

CHILD CUSTODY IS A CUSTODY BATTLE **BEST FOR YOUR CHILDREN?**



Beware of letting your children get involved in the case through an extended custody tug-of-war - it will backfire on you.

Look at this time as an adventure and opportunity of trying to improve your parenting skills in order to improve the quality of the relationship you have with your children rather than focusing on attacking their other parent.

1. Conservatorship

Conservatorship is the term used in Texas to designate the division of parental rights, privileges, powers, and duties. By law, it is now presumed that the parents should be named joint managing conservators unless good cause is shown. Because of this presumption, this handbook will only address joint managing conservatorship in detail.

In those extreme circumstances that warrant a sole managing/possessory conservatorship arrangement, the sole managing conservator (the "custodial" parent) is the person who is granted all of the rights, privileges, powers and duties of a parent. The possessory conservator (the "noncustodial" parent) has only limited parental rights when he or she has actual possession of the children. The court may choose a sole/possessory conservatorship when one parent has engaged in family violence or abuse.

2. The Order Must Set Out the Rights and Duties of Each Parent

In a decree or order involving children, the parental rights to make decisions regarding the children's health, education and welfare must be specified in the decree or order. The options are: one conservator may retain all primary decision-making rights; or, the parents may exercise the rights jointly; or, each parent may have independent rights. However, with regard to the child's primary residence, the final decree or order must either fix a geographic area for the residence of the children until and unless altered by further Court order, or give one of the conservators the right to determine the domicile without regard to a geographic area. The norm in Tarrant County is to award the right to determine the primary residence to one parent within Tarrant or contiguous counties.

The courts also like to allow the primary caretaker to have the overriding say the selection of schools, physicians and the right to direct the moral and religious training of the child or children, after appropriate notice to and/or discussion with the non-custodial conservator.

[Texas Family Code Section 153.132](#)

3. ***Things are Changing***

Prior to 1974, Texas had followed the "tender years" doctrine, in which children of tender years (up to seven or eight years old) should be with their mother. It was accepted that the mother was a better person to care for, teach and guide children of tender years. In 1974 the law specifically directed that the decision as to which parent should have custody of the children should be made without regard to the sex of the parent seeking custody. Although the "tender years" doctrine lingers to some degree, the family district courts of Tarrant County show that there has been a marked change in the attitude of judges towards the custody of children. Each party can expect to be treated fairly.

4. ***The Court Will Establish a Possession Schedule for Each Party***

In addition to setting out the parental rights of each party, the order must set out each parent's right to possession of the children at different times. Joint managing conservatorship does not necessarily mean that the children will divide their time equally between each parent, although that is becoming more common. The standard possession schedule now presumed to be appropriate is very close to shared possession if all of the extended alternatives are chosen by the non-custodial parent.

[Texas Family Code Section 153.132](#)

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[Texas Family Code Section 153.134](#)

[Texas Family Code Section 153.135](#)

[Texas Family Code Section 153.137](#)

5. ***The Best Interest of Your Children***

The law requires that the best interest of the children should be the determining factor in assessing which parent should be named a child's primary conservator. Some of the factors that should be considered are as follows:

- (A) the desires of the child;
- (B) the emotional and physical needs of the child now and in the future;
- (C) the emotional and physical danger to the child now and in the future;
- (D) the parental abilities of the individual seeking custody;
- (E) the programs available to assist these individuals in promoting the best interest of the child;

- (F) the plans for the child by these individuals or by the agency seeking custody;
- (G) the stability of the home or proposed placement;
- (H) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not a proper one;
- (I) any excuse for the acts or omissions of the parent.
- (J) the amount of time a parent has spent and currently spends with the child;

The Texas Family Code provides that the court, upon application, shall confer with any child 12 years of age or older and shall *consider* their desires. Even so, the decision of the court will still be primarily based on the best interest of the children, and not the children's wishes.

6. Assessing Your Motives

The most important question to consider is: Why do you want primary custody of your children? All sorts of reasons may be involved, and often you may not understand exactly why you want custody. If your spouse or ex-spouse has decided that a divorce or change in custody is necessary and assumes he or she will have custody, you might feel hurt and resentful by this. In this particular situation, you may want the children because they represent a means of revenge and an opportunity to punish your spouse or ex-spouse. That is, of course, a poor motive for seeking custody of your children. Alternatively, you may think you really are the better parent and can provide the children with more of what they need than your spouse or ex-spouse.

