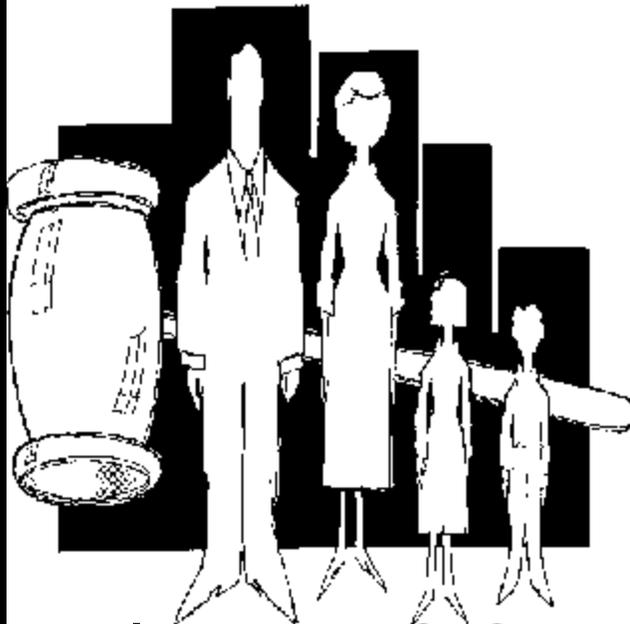


FAMILY LAW



HANDBOOK

2005

*HOUSTON BAR ASSOCIATION
FAMILY LAW SECTION*

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The handbook is divided into topics affecting families in a question and answer format. All of the issues and rights of family members cannot be addressed in this handbook. We hope this gives a broad overview of your rights and remedies.

This handbook is based on Texas Law and is issued to inform and not advise. This is a general summary of the laws as they existed in September 2005. This is only general and basic information and exceptions may exist. You should seek legal advice from an attorney of your choice to advise you in your particular situation.

FAMILY LAW HANDBOOK

The Family Law Handbook is a project of the Houston Bar Association and the Family Law Section of the HBA.

FOREWORD

According to a recent survey, 85 percent of the people of this state who came in contact with the judicial system — as jurors, witnesses, or parties — did so through the criminal and family courts. A significant percentage of all civil cases filed in Harris County courts are filed in the family courts; in fact, almost 10 percent of all the civil cases filed in the State of Texas are filed in the Harris County Family Courts.

The family is the fundamental building block of our society. When our families are threatened, our communities are threatened. It is important, therefore, that family courts work efficiently and at a reasonable cost and endeavor to reduce the anxiety and antagonism that too often accompany family matters.

Our hope is that this Family Law Handbook will educate the public regarding basic procedures of the family courts and, by doing so, will help create an atmosphere of trust and understanding in those courts.

The Houston Bar Association thanks the Family Law Section for its continuing support in updating this handbook.

Randall O. Sorrels
2005-2006 President,
Houston Bar Association

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INTRODUCTION TO FAMILY LAW COURTS

What are Family 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 nine Family Law Courts, and each court is identified by a district number. The courts are the 245th, 246th, 247th, 257th, 308th, 309th, 310th, 311th, and 312th. At the time of the filing of your lawsuit, the case will be randomly assigned to one of the nine 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 that made the initial order. 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 may handle many matters involving your case.

What are Associate Judges?

The associate judge of the court is appointed by that court's presiding judge. She or he has met the same statutory qualifications as those of a state district judge. The associate judge hears all cases referred by the presiding judge. By law, an associate judge may not hear certain matters.

Where are the Harris County Family Law Courts located?

The Family Law Courts are located in the Harris County Family Law Center at 1115 Congress Avenue in Downtown Houston. The Family Law Center is bounded by the streets Congress, Franklin, San Jacinto and Fannin.

What is a Courtroom like?

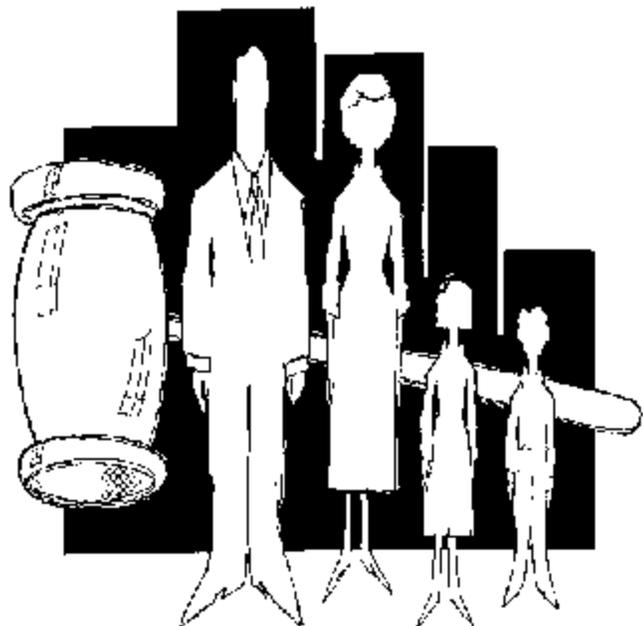
The Judge's bench is located in the front of the courtroom. There are specific places for court personnel, witnesses, a jury and the public.

