

A family-friendly approach to resolving child access

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When it comes to establishing each parent's individual roles and their levels of involvement, influence, and time spent with the children, the terms most discussed and debated are joint custody, sole custody, and visitation. Generally, physical child custody (whether sole, shared, or split) really comes down to the amount of time spent with one's children. Custody in the legal sense (that is, legal custody) governs who will make what types of decisions affecting the health, education, and general welfare of the children and under what circumstances such decisions will be made.

Parent and child un-friendly terms

Basically, without further definition or limitation, a parent with sole legal custody calls all the significant shots with or without the other parent's "consent" or input. The term custody is anything but child friendly and its usage often provokes anger and resentment between bickering parents. The word custody in its basic and primary sense suggests possession and control. Police take "custody" of criminals. Enough said.

In moderate to highly contentious cases, the initial fight for control is often a key catalyst to a perpetual battle. The children's feelings and emotional well-being often get lost in all the posturing that accompanies one's desire to show the other parent who is in the driver's seat. This fighting over the children can resemble a game of capture-the-flag, where children are treated like possessions and rewards for success in battle.

The counterpart to custody is visitation. What does the term visitation suggest? I "visit" clients in jail. Priests "visit" the dying in hospitals and nursing homes. Doesn't "visitation" suggest a short stay? Perhaps like a trip to a distant relative's house? Generally, we visit people or places that we don't see too often. When we are young we shouldn't be "visiting" our parents, we should be spending time with them. A parent's perception of terms like custody and visitation often fosters power-based and position-oriented discussions. This is usually not productive when the lives of our children are at stake.

Changing words for the better

In recognizing the power of suggestion and influence that can be derived from legal terms and principles in the area of family law, legal wizards have made significant efforts in the last decade or so to use more appropriate terms when discussing how to govern the lives of our children and the parent-child relationships that are affected by separation and divorce. These days, custody and visitation are more appropriately discussed in terms of child access and parental involvement. Legal custody is couched in

terms of parental decision-making. Custody orders are referred to as residential schedules. Plaintiffs and Defendants are addressed as “Mother” or “Father”; and it is common for “the minor child of the parties” to be called by his or her name in legal documents. These are positive and long overdue steps in the right direction.

Parents who are caught up in “child access disputes” should take special care to focus their respective and combined efforts in arriving at a fair and reasonable “parenting plan” and a “residential schedule” that works best for their children. An agreement should promote peace and stability between the parents as well. It is a lot easier to make positive progress and ensure meaningful child access and involvement when moms and dads use “parent-friendly” language in discussions about “custody” and “visitation.”

No schedule = no stability

When there is an ongoing fight over child access, it is important to realize that the term stability, in the context of fighting over the division of parental time, is an oxymoron if there is no agreed-upon schedule. For example, in some cases one parent may somewhat disingenuously stress that access to the other parent must be limited for the sake of the stability of the child. However, when there is an ongoing power struggle to maximize or minimize parental time, the life of the child is anything but “stable.”

Children adapt. The world is busy. Life is hectic. The theories or justifications of years past, the “traditional visitation schedule” if you will, that subscribed to the notion that a child needs to only regard one parent’s house as “home” and that he must sleep in the same bed every night is far less important than often proclaimed. These days, many experts suggest that a rigid “every other weekend and one or two nights a week for dinner” visitation schedule is a minimum type of arrangement. For separated or divorced parents, this is not necessarily the preferred norm.

A 50-50 schedule works

Having parented for over a decade on a court-ordered, equal-time-sharing schedule, I can attest to the fact that even a nearly 50-50 type schedule is far more workable than one might imagine. While it is not presumed that 50-50 is best for all children in all situations, it sure seems like a fair place to start. Furthermore, I have found that if the parents truly opt to act in accordance with the children’s best interests and if each parent operates from such a position of theoretical and practical equality, it is far more likely that one parent will voluntarily, if, when, and as needed, make the sacrifice of diminished time if it is truly beneficial to the children’s schedule.

If dad, for example, has been treated as an equal parent and not a weekend visitor, there is a greater likelihood that he will go along with future modifications if the children’s needs or routines suggest a modification to be appropriate. Once the power struggle for control and the claim for the overwhelming majority of time are abandoned, it simply will not be as important when compared to what may genuinely be in the children’s best interests.

Court orders must be precise

If the division of time is not mutually satisfactory, or if it is not otherwise possible to arrange a basic schedule with a certain amount of predictability (along with situational flexibility, respect, and cooperation), a court ordered schedule will ultimately be forced upon you. In such situations, any written document or court order must leave nothing open to interpretation. Your life must then fit into the court-mandated schedule. However, this is far easier and far less damaging to the children than the constant tug of war that often will occur in parental skirmishes. Simply left to the interpretation of loosely worded court orders, acrimonious parents will usually fail to rearrange or modify scheduled activities and time frames without wreaking havoc upon their children's lives. Let me show you how to minimize the problems that you may encounter.

How to create a schedule

There are many ways to approach the development of a residential and access schedule. Rather than explain or justify any of them, let's start with a few basic principles.

- There is no moral entitlement to anything more than equally dividing the time the children spend with each parent.
- There is no legal entitlement to equal parenting time.
- If you and the other parent were both completely committed to working out a schedule that maximizes each parent's time with the children, you could do it.
- The children's best interests are usually served when measured within the reasonable and practical limits of life in general and balanced in particular with the parenting styles and attributes of each parent.
- If each parent felt secure that they would truly have reasonable and liberal time and access with their children, without being unreasonably rebuffed, the counting of overnights would become less important and a more stable schedule (whatever the percentage of time comes to be) would be more likely to develop on its own.
- The best schedule is one that minimizes conflict and maximizes the children's time with each parent.

Although maximizing parental time is very important, it should yield to the best interests of the children. And obviously, each parent's differing views about what is or is not in the children's best interests is one of the many contributors to child custody chaos. The desire for power and control are other major contributors, as you might expect.

This article was excerpted with permission from the book *Stop Fighting Over the Kids* by Mike A. Mastracci, published by St. Gabriel's Press c2008. Mike is a nationally recognized family law attorney with over 20 years of experience. He is also a Collaborative Divorce Attorney, Mediator and Child Access Coach. Mike founded Maryland's first Child Access Center and is a founding member and vice president of the Maryland Collaborative Law Association.