The key to success in this type of case is simply hard work. You are asking the attorney to become a partner with you in this venture. You are asking for emotional commitment, a physical commitment and a time commitment to a demanding case. If your motives are questionable and your commitment is not complete, we will be reluctant to become a part of the effort to seek the primary conservatorship of your children.

7. Parenting is an Extremely Difficult Full Time Job

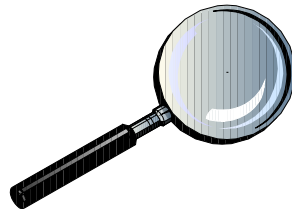
Take time to consider that primary conservatorship of one, two, or three children, is an enormous responsibility. It is much easier to visit your children every other weekend than to see your children on a day-to-day basis, feed them, clean them, be with them when they're sick, nudge them about their grades, have the economic responsibility of their care,

maintain the house, as well as, perhaps, holding down a full time job. It is neither an easy job nor a small one. It's a job you really have to want.

8. **Create a Win-Win Situation for Your Children**

If you have received temporary primary conservatorship and are living in the house with the children, you must use this precious time prior to trial to show your skills as a loving, concerned parent so that the court will be more inclined to continue this arrangement on a permanent basis. If, after taking over the primary responsibility of the children for a period of time, you make the determination that primary custody is more difficult than you anticipated. You may also find that it is not in the best interest of your children to pursue this "battle". After all, why spend thousands of dollars in a custody fight when that money could be saved or spent for the benefit of the children?

Making Your Case for Primary Conservatorship



A contested custody battle should be your last resort.

1. **Personal Assessment as a Parent**

The assessment of your existing parenting skills is crucial. Make a list of your strong points and your weak points as a parent, as a provider and as a person. Make a similar list of the good points and bad points of your spouse or ex-spouse. Then, list the names of persons who can testify as to the good and bad points of you or your spouse or ex-spouse, who can also describe the interaction between you and your children and can describe the relationship you have with them. Finally, provide your attorney with their names, addresses, and telephone numbers including a description of their relationship to you, so that we will have the ingredients for their testimony.

2. **Paint a Picture of Your Children's Relationship with EACH Parent**

Provide your lawyer with a picture of each of your children so that she may have it in my files for reference and let her know what you think about them. Explain the relationship you have with each child and the activities you and your children share. Provide the same type of description about your spouse or ex-spouse's relationship with your children. If this is a divorce, describe your role during the infancy of your children. If you are the father, where you were when

the children were born. What was your participation in the care of the children after they came home from the hospital? Exactly what was the division of duties in your house with each child, from the first child through the youngest? Break this down into time periods, such as infancy, two years, five years, etc. This needs to be in writing and to be as specific as possible.

3. Get Involved with Your Children

There are activities in which you can participate with your children that will be beneficial to a custody case and to your relationship with your children. You cannot think of your children as one group. Each child is unique and, consequently, your relationship with each child will be different. You need to develop activities that fit the interests of each particular child. Remember, each child may want or need activities different from those of your other children.

It is important to determine what activities your children will enjoy with you. If you require them to perform activities that they find unpleasant, they will look upon the time spent with you as unpleasant. That is counter-productive.

The expenditure of funds in entertaining children is often necessary, but not essential. Try not to be subject to the criticism that you're trying to buy the favor of your children. The money you spend should be on things other than material possessions for the children.

Children tend to use parents against each other during a lengthy custody proceeding. Do not allow your children to put you in a position where you are in a spending war with your spouse or ex-spouse for their affection, attention and favor.

4. Know Your Children's School and Activities

You should become actively involved in your child's school. You should know the children's teachers and principal by name, so that if you are asked about their schooling, you will be able to reply quickly and easily about their activities, their interests, and their academic progress. Quiz yourself. Do you know the name of each child's homeroom teacher or your child's favorite subject? You should know this information before proceeding to court in a custody contest. If you know that a custody dispute is going to become a reality, have a private conference with your children's teachers to let them know what is going on. Don't ask the teacher to pick sides, just let them know what is going on at home so they can be alert to any problems the children are having. Teachers are potentially among the strongest witnesses in a custody case. Make sure the teachers know that your children's best interests are your primary concern, and not who "wins" the custody battle.

