Child Custody

Child Custody Lawyers in New Jersey

When a marriage involving children comes to an end, child custody issues tend to be one of the most difficult matters to resolve. Child custody issues affect other complicated legal matters that you should not attempt to navigate alone. Indeed, a seemingly “simple” divorce case may become the proverbial “custody battle” that may involve psychologists and guardians. Simply put, these issues are best handled by knowledgeable family law attorneys who can fully protect your rights.

Einhorn Barbarito offers a team of seasoned New Jersey child custody lawyers who can help you through all stages of the divorce and custody process. In particular, our attorneys have substantial experience in custody trials, as well as negotiating, establishing, and enforcing child custody agreements. We understand that child custody matters can be very emotional, and our team is committed to helping clients reach custodial arrangements that meet their needs as well as the needs of their children. Throughout the process we aim to minimize animosity between parents so that a fair and productive outcome can be reached in the least stressful manner possible.

Often the issues of child custody and parenting time can be resolved early on through negotiation. The attorneys at our firm are highly effective negotiators who assist in the preservation of a working relationship between divorcing parties. In addition, our skills within the realm of alternative dispute resolution methods, including mediation and arbitration, are often utilized to settle custody and other matters associated with a dissolving marriage.

Unfortunately, there are those rare cases in which custody cannot be effectively resolved outside of the litigation process. In these cases, we offer at team of experienced and aggressive trial attorneys who are prepared to advocate for your custody rights at all levels of the New Jersey family court system.

What you Need to Know About Child Custody Arrangements under New Jersey Law

Family court judges in New Jersey have enormous discretion to order any custody arrangement they consider to be in the "best interests" of a minor child. For starters, courts in New Jersey must decide custody on a gender-neutral basis devoid of presumptions in favor of the father or mother. Stated differently, neither parent has a superior right over the other to custody of the children. As with most litigated issues in family court, each family is unique and custody must be decided on its own merits.

Under New Jersey law, there are several factors that a court must consider before entering a final custody award. The following factors – commonly referred to as the "best interests factors" – are set forth in N.J.S.A. 9:2-4(c):

- The ability of the parents to agree upon, discuss and cooperate in matters involving the child;
- The willingness of the parents to accept custody and any history of unwillingness to permit parenting time (except when abuse is substantiated);
- How the child interacts with parents and siblings;
- Whether there is any history of domestic violence;
- The child's safety and the safety of one parent from being subjected to physical abuse by the other parent;
- If the child is of sufficient age and capacity to make informed choices, the preference of the child;
- The child's needs;
- The extent to which the home environment offers stability to the child;
- The level of continuity and quality of child's education affords;
- The parents' fitness (a parent shall not be determined unfit unless the parent's conduct has a" substantial adverse effect on the child");
- The proximity of the parents' residences;
- The extent and quality of the time the parents spent with the child before and after their separation;
- The employment obligations of the parents and how this may impact the ability to parent; and
- The number and ages of the children.

Physical Custody, Legal Custody and Joint Custody

The role that parents play in raising their children will depend on their custodial arrangement. New Jersey law provides for two types of child custody: physical and legal. Physical custody refers to the residential arrangement between a parent and child (where the child physically resides). Legal custody refers to a parent's legal authority to make or influence decisions regarding their child's health, education and welfare. A court has authority to make any custodial arrangement it deems to be in the best interests of the child, including but not limited to:

- Awarding sole custody to one parent with appropriate parenting time to the other
- Awarding joint legal custody with sole physical custody to one parent and appropriate parenting time to the other
- Joint legal and joint physical custody with each parent having equal parenting time
- Any combination of the above

New Jersey Courts have shown a preference for custody arrangements that allow both parents full and genuine involvement in the lives of their children following a divorce. Joint legal custody means that both parents have equal legal authority to make major decisions respecting their children's health education and welfare. Major decisions can only be made with notice to and consent of each parent. In the event of an emergency, one parent can make a major decision if taking time to notify the other parent would be detrimental to the child. However, the parent making the decision must advise the other parent of the circumstances as soon as practicable.

Although joint legal custody is favored under the law and almost always granted, it may not be in the best interests of a child in every instance. The primary criterion for establishing a joint legal custodial relationship between divorced or separated parents "centers on the ability of those parents to agree, communicate and cooperate in matters relating to the health, safety and welfare of the child notwithstanding animosity or acrimony they may harbor towards each other. The ability of parents to put aside their personal differences and work together for the best interests of their child is the true measure of a healthy parent-child relationship." *See Nufrio v. Nufrio*, 341 N.J. Super. 548 (App. Div. 2001). If a court determines that joint legal custody is not in the best interests of the child, a court may award one party "sole" legal custody, which allows the party with sole custody to make decisions on

behalf of the child without input from the other parent.

A common misconception is that the phrases “legal” custody and “physical” custody are synonymous. Unlike legal custody, which guides the parents’ decision-making, physical custody refers to the amount of parenting time each party has with the child. “Joint” physical custody typically refers to an equal (50/50) allocation of parenting time. “Shared” physical custody generally refers to an arrangement in which the parties each have a substantial amount of parenting time, albeit less than 50/50. Like “legal” custody, physical custody may also be given solely to one party; however, even if one party is granted sole physical custody, the other party may be afforded parenting time. On the rarer end of the spectrum is “split” custody, which arises when the parties have two or more children and each parent is awarded custody of at least one or more of the children.

Custody Conflicts and Challenges to Custody Orders

Unfortunately, conflicts between parents after a custody award is relatively commonplace. Non-custodial parents (or the “parent of alternate residence”) sometimes disagree with decisions being made by the custodial parent (often referred to as the “parent of primary residence”). Parents should recognize that it is not the role of the court to micromanage every aspect of a child’s life. Custodial parents are often given the charge of making day to day decisions for the minor child(ren). However, in the event of significant issues, like health, education or the general welfare of the child, they are normally required to consult with the non-custodial parent before making a final decision. In the event the parties cannot agree on these issues involving their children, they each have a right to return to court. Bear in mind, since is the standard remains “best interests of the child,” courts will generally only disturb custody and parenting time determinations following a divorce (also referred to as “post-judgment), where a change in the parties’ circumstances – or the child’s circumstances – direct impacts the best interests of the child.

Discuss your Situation with the New Jersey Child Custody Lawyers at Einhorn Barbarito

If you are going through a divorce and are facing child custody issues, we encourage you to discuss your situation with the family law attorneys at our firm. We are caring lawyers committed to helping our clients resolve custodial matters in a reasonable effective way that promotes the best interests of their children. You can reach a child custody attorney in our New Jersey offices by calling 973-627-7300.