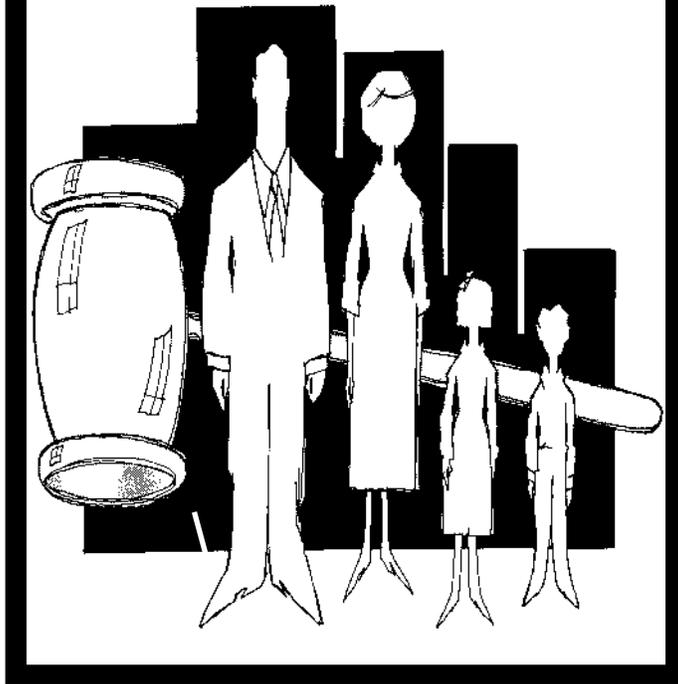


FAMILY LAW HANDBOOK



2009-2010

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 2009. 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.

Barrett H. Reasoner
2009-2010 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 Family Law Courts are the 245th, 246th, 247th, 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 which ruled on the initial order.

What are Associate Judges?

The associate judge of the court is appointed by that court's presiding judge. The associate judge 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.

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 is appointed by the presiding judge. The associate judge may handle many matters involving your case. In addition to the presiding judge and the associate judge, court personnel include 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; the bailiff maintains order in the court; the court reporter takes a record of testimony.

Where are the Harris County Family Law Courts located?

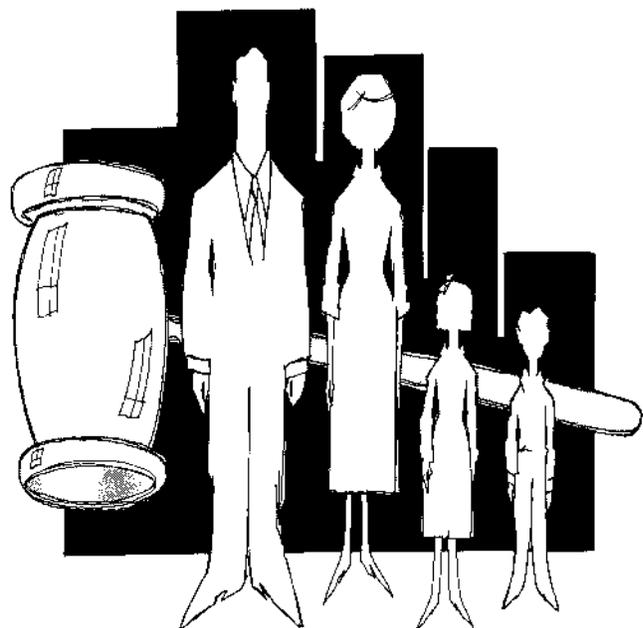
Most of the Family Law Courts are located in the Harris County Family Law Center at 1115 Congress Avenue in downtown Houston. The Family Law Center is bounded by the streets Congress, Franklin, San Jacinto and Fannin. The 245th, 247th, and 310th Family Law Courts are located at the Civil Courthouse at 201 Caroline, 15th Floor, as is the 280th, the Domestic Violence Court.

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. Generally, children should not be brought to the court unless the judge gives permission.



What are IV-D Courts?

In Harris County there are four IV-D Courts. In the IV-D Courts, the primary focus is on lawsuits related to child support involving the Attorney General's Office. Each court is identified by a number. They are 991, 992, 993, and 994, and they are informally known as IV-D Court numbers 1, 2, 3, and 4. They are located in the Family Law Center.

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 Avenue, 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 all Texas courts. 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 local rules may be obtained through the District Clerk's office online at www.hcdistrictclerk.com or at www.justex.net, and 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 rules.

