

Custody Basics

"Custody" is the big bazooka in any divorce involving children. Win or lose, few things in life can be more personally devastating than a custody battle. If you're thinking of initiating a custody contest, please, think it over carefully. Even the most antagonistic of couples can generally agree on issues affecting their children's health, education, and general welfare. Indeed, waging a custody battle may do more harm to a parent's standing in the eyes of his or her child than would directing those efforts toward a civil, joint custody agreement.

Try to look down the road a few years and understand that once the kids turn 18 and move out, things will not be over. You and your former spouse will have to cooperate on matters like graduations, weddings, the possible hospitalization of your child, the birth of grandchildren and, at some point, may still have to coordinate holiday schedules to arrange who gets to see the kids and grand kids, etc. Do a favor for your kids, your unborn grandchildren, your next spouse, and yourself: get things off to a good start.

When clients come to our law firm and say they want custody of their children, we often ask them what they mean. Consider what custody means to you and your spouse. Parents too frequently feel that because they are in divorce court, they necessarily face an all-or-nothing battle over the children. They feel that if they "win custody" they will obtain an absolute privilege to their children's love and acceptance but, if they lose, they will likely never see their children again. Nothing could be further from the truth. "Custody" is only vaguely defined in Illinois law which merely states that "[t]he custodian may determine the child's upbringing, including, but not limited to... education, health care, and religious training." Even that power may be restricted by the divorce court. Simply stated, "custody" is decision-making power. It refers to those great big decisions parents may have to make, say, five or ten times before a child's 18th birthday.

"Custody" has nothing to do with the amount of time a parent spends with a child¹, the things they may do together, whether a parent may attend functions significant to the child (sports events, school plays, parent-teacher conferences, graduations, etc.), or to be involved in other aspects of the child's life. Custodial and non-custodial parents alike celebrate birthdays with their children, attend school functions, graduations, their children's weddings, and visit with their grandchildren.

Custody Mediation: Most divorcing couples in Illinois are required by court rules to try to mediate conflicts involving custody. If your case is sent to a court-appointed mediator, be sure to work closely with your attorney to prepare a strategy and to carefully consider your objectives and options. Depending on the county in which your case is filed, the mediator may make recommendations to the judge. In many cases, comments made and evidence disclosed in mediation may not be confidential and the mediator may reveal to the judge and your spouse information that you thought was going to be held in confidence.² Work with an attorney familiar with the judges and mediators. You very well may be able to resolve all matters of custody and visitation in mediation.

Good Agreements and Bad Agreements: As divorce attorneys, we work every day with divorced parents who entered into a custody agreement that they thought was "good" at the time, but later came to regret. Most of these individuals made the mistake of trying to work out their agreement without the benefit of a lawyer; or just suffered from bad lawyering. Once they realize the mistakes they made – sometimes many years later – they had to hire us to assume the job of trying to clean up a bad mess. It's always easier (and cheaper) to do things right the first time than to try to clean up a mess after the fact. If you're thinking of working out your own custody agreement, do yourself a favor and work with an attorney.

Problems can crop up when least expected and even from what were thought to be the most settled areas of an "agreement." Illinois law reserves unto judges the power to undo, invalidate, or modify custody agreements whenever to do so would serve the child's best interests. The problem is compounded by the way most attorneys (and everyone working without an attorney) write up such agreements with inadequate or even insufficient stipulations.³ That's not to say that agreements are worthless, of course. The reality is, however, that to have an agreement with any certainty and any lasting meaning, you'll almost certainly have to work with an experienced and knowledgeable attorney.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.