

A GUIDE TO ALLOCATION OF PARENTAL RESPONSIBILITIES

What is Allocation of Parental Responsibilities (APR)?

Allocation of Parental Responsibilities is the legal process in family court to obtain physical and legal custodial rights for a minor child. There are three main areas of responsibilities addressed in an APR case: decision-making, parenting time, and child support.

Decision-making responsibilities determine how *major* decisions about a child are made.

- In general, a person with parental responsibilities has the authority to make day-to-day decisions (discipline, routine, meals, etc.) when they are with the child.
- For major decisions (school, medical care, religion, etc.), a judge will decide who has the primary authority for making those decisions or if that responsibility should be shared by more than one adult.
- A judge can also order that major decisions must be discussed by all the parties in the case, even if the final decision will be made by only one person.

Parenting time responsibilities define the child's schedule and contact with caregivers and parents.

- Parenting plans should be specific and practical. This can include transportation plans, telephone contact, holiday and summer schedules, and travel expectations.
- Courts want to encourage a parent-child relationship through frequent and consistent contact so long as it is in the child's best interest.
- There can be restrictions on parenting time, such as requiring a parent to have supervision during visits, when a child's safety or emotional development may be endangered. Restrictions can be modified, added, or removed as needed.

Child support is a duty of both parents and determined based on a child's physical care.

- The State of Colorado may ask for child support if the child is receiving public benefits.

Can I get parental responsibilities even though I'm not the child's parent?

Yes, in some cases. A nonparent must have *standing* to ask a court for parental responsibilities. Standing is determined based on a child's physical care. It does not require you to have a biological relationship to the child or to have a parent's permission to care for the child.

A nonparent can ask for parental responsibilities when:

- A child is in the nonparent's care and not in the care of either parent; or
- A child has been and continues to be in the shared care of a nonparent and a parent for at least 6 months (182 days); or
- If a child was in the shared care of the parent and nonparent for 182 days but the nonparent is no longer caring for the child, the nonparent can still seek parental responsibilities by going to court no later than 6 months (182 days) after the shared care ended.

You should talk to a lawyer for legal advice about your rights, options, and next steps based on your individual situation. This material provides legal information only and does not constitute legal advice or create an attorney-client relationship with the reader.

If you are sharing physical care of a child with a biological parent, a judge may need more information about the details of your care for the child, and the details of the parent's care for the child, in order to decide whether you can seek parental responsibilities.

If I have standing, can I ask for APR right away?

A court must have the authority (*subject matter jurisdiction*) to make decisions about the child in your care. Be prepared to answer these two questions.

- *Has a court already made a decision about this child's care?* If so, you cannot start a new case and must join (intervene) as a party in the original case, even if it is in another state.
- *If there is no prior court decision, how long has the child been in Colorado?* In general, a child must live in Colorado for six months before the court has authority over the child's care. If you need to go to court before the child has lived here for six months, you may want to talk to an attorney to see if you qualify for an exception to this rule.

Is it true that courts prefer parents over nonparents?

Yes, but this does not mean that nonparents cannot get parental rights. Parenting is recognized as a constitutional right, so a court must give preference to what a parent wants concerning the care of their child. However, if there is enough evidence that (1) what a parent wants is not in a child's best interest and (2) what a nonparent wants is in the child's best interests, a court can give parental responsibilities to a nonparent. It is your responsibility to present enough evidence for the judge to make this decision.

At what age can a child decide where they want to live?

There is no age when a child gets to decide where they want to live. A court makes all parenting decisions based on the best interests of the child. This includes the wishes of a child who is *sufficiently mature and able to exercise independent preferences* about the parenting schedule. In the majority of family law cases, children cannot testify or communicate with the judge. Instead, the judge can hear about the child's wishes from other witnesses, including the caregiver, the family, friends, parenting professionals appointed by the court, or therapists. Sometimes the court will ask for an outside professional to look at the facts and provide a recommendation to the court. When a Child and Family Investigator is appointed, their opinions can be shared with the Court through the court-appointed professional's investigation. An attorney for a child (Child's Legal Representative) can be appointed by the court, but this is very uncommon.

Is my APR Order permanent?

Not usually because orders can be changed based upon the facts and the needs of the child. When there is a new case or new motion in an existing case, *temporary orders* can be entered while the judge is resolving the longer-term issues. These orders are in place until the court decides all of the issues and puts *permanent orders* in place. If circumstances later change, or issues come up, the caregiver or a parent can ask the court to change the permanent orders.

