

## - Texas Child Custody Issues -

- In Texas, there is a rebuttable presumption that parents should serve as the Joint Managing Conservators of their children. In Texas, "Conservatorship" is "Custody" of the children.

Major changes were enacted in 2005.

In its 2005 wisdom, "The Legislature finds that the use of parenting plans and parenting coordinators in suits affecting the parent-child relationship will assist in promoting the interest of children and in helping litigants resolve their issues relating to parenting." Section 153.601 et seq. are intended to assist parties in minimizing conflicts in their post-divorce parenting through (1) creating a "parenting plan" which establishes the parents' rights and duties with respect to the children and which provides procedures for resolution of future disputes and (2) by court-appointment of "an impartial third party" to assist the parents in developing and implementing their "parenting plan". The court may appoint this "parenting coordinator" over a parent's objection in a "high conflict case." The parenting coordinator is paid by the parties, like a mediator, except for hardship exceptions. She has no power to impose a solution and may not testify in Court.

It will take some time to figure out what was really intended. Meanwhile, we continue to deal with the same practical concepts as before, as stated below.

Joint Managing Conservatorship does not mean that each party will have the children one-half of the time. It also does not mean that child support will not be awarded to one parent. Joint Managing Conservatorship does mean that the parents will either share, allocate, or apportion parental rights and duties. These are the same parental rights and duties that the parents have prior to a divorce being filed; they just may be allocated differently in the divorce. But there are new requirements, as in most cases, the child's domicile must be established in the final Court orders.

In the absence of extenuating circumstances ( a history of family violence, for one), it is advisable for parents to work out appropriate custody arrangements rather than have strangers do it for them. A custody fight involves a great deal of time, commitment, and emotional and financial expense. In some instances, the child can be damaged more by the court action than the worst trait of the other parent. Further, you need to remember that your child's other parent will be a continuing part of your child's life and activities. It will be easier for your child if the child is kept out of the parents' conflict. This is not possible if a trial occurs. If you are able to reach an agreement, and make a commitment to work together to resolve disputes that may arise in the future, it is very probable that the child will be able to have both parents at the important events in the child's life. To emphasize the importance of parental cooperation, many courts are now requiring all parents to attend parenting or divorce education classes before the court action can be finalized.

Obviously, there are going to be situations where a custody fight is the only option. However, it is very important that you thoroughly discuss your concerns, options, and position with your attorney before making the decision to take this issue to trial. **Mediation** services are available to assist the parties in formulating appropriate custody arrangements. The Court will usually also order mediation. As a general rule, mediation proceedings are confidential and privileged. The articles on Mediation should be reviewed for more information about this very useful alternative used to resolve custody disputes.

Communications with counselors are not privileged and confidential if the information is relevant to issues concerning the parent-child relationship.

In those cases where an agreement cannot be reached, professional services will be required to assist the Court in making a decision. In Dallas, it is customary to order a Social Study to be performed by Dallas County Family Court Services. The Social Study will involve the completion of informational data, gathering of references, and an interview in their offices and/or home. A recommendation on conservatorship will be made to the Court at the conclusion of their investigation. The Court may also order psychological evaluations of one or both parties and/or the children. Additionally, a party may wish to retain psychiatrists, psychologists, or private custody evaluators.

If 12 years of age or older, a child can sign an affidavit stating whom the child would prefer to live with. If requested by a party, the Court will interview a child 10 years of age or older. Neither the affidavit nor the information from the interview is binding on the court. It is some evidence, just like all the other evidence. However, the court realizes the problems in ordering a sixteen year old child to stay with a parent with whom he does not want to reside. If younger than 10, the child might have the opportunity to speak with the judge. There is no guarantee of this.

Texas recognizes the rights of grandparents and can award them custody or visitation rights.

Once a decision is made concerning conservatorship, provisions for periods of possession are generally determined by guidelines enacted by the Texas Legislature commonly called "[Standard Possession Order](#)".

You need to review these guidelines for possible modifications to fit your family circumstances. For example, if one parent's family always celebrates Christmas Eve and the other parent's family always celebrates Christmas Day, and everyone lives within close proximity, the schedule can be altered so the child has the advantage of being with both families each year. Persons of different religious affiliations will want to add holidays specific to their faith.

#### NAME CHANGE

- o Absent agreement of the parties, it is generally not possible to change the names of the children.

**Custody cases are sometimes the most difficult to resolve once the parties have dug into polarized positions. Review of the articles on Mediation and the [Guide to Dallas Family Courts](#) may help steer you away from these contentious lawsuits. Also, a professional consultation with an experienced divorce and family law attorney *early--* before everything falls apart-- may help, by applying the law to your unique situation, *prevent* the expensive, knock-down, drag-out type of case that a custody case can become. Feel free to call us to set up a consultation**

*- Law Offices of Raggio & Raggio, P.L.L.C.*