

Child Custody: How Parents Can Do What is Best for the Children

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When contemplating divorce or separation, one of the most difficult issues that families must overcome is custody.

The best way to resolve custodial issues is by an agreement among the parents: those who know what is best for the children. Parents who can't resolve custody will have the matter placed in the hands of a judge to decide where the children will live and when they will see the other parent. This decision will be rendered by the judge after knowing the parents for only a couple of hours.

When talking about "custody" it is important to keep in mind that there are two kinds of custody in Virginia: **Legal Custody** and **Physical Custody**.

Legal custody deals with the ability to make decisions on behalf of a minor child. A couple of examples of issues that come up in the legal custody arena are decisions regarding which school a child will attend or whether or not a child should have a medical procedure. The day-to-day decisions for a child are usually made by the parent who the child is with at the time. In most cases, parents share legal custody equally.

The other aspect of custody is **physical custody**. Physical custody determines where a child will live. Today there are many variations on custodial schedules, from the children living with one parent a majority of the time and seeing the other parent when it's convenient -- to a schedule where parents have (approximate) equal time with the child. The latter is referred to as a shared custodial schedule.

Traditionally, in cases where custody was at issue, many courts would favor a custodial arrangement where one parent had primary physical custody and

the other parent had visitation with the children; often times in an alternating weekend pattern. This may have been due the lingering effects of the "tender years doctrine" which was a presumption that younger children should be in the custody of the mother (this was eradicated by statute in the 1980s). Now there is a list of factors set forth in the Code of Virginia that the court must take into consideration in deciding these issues with no presumptions in favor of either parent. It is no longer simply a question of who was the primary parent for the children during the marriage, although that is still a factor that the court must consider and tends to give great weight.

Before any custody case ends up in the hands of a judge, parents should try to come up with an appropriate schedule. The beauty of resolving these issues between parents is that there is great freedom to be as creative as needed. There are also plenty of experts, including mental health professionals, who can act as parenting coordinators to facilitate an agreement. Sure there is the traditional alternating weekends or week-on/week-off approach, but each family is different and each child is unique -- what works best should be pursued.

In fashioning a custodial schedule, parents should strive for stability, consistency and reliability. In determining a schedule there are many things to think about including school schedules, extracurricular activities, the parent's work schedules and the distance between the homes of the parents. I always recommend to any parents who are considering a shared physical custodial schedule that location is everything. As uncomfortable as it may be, both parents need to live in close proximity of each other's home and the children's school(s) for a shared custodial schedule to work.

In my experience, it is hard if not impossible to share custody when parents do not live close by.

Each family has its own dynamic. What works for a neighbor may not work for your child; that is why it's important to try to reach a custody agreement. Clearly, in some cases, trying to have an open and positive discussion with a spouse may be difficult and uncomfortable. But, the best solutions are when parents put personal differences aside and figure out what works best for the children. This also sends a very positive message to the children; and will set the stage for future positive interaction between the parents.



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