

# **NYC CIVIL COURT COMMUNITY SEMINAR SERIES**

**Custody & Visitation**

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MR. JOHN CAIRNS: Good afternoon.

The name is Cairns, John, C-A-I-R-N-S. I am an assistant to the Deputy Chief Administrative Judge for the New York City Courts, the Honorable Fern Fisher, who is also the Director of Access to Justice. And that is why we are here today, to open up the court door to information and questions, and to hopefully share some knowledge with you about the New York State Family Courts. With me is Mr. Michael Williams, who is a court clerk specialist in the Kings County Family Court, Self-Represented Division. And people like Mr. Williams are represented in the four major counties in New York City and are available to you if you go to the court and seek to file a petition there.

We discussed previous paternity and child support, and the reason--I

mentioned earlier that paternity is a portal into child support. Paternity and child support are now a portal into what we're going to discuss now, custody and / or visitation of a child.

You file the petition for custody and / or visitation in the same manner as you would a paternity or a support petition. It is a petition that you file with the court, stating certain facts as you have them and asking for specific relief. And that relief may be visitation with a child that you are either biologically related to, or have a child support obligation to, and / or custody of that child. And in order to get custody of that child you must have that relationship with the child unless you're a grandparent, which Mike will talk to you in a little bit later on. And when you file your petition, you serve the papers, you come before a referee in the family

court or a judge and the judge and the referee will hear your testimony, determine if the facts warrant visitation, what visitations can be made available, and / or custody. And the first determination of course is custody. Once custody is determined you will either get one of the parents getting sole custody of the child or you will get joint custody of the child, where parents share the responsibilities for the child's rearing and activities, or you will get shared custody. The last two that I mentioned, joint and shared, are the most difficult for the court to deal with because there's a crossover between the families, there are times to cross over, there are issues that cross over, and many time they result in further problems for the family court to deal with in the form of domestic violence.

Once an order is determined in

the family court it continues with the family court, it can stay in the state, intra-state, all the counties within the state, or interstate. You can take that order, register it in another state, and it has the full force and effect of a New York State order in that state.

MR. MICHAEL WILLIAMS: Just to go over to custody, just why these two programs are put together, because it's important to be the legal parent. Paternity, we need to know what the paternity relationship or the father's relationship to a child is at the time of custody visitation. A legal father or a legal parent are the same, you automatically have custody. If you're in a relationship and the child lives with you, with the legal parents, mothers or fathers, you automatically have custody under the law. It's when a dispute comes in, and if a child is born out of wedlock

we need to know how paternity was established so you need to provide proof, if you're the father filing for custody or visitation, of how it was established. Whether it was done via acknowledgement of paternity, or was it done through a filiation order by filing a paternity case, and both can be filed. The paternity and custody or visitation can be filed at the same time.

And just one thing, paternity, once you file a paternity case also, the court has to enter a child support order once filiation is established. But you can do both at the same time. And as a mother can file and you can also file both to establish a man the father of the child, and request child support, and file for custody, if there's some situation that you want to establish the custody and receive child support. It could all be done the same day, same filing.

One case, the support, paternity cases will go through a magistrate and a custody / visitation will be heard by a judge referee. Right at the end we'll hold questions, all right?

Custody, what factors determine custody? Basically again, the family code act is established for the best interests of the child. Everything determines the best interest. So what factors does a judge or does the court determine in issuing a custody order? It's basically everything. It's anything you could possibly think of. You know, I mean it could be, you know, the child's education, where the child would receive a better education, who's the better parent, who has the better support reserves, whether it's grandparents, or other family members, or neighbors that could assist in the raising of the child and the custody of the child. It could be religion.

Quite often you hear if there's a mother or father of different religions sometimes they have to agree or court orders which parent, custodial parent, and which religion the child can be raised in. So it's basically anything. And when you really think of it, I mean the amazing thing about family court and custody cases, like I always say, I mean every child is different. Everybody in this room, I'm assuming has a child, otherwise you wouldn't be here attending this session. And that child is different than every other child that walks this planet. I mean they are unique and special in their own way but that makes every custody case different in its own way. There's no two custody cases the same. So it's difficult. Just the relationship that you're in with your former or present paramour, is different. Everybody's relationship is different. It makes every



custody / visitation case different and special in its own way. So it's-- understand, when we go over general topics we just give you an idea of custody, but the main thing to understand is that both the custodial parent and non-custodial parent, you have a right to file a custody or visitation petition, and child support petition in the family court. And nobody can deny you that right. So if there's a dispute either with custody, or visitation, or child support, the Family Court Act is established where neither the clerk of the court nor probation officer can deny you the right to file. I mean, your case has to be heard before a judge and the judge can, you know, dismiss the case or he can make a determination, but you have a right to file. And understand that every custody case is different in its own way.

