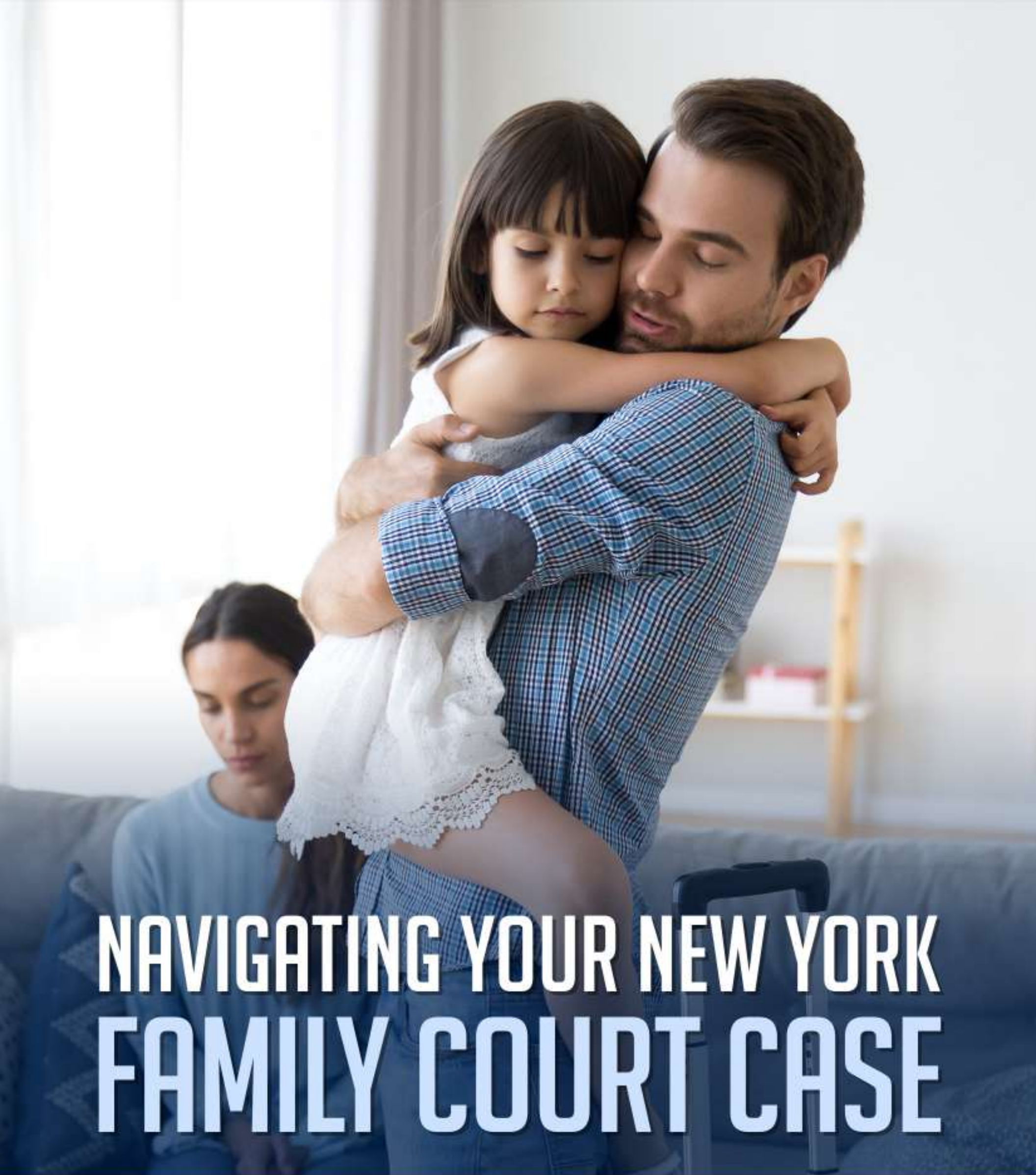

NAVIGATING YOUR NEW YORK FAMILY COURT CASE

Custody, Visitation, Support, Paternity & Adoptions

DAVID I. BLIVEN

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FOREWORD

Family Courts in New York State remain very busy courts. When I began my practice in 1997, there were 656,777 case filings in Family Courts throughout the state. The overwhelming percentage of those (78%) were paternity, child support, custody/visitation and family offense cases[1].

Ironically over time – though the state's population has markedly increased – case filings have gone down slightly. In 2018 there were only 580,548 cases filed[2]. This is due no doubt to much greater emphasis placed upon counseling, preventative measures, mediation & alternative dispute resolution and similar measures.

Nevertheless, *the time and resources* invested in Family Court matters have no doubt increased over time. It is not unheard of for contested custody cases to last 12-18 months or more – at least in the greater New York City region of which I'm most familiar.

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1 http://ww2.nycourts.gov/sites/default/files/document/files/2018-05/ar20-1fin.pdf

2 https://www.nycourts.gov/legacypdfs/18_UCS-Annual_Report.pdf

This book will focus on the cases taking up nearly 80% of the Family Court's docket - paternity, child support, custody/visitation and family offense cases (along with a short chapter on stepparent adoptions). This is not to say the remaining cases (principally child abuse & neglect as well as juvenile delinquency) are insignificant. Indeed, arguably the stakes are even higher in child abuse and juvenile delinquency cases than in "mere" child support cases.

Nevertheless, the point of this book is to assist Family Court litigants in navigating their cases – and in assisting his/her attorney in representing him/her. One could even theoretically represent oneself in Family Court cases (though one should be extremely wary in doing so) - but one should almost never represent oneself in a child abuse or neglect case, for instance.

As such, while there are many resources out there to assist such litigants[3], one should rely heavily upon the advice given by his/her attorney in such matters. The issues involved in child abuse and juvenile delinquency cases are quite distinct and could thus be books unto themselves.

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[3] The court's own website is a good place to start: http://www.nycourts.gov/index.shtml

Furthermore, while this book focuses on Family Court litigation, most of the issues dealt with here are transferrable to divorce litigation. Readers are referred to my first book – "Navigating Your New York Divorce Case" – for my treatment of divorce litigation.

Likewise, there are particular issues involved in high net worth or high-income cases which will be the subject of my forthcoming book – "Navigating Your High Income Family Law Case."

Nevertheless, my hope is that readers will use this book as a tool to understand the process they're going through and to use the newfound knowledge to empower their attorneys to present the case in a more efficient and impactful manner. I wish you all the best!

DISCLAIMER

This publication is intended to be used for educational purposes only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. The author assumes no liability for any errors or omissions or for how this book or its contents are used or interpreted or for any consequences resulting directly or indirectly from the use of this book. For legal or any other advice, please consult an experienced attorney or the appropriate expert.

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CHAPTER 1

CHILD CUSTODY ARRANGEMENTS IN NEW YORK

In terms of custody, there are several arrangements that can be made. The most common arrangements are for either **sole custody, joint custody, or shared custody**.

With ***sole custody***, a custodial parent has a child or children living with him/her the vast majority of the time. They also have sole decision making with respect to major decisions affecting the children. The non-custodial parent is still usually informed of the decisions and kept in the

loop. They are still generally entitled to receive medical records and school records, but the custodial parent has no specific obligation to meaningfully discuss proposed decisions in advance.

The parties may also resolve their case with ***joint custody***. Usually, this means that the non-custodial parent gets at least alternate weekends, one or two dinner visits (or even overnights) on weekdays, a splitting of holidays and breaks from school and decision-making with the custodial parent.

Sometimes, the parties have exactly 50/50 decision-making and if there is a disagreement, they either have to go to mediation or to Family Court for a Judge to make a final decision. There is also the "professional model," where if the parties have a disagreement on a decision in which a professional is involved, they can defer the decision to that professional. A common example would be a proposed medical treatment & they defer to the decision of the pediatrician[4].

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[4] The parties sometimes also build in a "financial impact" provision, whereby if a proposed decision has a financial impact to the non-custodial parent above a certain dollar amount (say, $500 per

Shared custody is rarer than sole custody or joint custody and usually entails an exact 50/50 split of parenting time. That would also usually entail an exact 50/50 split of decision-making, with certain tiebreakers built-in if there is any disagreement.

What Factors Are Considered in a Child Custody Determination?

The overall standard is the "best interests of the child." Within that standard, the court considers "the totality of the circumstances." Nevertheless, there numerous specific factors the court considers when awarding custody when dealing with two biological parents.

The Judge will generally consider such factors as:

- the stability of the child's current arrangement,
- each parent's home environment and financial ability to meet the child's needs,
- any arrangements to care for the child when the parent is unavailable,

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extracurricular activity), then the non-custodial parent must agree or else not be assessed with sharing the expense (though such provisions usually go on to state 'consent shall not be unreasonably withheld').

- who has been the primary caretaker for the child in the years (or months) leading up to the custody filing,
- any drug/alcohol use by either parent,
- the mental & physical health of the parties,
- adverse sexual misconduct of either parent,
- domestic violence, and
- the child's preferences.

The court will also assess each parent's willingness to foster a relationship between the other parent and the child, any denial of access to the child, as well as any abuse or neglect of the child. Finally, the Judge will assess the parties' conduct as the case is proceeding, including conduct both in and out of the courtroom.

How to Prepare for a Custody Battle?

I must first caution if you're presently living with the other parent – and no matter how tense the situation may be around the house - do NOT move out of the house & leave the kids with the other parent. This will automatically put you behind the 8-ball in winning custody.

Additionally, if you haven't been already, take an active part in all activities the children are involved. Make sure his/her teachers, doctors, extracurricular activity instructors, etc. know you by your first name.

If you presently work long hours, cut it out immediately. Spend the extra time with your kids. Take them to fun places & buy them nice gifts (though use caution not to over-do it as otherwise it may look like you're trying the bribe them). Bottom-line: being a good parent is the best way to win custody of children!

Keep a written diary of any important conversations or interactions with the other parent (a "he-said-she-said" log). Refrain from posting negative content about the other parent on social media as this is potentially discoverable - if you have something to say to a friend/family member about the other parent, say it in person. Refrain from cursing or denigrating the other parent, especially in writing[5].

In your Diary (ideally this would be kept on a computer), you should also record all significant contacts with your child[6], as well as contacts with the child's school,

[5] I don't know how many cases I have in which one side curses or denigrates the other via text and/or e-mail.

[6] If you don't have a court order yet setting forth a schedule, this recordation would include a calendar of the days/times the child(ren) are with you versus the other parent.

doctors, etc. Also, start thinking of any family members, teachers, clergy, etc. who would make good witnesses for trial. Moreover, please record a narrative of events for the past several years which you think may impact upon the custody issue, along with date(s) of occurrences. Log these items into your journal, along with contact information for any potential witness.

You should also send e-mails to the other parent if you do not get visitation (if you're the non-custodial parent), or to confirm missed visits (if you're the custodial parent) - or to capture your understanding of important discussions or exchange of documents. The e-mails should confirm the substance of any conversation you had with him/her, or your attempts to contact the other parent regarding visits (including confirming any messages left for him/her). The letter should request that s/he respond, and specifically request that "if anything I have stated in this letter is incorrect, please return correspondence."

