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Houston Bar Association
Family Law Handbook

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FAMILY LAW AVENUES

Family Law Courts

What are family law courts?

The judges of the family law courts hear cases concerning family law matters, including divorce and child related matters. In Harris County, there are currently 10 family law courts plus a protective order court, and each court is identified by a district number. The family law courts are the 245th, 246th, 247th, 257th, 308th, 309th, 301st, 311th, 312th, and 507th. The 280th is the protective order court. At the time of the filing of your lawsuit, the case will be randomly assigned to one of the 10 family law courts, unless you are filing an action related to a prior order of a Harris County court. In that case, you usually must file the action in the same court which ruled on the initial order. Some child support matters will be heard in the four IV-D Courts dedicated to child support matters, courts 991, 992, 993, and 994 are informally known as IV-D Court Numbers 1, 2, 3, and 4.

What are associate judges?

The associate judge of the court is appointed by that court's elected presiding judge. The associate judge has met the same statutory qualifications as those of a state district judge. Each of the family law courts has an associate judge. The 280th court does not. The associate judge hears all cases referred by the presiding judge. By law, an associate judge may not hear certain matters. Parties may object to an associate judge hearing final trial of a case.

Who works in the courts?

Each court has a presiding judge elected by the voters of Harris County. In addition to the presiding judge, there is also an associate judge who has many of the same powers as the judge and may handle many

matters involving your case. In addition to the presiding judge and the associate judge, court personnel include the clerks, the court coordinator, the bailiff, and court reporter. The clerks maintain the papers in each case and set motions for hearing; the court coordinator keeps the court's trial calendar; the bailiff maintains order in the court; and the court reporter takes a record of testimony.

Where are the Harris County Family Law Courts located?

The family law courts are located in the Civil Courthouse at 201 Caroline, Houston, Texas 77002. The protective order court is in the Juvenile Justice Center at 1200 Congress Street, Houston, Texas, 77002. The IV-D courts are located in the Family Law Center at 1115 Congress Street, Houston, Texas 77002. The buildings are connected by tunnel.

What is a courtroom like?

The judge's bench is located in the front of the courtroom. The clerk and court reporter usually sit in the front of the courtroom at desks located on either side of the judge. The bailiff and court coordinator sit at desks in the courtroom. The jury sits in the rows of chairs located on one side of the courtroom.

Who can go into the courtroom?

The courtrooms themselves are open to the public. Children should not be brought to the court, unless the judge has previously given permission.

What are juvenile courts?

In the juvenile courts, the primary focus is on lawsuits filed by the Department of Family and Protective Services (sometimes referred to as CPS) and cases brought by the District Attorney's office alleging violation of the law by a juvenile.

In Harris County, there are three juvenile courts, and each court is identified by a district number. The juvenile courts are the 313th, 314th and 315th. They are located in the Harris County Juvenile Justice Center, at 1200 Congress Street, in downtown

Houston.

Are there rules that must be followed in a Family Law suit?

Yes. The Texas Rules of Civil Procedure are the rules that apply generally to the procedures by which a case proceeds in all Texas courts. The Texas Family Code governs issues in family law cases. Additionally, the Texas Rules of Evidence apply during any contested hearing in which evidence is presented. Further, in addition to the above, the Harris County Family Law Courts have adopted local rules which govern how family law cases proceed through the courts. A copy of the local rules may be obtained through the District Clerk's office online at hcdistrictclerk.com or at justex.net. Still further, each court may maintain its own rules, which are available at justex.net. The court-specific rule control. If there are no court-specific rules on an issue, then the local rules apply.
If there are no local rules on an issue, then the Texas Rules of Civil Procedure applies. A copy of all applicable rules should be obtained at the beginning of a case.

Can you represent yourself?

Yes. A person who represents himself/herself is called a "pro se" litigant. A pro se litigant must follow the same rules as an attorney, including the rules of procedure, evidence, and the local/court rules.

If I file a lawsuit, how long will it take before my case is finalized?

The time required to complete your case may depend on the complexity and type of case. It will also depend upon the court to which your case is assigned. Some courts will issue trial setting very quickly while other will take 6-12 months. A completely uncontested divorce can be finalized once the mandatory waiting period has expired (61 days from the date of filing), while contested matters, such as a child custody case or complex property case, may take a year or more.

Mediation

What is mediation?

Mediation is a confidential settlement process where parties to a dispute meet with a neutral person, called a "mediator," to try to resolve areas of conflict. The parties, their attorneys, if applicable, and the mediator discuss the goals of each party and the reality of each party's position. The mediator will help the parties reach an agreement, but the mediator cannot make either party enter into the settlement agreement. If the parties reach a settlement, the mediator drafts a binding agreement that reflects the negotiated settlement. The Mediated Settlement Agreement (MSA) is irrevocable as long as it meets certain criteria required by the Texas Family Code. The terms of the MSA will used to create the order (*e.g.*, Agreed Order or Final Decree of Divorce) that will be signed by the Judge.

Is mediation required in family law matters?

Generally, yes. Prior to the final trial, and prior to a temporary hearing, the court will usually order mediation. If the parties cannot agree on a mediator, the court will order the parties to attend mediation with a specific mediator and to schedule mediation. Each court has different rules and should be contacted about its specific requirements for mediation, prior to a hearing or trial.

What are the advantages of mediation?

Mediation is the parties' process and decision – not the court's. The process gives the parties control over the outcome of their case; offers certainty of the outcome; can be creative based on the individual parties and their children; is generally less expensive than a trial; and is a friendlier, less contentious process.

Does the mediator have to be an attorney?

No, but an attorney-mediator experienced in family law is generally very beneficial in family disputes, whether involving children or property issues.

Do mediators receive a fee, and if so, who pays?

It depends. There are mediators and organizations in Harris County who perform mediations based on the ability of the parties to pay. Generally, the parties split the cost unless they agree otherwise. There is a considerable range in fees charged by mediators, often based on experience, qualifications and whether the session will be a full day or half day.

Can parties attend mediation without an attorney?

Yes, but when parties are represented, the attorneys normally participate in mediation to help their client make an informed and reasonable decision. However, the mediator is not able to give a party legal advice.

What happens to the case after mediation?

If an agreement is reached at mediation, the written agreement (MSA) is transferred by one of the attorneys into an Agreed Order and presented to the judge to approve and sign. If no agreement is reached, the case proceeds to trial, and the disputed issues will be decided by the judge or the jury when appropriate.

Collaborative Law

What is collaborative law?

Collaborative law is a process used by some specially-trained attorneys to help clients resolve disputes through the open sharing of information and the cooperation by the attorneys and parties, without the threat or fear of court intervention.

How is Collaborative Law different for the attorneys?

An attorney hired for collaborative law cannot represent the client in court. The clients and attorneys sign an agreement that all disputed issues

must be resolved through collaborative settlement procedures, or the attorney must withdraw.

How is Collaborative Law different for the parties?

The parties must voluntarily disclose all relevant information, and may not threaten to go to trial. The parties are expected to work with each other respectfully and honestly. If needed, neutral communication facilitators and neutral financial consultants can be brought in to assist the parties in developing options for settlement that meet both of their goals and interests.

If the parties change their mind about Collaborative Law, can they go to trial or mediation?

Yes. The process can be stopped at any time. The parties can proceed on their own or with other attorneys.

MARRIAGE AND DIVORCE

Marriage

Does Texas have an age requirement for marriage?

Yes. Both parties must be at least 18 years old to obtain a marriage license. If either party is under 18 years of age, a court order is required. Parents may no longer consent to the marriage of a child under 18.

Can I marry someone who is related to me?

It depends. You may not marry (1) someone who is an ancestor (mother, father, grandmother, grandfather, etc.) or descendant (son, daughter, grandson, granddaughter, etc.); (2) your brother or sister; (3) your parent's brother or sister (aunt or uncle); (4) your niece or nephew; (5) your cousin; or (6) your step-children or your step-parents.

Can I legally marry someone of the same sex?

In Texas, you may marry someone of the same sex.

What is a licensed marriage?

A “licensed” or “ceremonial” marriage requires a marriage license and is performed by an authorized official (minister, priest, rabbi, judge, etc.)

What is an informal marriage or “common-law marriage?”

An informal marriage, sometimes called a "common-law marriage," can be created when a man and a woman sign and register an official document of marriage at the county clerk’s office. A man and a woman may also enter into an informal marriage if they (1) agree to be married; (2) live together in Texas as husband and wife; and (3) represent to others in Texas that they are married. There is no minimum time period necessary to create an informal marriage, and living together, by itself, is not enough to create one. An informal marriage may not be entered into if either party is less than 18 years old. An informal marriage may be back-dated if the parties to it met all the requirements at a time when same-sex marriage was not yet recognized in Texas.

