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COLORADO LAW IN A NUTSHELL: PARENTAL DISPUTES REGARDING THEIR CHILDREN

This is a very brief, very general introduction to Colorado law dealing with disputes between parents regarding their children. Nothing here applies to any other state. Nothing below legal advice. This cannot take the place of legal advice from a lawyer. You reading it and/or me providing it does not make us “client and attorney.” I only become someone’s attorney after both of us have signed a written Fee Agreement and the person has paid in good funds any required deposit or initial fee. You cannot make any decisions to take or not take action based on this information. Always talk with a Colorado licensed lawyer when you want legal information or advice for a Colorado issue.

WHAT ARE THE COLORADO CUSTODY, JOINT CUSTODY and VISITATION LAWS?

The terms “custody,” “joint custody,” and “visitation” no longer exist in Colorado law for new cases. Instead, the Judge or Magistrate enters orders regarding “**allocation of parental rights and duties.**”

The court order setting up the division of parenting time and which parent or party to the case makes what parental decisions is called a “parenting plan.”

“Parenting time” is the term used schedule the days each parent or party to the case has a legal right to be with the children. Previously, the terms were “residential custodian” and “visitation.” Usually, each parent/party to the case is awarded some parenting time with the children. The home of the parent/party to the case with whom the children spend the majority of their time is usually considered to be the children’s “official” residence. Parenting time is one part of a parenting plan.

The other part of a parenting plan lists which parent/party to the case makes what decisions regarding the children. Imagine a chart listing all the major decisions that parents make regarding the children, such as decisions about medical care (choice of doctor, consent to surgery, etc.); education (public school, private school, choice of classes); religious training or the lack thereof; and other major life choices (smoking, driving, dating, chores, discipline, etc.). Then, think of three columns next to each type of decision on the chart: “Mom decides”; “Dad decides”; or “ We Jointly Decide”. If one or both parties to the case are not a parent, substitute that person’s name in a column. Eventually, with or without an agreement, the judge will, in effect, fill out that chart as part of the parenting plan.

Usually, the more of the parenting plan that is done by agreement, the more satisfied each parent/party to the case is and the less expensive the case might be than if no or fewer agreements were reached. Of course, any agreements must be reviewed by the Judge or Magistrate and made an order; if not, the parenting plan is legally meaningless.

CAN PERSONS NOT A PARENT SEEK AN ALLOCATION OF PARENTAL RIGHTS AND DUTIES?

Yes, in some instances. Persons with whom a child or children have lived with, usually for at least six consecutive months, can seek allocation of parental rights and duties if they file a case while the child or children is living with them or within six months after the child or children stop living with them. An allocation may also be sought by any person if the child/children are not living with one or both parents, even

the child does not live with the person who files for an order allocating parental rights and duties. This subject is very complex, turns on the presence or absence of specific facts and thus is only very briefly discussed here.

WHAT ABOUT GRANDPARENTS?

The above discussion regarding persons with whom a child has lived continuously for at least six months applies to pretty much anyone, including grandparents.

If the six month rule does not apply, grandparents have very little “rights.” Generally, in such instances grandparents have no right to file “their own” legal case, but generally have a right to formally ask the Judge or Magistrate handling the parents’ case that the grandparents be added as a party to an existing case between the parents. Even if added, generally grandparents have little to no legal right to “demand” or get parenting time and/or decision-making over an objection of a parent.

Some lawyers claim they “specialize” in “grandparents’ rights.” I do not make such a claim. I almost never represent grandparents seeking “rights.”

WHAT IS THE DIFFERENCE BETWEEN A JUDGE AND A MAGISTRATE?

In Colorado, Judges are appointed by the Governor and stand for a retention vote thereafter. Magistrates are lawyers hired by a Judge or Judges and are assigned tasks by the hiring Judge or Judges. For family law cases, Magistrates generally have the same powers as a Judge and orders and/or decrees signed by a Magistrate have the same force of law as those signed by a Judge.