You should advise your attorney immediately if you do not receive your visitation (if you're the non-custodial parent). Do not wait – if you do not insist on your visitation rights, then the Judge will not consider your case to be strong.

If the custodial parent unilaterally reduces your access time, be sure to document your objection via e-mail or text.

Especially for non-custodial parents (but also for custodial parents), you should minimize your utilization of relatives/babysitters to care for the child. It will ultimately look bad to the Judge if, on even some of your access periods, your child is spending a significant amount of time away from you. The access time is meant to be quality time shared between you and the child.

Moreover, you should review your Facebook, Twitter, e-mail, or other social networking pages for content which may portray you in a bad light. As an example, don't post pictures of you out partying at 6 a.m. You otherwise generally have a duty to preserve evidence, which includes electronically stored information, and therefore you may not erase or delete such evidence even if you think it's harmful. Instead, you should bring it to your attorney's attention as you can discuss with him/her what, if anything, should be done.

To the degree the opposing party harasses you, then start taping all phone conversations with him/her,

including any messages left for you. You may use the "voice recorder" or "voice memo" app on your cell phone for this purpose (or a hand-held recorder). You should refrain, however, from taping any of the child's conversations.

Additionally, if you are aware of, or suspect, that the other parent, or someone largely responsible for the child's care has abused or neglected the child, or that the child is in imminent danger of being abused or neglected, you should (at the least) contact your attorney <u>immediately</u>. You may also consider whether a report needs to be made to the Statewide Central Register of Child Maltreatment – though unless it's an emergency you should generally discuss that with your attorney first.

At least in the greater New York City area, the typical process of a contested custody case will involve the assignment of an attorney representing the child[7], a home

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[7] For information on the standards of representation and the role such attorneys play in child custody litigation, review this guideline from the New York State Bar Association: http://www.nysba.org/workarea/DownloadAsset.aspx?id=55900. If one scrolls down to page 73, one will find the standards in child custody proceedings.

assessment, and a forensic evaluation by a child psychologist. The average case involves 3-5 pre-trial hearing and 3-5 trial dates over the course of approximately 12-18+ months. In terms of costs, typical attorney's fees may range as high as $10-50,000 (or more) over that period[8].

How Can I Prevent My Alcoholic Ex-Spouse From Gaining Custody Of Our Children?

If the other parent is an addict, you want to confirm same - preferably in writing. If they have any related convictions, get the evidence by requesting a Certificate of Disposition[9]. If you find drugs or alcohol, photograph them. If you are seeing pictures of substance abuse online, download and print them.

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[8] Attorneys fees vary widely based on experience, where his/her office is located (e.g., Manhattan lawyers are more expensive than Bronx attorneys), what accolades the attorney has (e.g., are they "AV" rated, are they listed on "Super Lawyers," etc.) and caseloads among other factors.

[9] If you aren't sure which court the conviction was in & the opposing party won't disclose same, you may do a Criminal Background search using the court's database: http://ww2.nycourts.gov/apps/chrs/index.shtml.

How is Visitation Established?

Once you establish that one parent either has sole custody - or under joint custody, primary physical residence - you know that the custodial parent will have the children in his or her household the majority of the time. How many days the non-custodial parent would get usually depends on their availability and the background of that particular case.

For example, has the non-custodial parent been very involved with the children? Have they shown a lot of time and availability for the children? If so, you are talking about something closer to joint custody. If they do not have a lot of availability or if they have a history of non-involvement or personal issues, those factors can result in them having less parenting time. The more serious issues they have, the less time they are going to get.

Additionally, when one is fixing the structure of the non-custodial parent's visitation, then focus is more on the positive & negative attributes *he/she* has (rather than, in a custody case, where the focus is more on *both* parents). Thus, factors otherwise considered in a regular custody case will be looked at earnestly when structuring access

time for the non-custodial parent. Such factors include the stability of his/her household, whether there is a drug/alcohol history, criminal history, domestic violence history, as well as whether the non-custodial parent has any mental health issues or other issues which may warrant some restriction of his/her access time.

Under What Circumstances Is Supervised Visitation Ordered?

The usual circumstance for supervised visitation is where there has either been domestic violence, a serious abuse or neglect history, or a parent who has a drug and alcohol issue.

That said mere acrimony between the parents should not be a basis to make the non-custodial parent's visitation supervised. This is because courts wish to see both parents play a large role in the child's life and visitation should only be restricted where the court determines unsupervised visitation would be determined to a child's well-being and best interests.

In the case of drug or alcohol abuse, the custodial parent may feel more comfortable with having a supervisor (like a social worker) monitor either a Breathalyzer test at

the beginning of the visit, or the entire visit. It is also possible to arrange supervised drop-offs - rather than supervised visitation - if the parties are concerned with hostility or documentation of missed/late exchanges.

What Can I Do If I Do Not Approve of My Ex-Spouse's Partner During Visitation?

Usually the approval of a new relationship is not yours to make. The courts will not generally police who a party's new partner is.

There may be provisions you can build into custody agreements where, for instance, either parent should not reside with someone else without letting the other parent know. In addition, if the new partner has a criminal background that can be proven, it may cause a parent to confront the other parent with that information. Before you contact the court, however, you really want to be sure that your objection is valid and provable. Sit down with an attorney to go over what your concerns are to see whether it is something to bring to a family court's attention or not.

Does A Child Have A Say In The Amount Of Time They Spend With A Parent?

The older a child is, the more their preferences are considered. While a child in elementary school will be asked his/her preference, but their stated preferences are taken with a grain of salt, because they are not really yet at an age where they can appreciate some of the issues.

As the child progresses into middle school and certainly high school, their stated preferences are given more & more weight by the court. If a child is in high school, his/her stated preferences are most likely what is going to happen, unless the judge believes that granting his/her preference is going to put the child at serious risk of abuse or neglect.

When Would We Need To Use A Guardian Ad Litem Or A Custody Evaluator?

Technically the term "guardian ad litem" refers to an attorney who stands in the place of a parent who has some kind of serious mental health issues that causes them to be ruled incompetent to manage their affairs.

Much more often, the Court assigns an Attorney to represent the child(ren)[10], who then interview the child(ren) on his/her/their preferences and represent the child(ren)'s position in court.

A "custody evaluator" is usually a forensic mental health professional who conducts a forensic evaluation on the custody issues between the parties. They also do a psychosocial background on the parties and observe the interaction between the parties and the children, and then render a report to the court.

The custody evaluator may also act as a parenting coordinator, assigned by the court to act as a facilitator on access issues or decision issues. That said, commonly this role is conducted by an attorney or mediator.

Will My Child Need To Appear In Court?

In most contested custody cases, if the child is old enough to articulate his or her preference, the judge will

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[10] This role was previously called a "Law Guardian."

interview the child in his chambers, with only the attorney for the child and a court reporter present.

That is usually how the child puts his or her preferences on the record in a New York custody case.

What Are My Options If My Ex or My Child's Parent Is Not Following Visitation Or Custody Agreements?

For relatively minor violations, the first thing you should do is document it. You will usually want to send a default notice letter, which can simply be an email, calling the person out on the specifics of the violation and requesting that they immediately go back to following the order.

If there is a pattern and it is not being rectified, then you need to get lawyers and judges involved by filing a violation or enforcement petition with the family court. And in more serious violations (such as withholding access of a child), one should immediately proceed to file a violation petition, call the police and/or file a "writ of habeas corpus" application[11].

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[11] The latter two options usually only if the parent is the custodial parent.

Under What Circumstances Might I Petition To Modify A Custody Or Visitation Order?

There would usually have to be some relatively serious issues going on to warrant the court revisiting a custodial order. A variety of issues could come forth, such as interference with visitation rights.

For instance, there may be issues where the custodial parent develops a mental health issue or a drug or alcohol issue. Perhaps the custodial parent has lost their job and is now living in an undesirable housing arrangement.

Sometimes, the parties think they will be able to work out visitation on an informal arrangement and that informal agreement breaks down. Other times, the non-custodial parent has restricted visitation and then, over the course of time, they are able to solve whatever issues they had that warranted them having a restriction on their visits.

Are There Any Alternative Ways To Handle A Contested Custody Or Visitation Matter?

The alternative way to handle a contested custody case is mediation. Another option is for each of the parties can sit down with their own attorney and then get together

at a four-way settlement conference to attempt to negotiate a parenting agreement.

My Child's Grandparents Want to File an Order to Request Visitation? Is That Allowed In New York?

There is a specific statute[12] that allows for grandparents' visitation. The court, as a preliminary matter, has to consider what the parents' objections are to the visits (e.g., if there is relatively well-documented animosity between the parties). If the grandparents do not have an established relationship with the grandchildren, the family courts may not even allow the issue to go to a hearing.

Why Is It Critical To Retain Legal Counsel To Handle A Custody Or Visitation Matter?

If someone is going through a family court process that involves either custody or visitation, it's well recommended that s/he have an attorney. If custody is an important issue to you and your child is important to you, then it is worth paying for an experienced family law attorney.

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[12] DRL §72.

How Difficult Is It For An Unmarried Father To Sustain A Relationship With His Child?

Commonly at the outset of a case, the parents are already physically separated. The children are usually with the mother, either because the mother moved out and brought the children with her, or because the father moved out.

Most fathers do not realize that by moving out, they've given *de facto* (which is Latin for "in reality") custody to the mother. This is a specific factor the Judge can consider in a custody case - and is particularly important if the father alleges the mother is an unfit parent for some reason (perhaps for having a mental disorder or a problem with drugs or alcohol). If the father alleges this and then leaves the children with the mother, then to some degree his allegation is muted.

There is also a cultural or societal aspect to this issue - whether one likes it or not, the mother ends up doing the lion's share of the work that involves caring for the children. The court will look at what is called the "primary psychological parent" and review a number of tasks they deem to define a "parent." These tasks include cooking, preparing the children for school in the morning, picking

the children up from school at the end of the day, and arranging for childcare, play dates, and extracurricular activities. Because mothers tend to be the ones who carry out these tasks, they have an advantage in custody cases.

Since many fathers choose to leave their children under the care of the mother, it is not necessarily the case that there is a bias against fathers in matters of custody, but more that fathers tend to unwittingly position themselves disadvantageously in these matters. With that said, there still tends to be a somewhat unspoken and unwritten bias amongst some Judges (especially older Judges) who see mothers as being more capable caretakers.

Nevertheless, fathers are winning more custody cases than they did in the '80s and '90s and are having more rights awarded to them than they have in the past. This is particularly true in cases where the mother has alienated the children from the father or made false abuse charges against him[13].

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[13] The following article cites a study which looked at 2,000 custody cases & found that the majority of fathers won where allegations of alienation or false abuse charges were made (& presumably somewhat

Conclusion

The best piece of advice is to make sure that you are documenting as much as you possibly can. Emails are better than texts to document conversations, because they are easier to print out and follow the flow of the conversation[14].