Who works in the Courts?

In addition to the presiding judge and the associate judge, court personnel includes the clerk, the court coordinator, the bailiff, and court reporter. The clerk maintains the papers in each case, the court coordinator keeps the court's calendar, and the bailiff maintains order in the court.

Who can go into the courtroom?

The courtrooms themselves are open to the public. Generally, children should not be brought to the court unless the judge gives permission.



What are Juvenile Courts?

The courts on the 4th floor of the Harris County Family Law Center are referred to as Juvenile Courts. In Juvenile Court, the primary focus is on lawsuits filed by Harris County Children’s Protective Services (hereinafter referred to as “CPS”) and cases brought by the District Attorney’s Office alleging violation of the law by a juvenile.

Can you represent yourself?

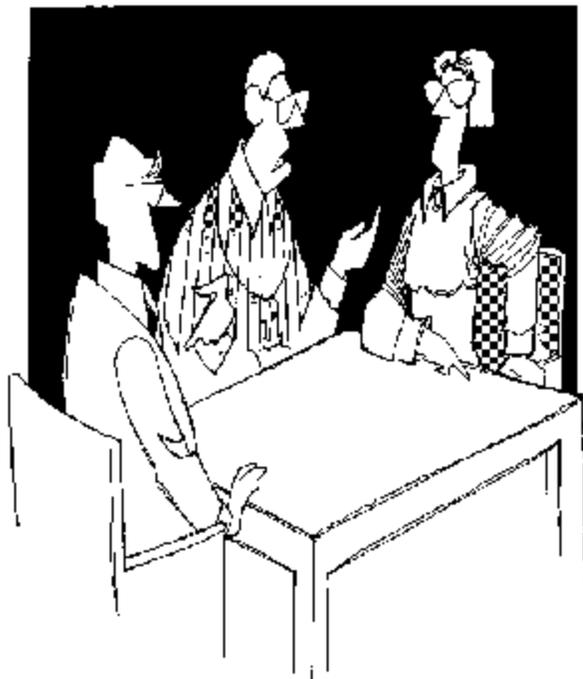
Yes. A person who represents himself/herself is called a “pro se” litigant. A pro se litigant must follow the same rules as an attorney, including the rules of procedure and evidence.

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

Yes. There are certain rules that apply generally to all Texas courts, which are called the Texas Rules of Civil Procedure. Additionally, the Harris County Family Law Courts have adopted local rules which govern how family law cases proceed through the courts. A copy of the rules may be obtained through the District Clerk’s office and should be obtained at the beginning of a case.

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

There are approximately 36,000 family law cases filed each year in Harris County. The time required to complete your case may depend on the complexity and type of case. A totally uncontested divorce may take only the minimum time (61st day from the date of filing), while a child custody case or complex property case may take a year or more.



MEDIATION

What is mediation?

Mediation is a process where parties to a dispute meet with a neutral person, called a “mediator,” to try and 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.

Is mediation required in family law matters?

Generally yes. The party filing a family law suit signs a statement saying he or she will try, “in good faith,” to resolve the conflict without court intervention - generally through mediation.

Prior to the final hearing, and sometimes prior to a temporary hearing, the Court will likely order mediation or the parties may agree on a mediator and schedule mediation.

What are the advantages of mediation?

Mediation gives the parties more control than trial; certainty on the result; saves trial costs; helps save the Court's time; and is generally a friendlier process for the parties.

Does the mediator have to be an attorney?

No, but an attorney-mediator experienced in family law is generally very beneficial in a complicated family dispute.

Do mediators charge a fee, and if so, who pays the fee?

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. Most mediators set their fee based on their experience and qualifications and they usually charge by the whole or half day.

Can parties attend mediation without an attorney?

Yes, when parties are represented, but generally attorneys participate in mediation to help their client make an informed and reasonable decision.

What happens to the case after mediation?

If an agreement is reached at mediation, the agreement is presented to the judge in the form of an order and generally approved.

