

Ward & Murphy

Attorneys and Counselors-at-Law

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Making sense of "family court"

Custody, visitation, modification. Family Court, Support Court, Divorce Court. Matters in these courts raise emotional issues no one wants to have to air in a courtroom. You may go your whole life without having to appear in Family Court, but it is still helpful to understand some basics of how a court handles issues of raising children and repairing or ending damaged marriages.

Let's start with children. Most people think that they have "custody" of their children when they are born. New York law, however, uses the word "custody" to mean only an order of a Court. Few of us get court orders when children are born. Parents of newborns instead have "parental rights." These parental rights include the right to decide where the child will live, who lives with the child, who visits the child, the child's religion, what medical care the child receives and how the child is raised.

So what is custody? Custody is where a court shifts this bundle of parental rights from both parents to only one person. Note the "one person" carefully. If a court must decide a case where the two parents cannot agree, New York law requires the court to grant custody to only one person.

If custody is limited to one person, how can a New York court order joint custody? Here in New York, no court actually forces joint custody by order. Rather, the parties approach the court and tell the court they are willing to share joint custody and the court - if it is satisfied the parties can work together - signs the order the parties have negotiated between themselves.

The one portion of the parental rights/custody bundle that is generally dealt with separately is who lives with the child (called "placement") and how the parent who does not live with the child visits (called "visitation"). Parents can arrange placement and visitation in any fashion that makes sense for that particular child and family: it is even possible to have joint placement.

So what happens if the parties cannot agree on custody, placement or visitation? These issues are heard in New York by a court sitting without a jury: Courts understand you would rather not

How to Reach Us...

Main Office - 170 Main Street, Groton

Ithaca Satellite - 109 East Seneca Street, Ithaca

Main Telephone - (607) 898-3190

Fax Line - (607) 898-3765

Ithaca Office/Emergencies - (607) 280-4954

E-mail - liam.murphy@clarityconnect.com

Website - www.ward-and-murphy.com

ave six or twelve of your neighbors sitting on a jury hearing about your family trouble. A single judge hears the case and makes a decision based, not on what the parents want, but instead on what that one judge believes is in the child's best interest. You might say "how is the judge supposed to know better than me, a parent?" The only answer is that you the parent cannot come to agreement with the other parent - meaning you need a third party to break the deadlock and that third party is the judge. In such a proceeding, you are entitled to have the court appoint a lawyer for you on issues involving custody - but the court will not appoint a lawyer if you are only asking the court to change the visitation arrangements.

When the judge issues that decision, he or she makes it based on his or her decision on what is in the child's "best interests." Best interests? Many people think that this standard is too "wishy-washy." The standard is used, however, all over the United States for a simple reason: it works. Try it yourself: can you state a better standard in one sentence to decide cases involving children? It is too difficult to try to state a standard that is more comprehensive. Over time, the courts have developed a large body of cases - stories of other situations - which help give a real-life flavor to this "best interests" standard.

What if you want to change a court order? That process is called "modification." To qualify for modification, you must be able to tell the court how the situation is changed since the last time the case was in court. The legal term is you must show a "substantial change" in circumstances.

What if you need help supporting a child? You can ask the Court to set the amount of support to be paid by the parent who does not live with the child (called the "non-custodial" parent - even if the parent has joint custody!). "Support court" as some people call it is actually a misleading term - the Family Court has a separate support division which hears only support cases. The lawyer who hears such cases is not given the rank of "judge" but rather the lower rank of "magistrate judge." Why? Because support is largely a matter of math:

the parent who does not live with the child pays a set proportion of their income to the child. And the funds do belong to the child - not the custodial parent. As a practical matter, no one gives young children the money, but the custodial parent is expected to use the money for the child's care. There are many other factors that go into a support award: childcare, health insurance, special expenses are but a few.

What if there is violence in your home, but you still want to try to keep the family together? The court system recognizes this situation and thus minor violence can be resolved in the Family Court through a "family offense" proceeding. In essence, a "family offense" is a minor criminal matter in which the Family Court can order the parties to engage in treatment rather than sending offenders to jail. In a family offense proceeding, the Family Court can make other counseling and support services available on at least a limited basis and the court system is able to provide referral to other agencies that will support families through troubled times. What is the difference between "Divorce court" and "family court?" Here in New York divorces are granted by the state's

general purpose court: the Supreme Court. In a divorce, the Supreme Court can deal with three issues: whether the people should stay married (also called "grounds"), how the married people's property should be divided (commonly called "equitable distribution") and how best to resolve custody, visitation and support. The parties can, however, choose to ask the Family Court to deal with the custody, visitation and support issues and allow the Supreme Court (or "Divorce court") to deal only with the grounds for the divorce and equitable distribution.

Thus, for issues involving children, the Family Court is generally the right place to resolve issues that parents cannot resolve by themselves. Supreme Court - the divorce court - is a place to resolve failed marriages. Support court can help families determine how to help children financially. While no one wants to have to solve their family problems with third parties, these resources are there when families cannot agree. If you find you need to go to one of these courts, please feel comfortable calling us to schedule a consultation so we can discuss your situation and which court may be best able to help resolve your dispute.

by Liam G.B. Murphy

Who has my file from Jack Ward's or Evan Webster's office?

As we explained in previous issues, Ward & Murphy is the successor to both the law offices of Evan Webster in Groton and Jack Ward in Ithaca. We have files going back at least seven years from both offices. We are now sending this newsletter to keep all our clients up-to-date. All our Groton estate clients are now computerized (to the extent we have current addresses) and the majority of our Ithaca estate clients are also in our database.

You, of course, retain the choice of lawyer. Unless you tell us otherwise, Ward & Murphy will presume you wish us to continue as your attorneys and we look forward to continuing that relationship with you.

Welcome To Our New Staff ...

We are very pleased to announce Amy Jackson, the Firm's long-time bookkeeper, has now joined us full-time as a paralegal. Amy started with the Firm part-time in 2000 and worked off-site nearly continuously since then. Amy started in her legal career as an assistant in the office of Thomas Gilhooley in 1990. She also served as an assistant City Court Clerk in the Ithaca City Court from 1996 to 1998. She lives in the Groton area and, among other activities, has served on the Groton Elementary School PTA and as a Girl Scout leader in the Groton area. She is normally in the office Monday to Thursday 8:30 am to 4:30 pm and 8:30 am to noon on Fridays.

Children who never come when they are called will grow up to be doctors. Children who come before they are called will grow up to be lawyers. From *The Best Lawyer Jokes Ever*.

Ward & Murphy
170 Main Street
Groton, New York, 13073
(address correction requested)