Don't hesitate to use the voice memo app on your phone to record conversations. In New York, you do not generally have an obligation - as long as you are a party to the conversation - to tell the other party that you are recording them.

Finally, work with your attorney in terms of whether you should be hiring a private investigator to research whether a person has been mentioned in the news at all, whether they have some kind of criminal background, whether they have judgments against them, or whether they have other children that you didn't know about.

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sustained): https://wamu.org/story/19/08/19/fathers-are-favored-in-child-custody-battles-even-when-abuse-is-alleged/

[14] Consider use of programs such as "Our Family Wizard" to better facilitate communication and help document disagreements.

CHAPTER 2

HOW COMMON ARE CHILD CUSTODY OR VISITATION MODIFICATION REQUESTS?

Modification requests to child custody and visitation orders are quite common. In part it is because as the child ages, circumstances will change. Often people go through custody cases or visitation cases when the child is a toddler or a baby. Once the child becomes school age, things have changed and access time may need to change to match-up with the child's changed circumstances. Unfortunately, for many people who

start out with conflict, the conflict never really goes away. It can rear its ugly head at any time.

In What Circumstances Can Custody And Visitation Orders Be Changed In NY?

The standard for changing a custody or visitation order is simply a "change of circumstances", which is to be distinguished from child support cases, where the standard is generally a "*substantial* change of circumstances.[15]"

In custody and visitation cases, it's a much more relaxed standard. It is also a vaguer standard than child support because it's governed by the "best interests of the child." What the court is really looking to in determining if there has been a sufficient "change in circumstances" is whether one party's circumstance or the other plays enough of a role to warrant revisiting the custody or visitation arrangement.

Under almost no circumstances can a judge make an initial custody determination without a trial. The law is

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[15] This has been further specified as either 3 years having passed since the last order was set, or a 15% change of income by either parent.

clear, however, that a judge does not necessarily have to conduct a formal trial for a modification. If an examination is conducted and a judge can make the determination of whether a modification is warranted or not, then the judge would be correct in the law to not order a trial. Otherwise, a trial is also required in a modification case, particularly if the matter cannot be determined on affidavits, reports and through "colloquy" alone.

What Qualifies As A Sufficient Change In Circumstances When It Comes To Custody?

There are a variety of circumstances under which custody can change. For example, one party moves far away from the other party. Or, one party develops a drug or alcohol issue, when they didn't have in the original case. Maybe one party neglects the child in some way or abuses the child. Another basis for change of custody would be if the custodial parent moves into an unstable household or a dangerous neighborhood. If the custodial parent moves the child around into multiple households, that can be a basis for a change in custody.

Mental health is an issue that the court is going to look at - so if at the inception of the case, the custodial parent

had a mental illness that was under control and then it got worse, that can be a basis for modification. Even things such as the custodial parent or the non-custodial parent becoming involved in criminal activity, or if they are either the victim of or perpetrator of domestic violence may be a basis for modification of custody.

Is There An Age At Which A Child Can Request a Change In Their Living Situation?

Generally, a child would never file a petition in a custody or visitation case. On a technical level, the child is not a formal party to the custody or visitation determination. At the same time, the child can be assigned an attorney to represent him or her, especially in family court matters. It is possible that the child will be able to contact their attorney and tell them that something has happened where custody should be modified. However, that circumstance is extremely rare. Usually, if there is a basis for a change of custody or visitation, it would come from one parent or the other filing a petition on behalf of their child.

As far as a child's preference in custody being considered by the court, the older the child gets, the more likely that their preferences are counted. In fact, once a child

reaches high school age, what they say usually goes. Very rarely will a judge go against the stated clear preferences of a child who is in high school - if they want to switch to the other parent's house or substantially decrease visitation.

If Abuse or Neglect Is Established, Does That Immediately Change A Child's Custody Arrangement?

Abuse and neglect cases really depend on the extent of the abuse or neglect and how easily it can be proven to a Judge without conducting a full trial.

Usually, a Child Welfare agency would be alerted if there is an abuse or neglect allegation, and they would be the ones filing the petition and asking for custody to be changed. If it is one of the parties filing, the abuse or neglect would have to be clear to a judge in order for them to switch the custody of a child without conducting any kind of hearing. That *can* happen - but it is extremely rare.

Usually, there is going to be gathering of evidence required before the Judge makes a determination - which may

include medical and/or psychological examinations[16] or counseling for the child. I tend to feel more comfortable getting an intermediary involved in those cases because an expert is usually better able to analyze the situation to determine whether the child has actually been abused or neglected.

When would a Petition for Enforcement of a Visitation Order be Applied?

In order for a visitation order to be enforced, you would have to have the other party served with an enforcement petition. A court date would have to be set and then a Judge generally would need to conduct a hearing or trial, especially if the petitioner is looking for some kind of sanction. Common sanctions include imposed makeup time for any missed visits, a possible award of counsel fees, and a possible monetary sanction.

Theoretically, the court could even order some type of probation or other services imposed on a violator of a visitation order. The Judge could technically even jail a

[16] This may also include a home study investigation by Child Protective Services or the Department of Probation.

violator. Both of the aforementioned are extremely rare, however. Ultimately, if a Judge feels that a custodial parent is too entrenched in a campaign of disallowing visits, it would be easier for the Judge to just switch custody - rather than throwing the custodial parent in jail.

What Is The General Timeline For A Request Of Modification To Go Through?

The timeline depends on whether a hearing or trial has to be conducted on the request for modification. If the issue is relatively simple, then you may be looking at a timeframe of a few months. If a particular application has to be tried, you might be looking at a much longer process. Issues such as relocation of children usually require a hearing or trial to be conducted. Those applications take usually six to eight months or more. If someone is looking to switch custody of the children, they could be looking at a full-blown custody trial, which may take well over a year in some cases.

CHAPTER 3

WHAT CONSTITUTES RELOCATION UNDER FAMILY LAW IN NEW YORK?

Generally, relocation relates to the relocation of residence of a child or children within the context of a child custody case. It means changing the primary residence of the child or children to another state - or within a state if it's beyond a certain mile radius.

Sometimes, in prior orders or agreements, that mile radius is defined. Even if it's not defined, however, if the proposed move is going to change the primary residence of

the child to such a degree that the noncustodial parent would not be able to exercise the same level of access time that they currently have, it would be considered a relocation[17].

Valid Reasons to Relocate With the Child

The overall focus of a relocation proceeding is on the best interest of the child. The focus is on whether the proposed move *would benefit the child*.

There can be many different reasons for moving. A common example is that the custodial parent gets remarried and their new spouse's job is transferred to another state - or the custodial parent’s job gets transferred to another state.

Often with an approved relocation, the noncustodial parent is not really involved with the child and the custodial parent wants to move closer to their family for support. If the noncustodial parent is not all that involved with the child, then that is something that the

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[17] Thus, in some cases, 25-30 miles may be considered too much. In other cases, the custodial parent may be able to move 40+ miles away from his/her current residence without it invoking a formal “relocation trial.”

court will definitely take into consideration in whether to approve the move or not.

How Much Advance Notice Must Be Given By A Parent Who Intends To Relocate With Their Child?

There is no hard rule on how much notice must be given by a relocating parent.

In New York, the person should give as much advance notice as possible simply because if the family court has to have a relocation trial, that relocation trial may take several months to reach a determination. That may mean that the custodial parent would not be able to move the residence of the child until the court makes that determination. The custodial parent should give the noncustodial parent notice of a possible or probable move immediately. Even if the custodial parent thinks that there's a possibility they may be able to remain in New York, they should let the noncustodial parent know as much in advance as possible.

What Specific Information Must Be Included In The Written Notice?

What is included in the notice depends on the particulars of the move. If the person's job will be transferred to the other state at some future point, the custodial parent should provide proof their job is being transferred on an approximate date and therefore they'll likely move the residence of the child to that other state. The notice should ask the other parent if they have any objection to the move – and if so, to please let them know immediately. If they do object, offer to work out arrangements whereby their access schedule would be expanded during school breaks, and consider making an offer to reduce child support to allow the noncustodial parent the ability to travel to visit with the child or children.

I wouldn't necessarily put too much (in terms of specifics of a settlement offer) in that initial notice but one should mention that the custodial parent is willing to negotiate all issues to gain the consent of the noncustodial parent to the move. Again, the custodial parent is still best advised to file a petition to obtain a court order authorizing the relocation.

What Is The Process Of Relocating With My Child In New York?

Generally, relocation applications are done in family court. The best way to go about it is to file a petition for relocation in the family court and get the noncustodial parent served. If there are going to be some dual issues[18], then it may be more cost efficient to do everything in Supreme Court, in which case you would file an order to show cause to modify a prior judgment[19].

What Factors Does The Court Consider In Deciding The Relocation Of A Child?

The overall standard for relocation litigation is derived from a case called *Tropea v Tropea*. The overall standard is still the best interest of the child but the case lays out some of the factors that the trial court should take into consideration, while also stating that the trial court should

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[18] Example: intertwined issues of child support enforcement & custody relocation.

[19] This can usually only be done if the parties were divorced in Supreme Court & thus the order to show cause purports to modify the divorce judgment.

not have a preference one way or the other towards allowing or disfavoring the move.

Instead, the Courts look at the "totality of the circumstances," specifically considering:

- the reasons for either seeking or opposing the move,
- the quality of the relationships between the child and the custodial and noncustodial parents,
- the impact of the move on future contact with the noncustodial parent,
- the degree the child's life may be enhanced economically, emotionally and educationally by the move, and
- the feasibility of preserving the relationship between the noncustodial parent and the child through suitable visitation arrangements.

Certainly, there are related factors, such as the payment or lack thereof of child support. Involvement with the child will include whether and to what degree the noncustodial parent is involved in every aspect of the child's life, to what degree they go to school events, extra-curricular events, medical appointments & dental appointments. The overall focus is on the best interest of the child and the

custodial parent should focus on presenting a picture to the court of how the move will ultimately benefit the child and will allow the child to lead a better life.

How Are Transportation Costs Worked Out Between Parents?

Transportation agreements are subject to negotiation within the relocation case. Usually, there is some reduction to child support, if the noncustodial parent agrees to the relocation in order to allow the noncustodial parent extra money to be able to travel back and forth. In addition, depending on the age of the child and the preferences of the parents, there are programs that many airlines sponsor which allow the child to be accompanied by a steward, so that the parents do not necessarily have to travel with the child[20].

Sometimes, child support is eliminated, depending on the amount of child support and how badly the custodial parent wants to relocate with the child, as well as their finances. It may very well be that the custodial parent

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[20] https://www.transportation.gov/sites/dot.dev/files/docs/Kids_Fly_Alone.pdf

is relocating because they're getting a great job in the other state and therefore, they won't need child support. If that's the case, perhaps an agreement can be made to then free up that money that the noncustodial parent would otherwise pay in child support to be used for airline tickets and travel expenses.

