

Custody 101:

Navigating the Family Court System in the Context
of Custody Proceedings



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Before You File

- Consider whether filing a custody petition is necessary
- Consider whether you can obtain an attorney
 - Assigned Counsel
 - Legal Aid Society of Northeastern New York
- Ensure you have a proper address for the other party so that they receive accurate and timely notice of the petition and hearing
- Understand:
 - Courts prefer to allow both parents access to the child
 - When there is no current order, both parents start out with equal rights
 - The outcome will not necessarily seem “fair” to you
 - Even “bad” parents are allowed access to their children



Standing

- Who Can File a Custody Petition?
 - Either parent; or
 - Non parent, where “extraordinary circumstances” exist:
 - Neglect/abuse;
 - Abandonment;
 - One or both parents incarcerated;
 - Serious acts affecting the well-being of the child

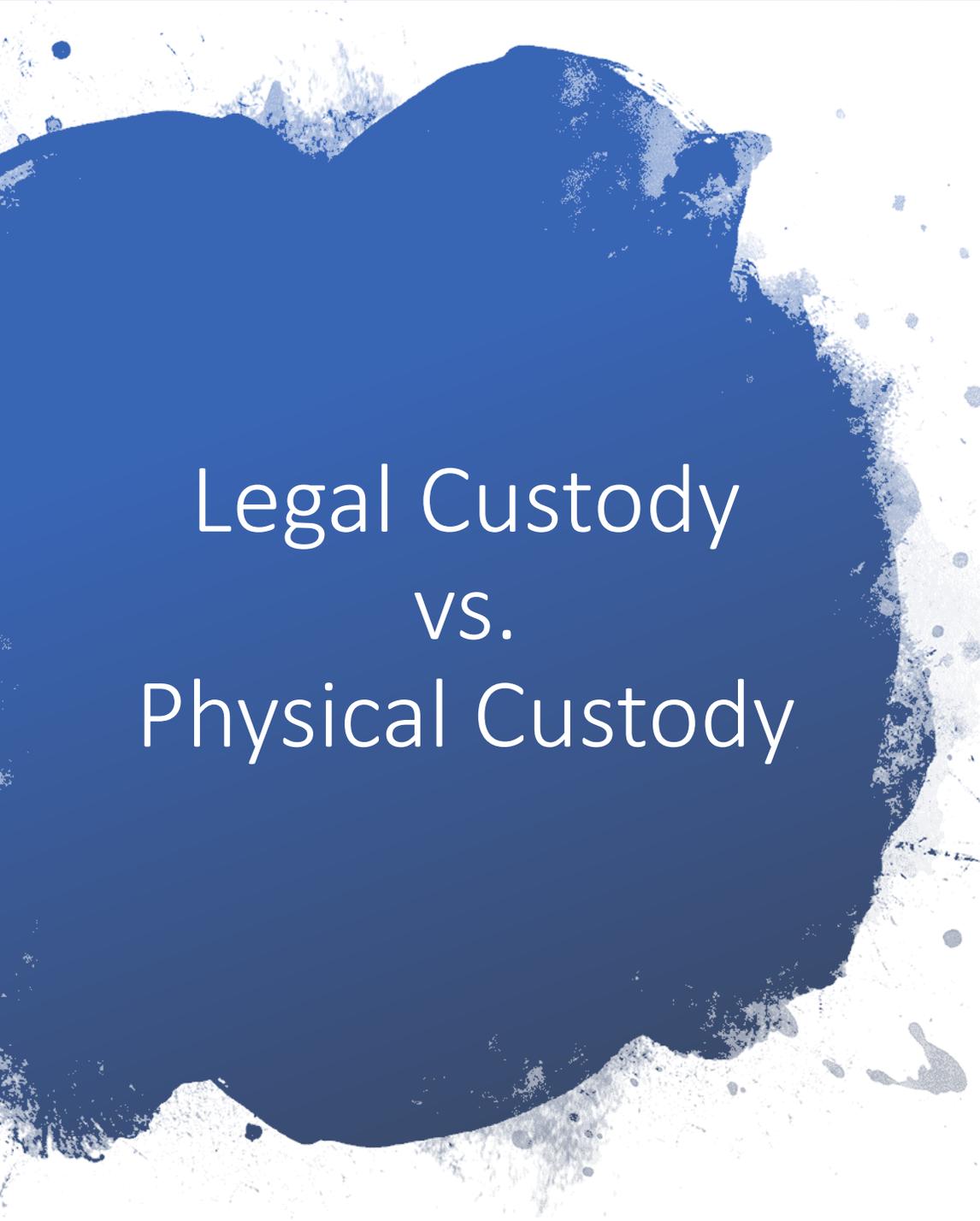
Jurisdiction

- It is appropriate to file in the county in which the child resides
- If the child shares time with both parents who reside in separate counties, the petition can be filed in either county



The Paperwork

- Custody Petition (available at nycourts.gov in the “Forms” section or at your county’s Family Court Clerk window)
- In the event there are safety issues, also complete and file an Address Confidentiality Affidavit
- Be complete in filling out the petition
 - Include any and all allegations you believe are relevant to a custody decision
 - Ensure you have substantial evidence to support any allegations you may make against the other parent
 - Set a timeframe for when specific events occurred
 - Use extra pages if necessary!!



