

## Legal Custody vs. Physical Custody

The word *custody* is confusing to many people. This is partly because in the State of California, it is used to refer to a few different things. When you and your child's or children's other parent are no longer together, it is important to understand the difference between "*legal custody*" and "*physical custody*". This will help you to speak the "lingo" of the court and to communicate effectively with the court, with counsel, and with the other parent.

### Legal Custody

*Legal custody* refers to decision-making power. In most situations, the parties share *joint legal custody* of the child/children. *Joint legal custody* means that both parents share the right and responsibility to make the decisions as they relate to the health, education, and welfare of a child. When parents share legal custody, it is necessary for them to work together to make choices about the child's school, daycare, extracurricular activities, religious practices, health care, and other major aspects of caring for the child. Decisions are made after discussion and planning. Joint legal custody requires some cooperation and willingness to work together, between the parents.

Occasionally one party will have *sole legal custody* of a child/children. The party with *sole legal custody* makes all of the decisions in regard to the child/children. While he or she may consult with the other parent such communication is not required. Sometimes one party has sole legal custody because the other party does not want to participate in decision-making or is not able to participate because of health, mental capacity or incarceration. In other cases, the judge has found that there are reasons why one party should not be involved in decision-making.

### Physical Custody

*Physical custody* refers to having time with the child or children. Most parents share *joint physical custody*, which is any custodial arrangement where each parent is with the child/children more than 30% of the time. Contrary to popular belief, *joint legal custody* is not necessarily the same thing as a 50/50 custody. Joint legal custody can, for example, be where one parent has the child/children 35% of the time, and the other has the child/children 65% of the time.

Sometimes, one parent will have *sole physical custody*. Interchangeable with the term *primary physical custody*, sole physical custody does not necessarily mean that one parent has the child/children 100% of the time and the other parent never sees the child/children. It means that one parent has 30% or less of the time with the child/children. Where one parent has 30% or less of the time with the child/children, the parent with the larger timeshare is called the *custodial parent*. In such a case, a custodial parent has a presumptive right to move away with the child/children. However, this does not guarantee that the court

will permit the custodial parent to move away with the child/children. Regardless of the title given to the custodial arrangement parents will either coordinate between themselves or if they cannot agree, will have a court ordered schedule for each parent to have parenting time with the child/children. Sometimes, the schedule will be fluid and will be left up to the mutual agreement of the parties. In other cases, the schedule will be very strict setting forth exact dates, times, and sometimes even locations for the exchange of the child/children.

For example, a custody order might include the following: *“Respondent shall have the child from 9:00 a.m. on Friday mornings until 6:00 p.m. on Sunday nights. All custodial exchanges shall occur curbside at Petitioner’s home.”* Still other families choose a schedule somewhere in between providing some structure yet still allowing for flexibility. Many families also include holidays, special days and vacation scheduling in their orders as well. The schedule depends on what is in the best interest of the child/children and a number of other related factors such as the parents’ work schedules, the children’s schedules and more.