

National Coalition for Sexual Freedom

Education Outreach Program (EOP)

Guidelines for Custody Disputes



OVERVIEW

The problems that arise in child custody disputes between spouses and partners create special concerns for members of the SM/leather/fetish/poly communities. In addition to the general tribulations that arise with privacy and personal security, these issues also require difficult decisions at a time of great stress. These choices often require making priority assessments between personal and family considerations. This presentation provides a framework for evaluating choices and seeking advice and counsel.

General thoughts on custody and visitation

- In a custody dispute, judgments about your behavior, beliefs, and lifestyle will be made by people other than you. These judgments will have a direct and lasting impact on your relationship with your children. Becoming unnecessarily defensive or arrogant about your private activities will often result in unwelcome results. A spirit of cooperation, coupled with due regard for the sensitivities of others, will frequently aid in producing a favorable conclusion.
- This attitude of cooperation may require alterations and compromises. When there are children in your household, care should be taken to keep equipment/toys/erotic art/play behavior carefully under wraps. The activities of consenting adults are to be confined to consenting adults; this certainly includes sight/hearing/awareness. For example, the choice to actively display d/s dynamics with children present will likely have an unpleasant impact on your ability to have either custody or unsupervised visitation with your children. Children have remarkably retentive and durable memories. Their reports of your activities will specifically bedevil you in a custody fight absent attention to detail. Little pitchers have big ears.
- A thorough housecleaning of any erotic or provocative literature/art/DVDs is part of this process. Specific attention ought to be paid to your electronic life. Your computer, if available to your children, and your various public pages and pictures will be exposed to scrutiny, including blogs, personal ads on services like alt.com and other similar activities.
- Bear in mind that the fact that your partner was a participant in various mutual activities will not keep those activities from being used as weapons in a custody fight.

General thoughts on how to choose an attorney:

- In generally urban settings, look for specialists; in generally rural settings, look for experience and location. What you are primarily looking for is someone who can guide you through local rules and conventions. Never go into a remote jurisdiction without local counsel.
- When in doubt, ask another lawyer. They tend to know each other; if they don't, they can find out about each other pretty fast.
- Naturally, it would help if your chosen counsel was kink-friendly. That is one of the services provided by the Kink Aware Professionals (KAP) project. Additionally, ask at your local ACLU chapter or Lambda Legal's regional representatives. Those offices tend to have access to lawyers familiar with issues specific to the BDSM/poly/GLTB communities.
- The most desirable lawyer/client relationship is one of mutual respect and unconditional trust. Do what is necessary to foster that relationship.

What to say to a lawyer:

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- The client shall make FULL disclosure to his/her attorney without reticence or omission. In preparing for this type of revelation, readiness to answer the following questions will be helpful:
 - What is the worst thing that your spouse/partner is likely to say about you (true or not)?
 - What is the worst true thing that anyone can say about you (whether anyone else knows it or not)?
- Most peoples' secrets aren't that remarkable. Fear of disclosure is usually the worst of all fears; once disclosure is made, the activities in which you engage in private are normally not all that spectacular.
- Your lawyer is a professional secret-keeper; you may speak with confidence in his or her discretion.
- NCSF, with your permission, is able to speak to your attorney and provide educational and resource information if you request it.

Parts of the process:

- It is common in most jurisdictions to provide some sort of court-appointed evaluator. Sometimes this person is appointed as a guardian ad litem, with an independent duty to report to the court and parties as to the "best interests" of the child or children. Sometimes this person is a mental health professional of some sort; sometimes it is a court employee or social worker. In any event, after consultation with your attorney, you will probably find that complete candor is your best course.
- You do not need to sensationalize your personal activities. Speaking in generalities- consensual kinky sex between adults for example- is much better than saying you engage in hardcore or edge playing activities or relationship models.
- Mental health professionals have a number of rules and guidelines for child custody evaluations. These standards are shifting, particularly in light of recent efforts to revise the DSM-V. For further information on these evaluation guidelines, refer to American Psychological Association, Practice Directorate (1994) Guidelines for Child Custody Evaluations in Divorce Proceedings. *American Psychologist*, 49(7), 677-680, at <http://www.apa.org/practice/childcustody.html> . Try not to over think these criteria; that is why you pay your lawyer.
- It may be worthwhile to retain your own psychologist/psychiatrist; get your lawyer to help you. Look for someone with experience in child custody that has NOT already been consulting with anyone in your family. (Apparent independence is an excellent credential.)
- Many jurisdictions provide for a court-ordered "parenting conference" or "parenting class." What this commonly means is you and your soon-to-be-ex-spouse or partner will be having some quality time together to discuss what you have in mind for the custody and visitation plans for your children. It will be useful for you to remember that you will be having conversations with this person until all of your children become adults. This will be an excellent place to start.

Custody fights:

- First of all, you should ask yourself what you are fighting for. If you really believe that your spouse is unfit in some fashion, by all means exert yourself in all ways. However, most parents are more or less fit absent some serious problems. If it is a question of whether your child will still love you if you don't engage in a custody fight over him/her/them, let's clear this up: they still love you, and probably always will. It really won't matter to them whether you spend thousands of dollars on lawyers. It, however, will matter to them if you will participate as a parent.
- If you end up a non-custodial parent, remember that you are now a sundial, and you will get to see your children in the sunny hours. Often you will have set time aside to give your child your undivided attention. The custodial parent

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does not always or consistently have that privilege. The amount of money paid child support is cheap in comparison to the amount of time you have to spend with your child. The telephone, mail, and email all work fine. You already have limitations on constant personal contact with your child, what with work, school and extra-curricular activities. Caring, and participation as you can, is what matter at the end.

- If you must fight, try not to turn things into a nuclear battlefield. Remember that you will have to speak civilly to your ex-spouse occasionally on matters of mutual interest.
- Think hard about a counselor for yourself. Break-ups are difficult. Friends will help; but professional help is different.

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