

September 24, 2013 /**24-7PressRelease**/ -- A parent has so much at stake when it becomes clear that custody of his or her child is going to be at issue either in [divorce](#), separation or when he or she is not married. With which parent will the son or daughter primarily live? What will be the arrangements for visiting with the other parent? Who will make important decisions for the child?

In New Jersey, however, the law cares most about the children in these situations, asking what would be in their best interests above all. In the best scenario, the parents will be able to negotiate an agreement that lays out how the family will handle [child custody](#) and parenting time. New Jersey law requires that the judge follow the parents' agreed-upon arrangement, unless it would not be in the child's best interest, in which case the judge may reject the proposed arrangement.

If the parents are unable to hammer out an agreement, custody and visitation will be decided by the court, which can be unsettling for the parties. After all, the judge does not know the family personally and must make such monumental decisions on its behalf.

First, the court must order the couple into mandatory mediation to see whether working with a neutral third-party trained in dispute resolution allows them to come to agreement. (This may not be the case if domestic abuse is an issue.) This mediation will take place through the court system, with a court mediator conducting the mediation at the courthouse.

Role of the child expert

If mediation fails and child custody is disputed, the judge may order the parties to each submit a proposed custody and parenting time plan. In addition, the court will want a specially trained child expert to conduct a [custody evaluation](#). This expert is a mental health professional with expertise in children and their relationships to their families and parents. In most cases, the parties agree on a joint expert or the judge appoints one to conduct the evaluation. In only a handful of cases, each party hires their own and two evaluations are prepared.

The expert's evaluation of each spouse's parenting styles, their respective homes and all family relationships is extensive and usually takes four to eight months. Many individual and family interviews take place, psychological testing is done, and family history and important records carefully considered. The expert will analyze all relevant evidence in light of the best interests of

the children, and make detailed findings and a custody recommendation in a lengthy (up to 100 pages or so) report.

During the evaluation or after it is issued, the parties may continue to negotiate in an attempt to come to agreement on the custody issue. They know that the judge is likely to give great weight to the thorough evaluation of the expert with his or her professional background in child development. Ultimately, if the parties cannot settle, the judge will schedule the matter for trial and the child expert will be called as a key witness.

As a separate matter, the judge has discretion to decide whether to interview the child in court chambers. The court may also appoint for the child a guardian ad litem or legal counsel or both.

Best interests

There are two components to custody -- legal custody and physical custody. Legal custody is the right to participate in important decisions that affect the child (health, education and general welfare) and the right to access the important information that affects the child. The parents usually have joint legal custody, but in certain circumstances one parent solely has legal custody rights.

Physical custody is where the child lives, as well as the parenting time (visitation) arrangements between the parents. There can be joint physical custody of a child, where there is no primary residence. Alternatively, one parent is designated as the parent of primary residence, and the other as a parent of alternate residence. In either case, a parenting time schedule is then formulated for the parties.

The judge will consider all the relevant evidence in making custody and parenting time decisions, but the law requires that he or she consider an extensive list of specific factors, some of which include:- Parents' ability to work together for the child.- Parental wishes and any history of unwillingness to spend time with the child.- Parent-child and child-sibling relationships.- Domestic violence, past and potential.- Child's wishes if mature enough to form an intelligent opinion.- Child's needs.- Stability of the respective parents' homes.- Child's education.- Parental fitness.- Geographical locations of parental homes.- Parent-child time during the marriage and during any separation.- Parental work commitments.- Age and number of children.

Finally, the law favors ongoing relationships with both parents when it is in the best interest of the child and the court may not find a parent unfit unless that mother or father has acted in a way that had a "substantial adverse effect on the child."

Seek legal counsel

Any parent in New Jersey facing custody and visitation decisions should speak with an experienced New Jersey family law attorney to understand how the law is likely to apply to the parent's particular family situation and for help either negotiating a settlement agreement or resolving the matter in court, if necessary.

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