

TOP THREE (3) CUSTODY COMPLAINTS (AND MY ADVICE)

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If you are going through a divorce or a paternity case with children, and you absolutely hate your spouse/partner, I strongly urge you read this article.

First, as a custody lawyer, if there was ONE trait I could wish on all my clients, it would be MATURITY. That's correct, 95% of nasty custody battles happen because one, or both parties, are incredibly immature. So, the first piece of advice I give to those entrapped in these battles is: **GROW UP**. Seriously, **GROW UP!!!!!!** I understand that sometimes it's your SPOUSE/PARTNER that is immature. But as a famous Judge once said on the bench: "Mother Theresa does NOT marry Hitler". Your complaints reflect more about YOU as a person than the other person.

Below please find a compilation of the top 3 custody complaints my firm (and ALL family law judges) hear, ALL THE TIME.

1. He/she doesn't really want joint custody. He/she is only requesting that so he doesn't have to pay as much child support.

Even assuming this is true, barring any drug and alcohol dependency/addiction/domestic violence/psychological issues, or a moveaway, the Courts will assume that a joint custody parenting plan is in the best interests of the child.

Yes, it could be true: California's child support formula is found in Family Code section 4055, and TIMESHARE is a huge factor. So, if your spouse/partner is well-versed with Dissomaster and the Family Code, potentially, this could influence things. But, if there is a history of regular bonding with both parents, it will be very difficult prove that one party is requesting custody to simply avoid payment of child support

MY ADVICE: Work it out. Go to mediation to work out a good parenting plan. If there are no drug dependency/addiction/domestic violence/psychological issues, or if there isn't a pending MOVE across an ocean, JOINT legal and JOINT physical custody will be preferred and awarded, especially in a case where the child(ren) have had times of appropriate bonding with both parents. Joint custody is not necessary 50/50, just as quality isn't necessarily quantity. If you are willing to put the children first, knowing their schedules can help you figure out a good parenting plan. BE REASONABLE.

2. The children can't live without me. I raised them on my own. He/She was never around. They need to be with me, it's in their "best interests", so I should have full custody.

I generally hear this complaint from mothers of very young children (typically under age 5). It is somewhat true that young children (under age 5), generally spend more time with their moms – this is especially true in households where only one parent (typically the father) works. However, times have changed: nowadays, both parents do work. As such, it is natural to assume the child spends an adequate amount of time during the day away from both parents. Lesson? CHILDREN ADJUST.

Sometimes the children DO spend more time with one parent, particularly if only one parent works. However, in most divorces and/or separations, THINGS CHANGE. The law will NOT punish a working parent. If you are father that frequently travels for his job (i.e., 280 days of the year), you may need to get a new job in order to bond with the children. If you have historically been absent, there may be a period where you gradually "step up" to your eventual role as a "present parent".

If you are the stay at home parent, the award of joint custody may be shocking at first. But it may be an opportunity for the other parent to step up, and really be the parent you always wanted him/her to be. In addition, I have

been informed by several of my at-first reluctant clients that after the initial shock and adjustment, they actually prefer the shared custody because they now “get a break from the kids”.

MY ADVICE: Work it out. Accept this reality: divorce splits a home. Every child will need to go through an adjustment period. They may have seen mommy, or daddy, every single night of their lives. But now there are TWO homes, and there will be times where they will not see you. This is the harsh reality of divorce. But understand that as long as the co-parenting is peaceful, the times without the children will not harm their development. You may miss them, but they are with their father (or mother). It is GOOD, and what the Legislature intended – that the child(ren) maintain “frequent and continuing” contact (NOT “every single second and none to the other parent”) with BOTH parents. Remember, you and your spouse/partner are going through the divorce/separation, NOT the children.

3. He/She is an “unfit parent”. He/She does not cook, does not discipline, does not help them with their homework, does not dress them warmly, is dating an ex-convict/prostitute; take them to the doctor, _____ (insert complaint), etc, etc, etc.

Co-parenting is tough, EVEN WHEN YOU ARE TOGETHER. I am a co-parenting mother. In our home, you will frequently hear accusations of this sort flying back and forth:

“You are late picking up our daughter, again!”

“No, do NOT feed her McDonalds AGAIN for dinner.”

“Can you not hover over her? She needs to breathe!”

“WHY is she watching Princess movies again when I just bought three (3) books for her?”

“It is 80 degrees out, and you dressed her in a sweater. What is wrong with you?”

“It is 50 degrees out and you dressed her in a T-Shirt. What is wrong with you?”

“Uh, she has 103 fever!! You were with her all day, didn’t you THINK about calling the doctor, or ME?”

Oh, and, I am happily married (most of the time). Imagine co-parenting with someone you hate? EXPONENTIALLY more difficult.

MY ADVICE: Enroll in parenting classes and individual counseling. Why parenting classes? Duh. Why counseling? Because sometimes, it is EASIER to learn how to teach, feed, educate a child, than it is to learn patience and understanding of the other side’s parenting style. Let’s face it, someone is always going to be the more attentive/considerate parent. But that does not necessarily mean the other side is “unfit”. In my experience (both professionally and personally), once the more critical parent lets up, the other side will step up. Once the critical parent relinquishes control, the other side can feel un-judged, and assume responsibility. Individual counseling can greatly help. And, if you are the parent suffering criticism, enrolling in parenting classes can do wonders for your relationship! It may seem ridiculous and absolute surrender to a control freak, but I assure you, taking a parenting class once in a while is super worth your time. Even the world’s most perfect parents can use it one in a while.

Obviously, my article is geared towards custody disputes which do not involve child abuse, drug/alcohol addiction, domestic violence, and other demons which do clearly exist out there. When one of more of the above-mentioned factors are present, you are no longer able to deal with REASON. As such, a professional evaluation may need to be performed, and treatment applied before joint custody can be granted. However, having handled divorce and custody matters for over a decade, I can assure you: most divorcing/separating couples with children do NOT need court intervention. And those who tragically took that route will tell you that after hundreds of thousands of dollars, even after their children become adults, their situation has NOT improved. Learn from their lessons. Take my advice.

***Kelly Chang Rickert founded the Law Offices of Kelly Chang, A Professional Law Corporation. She is a Certified Family Law Specialist, and her firm specializes in Divorce and Family Law, and handles all areas of Divorce, Annulment, Spousal Support, Child Support; Modification, Child Custody and Visitation, Prenuptial and Postnuptial Agreements, Adoptions, Property Division; Restraining Orders; and Family Law Mediation. She has offices in Los Angeles, San Francisco and San Diego. Ms. Chang Rickert is married with children.*