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1. WHAT IS CHILD CUSTODY?

A "custodian" is a person who "guards or protects" someone else. In a court of law, child custody means the appointing of one or more persons to take care of and control a child under the age of 18 years.

THERE ARE SEVERAL TYPES OF CHILD CUSTODY:

- a. Physical custody means who the child lives with most of the time;
- b. Legal custody means who has the right and responsibility to make the decisions relating to the health, education and welfare of the child.

THE PHYSICAL AND LEGAL CUSTODY OF THE CHILD MAY BE "SOLE" OR "JOINT."

- a. Sole physical custody means that the child will live with and be under the supervision of one parent. (The court may order that the other parent has some rights to visit the child.)
- b. Joint physical custody means that each of the parents will have significant periods of physical custody.
- c. Sole legal custody means that one parent will have the right and the responsibility to make the decisions relating to the health, education, and welfare of the child.
- d. Joint legal custody means that both parents will share the right and the responsibility to make the decisions relating to the health, education, and welfare of the child.

In general, after parents separate, it is considered best if the child has frequent and continuing contact with both parents and that both parents share the rights and responsibilities of raising their child.

2. WHEN DOES COURT-ORDERED CHILD CUSTODY END?

Court-ordered child custody usually ends when:

- A. The child turns 18 years of age,
- B. The child gets married or joins the military;
- C. The court ends the support or custody; or
- D. The child dies before the age of 18;

Whichever occurs first.

3. WHAT IS THE DIFFERENCE BETWEEN LEGAL AND PHYSICAL CUSTODY?

Physical custody refers to where the child lives and who has responsibilities associated with daily childcare. Legal custody is the decision-making responsibilities associated with the education, healthcare and religious upbringing of a child.

4. WHEN PARENTS FIGHT OVER CUSTODY, HOW DOES THE COURT DECIDE?

The typical standard is the best interests of the child. Each state has specific guidelines, but the court usually takes into consideration what each parent wants, what the child wants (if the child is old enough and/or mature enough), which parent has been the primary caretaker, the parenting abilities of each parent and whether there is a history of abuse.

5. WHAT IF THE CUSTODY ARRANGEMENTS AREN'T WORKING OUT?

It is not always easy to modify a custody arrangement that has been ordered by the court or agreed upon by you and your child's other parent. The agreement itself may set out methods by which it can be changed. Your state will also have laws that apply to

custody modification. It is typically more difficult to change the custody arrangements than it was to set them in the first place; there must have been a substantial change in the circumstances this time around. An experienced family law attorney can advise you on your rights in your state.

6. IS JOINT CUSTODY BETTER?

While no one solution is right for everybody, most children of divorce benefit from the ongoing involvement of both parents. Joint custody will not work if the parents are not living in the same area or if the parents cannot work together. Family circumstances like domestic violence, physical or sexual abuse, chemical dependency and neglect also affect the court's determination.

7. IF MY CHILD'S OTHER PARENT IS BEHIND ON CHILD SUPPORT PAYMENTS, CAN I PREVENT HIS OR HER VISITATION?

Parenting time and child support are not dependent on each other. It is not considered to be in the best interests of the child to prevent contact with the other parent because of child support problems. You have other remedies, like going to court or the child support enforcement office, to collect past-due child support payments.

8. I WANT TO MOVE TO ANOTHER STATE WITH MY CHILD. CAN I DO THAT?

This is another custody matter that varies from state to state, but most states share some overriding principles. The court will probably weigh the reason for the move; its probable effect on the child; whether you have sole or joint custody; if the child's other parent has objected to the move; and how often the other parent will be able to see the child.

9. IF THE JUDGE IN MY DIVORCE CASE ORDERS A CUSTODY EVALUATION, WHAT SHOULD I DO?

Cooperate with the custody evaluator; the evaluation is designed to find out what is in the best interests of your children. Custody evaluations are a regular part of contested custody cases. Share any concerns that arise during the evaluation with your attorney.

10. WHAT IS PARENTAL ALIENATION SYNDROME?

Parental alienation syndrome occurs when one parent convinces the child that the other parent has nothing to offer the child (or that the other parent is a bad parent or spouse), and the child comes to see the other parent in a uniformly negative light. The child insists on staying with one parent and refusing to see the other, usually in order to show loyalty to one parent. Courts disapprove of this type of behavior on the part of a parent and typically demonstrate such disapproval when making custody and visitation decisions.

11. WHEN CONSIDERING WHO SHOULD GET CUSTODY OF A CHILD, WHAT FACTORS DOES A COURT LOOK AT?

In almost all situations, a court will keep one primary question in mind when deciding a custody case, namely, what is in the best interests of the child? To answer this question, courts generally look at a number of different factors, such as:

A parent's financial and physical ability to provide a child with essentials like food, medical care, shelter and clothing,

A parent's medical history, both physical and mental,

The child's age, sex and medical history, both physical and mental condition,

A parent's vocation and habits, including things like excessive drinking or smoking,

The child's choice if the child is of a certain age, normally 12 years old,

The emotional bond between child and parent,

The wishes of both parents.

