

Parenting Plans
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Judge Marty McGee
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Temporary Custody

▶ G.S. 50-13.5(d)(2):

◦ *“If the circumstances of the case render it appropriate, upon gaining jurisdiction of the minor child the court may enter orders for temporary custody and support of the child, pending the service of process or notice as herein provided.”*

GS 50-13.5(d)(3)

▶ *“A temporary order for custody which changes the living arrangements of a child or changes custody shall not be entered ex parte and prior to service of process or notice, unless the court finds that the child is exposed to a substantial risk of bodily injury or sexual abuse or that there is substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of North Carolina courts.”*

Smith v. Barbour

- ▶ “Yet, *even as a third party*, Plaintiff had standing to bring this action because the district court’s findings that the child shared Plaintiff’s last name and Plaintiff had visited her since her birth two years prior to the action indicated the existence of a sufficient relationship. As such, the trial court had authority to enter a temporary custody order.”

- 154 NC App 402, 409, 571 SE2d 872, 878 (2002)

**Custody
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

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)

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)

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

"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)

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)

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, 5th edition, pp. 13–95

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

Joint Custody

- ▶ 47 states have joint custody statutes
- ▶ 11 states have joint custody presumption
- ▶ 17 states have presumption in favor of joint if both parents agree
- ▶ 2 states allow joint only if parents consent
 - Modern Child Custody Practice, pp. 6-1

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. 6-6

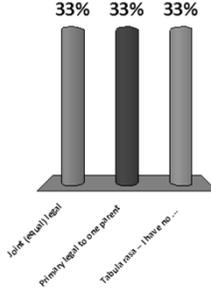
“Standard” Visitation

- ▶ 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

Share your views.....

My starting point (or default) re *legal* custody is....

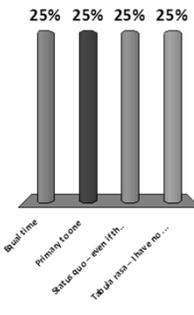
1. Joint (equal) legal
2. Primary legal to one parent
3. *Tabula rasa* - I have no default



Option	Percentage
Joint (equal) legal	33%
Primary legal to one parent	33%
Tabula rasa - I have no default	33%

My starting point (default) for *physical* custody is....

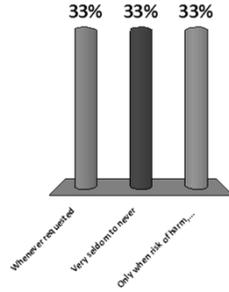
1. Equal time
2. Primary to one
3. Status quo - even if that means equal time
4. *Tabula rasa* - I have no default



Option	Percentage
Equal time	25%
Primary to one	25%
Status quo - even if that means equal time	25%
Tabula rasa - I have no default	25%

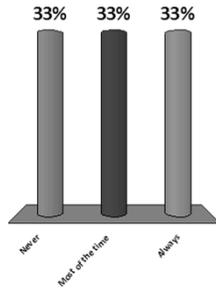
Do you grant ex parte "status quo" orders?

1. Whenever requested
2. Very seldom to never
3. Only when risk of harm, removal from state or other extraordinary circumstance



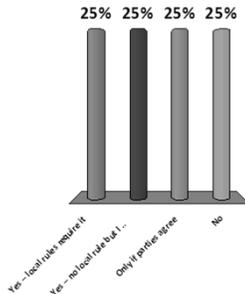
Do you require mediation before temporary custody?

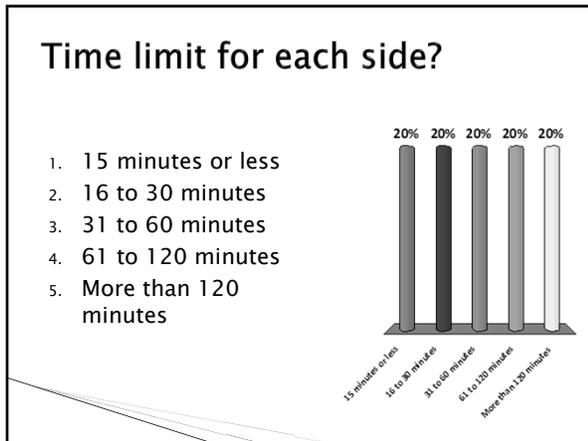
1. Never
2. Most of the time
3. Always

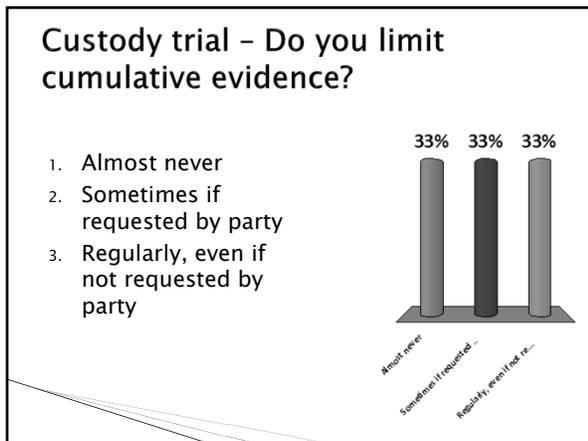


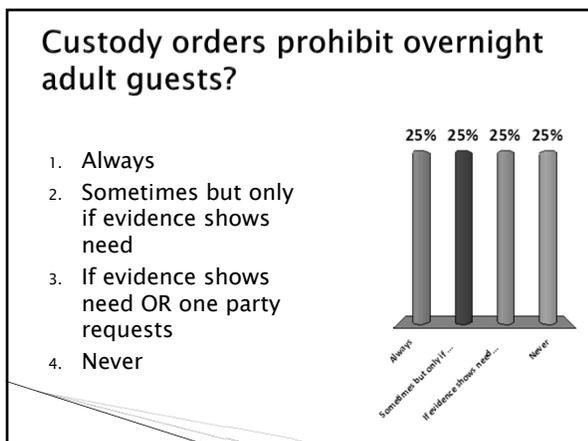
Place time limits on temporary hearings?

1. Yes - local rules require it
2. Yes - no local rule but I do it
3. Only if parties agree
4. No









Award attorney fees?

- 1. In most cases
- 2. Sometimes
- 3. Almost never

