

Custody and Visitation

Divorce and Custody Issues

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Nothing in a divorce provokes more anxiety and fear than issues related to children. Many parents are scared they will lose their children, that their children will be used as "pawns" in the divorce process or that a divorce will cause irreparable harm to their parent-child relationship. These are common fears of parents who simply don't have enough information about the process of divorce. In an attempt to remedy that lack of information, what follows are answers to some questions commonly asked by clients.

How Do I Find a Family Law Attorney?

Many resources are available to help you locate a family law attorney; recommendations from family and friends, local bar associations, family lawyer associations, the Internet and periodicals. Pick a source that you trust, and seek a recommendation. Often, the best sources of information are people who have been through a divorce themselves. Once you've located an attorney, don't be shy. Ask about his qualifications and experience, and look for:

1. An attorney who is admitted into practice, and knowledgeable about divorce laws in your particular state.
2. An attorney with whom you feel comfortable who listens to you and offers advice you would consider taking.
3. An attorney with a manageable hourly rate and retainer, given your income and assets.
4. An attorney who is responsive and who returns your phone calls promptly.
5. An attorney whose approach to the case is consistent with your goals and wishes. If at any point, one or more of these needs isn't met, consider a different attorney.

What does "Custody" Really Mean?

Resolving custody issues is essentially an exercise in problem solving to ensure that the children's needs are addressed. Courts and therapists have come to understand that the children of divorce need to have strong relationships with both parents so they grow up to have positive relationships with members of the same and the opposite sex. Parents who are separating need to decide how they will make decisions for, and on behalf of, their children. This set of issues is known as "legal custody." Where parents agree that they will share decision making, the arrangement is known as "joint legal custody."

Parents need to schedule when the child or children will be with each of them. This is known as "physical custody." In some situations, the children reside primarily with one parent and have a schedule of visitation with the other parent. In other situations, the children may spend approximately equal periods of time living with each parent. There are many possible schedules, depending on the ages of the children, the proximity of the parents' homes, the parents' work schedules, the children's activities, etc. Families must decide what works for them.

What Is Child Support?

Child support is money paid by one parent to another for the care of a child. Child support covers the food, housing, clothing, education and medical costs incurred by your children. In most cases, child support is determined by a simple calculation of each parent's gross income, adjusted according to their time-sharing schedule. Child support guidelines contained in each state's code books set forth the appropriate amount of support for each income level. Most attorneys now have computer software that automatically calculates support obligations in a given case. In certain "high income" cases, application of the guidelines result in an appropriately high child support obligation. In such cases, courts tend to look at the children's reasonable needs and set support accordingly. Where there are extraordinary circumstances (e.g., private school tuition, substantial unreimbursed medical expenses), the support figure can be adjusted upwards. The length of the support obligation varies by state, but in most cases, it continues until the children are at least 18 years old.

What About "Sharing" the Children with My Spouse?

The focus of the time-sharing schedule should be the best interests of your children. An appropriate schedule will provide the children with significant opportunities to spend quality time with each parent. Whenever possible, the time-sharing should be memorialized in a written agreement, and the children should be protected from any conflicts that the parents may be experiencing over the schedule.

The transfer of children from one parent to the other can be difficult and stressful. Take steps to make the transition as smooth and uneventful as possible. Advance planning, packing of clothing, schoolwork and favorite toys is a must. Communicate with the other parent well in advance about any special events, instructions or medications and have transitions take place on time and as scheduled. Expect and recognize that when your children return to you, they will need some time to "re-enter" your house and "relearn" your rules. Finally, the transition is not the time to address issues such as child support or grievances between parents. Nor should children be used as messengers between parents.

Can I Move Out of the Marital Residence with My Children?

It depends. In cases where you or your children are in danger of physical abuse, you must consider this option. Be aware, however, that most states provide mechanisms for removing abusive spouses. Consult your attorney if you find yourself in this situation. In other circumstances, the issue becomes complicated. Moving out is an aggressive step.

You may move out with your children, but you must be aware of the consequences. State laws vary. You might be sued for desertion in some states. You might be giving up the opportunity to get back into your marital residence. You might force the spouse left behind to sue for custody, especially if that spouse feels you are denying access to the children. Before considering a move-out, meet with your attorney to discuss the ramifications. A badly handled move-out can destroy the possibility of settlement. A well thought-out plan can move the divorce process forward in a productive manner for you and your children.

What Do I Tell My Kids?

How you present this information to your children is a matter of personal choice, the important thing is that you tell your children honestly what is happening and how it will affect them. There is no one correct way to do this, but you should keep some guidelines in mind. It is usually preferable to present a united front and tell your children with your spouse. While it is important that your children know you are separating, it can be hurtful and harmful to share the reasons for the separation with a child. Bear in mind that a bad spouse can be good parent and making negative comments about your spouse or your marriage only adds to your child's stress. Kids need reassurance of stability. If possible, try to work out the basic details (e.g., residence, sharing holidays, visitation) before informing the children of the separation. Then stick to the plan. You may also wish to consult a mental health professional, who can advise you about presenting this information to your kids.

What Are "Mental Health Providers?"

