

Pro Se Membership Program



UNDERSTANDING ALL THINGS CHILD CUSTODY- RHODE ISLAND



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A STEP- BY-STEP E-GUIDE

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RHODE ISLAND CUSTODY LAWS

When parents separate or divorce, a judge will enter an order designating physical and legal custody. Parents can reach custody agreements on their own or through mediation. A judge will review any custody agreement to ensure that it serves a child's best interests. If it does, a judge will enter the custody agreement as a court order.

When parents can't agree on visitation and custody, they will have to go to court and complete a hearing or trial, after which a judge will determine custody.

Physical Custody

A parent with physical custody lives in the same household as the child and is responsible for providing the child with adequate food, shelter, clothing, and care. Parents may share physical custody—also called "joint custody"—or one parent may be awarded sole physical custody of a child, with the other parent having scheduled visitation or parenting time.

The parent who lives with the child the majority of the time is generally called the "custodial parent" and the other parent is called the "noncustodial parent."

Legal Custody

"Legal custody" refers to a parent's right to make major medical, educational, and religious decisions on the child's behalf. In many cases, parents may share legal custody of their child.

Yet, even a parent without legal custody may make emergency medical decisions for the child. When parents can't agree on a certain aspect of the child's care, the custodial parent has the final say. Like physical custody, parents can share legal custody or one parent may have sole legal and physical custody over a child.

WHO MAKES CUSTODY DECISIONS IN RHODE ISLAND?

Parents can reach their own custody agreements, but a judge must approve the agreement before it can become an official custody order. Some parents are able to reach an agreement on their own, while others employ the help of a mediator.

When parents can't agree, judge may order the couple to attend mediation before setting a trial. Even when a court orders mediation, it is still a voluntary process. In other words, no one can force you or your spouse to settle at mediation. A mediator acts as a neutral third-party to help couples resolve their differences. If you're able to resolve custody issues at mediation, a mediator will prepare an agreement for you and your ex to sign and submit to the judge for approval. For couples who aren't able to resolve custody through mediation, a judge will decide custody at trial according to a child's best interests. See RI Gen. Laws § 15-5-29 (2020)

FACTORS IMPACT A JUDGE'S CUSTODY DECISION?

If you're filing for sole custody in Rhode Island, keep in mind that no single factor will determine the outcome of your custody case. Instead, a judge will review your family's overall circumstances to determine your child's best interests. Specifically, some factors a judge will consider include:

- each parent's desire for custody
- the child's relationship with each parent
- the child's preference (if the child is of a sufficient age and maturity level)
- the child's relationship with siblings and extended family members
- the child's adjustment to home, school, and community
- each parent's physical and mental health
- each parent's moral fitness
- either parent's history of domestic violence or abuse
- each parent's ability to provide the child with a stable environment, and
- each parent's willingness to encourage a relationship between the child and the child's other parent.

In addition, a judge may consider any factor that is relevant to the child's well-being, but there are factors that a judge explicitly can't consider. See *Pettinato v. Pettinato*, 582 A.2d 909 (R.I. 1990).

For example, courts can't consider a parent's gender in a custody proceeding, and mother doesn't have an automatic advantage in custody cases. However, Rhode Island child custody laws allow a judge to consider a parent's moral fitness. The meaning of "moral fitness" can be a gray area, but some actions would obviously hurt a parent's chances at custody, such as one parent's history of domestic violence or abuse.

RELOCATION

When one parent wants to move away, it can pose challenges to custody and visitation schedules. If the move is out-of-state, it may even justify a change in custody. A custodial parent seeking to relocate should provide the other parent with reasonable notice of the intended relocation.

The nonmoving parent can file an objection with the court to try to prevent the parent from relocating. A judge will hold a hearing to determine whether the move would serve the child's best interests.

The Rhode Island Supreme Court has established several factors a court should consider in determining whether a relocation will serve a child's best interests:

- the parent's reasons for moving
- the child's relationship with each parent, siblings, and extended family members
- the potential educational and emotional impact of the minor child's relocation
- the child's preference, taking into account the child's age and maturity
- the non-relocating parent's reasons for opposing the move
- how the relocation may benefit the child financially, emotionally, or in terms of quality of life, and
- any other factor relevant to the child's well-being.

A child's best interests are central to your custody case, whether you're seeking an initial custody determination or hoping to modify your current custody order. Because families are unique, your individual circumstances will determine the outcome of your case.

MODIFICATION OF CUSTODY

Common reasons that a parent may seek modifications to a child support or child custody agreement include:

- A parent's recent significant increase or decrease in income
- A child's or ex-spouse's substantial increase or decrease in need
- A child's or ex-spouse's extended illness or injury
- Extended unemployment
- Conditions such as alcohol or drug abuse in the child's household that create a dangerous environment to be around
- Preference of the child given the child's age and level of maturity

GUARDIAN AD LITEM

In Rhode Island (RI), A guardian ad litem is a individual who represents the hypothetical best interest of the minor child in a child custody, visitation or other type of Family Court case. The Guardian is not a lawyer for the minor child!

Guardians are frequently used in in contentious custody cases when the parties can afford the additional expense. The judge could make an appointment or the parties can agree to a guardian being appointed. If the parties cannot afford a guardian, the court can have Rhode Island Family Services do a home study and investigation for free. The court may, if in its discretion it deems it necessary or advisable, appoint an attorney or a guardian ad litem to represent the interest of a minor or dependent child with respect to his or her support, custody, and visitation." § 15-5-16.2.

"(i) In determining whether an appointment should be made, the court shall consider the extent to which a guardian ad litem may assist in providing information concerning the best interest of the child; the age of the child; the wishes of the parents, as well as their financial resources; the nature of the proceeding including the level of contentiousness, allegations of child abuse, or domestic violence and the risk of harm to the child if a guardian is not appointed; or conflicts of interest between the child and parents or siblings;" Id

RECUSAL OF A JUDGE

<https://www.courts.ri.gov/Courts/workerscompensationcourt/AppellateDivision/Decisions/00-01031.pdf>

RULES OF CONDUCT FOR JUDGES

<https://www.courts.ri.gov/PublicResources/JudicialTenureandDiscipline/PDFs/JudicialTenureJudicialConduct.pdf>

ATTORNEY ETHICS

<https://www.courts.ri.gov/PublicResources/disciplinaryboard/PDF/Article5.pdf>

<https://www.ribar.com/UserFiles/Rhode%20Island%20Disciplinary%20Rules%20of%20Professional%20Conduct%20.pdf>

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