

Family Matters e-Newsletter



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News For August 2016

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Is an Uncontested Custody Order Right For You?

By Amy A. Edwards

Times are changing. Parents, especially single parents, are looking at the big picture and the final product, the custody order. This is in contrast to the way so many parents used to resolve cases before the economic downturn several years ago. Now, people are thinking twice about spending the time, money and heart-ache of traditional trials unless it is truly necessary. An uncontested child custody order means both parents agree on matters related to child custody and neither parent wants a judge to make a ruling after a trial. An order like this is useful where parents have an agreed-upon schedule, including regular visitation times, holidays such as Christmas and Thanksgiving, special occasions and summer vacation.

Court Orders v. Informal Agreements

If parents do not have a formal signed agreement such as a separation agreement or a court order, the law presumes both parents have equal rights, such as visitation rights. In some ways, it means neither has any rights against the other because there is no tie-breaker to make a final decision in a dispute. Parents are always free to file a lawsuit for custody and litigate their case in court. But sometimes when parents have a regular

schedule they use, they are fairly comfortable with the honor system but they worry about what will happen if the other parent stops abiding by it. For example, the co-parenting relationship can suddenly change when a parent begins dating someone seriously or gets married.

An Overview of Court Orders

A child custody order is signed by a judge, either after a contested trial or by consent without the need for a judge to make a ruling (*i.e.*, a consent order). Like all custody orders, an uncontested custody order can be enforced by the contempt power of the court if a parent intentionally violates it when he or she has the ability to comply with it. Also like all custody orders, if there is a significant change in circumstances in the family in the future, the court can revisit the order to decide whether it should be changed accordingly. Another benefit of court orders is they can be registered in other states if a parent relocates. All custody orders remain in effect until a child reaches the age of majority, age eighteen in North Carolina.

The Role of the Attorney

This type of legal service is called unbundling, which means an attorney is hired to do one specific task instead of doing everything from start to finish. Instead of the traditional representation, such as negotiation, civil discovery and a trial, we complete the process necessary to obtain an uncontested custody order. It is important to understand that an attorney can only represent one parent, even if the parents agree to the terms of a custody order. Of course the other parent has the right to have his or her attorney review the order.

Our Flat Fee & Court Costs

In response to numerous calls we've received from parents seeking to merely formalize their informal agreements with child custody orders, we're now offering professional services to do just that by charging a flat fee combined with a payment plan. But, this service applies when the parents *agree* on the terms of the order, not if they are negotiating with each other.

Our fee for an uncontested child custody order is \$2,500.00 which includes a 30 minute child custody consultation and the cost for one attempt to serve the other parent by certified mail. If no previous lawsuit was filed in your case, you must also pay the court costs to file one. The current cost paid to the courts to file the lawsuit is \$225.00 although the

state periodically increases court costs. In certain circumstances, the courts also charge \$20.00 to schedule a date for the judge to sign the order. Court costs are unrelated to our fee. We also offer a payment plan for uncontested custody orders. We require \$1,000.00 to be paid at the time we are hired, along with payment of any court costs. The remaining \$1,500.00 in fees may be paid at the rate of \$250.00 per month for six months, beginning thirty days after the original payment is made. All payments may be made by credit card via our secure [client portal](#).

Look at school calendars for [Pitt County Schools](#) and local [private schools](#)

Look at [Custody and Visitation Topics to Address](#)

* We reserve the right to change fees/costs by revising or removing this page from our "client portal" page on our web site.

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of August 2016.

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Can I "Give Up My Rights" as a Parent?

Especially when child support is pending, some people mistakenly think they can avoid paying support, or avoid the other parent seeking visitation, if one parent surrenders parental rights. Because parents have legal duties to their children, and because various rights as next of kin flow from parents, there are very few occasions when "giving up" parental rights is legally possible. Courts are extremely hesitant to legally erase a parent from a child's life unless there is another adult stepping up to legally assume that role. Making sure the parent is in fact the parent (maternity and/or paternity and/or legitimation) is a legal determination, and this article assumes these designations have been made.

Duties and Rights of Parents

Parents naturally have constitutionally protected rights to the care and custody of their children. So long as they meet their basic responsibilities as parents, the state has little say about their parenting so long as the children are adequately cared for and safe. Parents have a legal obligation to support children or pay child support but there are other legal benefits to which children are entitled. Children, both natural and adopted, have rights such as social security death benefits, military benefits rights, and legal claims for wrongful death of parents in appropriate cases, and inheritance rights, to name a few. Children have legal benefits from a parent even if that parent fails to pay child support or is a parent in name only.

