

CALIFORNIA CHILD CUSTODY: A MOTHER'S GUIDE



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and the publisher. This report should not be used as a substitute for competent legal advice from a licensed professional attorney in your state.

INTRODUCTION- HOW IS CHILD CUSTODY AWARDED?

Divorce divides many things- property, debts, households- but the most important "asset" that divorce divides is the legal and physical custody of children. There is a lot of confusion over how child custody is won and lost. Put simply, if the parents of children cannot mutually agree on a parenting plan and how to divide custody of their children, the judge will make an order based upon what he or she deems is in the children's "best interest."¹

Most family law judges are going to start with the assumption that a child's best interest is spending fifty percent of time with one parent, and the other half of their time with their other parent. If you feel that your child's best interest would be better served otherwise, the burden will be upon you and your legal team to prove it to the court. In other cases, you may be fighting back against a father who is trying to deprive you of your fair share of access to the children.

If you are still married or early in the process of learning about your options, you may be surprised to learn that you can avoid a custody battle altogether. You can do this by reaching an agreement with your child's father about division of child custody. Since you are splitting up, you may doubt your ability to come to a compromise with your spouse. Thankfully, you don't have to do it alone. Your attorneys as well as professional mediators will be of great assistance in this process.

¹ Although the best interest of the children is supposed to be the deciding factor in child custody, there isn't a simple definition of best interest that everybody agrees upon. Each parent's involvement, the living environments, the children's preferences, the character of each parent, the opinions of professionals ordered by the court to evaluate both parents, and the personality of the judge may all influence what is deemed to be in your children's best interest.

Unfortunately, the collaborative law and mediation processes don't work for everyone. Some people are unable to reach an agreement and end up in the litigation process. This book generally assumes that you are an active parent who has been unable to reach an agreement with your child's other parent and that you are seeking to win custody of your children in court. Either way, the strategies in this book will serve you well as you fight for what's best for your family.

AVOIDING A CUSTODY BATTLE- THE BEST OPTION

Make no mistake, going to court to divide to sort out your child's custody issues is the most expensive, time consuming, and inefficient way possible to do it. Our court systems are overcrowded and delays are common. Judges are well-meaning, but they are dealing with crowded dockets as they are rushing to get through each day's calendar. They may have little time to truly learn the facts of each case. You are leaving the fate of your children in the hands of an overworked government employee.

I was in court one day on a case where parents were fighting over issues concerning the division of child custody. The judge took his seat, and looked down at my client and her estranged spouse, and said "I am offended that the two of you cannot decide what is best for your children, the people you love more than anybody and that you would leave such a decision to me, a total stranger."

Thankfully, you can avoid this process in most cases! Rather than wage a costly battle in court to decide custody, you can sit down with your child's other parent and draw up an agreement about how to split up legal and physical custody of the children. Presumably, the two of you love your children and know them better than anybody else. So who else is better suited to decide how to care for them than the two of you?

There may have been devastating circumstances that led to the breakup of your relationship with your child's father. There may have been an affair or other occurrence that makes it hard for you to see any good qualities they have anymore. He may have been an awful husband or partner. *But barring very extreme circumstances or character defects, few children benefit from being deprived of one parent. You owe it to your children to sit down and clearly evaluate his ability to be a loving and positive parent to your children.*

If they are a safe and loving father, you should make every good faith effort to work with him. The two of you ought to reach a mutual agreement to divide custody of the children that will ensure they have regular frequent and continuing contact with both of you.

It is never appropriate to use children as pawns to settle the scores of adult relationship drama. If the two of you can reach an agreement through mediation of how to coparent and share custody in a way that promotes the best interest of your children, you absolutely should.

PREPARING TO WIN WHEN YOU CAN'T AVOID A CUSTODY BATTLE

Although it is always best to avoid a custody battle, some custody battles are unavoidable. In some cases, this may be because one parent wishes to relocate. In other circumstances, there may be a truly toxic, unsafe, or abusive parent who the children need protection from. Whatever the circumstances, if you are unable to reach an agreement and must litigate your custody case, you absolutely need to prepare yourself to win.