How Is Jurisdiction Defined If The Parents Reside In Separate States?

There are a couple of different aspects to jurisdiction in relocation cases. If the jurisdiction has never been decided before - meaning there were no prior custody or visitation decrees - then it is generally governed by the "home state" of the child. The home state of the child is defined by statute[21] as where the child has resided at least six months prior to the case being filed. If a prior custody or visitation order has been issued, then the state that issued the prior order generally retains "continuing & exclusive jurisdiction" for any modifications - which would include relocation applications - so long as one

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[21] DRL Article 5-A.

parent and/or the child remains residing in the state which issued the 1st order.

There are certainly exceptions where the custodial parent and child have already moved and have lived in that other state for a very long time - they could make the application in the new state arguing the issuing state is an "inconvenient forum" for jurisdiction. In a relocation case, jurisdiction is usually not the battle simply because relocation would presume that the parents are already living in the same state and one parent wants to move away to a separate state.

Will The Court Change Visitation Schedules Due To Relocation Issues?

Visitation schedules are subject to the parties' agreement (if they reach an agreement) - or if the court has to have a relocation trial, the Judge may change visitation.

In a case where the noncustodial parent almost never visited the child, there's really nothing to adjust. In a situation where the noncustodial parent did see the child a lot, the court would almost surely set a visitation schedule if they decide the custodial parent can relocate with the child. The visitation for the noncustodial parent would be centered on

the children's breaks from school during the school year as well as summer vacation. It would also usually entitle the noncustodial parent to fly down to where they are to be able to see the child on particular long weekends.

Will I Have to Go To Court To Discuss My Relocation Request?

You do not have to go to court to discuss a relocation request if you can come to an agreement outside of court - but it is highly advisable that you get a court order which confirms the agreement that the custodial parent is allowed to relocate with the child or children.

The custodial parent would not want to take a chance that the noncustodial parent gives their consent orally, then reconsiders and revokes consent. If the custodial parent has already arranged to move or has already moved, this relocation would then cause a real problem.

Can I Appeal A Relocation Decision Granted By The Court?

Generally, the Court will reduce the relocation decision to an order. Either party may then appeal court orders - whether it's granted or denied. Relocation is

assuredly a custody decision and affects a substantial right of either party - and those types of decisions and orders are "appealable of right" as a general rule[22].

Many custodial parents think that merely because they have sole custody, they can relocate without needing the permission of the noncustodial parent. Some parents also think if the noncustodial parent has no relationship with the child or children, they can just move without needing any permission from the noncustodial parent. Both of those notions are wrong. It may have dire consequences for the custodial parent if they move the residence of the child without either the permission of the noncustodial parent or a court order which allows them to move. They run the risk of the noncustodial parent going into court and asking the judge to issue an order which either prevents them from moving or orders them to return the residence of the children back, which may pose a huge problem if they've already relocated.

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[22] i.e., you do not need to seek the permission of a court to be able to file the appeal.

Additionally, it's critical that people at least consult with a good family law attorney at the earliest possible stage, so that they can start planning strategies to help them win their case.

People may think all they have to do is file an application, show up to the first court date and list the reasons they want to relocate. It's definitely not as simple as that. Usually, a relocation trial will entail at least two to three pretrial dates, plus two to three trial dates over the course of about six to eight months. The custodial parent who's planning to move needs to plan well in advance.

Chapter 4

HOW IS PATERNITY ESTABLISHED IN NEW YORK?

In New York, paternity is established in a few different ways. If a child is born during a marriage or conceived during a marriage, New York State law has a "presumption of legitimacy," meaning the law presumes that the child is the child of both parties to the marriage.

Another way is if the father signs an acknowledgment of paternity when the child is born. The third common way is for either party to file a paternity petition through the court.

Is Having the Father's Name on The Birth Certificate Enough to Establish Paternity?

The acknowledgment of paternity must be signed along with the birth certificate to acknowledge paternity. Hypothetically, if the biological father is not present, the mother can put down anyone's name as the father of the child on the birth certificate. That does not determine father of your child from a legal standpoint, however, because it also requires the execution of the acknowledgment of paternity.

Is The Biological Father The Only Person Who Can Be Legally Recognized As A Father?

There are actually several ways a non-biological father can be legally recognized as a father. One way is when a person - usually a significant-other of the mother - raises the child as his own. If the child grows up for several years knowing this person to be the father, then there is a legal doctrine called "equitable estoppel" which comes into play – i.e., the law may recognize this person as the father. In such an instance, the Court may deny the actual biological father from even getting a DNA test to establish his paternity rights.

The other common way a non-biological father can be legally recognized as the child's father is through a stepparent adoption case (see Chapter 9 below).

Legal Doctrine Of Equitable Estoppel

If a father never signed the acknowledgement of paternity due to doubts he is the biological father but voluntarily pays child support or maintains a relationship with the child, then the court may invoke the legal doctrine of equitable estoppel in order to deny the father the right to have a DNA test done to confirm paternity.

The court may rule that by virtue of his actions, he has held himself out to be the father of the child and therefore ceded the right to have a DNA test. Before one starts voluntarily paying child support, it pays to have a DNA test if there is even the slightest doubt about the identity of the biological father. However, any DNA test taken informally (outside of the Family Court) may not necessarily be admissible in court. If the DNA test were to come back negative, then the individual should stop paying child support and make it known that he is not actually their father. If the child would be upset by hearing such news, then

perhaps the child could be told he is a “father figure” but is not the biological father.

If anyone anticipates any kind of dispute in terms of custody, visitation, or child support, then it is very important he see an attorney and understand his rights before problems crop up. Far too many people try to act as their own lawyer and unwittingly bury themselves.

I once handled a case in which the father was trying to do the right thing by allowing the mother to keep the children in another state over the summer, but the mother made it clear to the father that she may not want to come back. Rather than register specific objections to that, the father went along with it and did not memorialize specific objections. Even when the mother stated she was considering enrolling their children in school in the other state, the father still did not memorialize any specific objections. In the later custody and relocation dispute, the lack of memorialization came back to haunt the father. The Judge in that case suggested that if the father really cared about having his children live in the same state as him, then he would have immediately made same crystal clear to the

mother and would not have waited three or four months. This is just one of many examples, but the bottom line is that no one should be hesitant or shy about contacting a lawyer early on in the process.

Who Can Legally File For A Paternity Action?

The mother can always file a paternity suit, as can any person who is alleging to be the father, along with certain other entities (such as the Department of Social Services). Ironically, the statute does not specifically name a person who is alleging *not* be the father as able to file a paternity petition.

What Steps Do I Need To Take To Establish Paternity?

Out of court, you can simply sign the acknowledgment of paternity to establish paternity. While this is usually done at the birth of the child, it does not have to be. Generally, you can execute the acknowledgment of paternity at any point.

If the child is born during a marriage, the law presumes the husband to be the father. Otherwise, a petition has to be filed in Family Court to establish paternity rights.

Do I Have To Take A DNA Test?

If a father is not contesting the fact that he is the father, he can simply agree he is the father. The parties really do not have to go to court under those circumstances - it can just be known that you are the father of the child and therefore - if the parties separate – the father will pay child support. If you do so, however, you may be found to have waived your right to ask for a DNA test in the future.

Is There A Statute Of Limitations On Filing For Paternity Actions?

There is no strict statute of limitations to file for paternity. There are legal doctrines that may prevent you from contesting paternity, such as the doctrine of equitable estoppel. If the child knows a certain person to be his or her father then, at some point, you are going to lose your legal right to file a paternity petition to contest paternity. Likewise, if you sign the acknowledgment of paternity, you only have 60 days to move to vacate that acknowledgement. If you do not do so within the 60 days - unless you have a

specific defense to the contrary[23] - you are stuck with that acknowledgment and stuck with paternity.

If I Legally Establish A Man Is My Child's Father, Is He Responsible For Child Support?

In New York, the paternity petition also includes a request for child support. All within the same case, you would be establishing the father's paternity and then the court moves directly into the child support portion of the case. There is no separate petition that you have to file for that.

If It Is Legally Declared Who The Father Of A Child Is, Will He Have To Pay For The Mother's Attorney Fees?

You can always apply for counsel fees to be reimbursed. The statute also authorizes you to sue the father for expenses related to the birth of the child. However, in terms of an award of counsel fees, that is something you would generally have to file a motion on. It is usually governed by a disparity of income - it is not automatic.

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[23] Defenses are generally "fraud, duress, or material mistake of fact."

Can I Disavow Paternity If I Find Out My Child Is Not My Biological Child?

If you try to disavow paternity in Family Court, you are best advised to have an excellent attorney, who is well-versed in this area of law. You have to convince the court to accept your petition, even at the outset, because the statute technically does not allow a person who is looking to disavow paternity to file a paternity petition in Family Court.

If the father is married (and looking to disavow paternity of a child to the marriage), the contest is best done through the Supreme Court in a divorce proceeding. If the father is not married, the only way he would be established, from a legal perspective, as the child's father is either he signed the acknowledgement of paternity or the doctrine of equitable estoppel applies. If he signed the acknowledgement of paternity, then he has to file a specific petition to vacate that acknowledgment of paternity[24].

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[24] https://www.nycourts.gov/LegacyPDFS/FORMS/familycourt/pdfs/5-15.pdf

Entitlement To A Paternity Trial

One issue that is important for people to know about is the issue of entitlement to a paternity trial. You are entitled to a trial on a variety of issues within a paternity case.

For instance, if there is a contest around equitable estoppel or the presumption of legitimacy and the other side is trying to invoke those legal doctrines, you are entitled to a fact trial on those issues. This would involve the calling of witnesses, the parties' own testimonies, and presentation of documentary evidence.

The other way a paternity trial can be conducted is - even after DNA test results come in - you could still dispute those DNA tests. You could challenge the methodology or the results of the DNA tests, you could call your own DNA expert or lab expert, who may probe how they conducted the test. Of course, you really have to go over the cost-benefit analysis of spending possibly thousands of dollars doing a paternity trial where it may be extremely unlikely to result in a win for you. You want to carefully review - with your attorney - what facts you have and what ability to prove those facts at a trial.

CHAPTER 5

HOW IS CHILD SUPPORT HANDLED IN NEW YORK?

Nearly always the "non-custodial parent" is the one who would be responsible for paying child support[25]. Of

[25] Indeed, there was a case a few years ago that clarified the existing laws by making it clear that under no circumstances can the custodial parent be ordered to pay basic child support. In this case, the child lived with the father the majority of the time. Because the father was a multimillionaire, the trial court felt that it would be fair for the father to pay child support to the mother even though he was the custodial parent. That decision was reversed on appeal, and it was made crystal-clear that under no circumstances can the custodial parent be ordered to pay child support.

course, the custodial parent can still be directed to pay his or her share of the additional expenses such as unreimbursed medical, educational, and childcare costs.