Divorce

Is there a common-law divorce?

No. If the parties to a non-registered informal marriage separate and live apart for two years or more, the parties may or may not need a divorce depending on the circumstances. Parties to a registered informal marriage must be divorced the same as parties who were married in a ceremony with a marriage license.

Is an annulment different from a divorce?

Yes. An annulment is a proceeding to have a marriage declared void as if it never took place. A divorce is the proceeding to end a valid marriage. However, in both an annulment and a divorce, the court will divide property and issue orders regarding any children.

What are the grounds for an annulment?

An annulment will be granted if (1) the parties are related, by blood or adoption; or (2) either party was previously married and the prior marriage has not been dissolved. An annulment may be granted if at the time of the marriage one party to the marriage was (1) underage; (2) under the influence of alcohol or drugs; (3) impotent; (4) mentally incompetent; (5) forced to marry by fraud or duress; or (6) was misled about a prior divorce. In most cases, the law requires that the person seeking an annulment must stop living with the other party once the problem is discovered.

Must fault be found against a party for a divorce to be granted?

No. In Texas, a divorce may be granted without either party being at fault. However, a divorce may also be granted when one party is found to be at fault in the break-up of the marriage.

How long must I live in Texas to get a divorce here?

Before filing, one of the spouses must live in Texas for at least six months and in the county where the petition for divorce is filed for at least 90 days.

Is this different if I am in the military?

Not really. Time spent by a Texas resident outside of Texas, while in the military, satisfies the residency requirement in Texas for a divorce, assuming that Texas remains the residence of record.

Am I entitled to a court-appointed attorney?

No, unless there are special circumstances.

What do I do if I can't afford an attorney?

There are several programs in Harris County that offer help to persons who cannot afford to hire an attorney; however, you will be required to meet certain financial guidelines. See the resource guide at the back of this handbook for more information. An extensive set of forms approved by the

Family Law Section of the State Bar of Texas are available to help litigants at the Harris County Law Library located at 1019 Congress, tunnel level, Houston, Texas 77002. Also, the Houston Volunteer Lawyers program provides limited document review in the 17th floor of the Harris County Civil Courthouse at 201 Caroline Street.

What is a board-certified family attorney?

Attorneys who meet certain qualifications and pass a special examination may become board-certified in Family Law by the State Bar of Texas Board of Legal Specialization, evidencing their level of knowledge and experience in this area of the law.

Do the rates charged by attorneys differ?

Yes, attorneys set their hourly rates based upon their knowledge, experience, qualifications, and the complexity of the case.

How do I begin my divorce suit?

A petition for divorce must be E-filed in the district clerk's office and the required fees paid. Information about E-filing is available at hcdistrictclerk.com.

What if there are children of the marriage?

If there are children born, adopted, or expected during the marriage, the suit for divorce must also address matters of custody, visitation, and child support. If a wife has given birth or is expecting a child since the time she married, but the child is not or may not be the biological child of her husband, that information must be given to the court as soon as possible. If the wife is pregnant or becomes pregnant while the divorce action is pending, the parties must wait until the baby is born before the court can grant a divorce. This is true regardless of whether the husband is the baby's father.

Who is the petitioner and who is the respondent?

The party who files for divorce first is called the "petitioner," and the other party is called the "respondent."

Does my spouse get notified after I file my petition?

Yes, if you make certain the proper steps are followed to notify your spouse.

How is my spouse notified?

It is up to the party filing the suit to make sure the proper steps are followed to notify your spouse of the divorce case. Failure to notify him or her can result in a delay of your case or, in some cases, dismissal of the case. Several methods to notify your spouse are available depending on the circumstances:

1) By receiving a citation and copy of the petition from a sheriff, constable, or court approved private process server after you have made the request and paid the required fees; or

2) By certified mailing from the district clerk's office; or

3) If the parties agree, the non-filing spouse may, after the petition has been filed, sign and notarize a document called a "Waiver of Citation," which indicates that the non-filing spouse is accepting service of the lawsuit; or

4) If your spouse cannot be located, notice can be published in a court-approved newspaper or other court-approved publication.

What happens after my spouse is notified of the filing?

Once a respondent is officially notified, there is a deadline to file a response to the petition. If the deadline is not met, the petitioner may be able to go forward and obtain a divorce by "default."

What is a temporary restraining order?

A temporary restraining order is a court order that sets forth the acts which either one or both parties are prohibited from doing immediately after the petition is filed. Sometimes this order is called a "TRO." A TRO usually prohibits both parties from bad acts such as committing family

violence, harassment, hiding money from the other spouse, attempting to hide a child of the parties, etc. The TRO is only valid for 14 days, but may be extended by an additional 14 days. If you request a TRO in your petition, then you must request a temporary orders hearing and request that the Court make the TRO a temporary injunction that will remain in effect during your case.

Can I get a Temporary Restraining Order (TRO) without notice to my spouse?

Yes, if the court approves the request for a TRO; however, it is effective only for a limited amount of time before you must go before the judge at a court hearing and ask that the TRO be put into effect until the divorce is granted.

What happens if the TRO is violated?

A person who violates a TRO, or any other court order, can be held in contempt of court and punished by a fine and/or a jail sentence.

Can my spouse ask for a divorce also?

Yes. The respondent may file his or her own request for divorce in a document usually called a counter-petition for divorce.

What happens if I reconcile with my spouse?

You may dismiss your divorce proceedings by filing a request for nonsuit.

How soon can the court grant a divorce?

A petition for divorce must be on file with the court for at least 60 days before the court can grant a divorce. The 60-day waiting period may be waived in certain cases involving convictions for family violence and protective orders. You will not be notified and the court will not take action on its own just because the 60 days have elapsed.

How long does it take to get a divorce?

If the parties are in agreement, a divorce proceeding can be finalized soon after the 60-day waiting period is over. If the parties are not in agreement, the time it takes will depend on the court's schedule and the complexity of the case. From start to finish, the divorce process may go through a number of phases which might include temporary orders, exchange of financial information, psychological evaluations (in custody cases), alternative dispute resolution, trial, and appeal. A divorce in which the parties are not in agreement on some or all issues will usually take several months and up to one year if a trial is necessary.

How do I know when my case is set for trial?

The court will issue a scheduling order that will inform you of all the deadlines you are expected to follow. Each party must make sure that the court and other parties are notified in writing at their current address, so that each will receive the scheduling order and other notices. Each party must update their mailing and email addresses during the case so that they will receive notices.

When am I divorced?

You are divorced when all the property and child related issues are resolved and the presiding judge signs an order, usually called a Decree of Divorce.

How long must I wait to get married again?

In most cases, you must wait 30 days after the court signs the decree, but the court can grant a waiver to permit you to marry sooner.

Division of Property upon Divorce

What is community property?

It is presumed that all property owned by the parties at the time of divorce is community property. However, if a party can prove that certain

property is his or her separate property, then that property will be set aside to him or her and cannot be divided by the court.

What is separate property?

Separate property is that property owned by a spouse prior to marriage or acquired by a spouse during marriage by gift or by inheritance. It can also include monies recovered for personal injuries, but not recoveries for lost wages. Separate property cannot be divided by a court.

Does the judge divide community property and separate property 50-50 at the time of divorce?

Not necessarily. The judge only divides the community assets and community liabilities in a "just and right" manner, while taking into consideration the rights of each party and the children, if any. Depending on the circumstances, the judge may award more of the community property and/or the liabilities to one of the spouses.

What happens to separate property?

Once proven to be separate, that property is confirmed as the property of the party claiming it. The judge cannot divide a party's separate property.

How does a party prove that an item of property is separate property?

There are a variety of methods to prove that property is separate. Generally, however, a party must provide clear and convincing evidence of when and how he or she received the property. If it has changed form by being sold and the money held or reinvested, then the party must also provide clear and convincing evidence tracing the change from one form into another.

What factors does the judge consider when making a "just and right" division of the property and liabilities?

In making a division, the judge may consider any relevant factor, which might include evidence of:

1) Fault in the break-up of the marriage;
2) Differences in earning capacities and education;
3) Age of the parties;
4) Health of the parties;
5) Any special needs of the parties; or
6) Separate property available to either spouse.

Who decides the value of my property?

Each party is required to provide the judge with a sworn inventory which identifies all property, assets, accounts and their value, as well as all liabilities. The inventory also lists any separate property either party is claiming. The judge decides the value of the property, based on the evidence, when there is a dispute. Check with the court and local rules to determine when the parties must exchange their sworn inventories, and whether they must be filed with the court. County Appraisal District valuations may be used to determine home values, Kelley Blue Book may be used to determine automobile values.

Must the judge decide how to divide the property?