AT WHAT AGE DOES THE CHILD GET TO DECIDE?

Legally: never. Regardless of the child’s age, the final decision is made by the Judge or Magistrate.

Children under age 19 never get to make major decisions regarding themselves unless their parents or, if an allocation of parental decision making order exists, unless the parent have the legal right to make the decision agrees. Once a child is age 19, he/she is usually “on his/her own” unless determined to lack the mental ability to make his/her own decisions. Until then, the child is under the control of his/her parents and does not legally get to make major decisions.

Children mature enough to make reasonable choices do get to let the Judge or Magistrate know about their choices. Then, the child’s choices are one thing the Judge or Magistrate considers.

Practically: Mature children are often beyond the practical control of their parents and/or the courts. Thus, older teens often do get to choose, from a practical standpoint.

CAN I BRING A CHILD TO COURT TO TALK TO THE JUDGE OR MAGISTRATE?

Not without an order or at least an advance “okay” from the Judge or Magistrate.

Judges and Magistrates almost never allow a child to be in their courtroom and almost never talk to or allow a child to testify in a family law case.

Judges and Magistrates often appoint professionals to talk to children involved in family law cases and have the appointed professional report the child’s hopes/wishes and desires.

HOW CAN I FORCE THE OTHER PARENT TO SPEND TIME WITH OUR CHILD?

Typically you cannot force a parent to spend time with the child. Parenting time is a right, not a duty.

The “rules” regarding financial issues is different. Each parent has a legal duty to support their child or children. Those who fail to do so and who get caught may be punished by being sent to jail.

WHAT ABOUT CHILD SUPPORT?

Colorado has adopted a set of “child support guidelines” which are used to decide the amount of child support. The guidelines set child support based on the income of the parents, the number of children, and any special expenses regarding the children, such as health insurance, work related day care, and agreed upon private schooling. All the figures are put into a computer set to the Colorado guidelines and the computer figures out the total amount for support of the children. Then, that total is divided between the spouses based on their share of the total parental income. This is known as each parent’s “percentage share of income.” For example, if combined income of both parents is \$4,000 per month with one parent making \$3,000 and the other making \$1,000, the percentage share of income is 75% for the higher earning parent and 25% for the lower earning parent. Then, the higher earning parent’s share of the total support amount is 75%, and the lower earning parent’s share is 25%.

Once the incomes and the children’s special expenses are known, the amount of child support will be the same regardless of the age of the children or where the parents live. Therefore, issues regarding child support usually are only the amount of each parent’s income and then only when one or both parent does not work for regular wages. For example, sometimes there is a dispute as to the income of a self-employed parent. Bonuses, special job perks (free use of company car, etc.) are valued and become part of the income of the parent receiving them for figuring the amount of child support. If the child sleeps at least 93 nights at the home of the parent paying child support, usually that parent gets about a 15% discount on what otherwise would have been the amount of child support ordered to be paid.

Sometimes, parents “buy and sell” time with their children to get more or pay less child support or otherwise “trade off” things unrelated to child to get or give more time or to get more child support or pay less child support. Colorado law says children have their own independent right to be treated fairly under the law. Such “universal settlement” schemes are usually unethical but often do “get past” the Judge or Magistrate. While I do not represent children *per se*, I do not represent clients who use their child or children to “buy or sell” parenting time or to get other desired items that are not directly related to the child or children.

Usually, the parent with whom the child lives most of the time receives child support from the other parent.

Once child support is ordered, it never changes without another court order. Usually, the Judge or Magistrate will change child support if asked to do so if new figures would increase or decrease the “old” order by at least 10%.

Once child support is ordered, it never ends without another court order. Usually, the Judge or Magistrate will end child support if asked to do so when any of the following happen: the parent who was ordered to pay child support dies; a child dies; a child marries; a child gets a full time job or joins the military; or a child turns age 19 unless then still a full time high school student or then is disabled. Child support might never end for a disabled child, even when that child is age 30, 40, 50, or even older.

