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## Introduction

The most important lesson that anyone can take away from this writing is easy to remember, but, very hard to practice. The best advice anyone can give to unmarried parents is **“Do Not Wait For A Crisis To Speak To An Attorney”**. Throughout this reference you will learn how some serious legal issues could have been avoided or made far less serious had parents sought some decent legal advice ahead of time, but, for some reason we as humans tend to procrastinate and avoid speaking to lawyers until our situations are so desperate that we have no choice. Whether it is denial, not wanting to spend the money, or even holding out hope that the other parent will come around and be reasonable; most people avoid the thing that can help the most (a good attorney) and they continue the same cycle of disfunction until things reach critical mass.

The legal landscape for child custody issues has changed drastically over the past decade. Fewer and fewer couples are getting married each year and instead are living together and having children which affects how child custody attorneys litigate cases.

The truth is that when a married couple has a child both parents are seen by the law as being the legal parents of their children because the child was born to an intact marriage.

Alternatively, when an unmarried couple has children the legal paternity of the children is a more complicated thing to establish.

Every day unmarried parents are deceived or intimidated into believing that they do not have any ability so exercise visitation with their children. An even greater number of parents are ordered by the state to pay child support for children who they are not permitted to visit. These parents need to understand that every parent has the right to have a relationship with their children even where there was not a marriage in place; they need only to properly involve the courts.

At certain points of this reference guide female readers may think it is more geared toward fathers and at other times male readers may think certain sections are written for mothers. However, I can assure you that the information contained in these pages is important for both mothers and fathers as it can provide a well rounded mental picture of custody issues and how to view them as part of the big picture rather than viewing them in a vacuum as happens most of the time.

This short reference is written with Florida law in mind and specifically the Ninth Judicial Circuit For Orange County and surrounding areas, but many of the ideas can hold true to other areas of the country. You should always consult an attorney about your particular case as this reference is provided for informational purposes only and is not a substitute for legal representation.

Additionally, nothing in this reference should be construed as legal advice and does not establish an attorney/client relationship. You are not represented by this firm unless or until you enter into a written agreement for representation signed by both you and an attorney of this firm. The law changes often consult your attorney about current law or recent changes.



## **Chapter 1**

### **His Story and Her Story; Why Unmarried Parents Need To Speak To Lawyers**

When one considers just how important it is to seek establishment of parental rights the lack of rights that unmarried fathers have is downright scary. Imagine the following two hypothetical fact patterns:

#### **His Story**

John is a 24 year old college student who dated Jane, a fellow classmate from Miami, for 4 months when Jane announced that she was pregnant. Jane always wanted a family and John wanted to do “the right thing” so they stayed together through the pregnancy and Jane gave birth to baby Danielle.

After the birth John and Jane fought often and intensely about how to delegate responsibilities and Jane did not approve of John going out drinking with his friends. When baby Danielle was two months old John and Jane, during a more volatile fight, agreed to call it quits and end the relationship.

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John moved into his own apartment and for a couple weeks he was able to go see baby Danielle at Jane's home each day after class, but, suddenly Jane began to tell John that it wasn't a good day for him to come by and over a few weeks this became more frequent until John was not seeing the child at all. One day, fed up, John showed up at Jane's home and pounded on the door demanding to see his daughter. When Jane finally opened the door John pushed past her and picked up and played with the baby for ten minutes or so before leaving without further incident.

A few days later as John was leaving class a sheriff's deputy approached him and personally served him with documents for a domestic violence injunction which Jane filed against him. The documents said that he was not permitted within 500 feet of Jane or the baby and that John had to show up to a hearing that was three weeks away. The part that shocked and confused John the most was that the paperwork was out of Miami which was where Jane's family lived.

John was not able to get out of work long enough to travel for the hearing and a judge in Miami granted Jane's request for an injunction against John for one year and ordered that John could see the baby once a week at a supervision center in Miami.