The only exception is if the parties have shared custody and thus both parents have exactly equal time with the child. Under those circumstances, case law has stated that the higher-earning parent is deemed the non-custodial parent for child support purposes. Nevertheless, many child support orders would generally be for a much-reduced amount in this situation - owing to the fact that the parties are sharing custody 50/50. The courts generally recognize the “non-custodial parent” in this scenario would have significant expenses when the child is living under his/her roof 50% of the time.

How Is The Amount Of Child Support Determined In A Divorce In New York?

The same law applies regardless of whether the case is being handled in divorce court or family court. In either situation, the law will first determine the incomes of both parties and then apply the Child Support Standards Act. Under that act, the child support order is based on parental income at the rate of 17% for one child, 25% for two

children, 29% for three children, 32% for four children, and 35% for five or more children.

Certain deductions are then done to arrive at "adjusted gross income" for child support purposes[26]. The common deductions are FICA (social security & Medicare taxes) and local income taxes. Another common deduction is unreimbursed business expenses.

Once those percentages are applied to the incomes of both parties, the next step is to calculate the pro-rata share of each party's income to the combined parental income before determining what the non-custodial parent's overall child support obligation is.

The way the law is drawn up is a little confusing because the calculations would work out the same way if you simply applied the percentages directly to the non-custodial parent's income without even looking at the combined parental income. It's written that way to make it easier to figure out the percentages that the parties would

[26] Note: this is *not* the same way the IRS defines "adjusted gross income."

pay for additional expenses and also take the combined income cap into account.

Additionally, there is a cap below which the standard percentages would apply[27]. The current cap is $148,000[28], but the cap changes once every two years because it's pegged to the consumer price index. It usually goes up by roughly $3,000-$5,000 every two years.

This means generally the court does *not* have to apply those percentages to combined parental incomes above $148,000. Nevertheless, in the Greater New York City area which would include Westchester, Long Island and all of New York City, there exists what attorneys generally term a "soft cap." A soft cap means the courts often exceeds the $148,000 cap in recognition of the fact that the cost of living is so much higher in the Greater New York City area than it is upstate[29].

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[27] 17% for one child, 25% for two children, and so on.

[28] As this book was going to press - December 2019.

[29] i.e., it costs more to raise a child down here as opposed to Essex County or Clinton County or some upstate county.

Generally -in the greater NYC-area - courts have gone up to caps of $300,000 to $400,000. I've seen reported cases as high as $800,000 or more - but every year you'll see another case that uses a higher cap, simply because as each year passes the cost of living goes up. Moreover, in super high-income cases, the Court has discretion not to even set a cap, but simply figure out an appropriate amount.

Do Assets Affect The Amount Of Child Support To Be Paid Or Received?

As a general rule, assets do *not* affect child support calculations. Those percentages are meant to apply in the vast majority of cases.

There are certainly deviation factors which may lead the court to deviate up or down from the presumptive amounts. As of 2019, possible deviation factors include:

- the financial resources of the parents and theoretically of the child,
- the physical and emotional health of the child and his or her special needs and aptitudes,
- the standard of living the child would have enjoyed had the marriage or household not been dissolved,
- any tax consequences to the parties,

- the non-monetary contributions that the parents will make toward the care and well-being of the child,
- the educational needs of either parent if one parent's gross income is substantially less than the other parent's, and
- the needs of children of the non-custodial parent.

As long as the child is not on public assistance, the court can consider things like extraordinary visitation expenses. The court can also include any other factor it considers relevant. Nevertheless, there is no explicit statutory reference to assets or property owned.

In a given case, the court might consider the fact that one parent has millions in assets despite having relatively low income for tax purposes. The court can definitely factor that in when considering a deviation. To what degree it would end up affecting the amount is case-specific. In order to determine a fair child support order in that situation, one would need to look at how the incomes are derived, what form and what amount the assets and property are taken, as well as a comparison between the two parties.

My Income Is Based On Bonuses And Commissions. Will The Court Take This Into Account In Determining Child Support Payments?

The short answer is yes. In a nutshell, *all income counts for child support purposes*. So even a bonus - even something that most people would not traditionally think of as income - nevertheless is considered income for child support purposes. Among other things, if somebody is receiving rental income, annuity payments, retirement income, or veterans' benefits[30] - all of that counts for income purposes.

Does The Parenting Plan Arrangement Affect The Child Support Amount?

Yes, the parenting plan *can* affect the amount of child support. This is especially true if the parties have an exact 50/50 split - but even without an exact split, it could still affect the amount of support if the non-custodial parent has joint custody and significant access time.

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[30] The child support statute also includes income from workers compensation, disability or unemployment benefits, social security, fellowships or stipends, alimony received, and the Court *may* consider "non-income producing assets," certain fringe benefits as well as "money, good or services provided by relatives and friends."

The typical non-custodial parent has alternate weekends and a split of holidays. If the non-custodial parent also has a day or two during the week (and perhaps half of summer or close to it), then he or she is going to see the child a lot more than the average non-custodial parent. I've at times been successful in arguing that the non-custodial parent should get a break on the guidelines for child support in such instance.

Of course, it's case-specific - because you could have a high-income situation in which the other side is waiving maintenance or waiving a share of assets. If that's the case then perhaps the full guidelines for child support should be directed even if the non-custodial parent has more than the average access time with a child. There’s no set formula in a situation like that - it's all subject to negotiation - and ultimately if the parties can't settle, then it's up to the discretion of the Judge to determine the proper amount.

Are There Any Special Issues To Be Considered In Child Support Under New York State Law?

Many people do not realize that in New York child support continues until 21. In many other states, child support is cut off at age 18.

Moreover, many parents also do not realize that *because* New York continues child support through the age of 21, this also generally includes the costs of college. I have had many non-custodial parents come in for a consultation and say they've been paying child support all along but now their child is getting ready to go to college and the custodial parent just gave them the bill saying the parents' portion of college is $10,000 or $20,000. They will often tell me they haven't saved any money at all for college because child support payments have taken up all or most of their disposable income. Some people didn't even think of it at all. Invariably I have to advise them that unreimbursed educational expenses, including the cost of college through age 21, are usually ordered by the court. It would be a very big exception to the law to say that the parent should not pay a pro-rata percentage.

Sometimes the court sets what's called a "SUNY cap." This means that if the child opts to attend a private school then the parent's obligation to pay for the schooling would essentially be capped at what the most expensive SUNY college would cost. In this situation, the child would need to pay any difference by taking out student loans. That's usually a fair result when one is *not* dealing with a high-income situation.

On the other hand, if one or both parents are high-income earners (usually $200,000 or more in the Greater New York City area), then the court may not set a SUNY cap and may make them pay a pro-rata percentage – especially if the parents also attended a private college or private university. In such instance, if the parent or parents say "we just don't have the money," then they may need to take out a parent's loan to fund whatever their obligation is towards college.

What Happens To The Amount Of Child Support Once My Ex Has Remarried?

The fact that they got remarried, in and of itself, would not play any basis at all in child support. Theoretically, if they were remarried and they had another child, then that is a specific deviation factor the court can consider. However, this does not necessarily mean the Judge would order any change in the amount of child support paid.

If the non-custodial parent has another child, the philosophy of many Judges is that so-called "after born children" get whatever is left of the non-custodial parent's income after the first child takes his or her cut. In other words, the philosophy is if you have a second or third child when

you know you already had a child support obligation for the first child, then you do so with the knowledge that the child support money is already coming out of your paycheck. You have done so knowing any subsequent child you have will get a lesser and lesser percentage of your income.

If the law didn't work like that, then theoretically if a person had 10 children with 10 separate mothers and each of them was entitled to 17% the father would be paying 170% of his income. Obviously, the law cannot be structured like that because doing so would be an impossibility. The only way the law can be structured is for the first child gets 17% of the father's income and then each subsequently born child would get 17% of whatever is left.

In some cases, an argument can be made that support provided by the new spouse to one of the parents should be seen as income. Usually, this argument only works in cases in which that particular parent is suppressing his/her income.

Can I Get Child Support During A Separation?

Child support can start via a separation. In other words, it can be reduced to a separation agreement, or the parties can even work out an informal arrangement.

They really don't even need to go through attorneys, because they could access the court's website NYCourts.gov[31] or they could go to the New York State Office of Child Support Enforcement[32] which has a number of materials that the parties can look at (including the ability to calculate one's own child support). They could each exchange their financials, do the calculations, set up a direct deposit from the father's bank account into the mother's bank account, and never see a lawyer. As long as they live by that agreement and they're fine by that agreement, there's no need to go to court.

Obviously, under this scenario, one would highly recommend they at least consult with an attorney to make sure they're doing things correctly and they're arriving at a fair amount. Theoretically, this can be done, but with the proviso that such agreement is completely unenforceable[33]. If the non-custodial parent stops paying child support, however, the custodial parent's only

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[31] http://www.nycourts.gov/courthelp/Family/support.shtml

[32] https://www.childsupport.ny.gov/DCSE/HomePage

[33] Only court orders can be enforced with regard to child support.

remedy is to then file a court case and get a court order from that point forward - but nothing pursuant to the informal arrangement would be enforceable.

How Long Does Child Support Last?

Pursuant to statute, child support in New York lasts until the child is 21 or is sooner emancipated. That usually means the child moves out from the custodial parent's house and gets a full-time job and they're self-supporting. They could also join the armed services - and there are other scenarios under which the law would consider them to be emancipated.

There's also “constructive emancipation” - in which the child refuses unjustifiably to have a relationship with the non-custodial parent. This scenario usually comes in with an older child or a teenager.

Even though constructive emancipation is a theoretical basis to have the child support terminated, it almost never works simply because the case law says the child has to be completely unjustified in their refusal. Even if they're completely unjustified, the child may need money from the non-custodial parent to eat, keep a roof over their head, to keep clothes on their back, and so on.

Judges are often reluctant to eliminate child support even if they find that the child is completely unjustified in refusing a relationship. The next problem is that once they turn 18, they are considered an adult for custody and visitation purposes. As a result, after the child is 18 it's not possible for the non-custodial parent to file an application before a Custody Judge to prove their visitation rights have been frustrated.

The only thing they could theoretically do is bring that up to the Support Magistrate. It almost never works and I usually advise clients or potential clients that want to raise that defense that they may be spending many thousands of dollars on a case that is extremely unlikely to result in an emancipation declaration.

CHAPTER 6

WHAT ARE MY RIGHTS IF THE OTHER PARENT FAILS TO PAY CHILD SUPPORT?

If the other parent fails to pay child support, you would have the right to file a violation petition. That's usually done in Family Court[34].

If it's pursuant to a settlement agreement that was drawn up in a divorce case, I usually advise my clients to

[34] If the parties were divorced, one may also file an "order to show cause" to enforce the support provisions of the Divorce Judgment.

send what's called a default notice letter before they file the application in Court. The default notice letter would say something to the effect of, "pursuant to our agreement you were obligated to pay X amount in child support and you stopped paying it for no good reason. So please start paying again & catch up with your payments - or else." The "or else" is that we would go to the Family Court - although you would usually give them 30 days to respond.

