

Q: *I'm not sure what kind of custody arrangement is right. What do I do?*

A: The answer to this question really depends upon how well you and your spouse are able to work together. Many clients say that they want joint custody with their spouse. This raises a question of what the parties think "joint custody" really means. There are essentially four types of custody arrangements: Joint Legal Custody, Joint Physical Custody, Split Custody and Sole Custody. They will be discussed below in no particular order.

Explanation of Custody

- In a **joint legal** custody arrangement, the children live primarily with one parent and the parent who doesn't have the children has visitation or parenting time. Both parents are able to work together in making decisions involving the children. If an agreement cannot be reached in decisions involving the children, the parent who has custody of the children will decide. Before the Court will approve joint legal custody, both parties will have to testify that they are able to cooperate with each other for the children's educational, medical and religious needs. Without that testimony, the Court will not enter an order for joint legal custody.

- A **joint physical** custody situation is one in which the children actually move from one parent's home to the other for a specified amount of time (for example, school year with one parent and summers with the other OR alternate weeks with each parent).
- Another option is **split custody**. This means the children are actually separated and do not live together with the same parent. *Joint physical custody and split custody are generally not favored by the Court. The Court has concerns about shuffling children back and forth between parents.*
- **Sole** custody occurs when physical custody is placed with one parent. The parent without the children is given visitation or parenting time with the children.

Q: *My spouse has custody of our children and is planning to move from Nebraska after the divorce. Can he/she do that?*

A: The parent who has custody of the children must get permission from the Court before moving the children from Nebraska. If the other parent does not object to the move, it will be approved. If the parent who doesn't have custody of the children objects, there will be a hearing. The Court will approve the move if the parent with custody of the children proves that (1) there is a good reason for leaving

the state and (2) it is in the children's best interest to continue to live with that parent.

A good reason to leave the state is often found in the following situations:

- The parent's occupation
- A career improvement
- The parent's remarriage

This is not a complete list; it is only an example of the commonly raised reasons for such a request. The Court will consider whether there are similar career opportunities (in pay and type) available in Nebraska; however, wanting to move to more interesting or attractive surroundings is not a good enough reason to move with the children.

The second part of the test is that the move is in the children's best interests. In determining whether this is the case, the Court will look at the following factors: will the move improve the quality of life for the parent and the children; motives of the parent for moving; motives of the other parent for fighting the move; visitation or parenting time of the parent without custody of the children and whether reasonable and realistic visitation schedules can be made if the move is approved.

Q: *I don't know what kind of visitation to ask for. What should I do?*

A: The answer to this question also depends upon how well you and your spouse are able to work together. Some couples feel that they can work together to establish reasonable visitation and want the flexibility of not having a set visitation schedule. Others feel more comfortable with a set plan so that they can know for sure when the visits are occurring.

The standard visitation model in Nebraska is called Wilson visitation. Essentially, this provides for alternate weekend visits from Friday evening to Sunday evening. In addition, the parents also alternate holidays. For example, in odd numbered years the parent without custody of the children would have visits for the following holidays: Easter, Fourth of July, Thanksgiving and New Year's Day. The other parent would have the children for the following holidays: Memorial Day, Labor Day and Christmas. The parent without custody of the children might also have some mid week parenting time.

Recognizing that some families may celebrate other holidays not listed above, a similar schedule could be done including any family celebrations or religious observances.

In some cases, a parent may request visitation with special conditions, such as supervised visits, etc. Judges are very leery about putting conditions on visitation without enough evidence to support the request. There is concern that requiring visits to be supervised may hamper a

parent's ability to see his or her child. At the same time, the Court is also concerned about entering orders that are in the minor children's best interests.

Q: My spouse wants to do split custody of the children so there will no child support ordered. Can we do that?

A: The answer is that it depends. Courts frequently frown on parents' structuring a custody arrangement as a way of eliminating or minimizing a parent's child support obligation. The Nebraska Supreme Court holds the opinion that both parents have some responsibility for supporting their children.

In an effort to ensure that child support is calculated and ordered in a uniform manner across the state, the Nebraska Supreme Court has developed Child Support Guidelines. The Court takes each parent's income and subtracts from it any health insurance premiums paid for the minor children and any other court ordered child support payments for other children to determine each parent's income after taxes.

The Guidelines direct that the parents' income is combined to determine the total monthly income. A calculation is done to determine what percentage of the combined total each parent should pay. The monthly child support is determined by looking on the court-created matrix. The combined income after taxes is on one

side and the number of minor children is on another. By following the numbers down until the two lines intersect, the monthly child support figure is determined.

The monthly child support figure is divided proportionately between the parents, by using the same percentage of their portion of the combined income after taxes. It is through this mathematical relationship that the Court determines each parent's child support obligation.

It is possible to differ from the standard child support. In order to have any change approved, enough evidence must be presented to the Court to support the requested change. Some of the factors that the Court may look at in support of a change are: amount of time the minor children spend with the parent who doesn't have custody; whether the parent who doesn't have custody provides childcare for minor children. This is intended to illustrate situations when a change from the standard support calculation may be appropriate and is not a complete list.

All child support payments are paid through the State Disbursement Unit. Some parents prefer to have child support payments directly withheld from the paying parent's wages. The parent paying the support is responsible for making sure his or her employer forwards those payments to the State Disbursement Unit, on time.

Do It Yourself Divorce

Frequently Asked Questions Regarding Child Custody, Visitation & Support



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