

# Child Custody and Visitation

Child custody and visitation issues are often the most important and most emotional issues in a Divorce. While parents are residing together and after they are physically separated but have no court order or agreement, each parent is considered to have the same rights as the other. Thus, many conflicts can arise about one party's failure to let the other have parenting time, or one party's failure to return the child to the other parent after parenting time is over. The police are reluctant to get involved in a custody dispute if there is no apparent danger to the child and no court order or written agreement regarding custody. However, it is generally illegal to conceal a child's whereabouts from the other parent and serious criminal charges can result from very egregious cases.

In a court case where custody and visitation is disputed, the general procedure is to ask for a hearing so that the court can make a decision because the parties cannot agree. Prior to the hearing, California law requires that the parties attend a session with a court counselor, or authorized agent in the private sector, to address the issues between the parties – something that is commonly known as a session with a child custody counselor. Attorneys are not present at the session.

If the parties are unable to agree at this session, the court has several options. The counselor can write a report to the court with a recommendation as to a custody plan, based solely on the information available to the counselor at the session and the court can take such a recommendation as a temporary custody order until a longer hearing with witnesses can be completed at a later date.

The court can hire its own expert to evaluate and investigate the custody issue, requiring the one or both the parties to pay the evaluator directly. A child custody evaluation generally takes months to complete and can require parents and children to attend several sessions with the evaluator separately and together. Often home visits are made, and new spouses or domestic partners, siblings, teachers and other therapists may also be part of the evaluation process.

For the protection of the child, many times the court makes comprehensive orders involving the conduct of each parent who has been granted custody and or visitation. The court can make orders that concern alcohol and drug use, neglect or failure to supervise, failure to provide the child with a safe

living environment, exposure of the child to unsuitable persons or conditions. The court can require parents to attend parenting classes, mental health counseling, and co-counseling with the child.

The law favors joint custody of children, and courts are more and more inclined to grant custody orders that give each parent 50% parenting time with the children. The actual days and hours spent with the children need to be carefully specified in written agreements and orders. Using language in agreements such as joint custody, shared custody or 50% custody is ambiguous and hard to enforce.

Often times it is very difficult for a hard working parent who commutes a great distance and works long or odd hours to exercise 50% custody, but agreements are made for 50/50 custody, without the supported parent realizing that the other parent might get a significant reduction in child support payments for every percentage of time that parent has on paper, even if in reality, the percentage is significantly less.

Some creative drafting of orders can help. For instance, a parent might drop off the children at school at 8:00 am, but have custody time until they are picked up from child care by the other party at 6:00 pm. There are 8,760 hours in a year. The best court orders account for every hour.

Ms. Callahan has a broad range of experience in child custody and visitation issues. She is a skilled, experienced family law attorney who will work to ensure that your interests and those of your children are properly and aggressively protected.