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 completely 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 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. If the parties reach a settlement, the mediator drafts a binding agreement that reflects the negotiated settlement.

Is mediation required in family law matters?

Generally yes. Prior to the final trial, and sometimes prior to a temporary hearing, the court will likely order mediation. Either the court chooses the mediator or the attorneys agree to a mediator and schedule mediation.

What are the advantages of mediation?

Mediation is the parties' process and decision and not the court's. The process gives the parties control over the outcome of their case; offers certainty to 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 share 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.

What happens to the case after mediation?

If an agreement is reached at mediation, the written agreement is transferred by one of the attorneys into an Agreed Order and presented to the judge to approve. 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 an open sharing of information and 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 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 communications 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 and the parties can proceed on their own or with other attorneys.

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?

In Texas, you may not 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 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, 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 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. The sixty (60) day waiting period may be waived in certain cases involving convictions for family violence and protective orders.

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 (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.

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 50-50 at the time of divorce?

No. 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 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 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.

Does the judge divide the community property 50-50?

Not necessarily. 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 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
6. Separate property available to either spouse

Who decides the value of my property?

Each party is required to provide the judge with an 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.

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, 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 and divided at the time of divorce. Any community property not divided upon divorce remains as property 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. 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 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 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 two 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 requesting party in the divorce) of the requesting 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 three 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

What is "Custody"?

In Texas, the term "custody" is 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 given exclusively to one parent over the other. One parent may be given more rights than the other parent or the parent 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 right 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. 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 such as spring break and in the summer. There may 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 may consult with the Judge to provide the Judge with information concerning the child’s preference.

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 to 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 but you must give notice of your plans to move to the other parent.

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.

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?

Normally, the court will order that the child support be paid monthly or semimonthly. 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.

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 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 what periods each parent may 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 which comply with a Standard Possession Order. In very basic terms, a Standard Possession Order provides for weekend time on the 1st, 3rd, and 5th Fridays of each month at 6:00 p.m. until the following Sunday at 6:00 p.m. or return to school the following Monday; on Thursdays of each week during the regular school term beginning at 6 p.m. and ending at 8 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 holiday period.

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 what is in 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 fact structure 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.

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: 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 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 limited circumstances.

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

If at the time you make a request to the court for access and possession of your grandchild and your child is a biological parent or an adoptive parent of your grandchild who has not had their parental rights terminated, you must overcome the presumption that your child is acting in the best interest of the child and that your denial of or access to your grandchild would significantly impair your grandchild's physical health and emotional well being. In addition, at the time of the filing of your petition one of the following must apply: (1) your child has been incarcerated during the three month period prior to your filing of your petition; (2) your child 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 considering filing a lawsuit seeking to visit 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.

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 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 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 four (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 postnatal 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 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.

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 at (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. 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 stepparent 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 and 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 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?

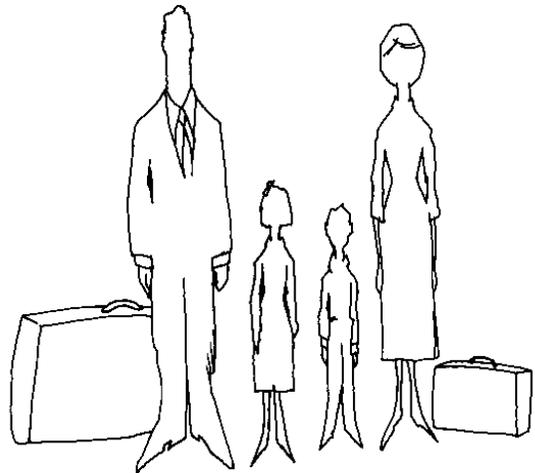
A court can modify provisions for custody (conservatorship), visitation, and child support.

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 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.

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.

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 less than two years.

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:

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.

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 an attorney 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 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 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:

- a. child support;
- b. access/possession of a child (visitation);
- c. property division; and
- d. 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 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; and
- e. A court may appoint an attorney to investigate and enforce a child support or visitation order through a “308a appointment” 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:

- a. 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;
- b. The family court services division conducts court-ordered social study investigations in adoptions and contested custody/access cases, parenting coordination and parent conferences;
- c. 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; and
- d. 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 to the judge. If you cannot settle your case, you have a hearing to 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. A judgment for the total amount of support owed, including interest;
- b. A finding of contempt for specific dates that the person failed to pay the support 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 total support owed, and payment of attorney's fees and costs of court; and
- e. 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. 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 ordered visitation, allow additional visitation to make up for periods denied, and payment of attorney's fees and costs of court; and
 - d. 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 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 punishment. If the person fails to comply after the compliance hearing has passed, 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.