The most important single decision you make is selecting the right attorney. See the chapter entitled "How do I select the right attorney?" for detailed guidance and information on how to choose the best lawyer and law firm for your case.

The next thing you must do is continue to be an active parent while gathering evidence that will allow you to demonstrate what type of parent you are to the court. We will discuss exactly this in the upcoming chapters of this book.

WINNING YOUR CUSTODY CASE: GATHERING EVIDENCE

It's one thing to be an active and involved parent who deserves custody. It's an entirely matter to prove it to the court. The foundation of winning your custody case is having all of your evidence in order that demonstrates your exemplary parenting to the court. Your legal team will use the evidence you gather to present your case.

What did you eat for breakfast two months ago today? Chances are slim you remember. How were you involved and active mother that same day? You probably can't answer that in much detail either. What you ate for breakfast doesn't matter much, but if you are involved in a custody battle your parenting record does!

Start a parenting journal today. Record any significant fact about the day's parenting you did with details, dates, and times. Record any concerns you have. Record it when you pick your child up, attend a soccer practice, take your child to church, help them with a school project, read them a book, or speak with a teacher or other professional. Printout copies of written communications, which are especially helpful. Did your child's other parent do or say anything questionable? Write it down. Include photos, emails, and other supporting documentation.

You should assume that your child's father will also be gathering evidence with the intent to win custody of the children. Govern yourself accordingly. What would you do or say if your parenting was being recorded as a video for the judge to watch? Act how you would act if you were being watched like this.

It's unfortunate but true fact that parents have been known to lie or misrepresent how actively involved the other parent is in their efforts to secure custody of their children. You can protect yourself by collecting evidence where your child's other parents acknowledges that you are an active, positive parent in your child's life. It's against the law in the state of California to record a conversation unless both parties consent. But if your child's other parent sends you a written or electronic communication (a note, an email, a voicemail, etc) that acknowledges or praises your parenting, save a copy and put it with your parenting journal. Endeavor to keep as much of your communication as possible written so that what you say can't be misrepresented.

On a similar note, if other important people in your child's life (coaches, teachers, grandparents, etc.) speak with you via email or text, and especially if they acknowledge your parenting efforts in written or electronic communications, add that to your journal and evidence collection as well.

WINNING YOUR CUSTODY CASE: PARENTING YOUR CHILDREN

Being an active parent and a positive presence in your child's life isn't just important for your relationship. Parents who take an active role in parenting their children and can demonstrate it to the court are laying a foundation to win their custody case. Let's talk about general principles as well as strategies for being an active parent to your children at every age.

In general, if your children are in your custody, unless you are working, you should avoid delegating their care to others. The parent who leaves their children unsupervised with a new person they are dating is on especially dangerous ground- both in the care of their children and in their chances of being seen as a responsible parent by the court.

As discussed in the previous section, you need to keep a daily journal to record your parenting. This will be used by your legal team. This journal should be a complete record of your

involvement in your child's life, including any time you do any of the activities listed below (such as picking a child up from school or attending a sports practice). It includes copies of any written communication you have with other people relevant to your child. Take photos with your child when you do fun activities or go to events. Include them in your journal.

i) Health

- (1) Take the lead in scheduling medical and dental appointments.
- (2) Attend every medical or dental appointment.
- (3) Know your child's pediatrician, dentist, etc. by name.
- (4) If your child has a health condition, be competent at managing and caring for their condition. Know their medication schedule. Take the lead in coordinating their care with specialists.
- (5) Be the parent who notices when the child needs help from a professional. For example, if your child has a speech issue, be the parent who arranges for your child to work with a speech therapist.

ii) School & Daycare

- (1) Know your child's teachers by name and be known to them.
- (2) Be the one to transport your child to and from school/daycare. If there is a "sign in" sheet, make sure to sign your name as well as get a copy of completed sign in sheets for your file. Do not be tardy to get your child to school! The court does not look well upon any pattern of tardiness or absences.
- (3) Help your child with homework and school projects.
- (4) Pack lunches.
- (5) Attend all parent/teacher conferences.

