

Shared Custody



Practice directions

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Love gains a number.

Fathers and mothers search for their right to express and experience love after a long struggle has finally won a number: the law 13.058/2014.

Satisfying the plea of millions of children's and teenager's parents, it has been approved the Brazilian law that favors the shared custody and parental equality.

The Family Law seems to have had great evolution these days, however, in fact, what has really happened is the prevalence of the only feeling that justifies the existence of a family: love.



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Judge - Mato Grosso State - Brazil

Love gains a number.

Giving preference to shared custody and parental equality is to set the foundation of human existence and relationships where they should always be.

In times of discussions, revisions and adequacies there was the opportunity to remember the concept of "Family". Unadvisedly, many people affirmed that their family had finished with the end of their relationship. However, life has proved the opposite. **Family never finishes.** Family overlaps the relationship between parents. What was cropped will sprout, even in a bad soil condition, when it is the time to spring forth.

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Judge - Mato Grosso State - Brazil

Love gains a number.

At that time, comparing with our time, where millions of people search for Independence and consumption, fathers and mothers so often affirm that they would like to have the opportunity to play more with their kids, take them to the cinema, go for a walk holding hands, bath their babies, prepare a bottle, change diapers, wake up by their sides, take them to school, to the pediatrician, follow their homework, take them to the club, travel. Things from the daily routine, trivial things but showing **true love**.

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Love gains a number.

In a so competitive, technologic and demanding world, people finally discover the value of affection and what a really parental relationship is. Money does not occupy the place of the heart.

To you - children, boys, girls and teenagers, I wish the real experience of love!

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What is shared Custody?

Shared Custody is the joint responsibility and the joint duty of fathers and mothers for their children, when they live apart.

The unilateral custody is the exclusive responsibility of only one of the parents or a substitute.

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What has changed in Brazil?

The shared custody has started to be practiced in Brazil since 2002. It was established by the law 11.698/2008, and it changed the articles 1583 and 1584 of the Civil Code. By the new rule, the judge started to have the power to apply or not the shared custody.

In 2014, the law 13.058/2014 came to ruled the situation of conflict about the custody of the children. Now, if both parents demonstrate aptitude to have the family power, the shared custody will be employed.

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What has changed in Brazil?

The shared custody does not take place when one of the parents declines the custody.

The legal proceedings in progress will be judged accordingly to the law 13.058/2014; the court will not have jurisdiction in unappealable cases, but there is the opportunity of reapplying for the change custody.

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Time of conviviality with the children

The purpose of the shared custody is to share the time of companionship with the kids, in a balanced way.

For that, it's necessary to analyze the children's routine, their activities and leisure hours always taking into account the children's best interests. **The balance can not be mathematical, but affective.**



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Time of conviviality with the children

The lack of daily contact with parents and the decrease of affection can permanently scar the children's personality. Parents must try to maintain the routines and children habits, providing protection and reinforcing the family ties.

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Where should the children live?

Considering the shared custody, the children's residence should be the one that satisfies their interests.

This rule applies to the parents that do not live in the same city.



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Where should the children live?

Both homes might offer complete support to the children, and meet their expectations, a refuge for their survival, development and family ties.

Divorce brings up the separation of a parental families with two homes.

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Shall the shared custody cease the maintenance obligation?

The shared custody does not cease the maintenance obligation.

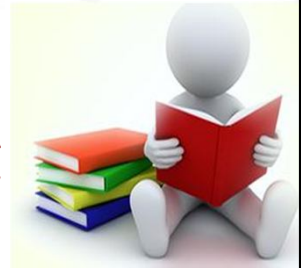
The children must be maintained with all their necessities (clothing, education, medical treatments) satisfied, respecting the proportion and conditions of each one of the parents.

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Does the parent, that isn't in custody, have the duty of supervision?

The father or the mother which does not have the custody has the duty to supervise the interests of the children.

The parents must play a real and active role in the daily development of the children.



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Does the parent, that isn't in custody, have the duty of supervision?

To enable the duty of supervision, any of the parents may request information or reports in any subjects or situations that may affect directly or indirectly the health or education of the children.

The public or private establishments are obliged to give the information requested to any of the parents.



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Does the parent, that isn't in custody, have the duty of supervision?

If the information is not provided, a penalty may be imposed of R\$ 200,00 / R\$ 500.00.

Both parents should cooperate with information about the children. The impact of non cooperation may represent weakness within the family ties and power. In this case, the active engagement of the distant parent may be harmed.