Bear in mind one isn't *required* to send a default notice letter unless one's settlement agreement mandates it. But unless there's an urgent need to enforce child support within a month or so then I would advise a client to send the default notice letter because it would better set up a claim to counsel fees if the other side does not respond and remedy the situation.

Do I Have The Right to Know What The Child Support I Am Paying For Is Going Towards?

The short answer is no - child support law simply doesn't work like that.

In theory, while the parties are going through a child support proceeding through discovery, both sides are entitled to know what the other side's expenses are. Each

party is required to submit a statement. In a Family Court case it's called a “financial disclosure affidavit,” and in a divorce case it's called a “net worth statement.”

In those two documents, both sides are required to list their expenses and you could be required to document or corroborate those expenses. Oftentimes parties are required to produce bank account statements, credit card statements and the like. In this way, each side would be entitled to know how the other side is spending money. That’s the only stage in the process at which you would have access to that information.

Otherwise, it's not as though merely because you're paying child support you can somehow police how that money is spent. For example, you have no right as a non-custodial parent to contact the custodial parent and say, “I don't think you should be taking the child to an expensive play with my child support money.”

In a given case, it may be that a non-custodial parent notices the child isn't being provided adequate clothes, or learns the child is not being properly fed, or learns the house which is being provided with their child support

money is grossly inadequate for the child. However, that's more of a custody issue than it is a child support issue. That's not an issue which would warrant a modification of child support - instead, they would be advised to file a modification of custody petition.

Can I Stop Paying Child Support If My Ex Does Not let Me See the Children?

The short answer is no. The only thing that you can do is file a modification of child support application as well as an enforcement petition regarding visitation, assuming you have a visitation order already in place. Obviously if one did not, then the remedy would be to file a petition to get a visitation order.

Within the child support case, you would have the ultimate burden of proving that the other parent (the custodial parent) has willfully violated your visitation rights - in which case the court can consider that *as a factor* in either reducing or eliminating child support at least during periods of time that the visitation rights were violated. It's extremely rare a court would outright terminate child support (especially for a child younger than 18) and in effect bar the

mother or the custodial parent from reapplying for child support. Eliminating child support under this scenario would appear to violate the "public policy" of the State (to ensure the basic needs of minor children are met).

If My Ex Fails to Pay Child Support Can I Stop Him from Seeing the Children?

No - under no circumstances can the custodial parent withhold access rights *especially* if they've already been established. They would be violating a court order themselves. In a scenario where child support is not being paid, your remedy is to go into court on a violation case.

Which State Can Enforce Child Support If The Parent Paying Child Support Moves Out Of State?

If one parent moves out of state, you can generally file an enforcement proceeding in either state. You can file for an enforcement proceeding in New York and force the other party to appear, usually by phone. As long as the recipient of the child support (& thus the child as well) remains living in New York, New York would continue to retain exclusive jurisdiction to modify or enforce.

You can ask for income garnishments or money judgments to be issued within New York. You can also proceed in the other state. This is the beauty of the federal law. The recipient of child support can register a New York order for enforcement in another state and go after bank accounts or income garnishments in the other state[35].

[35] See Family Court Act Article 5-B.

CHAPTER 7

WHAT IS THE PROCESS FOR CHILD SUPPORT ORDERS TO BE MODIFIED?

Almost exclusively, the custodial parent will file the initial child support petition in Family Court. That said, either a father or a mother could petition for a child support order to be modified[36].

[36] As stated in the Foreward, because there are particular issues involved with high income cases, those will be the subject of my forthcoming book, "Navigating Your High Income Family Law Case."

What Is The Process To Modify Child Support In New York?

All one has to do to ask for a modification of child support is go to the court and file a petition. The court will draft that petition - they have pre-printed forms you can fill out[37].

One can also go to their attorney and draft a petition to file on their behalf. If you have an original divorce proceeding, you have the option of filing a modification of child support in divorce court. I usually advise people to go to divorce court if there are any other issues going on, like a need to adjust the visitation schedule. It is generally more cost effective to proceed in divorce court than in family court (especially if there are intertwined issues like support & visitation, or support & property enforcement).

What Are The Reasons That A Court Might Consider Modification Of Child Support?

Traditionally, you'd need to show a "substantial change of circumstances" to change child support. In 2010, the law was amended to add two other bases to change child

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[37] http://ww2.nycourts.gov/forms/familycourt/childsupport.shtml

support. The first is whether either parent's income has gone up or down by at least 15 percent. The second is whether 3 years have passed since support was set or adjusted.

This makes it much easier for either party to come into court and adjust child support. The prior law - requiring only a substantial change of circumstances - set a much higher bar. Now, many parties are just using that three-year trigger to go in and file a petition because they don't have to prove that there is a substantial change. All you have to prove is that three years have passed and then there is automatic re-visiting of support.

If the parties have done either a separation agreement or a stipulation settlement in a divorce case, they can either opt in or opt out from those modification standards. They can change it so that the other party will also have to prove a substantial change of circumstances and they will not get an automatic increase if there is a change of 15 percent or three years have passed. They can even change the legal standard to "unanticipated change of circumstances," which would be the highest bar that the law recognizes in New York to be able to modify child support.

There is also a provision that if the parties' agreement does not specifically opt out of the modification standards, they have opted in. They are implicitly agreeing that child support can be modified if there is a change in income by 15 percent or three years have passed.

Will The Court Modify Child Support If The Parent Paying Support Loses His/Her Job?

If a person voluntarily quits or is fired due to misconduct, they usually will *not* get a modification of child support. However, there are exceptions.

If someone quits his job but he quits for valid reasons which can be documented - like medical issues - the court may agree to a modification. If they have quit their job under circumstances where they were being forced out by, for example, an outlandish relocation demand, even the Department of Labor would consider that a non-voluntary quit.

There could be other circumstances where you quit for very good reasons, such as you are a victim of sexual harassment or racial harassment. If you quit your job, sued your employer, and filed a complaint against your

employer, you can document that to the child support issue. A good analogy would be that anything the Department of Labor would recognize to be a valid reason for quitting (& still receive unemployment) can give you a chance at a modification[38]. Of course, then you have the obligation to prove that you are making a diligent search to find new employment.

My Ex-Spouse Recently Quit Her Job And Has Petitioned For An Increase In Child Support. Will An Increase Be Awarded?

Voluntarily quitting a job does *not* constitute a substantial change of circumstances - unless a parent quits because she became disabled, was the victim of sexual or racial harassment, or some other valid reason. The court may find those to be valid reasons for quitting her job - and for requesting additional child support.

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[38] Another example in a recent case was where the noncustodial parent quit his job to move closer to the custodial parent's residence in order to spend more time with the subject child.

If I And My Ex Have Moved Out Of State After The Divorce, Which State Will Have Jurisdiction Over Child Support Matters?

Most of the time, the court will allow a modification filing where the child resides. If both parties have moved outside of New York, then the New York court will not allow the modification to take place in New York. The state has lost exclusive jurisdiction over the case. As such, the modification or enforcement proceeding would need to be filed in the new state. If only one party has moved, then the original county will generally retain continuing venue over the case.

Can We Set Our Own Modification Of Child Support Without Taking Matters To Court?

Parties can create out-of-court agreements on child support and as long as they live according to that agreement, there is no reason they *must* go into court.

Usually, it is advisable to have an agreement drafted by an attorney. Thus, if something goes wrong, you have a valid agreement that you can turn into a court order. The issue is that an out-of-court agreement is not enforceable in itself.

The only remedy, if one party fails to follow the out-of-court agreement, is to file a child support petition in family court and then take the agreement to the support magistrate to ask for a court order based on it. Support will only be retroactive from the day he or she filed the petition in family court.

Can I Get Help In Enforcing Health Insurance As Part Of My Child Support Process In NY?

Health insurance is usually a very standard part of a child support hearing in New York. They will ask, at the initial hearing, if either party has health insurance available for the child. If the child or children are not covered with medical insurance and medical insurance is available to one party, the court will order that to be done.

When Does The Modification Of A Child Support Order Take Effect?

A child support order will usually take effect the day hearing is concluded and the general rule is that the support is retroactive to the day the person filed for modifications.

Can I Challenge Or Oppose The Court's Decision To Modify Child Support?

If a court has made a decision and either party disagrees with the decision, they have a right to file an objection appeal. In New York, the initial support hearings are held by a support magistrate and the objection appeal goes to an actual family court judge. The parties have to file that objection appeal within 30 days of being personally served with the decision or order, or within 35 days after it was noted it was mailed out to them.

Chapter 8

WHAT IS A FAMILY OFFENSE?

In New York, a "family offense" is a domestic violence crime which is "prosecuted" in Family Court.

The language within the Family Court Act[39], which is the statute that governs family law cases in New York, matches the language in the criminal statute. In fact, it merely refers the reader over to the criminal statute. It constitutes a variety of offenses - and each year the list seems to grow bigger.

[39] https://codes.findlaw.com/ny/family-court-act/fct-sect-812.html

The most common traditional offenses are assault, menacing, and harassment of various forms. Over the years, it has expanded to include things like identity theft, strangulation, stalking, and reckless endangerment. A "family offense" is only constituted if someone proves their burden at trial that the respondent has committed an actual family offense pursuant to the statute.

Examples of Family Offenses Under New York Law

The comprehensive list of family offenses[40] includes:

- disorderly conduct,
- harassment,
- aggravated harassment,
- sexual misconduct,
- forcible touching,
- sexual abuse,
- stalking,
- criminal mischief,
- menacing,

[40] As of this writing – December, 2019.

- reckless endangerment,
- criminal obstruction of breathing or blood circulation,
- strangulation,
- assault or attempted assault,
- identity theft, and
- grand larceny.

Additionally, there are varying degrees of each crime. Murder and attempted murder are *not* included, as the legislature decided that those serious crimes could only be prosecuted in the criminal court.

How Do I Go About Filing A Family Offense Petition And Obtaining An Order Of Protection In A Family Court?

The easiest and fastest way to file a family offense petition is to go to the Family Court in the county where you reside. The clerks will assist you with filing a family offense petition. One can also file at a domestic violence shelter, but ultimately that filing has to be brought to Family Court. In New York City, there is a program called Safe Horizons that can initiate family offense filings on behalf of domestic

violence victims. There are also satellite courts set up around New York City, through which a person can file a petition.

How Do I Serve A Petition For A Temporary Order Of Protection?

Generally speaking, the Police Department or the Sheriff's Department serve petitions and temporary orders of protection. If the filer already has an attorney upon filing the petition, sometimes the Judge will give them the option of having the attorney arrange for the petition and temporary order to be served.

Does The Respondent Have Any Idea An Order Of Protection Has Been Filed Against Them Before Being Served?

The only way a respondent would get an idea that a petition has been filed is if the victim has said something directly to them or to a third party. There is no possible way they can know by accessing any kind of court website or anything similar to that because all family court filings are confidential.

