

**Creating Parenting Plans**  
May 2011

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**North Carolina Law**

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**GS 50-13.2**

- ▶ Custody must be awarded to “such person as will best promote the interest and welfare of the child.”
- ▶ Court may grant:
  - Joint custody to the parents
  - Exclusive custody to one person
  - Custody to two or more persons

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## GS 50-13.2

- ▶ Order shall include such terms, including visitation as will best promote the interest and welfare of the child
- ▶ Visitation is a "lesser form of custody"
  - *Clark v. Clark*, 294 NC 554 (1978)
- ▶ Order should establish the time, place and conditions for exercising visitation.
  - *Ingle v. Ingle*, 53 NC App 227 (1981)

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## Parents

- ▶ Between mother and father, no presumption shall apply as to who will better promote the interest and welfare of the child
  - GS 50-13.2
- ▶ Parent cannot be denied reasonable visitation unless court finds parent unfit or that visitation is not in best interest of the child
  - GS 50-13.5(i)
  - Supervised visitation is not "reasonable visitation"
    - *Hinkle v. Hartsell*, 131 NC App 833 (1998)
- ▶ Cannot allow custodial parent to control visitation
  - *Brewington v. Serrato*, 77 N.C.App. 726, 336 S.E.2d 444 (1985)

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## Definitions

- ▶ Physical Custody
  - No definition in statutes or cases
- ▶ Legal Custody
  - Right and responsibility to make decisions with important and long-term implications for a child's best interest and welfare
  - Includes "education, health care, religious training and the like."
    - *Diehl v. Diehl*, 177 NC App 642 (2006)
    - No presumptions regarding legal custody
    - Order should be specific

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### “Joint” Custody

- ▶ Must be considered “upon request of either party”
  - GS 50-13.2
- ▶ There is no presumption in favor of joint custody
  - *Hall v. Hall*, 655 SE2d 901, n3 (NC App, Feb. 2008)
- ▶ Implies a sharing of responsibility.
  - *Diehl*, 177 NC App 642 (2006)
- ▶ Because there is no definition, “judge has substantial latitude in fashioning a joint custody arrangement.”
  - *Patterson v. Taylor*, 140 NC App 91 (2000)

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### Joint Legal Custody

- ▶ If award joint legal, cannot “split” decision-making authority without specific findings regarding need to split
  - *Diehl*, 177 NC App 642 (2006)
  - *Hall v. Hall*, 655 SE2d 901 (NC App, Feb. 2008) (inability to communicate insufficient)
  - *MacLagan v. Klein*, 123 NC App 577 (split upheld based on conflicts over religion and evidence of impact on child)

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### Standard Visitation?????

- ▶ “A fairly common visitation schedule for unrestricted visitation with school age children is every other weekend, one weekday evening per week, four weeks in the summer, and alternate holidays.”
  - Lee’s Family Law, 5<sup>th</sup> edition, pp. 13-95

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**Trends Outside of North Carolina**

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**ALI Principles of Family Dissolution (Restatement)**

- ▶ Each parent must submit "Proposed Parenting Plan"
- ▶ Goal of court should be to reasonably approximate pre-separation caretaking responsibility as much as possible
- ▶ Allocate decision-making authority based on listed factors

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**Joint Custody**

- ▶ 47 states have joint custody statutes
- ▶ 11 states have joint custody presumption
- ▶ 16 states have presumption in favor of joint if both parents agree
- ▶ 2 states allow joint only if parents consent
  - Modern Child Custody Practice, pp. 6-2

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## Joint Custody

- ▶ Definition: custody shared in such a way as to assure child of frequent and continuing contact with both parents
  
- ▶ Equal division of time is not required
  
- ▶ Courts mixed on true “alternating custody”
  - Modern Child Custody Practice, pp. 6–10

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## “Standard” Visitation

- ▶ Several states have adopted visitation guidelines
  - Texas: statute requires use of guidelines if child is 3 years or older, unless against best interest
    - Tex. Code Ann., sec. 153.311 et. seq.
  - Indiana: very detailed guidelines by state judicial conference
  - Utah: advisory visitation guidelines by supreme court rule
  - Massachusetts: Parenting Plan guidelines provided to parents by AOC

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