If no agreement is reached, the case will proceed to a trial and the disputed issues will be heard by the judge or a jury, if appropriate.

COLLABORATIVE LAW

What is Collaborative Law?

Collaborative Law is a new process in Texas, used by some specially trained attorneys to try and resolve disputes with the attorney and parties through an open sharing of information and cooperation without the threat or fear of court intervention.

How is that different for the attorneys?

An attorney hired for collaborative law cannot represent the client in court. All disputed issues must be resolved through settlement procedures or the attorney must withdraw.

How is that different for the parties?

The parties must voluntarily disclose all relevant information and not threaten to go to trial. The parties are expected to work with each other respectfully and honestly.

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

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

MARRIAGE AND DIVORCE

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, parental consent or a court order is required.

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 descendent (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?

No.

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 woman sign and register an official document of marriage at the county clerk's office. A man and woman may also enter into an informal marriage if they agree to be married, live together in Texas as husband and wife, and 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.

Is there a "common-law divorce?"

No. If the parties to a non-registered informal marriage separate and live apart for two (2) 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. 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 (6) months and in the county where the divorce is filed for at least ninety (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.

Am I entitled to a court-appointed attorney?

Not 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.

What is a board-certified family attorney?

Attorneys who meet certain qualifications set out by the State Bar of Texas and pass a special examination may become board certified in family law, evidencing their level of knowledge and experience in this area of the law.

Do the rates charged by attorneys differ?

Yes, depending upon their knowledge, experience, qualifications, and the complexity of the case.

How do I begin my divorce suit?

A petition for divorce must be filed in the district clerk's office and the required fees paid.

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 to a child 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?

1. By receiving a 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 bad acts such as committing family violence, harassment, hiding money from the other spouse, attempting to hide a child of the parties, etc.

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 sixty (60) days before the court can grant a divorce.

How long does it take to get a divorce?

If the parties are in agreement, a divorce proceeding can be finalized soon after the sixty-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.

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 thirty (30) days, 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 acquired by the parties during the marriage is community property.

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.

Does the Judge divide community property and separate property at the time of divorce?

No. The judge only divides the community property and liabilities in a "just and right" manner, while taking into consideration the rights of each party and any children

of the marriage. In some 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 awarded to the party claiming it.

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

There are a variety of methods to prove the separate nature of an item of property. Generally, however, a party must provide 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 evidence tracing the change from one form into another.

Does the judge divide the community property 50/50?

It depends. The judge divides community property and liabilities in a “just and right” manner and this may result in the judge giving more property to one spouse.

What factors does the judge consider when dividing the property and liabilities?

In making a division, the judge can 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
6. Separate property of either spouse

Who decides the value of my property?

Each party is required to provide the judge with an inventory which identifies the property and lists its value, identifies community liabilities of the parties and sets forth each party’s claim to separate property. The judge decides the value of the property, based on the evidence, when there is a dispute.

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 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, 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 up to the judge and divided at the time of divorce. Any community property not divided upon divorce is thereafter owned jointly by the parties. Either party may come back to court and request the judge to divide this jointly-owned 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. There are time limits on when these claims can be made so a lawyer should be consulted.

ALIMONY IN TEXAS

What is alimony?

Alimony is a periodic payment of money from one spouse for the support of the other spouse.

Does the State of Texas have court-ordered alimony?

Yes, but it is referred to differently depending on whether it is ordered while a divorce is pending - “temporary spousal support”; or, agreed upon by the parties as part of the terms of a final court order - “contractual alimony”; or, court-ordered in a divorce decree - “maintenance.”

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 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 alimony 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 either one of the following two circumstances exist:

1. A spouse has been convicted of a crime or received deferred adjudication for a crime that can also be considered an act of domestic violence and this has occurred within 2 years of the filing of the suit or while the divorce is pending;
2. The parties have been married at least 10 years and the financial resources (including any property received by the party in the divorce) of the spouse are limited. In this situation, the spouse asking for maintenance must also be able to prove one of the following:
 - a. They are unable to support themselves because of a physical or mental disability;
 - b. They have custody of a child of the marriage of any age who requires substantial and continuous care and this makes it impractical for them to work outside the home; or
 - c. They clearly lack the ability to earn a living which would meet their minimum reasonable needs.

How long can court-ordered maintenance last?

The judge can set a time not to exceed 3 years, unless the spouse receiving maintenance cannot become self-supporting in that time period due to an incapacitating physical or mental disability or is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability.

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

The amount of maintenance will either be \$2,500.00 per month or 20% of the paying spouse's average monthly gross income, whichever is less.

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 judgement if the alimony is maintenance ordered by the court.