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How to analyze the best conditions?

To establish the parents assignments and the period of family living during the shared custody, the judge may use the expertise of other specialists, with the purpose to manage a igual time of the custody.

There is not a preconceived formula. The feelings of responsibility and solidarity must be encouraged, so that the parents may provide the children with socially integrated family life.



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How to analyze the best conditions?

The understanding of the parents must overcome the ruins of the end of the love relationship between them, favoring the balanced social life of the children, and the changes in their lives.

This is the fundamental role of the family that must remain. The parental ties must sustain the development of the children, to avoid children having feelings of weakness, anguish, lack of affection and sorrow.

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Judge - Mato Grosso State - Brazil

What happens with when the father or mother do not comply the established rules?

The unauthorized change or the non-compliance of the rules of custody may cause the reduction of the prerogatives given by the judge.

The rules are established in favor of the children, their interests, and cannot be ignored.

In the case of a difficult situation appearing, the parents must find the solution in a new judicial decision.

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What if the mother or the father do not have the appropriate conditions for the custody of the children?

In this case, the judge will give the custody to the one that reveals compliance with the nature of the rules. If both, father or mother do not have the conditions, a third person will have the responsibility of the custody, respecting the degree of family relationship, affinity and affectivity.



Only in extreme situations must this last possibility be taken, always favoring the inclusion of the children within a family context.

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How to lead with urgent situations?

The urgent judicial decisions, even in the case of temporary custody, should be taken after the judicial hearing of both parents.

If the urgent protection of the children must be taken without the parents hearing, the judge may analyze the question with the help of a team of expertise.

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Shared custody

A powerfull instrument against
the parental alienation

Parental alienation is the intervention in the children's psychological development, encouraged or induced by one of the parents, by the grandparents or by the one that has the children under their custody, with the purpose to convince the children to reject the parents or one of the parents, or to cause damage to their affective ties.

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Shared custody

A powerful instrument against
the parental alienation

The Brazilian law enumerates practices in a non exhaustive list of acts that can characterize the parental alienation. So, the judge may understand that others practices and unsafe behavior may characterize the parental alienation.

The shared custody as general rule is a powerful instrument to increase an invert progression of the parental alienation, making it more difficult this constant and hateful practice.

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Shared custody

A powerfull instrument against
the parental alienation

The shared responsibility about the rights and duties of fathers and mothers that do not live together will represent a sum of all their efforts looking for the preservation of the parental family and the best interests of the children.

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Law 13.058 – December, 22, 2014.

Modify the articles 1.583, 1.584, 1.585 and 1.634 of the Law 10.406 (Civil Code) and establishes the meaning of “shared custody” and provides for its application.

The President of Republic May all know that the National Congress has decreed and I herein sanction the following law:

Art. 1º This law establishes the meaning of the expression “shared custody” and provides about its application, so that modifies the arts. 1.583, 1.584, 1.585 and 1.634 of the law 10.406, January, 2002 (Civil Code).

Art.2º The law 10.406 January, 10, 2002 (Civil Code) come into force with the following modifications:

“Art. 1.583.....

§2º In the shared custody, the conviviality time with the children must be shared in a balanced form with the mother and the father, always with the purpose of the children interests and the real conditions.

Revoked

Revoked

Revoked.

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§3º In the shared custody, the city considered base of residence will be the one that attends the children interests.

§5º The unilateral custody compels the mother or the father that does not have it, to supervise the children interests, and, to enable this condition, any of the parents will be legitimate to plea for information or reporting of accounts, objective or subjective, in matters or situations wich direct or indirectly influence the fisical or psychological health and the children education.

Art.1.584.....

§ 2º When the agreement between the father and the mother about the childrem custody is not possible, and the parents are able for the family power, will be applied the shared custody, except if one of them declares that does not want the custody.

§ 3º To established the father and mother assignements and the periods of conviviality under the shared custody, the judge , “ ex officio” or in face of a request of the public prosecutor, may be based in reports and information of multidisciplinary team of experts, that will search for an equilibrate division of time.

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§ 4º The unauthorized change or the non-compliance of the rules of the custody may cause the reduction of the prerogatives given by the judge.

§ 5º If the judge verifies that the children must not be under the custody of the parents, he will apply the custody to a person that reveals compatibility with the nature of the custody, considering degree of family relationship, affinity and affectivity.

