

CHILD CUSTODY & TIME SHARING (VISITATION)

This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

For additional basic information about representing yourself in District Court, see the Supreme Court's *Representing Yourself - Basic Information* guide (attached as an Appendix to this publication).

What is joint custody?

- It means that both parents are responsible for the child(ren), including the child(ren)'s financial, physical, emotional and developmental needs. It also means that both parents have the authority to make important decisions regarding their child(ren) on the issues of medical and dental care, education, childcare, religion, and recreation. Most importantly, it means both parents have to work together to make the best decisions on those issues for their child(ren).
- Joint custody does NOT mean an equal division of the child(ren)'s time with each parent.
- By law, all decisions about child custody must be made considering *only* the best interests of the *child(ren)*. Also by law, joint custody presumed to be in the best interests of the child(ren), so it is what the courts in New Mexico most often order. Even if one parent lives in a different town than the child and only sees the child during holidays or summer vacations, that parent could still have joint custody.

What is sole custody?

- It means that only one parent is awarded custody of the child(ren). Only the parent with sole custody has the authority to make the decisions regarding the child(ren)'s health care, education, religious upbringing, child care, and recreational activities. That parent is called the custodial parent. The non-custodial parent still has the ability to have access to the child(ren)'s medical, dental, and educational records. The child(ren) lives with the custodial parent all the time and the other parent may have visitation with the child(ren).
- If a parent requests sole custody, that parent will need to give reasons why joint legal custody is not appropriate. The judge may deny a request for sole custody.

If sole custody is given to one parent, does that mean that the other parent can never see his/her child(ren)?

- Not usually. If a judge believes the child(ren) will be hurt or is in danger when in the care of the other parent, the judge can order supervised visitation. Usually, the Court orders visitation for the non-custodial parent. The circumstances have to be fairly extreme for a court to not let a parent see his/her child(ren) at all.

If one parent has sole custody, does that mean the other parent doesn't have to pay child support?

- No.

What is a custody plan?

- A *Custody Plan* is a legal document that establishes custody and sets out a timesharing (for joint custody) or visitation (for sole custody) schedule. The timesharing or visitation schedule says which parent will be responsible for the physical care of their child(ren) 24/7/365. Most plans include statements that explain: (1) when the child(ren) will stay with each parent and for how long (often called periods of responsibility); (2) which holidays the child(ren) will stay with each parent; (3) when, how, and where the child(ren) will be transferred from one parent to the other; (4) how decisions about the child(ren)'s education, religion, and medical care will be made when the parents have joint custody; (5) how to handle disagreements about the parenting plan; and (6) any other issues that will help make joint custody work for both parents and the child(ren).
- Every plan is different and depends on what is the best interest of the child(ren) and what, if any, agreements are made by the parties. Every district court offers mediation to help parents establish their Custody Plans. Check with your local court to find out the procedure for asking for mediation.
- If the parents cannot reach an agreement, a judge will determine the custody plan according to the best interest of the child(ren).
- All custody plans need to be approved and ordered by a judge. Parenting plans cannot be filed with the Court without first opening a case.
- Child support is NOT addressed in the Custody Plan.

I am not happy with the Custody Plan. How can it be changed?

- If you and the other parent are able to agree on the changes, complete a new *Custody Plan*, sign it with notarized signatures, and submit it to the judge for approval.
- If you and the other parent cannot agree on the changes, you may ask for mediation to help you. Or you can file a Motion to Modify Custody Plan and a Form 4A-206 *Request for Hearing* (domestic relations actions) to ask the judge to order the changes

Where can I get the forms and more information?

- See the New Mexico Statutes Annotated, Chapter 40, Domestic Affairs, and New Mexico Supreme Court Rule 1-123 and Rule 4A-100 for more information and other required forms.
- Our office carries many of these forms. Forms are also available on the Supreme Court's law library website: (www.supremecourtlibrary.org), and the New Mexico Compilation Commission's website (www.nmonesource.com)