
You & Your Children

Whether you and your spouse intend to agree on matters related to your children, including custody, support, and parenting time (visitation), there are certain considerations we believe you should be made aware of, including the following:

CUSTODY & CHILD SUPPORT

Courts examine various factors in making custody and child support determinations. Although they vary from state to state, guidelines were conceived to provide fair and consistent results.

As you go through the divorce process, stay focused on the welfare of your children. Remember that your relationship with your spouse does not end with the final decree. You will continue to have contact with your ex regarding support, parenting time and other parental responsibilities. For the sake of your children, keep the lines of communication open. Don't let your children be the losers in your divorce.

Custody of minor children consists of two (2) distinct concepts: decision making and timesharing. One or both parents may be responsible for decisions affecting the children. Timesharing refers to the amount of time each parent will spend with the children.

DETERMINING CUSTODY

The Court determines custody on the basis of what it believes to be the best interests of the children. The Court considers all relevant factors, including but not limited to the following:

- § child's relationship with parents, siblings, and any other who may have a significant impact on the child's life;
- § parents' wishes;
- § child's wishes, depending on the age and maturity of the child;
- § mental and physical health of all the individuals involved;
- § ability and willingness of each parent to care for the children;

- § respect each parent shows for the parental rights of the other parent;
- § adherence to a timesharing schedule;
- § suitability of each party's parenting plan;
- § geographic distance between the parties; and
- § willingness and ability of each parent to work cooperatively.

TYPES OF CUSTODY

A variety of terms describe the way parents share time spent with their children.

Sole physical custody means that the child resides with and under the supervision of one (1) parent, subject to the power of the Court to order parenting Time with the other parent. Sole legal custody means that one (1) parent will make all of the major decisions regarding the health, education, and welfare of the child.

Joint physical custody means that each parent spends significant time with the child. This arrangement generally assures frequent and continuing contact with both parents. It does not necessarily mean that the parents spend *equal* time with the child. Joint legal custody means that both parents share decision-making responsibilities relating to major issues, such as those affecting the child's health, education, and welfare.

TIMESHARING

Timesharing describes an arrangement through which both parents spend time with the children. Timesharing can be as varied as the families using it. There is no "right" schedule that fits all families or age groups.

DISPUTE RESOLUTION

If the parents cannot agree on a custody and parenting plan, a variety of methods exist for arriving at a custody agreement and order: mediation, arbitration, and evaluation and trial.

In states that require mediation, the parties must attempt to resolve their dispute with a trained mediator before the Court will address custody issues. If the parties do not reach an agreement with the help of a mediator, the mediator cannot impose a resolution. Arbitration is a voluntary process similar to mediation except that the arbitrator has the power to make a ruling if the parties do not agree. If mediation fails, a mental-health professional, such as a social worker, may evaluate the child's best interest and make custody and timesharing recommendations to the Court.

FINANCIAL SUPPORT

Child support is a court-ordered payment made to a spouse for the support, maintenance, and education of the children. Voluntary gifts, clothes, transportation, vacation expenses, and rent, which benefit the children, may not be considered support. The Court does not usually require the custodial parent to account for how he or she sends support. Child support stops when the child reaches the age of majority (which is 21), when state law decrees it, or upon agreement by the parties.

GUIDELINES

Indiana has Guidelines by which Courts determine support. The Guidelines contain formulas or tables that define the income of both parents and the timesharing schedule. The Guidelines require parents to share certain expenses in proportion to their incomes, such as work-related childcare and medical insurance. Parties who wish to deviate from the Guidelines must persuade the Court that a change is necessary. I can explain how deviation works in Indiana.

ENFORCEMENT

Child support orders may be enforced in a variety of ways. Child support is not dischargeable in bankruptcy, but unpaid support is collectible for only a limited time. Thus, if you allow support to remain unpaid for an extended period, you may forfeit your right to it.

MODIFICATION

Until a child is emancipated (i.e., an adult), the Court can modify custody and child support whenever necessary. A change of circumstances is generally required for the Court to modify a previous order. Remarriage of either parent does not automatically result in a change of circumstances.

