



Question: My wife and I have been divorced for over five years. My wife has full custody of our two children. How do I go about changing the custody arrangement to get full custody of my children myself?

Answer: It is possible to change the final judgment of dissolution of marriage after it has been entered. The process is called “modification of final judgment.” A parent who is trying to modify an award of parental responsibility/custody carries a hard burden. To modify custody, the party needs to prove:

- 1) a substantial or material change in the parties’ circumstances since the entry of the most recent custody order, unknown to the court at the time of the original order, and
- 2) that modification is in the best interest of the child.

What constitutes a substantial change in circumstances depends on the specific facts of every case and differs from family to family.

The fact that the parents do not get along with each other, absent other factors, does not constitute a basis for custody modification.

In a modification of custody, the court must also determine that the change in custody is in the best interest of the child. There are several factors considered by the court in making this determination: preference of the child, with some exceptions; which parent is more likely to allow the child frequent and continuing contact with the nonresidential parent; ties existing between the parents and the child; the ability of the parent to provide the child with food, clothing, and other material needs; the home, school, and community record of the child; evidence that any party has knowingly provided false information to the court regarding a domestic violence proceeding; and evidence of domestic violence or child abuse.

The court also looks at the stability of the child’s environment and the desirability of maintaining that stability. The moral fitness of the parent plays a role in the determination if the behavior of the parent causes a detriment to the child. For example if a parent’s lifestyle has become chaotic and is adversely affecting the child, causing emotional distress, modification may be an appropriate course of action.

In the past, the courts were guided by the “tender years doctrine” meaning that the mother of the child was presumed to be the parent best able to care for the children. Times have changed, and the courts now believe that the father is an equally important figure in the child’s life who is equally able to take care of the child. Now the father of the child is given the same consideration as the mother in determining the custody of the child.

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