

# SMOLENPLEVY

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## Report From Counsel

Insights and Developments in the Law Summer 2021

### *The Best Interests of the Child: Factors a Judge May Consider in Deciding Custody*

Custody is the legal responsibility for the care, control, and maintenance of a minor child. There are several types of child custody, including physical, legal, sole, and joint custody. Child custody may be decided in a mutual agreement between parents or by a court, usually during a divorce or legal proceeding.

“In instances in which both parents come to a mutual understanding on child custody, an agreement can be made that specifies the terms of custody,” explains founding SmolenPlevy Principal Alan Plevy. In other instances, parents may not agree when deciding child custody and the issue may be brought before a neutral mediator in mediation or before a judge to decide.

When a parent seeks custody of a child, and there is no court order in place, the parent must file a Petition for Custody with the court or within the context of a divorce proceeding. In most instances, a parent will file for custody in the county court where the parent and child currently reside. In the cases in which a court order is in place, the parent must file a Motion to Amend or Modify. Generally,

a parent will file for this in the court that issued the original court order. In both instances, the petitioning parent must serve the other party the appropriate legal documentation. A court will then set a scheduling hearing.

Traditionally, the courts have favored the mother when making custody decisions, regardless of her fitness to parent a child. More recently, though, new standards for deciding custody arrangements have been set. “Judges make their decisions based on what they believe to be in the best interest of the child

while also considering the totality of the circumstances,” notes SmolenPlevy Principal Kyung (Kathryn) Dickerson. The court system works on a case-by-case basis, thoroughly considering the specific facts of each case.

There are several factors a judge will take into consideration when deciding a child custody matter. These factors may include, but are not limited to:

- Age of the child

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Alan Plevy



Kyung (Kathryn)  
Dickerson

### *SmolenPlevy in the Media*

SmolenPlevy Principal Dan Ruttenberg is featured in *Financial Advisor Magazine*, providing expertise on “How Inherited Retirement Accounts Can Lead To Hefty Tax Bills.” Read the full article at [bit.ly/30KL26R](https://bit.ly/30KL26R).

### *SmolenPlevy In the Community*

SmolenPlevy Associate Bryan MacAvoy leads a virtual estate planning workshop for members of the community in partnership with the Alexandria Library. He discusses the basics of an estate plan, and talks about estate planning lessons he’s learned from the COVID-19 pandemic.

## How Do Estate and Gift Transfer Taxes Work?

When a loved one passes away, it is important to ensure that all of his or her affairs are in order. This includes paying off any debts, as well as paying any necessary federal and state taxes required on an estate. There are taxes on both the transfer of assets from the decedent to the beneficiaries, as well as the income generated by the assets of the estate.

The person responsible for overseeing the estate—the fiduciary—is required to ensure that the estate pays the income tax for that year, similar to how an individual is required to pay a tax on his or her income. If the estate generated a gross income of more than \$600 that year, then the estate can be taxed on this income.

“Filing an estate tax return covers the transfer of estate property and will require that you calculate the value of all of your assets,” explains SmolenPlevy Principal Jason Smolen. The federal government will tax the value of the entire estate or

the total value of all of your assets at the date of death. The property that may be included in the taxable estate consists of cash, securities, real estate, insurance, trusts, shares of a company, and more.

Currently, most estates with assets that do not exceed \$11.7 million do not require you to file a federal estate tax return. However, it is anticipated that this number will be reduced to \$3.5 million starting January 1, 2022.

Married couples can get an even bigger tax break: the threshold essentially doubles, meaning that a married couple’s estate does not get taxed unless their estate totals over \$23 million (or likely \$7 million, beginning next year). However, use of both exemptions is not a given and requires proper estate planning.



Jason  
Smolen



Daniel  
Ruttenberg

A way to lock in the current \$11.7 million amount is to gift away assets before the law changes. SmolenPlevy Principal Dan Ruttenberg explains “a person can gift away \$11.7 million today tax-free, so that it doesn’t affect them if the law reduces their exemption amount to \$3.5 million thereafter.”

While most Americans do not have to pay the federal estate tax, some states have their own estate or inheritance taxes that must be paid, and often the local estate tax kicks in at a lower threshold than the federal estate tax.

