

## LEGAL TOOLS: CUSTODY AND PHYSICAL PLACEMENT

### DEFINING THE TERMS

A. **Legal Custody:** Who has the right to make the major decisions in children's lives, including "decisions regarding consent to marry, consent to enter military service, consent to obtain a driver's license, authorization for non-emergency health care and choice of school and religion" Sec. 767.001(2m), Stats.

-Joint: Both parents share in major decisions, rights and responsibilities.

-Sole: One parent has the autonomy to make these decisions without input from the other.

(The law now presumes that joint legal custody is in the best interests of the child.)

B. **Physical Placement:** Time children spend with the parent.

-**Primary physical placement:** A child lives with and lists his address as the home of that parent. That parent has the primary responsibility for routine medical and dental care, school activities, haircuts, clothing, and other variable purchasing and care for the child.

-**Periods of physical placement:** This is what used to be called "visitation." Children spend periods of physical placement with the parent they do not live primarily with.

This is usually set out as "reasonable upon reasonable notice" which is another way of saying the parents should just talk to each other and make agreeable plans. The "reasonable upon reasonable notice" provision gives the primary caretaker the right to say yes or no to placement time with the other parent. The only restriction on the primary caretaker is that he or she must be "reasonable."

If the parties cannot agree on what is reasonable, or are unable to talk to each other, then a placement schedule can be court ordered. Some people prefer this, even though it is more rigid, because then they don't have to make a lot of decisions or discuss it much. You just make sure you are available when it is your time to have the child. It requires the parties to always follow that schedule except for emergencies.

-**Shared physical placement:** The child's time is divided, as close as practical to equally, between the two homes. They can split their days, weeks, months or sometimes even years. This type of placement is NOT recommended for infants, as they must have a primary care giver. This type of placement only works when there are excellent communication and cooperation skills between the parents.

### RESOLVING DISPUTES

A. **When you can't agree on child support.**

1. Call the Child Support Agency (920)683-4066 and pay the \$25.00 fee to get a case manager. Then see if the case manager will bring a motion on your behalf to change the support.

2. If they cannot or will not bring your case to court, get a "pro se packet" from the Family Court Office on the 3<sup>rd</sup> floor of the courthouse or call (920)683-4493 and we will send you one. Follow the instructions to file your own motion and get a hearing in court. There is a \$30.00 filing fee.

#### **B. When you can't agree on placement**

1. Participate in mediation. Call or write us for a "Request for Mediation" form. On that form you will describe your dispute over placement and your proposed resolution. You and the other parent will be ordered to attend a mediation session with a trained mediator who acts as a neutral third party to facilitate your discussion to mutually resolve your disagreement. The county pays the entire cost of this service for you, up to a maximum of two hours of mediation.

2. If mediation is unsuccessful, file a motion. Call or write us for a "pro se packet." Follow the instructions to get your motion on file and a hearing scheduled in court. There is a \$50.00 filing fee. At the initial hearing, if the other parent disputes your request, the court will appoint an attorney to represent the best interests of your child. This attorney is called a "Guardian ad Litem." You will have to pay a \$500.00 deposit toward the GAL fees, and then you will be responsible for that attorney's fees at the rate of \$70.00 per hour. Usually the total bill is split equally between the parents at the end of the case.

#### **C. When you want to enforce the placement rights you already have.**

If you are not looking to change the current order, but simply to enforce it, you can file a Petition to Enforce Physical Placement Order. There is no filing fee with this procedure, but you will have to pay to have the other party served with notice of your Petition. You can get the form from the Manitowoc County Clerk of Circuit Court on the first floor of the courthouse. In order to use this form, one of the following things must have happened:

1. The other parent denied you your period of placement.
2. The other parent substantially interfered with your period of placement.
3. The other parent failed to exercise his/her period of placement that was specifically ordered and that failure cost you money. (This provision does not apply to "reasonable upon reasonable notice" orders.)

If you prove your case in court, the court must issue an order granting additional periods of placement to replace those denied or interfered with and require the other parent to pay your costs and attorney fees in bringing the petition.

The court may issue an order specifying the times for periods of placement.

The court may find the other parent in contempt of court.

The court may grant an injunction requiring strict compliance which you can then have the police help you enforce.

If your case was under #3 above, the court may order the other parent to reimburse you for the money you lost as a result of the failure to exercise placement as ordered.

#### **SUPPORTING PERIODS OF PHYSICAL PLACEMENT**

1. Support a good deal of contact, both in person and by phone, between your child and their other parent - enough to build and maintain meaningful relationships. (The law now requires the

court to consider “whether each party can support the other party’s relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child’s continuing relationship with the other party.” Sec.767.41(5)11.

2. Don’t mistake your child’s upset or problematic behavior before or after visitation as a signal that their time together is harmful.
3. Encourage the other parent to contribute as a full-fledged parent in your child’s life. Give notice to the other parent about school/extra-curricular/church events that the child is involved in.
4. Respect the other parent’s right to develop his or her own relationship with your child and to parent them. Do not interfere when it is their time together.
5. Never use visits as rewards or punishments and do not cancel visits because of missed child support.
6. Do not ask your child to report back to you about the other parent - this puts them in the middle. Instead, ask them about their time: Was it fun? What did they do?
7. Safety come first. Do NOT let your child go to the other parent if the child’s health or safety is in danger. For example, do not release a child to a parent under the influence of drugs or alcohol. But be careful! If your denial of a visit is in violation of the court order, you should file a motion in court to revise the order as soon as possible after the incident occurs, unless it is a one time occurrence and not likely to happen again. If you suspect abuse, call the Department of Human Services before you deny periods of placement to the other parent, and file a motion to revise the placement schedule as well.
8. Keep your child **out** of any conflict you have with the other parent:
  - A. Don’t raise issues that could start an argument when the child is being picked up or dropped off. If the other parent raises issues at these times, politely cut off the conversation and discuss it later.
  - B. When you want to get complaints about the other parent off your chest, talk to a friend, relative or counselor - NOT the child.
  - C. If your child is angry with the other parent, let him talk but don’t add fuel to the fire.
  - D. Avoid bad-mouthing the other parent in front of your children.
  - E. If the other parent is bad-mouthing you, don’t get caught up in the game. Calmly correct any lies and explain that people often say things they don’t mean when they are upset.
  - F. Realize that your child needs to be able to love BOTH parents. Don’t interpret their love for the other parent as a threat to you.
  - G. Try as best you can to resolve your conflict with the other parent and achieve some level of mutual respect. Your child instinctively knows that he is part of each of you, and will love himself better if his “two halves” are not in conflict.

Most pro-se forms can be obtained from the Clerk of Court Office (Room 105), the Family Court Commissioner Office (Room 317) or on the internet at Manitowocounty.com. Click on “departments,” then “Family Court Commissioner,” then “forms.”