

# FAMILY MATTERS

## Trend of the Law: CHILD CUSTODY

By Phoebe P. Hall, Attorney, Mediator and Former Judge

Child custody is the most important decision a separating couple makes. Both legal custody and physical custody of the child or children must be decided, and modern practices have changed the face of custody arrangements.

Legal custody determines which person will be responsible for major decision making for the children. Joint legal custody allows both parents to assume this role. Physical custody determines with whom the children will live. The physical custodian provides the daily nurturing and supervision of the children. This often is one parent, but in some situations parents share physical custody. The decisions made by the parent who has custody are rarely life or death decisions, but often

small ones such as: “Mom, can I go to the mall or movies?”; “Dad, do I have to finish my homework tonight?”; “Mom, can I buy this?”; “Dad, can I stay up late tonight?”. Parents should keep this in mind and should agree on custody. If they can’t the court will decide in an expensive and stressful process.

In the past, a father received custody only if the mother was proven unfit. Today, fathers are playing much stronger roles in the lives of their children. Dads frequently nurture the children and perform many of the household functions. Dads may receive only visitation or may receive shared or even sole custody. The law says that neither parent is preferred and mothers no longer enjoy a preference as custodian.

When child custody becomes an issue the courts look closely at factors such as the relationship between the parent and the child, the role each parent has played in the past, the plan each parent has for nurturing the child, the schedule of each parent, the age of the child and the needs of the child. The recent trend is to consider whether a parent seeking custody will encourage the active participation of the other parent. Both parties should arrange custody based on the best interest of the child and nothing else. Court should only be a last resort.



**The law is always being rewritten**

*Mrs. Hall is an attorney and mediator. She formerly was a substitute judge in the Richmond Juvenile and Relations Court.*

Inside this issue:	
MARRIAGE MINDERS	2
SMART DIVORCE	2
5 HOT TIPS	2
LOOKING AT ISSUES	3
WILLS AND ESTATES	3
KIDS CORNER	3
MORE LEARNING	4

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## Important News at Hall and Hall

Our law firm is dedicated to family law matters and we are called upon by people from all walks of life to counsel them about courses of action they are contemplating, situations they are facing or to provide ongoing representation.

We seek to provide what our clients need and want.

Our services include:

- Wills and estates
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- Mediation
- Custody and visitation
- Child support
- Spousal support
- Equitable distribution

We help with:

- Prenuptial agreements
- Property settlement agreements
- Negotiations
- Litigation
- Uncontested matters
- Contested matters

## Marriage Minder

Everyone marries with the idea that the marriage will last a lifetime.



Too often couples experience problems because they expect unrealistic things from their spouse. For example, they believe that the right spouse can “fix” them so that they do not have to be responsible for themselves, or they expect a spouse to make them happy. Others feel that once they have experienced a previous disappointing relationship, the pain is too great so they never give another person the chance to meet their needs for love and intimacy.

The first step toward a good relationship is to know yourself. What do you want or need in a relationship?

What kind of relationship would make you happy? Think about your family and how they have influenced your ability to build healthy (or unhealthy) relationships. Is your marriage a mirror image of how your parents reacted or treated each other?

Once you learn about yourself, then you can start to ask your spouse the same questions. This means you will need to *listen* in order to learn about your spouse. When this happens, your communication becomes centered around what is important to “us” and not so much what is important to “me”.

The interesting part about knowing yourself is that you then begin to know how to take care of yourself and learn to be happy with the person within. Once you begin to understand how your spouse is thinking and feeling, then you sincerely become constructively concerned about

his or her well-being. The need to be the person in *control* of the relationship ceases to be an issue.

However, caring about your spouse does not mean that you have to tolerate behavior that is unacceptable to you, such as a spouse who is physically or emotionally abusive or where substance abuse is an issue. A partner who loves you and is mature will be interested in you as an individual and interested in the marriage, and not place their own destructive behaviors ahead of the marriage. If you and your spouse have issues that you cannot resolve, seek marriage counseling early.

Make a long term commitment to keep learning about yourself and your spouse, to take care of yourselves and to be happy. You will then have laid the groundwork to a great relationship.

## Smart Divorce

Separation of a husband and wife does not always lead to a divorce; nor does it always lead to a custody dispute. Often *before* separation occurs, people will want to know their rights with regard to the children and other issues that come into the picture when children are involved.

They have questions, and often, misconceptions about how custody works, how the courts determine custody and how support is

An initial consultation may be the best expenditure you will ever make.

determined. We recommend you begin by obtaining some basic information with an initial consultation. When contemplating a divorce or separation, sit down with one of our experienced family law attorneys and counselors-at-law.

## 5 HOT Tips

1. Surround yourself with people who encourage you, teach you and believe in you. This is especially true when you are going through the separation and divorce process.
2. Take time to be with those you care about. The best memories are made when you experience life’s
3. Have a daily motto to be supportive and encouraging to those you meet.
4. Weigh carefully the amount of time and emotional energy spent in relationships with people who do not share your same values.
5. The Olympic winners competed in



their areas of expertise. Become a winner by striving to be better. Look for ways to improve and strive for quality in all you do.