CUSTODY

When do I need a court order concerning my children?

You should obtain a court order for custody when you are separated but not divorcing, when you are divorcing, or when a paternity or legitimization suit has been filed.

What exactly does “custody” mean?

In Texas, “custody” or conservatorship is a term that is used to define the rights each parent will exercise for the benefit of the children and specify who will make certain decisions on their behalf.

Is this different from who has possession of the child?

Yes. There will be either an agreement or a court decision as to what times the children will spend with each parent.

Will one parent have more control over the children than the other parent?

Except in extreme circumstances which must be discussed with an attorney, each party will have certain legal rights as a parent. The legal rights each parent has do not determine how much time that the parent will have with the child. Some legal rights belong to both parents at all times (such as the right to consult with the child’s school or doctors); some legal rights belong to both parents and apply when the child is with them (such as the right to discipline the child or provide emergency medical care); and some legal rights will be given to only one parent (such as the right to say where the child will live or to consent to surgery that is not an emergency.)

In some cases the court may determine a specific area where the child will live (i.e., a particular county, such as Harris County) or which school the child will attend.

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. It is now the preference in Texas; however, there can also be orders naming a sole managing conservator instead. 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 decide 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 visitation between each parent and the child,

which make provisions for weekends, spring break, Father's day, Mother's day, summer, Thanksgiving, and Christmas. These guidelines are called a "standard possession order". The times with the child are shared, especially during the holidays. There are guidelines for visitation 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 visitation" and they provide extra time at spring break and in the summer. There can also be provisions for other religious holidays such as Hanukkah or Ramadan. The parents can always make their own agreements about visitation. The court will order specific times in case the parties cannot agree.

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

No, but at age 12 a child is allowed to sign a document which can be filed with the Court stating that child's desires. The "choice" filed by the child is not binding on the Court, and is only one factor the Court looks at in deciding with which parent the child will live.

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 and you have to move outside that area, you must receive permission from the Court before the child can move.

If the court has not restricted where the child lives, you may move after giving notice to the other parent.

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

Child support is 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 person paying support has other children to support, which will usually entitle the person paying to a discount. The court may also consider other factors when setting a child support amount, which should be discussed with an attorney.

The court will order health insurance to be provided for the child. The parent paying child support will probably be the parent ordered to provide health insurance. Both parents are usually ordered to share payment of the medical costs that are not paid by the insurance company.

How will the child support be paid?

It will be ordered paid monthly or semi-monthly. Unless the parties agree or the court finds a good reason not to, the child support will be deducted from the salary of the person paying support. This is called wage withholding.

Will the child support be paid directly to me?

In most cases, 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 can 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 3 years old. However, for children over the age of 3, **Family Code Chapter 153 Subchapter F** outlines what periods each parent will have throughout the year. There is a presumption that parents will have a standard possession order and that it is in the best interest of a child for the "non-custodial" parent to have periods of possession compliant with a Standard Possession Order. In very basic terms a Standard Possession is Fridays on the 1st, 3rd and 5th weekends until Sunday at 6:00 p.m. and Thursdays overnight during the school year until the following Friday morning, 30 days in the summer and every other holiday period.

The standard possession order is divided into two sections based upon whether or not parents reside within 100 miles of each other or not. 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**.

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.

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

No. Ad litem 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 litem?

Yes, there are three different kinds of ad litem, an Attorney Ad Litem, Attorney/Guardian Ad Litem (Dual Role), and a 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 litem charge a fee, and if so, who pays it?

Ad litem 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.

GRANDPARENT RIGHTS TO VISITATION

May I ask the judge for visitation with my grandchild?

Yes, under certain circumstances.

Under what conditions could a judge grant my request for visitation with my grandchild?

Generally, if the child's parent (who is your child) has been incarcerated, divorced, or has died, the judge may give a grandparent rights to see their grandchild if the judge also finds that visitation with the grandparent is in the child's best interest. If you are considering filing a lawsuit to be able to visit with your grandchild, you should discuss the specifics of your case with an attorney because this area of the law is unsettled.

PARENTAGE/PATERNITY SUITS

What is a parentage suit?

This is a lawsuit to determine a legal biological parent.

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) not 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 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 was married to the mother within 301 days of the child's birth. A man is also a presumed father if he married the mother after the birth of the child, AND (1) he voluntarily asserted his paternity of the child and that assertion is filed with the bureau of vital statistics, (2) he is 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 2 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 a determination of parentage by a court. 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.

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?

Generally, the following people may file: (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.

When can you file?