- (6) Talk to your child and ask them about each day at school. Know what they are doing and who their friends are.
 - (7) Volunteer in the classroom.
 - (8) Attend PTA meetings.
 - (9) Use email to interact with your child's teachers and monitor your child's progress. Keep printouts of these emails in your parenting journal.
- iii) Extracurricular activities
- (1) Be diligent as a parent.
 - (2) Take the lead in getting your child involved in extracurricular activities that they will enjoy and that will help them develop their potential.
 - (3) Know and be known by their coaches or other extracurricular instructors.
Coach a sports team for your child if you are able.
 - (4) Transport your child to and from, and if possible, attend practices, recitals, lessons, etc. for any extracurricular your child is involved in.
 - (5) Do you have a hobby or sport that you can teach your child? If you will both enjoy it, it is a great idea to show and teach your child your hobby. For example, if you enjoy playing tennis, teach your child the sport.

NEWBORNS & INFANTS (AGES 0 – 1 YEAR)

Very young babies need active parenting more than any other age group, and if you want to be awarded custody you've got to show you are a competent parent. Who changes diapers? Who feeds the baby? Who schedules appointments and brings the baby to the pediatrician? Who is up at 3 AM when the baby is crying? You need to take the lead role in these areas if you want primary custody of your baby. If another person is taking the lead role in caring for your baby,

your case for primary custody of your baby will be on shaky ground. For mothers, exclusive breastfeeding can increase your chances of being granted custody during your child's tender years.

TODDLERS (AGES 1–3 YEARS), PRESCHOOLERS (AGES 4–6 YEARS), & SCHOOL-AGED CHILDREN (AGES 6–11 YEARS)

- 1) If your child is in daycare or preschool, you should be involved with this as much as possible.
- 2) For preschool & school aged children, see if there are opportunities for classroom volunteering.
- 3) As much as possible, you should be transporting your child to and from daycare and preschool. Most daycares and preschools have a sign in sheet, be the one who signs your child in to school or daycare regularly. Get copies of the sign in sheet for your journal.
- 4) You should be on a first name basis with all of their teachers.
- 5) This is the age where activities like dance and sports lessons start. The judge is likely to favorably look upon the parent who coaches their kids sports team, attends practices and lessons, or is otherwise central to their child's extracurricular activities.
- 6) Read to your child every night before bed.
- 7) Be competent at using positive discipline methods with your child where necessary.
- 8) Take the lead in organizing playgroups, afterschool get togethers, and other opportunities for your child to socialize. Get to know their friend's parents.

ADOLESCENTS (AGES 12–19)

As children get older, the Court is under obligation to consider their opinion on which parent they would like to live with. Although you must discipline your child when necessary and raise them well, it's important to do so in a way that promotes a positive relationship with your child. If your adolescent child strongly prefers their other parent, you will face an uphill battle for

custody in many cases. This is a time where having a hobby you share or an extracurricular you are involved in with your child is an especially important way to bond. Take the lead in preparing them for the future, including preparing for college or vocational school.

ARE MOTHERS FAVORED OVER FATHERS?

No, mothers are not favored over fathers in custody cases. The law does not provide for one parent to be favored simply because of gender. Although there can be a cultural bias towards mothers which could influence some judges, in my experience I have seen that most judges pride themselves on giving mothers and fathers equal footing in custody cases. Most judges start with the assumption that the children are best served by continued, frequent contact with both parents.

ARE WORKING PARENTS AT A DISADVANTAGE?

Some parents fear that although they are an active and involved parent, they will be at a disadvantage because they need to work (and consequently put their children in childcare while they are working). Meanwhile, their child's coparent may have the freedom to stay at home. Rest assured, this does not mean your child's coparent automatically has a leg up in your case. In fact, California case law prohibits judges from discriminating against one parent on the basis that they need to work or use childcare services.

