

# CHILD SUPPORT AND CUSTODY

Although no one enters a marriage with the intent to separate, the reality is that about 50 percent of marriages end in divorce. If you should find yourself in this difficult position, it is critical that you receive as much information as possible to make the best decisions for you and your family. The breakup of a marriage can be traumatic for everyone involved, including the children. Parents who are separating should exercise great care in making the process as conflict-free and smooth as possible for the benefit of the children. The biggest mistake people make when separating is using the child as a pawn or tool for revenge. A child should never be used by a parent for revenge — the child's needs and interests should always come first. Other common mistakes people make when separating include arguing in front of the child, disparaging the other parent to the child, 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 the other parent created this child, and despite the break-up of your relationship, you and the other parent must continue to communicate civilly for the sake of your child for years to come.

When a child's parents decide to separate, they must also make decisions regarding the custody, care, and support of the child. Parents can execute a contract called a "Parenting Agreement", which is a private contract between the parties regarding custody and child support. Parents can also enter into Consent Orders for Child Custody and Support, which requires the commencement of a lawsuit with a Complaint and Civil Summons. If the parents are not able to resolve the issues of custody or child support, a parent can initiate a civil lawsuit in the county where the child resides, and ultimately a judge will make these decisions concerning the minor child. 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, with a "best interest" standard.

Generally, the child and the parents will be better served by trying to decide what is in the child's best interests by agreement rather than by litigation. However, there are a variety of different reasons why people cannot agree and in those cases litigation is the best course of action to protect the child.

## 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 free mediation at the courthouse before a trial can take place. The mediation can be waived if one party lives more than fifty miles away, if the parties have already mediated, if there is a domestic violence protective order in place, or for other valid reasons. If mediation fails to resolve the case, a District Court judge is authorized to decide who should have custody, the visitation schedule, and how much child support the parents will pay.

Litigation should be used as a tool of last resort when there is no other way to protect your child. Litigation is expensive, with both parties usually represented by an attorney. Often, people end litigation feeling bitter and unhappy.

Litigation allows the Court to make decisions which are in the child's best interest instead of the parents. When deciding who is awarded legal and physical custody during a custody trial, the judge considers all facts and issues to determine the best interests and welfare of the minor child. A judge will have limited contact with the parties and little or no contact with the child at issue. No judge can ever know every detail about your child or your ability to parent.

Here are important facts that help a judge decide a child custody case:

- What is the child's age?
- Who has assumed primary responsibility in caring for the child throughout the child's life?
- Who feeds, bathes, and clothes the child?
- Who assists the child with homework? Who attends parent/teacher conferences? Who is involved in the child's schooling?
- What is the work schedule of each parent who works outside the home?
- What is the physical, emotional, and parenting ability of each parent?
- With whom has the child bonded?
- Does the child have any special needs?
- Is a parent trying to prevent the child from continuing a relationship with the other parent?
- Is a parent trying to use the child to hurt or manipulate the other parent?
- Is a parent unfit, unwilling, or unable to raise the child properly and appropriately?

There is no legal presumption that one parent is better than the other. The only question is the welfare of the child. The judge must make his decision based on what is in the best interest of the minor child. The risk of litigation is that it is impossible to predict what a judge will ultimately decide as being in the child's best interest.

This brochure speaks to "parents" as having custodial rights. However, there are third parties that may have standing to sue for custody of a minor child, such as step-parents and relatives. If you are a third party seeking custody of a child, consult with an experienced family law attorney immediately. Third party cases are complicated and it is important that your attorney has experience in third party custody cases. Another time a third party seeks custody of a child occurs when Child Protective Services is involved with your family and places the child outside the home. Child Protective Services has vast authority to protect children within the State. If Child Protective Services is involved with your family, you need the guidance of experienced counsel because you could risk losing custody of your child.

## AGREEMENT V. ORDER

Physical and Legal Custody can be accomplished in different ways:

- **Option 1:** The parties agree as part of a private contract or "Parenting Agreement" to a legal and physical custody and/or child support arrangement.
- **Option 2:** Parties agree to the terms of a Consent Order for legal and physical custody and/or child support, and codify that agreement via a Court Order which involves a lawsuit and claims for custody and/or support.
- **Option 3:** Parties cannot agree and a party files a lawsuit for custody and/or child support in the proper county.

With Options 2 & 3, 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 contempt powers of the court.

The form of your custody determination — agreement or order — makes a difference. Contracts and Orders are 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 before agreeing to or executing anything.

## PHYSICAL CUSTODY

Many people confuse legal and physical custody or refer to custody as “joint custody.” It is important to know whether or not that person is discussing legal or physical custody. Joint legal custody of a child means that the parents must communicate major life decisions for the child prior to making them. Physical custody refers to where the child is residing at a given time. When one parent has primary physical custody of a child, the other parent usually has secondary custody in the form of visitation for specific periods of time. An example of secondary custody would be every other weekend. Another type of physical custody is joint physical custody, which is when the parents share custody of the child equally. Joint physical custody can take a variety of different forms, such as week on/week off, 5-2-2-5 or 2-2-3. In a 5-2-2-5 scenario, parent A would have 5 days, parent B would have 2 days, parent A would have 2 days and parent B would have 5 days — this rotation would occur on a 14-day cycle and would be repeated every 14 days.