How Are Rights Given Up?

Choosing not to pursue visitation with your child is quite different from surrendering your legal rights as a parent. One example of surrendering parental rights is found in North Carolina's safe surrender laws, for infants seven days old or younger. Parents who would otherwise abandon an infant are given legal protection from criminal prosecution if they leave the infant with an appropriate agency or individual, such as a social worker, law enforcement officer, or an emergency medical service worker. NC Gen. Stat. 7B-500 *et seq.*

A parent can give legal consent to allow the NC Department of Social Services (DSS) to facilitate an adoption by a step-parent if the other parent has remarried and he or she desires to adopt, or adoption by a third party. The state then assigns new parents who legally assume the rights and duties of parents. If only one parent consents to an adoption, it becomes a complicated legal matter beyond the scope of this article.

When a parent is unable or unwilling to appropriately parent a child, DSS will independently initiate legal proceedings to protect a child. When DSS becomes

the legal custodian of a child, parents are typically given access to resources to assist them, such as substance abuse treatment. If the assistance is not accepted or the parents cannot or will not parent the child, the state (or a third party) may initiate legal action called "termination of parental rights." If the parental rights are terminated, DSS will often clear the child for adoption.

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What Is Family Court?

By Amy A. Edwards

In some North Carolina counties, including [Pitt County](#), there is a specific [Family Court Program](#) devoted to cases involving child custody and support, alimony and equitable distribution (division of

marital property). In Pitt County we have a Family Court Administrator and two Family Court Coordinators. I'll call the program FC for Family Court.

What's the Role of Family Court?

FC operates behind the scenes kind of like air traffic controllers, herding judges, attorneys, unrepresented people and miscellaneous others through the court system in family law cases. Their objective is to help everyone navigate the court system. Contrast FC with clerks of court who are frequently in the courtroom keeping track of exhibits, swearing or affirming witnesses to testify, and having documents available for the judge during the trial. Judges have staff members who support the judges. However, judges preside over more than just family law cases. For example, judges handle cases in criminal court and traffic court.

What Does Family Court Do?

FC follows each case and enforces the local rules that apply to the procedures attorneys, parties, and judges must follow. In consultation with the judges, FC has some discretion to make certain administrative decisions, such as facilitating routine requests to continue cases. This helps keep the process moving along a bit quicker. FC monitors the completion of cases, prodding them to be resolved one way or the other instead of letting them linger unresolved if people drag their feet.

Annually, the North Carolina Judicial Branch, attorneys and citizens have to advocate strongly to keep FC programs from being cut out from the state budget. Some people don't realize the money saved by the state and time saved by the judges by employing additional employees to operate Family Court. After all, nobody gets married (or has children) expecting to be a party in a lawsuit in the midst of a crisis. They deserve a system that is responsive and gives them a timely resolution.

The Old System

Courtroom time is a limited and precious resource. There are many more cases to be heard than there are judges to hear them. A key function of FC is to assign "real" court dates for trials. Although each judge and lawyer was absorbed in each case, there was no effective mechanism for managing the "big picture" of court. FC became that mechanism.

Before FC, attorneys had calendar call several times a month, each time taking 60-90 minutes of the judge's time to hear attorneys argue why their cases were truly emergencies important enough to receive courtroom time. Routinely, well over 100 family law cases were scheduled for a one week term of court in Pitt County. If a five day long trial was scheduled to be heard that week, none of the other cases were heard. Then, an avalanche of orders continuing all the other cases had to be prepared by attorneys, sent to the judge's office to be processed, signed by the judge and filed in the clerk's office creating stacks of documents to be maintained and tracked. Cases took years to wind through the system.

The Benefits of Family Court

The old system not only wasted judges' time, it wasted attorneys' time, costing clients more. Attorneys would have to repeatedly prepare for court every couple weeks as new events and incidents in the family arose because the case *might be* heard the next week. FC allows attorneys to better prepare our cases and minimizes inconvenience to parties and witnesses who were often placed on standby for months as cases were usually continued every two weeks.

Although many people don't recognize it, taxpayers save money with FC. Staff time is much less expensive than that of the judges. The fewer hours a judge spends dealing with things like scheduling trials, the better. Pitt County modernized our [local court rules](#) and created consistency by developing certain forms for routine matters. Because FC cases are assigned to judges, each judge knows the family dynamics. That alleviates the need for a judge to plow through a file (sometimes five or six inches thick) to familiarize himself or herself with the family before every hearing. This not only

makes court more efficient, saving the court resources, but it gives the parties better outcomes.

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Sincerely,
Amy A. Edwards

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