TIPS FOR BETTER PARENTING

Now and after your divorce, keep in mind the following suggested parenting guidelines:

1. Put your children's welfare ahead of any satisfaction you may get from fighting with your former spouse. Involving your children in any conflict with your former spouse can do long-term damage to them.
2. Remember that children need two (2) parents. Help your children maintain a positive relationship with the other parent. Give them permission to love that

parent.

3. Show respect for the other parent. Do not make derogatory remarks about the other parent to or in front of the children.
4. Honor your timesharing schedule. Be courteous to the other parent by always notifying him or her if you will be late or cannot spend time with the children. Children may view missed visits, especially without a call, as a rejection.
5. If you are the non-primary parent, do not schedule "special activities" for every minute you spend with your children. Your kids need at-home time with you, too.
6. Do not use the children as messengers or spies. Never pump your children for information about the other parent.
7. Strive for agreement on important issues that affect your children, such as discipline, so that you do not undermine the other parent.
8. Use common sense in exercising your custodial and parenting time rights. Follow the old adage "Don't make a mountain out of a molehill" and follow the Golden Rule: "Do unto others as you would have them do unto you".
9. Don't send or collect child support through your children.

COMMUNICATING ABOUT YOUR CHILDREN

It is important that you communicate to the Court the relationship you have with your children. You may be the best parent in the world and have impressive relationships with your children, but if you cannot demonstrate that to the judge, the counselors, and the psychologists, you will not succeed in your case. Some people verbalize better than others. If you have good communication skills, it's a big help. If you are not a good communicator, you must work to improve your skills. If you need help in this area, talk with me about it.

When discussing their children before a judge or evaluator, many litigants refer repeatedly to "my" son or daughter. Keep in mind that whatever your feelings about your spouse, you are not the child's only parent. Persistent language that excludes the other parent may cause the Court to doubt your ability to foster a healthy relationship between the child and the other parent.

When asked to describe their children, most parents do a terrible job. They have difficulty saying much more than "Johnny's a great little kid." You must make the judge and evaluator believe that Johnny is "a great little kid" by helping them understand and

visualize Johnny. Make the judge and evaluator feel close to Johnny by demonstrating that you feel close to him. If you can do that, the psychologists and the judge will unlikely want to disturb your relationship with Johnny. When you speak about Johnny, use “word pictures”. For example, “I have a headache” means different things to different people. “I have a throbbing headache” is more communicative. And, “I have a throbbing headache that is making me nauseated” is even more descriptive.

These word pictures are the kinds of descriptions you should use when talking about your children. Remember that the judge who hears your case will have heard hundreds of cases. You must humanize yourself and your children so that the judge can see that the names on the paper represent real people - children with distinct characteristics and personalities and a parent who cares about and loves them.

Practice describing your children. First, write down a description of each child. Focus on their imaginations, sense of humor, or sensitivities. Then try describing them out loud. When you describe a child, begin with physical characteristics. Your Johnny may be blond, blue-eyes, four feet tall, 80 pounds, and eight years old. You will also want to show a current picture of Johnny so that the judge and evaluator can see him. Next, help the judge and evaluator understand Johnny’s personality, strengths, weaknesses, and the characteristics that make him unique. Again, do this with word pictures. Anecdotes about Johnny make him come alive. Remember, if you are asked to describe your child, this is not the time to complain about your spouse.

The evaluator and judge want to know how much you really know about your children. For example, what dress size does your daughter wear? Who is your son’s music teacher? What is your daughter’s favorite color? What is your son’s favorite ice cream? You should know the answers to all of these questions.

A large part of the process is assessing your relationship with your children, building your parenting skills and talents, recording information about you, your spouse, your children, and perhaps most important, improving the quality of your relationship with your children. Your children simply can’t lose if they come out of this case with a more caring, understanding, attentive, and skilled parent. If your spouse has made the same efforts, your children will emerge from the divorce with two parents who are functioning, both physically and emotionally, on a higher plateau.

You may even notice that some of your problems with your spouse disappear during the divorce. Don’t be surprised if your spouse “cleans up his or her act” before going to court. Don’t be angry about this. Remember, your children will benefit.