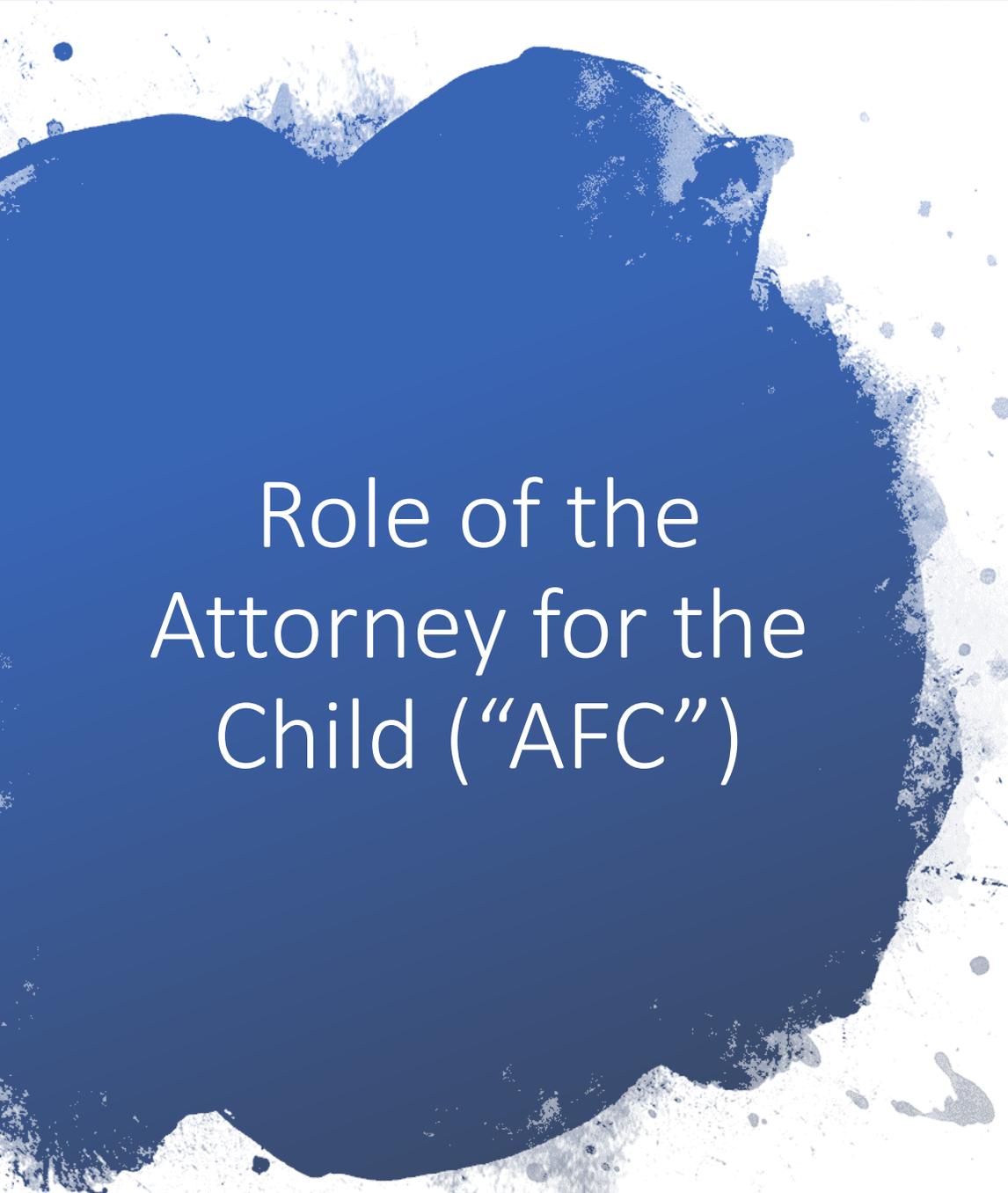
Legal Custody vs. Physical Custody

- Legal custody relates to which parent (sometimes both) will have the authority to make important decisions regarding the upbringing of the child, such as religious, medical and educational
- Physical custody or residential custody relates to where the child will reside, all or part of the time. If parents live in separate school districts, the residence of the primary physical custodian will usually dictate school district



Bests Interests Standard

- When a custody determination is left to a judge because the parents cannot come to an agreement, a large part of the determination is made based on the best interests of the child
- Considerations:
 - Which parent is the main caregiver/nurturer
 - Parenting skills/strengths/weaknesses
 - Ability to care for special needs of the child (if applicable)
 - Mental/physical health of the parties (only to the extent it impairs their ability to effectively care for the child)
 - Presence of Domestic Violence
 - Work schedule/child care plans
 - Child's position (dependent upon age/maturity)
 - Parents' ability to co-parent, cooperate, and foster relationship with the other parent



Role of the Attorney for the Child (“AFC”)

- An Attorney for the Child is appointed in all custody proceedings, whether or not it goes to a hearing
- As a parent, it is absolutely necessary to cooperate with the AFC
 - Though keep in mind that the AFC is there to promote the interests of the child/ren and not one or both of the parents
 - While you need to cooperate, it is best to limit your communications regarding aspects of your case as it could be used against you