WHAT ABOUT COLLEGE OR OTHER POST-HIGH SCHOOL EDUCATION FOR CHILDREN?

Colorado law prohibits a Judge or Magistrate from ordering a parent to pay anything toward college or post-high school completion education for children

WE HAVE REACHED OUR OWN AGREEMENT ON CHILD SUPPORT. MUST THE JUDGE OR MAGISTRATE GO ALONG WITH IT?

No.

Child support is for children; not for the parent receiving it. The State of Colorado is very concerned about the welfare of children and through the process noted above has decided a minimum amount for child support. Therefore, the Judge or Magistrate usually will not approve an agreement for child support unless the amount is equal to or greater than the amount that would be required without an agreement. Sometimes, if the agreement is for less but not more than 10% less, the Judge or Magistrate will approve it. For the Judge or

Magistrate to give an “okay” to an agreement that provides for substantially less child support than per the Child Support Guidelines usually requires proof of very unusual and special circumstances.

ONE OF US DOESN'T WORK. HOW DOES THAT AFFECT CHILD SUPPORT?

Colorado law says each parent has the legal duty to financially support his/her children unless a “legal excuse” exists. The most common of these is are having full time care of a child under the age of 30 months; disability; or in some instances, attending school full or part time.

Absent a legal excuse for not working, the Judge or Magistrate will decide how much the non-working parent should be able to earn, and then use that amount to figure child support even if the person is unemployed.

ONE OF US COULD EARN A LOT, BUT TOOK A LOW PAYING JOB. HOW DOES THAT AFFECT CHILD SUPPORT?

If the Judge or Magistrate decides a parent is “voluntarily underemployed,” the Judge or Magistrate will decide how much the parent could earn if he/she worked a “real job,” and that amount is used to figure child support.

Many years ago there was a case about a lawyer who decided to be a cowboy. He quit his lawyer job and worked on a ranch, making lots less than he used to earn when he was a lawyer. The Judge decided that he should pay child support based on his earnings when he'd been a lawyer instead of based on his current income as a cowboy.

I HATE A COURT ORDER THAT JUST ENTERED. CAN I APPEAL?

Yes, if you file a timely Notice Of Appeal. Usually, that means within 49 days after the order's date.

An appeal often takes about two years. Legal fees could easily run in the \$10,000 range. The vast majority of child “custody” appeals are eventually denied.

Appeals are a speciality area of the law. Most family law attorneys do not represent people in appeals as unless one handles lots of them, it is not possible to really develop the important expertise.

I do not have the speciality expertise to handle appeals and thus do not do any appeals.

THINGS HAVE CHANGED SINCE THE LAST ORDER. CAN I GET THE OLD ORDER CHANGED?

Maybe.

Only a Judge or Magistrate can change a court order. Agreements by parents that are not filed in court and approved by a Judge or Magistrate are usually legally meaningless and unenforceable.

If the parents agree upon a change, their agreement is written up in legal terms and filed. Usually, Judges and Magistrates think parents know themselves and their children best and will sign a new order changing the old order as requested by the parents without any court hearing. Sometimes, the Judge or Magistrate feels a court hearing is needed. Remember: the State of Colorado has a legal interest in the welfare of all Colorado children and thus anything proposed by the parents must be approved by a Judge or Magistrate, including parenting plan changes and child support changes. Also remember: court orders are not suggestions; they are orders. Only a judge may change an order. So, an agreement by parents is legally meaningless unless and until signed off by a Judge or Magistrate.

Absent an agreement, to get an “old” order changed generally one must prove that since entry of the order, things have changed so much that if whatever is “new” was happening when the Court was about to enter the “old” order, the Judge or Magistrate would have decided things completely different.

With or without an agreement by the parents, the process starts with the filing of a Motion To Modify. It must state the “new” facts. There is a court filing fee for such a Motion.

If the change deals with child support, the cost of a “court fight” can be high, but often is not.

