



## CHILD CUSTODY

This brochure has been made available in your community by the following CALDA member:

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*This guide will help you understand the basics of custody and visitation orders available under California law. We have tried to answer many of the most frequently asked questions about the process and address the available procedures in California*

The following information was derived from the Judicial Branch of California, California Courts On-Line Self-Help Center

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This section will help you understand some legal words that are used in family court to describe the sharing of parenting responsibilities. For example, you will often hear the words “custody” and “visitation” being used in separation and divorce cases. “Child custody” refers to the rights and responsibilities between parents for taking care of their children. In your case, you will need to decide on custody. You also have to decide on “visitation” which means how each parent will spend time with the children.

In California, either parent can have custody of the children or the parents can share custody. The judge makes the final decision about custody and visitation but usually will approve the arrangement (the parenting plan) that both parents agree on. If the parents cannot agree the judge will make a decision at a court hearing. The judge will usually not make a decision about custody and visitation until after the parents have met with a mediator from Family Court Services.

### ***Types of custody orders***

There are two kinds of child custody:

- Legal custody, which means who makes important decisions for your children (such as, health care, education, and welfare)
- Physical custody, which means who your children live with

**Legal custody** can be:

- Joint, where both parents share the right and responsibility to make the important decisions about the health, education and welfare of the children.
- Sole, where only one parent has the right and responsibility to make the important decisions about the health, education and welfare of the children.

Parents with legal custody make decisions or choices about their children's:

- School or child care
- Religious activities or institutions
- Psychiatric, psychological or other mental health counseling or therapy needs
- Doctor, dentist, orthodontist or other health professional (except in emergency situations)
- Sports, summer camp, vacation or extracurricular activities
- Travel
- Residence (where the children will live)

Parents who both share legal custody have the right to make decisions about these aspects of their children's lives but they do not have to agree on every decision. Either parent can make a decision alone. However, to avoid having problems and ending up back in court both parents should communicate with each other and cooperate in making decisions together.

**Physical custody** can be:

- Joint, which means that the children live with both parents.
- Sole or primary, which means the children live with one parent most of the time and usually visit the other parent.

Joint physical custody does not mean that the children must spend exactly half the time with each parent. Usually the children spend a little more time with one parent than the other because it is too hard to split the time exactly in half. When one parent has the children more than half of the time then that parent is often called the "primary custodial parent."

Sometimes, a judge gives parents joint legal custody but not joint physical custody. This means that both parents share the responsibility for making important decisions in the children's lives but the children live with one parent most of the time. The parent who does not have physical custody usually has visitation with the children.

### ***Types of visitation orders***

Visitation (also called "time-share") is the plan for how the parents will share time with the children. A parent who has the children less than half of the time has visitation with the children. Visitation orders are varied, depending on the best interests of the children, the situation of the parents and other factors. In general, visitation can be:

- **Visitation according to a schedule:** Generally, it helps the parents and children to have detailed visitation plans to prevent conflicts and confusion, so parents and courts often come up with a visitation schedule detailing the dates and times that the children will be with each parent. Visitation schedules can include holidays, special occasions (such as, birthdays, mother's day, father's day and other important dates for the family) and vacations.
- **Reasonable visitation:** A reasonable visitation order does not necessarily have details as to when the children will be with each parent. Usually these orders are open-ended and allow the parents to work it out between them. This type of visitation plan can work if

parents get along very well and can be flexible and communicate well with one another. However, if there are ever disagreements or misunderstandings this kind of an open schedule can cause issues between the parents, and the children may suffer as a result.

- **Supervised visitation:** This is used when the children's safety and well-being require that visits with the other parent be supervised by you, another adult or a professional agency. Supervised visitation is sometimes used in cases where it is necessary for a child and a parent to become more familiar with each other, for example, if a parent has not seen the child in a long time and they have to slowly get to know each other again.
- **No visitation:** This option is used when visiting with the parent, even with supervision, would be physically or emotionally harmful to the children. In these cases it is not in the best interest of the children for the parent to have any contact with the children.

### ***The law on deciding custody and visitation***

The law says that judges must give custody according to what is in the "best interest of the child." To decide what is best for a child the court will consider:

- The age of the child
- The health of the child
- The emotional ties between the parents and the child
- The ability of the parents to care for the child
- Any history of family violence or substance abuse
- The child's ties to school, home and his or her community

Courts do not automatically give custody to the mother or the father no matter what the age or sex of your children. Courts cannot deny your right to custody or visitation just because you were never married to the other parent or because you or the other parent has a physical disability or a different lifestyle, religious belief, or sexual orientation.

