



Pro Se Membership Program

UNDERSTANDING ALL THINGS CHILD CUSTODY- PENNSYLVANIA



By Tracey Bee The Divorce Solutionist

A STEP- BY-STEP E-GUIDE

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IN RE LM, 923 A. 2D 505 - PA: SUPERIOR COURT 2007
IN RE ADOPTION OF LBM, 161 A. 3D 172 - PA: SUPREME COURT 2017

Pennsylvania custody laws can be complicated, and custody orders are as varied as those bound by them. Specifically, Pennsylvania law allows a judge to make any of the following custody awards after considering a child's best interests:

- shared physical custody
- primary physical custody
- partial physical custody
- sole physical custody
- supervised physical custody
- shared legal custody, or
- sole legal custody. (23 Pa. Cons. Stat. Ann. § 5323 (a).)
- The two main types of custody are physical and legal custody. A parent with primary physical custody (called the "custodial parent") lives with the child. The other parent may share physical custody (also called joint custody in Pennsylvania) with the custodial parent or may have a limited form of physical custody, like supervised visitation.
- Partial or shared physical custody means that parents have a similar amount of time with the child. Note that a shared physical custody award doesn't require that the parents have an equal amount of parenting time. A shared physical custody award may grant one parent four nights per week with the child, while awarding the other parent only three nights per week.
- Legal custody involves a parent's rights to make major medical, educational, religious, and legal decisions on the child's behalf, such as where the child should attend school or whether the child should undergo a major medical procedure. Parents may share legal custody, or one parent may have the sole right to make decisions for the child. (23 Pa. Cons. Stat. Ann. § 5322.)

WHAT IS SUPERVISED PHYSICAL CUSTODY IN PENNSYLVANIA?

A judge may award supervised physical custody if there's any doubt about a child's safety in a parent's care. A custody order requiring supervised visitation will designate a third-party to supervise or oversee visits between the parent and child. The order may also dictate the location of such visits. Supervised visitation is rarely a permanent custody order.

Instead, a judge usually awards supervised visits when one parent is working on rebuilding a relationship with the child or when the child could be unsafe in one parent's care. A judge may gradually reduce supervised visits over time and replace those visits with traditional visitation until supervised visits are no longer needed. (23 Pa. Cons. Stat. Ann. § 5322 (a).)

HOW DOES A JUDGE DECIDE A CUSTODY AWARD?

A child's best interests are paramount to any custody proceeding. To determine the custody arrangement that best serves a child's needs, a judge will consider the following factors:

- each parent's role in the day-to-day care of the child
- the child's need for stability in education, family, and community life
- the child's relationship with extended family
- the child's sibling relationships
- the child's preference (based on the child's maturity and judgment)
- either parent's history of domestic violence or abuse
- each parent's willingness to foster a relationship between the child and other parent
- each parent's ability to maintain a loving, stable, consistent, and nurturing relationship with the child
- the child's special needs, if any
- the geographical proximity of the parents
- the level of conflict between the parents
- each parent's availability to care for the child or ability to make appropriate child-care arrangements
- each parent's physical and mental health, and
- any other relevant factor. (23 Pa. Cons. Stat. Ann. § 5328 (a).)

While there are many factors a judge should consider in a custody case, a judge may not give preference to one parent based upon the parent's or child's gender. In other words, mothers don't have an automatic advantage in custody proceedings. (23 Pa. Cons. Stat. Ann. § 5327 (a).)

HOW DOES A JUDGE DECIDE A CUSTODY AWARD?

Your custody order will spell out all the details of parenting exchanges, holiday visitation, child support, make-up visitation, transportation between visits, physical and legal custody, and any other issues relevant to your case.

A custody order should eliminate the risk of potential arguments between parents by resolving issues before they even come up. Parents can't fight about when and where a custody exchange should happen if the court has already explained the requirements in the custody order. Parents are bound by the court's custody order unless or until a judge modifies it. (23 Pa. Cons. Stat. Ann. § 5331.)

Child support is a crucial part of any custody order. Judges usually resolve child support at the same time as custody because parenting time and custody impact child support awards. The court will calculate child support according to a statutory formula. A judge may deviate from the statute and order a different amount of child support if the parents' circumstances and the child's needs demand it.

PENNSYLVANIA CHILD CUSTODY MODIFICATIONS

Although custody awards are permanent orders until modified or until a child reaches age 18, it's rare for one custody order to last through a child's entire 18 years. More often, parents' circumstances change, and a custody order changes along with the family's needs. Pennsylvania law allows either parent to seek a modification to a custody order when it's in a child's best interests. (23 Pa. Cons. Stat. Ann. § 5338.)

A judge will consider the same factors in a custody modification proceeding that were relevant in your original case. Additionally, a judge may also consider the child's preference—if the child is of a sufficient age and maturity level—and either parent's reasons for seeking a custody modification.

For example, a parent probably won't be able to modify custody simply because the child's other parent has remarried. However, a child's new medical diagnosis or one parent's relocation out of the country might be grounds to adjust the custody award.

GUARDIAN AD LITEM

GAL is appointed to represent the best interest of the child. Basically, the GAL is the child's advocate. The GAL also functions as a caseworker for the child. The GAL will observe the child and report any findings back to the court just like a caseworker in a dependency case would do.

Once a GAL is appointed by a PA Family Court, he or she will meet with the child as soon as possible, and several times thereafter as the GAL deems appropriate. The GAL will participate in all court proceedings and will be given access to any and all documentation that is necessary to carry out the responsibilities. The GAL will also conduct his or her own investigations as to any claims made during the case. The GAL will make recommendations to the court as to the best interest of the child. These recommendations will take into account the safety of the child, as well as any educational, medical, or emotional needs the child has. It is also the GAL's responsibility to explain to the child everything that is happening to the best of his or her ability. Because the GAL also functions as the child's legal representative, the GAL should keep the child informed. The GAL should similarly keep the court informed of the child's wishes during the course of a proceeding.

Having a Pennsylvania GAL work on a case can be a great asset. However, it can also be very confusing for the parties to fully understand the role of the GAL. As always, it is a good idea to have legal representation during any custody matter.

RECUSAL OF A JUDGE

<https://www.law.cornell.edu/regulations/pennsylvania/207-Pa-Code-SS-15->

4#:~:text=%22Recusal%22%20is%20the%20act%20of,the%20judge%20can%20be%20impartial.

<https://casetext.com/regulation/pennsylvania-code-rules-and-regulations/title-207-judicial-conduct/part-ii-conduct-standards/chapter-33-code-of-judicial-conduct/subchapter-b-formal-opinions/section-15-4-disqualification-and-recusal>

<https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2743&context=vlr>

RULES FOR CONDUCT FOR JUDGES

<http://judicialconductboardofpa.org/code-of-judicial-conduct>

<http://ethics.pacourts.us/code.htm>

ATTORNEY ETHICS

<https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1955&sessInd=0&smthLwInd=0&act=130&chpt=14>

<http://www.padisciplinaryboard.org/attorneys/rules/pennsylvania-rules-of-professional-conduct.php>

<https://www.padisciplinaryboard.org/for-attorneys/rules>

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