If you have questions about estate and gift taxes, contact Jason Smolen at [jdsmolen@smolenplevy.com](mailto:jdsmolen@smolenplevy.com) or Dan Ruttenberg at [DHRuttenberg@smolenplevy.com](mailto:DHRuttenberg@smolenplevy.com).

## Does Dad Always Pay for Child Support in a Divorce?

As a parent, you may be wondering whether you are entitled to receive child support payments from your child’s other parent. Here are a few initial considerations regarding parents’ rights to receive child support payments.

When married parents divorce or separate, or when only one of the unmarried parents of a child has custody, the court may order the other parent (the parent with whom the child does not live) to pay a certain portion of his or her income as child support. This is not the only scenario in which child support might arise. SmolenPlevy Principal Kyung (Kathryn) Dickerson explains, “Less frequently, when neither parent has custody, the court may order them to pay child support to a third party who cares for their child.”

No matter what situation gives rise to the need for child support, it is helpful to think of the legal right to child support as being possessed by a child, for his or her proper care and upbringing, regardless of who actually receives child support payments.

### **Child support in joint custody situations**

In cases in which a child spends substantive time living with both parents, one parent may still be required to pay child support to the other. This is especially likely if there is a large disparity in the parents’ incomes. For example, if a husband and wife get a divorce and agree to share joint physical custody of their son, the husband would likely be entitled to receive child support from the mother if he was a stay-at-home father during the marriage, while she earned a six-figure

salary. Without receiving such financial support, the father would probably not be able to pay the day-to-day expenses required to properly provide care for the child, even on a half-time basis. Both parents have an obligation to support their children. The court could impute income to one parent for being voluntarily unemployed or underemployed.

### **Amount you can receive**

Each state has presumptive legal guidelines that help establish the amount of child support that must be paid to a parent. The specifics of each guideline differ from state to state, but they are all generally based on the parents’ incomes, living expenses, and needs of the children. If there are good reasons, most states allow some variance from the guidelines.

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# *The Basics of Business Format Franchises*

Buying a franchise is a serious investment. If you are considering a franchise purchase, it is very important that you learn as much as you can about the many issues facing you. Many franchises are successful because the system creates a certain synergy. Businesses brought together under one trademark can achieve things not possible for individual business people, such as group advertising and buying power. However, along with success comes a certain number of failures and risks. As a result, it is imperative to be informed and know your legal rights.

## **Types of franchises**

There are three basic types of franchises:

- Distributorships, which grant the right to sell their parent company's product(s). Auto dealerships such as Toyota, Ford, GM, Mercedes-Benz, etc. are good examples.
- Trademark or brand name licensing, which gives the licensees the right to use the parent company's trademark or brand in conjunction with the operation of their own business. For example, beverages such as Coca-Cola and sports franchises such as the Washington Football Team or the Baltimore Orioles.
- Business format franchises, the type most people are familiar with, which include businesses such as Chick-fil-A, and Pep Boys, which will be the focus of this article.

## **Advantages and disadvantages**

Business format franchisors offer to their franchisees the license or right to sell its goods or services and/or use its business techniques. The franchisees usually pay an initial fee to acquire this right, and thereafter pay a percentage of their gross sales to the franchisor throughout the term of their franchise contract.

In return for these payments, franchisees gain privileges, including the right to

sell a proven and recognized product or service, to use the franchisor's business practices, and to receive initial training and ongoing support. Additional responsibilities can and usually do include:

- Requirements to meet a variety of quality controls for products and services sold
- Restrictions on what they can sell or how they can operate using the company's name
- Specifications for their business location and site appearance
- Prohibitions on the operation of any similar businesses during or after the terms of the franchise agreement

Franchisees usually have an advantage over their non-franchise competitors,

since they have the rights to use the franchisors' brand names, trademarks, copyrights, trade secrets, and patents, as well as uniform logos, storefronts, and interiors. However, sometimes the restrictions may outweigh the possible benefits.

## **Contact an attorney**

Franchise law and agreements can be very complex and intricate. If you are interested in entering a franchise agreement, contact Jason Smolen at [JDSmolen@smolenplevy.com](mailto:JDSmolen@smolenplevy.com) or Scott Taylor at [SWTaylor@smolenplevy.com](mailto:SWTaylor@smolenplevy.com) to ensure your legal rights are protected and to weigh all your options. By knowing your options, you will be able to make the best decision for you, your business, and your future.