How Soon After A Petition Is Served Will We Have A Court Date?

The answer to this question tends to vary with the county - as well as the urgency of the petition.

Certainly, if a person has been assaulted with a weapon, then the court may schedule a very quick date within a matter of a couple of days. There may also be instances where the court is essentially kicking someone out of their house by entering a "stay away" order of protection – which excludes the respondent from the residence they used to live in. In such event, the court would tend to schedule the initial court appearance relatively quickly.

As far as the time the accused has to respond, the person will go in and usually give a "general denial" in the family court - which is the equivalent of pleading not guilty. This is done orally on the return date of the petition.

They do have the option of filing a formal answer to the petition. It's something that is not required but I sometimes recommend it. Every single time the case comes back up on that Judge's docket, the Judge may want to

refresh his or her recollection with what the case entails. If s/he cracks open your court file and if the only thing s/he repeatedly looks at is the allegation of domestic violence, those tend to plant a seed in the Judge's mind. Filing an answer to the petition lays out your side of things and when the Judge reviews your case prior to coming in, they will review both the petition and the answer with what your responses are.

If A Family Offense Case Cannot Be Settled, Will It Go To Trial?

Unless there is an application, pre-trial, to dismiss the case and it is granted, the only way to resolve the case without a settlement is by going to trial.

If The Court Finds Allegations To Be True In A Family Offense Case, What Happens?

If the Petitioner wins at trial, this means the court has found that the allegations have been sustained by a "preponderance of the evidence." This is the equivalent of the Judge determining it is "more likely than not" a family offense has been committed.

If there is a sustaining of the allegation, then the court will proceed to a "dispositional hearing." Oftentimes, this is a very quick hearing where the Judge will simply enter a final order of protection. The only debate is how long the order of protection is (generally 2-5 years) and what the exact terms of the order of protection are[41].

How Long Do Protection Orders Last?

Orders of protection generally last for two years. They *can* last for as long as five years, if there are aggravating circumstances. There can also be shorter orders of protection - usually if the parties settle or resolve the case. Nevertheless, there also is the potential of someone filing a petition at the end of the term of the order of protection for an extension of the order of protection.

What Can I Do If Someone Violates The Order Of Protection?

If someone violates an order of protection, call the police right away. The person can be immediately arrested.

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[41] Other terms of a final order may be found here: https://codes.findlaw.com/ny/family-court-act/fct-sect-841.html

You can also file a violation petition, which brings the case to criminal court and/or family court. The person would be looking at jail time at that point.

Can I Decide Not To Pursue The Order Of Protection For Some Reason?

The court cannot force someone to proceed with an order of protection, if s/he chooses to withdraw it. The only theoretical exception is where the Judge feels that in withdrawing the order of protection, the petitioner may be putting children at a risk of harm. In that case, they do have the authority to order Child Welfare to step in, conduct an investigation, and report back to the court as to whether a possible child neglect case needs to be filed.

The Judge also has the power to refer the case over to the District attorney's office for criminal prosecution. Even then, it remains the sole province of the District Attorney to determine whether they accept the case and actually file a criminal case or not. A Judge has no authority to order a District Attorney to actually file a case.

The third option is where a person may contact his/her attorney saying that the order of protection has

been violated. Short of filing a petition, the attorney can issue a “cease and desist” letter to the other side, warning them that the victim will immediately call the police and/or file a violation petition upon the next violation.

What Happens If the Petitioner Is Afraid to Face the Respondent In Court?

The court has the power to allow the petitioner to appear at pretrial hearings either over the phone, via video conference, or via their attorney. However, in 20+ years, I’ve seen only one or two cases where the person has not physically appeared, out of safety concerns, within the courtroom. Most courtrooms have at least two court officers present at all times[42].

What Should People Generally Know About Family Offense Cases In New York?

If you’ve been accused of a family offense, make sure the attorney representing you has done numerous family offense petitions and is *not* the type of attorney who has just dabbled in family court law. Family law is very

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[42] The court may arrange for the person to come in separately as well.

particular. If the attorney isn't a specialist, they are not going to be as well versed in that area of the law (as a specialist would be). Make sure to shop around and interview your potential attorneys along those lines.

CHAPTER 9

STEP-PARENT ADOPTION PROCEEDINGS

One positive benefit of a stepfather adopting his stepchild is s/he will be granted rights of custody and visitation in the event that the relationship between them and the biological mother dissolves. There is an evolving law which says a “father figure” may have certain rights vis-a-vis the child, but this is relatively new and should not be relied upon until it becomes better established within New York.

Yet another benefit of adopting a stepchild is that separate documentation or approval from the biological mother

would no longer be necessary in order to allow the stepparent to participate in school activities, receive certain governmental benefits, or receive medical treatments. In addition to these benefits, which are legal in nature, there are moral and emotional benefits which come with adopting a stepchild.

If I Adopt My Stepchild, What Are My Legal Parental Duties Towards That Child?

If the relationship between an adoptive father and the biological mother of a child were to dissolve, the adoptive father would have a duty to provide child support. With respect to an intact family, the adoptive father would have the same legal responsibilities as a biological father, including a duty to ensure the safety of the child, ensure that the child attends and performs well in school, and is medically cared for.

How Difficult Is It To Adopt Stepchildren?

It's not difficult to adopt a stepchild so long as there is a good case for doing so. If the biological father of a child has not legally abandoned the child, does not consent to the adoption, and there are no other grounds to terminate that biological father's rights, then it *would* be very difficult or impossible for a stepparent to adopt the stepchild.

A biological father's rights could be terminated due to mental illness or the inability to take care of the child - though in most such cases, CPS or New York City ACS would be involved. Oftentimes, if a biological father’s rights are being threatened or have already been taken away, it is because they have been accused of neglecting or abusing the child.

Additionally, if the biological father has not had substantial contact (e.g., meaningful contact at least once per month) with the child for at least six months prior to the filing of the adoption case - and the mother was not actively concealing the whereabouts of the child - then the stepparent adoption should go through without a problem. In such cases, the only real cause of action or defense that the biological father could use would be to claim that the mother prevented or thwarted their attempts to access the child. When a biological father makes this claim, I will cross-examine them in order to determine the specific ways in which they tried to search for the mother and/or child. It would be the father’s responsibility to prove they made adequate efforts to do so, such as by filing a visitation petition or hiring a private investigator.

Do We Need A Biological Parent's Permission Before Moving Forward With A Stepchild Adoption?

If the biological father has legally abandoned the child, then it would not be necessary to have his permission before moving forward with a stepchild adoption. If the biological father consents to the adoption, then he can either execute an "extra-judicial surrender" of their parental rights, or he can surrender his rights before a Judge - which is referred to as a "judicial surrender." Either option would simplify and expedite the adoption process.

Can We Terminate The Biological Parent's Rights If They Do Not Consent?

In situations where the biological father has legally abandoned the child by failing to have substantial contact for at least six months prior to the filing of the adoption case, the biological father's rights can be terminated. If the biological father has either persistently neglected the child or abused the child, then CPS and the biological mother will work together on getting the stepparent adoption case through. It's rare that a biological father will have a good case to defeat a cause of action of legal abandonment - because prior to filing a stepparent adoption case, most

good lawyers will assess that the biological father indeed failed to have contact with the child for at least six months.

If there are grounds to do so, it might make sense to first move to terminate any visitation rights the biological father has and/or to negotiate surrender. For instance, if the biological father owes a substantial amount of child support arrears, a negotiation could be had where the child support arrears are forgiven in exchange for their consent to the adoption[43]. Another option would be to negotiate an open adoption, whereby the biological father still has some rights to see the child and to be informed of their progress in life.

Does A Stepparent Adoption Terminate A Biological Parent's Rights?

In most circumstances, the stepparent adoption automatically terminates a biological parent's rights. There is the option of an "open adoption," which allows for limited visitation rights or an agreement between the biological parents to allow informal contact. Under such an agreement, for example, there would be nothing preventing

[43] One needs to be very careful, however, that it doesn't appear the biological father is being bribed or coerced into giving up his rights *merely* because he owes support arrears.

the biological father from visiting the child in the home shared by the biological mother and adoptive father.

Can A Child Have Both A Biological Mother And Father - As Well As A Stepparent - Without Anyone's Parental Rights Being In Question?

A child can simultaneously have a legal mother, a legal father *and* a stepparent without anyone giving up their rights. A common example would be where the biological mother or father gets remarried to a new spouse, but the biological father or mother's rights are not legally terminated.

Would A Stepparent Be Able To Adopt A Child Without Terminating The Biological Parent's Rights?

It is *not* possible for a stepparent to adopt a child without terminating the biological parent's rights. In other words, a child cannot have three legal parents[44].

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[44] It is possible, however, to do an "open adoption" which may (among other things) preserve the biological father's right for future visitation or some level of contact.

Can We Change A Child's Name During The Adoption Process?

It is not uncommon for a child's name to be changed to the last name of the stepfather after adoption by that stepfather. Indeed, there is a place on the petition for adoption as well as on the final order of adoption to change the child's last name.

Does The Child Have Any Say In The Adoption Process?

By statute, a child who is 14 years or older must consent to the adoption case. That consent will generally be captured by the social worker who does the adoption home study.

If the child is under the age of 14 but a social worker deems the child to be relatively mature, then they will interview the child as to the nature of the relationship with the stepparent and try to determine whether they're aware of the impending adoption process, and how they might feel about it. So, even if a child is under the age of 14, the court will usually want to know whether the child has any reservations about being adopted by the stepparent.

What Is The Process Of Stepparent Adoption?

The first document that's generated during the process of stepparent adoption in New York is a notice of the proceeding, which will be served to the opposing side once the adoption filing package has been accepted.

Once complete, this package will contain approximately 20 different documents. Among other things, the court will require the adoptive father to have his fingerprints taken so that the court system can run a criminal background check on him. They will also run a child welfare check on the adoptive father. In most cases, the adoptive father and biological mother will need to hire a certified social worker to do a home study of their home and render a report to the court. All of these steps are taken *prior to* the notice of the adoption proceeding being sent to the biological father. This process takes several months, simply because it takes about 4-5 months for the child welfare and criminal background check results to come back. This means that by the time the notice is sent to the biological father, the actual adoption case will have been pending for six months or longer.

After notice of the proceeding goes out to the biological father, a court date for an initial hearing will be assigned. If a proper personal service of the notice has been done and the father does not appear at the hearing, then the courts will mark him in default. If the father does appear at the hearing, then the court will assess whether he's actually contesting the adoption case. If he is, then he will be entitled to a hearing that will determine whether he has legally abandoned the child. If the courts find that he has legally abandoned the child, then the adoption clerk will contact the adoptive father's attorney and request any other documentation or information needed in order to shore up the case. Finally, an adoption ceremony will be scheduled before a family court judge who will finalize and celebrate the adoption with the family.

Will The Child Receive A New Birth Certificate?

