"), in the above-entitled matter, by and through her attorney, Nick L. Nielson, and in response to the Complaint for Divorce filed by Plaintiff, Charles M. Clair, Jr. ("Charles" or "Father"), admits, denies and states as follows:

ANSWER

1. Tracy denies each and every allegation not specifically admitted herein.
2. Answering Paragraph 1 of the Complaint, Tracy admits the same.
3. Answering Paragraph 2 of the Complaint, Tracy admits the same.
4. Answering Paragraph 3 of the Complaint, Tracy admits the same.
5. Answering Paragraph 4 of the Complaint, Tracy admits the same.

6. Answering Paragraph 5 of the Complaint, Tracy denies it is in the best interest of the child to reside equally with both parents. Tracy admits Father should pay child support pursuant to the Idaho Child Support Guidelines.
7. Answering Paragraph 6 of the Complaint, Tracy admits this Court has jurisdiction to make a child custody determination in this action.
8. Answering Paragraph 6 (A) of the Complaint, Tracy admits the same.
9. Answering Paragraph 6 (B) of the Complaint, Tracy admits the same.
10. Answering Paragraph 6 (C) of the Complaint, Tracy admits that she and the child reside at 349 Ely Avenue, Ely, Nevada, but denies child's present address is 626 Britton Lane, Moscow, Idaho, as child has never resided at that address, nor has he ever spent the night at that address. Charles did not move to Moscow until July 6, 2010, after the parties had separated. Tracy admits that the child has resided at 1045 Concord, Chubbuck, Idaho with both parents.
11. Answering Paragraph 6 (D) of the Complaint, Tracy admits the same.
12. Answering Paragraph 7 of the Complaint, Tracy admits the parties have acquired community property and community debt, but denies it should be divided as set forth in the Prayer of the Complaint.
13. Answering Paragraph 8 of the Complaint, Tracy admits the parties have separate property, but denies it should be confirmed as set forth in the Prayer of the Complaint.
14. Answering Paragraph 9 of the Complaint, Tracy denies that she should be required to pay Charles' attorney's fees and costs incurred in this matter, as

Charles is the one who wanted the divorce and he should be the one to incur the costs of this action.

15. Answering Paragraph 10 of the Complaint, Tracy admits the same.

16. Answering the Prayer of the Complaint, Tracy denies the same.

WHEREFORE, the Defendant Tracy Clair prays that Plaintiff's Complaint for Divorce be dismissed and that an Order be entered consistent with the terms and provisions set forth in Defendant's Verified Complaint for Divorce filed in Latah County on July 22, 2010, (which is attached hereto). Said Complaint has now been consolidated with this case pursuant to the court's August 10, 2010 Order Granting Stipulation to Consolidate, and Tracy's Verified Complaint for Divorce shall be considered as a Counterclaim to Charles' Complaint for Divorce.

DATED this 11 day of August, 2010.


NICK L. NIELSON, Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11 day of August, 2010, I served a true and correct copy of the foregoing **ANSWER TO COMPLAINT** by causing a copy to be delivered in the matter set forth below to:

Gregory May, Esq.
MAY, RAMMEL & THOMPSON, CHARTERED
P.O. Box 370
Pocatello, Idaho 83204


NICK L. NIELSON

NICK L. NIELSON- Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Ave., Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

Case No. _____
2010 JUL 22 11:11:57
CLERK OF DISTRICT COURT
MAGISTRATE DIVISION
POCATELLO, IDAHO

Attorney for Plaintiff

**IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH
MAGISTRATE DIVISION**

TRACY J. CLAIR,

Plaintiff,

vs.

CHARLES MALCOLM CLAIR, JR.,

Defendant.

CASE NO. 2010-11-1735
**VERIFIED COMPLAINT FOR
DIVORCE**

CATEGORY: F1

FEE: \$129.00

COMES NOW the Plaintiff, Tracy Clair ("Tracy" or "Mother"), and for a cause of action against the Defendant, Charles Malcolm Clair, Jr. ("Charles" or "Father"), alleges and avers as follows:

1. Plaintiff's current address is 349 Ely Avenue, Ely, Nevada 89301. Mother was a resident of Pocatello, Bannock County, Idaho until June 20, 2010. Mother submits to the jurisdiction of this Court for purposes of adjudicating this matter.

2. The Defendant's current address is 626 Britton Lane, Moscow, Idaho 83843. Defendant has resided at this address for less than six (6) weeks immediately prior to the

commencement of this action. Defendant is a resident of the State of Idaho and resided in Pocatello before moving to Moscow.

3. The Plaintiff and Defendant were married on November 19, 1993, in Ely, White Pine County, Nevada, and have been husband and wife since that time.

4. The parties have been separated since June 20, 2010.

5. Plaintiff should be granted a divorce from Defendant on the grounds of irreconcilable differences, pursuant to I.C. § 32-603(8), which have made the legitimate objectives of the marriage impossible, and which prevent the continuance of said marriage.

6. The parties are the natural parents of one child born of the marriage:

Colten Maclain Clair ("Colten") DOB: May 4, 2007

7. Plaintiff has not participated as a party, witness or in any other capacity, in any other litigation concerning the custody of said child in this state or any other state.

8. Plaintiff has no information of any custody proceeding concerning said child pending in a court of this or any other state.

9. Plaintiff knows of no other person not a party to this proceeding who has physical custody of said child or claims to have custody or visitation rights with respect to said child.

CUSTODY/VISITATION/CHILD SUPPORT/MEDICAL

1. Both parties are fit persons to act as parents. It is in the best interest of the minor child, Colten, that the parties be awarded joint legal custody of Colten with Mother receiving primary residential custody of Colten and Father having frequent visitation as is practicable.

In the event the parties cannot agree upon visitation, visitation should be as follows:

A. Before Colten begins attending school, Father should have visitation with Colten for seven (7) consecutive days approximately every two to three months in Moscow, with visitation being around certain holidays. The dates of visitation should be as follows:

September 5-12, 2010 (Labor Day)
November 21-28, 2010 (Thanksgiving)
December 26, 2010-January 2, 2011 (New Years)
February 20-27, 2011 (President's day)
May 29, 2011-June 5, 2011 (Memorial Day)
July 3-10, 2011 (Independence Day)
September 4-11, 2011 (Labor Day)
November 6-13, 2011 (Veteran's day)
December 25, 2011-January 1, 2012 (Christmas/New Years)
February 19-26, 2012 (President's Day)
May 27, 2012-June 3, 2012 (Memorial Day)
July 1-8 2012 (Independence Day)

B. Colten turns 5 on May 4, 2012, and should begin kindergarten in the fall of 2012. After Colten begins attending school, Father should have visitation with Colten during his breaks from school. The dates of visitation should be as follows:

Thanksgiving: Father shall have the day after school lets out to the Sunday prior to school resuming every other year on even-numbered years.

Christmas: Father shall have one-half of the child's Christmas break from school, with the week including Christmas Eve/Day in odd-numbered years and the week including New Years Eve/Day in even-numbered years.

Spring Break: Father shall have Spring Break every other year in odd-numbered years.

Summer Break: Father shall have six (6) weeks of the summer break, to be divided into two segments of three consecutive weeks each.

C. Colten should spend all holidays not listed above with the parent who has current physical custody during that holiday unless otherwise mutually agreed to by the parties.

D. Pickup and drop off times and locations for the holidays not set forth above should be determined by mutual agreement of the parties.

E. In the event occasional scheduling changes need to be made, a request for such change will be made at least forty-eight (48) hours in advance. Requests may need to be refused from time to time. Neither Parent will schedule any activities for the child that interfere with the other Parent's schedule time.

F. The parties or their designees should arrive on time (no more than twenty minutes early or late) to drop off and pick up the child.

G. For all visitation times set forth above, the Father shall bear all transportation costs for the exchanges.

H. When Mother has physical custody of Colten, Father should have visitation with Colten any time he is in Ely, Nevada (or wherever Mother resides, as she may move to Reno or Carson City, Nevada). Father should inform Mother of any visits at least seventy-two hours prior to the visitation.

2. Neither parent should move the minor child more than fifty (50) miles without the other's written consent or a court order. Each parent should give the other at least thirty (30) days written notice when a decision to move is made. The written notice should contain the new address, mailing address and telephone number as soon as they are known, as well as the date the move will be made.

3. Conduct of the parents in connection with the care and custody of their minor child should be as follows:

A. When the child is enrolled in school, both parents will take responsibility for communicating with the minor child's schools. Parents should remain informed and attend conferences with the child's teachers. Major decisions about education should be made by both Mother and Father.

B. During separation from the minor child, each parent should maintain frequent contact with the child by phone, letter, postcard, video, audio tape, or other electronic method. Each parent should encourage the child to communicate frequently with the other parent. Each parent will help the child to adequately communicate with the other parent as needed. Each parent should provide the other with his/her current address and telephone number to allow each parent to communicate with and about the minor child.

C. Each parent should not question the child about the other parent and will not speak negatively about the other parent any time the child can hear. Each parent should communicate directly with each other and not through the child. Each parent will focus conversations with the other on the best interests of the child.

D. Each parent should not compromise the safety of the child at any time.

E. Each parent should not operate a vehicle when impaired by alcohol or drugs when the child is in the vehicle. Each parent should refrain from all use of illegal drugs at all times and from the excessive use of alcohol while the child is in the parent's custody or control. Each parent should ensure that no other person uses illegal drugs or excessively uses alcohol in the home while the minor child is present.

F. Each parent should encourage love and affection between the child and the other parent. Neither parent should do anything, nor permit any other person residing in their household to do anything, which would alienate the child from the other parent or distort the child's opinion of the other parent or impair the child's love and respect for the other parent.

G. Each parent should have the child ready and promptly available for all custody exchanges. The child should be exchanged with sufficient clean clothing appropriate for ordinary activities. Each parent should arrive on time (no more than twenty (20) minutes early or late) for each custodial exchange. Each parent should deliver the child's personal belongings at the same time the child is exchanged. Each parent should assist the child to remember to take needed personal belongings and school supplies.

H. Each parent should conduct themselves in a manner which is in the best interest of the minor child.

I. Each parent agrees not to use the child as a messenger or make the child feel responsible for any misunderstandings which may arise between the parties.

J. When the minor child is in a parent's physical custody, each parent will provide the child with (1) regular and nutritious food, (2) clean and appropriate clothing, (3) appropriate medical examinations and treatment, (4) sanitary and reasonably private living and sleeping quarters, and (5) guidance and counseling in worldly and spiritual matters. Each parent should make proper decisions about the day-to-day care and control of the child.

K. Each parent, and any other persons under their direction and control, should not do, attempt, or threaten to act to injure, mistreat, vilify, malign, defame, or molest the other parent, the child, or any person lawfully supervising the child.

L. Each parent agrees not to discuss financial issues regarding child support with the child.

M. Each parent will return all items sent with the child for visits. If something is lost during said visitation, the custodial parent should replace it in a timely manner.

N. Neither parent will prohibit any of the family members from having visitation with the child.

4. The child should be supported by each Parent and child support should be calculated pursuant to the Idaho Child Support Guidelines beginning July 1, 2010, and due on the 1st of each month thereafter. Support for the child should continue until he attains the age of 18 years or becomes emancipated. If that child is actively pursuing a high school education after reaching the age of 18 years, the support should continue until the time that child attains 19 years of age or ceases pursuing a high school education, whichever occurs first.

A. Payments: All Child Support payments should be paid to the Idaho Department of Health and Welfare by cash, cashier's check, or as otherwise allowed by law:

1. All money paid under the judgment should be paid to:

State of Idaho
Child Support Receiving
P.O. Box 70008

Boise, Idaho 83707
or such other entity as may be required by law or court order.

2. Pursuant to Idaho Code §32-1212 and U.S.C.A. §42-666(c)(2)(a)(I), Mother and Father should be required to notify Child Support Services of any change of address, telephone number, or employment within thirty (30) days of said change.

Notice of Income Withholding: The Petitioner should take notice that an order to support the child is enforceable by income withholding under Chapter 12, Title 32, Idaho Code. A mandatory income withholding order may be issued by the Court to your employer or other person who pays you income, without prior notice to you. It is not necessary for a spouse to apply for support enforcement services under Title IV-D of the Social Security Act (42 U.S.C. 652 et. seq.) to obtain enforcement of a support order by means of income withholding.

5. Defendant should be entitled to claim Colten as a dependent for State and Federal Income Tax purposes. Child support should be adjusted to provide for the pro-rata payment of the value of the exemptions.

6. The child should be provided with health, optical and dental care. Father should continue to provide health insurance for the child as long as such is available at reasonable cost through his employment. Father should provide Mother with a copy of the policy, identification cards and the necessary forms needed for filing of claims. Father should also provide ocular, orthodontic, dental and psychological insurance for the benefit of the child according to what insurance provides. All medical expenses of the child not covered by insurance (including co-pays) should be paid pro-rata 91% Father and 9% Mother. The insurance and payment of medical expenses should continue until said child attains the age of eighteen or, if that child continues his education after attaining the age

of eighteen, said insurance and payment of medical expense should continue until that child discontinues his education or reaches the age of nineteen, whichever occurs first.

7. The minor child should be provided with regular health, optical and dental care and each parent should make sure each minor child takes his prescription medications, if any, as directed. In emergencies, each parent can consent to emergency medical treatment for the minor child as needed. The intent is to take care of the medical emergency first and communicate with the other parent as soon as possible. Each parent should communicate with each other on major health care of the minor child. Each parent should instruct each health care provider for the minor child to list both parents on the health records. Non-emergency health care decisions regarding medical, dental, optical, orthodontic, psychiatric, psychological, special education, addition treatment and counseling should be made by both parents.

8. Pursuant to the Idaho Child Support Guidelines, any claimed health care expense for the minor child (whether denominated as psychiatric, psychological, special education, additional treatment, or counseling in any form, and including regular medical or dental care), whether or not covered by insurance, which would result in an actual out-of-pocket expense to the parent who did not incur or consent to the expense of over \$500.00, must be approved in advance, in writing, by both parties or by prior court order. Relief may be granted by the Court for failure to comply under extraordinary circumstances, and the Court may in its discretion apportion the incurred expense in some percentage other than that in the existing child support order, and in so doing, may consider whether consent was unreasonably requested or withheld.

9. The Court should issue a QUALIFIED MEDICAL CHILD SUPPORT ORDER under Section 1169 of the Employee Retirement Income Security Act of 1974 as amended (ERISA), notifying the offending party that failure to provide his share of the premium of such health insurance coverage may result in enforcing party directly enforcing the Court's order to provide health insurance coverage, without further notice to the offending party, sending a certified copy of said order requiring health insurance coverage to the offending party's employer by certified mail, return receipt requested. The enforcing party should attach a notarized statement to accompany a certified copy of the aforesaid order, stating that the order is the latest order addressing health insurance coverage entered by the Court. The Court should require the offending party's employer to enroll the minor child in the health insurance plan as provided without regard to any required premium for said health insurance coverage of the offending party's dependents from the offending party's wages income or wages. The Court should retain jurisdiction to amend any order as may be necessary to establish or maintain a QUALIFIED MEDICAL CHILD SUPPORT ORDER are duly adhered to and honored.

NOTICE OF MEDICAL ENFORCEMENT

This order is enforceable by allowing the State of Idaho, Department of Health & Welfare or other obligee to enforce medical coverage. That whenever an obligor parent who has been ordered to provide health insurance coverage or lets it lapse, the Department of Health & Welfare or other obligee may seek enforcement of the coverage order as of the effective date of this order under Chapter 12, Title 32, Idaho Code.

10. If work-related child care is necessary, legitimate work-related child care shall be chosen mutually by the parties. The parties shall share in the work-related child care pursuant to the pro-rata shares of the parties. Payment should be made directly to the

child care provider by both parents according to arrangements made with the care provider. If one parent pays the child care provider any portion of the other parent's share of costs, the non-paying parent must reimburse the paying parent within thirty (30) days after the paying parent provides a copy of the invoice and receipt for the payment.

PROPERTY/DEBTS

1. The parties have no real property together. The parties owned a home in Pocatello, Idaho, that was sold prior to the filing of the divorce. The parties owed more on the home than it was sold for and have paid the difference.

2. Any and all items of separate personal property of the parties have been retained to the satisfaction of the parties.

3. Any and all community property acquired by the parties during the marriage will be divided as follows:

To Tracy:

- a. 2008 Toyota Highlander - Plaintiff should be responsible for any and all insurance in connection with said vehicle;
- b. ½ of the \$10,000.00 remaining sign-on bonus for Defendant;
- c. .30 caliber pistol;
- d. Her own clothing and jewelry;
- e. All other community property in Plaintiff's possession at the time of the parties' separation.

To Charles:

- a. Chevrolet Z-71 Silverado - Defendant should be responsible for any and all insurance in connection with said vehicle and for removing the Plaintiff's name from the title and insurance;
- b. ½ of the \$10,000.00 remaining sign-on bonus for Defendant;
- c. His own clothing and jewelry;
- d. All other community property in Defendant's possession at the time of the parties' separation.

All other community property not specifically listed herein has been divided among the parties to their satisfaction.

4. Any and all separate and community debt will be divided as follows:

To Tracy:

- a. Tracy will be responsible for any and all student loan debts in her name with Nelnet;
- b. Any and all credit card debt in her name only; and
- c. Any other debt currently in her name only and any debts she has incurred after the date of separation.

To Charles:

- a. Debt owing against the Chevy Silverado;
- b. Debt owing against the 2008 Toyota Highlander;
- c. ATT iphone service (until contract is complete);
- d. Charles will be responsible for any and all student loan debts in his name;
- e. Charles will be responsible for the lease agreement and any and all utilities for the condo in Moscow, Idaho;
- f. Discover card in his name (Charles should cancel the credit card in his name or have Tracy's name removed from the card such that Tracy has no liability for the card whatsoever);
- g. Any and all other credit card debt in his name;
- h. Any other debt currently in his name only and any debts he has incurred after the date of separation.

All other community debt has been divided and/or assumed to the satisfaction of the parties.

Each party shall hold the other party harmless and agree to indemnify each other for those debts awarded to each of them and listed above, and/or any debt incurred by the other party since the date of separation. In the event either party defaults in the payment of any obligation assumed herein, the defaulting party shall assume and pay all expenses, including attorney fees, which may be incurred by the non-defaulting party in defending herself/himself against any attempt to hold her/him liable for such obligation, whether or not litigation is involved. In the event any judgment is rendered against the defaulting party and it is necessary for the non-defaulting party to execute or garnish in order to satisfy said

judgment, the defaulting party shall pay all attorney fees incurred by the non-defaulting party in obtaining satisfaction.

In the event Charles files for bankruptcy, all debts that are allocated to Charles listed above should be construed as Charles' non-dischargeable spousal obligations if it is determined that Charles has the ability to pay those debts and the detriment to Tracy from Charles' nonpayment outweighs the benefit to Charles of discharging such debts. The exception to the discharge must be raised in an adversary proceeding within the time permitted by the Federal Rules of Bankruptcy Procedure or the debt may be discharged.

5. Tracy does not have the financial ability to meet her needs independently. Tracy quit her job in Pocatello, Idaho to relocate to Moscow, Idaho with Charles when he finished his residency in Pocatello and accepted a job in Moscow. Charles then indicated that he was no longer in love with Tracy and she felt she had no choice but to move in with her parents in Ely, Nevada, to assist herself in getting back on her feet. Tracy is requesting spousal maintenance in the amount of \$2,000.00 per month to be paid by Charles for two (2) years.

Pursuant to Idaho Code §32-705, (a) Tracy lacks sufficient property and resources to meet her needs and has only worked part-time during the marriage since the parties' son was born, has a Bachelor's degree in education, but is not currently able to fully support herself through appropriate employment as there are no teaching positions open in Ely, Nevada; (b) it will take several years for her to receive appropriate training for teaching in Nevada and to locate and acquire a full-time teaching position; (c) The parties were married for seventeen years and Tracy has not worked full-time since 2007; (d) Tracy is 37 years old; (e) Charles' income is anticipated to be over \$150,000.00 per year and is

sufficient to support himself as well as support Tracy until she can obtain gainful employment; (f) tax consequences may be beneficial to Charles; and (g) Charles' actions are the main reasons for the destruction of the parties' marriage.

It is therefore reasonable and proper that Charles be ordered to pay \$2,000.00 per month spousal support to Tracy beginning July 1, 2010, and continue for two (2) years to July 2012.

MISCELLANEOUS

1. Plaintiff will pay the fees and costs necessitated in this action if the matter is uncontested. If the matter is contested, Defendant should be ordered to pay Plaintiff's attorney fees and costs in connection with this matter.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. Plaintiff be granted a divorce from the Defendant on the grounds of irreconcilable differences. The bonds of matrimony existing between the parties shall be dissolved and the parties shall be restored to the status of single persons.

2. The parties shall have joint legal custody and joint physical custody of the child with Mother having primary residential custody of the child with Father having frequent visitation as set forth above.

3. Child support of the parties' minor child shall be calculated as set forth above.

4. Health and hospitalization insurance for the benefit of the minor child shall be provided as set forth above and payment of the expenses not paid by said insurance shall be made by the parties as set forth above.

5. Parties shall be entitled to claim the minor child as a exemptions for income tax purposes as set forth above.

6. Any and all separate property, community, property and community debts acquired by the parties during the marriage shall be divided as set forth above.

7. If the matter is contested, Defendant should be ordered to pay Plaintiff's attorney fees and costs in connection with this matter.

8. For such other and further relief as the court seems just and equitable.

DATED this 19 day of July, 2010.

Nick L. Nielson

NICK L. NIELSON, Attorney for Plaintiff

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF WHITE PINE)

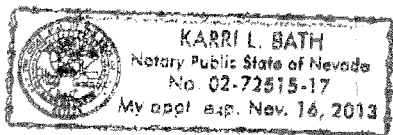
Tracy J. Clair, being first duly sworn, deposes and says:

That she is the Plaintiff in the above-entitled action; That she has read the foregoing Complaint for Divorce, knows its contents, and that the facts therein alleged are true to the best of her knowledge.

Tracy J. Clair

TRACY J. CLAIR

SUBSCRIBED AND SWORN TO before me this 16 day of July, 2010.



Karri L. Bath

NOTARY PUBLIC
Residing at:
My Commission Expires:

ORIGINAL

Gregory C. May, Esq.
MAY, RAMMELL & THOMPSON, CHARTERED
216 West Whitman
P.O. Box 370
Pocatello, Idaho 83204-0370
Telephone (208) 233-0132
Facsimile 208) 234-2961
Idaho State Bar No. 1941

2010 AUG 18 PM 4:35
DEPUTY CLERK

IN THE DISTRICT COURT FOR THE SIXTH JUDICIAL DISTRICT
FOR THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES M. CLAIR, JR.,

Plaintiff,

vs.

TRACY J. CLAIR,

Defendant.

CASE NO: CV-2010-2989-DR

ANSWER TO VERIFIED COMPLAINT
FOR DIVORCE

Charles M. Clair, answers Tracy Clair's *Verified Complaint for Divorce*, filed in Latah County Case no. CV-2010-00778, as follows:

ANSWER

Ms. Clair's Complaint fails to state a claim upon which relief can be granted.

I.

Mr. Clair generally denies each and every allegation of the *Verified Complaint for Divorce* except for those expressly admitted herein.

II.

With regard to the Custody/Visitation/Child Support/Medical section of the *Verified Complaint for Divorce*, Dr. Clair denies Paragraphs 1, 4, 9, and 10.

III.

