

**Pro Se Membership
Program**



UNDERSTANDING ALL THINGS CHILD CUSTODY- OKLAHOMA



**By Tracey Bee
The Divorce Solutionist**

A STEP- BY-STEP E-GUIDE

BY TRACEY BEE

WWW.THEDIVORCESOLUTIONIST.COM

KLAHOMA CHILD CUSTODY LAWS

Child custody refers to all parental rights in the rearing of the child, including the right to direct a child's activities and to make decisions regarding the child's care and control, education, health, and religion. Oklahoma child custody laws differentiate between physical and legal custody.

Legal and Physical Custody

A parent with "physical custody" lives with the child. Parents can share physical custody or one parent may have sole physical custody while the other parent has visitation rights. "Legal custody" refers to a parent's right to make major decisions on the child's behalf.

A parent with legal custody can decide whether the child should receive certain medical treatment, where the child should attend school, and if the child should participate in a certain religious faith. Fathers and mothers have the same legal rights to seek custody of their minor children. Ultimately, a judge's decision will depend on the child's best interests. This is true in both divorce and paternity actions.

Joint Custody

Parents with joint custody share in all or some of the aspects of physical and legal care, custody, and control of their children. Parents with joint legal custody will share in the upbringing of their kids and will make major decisions together.

Parents who share joint physical custody will both have substantial amounts of time with their child, although not necessarily equal. For example, your joint custody award may grant one parent 4 nights per week with the child, and the other parent 3 nights per week.

Sole Custody

One parent can be awarded sole physical and/or sole legal custody. As the name implies, sole custody gives only one parent legal or physical custody rights over the child.

A parent with sole legal custody can decide where a child will attend school without any input from the child's other parent. A parent with sole physical custody primarily lives with the child, but the other parent (called the "noncustodial parent") is still entitled to frequent visitation.

Split Custody

"Split custody" is a custody arrangement where each parent is awarded custody of one or more of the couple's children. For example, in a split custody arrangement one parent might have custody of twin girls while the other parent has custody of the couple's son. Both parents live with some of their children, and are entitled to regular visits with the children they don't live with.

"Bird Nesting"

"Bird nesting" is a divided custody situation that provides additional stability for children. Under a bird nesting custody arrangement, children will live at one parent's home full-time and the other parent will travel to that home for visits with the children. Bird nesting arrangements are uncommon and require substantial cooperation among parents.

HOW DOES A JUDGE DECIDE CUSTODY IN OKLAHOMA?

A child's best interests are at the heart of any Oklahoma custody decision. A judge will evaluate the child's needs, the parents' abilities to meet those needs, and all relevant circumstances, including the following factors:

- each parent's willingness to foster a relationship between the child and the other parent
- each parent's physical and mental health
- the child's educational and emotional needs
- either parent's history of domestic violence, child abuse, or neglect
- each parent's overall stability
- the child's adjustment to school, home, and the community
- the child's relationship with siblings and extended family members
- either parent's dependency on drugs or alcohol, and
- a child's preference in certain circumstances.

In Oklahoma, there's a rebuttable presumption against awarding custody, legal guardianship, or unsupervised visitation to registered sex offenders, anyone living with a registered sex offender, convicted child abusers, persons living with a convicted child abuser, alcohol or drug-dependent persons, domestic abusers, or persons living with a domestic abuser. See Ok. Stat. § 43-112.5 (2020).

An abusive parent probably won't receive custody, but he or she will still be entitled to visitation (likely supervised visits) with the child. Limits on a parent's visitation, such as supervised visits, continue until a court can be sure that the child is safe in that parent's care.

It's important to note that a parent's race or gender cannot be considered by a judge deciding custody. For instance, a judge can't award custody to a mother over a father, based solely on her gender.

CAN ONE PARENT RELOCATE WITH THE CHILD?

When one parent plans to relocate with the child, he or she must notify the other parent in writing at least 60 days before the proposed move, or within ten days of learning of the move. This rule applies when the parent is moving more than 75 miles away.

The notice should include the moving parent's new address and phone number, when the move will happen, reasons for the move, and a proposed schedule for sharing time with the children after the move. If the other parent disagrees with the move, he or she can file an opposition to the custodial parent's relocation. A judge will set a hearing on the relocation and review evidence to make sure the move is for a good reason and that it would be in the child's best interests to keep custody with the moving parent.

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.

