

"Joint" and "Sole" Custody Terms

"Joint" and "Sole" custody terms can be confusing to divorcing parents

There are various custody arrangements, which can be entered into after a divorce, and possibly, as the result of a decree of paternity. The most typical form of custody is "sole" custody. That is, the custodial parent has exclusive physical custody of a child, subject only to the non-custodial parent's visitation rights. Under this form of custody, the custodial parent has the right to make all-important decisions on behalf of that child. The court according to local rules usually sets the non-custodial parent's visitation rights and guidelines.

"Joint legal custody" is a term of law used to describe an arrangement whereby both parents have the authority and responsibility for the major decisions concerning the child's upbringing, including the child's education, health care, and religious training. An award of joint custody does not necessarily mean that the parties will share physical custody of the child. Most often, one parent will have primary physical custody of the child with the non-custodial parent having visitation rights, similar to those exercised by non-custodial parents under "sole" custody arrangements.

Whether the parties have a "sole custody" or "joint legal custody" arrangement, they may agree to virtually any arrangement for sharing time with their children. For example, we have handled cases where the parties have agreed to "visitation" ranging from alternating weekends and holidays to an equal division of time with the children on a weekly, monthly or yearly basis.

In determining whether an award of joint legal custody is appropriate under a given circumstance, a court will consider whether the parties agree to such an arrangement. Additionally, the court will look at the following factors:

The fitness and suitability of each of the persons awarded joint custody. It is unlikely that a court will award joint custody to a parent who is mentally unstable, has a substance abuse problem, or has a history of committing physical abuse. The court's primary interest is in protecting the well being of the child.

Whether the persons awarded joint custody are willing and able to communicate and cooperate in advancing the child's welfare. This factor is crucial. However, communication can break down even in an intact family. For that reason, the members of this firm frequently recommend to our clients that their custody agreements require mediation if an intractable dispute arises between them regarding a child rearing issue.

The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age, and whether the child has established a close and beneficial relationship with both of the persons awarded joint custody.

Whether the persons awarded joint custody live in close proximity to each other and plan to continue to do so. While close proximity is not necessary, it is our experience that it is more difficult for a non-custodial parent to be apprised of current situations and to keep abreast of details in the child's life if he or she lives outside the child's community. Close proximity is particularly important if the parties share substantially equal time with the children on a weekly basis.

The nature of the physical and emotional environment in the home of each of the persons awarded joint custody. It is important for each parent to have a stable home. Again, the court is determining what is in the child's best interest and stability is an important aspect of good parenting.