In addition to custody orders the judge will probably also make child support orders. Keep in mind that a child support order is separate from child custody and visitation so you cannot refuse to let the other parent see the children just because he or she is not making the child support payments that the court ordered. Also, you cannot refuse to pay child support just because the other parent is not letting you see your children. Child support and custody are related because the amount of time each parent spends with the children will affect the amount of child support.

Sometimes, if giving custody to either parent would harm the children, courts give custody to someone other than the parents because it is in the best interest of the children. Usually this is called "guardianship," where someone who is not the parent asks for custody of the children because the parents cannot care for them.

### ***Ways to get a custody and visitation court order***

In most cases parents can make their own agreements for custody and visitation without a court order. If you make an agreement between the two of you the agreement becomes binding and enforceable. But if one of you does not follow the agreement a court cannot enforce it until it becomes a court order. So, if you and the other parent agree on custody and want a court order that either of you can enforce if one of you violates the agreement, you can turn in your

agreement to a judge. The judge will probably approve the agreement, sign it and it will become a court order. After the judge signs your agreement, file it with the court clerk.

If you cannot agree, the judge will send you to mediation and a mediator from Family Court Services or another court-related program will help you. If you still cannot agree you and the other parent will meet with the judge. Generally the judge will then decide your custody and visitation schedule.

In some cases the judge may appoint a child custody evaluator to do a custody evaluation and recommend a parenting plan. A parent can also ask for an evaluation but the request may not be granted. Parents may have to pay for an evaluation. The judge also may appoint lawyers for children in custody cases. The judge will also decide who will pay for the children's lawyer's fees.

After a judge makes a custody or visitation order one or both parents may want to change the order. Usually the judge will approve a new custody and visitation order that both parents agree to. If the parents cannot agree on a change one parent can ask the court for a change. That parent will probably have to complete certain forms to ask for a court hearing and prove to the judge that there is a significant change in circumstances (for example, the children would be harmed unless the order is changed) or other good reason to change the order. Both parents will most likely have to meet with a mediator to talk about why the court order has to be changed.

To get an overview of the child custody and visitation process, read the *Child Custody Information Sheet* (Form FL-314-INFO). This information sheet is also available in Spanish, Chinese, Korean and Vietnamese.

## **Custody Mediation**

Child custody mediation gives parents a chance to resolve disagreements about a parenting plan for their children. In mediation, the parents have the help of an expert (a mediator) in resolving these disagreements. If the parents are able to work out an agreement the mediator helps the parents write a parenting plan that may then become a custody and visitation order if it is signed by a judge. In some counties this service is called "child custody recommending counseling" because the mediator (called a "child custody recommending counselor") can give a written recommendation to the parents and the court if the parents cannot agree to a parenting plan.

The goals of mediation are to:

1. Help you make a parenting plan that is in the best interest of your children
2. Help you make a parenting plan that lets your children spend time with both parents
3. Help you learn ways to deal with anger or resentment

You can learn more information about child custody by reading:

- *Child Custody Information Sheet – Child Custody Mediation* (Form FL-314-INFO). This information sheet is also available in Spanish, Chinese, Korean and Vietnamese.

- *Child Custody Information Sheet – Recommending Counseling* (Form FL-313-INFO). Read this form if your case is in a county where there is "child custody recommending counseling." This information sheet is also available in Spanish, Chinese, Korean and Vietnamese.

**Supervised Visitation**

The public policy of the State of California is to protect the best interest of children whose parents have a custody or visitation matter in family court. Sometimes, based on issues of protection and safety, a judge will order that a child only have contact with a parent when a neutral third person is present during the visitation. This type of third person visitation arrangement is often called “supervised visitation.” A judge may order supervised visitation for many reasons, such as:

- To give the visiting parent a chance to address specific issues
- To help reintroduce a parent and a child after a long absence
- To help introduce a parent and a child when there has been no existing relationship between them
- When there is a history or allegations of domestic violence, child abuse and neglect or substance abuse
- When there are parenting concerns or mental illness
- When there is a parental threat of abduction

The court order will specify the time and duration of the visits. Sometimes, the court order will also specify who will provide the supervised visitation services and where the visits will take place.