It depends. As discussed elsewhere in this handbook, there are many ways to resolve a suit for divorce without having the judge decide the value or division of the assets and liabilities. If the parties agree on the division of their property, at the end of the case, the judge will typically approve the parties' agreement before granting the divorce.
If there is no agreement, however, it may be necessary for the judge to make the decisions.

How do I get the property that is awarded to me in the divorce?

There are many methods to get the property you are awarded. These include obtaining signed real estate documents, orders to employers to divide retirement and other benefits, orders in the divorce decree to transfer the property, documents required by banks and other financial

institutions directing the division and transfer of funds and accounts, technical business documents and many others. Because there are so many types of property and so many ways to transfer property, this handbook cannot address any of them in detail, and an attorney should be consulted.

What happens to community property that is not divided in a divorce?

All community property should be brought to the attention of the judge in the sworn inventories and divided at the time of divorce. Any community property not divided upon divorce remains community property, regardless of whether it is jointly owned or owned by only own of the parties. Either party may come back to court and request the judge to divide this community property and the judge shall divide the property in a just and right manner, taking into consideration the rights of each party and any children of the marriage. If an asset was concealed, the judge has the authority to award it to the other party. If a liability was concealed, it will likely remain with the concealing party. There are time limits on when claims can be made, subject to when the undivided community property or fraud was discovered, so a lawyer should be consulted. Finally, agreements among spouses regarding who gets certain liabilities do not bind creditors, who generally may sue an ex-spouse to collect unpaid debts.

Alimony

What is alimony?

Alimony is a periodic payment of money from one spouse for the support of the other spouse. Texas does not have traditional alimony but the parties can, and sometimes do agree to it. A divorcing spouse in Texas may be entitled to spousal maintenance.

Does the State of Texas have court-ordered alimony?

Yes, in limited circumstances, including while a divorce is pending; this is called “temporary spousal support.” If the parties agree in a final court

order, it is called "contractual alimony." Alimony may also be court-ordered in a divorce decree if the party qualifies under strict requirements, and this is called "spousal maintenance." Those terms are discussed further below.

What is temporary spousal support?

While the divorce is pending, the court may make an order requiring one spouse to make temporary payments for the support of the other spouse, based on what the court finds to be necessary and equitable. This type of "alimony" is not subject to the same requirements as that set out for court ordered maintenance after divorce.

What is contractual alimony?

This is alimony paid by one spouse to another after divorce based on an agreement between the parties that forms a contract. Unlike temporary spousal support, the person receiving the alimony must usually pay income tax on the money. Contractual alimony is often used as part of the settlement of a divorce case.

What is spousal maintenance?

This is alimony that may be ordered by the court for the support of a spouse after divorce and, like contractual alimony, the person receiving the spousal maintenance must pay income tax on the money.

Can either a husband or a wife receive maintenance?

Yes.

Under what circumstances would the judge order maintenance in a final decree of divorce?

The judge can order maintenance if the spouse seeking maintenance has limited resources such that they lack sufficient property (including property received in the divorce) to provide for their minimum reasonable needs, AND one of the following situations exists:

1) A spouse has been convicted or received deferred adjudication for a crime that can be considered an act of family violence which occurred

within 2 years of the filing of the divorce case or while the divorce is pending; or

2) The spouse seeking maintenance:

A) Cannot earn sufficient income to provide for their minimum reasonable needs because of an incapacitating physical or mental disability; or

B) They have custody of a child of the marriage, who requires substantial and continuous care, which prevents the spouse from earning sufficient income to provide for their minimum reasonable needs; or

C) Has been married for at least 10 years, and lacks the ability to earn sufficient income to provide for their minimum reasonable needs.

How long can court-ordered maintenance last?

It depends. Generally, there are four "tiers" of support duration:

- Not More than 5 Years – If the support is based upon (1) domestic violence within the prior 2 years; or (2) a marriage lasting between 10 and 20 years.
- Not More than 7 Years – If support is based upon a marriage lasting between 20 and 30 years.
- Not More than 10 Years – If support is based upon a marriage lasting 30 years or more.
- The shortest reasonable period – If support is based on (1) a physical or mental disability; or (2) a child with a physical or mental disability.

The judge is required to limit the duration of spousal maintenance to the shortest period of time to reasonably allow the spouse seeking maintenance to earn enough money to provide for his or her minimum reasonable needs.

What if the physical or mental disability is one that is more permanent in nature?

If support is based upon a physical or mental disability or a child with a physical or mental disability, the judge may order maintenance for as long as the spouse (or child) has the mental or physical disability.

How does the judge determine the amount of maintenance to be ordered?

The amount of maintenance cannot be more than $5,000.00 or 20% of the paying spouse's average monthly gross income, whichever is less. The court will consider a variety of factors in determining the exact amount and duration of spousal maintenance in a case-specific manner.

Can the judge order that maintenance payments be withheld from the paying spouse's income?

Yes. Just like child support, the judge may order that the maintenance payments be withheld from the paying spouse's paycheck. However, they cannot be taken from a person's unemployment insurance benefit payments.

Can the judge order that contractual alimony payments be withheld from the paying spouse's income?

No, unless the contract specifically permits income withholding or the alimony or maintenance payments are not timely made under the terms of the contract.

If my spouse doesn't pay the alimony, what can I do?

Depending on the type of alimony, you may do one or more of the following: (1) ask for a wage-withholding order as described above; (2) sue to enforce the contract if the alimony is contractual; (3) sue for enforcement by contempt of the court's order; or (4) seek a money judgment if the alimony is maintenance ordered by the court.

CHILDREN

Custody

What is custody?

In Texas, the term "custody" does not appear in the Family Code but is generally referred to as "conservatorship." Conservatorship means the right a parent has to make certain decisions relating to his or her child. These decisions include the right to determine where the child lives, the right to determine where the child goes to school and to make other educational decisions for the child, the right to consent to certain medical procedures, and other specific rights, as set out in the Texas Family Code. These rights can be shared by the parents or one parent may hold these rights exclusively. One parent may have more rights than the other parent or the parents may share the rights.

What is visitation?

In Texas, the term "visitation" is referred to as "possession and access." Possession and Access means the right a parent has to have actual possession of his or her child on specific dates and at specific times.

Who decides what rights each parent is given and what periods of possession each parent has with the child?

The parents may reach an agreement concerning the rights to make decisions and the time each parent will spend with the child, subject to the approval of the judge who determines if the agreement is in the best interest of the child. If the parents are unable to reach an agreement, the judge will make the decision.

Does joint custody (or Joint Managing Conservatorship) mean the child lives half of the time with each parent?

No, conservatorship, generally, is not a question of time with the child. Joint managing conservatorship is a sharing of the rights, duties, and powers parents have concerning their children. The specifics should be discussed with an attorney. Joint managing custody is now the preference

in Texas; however, there may be orders which name a sole managing conservator and a possessory conservator instead of joint managing conservator. The difference between sole and joint custody should be discussed with an attorney.

Where will my child live after the divorce?

More than likely, your child will live the majority of the time with the parent who is given the legal right to determine the child's place of residence.

Will the type of custody (sole vs. joint) affect a parent's time of possession with the child?

Generally, no. No matter what the custody arrangement is called, the court's goal is to keep the child in a stable environment while encouraging a relationship with both parents. There are guidelines for possession and access with each parent and the child. The guidelines provide for weekends, spring break, Father's Day, Mother's Day, summer, Thanksgiving, and Christmas. The guidelines for possession times of the visiting parent is stated in the "standard possession order" (SPO). The SPO also states the times with the child are shared, especially during the holidays. There are guidelines for possession and access if the parties live within 100 miles of each other and another set of guidelines if the parties live further away. The second set of guidelines are sometimes called "long distance" possession and access; they provide a little additional time during spring break and in the summer. There may also be provisions for other religious holidays such as Hanukkah or Ramadan, which are not specifically referenced in the Texas Family Code. The parents may always make their own agreements about possession and access. The court will order specific times in case the parties cannot agree.

Is there an age at which a child may decide for himself where he will reside?

No, but at age 12 a child may consult with the Judge, in chambers, to provide the Judge with information concerning the child's preference. The

consultation is not the last word, just one more thing the judge can use in making a decision. Often the consultation is not held until after the close of evidence in a trial.

What if I have to move after the order is signed by the Judge?

If the child lives with you under an order restricting the county where the child may live (often referred to as a geographic restriction), and you have to move outside that area, you must receive permission from the Court or the written agreement of the other parent filed with the Court before the child can move. If the court has not restricted where the child lives, you may move but you must give notice of your plans to move to the other parent. Courts favor active involvement of both parents, so geographic restrictions are rarely lifted without the agreement of both parents.

How much child support will I receive or will I have to pay?

