

CHILD SUPPORT AND CUSTODY

INTRODUCTION

Typically, the breakup of a marriage is more traumatic for the children of the marriage than for the parents. Thus, parents intending to separate should exercise great care in making the transition as conflict-free and smooth as possible.

When a child's parents decide to separate, decisions regarding the custody, care, and support of the child must be made. If the parents are not able to resolve the issues of custody or child support, either person can initiate a case in the county where the child resides, and ultimately, a judge will make the decisions. North Carolina law directs District Court judges to protect children until they reach majority (usually age 18) by determining what is best for the child. Generally, the child and the parents will be better served by putting the child's welfare first and trying to decide what is best by agreement rather than by litigation. A child should never be used by a parent for revenge — the child's needs and interests should come first. In addition to arguing in front of the child, other actions that put stress on the child include putting down the other parent, telling the child that the other parent is the cause of the problems, or making the child relay messages to the other parent. Remember that you and your ex created this special being, and despite the break-up of your relationship, you and your ex must continue to communicate civilly for the sake of your child for years to come.

NEGOTIATION OR LITIGATION?

In an effort to avoid litigation, counties offer, or sometimes mandate, state-supported mediation to facilitate decision-making by the parents. In Wake County, for example, all parties involved in a child custody case must attend an orientation session and then a mediation at the courthouse before a hearing can take place. The mediation can be waived if one party lives more than fifty miles away, if the parties have already mediated, or if there is a domestic violence protective order in place. If mediation fails to resolve the case, a District Court judge is authorized to decide who should have custody, how much visitation the non-custodial parent will have, and how much child support the non-custodial parent will pay.

Litigation may be expensive, with both parties usually represented by an attorney. Litigation means the parents give up control over decision-making that has an enormous impact on their child. A judge will, at most, have only a few hours of contact with the parties and little or no contact with the child at issue. No judge can ever know as much about the needs of a child as the parents do. Since litigation usually ends with both parties feeling bitter and unhappy about the results, use of the courts to resolve issues of custody and support should be a last resort — when there is no other way.

CUSTODY CONSIDERATIONS

When deciding who is awarded legal custody during a custody trial, the judge considers certain facts and issues to determine the best interests and welfare of the child. Here are some guidelines:

- What is the child's age?
- Who assumed primary responsibility in caring for the child during the marriage?
- Who would feed, bathe, clothe, and teach the child during the week?
- What is the work schedule of each parent who works outside the home?
- What is the physical, emotional, and parental ability of each parent?
- With whom is the child bonded psychologically?
- Is either parent trying to prevent the child from continuing a relationship with the other parent?
- Is either parent trying to use the child just to hurt the other parent?
- Is either parent really unfit, unwilling, or unable to properly and appropriately raise the child?

There is no legal presumption for either the mother or the father as the custodial parent. The only question is the welfare of the child.

AGREEMENT V. ORDER

Custody, whether sole custody or joint custody, is valid if it is part of a written and properly executed agreement or if part of a court order. Consent orders may be entered by agreement, i.e., without a trial. Even if a lawsuit has been filed, the two parties may reach an agreement on their own and ask the court to approve their agreement. The agreement almost always will be approved; the result is called a consent order, which can be enforced by the court.

The form of your custody determination — agreement or order — may make some difference. Each is enforced differently and treated differently if a change in custody or visitation needs to be made in the future. You should consult an attorney about what is best for you and your child.

PHYSICAL CUSTODY

Physical custody refers to where the child will be residing. When one parent has physical custody of a child, the other parent usually is granted visitation privileges. Except in extraordinary circumstances, it is healthy and desirable for the child to have regular contact with the non-custodial parent. Three visitation options are:

- Reasonable Visitation: There is no set time for child visitation, rather it will be subject to agreement between the parents. Although it provides flexibility, it will not work unless the parents can agree on what visitation is "reasonable."
- Structured Visitation: There is a schedule for child visitation that may include visitation every other weekend from Friday evening through Sunday evening, alternating holidays through the year, and several weeks during summer vacation.
- Joint Physical Custody: There is a schedule where each parent spends a significant portion of the time with the child, so that the child resides with both parents.

Until the parents execute a written separation agreement with provisions for custody or a court grants custody to one parent, both parents have equal rights regarding their child. This does not, however, give one parent a right to take the child from the other. Usually, agreements and court-ordered custody place the child primarily with one parent and give the other parent time with the child — at least two weekends each month, alternating major holidays, and extended time in the summer.

LEGAL CUSTODY

If parents are granted joint legal custody, it generally means that the parents should jointly make major decisions for the child. Joint legal custody implies that both parents are to make the necessary educational and health decisions for the child, and have equal access to the child’s health and educational records. When a judge must decide the issue of custody, it may be because the two parties cannot work together and resolve matters concerning their child. If a judge grants joint legal custody, this essentially means both parents must cooperate in making major decisions such as school selection or major medical decisions affecting their child.

When separated parents agree upon joint custody or the court decides that the parents should be granted joint legal custody of a child, it does not mean that each parent has physical custody of the child for half of the child’s time. It means that the parents should continue to cooperate and work together to make the major decisions for the child.

Joint custody, whether it is joint physical custody or joint legal custody, can be beneficial for the child if the parents are interested in and capable of working together for the child’s best interests and welfare. On the other hand, it can be disastrous if one parent is bent on obstructing or undermining the other parent or the child.

THE AMOUNT OF CHILD SUPPORT

Each parent has a duty to support his or her children. North Carolina has adopted child support guidelines that apply to all cases and are based upon the income of both parents, the type of custodial arrangement that exists and factors such as day care and health insurance costs. Forms for determining the amount of support can be obtained from the Administrative Office of the Courts or online at the North Carolina Child Support Enforcement website.

Visitation/Child Support Issues

Q: Will the full amount of child support be reduced if the child spends a relatively long period of visitation (three or four weeks) with the supporting parent?

A: A separation agreement may allow credit, reducing the child support under such circumstances. All North Carolina courts use guidelines that take into account extended time with the non-custodial parent.

Q: Is there a relationship between child support and visitation?

A: Some parents with custody refuse to allow visitation when support is not paid, or a parent will withhold child support when not able to see a child. Under North Carolina law, visitation and child support are not related; neither parent has the right to withhold support or visitation. Instead, the aggrieved parent must seek help from the court.

CONCLUSION

Your child will benefit if matters of custody, visitation, and support can be determined amicably. When that is not possible, either parent or anyone seeking custody may petition the court to decide. Custody, visitation, and support issues are not concluded until the child reaches majority. An agreement or court order may be changed if the circumstances warrant. For custody and visitation, majority occurs when the child reaches his or her 18th birthday. For child support, it may continue until the child graduates from high school or reaches his or her 20th birthday, whichever occurs first. If the support has been agreed to by the parents, it is not uncommon to make provisions for financial assistance for children who may go on to college.

If you need to find an attorney to assist you in your child custody or child support case in North Carolina, you may search for an attorney in your county at www.ncaj.com under “Find a Lawyer.”



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If you have further questions about the information discussed in the brochure, you should consult an attorney. It is suggested that you write down all questions prior to meeting with an attorney to ensure that your questions are answered directly and promptly.