

A legal note from Marshal Willick about a sea change in Nevada child custody (and support) law

The Nevada Supreme Court finally decided the *Rivero Opinion on Rehearing* (*Rivero v. Rivero II*, 125 Nev. \_\_\_, \_\_\_ P.3d \_\_\_ (Adv. Opn. No. 34, Aug. 27, 2009), altering the applicable standards for making custodial determinations. Adopting the bright line test suggested by the State Bar's Family Law Section working group (Ray Oster, Jennifer Abrams, Mary Anne Decaria, and Marshal S. Willick), a custodial time share of anywhere from 50/50 to 60/40 is now "joint custody." This replaces the far more cumbersome (and uncertain) analysis in the original *Opinion*.

At the same time, the Court eliminated the complicated (and equally uncertain) child support calculation formula in the original *Opinion*, instead making all such cases fall under the *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998), offset method for calculating child support.

The lengthy (50+ page) opinion makes many changes to the law of child custody and visitation, including:

- A minority time share parent now has the same ability to resist an interstate relocation by the other parent with the child as a 50/50 timeshare parent would have.
- Courts are to look at "residence" of the child when determining the actual custody arrangement that is in place, disregarding such things as time with third party care providers.
- For the first time, child support can flow "uphill," from a majority time-share parent to a minority time-share parent.

There were many other aspects of child custody and support that are affected by the final *Rivero* opinion; it may take some time for all of them to become apparent. To see the *Opinion*, go to <http://www.willicklawgroup.com/appeals>. To see the State Bar Amicus Brief, go to <http://www.willicklawgroup.com/appeals>.

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