A suit to determine the parentage of a child may always be brought before the birth of the child. If the child does not have a presumed, 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 must be brought before the child's fourth birthday. However, 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 and the presumed father never openly treated the child as his own, a suit to determine parentage may be brought at any time.

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 4 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.

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 pre-natal and post-natal expenses related to the child's birth.

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 blood 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 will retain the mother's name.

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.

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.

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?

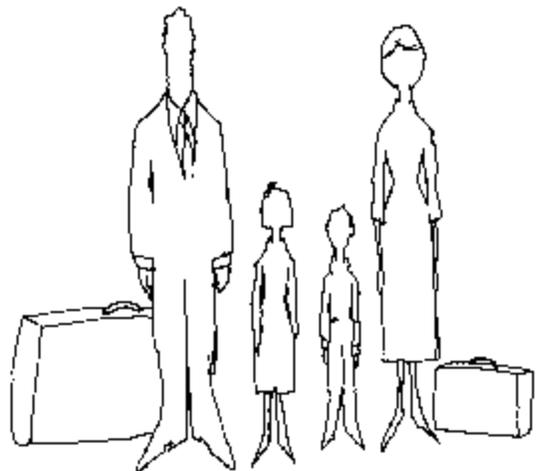
Contact the Texas Department of Protective and Regulatory Services (512) 834-4485 and they can provide you a list of agencies.

What is involved in the adoption process?

Before an adoption can be finalized, the parental rights of the birth parents must be terminated by court order. Next, a petition for adoption must be filed with the proper court, 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. 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 step-parent seeking adoption are not terminated and a health, social, education, and generic 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 Regulatory and Protective Services, P.O. Box 149030, Austin, Texas 78714-9030 (phone (512) 834-4485) 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.

MODIFYING CUSTODY, VISITATION & 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?

A child 12 years or older may file a document with the court naming the parent with whom the child wishes to live; however, this choice 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 6 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.

FAMILY VIOLENCE: 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 “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.

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.

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 is effective for not more than two years, and less if the judge decides.

CHANGE OF 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.

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:

- a parent (whose rights have not been terminated);
- any managing conservator of the child; and
- any guardian of the child.

What is required in the petition?

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

- a. The name and address of the child;
- b. The reason a name change is being requested;
- c. The full name requested for the child;
- d. Whether the child has previously been before the court before; and
- e. 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.

CHANGE OF 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. If you are not getting a divorce, then you file the request as a separate lawsuit.

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:

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

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 disabilities. In this type of suit, a child may file without an adult.

What is required to file this suit?

The petition must include:

- a. The name, age and address of the child;
- b. The name and address of each living parent;

- c. The name and address of any legal guardian;
- d. The name and address of the person with custody;
- e. The reasons why the removal of disabilities would be in the child's best interest; and
- f. The reason why 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 it must be notarized. However, if a person with custody or a guardian has been appointed, that person may verify the petition. If these people are unavailable, the court will appoint a guardian ad litem 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 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 would mean that a child would have the legal right to act as an adult, including the right to enter into a contract. However, the child would still be subject to statutory and Constitutional age restrictions, such as the legal right to vote or to drink alcohol.

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 where you live.

ENFORCEMENT OF COURT ORDERS

What is enforcement?

Enforcement is when a lawsuit is filed against a person for violating a court order. Court orders can be enforced by several different means, one of which is by holding the person who violated the court's order 'in contempt of court.' If a person is found in contempt of court, this means the person could be placed in jail for the violation. Not all court orders are enforceable by contempt.

What orders can be enforced?

Orders for any of the following may be enforced by a family court:

- a. child support
- b. visitation with a child
- c. property division ordered in a divorce or annulment
- d. spousal maintenance (sometimes called alimony)

When can a suit for enforcement of child support be filed?

The court can enforce by contempt an order to pay child support as long as the motion for enforcement is filed not later than the sixth month after the date the child becomes an adult or the date on which the child support obligation terminates under the order. Also, the court can enforce a child support order without a contempt finding by confirming the total amount of child support arrearages due and rendering judgment for that amount as long as the motion for enforcement is filed not later than ten years 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 file for enforcement if the other person is not paying court-ordered child support or allowing court-ordered visitation?

The following agencies or individuals may seek to enforce court orders for child support and/or visitation:

- a. The Texas Attorney General can enforce child support orders.
- b. The Harris County Domestic Relations Office can enforce child support and visitation orders.
- c. Private attorneys can enforce child support and visitation orders.
- d. Child support collection companies can enforce child support orders.
- e. A court may appoint an attorney to investigate and file for enforcement if a person alleges that a child support or visitation order has been violated. This is called a "308a appointment."

What does the Texas Attorney General do?

