

The Truth About Father's Rights in New York

What You Need to Know



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The Good, The Bad, and The BS

The purpose of this eBook is to share with you the real inside information that relates to fathers' rights in New York, and how you can best prepare yourself for a case involving child custody. Specifically, this eBook addresses how you can most successfully overcome the arguments women make against 50-50 timesharing arrangement. Custody cases can be stressful, but understanding what to look for and how to navigate through these types of situations will help enormously.

Understanding your rights as a father and having an experienced child custody attorney representing you can help you navigate through the custody process and achieve a better outcome in your custody case. When thinking about your rights as a father you need to consider three things: the good, the bad, and the bs. Then you need to know how to proceed through the situations you'll most likely encounter.

The Good

Let's start with the good news. The good news is this is a great state to get divorced as a father, especially if you have custody issues, and especially if you pay attention to the following sections of this eBook. The reason is that our state does not have any legal presumptions as it relates to custody, and in fact, the judges here like to see as much shared physical custody as possible.

In the state of New York, child custody is determined based on the best interests of the child. While New York is not required to ensure parents have 50-50 custody, you can achieve this in one of two ways. The first is coming to an agreement with your spouse. The vast majority of divorce and custody cases are settled with a stipulated agreement. Beyond that, you will need to prove to the court that a shared custody arrangement (or even primary custody for father) would be in the best interests of the child. A good child custody attorney can advocate for you and help you prove this to court.

The Bad

The bad news, if there is any, is that some time ago there was a legal doctrine that the courts followed called the tender years doctrine. What that essentially meant was that when children were younger, the courts believed it was in their best interests to spend more time with their mothers. That doctrine has been abolished, and is not followed by the courts today, but the underpinnings of that, the actual thought processes behind that, can still creep into custody findings in the modern era. If you have a very small child who is the subject of your case, you need to be aware of this possible bias, and you need to have very specific arguments in place to help overcome some of these prejudices.

The BS

Now, the bs part about fathers' rights is that there are a lot of fathers' rights groups running around out there and there are some divorce firms out there who are pretending like fathers' rights are some unique development in the law or that they somehow exist independently of parents' rights in general. The truth is, there is no such thing as fathers' rights. Fathers have the same rights as mothers in New York. However, there is certainly danger in this messaging which makes men sometimes think that there are special rights they can assert in their custody cases. A lot of this fathers' rights messaging is just a marketing tactic for these firms to get more business. I'm not saying that marketing is a bad thing at all, but the danger in this is that it's very misleading to men in terms of how these cases should actually be handled, how they should be preparing their strategy and how they should be communicating to the courts about their custody cases. From personal experience litigating against "fathers' rights," firms, it can be a disaster for men when they lead with the idea that somehow, fathers have their own unique rights to an equal custody arrangement.

Common Arguments Made by Mothers

Depending on your relationship with your co-parent, she may try to do everything she can to prevent you from getting 50-50 custody. Some common arguments we see made by mothers are that the parties can't effectively co-parent, father's schedule won't permit 50-50 custody, or that it won't be in the best interests of the child for the parents to share custody equally. A common way that mothers most easily establish these arguments is by showing communications that happen at the beginning of a case that relate to arguments, unreasonable demands, and inflexibility when it comes to a child visitation schedule. It's important to be prepared to have a solution that combats every one of these arguments.

Argument 1: It isn't possible to co-parent effectively

The very first thing you need to consider is how you're going to communicate with your wife, or if you're not married, with the mother of your children. There have been way too many cases in which a father completely blows up his custody case before it even gets started.

So what should you do? Well, the best thing to do is to pretend like every conversation you have, every text you send to your wife, every Facebook or social media post that you make, is going to be reviewed by the judge who will be hearing your case. And actually, that's something that happens all the time. Evidence of negative communications is used day after day in courtrooms all over the country to impact child custody scenarios. I should know, because I've done it many times myself to limit visitation with the opposing party in a case. It's a good idea to be nice, and even more importantly, to be accommodating and flexible at the very beginning of your case. Why do I say this? This is so important because one component of having 50-50 custody is your ability to co-parent. Many times, men who get very aggressive about custody arrangements or refuse to be flexible at the beginning of the case, ultimately get that used against them for a 50-50 custody split. You do have to argue for as much time as possible while the case is pending, because that starts to establish a status quo, and if you have too little visitation at the beginning of your case, that can work against you as well. It's a very fine line, and a good lawyer should be able to help you navigate that issue.

