

# SILENT PARTNER

## VISITATION TRAVEL COSTS

*INTRODUCTION: **SILENT PARTNER** is a lawyer-to-lawyer resource for military legal assistance attorneys. It is an attempt to explain broad generalities about the law of domestic relations. It is, of course, very general in nature since no handout can answer every specific question. Comments, corrections and suggestions regarding this pamphlet should be sent to the address at the end of the last page.*

One of the challenges facing separated or divorce parents is how to plan for – and pay for – long-distance visitation. Quite often a military couple will find that thousands of miles separate the noncustodial parent, usually “Dad,” from the children. Here are some tips to remember when you must advise such a parent. The author acknowledges the help of Laura W. Morgan, Senior Attorney at the National Legal Research Group in Charlottesville, VA, in the preparation of this text.

First of all, try to set up a schedule for the visitation, taking into account the distance between the parents’ homes, the availability of connections, and other factors. With any distance over a couple of hundred miles, the visiting parent will most likely be looking at summer and Christmas holidays as the best available times for visitation. It would not be uncommon for a judge, in an ordinary case, to consider awarding several weeks in the summer for Dad and a week or ten days at Christmas.

The next issue should be planning the logistics of the transportation. Does Mom get the kids to the airport? Does Dad fly there to get them? Will they need a “companion” for the trip? Have your client check into the requirements of the airlines to see at what age children can, for that air carrier, fly unaccompanied; also have him be sure to ask about the cost of providing assistance by a flight attendant if that is available. Make sure he’s done his homework!

If a companion is necessary, how should this work? Will Dad be willing to fly “back to Ohio” to get the kids, then return with them to his home for a week or two, then fly them back and then return? That might cost a lot of money!

On the other hand, when Dad suggests that “Mom ought to take care of the flying,” be sure to remind him that, if she does, he may be responsible for the plane tickets for her too! Sometimes the cheapest way of doing long-distance visitation is for Dad to fly to Mom’s home and stay there for his visitation period – find a motel or stay with friends – in order to cut down on expenses and still accomplish the visitation.

If the kids are old enough to fly by themselves, then ordinarily Dad contacts Mom to discuss departure and arrival times and dates. He then buys the plane tickets and gets them delivered to Mom reasonably in advance of the planned visitation.

An issue that comes up often is who pays for the plane tickets. Colorado and North Carolina specifically provide in their child support guidelines that the cost of transporting a child is an add-on to the basic child support award. Sixteen other states provide that a child’s travel expenses are a deviation factor. But that won’t help, of

course, when the child support's already been set and you're advising Dad or Mom on the logistics and cost of the upcoming visitation.

There is no uniform answer or solution. Usually the answer is "It's in the judge's discretion." And, of course, we're not even talking about going to court!

Some judges believe that the party who moved in the first place should pay the costs. Is this the same as punishing the moving party? Perhaps the judge would respond that it's only making accountable the one whose move occasioned the expense in the first place.

What if that party cannot pay? What if Mom "moved back to Ohio" to her family and doesn't have a job? What if Dad moved because of a PCS and he's only an E-3? Try to budget for either this Mom or this Dad to pay for the plane tickets!

Some courts have taken the view that visitation with the noncustodial parent is a goal that should be encouraged by the courts and both parents. A number of studies suggest that greater visitation leads to greater compliance with support awards. It is therefore unfair and unwise for one parent to bear the entire cost of travel.

A recent case adopting this approach is Drakulich v. Drakulich, 705 So. 2d 665 (Fla. 3d DCA 1998). In that case, Dad moved from the marital residence in Florida to New York when the parties separated. The trial judge ordered that Dad must pay the entire cost of his visitation with the child when the child traveled to and from New York. The rationale was that Dad's necessitated the travel; therefore, he should bear the cost. The judge also stated that to make the custodial parent bear any part of the cost would unnecessarily diminish the child support benefits paid to her.

The appellate court reversed. The Third District Court of Appeal for Florida criticized the trial court's reasoning, holding that both parents should pay for the cost of transporting the child in proportion to their incomes. In the instant case, Mom earned 58% of the parents' combined income, and Dad earned 42%. Thus Mom and Dad ought to share the cost of transporting the child in the ratio of 58:42.

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