With regard to the Custody/Visitation/Child Support/Medical section of the *Verified Complaint for Divorce*, Dr. Clair admits Paragraphs 2, 3, 5, 7, and 8.

IV.

With regard to Paragraph 6 of the Custody/Visitation/Child Support/Medical section of the *Verified Complaint for Divorce*, Dr. Clair admits that he should continue to provide health insurance for the Child as long as such is available at reasonable cost through his employment. Dr. Clair denies the stated pro-rata shares of the Parties.

V.

With regard to the Property/Debts section of the *Verified Complaint for Divorce*, Dr. Clair admits Paragraphs 1, and 2.

VI.

With regard to the Property/Debts section of the *Verified Complaint for Divorce*, Dr. Clair denies Paragraphs 3, 4, and 5.

VII.

With regard to the Miscellaneous section of the *Verified Complaint for Divorce*, Dr. Clair denies Paragraph 1.

VIII.

Dr. Clair denies the prayer for judgment in the *Verified Complaint for Divorce* in its entirety.

IX.

Dr. Clair has had to obtain the services of May, Rammell & Thompson, Chartered in order to defend this matter. Ms. Clair should be required to pay his attorney's fees and costs incurred in this matter, pursuant to IDAHO CODE §§ 32-704, 32-705, IDAHO CODE §§ 12-120, 12-121, and I.R.C.P. Rule 54(e), in the minimum amount of \$1,500 and/or such other fees and costs as may be incurred by Dr. Clair.

WHEREFORE, Dr. Clair prays:

1. The Ms. Clair take nothing by way of her *Verified Complaint for Divorce*, which should be dismissed;
2. Ms. Clair should be required to pay Dr. Clair's attorney's fees and costs incurred in this matter, pursuant to IDAHO CODE §§ 32-704, 32-705, IDAHO CODE §§ 12-120, 12-121, and I.R.C.P. Rule 54(e), in the minimum amount of \$1,500 and/or such other fees and costs as may be incurred by Dr. Clair; and

3. For such other relief that Court deems equitable under the circumstances.

DATED this 18 day of August, 2010.

MAY, RAMMELL & THOMPSON, CHTD.
Attorneys for Dr. Clair



GREGORY C. MAY

CERTIFICATE OF SERVICE

I HEREBY certify that on this date, a copy of the foregoing *Answer to Verified Complaint for Divorce* was served on the following named person(s) at the address(es) shown and in the manner indicated.

Nick L. Nielson
Nielson Law Office
P.O. Box 6159
Pocatello, ID 83205-6159

U.S. Mail
 Facsimile
 Hand Delivered

DATED this 18 day of August, 2010.



MAY, RAMMELL & THOMPSON, CHTD.

NICK L. NIELSON - Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Avenue, Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

2010-09-07 19
[Handwritten signature]

Attorney for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

CHARLES M. CLAIR, JR.,
Plaintiff,

vs.

TRACY J. CLAIR,
Defendant.

CASE NO: CV-2010-2989-DR

STIPULATION

COMES NOW Charles M. Clair, Jr., Plaintiff, ("Father") in the above-captioned matter, by and through his attorney of record, Frederick Belzer, and Tracy J. Clair, Defendant, ("Mother"), by and through her attorney of record, Nick L. Nielson, and stipulate as follows:

1. The parties have one minor child, Colten Clair, DOB: 05/04/2007. The parties agree that Colten is currently residing with Mother in Ely, Nevada.
2. The parties agree that Father shall have physical custody of Colten in Idaho from Saturday, September 11 through Monday, September 27, 2010.
3. Prior to September 11, Father will provide Mother with his work schedule for this period of time. Father agrees he will not work urgent care at nights while Colten is with him and has set his schedule so he will not be "on call" for this period of time.

4. Father has arranged for Palouse Christian Pre-school to care for Colten while Father is at work.

5. In the event of any unexpected situation where Father is called away to work, the nurse manager at Father's work has agreed to baby-sit Colten.

6. The parties agree to meet in Twin Falls, Idaho for the exchanges. The exchange on Saturday, September 11 will take place at 3:00 p.m., and the exchange on Monday, September 27 will take place at 10:00 a.m.


7. This Stipulation is for purposes of September 2010 custody only and does not affect any other claims either parent has for custody of Colten.

8. The parties agree to incorporate this Stipulation into an Order.

DATED this 9th day of September, 2009.


Frederick Belzer, Attorney for Plaintiff

DATED this 9th day of September, 2010.


Nick L. Nielson, Attorney for Defendant

FILED
BANNOCK COUNTY
2010 SEP 10 AM 9:42
BY [Signature]
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES M. CLAIR, JR.,
Plaintiff,

vs.

TRACY J. CLAIR,
Defendant.

CASE NO: CV-2010-2989-DR

ORDER ON STIPULATION

This matter having come before the Court upon the filing of the parties' **Stipulation** filed on September 9, 2010, the Court having reviewed the Stipulation, and good cause appearing therefor:


IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. The parties have one minor child, Colten Clair, DOB: 05/04/2007.
2. Colten is currently residing with Mother in Ely, Nevada. Father shall have physical custody of Colten in Idaho from Saturday, September 11 through Monday, September 27, 2010.
3. Prior to September 11, Father will provide Mother with his work schedule for this period of time. Father will not work urgent care at nights or be "on call" while Colten is with him. Father has arranged for Palouse Christian pre-school to care for Colten while Father is at work. In the event of any unexpected situation where Father is called away to work, the nurse manager at Father's work shall baby-sit Colten

4. The parties shall meet in Twin Falls, Idaho for the exchanges. The exchange on Saturday, September 11 will take place at 3:00 p.m., and the exchange on Monday, September 27 will take place at 10:00 a.m.

This Order pertains only to September 2010 custody and does not affect any other claims or rights to custody of the parents in this matter.

DATED this 10 day of September, 2010.

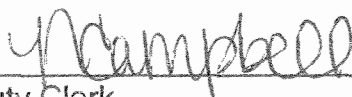

Rick Carnaroli, Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of September, 2010, I served a true and correct copy of the foregoing **ORDER ON STIPULATION** upon the following, by U.S. Mail, postage prepaid:

Frederick Belzer
Attorney at Law
PO BOX 1358
Pocatello, ID 83205

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205-6159

By: 
Deputy Clerk

Frederick F. Belzer
Attorney at Law
850 East Center, P. O. Box 4947
Pocatello, ID 83205
Telephone: (208) 234-7118
Idaho State Bar No. 2535
Attorney for Plaintiff

2010 SEP -9 PM 8:20

BY Gregory C. May
DEPUTY CLERK

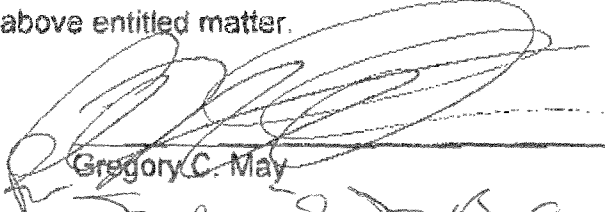
IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,)	
)	
Plaintiff,	)	Case No. CV-2010-2989-DR
)	
vs.	)	NOTICE OF SUBSTITUTION
	)	OF COUNSEL
)	
TRACY JO CLAIR,)	
)	
Defendant.)	


Come now Gregory C. May and Frederick F. Belzer and hereby give notice that Frederick F. Belzer is substituted as attorney of record for the plaintiff, Charles Malcolm Clair, Jr., in all further proceedings in the above entitled matter.

9/2/10
Date

9/2/10
Date



Gregory C. May



Frederick F. Belzer

CERTIFICATE OF SERVICE

I hereby certify I am a duly licensed attorney in the State of Idaho; a resident of and with my office in Pocatello, Idaho; and on the 3rd day of September, 2010. I served a true and correct copy of the foregoing document on the following:

Parties served:

Method of Service

Nick L. Neilson
P.O. Box 6159
Pocatello, ID 83205

First Class Mail
 Fax 232-0048



Frederick F. Belzer

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MAGISTRATE DIVISION

FILED
BANNOCK COUNTY
2010 OCT 4 AM 10:22
BY DEBBY CLERK

CHARLES CLAIR, JR.,)
)
Plaintiff,)
)
vs.)
)
TRACY JO CLAIR,)
)
Defendant.)
)
)
)
)
)

CASE NO. CV-2010-2989-DR
MINUTE ENTRY and ORDER

The above-entitled matter came before the court for Scheduling Conference on September 30, 2010. The Plaintiff appeared through counsel, Frederick Belzer. The Defendant appeared through counsel, Nick Nielson.

Hearing proceeded before the court in chambers. At the conclusion thereof, the court set hearing on Plaintiff's Motion for Change of Venue. IT IS HEREBY ORDERED, hearing is set for October 8, 2010 at 10:00 a.m.

IT IS SO ORDERED.

DATED: October 1, 2010.


RICK CARNAROLI
SIXTH DISTRICT MAGISTRATE JUDGE

cc: Frederick Belzer, Esq., P.O. Box 1358, Pocatello, ID 83205
Nick Nielson, Esq., P.O. Box 6159, Pocatello, ID 83205-6159

DALE HATCH, Clerk of the District Court
By Nichole Campbell, Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF IDAHO
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
 MAGISTRATE DIVISION

FILED
 2010 OCT 8 PM 1:10
 BY DEPUTY CLERK

CHARLES CLAIR, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 FRACY CLAIR,)
)
 Defendant.)
)
 _____)

CASE NO. CV-2010-2989-OC
 MINUTE ENTRY and ORDER

The above-entitled matter came before the court for Plaintiff's Motion for Change of Venue on October 8, 2010. The Plaintiff appeared through counsel, Fred Belzer. The Defendant appeared through counsel, Nick Nielson.

Hearing proceeded before the court. At the conclusion of oral argument, the court took the matter under advisement with a decision to be released at a later date.

IT IS SO ORDERED.

DATED: October 8, 2010.


 RICK CARNAROLI
 SIXTH DISTRICT MAGISTRATE JUDGE

cc: Fred Belzer, Esq., P.O. Box 1358, Pocatello, ID 83205
 Nick Nielson, Esq., P.O. Box 6159, Pocatello, ID 83205-6159

DALE HATCH, Clerk of the District Court
 By Nichole Campbell, Deputy Clerk

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MAGISTRATE DIVISION

CHARLES M. CLAIR, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 TRACY J. CLAIR,)
)
 Defendant.)
 _____)

Case No. CV-10-2989-DR

ORDER DENYING MOTION
FOR CHANGE OF VENUE

DELETED
 BANNOCK COUNTY CLERK
 5 PM 1:07
 FILED FOR THE COURT

The above-entitled matter came on before the Court for Plaintiff’s motion for change of venue on the 8th day of October, 2010. The Plaintiff was represented by counsel, Frederick Belzer. The Defendant was represented by counsel, Nick L. Nielson.

Trial proceeded before the Court. At the conclusion thereof, the Court took the matter under advisement.

DECISION & ORDER

This is an unusual case. Neither of the parties currently have a residence in Bannock County. The Plaintiff (hereinafter “the father”) resides in Latah County Idaho. The Defendant (hereinafter “the mother”) resides in Ely, Nevada. Following the separation, the father filed this divorce action on July 19, 2010. In his complaint the father alleged:

“[The] child’s present address is 626 Britton Lane, Moscow, Idaho when he resides with the Father, and 349 Ely Ave., Ely, Nevada when he resides with the Mother. Prior to this the Child resided at 1045 Concord, Chubbuck, Idaho where he resided with both parents.”

[Father’s] Complaint for Divorce, filed July 19, 2010, paragraph (6)(C), p. 2.

So, the father chose Bannock County as the venue for the divorce action that is pending before this court.

The mother filed for divorce in Latah County, Idaho. *Verified Complaint for Divorce, Case No. CV-2010-00778, In the District Court of the Second Judicial District of the State of Idaho, in and for the County of Latah, Magistrate Division, filed July 22, 2010.* She filed her action for divorce three (3) days after the father filed his complaint in Bannock County. In her complaint, she alleged:

“[Mother’s] current address is 349 Ely Avenue, Ely, Nevada 89301. Mother was a resident of Pocatello, Bannock County, Idaho until June 20, 2010. Mother submits to the jurisdiction of this Court for purposes of adjudicating this matter.

The [Father’s] current address is 626 Britton Lane Moscow, Idaho 83843. Father has resided at this address for less than six (6) weeks prior to the commencement of this action. Father is a resident of the State of Idaho and resided in Pocatello before moving to Moscow.

The parties have been separated since June 20, 2010.”

Verified Complaint for Divorce, Latah County Case No. CV-2010-00778, paragraphs 1, 2, and 4, p. 2.

So, the mother chose Latah County as the venue for her divorce action.

Counsel for the parties thereafter executed a stipulation and this court issued an order to consolidate the two actions in Bannock County for disposition. Among other things, the stipulation recites that each of the parties had been served with the other party’s complaint as of the date of the stipulation. *Stipulation to Consolidate, Bannock County Case No. 2010-2989-DR, filed August 6, 2010; Order Granting Stipulation to Consolidate, Bannock County Case No. 2010-2989-DR, filed August 10, 2010.*

The father chose a proper venue when he commenced his action in Bannock County. The mother was residing out of state, so the father had his choice of “any county which the plaintiff may designate”. *I.C. Section 5-404.*

The mother chose a proper venue when she commenced her action in Latah County. The father was residing in Latah County. Since the father was the Defendant in Latah County, he was entitled to trial “in the county in which [he] ... reside[d], at the commencement of the action”. *I.C. Section 5-404.*

In either case, the father had the right to determine venue. He could choose to file in Bannock County, as he did. Or, he could insist that the case be tried in Latah County, which by stipulation he did not when presented with a second opportunity to consider venue. He could have moved to dismiss his action in Bannock County. Instead, he entered into a stipulation through his legal counsel to maintain his divorce action in Bannock County. Parties who enter stipulations are bound thereby. *Ratliff v. Ratliff, 129 Idaho 422, 425, 925 P.2d 1121 (1996).*

The father argues for a change of venue to Latah County because that is the county of his current residence. However, Latah County was where he resided when he chose to commence his divorce action. At the commencement of his divorce action, Bannock County and forty three (43) other counties were proper choices available to him. He could have chosen Latah County at that time, but did not. Then, he stipulated through his legal counsel to move his wife’s collaterally filed divorce action from Latah County, to Bannock County, as a counterclaim for divorce against him in this action. He therefore affirmed his choice to have his divorce action heard in Bannock County. This court concludes that venue was proper in Bannock County at the time of the

commencement of the father's divorce action which is still the action pending before this court. The court DENIES the father's motion to change venue.

IT IS SO ORDERED.

DATED November 5, 2010.


RICK CARNAROLI
SIXTH DISTRICT MAGISTRATE JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 5th day of November, 2010, a true copy of this Order was mailed postage pre-paid to:

Frederick Belzer, Esq.
P.O. Box 1358
Pocatello, ID 83205

Nick L. Nielson
P.O. Box 6159
Pocatello, ID 83205-6159


Magistrate Clerk

NICK L. NIELSON- Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Ave., Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

FILED
2010 OCT -9 AM 9:39
DEPUTY CLERK

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES M. CLAIR, JR.,
Plaintiff,

vs.

TRACY J. CLAIR,
Defendant.

CASE NO. CV-2010-2989-DR

DEFENDANT TRACY CLAIR'S
OBJECTION TO PLAINTIFF'S MOTION
FOR CHANGE OF VENUE IRCP
12(B)(3)

COMES NOW Defendant, Tracy J. Clair, by and through her attorney, Nick L. Nielson, and hereby submits her Objection to Plaintiff's Motion for Change of Venue

In arguing for a change of venue to Latah County, Plaintiff cites Idaho Code §5-404, *McCarty v. Herrick*, 41 Idaho 529, 535, 240 P. 192 (Idaho 1924) and *Pintlar Corp. v. Bunker Ltd Partnership*, 117 Idaho 152, 156, 786 P. 543 (Idaho 1990) which indicate that the divorce action must be tried in the County in which the Defendant resides and that the parties are not permitted to agree to venue. Based on a detailed review of these authorities, Defendant asserts that Latah County is not the proper venue for this lawsuit.

Idaho Code §5-404 provides as follows:

OTHER ACTIONS -- VENUE DETERMINED BY RESIDENCE -- EXCEPTIONS. In all other cases the action must be tried in the county in which the defendants, or some of them, reside, at the commencement of the action; or, **if none of the defendants reside in the state, or, if residing in this state, the county in which they reside is unknown to the plaintiff, the same may be tried in any county which the plaintiff may designate in his complaint;** and if the defendant is about to depart from the state, such action may be tried in any county where either of the parties reside, or service is had, subject, however, to the power of the court to change the place of trial, as provided in this code; provided, that all actions against life or fire insurance companies, suit or action may be commenced and tried in the county where the death occurred or the loss was sustained; and provided, further, that in all actions against any corporation organized under the laws of the state of Idaho, suit or action shall be commenced and tried in any county of this state where the defendant has its principal place of business or in the county in which the cause of action arose.

For this analysis, the designation of the parties must first be addressed. Charles is not the Defendant in this case. Charles is the Plaintiff. He is designated as the Plaintiff in the captions of the pleadings, his Complaint was filed first in time, and he has stipulated that "Tracy's Verified Complaint for Divorce shall be treated as a Counterclaim to Charles' Complaint for Divorce." Venue cannot be changed to Latah County on the grounds that the Defendant resides in Latah County because the actual Defendant does not reside in Latah County.

Charles is a Counter-Defendant in this lawsuit. Charles has cited no authority for the proposition that the residence of the Counter-Defendant controls over the residence of the Defendant for the purposes of determining venue under §5-404. In accordance with the statute, the focus is directed at the residence of the Defendant, Tracy Clair, at the time Charles commenced his lawsuit.

Based upon the facts set forth in Charles' Affidavit, Tracy resided in Ely, Nevada when Charles filed his Complaint in Bannock County on July 19, 2010. Affidavit of Charles Malcolm Clair, Jr. ("Clair Affidavit") ¶2, Motion to Change Venue, p. 1. In accordance with §5-404, this lawsuit may be tried in any county which Plaintiff may designate in his Complaint. Therefore, Charles had the choice of initially designating Latah County as the proper venue. Not only did he choose not to do so, he designated Bannock County and then sought the agreement of the Defendant to designate Bannock County as the proper venue.

The question then becomes, should the Court honor Plaintiff's request to change venue when Plaintiff determines that that his first choice was not his best choice. Defendant asserts that under the statute and the case law, Plaintiff cannot be afforded such a luxury.

In *Pintlar Corp. v. Bunker Ltd Partnership*, 117 Idaho 152, 156, 786 P. 543 (1990), the Idaho Supreme Court cited to *Banning v. Minidoka Irrigation Dist.*, 89 Idaho 506, 406 P.2d 802 (1965) in which the issue arose as to whether Bannock County or Minidoka County was the proper venue. The *Pintlar* Court reviewed the Banning decision and stated, "*Banning* provides that where an action may be maintained in either of two or more counties, the choice is that of the plaintiff **at the commencement of the action** (emphasis added)." Although *Banning* did not address the decision of the Plaintiff to request a change from his initial venue designation, Defendant believes that the language in *Pintlar* is instructive. The decision to choose venue is to be made at the **commencement of the action**. Defendant is not aware of any, and Plaintiff has not

produced any, case law stating that the Plaintiff gets another shot at re-designating venue **after the commencement** of an action, or that the Court must honor Plaintiff's request for re-designation. Given that Charles chose Bannock County over Latah County, and then got Tracy to agree to Bannock County, he should not now be allowed to argue that Latah County was really the right place all along.

"Granting or refusing to grant a motion for change of venue lies in the sound discretion of the trial court, and will not be disturbed in the absence of manifest abuse of that discretion. *Pintlar*, 117 Idaho at 156, 786 P. 2nd at 547, *citing Jarvis v. Hamilton*, 73 Idaho 131, 135, 246 P. 2d 216, 218 (1952); *Stephan v. Hoffman*, 86 Idaho 304, 386 P.2d 56 (1963). The *Banning* Court discussed restrictions of the discretion of the court in determining venue as follows:

Determination of venue is within the discretion of the court only in cases where conflicting issues of fact must be resolved, such as the actual residence of a defendant, *Jarvis v. Hamilton*, 73 Idaho 131, 246 P.2d 216, 33 A.L.R.2d 910 (1952); convenience of witnesses, *Stephen v. Hoffman*, 86 Idaho 304, 386 P.2d 56 (1963); *Spaulding v. Hoops*, 49 Idaho 289, 287 P. 947 (1930); or impartial trial, *Gilbbert v. Washington Water Power Co.*, 19 Idaho 637, 115 P. 924 (1911)(emphasis added).

Banning, 89 Idaho at 512, 406 P.2d at 808.

Rule 40(e) of the Idaho Rules of Civil Procedure provides as follows:

Change of venue.

(1) Judge or magistrate may grant a change of venue or change the place of trial to another county in any civil action as provided by statute, and the judge or magistrate must, on motion pursuant to Rule 12(b), change the venue of a trial when it appears by affidavit or other satisfactory proof:

(A) That the county designated in the complaint is not the proper county, which motion must be made no later than fourteen (14) days after the party files a responsive pleading, or

(B) That there is reason to believe that an impartial trial cannot be had therein, or

(C) That the convenience of witnesses and the ends of justice would be promoted by the change.

Plaintiff asserts that it is not appropriate for the Court to change venue under Idaho Code §5-404. The statute does not provide for the changing of venue at the request of the Plaintiff after the Plaintiff has already designated the venue in his Complaint. Nor is there any statutory or other case authority stating that if a Plaintiff changes his mind on his designation of venue, he can fall back on status as a Counter-Defendant to choose his forum.

Rule 40(e)(1)(a) cannot be used as a grounds for changing venue because Plaintiff's Motion was not filed within fourteen days of a pleading filed in response to his Complaint. Rule 40(e)(1)(b) is also inapplicable because there has been no argument raised that Charles cannot receive an impartial trial in Bannock County.

Defendant asserts that Rule 40(e)(1)(c) pertaining to the convenience of witnesses and the ends of justice should be considered here. The parties, of course, are primary witnesses. If the trial is set in Bannock County, Charles must travel approximately 559 miles and Tracy must travel approximately 372 miles. If the trial is held in Latah County, Charles does not have to travel, but Tracy must travel approximately 707 miles, about 335 miles more than if the trial were in Bannock County.

Granted, Defendant filed her complaint in Moscow because that is where Charles was residing. Tracy, in her role as Defendant and witness, obviously

accepted the request to have the case heard in Bannock County because of the very issue of traveling, i.e. the convenience of her being able to travel to Pocatello, rather than Moscow for proceedings.

As stated in Plaintiff's Affidavit, the parties resided in Pocatello for approximately three years prior to their separation. Clair Affidavit, ¶12. Any Pocatello witnesses who would testify as to the parties' relationship with each other and their respective relationships with their minor son would necessarily have to travel over 700 miles if the trial were in Latah County. If the trial were in Pocatello, such witness would not have to incur such costs.

In the interests of justice, Defendant Tracy Clair respectfully requests that Plaintiff Charles Clair's Motion for Change of Venue be denied and that venue remains in Bannock County.

DATED this 7 day of October, 2010.


NICK L. NIELSON, Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of October, 2010, I served a true and correct copy of the foregoing **DEFENDANT TRACY CLAIR'S OBJECTION TO PLAINTIFF'S MOTION FOR CHANGE OF VENUE IRCP 12(B)(3)** by causing a copy to be delivered in the matter set forth below to:

Frederick Belzer
Attorney at Law
PO BOX 1358
Pocatello, ID 83205

Fax: 234-7139


NICK L. NIELSON

NICK L. NIELSON - Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Avenue, Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

2/11/11 11:11 AM
CH
DEPUTY CLERK

Attorney for Defendant

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK**

CHARLES M. CLAIR, JR.,

Plaintiff,

vs.