Child support is usually set according to a formula and the specifics should be discussed with an attorney. Generally, however, under Texas law, child support is presumed to be proper if set at the following percentages:

- 20% of net resources for 1 child;
- 25% of net resources for 2 children;
- 30% of net resources for 3 children;
- 35% of net resources for 4 children;
- 40% of net resources for 5 children;
- Not less than 40% for 6 or more children.

Net resources include salary, commissions, overtime, tips, bonuses, dividend income, self-employment income, net rental income, severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits, unemployment benefits, interest income, gifts, prizes, spousal maintenance, and alimony.

In determining net resources, the court will take the total amount of money received from all sources and deduct social security taxes, federal taxes using only one deduction, state income tax, union dues, and the cost of the child's health insurance. The court will consider if the parent paying

support has other children to support, which will usually entitle the paying parent to a discount. The court may also consider other factors when setting a child support amount, which should be discussed with an attorney. When calculating the child support obligation, the net resources are capped at $9200.00 per month. For example, if a parent is paying child support for one child and has net monthly resources of $10,000.00, that parent's child support will be $1,820.00 per month, or 20% of $9,200.00. The court will order health insurance to be provided for the child. The parent paying child support is generally the parent ordered to provide health insurance. Both parents are usually ordered to share payment of medical expenses which are not paid by the insurance company.

How will the child support be paid?

Normally, the court will order that the child support be paid monthly or semimonthly (two times per month). Unless the parties agree or the court finds a good reason not to, the child support will be deducted from the paycheck of the parent paying support. This is called "wage withholding." When a wage withholding order is in effect, the child support will be withheld in the same interval as the payor parent receives his or her wages. For example, if the payor parent is paid semimonthly, the child support will be withheld semimonthly. If the payor parent is paid biweekly (every other week), the child support will be withheld biweekly.

Will the child support be paid directly to me?

Child support is ordered to be paid through the state child support disbursement office. It is helpful for both parties to keep records of child support paid or received, as the case may be, either through the child support office or if paid directly to the receiving party.

What if the support is not paid?

You may ask the court for help in enforcing the order. Enforcement of court orders is discussed in a later section of this handbook.

What is a typical possession order?

There is no standard possession order for children under the age of three years old. However, for children over the age of three, Family Code Chapter 153 Subchapter F outlines periods of possession for each parent throughout the year. There is a presumption that parents will have an expanded standard possession order and that it is in the best interest of a child for the "non-custodial" parent to have periods of possession which comply with an Expanded Standard Possession Order. In very basic terms, a Standard Possession Order provides for weekend time on the first, third, and fifth Fridays of each month at 6:00 p.m. (or dismissal at school, if so elected) until the following Sunday at 6:00 p.m. (or return to school the following Monday, if so elected); on Thursdays of each week during the regular school term beginning at 6 p.m. and ending at 8:00 p.m., or at the election of the noncustodial parent, made before or at the time of the order granting periods of possession, beginning at the time school is recessed on Thursday and ending at the time school resumes on the following Friday; 30 days in the summer; and every other spring break.

The Standard Possession Order is divided into two sections based upon whether or not parents reside within 100 miles of each other. Furthermore, the Standard Possession Order provides for periods of possession during school and during the summer as well as for holidays.

The Standard Possession Order also provides for general terms and conditions for conservators to abide by when exchanging the child. See Texas Family Code 153.316.

Can the parties vary from the Standard Possession Order?

Yes, by agreement, and with the approval of the judge.

Can the court vary from the Standard Possession Order?

Yes. The judge's main concern is always the best interest of the child. If the Standard Possession Order is not in the child's best interest, the judge will impose a possession order which the judge believes is best for the child. If there is a history of, or a current problem involving child abuse, drug abuse, domestic violence or inappropriate parenting, the judge may modify and restrict a parent's possession time. Additionally, if a standard

possession order is unworkable because of a parent's work schedule (such as shift work or off-shore work) or a child's schedule, the judge can modify the possession and access order to fit the parents' and child's needs. Particular facts should be discussed with an attorney.

Special Appointments and Ad Litem Representation

What is an ad litem?

An ad litem is a special person appointed by the judge to protect or represent the interests of a person involved in a lawsuit, usually a child or children. The services of an ad litem end when the lawsuit is over. The parties usually share in paying the fees of the ad litem.

Is an ad litem appointed only to represent children in custody lawsuits?

No. Ad litems are also appointed to represent (1) persons who are legally incompetent; (2) persons whose parental rights are sought to be terminated when they cannot afford to hire a lawyer; (3) any party in a lawsuit when the judge feels representation is necessary to protect the interest of a child; (4) "missing" or "unknown" parties; or (5) children in a termination and/or adoption case.

Who appoints the ad litem?

The judge of the court where the lawsuit is pending will make the appointment.

Are there different kinds of ad litems?

Yes, there are three different kinds of ad litems: attorney ad litem, attorney/ guardian ad litem (dual role), and guardian ad litem. The ad litem's role and duties may vary depending if it is a guardian or attorney ad litem. Whether the court appoints an attorney ad litem, guardian ad litem, or amicus attorney, depends on the type of case. The ad litem's specific

duties are set forth in the Texas Family Code and should be discussed with an attorney.

Does an ad litem have to be an attorney?

An attorney ad litem must be an attorney. A guardian ad litem need not be an attorney, but often is.

Do ad litems charge a fee, and if so, who pays it?

Ad litems are generally allowed a fee for the reasonable and necessary services they perform. Unless the parties agree, the judge decides who will pay the ad litem's fee.

Can the ad litem be dismissed or fired?

A party may object to the ad litem at any time before the trial of the lawsuit actually begins. The judge may order the removal of an ad litem if the judge finds that the objection raised by a party to the lawsuit is reasonable.

What is an amicus attorney?

An amicus attorney is an attorney appointed by the court in certain cases to help the judge make decisions about a child's best interests. It is a role similar to an attorney ad litem, but the difference is that an amicus attorney is appointed specifically to help the judge and does not provide legal services directly to a child. The judge will determine how the amicus' fees are paid by the parties.

Grandparent Rights to Visitation

Can grandparents file a suit to seek visitation with a grandchild?

Yes, grandparents can file either an original suit or a suit seeking modification of a current court order and request that the court grant visitation with a grandchild. However, the law allows a judge to grant the request for grandparent visitation only under very limited circumstances.

Under what circumstances could a judge grant a grandparent's request for visitation with a grandchild?

In order for a judge to be able to grant a grandparent's request for visitation with a grandchild, the grandparent seeking visitation must be a biological or adopted grandparent. Step grandparents may not be granted visitation. In addition, at least one of the child's parents (biological or adopted) must continue to have parental rights to the child and have not had parental rights terminated. A grandparent must also overcome the presumption that the parent is acting in the best interest of the child and that denial of visitation between grandparent and grandchild would significantly impair the grandchild's physical health and emotional well-being. Finally, a grandparent must show that he or she is a parent of the parent of the grandchild and that the parent of the grandchild: (1) has been incarcerated during the three-month period prior to your filing the suit; (2) has been found by a court to be incompetent, (3) your child has died; or (4) your child does not have actual or court-ordered possession or access to your grandchild.

If you are a grandparent considering filing a lawsuit seeking visitation with your grandchild, you should discuss the specific facts of your case with an attorney. You will be required to file a sworn affidavit with the court containing facts supporting your belief that denial of access to your grandchild will significantly impair your grandchild's physical health and emotional well-being and that the child's parent (your child) isn't acting in the child's best interest.

Modifying Custody, Visitation and Child Support

Can the terms of a divorce decree regarding children be changed?

Yes, through a process called "modification."

What terms can be modified?

A court can modify provisions for custody (conservatorship), visitation, and child support.

Which court can modify an order regarding children?

A request to modify custody, visitation, or child support must be filed in the court that last entered an order regarding the children.

Who can file a request to modify an order regarding children?

Generally, any person who is affected by the court order can request a modification.

What are the reasons (grounds) that a court will modify custody of a child?

The grounds for a change of custody are complex and should be discussed with an attorney. The court may consider whether there has been a significant change in the circumstances of the parties or of the child, or whether a person with visitation has been convicted of child abuse or family violence.

Do I have to wait a certain amount of time before I can file a motion to modify custody?

Generally, no. However, if you are seeking to change custody less than one year after the original order was signed, then the court has special requirements that you must show in a sworn affidavit before the suit can go forward. In the case of an emergency, the timing of the suit is usually not an issue. But in other circumstances, it is probably wise to wait at least one year before you attempt to change custody.

At what age can my child choose where to live?

Technically, the child cannot choose where he or she lives until the child becomes an adult at 18 years of age. However, if the party requests for a child to talk to the judge, the judge must confer with a child who is 12 years or older. If a child is less than 12 years old, it is the Judge's decision whether to visit with the child. In the conference with the Judge, the child

may name the parent with whom the child wishes to live; however, the child's desire is not binding on the court because the court must also consider what is in the child's best interests.

