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Child Custody and Child Visitation

Who has the right to custody of a child?

Unless there's a court custody order, both parents of a child have equal rights to physical possession of a child. This is true whether or not the parties are married to each other. Virginia law gives no preference to either the mother or the father. Virginia law requires a judge to assure regular and frequent contact of the child with both parents. Virginia law doesn't assume shared physical custody of a child is favored. However, more and more often judges are granting shared physical custody, as well as joint legal custody.

How does child custody get ordered?

You file a petition for child custody with the Court Services Unit of the Juvenile and Domestic Relations (J&DR) Court. You should file in the county (and state) where the child last lived for at least six consecutive months. This is called the "home county" or ("home state"). If you file your petition in the wrong county (or state), it still may be heard there. Should the opposing party object, the case is likely to be transferred to the proper county (and state).

What happens after I file for child custody?

You may file a petition for custody in the J&DR Court by yourself, without an attorney, and without a filing fee if the Judge allows it. If you can't afford the filing fee, ask for the "Financial Statement for Assessment of Guardian *ad Litem* Costs," also is called "Form DC-606." Your petition usually will be heard within several weeks. All parties in contested custody cases, in both the J&DR Court and in Circuit Court divorces, must attend a four-hour long parenting education class. At the first hearing, the judge usually will enter an Order requiring this course be completed and set another hearing in several months.

The judge may also appoint an attorney, called a Guardian *ad Litem*, to represent the child. The judge may order the Department of Social Services (DSS) to do Home Studies. This is a report by DSS on you and your home surroundings. The judge also may appoint a Court Appointed Special Advocate (CASA Worker) to do an investigation.

How does the judge decide who gets custody?

Judges look at many factors in deciding child custody. The most important probably are the role that you have played in the past upbringing of the child, the role that you will play in the future upbringing of the child, and each parent's ability to encourage the relationship between the child and the other parent. The judge also will look at the following things.

- The age, mental and physical condition of the child.
- The age, mental and physical condition of each parent.
- The relationship between each parent and the child.
- The needs of the child.
- The relationship between the child and siblings or extended family members.
- The willingness of each parent to actively support the child's contact with the other parent.
- The willingness of each parent to keep a close relationship with the child.
- The willingness of each parent to cooperate and resolve disputes.
- Any history of family abuse.

What else does the judge look at when deciding custody?

Certain factors can be extremely harmful in a party's petition for custody. Among these are the following things.

- Alcohol abuse.
- Illegal drug use.
- Prescription drug abuse.
- Adultery and/or living with a person of the opposite sex to whom not married when it adversely affects the child.
- Criminal convictions.
- Founded Child Protective Services (CPS) complaints.
- Civil commitment and/or mental health hospitalizations.
- Physical or mental impairments that would affect your ability to care for a child.

Does the judge take into account what the child wants?

The preference of the child can be a factor, depending on the child's age. Children under the age 7 generally are not asked what they want. If they are, it often is given little weight. Children between 7 and 13 sometimes are asked what they want. Their preference sometimes is given weight, depending on the age and maturity of the child. Children 14 and older are typically asked what they want. Their preference may be given greater weight, unless it is unreasonable.

How does the Judge decide about visitation?

Virginia law requires a Judge to assure regular and frequent contact of the child with both parents. If you don't get child custody, the Judge almost always will give you child visitation. If you can work things out with the other party, you may be given "liberal and reasonable

visitation." If you can't work things out with the other party, you may be given visitation at specific times. This depends on many things, such as how far you live from the other party, and how much contact you've had with the child in the past.

Can I be kept from my child completely?

You can't be kept from your child completely unless your parental rights have been terminated (ended) by a court. However, if you're an unfit parent or would be a danger to your child, the Judge can order that DSS, or some responsible adult, supervise your visitation.

Can I appeal a J&DR court custody or visitation order?

Only a final order can be appealed from J&DR Court. You must file the appeal in writing. The appeal must be filed within ten days after the final order is entered and served on the other party. If the tenth day falls on a Saturday, Sunday, or legal holiday, the appeal can be filed on the next business day. You must file the appeal in the Clerk's office of the J&DR Court that heard your case. The appeal will be tried again in the Circuit Court as though the case had not been tried in J&DR Court. Unless changed by a Judge, the J&DR Court order stays in effect during the appeal.

How do I enforce a J&DR court custody or visitation order?

If a court order is not being obeyed, you may go to court to ask the Judge to enforce the order that is being disobeyed. You do this by filing a Motion for Show Cause Summons. You file this with the court that issued the last order. However, if the court that issued the last order referred or transferred the case to another court, you would file with the new court.

How do I change a J&DR court custody or visitation order?

Once child custody or visitation has been set, it can't be changed unless there has been a material or important change in circumstances or events since the prior court order. Without this, the court is not very likely to amend or change the last order. You can't bring up things that happened at or before the last court hearing. You only can bring up things that happened since the last court hearing. Only a Judge can change a court order. The Judge does this by issuing a new order.

If there has been an important change since the prior court order, you would file a Motion to Amend or Review Order. You file this with the court that issued the last order. However, if the court that issued the last order referred or transferred the case to another court, you would file with the new court.

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