

Maryland

TRACEY BEE, THE DIVORCE SOLUTIONIST



Child Custody in Maryland

In Maryland, courts break custody into two categories: physical and legal. Additionally, judges can award sole physical or legal custody, joint legal or physical custody, or a combination of both.

What is legal custody?

Legal custody involves the right and obligation to make important decisions about the child. Common issues include education, religious training, discipline, medical care, and other significant matters affecting the child's welfare. What is joint legal custody?

If parents have joint legal custody, both parents have an equal right to make legal custody decisions. If the parents disagree on how to handle a significant issue involving the child, the parents will need to file a motion and ask the court to decide for them.

What is physical custody?

Physical custody means the right and obligation to care for a child physically. The parent who has physical custody provides a home for the child and makes the day-to-day decisions required during the time the child actually spends with the parent having such custody. If the court awards one parent sole physical custody, the judge will typically create a parenting time or visitation schedule for the noncustodial parent and child.

What is joint or shared physical custody?

Joint physical custody is, in reality, "shared" or "divided" custody. If parents share physical custody of a child, the child spends part of the year living with each parent. Shared physical custody may, but need not, be split exactly (on a 50/50 basis). More commonly, the child lives with one parent during the school year and with the other during summer vacation months, or with one parent during the week and the other on the weekend.

How Courts Determine Custody and Visitation in Maryland

In any child custody case, the judge must consider the unique facts and circumstances of each case in deciding what type of custody arrangement would serve the child's best interests.

The same standard applies for visitation issues: the court must decide what would be in the child's best interest. An important consideration when determining visitation schedules is whether the non-custodial parent has ever committed child abuse or domestic violence. If so, the court may restrict or otherwise limit visitation. (Md. Code Ann. Fam. Law § 9-101.) For example, the judge may require a third-party supervisor during the visits or prohibit overnight visits between the child and parent. In other cases, it may be more appropriate for the court to restrict visitation to court-sanctioned facilities.

What are "Best Interest of the Child?"

It depends on the unique circumstances of the case. The court has the discretion to determine which facts are relevant in each case. Here are some factors judges consider, based on Maryland case law:

- the fitness of each parent
- the character and reputation of each parent
- what each parent wants regarding custody and any agreements they have made
- the possibility of maintaining family relationships
- the child's preference (if old enough and mature enough to form an opinion)
- the material opportunities each parent can offer affecting the child's future
- the age, health, and sex of the child
- the residences of each parent, including opportunities for visitation and geographic proximity of the parental homes
- the length of the child's separation from the parent, and
- whether either parent has voluntarily abandoned or surrendered the child. (Montgomery County v. Sanders, 38 Md. App. 406 (1978))



Leading Case Law in Best Interest of a Child.

Taylor v. Taylor, 508 A. 2d 964 - Md: Court of Appeals 1986

Rule for Conduct for Judges

<https://www.mdcourts.gov/sites/default/files/rules/reports/178thsupplementpart2markup.pdf>

<http://www.courts.state.md.us/rules/reports/codeofjudicialconduct2010.pdf>

Attorney Ethics

<http://www.courts.state.md.us/attygrivance/rules>

<https://guides.ll.georgetown.edu/c.php?g=275830&p=1839009>



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The factors courts consider in deciding whether joint custody will work include:

- the capacity of the parents to communicate and reach shared decisions affecting the child's welfare
- whether the parents are willing to share custody
- the child's relationship with each parent
- whether joint custody will disrupt the child's social and school life
- the demands of each parent's job
- the sincerity of either (or both) parent's request for joint custody
- the financial status of the parents, and
- the benefit to the parents of awarding joint custody. (Taylor v. Taylor, 306 Md. 290 (1986))

Modifying Custody in Maryland

It can be very difficult to get custody modification since in Maryland, the court assumes that the former custody agreement is in the child's best interest until someone offers evidence to the contrary.

Under Maryland law, a parent who wishes to modify a court order regarding custody and visitation must successfully prove that there has been what's known as a "material change in circumstances."

In order for it to be a material change, there needs to be a big difference in the circumstances from the first custody arrangement to the new proposed one. That is, you have to prove that the "material" facts of the case have changed since the new order.

Qualifying material changes to child custody arrangements may include:

- Interfering with court-ordered visitation
- Moving out of state
- Inability to comply with the previous order
- Misuse of custody funds
- Assault, abuse, or other violence
- Dangerous home situations
- Dramatic shifts in a child's behavior
- The following scenarios do not automatically qualify as a material change for custody cases, but may be part of a broader justification for modification. These may be especially useful if you're trying to gain custody of the child for the first time, now that your life has changed.
- Completing a rehabilitation program
- Release from prison or parole
- Job loss or change of shift schedule
- The other parent's dating habits or acts of infidelity
- Aspects of the child or parent's sexuality or gender
- The child growing up

Guardian Ad Litem

In Maryland, a guardian ad litem is referred to as a best interest attorney (BIA). In most counties, you will have to pay in order for a BIA to be appointed to a case. All cases are fact-intensive. When a case involves children who are too young to have a say in the matter, a BIA may be appointed in order to hear the child's voice.

If, on motion by the attorney for a parent or from other compelling evidence, the court finds that (1) a parent, by reason of physical, mental, or developmental disability, is and will remain, for an indefinite period, unable to comprehend the nature of the proceeding, read and understand the petition and show cause order, and make a knowing and voluntary decision whether to consent or file a timely notice of objection to the guardianship, and (2) the parent does not already have a court-appointed guardian of the person authorized and willing to act for the parent, the court shall appoint a guardian ad litem for the parent. After consultation with the attorney and such other persons as the guardian ad litem deems appropriate, the guardian ad litem may file a consent pursuant to Rule 11-309 or a notice of objection pursuant to Rule 11-307 on behalf of the parent.

Recusal of a Judge

Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of subsections (a)(1) through (5) apply. In this Rule, "disqualification" has the same meaning as "recusal."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] By decisional law, the rule of necessity may override the rule of recusal. For example, a judge might be required to participate in judicial review of a judicial salary statute or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. When the rule of necessity does override the rule of recusal, the judge must disclose on the record the basis for possible disqualification and, if practicable, use reasonable efforts to transfer the matter to another judge.

{4} A judge should disclose on the record information that the judge believes the parties or their attorneys might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[5] This procedure gives the parties an opportunity to waive the recusal if the judge agrees. The judge may comment on possible waiver but must ensure that consideration of the question of waiver is made independently of the judge. A party may act through an attorney if the attorney represents on the record that the party has been consulted and consents. As a practical matter, a judge may request that all parties and their attorneys sign a waiver agreement.

<https://casetext.com/rule/maryland-court-rules/title-3-maryland-rules-of-civil-procedure-district-court/chapter-500-trial/rule-3-505-disqualification-of-judge>
<https://mdappblog.com/2020/10/13/a-maryland-guide-to-judicial-recusal/>



<https://thedivorcesolutionist.com>