Like Jack said, you've got sole

custody, joint custody, and shared custody. Shared custody is very rare, you know, because usually a shared custody situation is usually both parties already agree to it so there's no need for the court to get involved. You know, a joint custody, the one thing to remember about joint custody, I mean joint custody is normally that, you know, both parents have joint custody. It allows the non-custodial parent say over, you know, educational or medical situations or decisions. But there's always a primary custodian on every joint custody order. So when the person who has primary, the primary residence, the child's primary residence, whichever parent that is that has the primary residence, that person's entitled to child support. Having joint custody does not necessarily mean and normally does not mean that you don't have to pay child support as a non-custodial

parent. You may have liberal visitation under it but if it's joint custody, with one parent having primary residence, that person that has primary residence is the person entitled to child support. All right? And then sole custody means you're like the full custodian of the child.

Custody between parents doesn't mean that you give up your parental rights in one way or the other. It's just that there's one primary parent responsible for decision making or responsibilities for the child.

Visitation for non-custodial parents, who can file for visitation? Every non-custodial parent. A parent, by right, just comes in, they have standing and a right to ask and receive visitation. It cannot be denied, visitation, unless there's some sort of extraordinary circumstances. I mean, if there's some sort of dangerous situation the child may

be in, or if there's some sort of domestic violence situation, or neglect, or abuse possibility, then, even then there would be visitation order entered but it might be supervised initially. But every parent has a right, every non-custodial parent has a right and cannot be denied visitation with their own child unless there's some extraordinary circumstances. And that's rare because if there is we wouldn't be discussing a visitation matter at this point. There would be other cases filed.

But again, anybody can come in. They do not give ex parte orders, which means you can't come in and say I want visitation this weekend with my child. Everybody has to be served, it has to be-- the courts do try to get these orders, the family court does try to get these orders on consent, whether you file for visitation or custody. After the filing

date you're going to receive a return date. Depending on which county you are in, usually somebody, whether it's a social worker, the judge's court attorney, or possibly a referee, will try to mediate this situation with you. Also when you're handed down, you do have the option, but mediation, you know, every family court should be handing out a mediation pamphlet that you can apply for, call up, and try to set up. But that has to be on consent of both parties if you want to go to mediation to try to work out a visitation to custody arrangement. Mediation doesn't work if there's domestic violence allegations. Domestic violence is about power and mediation doesn't work if one side has more power than the other. So but that's an entitlement and that's something you should look at because the best thing with custody or visitation, if the two parents can make up their own

decision and let the court just stay away from it or even sign it into an order, if you can make the decisions for yourself and your child or children, that's usually the best result we can request the court and for yourselves. I mean, we'll do it and we'll dispute it, but you know, if you guys can work it out yourself it just leads to future benefits both to you and your children.

Also there's something called P.E.A.C.E., which is the parent education program that we have. They meet in every county. They usually try to meet every other month. But basically it tells you, and at the family courthouse, they're held in the family courts, usually around at night, depending on the court and depending on the hours of that court, it's a three hour program and you've got to meet from like 4:00 to 7:00, I believe it is. And parents go separately but both

parents can go, and what it does, it basically informs you of the impact or effect that this custody, visitation, or family court proceedings can have on a child. So you should avail yourself of that opportunity too, even prior to filing or right after your filing, request to find out if there is any mediation or parental education programs because it's very important. It could be one of the best decisions you make. It gives you some control over knowing what's going on in a child's, from a child's point of view.

Modification, if you need to file for modification, the one thing, modification of a family court order or we can modify a supreme court order based on a divorce, depending on what order you're asking for. The one thing with the supreme court orders is the supreme court has to give us jurisdiction to modify

their orders, the family court. So every divorce decree, usually 95 percent are from, we'll say, family court has concurrent jurisdiction with the supreme court to modify or enforce these orders. But it doesn't matter. The modification, you can always file for modification. Again, it has to be a change of circumstances. It's not as strict as a child support but there has to be a change of circumstances, in a sense, for any modification. You can file a modification for relocation purposes because you're moving or educational things. The one thing with relocation, I mean a lot of people come in filing a relocation petition but it really is either a custody or modification petition, just asking to modify the existing order so one parent can leave the jurisdiction. I mean technically, if you live in Manhattan and you--one parent lives in Manhattan or both



parents live in Manhattan, and one parent moves over to Trenton or Hoboken, right over the, you know, a few minutes away, close, easier to get to than Queens, basically, I mean, there wouldn't really be an issue. I mean the primary thing or decision with a relocation, again it's best interest, and it could be the child's education, or it could be some sort of child's neighborhood--the child may be in danger a little bit and they're moving the child to a neighborhood where they think the child can grow and be more secure, that's possible. But also it always has a direct impact on the non-custodial parent. Then if the non-custodial--you can't impede on the non-custodial parent's rights to significant and meaningful contact with their child. So it depends. I mean sometimes you do it, which will get into... Again, but the fact that the court considers in a modification, it's

everything. Again you know, it depends on the situation. It could depend on anything. Same factors that went into the custody determination, new factors in this, age of child, the consent of the child possibly depending on the age of the child. A 15 year old child--every child in a family court is appointed a lawyer on a custody / visitation case. The attorney for child is on every family court case, custody or visitation, in the State of New York, to represent the child's interests. And obviously a three year old child doesn't have as much of a say as a 15 year old child.

