

## 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).

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# CHILD CUSTODY IN MINNESOTA



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## **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.

**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.

## **Factors considered by the Court in Determining Custody (new in 2015):**

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) A child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development;
- 2) Any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;
- 3) The reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;
- 4) Whether domestic abuse, as defined in section 518B.01, has occurred in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs;
- 5) Any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;
- 6) The history and nature of each parent's participating in providing care for the child;
- 7) The willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain the consistency and follow through with parenting time;
- 8) The effect on the child's well-being and development of changes to home, school and community;
- 9) The effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;

- 10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;
- 11) except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and
- 12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize method for resolving disputes regarding any major decision concerning the life of 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.

## **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 12 relevant factors to allow the judge to determine what is in the best interests of the child.