**FORMS:**

**Forms and instructions to ask for a custody & visitation order once you (or the other parent) have opened a case:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Request for Order</i>	<u>FL-300</u>	Use the <i>Information Sheet for Request for Order</i> (Form FL-300-INFO) for information on how to fill out the <i>Request for Order</i> .
<i>Child Custody and Visitation Application Attachment</i>	<u>FL-311</u>	Optional form, but it may help you ensure you do not leave anything out of your request.
<i>Temporary Emergency Court Orders</i>	<u>FL-305</u>	If you want to get a temporary order contact a lawyer for help.
<i>Proof of Personal Service</i>	<u>FL-330</u>	For instructions, read <i>Information Sheet for Proof of</i>

		<i>Personal Service</i> (Form FL-330-INFO).
<i>Responsive Declaration to Request for Order</i>	<u>FL-320</u>	Form includes instructions. Attach it blank.

**Forms and Instructions if you will also be asking for child support:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Income and Expense Declaration</i> OR <i>Financial Statement (Simplified)</i>	<u>FL-150</u> OR <u>FL-155</u>	You have to use either Form FL-150 or Form FL-155.  Read <i>Which Financial Form — FL-155 or FL-150?</i> (Form DV-570) to find out if you can use the simpler Form FL-155. You need to attach a copy of your pay stubs for the last two months or a recent profit and loss statement if you are self-employed or own any rental property.

**Forms and instructions to set up custody & visitation with a Petition for Custody and Support of Minor Children:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Petition for Custody and Support of Minor Children</i>	<u>FL-260</u>	
<i>Summons (Uniform Parentage — Petition for Custody and Support)</i>	<u>FL-210</u>	
<i>Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)</i>	<u>FL-105/GC-120</u>	Instructions for Form FL-105/GC-120
<i>Attachment to Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)</i>	<u>FL-105(A)/GC-120(A)</u>	
<i>Child Custody and Visitation Application Attachment</i>	<u>FL-311</u>	Optional form, but it may help ensure you do not leave anything out of your request.
<i>Proof of Service of Summons (Family Law — Uniform Parentage — Custody and Support)</i>	<u>FL-115</u>	
<i>Response to Petition for Custody and Support of Minor Children</i>	<u>FL-270</u>	

<i>Request to Enter Default (Family Law — Uniform Parentage)</i> OR <i>Appearance, Stipulations, and Waivers (Family Law — Uniform Parentage — Custody and Support)</i>	<u>FL-165</u> OR <u>FL-130</u>	
<i>Income and Expense Declaration</i> OR <i>Financial Statement (Simplified)</i>	<u>FL-150</u> OR <u>FL-155</u>	You have to use either Form FL-150 or Form FL-155. You have to attach a copy of your pay stubs for the last two months and/or a recent profit and loss statement if you are self-employed or own any rental property.
<i>Declaration for Default or Uncontested Judgment (Uniform Parentage — Custody and Support)</i>	<u>FL-230</u>	
<i>Judgment (Uniform Parentage — Custody and Support)</i>	<u>FL-250</u>	
<i>Child Custody and Visitation Order Attachment</i>	<u>FL-341</u>	
<i>Supervised Visitation Order</i>	<u>FL-341(A)</u>	Instructions for Form FL-341(A)
<i>Children’s Holiday Schedule Attachment</i>	<u>FL-341(C)</u>	
<i>Additional Provisions — Physical Custody Attachment</i>	<u>FL-341(D)</u>	
<i>Joint Legal Custody Attachment</i>	<u>FL-341(E)</u>	
<i>Child Support Information and Order Attachment</i>	<u>FL-342</u>	
<i>Stipulation to Establish or Modify Child Support and Order</i>	<u>FL-350</u>	Mark all the appropriate boxes and fill in all blanks that apply. You may have to attach other court forms such as Forms FL-341, FL-341(A).
<i>Notice of Rights and Responsibilities — Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order</i>	<u>FL-192</u>	No instructions necessary. Read this form and attach it to your court order (Form FL-350).