With no knowledge about the law and no financial ability to travel to Miami to see his daughter John assumed that he had simply lost "custody" of his daughter and after a period of depression John accepted this mistaken belief that he would never see his daughter again.

Two years later John was pulled over driving home from work and told by police that his driver's license had been suspended for failure to pay child support. This came as a surprise because John did not know that he owed child support to Jane. John immediately went to the child support office and after being treated very poorly by several staff members John was able to learn that the year before the Florida Department of Revenue had sent letters to an old address of his regarding setting up a case for support and, having missed the hearing due to not receiving the letters from the state, John was ordered to pay an amount of child support that amounted to 70% of his monthly income and he never even realized it.

John could not imagine how he could be ordered to pay so much child support for a child that he was not permitted to see and after consulting with a lawyer he learned that in order to seek visitation with his daughter he would likely need to hire a Miami attorney and fight for visitation in South Florida since the child had now lived in that jurisdiction for over a year.

John's biggest problem here was a simple lack of basic knowledge. Had he spent 5 minutes on the phone with a lawyer in the beginning this entire story could have been different.

What John did not realize in the beginning of this story is that when a father is not married he has essentially no rights to the child until he files a petition with the court seeking parental rights, visitation, and other relief. The Florida statutes declare that in the unmarried context the mother is the sole parental responsibility parent, that is, until dad files a case with the court,

serves the mother, and the parties either reach a court ratified agreement, or go to trial for a judge to decide all the issues.

Had John filed one of these cases early on Jane would have been served with a copy of an administrative order for the Ninth Judicial Circuit of Orlando Florida which would have required her to reasonably permit John to see the child. Another huge advantage this could have given John is that once served with the administrative order Jane would not have been permitted to pick up and move so far away with the baby without first obtaining court approval to do so.

Yet another advantage John would have had in filing a case early is that the domestic violence judge who reviewed Jane's initial request for a domestic violence injunction would have seen that there was a pending custody case and may have reviewed the request for injunction with more scrutiny to ensure that it was not a strategic move to gain the upper hand in the custody case. Finally, child support would have been properly calculated after more intensive discovery as part of the custody case which would have given John a more reasonable support payment and afforded him proper notice of hearings so that he had the opportunity to participate.

Unfortunately for John, now that the mother and child reside in Miami the best visitation schedule he can hope for will be to see his child on holidays where he will need to make arrangements and come up with funds for travel on each and every visit. This could have been very different had he had the mother served with his petition before she moved; there would



have been a very good chance that the mother would have been ordered to remain in the jurisdiction to allow the father to exercise regular constant contact with the child.

**Her Story:**

Sue is a 21 year old server at a upscale restaurant in a touristy area of Orlando where she met Abe at a party a week ago. Against her better judgment she gave in and slept with Abe after knowing him for a week and quickly found out that she was pregnant with his baby. From the day Sue met Abe she had little prospects for a future with him and this was further solidified when she was introduced to his heavy drinking and drug use shortly after they slept together.

Over the course of a month she witnessed Abe get into two fist fights with strangers and heard many stories from Abe and his friends about his drug and alcohol binges and run-ins with the law. One night Abe had been drinking heavily and started an argument with Sue wherein he got up in her face screaming obscenities at the top of his lungs at her which caused her great fear and anxiety at the sight of him thereafter.

Sue knew that this was not the type of person that she wanted around her baby and she quickly distanced herself from Abe and by the time she was ready to deliver her baby she had not spoken to Abe for several months despite his regular aggressive texts and angry voice messages voicing his desire to be present for the birth and threatening that if she did not allow him to be present for the birth that he would “hire a lawyer and take the kid away from her”.

Sue gave birth to baby boy Ryan and did not let Abe know that she was in the hospital and did not make any arrangements for Abe to see the child after the birth. One day Sue received a call from a number that she did not recognize and a woman on the other end of the call identified herself as Abe's mother and began making the same type of aggressive threats toward Sue as Abe had regarding hiring lawyers and taking the baby away.

