

WHAT IS CUSTODY?

Legal custody means the right to determine the child(ren)'s upbringing, including education, health care, and religious training.

Physical custody and residence means the routine daily care and control and the residence of the child(ren).

Joint legal custody means that both parents have equal rights and responsibilities, including the right to participate in major decisions determining the child(ren)'s upbringing, including education, health care, and religious training.

Joint physical custody means the routine daily care and control and residence of the child(ren) is structured between the parties. There is no requirement that the time be split on a 50/50 basis--all that is required is some structuring between the parties.

WHAT IS PARENTING TIME?

Parenting time (also called visitation) refers to the time that the non-custodial parent (the parent who does not have physical custody of the child(ren)) spends with the child(ren). It is intended to enable the child(ren) and the noncustodial parent to maintain a child(ren)-to-parent relationship that will be in the best interests of the child(ren). Parenting time/visitation rights are generally determined incident to a custody proceeding.

WHO DECIDES CUSTODY?

If you and the other parent are not able to agree upon custody, the judge assigned to your claim will decide who is awarded custody of the child(ren).

ENGEL LAW OFFICE

The Kensington, Suite J

157 West Third Street

Winona, MN 55987

Phone: 507-453-3646

Fax: 507-457-0519

www.engellawoffice.com

©2008 Engel Law Office

Disclaimer: This brochure does not provide legal advice. You should consult an attorney for individual advice regarding your own situation.

CHILD CUSTODY IN MINNESOTA



507-453-3646

www.engellawoffice.com

ENGEL LAW OFFICE

Starting a Proceeding:

A child custody proceeding may be started as part of a dissolution or legal separation proceeding. Where a dissolution or legal separation is not involved, a parent or other party may start a child custody proceeding by filing, with the Court, a petition or motion seeking custody of the child.

Temporary Custody:

When custody is in dispute, one or both parties request a hearing to ask the court to award custody to one parent rather than to the other. To prepare your case for a hearing, your attorney must gather as much evidence as possible to show that you are the primary parent of the child(ren) and that it would clearly be in their best interest if you were to be awarded custody. This is usually done by providing the court with sworn affidavits (statements made in writing, under oath) and memoranda of law (legal documents spelling out the law that the court needs to examine to make its determination). At the hearing, the court will usually order a temporary custodial arrangement, pending a final decision.

Guardian Ad Litem:

The court has the authority, and in some situations, the obligation, to appoint a guardian ad litem to represent the best interests of the child. A guardian ad litem is required to protect the child's legal rights and to advise the court what is in the child's best interests as to custodial rights and rights of visitation.

Factors considered by the Court in Determining Custody:

The court is required to determine what is in **the best interest of the child** when making its decision about custody. To do so, it must consider all relevant factors including:

- 1) The wishes of the child's parents as to custody;
- 2) the reasonable preference of the child, if the court deems the child to be of sufficient age to express preference;
- 3) the child's primary caretaker;
- 4) the intimacy of the relationship between each parent and the child;
- 5) the interaction and interrelationship of the child with a parent or parents, siblings, and any other person who may significantly affect the child's best interests;
- 6) the child's adjustment to home, school, and community;
- 7) the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- 8) the permanence, as a family unit, of the existing or proposed custodial home;
- 9) the mental and physical health of all individuals involved;
- 10) the capacity and disposition of the parties to give the child love, affection, and guidance, and to continue educating and raising the child in the child's culture and religion or creed, if any;
- 11) the child's cultural background;
- 12) the effect on the child of the actions of an abuser, if related to domestic abuse between the parents; and
- 13) Except where a finding of domestic abuse has been made, the ability of each parent to encourage and permit frequent and continuing contact by the other parent with the child.

Concluding a Custody Case:

A custody dispute may be resolved by a number of different methods, as follows:

Mediation: Frequently the court will order the parents to engage in mediation to attempt to get them to resolve the issue of custody. During mediation, a neutral third party meets with both parties and assists them in defining and solving the problems they have about custody. If mediation is not successful, the court may order a custody evaluation.

Custody Evaluation: In a custody evaluation, a third party (either a Court Services worker or private expert hired by a party) conducts a study of the family and makes a recommendation to the court about who should be awarded custody and under what conditions custody should be awarded. The evaluation usually consists of psychological tests, observation of the parent interacting with the child and interviews of the child(ren), parent and, in some cases, teachers, neighbors, friends and medical providers. Based on the information gathered, the evaluator makes recommendations to the court.

Hearings, Conferences and Trials:

Once the court has before it the reports on the evaluation(s), the court may hold another hearing on the matter of custody or may order the parties to engage in a pre-trial conference to discuss the possibility of settlement. After the pre-trial conference, the court will set a date for the trial of the case. At trial, witnesses present oral testimony regarding the 13 relevant factors to allow the judge to determine what is in the best interests of the child.