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# **UNDERSTANDING ALL THINGS CHILD CUSTODY- ALABAMA**



**By Tracey Bee  
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# A STEP- BY-STEP E-GUIDE

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## HOW BEST INTEREST FACTORS ARE APPLIED IN CUSTODY IN ALABAMA

Alabama courts consider a number of factors when it determines which party should receive custody and on matters of the best interest of a child. These factors are listed below:

- The sex and age of the children
- The characteristics and needs of the children, including their emotional, social, moral, material, and educational needs.
- The respective home environments of each party.
- The specific characteristics of the party seeking custody, including that party's age, character, stability, mental and physical health.
- The parties' respective capacity and interest in providing for the needs of the children, including social, moral, material, and educational needs.
- The interpersonal relationship between each child and the interpersonal relationships between the children and the parents.
- The effect on the child of disturbing or disrupting or continuing in existing custodial situation.
- If the child is of sufficient age and maturity, the preference of the child.
- Reports or recommendations from expert witnesses for independent investigators either of the party or those appointed by the court.
- Any other factor or relevant evidence which may be presented by the parties that has a bearing on a determination of the best interest of the child.

## MODIFICATION OF CUSTODY IN ALABAMA

The standard you or your child's other parent must meet to modify child custody is based on an Alabama court case, *Ex parte McLendon*. It is sometimes called the "McLendon standards" or the "McLendon doctrine." Grounds for child custody modifications are not found in an Alabama statute.

For a judge to approve a change in your current child custody order, you or the other parent must prove:

- *There has been a material or substantial change in circumstances affecting child custody;*
- *Changing the custody order is in your child's best interests; and*
- *The benefits of altering the custody order outweigh the inherent disruption that results from the change.*

This is a high hurdle. If you wish to change the child custody order, you should speak with an attorney first. If you go to the court to try and modify the custody agreement and you cannot establish the three elements above, you will have wasted your and court's time. However, this high hurdle also works in your favor if your child's other parent attempts to alter the current custody order for an insignificant reason.

## **COMMON REASONS FOR MODIFICATION OF CUSTODY IN ALABAMA**

There are many reasons why you or your child's other parent may ask the court to modify the current child custody schedule, including:

- One parent moves further away from the parent or out of state.
- A parent believes the child is neglected in the other parent's custody.
- The child's needs and/or preferences have changed.
- The child is in immediate danger due to domestic violence, drug use, or alcoholism in the other parent's home.
- The non-custodial parent is now better able to provide for their child.
- A parent's new job results in a different schedule.
- A parent repeatedly chooses not to follow the current parenting plan.
- The custodial parent passes away.

## BEST INTERESTS OF THE CHILD AND MODIFICATION IN ALABAMA

If a judge determines the reason for you or the other parent's modification request is substantial enough, the next step is for the judge to decide if changing the custody schedule is in the best interests of the child.

The court can look at numerous factors when deciding whether a change is the best thing for your child's health, safety, and well-being, including:

- *Each parents' home environment;*
- *The nature and relationships of the parents and the people in their lives;*
- *The parents' ages;*
- *The parents' character, stability, and mental and physical health;*
- *The parents' relationships with each other and the child;*
- *Any interference by either parent with the relationship between the other parent and child;*
- *The child's needs, age, and health; and*
- *The wishes of the child, if relevant based on age and maturity.*

The judge wants to establish a parenting plan that is the best possible arrangement for your child. That will be a custody schedule in which the child can thrive in a nurturing and loving environment while also maintaining close and healthy relationships with both parents.

Many child custody modifications brought by the non-custodial parent result in them gaining more visitation or physical custody, while the custodial parent receives less time with the child. If the changes are substantial enough though, the judge may change who the custodial guardian is.

## RELOCATION REQUESTS IN ALABAMA

Alabama law requires the custodial parent to provide notice of any change in the child's residence to the other parent at least 45 days before the proposed move. While it's common for parents to move across town for work or into a new residence upon remarriage, when the proposed move is more than 60 miles away, the non-moving parent can object to the relocation. Once you've received notice of the other parent's plans to relocate, you have 30 days to file an objection with the court. A judge will schedule a court hearing, which you and your ex must attend the hearing. Both parents will likely have to testify. Because of the complicated legal issues surrounding move away cases, parents are usually represented by attorneys during these proceedings. If you have an attorney, your lawyer will prepare for the hearing and represent you in court.

In Alabama, one parent's proposed move reopens the question of who should get custody. If you're the parent objecting to the move, you have the burden of proving that it would be detrimental to let the child relocate with the custodial parent and that a change in custody to the noncustodial parent is appropriate. For example, in one Alabama case the court switched custody to the child's father after the mother (formerly the custodial parent) announced her plans to marry for a third time and move with the child to Texas. The judge decided that a change in custody was appropriate because the father was able to show several reasons why the move didn't serve the child's best interests.

