

In cases involving children in New York, custody is often an issue. Child custody is much more complicated than the basic “the children can live with me and you can have visitation” scenario.

In its most basic form, custody can be broken down into two broad types: physical or residential custody and decision making.

Physical custody refers to the amount of time each parent is permitted to spend with the children. Physical custody is now more commonly referred to as parenting time or access time.

There are two types of physical custody- sole custody or joint custody. I have found that the trend is away from sole custody, where the children reside primarily with one parent, towards joint or shared physical custody. In a joint custody situation, the children split their time between their parents’ homes. Joint custody should be considered in cases where both parents are cooperative, “functioning” and involved in their children’s lives.

In splitting the times between the parents’ homes in a joint custody situation, consideration of the number of transitions from one parent’s home to the other’s must be balanced against the time separate and apart from a parent. An alternating night schedule would maximize contact with each parent, but would have a dizzying number of transitions. On the other hand, a schedule of two consecutive weeks a month with each parent would result in long stretches between seeing the other parent. The access time should be crafted based upon the ages and maturity of the children and everyone involved schedule.

The other side of custody is legal custody or decision making, i.e., how are decisions regarding the children’s health, education, religion going to be made. Like physical custody, decision making can be shared or one parent can have sole decision making power. While joint decision making prevents one parent from unilaterally imposing his/her will on the other (which becomes significant when one parent enrolls a child in an activity against the other’s wishes and then demand a contribution to pay for it), it can also lead to stalemate when the parents cannot reach an agreement.

In some instances, where one parent has a particular field of knowledge, that parent may be allowed to make decisions within his/her particular sphere of knowledge. For example, a parent who is a physician could be allowed to make medical decisions for the children.

Clearly, child custody has evolved from the traditional mother has custody and the father visits the children every other weekend model. Each issue and every possible solution opens up another can of worms, potentially derailing a just settlement which requires skilled and creative counsel to resolve.