MODIFICATION OF CHILD CUSTODY ORDERS

§43-118I. Universal Citation: [43 OK Stat § 43-118I \(2014\)](#)

- A. 1. Child support orders may be modified upon a material change in circumstances which includes, but is not limited to, an increase or decrease in the needs of the child, an increase or decrease in the income of the parents, changes in actual annualized child care expenses, changes in the cost of medical or dental insurance, or when one of the children in the child support order reaches the age of majority or otherwise ceases to be entitled to support pursuant to the support order.
2. Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders.
3. An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the court makes a specific finding of fact that the material change of circumstance did not occur until a later date.
- B. 1. A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.
2. All final orders shall state whether past-due support and interest have accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past-due amount shall not bar collection of that amount after entry of the final support order.

C. The amount of a child support order shall not be construed to be an amount per child unless specified by the district or administrative court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order. When the last child of the parents ceases to be entitled to support, the child support obligation is automatically terminated as to prospective child support only.

D. 1. When a child support order is entered or modified, the parents may agree or the district or administrative court may require a periodic exchange of information for an informal review and adjustment process.

2. When an existing child support order does not contain a provision which requires an informal review and adjustment process, either parent may request the other parent to provide the information necessary for the informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

3. Requested information may include verification of income, proof and cost of medical insurance of the children, and current and projected child care costs. If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.

4. Exchange of requested information may occur once a year or less often, by regular mail.

5.a. If the parents agree to a modification of a child support order, their agreement shall be in writing using standard modification forms and the child support computation form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

b. The standard modification forms and the standard child support computation form shall be submitted to the district or administrative court. The court shall review the modification forms to confirm that the child support obligation complies with the child support guidelines and that all necessary parties pursuant to Section 112 of Title 43 of the Oklahoma Statutes have been notified. If the court approves the modification forms, they shall be filed with the court.

GUARDIAN AD LITEM

1. § 107.3. Appointment of guardian ad litem--Referral to mediation or counseling--Definitions--False accusations of child abuse or neglect
2. A. 1. In any proceeding when the custody or visitation of a minor child or children is contested by any party, the court may appoint an attorney at law as guardian ad litem upon motion of the court or upon application of any party to appear for and represent the minor children.
3. 2. The guardian ad litem may be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child. In addition to other duties required by the court and as specified by the court, a guardian ad litem shall have the following responsibilities:
 4. a. review documents, reports, records and other information relevant to the case, meet with and observe the child in appropriate settings, and interview parents, caregivers and health care providers and any other person with knowledge relevant to the case including, but not limited to, teachers, counselors and child care providers,
 5. b. advocate for the best interests of the child by participating in the case, attending any hearings in the matter and advocating for appropriate services for the child when necessary,
 6. c. monitor the best interests of the child throughout any judicial proceeding,
 7. d. present written factual reports to the parties and court prior to trial or at any other time as specified by the court on the best interests of the child, which determination is solely the decision of the court, and
 8. e. the guardian ad litem shall, as much as possible, maintain confidentiality of information related to the case and is not subject to discovery pursuant to the Oklahoma Discovery Code.1

RECUSAL OF A JUDGE

<https://www.ocpathink.org/post/mcgirt-complications-judge-considers-recusal#:~:text=Oklahoma%20law%20requires%20a%20judge,judge's%20impartiality%20might%20reasonably%20be>

<https://casetext.com/statute/oklahoma-statutes/title-5a-attorneys-and-state-bar/appendix-4-code-of-judicial-conduct/rule-211-disqualification>

<https://oklahoma.gov/okdhs/library/policy/current/oac-340/chapter-2/subchapter-28/disqualification-or-recusal-of-an-administrative-law-judge-alj.html>

RULES OF CONDUCT FOR JUDGES

<https://oklahoma.gov/cojc/resources-information/code-of-judicial-conduct.html>

<https://casetext.com/statute/oklahoma-statutes/title-5a-attorneys-and-state-bar/appendix-4-code-of-judicial-conduct>

https://codelibrary.amlegal.com/codes/harrahow/latest/harrah_ok/0-0-0-1642

ATTORNEY ETHICS

<https://www.supremecourt.ohio.gov/LegalResources/Rules/ProfConduct/profConductRules.pdf>

<https://www.ohiobar.org/public-resources/about-attorneys/lawyer-ethics-discipline/>

<https://casetext.com/rule/ohio-court-rules/ohio-rules-of-professional-conduct>

Tracey Bee

THE DIVORCE SOLUTIONIST

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

- ✓ Family Court Strategist,
- ✓ Coach & Consultant
- ✓ Mediator
- ✓ Parent Coordinator
- ✓ Blogger



862.800.7850

DIVORCECOACHESQ@GMAIL

WWW.THEDIVORCESOLUTIONIST.COM

FB Group: ProSe (Self Represented)

Divorce & Custody



@THEDIVORCESOLUTIONIST



THE DIVORCE
SOLUTIONIST



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