## WHAT FACTORS DOES A COURT CONSIDER IN RELOCATION CASES IN ALABAMA?

A child's best interests are central to any custody decision. When a parent plans to move a child out of state, a court will take into account all factors that affect a child's well-being, including:

- *the child's involvement with both parents and any siblings*
- *the child's needs*
- *the impact of a move on the child's emotional and educational development*
- *the increase in travel time for visitation between the child and noncustodial parent*
- *the child's preference if of a sufficient age and maturity*
- *the feasibility of preserving visits or providing alternative visitation if the custodial parent is allowed to relocate*
- *the availability of alternative communication between the child and non-custodial parent*
- *each parent's stability*
- *whether there is any history of domestic violence or child abuse*
- *whether the proposed new residence is a foreign country that won't adequately protect or enforce existing visitation rights, and*
- *any other factor the court deems relevant.*

## **PARENTAL ALIENATION IN ALABAMA**

In this proclamation, the Alabama Governor acknowledges that parental alienation refers to any behavior or attitude that one parent, either parent or third party, interferes with, damages, or destroys the relationship between a child and their other parent. Alienation itself is not a crime, but evidence of alienation can be used to modify custody or visitation orders in favor of the wrongly alienated parent. It is possible for a parent to be charged with a crime if they attempt to alienate the other parent. In contempt of court, parents can be found in contempt of court and ordered to pay court costs. In the event of alienation, the court can modify the child's physical or legal custody. There is a possibility that the children will be placed in danger. It is possible that the alienating parent will be given custody if he convinces the children that they are safe with him and unsafe with the other parent, but in reality, this is not true.

A court will pay special attention to the reasons why a child's negative actions toward a parent are motivated by parental alienation. Alienators may have imprinted their behavior with experience or may have been unfounded. Alienation occurs when one parent disrespects the other parent to the point where they are unable to parent together. Mom may tell her child that their dad doesn't love them or doesn't want to see them, for example. Regardless of whether the allegations are true or not, the parent-child relationship suffers. A parent who alienates is described as "the alien" parent undermines and destroys the relationship between the other parent and their child. What is the best way to sue for parental alienation? In the event of alienation, the best course of action is to file a complaint immediately with the court. A court order may be needed to reunify you or to give you sole custody.

## **DO THE COURTS IN THE STATE OF ALABAMA HAVE THE RIGHT TO APPOINT AN ATTORNEY OR GUARDIAN AD LITEM TO REPRESENT THE CHILD?**

1. The court shall not appoint a lawyer to serve as guardian ad litem until the lawyer has completed at least six hours of continuing legal education devoted to guardian ad litem training pursuant to Alabama Code section 12-15-304(c) and the Alabama Administrative Office of Courts. Also
  2. <https://finance.alabama.gov/media/ktbfgorc/galguidelines.pdf>
  3. <https://www.alsolaw.com/all-about-guardians-ad-litem-in-alabama/>
  4. <https://judicial.alabama.gov/library/rulescanons>

## **JUDGE RECUSAL IN ALABAMA**

A judge should recuse from a case in which the judge will have to determine the propriety of conduct of an attorney who regularly appears before the judge, based in part, on assessment of the testimony of other attorneys who appear before the judge and have cases pending in the judge's court. <https://www.starneslaw.com/wp-content/uploads/2017/10/rpm-ltd-article-alabama-lawyer-june-2010.pdf>

## ATTORNEY ETHICS IN ALABAMA

Lawyers creed in the state;

**To the opposing parties and their counsel, I offer fairness, integrity and civility.** I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one. To the courts, and other tribunals, and to those who assist them, I offer respect, candor and courtesy. Check, <https://www.alabar.org/office-of-general-counsel/ethics-division/#:~:text=Lawyers'%20Creed&text=To%20the%20opposing%20parties%20and,offer%20respect%2C%20candor%20and%20courtesy>

## GAL IN ALABAMA

Guardian ad litem (usually called GAL for short) is a person appointed by a judge to speak for a child's best interests during a court case. A GAL may be an attorney, but does not have to be. In court, the GAL may ask questions of other people who are giving information, and may also answer questions about what the GAL believes is best for the child. <https://finance.alabama.gov/media/ktbfgorc/galguidelines.pdf>

## RULES OF EVIDENCE AND PROCEDURE IN ALABAMA

Kindly see <https://judicial.alabama.gov/library/rulesev>

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Former Family Law attorney with almost 20 years in Family Court. Providing services geared specifically towards the self-represented.

- ✓ Family Court Strategist,
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