



## Child Custody: Considering the Best Interest of the Child

One of the most serious aspects in a divorce is child custody. When a chancery court judge considers custody issues, the overriding question is "What is in the best interest of the child?"

Both parents have equal rights to the child, so a judge considers several factors in custody matters. These include the health and sex of the child, the primary caregiver prior to the divorce, parenting skills and willingness to care for the child, the emotional ties between child and parent, and each parent's moral fitness.

Some factors that previously weighed heavily on the judge's decision are now balanced against other considerations. Examples include the age of the child, a parent's employment that involves long absences from home, immoral conduct of a parent, and differences between the parents in financial position, religion, personal values, and lifestyles. While any one may be a strong reason to base the custody decision, judges must look at the whole picture in determining what is in the best interest of the child. One standard rule is to keep siblings together.

A child age 12 or above may tell the judge his or her preference for custody if the court considers both parents fit. The judge, however, is not bound by the child's preference.

A judge awards both physical and legal custody. Physical custody is where the child actually lives. Legal custody gives a parent the decision-making authority concerning the child's health, education and welfare. The judge may grant either or both custody designations to both parents, one parent, or a third party.

If one parent receives physical and legal custody, the judge grants visitation rights to the other parent, unless it is not in the child's best interest.

A third party receives custody only when the court finds that it is in the best interest of the child because of the parents' abandonment, immorality, mental problems, or other reasons harmful to the child. Grandparents receive no special consideration over other third parties in these cases, but they may petition the court for visitation rights in situations of divorce, termination of parental rights, or the death of one of the parents.

Once ruled, a judge is reluctant to change custodial rights because of the disruptive affect on the child. For the judge to consider a change, the non-custodial parent must prove a significant change in circumstances has had an adverse impact on the child.

If the custodial parent dies, the surviving parent automatically receives custody unless a step-parent or third party proves to the court that it is in the best interest of the child that the natural parent not have custody.