

Maine

TRACEY BEE, THE DIVORCE SOLUTIONIST



Parenting Rights and Responsibilities in Maine

Although child custody is a concept that many parents understand, Maine courts don't actually use the term "custody" when dealing with a parent's rights concerning minor children. Instead, the courts use the terms "parental rights and responsibilities" (legal custody) and "physical residence" (physical custody). Parental rights and responsibilities refer to each parent's rights and obligations to take part in decisions regarding the child's wellbeing—like medical decisions, religious training, and educational decisions. Physical residence refers to where the child will live and which parent will have control over the child's day-to-day activities.

There are three ways for the court to divide parenting rights and responsibilities:

- shared rights
- allocated, and
- sole.

Courts most commonly award shared parental rights, which means that each parent takes part in making decisions regarding the child's wellbeing, and both parents must consult with each other before deciding how to handle significant issues. In allocated rights, the court may award one parent the ability to make religious decisions while granting the other the right to control all educational decisions. In rare cases, the court will award one parent sole rights and responsibilities, meaning the parent does not need to consult with the other when making important decisions regarding the child. If the court awards one parent sole residence, it means that the parent will decide where the child lives and will be responsible for day-to-day decisions for the child. (Me. Rev. Stat. Ann. tit. 19-A, § 1501.)

Best Interest of a Child

In Maine, the hallmark factor in every custody evaluation is what's in the child's best interest. (Me. Rev. Stat. Ann. tit. 19-A, § 1653 (2)(D)(1).) If the parents agree to a parenting plan, and it's in the child's best interest, the court will sign the agreement, and it will become an official court order. (Me. Rev. Stat. Ann. tit. 19-A, § 1653 (2)(A).)

However, if parents can't agree, the court will decide. To determine the child's best interest, the judge will consider a number of different factors, including each of the following:

- the child's age
- the child's relationship with each parent and anyone else who may affect the child's welfare
- the duration and stability of the child's current living situation
- the stability of any proposed living arrangements
- each parent's ability to give the child love, affection, and guidance
- the child's adjustment to his or her present home, school, and community
- each parent's willingness to encourage frequent contact between the child and the other parent
- each parent's ability to cooperate or learn to cooperate in child care
- each parent's methods for parental cooperation and resolving disputes, and willingness to use those methods
- the effect on the child if one parent has sole authority over the child's upbringing
- whether either parent has a history of domestic abuse or child abuse
- whether either parent has lied about abuse to gain an advantage in the custody proceedings
- if the child is under one year of age, whether one parent is breastfeeding the child
- whether either parent or a person living in either parent's household has been convicted of a sex offense
- the child's custodial preference, if the child is old enough to have a meaningful opinion, and
- any other factors the court deems relevant to custody. (Me. Rev. Stat. Ann. tit. 19-A, § 1653 (3).)

Contrary to popular belief, the court must give equal consideration to both parents, regardless of the parent's or child's gender or age. (Me. Rev. Stat. Ann. tit. 19-A, § 1653 (4).)



Leading Case Law in Best Interest of a Child.
CEW v. DEW, 2004 ME 43 - Me: Supreme
Judicial Court 2004

Rules of Conduct for Judges

A judge shall comply with the law and the Maine Code of Judicial Conduct. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary; shall avoid impropriety; and should avoid the appearance of impropriety.
https://www.courts.maine.gov/rules/t/ext/mc_jud_conduct_only_2017-9-5.pdf

Attorney Ethics

https://www.mebaroverseers.org/regulation/maine_conduct_rules.html



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Modification of Child Custody

Maine law requires that there be a "substantial change in circumstances" in order to change or modify an order for parental rights and responsibilities or divorce.

Many things could result in a change in your family's circumstances since the court issued the order. Examples include a change in financial circumstances, or the relocation of one of the parents that would disrupt the parent-child contact schedule. (Me. Rev. Stat. Ann. tit. 19-A, § 1657.)

Unless you and the other party can agree on a modified order, the court will decide whether to grant the motion to modify based on the specific facts of your case.

Recusal of a Judge

Generally, a judge must recuse on motion made by any party only if

1. the judge's "impartiality might reasonably be questioned" or
2. the judge has a "personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding."

Maine Code of Judicial Conduct Canon 3(E) establishes two instances where a judge's recusal or disqualification from a case is warranted. First, "[a] judge shall disqualify himself or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that he or she could not act with complete impartiality." M. Code Jud. Conduct 3(E)(1). "This is a purely subjective test which the judge should apply based on his or her own understanding of personal feelings or attitudes or factual matters involved in the proceeding." Advisory Comm.'s Notes to the M. Code Jud. Conduct at 34 (effective Sept. 1, 1993) (hereinafter, "Advisory Notes"). "A judge acting under this subsection . . . need not state the grounds of disqualification." M. Code Jud. Conduct 3(E)(1).

Second, "[a] judge may disqualify himself or herself on the judge's own initiative without stating the grounds of disqualification, and shall disqualify himself or herself on a motion for recusal made by a party, in any proceeding in which the judge's impartiality might reasonably be questioned." M. Code Jud. Conduct 3(E)(2). Canon 3(E)(2) establishes an objective test that asks, "[r]egardless of the judge's own belief about his or her ability to act impartially, [whether] the judge's impartiality might reasonably be questioned by others." Advisory Notes at 34-35. Canon 3(E)(2) also sets forth a nonexhaustive list of examples of when a judge's impartiality might reasonably be questioned, such as when "the judge has a personal bias or prejudice concerning a party or a party's lawyer."



Recusal of a Judge

[M. Code Jud. Conduct 3\(E\)\(2\)\(a\).
https://www.courts.maine.gov/rules/text/MRCivPPlus/mr_civ_p_63_plus_2_016-11-17.pdf](https://www.courts.maine.gov/rules/text/MRCivPPlus/mr_civ_p_63_plus_2_016-11-17.pdf)



Appointment of Guardian ad Litem

When parents have very differing views on what is best for the children going forward, the court may appoint a guardian ad litem (GAL). The GAL does an investigation and makes recommendations to the court about what is in the child's best interest. The GAL does not represent either parent, but will spend time talking with both parents and the child. The GAL's recommendations may be made in a written report submitted to the court, or in testimony at a court hearing, or both, depending upon the type of appointment and duties set by the court



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