Fearful and not knowing anything about the law Sue began to allow Abe to visit with baby Ryan as long as Abe's mother was present. Over time Abe began showing up at random times demanding to take the child and offering no explanation as to where the baby was going to be during the visits. At one point Abe kept the baby overnight without asking Sue and he did not answer any of her repeated phone calls leaving her to stay awake all night frantically wondering if her baby was safe.

That was the last straw. Sue made an appointment to see an attorney to find out what she could do. She felt like she was being bullied and intimidated into putting her child in a dangerous situation and she'd had enough.

The lawyer explained to Sue that since she had given in and permitted unsupervised visits with the father that her argument for supervised only visitation would be weakened substantially. She also learned that Abe's dangerous lifestyle may not be an easy thing to prove to a judge and that in Central Florida dad's who meet certain factors have a easy time getting awarded 50% of the parenting time with the child. Sue learned that Abe's attorney would likely argue

that Sue knew who Abe was before they slept together and that she was accepting of him as a possible suitable father otherwise she would not have slept with him and that her allegations were simply an effort to try to alienate him from his baby.

She also found out that she would most likely have to consult Abe and get his agreement on every major decision related to the child, that she would be directed by the judge to communicate with Abe to co-parent the child, and that chances were that Abe would get very regular time-sharing and that she would need to interact with him constantly for the next eighteen years. To make matters worse, because Abe was a minimum wage earner child support guidelines could work out to provide Sue with less than \$200 per month which would be little help to her trying to keep a roof over her and her child's head.

At Sue's trial she told the judge through tears that Abe was an unsafe father, but she just didn't know how to prove it to which the judge replied "you should be careful who you decide to reproduce with"...

These two hypothetical fact patterns contain most of the common issues that custody attorneys face in different cases. Of course these stories sound extreme and most of the time only one or two of these different issues will arise in a single case, but the fact remains through them all that had the parent gotten a little good information ahead of time things could have been different.

I believe that John in the first story had more ability to change the outcome than Sue in the second story, however, Sue could have made some strategic decisions in the beginning that could have given Abe the chance to bond with his child without giving up important leverage that she could have held onto to seek the supervised time-sharing that she really wanted to address her safety concerns.

For both of these parents and for anyone who is or is about to be an unmarried parent the best thing to do ahead of time would have been to set up a meeting with an attorney and discuss their options. Many people believe that some internet research or that maybe some question and answer forums will suffice. Unfortunately, decisions in custody litigation can have a ripple effect and one decision made now can have an substantial unforeseen impact on the case later and an online forum simply cannot provide all the information needed.



## Chapter 2

### Sorry Dad You Just Do Not Have A Say...Unless You Want It.

In the state of Florida an unmarried father simply does not have his parental rights unless and until he files a child custody case with the Court to have his parental rights legally bestowed to him. This is very different than if the parents are married and decide to get a divorce as married fathers are automatically seen as the legal father of a child born to the marriage.

#### **Parental Responsibility:**

Most parents who have custody orders signed by judges, are married, or are divorced with custody orders have what is called shared parental responsibility over the children. In a nutshell this means that both parents have an equal say in all major decisions to be made for the

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children. However, an unmarried father who has not obtained a visitation order signed by a judge does not automatically have any a say in decisions related to the child and often is forced to sit idly by and watch as major decisions such as schooling, medical decisions, and the child's religions upbringing are completely controlled by the other parent and their family. This can be problematic because this process essentially cuts one of the child's parents out of a major segment of the parenting experience and can make dads feel disconnected as a parent which the courts generally do not want to see happen if at all possible.

### **Relocation:**

One issue that comes up very often in custody cases involving unmarried parents occurs when a parent decides to move a great distance away with the children.

