

“Sole Custody” vs. “Joint Custody”

Illinois adopted its joint custody law in 1982. At that time, the law defined both “joint legal custody” and “joint physical custody.” The law was revised in 1986 and, today, we have only “joint custody” and “sole custody” – the distinction between “joint legal custody” and “joint physical custody” has been dropped.

So, today, in Illinois custody comes in only two denominations: sole or joint. “Custody” is decision-making power. So, custody awards can be thought of as either “sole decision-making power” or “joint decision-making power.” Illinois’ custody law is far more limited than most people think. Illinois law specifically says that “[a divorce] or the parents living separate and apart shall not diminish parental powers, rights, and responsibilities except as the court for good reason may determine... .”¹ On the other hand, most custody awards are very broad and general – and those are the very limitations the law empowers.

If you can make decisions about the children jointly with the other parent, two heads may be better than one and joint custody may be for you. Indeed, many “sole custodial” parents find out sooner or later that they **need the other parent's help, insight, and authority** in rearing the child.

Some couples, however, just can't work together. Trying to make decisions jointly may create more problems than it solves. For those couples, sole custody may be the only option. When problems with the kids arise, they merely present another opportunity for the parents to quarrel – possibly leading to violence or a return to the judge for a ruling. Those outcomes are what a judge is trying to avoid. So, for those couples, an award of sole custody to one parent may be the best solution.

To help our clients determine which type of custody is right for them we often pose the following question: “Once you're divorced, what will you do if, say, you're doing your child's laundry and you find a bag of marijuana (or condoms, or bullets, or whatever) in the dryer?” If you and your then-former spouse will be able to sit down and talk about it, reach a decision together, and then present a united front in carrying out your decision, that is a classic joint custody situation. If, however, you and the other parent will merely fall back to name-calling, blame-placing, arguing – and possibly violence – over the issue, then it would probably be better to avoid joint decision-making by giving one parent sole decision-making power; in other words: sole custody.

Parental Involvement: Illinois law requires the court to presume that “the maximum involvement and cooperation of both parents regarding the physical, mental, moral, and emotional well-being of their child is in the best interest of the child.”² There can be no presumption in favor, or against, joint custody, but the court must seek to obtain the maximum involvement of both parents-regardless of the custody award.

In many contested custody cases one parent will deliberately sabotage efforts at cooperation and communication so as to be able to later argue that the parents aren't really capable of co-parenting. Such a finding would probably preclude an award of joint custody.³ The irony here is that the non-cooperating parent thinks belligerence will help his or her claim for sole custody. In reality, all other things being equal, a refusal to communicate, cooperate, and compromise usually undercuts a claim for sole custody.

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.