- Both parents are expected to make the child available to their attorney and the child (dependent upon age) is also allowed/encouraged to reach out to their attorney if they feel it is necessary
- The AFC will have to “consent” to any agreements and their position will be taken into consideration in the event a hearing is held
- The AFC can independently file a modification/violation/enforcement petition after the entry of a custody order



Life After a Custody Order

- In all cases, abide by the custody order even if you are unhappy with the outcome
- In the event you are dealing with a parent who fails to exercise their parenting time consistently, keep a journal wherein you keep track (objectively) of when they do attend their parenting time, for how long, times they ask for you to keep the child for their time, etc.
- Deciding when to enforce or modify:
 - Enforce: The other parent is not complying with the order. You will want to track this just as stated above to support your contention that one parent isn't abiding by the order, ie. they are not allowing you to exercise your parenting time. I suggest keeping communications with the other parent to text or email so that you have evidence that they are denying your time
 - Modify: substantial change in circumstances required. If other parent failing to exercise their parenting time, a pattern should be established to show this is not a rare occurrence. A simple disagreement over scheduling or feeling as though the other party made a poor parenting decision does not necessarily amount to substantial change in circumstances. Consider any allegations you believe you would have to support your request for change and what direct evidence you have to support it. It can ultimately hurt your position to file petitions that are dismissed because they aren't sufficient to support a change.