

# Is Shared Physical Custody Possible?

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There has been a growing trend in the Massachusetts Probate and Family Courts in the philosophy that parents should, barring certain circumstances, have shared physical custody of their minor children. In this firm, we have seen a trend of parents who ask for what's "fair" or "half of the time". However, a parenting plan is dynamic and may not always appear to be equal. Custody is possible to share but whether it's in the best interest of the child(ren) is determined by the parties or ultimately the Court.

Physical custody is defined by where the children reside and who is responsible for making the day-to-day decisions regarding the children. Traditionally in a divorce, it was automatically presumed the mother was the primary caretaker of the children during the relationship/marriage and therefore, she was awarded primary physical custody of the children. In Paternity cases, (where the parties are unmarried) under the law, it still is presumed to be the Mother.

With that said, times are changing. Women are working and becoming more and more financially independent. With that, father's rights have come to the forefront and courts have started to analyze the question, "why not?". If we have two working, capable, and loving parents – who both work, rely on others for various caretaking tasks and chores, what's the tie breaker? We see that there are more dual-income families, there has been a real shift in a shared parenting plans. Children perform better when parents can continue their relationship

post-divorce. Clearly, this is not the same husband/wife relationship but the relationship should evolve to a co-parenting relationship. This is what is required to have a successful shared physical custody plan. The Courts have seen an increase in shared physical custody orders, either by agreement of the parties or ordered by the Judge. Fathers that were involved in their children's lives prior to their separation want to remain committed to their children. In situations where both parents work full-time, it may be beneficial for the parties to share the day-to-day responsibilities of the children, rather than one parent primarily bearing that sole responsibility.

This type of parenting arrangements works well if the parents are able to effectively communicate, live within close proximity to each other/the children's schools and a parent does not suffer from any impediment which would impact their ability to co-parent in this way. In addition, the parties should consider the age of the children. School-age children (especially teens) tend to adapt better to this living situation whereas it might be more disruptive and confusing for younger children.

What do shared parenting plans look like? Some parents choose to do a week on/week off schedule with the other parent having some parenting time during that week so the children do not go a full week without seeing the other parent. For example, the other parent may see and take the children on Wednesdays from after school until the evening. Other parents have chosen a slightly modified version – Monday to Wednesday with one parent, Wednesday to Friday with the other parent, then the parties alternate every other weekend. This schedule allows each parent to have five days of uninterrupted parenting time. With both of these types of schedules, the parties typically build in parameters that allow the other parent multimedia access (telephone, text, FaceTime) during that five/seven-day time period. This set schedule allows the children to spend significant time with each parent, there is less back and forth between homes for the children and the children know where they are going to be on any given day.

With respect to custody (legal custody and physical custody), the standard set by the Massachusetts legislature is the "best interests of the children". Shared physical custody can be "in the best interests of the children" if both parties are willing and able to put in the effort to make it work.

Please call us at Cohen Cleary to discuss your Massachusetts custody case. We can assist you in preparing comprehensive parenting plans for different custody arrangements.