TRACY J. CLAIR,

Defendant.

CASE NO: CV-2010-2989-DR

STIPULATION

COMES NOW Charles M. Clair, Jr., Plaintiff, ("Father") in the above-captioned matter, by and through his attorney of record, Frederick Belzer, and Tracy J. Clair, Defendant, ("Mother"), by and through her attorney of record, Nick L. Nielson, and stipulate as follows:

1. The parties have one minor child, Colten Clair. DOB: 05/04/2007.
2. The parties agree that Father shall have physical custody of Colten in Idaho from Saturday, December 11, 2010 through Sunday, January 2, 2011.
3. Prior to December 11, Father will provide Mother with his work schedule for this period of time. Father agrees he will not work urgent care at nights while Colten is with him and has set his schedule so that he will not be "on call" for this period of time.

4. Father has arranged for Palouse Christian Pre-school to care for Colten while Father is at work.

5. In the event of any unexpected situation where Father is called away to work, the nurse manager at Father's work has agreed to baby-sit Colten.

6. The parties agree to meet in Twin Falls, Idaho for the exchanges. The exchange on Saturday, December 11 will take place at 10 a.m., and the exchange on Sunday, January 2, 2011 will take place at 10:00 a.m.

7. This Stipulation is for purposes of December 2010 and January 2011 custody only and does not affect any other claims either parent has for custody of Colten.

8. The parties agree to incorporate this Stipulation into an Order.

DATED this 23rd day of November, 2010.


Frederick Beizer, Attorney for Plaintiff

DATED this 24 day of November, 2010.


Nick L. Nielson, Attorney for Defendant

FILED
2010 DEC 24 AM 9:46
BY *CL*
DEPUTY CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

CHARLES M. CLAIR, JR.,

Plaintiff,

vs.

TRACY J. CLAIR,

Defendant.

CASE NO: CV-2010-2989-DR

ORDER ON STIPULATION

This matter having come before the Court upon the filing of the parties' **Stipulation** filed on November 24, 2010, the Court having reviewed the Stipulation, and good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that

1. The parties have one minor child, Colten Clair, DOB: 05/04/2007.
2. Father shall have physical custody of Colten in Idaho from Saturday, December 11, 2010 through Sunday, January 2, 2011.
3. Prior to December 11, Father will provide Mother with his work schedule for this period of time. Father will not work urgent care at nights while Colten is with him and has set his schedule so that he will not be "on call" for this period of time.
4. Father has arranged for Palouse Christian Pre-school to care for Colten while Father is at work.

5. In the event of any unexpected situation where Father is called away to work, the nurse manager at Father's work shall baby-sit Colten.

6. The parties shall meet in Twin Falls, Idaho for the exchanges. The exchange on Saturday, December 11 will take place at 10 a.m., and the exchange on Sunday, January 2, 2011 will take place at 10:00 a.m.

This Order pertains only to December 2010 and January 2011 custody only and does not affect any other claims either parent has for custody of Colten.

DATED this 30 day of November, 2010.



Rick Carnaroli, Magistrate Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1 day of ^{December} ~~November~~, 2010, I served a true and correct copy of the foregoing **ORDER ON STIPULATION** upon the following, by U.S. Mail, postage prepaid:

Frederick Belzer
Attorney at Law
PO BOX 1358
Pocatello, ID 83205

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205-6159

By: 
Deputy Clerk

Frederick F. Belzer
Attorney at Law
850 East Center, P. O. Box 4947
Pocatello, ID 83205
Telephone: (208) 234-7118
Idaho State Bar No. 2535
Attorney for Plaintiff

FILED
JAN 14 2011
12:11
DEPT. OF
CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,)

Plaintiff,)

vs.)

TRACY JO CLAIR,)

Defendant.)

Case No. CV-2010-2989-DR

STIPULATION FOR APPOINTMENT
OF CUSTODY EVALUATOR

Come now the parties, by and through their attorneys, and hereby stipulate and agree that a custody evaluation shall performed by Linwood Vereen, Ph.D., to determine the best custody arrangements for their minor child, Colten Clair, born May 4, 2007.

The best interests of the child and the interest of justice would be served by a custody evaluation by a qualified professional.

Plaintiff Charles M. Clair agrees to pay for the custody evaluation.

The parties agree there shall be no exparte communication between the attorneys and the custody evaluator.

1/14/11

Date

1/13/10

Date

Frederick F. Belzer

Frederick F. Belzer, Attorney for Plaintiff

Nick L. Nielsen

Nick L. Nielsen, Attorney for Defendant

Frederick F. Belzer
 Attorney at Law
 850 East Center, P. O. Box 4947
 Pocatello, ID 83205
 Telephone: (208) 234-7118
 Idaho State Bar No. 2535
 Attorney for Plaintiff

FILED
 DISTRICT COURT
 2011 JAN 19 10:36
 BY [Signature]
 DEPUTY CLERK


IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
 MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,)	
)	
	)	Case No. CV-2010-2989-DR
Plaintiff,)	
	)	ORDER APPOINTING
vs.	)	OF CUSTODY EVALUATOR
)	
TRACY JO CLAIR,)	
)	
Defendant.)	

The court having reviewed the Stipulation for Appointment of Custody Evaluator entered into between the parties, and the same appearing proper, it is hereby ordered as follows:

1. The best interests of the child and the interest of justice would be served by a custody evaluation by a qualified professional.
2. A custody evaluation shall performed by Linwood Vereen, Ph.D., to determine the best custody arrangements for their minor child, Colten Clair, born May 4, 2007.
3. Plaintiff Charles M. Clair shall pay for the custody evaluation.
4. There shall be no ex parte communication between the attorneys and the custody evaluator.

Dated this 19 day of January, 2011.


 Rick Carnaroli, Magistrate Judge

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 19 day of January, 2011, I caused a true and correct copy of the foregoing document to be forwarded by first class mail with all required charges prepaid, in accordance with the Idaho Rules of Civil Procedure, to the following persons:

Frederick F. Belzer
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
P.O. Box 6159
Pocatello, ID 83205

Clerk of the District Court


Deputy Clerk

831 JUN 26 11:46
BY DEPT. CLERK

Frederick F. Belzer
Attorney at Law
850 East Center, P. O. Box 4947
Pocatello, ID 83205
Telephone: (208) 234-7118
Idaho State Bar No. 2535
Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,)	
)	
Plaintiff,	)	Case No. CV-2010-2989-DR
)	
vs.	)	STIPULATION
)	
TRACY JO CLAIR,)	
)	
Defendant.)	


Come now the parties, by and through their attorneys, and stipulate and agree as follows:

1. The parties have one minor child, Colten Clair, born May 4, 2007.
2. The parties agree that plaintiff shall have physical custody of the minor child from noon on Monday, February 21, 2011 and ending Sunday, March 13, 2011 at noon.
3. Prior to the period of custody, plaintiff will provide defendant with his work schedule for this period of time. Plaintiff agrees that he will not work urgent care at nights while Colten is with him and has set his schedule so that he will not be on call for this period of time.
4. Plaintiff has arranged for Alisa Payne to provide day care for Colten while plaintiff is at work.

1. STIPULATION

5. The parties agree to meet in Jackpot, Nevada for the exchanges. The exchange on February 21, 2011 shall take place at noon Pacific time and the exchange on March 13, 2011 shall take place at noon Pacific time.
6. This stipulation is for the purpose of February and March 2011 custody only and does not affect any other claims either parent has for custody of Colten.
7. The parties agree to incorporate this stipulation into an order.

Dated this 25th day of January, 2011.



Frederick F. Belzer
Attorney for Plaintiff



Nick L. Nielsen
Attorney for Defendant

NICK L. NIELSON- Idaho State Bar #3787
NIELSON LAW OFFICE
120 N. 12th Ave., Suite 7
P.O. Box 6159
Pocatello, Idaho 83205-6159
Telephone: (208) 232-1735
Facsimile: (208) 232-0048

03/11/2011 11:09
Handwritten initials

Attorney for Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES M. CLAIR, JR.,
Plaintiff,

vs.

TRACY J. CLAIR,
Defendant.

CASE NO. CV-2010-2989-DR
STIPULATION TO CONTINUE

COMES NOW Plaintiff Charles M. Clair, Jr., by and through his attorney, Frederick F. Belzer, and Defendant Tracy J. Clair, by and through her attorney, Nick L. Nielson, and hereby stipulate that the hearings on Plaintiff's Motion for Temporary Custody and Defendant's Motion for Temporary Orders presently scheduled for Monday, March 14, 2011, at 10:00 a.m., shall be continued to the next available date for the court and counsel.

DATED this 11 day of March, 2011.

DATED this 11 day of March, 2011.

Attorney for Plaintiff

Attorney for Defendant

Signature of Frederick F. Belzer
FREDERICK F. BELZER

Signature of Nick L. Nielson
NICK L. NIELSON

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES CLAIR, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 TRACY CLAIR,)
)
 Defendant.)
)
 _____)

CASE NO. CV-2010-2989-IPR
MINUTE ENTRY and ORDER

FILED
 APR 29 PM 9:58
 DISTRICT COURT
 BANNOCK COUNTY
 IDAHO

The above-entitled matter came before the court for Plaintiff's Motion for Temporary Custody on April 25, 2011. The Plaintiff appeared through counsel, Frederick Belzer. The Defendant appeared through counsel, Nick Nielson.

Hearing proceeded before the court. Counsel for the Plaintiff informed the court the parties reached an agreement as to temporary child support and custody and recited the same for the record. At the conclusion thereof, the court set the matter for trial. IT IS HEREBY ORDERED that:

1. PRE-TRIAL CONFERENCE is set for May 23, 2011 at 1:15 p.m. with TRIAL set for ½ day on June 1, 2011 at 9:00 a.m. and June 2, 2011 at 9:00 a.m.
2. At the Pre-Trial Conference, the parties shall be prepared to enter into a Pre-Trial Order as outlined in IRCP 16(f).
3. At the time of the Pre-Trial Conference, the parties SHALL APPEAR unless otherwise ordered by the Court.

4. At least one (1) week prior to the Pre-Trial Conference, the parties shall submit a Memorandum containing the following (and provide a copy to the opposing party):
 - a. Copies of all exhibits, including those to be used for impeachment and rebuttal.
 - b. A list containing the name and address of all witnesses that may be called at trial, including impeachment and rebuttal witnesses; expert witnesses shall be identified as such.
 - c. A statement concerning the status of settlement negotiations.
 - d. A statement concerning the status of all answers to discovery.
 - e. A concise description of all disputed factual and legal issues, including a statement of the claim of the party supplying the memorandum.
 - f. Any admissions or stipulations of the parties.
 - g. Any amendments to the pleadings or any issues abandoned by the parties.
 - h. A list of any Pre-Trial motions or other matters that will expedite trial.
5. Discovery shall be completed TWO WEEKS prior to the Pre-Trial date.
6. All Pre-Trial motions shall be filed and noticed up for hearing TWO WEEKS prior to the Pre-Trial date.
7. All responsive pleadings and amendments will be made, pursuant to the IRCP, no later than the THREE WEEKS prior to the Pre-Trial date.

Failure to comply with this Order may result in sanctions, including, but not limited to, default, dismissal of actions or the striking of pleadings and/or an award of attorney fees and costs.

DATED: April 29, 2011.


RICK CARNAROLI
SIXTH DISTRICT MAGISTRATE JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 29 day of April, 2011, a true copy of this Order was mailed postage pre-paid to:

Frederick Belzer
Attorney at Law
P.O. Box 400
Pocatello, ID 83204-0400

Nick Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205-6159

N Campbell
Magistrate Clerk

FREDERICK F. BELZER
 Attorney at Law
 850 East Center
 P.O. Box 4947
 Pocatello, Idaho 83205
 (208) 234-7118
 Idaho State Bar No. 2535
 Attorney for Plaintiff

2011 APR 29 10:09:50
 BY: [Signature] CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
 MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,	)	Case No. CV-2010-2989-DR
)	
Plaintiff,)	
)	
vs.	)	MINUTE ENTRY AND ORDER
)	
TRACY JO CLAIR,)	
)	
Defendant.)	
_____)	

THIS MATTER came on for hearing pursuant to notice on April 25, 2011, at 1:00 PM on Plaintiff Charles Malcolm Clair, Jr.'s Motion for Temporary Custody, and Defendant Tracy Jo Clair's Motion for Temporary Orders seeking a temporary custody schedule, temporary spousal support, temporary child support and medical support. Plaintiff appeared in person and by counsel, Frederick F. Belzer. Defendant appeared in person and by counsel, Nick L. Nielson. The parties presented to the Court a resolution of the pending issues in their respective Motions for Temporary Orders and the Court set this matter for trial.

1. MINUTE ENTRY AND ORDER
 (042611)

This matter is set for trial on Wednesday, June 1, 2011, beginning at 9:00 AM, and on Thursday, June 2, 2011, beginning at 9:00 AM. It may be necessary during parts of these two days to accommodate other matters before the Court and a telephone pretrial conference for Defendant's counsel on June 2, 2011. The Court, at its discretion, may set a pretrial conference to be attended by counsel for the parties.

Based upon the stipulation of the parties, the following agreement submitted to the Court is hereby an Order of the Court:

1. The parties' minor child, Colten Clair (d/o/b 05/04/2007), shall be in the physical custody of Defendant at all times not set forth for Plaintiff until further order of the Court.

2. Plaintiff shall have physical custody of the parties' minor child as follows:


a. From Sunday, April 24, 2011, until Sunday, May 8, 2011. The exchange of custody on May 8, 2011, shall be at 10:00 AM Pacific Time in Wells, Nevada.

b. From Thursday, June 2, 2011, at 5:00 PM (or at Defendant's option from Tuesday, May 31, 2011, at a time agreed to by the parties) until Sunday, June 26, 2011. The exchange of custody at the start of this period shall be in Pocatello, Idaho. The exchange on Sunday, June 26, 2011, shall be at noon Pacific Time, in Jackpot, Nevada.

c. From Sunday, July 17, 2011, until Sunday, August 7, 2011. The exchange of custody on July 17, 2011, shall be at noon Pacific Time in Wells, Nevada. The exchange of custody on August 7, 2011, shall be at noon Pacific Time in Jackpot, Nevada.

3. Plaintiff shall pay Defendant temporary child support for the month of May, 2011, in the amount of \$1,586.72, payable on or before noon on April 29, 2011, by certified check or Plaintiff's attorney's trust check, delivered to Defendant's attorney's office.

IT IS SO ORDERED this 29 day of April, 2011.


Rick Carnaroli, Magistrate Judge

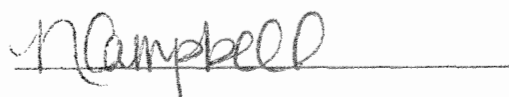
CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 29 day of April, 2011, I caused a true and correct copy of the foregoing document to be forwarded by first class mail with all required charges prepaid, in accordance with the Idaho Rules of Civil Procedure, to the following persons:

Frederick F. Belzer
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
P.O. Box 6159
Pocatello, ID 83205

Clerk of the District Court



IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
 MAGISTRATE DIVISION

MAY 24 2011 9:56 AM
FILED

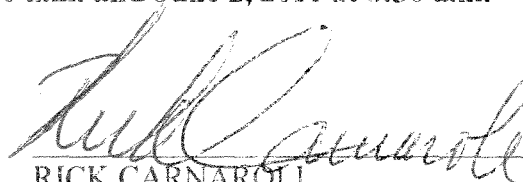
CHARLES M. CLAIR, JR.,)
)
 Plaintiff,)
)
 vs.)
)
 TRACY JO CLAIR,)
)
 Defendant.)
 _____)

CASE NO. CV-2010-2989-DR
 MINUTE ENTRY and
 ORDER CONFIRMING TRIAL

The above-entitled matter was before the Court for Pretrial Conference on May 23, 2011. The Plaintiff appeared through counsel, Fred Belzer. The Defendant appeared through counsel, Nick Nielson.

Hearing proceeded before the Court. At the conclusion thereof, the Court CONFIRMED Trial for **Wednesday, June 1, 2011 at 8:30 a.m. and June 2, 2011 at 8:30 a.m.**

DATED: May 24, 2011.


 RICK CARNAROLI
 SIXTH DISTRICT MAGISTRATE JUDGE

cc: Fred Belzer, Esq., P.O. Box 4947, Pocatello, ID 83205
 Nick Nielson, Esq., P.O. Box 6159, Pocatello, ID 83205-6159

DALE HATCH, Clerk of the District Court
 By Nichole Campbell, Deputy Clerk

FREDERICK F. BELZER
Attorney at Law
850 East Center
P.O. Box 4947
Pocatello, Idaho 83205
(208) 234-7118
Idaho State Bar No. 2535
Attorney for Plaintiff

2011 APR 27 11:00
M

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,	)	Case No. CV-2010-2989-DR
)	
Plaintiff,)	
)	
vs.	)	PLAINTIFF'S PRE-TRIAL
	)	MEMORANDUM
TRACY JO CLAIR,)	
)	
Defendant.)	
_____)	

Pursuant to the Minute Entry and Order dated April 29, 2011, the undersigned counsel for Plaintiff hereby submits this Pre-Trial Memorandum.

a. Copies of all exhibits, including those to be used for impeachment and rebuttal, are provided herewith and copies have been provided to opposing counsel pursuant to the agreement of counsel. A list of exhibits is attached hereto as attachment A.

b. A list containing the name and address of all witnesses that may be called at trial, including impeachment and rebuttal witnesses; expert witness shall be identified as such. Attached as attachment B is a list of Plaintiff's witnesses.

c. A statement concerning the status of settlement negotiations. Settlement negotiations continue and Plaintiff is willing and able to continue with settlement negotiations.

d. A statement concerning the status of all answers to discovery. Based upon the revised agreement of counsel for the parties, discovery was handled informally, and all documents requested by Defendant's counsel have been provided by Plaintiff's counsel. Some documents requested by Plaintiff's counsel have been provided by Defendant's counsel. However, Defendant's counsel has refused to provide a copy of Defendant's Parent Intake Questionnaire which she submitted to Dr. Vereen, the child custody evaluator, and which Plaintiff's counsel requested in informal discovery. Therefore, Plaintiff's counsel has filed a Motion to Compel and has requested that this motion be heard by the Court at the Pre-Trial Conference on May 23, 2011.

e. A concise description of all disputed factual and legal issues, including a statement of the claim of the party supplying the memorandum.

Custody. The parties agree that they should be awarded joint legal custody and joint physical custody of their minor child, Colten Maclain Clair, born May 4, 2007. The parties disagree on the allocation of periods of physical custody between the parties. The father seeks an alternating week-long period of physical custody if the mother voluntarily relocates to Pocatello, and alternating three-week periods of custody for each parent if the mother remains in Ely, Nevada. A more detailed statement of father's custody proposal is set out in attachment C.

Child Support. The father proposes that he pay in excess of the child support guidelines of \$682.00 based upon an equal sharing of physical custody, but proposes to voluntarily pay the sum of \$1,112.00 should the mother voluntarily relocate to Pocatello and

the parties are awarded equal periods of physical custody. Plaintiff would be awarded the income tax exemption for the child each year beginning in 2011, and the parties would pay work-related daycare expense and unreimbursed healthcare expense in proportion to their incomes, with the Plaintiff paying 81% and the Defendant paying 19%. Plaintiff would maintain work-related health insurance for the child.

Division of Property and Debt. Plaintiff proposes that the parties be awarded the personal property each has in his or her possession. There is no real property of the parties. Plaintiff proposes an unequal division of debt in Defendant's favor with Plaintiff taking the community debt identified in Plaintiff's Proposed Exhibit F, with the exception of the Toyota Highlander debt, and Defendant taking her credit card, student loan, the Highlander debt and any other debt she has incurred since the parties' separation.

Spousal Maintenance. Plaintiff denies that Defendant is entitled to any spousal maintenance. During the parties' marriage, Defendant acquired sufficient education and work experience and has the ability to support herself.

Attorney's Fees. Each party should pay his or her own attorney's fees.

f. Any admissions or stipulations of the parties. Although there are no formal admissions or stipulations, both parties' divorce complaints allege irreconcilable differences as grounds for divorce and allege that both parties are fit and proper persons to have joint legal custody and joint physical custody of their child.

g. Any amendments to the pleadings or any issues abandoned by the parties. Counsel for the parties have informally agreed that there is no need to amend any of the pleadings and that the parties may seek relief in the form of a child custody award or an

amount of child support and a division of property and debts which varies from the relief requested in their respective divorce filings.

h. A list of any Pre-Trial motions or other matters that will expedite trial. None identified at this time, except Plaintiff's Motion to Compel.

Respectfully submitted this 20th day of May, 2011.



Frederick F. Belzer
Attorney for Plaintiff Charles Clair, Jr.

CERTIFICATE OF SERVICE

I hereby certify I am a duly licensed attorney in the State of Idaho; a resident of and with my office in Pocatello, Idaho; and on the 23rd day of May, 2011, I served a true and correct copy of the foregoing document on the party listed below as follows:

Parties served:

Method of Service

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205

Hand Delivery
 First-Class Mail
 Fax 232-0048



Frederick F. Belzer

CLAIR V. CLAIR

Bannock County Case No. CV-2010-2989-DR

Plaintiff's Proposed Exhibit List

- A. E-Mails Between the Parties
- B. Text Messages Between the Parties
- C. Charles Clair's Monthly Budget
- D. Tracy Clair's Monthly Budget
- E. Financial Accounting of Monies Paid to Tracy Clair
June 2010-June 2011
- F. Monies Contributed by Each Party During Marriage; Charles Clair -
Current Debt; Student Loan and Tax Year Information
- G. Charles Clair ISU Paystubs
- H. ISU Employment Contract
- I. Moscow Family Medicine Employment Agreement
- J. Gritman Medical Center Physician Incentive Agreement
- K. Plaintiff's Proposed Child Custody Schedule and Child Support
Proposal
- L. Plaintiff's Response to Dr. Vereen's Questionnaire - Parent Intake
Questionnaire, Custody Evaluation
- M. Plaintiff's Lease/Purchase Agreement for Home in Pocatello
- N. Letter from Tracy Clair to Charles Clair (undated)
- O. Teacher's Salary Information
- P. Tracy Clair Teacher Licensure
- Q. "Joint Custody" by Judge Michael Redman
- R. Plaintiff's Child Support Calculations
- S. Tracy Clair's Facebook Postings

ATTACHMENT A

CLAIR V. CLAIR

Bannock County Case No. CV-2010-2989-DR

Plaintiff's Witness List

1. Charles Malcolm Clair, Jr.

2. Tracy Jo Clair

3. Alisa Payne

Alisa Payne, 10907 Paint Brush, Chubbuck, ID 83202; 208-637-0685. Ms. Payne is the child care provider for the parties' child while he is in Plaintiff's custody in Pocatello and Plaintiff is unavailable during work hours. Ms. Payne is a personal friend of both parties.

4. Jonathan Cree, M.D., Program Director and Department Chair, Idaho State University, Department of Family Medicine, Family Medicine Residency Program, 465 Memorial Drive, Pocatello, ID 83201-4008; 208-244-1511; e-mail: joncree@fmed.isu.edu. Dr. Cree is Plaintiff's immediate supervisor.