The Texas Attorney General establishes and enforces child support orders on behalf of the State of Texas. In most cases, the Attorney General is involved in cases where a person has received some form of public assistance, such as AFDC, TANF, or Medicaid. The Attorney General may use administrative collection methods, such as writs of withholding and IRS intercepts, and may also review and adjust child support orders to comply with the Texas Family Code guidelines. The Attorney General does not represent individuals. If you apply with the Attorney General for assistance, you

must assign your child support rights to them. Cases filed by the Attorney General are usually heard by child support masters, not by the judge who may have heard the divorce or paternity case.

What does the Domestic Relations Office do?

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

- a. The legal enforcement division provides legal representation for parents seeking to establish paternity of a child or seeking to establish or enforce a court order for child support or visitation. They can also assist with terminating withholding orders for child support.
- b. The family court services division prepares court-ordered social study investigations in adoptions and contested custody/access cases.
- c. The alternative dispute resolution division provides mediation services to families involved in litigation regarding custody, possession, child support, and simple property issues that affect children.

(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 the Domestic Relations Office) appointed by a court to monitor and enforce child support and visitation orders.

What about using private attorneys for enforcement?

Anyone may hire their own attorney to represent them in an enforcement proceeding. Enforcement is a very technical area of family law. Not all family law attorneys handle enforcement cases.

How do we get to court?

A motion for enforcement is filed with the court and your case is set on the court's docket for a certain date and time. 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 deliver the documents. You cannot deliver the papers yourself, nor can they be served by mail or left with someone else at the person's residence. The other person is entitled to at least ten days' notice before the hearing.

What happens when we go to court?

You are usually given an opportunity to settle your case before you have a hearing in front of the judge. If you cannot settle your case, you have a hearing before 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 frequently includes the following:

- a. A judgment for the total amount of money owed, including interest.
- b. A finding of contempt for specific dates that the person failed to pay the amount ordered.
- c. Punishment (jail time or fine, or both).
- d. Suspension of punishment based on certain terms: payment of regular child support, payment of an extra amount toward the balance owing, payment of attorney's fees and costs of court.
- e. A compliance date (another court date) to determine if the agreed terms have been complied with, and if they have not, for enforcement of the terms of punishment.

In visitation enforcement cases, an agreement frequently includes the following:

- a. A finding of contempt for specific dates that the person failed to allow visitation as ordered.
- b. Punishment (jail time or fine, or both).
- c. Suspension of punishment based on certain terms: allow regular visitation, allow extra visitation to make up for periods denied, payment of attorney's fees and costs of court.
- d. A compliance date (another court date) to determine if the agreed terms have been complied with, and if they have not, for enforcement of the terms of punishment.

What happens if the judge hears the case?

The judge may find the other person in contempt and sentence them to jail, or may find them in contempt and suspend the jail sentence based on certain terms, including ordering them to pay back the money they owe or allow extra visitation periods. The judge may deny the contempt but order other relief including a money judgment for child support arrears, ordering the person to pay the arrears, awarding extra visitation to make up for periods denied, and ordering the person to pay 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 may be set for the person to appear in court at a later date to determine if they have complied with the terms of suspension (paying money, allowing visitation, etc.) and if they have not, they may be sent to jail at that time. After the compliance date has passed, if the person later fails to comply, another lawsuit called a motion to revoke 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 determines cannot afford to hire their own attorney. Most courts will require the person who requests 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 at the designated date and time, the court may grant a warrant for their arrest and may also grant a default judgment against them as to the amount of past due child support owed. However, a person cannot be held in contempt without being personally present in court.

Can extra money be withheld from a person's earnings to pay back child support?

Yes. The court must order income withholding in all cases, even when the person is self-employed. The court can order that an additional amount be withheld for past due child support in addition to regular child support payments.

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

Yes. The court order must be clear and specific. For example, a visitation order must order the custodial parent to surrender the child to the visiting parent at a specific place and at a specific time, and a child support order must order a person to pay a specific amount on specific dates. If an order is not properly written, the judge may not be able to hold someone in contempt for violating that order, but the judge may clarify the order so that in the future the order will be enforceable by contempt.

Can you still enforce child support and/or visitation orders when one or both parties move out of Texas?

Yes, the Texas court can enforce the order. If the person violating the order or both people have moved out of Texas, the Texas order can be registered in the new 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 then the Texas court can enforce the order as if it were an order issued by 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, if appropriate. 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 amount owed?

No. The court may not modify or reduce the amount of past due child support. Under certain circumstances, a person may be entitled to an offset or credit. The court

must render one judgment for the total past due child support, including interest. The court cannot reduce the amount of ongoing child support in an enforcement case. A person who wants their ongoing child support amount reduced should file a motion to modify.

