

Child Custody and Visitation

1. **Q. DO MOTHERS AUTOMATICALLY GET CUSTODY OF THEIR CHILDREN WHEN PARENTS SEPARATE?**
 - A. The courts of most states, including North Carolina, do not establish an automatic preference for either mother or father, but they do look very closely at which parent will best promote the welfare and interests of the children of the couple. As a general rule, parents are joint guardians of their children, with equal rights to custody and control, in the absence of a court order.
2. **Q. WHAT KIND OF FACTORS DO THE COURTS CONSIDER IN GRANTING CUSTODY?**
 - A. They usually look at who has primarily taken care of the child during the marriage (for example, washing, feeding, and clothing the child, or helping the child with homework), who has the best approach to discipline, who has cared for the child since the separation (if the couple has already separated), what work schedules either or both parents have, how each parent can provide for the physical, emotional, educational, religious and social needs of the child, and the temperament and character of each parent.
3. **Q. CAN THE COURT AWARD ATTORNEY'S FEES TO ME IN A CUSTODY CASE?**
 - A. Under North Carolina law, if the person asking for attorney's fees is acting in good faith and is unable to afford the legal expenses of the lawsuit, it is possible (but not mandatory) for the court to award reasonable attorney's fees as part of the custody order.
4. **Q. DO I HAVE TO FILE FOR CUSTODY IN NORTH CAROLINA?**
 - A. Not necessarily. While usually a custody suit is filed where the child is presently residing, a person can file an action involving custody of a minor child in the "home state" of the child (i.e., where the child has lived for the last six months) or in any state where the child and one parent have substantial and significant contacts and connections (such as former neighbors, teachers, doctors, relatives, and so on). If this would be in another state, you may file there.
5. **Q. HOW CAN THE ISSUE OF CUSTODY BE RAISED?**
 - A. This is done by filing a complaint with the court. The complaint for custody must be served on the other parent. After that, a hearing may be scheduled on custody and visitation rights.
6. **Q. CAN A CUSTODY ORDER BE CHANGED?**
 - A. No custody order is ever "permanent." However, once a parent is awarded custody in a court order, the judge can change the custody order only if there is a substantial change in circumstances since the time of entry of that prior order. It must be proven that the change has a direct impact on the child's welfare. The change may be either beneficial or adverse. The change in circumstance must be such as to require a change of custody, not some lesser change (such as a change in visitation schedule).

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7. **Q. WILL MY SEPARATION AGREEMENT PROTECT ME FROM THE OTHER PARENT SNATCHING MY CHILD?**
- A. No. A separation agreement is only a contract between you and the other parent. It is not a court order unless it is incorporated into a decree or order of a court. A court order is enforceable by contempt of court. Court orders of one state can be filed and registered in another state and thus be treated as if they were issued by the second state for purposes of enforcement. None of this applies to separation agreements.
8. **Q. CAN I REGISTER A COURT ORDER FROM ANOTHER STATE HERE IN NORTH CAROLINA SO THAT NORTH CAROLINA CAN TREAT IT AS ONE OF ITS OWN DECREES FOR PURPOSES OF ENFORCEMENT?**
- A. Yes. You may file and register the other state's decree with the Clerk of Superior Court at the county courthouse. You may want to register the decree in the county where you reside or in the county where the other parent lives.
9. **Q. IF ANOTHER PARENT DOES NOT LIKE THE PRESENT CUSTODY ORDER, CAN HE OR SHE FILE FOR CUSTODY IN ANOTHER STATE?**
- A. Under the Uniform Child Custody Jurisdiction and Enforcement Act, the court in a custody case must always inquire into whether the child or children have been the subject of custody litigation in any other state. When a judge finds that another court has made an award of custody, the judge should refuse to rule on the case and refer the parent to the court that originally entered the custody order. Only if that original court no longer has jurisdiction and has released or transferred jurisdiction to the new state court may that court assume jurisdiction to hear the custody case (unless there is an immediate and clear emergency affecting the child's welfare).
10. **Q. WON'T CUSTODY BE SETTLED WHEN I OBTAIN A DIVORCE?**
- A. Divorce decrees do not necessarily settle custody matters. A custody order can be entered before or after a final decree of divorce in North Carolina.
11. **Q. MY DAUGHTER IS TWELVE. CAN'T SHE TELL THE JUDGE WHERE SHE WANTS TO LIVE?**
- A. In North Carolina, the child's preference between parents is an important factor to be considered when deciding the issue of custody. However, the child's preference is not conclusive or binding on the issue of custody. There is no set age for when a child can testify.
12. **Q. CAN ALL CHILDREN TESTIFY IN COURT AS TO THEIR PREFERENCE?**
- A. The courts do not allow every child to testify as to his preference. Whether a child is old enough is a matter to be decided by the trial judge. This means that the judge must decide that the child is capable of testifying truthfully.
13. **Q. HOW CAN A JUDGE DETERMINE WHETHER A CHILD IS ABLE TO TESTIFY?**
- A. The trial judge must determine that the child is "of sufficient age, discretion and maturity" so that he can formulate and express a rational opinion as to custody. If you have other questions in this area, please ask for Client Information Letter Number 50, "Testimony of Your Child."

14. **Q. CAN A NON-PARENT OBTAIN CUSTODY OF A CHILD INSTEAD OF A PARENT?**
- A. There is a parental preference rule which states that a birth parent (mother or father), who is of good character and who is a proper person to have custody of the child, is usually entitled to custody against all other persons. If, however, the parents have abandoned, abused, or neglected the child, then a third party can intervene to request custody.
15. **Q. IF MY SPOUSE IS GRANTED CUSTODY, WILL I GET VISITATION RIGHTS?**
- A. Ordinarily, the noncustodial parent is entitled to reasonable visitation rights with a minor child except in extraordinary situations, such as when the noncustodial parent has a history of abusing or neglecting the child. Visitation can be flexible and unstructured, assuming the parties can get along and agree on the times and terms of visitation, or it can be highly structured and rigid, with certain days and times set out with great specificity. Ask for our Client Information Letter Number 32 on specific visitation rights to see the options available in this area.
16. **Q. WHAT IF I HAVE OTHER QUESTIONS?**
- A. Please feel free to ask our attorneys. They are here to help you.

