

GUIDE 1

5

KING @ LAW'S DIVORCE GUIDE SERIES

Custody and Child Support in a North Carolina Divorce



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Table of Contents

- 1 CUSTODY 1**
 - LEGAL CUSTODY 1
 - PHYSICAL CUSTODY 2
 - VISITATION MINIMUM..... 3
 - PRE-COURT 3

- 2 CHILD SUPPORT..... 5**
 - THE WORKSHEETS 5

- 3 AGREEMENTS 7**
 - TYPES OF AGREEMENTS..... 7

- 4 NEGOTIATIONS AND LITIGATION 9**





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Chapter

1

1 Custody

Physical custody is often in dispute, whereas legal custody is usually shared.

There are two types of custody. Physical custody refers to the parent the child lives with and spends time with. Legal custody refers to a parent's right to make major decisions about the child's upbringing. The state of North Carolina has a policy of promoting shared responsibility and collaboration between divorced parents whenever practical.

TERMS

 Physical Custody

 Legal Custody

 Visitation

Legal Custody

The parent with current physical custody can make day-to-day decisions without consulting the other spouse. However, in a joint legal custody arrangement, you and your spouse must reach a consensus on any decisions that have important, long-term implication for the child(ren).

The court starts from an assumption that a pure joint legal custody arrangement is in the child's best interest. However, a judge can deviate from this assumption if there are facts and circumstances that make a different arrangement better for the child(ren).

For example, say one spouse wants to use healing crystals whenever the child(ren) are sick. The court might award joint legal custody between the

parents, except that one parent may be given full legal custody when it comes to decisions about the child's health.

When parents have joint legal custody and cannot agree on a specific issue, the court may have to decide how the child will be raised on that particular issue. For example, if the parents disagree on what religion to raise their child(ren) with, a judge may have to pick one for them.

In reaching a decision on how the issue will be resolved, the judge will try to determine what is in the child's best interest. Judges tend to think whatever the status quo was during the marriage is also what's in the child's best interest.

This is because the judge is trying to give the child as much stability as possible. Also, the judge often presumes what the parents did during the marriage was what the parents thought was in the child's best interest at the time.

Physical Custody

Physical custody refers to which spouse the child lives with and spends time with. The judge determines what's in the child's best interest for physical custody by comparing the parents to one another and determining which (or both) will be a competent parent.

Judge's look for things like which spouse will provide a better home, supervise the child appropriately, and lookout for the child's safety. The following are a few more examples of things that may persuade a judge:

- Who was the primary caretaker of the child(ren) during the marriage?
- Which parent(s) prepare healthy meals at home?
- Which parent(s) takes the child to doctor, dentist, or school appointments?

- Which parent(s) attend events or meetings like parent-teacher conferences or sporting events?
- Which parent(s) responsibly disciplines the child?
- Does one spouse expose the child(ren) to drug abuse, criminal behavior, or poor morals?
- Which home and/or spouse has the child grown accustomed to?

Visitation Minimum

Even with a primary custody arrangement for physical custody, the other spouse ordinarily has visitation rights. This is because parents have a constitutional right to be involved in the lives of their child(ren). The minimum visitation is every other weekend. While this is the minimum, it's also de-facto.

A spouse's visitation rights can only be completely removed if the parent acts in a way that shows they've abandoned their parental role. Generally, this occurs if the parent is a danger to the child or abandons their care.

A side effect of the minimum is that spouses are incentivized to work together on their custody issues out-of-court. In most cases, even if you win at trial, you'll still need to share physical custody at least some of the time with the very person you criticized in the courtroom.

Pre-Court

If you have not filed a custody lawsuit nor obtained an order from the court, then custody is in an uncomfortable free-for-all situation. Until a judge signs an order, both parents have equal rights to the child(ren), as though they were still a married couple.

This means either spouse can keep the child(ren) away from the other and be within their rights. In fact, often one spouse will keep the child(ren), then a judge will hesitate to disrupt the status quo at interim

hearings. This results in a windfall to the spouse that unilaterally stole the child(ren).

