



## **CHILD CUSTODY AND VISITATION Q & A**



*The information provided in this document is meant for the sole use of Active Duty service members, retirees, their families, and those individuals eligible for legal assistance. The information is general in nature and meant only to provide a brief overview of various legal matters. Rights and responsibilities vary widely according to the particular set of circumstances in each case. Laws can vary across states, services, and civilian jurisdictions and laws are changed from time to time. Do not rely upon the general restatements of background information presented here without discussing your specific situation with a legal professional.*

### **Frequently Asked Questions**

#### **Q. DO MOTHERS AUTOMATICALLY GET CUSTODY OF THEIR CHILDREN WHEN A SEPARATION OCCURS?**

**A.** Courts in North Carolina do not establish an automatic preference for either mother or father, but they do look closely at which parent will best promote the welfare and interests of the children of the couple.

#### **Q. WHAT KINDS OF FACTORS DO THE COURTS CONSIDER IN GRANTING CUSTODY?**

**A.** "All relevant factors." This might include who has primarily taken care of the child during the marriage (washing, feeding and clothing the child, for example, or helping the child with homework), who has the best approach to discipline, who has cared for the child since separation (if the couple has already separated), what work schedules either or both parents have, and how each parent can provide for the physical, emotional, educational, religious and social needs of the child.

#### **Q. CAN A LEGAL ASSISTANCE ATTORNEY HELP ME GET A COURT DECREE FOR CUSTODY?**

**A.** No. You will need to retain a civilian attorney for the presentation of papers and appearance in court.

#### **Q. CAN THE COURT AWARD ATTORNEY'S FEES TO ME IN A CUSTODY CASE?**

**A.** Under North Carolina law, if the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit, it is possible (but not mandatory) for the court to award reasonable attorney's fees as part of the custody order.

#### **Q. DO I HAVE TO FILE FOR CUSTODY IN NORTH CAROLINA?**

**A.** No. While usually a custody suit is filed where the child is presently residing, a person can file an action involving custody of a minor child in the "home state" of the child (i.e., where the child has lived for the last six months) or in any state where the child and one parent have significant contacts and connections (such as former neighbors, teachers, doctors, relatives and so on).



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### **Q. CAN A CUSTODY ORDER BE CHANGED?**

**A.** Once a parent is awarded custody in a court order, the judge can change the custody order if there is a change of circumstances affecting the best interest and welfare of the child or children.

### **Q. WILL MY SEPARATION AGREEMENT PROTECT ME FROM THE OTHER PARENT SNATCHING MY CHILD?**

**A.** Not necessarily. A separation agreement which has not been incorporated into a court order or divorce decree is only a contract between you and the other parent, not a court order. A court order is enforceable by contempt of court. Court orders of one state can be filed and registered in another state and thus be treated as if they were issued by the second state for purposes of enforcement. None of this applies to separation agreements that are not incorporated into a divorce decree.

### **Q. IF MY SPOUSE IS GRANTED CUSTODY, WILL I GET VISITATION RIGHTS?**

**A.** Ordinarily the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing the child. Visitation can be flexible and unstructured, assuming the parties can get along and agree on the times and terms of visitation, or it can be highly structured and rigid, with certain days and times set out with great specificity. If a parent feels that they are not being permitted to exercise his or her visitation rights, he or she can apply to the court for a more explicit order.

### **Q. CAN I REGISTER A COURT ORDER FROM ANOTHER STATE HERE IN NORTH CAROLINA SO THAT NORTH CAROLINA CAN TREAT IT AS ONE OF ITS OWN DECREES FOR PURPOSES OF ENFORCEMENT?**

**A.** Yes. You may file and register the other state's decree with the Clerk of Superior Court at any county courthouse. You may want to register the decree in the county where you reside or in the county where the other parent lives.

### **Q. IF THE OTHER PARENT DOES NOT LIKE THE PRESENT CUSTODY ORDER, CAN HE OR SHE FILE FOR CUSTODY IN ANOTHER STATE?**

**A.** Under the *Uniform Child Custody Jurisdiction and Enforcement Act* and the *Parental Kidnapping Prevention Act*, the court in a custody case must always inquire into whether the child or children have been the subject of custody litigation in any other state. When a judge finds that another court has made an award of custody, the judge should refuse to rule on the case. Only if the first court has released or transferred jurisdiction to the new state court may that court assume jurisdiction to hear the custody case (unless there is an immediate and clear emergency affecting the child's welfare).

### **Q. WON'T CUSTODY BE SETTLED WHEN I OBTAIN A DIVORCE?**

**A.** Divorce decrees do not necessarily settle custody matters, and a custody order can be entered before or after a final decree of divorce in North Carolina.



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**Q. I'VE HEARD A LOT ABOUT JOINT CUSTODY. IF I ASK FOR THAT, DOES IT MEAN THAT I GET HALF OF THE CHILDREN'S TIME? THAT I HAVE "EQUAL RIGHTS" WITH MY EX? WHAT REALLY IS "JOINT CUSTODY"?**

**A.** North Carolina law states that "joint custody shall be considered at the request of either parent" but does not define what joint custody means. Joint custody does not necessarily mean that parents will share the child for equal periods of time—though that is an option. When courts use the term, they generally refer to two parents sharing decision-making responsibility and time with child. The exact arrangement and effects will depend on the individual case; the trial court will review available evidence—such as the parents' ability to work together—to determine what is best for the child.

**Q. IF I HAVE OTHER QUESTIONS, WHAT SHOULD I DO?**

**A.** See a legal assistance attorney or private attorney as soon as possible. Your lawyer can answer many questions and help you to make a fair and intelligent decision about your choices, options and alternatives. Our legal assistance office stands ready, willing and able to help you in these matters.