

CHILD CUSTODY AND VISITATION

Few issues in divorce have as much emotional impact as the subject of child custody.

Child custody refers to a collection of responsibilities and rights that parents have regarding their children's general welfare, authority, religion, education and health care. Spouses may settle custody and visitation issues out of court through a private agreement, which is the most often used and preferred method.

Custody may also be settled out of court by a parenting agreement or consent order that is later approved by a judge.

The challenge in private custody agreements is to develop a practical arrangement that enables each parent to maintain a consistent relationship with agreed to measures for raising their child.

If you are facing a child custody process, it is important to carefully consider both existing and future needs to ensure that you remain satisfied with your legal relationship with your children. Until child custody is agreed on and a court makes a ruling, each parent has equal rights to physical custody of the child.

In cases where custody is contested, the court must make a determination to "promote the best interests and welfare of the child". The best interest of the child is the "polar star" by which courts should guide decisions about custody.

The judge will consider your past and present conduct, and whether the evidence supports your custody claim. You must demonstrate that your behavior and abilities will enhance your child's overall welfare better than your spouse's. Other factors taken into consideration include:

- Physical, mental, emotional, moral and religious factors,
- The child's preference,
- Each parent's caretaking ability,
- Each parent's home environment,
- Each parent's availability to the child,
- Each parent's economic situation and potential,
- The child's bonding with other siblings, and
- Other factors that illustrate what is best for the child.

A custody action may also be brought to court by any parent, relative, or other entity (subject to certain exceptions) to claim custody of a minor child. In these cases, a child's natural parent is generally entitled to the custody and care of the child in an initial proceeding for custody. If it is determined that a non-parent

would provide better care for the child than the biological parent and that the biological parent has acted in certain bad ways, the judge may award custody to the petitioning non-parent (such as a grandparent). This is a complex area of law and you should seek the advice of an attorney.

North Carolina statutes show no preference to either a mother or father in custody matters. The court may award equal custody (joint custody) to both parties, or give primary custody to one parent (sole custody) and visitation privileges to the other. Joint physical custody can be an equal time sharing of time between parents and requires the greatest amount of cooperation. There is also joint legal custody which deals with how decisions are made for the child.

In a divorce, the custody action may precede or follow the divorce or take place while the action is pending.

Until you and your spouse settle on a custody agreement, or until a court issues custody ruling, each parent is entitled to co-equal rights to the physical possession of their child. A written document formalizes custodial and visitation rights and prevents unplanned changes in custodial arrangements by either parent.

Custody decisions will affect your family life after divorce for a long time, so it is in yours and your child's best interests to understand your legal rights and obligations. An experienced Family Law attorney can assist in developing and negotiating comprehensive custody settlement agreements, providing references to mediation expertise, and formalizing agreements reached as a result of mediation or litigation.