

## CHILD CUSTODY AND SUPPORT

### INTRODUCTION

Typically, the breakup of a marriage is more traumatic for the children of the marriage than for the parents. Thus, parents should exercise great care when a separation takes place.

When a child's parents separate, decisions regarding the care and support of the child must be made. If the parents are not able to resolve the issues of custody or child support, a judge will. 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 when parents cannot agree or when either parent submits the issue to a court. 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.

### NEGOTIATION OR LITIGATION?

In an effort to avoid litigation, counties either offer or mandate state-supported mediation to facilitate decision-making by the parents. However, when parents either cannot or will not agree between themselves, the legal system authorizes a District Court judge 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. No judge can ever know as much about the needs of a child as the parents do. And 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 and physical 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 of either a legitimate or illegitimate child as the custodial parent. The only question is what is in the best interest 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 agree 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—strictly 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, one night a week for dinner visitation, alternating holidays throughout 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

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means that the parents should jointly make the major decisions for the child. Joint legal custody implies that both parents make the 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 must cooperate in making major decisions such as school selection or major medical decisions affecting their child.

When separated parents agree upon joint legal 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 most 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.

Is there a relationship between child support and visitation? 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, reaches 18, or reaches his or her 20th birthday if attempting to make satisfactory progress toward graduation, 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.

The North Carolina Academy of Trial Lawyers is a nonprofit, nonpartisan association dedicated to protecting people's rights through community and professional legal education, championing individual rights, and protecting the safety of North Carolina families—in the home, in the workplace, and in the environment. This brochure is presented as a courtesy of the Academy and your local attorney. We hope it will assist you in understanding child support and custody issues.

The Academy's public education programs work to improve our court system to bring fairness and justice to all citizens and to increase both understanding and appreciation of the American judicial system and the right to trial by jury.

If you have further questions about your special needs regarding child support and custody, 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.

This brochure was prepared by the Academy's Public Education Department. For additional information on the public education brochure series, please email [ncatl@ncatl.org](mailto:ncatl@ncatl.org).