WHAT IS THE DIFFERENCE BETWEEN LEGAL & PHYSICAL CUSTODY?

Child custody falls under two broad categories- legal custody and physical custody.

i) Legal custody

- (1) Legal custody refers to the right to make major decisions regarding the health, education, or general welfare of the children. Having legal custody means that someone has the right to make important decisions regarding how the child(ren) will be raised. Some examples of this include:

- (a) What school will the children attend?
 - (b) When will they start school?
 - (c) Will an adolescent child be permitted to get a driver's license?
 - (d) What religion will the child practice?
 - (e) Will the child get braces?
 - (f) Decisions regarding medical care
- (2) The state of California has a general policy of assigning joint legal custody to the parents in the vast majority of cases. This means the parents will share the responsibility of making these decisions. In order for joint legal custody to be enforceable, it's important that your court order actually list the areas (such as medical, religious, driving, etc.) that the parties are obligated to share decision making with. If the final order simply states that the parties share legal custody but neglects to list where legal custody is shared, you are more likely to find that the order is unenforceable if you run into a disagreement with the other side.
- (3) Even with shared legal custody, the reality is that parent who is face to face with the kids the majority of the time will end up making most of the day to day decisions for how the children are raised. It's always a good idea to check in with your child's other parent before you make any major decision, even for something relatively trivial (such as a different haircut).
- (4) Sometimes one parent will want to involve their child in a possibly dangerous activity (motorcycle rides, travel abroad, etc.) and the other parent will strongly object. Tread carefully here if you are the parent who objects- in general, the courts are pretty liberal in allowing kids to live the lifestyle of their

parents. I have seen the courts come down hard when they see one parent who is trying to prevent the other parent from sharing positive experiences and creating memories with their child(ren).

ii) Physical custody

- (1) If a parent has physical custody of a child, that means that it is their right to have their child physically present with them under their care. If there is joint physical custody, it doesn't necessarily mean that the child is with each parent exactly 50% of the time, it just means that both parents have significant time periods where they have physical custody of the child(ren). When there is sole physical custody, it means that one parent has the child(ren) most of the time, notwithstanding visitation periods with the other parent.
- (2) Generally speaking, the state of California wants both parents to have frequent and continuing contact with their children. In most cases, children are better off when both parents are involved and present in their lives.
- (3) The time spent with your children will be allotted in something known as a parenting plan. There are many parenting plans, and if you and your spouse can work together, you can agree on any arrangement that best suits both of you and the children. It's important that you start out strong and insist on the time you need with your children. NEVER agree to a parenting plan in mediation with the idea that you will ask for more time later. Since the overcrowded courts are loathe to reopen an issue they see as resolved, the court will likely want to adopt any parenting plan agreed upon in mediation as the final order. Only agree to a parenting plan if it's good enough for you to be satisfied with.

- (4) If you and your spouse can't agree on a parenting plan or how physical custody should be awarded, you might end up participating in a custody evaluation. Custody evaluations are conducted by specially trained experts who evaluate both parents and provide the court a written report with their recommendation for what is in the best interest of the child(ren). Not only is this expensive, it means a stranger is the one who will be deciding what is in the best interest of your children. It's better to mediate early and often so that you can reach an agreement with the other side for what's best for your family.
- (5) Usually, children desire to continue their relationship and spend time with each parent. But this is not always so. The court is obligated to take into consideration the stated preference of children who are 14 and over. The court also may consider the preferences of younger children. Children who are well adjusted and doing well in school are given a lot of weight by the court. The court also wants to avoid situations where a child will be unhappy and run away if they are not with their preferred parent. The court will typically find out what children prefer through "minor's interviews" where a third party will interview the child and prepare a written report for the court to use. Older children (especially children 14 and above) with a strong preference can choose to basically opt out of most if not all of the time with one parent. The court will allow it in most cases. It's up to you to develop a positive relationship with your child(ren) that ensures this won't happen to you.
- (6) Some parents are concerned that they won't be awarded a fair amount of time with their children because their children will be in the care of others while they work. Rest assured that the law does not discriminate against parents that they

need to work to support their children. Even if it means your kids would be in daycare while the other parent would be available to watch them.