If the change deals with a parenting plan, without an agreement, be prepared for some huge expenses. Court cases over parenting plans (“custody”) often cost many thousands of dollars for lawyer’s fees and related expenses. A \$5,000 budget would be a very lean budget for such cases. Often, they run well over \$15,000. Often a “custody evaluation” is ordered. The cost of these start about \$2,500 for one child and two adults. If either or both parents has a new spouse or “significant other” person, the cost goes up.

The Judge or Magistrate can appoint a professional to work with the parents and try to come up with a parenting plan. The professional may also be told by the Judge or Magistrate to try to teach the parents how to better parent their child. The professional could be a lawyer, but is usually a child psychologist, social worker or the like. The professional becomes the Judge or Magistrate’s arms, legs, eyes and ears. Unless the Judge or Magistrate is “trying out” someone new, usually the Judge or Magistrate only appoints professionals in whom the Judge or Magistrate has great confidence. Thus, the practical effect is that usually most if not all of what the professional recommends should be done with the Motion is what the Judge or Magistrate ends up ordering.

The cost of the professional is usually split by the parents based on their incomes. The total amount could be anywhere from many hundreds of dollars to many, many thousands of dollars. The professional does not replace either parent’s lawyer, so the cost will be in addition to each parent’s lawyer’s fees. Persons determined by the Judge or Magistrate being too poor to afford such fees might have their share of the fee paid by the State.

The Judge or Magistrate can also or instead appoint a “*Guardian ad Litem*” (GAL). A GAL is a lawyer. The child is the GAL’s client. The GAL decides what he/she thinks is best for the child and presents that case to the Judge or Magistrate. The GAL does not replace either parent’s lawyer, so the cost of the GAL will be in addition to each parent’s lawyer’s fees.

WHAT ABOUT MEDIATION?

Mediation is often a good, very cost-effective way to reach a settlement on some or all issues.

A “mediator” is a neutral person whose job it is to help the parents reach an agreement on all or some issues. The mediator tries to help each parent see and understand the other parent’s position on an issue, suggests compromises, and generally tries to help each parent to “give and take a bit” so the case can be settled.

A mediator does not act as attorney for either parent, even though the mediator might be an attorney.

Anyone can call him/herself a mediator. Like any other occupation, some are better than others.

Mediators charge each parent a fee, usually based on the time spent. The Colorado Judicial Department sponsors a mediation program that is usually far less expensive than are private mediators.

I am a qualified Mediator.

CAN A PARENT “GIVE UP” A CHILD AND GET OUT OF PAYING CHILD SUPPORT?

Maybe.

Only a Judge or Magistrate can allow a parent to “give up” all parental rights and duties, including the legal duty to support his/her child. Usually, Judges and Magistrates do not allow this unless the other parent has married, has a stable marriage, and the other parent’s spouse is willing to and does adopt the child. Once a child is adopted, the adopting parent becomes the child’s legal parent for all purposes, including all legal rights and all legal duties.

HOW LONG DOES A CASE TAKE?

This depends on many things, including how busy the Judge or Magistrate is. In Denver, Jefferson or Adams counties it could be as quick as six months. In Douglas or Arapahoe counties, it is often lots longer. I don't practice in Boulder and thus don't know the typical time frame. In any county, the more disputes that exist and the greater the complexity of disputes means the case will take longer than would a fairly "simple" case.

If both parents agree to everything, and all paperwork is done correctly, it is possible to get a court order within a couple of weeks so long as, if a divorce case, the 90 day waiting period has run.

I CAN'T WAIT. HOW DO I GET A COURT ORDER CHANGED FASTER?

Either parent may ask for a "temporary order" to put in place a temporary modification of an existing order. For this to happen, usually an emergency or something very close to an emergency must be proven to exist.

CAN I GET MY ATTORNEY FEES PAID BY THE OTHER PARENT?

Maybe.

Often, this is part of the settlement of a case. If not, the Judge or Magistrate decides.

