

# ABOUT CHILD CUSTODY IN NORTH CAROLINA

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### **Q: What is child custody?**

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Child custody can be divided into two categories: legal custody and physical custody. Legal custody refers to a parents right to make major life decisions about a child. Think of these as typical parenting decisions such as education, medical care, religious involvement, etc. Physical custody refers to the right to have the child in your physical care, either all the time or part of the time.

### **Q: How will the judge determine who gets custody of the child?**

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When making a determination about who should be granted custody of the child, the judge will make a decision based on the *best interest of the child* under the specific circumstances of your family. Usually this includes looking at the child’s relationship with the parent, the parent’s ability to care for the child, and the parent’s living arrangements.

### **Q: What does it mean to have joint custody? What does it mean to have sole custody?**

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Sole **legal** custody allows a parent to make major life decisions affecting the child without being required to consult with the other parent. Joint **legal** custody means both parents must consult with one another before making major life decisions on behalf of the child. The most common scenario where parents would need to consult one another would be in the instance of a child needing an invasive medical procedure. Sole **physical** custody permits the child to live with only one parent while still granting the other parent visitation. If parents are granted joint **physical** custody, the child will share time with both parents to ensure both are given regular contact with the child. The judge can arrange for one parent to have primary and the other to have secondary physical custody. Additionally, parents will usually try to create a schedule allocating what days the child will spend with each respective parent.

### **Q: I think my child is in danger. What can I do?**

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North Carolina offers emergency custody orders known as “ex parte orders”, which will grant immediate, short-term custody without a formal hearing. To be eligible for an ex parte order the child must be facing a substantial risk of bodily injury, sexual abuse, or removal from North Carolina for the purpose of avoiding NC Courts.

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**Q: I'm a grandparent or family friend. Can I request custody of a child?**

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In North Carolina, a non-parent may be able to request custody of a child if they show the court that either: (a) they have a parent-like relationship with the child or (b) that they have a biological or adoptive relationship and there are allegations of abuse, neglect, or unfitness against the biological parent. If the non-parent argues that the biological parent is unfit, they will typically have to show some of the following issues: the parent's emotional instability, child abandonment, the child's exposure to sexual abuse or domestic violence, heavy drug use, or the parent acting in a manner inconsistent his/her ordinary responsibilities as a parent. If both biological parents believe a grandparent is a better fit for the child, they are able to sign a custody order formally giving the grandparent custody without having to file a request for custody with the court.

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**Q: I'm currently serving in the military. Will this hurt my chances of being granted custody?**

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Not necessarily. The judge cannot deny custody solely because you are a member of the military, have previously been deployed, or may face possible future deployment. However, the judge is able to take the possibility of future deployment into consideration when determining if it will be in the best interest of the child to remain in your custody.

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**Q: Are there requirements to file for custody?**

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You will file your paperwork in the county where the child is currently living or where you or the other parent lives. Before you file, you must be sure that the child has lived in North Carolina at least for the past six (6) months.

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**Q: What paperwork do I need to complete?**

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Filing for custody requires you to submit several documents to the Clerk of Court before you can be granted a custody hearing. First you will need to complete a complaint, which requires you to state the status of your relationship with the other parent, where the child has lived during the past five (5) years, and whether you have previously been involved in litigation regarding the child. Next, you'll need to complete a civil summons form which notifies the other parent that you are requesting custody of the child and that they have 30 days to respond. You must file a Servicemembers Civil Relief Act Affidavit stating whether or not your spouse is a member of the military. Depending on your financial situation, you may be eligible to file a petition to proceed as an indigent, which will allow the court to waive the usual filing fees that accompany a custody suit. You can visit [nccourts.gov](http://nccourts.gov) and search for “**File It Yourself Domestic Packets**” to find all the necessary documents you will need for a variety of custody related issues.

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**Q: How much will filing for custody cost?**

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The cost will vary. Court fees usually start at \$150 but you will also be responsible for paying a service of process fee. For example, in Wake County, service by a sheriff begins at \$30.00 per item. If you have decided to hire an attorney, your attorney fees will vary based on the complexities of your case. You may be eligible to have some court fees waived and can file a Petition to Sue as Indigent (AOC-G-106) form requesting this waiver.

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**Q: What happens after I file my paperwork with the Clerk of Court?**

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Once you file your paperwork, you will have to wait until the other parent is served with notice of your request for custody. They have 30 days to submit an Answer to the Complaint you filed. In Wake County, both parents are required to attend a Custody Mediation Program where you, the other parent, and a neutral mediator will attempt to come to an agreement on custody without the need to meet in court. There is also no additional fee for this mediation. You may be eligible for an exemption from this requirement if you live more than fifty (50) miles from the court, the other party has abused you or the children, the other party suffers from alcoholism, drug addiction, or severe psychiatric or psychological problems, or you have agreed to a private mediation. If you fit any of this criteria you must file a Motion and Order to Waive Custody Mediation to be excluded from the mediation requirement. If both parents are able to agree to custody terms, the mediator will draft a Parenting Agreement that will be signed by the judge and enforceable. If you are unable to come to an agreement, your case will be scheduled for a hearing before the judge. At the conclusion of the trial, the judge will enter a custody order that must be followed by both parents.

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**Q: What does it mean to have the other parent served?**

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The law requires that the other parent be provided with notice of your custody request through a process called “service”. For service to be proper, the other parent will need to be given a copy of the Complaint and Summons you filed with the Clerk of Court’s office and you will need to obtain proof of service. You cannot personally serve the other parent! The most common forms of service are requesting that the Sheriff’s office personally serve the other parent or going to the post office and mailing a copy of the Summons and Complaint to the other party by registered or certified mail with return receipt requested or by signature confirmation. Service will be subject to a fee that may vary by county.

**Q: If I had them served and they don't show up to the hearing what will happen?**

Failure to show up to a custody hearing is not a criminal offense and attendance is not required except for the parent that filed for custody. If the other party does not attend the hearing they will simply miss out on their only opportunity to explain why they should be granted custody or visitation rights. If you have proof that the other parent was properly served, you will have the benefit of being the only one in court able to explain to the judge why you are the most appropriate parent to care for the child.

**Q: I'm unhappy with my custody order. Can I change it?**

It depends. If the judge enters a permanent custody order, you must file a Motion to Modify and provide sufficient evidence that there has been a ***substantial change in circumstances*** since the original order was signed by the judge. A substantial change usually involves changes in one parents' financial circumstances, drug or alcohol abuse, deliberate acts preventing the child from seeing the other parent, or the physical/mental health of a parent. If the judge entered a temporary custody order, you will not need to file any additional paperwork to have a change made. You will simply need to request and schedule a hearing before the court.

**Q: What happens if the other parent isn't complying with the custody order?**

Because a custody order is a legally binding agreement, both parents must comply with the terms of the order. If one party is not complying with the custody order, the other party may file a Motion for Order to Show Cause or Motion for Contempt. The filing party will need to show that the other party violated the order. The judge will then determine what the appropriate penalty will be (verbal reprimand, fine, jail time, or payment of attorney fees).

**Q: Do I need an attorney?**

You are not required to hire an attorney to represent you in a custody dispute. You can file the documents with the court and attend every mediation or hearing by yourself. Depending on the complexities of your case and your ability to understand the legal proceedings, you may benefit from hiring an attorney to represent you in the custody dispute. Because custody disputes have the potential to become highly emotional, you may value having a neutral party by your side to assist in your decision-making.

**If you are considering filing for custody, the attorneys at Smith Dominguez, PLLC will be happy to help you navigate the difficulties of your custody dispute.**