ATTACHMENT B

If Tracy Clair voluntarily relocates to Pocatello

1. Father and mother will share joint legal custody and joint physical custody of Colten, with Colten spending alternating one-week periods of physical custody with each parent. Holiday periods will be alternating, with Tracy having the Christmas/New Year's holiday in 2011.
2. During the parent's period of physical custody, the other parent shall be entitled to have physical custody of the child for any period where the child is in work-related daycare and the other parent is actually able to care for the child.
3. Each parent will be responsible for his or her own transportation responsibilities and expenses. When Colten is being returned to the father, the father will pick up Colten, and when Colten is being returned to the mother, the mother will pick up Colten.

Child support if Tracy Clair relocates to Pocatello

1. Father will pay child support to mother calculated with father's income at \$156,000 per year and mother's income set at a full-time teacher's income of \$36,000 per year, and a 70/30 custody split (in favor of mother), even though actual custody will be 50% with each parent. This results in monthly child support payable by father to mother of \$1,112.
2. Father will pay all work-related child care costs for both parties through August 2012, when Colten starts school. Thereafter, the parents will pay work-related child care expenses in proportion to their incomes, with the father paying 81% and the mother paying 19%.
3. Father will pay mother her actual moving expenses from Ely, Nevada, to Pocatello, Idaho, in an amount not to exceed \$4,000.

If Tracy Clair does not voluntarily relocate to Pocatello

1. Father and mother will share joint legal custody and joint physical custody of Colten, with Colten spending alternating three-week periods of physical custody with each parent, arranged in such a way that during the Christmas 2011 and New Year holiday period Colten spends this time with mother. This arrangement will end August 2012 when Colten begins kindergarten.
2. Father will have physical custody of Colten during the school year beginning late August/early September 2012, when Colten begins kindergarten and throughout the school year. Every year mother will have the Thanksgiving school break, Christmas/New Year's school break, spring break, and all three- and four-day school breaks when Colten will not be in school and mother will be able to take off from work. Mother will also have any weekends or other times she is able to come to Pocatello. Mother will also have the school break for the summer with the exception of a two-week period for the father approximately midway through the summer.
3. Each parent will be responsible for his or her own transportation responsibilities and expenses. When Colten is being returned to the father, the parties will meet in Wells, Nevada, and when the mother is coming to pick up Colten from the father, the parties will meet in Jackpot, Nevada.

Child support if Tracy Clair does not voluntarily relocate to Pocatello

1. Father will pay child support to mother calculated with father's income at \$156,000 per year and mother's income set at a full-time teacher's income of \$36,000 per year, and a custody split of 70% of the time with the father and 30% of the time with the mother, which results in monthly child support payable by father to mother at \$252 per month.

FREDERICK F. BELZER
Attorney at Law
850 East Center
P.O. Box 4947
Pocatello, Idaho 83205
(208) 234-7118
Idaho State Bar No. 2535
Attorney for Plaintiff

2011 JUN 28 10:05
FREDERICK F. BELZER

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,) Case No. CV-2010-2989-DR
))
) Plaintiff,))
))
vs.) MINUTE ENTRY AND ORDER
))
TRACY JO CLAIR,))
))
) Defendant.))
_____)

THIS MATTER came on for hearing pursuant to notice on Plaintiff's Motion for Entry of Decree of Divorce. Plaintiff appeared in person and by counsel, Frederick F. Belzer. Defendant appeared by counsel, Nick L. Nielson. The Court heard the testimony of Daren Almond, Mortgage Loan Officer for Idaho Central Credit Union, and Plaintiff Charles M. Clair, Jr. The Court heard argument of counsel.

The Court having considered the pending motion, the opposition thereto by Defendant and the record herein, and good cause appearing, IT IS HEREBY ORDERED that the parties are awarded a Decree of Legal Separation.

The Court will reserve for further proceedings a ruling on all matters relating to child custody and child support, division of property and debt, and spousal maintenance.

IT IS SO ORDERED this 25 day of June, 2011.


Rick Carnaroli, Magistrate Judge

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 25 day of June, 2011, I caused a true and correct copy of the foregoing document to be forwarded by first class mail with all required charges prepaid, in accordance with the Idaho Rules of Civil Procedure, to the following persons:

Frederick F. Belzer
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
P.O. Box 6159
Pocatello, ID 83205

Clerk of the District Court

By 
Deputy Clerk

FREDERICK F. BELZER
Attorney at Law
850 East Center
P.O. Box 4947
Pocatello, Idaho 83205
(208) 234-7118
Idaho State Bar No. 2535
Attorney for Plaintiff

FILED 2010 JUN 28 10:05 AM
CLERK OF DISTRICT COURT
IDAHO

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION

CHARLES MALCOLM CLAIR, JR.,) Case No. CV-2010-2989-DR
))
) Plaintiff,))
))
vs.) DECREE OF LEGAL SEPARATION
))
TRACY JO CLAIR,))
))
) Defendant.))
_____)

Pursuant to the Minute Entry and Order and the hearing held on June 28, 2011, IT
IS HEREBY ORDERED that the parties are granted a Decree of Legal Separation.

IT IS SO ORDERED this 28 day of June, 2011.



Rick Carnaroli, Magistrate Judge

CLERK'S CERTIFICATE OF SERVICE

I, the undersigned, certify that on the 28 day of June, 2011, I caused a true and correct copy of the foregoing document to be forwarded by first class mail with all required charges prepaid, in accordance with the Idaho Rules of Civil Procedure, to the following persons:

Frederick F. Belzer
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
P.O. Box 6159
Pocatello, ID 83205

Clerk of the District Court

By *M. Weston*
Deputy Clerk

**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION**

CHARLES MALCOLM CLAIR,)
)
 Plaintiff,)
)
 vs.)
)
 TRACY JO CLAIR,)
)
 Defendant.)
 _____)

Case No. CV-2010-2989 DR
[Handwritten Signature]
FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER

The above entitled matter came before the court for trial on June 22 and 23 and on July 21 and 22, 2011. Charles M. Clair (hereinafter “the father”) was present and represented by Frederick Belzer. Tracy Jo Clair (hereinafter “the mother”) was present and represented by Nick Nielson.

Hearing proceeded and the court heard and received evidence on the issues of property and debt division, temporary spousal support, child custody and child support. At the conclusion thereof, the court took the matter under advisement. Now, based upon a preponderance of the evidence, the court makes the following findings of fact:

FINDINGS OF FACT

1. In June 2010, the mother, father, and child were residents of Pocatello, Bannock County, Idaho. The father was a bona fide resident of the State of Idaho for at least six (6) weeks prior to the filing of his complaint. He filed his complaint on July 19, 2010 in Bannock County, Idaho.

2. The parties separated on or about June 17, 2010. The mother moved to Ely, Nevada upon separation and has resided there with her parents since June 2010. She has not been employed during the separation. In June 2010, the father moved to Moscow, Latah County, Idaho to take a new job as a physician. The father later resigned his position in Moscow, Idaho and returned to reside in Pocatello in January 2011. He took a faculty position with the Idaho State University in the Family Practice Residency Department.
3. The mother was served the father's Complaint for Divorce on July 26, 2010. The mother filed for divorce in Latah County, Idaho on July 22, 2011. The father was served the mother's Complaint on August 1, 2010. With divorce actions pending in two counties, the parties stipulated to consolidate the cases in Bannock County. *Stipulation to Consolidate and Order to Consolidate, filed August 6, 2010.*
4. The parties were married on November 19, 1993 in Ely, County of White Pine, Nevada. The natural child of the parties Colton Clair (Colton) was born on May 4, 2007. Colton was born in Reno, Nevada just one month before the family relocated to Pocatello, Idaho in June 2007 for the father to begin his medical residency as a resident physician with the Idaho State University Family Practice Residency Department. Colton resided in Pocatello for three years with the parties until they separated.
5. Colton has resided primarily in Ely, Nevada with the mother and her parents since June 2010. He has visited and resided with the father a handful of times for extended visits since the separation.

6. The father filed his complaint seeking divorce alleging that property and debt should be divided equitably, that the parties should be awarded joint, shared legal and physical custody with specific parenting terms, and that the parties should share custody of the child on an equal time sharing basis in Idaho. He requested an award of attorney fees and costs pleading alternative statutory bases for an award. *Complaint for Divorce, filed July 19, 2010.*
7. The mother answered and counterclaimed for divorce, denying most of the allegations of the father's complaint and alleging that property and debt should be divided disproportionately with the father taking more of the community debt, that the parties should be awarded joint legal and physical custody of the child with specific parenting terms, and that she should be awarded primary residential custody of the child. She also seeks temporary spousal maintenance for a period of two years. She seeks an award of attorney fees and costs upon her counterclaim, but failed to plead a statutory basis for an award of costs or attorney fees in her answer or her counterclaim. *Answer to Complaint, filed August 11, 2010; Verified Complaint for Divorce (Counterclaim by Stipulation, filed July 22, 2010 in Latah County.*
8. The father answered the counterclaim denying most of the mother's allegations. The father again sought costs and attorney fees in defense of the counterclaim pleading alternative statutory bases for an award. *Answer to Verified Complaint for Divorce (Counterclaim by Stipulation,) filed August 18, 2010.*
9. The mother has limited the father's access to the child and has made arranging visits between father and son more difficult than it should have been. She opines

that the child suffers from separation anxiety and that he should not be away from her for visits as long as the father has had and proposed. *See, Plaintiff's Exhibits A, B, and U.* She and the maternal grandmother observed that Colton takes some time to adjust after returning from his visits with his dad.

10. The father observed that Colton seemed to enjoy his time with him and that he saw no behavioral or emotional problems in the child on arrival, while visiting, or on departure to return to the mother.
11. While residing with his mother and maternal grandparents in Ely, Nevada, Colton as attended the Magic Carpet Preschool in Ely. He attended this preschool from late August or early September 2010 through May 2011. *Defendant's Exhibit 5.*
12. The mother is college educated having achieved a BS in English from Weber State University and a BS in English Education from Utah Valley State College with minors in Art at both institutions. She has also earned 10+ graduate credits through University of San Diego and Sierra Nevada College. She has over six years of teaching experience in both Idaho and Nevada. She taught two years full-time at Pocatello High School. *See, Defendant's Exhibit 9.* The mother has certifications to teach in both Idaho and Nevada.
13. Since the separation, the mother had "motivational issues" for several months. She began to apply for jobs in October 2010. She began to substitute teach for the White Pine County School District in Ely, Nevada beginning at some time in the fall of 2010.
14. Since the separation, she has applied for full time teaching positions only in the state of Nevada. *Defendant's Exhibit 7.* She has received a job offer and intends

to relocate from Ely to Reno, Nevada in order to teach in Reno. *Defendant's Exhibit 11.*

15. The mother has clearly asserted that it is her intention to remain a resident of Nevada where she was born and raised and where most of her family resides. She wants to move Colton to the state of Nevada to reside with her primarily. At the time of trial, she had no idea where she would be living in Reno, or where Colton would attend pre-school or daycare during the next school year, or where he would attend school in the fall of 2012.
16. The father intends to remain in Pocatello, Idaho. He has a fulltime faculty position at Idaho State University. He is purchasing the home that he has been renting in Pocatello since he returned from Moscow. The home is three blocks from Gate City School where Colton would begin to attend school if he attends public school in the fall of 2012.
17. If the mother chooses to remain in Nevada, the father proposes that the parties share custody of Colton on an equal basis, exchanging the child every three weeks, from the date of the decree until August 2012. When Colton starts school in August 2011, he proposes that Colton reside with him primarily in Pocatello, Idaho if the mother will not voluntarily relocate to Pocatello. If the mother will relocate to Pocatello, he proposes an equal shared custody arrangement where the child will reside with each parent equally. Custody of the child would rotate from the home to home on a weekly basis. The father even proposes to pay child support to the mother in excess of that required by the Idaho Child Support

Guidelines in the event of an equal shared custody arrangement in Pocatello. The mother rejected that proposal at trial. *See, Plaintiff's Exhibit K.*

18. No informal or formal agreement was made concerning interim child support while the proceedings have been pending. No interim child support obligation was ordered or set. Upon her counterclaim, the mother seeks child support from the father retroactive to June 2010.
19. The father has paid child support directly to the mother as well as most all of the community debts and obligations of the parties since the parties' separated in June 2010. He sent the mother money and paid additional money towards other debts and obligations, which has helped support the mother and the child. His accounting of payments for child support shows that he paid \$9,850.00 specifically for child support directly to the mother. He also paid \$586.00 towards her travel expenses to attend a hearing in this case. He paid \$2,017.00 for the parties' federal and state income tax liabilities for 2010 and paid \$230.00 for the preparation of their joint tax return. He has paid \$3,061.00 for the mother's health insurance; \$480.00 for her cell phone; \$5,490.00 in car payments and \$450.00 for car insurance for the vehicle the mother has had sole and exclusive use and possession of; \$616.00 towards the mother's student loan obligation; \$9,800.00 towards the closing costs for the loss on sale of the parties' home in Pocatello; \$16,000.00 to Bank of America on a line of credit; \$5,500.00 to pay off the parties' April trip to Hawaii; and \$1,800.00 on a credit card debt. In total, since June of 2010 the father has paid \$35,347.00 towards the parties' jointly held debts and liabilities. In total, he paid a total of \$20,633.00 directly to his wife

and/or to support her and to continue to provide her with reliable transportation, a cell phone, health insurance, auto insurance, and even paid some of her student loan obligation. *See, Plaintiff's Exhibits E.* The father contends and believes that the mother and child have received ample support during the separation and that the mother has actually had several hundred dollars per month of discretionary income during the parties' separation. *Plaintiff's Exhibit D.*

20. During the separation, the mother testified that she had insufficient income to help with the parties' community debts and monthly bills. She shows a deposit of \$914.55 in her checking account at Greater Nevada Credit Union on November 22, 2010. Is this a paycheck for substitute teaching? She did not testify that it was and the court has no way to determine the source of these funds. She had a direct deposit of one paycheck in the sum of \$450.77 directly deposited to her checking account from the White Pine School District on January 21, 2011 which reflects income earned in 2010. All other deposits to her checking account correspond to child support payments made by her husband or are for service charge reversals or dividends before 2011. The court did not receive complete documentation to show her actual gross or net income from June 2010 through July 2011.

21. The mother testified that she has paid \$350.00 per month for room and board and a storage unit to her parents from June 2010 through June 2011. Neither her mother, nor father testified as to the receipt of any room and board payments. However, her check account statements show that she wrote checks for amount of \$350.00 to someone in the months of November 2010 through March of 2011.

The court will accept the mother's testimony with respect to room and board and finds that the mother paid her parents \$350.00 per month for room and board and a storage unit while the action has been pending from July 2010 through June 2011.

22. Since the separation, the mother has paid \$120.00 per month for Colton's preschool totaling \$1,185.00.
23. In the month of April 2011, the mother paid for six (6) months of her car insurance. *See, Defendant's Exhibits 1 and 5.*
24. However, the court finds that the mother failed to testify about, or show what her actual earnings or gross income was during the separation. Her Direct Deposit Receipts from the White Pines County School District do not clearly show what, if any earning she had in the fall of 2010. Her Direct Deposit Receipts show she earned a gross income of \$4,798.40 in the first quarter of 2011 from January 1 through April 2, 2011. She was paid \$513.66 for work done in December 2010 on January 21, 2011. Her "pay cycle end date" on that receipt is 1/1/2011. *See, Defendant's Exhibit 6.*
25. The court finds that the child was adequately supported during the separation and it is clear that the father provided more monetary support for Colton than the mother did through her earnings during the separation. Throughout the separation, it appears that the mother supported herself and Colton in large part by working only part-time, by living with her parents, and through receipt of the father's child support payments. She had few bills because of the fact that the father was paying almost all of the parties' community debts, obligations, and

monthly expenses, including but not limited to her car payments, car insurance, health insurance, and her student loan. *See, Defendant's Exhibit 5 and Plaintiff's Exhibit D.*

26. A comparison of the father's proposed monthly budget for the mother during the separation, which is based in large part on the mother's affidavit with additional expenses added by the father to her budget, showed that the mother's needs were being met. *Plaintiff's Exhibit D.* Based on the mother's proposed budget, which contains prospective expenses, and by looking to her checking account records, it appears that her needs and Colton's were met with the child support paid by the father, with her earnings, with her parents' financial assistance which cannot be quantified, and with the father's payment of the community debts and monthly obligations for himself and the mother. *Defendant's Exhibit 1 and 5.*
27. The father seeks divorce on the grounds of irreconcilable differences. The mother also seeks a divorce on the grounds of irreconcilable differences. The parties' marital relationship came to an abrupt end in June 2010. When faced with a move to Moscow, Idaho and the stress and strain of an emotionally and physically stagnant relationship, the father told the mother that he did not love her any more. Though she also filed for divorce, the mother has struggled with the idea of a divorce. *See, Plaintiff's Exhibits A and B, (e-mails and text messages between the parties) and Plaintiff's Exhibit N.* The father remains steadfast in his belief that the marital relationship cannot be reconciled. The court finds that irreconcilable differences preclude continuation of the marriage.

28. Child custody was the central issue in this trial. By stipulation and order, Linwood Vereen, Ph.D., LPC, was ordered to perform a custody evaluation for the parties. He was neither appointed as the court's expert, nor ordered to provide a report to the Court of his findings and recommendations. Dr. Vereen performed the custody evaluation and made a report for the parties in March of 2011. Dr. Vereen's report was based on interviews with both parents, separate parent-child observations of the child and both parents, home visits and discussions with collateral contacts provided by the parties. *Defendant's Exhibit 3*. Dr. Vereen testified at trial and his testimony was consistent with his report.

29. The parties did not stipulate that he could offer opinion testimony as an expert witness and for lack of foundation his opinions concerning recommendations for parenting time and the best interests of the child were not permitted into evidence. *Rule 702 Idaho Rules of Evidence*.

30. Dr. Vereen found that both parents are caring and attentive to Colton. He testified that they are both effective parents who have demonstrated loving relationships with Colton. He considered the fact that the mother had been the primary care provider for the child while the father completed his medical school residency program. He also considered the distance between the parties' homes and felt that sharing custody was going to be challenging for both the parents and Colton because of the distance between their homes.

31. The mother informed Dr. Vereen that she was considering a move to Reno, Nevada or Carson City, Nevada after the divorce. She told him she intended to take Colton with her. Just prior to trial, the mother received a job offer to teach in

a charter school in Reno, Nevada. She plans to accept the position and move to Reno.

32. Colton has no extended family members living in the Pocatello or Chubbuck, Idaho area. He has an aunt, an uncle and a cousin in Reno, Nevada with whom he is acquainted. Most of the mother's family resides in Nevada, but many miles away from Reno. The father has arranged for child care in Pocatello with the child care provider Colton has known for years and has a pre-school in mind for the child. The mother will rely on her family, and/or an unidentified daycare provider, and/or pre-school in Reno to care for Colton while she works. Her plans for Colton at the time of trial were not in place.
33. The father has friends and neighbors available to help if needed with Colton in an emergency, or in his temporary absence. He plans to have Colton enrolled in the Early Learning Center at Idaho State University for pre-school while he is working. He will have a flexible schedule and time available to attend to Colton. The father receives the benefit of 48 paid leave days per year.
34. The mother's family, particularly the maternal grandparents had quite a bit of interaction with Colton in spite of the distance between Ely and Pocatello even before the separation. Colton knows Ely, Nevada and his maternal grandparents very well after residing there with them now for more than a year.
35. If the mother moves to Reno with Colton she has fewer family members nearby to assist her with Colton. In addition, Colton has not had the opportunity to come to know these family members as well as those he knows his family in Ely, Nevada. The mother does not know where she will reside in Reno. Colton has not spent

time in Reno since he was about one month of age. His grandparents will be residing three hours away in Ely. It is unfortunate that the maternal grandfather is suffering from terminal cancer. The court has to wonder how often Colton would be able to see his maternal grandparents over the next several months while he would be making the proposed adjustment to a new life in Reno.

36. In contrast, the father has a house and neighborhood for Colton to live in in Pocatello that Colton knows already. Colton is also familiar with his neighbors and has some friendships in Pocatello.
37. Colton has had his mother at home with him more frequently in Ely because she has not been employed fulltime. When he hasn't been with his mother he has been in preschool or with his grandparents. He does not have any particular neighborhood friendships in Ely. If the mother takes a job teaching, Colton will be in a new town, in a new apartment or house, in a new preschool, without his grandparents, and with new people around him that he does not know very well. The mother whose presence he has been able to count on every day will be working fulltime and away from him all day, most days for the first time that he will ever know or likely remember.
38. At trial, the mother testified that she was certain that she was going to move to Reno. However, she did not testify that she would move to Reno even if that meant leaving Colton behind in Idaho with the father if the court decided that it is not in Colton's best interests to move from Idaho. She seemed to assume that Colton would accompany her. Though she has a job offer and an opportunity to

start a new life in Reno. the father is currently staying in the town that Colton has known since birth.

39. The father has sacrificed financially to be able to spend time with his son and to be a part of his son's life. The father gave up a job in Moscow, Idaho to move closer to Colton. He gave up a \$40,000.00 bonus to move to Moscow and take the position he had. \$30,000.00 of which he and the mother received and spent and which he must repay. He gave up student loan debt forgiveness that would have erased approximately \$223,000.00 in student loan debt over the next eight years. The Moscow position was in an underserved rural area and his position in Pocatello is not. He will not receive student loan debt forgiveness in Pocatello. He gave up an annual salary of \$225,000.00 to take a faculty position with Idaho State University for an annual salary of \$156,000.00.
40. The parties each have their own perspective as to why their relationship fell apart but the central causes were a growing lack of physical and emotional intimacy between them, and the loss of a marital partnership. They became distant from one another. Some of the testimony at trial tried to fix blame, but they are both to blame. The mother struggled with depression and the father became absorbed in his education and future career as a physician. Communication on a meaningful level disappeared.
41. The father was the breadwinner and financial provider for the family even while attending school. It cannot be argued that the mother made unusual sacrifice. that she worked to put the father through medical school and deserves something in return. Together they both financially contributed to the marriage while he

obtained his education. The financial history of this marriage does not reveal an arrangement wherein the father devoted himself to his studies while the mother provided the bulk of financial support to feed the family, to pay the bills and to facilitate his education. The father was not a fulltime student while the mother served as the breadwinner throughout his schooling. They each contributed to meeting the needs of their household over the course of their marriage. *Plaintiff's Exhibit E.*

42. The mother did not serve a traditional stay-at-home mom role after Colton's birth providing most of the daily care and nurturing for the child. Due to the mother's post-partum depression, the parties resorted to part-time daycare after five (5) months to give the mother a break. The mother worked fulltime for Pocatello-Chubbuck School District No. 2 5 during the 2008-2009 and 2009 and 2010 academic years. Colton spent substantial time in work related child care in Pocatello.
43. The mother claims that the father removed himself from her life and Colton's life while he was finishing his residency. She says he was "never around". The father claims he was interacting and bonding with Colton when he was home and that he was not away from home and Colton as much as the mother claims.
44. The father is described for lack of a better term, as a workaholic by the mother. Yet, without his dedication to work and his financial contribution to the marriage, they would have experienced greater financial difficulty, enjoyed a lesser standard of living as a family, and incurred more post-education debt. The mother has worked on and off and her greatest earnings and financial contributions to the

marriage occurred while she was teaching in Reno while he attended medical school. Such is evidence of a typical marital partnership.

45. In terms of their credibility as witnesses, the father has a more believable account of the breakdown of the marriage and how the Colton has been reared since birth. He testified that he was more involved in Colton's life and nurturing and caring for the child than the mother gives him credit for. He was complimentary of the mother's parenting abilities. He just wants to share time with Colton with her. He wants to continue to be a part of Colton's life rather than excluded by distance and the mother's whims.