If there is a big difference between the income of the spouses, the Judge or Magistrate can order the "richer" parent to pay some or all of the attorney fees of the "poorer" parent. Whether this will be done in your case, and if done the amount ordered to be paid, is up to the Judge or Magistrate.

At my office, my client is responsible to pay my fee. If the Judge or Magistrate orders the other parent to pay some or all of it, whatever is actually paid is a credit on my client's bill.

HOW DO PEOPLE AFFORD A LAWYER?

Most persons don't have a special savings account "in case I need to hire a family law lawyer." They often need to finance hiring a lawyer by using one or more credit cards and/or taking out a loan. Sometimes, they have to turn to family or friends for financial help.

I accept Visa and Mastercard, but do not have any other "finance plans" for my clients. I generally require a security deposit, which may be paid by credit card. Think of it as a rent deposit with a landlord. I bill more or less monthly as the work progresses. Each month's bill must be paid by its due date, sort of like paying rent each month. The security deposit itself does not pay the bill unless the client fails to pay timely. At the end of the case, the security deposit is refunded.

Very low or no income persons in metro Denver might be able to find a free or low-cost lawyer via the Denver Bar Association's Metro Volunteer Lawyer Program (MVL). Access to MVL is via a financial eligibility screening done for it by Colorado Legal Services. Call 303-837-1313 and ask to be screened financially for MVL services.

MAY I BE MY OWN LAWYER?

Yes. But, Colorado law is clear that anyone representing him or herself is expected to know and follow all the rules and laws as if he or she was a Colorado licensed lawyer. Or, put differently, do not hope or expect the Judge or Magistrate will "cut you a break" because you are representing yourself without a lawyer.

Self-help forms, court rules, etc. can be found at www.courts.co.state.us/Courts/Supreme. Look for the "self-help /forms" tab in one of the upper tool bars. Most if not all district courts have a "self-help/*pro se* coordinator" where persons representing themselves can get broad, general information but cannot actually get a lawyer to handle their case. Self-help books are available at some large bookstores but be sure any such book was written by a Colorado lawyer for Colorado cases as the law varies widely from state to state. Also

be sure any such book either has a publication date in the last year or so or has a update edition. Think very carefully whether “being your own lawyer” is a reasonable or responsible choice. Orders in family law cases typically affect you and your child/children for many years. Even though lawyers are expensive, make a careful decision whether you desire a lawyer’s assistance. After all, lawyers do not just “wake up” one day and become a lawyer. At least 19 years of formal education is required, followed by passing a multi-day examination, followed by years of actual practice of Colorado family law. I have been doing family law cases since 1970.

SUPPOSE ONE OF US DOES NOT FOLLOW A COURT ORDER?

Court orders are not “suggestions”. Severe punishment could happen for a violation of a court order, including a jail sentence of up to six months and/or a fine of up to \$1,000 and/or an order to pay all attorney fees of the “innocent” spouse.

Usually, the only way a Judge or Magistrate knows of a possible violation of a court order is if a “injured party” tells the court of the problem. Typically, that requires a formal Motion For Contempt Citation. Then, the Judge or Magistrate conducts a trial to decide if the order was violated. If so, the Judge or Magistrate makes a ruling of “guilty” and can impose punishment.

WHAT IS THE COLORADO FAMILY SUPPORT REGISTRY?

The Colorado Family Support Registry (“FSR”) is basically a bank/bookkeeping system. As payments arrive, they are deposited by the FSR and recorded. After allowing time to be sure the payment will not “bounce,” the FRS issues its own check to the parent entitled to the payment.

Records of the FSR are official evidence as to when and in what amount payments were made. Thus, the payor need not keep “cancelled checks” or the like and the payee need not keep records.

If an order says “pay through FSR,” any payments made other than through the FSR are usually considered gifts having nothing whatsoever to do with the order to pay child support.

If a parent does not comply with the court order, FSR does nothing. The “injured party” needs to take his/her own action.

