

Temporary Child Support

The judge may order temporary child support to the parent who has the responsibility for temporary custody. Temporary support helps the custodial parent support the children during the time between separation and the final divorce decree.

What if We Can't Agree?

If the parents cannot agree to custody and parenting time with their children, the court may utilize other alternatives. Depending on where you reside, the court may appoint an expert witness in the mental health field who will perform either a custody evaluation or a home study. The expert will then present his or her recommendations directly to the court. The judge decides how much weight to give to the expert's opinions and recommendations.

The parents may each retain his or her own expert witness to make custody and visitation recommendations to the court at a hearing or trial. This court proceeding may take from one to several days.

The court may order both parents to a parenting workshop and parenting skills class and order mediation to help the parties reach agreement.

Child custody battles can be costly and psychologically draining on everyone involved. At the same time, your children's best interests must be protected. Because attorneys are familiar with all the various aspects and problems, it is good advice indeed to follow the guidance of your attorney.

* * *

IDAHO TRIAL LAWYERS ASSOCIATION

The Idaho Trial Lawyers Association is a voluntary membership bar association. Our members are regularly engaged in the trial of all types of lawsuits.

This pamphlet is presented to you as a courtesy of ITLA and your attorney. We hope it will be of help to you in understanding the law.



This pamphlet provided for your information by:

**The Idaho Court Assistance Office
University of Idaho College of Law
P.O. Box 442321
Moscow, Idaho 83844-2321
(208) 885-5227
Fax: (208) 885-5709**

Website: www2.state.id.us/cao

REV. 1/98

Child Custody, Visitation and Support



Where Will the Children Live?

When parents divorce, they must decide with whom the children will live. Idaho law does not dictate the age at which children can select their primary residence. However, as your children mature, their preferences carry more weight.

Best Interests

The judge must make a decision based on a legal standard called "best interests of the children."

Judges' attitudes place a high premium on consensual initial placement of your children. Judges begin by assuming that neither parent could be bad, but give considerable weight to continuity and stability for the children.

Courts have the option of appointing an impartial, experienced mediator to help parents resolve issues involving visitation. The mediator assists parents in drafting a visitation/parenting plan which will be in the best interests of the children. If the mediation is successful, the negative impact on the children will be minimized. Your attorney will be able to offer valuable insight if this process is used.

Emergency Temporary Custody

If emergency temporary orders are called for, that is if children are in danger, your attorney can make the proper motion and appearance before the judge to request emergency relief.

Temporary Custody

Temporary custody is temporary in the sense that it lasts until the full and final custody hearing. Temporary placement may actually evolve into a permanent situation.

Joint Custody, Joint Legal Custody and Joint Physical Custody

Joint custody, in any form, does not necessarily mean 50/50 time share with children. Joint legal custody means that each parent shares equally in important decisions for your children, for example, education and health. Joint physical custody means that each parent has substantial contact with the children. This does not always mean equal time sharing.

Idaho law presumes that joint custody is in your children's best interests. Rarely do Idaho courts name one parent the "sole legal custodian." Your attorney understands the subtleties of the various forms of custody and can help you arrive at a schedule that is in your children's best interests.

Child Support -- How Much?

Our state has child support guidelines adopted by our Supreme Court. The guidelines recommend amounts of child support based upon the before-tax income of both parents.

In addition to guideline determined child support the court can order payment for work related child care, uninsured health care expenses and health care insurance for the children. Your attorney can help you analyze these factors and reach a child support amount that is in accordance with the law and considers your individual circumstances and needs.

If the Non-custodial Parent Does not Pay Support, Visitation Cannot be Withheld

Time sharing with the children, and the non-custodial parent's support obligation are separate issues. The judge may find that a non-paying parent is in contempt of court. The judge may find a custodial parent who withholds visitation to be in contempt of court. The two issues are like apples and oranges. One does not bear upon the other. However, your attorney can help you address both issues if necessary.

How Can I Increase/Lower Child Support?

Since child support is set according to the guidelines, the judge will order a certain amount to be paid. If that figure must be changed, the parents may do it through an agreement called a "stipulation," which must be approved by the court to be effective. Your attorney can draft this document and properly process it through the court system.

If, after the divorce, the parents cannot agree to a change in the child support amount, either parent may present his or her argument to the judge. Although a support order is always "modifiable," that is, may be changed by the court for good reasons, you must show the court "substantial and material changes in circumstances" before the judge will modify child support up or down. If the moving party does not meet his or her burden to show "substantial and material changes in circumstances," the judge may refuse to modify the amount. Your attorney is familiar with this standard, and can be certain that the judge has the proper information to decide the issue.