How can I get legal custody if my child is living with me, but the other parent has court-ordered custody?

If the person having custody of the child under the last court order voluntarily leaves the child in the possession of another for a period of more than six months and the court finds that this arrangement is in the best interest of the child, the court may modify custody upon the filing of the proper motion with the court.

What are the reasons (grounds) that a court will modify the periods of possession of a child?

The grounds for a change in visitation can be complex and should be discussed with an attorney. The court may consider whether there has been a significant change in circumstances of the parties or the child, whether the visitation order is unworkable or inappropriate, whether the person with custody moved out of state or moved without giving proper notice, whether a person with visitation rights repeatedly fails to exercise them or whether a person with visitation rights has a significant history of alcohol or drug abuse.

What are the reasons (grounds) that a court will modify child support?

Child support may be increased or decreased if there has been a substantial change in circumstances of the parties or the needs of the child. Child support can also be modified if it has been at least three years since the last child support order and the new amount calculated under the child support guidelines differs by either 20% or $100.00 from the amount of support currently ordered.

If I am being deployed on military duty, may I designate someone to exercise my possession periods?

Yes. If you are being deployed outside the country, you may petition the court to allow you to designate another person who will be able to have possession of the child for some portion of your regular possession periods. This designation will end upon the termination of your overseas deployment.

Parentage and Paternity Suits

What is a parentage suit?

A parentage suit is a lawsuit to determine who is a legal biological parent of a child.

Why is a parentage suit filed?

A parentage suit is filed to establish the child's legal relationship with a biological parent and to establish child support, visitation, and custody of the child. In certain cases, the court may also reimburse the biological mother for prenatal and postnatal expenses related to the child's birth.

Under what circumstances is a parentage suit filed?

A parentage suit is filed when there is a need or a desire to legally determine the biological parent of the child.

Who may file a parentage suit?

The following people may file a parentage suit: (1) the child; (2) the mother of the child; (3) the man whose paternity of the child is to be adjudicated; (4) a relative of the child's mother, within the 2nd degree of consanguinity, if the mother is deceased; (5) any government agency, including the support enforcement agency, authorized by law; (6) an authorized adoption agency or licensed child-placing agency; (7) a representative authorized by law to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, is incapacitated, or is a minor; or (8) a person who is an intended parent.

Both the mother of the child and the man whose paternity of the child is to be adjudicated must be joined as parties to the suit.

What is a presumed father?

A presumed father is a man who is recognized to be the father of a child until that status is either rebutted or confirmed in a later court proceeding. A man is a presumed father if he is married to the mother of the child at the time of the child's birth, or he is married to the mother of the child and the child is born before the 301st day after the date the marriage is terminated. A man is also a presumed father if he married the mother after the birth of the child, and he voluntarily asserted his paternity and (1) he filed the assertion with the bureau of vital statistics; (2) he was voluntarily named as the child's father on the birth certificate; or (3) he promised in writing to support the child as his own. Finally, it may be presumed that a man is the father of the child if during the first two years of the child's life, the man continuously resided in the household in which the child resided and the man represented to others that the child was his own.

What is an acknowledged father?

An acknowledged father is a man claiming to be the father of a child who, along with the mother of the child, has signed an acknowledgment of paternity. An acknowledgment of paternity is a form that is signed by the mother and the man claiming to be the father, under penalty of perjury. The acknowledgment is filed with the Bureau of Vital Statistics.
Once filed, an acknowledgment has the same effect as an adjudication of paternity. If the child has a presumed father who is not the man claiming to be the father of the child, the presumed father must also sign the acknowledgment.

What is an adjudicated father?

An adjudicated father is a man who has been found to be the father of a child by a court.

When can you file?

A suit to determine the parentage of a child may be brought at any time before the birth of the child.

If the child does not have an acknowledged or adjudicated father, the suit to determine parentage may be filed at any time, including after the child becomes an adult. If the child has a presumed father, a suit to determine parentage and challenge the presumption must be brought before the child's fourth birthday. This time limitation does not apply, if the court finds that the presumed father and the mother did not live together or engage in sexual intercourse with each other during the probable time of conception or the presumed father was precluded from commencing a proceeding to adjudicate the parentage of the child before the expiration of four years because of a mistaken belief that he was the child's biological father based on misrepresentations that lead him to that conclusion.

If the child has an acknowledged or adjudicated father, a man who did not sign the acknowledgment or who was not a party to the court proceeding may file a suit to determine parentage of a child within four years of the acknowledgment or adjudication.

Where can you file?

A suit to determine the parentage of a child shall be filed in the county in this state where (1) the child resides or is found; (2) where the respondent resides or is found if the child does not reside in this state; or (3) a proceeding for probate or administration of the presumed or alleged father's estate has commenced.

What happens after a parentage suit is filed?

Unless the parties agree on parentage, the court will order the child and the parties to submit to genetic testing. Genetic testing can be of blood, buccal cells, bone, hair, or other body tissue, but it is now usually done by a cheek swab. The court may not order genetic testing of a child before it is born.

Who pays for the genetic tests?

If the parties cannot agree, the court will decide. In most cases, the costs will be shared equally by the parties.

What happens after the genetic tests?

The lab conducting the test will prepare a report for the court. If the test shows that the tested man is not the parent, the court will dismiss the case. If the test shows that there is a 99% probability that the tested man is the parent, the court will find the man to be the biological parent of the child unless other testing excludes the man as the father or identifies another man as the possible father. Once the man is found to be the father by the court, the court will decide custody, visitation, and support if the parties cannot agree.

Is the child's name affected?

If the father requests, the court may order that the name of the child be changed to the father's last name. However, in some circumstances, the child may retain the mother's name.

Can I settle my case out of court?

Yes. The case can be settled between the parties and through their attorneys or through a process called "mediation," which is discussed in the "Mediation" section of this handbook. If you settle without mediation, the court may appoint an attorney to make sure that the child's interest is protected under the law. The court must find that all parts of the settlement are in the best interest of the child before it will approve the agreement.

What if the biological father wants to voluntarily admit he is the father of the child?

A man may voluntarily admit he is the father of the child by signing an acknowledgment of paternity, with the mother, or by filing a suit to determine parentage and admitting he is the father.

How does an unmarried man protect his rights as a father?

It is presumed that a man who has sexual intercourse with a woman should know that the act can result in a pregnancy. Therefore, to protect the parental rights of a father who is not the presumed biological father, has not been found to be the biological father of a child by a court order, or has not signed an acknowledgment of paternity, the man should register a claim of parentage with the Bureau of Vital Statistics. These forms are found in hospitals, birthing centers, the Harris County Clerk's office, and other locations. The registration should occur prior to the child's birth, and may not be filed more than 31 days after the birth of the child. If the registration is not filed, the man must sign an acknowledgment or file a suit to determine parentage.

What is the Registry of Paternity?

The Bureau of Vital Statistics maintains a registry for fathers who wish to be notified of a proceeding for the adoption of or termination of parental rights regarding a child he may have fathered. The father may register with the registry of paternity (1) before the birth of the child; or (2) no later than the 31st day after the birth of the child. A father is entitled to notice of an adoption or termination of parental rights even if he has not registered with the registry of paternity if (1) a father-child relationship was established by law; or (2) the man commences a proceeding to adjudicate his paternity before the court has terminated his parental rights.

What if the biological father does not want to have anything to do with the child and wants to terminate his rights to the child?

A proceeding for the termination of the father's rights may be filed. Whether this is granted will depend on the court's finding that it is in the best interest of the child. This procedure is discussed in more detail in the "Adoption" section in this handbook. It is unusual for a court to terminate a parent's rights and duties to a child unless another person is adopting at the same time.

Adoption

Who can place a child for adoption?

Either a birth parent or a licensed child-placing agency may place a child.

How do I find a licensed child-placing agency?

Contact the Texas Department of Family and Protective Services at 512.438.4800 and they can provide you a list of agencies.

What is involved in the adoption process?

Before an adoption can be finalized, the parental rights of at least one of the birth parents must be terminated by court order. Next, a petition for adoption must be filed with the proper court. If the petitioner is married, both spouses must join in the petition for adoption, and the child must live with the adoptive parents for at least six months. An ad litem for the child may be appointed, and a social study, background check, and criminal history check of the adoptive parents must be performed. If the adoptive parents are the petitioners in the termination suit, the social study report must be completed and filed with the court before the court can terminate the parental rights of the birth parents. It will then be updated at the time of the adoption. A health, social, education, and genetic history report of the child must also be prepared (except in a step-parent adoption). Once these matters have been completed, a hearing is held for the court to determine if the adoption is in the best interest of the child.