WHAT IS A CHILD SUPPORT ENFORCEMENT UNIT?

Each state has one or more Child Support Enforcement Units (“CSEU”). In Colorado, each county or at least each judicial court district has a CSEU. In Denver, the CSEU works out of the Denver City Attorney’s Office and is physically located at the Denver Department Of Human Services. In most other metro Denver counties, the applicable CSEU works out the applicable County Attorney’s Office.

The function of the CSEU is to obtain child support orders; to enforce existing child support orders; and to seek increases/decreases in existing child support orders as the CSEU feels is appropriate. It can and does file cases as a party and can and does get “added” as a party to existing cases.

Either parent (or non-parent, if supposed to be paying or receiving child support) can access the services of CSEU. As a governmental funded entity, CSEU’s services are free.

Each Colorado CSEUs works for what it considers to be the best financial interest of the child. It does not represent the child or a parent. It represents “the People of the State of Colorado.”

As each state has a CSEU “system,” a person in Colorado can use their “local” CSEU to try to find and collect child support against a parent who is in another state. Basically, the local CSEU sends to the CSEU where the other parent lives or works a request to establish a “local” child support order and then enforce it.

CSEUs have access to Social Security, I.R.S. and other governmental databases. Thus, a CSEU can often find where the other parent is working, addresses, and banking information.

DO I HAVE TO GO TO COURT?

Maybe.

If everything is settled and all paperwork is complete, it is “the norm” for orders to be mailed to the Judge or Magistrate, signed if found to be “in order” and “proper” by the Judge or Magistrate, and returned without a court trial or hearing.

If some or all issues are not settled, then a court trial or hearing is necessary regarding those issues.

WHAT IS YOUR WAY OF HANDLING DECISIONS IN MY CASE?

Lawyers have different styles. Some tell their clients what the client is to do. Other lawyers consider the client their “boss” and do what the clients tell them to do.

I know that decisions made in a case will affect the client’s life for many years. The case belongs to my client, not to me. The major decisions belong to my client, not to me. The decisions will affect my client’s life, not mine. Therefore, I do not “tell” my clients what to do and I do not criticize their decisions.

Instead, I see my job as being to help each client understand the various options and choices, the pros and cons of each, and my best guess what a Judge or Magistrate might do if no settlement is reached. Then, it is each client’s job to make the decision. Once the client has made the decision, it is my job to try to carry it out if the decision is lawful and ethical.

HOW MUCH WILL THIS CASE COST ME?

That cannot be known until the case is finished, as every case is different. This is because I generally do not offer to provide my services on a “flat fee” basis. I don’t because as Abraham Lincoln remarked when he was an active lawyer, a lawyer’s “stock in trade” is his advice and time. It is impossible to know at the start how much time and expertise will be needed for any case.

Instead of offering my services on a flat fee basis, I charge based on the time spent on your case and the value of certain “stock” documents I have developed if I adapt for use for your case and use them in your case.

Every case requires a certain minimum amount of work. I have no control over many factors that might affect the cost of your case, such as how reasonable you and your spouse might be; the skill of any other lawyers involved in the case; problems arising regarding other lawyers involved in the case; which Judge or Magistrate is assigned; which judicial district is handling the case; scheduling problems, and the like.

I do offer each client opportunities to “do some of the work” and thus save some of the expense. An example is very detailed worksheets I have developed to gather the information for some of the paperwork. Some clients do not like to fill out worksheets and thus that client’s case will be far more expensive than the case of a client who does carefully fill out the worksheets. Another example is mediation. Mediation is a good choice for some clients and could save a lot. Other clients do not want to sit with their spouse and try to mediate and for them, mediation is a bad choice.

I also give each client money saving suggestions. For example, each time a client calls me, there is a minimum charge for 12 minutes of my time, regardless of whether I spend 5 minutes or 12 minutes. By saving up questions and asking several on one call, a client can save a lot.

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