- (7) Child custody orders are generally very modifiable if circumstances change.

What is in the best interest of the children can easily change as they grow up and other things change. If your custody or visitation order needs changing, talk to an attorney.

WHAT ABOUT CHILD SUPPORT?

Child support exists to ensure that the needs of the children are provided for in both households. There is a statewide formula which calculates the amount that will be ordered in most cases. Of course, one of the most important factors is how the custody is split, meaning more support is owed to someone if they have the children for a higher proportion of the time. Because of this, many people have the idea that they should try to get more physical custody in order to save on child support. In general, this is a false economy. Children cost money when they are with you and the amount of money saved or gained is not likely to have a net benefit.

Life and circumstances change for both parents and children. In most cases, when circumstances change, so does child support. There are four circumstances where the court may choose to revisit the order and recalculate the amount that is owed:

- (a) There has been a significant change in the income of one or both of the parents.
- (b) There has been a change in the amount of time children are spending with each party.
- (c) If the parent paying support has had more children.
- (d) If the original order is determined to have been incorrectly calculated.

CHILDREN OVER THE AGE OF 18 & COLLEGE EXPENSES

Once a child is over the age of 18 and has graduated from high school, child support automatically terminates in the vast majority of cases. Parents are not obligated to contribute to college expenses, although of course many do voluntarily. In California, child support ends when a child reaches the age of 19 even if the child is still in high school.

In rare circumstances, child support could be ordered to continue indefinitely. This would be exceptionally rare, and can occur when a child has a physical or mental handicap that means that prevents them from becoming self-supporting.

HOW DO I SELECT THE RIGHT ATTORNEY?

- a) Family law is an extremely complex, fast changing, and highly specialized area of law.

Practicing family law requires a great deal of attention and specific training on the part of the practitioner to succeed. To be a successful family law attorney, one must have considerable breadth of knowledge. This requires working knowledge that includes, but is not limited to, all of the following areas:

- i) Paternity
- ii) Domestic violence
- iii) Child custody
- iv) Child Support
- v) Spousal Support (Alimony)
- vi) Tax law
- vii) Psychology (including an understanding of personality disorders)
- viii) Real property division
- ix) Real estate loans and liens
- x) Bankruptcy law
- xi) Pension and retirement accounts including valuation
- xii) The time value of money and cash flow analysis
- xiii) Business valuation
- xiv) Business management

- xv) Corporation law
- xvi) Partnership law
- xvii) Law and motion
- xviii) Discovery
- xix) Trial work

- b) At a bare minimum, your attorney should be certified by the California State Bar as a Certified Family Law Specialist. Even though you can (and should) try to settle your case without going to trial, an attorney who experienced in going to trial is your best bet since they have the experience to advise you what will happen if you do (or don't) compromise in out of court negotiations. Furthermore, an experienced and talented trial attorney is indispensable.

Even if an attorney is a person of integrity with ample expertise in family law, they still may lack what it takes to get winning results. It's been said that "no man is an island"- regardless of how true that is, here is one thing I can say- you don't want your divorce lawyer to be one!
- c) Some litigants think that hiring an attorney who works on his or her own without very much of a support staff and takes a low-key approach is a good idea. My experience as an attorney tells me different. The reality is that in metropolitan areas (such as any of the counties of Southern California), firms that excel in family law do so because they take a team approach. The work needed to properly litigate a family law case is significant. And not all of it is attorney work. A paralegal or legal assistant who is supervised by an attorney can do much of the work needed for your case.
- d) If a very small firm is hired (an attorney working solo or possibly with only one full time paralegal or legal assistant), the lawyer will have to spend considerable amounts of time

doing work that could otherwise be done by an employee who has a much lower hourly rate. You do not want your attorney having to focus on comparatively routine matters (such as preparing and propounding discovery requests or gathering and organizing documents). Your attorney doing everything is a bad use of his or her time. It distracts them from the more crucial preparation needed for your case.