The general presumption is that both parents should have regular contact with the minor child. However, in extraordinary circumstances such as child abuse, domestic violence, sex abuse, neglect, or abandonment, there are times when the Court prohibits any and all contact between a parent and a child. Another alternative in these high-risk cases is for the Court to order supervised visitation. There are private companies that supervise visitation. For example, in Wake County, the “Time Together” agency offers supervised visitation and supervised exchanges services.

In addition to the regular visitation schedule, the parents or the Court need to clarify holiday and vacation schedules in order to avoid confusion and disputes. Typically, parents will alter holiday visitation on a rotating basis such that one parent gets Thanksgiving in odd years and the other parent gets Thanksgiving in even years.

Until the parents execute a parenting agreement with provisions for custody, or a court orders otherwise, both parents have equal rights regarding their child. This does not, however, give one parent a right to take the child and flee the jurisdiction.

Each case is analyzed differently by the Court, and judges have broad discretion in determining the best interest of the minor child on a case-by-case basis.

## LEGAL CUSTODY

Legal Custody is the ability to make major life decisions for a minor child. 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 education 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 life decisions in their own life that may affect the child.

Legal custody is different from daily decision making for the minor child. Legal decision making involves major life decisions for the child such as medical decisions, educational decisions, and religious decisions. Daily decisions for the minor child — such as what the child wears, when the child bathes, or what the child eats — are made by the parent with physical custody of the child at that time.

If the parties chronically cannot agree on making life decisions for the minor child, the Court often appoints a “Parent Coordinator” who is a quasi-judicial appointee of the Court. Parent Coordinators are utilized when the case is high conflict and the parties cannot make joint decisions regarding the health, welfare, and education of the minor child. The parties are required to pay for the services of the Parent Coordinator. The Court in its

discretion can decide what percentage each parent is required to pay. An Order Appointing a Parent Coordinator must be filed and a Parent Coordinator Conference must be held in front of the judge to clarify the terms and duration of the Parent Coordinator’s authority.

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 or unable to cooperate with the other parent.

## THE AMOUNT OF CHILD SUPPORT

By law, each parent has a duty to support his or her children. In North Carolina, the North Carolina Child Support Guidelines can be applied to most cases in order to determine how much financial support a parent must pay. The North Carolina Child Support Guidelines are based upon the income of both parents, the type of custodial arrangements that exist, and other factors such as daycare and health insurance costs, to determine the appropriate amount of child support each parent is obligated to pay. Forms used to determine this amount of support can be obtained from the Administrative Office of the Courts or on-line via the North Carolina Child Support Enforcement website. The Child Support Guidelines have various worksheets depending on the custody arrangement for the minor child. The Child Support Worksheets can be confusing and difficult to understand. If you have questions about calculating child support, contact your attorney for clarification or visit the Wake County Child Support Enforcement office. A parent can petition the Court for child support or utilize the County’s Child Support Enforcement division.

Deviations from the North Carolina Child Support Guidelines are also available upon motion to the Court based on specific factors. Do not refuse visitation with a parent based on non-payment of child support. Child support payments and visitation are separate issues and visitation should not be withheld based on non-payment of child support.

Your County’s Child Support Enforcement division can help you collect back child support or child arrears through a variety of methods, including, but not limited to, intercepting tax refunds.

There are no provisions under North Carolina law that require a parent to pay for higher-learning/college for an adult child. However, some parents agree as a part of a settlement to include payment provisions for college in a Property Settlement and Separation Agreement. In order to ensure that your Agreement regarding payment of higher-learning/college is enforceable, have it reviewed by a family law attorney prior to signing it.

## CONCLUSION

Separation and Divorce can be stressful on any family. However, your child will benefit if matters of custody, visitation, and/or support can be determined amicably between both parents. When that is not possible, a parent or third party with standing to make a claim for custody may petition the court to decide these matters. Once a case begins with the Court, the Court maintains jurisdiction of custody, visitation, and support issues until the child reaches majority age. An agreement or Court Order may be changed and modified, per warranting circumstance(s), up until the child reaches majority age. 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. High conflict child custody trials are costly and often require the assistance of experienced counsel. For a parent seeking child support only, an inexpensive service is available through his or her county’s Child Support Enforcement Office. Litigation places a toll on the family, especially the child, and should be pursued as an option of last resort. Parents should fully explore their options with an experienced family law attorney before moving to trial.

The **North Carolina Advocates for Justice** is a nonprofit, nonpartisan association dedicated to protecting people’s rights through community, education and advocacy. This brochure is presented as a courtesy of NCAJ’s Family Law Section.

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.

If you need to find a family law attorney to assist in a child custody or child support case in North Carolina, you may search for attorneys in your county at [www.ncaj.com](http://www.ncaj.com) under “Find A Lawyer”.