

CHILD CUSTODY DETERMINATIONS

- Of all case types child custody in family law is the most difficult
 - Issues are emotionally charged
 - Include multiple nuanced considerations
 - Have enormous consequences for parents and the children

RESOURCES TO AVOID CUSTODY LITIGATION

- Coordinated Family Services through Chapter 14, Title 32, Idaho Code
 - Case management – promote efficiency of time and resources
 - Alternative dispute resolution
 - Coordinated involvement with juvenile and criminal cases
 - Family Court Services Coordinator to manage resources/services
 - Court Assistance
- Core Services
 - Parent Information and Education
 - Child Custody Mediation
 - Parenting Plan Assistance
 - Supervised Access IRFLP 717
 - Exchanges/Transfers
 - Visitation
 - Therapeutic (by a clinician)
 - Effective Co-Parenting
- Alternative Resources
 - Mediation IRFLP 602
 - Identify issues
 - Reduce misunderstandings
 - Clarify priorities
 - Explore compromise and agreement
 - Parenting Coordinator IRFLP 716
 - Decide discretionary issues
 - Assist parties in dispute resolution
 - Make recommendations to the court and/or parties
 - Parenting Time Evaluation IRFLP 719
 - Expert investigation and analysis
 - Information for the court
 - Capacity of parents –needs of the child
 - Brief Focused Assessment IRFLP 720
 - Limited Issues
 - Interviews, observations, relevant records, collateral contacts

RESOLUTION BY LITIGATION

- Substantive law at Chapter 7, Title 32, Idaho Code
- Procedural law at Idaho Rules of Family Law Procedure

THE TERMS:

Joint Custody Defined: Idaho Code § 32-717B(1):

- Shared to assure frequent continuing contact
- Court shall state reasons for denial of an award

Joint Physical Custody Defined: Idaho Code § 32-717B(2):

- Significant time for care, supervision, and residence to each parent
- Does not require the exact same length of time
- Actual time in discretion of the court

Primary Physical Custody: Refers to greater amount of time to one parent

- "Joint physical" and "primary physical" are not inconsistent concepts
- Court must state the reasons for declining joint custody

Joint Custody Preferred: Idaho Code § 32-717B(4):

- Presumption that joint custody is in the best interest of children
- Requires a preponderance of the evidence to the contrary

Sole Custody: Idaho Code § 32-717B(1):

- Court may grant sole physical/legal custody to one parent
- May grant sole custody on a single issue

Shared Custody/Split Custody:

- Shared custody—IRFLP 126(J)(5) adjusts support for over 25% of overnights
- Split custody—generally describes custody arrangement with differing times

LEGAL STANDARDS:

Jurisdiction: Idaho Code § 32-717

- Court may give direction before and after judgment
- Determine custody, care and education in the best interest of the children

Deciding Custody: The Best Interests of the Child: Idaho Code § 32-717

- Court shall consider all relevant factors
- Custody and visitation committed to the discretion of the magistrate
- Preponderance of the evidence standard applies (substantial and competent)

- Statute provides seven criteria for determining best interests:
 1. Wishes of the parent:
 - Parents' personal desires must yield to best interests of children
 - Welfare of the child, not the parent must determine custody
 2. Wishes of the child:
 - Persuasive but not controlling
 - Determined by:
 - Clinical interview – IRFLP 720
 - Appointment of child's attorney – I.C. §32-704(4), IRFLP 119
 - Court interview – IRFLP 119(C)
 - Child testimony – IRFLP 119(D)
 3. Interaction and interrelationship with parents and siblings:
 - Testimony and witnesses
 - Parenting Time Evaluation – IRFLP 719
 - Brief Focused Assessments – IRFLP 720
 4. Adjustment to home, school, and community:
 - See 3 above
 - Academics in adjustment to school
 - Tardiness and absences
 - Grades and academic performance
 - Home schooling
 - Access to the same school
 - Withdrawal from school
 5. Character and circumstances of all involved:
 - See 3 above
 - Abuse
 - Defined at Idaho Code §16-1602
 - Health and Welfare investigations – Idaho Code § 32-717C
 - Access to the child
 - Alienation of love and affection
 - Condition of the home
 - Primary caregiver
 - Drug and alcohol use
 - Extended family
 - Relocation
 - Communication and co-parenting
 - Social media
 - Messaging
 6. Need to promote continuity and stability for the child:
 7. Domestic violence:
 - As defined at Idaho Code § 39-6303(1)
 - Presumption against joint custody – Idaho Code § 32-717B(5)

Modification Of Child Custody: IRFLP 201(C)

- Requires substantial and material change in circumstances
- Filed like an original action
- All resources above available for resolution
- Same legal standards apply