The main take away for this section is that much of the time unless a court case is filed and served an unmarried mother can pack up the kids and move far away whether dad wants it to happen or not. Too many times to count I have sat across from devastated fathers at consultations who had put off filing a court case only to find out that the other parent took the kids and moved out of state. Most of the time when this happens, if no case has been filed and served, the court will not order the mother or child to return to the jurisdiction and the father will end up looking at a long distance visitation plan at best. While a long distance parenting plan is not the end of the world it does mean that a pile of new stressors come into play such as

payment for travel to effectuate visits, ramp up schedules to prepare children for long distance time-sharing, and greater risk of alienation of the non-relocating parent to name only a few.

Most of the time there are warning signs that a move is imminent and parents should trust their instincts. If you feel like the other parent may be getting ready to move away with the kids then these feelings should not be ignored.



## **Chapter 3**

### **Statutory Factors In Child Custody Cases:**

Florida statutes are the basic foundation for how child custody judges decide the outcome of cases. The following list basically sums up the main factors used by the courts to determine “the best interests of children” which is the guiding principle for decisions in custody cases.

1. Each parent’s ability to maintain the parent/child relationship between the child and the other parent.
2. A parent’s ability to follow the parenting schedule and to agree to any needed changes.
3. How parenting responsibilities will be divided between the parents.
4. Each parent’s ability to place the child’s needs before their own.
5. How long the child has lived with one parent and if it is stable.
6. The ability for the parents to maintain a parenting plan even when travel is involved for visitations.

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7. Each parent's moral fitness.
8. Mental and physical health of the parents.
9. How well the child does at home, school, and in the community.
10. After considering the intelligence and maturity of the child the court may take into account the child's preference.
11. The level of personal involvement of each parent in the child's life such as friends, school, doctors, and activities.
12. Ability of each parent to provide a good routine for the child when it comes to discipline, homework, meals, and bedtime.
13. The ability for each parent to communicate with the other parent on matters involving the child.
14. Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect.
15. A parent's ability to be involved in the child's school and extracurricular activities.
16. A parent's ability to provide a home for the child free of substance abuse.
17. A parent's ability to shield the child from ongoing court action by not discussing litigation with the child or otherwise exposing the child to such information.
18. Any other factor that relates to the best interests of the child.

Parents who are entering the custody court arena should be aware of these factors and be ever mindful of them as they make everyday decisions in their parenting and communication with the other parent. This is because when the court case starts up every text that was sent telling

dad that the “child doesn’t need to spend time with him” or the email to mom cursing her out and sounding all around difficult to communicate with; will show up in printed form and get entered into evidence at trial. For this reason everyone should be very careful how they communicate with the other parent no matter how upset they get parents should always keep their cool.

### **Most commonly used factors in litigation:**

While these factors are all important to a judge’s decision in a custody case there are certain factors that are more commonly at issue than others. For instance one parent denying visitation to the other parent is an issue in a large number of contested custody cases and for that reason the factor on a parents willingness to encourage a relationship with the other parent is one of the most commonly violated and thus referenced in trial more than many other factors.

Another major problem that family law judges deal with is where a parent refuses to communicate with the other parent about parenting or is verbally abusive to the other parent.

Thus, the factor relating to parents ability to communicate with the other parent in a mature manner for the child’s sake is very often highlighted in court.

Finally, the factors related to domestic violence and substance abuse are very often raised in custody litigation as allegations of domestic violence, both real and false, are very common in family law. Just as common are allegations of substance abuse in custody cases against a parent. Both of these types of allegations must be proven to the court which is why it is very

important to consult an experienced attorney regarding their legal case.

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## Chapter 4

### Can't we just get 50/50?

Ten years ago it was the norm for judges to award one parent a vast majority of time sharing with one parent and a mere every other weekend with the children to the other. Just in case you did not guess the parent who got the least time was normally the father. Today, however, custody judges are much more liberal with awarding shared “50/50” time sharing schedules as this is seen to be the best way to maximize the bond that a child has with both parents.