Once a lawsuit is filed, the court usually makes a temporary custody determination somewhat promptly. In emergency situations, you can get an emergency hearing within a week at what's called an ex parte hearing. An ex parte hearing is just between you and the judge. The judge makes a temporary decision at the hearing, until a proper hearing can be scheduled where the other spouse can tell their side.

The morale of the story is that if your spouse takes your child(ren) unilaterally, or threatens to do so, this may mean you need to file a lawsuit promptly. Otherwise, you may only see your child(ren) every other weekend for a year or two during the litigation process.



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2

2 Child Support

Child support is calculated using worksheets that correspond to physical custody

Different child support worksheets are used to calculate child support for primary or shared custody. These worksheets are simply called [Worksheet A](#) for primary custody and [Worksheet B](#) for shared custody. You should use the worksheet that corresponds to whatever custody actually took place, regardless of whether it was agreed on.

STEPS

 Determine Custody

 Complete Worksheet

The Worksheets

The worksheets are intended to calculate the financial support a child would have received had the parents remained married. The worksheets calculate child support based on the income and expenses of the spouses.

The worksheets look similar to a tax form. They'll ask for information like income or expenses, then tell you to subtract or multiply one line from another.

Income is defined very broadly for the purposes of the worksheets. You need to enter pre-tax income before any tax-exempt withdrawals like 401k contributions. Income can also include any non-cash compensation of financial value, such as a company car.

Child-related expenses includes anything that is reasonable and is one of the specific expenses identified in the worksheet. Expenses that were customary during the marriage will likely be considered reasonable. Expenses like food, shelter and clothing are not listed, because these are the expenses the child support is intended to contribute to.

The worksheets have a line called “extraordinary expenses,” but the expenses don’t have to be that “extraordinary” to count. You can think of this line as unique or unusual expenses.

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3

3 Agreements

Child support and custody agreements are useful

Many parents feel there is no point to negotiating a custody or child support agreement between the spouses, since the court can disregard your agreement if it wants to. However, agreements are still useful. Courts will only disregard your agreement in certain rare situations. The parents often follow the agreement without the court's intervention. Also, even if a court does interfere with a voluntary agreement between the spouses, the court will still enforce the agreement for the time-period before someone filed a lawsuit asking to disregard it.

AGREEMENTS

 Oral

 Contract

 Consent Order

Types of Agreements

Oral agreements are not enforceable at all but they are important as a stepping stone towards getting something in writing.

A signed, notarized contract between the spouses (a parenting or separation agreement) will be honored unless the judge feels ignoring the agreement is necessary to provide for the child.

If you want the agreed-upon child support to be the most enforceable and consistent, a contract is a good option. Judges start from the assumption that the deal the parents made is fair, reasonable, and adequately provides for the child. A parent trying to get the court to

disregard the agreement has the burden to prove the court needs to intervene for the child's sake.

A consent order has the same effect as getting a court order at trial. However, the spouses agree to the order and submit it to the judge for the judge's signature. The enforcement of a court order in the short-term is absolute. However, a parent can ask for a "modification" later on if there is a substantial change in circumstances.

A substantial change in circumstances would be something like a parent losing their job or becoming abusive towards the child(ren). The parent contesting the prior agreement has the burden of proving there has been a substantial change in circumstances, justifying the judge changing their original order.

A consent order is a good option if you want the agreement to be more flexible. Even consent orders are seen as a decision by the judge, and the judge can change their mind if the circumstances change. In contrast, it's rare for a judge to interfere in a private contract between the spouses.

In a nutshell, a contract between the spouses is enforceable if it is reasonable and the court does not need to interfere for the child's sake. A consent order is enforceable unless there is a substantial change in circumstances. Both types of agreements are very useful, even if their enforceability is not absolute.



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4

4 Negotiations and Litigation

Read my other guides on negotiations and litigation

This guide provides a lot of information about the law, but doesn't offer any real actionable instructions on how to litigate or negotiate the issues. For more of a step-by-step instructional guide, see my guides on [negotiations](#) and litigation.