How much do you really know about your children? We intend to find out. For example, what size dress does your daughter wear? What size shirt does your son wear? Who is your daughter's music teacher? Who is your son's favorite teacher? What is your daughter's favorite color? What is your son's

favorite ice cream? You should know the answers to all of these questions. If you don't, you should work on your knowledge of your child's life. As a part of the process of preparing for this case, you are going to learn about those things, and retain them so that you have the ability to testify in court as to those facts. You should be able to talk about your son's best friend, your daughter's boyfriend, if she has one, and what things your children like about their various friends. The only way you can find out those things is to spend time, individually, with each child, talking to them, but not interrogating them.



5. *Be able to Communicate to the Court about Your Relationship with Your Children*

It's important that you be able to communicate to the court the kind of relationship you have with your children. You can be the best parent in the world and have impressive activities with your children, but if you are unable to demonstrate that to the judge, the counselors, the psychologists, or the social worker, you may not succeed in your case. Some people verbalize better than others. Good communication skills are an asset. If you do not have the ability to communicate effectively we will work together to improve that ability.

When asked to describe their children, most people do a terrible job. They have a difficult time doing much more than saying, "He=s a great kid". You should make the judge believe your child is "a great kid" by helping the judge understand and visualize him.

You have to remember that the judge who hears your case has heard hundreds of cases. You have to humanize yourself and your children so the judge can see that the names on the paper represent people who are alive, children who are real and people who care about and love those children. You should practice describing your children. Think of their imagination, sense of humor, or sensitivities. Write down those qualities. Then describe those qualities aloud.

6. *Keep a Journal of Events*

For purposes of this suit, you should keep a log in which you write down the most interesting incident, positive or negative, that has occurred with each of your children. Try to do this at least once a week.

As noted before, you also need to keep a record of the time you spend with your child. Your record should reflect the times you have with your child, or in some cases, the times you did not have. Such a record will be a quick reference for you and your attorney in determining if visitation privileges are being carried out.

7. *Look for the Best from Your Spouse as a Parent as Well*

Your children will benefit from this case by having a more caring, understanding, attentive and skilled parent than when the case was first filed. If,

in fact, your spouse or ex-spouse has made the same kind of effort, the children will then have two parents who are functioning, both physically and emotionally, on a higher plateau. You may discover some of the problems and complaints you had about your spouse or ex-spouse have disappeared during the pendency of the suit. You should expect and hope that your spouse or ex-spouse's new conduct is of a lasting nature rather than a facade or a temporary measure to impress the court. If, in fact, your spouse or ex-spouse's conduct is real and lasting, your children will be the beneficiaries of two parents who love them and have worked hard to achieve better parenting skills.

8. *If a Social Study Investigation is Required, Cooperate Fully with the Investigator or Case Worker*

Tell the truth and let the case worker know the kind of parent you are. It is the duty of the case worker to make recommendations regarding the custody of the children and you should spare no effort in being cooperative so that your side will be understood and believed. The investigator will ask you for references, the names of people with whom you have worked and people who know you. These people will be contacted. Talk with your references and tell them that they can expect to hear from the case worker. Do not tell them what to say. Above all, don't give names of people who either does not know you well or who might be adverse to you. Do not hurt your case - help it.

9. *An Amicus Attorney May Be Appointed to Determine the Best Interests of the Children*

Sometimes, it is necessary for an objective professional to make an assessment of what is best for your children. This is especially true when we have the "he said, she said" issues between the parents, or coaching and parental alienation by one or both parents. In order to get to the bottom of the real truth, the Court will appoint an attorney whose sole purpose is to make a recommendation to the court on behalf of the children. This does not necessarily mean that the Amicus Attorney will do what the child says, but rather, will look at the big picture to find what is best. We find Amicus Attorneys to be extremely helpful and advise full cooperation. The Amicus Attorney often gives great guidance to the parents at a time when it is hard to be objective.