
- New York Child Custody FAQ's -

1. If contested, how is child custody determined?

Custody is determined by what is in the "best interest of the child."

2. How does the court determine what is in the best interest of my child?

The court considers many factors. Domestic violence is a significant factor. Where either party to an action involving custody or visitation alleges under oath, in writing, that the other party has committed an act of domestic violence against him/her, or a family or household member of either party, and the allegations are proven, the court must consider the effect of the domestic violence upon the best interests of the child.

Other factors to be considered are:

- o who is the primary caretaker of the child,**
- o who is the more fit parent,**
- o what is the nurturing ability of the parents,**
- o who has better judgment,**
- o the desirability of keeping siblings together,**
- o the wishes of the child, if of sufficient age,**
- o the parents' lifestyles,**
- o the parents' religion,**
- o whether a parent will encourage or discourage visitation,**
- o continuity of a stable environment,**
- o the age of the child,**
- o substance abuse or chemical addiction of a parent,**
- o the quality of each parents' home environment,**
- o the parental guidance each parent provides for the child,**
- o the ability of each parent to provide for the child's emotional and intellectual development,**
- o the financial status and ability of each parent to provide for the child,**
- o the relative fitness of the respective parents including their mental condition,**

- the length of time the present custody arrangement has been in effect.

A parents' sexual behavior, character or lifestyle is not a factor unless it directly affects the child.

3. Does either parent have a priority in awarding custody under the law?

Priority in custody disputes is usually given to the parent who was first awarded custody by the court or to the parent who first obtained custody by voluntary agreement. However, this priority is one of many factors.

4. Will the court make the decision itself?

Yes, although it may enlist the aid of experts and professionals to help it formulate an opinion.

Although a party to a custody or visitation proceeding has no right to insist upon the free services of a psychiatrist to prepare for the case, the courts do order forensic evaluations by such professionals. In fact, it can be considered an abuse of discretion for the court not to order a psychiatric evaluation in a custody case in which psychological factors are critical. Investigation as to relevant facts bearing on parental fitness and home environment may be conducted by either a party or by the court's professional staff, or by both.

5. What weight will expert opinions have in the court's custody decision?

Understandably, courts tend to place greater confidence in the reports and advice of experts of their choosing than in the reports, recommendations and testimony of outside experts. Where there is a psychiatric evaluation, courts give little weight to it when the expert did not examine both parties and the children.

6. What is an AFC?

The best interests of the child are the concern and objective of custody and visitation proceedings. But he or she is not a party to the action, and usually is unrepresented. Too frequently, the child's preferences as to custody and visitation are generally brushed aside because of the tender age of the child which makes he or she susceptible to improper influences of a party. Sometimes a child is ignored by a well-

meaning judge adopting an "older and wiser" attitude. An attorney for the child (formerly referred to as the law guardian) who must be an attorney may be appointed by the court to represent the child, or the child may choose independent counsel.

7. Is it more likely that a mother will be granted custody than a father?

New York's custody laws have as their basis the fundamental principle that custody is awarded based upon "the best interests of the child". The underlying concept is that custody should be determined, as between parents, regardless of sex, based upon what is best for the child. In theory, neither parent has a superior right to the custody of the child..

8. What is joint custody?

Joint legal custody, sometimes referred to as "divided" custody or "joint decision making" gives both parents a shared responsibility for and control of a child's upbringing and decision making. It may or may not include an arrangement between the parents whereby they alternate physical custody of the child. Where there is "joint physical custody" the child lives alternatively with both parents. The daily child rearing decisions are made by the parent with whom the child is then living, while the major decisions, such as those involving religion, education, medical care, discipline, choice of school or camp, are jointly made.

9. Can a court grant joint custody to both parents?

New York has no provision in its law for joint custody. However, the law has been interpreted as granting the court the power to make joint custody awards when such an award is "in the best interests of the child."

10. Under what circumstances is joint custody awarded?

Joint custody is encouraged primarily as a voluntary alternative for relatively stable amicable parents behaving in a mature civilized fashion. It will not be awarded where the parties are unable to agree on anything and are severely antagonistic towards one another.

Joint custody is not awarded where the parents have demonstrated an inability to cooperate on issues affecting the

children nor will it be awarded when the non custodial parent places his own needs above those of the child.