

Your Legal Corner: Custody and Removal **Posted by permission of Victoria M. Dalton, Esq.**

Today Your Legal Corner provides information on custody and removal. This topic is divided into four sub issues to include: (1) Marriage and divorce, (2) Application, (3) Hearing and (4) Appeal.

Let us begin with the marriage. How often you interact with your children, meaning how involved you are in their lives during the marriage, may substantially affect the parenting arrangement awarded in a divorce.

According to public policy, a child is entitled to have a sound relationship with both parents.

Are you the parent who works all the time, sauntering in after a hard day only to kiss the children good night? Understandable, yes, but just be aware of precedent you are setting should the marriage end.

Where children are involved, one should always explore all avenues of reconciliation before filing a divorce complaint. On the other hand, some marriages are not made in heaven and therefore should not continue. This is especially true in instances of domestic violence, when a spouse and child each have suffered at the hand of an abuser within the family.

During the actual divorce process, custody is a major area to be agreed upon or decided by the court before the divorce can be granted. If the parents cannot agree, the court may require each to submit a custody plan which the court will then consider and review before awarding custody.

You may hear the following terms used: joint custody, legal custody, residential custody, parent of primary residence and parent of alternate residence. Here is what they mean and how what type of custody you have may hinder or help future custody/removal applications with the court.

The most common standard of law awarded is joint legal custody. Usually, one parent is the parent of primary residence and the other is the parent of alternate residence. The parent of primary residence (PPR), has the child reside with him or her, and will have primary responsibility for the child.

The parent of alternate residence (PAR) has only visitation with the child and is responsible for the child only when the child is with him or her. Again, when there is also a joint legal custody designation as opposed to sole custody, both parties decide all major issues together.

However, it is important to note that the PPR in sole or joint custody usually has the upper hand over the PAR. This is most evident when courts must decide change of custody or removal applications. Remember, there are exceptions to the rules, as these types of cases are extremely fact-specific.

Custody is always temporary and is reviewed under the best interest of the child standard. Alternatively, when a parent requests permission to relocate outside the state with the child, also known as a removal application, the standard used to decide this case could be the best interest of the child, or a process to decide if there is a good-faith reason for the move and that the move will not be contrary to the child's interest.

Victoria M. Dalton is a Family/Elder Attorney, with the Law Firm of Hoffman DiMuzio. To contact her by phone, call **856-845-8243** or email her at vdalton@hdhlaw.com.

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