- Modifications can include recalculating child support, changing parenting schedules, or creating a new process for making decisions about a child's care.
- Special rules apply to major changes to parenting time orders. Major changes to a child's primary care can only be made every two years unless the child is endangered in their present environment. Substantial changes can also be made only when they are necessary because important facts have changed or were not known by the judge when the existing order was made.

What do I do to get started?

If you are starting your own case, you will need to prepare these forms available at your county courthouse or on the Colorado Judicial Branch website:

- Petition for Allocation of Parental Responsibilities
- Case Information Sheet
- Summons

If you are joining an existing case or divorce case, you will need to file these forms:

- Motion to Intervene
- Proposed Order for Motion to Intervene
- Motion to Modify Allocation of Parental Responsibilities

Courts charge fees when you file a new case or ask to join an existing case. You can file a motion to ask to have these fees waived based on your income. If your motion is not granted, you will have to pay the filing fee before your case can move forward.

How do the parents find out that I am asking for APR?

It is your responsibility to give the parents notice about your request. A court cannot act until the parents are given the required notice.

In new cases, this means you will need to give formal notice (*personal service*) to the parents.

- Many people pay the local sheriff or a private process server to do this. It can also be done by an adult over the age of 18 who is not involved in your case. An affidavit must be signed and notarized by the person who gives the notice to the parent.
- A parent can sign and notarize a waiver to acknowledge they have notice of the case. This also must be filed with the court.
- If you can't find a parent, or don't know the parent personally, you still need to take reasonable efforts to find that parent to accomplish formal service. This applies even if you haven't had contact with them in years. Reasonable efforts may include calling people who know the parent, searching for the parent on social media and the internet, asking the child about contact with their parent, or researching public records with information about the parent. Keep track of what you do to try to locate each parent. If you cannot find the parent, you can tell the court what you have tried and ask to put a notice in your county's local paper.

If you are joining an existing case, you do not have to provide the same type of formal notice. You will need to mail what you filed with the court to the parent's address in the court file. If you know the parent resides at a different address, you should send it to that address as well.

What happens next?

In new cases, most counties issue *Case Management Orders* to give instructions about the next steps and deadlines set by the Court. Look at this order carefully.

In old cases, you must wait for the court to take action on your motion to get instructions.

How many times do I have to go to court?

This depends on the type of case and what you have asked for.

- An *Initial Status Conference* is first appearance in a new case to identify issues in the case, deadlines, and next steps. You must attend (usually in person) and meet with a judge or the Family Court Facilitator in your court.
- You may have more than one *Status Conference* in your case to monitor progress on meeting the initial requirements in your case. You may also have a status conference when you file a motion in an existing case.
- A *Temporary Orders Hearing* is set when requested by a party. It is intended to address only what orders are necessary and in the child's best interest while the case is ongoing.
- A *Permanent Orders Hearing* is the final hearing in a new case. This can be a *default* hearing when other parties do not participate, an *uncontested* hearing when everyone is in agreement, or a *contested* hearing where evidence is presented through witnesses.
- A *Motions Hearing*, like a permanent orders hearing, resolves the motion in an existing case. It may also require presenting evidence to the judge if it is contested.
- An *Emergency Hearing* to restrict parenting time can be set if a child's physical safety is endangered or their emotional development is significantly impaired.
- *Mediation* is required in all cases. This may happen at the courthouse or at a professional location. Colorado offers reduced cost mediation through the Office of Dispute Resolution. You can ask the court to waive this requirement if there is a good reason, like someone's physical safety or if another party is unknown or unavailable to attend.

What else should I know before I file an APR?

- The rules that apply to divorce cases also apply to APR cases. This means that you are expected to make financial disclosures to the other parties about your income and expenses. Sometimes, this can be waived for nonparents, but you must file a motion with the court explaining why there is a good reason to change the rule in your case.
- If there is going to be a hearing where witnesses are called, everyone needs to tell the other parties about any witnesses and documents or exhibits before the hearing.
- If you think an outside professional's advice about the child's best interest would be helpful for the court, you can ask that the court appoint a CFI or PRE. This is typically a *Child and Family Investigators (CFI)* or *Parental Responsibilities Evaluators (PRE)*. A CFI's fees can be paid by the state if you qualify.