Also, custody / visitation in a family court is only up to the age of 18. Whereas we said, child support's up to the age of 21. An 18 year old can basically sign themselves into the army or military, leave the house and go out on their own, and there's really not much a parent can

do to prevent them because an 18 year old is considered an adult in a lot of aspects of the law in New York State, at 18. However, parents are fiscally responsible for children up to the age of 21. So sometimes there's a conflict there in New York State. You know, in a lot of states it's 18, 19, but in New York State, child support is to 21. So just understanding that if a child leaves, and a child is 19, and goes to live with the parent, a different parent at that point, we won't modify the custody order, can't modify the custody / visitation order but the child support order can be modified. Because child support is up to the age of 21. And a custodial parent can get child support up to the age of 21.

Visitation, who else can file for visitation? Obviously we said the parent can file for visitation. The only - - else, visitation is very limited. Aunts,

uncles can't really file. We'll file the petition because the family court has to file but you don't have an automatic standing to file. I mean, under the law basically it's only parents, grandparents. Grandparents have an automatic right if a parent is deceased. I mean you want to keep the connection between the families or a child should know both his father's side and mother's side, or both parents' side of the relationship. However, if there's grandparents, the parties are together and they both agree that a grandparent shouldn't visit, file, or have visits with their child, they can argue that and the court will, for the most part, unless there's extraordinary circumstances, respect the parents' decision not to let other non-parent relatives visit with the child. So a grandparent can file but there's some limitations for when. Also a sibling or a

half-sibling can file. So sometimes basically if there's a new relationship, or different parents, or different families, but there's half-siblings, had the same father, had the same mother, or siblings living in different household or households, they can file or somebody can file on behalf of those children to visit with each other so they keep the connections as siblings and half-siblings.

Getting into filing for visitation or custody of a child outside the state. I mean you know we spoke earlier about URIFSA. There's also federal statute called UCCJEA. It's the Uniform Child Care, Child Custody Jurisdiction and Enforcement Act. It's similar but it's not the same. I mean this one has a home state rule. Wherever a child legally resides for six months becomes that child's home state. All issues of custody or visitation should be

dealt with in that state for initial determination of a custody or visitation order.

So basically if somebody lives in New York for four years and the parties move to or the child and custodial parent move to Jersey, and they live there for seven months, any custody / visitation orders would have to be entered in New Jersey. This gets complicated because it does conflict with child support and visitation. I mean, child support and custody / visitation do conflict where you can have the child support case pending in one state, depending on how it was filed, and a custody / visitation pending in another state. So it can get complicated but the idea was that both of these statutes or federal laws was to make one order. Years ago, people would have conflicting orders in different states. They would go into their local court at

whatever state they lived in and file, and then there was all these conflicting orders. This was to centralize and create one order. So if New York State makes the order, as long as one party still resides here, custody / visitation should be dealt with here or will be--it could be filed here. There are certain criteria under there like - - , whatever it may be. There might be certain situations where New York could say we no longer have jurisdiction in this matter, it should be filed in the child's home state or the other state. So there's always a fight over it but understand this is a procedure to obtain jurisdiction if somebody lives outside New York State in child support, or custody, or visitation. There's ways to obtain jurisdiction. There's a provision for long-arm jurisdiction where you can maintain a family court case, a New York State court case, but use the

long arm of the law they used to say, right, where you can obtain or reach outside New York State, serve that person, and make them fall under the jurisdiction of New York State or family court when it comes to these provisions.

Also modifications, any modifications, if you have an order from another state, New York State family court can modify it. You have to bring us a certified copy. It must be registered. All out of state orders must be registered in New York State. And you can file your modification or enforcement petition after. It's deemed registered immediately upon, the same day as filing, but it's officially not registered for 21 days, and notice will go out to the other side to serve them--go out to the other side to see if they want to object to the registration of the proceeding.

MR. CAIRNS: Just to wrap up on



that, the family court is open to the public. There are no fees to file petitions in family court. You can request an attorney. It does not guarantee that you will get an attorney. We have web sites that you can go to, to get further information on this topic if you wish to do so. My name is J--my web site is jcairns, C-A-I-R-N-S, at courts dot state dot ny dot us. If you have any questions you can forward them to me and we will attempt to get you answers to those questions.

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