"Mental Health Provider" ("MHP") refers to the professionals who provide counseling services for individuals and families including those going through separation and divorce. These professionals can be psychologists, social workers, developmental specialist, counselors and psychiatrists who specialize in families and children experiencing separation and divorce. Particularly in cases involving custody and time-sharing of minor children, the MHP can provide recommendations and input about the custody and time-sharing arrangement that may be in your child's best interests. In most cases, there is no requirement that an MHP participate in the process of fashioning the optimal arrangement for your child. In more difficult or litigated divorces, one or both parents may request that the court appoint an MHP to make custody and time-sharing recommendations.

I've Been a Stay-at-Home Mom for Ten Years. Will I Have to Go Back to Work?

Whether or not you go back to work depends on many different factors including your post-divorce financial resources, whether you have small children, your age, your education, and your health. Most stay-at-home moms eventually return to paying jobs at some point post-divorce. A mother who has been out of the work force for 10 years may

be eligible for alimony for depending on her spouse's income level. However, by law, most courts are required to structure alimony so that a "dependent" spouse can become self-supporting - or at least make substantial progress towards that goal. Alimony is now viewed as a means to an end, which is an economically self-sustaining individual. A good attorney will give you a reasonable assessment of your ability and obligation to become employed.

Can My Children Talk to the Judge?

In most states, judges may take into consideration the wishes of the older children when arranging custody. However, most judges are concerned about the impact on a child of having to appear in a courtroom where the parents are pitted against each other. In fact, a parent who insists that her child talk to a judge is often viewed negatively. There are various ways for a child to have input without talking to a judge. A guardian ad litem can be appointed to represent the children's interests in a divorce. The court or parties can appoint a mental health professional to talk with the child and make recommendations to the court. If litigants have exhausted these options, the judge may decide to talk to the child. Keep in mind, however, that talking to a judge can mean giving testimony. Ask yourself whether you wish to put your child in that position.

What If My Child Doesn't Want to See My Spouse?

Both parents should be doing everything possible to encourage contact between their child and the other parent. Many courts take a party's ability to foster such interaction into account when arranging custody. However, there are times when even well intentioned parents get caught up in arguments with their children over visitation. The important thing is to pinpoint the reason for the refusal to visit. Is your child scared? Is he having difficulty with the other spouse? Is he angry with you? Or is he simply being manipulative? Once you determine the cause of the problem, address it. If you cannot, ask your spouse for help or seek professional assistance. Keep in mind that your child will be visiting with the other spouse for many years. Invest the time to solve these conflicts constructively when they arise. If you are the parent with whom the child refuses to visit, consider backing off until the conflict is solved. If you have proof that your spouse is preventing visitation, you have legal remedies available to enforce visitation arrangements.

Do Courts Favor Mothers?

Today, most courts are prohibited from making custody determinations based solely on the gender of a parent. A court may, however, take gender into consideration as one factor when deciding which parent should have primary physical custody. Gender tends to play a larger role when a court assesses the best interests of infants and very young children. In such cases, primary custody is often awarded to the child's primary caregiver, who is more likely to be the mother.

Which is Better Litigation or Negotiation?

Negotiation of custody and time-sharing arrangements (and other divorce issues) is generally less expensive, less confrontational and less time-pressured than resolving the issues through litigation. While litigation enlists the assistance of a court in achieving resolution and provides a schedule for resolving issues, the adversarial nature of the proceeding is an additional stressor in an already stressful situation. If you are having difficulty getting your spouse to comply with deadlines, provide support or comply with time-sharing schedules, then litigation may be the appropriate course of action for you. However, if you believe that you and your spouse can resolve issues arising from the divorce, can communicate with the help of attorneys and if you believe that you both have the best interests of your children in mind, then negotiation will probably provide you with a better resolution.

Once Custody is Allocated Can it Ever Be Changed?

Yes. Parents who agree that changes are in the best interests of their children can negotiate changes in their custody arrangements between themselves or with the help of counsel. If they cannot agree, lawmakers recognize that a child's needs and family situations evolve over time. Consequently, most states permit a court to modify custody arrangements once set by agreement or by court order. A parent seeking to modify custody in court must generally show a significant and material change of circumstances that justifies a modification. For example, a custodial arrangement for an infant won't necessarily make sense for a first-grader. Custody arrangements should give parents and children a sense of security and some permanence, but they should be flexible enough to accommodate changes.

Can I Move to California with the Kids?

Relocation issues are among the most difficult faced by any family. The parent wishing to relocate may have wonderful reasons for doing so, but a relocation out of the D.C. area will almost always have a negative impact on the parent left behind, for a number of reasons. The costs of visitation - plane tickets, hotels, driving time - increase exponentially. As the costs increase, the time spent with the noncustodial parent decreases. And long-distance relationships are much more difficult to sustain. Sadly, many relocation cases end up in litigation. The best advice is to talk with your ex-spouse about the relocation, explaining why it is best for your children. If you end up in court, the primary consideration is the best interests of the children, and that should be your focus as you contemplate a move out of the area. If you can't work things out with your ex-spouse, be realistic about your prospects for success in court. If your children have lived in the D.C. area for many years and have strong connections with school, neighborhood and friends, a judge would be likely to have concerns about uprooting them.