<i>Notice of Entry of Judgment (Family Law — Uniform Parentage — Custody and Support)</i>	<u>FL-190</u>	
<i>Child Support Case Registry Form</i>	<u>FL-191</u>	
<i>Order/Notice to Withhold Income for Child Support</i>	<u>FL-195</u>	Form FL-196: Instructions for form FL-195. When filling out Form FL-195, make sure to write only the last four digits of the social security number of the person ordered to pay support – the law requires it to protect their privacy.
<i>Non-Guideline Child Support Findings Attachment</i>	<u>FL-342(A)</u>	
<i>Proof of Personal Service</i>	<u>FL-330</u>	For instructions, read <i>Information Sheet for Proof of Personal Service</i> (Form FL-330-INFO).
<i>Proof of Service by Mail</i>	<u>FL-335</u>	For instructions, read <i>Information Sheet for Proof of Service by Mail</i> (Form FL-335-INFO).
<i>Stipulation and Order for Custody and/or Visitation of Children</i>	<u>FL-355</u>	

**Forms and instructions to prepare a custody & visitation order (including child support):**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Findings and Order After Hearing (Family Law — Custody and Support — Uniform Parentage)</i>	<u>FL-340</u>	
<i>Child Custody and Visitation Order Attachment</i>	<u>FL-341</u>	
<i>Supervised Visitation Order</i>	<u>FL-341(A)</u>	Instructions for Form FL-341(A)
<i>Children’s Holiday Schedule Attachment</i>	<u>FL-341(C)</u>	
<i>Additional Provisions — Physical Custody Attachment</i>	<u>FL-341(D)</u>	
<i>Joint Legal Custody Attachment</i>	<u>FL-341(E)</u>	

<i>Child Support Information and Order Attachment</i>	<u>FL-342</u>	
<i>Notice of Rights and Responsibilities — Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order</i>	<u>FL-192</u>	No instructions necessary. Read this form and attach it to your court order (Form FL-340).
<i>Stipulation and Order for Custody and/or Visitation of Children</i>	<u>FL-355</u>	
<i>Child Support Case Registry Form</i>	<u>FL-191</u>	Form includes instructions.
<i>Income Withholding for Support</i>	<u>FL-195</u>	Use this form if you are asking for child or spousal support. When filling out Form FL-195 make sure to write only the last four digits of the social security number of the person ordered to pay support – the law requires it to protect their privacy. Form FL-196: Instructions for form FL-195
<i>Additional Page — Attach to Judicial Council Form or Other Court Paper</i>	<u>MC-020</u>	

**Forms and instructions to answer papers you were served with asking to set up or change a custody and visitation order:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Responsive Declaration to Request for Order</i>	<u>FL-320</u>	
<i>Child Custody and Visitation Order Attachment</i>	<u>FL-311</u>	
<i>Proof of Personal Service</i>	<u>FL-330</u>	For instructions, read <i>Information Sheet for Proof of Personal Service</i> (Form FL-330-INFO).
<i>Proof of Service by Mail</i>	<u>FL-335</u>	For instructions, read <i>Information Sheet for Proof of Service by Mail</i> (Form FL-335-INFO).

**Forms and instructions if the papers you were served with also ask for child support:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Income and Expense Declaration</i> OR <i>Financial Statement (Simplified)</i>	<u>FL-150</u> OR <u>FL-155</u>	You have to use either Form FL-150 or Form FL-155. Read <i>Which Financial Form — FL-155 or FL-150?</i> (Form DV-570) to find out if you can use the simpler Form FL-155. You have to attach a copy of your pay stubs for the last two months and/or a recent profit and loss statement if you are self-employed or own any rental property.

**Forms and instructions to answer papers you were served with asking for custody and visitation orders as part of a domestic violence restraining order:**

<b>Form Name</b>	<b>Information Sheet</b>	<b>Form Number</b>
<i>Response to Request for Domestic Violence Restraining Order</i>		<u>DV-120</u>
<i>Request for Child Custody and Visitation Orders</i>		<u>DV-105</u>
<i>Proof of Service by Mail (CLETS)</i>		<u>DV-250</u>
<i>How Can I Respond to a Request for Domestic Violence Restraining Order?</i>	<u>DV-120-INFO</u>	

**Forms needed to respond to a Petition for Custody and Support of Minor Children:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Response to Petition for Custody and Support of Minor Children</i>	<u>FL-270</u>	
<i>Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)</i>	<u>Form FL-105/GC-120</u>	
<i>Child Custody and Visitation Application Attachment</i>	<u>Form FL-311</u>	This form may help ensure you do not leave anything out of your request.
<i>Proof of Personal Service</i>	<u>FL-330</u>	For instructions, read <i>Information Sheet for Proof of Personal Service</i> (Form FL-330-INFO).
<i>Proof of Service by Mail</i>	<u>FL-335</u>	For instructions, read <i>Information Sheet for Proof of Service by Mail</i> (Form FL-335-INFO).