46. The mother was less believable in part because she contradicted herself. She said the marriage was a good marriage, then, she admitted a lack of intimacy or communication for the last several years of the marriage. She was confiding in friends about her unhappiness with her marriage. She called family members to testify about how abrupt, cold and distant her husband had become in the later years of the marriage. Yet, she asserted that she was blindsided by the father's request for a divorce. She minimized the father's role as both a parent and provider and magnified what she perceived as her role as primary care giver and the woman who put her husband through medical school. The mother was not as complimentary of the father's parenting abilities.

47. The mother has not by action during the pendency of these proceedings, or by word through her testimony shown a desire to share time with Colton with the father. In fact, the move to Reno evidences a desire to put greater distance between Colton and his father and to create greater difficulty for the father to be a

real part of Colton's life. The mother testified basically that she did it all with respect to raising, feeding, bathing, diapering, nurturing, and educating the child. According to her, the father was almost never around for her and Colton. But, she also testified that the father is a good dad. Her inconsistent testimony is difficult to understand.

48. It was also revealed at trial that the mother suspects that the father has left her for another woman. She has gone so far as to hire a private detective to try to prove that point. The father denies any prior or current relationship with another woman beyond a friendship he has with a co-worker and the mother's evidence of his suspected infidelity does nothing to prove or confirm her suspicions. The private detective did not testify, so he or she must have little, if any information to share about what he or she has learned.

49. There is always a certain amount of posturing and presenting a person's best side at trial. The court had the opportunity to observe the demeanor of these parents throughout the trial, when they were testifying and when they were at counsel table. The father came across as genuine and honest about himself, about his failings and his conduct in many respects. He is a good father trying to find a way to share time with his child with the mother. Dr. Vereen also saw positive things in his parenting of and relationship with Colton and his desire to spend significant quality time with his son.

50. In general, the mother was the least credible witness of the parents. When the mother testified that she wanted to share custody of the child and access to the child with the father, she was not believable. The difficulties the father

experienced and endured trying to see his son during the pendency of these proceedings is testimony to the mother's resistance to fostering a relationship between father and son. It is also a testimony to the father's commitment to be a parent to Colton. He could have given up, but chose not to.

51. The mother is a nurturing parent to Colton and a good mother except for her demonstrated unwillingness to include the father in Colton's life. Dr. Vereen saw positive things in her parenting of Colton. But, it appears to this court that she seems too willing to claim custody of Colton as if he were a possession, rather than consider ways to co-parent Colton with the father after the divorce. The mother's actions and desire to move further away demonstrate either a conscious or unconscious willingness to diminish the relationship that Colton has and can have with his father.
52. The mother must learn to accept that the father has an equally important role in Colton's life. The move to Reno is as much about control over the child as it is about an honest desire to live in Reno, Nevada, or to reside anywhere but Pocatello, Idaho.
53. The mother testified that she does not like living in Pocatello and that neither she nor the father planned to stay in Pocatello after his residency. The divorce has also changed the father's plans. He has sacrificed greatly to return to be in a place where he can have greater access to his son.
54. The father can and is providing health insurance for Colton's benefit through his employment.

55. Neither party will have much discretionary income following the divorce based upon the total sum of their debts and with the additional requirement of monthly child support payments, regardless of how the court divides their debts and regardless of who is paying or receiving child support.
56. The mother's actual gross annual income for the past twelve months cannot be determined with precision based upon the evidence. The mother has not been fulltime employed during the separation and has not really sought employment in earnest. She did not state what she had earned during the separation and she did not provide complete records of her earnings. The court can only speculate as to her actual income during the separation.
57. The mother has a college degree and is certified to teach in Idaho and Nevada. It is speculative at best, to assume that she could have found more substitute teaching work or other employment in Ely, Nevada. The mother offered little evidence about her efforts to find employment during the first few months of the separation. She applied for no work other than teaching work when she got around to looking for employment. The court finds that the mother has been voluntarily under-employed during the separation.
58. The father can be and has been a financial provider for this child. He paid support directly to the mother during the separation without a court order to do so and he paid the bulk of the parties' debts.
59. The father's current gross annual income is \$156,000.00. The mother has found employment in Reno, Nevada and intends to accept the teaching position she has been offered. The gross annual income is a starting salary of \$31,332.00. She is

challenging that salary offer to obtain a greater salary because of prior years of teaching experience.

60. The mother seeks retroactive child support and spousal maintenance, even though she was in fact under-employed, received \$9850.00 as child support, and paid only a small fraction of the parties' debts and monthly obligations. She failed to provide a precise income figure for herself with which to make any child support calculations. This court will not impute a fulltime minimum wage figure to her as requested in order to manufacture an interim child support figure for purposes of coming up with a fictional arrearage. The father fully supported both the child and the mother during this separation and the court finds that interim child support and spousal maintenance claims under the facts of this case are without merit and are not based in reality.

61. There was relatively little testimony or other evidence admitted addressing property and debt division, the character of the parties' property and debts, or the value of the parties' property. There was no testimony that any asset of the parties was the separate property of either party. The court finds that all of the parties' property is community property; that all of the parties' debt is community debt; and that it is virtually impossible to make a precisely equal division of the parties' community property and community debt without causing post-divorce hardship upon the parties and their creditors. The mother's lack of sufficient income to service much of the parties' community debt is a serious impediment to an equal division of assets and debts. The parties have more debts than assets. Considering the financial circumstances of the parties, a fair and practical, though

unequal division of the parties' community assets and community debts can be achieved.

62. The parties' pleadings and testimony evidenced basic agreement concerning property division. The following assets, for which no evidence of value was offered, are to be divided by the agreement that is revealed in the comparison of their pleadings:

To the Plaintiff	To the Defendant
2006 Chevy Silverado	2008 Toyota Highlander
Firearms (except .32 pistol)	.32 pistol
Power tools	Wife's jewelry & clothing
Lawn and garden tools	Art objects
Bed	Washer
Laptop computer	Dryer
Freezer	Couch
Husband's clothing & jewelry	Bed
Other property in his possession	Other property in her possession

63. The parties also agreed upon how to divide their community debts.

To the Plaintiff	To the Defendant
All debt he incurred after separation	All debt she incurred after separation
ICCU debt (\$25,000)	Wife's student loan (\$13,000)
Toyota Credit Services (\$27,000)	
Discover Card (\$2,000)	
Husband's student loan (\$240,000)	
Moscow Family Medicine and Gritman Hospital bonus repayment (\$30,000)	
ATT iPhone contract	

64. A division of the parties' community property and community debt can be achieved by utilizing the parties' agreement because the father is in a better position to service the debt of the parties. This division of assets and debts is not a substantially equal division, but it is practical and takes into account the realities

of the current employment status of each of the parties, their ability to service their debts, and their lack of significant assets.

65. The father does not have sufficient funds available with which to pay the spousal maintenance sought by the mother or to pay any of her costs and attorney fees due to the disproportionate division of the parties' property and debt. He also owes his attorney costs and attorney fees incurred in these proceedings.

Plaintiff's Exhibits C and D, Defendant's Exhibit 1.

66. The parties have offered no evidence of retirement or investment accounts to divide between them so the court finds that they have no such accounts.

67. The parties have disclosed no information about the balances in their savings or checking accounts and have not sought to divide the existing balances in their respective savings and checking accounts so the court finds that each should keep their respective bank accounts and whatever balances each of these accounts hold.

68. There were no claims made that community income was not accounted for. There were few foundational exhibits and no testimony offered in support of any potential claims for "unaccounted for" community income since the separation. The court therefore finds that the parties' earnings during the separation were spent for community purposes.

69. The court finds as fact that the mother has sufficient property to provide for her reasonable needs and that she is able to support herself through employment.

LEGAL STANDARDS TO BE APPLIED

Divorces may be granted for a number of causes, including irreconcilable differences. *I.C. 32-603(8)*.

The children's welfare and best interest is of paramount importance in determining custody of children in a divorce action. *Hoskinson v. Hoskinson, 139 Idaho 448, 80 P.3d 1049 (2003)*. It has long been the law of the State of Idaho that the best interest of the children is the sole matter with which the court is concerned and their custody is of supreme importance regardless of the claims or the personal desires of the parents and even the wishes of the child must yield to the determination of what is best for the child's ultimate good. *Gustaves v. Gustaves, 138 Idaho 64, 57 P.3d 775, (2002)*; *Poesy v. Bunney, 98 Idaho 258, 561 P.2d 400 (1977)*; *Larkin v. Larkin, 85 Idaho 610, 382 P. 2d 784 (1963)*; *Tobler v. Tobler, 78 Idaho 218, 299 P.2d 490 (1956)*.

The legislature has provided by statute, a non-exhaustive list of factors for the trial court to consider when determining what is in the best interest of a child:

- (a) the wishes of the child's parent or parents as to his or her custody;
- (b) the wishes of the child as to his or her custodian;
- (c) the interaction and interrelationship of the child with his or her parent or parents, and his or her siblings;
- (d) the child's adjustment to his or her home, school, and community;
- (e) the character and circumstances of the individuals involved;
- (f) the need to promote continuity and stability in the life of the child; and
- (g) domestic violence as defined in section 39-6303, Idaho Code, whether or not in the presence of the child.

I.C. 32-717.

The trial court must avoid considering irrelevant factors, avoid assigning too much weight to any particular factor, and base its findings upon substantial and competent evidence. *Dymitro v. Dymitro, 129 Idaho 527, 927 P. 2d 917 (App. 1996)*.

Custody is committed to the discretion of the trial court. *Roberts v. Roberts*, 138 Idaho 401, 64 P.3d 327 (2003).

Setting a visitation schedule rests in the discretion of the trial court. *Miller v. Mangus*, 126 Idaho 876, 893 P.2d 823 (App. 1985).

The preponderance of the evidence standard applies to custody and visitation determinations. *Hoskinson v. Hoskinson*, 139 Idaho 448, 80 P.3d 1049 (2003).

The court may select a custody schedule different than that proposed by either of the parties, *Milliron v. Milliron*, 116 Idaho 253, 255-56, 775 P.2d 145 (App. 1989), or from that recommended by an expert. *Levin v. Levin*, 122 Idaho 583, 586, 836 P.2d 529 (1992).

The court may consider bonding between the parents and the children. *Weiland v. Ruppel*, 139 Idaho 122, 124, 75 P.3d 176 (2003).

A custody order will not violate a parent's right to travel by restricting the move of a child out of state when the benefit the child would derive by staying near the parent who remains in Idaho outweighs the infringement on the moving parent's liberty. *Weiland v. Ruppel*, 139 Idaho 122, 125, 75 P.3d 176 (2003).

A parent has a fundamental liberty interest in maintaining a relationship with his or her child. *Doe v. Department of Health & Welfare*, 137 Idaho 758, 760, 58 P.3d 341 (2002); *Troxell v. Granville*, 530 U.S. 57 (2000); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

It is appropriate for the court to consider the parents' work schedules and the need for third-party child care in a child custody determination, to the extent that such circumstances affect the well-being of the children. It can be one of many factors that

assists the trial court in tailoring a custody order that best serves and promotes the welfare of the children. *Silva v. Silva*, 142 Idaho 900, 905-06, 136 P3d 371 (App. 2006).

There is a presumption that joint custody is not in the best interests of a minor child if one of the parents is found by the court to be a habitual perpetrator of domestic violence. *I.C. 32-717(B)(5)*.

In Idaho, the moving parent has the burden of proving relocation would be in the best interests of a child. *Roberts v. Roberts*, 138 Idaho 401, 405, 64 P.3d 327 (2003); *Albright v. Albright*, 147 Idaho 752, 755, 215 P. 3d 472 (2009).

Child support awards rest in the sound discretion of the trial court. *Margairez v. Siegal*, 137 Idaho 556, 558, 50 P.3d 1051 (App. 2002).

The Idaho Child Support Guidelines must be utilized to determine the appropriate amount of child support for minor children. *Rule 6(c)(6) IRCP*.

The assignment of the income tax exemption(s) to the parent who receives the greater tax benefit is required absent a finding that the circumstances justify a departure from the child support guidelines. *Idaho Child Support Guidelines, Section 3, Rule 6(c)(6)*; see also, *Silsbey v. Kepner*, 140 Idaho 410, 411-12, 95 P.3d 28 (2004).

The court must set child support with a deduction for the income tax exemptions for the children. The court may allocate the income tax exemption to the non-custodial parent and direct the custodial spouse to execute a written waiver to that effect. *Rohr v. Rohr*, 118 Idaho 689,693-95, 800 P.2d 85 (1990).

If the needs or resources of the spouses are “likely to change” in the future, there is no logical reason to deprive the trial court of authority to prescribe a payment schedule containing future adjustments, and the court may set child support with an automatic

future child support adjustment. *Keller v. Keller*, 130 Idaho 661, 664, 946 P.2d 623 (1997). The court can set child support increases, but must make findings as to the future needs of the children and the abilities of the parents to meet those needs. *Brazier v. Brazier*, 111 Idaho 692, 699-700, 726 P.2d 1143 (App. 1986).

It is proper for the court to set child support in accordance with a payor's earning capacity when the payor is voluntarily under-employed. *Atkinson v. Atkinson*, 124 Idaho 23, 25, 855 P.2d 484 (App. 1993). Income may be imputed to a voluntarily under-employed parent based upon education and potential income as if employed fulltime. *Kornfield v. Kornfield*, 134 Idaho 383, 386, 3 P.3d 61 (App. 2000). However, full-time employment need not be attributed to a student. *Browning v. Browning*, 136 Idaho 691, 694, 39 P.3d 631 (2001). Potential income for child support purposes is not strictly limited to the amount a parent has earned in the past, but rather can be based upon earning potential as derived from their work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. *Ireland v. Ireland*, 123 Idaho 955, 958-59, 855 P.2d 40 (1993). The court need not limit income to the salary earned at the time of the hearing if the obligor is working for less than his potential income based on his work history, occupational qualifications, and prevailing job opportunities, even if travel beyond his community is required. *Margairez v. Siegal*, 137 Idaho 556, 558-59, 50 P.3d 1051 (App. 2002).

The determination of value of community property is within the discretion of the trial court. *Chandler v. Chandler*, 136 Idaho 246, 249, 32 P.3d 140 (2001); *Hooker v. Hooker*, 95 Idaho 518, 522, 511 P.2d 800 (1973).

The determination of the characterization of property is within the discretion of the trial court. *Matter of Estate of Eliason*, 105 Idaho 234, 238-37, 668 P.2d 110 (1983).

Earnings of the parties during separation and up to the date of divorce are community property. *Desfosses v. Desfosses*, 120 Idaho 354, 360-61, 815 P.2d 1094 (App. 1991); *Suter v. Suter*, 97 Idaho 461, 466-671, 546 P.2d 1169 (1976). The court must still review income and expenses incurred during the pretrial separation so there has been a proper accounting. *McAfee v. McAfee*, 132 Idaho 281, 292, 971 P.2d 734 (App. 1999).

Unless shown to the contrary, expenditures made on indebtedness incurred during the marriage are presumed to be for the benefit of the community. *Gardner v. Gardner*, 107 Idaho 660, 662, 691 P.2d 1275 (App. 1984). A debt incurred during the marriage is presumed to be a community debt. *Simplot v. Simplot*, 96 Idaho 239, 246, 526 P.2d 844 (1974). There is a rebuttable presumption that a debt incurred during the marriage is a community debt. *McAfee v. McAfee*, 132 Idaho 281, 291, 971 P.2d 734 (App. 1999).

Community property exists only as long as the community exists and it necessarily follows that the date of valuation of an asset is the date of entry of the decree of divorce. *McAfee v. McAfee*, 132 Idaho 281, 289, 971 P.2d 734 (App. 1999); *Desfosses v. Desfosses*, 120 Idaho 354, 358, 815 P.2d 1094 (App. 1992).

The trial court must find the value of each material asset and debt. Material means of a “sufficient amount to affect a substantially equal division”. *Donndelinger v. Donndelinger*, 107 Idaho 431, 435-36, 690 P.2d 366 (App. 1984).

Unless there are compelling reasons, there shall be a substantially equal division of value of community property considering debts between spouses. *I.C. 32-712*. When

there is conflicting evidence regarding property division, it is the trial court's task to evaluate the credibility of the witnesses and to weigh the evidence presented. *Huerta v. Huerta*, 127 Idaho 77, 79, 896 P.2d 985 (App. 1995). Each community asset need not be divided equally, as long as the value of the community property as a whole is substantially equal. *Ross v. Ross*, 117 Idaho 548, 554, 789 P.2d 1139 (1990). The trial court determines the extent and value of the community property and then deducts the total of the community debts to arrive at a net value of the community estate. The trial court then awards the property in such a manner as to divide that net value between the spouses. *McGrew v. McGrew*, 139 Idaho 551, 559, 82 P.3d 833 (2003).

Generally, community property will be divided in a substantially equal manner unless there are compelling reasons otherwise. *Maslen v. Maslen*, 121 Idaho 85, 88, 822 P.2d 982 (1991). Where one spouse is in a better position to pay the debts and maintain a positive cash flow following divorce, and the other spouse's expenses will exceed his monthly income following the divorce, an unequal division of the marital estate is permitted. *Tisdale v. Tisdale*, 127 Idaho 331, 333, 900 P.2d 807 (App. 1995).

Upon dissolution of the community upon divorce, each spouse should have immediate control of his or her share of the community property, or at least within a reasonable time. *Carr v. Carr*, 108 Idaho 684, 688, 701 P.2d 304 (App. 1985); *Ramsey v. Ramsey*, 96 Idaho 672, 679, 535 P.2d 53 (1975).

Spousal maintenance is a right created by statute and may be awarded when there is substantial competent evidence to support an award. The statute provides as follows:

1. Where a divorce is decreed, the court may grant a maintenance order if it finds that the spouse seeking maintenance:

- (a) Lacks sufficient property to provide for his or her reasonable needs; and
 - (b) Is unable to support himself or herself through employment.
2. The maintenance order shall be in such amounts and for such periods of time that the court deems just, after considering all relevant factors which may include:
- (a) The financial resources of the spouse seeking maintenance, including the marital property apportioned to said spouse, and said spouse's ability to meet his or her needs independently;
 - (b) The time necessary to acquire sufficient education and training to enable the spouse seeking maintenance to find employment;
 - (c) The duration of the marriage;
 - (d) The age and physical and emotional condition of the spouse seeking maintenance;
 - (e) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance;
 - (f) The tax consequences to each spouse;
 - (g) The fault of either party.

I.C. 32-705.

Spousal maintenance is not awarded as a matter of right but only at the discretion of the trial court after a showing of need. *Ross v. Ross*, 103 Idaho 406, 648 P.2d 1119 (1982). The standard applied in awarding spousal maintenance is due consideration of the correlative needs and abilities of both parties. *Id.* at 411, 648 P.2d at __; *Stewart v. Stewart*, 143 Idaho 673, 152 P.3d 544 (2007). Maintenance is designed solely for the support of a dependent spouse after a showing of need. *Campbell v. Campbell*, 120 Idaho 394, 816 P.2d 350 (App. 1991). "The primary consideration in deciding the appropriateness of an award of maintenance is the financial condition of the parties". *Tisdale v. Tisdale*, 127 Idaho 331, 900 P.2d 807 (App. 1991)

The trial court's decision of whether to award attorney fees pursuant to I.C. 32-704 is discretionary. *Antill v. Antill*, 127 Idaho 954, 958, 908 P.2d 1261 (App. 1996); *McAfee v. McAfee*, 132 Idaho 281, 293, 971 P.2d 734 (App. 1989). Under I.C. 32-704(3), the financial resources of the parties must be considered then the factors under

I.C. 32-705 must be applied and specific findings made on the issue of an award. *Antill v. Antill*, 127 Idaho 954, 958, 908 P.2d 1261 (App. 1996). An award under I.C. 32-704(3) is not dependent on who prevails. *Perez v. Perez*, 134 Idaho 555, 558, 6 P.3d 411 (App. 2000).

Parties who enter stipulations are bound thereby. *Ratliff v. Ratliff*, 129 Idaho 422, 425, 925 P.2d 1121 (1996).

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, applying the legal standards above, recognizing and exercising its discretion, the court enters the following conclusions of law:

1.

The court has continuing jurisdiction over the issues of child custody and child support, including enforcement of orders for support, for payment of medical expenses and for provision of health insurance for the benefit of the child during his minority. *I.C. 32-706*. The State of Idaho is the “home state” and was the place of residence of the child, the Plaintiff (the father) and the Defendant (the mother) at the time of the parties’ separation in June 2010. Both parties filed for divorce in Idaho within five (5) weeks of their separation. The parties stipulated that Bannock County was the proper venue for this divorce action. The father later challenged venue and the court concluded then that venue was proper in Bannock County. Venue is proper and this court has jurisdiction under *I.C. 32-1103*, to enter a decree of divorce, an order dividing community property and debt, and a child custody and child support order in this matter.

2.

The parties are entitled to a divorce from one another. Both parties petitioned for divorce on the basis of irreconcilable differences. It is clear that their marital relationship is broken beyond repair. While it would appear that the parties were stipulating to the grounds for divorce, the mother and her counsel explored the “sudden” breakdown of the marital relationship and spent considerable time and effort trying to convince this court that the marriage was not so bad and that the father’s desire for a divorce was and still is beyond the mother’s comprehension. It is however clear after nearly four full days of trial that the parties’ differences are irreconcilable. The court concludes as a matter of law that the parties are entitled to a decree of divorce from one another on the grounds of irreconcilable differences.

3.

The parties are the parents of one minor child, Colton Clair. I.C. 32-717 grants the court the ability to “give such direction for the custody, care and education of the child of the parties as may seem necessary or proper in the best interests of the child.” Pursuant to the evidence, it is in the best interests of the minor child to remain in Idaho under a shared custody arrangement with both of his parents. The mother failed to prove by a preponderance of the evidence that the proposed move for the child from Idaho to Reno, Nevada is in Colton’s best interests.

There is a significant physical distance between the mother’s proposed residence and the father’s residence and distance is one factor the court considered when evaluating the move, whether it was her temporary move to Ely, Nevada, or her intended move to Reno, Nevada.

There was a joint prohibitive order entered in this case prohibiting either party from removing the child from Idaho without leave of the court. The mother did not seek this court's permission to remove the child from this state to Ely, Nevada. The father also did not seek to have her return the child to Idaho either.

The mother testified that she had no choice but to move home with her parents during the divorce. She blames the father for putting her in the position that she had to move home temporarily because she had resigned her teaching position. They had sold the home in Pocatello. The father was prepared moved to Moscow to start his new job. In addition, she testified that staying in Pocatello, Idaho was not part of the family's plan and that she did not like living in Pocatello and prefers to live in Nevada where she was born and raised and where most of her immediate family is located.

The father also did not plan to live in Pocatello, Idaho after completion of his medical residency. The father returned to Pocatello to reduce the distance between his home and the mother's home. Custody exchanges between Ely, Nevada and Moscow, Idaho proved difficult in part due to the distance. The father gave up a lot financially by returning to Pocatello to take another job in order to improve his access to and his ability to spend time with Colton.

This court must examine where Colton should live, not where the mother or the father should live. Regardless of whose fault it may be for the separation, the divorce and the temporary living arrangement that followed separation, it is the court's obligation to decide where Colton should live in the future.

Colton has two good nurturing parents who love him and whom he loves. A permanent move to Nevada will likely damage the child's bond with his father if he is

allowed to move with the mother. If the mother should move to Nevada without Colton, there is no doubt that her move will likely damage the child's bond with her. But, the court cannot prohibit a parent from moving out of state.