My current spouse wants to adopt my child from a previous marriage. What is the process?

The process is the same as any other adoption, except that the parental rights between the child and the spouse of the stepparent seeking adoption are not terminated; a health, social, education, and genetic history report of the child are not necessary.

Under what circumstances may a court terminate a birth parent's rights?

Parental rights may be terminated as follows:

1) Voluntary relinquishment by the birth parent upon signing an affidavit giving up that parent's rights or an alleged father's failing to register with the state's paternity registry; or
2) Involuntary termination by the court upon finding specific reasons set out in the Texas Family Code, as well as a finding that termination of the parent-child relationship is in the child's best interest.

How do I begin the adoption process?

If you and the birth parents agree to an adoptive placement, contact an attorney to start the process to terminate the parental rights of the birth parents. If you select a licensed agency, the agency will begin the process.

Are the court records of an adoption open to the public?

In most cases, no. However, once an adopted child reaches 18 years of age, the child may request that the court open the records. Contact the Texas Department of Family and Protective Services, 701 W. 51st Street, Austin, Texas 78751; phone 512.438.4800 for further information.

Do I get a new birth certificate for my adopted child?

Yes. The new birth certificate looks identical to any other birth certificate. The parent information names the adoptive parents and does not indicate that the child is adopted.

Child Protective Services

Who is CPS?

The official name is the Texas Department of Family and Protective Services (TDFPS). Child Protective Services (CPS) is one part of TDFPS. CPS is in charge of investigating allegations of abuse or neglect and protecting children.

Who governs CPS?

CPS is a state-run agency. CPS has specific time requirements, deadlines, and hearing protocols set forth in federal law and in the Texas Family Code.

How does CPS get involved with a family?

All allegations of abuse and neglect are reported to a central intake office in Austin, Texas. Allegations can be reported by calling 1.800.252.5400 or making a report online at txabusehotline.org. Everyone in Texas is required to report abuse and neglect. Each intake call is assigned a priority level, and referred to an investigative worker in the county where the child lives. If a child is at risk of immediate harm or danger, CPS can file a lawsuit to remove the child. CPS can also refer a case to Family Based Safety Services if the parent voluntarily agrees to work with CPS, and a safety plan is set up to protect the child from further abuse or neglect.

CPS has taken possession of my child; what can I expect?

Below is a brief summary of the hearings, meetings, and other requirements as set forth in the Texas Family Code and CPS rules and regulations.

Emergency Hearing – An Emergency Hearing is held the 1st working day after CPS takes possession of the child or CPS can petition the court before taking possession of the child. An emergency hearing is generally ex parte, (*i.e.*, CPS and a judge without a parent being present.) CPS must notify the parent no later than the 1st working day after the child has been removed.

Initial Home Studies – Before the full adversary hearing (see below), CPS is required to perform background and criminal checks on relatives or potential caregivers named by a parent on the placement resource form and perform a home study if the relative or caregiver is located in Texas and is found to be an appropriate placement for the child.

Visits – CPS standard visitation with a child who has been removed from your home is two hours a month. These visits can be two one-hour

visits or one two-hour visit. Additional visits may be available for a child under the age of one.

Full Adversary Hearing – No more than 14 days after the emergency hearing (removal of the child) if the child has not been returned, a hearing is conducted to determine if CPS had a legal right to take the child and if there is a continued need for the child to remain in the temporary care of CPS. This is your opportunity to present evidence (call witnesses) to the court as to why your child should be returned to you.

Permanency Conference or Family Group Conference – Generally, after the full adversary hearing (see above) and before the status hearing (see below), CPS will hold a permanency conference or a family group conference. At this meeting the long-term goal for the child (family reunification, relative adoption, unrelated adoption, or conservatorship), the needs of the child, and the services the parent(s) needs to complete will be discussed. This meeting is held at the CPS office and is not a legal proceeding.

Service Plan – No more than 45 days after the full adversary hearing (see above) CPS must file a service plan which specifically lays out the services CPS is requesting the parent to complete in order to achieve the permanency goal.

Status Hearing – No more than 60 days after the full adversary hearing (see above) the court shall hold a status hearing to review the service plans developed by CPS.

Second Permanency Conference or Family Group Conference – Another permanency conference or family group conference is held around the 5th month after the children have come into CPS care. This meeting generally occurs prior to the initial permanency hearing (see below). This meeting will discuss the needs of the child, the parent's progress towards completing the service plan, and what additional services, if any, are needed for the child and/or parent.

Permanency Progress Report – No more than 10 days before the permanency hearing (see below), except the initial permanency hearing (see below), CPS shall file with the court and provide to each parent, the

child's attorney and guardian, and the child's volunteer a permanency plan progress report stating the status of the case.

Initial Permanency Hearing – No more than 180 days after the full adversary hearing (see above) an initial permanency hearing is held to review, among other things, the status of the child and parent, parent's and CPS compliance with temporary orders and the service plan, the need for the child to continue in care, and whether to set the case for another permanency hearing and/or trial.

Permanency Hearing(s) – No more than 120 days after the initial permanency hearing (see above) another permanency hearing is held and other permanency hearings will continue to be held every 120 days until the final trial starts.

Dismissal Date and Extended Dismissal Date – The initial dismissal date is 12 months after the full adversary hearing. Under extraordinary circumstances the court can give an additional 6 months. The dismissal date is the date when final trial must be started or the case will be dismissed and the child returned. However, if the child would be in danger of abuse or neglect if returned home, CPS may refile the lawsuit alleging new facts. If CPS refiles the case the above timeline will start over.

Monitored Return Dismissal Date – If the child has been placed back in the home of a parent, after the first 18 months the court can extend the case an additional six months for a total of 24 months.

What rights do I have if CPS has temporary custody of my child?

You have a right to be notified of all hearings and permanency conferences or family group conferences. If CPS is requesting termination of your parental rights and the permanency goal is adoption, you can request that the court appoint an attorney to represent you. The court will hold a hearing to determine if you are indigent and eligible for free legal representation. If the court does not appoint a lawyer for you, you can hire one. You have the right to visit with your child unless the court has ordered no visitation. You have the right to be informed of your child's current medical condition and any change of placement but not the location of the

placement. You have the right to speak with your caseworker, attorney, and attorney and/or guardian for your child. You have the right to a jury trial.

What rights does my child have while in the temporary custody of CPS?

Every child in the temporary custody of CPS is appointed an attorney to represent his or her desires or wants. In certain situations, an attorney can substitute his or her opinion of best interest for the child's desires or wants. A child may also be appointed a guardian ad litem (CASA or Child Advocates) to represent his or her best interest. A child has the right to meet with his or her attorney and guardian ad litem. A child has the right to speak with his or her caseworker. A child has the right to attend all permanency hearings. In Harris County, most courts require prior permission for a child's attendance in court.

Being involved with CPS can be very scary. CPS will always have an attorney to represent them at every hearing. A parent should consider finding legal representation as soon as possible to protect his or her parental rights.

COMMON FAMILY LEGAL PROCEDURES

Family Violence and Protective Orders

What is a protective order?

A protective order is a court order issued to protect victims of family violence and dating violence.

What is family violence?

Family violence is an action or the threat of an action by a member of a family or household against another member of the family or household that is intended to cause physical harm, bodily injury, physical assault or sexual assault or reasonable fear of such action. Abuse toward a child of the family or household and dating violence are also considered family violence.

What is dating violence?

Dating violence is an action or the threat of an action by a person against another person with whom they have or have had a dating relationship that is intended to cause physical harm, bodily injury, physical assault or sexual assault, or reasonable fear of such action.

Do I have to give my address and phone number when I apply for a protective order?

You may not have to give your home or work address and telephone numbers, or the address and telephone number of a protected child's daycare or school. The judge will make this decision.

Who can file a protective order?

- For "family violence," any adult in a household can file for themselves or any other member of the household, including a child who needs protection.
- For "dating violence," any adult member of the dating relationship can file for themselves.
- Any adult may apply for a protective order to protect a child from family violence.
- The Attorney General, the District Attorney or the Department of Protective and Regulatory Services may also apply for any person who is a victim of family violence.

What do I have to show the court to get a protective order?

In order to be granted a protective order, you must prove to the court that family violence has occurred and is likely to occur in the future. A victim's testimony may be enough to obtain a protective order, even if there is no police report.

How much does it cost to apply for a protective order?

There is no fee to the person applying for the protective order, but a person found by the court to have committed family violence may have to pay for certain court costs.

What happens to a person found to have committed family violence?