# *Does Dad Always Pay For Child Support?*

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## **Child support orders**

There is a growing misconception that child support should only cover a child's bare necessities, such as food and clothing. SmolenPlevy Principal Alan Plevy notes, "Child support is actually meant to cover a broad range of expenses, including school fees, entertainment, medical expenses, and extracurricular activities."

Child support orders are issued by the court, which bases the amount of the support on the state child support guidelines. These guidelines establish the presumptive amount of support that must be paid, based largely on the parent's income and the number of children. The court will also take into account other relevant factors, such as the amount of time the child/children spend with each parent and the special needs of the children.

The court can deviate from the guidelines if there are significant reasons for doing

so. The fact that the parent has a high income does not itself justify deviation from the guidelines because, under the law, children have the right to benefit from both parents' incomes. Child support can be increased if there is a change in circumstances justifying the increase, such as an increase in the payer's income or the cost of living, a decrease in the parent's income, or an increase in the child's needs. Similarly, the amount can be reduced if the circumstances justify the reduction.

## **Contact an attorney**

If you are facing a potential child support issue or dispute, whether due to divorce or as a single parent, a family law attorney can help by fairly and zealously representing you in a child support proceeding. A family law attorney will work to obtain the best possible result in the entry of a child support order, enforcement of an existing order, or in establishing or disproving paternity. Contact an experienced attorney today to ensure your legal rights are protected.



# *When Can a Legal Dispute be Solved by Mediation?*

Mediation is a great way to solve traditional legal disputes and can be a much cheaper, quicker, and more pleasant process than litigation. Not too many people are very familiar with mediation, however, and most people have questions about whether the process is right for them.

Mediation is an informal conflict resolution process brought before an independent, neutral third party, otherwise known as the mediator. Mediation cases give the parties the opportunity to discuss their issues, clear up misunderstandings, and find areas of agreement in a way that would never be possible in a lawsuit. Parties are not forced to agree to a solution in mediation, but, rather, the mediator facilitates communication to help the parties reach a mutual agreement.

## **Can my case be mediated?**

Typically, only civil cases can be mediated. Typical civil cases that are mediated include, but are not limited to:

- Business disputes
- Landlord-tenant disputes
- Small claims disputes
- Divorces
- Child custody disputes
- Contract disputes
- Post-divorce issues

## **What are the advantages of mediation?**

Mediation cases have many significant advantages over traditional lawsuits which include, but are not limited to:

**Quicker:** Mediation typically can be done

a lot sooner, whereas lawsuits typically take months or years to get heard.

**Less expensive:** Mediation is often vastly less expensive than a typical lawsuit. With a much quicker turnaround, you'll be paying less money over a shorter period of time.

**Less formal:** The informality of mediation allows the parties to be more engaged than they would be in a court-driven process with an abundance of rules and procedures designed to separate the parties. Accordingly, since the mediator deals directly with the parties and their counsel, the mediator can focus the attention of the parties upon their needs and interests, rather than on their stated positions.

**Confidential:** Unlike court cases, which are public, mediation is typically confidential. This reason alone can be a great reason to use mediation rather than file a lawsuit.

**Greater flexibility and control:** In mediation, unlike in a lawsuit, the parties and their counsel are in control. This means that the parties have a much greater say in negotiations and greater control over the outcome and can fashion resolutions that a court cannot be able to do.

Should you or a loved one have a question about mediation and if it is right for you, contact an attorney at SmolenPlevy to ensure your legal rights are protected.

# *The Best Interests of the Child*

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- The physical and psychological health of the child
- The physical and psychological health of the parents
- The existing relationship between each parent and the child
- Who has been the child's primary caretaker
- Each parent's ability to meet the physical, emotional, and intellectual needs of the child
- The willingness of each parent to support and facilitate a child's relationship with the other parent
- Living arrangements
- Child's preference

- History of domestic violence, abuse, or neglect

Child custody disputes can be emotional and often are complex. If you are a parent who is facing a child custody dispute, it is important that you consult the guidance of an experienced child custody lawyer who can guide you through the process and protect your legal rights during proceedings.

For more information about child custody, contact Alan Plevy at [ablevy@smolenplevy.com](mailto:ablevy@smolenplevy.com) or Kyung (Kathryn) Dickerson at [kndickerson@smolenplevy.com](mailto:kndickerson@smolenplevy.com).

*Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*