## Looking At Issues By Franklin P. Hall, Esquire

### How is Custody Determined?

Custody is based on the best interest of the child. Parents ought to be able to assess this better than anyone else. However, if the parents cannot agree on the basic custody and visitation arrangements through a written agreement, then the court decides.

Where the court is involved, the parties present evidence at a hearing or a series of hearings. Upon request, the court may appoint a guardian ad litem (GAL), an attorney for the child. The court also may order the parties to submit to mental health evaluations. Both can be at the

parties expense, but the expense can be allocated to one parent.

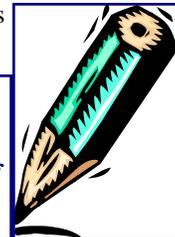
Before any court hearings, the parents should give serious consideration to the needs and preferences of the children. Bringing your children into your personal battle with your spouse should be avoided at all costs. If a child's preference is expressed, usually to the GAL or the judge in chambers, it can be weighed in court in light of the child's maturity and reasons for the preference.

Remember that as a couple, you can work out any parenting arrangement that realistically reflects your strengths and

needs and the needs of your children.

Custody and visitation are never decided forever. Even after an agreement is made, or a court decision is rendered, as time passes and circumstances change, the parties can return to court and new orders can be made. The person seeking the change has the burden of proof.

*The written law  
in the  
Commonwealth of  
Virginia*



## Wills and Estates

There is no better time to plan for your family than immediately following a separation or divorce.

Who will raise the children in your absence? If you name a guardian now you will prevent your loved ones from having to go to court over who will be

appointed as guardians. Guardians may have no control of the children's money, but they have the responsibility to raise the children.

Another important person to name in your will is the trustee, who may or may not be the same as the guardians. The

trustee controls the children's money on behalf of the court. Loving parents should never place their loved ones in the situation of having a judge make these decisions. Plan ahead for your children's sake.

## Kids Corner

*There is no roadmap that provides parents a direction to go in the journey of re-organizing a family. The book Mom's House, Dad's House, by Dr. Isolina Ricci provides some of the stages of transition from one house to two:*

1. **The American Dream Home**-Mom, Dad and the children under one roof.

2. **The Problem Home**-Both parents in the same household, but the children notice trouble and discord. Mom or Dad may be sleeping on the sofa



or in a separate bedroom.

3. **The Dividing Home**-Two parent household with severe difficulties. Parents argue more, distrust takes the place of trust, Mom cries a lot, Dad loses his temper.

4. **The Divided Home**-Physical separation has happened. A sense of numbness sets in. Now is the time that the children and each parent begin to explore life after separation.

5. **Mom's House, Dad's House**-The Unsettled Period with two one-parent households with changes that demand attention which affects everything. Stress mounts as the marriage ends and feelings are raw. Parents have lost touch with their children's needs and feelings.

This stage lasts 6 months to 2 years.

6. **The Reshaping Process**-Two one-parent households settle down. Life is calmer and the children have become accustomed to their new life-style in two homes. The parents cement a relationship where they respect one another's territory and parenting style and have learned how to keep their children out of the middle.

7. **From Coping to Creating** -Mom and Dad have stopped competing for the good-guy prize. At times, they still disagree about the children, but they have learned tolerance and everyone is better for it. Stage 7 is worth the wait.

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## More Learning by Tracy H. Spencer, Esquire



Going through a separation and divorce and dealing with property division is hard enough for husbands and wives. However, separation becomes more complicated when children are involved. Children bring new, and very emotional, issues to discuss. Neither parent wants to see his or her child less, and they fear that their relationship with their child will change after the separation.

Children have their own fears when Mommy and Daddy separate. Will they see their Mommy or Daddy again? When? Some children wonder if the separation is their fault. If either parent has a boyfriend or girlfriend, the children often think that this person will be their new Mommy or Daddy, and

often ask if their real Mommy or Daddy will still be Mom or Dad. Parents need to be conscious of these fears and assure their children that the separation is between Mommy and Daddy and that both parents love them very much.

Children can adjust better to the new situation when parents can keep their children out of the divorce. Your 10 year old child should not be your confidant throughout the separation. Your 12 year old should not overhear you and your spouse discussing property distribution and support issues. The parents should respect each other and not make derogatory comments about the other to the children, or quiz the children about the other parent. Children are a lot smarter than parents

give them credit for, and they know when you are upset. This, however, does not mean that the children should be aware of every detail of the negotiations or litigation.

Work together with your spouse and make a pact not to bring the children in the middle. Remember that even though you and your spouse may no longer live together, you will be tied together for the rest of your children's lives. There will be graduations, weddings, and births to celebrate in the future. Your children will appreciate you and your spouse being cooperative and civil toward one another.