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# UNDERSTANDING ALL THINGS CHILD CUSTODY- SOUTH CAROLINA



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The Divorce Solutionist

# **A STEP- BY-STEP E-GUIDE**

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**SC DEPT. OF SOCIAL SERVICES V. SMITH, 538 SE 2D 285 - SC:  
WOODALL V. WOODALL, 471 SE 2D 154 - SC: SUPREME COURT 1996**

## **SOUTH CAROLINA CUSTODY LAWS**

In South Carolina, if you're splitting from your ex, you'll need to resolve custody. Simply put, a custody proceeding is any court case where legal custody, physical custody, or visitation is being decided.

For example, a judge may decide custody as part of a divorce, separation, neglect, abuse, paternity, domestic violence, or guardianship proceeding. Regardless of the type of case, a child's best interests are always at the center of any custody proceeding.

## **WHAT ARE THE DIFFERENT TYPES OF CUSTODY?**

South Carolina laws differentiate between two types of custody—physical custody and legal custody.

### **Physical Custody**

A parent with physical custody lives in the same household as the child. Additionally, the parent with primary physical custody (also called "the custodial parent") is legally responsible for the child's day-to-day care, including food, clothing, education, medical care, and safety.

The parent without primary physical custody (called the "noncustodial parent") is usually responsible for paying child support to the other parent.

### **Legal Custody**

Legal custody is distinct from physical custody. A parent who does not have physical custody of a child may still have legal custody. A parent with legal custody may make major educational, medical, dental care, extracurricular, or religious decisions on the child's behalf.

Parents can share physical and/or legal custody, or one parent may have sole physical or legal custody. Joint custody in South Carolina means that both parents have frequent contact with their children and have an equal say in the child's upbringing.

However, a joint physical custody award doesn't mean that the parents have exactly equal time with their child. For example, one parent may have 4 overnights per week while the other parent has 3 even though they share joint physical custody of the child.

In most cases, parents will share legal custody unless it's not in the child's best interests. Even where parents share legal custody, if the parents can't agree on a matter involving the child, the primary custodial parent has the right to make the final decision. When one parent has sole legal and physical custody, the noncustodial parent has an equal right to access the child's medical or educational records.

Additionally, South Carolina child custody laws allow a noncustodial parent to participate in and attend a child's school activities unless it's expressly prohibited by court order.

## HOW TO GET FULL CUSTODY IN SOUTH CAROLINA

Any factor that is relevant to your child's best interests is relevant to custody. See SC Code § 63-15-240 (2020). Specifically, a judge may review the following factors to better understand your family's circumstances:

- each parent's age, physical, and mental health
- each parent's mental health
- the child's temperament and developmental needs
- the child's relationship with each parent
- the child's adjustment to home, school, and community
- each parent's ability to provide the child with a safe, stable, and enriching environment
- the child's preference in light of the child's age, understanding, and maturity
- either parent's history of domestic violence
- each parent's ability to be actively involved in the child's life
- the child's cultural and spiritual background
- the child's relationship with extended family members and siblings
- the child's special needs, if any
- each parent's willingness to foster a relationship between the child and the child's other parent, and
- any other relevant factor.

A court is not limited to considering the above factors. However, a parent's gender cannot be the basis for awarding or denying custody.

Mothers don't have an automatic advantage in custody proceedings, but a parent who has acted as the child's primary caretaker is more likely to get custody, regardless of gender. See SC Code § 63-15-30 (2020).

There's a rebuttable presumption that a parent who has committed domestic violence against the other parent or the child, should not receive custody. The abusive parent can overcome that presumption by showing that an award of custody would be in the child's best interests, but it's a difficult standard to meet when there's evidence of abuse.

In some cases, a judge may deny custody to an abusive parent and place further limits visitation, including no overnight visits and only supervised visits.

## MODIFICATION OF CUSTODY ORDERS

To convince the family court to CHANGE custody, a parent must prove three things:

1. A material change in circumstances;
2. The material change in circumstances happened AFTER the initial family court custody order; and
3. The material change substantially affects the child's best interests.

