



**OFFICE OF THE STAFF JUDGE ADVOCATE
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CHILD CUSTODY AND VISITATION FAQs

These are a sampling of some frequently asked questions concerning child custody and visitation. This provides a general overview of the topic; however, be advised these can be situation and state specific.

Introduction

Visitation agreements can be made and signed between the two parents in the absence of a court order; however, once a court has decreed the custody arrangements then that will take precedence for who will have custody of the child.

1. Do mothers automatically get custody of their children when a separation occurs?

No. While the law has given fathers the right of custody to their children, in most jurisdictions it has been slow to change the legal presumption to balanced custody between parents. A marriage changed occurred when the law adopted the “best-interests” of the child test for custody decisions. Today, this test remains the most widely applied custody standard. Hence, the courts of most states no longer establish an automatic preference for either parent, but rather look very closely at which parent will best promote the welfare and interests of the children.

2. What kinds of factors do the courts consider in granting custody?

Courts usually look at who has primarily taken care of the child during the marriage (washing, feeding and clothing the child, or helping the child with daily tasks, such as, homework), who has the best approach to discipline, who has cared for the child since separation (if the couple has already separated), what work schedules either or both parents have, and how each parent can provide for the physical, emotional, educational, religious and social needs of the child. Simply stated, the test that most states utilize is the “best interests” of the child.

3. Can a legal assistance attorney help me get a court decree for custody?

No. Military attorneys cannot represent in court. You will need to retain a civilian attorney for the presentation of the papers and the appearance in court.

4. Can the court award attorney’s fees to me in a custody case?

In most states, if the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit, it is possible (but not mandatory) for the court to award

reasonable attorney's fees as part of the custody order. But remember, unlike a standard civil suit, there is no winner and loser in custody disputes in the traditional sense, and thus, no mandatory award of fees. Also, payment of attorney fees may also be negotiated into a settlement of custody.

5. Can a custody order be changed?

Yes. No custody order is ever *permanent*. However, once a parent is awarded custody in a court order, the judge can change the custody order only if there is a substantial change of circumstances affecting the best interest and welfare of the child or children.

6. Will my separation agreement protect me from the other parent snatching my child?

No. A separation agreement which hasn't been incorporated into a court order or divorce decree is *only a contract* between you and the other parent, not a court order. A court order, on the other hand, is enforceable by the court. Court orders of one state can be filed and registered in another state and thus be treated as if they were issued by the second state for purposes of enforcement. None of this applies to separation agreements, which are not incorporated into a divorce decree.

7. If my spouse is granted custody, will I get visitation rights?

It depends. Ordinarily the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of child abuse or a criminal record. Visitation can be flexible and unstructured, assuming the parties can agree on the times and terms of visitation, or it can be highly structured and rigid, with certain days and times set out with great specificity by the court.

8. If the other parent does not like the present custody order, can he or she file for custody in another state?

Under the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act, the court in a custody case must always inquire into whether the child or children have been the subject of custody litigation in any other state. When a judge finds that another court has made a custody decision, the judge should refuse to rule on the case. Only if the first court has released or transferred jurisdiction to the new state court may the second court assume jurisdiction to hear the custody case (unless there is an immediate and clear emergency affecting the child's welfare).

9. Won't custody be settled when I obtain a divorce?

Custody can be, but does not have to be, decided when the couple divorces. Divorce decrees do not necessarily settle custody matters, and a custody order can be entered before or after a final decree of divorce. A divorce decree and a child custody decree, while perhaps issued close in time with each other, are, and should be, two separate documents.

10. Does the child’s grandparents or some other third party have visitation rights?

All 50 states now have some type of statute allowing courts to grant visitation to a non-parent based on the best interest of the child. Many states have restrictive statutes, limiting who can petition a court for visitation and under what circumstances.

11. If I have other questions, what should I do?

See a legal assistance attorney for general questions or process. Alternatively seek out a private attorney as soon as possible in your jurisdiction so that the lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives.

Resources

<https://aflegalassistance.law.af.mil>

Conclusion

Child custody and visitation laws vary depending on location—if you have any questions or need assistance on this topic, please speak with a legal assistance attorney.

RAF Alconbury and RAF Croughton Legal Office Hours

All Services by Appointment Only (email 501cswja@us.af.mil)

Tuesdays and Thursdays 1000-1200 & 1300-1400

Current as of May 2022