The willingness of each parent to support the child's relationship with the other parent.

The level of adjustment needed from the child if forced to move to a new school, city, or state.

The quality of life the child enjoys in the child's current status quo, and.

12. WHETHER ANY PARENT HAS BROUGHT FALSE OR MALICIOUS CHARGES OF CHILD ABUSE ON THE OTHER PARENT?

If, upon looking at all of these factors, a court cannot decide what is in the best interests of the child, courts normally tend to look closely at which parent would most likely provide the child with a stable household. This can vary depending on the child's age. If the child is young, custody may go to the primary caregiver. However, if the child is older, custody may be awarded to the parent that is better situated to provide the child with access to education, friends, and social development.

13. DOES IT HURT MY CHANCES OF GETTING CUSTODY OF MY CHILDREN IF I MOVE OUT OF THE HOME AND LEAVE THE CHILDREN WITH THEIR OTHER PARENT?

In short, yes, it probably will hurt your chances of getting custody of your children. Parents that leave the home, even for good reasons, may have a lesser chance of getting custody of the children when it comes time to go to court. By leaving, the judge will see an implied message from the parent's actions. Also, assuming that the parent left the family home, a judge will probably be more inclined to grant custody to the parent that is currently residing in the home so as to disrupt the children's status quo as little as possible.

However, if you take the children when you leave the home, this may send a message to the judge that you are trying to protect your children. If you do move away from home and take the children with you, you need to be sure to go to court as soon as possible so that it does not look like you are attempting to take the children away unlawfully. If you do not set up a court appointment soon after taking the children away from the home, the other parent may ask the judge to take the children away from you as you took them without court authorization.

14. WHO IS MORE LIKELY TO BE AWARDED CUSTODY OF A CHILD, MOTHERS OR FATHERS?

Although it has not always been so, today's courts will generally award custody to whichever parent would be in the best interests of the child. However, in the past, custody of young children (typically under 5 years old) normally went to the mother of the child if the parents divorced. This rule has been phased out in almost every state, and instead, judges must decide on the merits of the case which parent having custody would be in the best interests of the child.

However, just because the rule has been phased out, that does not mean that parents cannot ask a judge to award custody to the mother. Sometimes parents will agree that the mother has more time and inclination to raise the children, and will stipulate to such an order. However, some fathers may only stipulate to this

arrangement because they believe that the court already favors the mother, which is not true.

Fathers have every right to ask for, and argue for, full custody of the children during a divorce. These days, both men and women commonly enter into the workforce full-time, meaning that the custody decision could be as simple as which parent could spend the most time with the child, all other factors being equal. For example, if a father works from home while the mother works a 60+ hour a week job as a corporate attorney, a judge may decide that the best interests of the child are to be with the parent that can spend the most time with the child, which would be the father in this example. Fathers are just as willing and able to be parents as mothers, and they can present that argument in court.

15. IS CUSTODY ALWAYS AWARDED TO JUST ONE PARENT?

In short, no. It is very common for a court to award partial custody to both parents, otherwise known as joint custody. This type of custody arrangement normally falls into one of three forms. First, joint physical custody is where a court orders a child to spend a substantial amount of time with both parents during the course of the year. Second, joint legal custody is where, although one parent may have full physical custody, both parents must agree on any decisions that impact the child, such as their education, medical care and spiritual matters. Lastly, both joint physical and legal custody is a combination of the first two.

It is ultimately up to the court to decide whether any type of joint custody is in the best interests of a child. However, you, as a parent, have the right to argue for joint custody if you so wish it.

16. WHO WILL BE THE PERSON DECIDING HOW MUCH CHILD VISITATION IS FAIR AND REASONABLE?

In general, the parent with primary custodial rights over a child will get to decide what kind of visitation for the other parent is fair and reasonable. In many situations, this works out well for both parents and they can often come to an amicable arrangement regarding visitation hours and days.

However, what is often in the news and on TV is a result of breakdown in communication between the parents. This usually happens when the parent with full custody of a child decides to be vindictive and uses the child as a weapon. To this end, the parent with custody will set the other parent's visiting rights at a bare minimum, often only for a few hours each week during the most inconvenient times.

Some courts are allowing parents to make custody and visitation plans that the judge will sign into law. Parenting agreements, as they are called, are agreed upon visitation schedules and times where the child will be. These agreements can also include plans that deal with how decisions about the child will be made. For example, the agreement could include language that dictates that the parent with custody at the time of a medical emergency can make a decision about the child's health without consulting the other parent first. Parenting agreements are a great idea and you should look into it more carefully if you want to take full advantage of them.