- e) In all areas of Southern California, there are law firms who are staffed adequately so that they are able to take a team approach to your case. A team approach makes much more sense financially, because non-lawyer work can be delegated to team members with lower hourly billing rates. These team members often have specialized skills in these ministerial tasks and can do the work just as fast (or possibly even faster) than the single attorney.
- f) The four essential members of a family law legal team are: the lead trial attorney, the supporting office attorney, a paralegal, and a legal assistant.
 - i) In my firm, we have a team approach. A team of four people handles each case. These include the lead attorney, the office or support attorney, a paralegal or senior legal assistant, and a legal assistant. Each team member knows their role on the team and performs it well.
 - (1) The lead attorney strategizes, conducts trials and hearings, meets with clients, dictates communications, assigns work to the other team members, and is responsible for the outcome of the case. This is my role at my firm. I am often at court in the mornings, and I am frequently out of the office for most (if not all) of the normal workday when I am busy with clients in trial, in mediation, or another hearing.

- (2) The office or support attorney is another crucial member of the team. He or she is required to supervise the team and the work on your case to the fullest extent possible. Although they defer to the expertise and experience of the lead attorney, the office attorney is a very talented and effective lawyer in his or her own right. This is an attorney who you as the client can have full confidence in, and who will administer your case under the daily supervision of the lead attorney. Unlike the lead attorney who handles matters in the courtroom, the support attorney is in the office the large majority of the time, so you can call him or her any time of the day and get a rapid response. The support attorney drafts targeted discovery requests, does legal research, and drafts complicated briefs and memorandums for the lead attorney review before they are filed with the court. When necessary, the support attorney attends trial and learns while participating as the “second chair trial attorney.” The support attorney is invaluable to both you and the lead attorney.
- (3) The paralegal or senior legal assistant drafts correspondence, complies with discovery requests, assists with trial preparation, and supports the office lawyer with the voluminous work needed to administrate a family law case.
- (4) The legal assistant works assists the rest of the team in all of the above work, and other work as needed.
- ii) The above team approach works well and provides cost effective manner for you to get your case handled.
- g) In conclusion, you need to hire an attorney you can trust. You need an experienced trial attorney who specializes in family law and is certified family law specialist. And the attorney you hire needs to have the right support staff to handle your case effectively and

economically. This means his legal team will be staffed with multiple people who each have specialized responsibilities.

ABOUT THE AUTHOR

John A. Bledsoe began practicing family law in 1991. Since then, he has practiced throughout the state of California, been sworn in before the Supreme Court of the United States of America, and become an expert in divorce and family law matters. His expertise has been recognized formally by the State Bar of California, who named him as a certified family law specialist (an elite sector of family law attorneys designated by the State Bar). He has earned the prestigious Client Champion (Gold) Award by Martindale-Hubbell, the most trusted name in legal ratings. Mr. Bledsoe has also received the prestigious AV Preeminent Rating by Martindale-Hubbell, recognition of professional excellence given to less than ten-percent of attorneys. He has also been rated 10.0 Superb on Avvo.

In addition to his law degree (juris doctorate) Mr. Bledsoe also has a Master's of Business Administration degree in finance. He has years of previous experience of financial auditing and financial management. He brings a special expertise to the complex financial matters found in many family law cases. He has tried several hundred family law matters and settled over a thousand more. Mr. Bledsoe is the father of five daughters and a son. He has been married to his wife for over thirty-five years.

Our firm offers a confidential initial case evaluation. Call (949) 363-5551 or go to www.justfamilylaw.com to learn more.