

**CHILD CUSTODY**  
**FREQUENTLY ASKED QUESTIONS**  
**September 2, 2004**

**By: Todd R. Warren, Esq.**

1. What is the difference between the terms “Sole Custody” and “Joint Custody”?
  - Education
  - Medical Needs
  - Religion
  - Activities
2. How can you determine if you are a candidate for Joint vs. Sole Custody?  
(See Exhibit “A”)
3. What does the term “Primary Residential Parent” mean?  
(See Exhibit “B”)
4. What are the differences between:
  - Mediation
  - Conciliation
  - Arbitration
5. What does an “Attorney for Child/Guardian Ad Litem/Child Representative” do?  
(See Exhibit “C” – *Cite* – Section 2.93 of IICLE 2003 Handbook)
6. What are the differences between a Rule 215, Rule 604(b) and Rule 604.5 Expert?  
(See Exhibit “D”)

7. What kinds of evidence does the Court's consider?
  - Photographs
  - School Records
  - Children's Medical Records
  - Psychological and Psychiatric Evaluations
  - Witness Interviews and Statements
  - Child's Expressed Preference
8. What is Parental Alienation?
9. What is Temporary Custody?
10. How long can I expect all of this to take?
11. How much does this cost?
12. What can happen if I go to Court?  
(See Exhibit "E")

**EXHIBIT "A"**

**750 ILCS 5/602.1(c):**

“The court may enter an order of joint custody if it determines that joint custody would be in the best interests of the child taking into account the following:

- (1) the ability of the parents to cooperate effectively and consistently in matters that directly affect the joint parenting of the child. ‘Ability of the parents to cooperate’ means the parents’ capacity to substantially comply with a Joint Parenting Order. The court shall not consider the inability of the parents to cooperate effectively and consistently in matters that do not directly affect the joint parenting of the child.
- (2) the residential circumstances of each parent; and
- (3) all other factors which may be relevant to the best interest of the child.”

**EXHIBIT “B”**

**750 ILCS 5/602.1(d):**

“Nothing within this section shall imply or presume that joint custody shall necessarily mean equal parenting time. The physical residence of the child in joint custodial situations shall be determined by:

- (1) express agreement of the parties; or
- (2) order of the court under the standards of this section.”

**EXHIBIT C**

<b>PROCEDURE</b>	<b>ATTORNEY FOR CHILD</b>	<b>GUARDIAN AD LITEM</b>	<b>CHILD REPRESENTATIVE</b>
File Appearance	Yes	Yes	Yes
File Petitions	Yes	No	Yes
Interview Child	Yes	Yes	Yes
Interview Parent w/permission of counsel, who may be present	Yes	Yes	Yes
Interview Others	Optional	Optional Recommended	Optional Recommended
Investigate Home Situation	Optional	Yes	Yes

Confidentiality w/Child	Yes	No	Yes
Advise Counsel	Yes - Before Judgment No -At Trial	Yes	Yes - Before Judgment No -At Trial
File Report	No	Optional	No
Testify	No	Yes	No
Argue Evidence	Yes	No	Yes
Advocate	Yes	Optional	Yes
May Argue Best Interest even if contrary to child's wishes	No	Yes	Yes

## **EXHIBIT “D”**

### **Illinois Supreme Court Rule 215(a):**

“In any action in which the physical or mental condition of a party or of a person in the party’s custody or legal control is in controversy, the court upon notice and on motion made within a reasonable time before the trial, may order such party to submit to a physical or mental examination by a licensed professional in a discipline related to the physical or mental condition which is involved”.

### **750 ILCS 5/604(b):**

“The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel. Counsel may examine, as a witness, any professional personnel consulted by the court, designated as a court’s witness”.

### **750 ILCS 5/604.5(a):**

“In a proceeding for custody, visitation, or removal of a child from Illinois, upon notice and motion made within a reasonable time before trial, the court may order an evaluation concerning the best interest of the child as it relates to custody, visitation or removal. The motion may be made by a party, a parent, the child’s custodian, the attorney for the child, the child’s guardian ad litem, or the child’s representative. The requested evaluation may be in place of or in addition to an evaluation conducted under subsection (b) of Section 604”.

## EXHIBIT “E”

- “Court’s have broad discretion” See all cases.
- “Child Custody determination necessarily depends on temperaments, personalities, and capabilities of parties involved and trial court is in best position to evaluate those traits.” See *In re Marriage of Petraitas*, 201 Ill.Dec. 259 (1st Dist., 1993).
- “The *appellate court* reviewed the records, found that the 6 year old had not truly expressed a preference for either parent, and thus reversed the trial court for relying on the child’s alleged preference”. See *In re Marriage of Zucco*, 103 Ill.Dec. 558 (5<sup>th</sup> Dist., 1986).
- *In re Marriage of Werner*, 98 Ill.Dec. 178 (5<sup>th</sup> Dist., 1986), the court considered the mother’s allowing the children to wear dirty clothes, emotional abuse of one daughter, and bizarre behavior, including sifting through garbage before allowing its disposal. Locking food in the freezer, and locking clean clothes in the basement, as well as other factors as relevant to her poor relationships with most of the children and their poor relationship with her. *The Court awarded 5 of the 6 minors to the father and the 15 year old to the mother.*
- *In re Marriage of Uluhogian*, 41 Ill.Dec. 761 (5<sup>th</sup> Dist., 1980) custody of the parties’ daughters was split, with the 15 year old going with the father, which was her preference, and the 10 year old going with the mother, even though she also stated a preference for the father. The father’s testimony that he did not and should not have to cook, clean or wash dishes caused the court to question his ability to care for the younger child. Additionally, the teenaged daughter’s personality conflict with her mother was given great weight when awarding custody to the father.

\*Cite to IICLE 2003 Handbook for Case References