

Child Custody

What does it mean to have custody of a child? Custody and conservatorship describe your relationship with a child when there is a court order. Examples of court orders which involve custody:

- Order in Suit Affecting Parent-Child Relationship (SAPCR)
- Paternity Establishment Order
- Divorce Decree (if the divorce includes children)
- Emergency Order involving the Department of Family and Protective Service (“CPS”)

What is Joint Custody? Most custody orders name the parents Joint Managing Conservators (JMCs). A court will order JMC unless there is a good reason not to (such as domestic violence). A JMC order normally requires that the parents share decision making about child’s education, medical treatment and similar issues. Joint custody or conservatorship (JMC) does *not* mean the child’s time is split equally between the parents.

In most custody orders, one parent has the right to determine the child’s primary physical residence. The parent with the right to decide where the child lives is usually the person with whom the child lives more than half of the time and who has the right to receive child support on behalf of the child. This parent is sometimes called the custodial parent, managing conservator, or primary conservator. The other parent, sometimes called the non-custodial parent or possessory conservator, is the parent responsible for paying child support and usually has visitation rights. Nonparents are sometimes included in custody orders. For example, a grandparent can be the primary conservator and both parents can be named possessory conservators and ordered to pay child support to the grandparent.

What is a Standard Possession Order? Most custody orders include a Standard Possession Order (SPO) that sets the schedule for each parent’s time with the child. Custody orders refer to parenting time as access and possession, which is the same as visitation. Terms of the basic SPO allow the noncustodial parent to have possession of the child a couple of hours every Thursday nights; on the first, third and fifth weekends of each month; on alternating holidays, and at least one month in the summer. The SPO tells the parents where the exchanges of the child will take place, where the child will spend the holidays, and has special rules for when the parents live more than 100 miles apart. The court does not have to follow the SPO if a child is under three years old, in cases involving domestic violence or child abuse, or if the SPO is not in the best interest of the child. The court can order supervised visitation, order the parents to undergo drug testing, or make any order to protect the child. *NOTE: Parents with a court-ordered visitation schedule can agree to any schedule that works for both of them. If they can’t agree, then they must follow the court-ordered visitation schedule.*

What is Sole Custody? When there is a good reason to do so (as in cases involving domestic violence or child abuse), a court can name one parent as a Sole Managing Conservator (SMC). An SMC order can limit or even take away the right to make certain decisions about the child.

What if I don’t have a custody order? Legal custody can only be created by a court order, not a power of attorney (POA) or other document. Without a court order, there is nothing for a court to enforce. Each parent is free to take the child from the other at any time.

Does a Power of Attorney give legal custody? No. Legal custody requires a court order. A Power of Attorney (POA) or a Temporary Authorization to Care for a Child can permit a nonparent to care for a child, but the parent can revoke the POA or a Temporary Authorization to Care for a Child at any time and take the child back. If the child has lived with another person for more than 6 months, that person can bring a lawsuit against the parents for custody of the child, including child support.