What if a person fails to provide health insurance or pay uninsured health care expenses as ordered?

These obligations are usually considered additional child support obligations and may be enforced as discussed here. Some orders for these obligations may not be enforceable by contempt. One can at least receive a judgment for the monies not paid by the person who was ordered to pay them. 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 against a person's homestead. More 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 back child support equal to or greater than the total support due for 90 days and they have been given an opportunity to make payments toward the arrearage 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, and hunting and fishing licenses.

If one person is not paying child support, does the other person still have to let them see the children?

Yes. One person's failure to pay child support does not justify denying that person court-ordered visitation. Likewise, one person's refusal to allow visitation does not justify failure to pay court-ordered child support to that person.

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 and specific details should be discussed with an attorney.

What about enforcement of property orders?

The 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, ordering a person to sign specific documents to transfer property, and ordering a division of retirement or pension benefits. Specific details should be discussed with an attorney. The agencies described above cannot assist with actions to enforce property divisions.

Can the court enforce alimony payments?

Yes. Spousal maintenance payments may be enforced by contempt. Also, the court may order income withholding for spousal maintenance payments just as they do for 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 suit 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.

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 between the ages of 12 and 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 \$25,000.00 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.

RESOURCE AND REFERRAL NUMBERS

FAMILY SUPPORT GROUPS

- Community Family Centers713-923-2316
- Depelchin Children's Center713-730-2335 or 888-730-2335 (toll free)
- Escape Family Resource Center713-942-9500
- Family Outreach of America888-643-4005
- Family Outreach Centers
 - Clear Lake 1300 Bay Area Blvd. 281-486-8827

Montgomery County	1735 W. FM 1960	936-441-4733
Fort Bend County	341 Eldridge	281-242-5385
Family Services of Greater Houston		
<i>Intake for all services and areas listed below</i>		713-861-4849
AIDS Support	4625 Lillian	
Central	4625 Lillian	
Northwest	4501 N. Main Street	
Bay Area	1300 Bay Area Blvd. #201	
Fort Bend County	10435 Grennbaugh Blvd., Bldg. 2, Suite 200	
Waller/Brookshire Counties	FM 531 359 South	
The Woodlands	1600 Lake Front Circle	
Jewish Community Center		713-729-3200
<i>Parent education, workshops; open to all parents</i>		
Jewish Family Service		713-667-9336
<i>A Counseling Service for personal and family problems</i>		
Learning Support Center		832-822-3700
<i>Texas Children's Hospital parent education groups</i>		
Northwest Assistance Ministries - 9 a.m. to 3 p.m.		281-885-4555
Program Assistance		281-583-5600

CHILD SUPPORT ASSISTANCE

Attorney General's Office		713-974-4876
<i>Enforcement of child support payments that are more than 2 months overdue</i>		
Domestic Relations Office		713-755-6757
<i>Enforcement of child support payments and some visitation and paternity problems</i>		
Harris County Child Support Office		713-755-6077
<i>For information on an account</i>		
Harris County District Clerk's Office		713-755-5758
<i>For information on garnishing wages from a non-custodial parent...713-755-5750</i>		

DOMESTIC ABUSE ASSISTANCE

Aid to Victims of Domestic Abuse		713-224-9911
New Horizon Family Center (Crisis Center)		281-422-2292

Bridge Crisis Center Hotline.....	713-473-2801
Child Advocates, Inc.	713-529-1396
<i>Advocates for the rights of abused and neglected children in the custody of Children's Protective Service</i>	
The Children's Assessment Center	713-986-3300
<i>Program which helps coordinate therapy, treatment, and intervention services for child sexual abuse victims.</i>	
Children's Protective Services	1-800-252-5400
<i>For placement of children in foster homes and investigating child abuse</i>	
Escape Family Resource Center	713-942-9500
Family Outreach Centers (<i>for child abuse prevention services</i>)	
1300 Bay Area Blvd.	281-486-8827
Fort Bend Co.	281-242-5385
Montgomery Co.	936-441-4733
Family Time Foundation, Inc.....	281-446-2615
<i>For crisis intervention and counseling</i>	
Family Violence Legal Hotline.....	1-800-374-4673
<i>Sponsored by the Women's Advocacy Project, provides legal counseling and information about legal rights and options for victims of family violence</i>	
Family Violence Unit of Harris County District Attorney's Office	713-755-5888
<i>For issues related to parental kidnapping, family violence and protective orders and bigamy</i>	
Fathers for Equal Rights, Inc.....	713-226-8485
<i>Offers education, legal advice and support for parents, grandparents and others trying to navigate the judicial system</i>	
Healthy Family Initiatives.....	713-270-8849
Houston Area Women's Center	713-528-6798
Rape Crisis Hotline/24-hours	713-528-RAPE (7273)
Emergency Shelter/Domestic Violence Hotline, Houston Area Women's Center	713-528-2121
Northwest Assistance Ministries	281-583-5600
<i>Women's and children's counseling</i>	
Sheltering Arms	713-956-1888
<i>Assistance to victims of elderly abuse</i>	
Victim's Assistance Center	713-755-5625
<i>Counseling, support and some financial aid</i>	

