

Child Custody

Common Types of Custody

Common Factors

Experience shows that sharing parental rights and responsibility works best for parents who are cooperative and capable of caring for their children. However, in certain circumstances, one parent is better suited to have sole custody. An attorney can help you evaluate your unique situation, and help you deal with your Child Custody matter. If you need to formalize your custodial arrangement, or need to change your existing arrangement, that process most often begins with filing a Petition for Custody and Visitation in the County Family Court where your child resides. Our attorneys practice throughout the capital region, and are available to assist you in all aspects of the child custody and visitation process. This includes custody petitions, custody modification petitions, petitions for enforcement of orders of custody and visitation, and family offense petitions. Also, in limited circumstances, grandparents or siblings can petition for custody and visitation of children. New York's custody laws are designed not only to look at situations in the past but also to look at the parents' future ability to act in the best interest of the children. Because each custody case is different, it is important to have an attorney who understands this extremely sensitive matter and will give your case his or her personal attention. While each case is judged on its merits, there are certain factors the court will evaluate in determining initial custody. Please call (518) 218-7100 24 hours, 7 days a week or email custody@tullylegal.com

to find out how Tully Rinckey can help you in your child custody matter.

Common Types of Custody

"Pendente lite"

or temporary custody is issued by the court once your Petition has been filed with the court, but before the trial or final resolution of your case. Pendente lite literally means "pending the trial" and this term is usually used in Supreme Court. In Family Court, it is usually referred to as "temporary custody." At the conclusion of your case, any pre-trial temporary orders are replaced with a final order, which may or may not be similar to the temporary order. "Physical custody"

(sometimes referred to as "residential custody") refers to where the child physically resides, and/or spends his or her time. The parent physically residing with the child more than fifty percent of the time is deemed to have "primary physical custody" of the child and is referred to

as the "custodial parent." The non-custodial parent will more often than not receive rights to visitation with the children. There are various ways in which an attorney can work with you to develop an arrangement that works for you and your child."Legal custody"

refers to which parent has the legal authority to make major decisions involving the child such as educational, religious, and medical decisions."Joint Legal Custody"

implies equal role in making major decisions and is not an indication of how much time the child spends with a parent. Joint legal custody will allow both parents to have an equal role in making decisions, provided that they can work together. Equal authority also means that each parent has veto power over the decisions of the other parent. If a mutual agreement cannot be reached, sole physical and legal custody may need to be addressed."Shared Physical Custody"

refers to the situation where both parents share equally their time spent with the children.

Common Factors

Many factors are considered by the Court in determining child custody. Since each case is evaluated individually, there is no way to formulate a definitive list of criteria. Below are typical factors that may be evaluated:

The Age and maturity level of Parents:
Matter of practicality if there is a large age discrepancy.

Alcohol & Drug Use:
Former and current use, habits and any convictions or related problems.

Availability of Each Parent:
Courts tend to favor a parent who has more time to spend with the children. If you are going through a divorce and want custody, it is important to spend as much time as possible with your children. The court will look to see who was and continues to be the primary caretaker of the child.

Financial Situation of Each Parent:
Courts tend to favor a parent who can adequately provide for the children. It is important that you do not quit your job while trying to get custody. However, Courts can also impose Child Support Orders.

Home Environment of Each Parent:
Courts try to place children in a home with safe and stable environments.

Disability, Mental, Emotional, & Physical Health:
Relevant if it impacts how well the parent can care for children. Courts prefer an emotionally and mentally stable parent.

Siblings:
Keeping siblings together is generally considered to be the best interest of the children but there are always exceptions.

Marital Fault:
In order to get a divorce in New York, the couple must demonstrate grounds. A court may evaluate if the event that spurred the divorce or separation endangered the children in any way.

Relationship of Parents:
Courts try to place children with a parent that is willing to work with the other parent and encourage the relationship. Courts tend to avoid awarding custody to a parent that tries to impede visitation or the child's relationship with the other parent.

Preferences of the Children:
Children are not forced to choose one parent over the other. However, if the child does have a preference, the court will typically place more weight on the child's preference the closer a child is to age 18. The court will also examine the reason for the preference and if that is in the best interest of the child. In this situation, however, it is important not to try to influence your child's opinions about custody. Oftentimes, attempts to influence a child's opinions concerning custody will reflect very negatively on that parent.

Law Guardian:

The Law Guardian is an attorney assigned by the court to represent the children involved. This attorney is independent of either party, whose purpose is to inform the court of the children's wishes. New laws state that in cases where a child is old enough to express their opinion to the law guardian, the law guardian is legally-obligated to advocate for the child's opinion in court. This is unlike the prior role of the law guardian, where the law guardian was able to substitute his or her own judgment to further the "best interests" of the children. The law guardian may give the Court a recommendation on behalf of the children. Observable Behavior:

Behavior in court will be monitored closely and plays a significant factor in determining custody. Being argumentative or hostile should be avoided while being respectful, cooperative and reasonable is seen as more favorable. Previous Court Judgments:

Prior cases of child abuse or neglect are significantly relevant to determine custody. Prior criminal

or drug activity

may also bode negatively for a parent. Collateral Sources:

Relevant counselors, school officials, or other family members may be asked their opinions as to which parent should have custody. Voluntary Custody Agreements:

An attorney could help you negotiate an agreement with the other parent. The court assumes no reasonable parent would voluntarily act against the best interest of the children. Therefore, unless there is some compelling reason, the court will honor this agreement. The most popular City / Village / Town Courts our lawyers serve:

Albany, Altamont, Amsterdam, Berne, Bethlehem, Brunswick, Clifton Park, Cohoes, Colonie, Coeymans, Delaware, Duanesburg, East Greenbush, Fulton, Glens Falls, Glenville, Gloversville, Grafton, Greene, Guilderland, Hoosick, Hudson, Johnstown, Malta, Mechanicville, Menands, Montgomery, Nassau, New Scotland, Rensselaer, Rensselaerville, Rotterdam, Saratoga, Schenectady, Schoharie, Schodack, Scotia, Troy, Ulster, Voorheesville, Warren, Washington, Watervliet