§ 6º Any public or private establishment has the duty of give informations about the parents and their children, under the penalty of payment of a fine, R\$ 200,00 to R\$ 500,00 by day of disobedience of the request.

Art. 1.585 In cases of provisory judicial order of separation and provisory custody, the decission of custody, even temporarily, will be taken after hearings of the parts, by the judge, unless the urgent protection of children demands the order without the opposite part hearing , applying the art. 1584.

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Art. 1634 Both parents are responsible, in any marital situation, for the family power, consisting :

I- Direct the education and upbringing of the children;

II- Execute the unilateral or shared custody following the rules of art. 1.584;

III- Agree or not with marriage;

IV- Agree or not with foreign travels;

V- Agree or not with change of permanent residence to other town;

VI- Provide a tutor by testament or similar document, if the other parent do not survive or, if survives with no conditions of custody;

VII- Represent the children judicially or extra judicially until 16 years old, in the civil acts and after this age assist them, by supplying their will;

VIII- Claim for the children from those who maintain them illegally;

IX- Require obedience, respect and works adequate for their age and condition.

Art. 3º This law shall come into force on the day of its publication.

Brasilia, December, 22, 2014.

Dilma Rousseff

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Judge - Mato Grosso State - Brazil

Law Project and justification nº 1.009, 2011.

Modify the articles 1584, § 2º and 1585 of the Brazilian Civil Code, to give more clarity about the legislator intention, about the shared custody .

The National Congress has decreed:

Art. 1º The § 2º of the article 1584 of the Brazilian Civil Code comes into effect as follow:

§2º When the agreement between the father and the mother about the children custody is not possible, and both the parents are able for the familiar power, it will be applied the shared custody, except if one of them declares that does not want the custody, when will be applied the exclusive custody to the other parent.

§ Regardless of which of the parents detain the custody, it is prohibited, under the penalty of fine of one minimum salary per day, to any public or private establishment to deny to the parents, information's about the parents and their children. The establishments will be considered co-responsible.

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Art. 2º The Brazilian Civil Code, article 1585 comes into force as follow:

Art. 1585. The custody will not be decided in cases of Provisory separation, even temporarily . The custody may be applied only after the hearing of the parts.

Art. 3º This law shall come into force on the day of its publication. All opposing dispositions shall be revoked.

Justification

Unless there is no way to deny the legal progress of the law 11.698, 06/13/08, that introduces the Shared Custody in Brazil, several people, including judges, seems that had not understood the real purpose of the legislator.

For the parents that are able to disconnect the relationship husband/wife from father/mother, the law is not necessary. They are not the target of this law, in fact, they understand by themselves the importance of their places in the children's life.

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It happens that judges and public prosecutor, misinterpret the expression existed in the law, "when at all possible", as "when the parents have a good relationship". If that was the situation, it would not exist motive for divorce, or for the ending of a life in common, and yet, for probability of agreement. It would not be the necessity of a law, since there was already the rules of the Civil Code. Therefore, following this thinking, totally wrong, the National Congress had lost time, public money with a proposal of a new law, what we know is not true.

The basic assumption that the existence of agreement or the good relationship between the parents could be the condition to the shared custody allows that the eventual - litigant situation with the only purpose of obstruct the shared custody favoring his/her own interests , forgetting about the children's, becoming innocuous the rules of the law. Its common that after ending the relationship, with preliminary restriction order, the temporary custody is used like a weapon against the other part, characterizing the parental alienation.


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This actions have been observed by the judges, witch defend to apply the shared custody without any condition but with a deep analyses of the cases before the custody is given. Several papers published and conferences, in the legal and psychological fields, like the follow:

"Shared custody with or without agreement – Judge Eulice Jaqueline Cherulli – Judge 2ª Vara- Family- Rondonópolis-MT

"The Shared Custody allows (...) the alternating of conviviality periods. (...)The alternating periods of custody is possible, as long as it means a convenience for the children, looking forward the age, place of formal education, health and others factors that must be carefully considered."

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1. The children must feel at home in both residences.
 2. If the children can decide , by themselves, where to go, they will be a “mini grown-up”.
 3. The Shared Custody is a social anchorage for the children.
 4. The Shared Custody does not necessarily require a good relationship between the parents.
- Based on all facts, we rely on the approval of this important law Project.

Sessions Room, April, 12, 2011.
Arnaldo Faria de Sá
Federal Deputy – São Paulo

Translated by *Margarete da Graça Blanck Miguel Spadoni*
Retired State Judge

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