Generally, to justify a change of custody, the family court looks to see whether there have been negative changes in the custodial parent's skills or lifestyle.

Here are a few examples of poor parenting or lifestyle choices that may cause the family court to change custody:

- **Interfering with the Relationship Between the Child and the Noncustodial Parent.** Unfortunately, some custodial parents try to drive a wedge between the child and the other parent. Examples of this include bad-mouthing the other parent in the child's presence, obstructing visitation and communication between the parent and child, and making false allegations against the other parent to restrict their visitation. Most family court judges will give the custodial parent an opportunity to change their negative behaviors, but if their conduct continues, then the court may change custody.
- **Immoral Conduct.** The family court will change custody if the custodial parent engages in immoral conduct that impacts the child's welfare. Examples of immoral conduct include exposing the child to overnight romantic guests, exposing the child to pornography or other age-inappropriate materials or behaviors, drug use, and alcohol abuse.

- **Educational Problems.** If a child performs poorly at school, and the custodial parent is contributing to the problem or does little to help the child, then the court may change custody. Examples include excessive tardiness or absences from school or failing to get tutoring or other assistance for a child that is struggling with their courses.
- **Unstable Home Environment.** Many things can negatively impact the stability of a child's home environment based on the custodial parent's choices. Examples include excessively moving from home to home, lack of job and income stability, and the custodial parent's over-dependence on their family for support.
- **Poor Parenting Skills.** Poor parenting skills come in many forms. Examples include behaviors that keep the child from developing independence, responsibility, or maturity, elevation by the custodial parent of their own happiness over that of their child, and improper or no supervision of the child, and mental or physical abuse of the child

## RELOCATION

As South Carolina's courts have stated, cases involving the relocation of a custodial parent present some of "the knottiest and most disturbing problems that our courts are called upon to resolve." Years ago, our family courts were guided by the presumption against relocation. These days, the courts struggle to determine what is in the child's best interest by focusing on various factors including the following:

1. Each parent's reason for seeking or opposing the relocation;
2. The relationship between the children and each parent;
3. The impact of the relocation on the quality of the children's future contact with the non-custodial parent;
4. The economic, emotional, and educational enhancements of the move;
5. The feasibility of preserving the children's relationship with the non-custodial parent through visitation arrangements; and
6. The likelihood the move would substantially improve the quality of life for the custodial parent and the children and is not the result of a whim of the custodial parent



## **GUARDIAN AD LITEM**

Often in family law matters, the interest of the children can become lost and develop into a point of contention because of the stresses related to divorce, custody and support. Family court cases that commonly require a guardian ad litem include:

- Contested visitation and custody cases
- Legal name changes for minors
- Abuse and neglect cases
- Adoption
- Termination of parental rights

A Guardian may be agreed upon by the parties or their counsel, or may be appointed by the Court. Under either scenario, a Guardian's appointment order in private cases will typically set forth the Guardian's functions and scope, hourly rate, and fee cap for the entire case, which can only be modified by agreement or further court order

Guardians fulfill two important roles for children in legal proceedings.

- To act as an investigator and reporter for the court, and
- To advocate for what he or she believes are the best interests of the child involved in the case

## **RECUSAL OF A JUDGE**

<https://www.sccourts.org/forms/word/SCCARecusalProc.dot>  
[https://www.sccourts.org/courtReg/displayRule.cfm?  
ruleID=501.0&subRuleID=Canon%203&ruleType=APP](https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=501.0&subRuleID=Canon%203&ruleType=APP)

## **RULES OF CONDUCT FOR JUDGES**

<https://www.scstatehouse.gov/CommitteeInfo/PublicUtilitiesReviewComm/2018PublicServiceCommissionScreeningInformation/Code%20of%20Judicial%20Conduct,%20Rule%20501.pdf>

## **ATTORNEY ETHICS**

<https://www.scbar.org/lawyers/sections-committees-divisions/committees/ethics-advisory-committee/rules-of-professional-conduct/>  
<https://casetext.com/rule/south-carolina-court-rules/south-carolina-rules-of-professional-conduct>

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