The court may issue an order stopping a person found to have committed family violence from:

1) Committing more family violence;
2) Communicating directly or indirectly with a person protected by the order;
3) Going near the home or work place of a person protected by the order;
4) Going near the home, day care, or school of a child protected by the order;
5) Following, harassing, annoying, alarming, abusing, tormenting, or embarrassing a person protected by the order; and
6) Having a firearm.

What if a person violates the protective order?

Some violations can result in the police taking the person to jail if he or she violates the protective order. Additionally, if the person that violates the protective order is in the country illegally, he or she may be deported. Violations of a protective order can result in criminal charges being filed. Those charges could range from a Class A Misdemeanor to a third degree felony, depending on the charge and the history of the violator.

How are law enforcement agencies notified of protective orders?

The clerk of the court sends a copy of the order to the appropriate law enforcement agencies in the area where the member of the family or household protected by the order lives. The order is also entered into the statewide law enforcement information system maintained by the Texas Department of Public Safety (DPS).

Will Texas courts enforce a protective order from another state?

Yes, Texas courts will enforce valid protective orders from other states.

How long is a protective order effective?

A protective order can be effective for up to two years. However, the judge has the discretion to decide to make it effective for any amount of time.

Changing the Name of a Minor Child

May I change my child's name?

Yes, with the court's approval, a parent, a managing conservator or a guardian of the child may file a lawsuit (a petition) requesting that the name of the child be changed. However, before approving a change of the child's last name, the court will require evidence that a good reason exists for such a change.

Where would I file a petition to change my child's name?

File the petition in a District Court in the county where the child resides. If the child has been the subject of a previous lawsuit in a certain court, then the petition must be filed in that same court.

Does the other parent have to know if I file the petition?

Yes, the following persons are entitled to notice and service of citation when the petition is filed:

1) A parent of the child (whose rights have not been terminated);
2) Any managing conservator of the child; and
3) Any guardian of the child.

What is required in the petition?

A petition to change the name of the child must include:

1) The current name and address of the child;

2) The reason a name change is being requested;
3) The full name requested for the child;
4) Whether the child has previously been before the court before; and
5) If the child is 10 years of age or older, the child's written consent to the name change must be attached to the petition.

The petition must be sworn to before a notary public.

Changing the Name of an Adult

May I legally change my name?

Yes, with the court's approval. If you are getting a divorce you may request a name change within that lawsuit, without being required to pay any extra fee. If you are not getting a divorce, then you file the request as a separate lawsuit, and will be required to pay the associated filing fee.

Where should I file the petition?

A petition for name change should be filed in a Civil District Court or a Family District Court in the county of your residence.

What is required in the petition?

A petition for name change of an adult must include, among other things:

Your name and address;

- The full name you are requesting;
- The reason for the name change;
- Whether you have been convicted of a felony;
- Whether you are required to be registered as a sex offender;
- A complete set of your fingerprints on a fingerprint card approved by
- The Texas Department of Public Safety and the FBI; and

- A state and FBI background check completed in connection with the fingerprint card submitted to the Texas Department of Public Safety.

The petition must be sworn to before a notary public.

Removal of a Child's Legal Disabilities

Can a child file a suit so that they are no longer under their parent's authority?

Yes. A child can file a petition seeking to remove the disabilities of minority. In this type of suit, a child may file in his or her own name.

What is required to file this suit?

To petition for removal of the disabilities of minority, the child must be (1) a Texas resident; (2) 17 years old, or at least 16 years old and living apart from his or her parents, managing conservator, or guardian; and (3) self-supporting and managing his or her own financial affairs.

The petition must include:

- The child's name, age and residential address of the child;
- The name and residential address of each of the child's living parents;
- The name and residential address of the child's guardian and the guardian of the child's estate, if any;
- The name and residential address of the person with custody of the child (the child's managing conservator);
- The reasons why removing the disabilities of minority would be in the child's best interest; and
- The purposes for which removal is requested.

Must the parents consent to the removal of disabilities?

Generally, yes. Parents must "verify" the petition, which means that at least one parent must sign the petition and their signature must be notarized. However, if a person with custody (managing conservator) or a

guardian of the child has been appointed, that person may verify the petition. If a parent, person with custody, or guardian of the child is unavailable to verify the petition, the court will appoint an attorney ad litem or amicus attorney to verify the petition.

Where is the petition filed?

The petition is filed in the county where the child lives.

Will the court appoint anyone to represent the child?

Yes. It is mandatory that the court appoint an amicus attorney or attorney ad litem to represent the child's interests at the hearing.

Does the court always grant such a petition?

Not necessarily. The court has discretion to do what is in the child's best interest.

Can the court remove some, but not all, disabilities?

Yes. The court's order must state the limited or general purposes for which the disabilities are removed.

What does "general" removal of disabilities mean?

If a child's disabilities are removed for general purposes, this means the child would have the legal capacity of an adult. When a court removes a child's disabilities for general purposes, the child is permitted to take the following actions:

- Enter into a contract;
- Consent to medical treatment;
- Make decisions about his or her education;
- Represent themselves in a lawsuit without a guardian or representative;
- Keep her own earnings and manage her own estate;
- Make all legal decisions previously made by his or her parents.

However, although the child is a legal adult, if the court removes a child's disabilities for general purposes, the child would still be prohibited

from certain activities subject to statutory and constitutional age restrictions, including, for example, voting (a person must be at least 18 to vote), purchasing and consuming alcohol (a person must be at least 21 to purchase and consume alcoholic beverages, with some limited exceptions), and purchasing and consuming tobacco (a person must be at least 18 to purchase and consume tobacco products.)

If a child's disabilities are removed in another state, must another proceeding be filed if the child moves to Texas?

No. You may file a certified copy of the order removing disabilities with a court in the county to which the child moves. The order will give the child the same legal rights as if the order were originally signed in Texas.

Where do you file the order from another state?

You may file it in the deed records of the county in which the child lives.

Enforcement of Court Orders

What is enforcement?

Enforcement is a lawsuit filed against a person for violating a court order. Court orders may be enforced by different means, including asking a judge to hold a person who violated the order "in contempt of court." A person found in contempt of court may be fined or placed in jail for the violation. Not all court orders are enforceable by contempt.

What orders can be enforced?

The following orders may be enforced by a family district court:

- Child support;
- Access/possession of a child (visitation);
- Property division; and
- Spousal maintenance (sometimes called alimony).

When can a court enforce an order by contempt or by other means?

A court can enforce a child support order by contempt if the motion for enforcement is filed not later than the second anniversary after the date the child becomes an adult or the date on which the child support obligation terminates under the order. Also, a court can enforce a child support order without contempt by confirming the total amount of child support owed and rendering a money judgment for that amount provided the motion for enforcement is filed not later than the tenth anniversary after the date the child becomes an adult or the date on which the child support obligation terminates under the order.

How does a person enforce a court order if the other person is not paying child support or allowing visitation?

The following agencies or individuals may assist with enforcing court orders for child support and/or visitation:

- The Texas Attorney General can assist with enforcing child support orders;
- The Harris County Domestic Relations Office can assist with enforcing child support and visitation orders;
- Private attorneys can assist with enforcing child support and visitation orders;
- Child support collection companies can enforce child support orders; and
- A court may appoint an attorney to investigate and enforce a child support or visitation order if a person alleges that the order has been violated.

How is the Texas Attorney General involved in family law suits?

The Texas Attorney General establishes, enforces and modifies child support orders on behalf of the State of Texas and does not represent individuals. The Attorney General must be involved in cases where a person has received unreimbursed public assistance, such as AFDC, TANF, or Medicaid. However, the Attorney General also provides services to persons who have not received public assistance. The Attorney General may use

administrative collection methods, such as writs of withholding, federal offsets and child support liens, in addition to suits to enforce child support. The Attorney General may also review and adjust child support orders to comply with the Texas Family Code guidelines.

What services does the Domestic Relations Office provide?

The Harris County Domestic Relations Office assists families and the courts through four divisions:

- The legal enforcement division provides legal services for parents seeking to: establish paternity of a child; establish or enforce child support or visitation; or terminate withholding orders for child support;
- The family court services division conducts court-ordered social study investigations in adoptions and contested custody/access cases, parenting coordination and parent conferences;
- The family dispute resolution division provides mediation services to families involved in litigation regarding custody, possession, child support, and simple property issues that affect children;
- The community supervision unit monitors the terms and conditions of persons held in contempt for violating child support or visitation orders. (Domestic relations offices in other counties may provide different services.)

What is a Friend of the Court?

A Friend of the Court is an individual or organization (usually a Domestic Relations Office) appointed by a court to monitor and enforce child support and visitation orders.

What is the FOCAS Program?

Focus On Collections And Services (FOCAS) is an early intervention program appointed by a court to monitor and enforce child support orders. It is a partnership of the Harris County District Clerk, Family District Courts, Domestic Relations Office and the Texas Attorney General.