In most cases, the child will receive a new birth certificate once an adoption has taken place, especially if the child's last name has changed. I almost always advise my clients to request a new birth certificate so that the new adoptive parent's name will be on it.

Can A Same-Sex Couple Adopt A Stepchild?

A same-sex couple can absolutely adopt a stepchild. In fact, partners do not even have to be married in order for an adoption to be possible. Over the course of 20 years, I've handled numerous stepparent adoptions, and while almost all of them were situations where the biological mother was married to their partner, this is *not* a requirement.

Unlike some other areas of law, completing a stepparent adoption *requires* the assistance of an attorney. There are certain forms that the court requires an attorney to submit on behalf of the adoptive parents.

I advise all clients who are doing stepparent adoption cases to have patience, because unfortunately, every other case that is done in family court takes statutory priority over adoption cases. For instance, family courts will prioritize custody and visitation, juvenile delinquency, child support, child abuse, and child neglect cases over adoption cases. As a result, adoption cases take a long time to get processed. In the Greater New York City area, it is not uncommon for adoption cases to take over a year to complete.

If I Am Not Married To Mother, Do I've Any Say If Her Husband Wants To Adopt My Child?

If the father's name is on the birth certificate by virtue of him having signed the acknowledgment of paternity, and if he has maintained contact with the child, then his consent would generally be necessary in order for an adoption by the mother's husband to proceed. This is because the adoption proceeding would terminate the biological father's parental rights and the husband would become the legal father of the child once the adoption process is complete.

If the father did not sign the acknowledgement of paternity but has maintained regular contact with the child, then his consent would most likely still be necessary. If the mother is proposing that her husband adopt the child, then the biological father should move quickly to establish his paternity rights and possibly get a visitation order in place through Family Court.

If, however, the biological father's name is not on the birth certificate and he has *not* maintained regular contact with the child, then it is unlikely his consent would be necessary.

CONCLUSION: WHAT'S THE NEXT STEP?

Whether you need an attorney really depends on the issue that you're looking to adjust, how familiar you are with that particular judge, and whether the other side is going to bring in an attorney. If it's not a complex issue, you may not need one. At the very least, you should certainly consider consulting with one before you appear in court.

Overall, everyone benefits from having an attorney. Often, these cases are dependent upon what happens between the attorneys in between court proceedings. I try to impart to all of my clients that you need to keep a careful paper trail, especially when you don't have attorneys or judges involved, because you have to capture what goes on at each step of the way. If a parent is late with pick up or drop off, document that by emailing them about it. When you go back to court, you can show the judge that on these dates they were late by these amounts of time.

Simply saying they were late numerous times will not win your case. The more you keep track of details and the more you try to rectify issues, so that the judge can see you're not here just to be a burdensome person on the court,

the better you look. The judge can then step in and either do a modification or send the parties off to mediation.

Regardless, I highly recommend having a good, quality attorney to represent you in your Family Court matter. I have a chapter entitled "Qualities to Look for in a Family Law Attorney" in my book "navigating Your New York Divorce Case" which I refer readers of this book to (it is available on Amazon or downloadable for free on the home page of my website).

In a nutshell, opt for a specialist. If one has a heart issue, one sees a cardiologist, not a general practitioner. Same thing in the law.

Also, ask how many cases the attorney maintains – if it's much over 70 (e.g., 90-100+) s/he is probably too busy to devote quality time to properly preparing your case.

And don't assume merely because you're at a "law firm" as opposed to a solo practitioner that the law firm will have far more time & resources to devote to your case. Invariably, each individual attorney at a law firm will have his/her own caseload – comprising 50, 60 or 70+ cases each.

Moreover, ask what the staff-to-attorney ratio is – if the firm doesn't have at least one full-time paralegal/assistant per attorney, be wary of the firm (especially if the firm is primarily dedicated to family law cases).

Bottom-line: shop around, ask questions & be choosy. The attorney or firm you hire should have a wealth of information about the background of the attorney/firm on the website – use it to fuel questions of the attorney/firm. If you feel hesitant about "grilling them with questions" at the consultation, don't hesitate to send follow-up e-mails with questions regarding their background, caseload, staff levels, etc. Any good attorney worth your time & money should be more than willing to answer such questions.

And don't hesitate to visit the Bar Associations websites (e.g., NYSBA) who have a wealth of information regarding family law cases (among other types). After all, your future and the future of your children may depend on choosing a good attorney. Choose wisely!

About The Author

David Bliven graduated with honors from Syracuse University in 1993 with a B.A. in Sociology. He went on to serve as a statistician with the NYS Commission on City Court Judicial Reallocation with the Office of the Deputy Chief Administrative Judge. He then attended New York Law School where he graduated in 1997 with honors and ranked within the top 15% of his class.

Shortly after graduating, he served as a prosecutor for nearly 3 years with the NYC Administration for Children's Services. While at ACS he prosecuted child support, child abuse & neglect and foster care cases on behalf of the City of New York.

After leaving the prosecutor position, Mr. Bliven opened his present practice in 2000. His practice is currently devoted 100% to Divorce & Family Court cases.

Mr. Bliven has an "AV" rating from Martindale-Hubbell (the highest possible rating in both Legal Ability & Ethical Standards), a perfect 10.0 rating from Avvo ("Superb" rating) and is listed in the "Super Lawyers" directory by Thompson Reuters (a distinction given to less than 5% of all attorneys in each field of practice). He is also a “Certified Financial Litigator” and was honored as a “Super Lawyer” for the NY Metro & Westchester area by *Westchester Magazine* in their October, 2019 issue.

Mr. Bliven also authors "Cases That Help" - an annual caselaw newsletter distributed to Family Court Assigned Counsel panels throughout the State of New York, and his articles have been published in the New York Law Journal, Nolo.com and Westchester Lawyer Magazine.

TESTIMONIALS

- Anonymous: “During a time, when it seemed as my life was about to fall apart, Mr. Bliven was there to make sure I was protected. Mr. Bliven was there to make sure every "T" was crossed and every “I" was dotted. He made sure I was entitled to my fair share. When children are involved in a divorce, I wanted to make sure they were taken care of for the foreseeable future. Mr. Bliven made it his duty to fight for me when he felt I deserved more retribution. He fought tooth and nail for the needs of my children as well as for me. During a time when things looked bleak, Mr. Bliven made sure my legal and financial needs are taken care of. When beginning this venture, I was scared that I would walk off of this with only my "shirt", but Mr. Bliven made it his job to make sure I was able to resume my life without looking back. I want to thank Mr. Bliven and I would recommend him to anyone who is and is thinking about filing for a divorce.”

- Jonathan: “Mr. Bliven came very highly recommended to me by a friend who used to practice family law and had transitioned into other areas of legal practice. I was not disappointed. Mr. Bliven was thoroughly knowledgeable and highly attentive as he helped me smoothly resolve complex child support matters involving international issues of competing jurisdictions. Having had a number of attorneys in the course of my divorce and child custody/support matters over the last 18 years, I believe I am experienced to know that Mr. Bliven is a top family law expert.”

- Lou: “Mr. Bliven represented me in a child support case. I was very pleased with the services provided by Mr. Bliven. He is professional, courteous, and knows his stuff! I am completely gratified with the outcome of my case. Thanks to Mr. Bliven’s knowledge of family law. Mr. Bliven kept me up to date on all matters pertaining to my case and his billing is fair and accurate for the work he puts into the case. I would certainly recommend him to anyone that is seeking a topnotch lawyer in the area family court.”

- Teri Colon: “Although I have not met with Mr. Bliven yet. I contacted his office on a Friday of a Holiday Weekend. His office's response was immediate and I was treated with respect as if I was already a client. His staff took the time to email me immediately and when I called I was given an appointment that accommodates my schedule. Custody matters are very sensitive and clients can be emotional. It was a relief to speak with someone who was not only professional and courtesy, but also showed genuine concern. I look forward to my consultation with Mr. Bliven.”

- Ariane: “Mr. Bliven was knowledgeable, informative, and an incredible strategist. He used all of my legal rights to defend me in my case and was extremely professional to work with. I can't thank him enough for his ability to use our rights as law-abiding citizens and to get the job done. David consulted with me on all motions before revealing them to the court or to any other parties. For this I thank him and am grateful for his diligence in representation.”

- Gregg: “Although I subscribe to a legal plan through my union (I'm a teacher), I decided to retain Mr. Bliven based

on our initial consultation. He seemed much better versed than the less expensive "plan" attorney I spoke to in the child support matter I brought to him. Mr. Bliven scanned the paperwork I brought with me to the consultation and immediately developed a strategy using various points of law. Mr. Bliven kept in constant contact with me and "cc'd" me on all correspondence he and my ex-wife's attorney had via email or hard-copy. Mr. Bliven's courtroom demeanor was just as I had hoped it would be; vocal and on point. Ultimately, my ex-wife and I reached a fair compromise that did not follow the default percentages NY State dictates. I would definitely retain again should the need arise."

- A Satisfied Client: "Navigating family court for personal reasons can be quite intimidating, even for folks who have interfaced with court officers and judges for professional purposes. That said, Bliven was nothing short of extremely knowledgeable, courteous and very attuned with the emotional experience that comes with the process. I highly recommend Bliven if you are seeking consultation and representation with a child support and/or custody case!"

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More Testimonials may be found on David Bliven's website (http://www.blivenlaw.net/Testimonials.shtml) and at Avvo (https://www.avvo.com/attorneys/10463-ny-david-bliven-952796.html#client_reviews).

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NOTES

NAVIGATING YOUR NEW YORK FAMILY COURT CASE

Custody, Visitation, Support, Paternity & Adoptions

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— A Satisfied Client

David I. Bliven

David Bliven graduated with honors from Syracuse University in 1993 with a B.A. in Sociology. He went on to serve as a statistician with the NYS Commission on City Court Judicial Reallocation with the Office of the Deputy Chief Administrative Judge. He then attended New York Law School where he graduated in 1997 with honors and ranked within the top 15% of his class.

Shortly after graduating, he served as a prosecutor for nearly 3 years with the NYC Administration for Children's Services. While at ACS he prosecuted child support, child abuse & neglect and foster care cases on behalf of the City of New York.

After leaving the prosecutor position, Mr. Bliven opened his present practice in 2000. His practice is currently devoted 100% to Divorce & Family Court cases.

Mr Bliven has an "AV" rating from Martindale-Hubbell (the highest possible rating in both Legal Ability & Ethical Standards), a perfect 10.0 rating from Avvo ("Superb" rating) and is listed in the "Super Lawyers" directory by Thompson Reuters (a distinction given to less than 5% of all attorneys in each field of practice). He is also a "Certified Financial Litigator" and was honored as a "Super Lawyer" for the NY Metro & Westchester area by Westchester Magazine in their October, 2019 issue.

Mr. Bliven also authors "Cases That Help" - an annual caselaw newsletter distributed to Family Court Assigned Counsel panels throughout the State of New York, and his articles have been published in the New York Law Journal, Nolo.com and Westchester Lawyer Magazine.

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