The court can only determine if it is in the best interest of the child to move with one parent, or remain in Idaho in cases such as these. The court concludes that it would serve this child's best interests to have both parents living in near-by communities which would allow Colton frequent contact and the opportunity to maintain healthy bonds and relationships with both of his parents.

Since the mother stated a clear desire and intention to move to Reno, Nevada with the child, this court shall enter alternative orders. First, the mother did not prove by a preponderance of the evidence that it is Colton's best interests to move from Idaho with her. Therefore, if she moves, the court concludes and will order that Colton will primarily remain in Pocatello, Idaho with the father and visit her in Nevada. Second, if the mother were to promptly return to Pocatello within the next four months, the mother and father together proved by a preponderance of the evidence and the court concludes that a 65/35 shared custody arrangement between them will serve Colton's best interests. Third, if the mother were to return to Pocatello by August 15, 2012, the court concludes that a slightly different shared custody arrangement that being an equal shared custody arrangement will serve Colton's best interests.

Since the mother is apparently choosing to work and to reside in Reno, Nevada, the court had to decide if Colton would reside there with her primarily, or remain in Idaho in his father's primary care. The court concludes that shared custody is simply

impractical when Colton begins school in August 2012 if one parent is in Reno and the other in Pocatello.

The father proposes sharing custody on a three week rotating basis until Colton starts school in August 2012. He proposes that Colton begin residing with him primarily in Pocatello when the child starts school, if the mother will not return to Pocatello. The court concludes that it is not in Colton's best interests to travel such great distances so frequently.

These parents propose yet another major adjustment for this young child. There is also no good reason to delay the transition to the father's primary care for one more year before Colton begins school. Why require Colton to move a third time? He has moved to Ely. The mother would move him to Reno. The father would bring him back to Pocatello in a year. The mother and father would subject the child to frequent extended travel between Reno and Pocatello. Winter travel could be dangerous and problematic.

If it is in Colton's best interests to remain in Idaho in the father's care next year, it must be so this year. The court concludes that if the mother refuses to return to the Pocatello or Chubbuck, Idaho area, it is in Colton's best interests that he will reside primarily with the father in Idaho with provisions to promote access and regular visitation with the mother in Nevada. In that event, Colton will reside with father in Idaho for more than 75% of the overnights and a standard child support calculation will apply.

The mother could decide to return to Pocatello, Idaho when faced with reality of moving to Reno without Colton. The mother has been the primary care giver for Colton throughout his life and particularly during the past fourteen months. If she relocates to Pocatello, Idaho within 120 days of this order, the court concludes that it is in Colton's

best interests that custody of the child should be shared by the parents on a 65/35 time sharing basis with the mother having sixty five percent (65%) of the overnight custody with the child and the father having thirty five percent (35%) of the overnight custody with the child.

If within 120 days of this order, the parents both are residing in Pocatello, Idaho, the court finds that it is in the best interests of the child to create and utilize a rotation of custody that involves nine (9) consecutive days with the mother followed by five (5) consecutive days with the father instead of a one week in, one week out rotation. The mother will continue to serve as the primary custodian. Colton will not be bouncing back and forth between households and living out of suitcases and/or travel bags. Each parent's residence will be more like a home for him. For the reasons set forth herein in these findings of fact and conclusions of law, if the mother returns to Pocatello, Idaho, custody shall be shared on a 65/35% basis and in that event a shared custody child support calculation shall apply.

If the parents are to reside at a distance with the mother in Reno, Nevada and the father in Pocatello for the next four months, or until Colton begins school in August 2012, and the court concludes that custody of the child should be shared by the parents on a 50/50 equal timesharing basis with the father having fifty percent (50%) of the overnight custody with the child and the mother having fifty percent (50%) of the overnight custody with the child on a weekly rotation between the parents' homes. If Colton must spend in excess of four months in his father's primary care making the adjustments he will have to make in his mother's absence, it is unfair to Colton to have to switch to a custody schedule that ignores the father's efforts to be the primary care giver

and the routine that has been established for Colton here in Pocatello. In the event of an equal shared custody arrangement in Pocatello, a shared custody child support calculation shall also be applied.

If the mother does not relocate to Pocatello within a year of the entry of the decree of divorce, it is unfair to Colton to have any switch in the custody schedule that ignores the father's efforts to be the primary care giver and the routine that has been established for Colton here in Pocatello absent a showing of a substantial, material change in circumstances. The mother may now have contractual obligations for employment and housing in Reno. Twelve months gives her time to decide if living in Reno is more important to her than being a regular presence in Colton's life in Pocatello. The court does not believe it is in Colton's best interests to leave the equal custody option open indefinitely or beyond a year because the longer she is apart from Colton, the more difficult the transition will likely be for the child to an equal shared custody arrangement. The child's daily routines will be established and the continuity and stability of his life disrupted if the mother can return whenever she wants after a year and demand equal shared custody.

It is clear that the wishes of the parents differ. The father petitioned the court for equal shared custody of the child, or primary custody of the child in Idaho, if the mother moves out of Idaho permanently. The mother petitioned the court for primary custody of the child and for an order allowing her to take him with her to reside in Nevada.

The court concludes that the wishes of the parents are inconsistent, are not supported by the evidence and that their wishes and proposals do not promote the best interests of the child. The parents' wishes and proposals for custody do not really assist

the court in determining the child's best interests other than the fact that the father is apparently willing to share custody with the mother if she remains in Idaho. Shared custody in Pocatello would be the best choice for Colton. I.C. 32-717(1).

The court concludes that the child is too young for the court to consider his wishes. There was no substantial evidence that indicated what his wishes are. The court concludes as a matter of law that the wishes of the child do not assist the court in ruling on custody issues in this case. I.C. 32-717(2).

The interaction and interrelationship of the child with his parents favors shared custody in Idaho with mother continuing to provide the primary care for the child if she promptly returns to Pocatello within the next four months. This child has no siblings. Both parents are capable of sharing custody, though the mother seems less willing to do so. During the separation, the mother has not demonstrated the ability or willingness to share custody with the father from afar. Now she wants to move even further away. In Idaho, the parents will have the opportunity to share custody in ways they could not during the separation because of the distance between them.

Both parents have good, loving, nurturing relationships with their child that need to be fostered and maintained. Colton does reasonably well in the care of both of his parents. The court concludes as a matter of law that the interaction of the child with his parents assists the court in ruling on custody and favors shared custody in Idaho with both parents. The child knows his father and his mother. The distance between the father and child created by the mother's move will not likely have a positive effect on Colton or his relationship with his father which is one reason why the move is not in Colton's best

interests. The preponderance of the evidence that addresses the interrelationship between the child and both parents favors shared custody here in Idaho. I.C. 32-717(3).

The children's adjustment to home, school and community also favors returning the child to Idaho under a shared custody arrangement. The mother removed the child to Ely, Nevada. He has resided there for a year and two months. The mother has been less than cooperative with time sharing and visitation between the father and Colton. But, now the mother wants to uproot the child and move him to Reno, Nevada, a community he does not know.

Colton resided most of his life in Pocatello, Idaho before the separation. Pocatello is where his father will continue to reside. Though he is only four years old, he knows Idaho as his home and Ely, Nevada as his home. He is not in school yet, but he has attended preschool. He is exceptionally bright for his age. He has spent time in child care. He knows his child care providers in Pocatello and Ely. The mother would move him to Reno where he does not know his child care providers or his preschool.

Colton does not have a lot of family or community ties in the Pocatello community because of his age. He is young and probably could adjust to a move to Reno, but only a move that involved both parents moving with him. Colton knows his family members in Ely. He certainly has had the opportunity to come to know his maternal grandparents very well as he has resided with them since the separation began. But, now the mother wants to move him away to Reno.

Colton is familiar with his father's new home in Pocatello and his adjustment to community will best be served by remaining in the father's care in Idaho if the mother chooses to move to Reno and not relocate to Pocatello. At his young age, Colton can

only know little about what community may have to offer him at this time in Reno. His mother will be working full time and he will be adjusting in the care of strangers and in the absence of his father and grandparents. Idaho provides a familiar environment and a familiar routine in child care. The court concludes as a matter of law that consideration of the child's ties to home, school and community that Colton has stronger ties to Pocatello than Reno. I.C. 32-717(4).

The character and circumstances of the individuals involved gives the court some concern. The mother has demonstrated a tendency to withhold the child's access to the father. She is willing to take the child further away from the father and create not only distance between the child and the father, but distance between the child and the maternal grandparents. The mother is a good mother. She is caring and nurturing. She is willing to provide financial, educational and emotional support for the child. She just does not want to share the child with the father.

The father is emotionally removed from the mother, but not from his child. He is thoughtful and patient when it comes to parenting the child. He is genuinely interested in making sure that the child has frequent access to both parents and in sharing custody and in providing financial, educational and emotional support for the child.

They are both good parents apart from one another and generally good parents can share custody of a child after divorce. The father is happier now that he and the mother have separated, but the mother is still hurt, angry and unwilling to let go of past issues. The court is not persuaded that the mother's emotional issues or her propensity to dwell on the past impacts her ability to care for the Colton at this time so long as she focuses on the child's emotional needs and not her own. If she cannot put this failed

marriage behind her, it may seriously impact her ability to co-parent under a shared custody arrangement in the future. The court concludes as a matter of law that character and circumstances of the individuals involved leads the court to conclude that shared custody in Pocatello, Idaho, with the mother taking the role of primary caretaker under a 65/35% overnight custody rotation serves the best interests of the child. The other alternatives for custody are in Colton's best interests based upon the when and if the mother should decide to return or not return to Pocatello. I.C. 32-717(5).

The court next looks to the need to promote continuity and stability in the life of the child. This child should continue to do well under a shared custody arrangement with substantial access to both of his parents in the community he knows in Pocatello, Idaho. Uprooting Colton and moving him again to Reno, Nevada does not promote continuity and stability in his life. The court is most concerned about the child's ability to adjust to the proposed radical change that would accompany a move to Reno without the father and without his maternal grandparents' daily presence. If permitted to move with the child, the mother offers speculative possibilities of easy adjustments to a new community, with different family members, new relationships, in a new home, in a new neighborhood, in a new child care, in a new preschool, and with new friends, all far distant from the people and places he has known. Should the mother elect to move, the mother will be taking on the role of self-supporting single mom with no one else in the home to assist her for the first time in Colton's life. All things considered as to continuity and stability in the life of the child, the mother failed to prove by a preponderance of the evidence that a move to Reno, either by herself, or with Colton, would serve the child's best interests.

The court concludes as a matter of law that if the mother moves out of state, the child should reside primarily with the father in Pocatello, Idaho, with summer visitation in Reno and holiday visitation as will be set forth in Exhibit A hereto. The promise of adjustment and adaptation to a new home, in a new community, with new friends and family does not outweigh the reality that the child will be in a stable known environment in Pocatello, Idaho, a place Colton knows as home. An order granting both parents joint legal and physical custody, with the child to reside primarily with the father in Pocatello, Idaho with parenting provisions as set forth in Exhibit A hereto promotes about as much continuity and stability in the child's life as one could hope for if the mother chooses to move and suddenly absent herself from his young life. Colton will at least have one parent and a community he knows. I.C. 32-717(6).

There was no allegation of domestic violence between these parties. The presence of past domestic violence is a factor upon which the court cannot draw any conclusions in this case. Neither parent was or is a habitual perpetrator of domestic violence. I.C. 32-717(7).

The guidepost for custody decisions is the “**best interest of the child**”. The court has both discretion and statutory guidance. The standard of proof applied as to all factual issues was a preponderance of the evidence standard. The court turned to Idaho Code 32-717 for guidance. The court considered the evidence and all relevant factors in turn, and considered the case law and statutes stated above and exercised its discretion in reaching its conclusions.

4.

Neither party is currently paying child support under a court order. Pursuant to the evidence, the court concludes as a matter of law that only a prospective child support order should enter. A retroactive support order for child support and spousal maintenance was sought but it is clear from the evidence that the child and the mother were fully supported by the father during the pendency of these proceedings

Based upon an actual gross annual income figure of \$156,000.00 for the father and an actual gross annual income of \$31,312.00 for the mother as a full time teacher in Reno, with adjustment for health insurance premiums for the child to be paid by the father and assignment of the annual state and federal income tax deductions for the child to the father, a standard child support calculation with the Colton residing primarily with the father yields a monthly child support obligation, payable from the mother to the father in the monthly sum of \$244.00 payable from August 1, 2011 until further order of this court. See, Exhibit C attached.

The mother may choose to return to reside in Pocatello. She shall have thirty days to state her intentions in writing and provide them to the father. If the mother chooses to return to Pocatello within four months, based upon an actual gross annual income figure of \$156,000.00 for the father and a potential gross annual income of \$31,312.00 for the mother as a full time teacher in Idaho, with adjustment for health insurance premiums for the child to be paid by the father and assignment of the annual state and federal income tax deductions for the child to the father, a shared child support calculation with Colton residing with the mother for 65% of the overnights and 35% of the overnights with the father, yields a monthly child support obligation, payable from the father to the mother in

the monthly sum of \$1016.00 payable from the first day of the month that the mother establishes residence in Pocatello. See, Exhibit D attached.

The mother may choose to return and establish her residence in Pocatello between December 15, 2011 and August 15, 2012. She shall state her intentions to relocate to Pocatello in writing and provide them to the father. If the mother chooses to return to Pocatello after four months and before one year from the date of the decree of divorce, based upon an actual gross annual income figure of \$156,000.00 for the father and a potential gross annual income of \$31,312.00 for the mother as a full time teacher in Idaho, with adjustment for health insurance premiums for the child to be paid by the father and assignment of the annual state and federal income tax deductions for the child to the father, a shared child support calculation with the Colton residing with the mother for 50% of the overnights and 50% of the overnights with the father, yields a monthly child support obligation, payable from the father to the mother in the monthly sum of \$677.00 payable from the first day of the month that the mother establishes residence in Pocatello. See Exhibit E attached.

Monthly child support payments shall be made through Idaho Child Support Receipting, P.O. Box 70008, Boise, Idaho 83707, commencing August 1, 2011 consistent with this order.

If the mother moves to Reno, her monthly child support payments should be reduced each summer commencing in the year 2012 with one-half (1/2) abatement during the months she has the Colton for periods in excess of fourteen (14) days.

5.

There was no testimony as to which of the parents would receive the greater tax benefit for having the ability to claim the dependency exemptions for the minor children on their income taxes. The parties both submitted proposed child support calculations that allowed the father to claim the dependency exemptions. The court concludes that based upon the implicit stipulation of the parties the father shall be entitled to claim the dependency exemptions for the child on his income tax returns. The mother shall have an ongoing obligation to execute any state or federal tax forms as may be required from year to year that may be necessary to permit the father to claim the dependency exemptions until further order of this court.

6.

The court concludes as a matter of law that a practical, fair, though not substantially equal division of the parties' community property and community debt is contained in Exhibit B attached hereto. There are compelling reasons to not divide the property and debt of this couple equally primarily because the mother has been under-employed and unable to pay much debt and because the father has the willingness and his financial ability to service the substantial debt owed by the parties. The father has agreed and will continue to pay for the debt to Toyota Credit Services, but if the mother sells, trades, or suffers a total loss of the 2008 Toyota Highlander she is awarded in the property division, the father will no longer be obligated for her future vehicle payments. The mother shall be required to provide auto insurance (gap coverage) sufficient to completely satisfy the interests of Toyota Credit Services in the event that the 2008 Toyota Highlander is ever damaged to the extent that it is determined a total loss.

7.

The court concludes that this is not a proper case for an award of temporary spousal maintenance. The mother has sufficient property and the ability to provide for her needs. The mother is educated, has a job, has almost seven years of experience in her profession, and has the ability to support herself. The mother is taking only her student loan debt of approximately \$13,000. The father is taking a disproportionate amount of the community debt. He is taking on in excess of \$320,000 of community debt. He is taking on a new mortgage for his home. He is even paying for the mother's motor vehicle. He owes attorney fees to his lawyer. If the mother returns to Pocatello, he will be paying child support. If she does not, he will not receive a significant amount of child support. He will be paying the greatest share of work-related child care expenses and health care expenses that may be incurred for the benefit of the child. He clearly has little room in his budget with which to pay spousal maintenance.

8.

The court also concludes that neither party should pay the other's costs and attorney fees incurred and that each should bear their own legal fees and expenses. This case presented a difficult custody decision. Litigation and trial in this case arose from honest disagreement and difference of opinion about what is in the best interest of the minor child. Two good parents offer good homes for Colton and it is unfortunate that distance, the mother's unwillingness to share custodial time, and the possible choice of the mother to move to another state put primary residential custody at issue for these parties and their child. The child will be best served if both parents remain in close proximity to one another in the same community in Idaho to share custody.

But, each parent has a right to travel and to live where they wish. The court does not and will not fault the mother for moving to improve her life, to increase her happiness by bringing her closer to her family, and to advance her career opportunities. By the same token, the right to move also must consider the reciprocal right to stay where one resides. The father has the equal right to pursue a budding career he has established here in Idaho. The mother's choice to propose a move with the child and the father's choice to remain in Idaho triggered the factual and legal analysis above which favors primary residential custody of this child with the father in Idaho and summer and holiday visitation with the mother in Reno, if she moves to Reno. The basis for the allowance of any award of attorney fees is contained in I.C. 32-704 and the court concludes that each should pay for their own counsel.

9.

Since the mother is the one to move from Idaho and will precipitate transportation expense, the court concludes that she shall bear her own transportation costs to and from Idaho to see her child, the same as the father must do to see his child during the summer in Reno. If they choose to, or are required to accompany the child when they travel to and from Reno, the parents will pay their own transportation expense. Otherwise, the parties will equally share transportation expenses for the child, be it airfare or mileage reimbursed at the published government rate for mileage reimbursement for the state of Idaho. Any lodging expenses or meals shall be the responsibility of the transporting party. The parties may agree to exchange the child at a mid-point between Pocatello and Reno, but absent written agreement the party receiving the child for his or her custody

time shall be responsible to pick up and transport the child from the residence of the party who is concluding his or her custody time with the child.

10.

The parties should be solely responsible to pay the debts assigned to them in this order and should indemnify and hold the other harmless for any future financial responsibility for the debts that each is ordered to pay.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED AND DECREED that:

1. The parties are entitled to a divorce from one another on the grounds of irreconcilable differences;
2. The parties shall have joint legal and physical custody of the child in accordance with the court's findings and conclusions above and with parenting provisions as set forth in Exhibit A attached hereto;
3. The parties' debts and assets will be divided in accordance with the court's findings and conclusions above and Exhibit B attached hereto.
4. If the mother moves to Reno a child support order shall be established requiring the mother to pay \$244.00 per month commencing August 15, 2011, as calculated in Exhibit C attached hereto.
5. If the mother returns to the Pocatello area within four months, a child support order shall be established requiring the father to pay \$1016.00 per month commencing the first day of the month that the mother establishes residency in Pocatello, as calculated in Exhibit D attached hereto.

6. If the mother relocates to the Pocatello area after December 15, 2011 and before August 15, 2012, a child support order shall be established requiring the father to pay \$685.00 per month commencing the first day of the month that the mother establishes residency in Pocatello, as calculated in Exhibit E attached hereto.
7. The initial child support order shall be that which assumes the mother will remain in Reno. During the next twelve months, the parties through counsel shall advise the court if the mother is going to choose to relocate to Idaho and exactly when she has established residence in the Pocatello area after which the court will enter a supplemental order clarifying which of the alternative child support orders is in force.
8. Within ten (10) days counsel for both parties and the parties shall prepare and sign all deeds, documents, and titles required to transfer title to assets awarded the respective parties.
9. The parties shall each bear their own costs and attorney fees.
10. The court will issue a decree of divorce consistent herewith.

DATED this 16 day of August, 2011



RICK CARNAROLI
SIXTH DISTRICT MAGISTRATE JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 16 day of August, 2011, a true copy of these
Findings of Fact and Conclusions of Law and Order was mailed postage pre-paid to:

Frederick F. Belzer
Attorney at Law
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205



Nichole Campbell, Deputy Clerk

EXHIBIT "A"

PROVISIONS FOR LEGAL AND PHYSICAL CUSTODY

The provisions for the legal and physical custody of the minor child of Charles Clair and Tracy Clair shall be as follows:

1. Legal and Physical Custody. The parents shall be awarded the joint legal and physical custody of their minor child Colton.

IF THE MOTHER MOVES FROM THE POCATELLO AREA PERMANENTLY

The Pocatello area is defined as the geographic area that is 25 miles or less outside of the incorporated city limits of Pocatello, Idaho. A permanent move is failure to establish a residence in the Pocatello area on or before August 15, 2012.

In the event that the mother permanently moves from the Pocatello area, the parents shall alternate physical custody with the father having primary physical custody during the school term and a portion of the summer as set forth below and with the mother having primary physical custody of the child for a portion of the summer as set forth below. The physical custody arrangement shall be fixed based on the mother living in Reno, in a state other than Idaho, or in a community twenty-five (25) miles or more distant from Pocatello, Idaho, and the father living in Pocatello, Idaho, as follows:

- a. Holidays/Special Occasions. The parents shall alternate physical custody of the minor child for the following holidays and special occasions:

- (1). Thanksgiving Holiday. The parents shall alternate physical custody of the minor child for the Thanksgiving holiday, with the mother entitled to this holiday in odd-numbered

years and the father in even-numbered years. The period of physical custody for this holiday shall be from the Friday prior to Thanksgiving Day until the Friday that follows Thanksgiving Day.

(2). Christmas Holiday. The parents shall each be entitled to a portion of the child's Christmas holiday each year, with the father having the first portion in odd-numbered years and the mother in even-numbered years and with the father having the second portion in even-numbered years and the mother in odd-numbered years. The period of physical custody for the first portion of the Christmas vacation shall start on the day the child is released from school for Christmas vacation and continue until December 27. The period of physical custody for the second portion of the Christmas vacation shall be from December 27 and continue until the day prior to when the child is to return to school in Pocatello-Chubbuck School District No. 25.

(3). Spring Break. The mother shall be entitled to physical custody of the minor child during every Spring Break. The period of physical custody for the Spring Break shall start on the day children are released from school and continue until the Friday prior to the day children return to school in Pocatello-Chubbuck School District No. 25.

b. Summer Visitation. The parents shall share the child's summer. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. The mother is entitled to nine (9) weeks of the summer commencing in 2012 and each summer thereafter and the father is entitled to the remainder of the summer. The mother's period of physical custody during the summer shall start on the day

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of her choosing, but shall be scheduled by her to end at least two weeks prior to the start of the school year according to the Pocatello-Chubbuck School District No. 25's Academic Calendar.

c. Unscheduled Visits. When a parent is visiting for a short period in the town where the parent with physical custody is residing, that parent shall be entitled to an unscheduled visit with the child for up to ten (10) hours selected by the visiting parent, conditioned on giving at least 72 hours advance written notice of the date and time of the visit.

d. Transportation. The parents shall share equally the cost and means of transportation to enable the exchange of physical custody, with the parents to agree in writing and select a midpoint to meet and exchange physical custody if they mutually agree that automobile transportation is used. If the parties do not agree in writing on a midpoint for a custody exchange, the party commencing his or her custody time shall be responsible to pick up the child at the residence of the party turning over custody of the child. If airline transportation is used upon mutual written agreement between the parties, the parents shall share equally the cost of the airline ticket, with the father to purchase the airline ticket and the mother to immediately reimburse the father for her share of the cost. If airline travel is to be utilized, the parents shall coordinate to purchase the airline tickets at the lowest possible cost. Absent written agreement, airline travel shall not be used.