CHILDREN'S MENTAL HEALTH SERVICES

DePelchin Children's Center	713-730-2335
<i>Offering outpatient services, partial hospital services, residential treatment, for individuals, families, and group therapy</i>	
Casa de Esperanza.....	713-529-0639
<i>Residential care for abused and HIV children under 6</i>	
Chimney Rock Center	713-664-5701
<i>Emergency shelter and community youth services and counseling</i>	
Covenant House Texas.....	1-800-999-9999/713-523-2231
<i>Shelter for youth under 21, counseling, emergency shelter offering food, and clothing</i>	
MHMRA/Administration Number	713-970-7070
<i>County Mental Health Mental Retardation Administration</i>	
County Mental Health Mental Retardation Administration Crisis Line.....	713-970-4600
University of Texas Psychiatric Services	713-500-2700

PARENT EDUCATION

Children Cope	713-952-2673
Memorial Drive Methodist Church	713-468-8356
<i>Children in the Middle</i>	
Depelchin Children's Center <i>Parent Education and Support Programs</i>	713-730-2335
Escape Family Resource Center	713-942-9500
<i>Families and Divorce and Building New Beginnings</i>	
Family Education Institute - Parenting Workshops.....	713-696-8841

PARENTING CLASSES AND SKILLS RESOURCES

AVANCE Family Support and Education Program	713-923-8008
Columbia Woman's Hospital of Texas Parenting <i>Education Program</i>	713-791-7495
Depelchin Children's Center	713-730-2335
Escape Family Resource Center <i>Parenting Workshops/Building Confident Families</i>	713-942-9500

Family Service of Greater Houston	713-861-4849
Parent Education Project/University of Houston.....	713-743-5435
St. Andrew's Presbyterian Church	713-667-1703
Parent Reading Program/Houston Public Library System	713-867-0344

SUBSTANCE ABUSE SERVICES

Al-Anon.....	713-683-7227
Alcoholics Anonymous	713-686-6300
Center for Recovering Families.....	713-914-0556
Houston Council on Alcoholism and Drug Abuse	713-942-4100

LEGAL SERVICES AND INFORMATION

Dispute Resolution Center	713-755-8274
Lone Star Legal Aid.....	713-652-0077
Houston Bar Association's LegalLine.....	713-759-1133
<i>Legal advice over the phone, 5 p.m. to 9 p.m., 1st & 3rd Wednesday of each month</i>	
Houston Lawyer Referral Service.....	713-237-9429
Houston Volunteer Lawyers Program	713-228-0732
Hispanic and Mexican-American Bar Association's Consejos Legales	713-759-1133
<i>Spanish language legal advice over the phone, 6 p.m. to 8 p.m., 1st Thursday of each month</i>	
Vietnamese LegalLine	713-759-1133
<i>Vietnamese language legal advice over the phone, 5 p.m. to 7 p.m., 3rd Tuesday of each month</i>	
South Texas Legal Aid Clinic.....	713-652-0009
<i>Handles simple, uncontested divorce, will & probate matters, social security disability cases and name changes</i>	
University of Houston Law Center Legal Aid Clinic	713-743-2094
Harris County Switchboard	713-755-5000
District Clerk's Office	713-755-5711
County Clerk's Office.....	713-755-6411
District Attorney's Office.....	713-755-5800
City Attorney's Office	713-247-2000
Harris County Attorney's Office	713-755-5101

USEFUL PUBLICATIONS

HBA Family Law Handbook713-759-1133

For multiple copies, please fax your request to the Community Education Department, 713-759-1710.

Individual copies are available from the Houston Bar Association, 1001 Fannin, Suite 1300, Houston, Texas 77002, or by sending a self-addressed, 9x12 envelope stamped with \$1.85 postage per handbook to the address above. Please specify that you would like the Family Law Handbook. This handbook is also available in Spanish.

All HBA Legal Handbooks are available online in other languages at www.hba.org.



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