Argument 2: Father's schedule can't accommodate a 50-50 custody agreement

The second argument that is made against a 50-50 custody arrangement is that father's schedule simply cannot accommodate it. Almost always this has to do with the father's work schedule, and his inability to spend time with the kids

during his periods of responsibility. Another component of setting yourself up for success is getting your schedule in shape so that you can actually demonstrate to the court that a shared custody arrangement is appropriate. If it is possible to vary your workdays to better accommodate your visitation schedule, you should absolutely do that. You should also be committed to taking your children to extracurricular activities during your periods of responsibility. It's understandable if you can't always do that, so make sure you also have contingency plans in place that might include something like the kids' grandparents taking them or someone else helping you to accommodate the childrens' needs.

What is NOT a good idea is proposing that your new girlfriend will watch the kids or take them to extra-curriculars. While the courts are sympathetic that your time is your time with the kids, it is often possible for the other side to defeat shared custody by showing that you will not actually be able to be with the kids on your time. Even if you haven't been able to spend that much time with your kids in the past, you should start making that effort right now. The court will look at what the parties have done while the case is pending, so if your divorce case is pending for a long period of time, that will give you an opportunity to demonstrate that a shared custody arrangement can work. In a number of cases in which our firm has represented mothers and argued that this was too little too late, the court has still recognized this effort and rewarded fathers for it. It's never too late to get fully involved with your kids.

Argument 3: This isn't in the best interests of the child

The third mistake that many men make, and that unfortunately many fathers' rights law firms make as well, is not framing their proposed custody schedule in the concept of the best interests of the child. The legal standard as I've said is always going to be what is in the best interests of the child. That legal standard trumps any rights that you think you have in these cases and will always be applied by the court. Women will often argue that a 50-50 custody arrangement is not in the best interests of the child. So again, the focus here should be on the value you're adding as a parent. The most obvious arguments are that children are usually very bonded with both parents and that a father can provide a unique experience to the children. Some psychological studies have shown that a father's role becomes even more important than mother's when it comes to same-sex children. As your sons gets older, there is some evidence to support the idea that it is more important for them to spend time with their father than with their mother. However, this always has to be presented as being in the best interests of the child.

Finding the Right Attorney

Finally, how do you select an attorney that is right for your case? First, do NOT select a firm that is advertising as a fathers' rights law firm, especially if the firm does a lot of advertising in the community. While these firms' marketing is usually fairly aggressive, the truth is that the attorneys at these firms spend much of their time readjusting their clients' expectations. The other problem is that these firms are always representing men, and they're known in the community for that. Often the courts will take their attorneys' arguments less seriously because they are always arguing that 50-50 custody is in the best interests of the child, regardless of the situation, ultimately affecting that lawyer's credibility with the courts.

What you should really be looking for is someone who practices in the court and in front of the judges who will likely hear your case. You do not need a "bulldog" attorney. These types of lawyers often do more harm than good in custody cases. Instead, you should be looking for an attorney who can stand up for you and say no when saying no is appropriate. One of the easiest things you can do is to imagine that you're going to court and you won't allowed to say a single word to the judge. Imagine that only your lawyer can communicate on your behalf. If you are not 100% confident that the attorney you're interviewing could do that effectively, you need to keep looking for an attorney.

Finally, if you have a particularly difficult case, or you are going to be making a big ask to the court, you may consider hiring a female divorce attorney. We realize that recommendation is colored with some cynicism, and it sounds sexist, but think that about it on a deeper level. It is sometimes easier for a judge to consider a custody proposal more reasonable when it is made by a woman on behalf of a man, than if it is made by a man on behalf of a man. That's just human nature.

Conclusion

No parent wants to face a custody case, but it is a reality that separated parents will have to face. Although it isn't fair, as a father facing a custody case, it can be more difficult to achieve 50-50 custody or full custody than a mother, but it's not impossible. In fact, with a knowledgeable and skilled attorney advocating for you and fighting for the best interests of your child it can be more possible than you might think.

If you are facing a custody case, it is vital that you pay close attention to the contents of this eBook because it will do you wonders in improving your ability to get an equal time-sharing custody arrangement in your case. At Brian D. Perskin & Associates we will help you to determine what type of divorce will be best for you, including uncontested, mediated, collaborative and litigated divorces, and we'll help you figure out the roadmap to the successful resolution of your custody issues.

Hang in there. We know this isn't easy, but we'll do everything we can to help you get through the process and achieve your desired outcomes.



New York Divorce Attorneys

Every custody case is unique and requires a thoughtful approach. At Brian D. Perskin & Associates we understand just how challenging it can be to facing a custody case. We are here to help you navigate the custody process and inform you of your rights as a father.



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