IF MOTHER RETURNS TO POCATELLO BY 12/15/2011

Unless a different schedule is otherwise agreed to in writing signed by both parents, the following schedule shall be strictly followed and will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside

permanently within twenty-five miles of Pocatello, Idaho. In that event, the parents shall share physical custody 65/35% overnight custody basis. The mother shall have overnight custody of the children on 65% of the overnights. The father shall have overnight custody on 35% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Dad	Dad	Mom	Mom	Mom	Mom	Mom
Week 2	Mom	Mom	Mom	Mom	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with

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the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days.

When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the children shall stay overnight with the mother on his birthday.

IF MOTHER RETURNS TO POCATELLO BETWEEN 12/16/2011 AND 08/15/2012

Unless a different schedule is otherwise agreed to in a writing signed by both parents, the following schedule shall be strictly followed, will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside permanently within twenty-five miles of the incorporated city limits of Pocatello, Idaho. In the event that the mother returns to Pocatello after four months and prior August 15, 2012, the parents shall share physical custody in Pocatello on an equal 50/50% overnight custody basis. The mother shall have overnight custody of the children on 50% of the overnights. The father shall have overnight custody on 50% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Mom	Mom	Mom	Mom	Mom	Mom	Mom
Week 2	Dad	Dad	Dad	Dad	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

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Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello Chubbuck-School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days. When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of

any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the child shall stay overnight with the mother on his birthday.

The child shall spend all other holidays not specified with the parent with whom he is regularly scheduled to be under any of the three custody schedules stated above.

2. Parenting Rules and Regulations. The rules shall apply whether the mother returns to the Pocatello, or whether she remains outside of the Pocatello area. While the parents have

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physical custody of the minor child, the parents shall conduct themselves for the best interests of the child, to include the following provisions:

a. Direct Communication. The parents shall not use the child as a messenger, or make the child feel responsible for any misunderstandings which may arise between the parents.

b. Care. While the child is in the physical custody of a parent, that parent shall provide the child with: (a) regular and nutritious food, (b) clean and appropriate clothing, (c) sanitary and reasonably private living and sleeping quarters, and (d) appropriate medical examinations and treatment.

c. Supervision. While the child is in the physical custody of a parent, that parent shall: (a) train the child to obey and respect the children's teachers and the law, (b) require the child to attend all regular sessions of school until graduation, unless excused by medical reasons, the school, or the Court, and (c) personally supervise and control the conduct and activities of the child, except when the child is at school or in known or usual recreational activities, or in the immediate care of another competent, adult person.

d. Limitations. While the child is in the physical custody of a parent, that parent shall not engage in or permit in the presence of the child any excessive alcohol consumption; unlawful drug use; sexually explicit activities and/or permit any sexually explicit or suggestive photos, videos, movies or magazines to be left where a child may see them; and/or, violence or disrespect for law and order. That parent shall also ensure that the child does not engage in any objectionable activities, including, but not limited to, the use of alcohol and/or unlawful drugs.

e. Restraints. The parents, and any other persons under their direction and control, shall not do, attempt, or threaten any act to injure, maltreat, vilify, malign, defame, or molest the other parent, the child, or any person lawfully supervising the child; nor shall either parent attempt, or condone any attempt (directly or indirectly) by any artifice or subterfuge whatsoever, to estrange or alienate the minor child from the other party, or to injure or impair the child's mutual love and affection for the other parent.

f. Privacy. Neither parent shall intrude upon or invade the privacy of the other parent. Neither parent shall interfere with the lifestyle differences which may exist in the other's home, unless such lifestyle difference is later found by the court to be harmful to the child.

g. Love and Affection. Each parent shall exert every effort to maintain free access and unhampered contact between the child and the other parent, and shall foster love and affection between the child and the other parent. Neither parent shall do anything, nor permit any other person residing in the household to do anything, which would estrange the child from the other parent, or that would distort the child's opinion of the other, or would impair the child's love and respect for the other parent.

h. Telephone Calls and Electronic Communication. Each parent shall be entitled to telephone and electronic communication with the child at reasonable times, frequency and duration, and the other parent shall respect the child's right to privacy during such conversations. Telephonic communication includes, but is not limited to phone calls and text messaging. Electronic communication includes but is not limited to internet

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communication through e-mail, social media such as Facebook, and audio/visual communication such as Skype.

i. Mail. Each parent shall be entitled to correspond with the child through the mail, by text message, or through the internet and the other parent shall not read, censor, or otherwise interfere with such correspondence unless such communication is later found to be harmful by the court.

j. Interference. If the child is invited or desires to participate in any activity which may interfere with one parent's rights, the other parent shall not encourage, permit or consent to such activities without prior approval of the parent entitled to physical custody of the child during that time, and, shall not belittle the parent's denial of such approval.

k. Activities. While the child is in a parent's physical custody, that parent shall be entitled to take the child to any reasonable place and participate in any reasonable activity.

l. Readiness. The child shall be ready and promptly available for all custody exchanges. Each child shall be sent with sufficient clothing which is appropriate for ordinary activities; and, if advised in advance, with special or additional clothing when it is appropriate for any special activities. However, neither parent shall be obligated to purchase new clothing solely to comply with this provision.

m. Consultations. The parents shall confer as frequently as necessary by telephone, text, e-mail, internet, or mail to inform the other about the needs, activities, discipline, welfare, education, health, religious upbringing, and development of the child.

The objective is, so far as possible, to adopt a mutually harmonious policy for the child's upbringing and the parents shall discuss these matters with a goal of shared decision making. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

n. Records. Upon request, the parents shall provide each other with the child's educational, health or other records, but the parent requesting copies shall be responsible for the costs of copies. Both parents shall be responsible for keeping the other parent advised of all major school, social, athletic, and religious events in which the child participates and of which the other parent may not be aware.

o. Selections. Except in emergency situations, all schools, health care providers, and counselors shall be selected by the parents jointly. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

p. Emergencies. Each parent shall be empowered to obtain emergency health care for a child without the consent of the other parent. However, each parent shall promptly notify the other, as soon as possible, if an emergency illness or injury requires a physician's care.

q. Non-emergency Medical/Health Care. Each party shall notify the other parent as soon as possible if a non-emergency illness or injury requires the care of a physician or other health care provider. All non-emergency matters for surgery, medical, dental, orthodontic, optical or other health care shall be discussed and resolved before treatment

[Type text]

is commenced and the children shall be treated for all non-emergency medical, dental, orthodontic or optical matters by a medical provider mutually acceptable to both parties. Both parents shall make reasonable efforts to keep the other parent informed of the child's medical condition while in their physical custody. If the parents cannot agree on the nature or extent of medical or other health care and/or shall the parents not agree on the person to provide such care, then the parents shall pursue resolution through a mediator before legal action is taken.

r. Name. The child shall continue to be known legally and publicly by the father's surname. The child shall not, for any purpose or reason, use or assume the name of any subsequent spouse of either parent, or any other surname.

s. Address and Telephone. Each parent shall provide the other with the child's address and telephone number while in that parent's physical custody and/or during periods of custody, visitation, or vacations. Reasonable advance notice shall be provided for any anticipated travel and itineraries shall be provided upon request.

t. Notice of Intended Move. If either parent plans on permanently moving their principal place of residence a distance of more than twenty five (25) miles from that where they are presently residing, they shall be required give prior notice to the other parent so that the court can be asked to determine appropriate provisions for future physical custody based on that intended move, if any are needed. Notice shall be required to be given not less than sixty (60) days in advance of any intended permanent move, if known; or, if an intended permanent move does not allow the giving of sixty (60) days prior notice, then at a minimum notice shall be given within twenty-four (24)

hours of the time the parent determines that a permanent move is necessary. The written notice shall contain: (a) the new intended address; (b) the mailing address, if not the same; (c) the telephone number, if known; (d) the date of the intended move; (e) specific reasons for the move; and (g) a proposed custody and visitation schedule, if changes are required from the provisions set forth above. The child shall not be moved to a new residence that precludes continuation of the custody arrangement set forth above unless and until the court enters an order allowing that move.

[Type text]

EXHIBIT B

ASSETS

To the Plaintiff

2006 Chevy Silverado
Firearms (except .32 pistol)
Power tools
Lawn and garden tools
Bed
Laptop computer
Freezer
Husband's clothing & jewelry
Other property in his possession

To the Defendant

2008 Toyota Highlander
.32 pistol
Wife's jewelry & clothing
Art objects
Washer
Dryer
Couch
Bed
Other property in her possession

DEBTS

To the Plaintiff

All debt he incurred after
separation
ICCU debt (\$25,000)
Toyota Credit Services (\$27,000)
Discover Card (\$2,000)
Husband's student loan (\$240,000)
Moscow Family Medicine and Gritman
Hospital bonus repayment (\$30,000)
ATT iPhone contract

To the Defendant

All debt she incurred after
separation
Wife's student loan (\$13,000)

Case Summary

Case #:CV-2010-2989-DR

<u>Parent Information:</u>	<u>Father</u>	<u>Mother</u>
Name:	Charles M. Clair, Jr.	Tracy J Clair
Marital Status:	Single	Single
Party Association:	Plaintiff	Defendant
Attorney's Name:		
Attorney's Phone:		
ICSG Income:	156,000.00	31,312.00
ICSG Percentage:	83.3%	16.7%

Children Information:

Child's Name	Birthdate	% with Father	Tax Exemption	Calc Support Until
Colten Clair	5/7/2007	75	Father	18th Birthday

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	0.00	236.34
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	0.00	243.86

The recommended basic support the Mother should pay is 236.34 per month (before other costs to be considered by the court).

The recommended adjusted support the Mother should pay is 243.86 per month (other costs considered by the court included).

EXHIBIT

C

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Affidavit Verifying Income

I hereby state under oath that the following information is true.

A. GROSS INCOME	Father	Mother
1. Wages, salary, commissions, bonuses, etc.	\$156,000.00	\$31,312.00
2. Rent, royalties, trade, or business income, etc.		
3. Interest, dividends, pensions, annuities, etc.		
4. Social sec., worker's comp, unemployment, disability, veteran ben., etc.		
5. Public Assistance, welfare for.....__ Self __ Children		
6. Alimony		
7. Grants, distributions from trusts, etc.		
8. Other		
9. SUBTOTAL	\$156,000.00	\$31,312.00
B. DEDUCTIONS FROM GROSS INCOME		
1. Straight line depreciation on assets		
2. One-half of self-employment Social Security taxes		
3. Child support + alimony from another relationship		
4. Support for child of another relationship living in the home		
5. Deduction for spousal maintenance in this case		
6. Non Court Ordered Deductions		
7. DEDUCTIONS SUBTOTAL		
C. GROSS INCOME AS ADJUSTED	\$156,000.00	\$31,312.00
D. IN-KIND BENEFITS (I.C.S.G. Section 6(b))		
E. POTENTIAL INCOME (I.C.S.G. Section 6(c))		
F. GUIDELINES INCOME (C + D + E)	\$156,000.00	\$31,312.00
G. MONTHLY ICSG INCOME (F / 12 months)	\$13,000.00	\$2,609.33

Signature of Party Submitting _____

Subscribed and sworn to before me on _____, _____

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant.

Adjustments to Child Support and Recap of Obligations

Total ICSG Income:	\$187,312.00	Father's Share	83.3	\$156,000.00	Single
		Mother's Share	16.7	\$31,312.00	Single

Tax Exemption Adjustment

Child's Name	Claimed by	Exemption Amt	Father's Share	Mother's Share
Colten Clair	Father			

Parent is entitled to:
While parent is getting:

Nothing is owed by either parent for taxes.

Health Insurance Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father	\$540.00	83%	\$449.73	\$540.00	\$-90.27
Mother	\$540.00	17%	\$90.27		\$90.27

Mother owes \$90.27 per year, \$7.52 per month for health insurance.

Work Related Daycare Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for work related daycare.

Travel Expenses Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for travel expenses.

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	0.00	236.34
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations		\$243.86

The recommended basic support the Mother should pay is \$236.34 per month (before other costs to be considered by the court).

The recommended adjusted support the Mother should pay is \$243.86 per month (other costs considered by the court included).

Prepared By _____ Date _____

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Standard Custody
Child Support Worksheet**

CHILDREN	BIRTHDATE	CUSTODY	CHILDREN	BIRTHDATE	CUSTODY
1. Colten Clair	5/7/2007	Joint	2.		
3.			4.		
5.			6.		
7.			8.		

	Plaintiff	Defendant	Combined
1. Monthly I.C.S.G. Income (from Affidavit)	\$13,000.00	\$2,609.33	\$15,609.33
2. Percentage Share of Income (Each Parent)	83%	17%	
3. Child Support Obligation			\$1,413.80
4. Each Parents Child Support Obligation	\$1,177.46	\$236.34	
5. Recommended Child Support Order for non-custodial parent	\$236.34		

Other Costs to be Considered by the Court

- a. Work-Related Child Care Costs
- b. Health insurance premium and uninsured health care expenses \$7.52
- c. Disability or Retirement dependent benefits
- d. Tax benefit for dependancy exemptions
- e. Travel Expenses

Comments, Calculations, or Rebuttals

Prepared By _____ Date _____

From the offices of: Bannock County Court Assistance Office

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Continued Support Worksheet

As of 5/7/2025 when Colten Clair turns 18, no children will remain in the home.

Case Summary

Case #: CV-2010-2089-DR

<u>Parent Information:</u>	<u>Father</u>	<u>Mother</u>
Name:	Charles M. Clair, Jr.	Tracy J Clair
Marital Status:	Single	Single
Party Association:	Plaintiff	Defendant
Attorney's Name:		
Attorney's Phone:		
ICSG Income:	156,000.00	31,312.00
ICSG Percentage:	83.3%	16.7%

Children Information:

Child's Name	Birthdate	% with Father	Tax Exemption	Calc Support Until
Colten Clair	5/7/2007	35	Father	18th Birthday

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	1,023.95	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	1,023.95	7.52

The recommended basic support the Father should pay is 1,023.95 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is 1,016.43 per month (other costs considered by the court included).



From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs Tracy J Clair

Defendant,

Affidavit Verifying Income

I hereby state under oath that the following information is true.

A. GROSS INCOME	Father	Mother
1. Wages, salary, commissions, bonuses, etc.	\$156,000.00	\$31,312.00
2. Rent, royalties, trade, or business income, etc.		
3. Interest, dividends, pensions, annuities, etc.		
4. Social sec., worker's comp, unemployment, disability, veteran ben., etc.		
5. Public Assistance, welfare for.....__ Self __ Children		
6. Alimony		
7. Grants, distributions from trusts, etc.		
8. Other		
9. SUBTOTAL	\$156,000.00	\$31,312.00
B. DEDUCTIONS FROM GROSS INCOME		
1. Straight line depreciation on assets		
2. One-half of self-employment Social Security taxes		
3. Child support + alimony from another relationship		
4. Support for child of another relationship living in the home		
5. Deduction for spousal maintenance in this case		
6. Non Court Ordered Deductions		
7. DEDUCTIONS SUBTOTAL		
C. GROSS INCOME AS ADJUSTED	\$156,000.00	\$31,312.00
D. IN-KIND BENEFITS (I.C.S.G. Section 6(b))		
E. POTENTIAL INCOME (I.C.S.G. Section 6(c))		
F. GUIDELINES INCOME (C + D + E)	\$156,000.00	\$31,312.00
G. MONTHLY ICSG INCOME (F / 12 months)	\$13,000.00	\$2,609.33

Signature of Party Submitting

Subscribed and sworn to before me on

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Adjustments to Child Support
and Recap of Obligations

Total ICSG Income:	\$187,312.00	Father's Share	83.3	\$156,000.00	Single
		Mother's Share	16.7	\$31,312.00	Single

Tax Exemption Adjustment

Child's Name	Claimed by	Exemption Amt	Father's Share	Mother's Share
Colten Clair	Father			

Parent is entitled to:
While parent is getting:

Nothing is owed by either parent for taxes.

Health Insurance Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father	\$540.00	83%	\$449.73	\$540.00	\$-90.27
Mother	\$540.00	17%	\$90.27		\$90.27

Mother owes \$90.27 per year, \$7.52 per month for health insurance.
--

Work Related Daycare Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for work related daycare.
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Travel Expenses Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for travel expenses.

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	1,023.95	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	\$1,023.95	\$7.52

The recommended basic support the Father should pay is \$1,023.95 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is \$1,016.43 per month (other costs considered by the court included).

Prepared By _____ Date _____

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Shared, Split or Mixed Custody
WorkSheet**

CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE
1. Colten Clair	5/7/2007	2.		3.	
4.		5.		6.	
7.		8.		9.	
10.		11.		12.	

	MOM	DAD	COMBINED
1. Monthly ICSG Income (from Affidavit)	\$2,609.33	\$13,000.00	\$15,609.33
2. Share of income for Each Parent <small>(line 1 for each parent divided by Combined Income)</small>	16.7	83.3	
3. Combined Child Support Obligation <small>(apply line 1 Combined to Child Support Schedule)</small>			\$1,413.90
4. Each Parents Child Support Obligation <small>(line 2 multiplied by line 3 for each parent)</small>	\$236.34	\$1,177.46	
5. Obligation Allocation <small>(line 4 divided by the number of children)</small>	\$236.34	\$1,177.46	

	6. Allocation to Child <small>For each standard-custody child enter the amount from line 5. For each shared or split-custody child multiply line 5 by 1.5.</small>		7. Proportional Obligation <small>Number of overnights with other parent divided by 365. If greater or equal to 75%, enter 1. If less than or equal to 25%, enter 0.</small>		8. Parents Obligation <small>Line 6 times line 7 for each child.</small>	
	Mom	Dad	Mom	Dad	Mom	Dad
Colten Clair	\$354.51	\$1,766.19	35%	65%	\$124.08	\$1,148.03

9. EACH PARENT'S TOTAL SUPPORT <small>(total from all boxes)</small>	MOM	DAD
	\$124.08	\$1,148.03

10. RECOMMENDED SUPPORT <small>(subtract lesser of line 9 from greater and enter it under parent with greater obligation)</small>	
	\$1,023.95

Other Costs to be Considered by the Court

- a. Work-Related Child Care Costs
- b. Health insurance premium and uninsured health care expenses \$-7.52
- c. Disability or Retirement dependent benefits
- d. Tax benefit for dependency exemptions
- e. Travel Expenses

Prepared By _____ Date _____

From the offices of: Bannock County Court Assistance Office

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

VS
Tracy J Clair

Defendant,

Continued Support Worksheet

As of 5/7/2025 when Colten Clair turns 18, no children will remain in the home.

=====

Case Summary

Case #: CV-2010-2989-DR

Parent Information:

	<u>Father</u>	<u>Mother</u>
Name:	Charles M. Clair, Jr.	Tracy J Clair
Marital Status:	Single	Single
Party Association:	Plaintiff	Defendant
Attorney's Name:		
Attorney's Phone:		
ICSG Income:	156,000.00	31,312.00
ICSG Percentage:	83.3%	16.7%

Children Information:

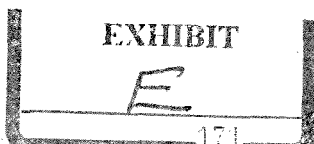
Child's Name	Birthdate	% with Father	Tax Exemption	Calc Support Until
Colten Clair	5/7/2007	50.1	Father	18th Birthday

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	684.64	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	684.64	7.52

The recommended basic support the Father should pay is 684.64 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is 677.11 per month (other costs considered by the court included).



From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Affidavit Verifying Income

I hereby state under oath that the following information is true.

A. GROSS INCOME	Father	Mother
1. Wages, salary, commissions, bonuses, etc.	\$156,000.00	\$31,312.00
2. Rent, royalties, trade, or business income, etc.		
3. Interest, dividends, pensions, annuities, etc.		
4. Social sec., worker's comp, unemployment, disability, veteran ben., etc.		
5. Public Assistance, welfare for..... <input type="checkbox"/> Self <input type="checkbox"/> Children		
6. Alimony		
7. Grants, distributions from trusts, etc.		
8. Other		
9. SUBTOTAL	\$156,000.00	\$31,312.00
B. DEDUCTIONS FROM GROSS INCOME		
1. Straight line depreciation on assets		
2. One-half of self-employment Social Security taxes		
3. Child support + alimony from another relationship		
4. Support for child of another relationship living in the home		
5. Deduction for spousal maintenance in this case		
6. Non Court Ordered Deductions		
7. DEDUCTIONS SUBTOTAL		
C. GROSS INCOME AS ADJUSTED	\$156,000.00	\$31,312.00
D. IN-KIND BENEFITS (I.C.S.G. Section 6(b))		
E. POTENTIAL INCOME (I.C.S.G. Section 6(c))		
F. GUIDELINES INCOME (C + D + E)	\$156,000.00	\$31,312.00
G. MONTHLY ICSG INCOME (F / 12 months)	\$13,000.00	\$2,609.33

Signature of Party Submitting _____

Subscribed and sworn to before me on _____,

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

Adjustments to Child Support
and Recap of Obligations

Total ICSG Income:	\$187,312.00	Father's Share	83.3	\$156,000.00	Single
		Mother's Share	16.7	\$31,312.00	Single

Tax Exemption Adjustment

Child's Name	Claimed by	Exemption Amt	Father's Share	Mother's Share
Colten Clair	Father			

Parent is entitled to:
While parent is getting:

Nothing is owed by either parent for taxes.

Health Insurance Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father	\$540.00	83%	\$449.73	\$540.00	\$-90.27
Mother	\$540.00	17%	\$90.27		\$90.27

Mother owes \$90.27 per year, \$7.52 per month for health insurance.

Work Related Daycare Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for work related daycare.

Travel Expenses Adjustment

	Total Paid	% Share	Obligation	Amt Paid	Difference
Father		83%			
Mother		17%			

Nothing is owed by either parent for travel expenses.

Recap of all Obligations per Month

	<u>Father</u>	<u>Mother</u>
Monthly Child Support Obligation	684.64	0.00
Work Related Child Care Costs	0.00	0.00
Health Insurance Obligation	0.00	7.52
Travel Expenses	0.00	0.00
Disability and Retirement Dependency Benefits	0.00	0.00
Tax Exemption Compensation	0.00	0.00
	-----	-----
Total of each parent's obligations	\$684.64	\$7.52

The recommended basic support the Father should pay is \$684.64 per month (before other costs to be considered by the court).

The recommended adjusted support the Father should pay is \$677.11 per month (other costs considered by the court included).

Prepared By _____ Date _____

**In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock**

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

vs
Tracy J Clair

Defendant,

**Shared, Split or Mixed Custody
WorkSheet**

CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE	CHILDREN	BIRTHDATE
1. Colten Clair	6/7/2007	2.		3.	
4.		5.		6.	
7.		8.		9.	
10.		11.		12.	
		MOM		DAD	
1. Monthly ICSG Income (from Affidavit)		\$2,609.33		\$13,000.00	
2. Share of Income for Each Parent (line 1 for each parent divided by Combined Income)		16.7		83.3	
3. Combined Child Support Obligation (apply line 1 Combined to Child Support Schedule)				\$1,413.80	
4. Each Parents Child Support Obligation (line 2 multiplied by line 3 for each parent)		\$236.34		\$1,177.46	
5. Obligation Allocation (line 4 divided by the number of children)		\$236.34		\$1,177.46	
6. Allocation to Child For each standard-custody child enter the amount from line 5. For each shared or split-custody child multiply line 5 by 1.5.		7. Proportional Obligation Number of overnights with other parent divided by 365. If greater or equal to 75%, enter 1. If less than or equal to 25%, enter 0.		8. Parents Obligation Line 6 times line 7 for each child.	
	Mom	Dad	Mom	Dad	
Colten Clair	\$354.51	\$1,766.19	50.1%	49.9%	
9. EACH PARENT'S TOTAL SUPPORT (total from all boxes)				MOM	DAD
				\$177.61	\$881.33
10. RECOMMENDED SUPPORT (subtract lesser of line 9 from greater and enter it under parent with greater obligation)					\$703.72
Other Costs to be Considered by the Court					
a. Work-Related Child Care Costs					
b. Health insurance premium and uninsured health care expenses					
c. Disability or Retirement dependent benefits					
d. Tax benefit for dependency exemptions					
e. Travel Expenses					
Prepared By _____ Date _____					

From the offices of: Bannock County Court Assistance Office

In the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bannock

Charles M. Clair, Jr.

