

CHILD CUSTODY AND VISITATION

Often the most traumatic issue in any divorce or separation is custody of the children. The underlying principle for all custody decisions in court is the “best interest of the child.” This includes the needs of the child, the ability of each parent to meet these needs, the child’s preference, the stability of the home, and each parent’s willingness to allow the child to visit the other parent.

PATERNITY

The first step in any custody case is determining the paternity of the child. The court presumes the husband is the father of any child born during the marriage, absent proof to the contrary. For unmarried couples, either the mother or father may file a paternity suit, or the Child Support Enforcement Division may initiate the case on the mother’s behalf. The case almost always hinges on the results of a DNA paternity test.

INITIATING THE CUSTODY CASE

A custody hearing can be initiated in a variety of ways. Usually, the hearing is part of a divorce or dissolution case ending a marriage. Less frequently, a father may start a custody case after learning that he is the father of a child. Also, unmarried parents may petition the court for a custody determination

incident to breaking up. A filing with the local state court starts all these proceedings.

CUSTODY INVESTIGATORS

Once a case is filed, the court will often appoint a custody investigator to help the judge determine the best interest of the child. The Child Custody Investigator’s Office will determine whether you have a low enough income to qualify for a free investigator, or whether you need to hire one yourself. The investigator will meet with both parents and the child and write a report expressing his or her opinion as to the best interests of the child.

The investigator should not have a bias towards either parent. If you are hiring your own custody investigator, talk to the investigator to make sure the investigator is not biased against military members, who are subject to changes of assignment and deployments.

You should try to make the best impression possible on the investigator. The court rarely disregards the investigator’s recommendation.

Your child’s preference can be very important. The court will generally give some weight to the child’s opinion if the child is seven years or older. The older

the child, the more the court will respect his or her preference.

TYPES OF CUSTODY

Generally, there are two types of custody: sole custody and joint custody. Sometimes, parents will further distinguish between legal custody and physical custody for various reasons relating to taxes and military benefits. Please consult an attorney for more details on the consequences of legal and physical custody.

Sole custody is primary possession of a child. It does not rule out visitation by the other parent. Joint custody is sharing the child beyond mere visitation. The court may impose joint custody without the consent of the parents, but does so rarely.

VISITATION

Visitation is the ability of a non-custodial parent to see his or her children for a limited period of time. You may agree to various times of visitation, or the court may impose them. The standard conditions of visitation are two weekends a month and two weeks a year, but courts and parents vary significantly from this guideline. Parents often divide major holidays, and may agree to longer, less frequent periods of visitation if one parent resides

out-of-state or out-of-country. You also should determine who will be responsible for paying the expenses related to visitation, and who will accompany the child during travel.

Once the court enters an order, you must abide by it. Custodial interference is a felony in all fifty states, and denying reasonable visitation can result in heavy financial penalties.

MODIFICATION OF CUSTODY ORDERS

The custody determination by the court is not necessarily the end of the matter. While the courts prefer not to disturb existing child custody arrangements, they will look at custody again if the parents make significant lifestyle changes. Please see an attorney if you are considering asking the court to change custody.

CONCLUSION

The most important thing you can bring to a custody hearing is a mature attitude. The best shot you have is to present your case calmly and coherently. **Always remember that the court only cares about what is best for the child.**

HOURS OF OPERATION

Legal Assistance

(Attorney consults by appointment only)

Will Appointments

Must complete Will worksheet BEFORE you make a will appointment! Stop by or call for more information.

Italian Legal Assistance

(Attorney consults by appointment only)

Powers of Attorney/Notaries

Mon-Fri 0745 - 1630

You can complete power of attorney and read more information at

<https://aflegalassistance.law.af.mil>

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