

## **CUSTODY CONSIDERATIONS**

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Fighting over custody is often the most stressful event for you and your children because it causes such incredible emotional intensity and angst. That stress is not only felt among the parents, but also in your children for a long time to come. It typically leaves long term emotional scars.

When parties are litigating over division of a house, retirement plan, or other asset, it can become obvious along the way that the cost of the fight is approaching, or exceeding the value of the asset. Hence, reasonable people will often take steps to reach an agreement before reaching that point, or at least control the litigation cost. But this is often not the case in a dispute over custody and visitation. A parent may feel that s/he can never put a price on spending time with their children, or having the power to make important decisions about their children's upbringing and welfare. Emotions typically run much higher in custody disputes, clouding the judgment of one or both parties.

Because of this, it's not unusual to see parties spend many times their net worth in a custody battle. While the fight is under way, they simply lose touch with the cost, and get more embroiled in negative emotions that interfere with sound reasoning.

The very term "custody" often encourages conflict because parents assume that one person "wins" custody over the other. Yet, it doesn't have to be that way. Children need a close, loving relationship with both parents. Thus, a good custody/visitation arrangement is a win for the children. When the children win, everyone wins.

### **Basics**

One of the first things to understand about custody is that it's not about what's fair to the parents. Instead, it's about what's in the "best interests" of the children.

The court has a duty to protect the interests of children, not to satisfy the wants/needs of either parent. Because of this, a parent who feels he/she has done everything right may still suffer an adverse ruling simply because the judge believes that the order is in the child's "best interests." A judge's perspective is often not the same as the parents', and may involve an application of certain facts to the law that the parents don't understand or agree with.

When considering a child's best interests, a judge will look to the status quo. In other words, before ordering any material change to a child's life, the judge will establish whether there's something really bad about the present custody/visitation arrangement in relation to a proposed alternative that would be dramatically better for the child, once implemented. If the alternative is not in the child's best interests, all things considered, then the judge is likely to leave the present situation unchanged.

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### **Getting Help**

It's best for parents to work through their disagreements about custody or visitation, without having a court decide those issues for them. If parents can't communicate or coordinate effectively, they should hire professionals to help, such as a co-parenting counselor, lawyer, or mediator. When hiring such professional(s), parties should consider that person's level of experience, including knowledge of the law, as well as whether they possess good people skills.

### **Costs**

For reasons discussed above, it's easy to lose track of the cost when dealing with custody and visitation issues. Therefore, it's important to keep the lines of communication open with any professional you may hire regarding ongoing fees. You should establish an arrangement in which you are provided at least once a month (or more periodically when you request) an itemization of services provided, the amount of fees you've incurred to date, including the remaining amount of your original retainer/deposit, and an estimate of future fees based on the current status and trajectory of your case.

Although no attorney, mediator, or co-parenting counselor can tell you exactly how much it may cost to finally resolve your case (as there are too many variables, most of which are controlled by the parents and children), an informed and evolving estimate can be beneficial for all involved in regard to future planning.

### **What's Next?**

Parents are fond of telling each other (and anyone who will listen) that the children are their most important consideration. Hence, they are putting up a fight only because they believe it is in their child's best interests. In reality, however, fighting over custody is very rarely in the children's best interests, especially when it involves a long, nasty court battle. In such circumstances, parents often lose sight of the long term, irreversible effects on their kids. Instead, they focus on themselves and their struggle to "win" (including the desire to have their perspective validated).

When both parents are able to focus on the children, rather than themselves, they're less likely to engage in a prolonged or nasty custody fight. When disagreements arise, they can find ways to resolve the problem without acrimony or court intervention. The best way to care for your children in the midst of a divorce, or at any other time, is to cooperate with your ex to seek custody and visitation arrangements that provide quality time with each parent.

You and the other parent should always be intimately involved in your children's lives, including modifying your parenting arrangements and duties, at least until your child is grown up and out of the house, and perhaps beyond that. Questions such as: where the child lives, how often he or she will visit the other parent, who will make arrangements for transportation, who will pay for certain expenses; are all proper subjects for ongoing discussion between parents. This means

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that you might as well get started now learning how to work amicably together. If you don't, it's going to be a long difficult road, especially for your children.

How the divorce is managed can also impact your relationship with your child once he/she becomes an adult. We're all aware of kids who resent their parents long after they become adults due to the poor way in which the parents managed the divorce process, especially custody issues.

Sometimes one parent's stubbornness (or other problematic behavioral) forces the other parent into a custody or visitation dispute they don't want. For example, one parent may use custody as an unrealistic bargaining chip; e.g., he/she has no realistic chance of getting additional custodial time (and doesn't even have a true interest in spending more time with the kids), but threatens to fight for custody because s/he knows it may prompt the other parent to negotiate away some financial rights. Or a parent may try to prevent visitation as a way to punish the other parent for some emotional grievance related to a past relationship event.

One of the most important traits you can carry into a discussion about custody/visitation is a mature disposition and cool head. Children need both parents to act as good role models. They need parents that cooperate, even if they no longer like each other. They need parents who know how to put their differences aside in order to act in their best interests. The best way to help your children develop into a happy, healthy, competent adults is to be one yourself; for instance, someone who can be reasonable, cooperative, and considers and incorporates the needs of the other parent, despite any lingering animosity toward the other based on prior relationship troubles.

Deep down, most parents want to be good role models for their children. Taking the time to recognize what actions will serve their long-term interests is a good starting point when considering your motives and behavior during the divorce process.

For more information, or to discuss your case, please contact Apicella Law at 415-377-1580.