

By: Jeralyn L. Lawrence, Esq.



Often in a divorce, the main area in dispute is custody and parenting time of a child. Litigants can spend months of their lives and thousands of dollars fighting over their child.

There are two different types of custody - legal custody and residential custody. With regard to legal custody, there is sole legal custody or joint legal custody. In most cases, parents share joint legal custody. This means that parents have equal say in making decisions regarding the child's health, education, religion, safety and welfare. With regard to residential custody, generally one parent is designated the Parent of Primary Residence and the other is the Parent of Alternate Residence.

The Parent of Primary Residence is the parent with whom the child spends the greater amount of his or her overnights. The Parent of Alternate Residence will have parenting time with the child based on a schedule that the parties either agree upon or is ordered by the Court.

Statistically speaking, 97%-98% of all divorce cases settle. Generally, it is not a matter of "if" a case will settle. The question is "when" a case will settle. Of the 2%-3% of cases that may go to trial, generally half of those cases settle at or in the middle of the trial. As such, only a small number of cases are tried. If a case is

tried, it may be because the parents just cannot agree on how to share the time with their child or who should be the Parent of Primary Residence.

At the outset of every case where custody or parenting time is an issue, the parents are required to attend a Parent Education Workshop wherein a Superior Court Judge and Court Personnel speak to the parents about the Court process as well as the effect divorce and divorce litigation have on children.

Additionally, the parents (so long as a domestic violence restraining order is not in effect) participate in custody and parenting time mediation in an attempt to settle these issues. Throughout the course of the divorce litigation, parties will have the opportunity to settle the custody and parenting time issues of their case. If they do so through the mediation process or through the assistance of their attorneys, there are certain considerations that must be made when addressing custody and parenting time in the divorce.

The details of a custody arrangement should be made part of the Property Settlement Agreement ("PSA") which is a written and binding agreement entered into between the parties which addresses all issues arising out of the marriage, including:

- The designation of joint or sole legal custody and who will be the Parent of Primary Residence and Parent of Alternate Residence.
- The delineation of a parenting time schedule for the Parent of Alternate Residence.
- Language that obligates the parents to cooperate with each other as co-parents and to commit themselves to placing the best interests of the child first and foremost in all decisions concerning the child. Language should also be included that both parents agree to not disparage the other parent to or in front of the child.
- Indication that each parent has equal and full access to all medical and dental information, reports and records rendered on behalf of the child. Additionally, each parent should be entitled to full and equal access to all school related information and to receive notification

from the school as to events, schedules, conferences and the like.

- Extracurricular activities, the scheduling of same, transportation of the child to the activities, how many activities the child will participate in, and what seasons the child will participate in which activity.
- Religious issues such as what synagogue or church the child will continue to attend and who will pay for the confirmation classes or the bar/bat mitzvahs.
- Delineation of a holiday and vacation schedule. School breaks and recesses also need to be addressed.

Additionally, a significant issue may involve one parent's desire to relocate from New Jersey with the child. Our law provides that neither parent can permanently relocate with the child from New Jersey without the other parent's written consent or a Court Order. In the event this issue is relevant, the PSA should address any potential relocation; if it is acceptable, and if so, the framework for same.

The issues of custody and parenting time can be very difficult to resolve because parents are attempting to divide the time of their most precious gift - their child. Both parents want to be with their child 100% of the time and it is often very painful and difficult to tailor a schedule that is in the child's best interest yet is also a compromise both parents can accept.

However, as settlement of divorce cases are likely, the above considerations are important to address when custody and parenting time are issues in a divorce.

Jeralyn Lawrence member of the Norris McLaughlin & Marcus Matrimonial Law Group, has been selected by her peers as one of New Jersey's top matrimonial law under the age of 40. She has also been recognized by the New Jersey Law Journal as one of 40 accomplished attorneys in the State of New Jersey under the age of 40. Jeralyn is a frequent speaker at many programs and seminars.

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