#### **50/50 Myths:**

There are many myths about this type of split custody schedule that parents need to understand going into litigation:

#### **Myth 1: “Any dad can get 50/50”**

The truth is that there are several factors a judge will consider before awarding a split schedule such as how close the parents live together, how well the parents get along, each parents

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ability to keep up with the child's school responsibilities, bond between child and parent, historical involvement with the child, etc.

**Myth 2: "if I get 50/50 there will not be any child support owed"**

The truth here is that even with a split schedule if one parent earns more than the other then the higher earning parent will most likely owe support to the other parent. There are many other factors that can cause child support to be unexpectedly high such as day care costs that can lead to substantial support obligations even where there is a split time-sharing schedule.

**Myth 3: "As long as I get 50/50 ordered it does not matter if I actually exercise all of it"**

The truth about this myth is that a parent's time-sharing is always subject to modification upon the happening of a substantial change. This can mean that if a parent fails to exercise all of their time-sharing then the other parent can come in and seek to have the visitation order changed to reflect what visits are actually being exercised which would also likely increase child support for the parent who is losing overnight visitation time on paper.

Most fathers want 50/50 and most mothers want dad's to have something less than 50%. At the end of the day it is important for all parents to really sit down and consider what will be best for the children completely setting aside all personal reasons for wanting a certain type of visitation schedule. Maybe John could get an order for 50% of the time-sharing, but, it would mean that his daughter would have to miss out of playing softball 3 days a week which she loves to do. Maybe Jane could get an order for dad to only get every other weekend, but, she

knows that her daughter loves her dad and would want to see him more often.

Many times parents get overly caught up in what they want in order to “win the case” and completely lose sight of what may truly be best for the children involved. The very nature of child custody litigation revolves around parents who’s relationships did not work out being forced to cooperate in the world’s most important and complex job; to raise a child. Regardless of how the relationship ended; “she cheated”, “he cheated”. Or “he is now dating my best friend”, and “I don’t know anything about their new significant other”. All parents must be extremely careful to separate their emotional feelings about the other parent when making decisions related to parenting of a child. This is because when judges get involved and it becomes apparent that parenting decisions are being guided by negative feelings about the other parent rather than what is best for the child, things can get ugly for the parent acting out of negative emotion.



## **Chapter 5:**

### **Child Support**

One important factor to the child custody case for unmarried parents is the proper calculation and ordering of a child support obligation. As stated in chapter 4, even where a 50/50 time-sharing schedule exists there will still usually be an obligation for one of the parents to pay child support. A parent's exact payment amount will vary based on the results of a math calculation that has been set forth in the state statute. This math takes into account; the incomes of each parent, how much visitation each parent has with the child in overnights, and any necessary day care costs for the children of the case.

It is not a good idea to go into a case assuming that you know what child support will be. There are many cases where the mother may have the majority of the time-sharing with the child and may still be required to pay support to the father because she earns substantially more income

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than he does. This is why it is always important to speak with an experienced attorney before deciding to file any case to make sure that you know how to prepare for all possible outcomes.

Some parents operate under the mistaken belief that if they quit their job or intentionally cause themselves to get fired that the courts will excuse them from paying child support or give them a lower payment amount. The truth is that any loss of income that results from quitting or being fired from a job will likely be deemed as a intentional reduction in income and will result in the original higher income being used for child support calculations.

The only common excusable reasons for reducing support will be if the paying parent was truly “laid off” and can demonstrate a good faith attempt to find new comparable employment. Another avenue the courts normally accept for lower child support payments is if a parent becomes disabled or suffers from an illness which truly affects their ability to work.



### **About the Firm:**

The Law offices of Sean Smallwood, P.A. is an Orlando, FL based family law firm representing parents in divorce, child custody, child support, paternity, and more. The firm offers free consultations and payment plans. Call today to discuss your family law issue at:321-800-3682 or visit [www.affordablefamilylawyer.com](http://www.affordablefamilylawyer.com)



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