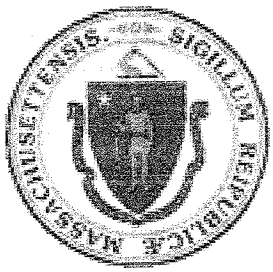
SUFFOLK COUNTY PROBATE & FAMILY COURT REGISTRY

A SELF-HELP GUIDE TO:

Thinking About Parenting from the Legal Perspective

- What are the differences between shared and sole custody? Legal and physical custody?
- What will the court consider when determining custody arrangements?
- Can we work together and develop our own parenting plan?



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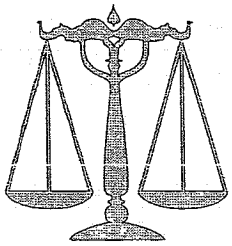

THINKING ABOUT PARENTING FROM THE LEGAL PERSPECTIVE

The laws about parents and children are complex. This summary highlights some of the main ideas to guide you as you plan for your children, but it is only a summary. Please consider the importance of hiring an attorney to help you understand the laws and to guide you though the demanding and often technical court process.

I. Important Definitions

A. **Sole Legal Custody**. One parent has the right to make major decisions regarding the child's welfare, including matters of education, medical care and emotional, moral and religious development.

B. **Shared Legal Custody**. The parents have mutual responsibility and involvement in major decisions regarding the child's welfare, including matters of education, medical care and emotional, moral and religious development.

C. **Sole Physical Custody**. A child resides with one parent and is under that parent's daily supervision, subject to reasonable visitation by the other parent (unless the court decides that visitation is not in the best interest of the child).

D. **Shared Physical Custody**. A child has periods of residing with each parent and being under the supervision of each parent. The physical custody must be shared in such a way that the child has frequent and continued contact with both parents.

(Under <u>any</u> form of custody, the court will expect both parents to

take appropriate responsibility for financial support of the children)

II. What the Court Will Consider

The parents' rights regarding custody are equal if there is no misconduct by a parent. But in determining custody, the court will focus principally on the happiness and welfare of the child–what the court calls the child's "best interests."

When the court considers the happiness and welfare of the child, it must consider whether or not the child's present or past living conditions adversely affect the child's physical, mental, moral or emotional health.

When the court decides whether or not shared custody (legal or physical) is in the child's best interest, the court will consider the following questions:

- Has any member of the family been the perpetrator of domestic violence?
- Does any member of the family abuse drugs or alcohol?
- Has any member of the family deserted the child?
- Do the parents have a history of being able and willing to cooperate in matters concerning the child?

III. Can You Design Your Own Parenting Plan?

Yes. Any plan you design is subject to the court's approval, but the court tries to respect the wishes of parents who agree on a plan.

Some ideas:

1. You don't have to use the word "custody" in your plan if you don't want to. Because the word has specific definitions, it's a short-cut way of describing parents' responsibilities. But some parents dislike the word, and with some careful planning, you can design a parenting plan without using the word. If you decide against using the word "custody," your parenting plan must set out very clearly each parent's responsibilities for all the tasks listed in the definitions.

2. Some parents dislike the word "visitation, " too. You can write a parenting plan without using that word as long as you describe each parent's access to the child clearly and in enough detail so that both parents understand the plan and can avoid arguments about it.

3. Think about whether you and the other parent can get along without arguments. If you have a history of working very well together, then you might feel comfortable with a broadly-worded plan such as "reasonable rights of visitation" or "reasonable rights of access." But most people need more structure than that in order to have some predictability in their daily lives. This is especially true after the children are in school or if both parents work outside the home. You might want to consider a minimum schedule with the right to add to it if you both agree. Or you might want to schedule holidays and vacations so they won't become a source of tension in the future.

4. Feel free to use the blank calendar forms provided for working out a monthly parenting schedule.

5. Feel free to use the Checklist entitled "Thinking About Parenting from the Practical Perspective" to think about whether you need a detailed Parenting Plan.

IV. There's Help On the Way

If you need help discussing parenting, you may consult with your attorneys, seek Mediation, or ask the court to refer you to Mediation or to the Probation Office for Dispute Intervention.

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