**Forms needed if the papers you were served with also ask for child support or spousal or partner support:**

Form Name	Form Number	Instructions
<i>Income and Expense Declaration</i> OR <i>Financial Statement (Simplified)</i>	<a href="#">FL-150</a> OR <a href="#">FL-155</a>	You have to use either Form FL-150 or Form FL-155. Read <i>Which Financial Form — FL-155 or FL-150?</i> (Form DV-570) to find out if you can use the simpler Form FL-155. A lawyer or family law facilitator can help you decide which form to use. You have to attach a copy of your pay stubs for the last two months or a recent profit and loss statement if you are self-employed or own any rental property.

**Forms and instructions to prepare a custody and visitation order (including child support):**

Form Name	Form Number	Instructions
<i>Findings and Order After Hearing (Family Law — Custody and Support — Uniform Parentage)</i>	<a href="#">FL-340</a>	
<i>Child Custody and Visitation Order Attachment</i>	<a href="#">FL-341</a>	
<i>Supervised Visitation Order</i>	<a href="#">FL-341(A)</a>	Instructions for Form FL-341(A)
<i>Children’s Holiday Schedule Attachment</i>	<a href="#">FL-341(C)</a>	
<i>Additional Provisions — Physical Custody Attachment</i>	<a href="#">FL-341(D)</a>	
<i>Joint Legal Custody Attachment</i>	<a href="#">FL-341(E)</a>	
<i>Child Support Information and Order Attachment</i>	<a href="#">FL-342</a>	
<i>Notice of Rights and Responsibilities — Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order</i>	<a href="#">FL-192</a>	No instructions necessary. Read this form and attach it to your court order (Form FL-340).
<i>Stipulation and Order for Custody and/or Visitation of Children</i>	<a href="#">FL-355</a>	
<i>Child Support Case Registry Form</i>	<a href="#">FL-191</a>	Form includes instructions.
<i>Income Withholding for Support</i>	<a href="#">FL-195</a>	Use this form if you are asking for child and/or spousal or partner support. When filling out Form FL-195 make sure to write only the last four digits of the social security number of the person ordered to

		pay support – the law requires it to protect their privacy. Form FL-196: Instructions for Form FL-195
<i>Additional Page — Attach to Judicial Council Form or Other Court Paper</i>	<u>MC-020</u>	

**Forms and instructions to change a custody and visitation order:**

<b>Form Name</b>	<b>Form Number</b>	<b>Instructions</b>
<i>Request for Order</i>	<u>FL-300</u>	Use the <i>Information Sheet for Request for Order</i> (Form FL-300-INFO) for information on how to fill out the <i>Request for Order</i> . Ask your family law facilitator if you have to check the box for “Court Order” and item 4 on Form FL-300.
<i>Child Custody and Visitation Application Attachment</i>	<u>FL-311</u>	Optional form, but it may help ensure you do not leave anything out of your request.
<i>Temporary Emergency Court Orders</i>	<u>FL-305</u>	If you want to get a temporary order contact a lawyer for help.
<i>Proof of Personal Service</i>	<u>FL-330</u>	For instructions, read <i>Information Sheet for Proof of Personal Service</i> (Form FL-330-INFO).
<i>Responsive Declaration to Request for Order</i>	<u>FL-320</u>	Form includes instructions. Leave this form blank.

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<i>Joint Legal Custody Attachment</i>	<u>FL-341(E)</u>	
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<i>Notice of Rights and Responsibilities — Health-Care Costs and Reimbursement Procedures and Information Sheet on Changing a Child Support Order</i>	<u>FL-192</u>	No instructions necessary. Read this form and attach it to your court order (Form FL-340).
<i>Stipulation and Order for Custody and/or Visitation of Children</i>	<u>FL-355</u>	
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<i>Income Withholding for Support</i>	<u>FL-195</u>	Use this form if you are asking for child and/or spousal or partner support. When filling out Form FL-195, make sure to write only the last four digits of the social security number of the person ordered to pay support – the law requires it to protect their privacy. Form FL-196: Instructions for Form FL-195
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