Plaintiff,

Case No. CV-2010-2989-DR

VS
Tracy J Clair

Defendant,

Continued Support Worksheet

As of 5/7/2025 when Colten Clair turns 18, no children will remain in the home.

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**IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK
MAGISTRATE DIVISION**

CHARLES MALCOLM CLAIR,)	Case No. CV-2010-2989-DR
)	
Plaintiff,)	
)	
vs.)	JUDGMENT AND
)	DECREE OF DIVORCE
)	
TRACY JO CLAIR,)	
)	
Defendant.)	
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The above entitled matter came before the Court for trial on June 22 and 23 and on July 21 and 22, 2011. Charles M. Clair (hereinafter “the father”) was present and represented by Frederick Belzer. Tracy Jo Clair (hereinafter “the mother”) was present and represented by Nick Nielson.

Trial proceeded before the Court. At the conclusion thereof, the Court took the matter under advisement. The Court issued Findings of Fact and Conclusions of Law on August 15, 2011. Now, a decree of divorce shall be entered upon good cause appearing therefor:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court has jurisdiction over the parties as well as over child custody and related matters and the division of property and debts.

2. The Plaintiff and the Defendant shall be granted a Decree of Divorce from one another upon the grounds of irreconcilable differences, the marital relationship between the parties shall be dissolved, and the parties returned to the status of single persons.
3. During the course of the marriage, the parties incurred certain community property. Plaintiff shall receive as his sole and separate property the items listed in Exhibit B attached hereto and incorporated by reference, all of his personal items and belongings, as well as all other property currently in his possession.
4. During the course of the marriage, the parties incurred certain community property. Defendant shall receive as her sole and separate property the items listed in Exhibit B attached hereto and incorporated by reference, all of her personal items and belongings, as well as all other property currently in her possession.
5. During the course of the marriage, the parties incurred certain community debts. A practical and fair division of community debt requires the court to order that the parties pay the debts assigned to them as listed in Exhibit B attached hereto and incorporated by reference.
6. Any debt incurred by either the Plaintiff or Defendant since the date of separation of the parties in June 2010, shall be the separate debt of the party incurring the debt.
7. It is in the best interests of the minor child of the marriage, Colton Clair to be in the joint legal and joint physical custody of the parties, and the parties shall be awarded joint legal and joint physical custody of the child.

8. The legal rights and duties incident to joint legal custody include, but are not limited to, the particulars set out in Exhibit A attached hereto and incorporated by reference and the parents will conduct themselves in conformance therewith for the best interest of the child.
9. If the mother chooses to reside in Reno following the divorce, the mother shall begin paying to the father, monthly child support payments through Idaho Child Support Receipting, P.O. Box 70008, Boise, Idaho 83707, commencing August 16, 2011, in the sum of \$244.00 per month. See, Exhibit C attached to the court's Findings of Fact and Conclusions of Law. The mother shall receive one-half (1/2) abatement of her child support obligation during any month(s) of summer when she has the child in excess of fourteen days.
10. If the mother chooses to return to reside in the Pocatello-Chubbuck, Idaho community and establishes residency before December 15, 2011, the father shall begin paying to the mother, monthly child support payments through Idaho Child Support Receipting, P.O. Box 70008, Boise, Idaho 83707, commencing the first of the month in which the mother establishes residency, in the sum of \$1016.00 per month. See, Exhibit D attached to the court's Findings of Fact and Conclusions of Law.
11. If the mother chooses to return to reside in the Pocatello-Chubbuck, Idaho community and establishes residency between December 16, 2011 and August 15, 2012, the father shall begin paying to the mother, monthly child support payments through Idaho Child Support Receipting, P.O. Box 70008, Boise, Idaho 83707, commencing the first of the month in which the mother establishes residency, in

the sum of \$677.00 per month. See, Exhibit E attached to the court's Findings of Fact and Conclusions of Law.

12. The father shall be entitled to claim the dependency exemptions for the child on his income tax returns.
13. The father can provide medical/health insurance for the benefit of the minor child which is available through his employment. The parents shall apportion between them, based upon their gross annual income used for calculation of child support, any and all costs incurred in excess of insurance for medical, dental, orthodontic, optical and other health care for the benefit of the child. The provisions for medical/health insurance and non-insured costs shall continue for the benefit of the child as long as that child is entitled to child support benefits. Based upon current anticipated future gross annual income, the father shall be responsible for 83% and the mother 17% of all non-insured medical and other health care expenses for the parties' minor child.
14. Any order providing for medical support for the benefit of the minor child shall also be subject to the following mandatory notices and provisions:

MEDICAL/HEALTH CARE EXPENSES

Any claimed health care expense for a minor child, whether or not covered by insurance, which would result in an actual out-of-pocket expense to a parent who did not consent to the expense of over \$500.00, must be approved in advance, in writing, by both parents or by prior Court order. Relief may be granted by the Court, for failure to comply under extraordinary circumstance, and the Court may in its discretion apportion the incurred expense in some percentage other than that in the existing support order, and in so doing, may consider whether consent was unreasonably requested or withheld.

NOTICE OF MEDICAL ENFORCEMENT

This order is enforceable by allowing the Department of Health and Welfare or an obligee parent to enforce medical coverage as provided under Chapter 12, Title 32, of the Idaho Code. A National Medical Support Notice shall be sent to the obligor parent's employer pursuant to the provisions of Idaho Code 32-1214C requiring the obligor parent's employer to enroll the minor and dependent children in a health benefit plan, if available, unless notice of an exception is provided under the provisions of Idaho Code 32-1214D; and, the employer shall be directed to withhold any required premium from the obligor parent's income or wages.

15. Any child support order that is entered shall be enforceable by income withholding under Chapter 12, Title 32, Idaho Code and shall contain the following mandatory notices and provisions:

IMMEDIATE AND AUTOMATIC INCOME WITHHOLDING

This order is enforceable by immediate income withholding as of the date of this order under Chapter 12, Title 32, Idaho Code. This immediate income withholding order will be issued to your employer or other person who pays your income without additional notice to you.

NOTICE OF LIEN

This support order shall be enforced by the filing of a state wide lien upon all real and personal property of the obligor if the delinquency in the support obligation is equal to \$2,000.00 or 90 days of support, whichever is less.

16. The parents shall apportion between them in the same percentages used for division of non-insured medical expenses, any and all costs incurred for work-related or school-related daycare expense incurred for the benefit of the minor child by either parent. A parent's share of such expense shall be remitted directly to the parent incurring the expense on or before the 1st day of each month, if it is incurred on a fixed monthly basis. Otherwise, the parent owing reimbursement for non-routine work-related daycare expense shall remit their share of the

expense to the other parent within thirty (30) days after receipt of written notice of the expense incurred.

17. Within ten (10) days, the parties and counsel for the parties shall jointly cooperate in the drafting and submission of vehicle title transfers, and any other documentation necessary to separate the parties' ownership of assets and financial obligations divided between them.

18. The mother shall advise the court through counsel as to any decision to relocate herself to the Pocatello-Chubbuck, Idaho area, if any.

19. Each party shall bear their own costs and attorneys fees.

DATED this 16th day of August, 2011.


HONORABLE RICK CARNAROLI
SIXTH DISTRICT MAGISTRATE JUDGE

CERTIFICATE OF MAILING

I hereby certify that on the 16 day of August, 2011, a true copy of these Findings of Fact and Conclusions of Law and Order was mailed postage pre-paid to:

Frederick F. Belzer
Attorney at Law
P.O. Box 4947
Pocatello, ID 83205

Nick L. Nielson
Attorney at Law
P.O. Box 6159
Pocatello, ID 83205


Nichole Campbell, Deputy Clerk

EXHIBIT "A"

PROVISIONS FOR LEGAL AND PHYSICAL CUSTODY

The provisions for the legal and physical custody of the minor child of Charles Clair and Tracy Clair shall be as follows:

1. Legal and Physical Custody. The parents shall be awarded the joint legal and physical custody of their minor child Colton.

IF THE MOTHER MOVES FROM THE POCATELLO AREA PERMANENTLY

The Pocatello area is defined as the geographic area that is 25 miles or less outside of the incorporated city limits of Pocatello, Idaho. A permanent move is failure to establish a residence in the Pocatello area on or before August 15, 2012.

In the event that the mother permanently moves from the Pocatello area, the parents shall alternate physical custody with the father having primary physical custody during the school term and a portion of the summer as set forth below and with the mother having primary physical custody of the child for a portion of the summer as set forth below. The physical custody arrangement shall be fixed based on the mother living in Reno, in a state other than Idaho, or in a community twenty-five (25) miles or more distant from Pocatello, Idaho, and the father living in Pocatello, Idaho, as follows:

- a. Holidays/Special Occasions. The parents shall alternate physical custody of the minor child for the following holidays and special occasions:

- (1). Thanksgiving Holiday. The parents shall alternate physical custody of the minor child for the Thanksgiving holiday, with the mother entitled to this holiday in odd-numbered

years and the father in even-numbered years. The period of physical custody for this holiday shall be from the Friday prior to Thanksgiving Day until the Friday that follows Thanksgiving Day.

(2). Christmas Holiday. The parents shall each be entitled to a portion of the child's Christmas holiday each year, with the father having the first portion in odd-numbered years and the mother in even-numbered years and with the father having the second portion in even-numbered years and the mother in odd-numbered years. The period of physical custody for the first portion of the Christmas vacation shall start on the day the child is released from school for Christmas vacation and continue until December 27. The period of physical custody for the second portion of the Christmas vacation shall be from December 27 and continue until the day prior to when the child is to return to school in Pocatello-Chubbuck School District No. 25.

(3). Spring Break. The mother shall be entitled to physical custody of the minor child during every Spring Break. The period of physical custody for the Spring Break shall start on the day children are released from school and continue until the Friday prior to the day children return to school in Pocatello-Chubbuck School District No. 25.

b. Summer Visitation. The parents shall share the child's summer. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. The mother is entitled to nine (9) weeks of the summer commencing in 2012 and each summer thereafter and the father is entitled to the remainder of the summer. The mother's period of physical custody during the summer shall start on the day

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of her choosing, but shall be scheduled by her to end at least two weeks prior to the start of the school year according to the Pocatello-Chubbuck School District No. 25's Academic Calendar.

c. Unscheduled Visits. When a parent is visiting for a short period in the town where the parent with physical custody is residing, that parent shall be entitled to an unscheduled visit with the child for up to ten (10) hours selected by the visiting parent, conditioned on giving at least 72 hours advance written notice of the date and time of the visit.

d. Transportation. The parents shall share equally the cost and means of transportation to enable the exchange of physical custody, with the parents to agree in writing and select a midpoint to meet and exchange physical custody if they mutually agree that automobile transportation is used. If the parties do not agree in writing on a midpoint for a custody exchange, the party commencing his or her custody time shall be responsible to pick up the child at the residence of the party turning over custody of the child. If airline transportation is used upon mutual written agreement between the parties, the parents shall share equally the cost of the airline ticket, with the father to purchase the airline ticket and the mother to immediately reimburse the father for her share of the cost. If airline travel is to be utilized, the parents shall coordinate to purchase the airline tickets at the lowest possible cost. Absent written agreement, airline travel shall not be used.

IF MOTHER RETURNS TO POCATELLO BY 12/15/2011

Unless a different schedule is otherwise agreed to in writing signed by both parents, the following schedule shall be strictly followed and will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside

permanently within twenty-five miles of Pocatello, Idaho. In that event, the parents shall share physical custody 65/35% overnight custody basis. The mother shall have overnight custody of the children on 65% of the overnights. The father shall have overnight custody on 35% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Dad	Dad	Mom	Mom	Mom	Mom	Mom
Week 2	Mom	Mom	Mom	Mom	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello-Chubbuck School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with

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the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days.

When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the children shall stay overnight with the mother on his birthday.

IF MOTHER RETURNS TO POCATELLO BETWEEN 12/16/2011 AND 08/15/2012

Unless a different schedule is otherwise agreed to in a writing signed by both parents, the following schedule shall be strictly followed, will be enforceable by contempt proceedings and by law enforcement. A return to Pocatello shall be defined as the mother's return to reside permanently within twenty-five miles of the incorporated city limits of Pocatello, Idaho. In the event that the mother returns to Pocatello after four months and prior August 15, 2012, the parents shall share physical custody in Pocatello on an equal 50/50% overnight custody basis. The mother shall have overnight custody of the children on 50% of the overnights. The father shall have overnight custody on 50% of the overnights. The weekly schedule for the child shall be in two week blocks as follows:

	Sun.	Mon.	Tues.	Weds.	Thurs.	Fri.	Sat.
Week 1	Mom	Mom	Mom	Mom	Mom	Mom	Mom
Week 2	Dad	Dad	Dad	Dad	Dad	Dad	Dad

The shared custody schedule set forth above shall commence on the Sunday following the date when the mother establishes permanent residence in the Pocatello area.

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Beginning in 2012, every summer, the father shall be entitled to a single two (2) week period of uninterrupted vacation time with the child. Summer shall be defined as the time that school is not in session according to the Pocatello Chubbuck-School District No. 25 Academic Calendar. Every summer the mother shall also be entitled to a single two week period of uninterrupted vacation time with the child. On or before April 15, 2012 and in each year thereafter, the parents shall select their vacation weeks and communicate their selections to one another in writing. If by chance in any year there is a conflict in the proposed vacation dates for both parents, if the parents cannot agree to reschedule one vacation or another, the mother's choice takes precedence in even numbered years and the father's choice takes precedence in odd numbered years. The parents are not required to take the child on a vacation out of town. This vacation time can be spent at home, with family, or traveling with the parent entitled to the vacation time.

UNLESS OTHERWISE AGREED IN WRITING, ALL CUSTODY EXCHANGES SHALL TAKE PLACE PROMPTLY AT 6:00 P.M. ON THE DAY OF EXCHANGE. THE PARENT COMMENCING HIS OR HER CUSTODY PERIOD WITH THE CHILD SHALL BE RESPONSIBLE TO PICK THE CHILD UP AT THE HOME OF THE PARENT WHO IS ENDING HIS OR HER CUSTODY PERIOD WITH THE CHILD.

HOLIDAYS AND SPECIAL DAYS

Holiday and special day custody shall take precedence over the two week rotation days. When full week periods of uninterrupted time with the child are taken for summer vacations, Thanksgiving, and Christmas, those one week or two week periods shall commence on the Sunday night immediately preceding the vacation or holiday, and at the end of the vacation or holiday, the two week rotation will pick up exactly where it left off prior to the beginning of

any uninterrupted period for vacation, Thanksgiving, or Christmas.

Beginning in 2012 and in all even numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving. Beginning in 2012 and in all even numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas.

Beginning in 2011 and in all odd numbered years thereafter, the mother shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Christmas. Beginning in 2011 and in all odd numbered years thereafter, the father shall be entitled to uninterrupted time with the child for one seven day week with the child the week of Thanksgiving.

Regardless of the two week rotation schedule, the child shall stay overnight with the mother on Mother's Day night and the mother's birthday. Regardless of the two week rotation schedule, the child shall stay overnight with the father on Father's Day night and the father's birthday. In even numbered years the child shall stay overnight with the father on his birthdays. In odd numbered years, the child shall stay overnight with the mother on his birthday.

The child shall spend all other holidays not specified with the parent with whom he is regularly scheduled to be under any of the three custody schedules stated above.

2. Parenting Rules and Regulations. The rules shall apply whether the mother returns to the Pocatello, or whether she remains outside of the Pocatello area. While the parents have

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physical custody of the minor child, the parents shall conduct themselves for the best interests of the child, to include the following provisions:

a. Direct Communication. The parents shall not use the child as a messenger, or make the child feel responsible for any misunderstandings which may arise between the parents.

b. Care. While the child is in the physical custody of a parent, that parent shall provide the child with: (a) regular and nutritious food, (b) clean and appropriate clothing, (c) sanitary and reasonably private living and sleeping quarters, and (d) appropriate medical examinations and treatment.

c. Supervision. While the child is in the physical custody of a parent, that parent shall: (a) train the child to obey and respect the children's teachers and the law, (b) require the child to attend all regular sessions of school until graduation, unless excused by medical reasons, the school, or the Court, and (c) personally supervise and control the conduct and activities of the child, except when the child is at school or in known or usual recreational activities, or in the immediate care of another competent, adult person.

d. Limitations. While the child is in the physical custody of a parent, that parent shall not engage in or permit in the presence of the child any excessive alcohol consumption; unlawful drug use; sexually explicit activities and/or permit any sexually explicit or suggestive photos, videos, movies or magazines to be left where a child may see them; and/or, violence or disrespect for law and order. That parent shall also ensure that the child does not engage in any objectionable activities, including, but not limited to, the use of alcohol and/or unlawful drugs.

e. Restraints. The parents, and any other persons under their direction and control, shall not do, attempt, or threaten any act to injure, maltreat, vilify, malign, defame, or molest the other parent, the child, or any person lawfully supervising the child; nor shall either parent attempt, or condone any attempt (directly or indirectly) by any artifice or subterfuge whatsoever, to estrange or alienate the minor child from the other party, or to injure or impair the child's mutual love and affection for the other parent.

f. Privacy. Neither parent shall intrude upon or invade the privacy of the other parent. Neither parent shall interfere with the lifestyle differences which may exist in the other's home, unless such lifestyle difference is later found by the court to be harmful to the child.

g. Love and Affection. Each parent shall exert every effort to maintain free access and unhampered contact between the child and the other parent, and shall foster love and affection between the child and the other parent. Neither parent shall do anything, nor permit any other person residing in the household to do anything, which would estrange the child from the other parent, or that would distort the child's opinion of the other, or would impair the child's love and respect for the other parent.

h. Telephone Calls and Electronic Communication. Each parent shall be entitled to telephone and electronic communication with the child at reasonable times, frequency and duration, and the other parent shall respect the child's right to privacy during such conversations. Telephonic communication includes, but is not limited to phone calls and text messaging. Electronic communication includes but is not limited to internet

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communication through e-mail, social media such as Facebook, and audio/visual communication such as Skype.

i. Mail. Each parent shall be entitled to correspond with the child through the mail, by text message, or through the internet and the other parent shall not read, censor, or otherwise interfere with such correspondence unless such communication is later found to be harmful by the court.

j. Interference. If the child is invited or desires to participate in any activity which may interfere with one parent's rights, the other parent shall not encourage, permit or consent to such activities without prior approval of the parent entitled to physical custody of the child during that time, and, shall not belittle the parent's denial of such approval.

k. Activities. While the child is in a parent's physical custody, that parent shall be entitled to take the child to any reasonable place and participate in any reasonable activity.

l. Readiness. The child shall be ready and promptly available for all custody exchanges. Each child shall be sent with sufficient clothing which is appropriate for ordinary activities; and, if advised in advance, with special or additional clothing when it is appropriate for any special activities. However, neither parent shall be obligated to purchase new clothing solely to comply with this provision.

m. Consultations. The parents shall confer as frequently as necessary by telephone, text, e-mail, internet, or mail to inform the other about the needs, activities, discipline, welfare, education, health, religious upbringing, and development of the child.

The objective is, so far as possible, to adopt a mutually harmonious policy for the child's upbringing and the parents shall discuss these matters with a goal of shared decision making. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

n. Records. Upon request, the parents shall provide each other with the child's educational, health or other records, but the parent requesting copies shall be responsible for the costs of copies. Both parents shall be responsible for keeping the other parent advised of all major school, social, athletic, and religious events in which the child participates and of which the other parent may not be aware.

o. Selections. Except in emergency situations, all schools, health care providers, and counselors shall be selected by the parents jointly. If there is disagreement over any of these issues and the parents cannot resolve those differences, then disputes shall be submitted to a mediator for resolution before legal action is taken.

p. Emergencies. Each parent shall be empowered to obtain emergency health care for a child without the consent of the other parent. However, each parent shall promptly notify the other, as soon as possible, if an emergency illness or injury requires a physician's care.

q. Non-emergency Medical/Health Care. Each party shall notify the other parent as soon as possible if a non-emergency illness or injury requires the care of a physician or other health care provider. All non-emergency matters for surgery, medical, dental, orthodontic, optical or other health care shall be discussed and resolved before treatment

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is commenced and the children shall be treated for all non-emergency medical, dental, orthodontic or optical matters by a medical provider mutually acceptable to both parties. Both parents shall make reasonable efforts to keep the other parent informed of the child's medical condition while in their physical custody. If the parents cannot agree on the nature or extent of medical or other health care and/or shall the parents not agree on the person to provide such care, then the parents shall pursue resolution through a mediator before legal action is taken.

r. Name. The child shall continue to be known legally and publicly by the father's surname. The child shall not, for any purpose or reason, use or assume the name of any subsequent spouse of either parent, or any other surname.

s. Address and Telephone. Each parent shall provide the other with the child's address and telephone number while in that parent's physical custody and/or during periods of custody, visitation, or vacations. Reasonable advance notice shall be provided for any anticipated travel and itineraries shall be provided upon request.

t. Notice of Intended Move. If either parent plans on permanently moving their principal place of residence a distance of more than twenty five (25) miles from that where they are presently residing, they shall be required give prior notice to the other parent so that the court can be asked to determine appropriate provisions for future physical custody based on that intended move, if any are needed. Notice shall be required to be given not less than sixty (60) days in advance of any intended permanent move, if known; or, if an intended permanent move does not allow the giving of sixty (60) days prior notice, then at a minimum notice shall be given within twenty-four (24)

hours of the time the parent determines that a permanent move is necessary. The written notice shall contain: (a) the new intended address; (b) the mailing address, if not the same; (c) the telephone number, if known; (d) the date of the intended move; (e) specific reasons for the move; and (g) a proposed custody and visitation schedule, if changes are required from the provisions set forth above. The child shall not be moved to a new residence that precludes continuation of the custody arrangement set forth above unless and until the court enters an order allowing that move.

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EXHIBIT B

ASSETS

To the Plaintiff

2006 Chevy Silverado
Firearms (except .32 pistol)
Power tools
Lawn and garden tools
Bed
Laptop computer
Freezer
Husband's clothing & jewelry
Other property in his possession

To the Defendant

2008 Toyota Highlander
.32 pistol
Wife's jewelry & clothing
Art objects
Washer
Dryer
Couch
Bed
Other property in her possession

DEBTS

To the Plaintiff

All debt he incurred after
separation
ICCU debt (\$25,000)
Toyota Credit Services (\$27,000)
Discover Card (\$2,000)
Husband's student loan (\$240,000)
Moscow Family Medicine and Gritman
Hospital bonus repayment (\$30,000)
ATT iPhone contract

To the Defendant

All debt she incurred after
separation
Wife's student loan (\$13,000)