May I hire a private attorney to enforce a court order?

Any person may hire their own attorney to represent them in an enforcement suit. Enforcement is, however, a very technical area of family law. Not all family law attorneys handle enforcement cases.

How do I obtain a hearing?

A motion for enforcement is filed with the court, and a hearing for a certain date and time is set on the court's docket. If contempt is requested, the other person must be personally "served" with the motion and ordered to appear in court at the designated date and time. Either a constable or authorized private process server must "serve" or deliver the motion and order to appear. You cannot serve the papers, nor can they be mailed or left at the person's residence. The other person is entitled to at least ten days' notice of the hearing and the alleged violations.

What happens at the court hearing?

You are usually given an opportunity to settle your case before having a hearing in front of the judge. If you cannot settle your case, you have a hearing in front of the judge or associate judge. The other person may be entitled to a court-appointed attorney and, if so, your case may be reset in order to give the attorney time to discuss the case with their new client.

What kind of agreement can be reached?

In child support enforcement cases, an agreement may include the following:

- A judgment for the total amount of support owed, including interest;
- A finding of contempt for specific dates that the person failed to pay the support ordered;
- Punishment (jail time or fine, or both);
- Suspension of punishment based on certain terms: payment of regular child support, payment of an extra amount toward the

total support owed, and payment of attorney's fees and costs of court; and

• A future court date (a "compliance hearing") to determine if the agreement has been complied with and, if it has not, a hearing to ask the court to impose the punishment.

In visitation enforcement cases, an agreement may include the following:

• A finding of contempt for specific dates that the person failed to allow visitation as ordered;

• Punishment (jail time or fine, or both);

• Suspension of punishment based on certain terms: allow ordered visitation, allow additional visitation to make up for periods denied, and payment of attorney's fees and costs of court; and

• A future court date (a "compliance hearing") to determine if the agreement has been complied with and, if it has not, a hearing to ask the court to impose the punishment.

What happens if the judge hears the case?

The judge may find a person in contempt and sentence them to jail, or may find the person in contempt and suspend the jail sentence based on certain terms, including ordering them to pay the support owed or to allow the ordered visitation periods. The judge may also order other relief, including a money judgment for the total support owed, a payment schedule for the support, additional visitation for the periods denied, and payment of attorney's fees and costs of court.

What happens if the jail sentence is suspended?

A jail sentence may be suspended for up to ten years. A compliance hearing or hearings may be ordered for the person to appear in court at a later date to determine if they have complied with the terms of suspension (paying support, allowing visitation, etc.) and, if they have not, they may be sent to jail at that time to serve the original punishment. If the person

fails to comply and no compliance hearing is set, a motion to revoke the suspension can be filed.

Can the court appoint an attorney to represent a person who has been served with a motion for enforcement?

Yes. If the motion includes a request for jail time, the court may appoint an attorney to represent a person that the court finds cannot afford to hire their own attorney. Most courts require the person requesting a court-appointed attorney to complete an affidavit regarding their financial status and/or have a hearing to determine if the person is entitled to a court-appointed attorney.

Are there any defenses that can be raised by a person accused of violating a court order?

Yes, there are several defenses, counter-claims, and offsets that may apply, but this is a very complex issue and should be discussed with an attorney.

What happens if the other person does not show up for the court date?

If a person has been properly served and does not appear in court at the designated date and time, the court may grant a warrant for their arrest and may also grant a default judgment for the past due child support. A person cannot be held in contempt without being present in person in court.

Can additional money be withheld from a person's earnings for past due child support?

Yes. The court can order that, in addition to regular child support payments, an additional amount be withheld for past due child support.

Are there certain requirements for an order to be enforceable by contempt?

Yes. The court order must be clear and specific. For example, a child support order must order a person to pay a specific amount on specific

dates, and a visitation order must order the custodial parent to surrender the child to the visiting parent at a specific place and time. If an order is not properly written, the judge may not be able to hold a person in contempt for violating that order, but the judge may clarify the order so that the order is enforceable by contempt in the future. Consulting an attorney for proper language in the original order may help avoid enforcement problems later.

Can child support and/or visitation orders be enforced when one or both parties move out of Texas?

Yes. If the person violating the order or both persons have moved out of Texas, the Texas order can be registered in the state where the person violating the order lives and enforced in that state as if it were an order of that state.

What about when the person violating the order moves to Texas from another state?

The other state's order can be registered in Texas, and the Texas court can then enforce the order as if it were an order of a Texas court.

What if my child support is set too high and I can't afford to pay it?

You should consult with an attorney about filing a motion to reduce your child support. You may also request that the Attorney General review your child support order and adjust it to meet the Texas Family Code guidelines. However, until you obtain a new order reducing the child support, you are responsible for paying the ordered amount.

In an enforcement case, can the court reduce the total support owed?

No. The court may not modify or reduce the total child support owed in an enforcement case. Under some circumstances, a person may be entitled to certain credits or offsets. The court must render one judgment for the total child support owed, including interest. The court cannot reduce the

amount of ongoing child support in an enforcement case. A person who believes their child support should be reduced must file a motion to modify.

What if a person fails to provide health insurance or reimburse healthcare expenses as ordered?

These expenses are considered additional child support obligations and may be enforced. Although some orders for these obligations may not be enforceable by contempt, a money judgment for the total support owed may be appropriate. Specific details should be discussed with an attorney.

What about child support liens?

A child support lien may be filed in certain cases. Child support liens attach to all real and personal property not exempt under the Texas Constitution, including bank accounts and claims for personal injury, but not a person's homestead. Specific details should be discussed with an attorney.

If someone fails to pay child support, can his or her driver's license be suspended?

Yes, under certain circumstances. If a person owes past due child support equal to or greater than the total support due for 90 days and has been given an opportunity to repay the support but failed to comply with the repayment schedule, the court or the Attorney General, after proper notice, may suspend any licenses issued to that person by the State of Texas, including a driver's license, professional license, or hunting and fishing licenses.

If a parent is not paying child support, does the other parent have to allow visitation with the children?

Yes. One parent's failure to pay child support does not justify denying that parent court-ordered visitation. Likewise, a parent's refusal to allow visitation does not justify a failure to pay court-ordered child support by the parent ordered to do so.

What can be done if a child is taken out of the country in violation of a court order?

The remedies available when a child is illegally removed from the United States are very complex. Specific details should be discussed with an attorney.

What about enforcement of property orders?

A court has the power to enforce its orders for property division, including ordering a person to deliver specific property; awarding money damages if property cannot be delivered because it has been destroyed or disposed of; ordering a person to sign specific documents to transfer property; and ordering a division of retirement or pension benefits. The agencies that assist with child support and visitation cases cannot assist with actions to enforce property divisions. Specific details should be discussed with an attorney.

Can the court enforce spousal support payments?

Yes. Spousal maintenance payments may be enforced by contempt. Also, a court may order income withholding for spousal maintenance payments just like child support.

Can I recover my attorney's fees and court costs in the enforcement action?

Yes. Attorney's fees and court costs are generally recoverable in any motion to enforce a court order. The court may order a person to pay attorney's fees and court costs as a condition of a suspended jail sentence. Also, the order for payment of the attorney's fees and court costs can be enforced by contempt in some limited circumstances.

Parental Liability

Is a parent in Texas liable for damage caused by his/her child's actions?

Yes, in some circumstances. A parent is liable for damage to property caused by the willful and malicious acts of a child who is at least age 10 but not yet 18 years of age. A parent is also liable for the negligent conduct of a child, if the parent has negligently failed to supervise or control the child, and the parent had a duty to do so.

Are there limits on the amount of money a parent must pay if the court finds his child responsible for property damage?

Yes. In most cases, recovery for damage caused by the willful and malicious acts of a child is limited to $25,000 per act, plus court costs and attorney's fees. However, in the case of damage to an inn or hotel, incidents in more than one room or on more than one-day count as separate acts, each subject to an additional $25,000 in damages.

Where must such a suit against a parent be filed?

It should be filed either in the county where the conduct of the child occurred or the county where the parent resides.

Parental Duty to Ensure a Child's School Attendance and Liability for a Child's Truancy

Per the Education Code, Section 25.087, parents are subject to prosecution for their child's truancy. Per the Education Code, a parent should be notified by the school the child attends, if the child has been absent from school on three days or parts of days within a four-week period. The notice must:

- Inform the parent that:
  - It is the parent's duty to monitor the student's school attendance and require the student to attend school; and
  - The parent is subject to prosecution under Education Code 25.093; and
- Request a conference between school officials and the parent to discuss the absences.

The fact that a parent did not receive the notices described above is not a defense to prosecution for the parent's failure to require a child to

attend school nor for the student’s failure to attend school. See Education Code 25.095.