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 health care 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, one parent's refusal to allow visitation does not justify failure to pay court-ordered child support to the other parent.

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, 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 alimony 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 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 Insure 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:

1. Inform the parent that:
 - a. It is the parent's duty to monitor the student's school attendance and require the student to attend school, and
 - b. The parent is subject to prosecution under Education Code 25.093; and
2. 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. Education Code 25.095

CHILD PROTECTIVE SERVICES

Who is CPS?

The official name is the Texas Department of Family and Protective Services (TDFPS). Child Protective Services 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. Allegations can be reported by calling 1-800-252-5400 or making a report online at www.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 (see www.dfps.state.tx.us/handbooks/CPS).

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 you an attorney to represent you. The court will hold a hearing to determine if you are indigent and eligible for free legal representation. 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.

CONSUMER DEBT

What is a consumer debt?

A consumer debt is any debt incurred by an individual for the benefit of himself and/or his dependents. Examples include car loans, credit cards, bank loans, personal loans.

Who is responsible for the payment of my consumer debt?

Generally speaking, any individual who signed off on the account to obtain the credit is liable for the debt. This can include spouses, children, parents, and other cosigners. An authorized user on the account is generally not responsible for repayment.

Can my spouse or children be held responsible for the payment of my consumer debts?

Only if they are co-applicants or co-owners on the account. Texas law does recognize that spouses may be liable for the payment of necessities, such as food, clothing, shelter and medical attention, however as a practical matter the creditor will only look to those individuals who are signers on the account for repayment.

What can I expect if I become delinquent on the payment of my consumer debts?

The creditor will usually begin by making telephone calls to you for collection. These calls will escalate the farther behind you become on your payments. Calls are generally followed up with written demands for payment. Eventually delinquent accounts are referred over to collection agencies or attorney's for collection. If a lawsuit is filed to collect the amounts due, a judgment can be entered against you and attorney's fees imposed.

How long does a creditor have to collect against me on a consumer debt?

Texas law imposes a four year statute of limitations on the collection of any consumer debt. This statute of limitations runs from the date of last activity on the account.

How long will a delinquent account stay on my credit report?

Your credit history, whether good or bad, generally stays on your credit report for seven years. If a creditor obtains a judgment against you, that will stay on your credit report for 10 years.

What should I do if I am receiving harassing telephone calls at home or at work?

Creditors are governed by the Fair Debt Collection Practices Act (FDCPA). This act protects the consumer from threats and harassment by the creditor. As a consumer you have the right to request the creditor to not call you at home or at work. This request should be in writing and preferably sent by certified mail.

What should I do if I am unable to pay my debts as agreed?

You have several options. The first would be to attempt to work out an alternate payment arrangement with your creditors. Some creditors are willing to accept reduced payments for an interim period of time or perhaps even reduce your interest rate to assist you with payments. If you are still unable to meet your obligations, you may want to consider filing a personal bankruptcy.

How do I know if I qualify for filing bankruptcy?

Bankruptcy is a highly specialized area of the law and the qualifications for filing vary depending on your individual circumstances. You should consult an attorney who specializing in consumer bankruptcy to determine if you qualify.

For more detailed information on consumer debt and other consumer issues, see the Houston Bar Association's Consumer Law Handbook, available for download at www.hba.org or through the HBA office, 713-759-1133.

RESOURCE AND REFERRAL NUMBERS

FAMILY SUPPORT GROUPS

Community Family Centers713/923-2316
www.communityfamilycenters.org

Depelchin Children's Center713/730-2335 or 888/730-2335 (toll free)
www.depelchin.org

Escape Family Resource Center.....713/942-9500
www.learnparent.org

Family Outreach Centers www.familyoutreachclba.org

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

Intake for all services and areas listed below713/861-4849
www.familyservices.org

AIDS Support4625 Lillian

Central.....4625 Lillian

Bay Area.....1300 Bay Area Blvd. #201

Fort Bend County.....10435 Greenbaugh Blvd., Bldg. 2, Suite 200

Waller/Brookshire Counties.....FM 531 359 South

The Woodlands.....1600 Lake Front Circle

Jewish Community Center.....713/729-3200
Parent education, workshops; open to all parents: www.jcchouston.org

Jewish Family Service713/667-9336
A Counseling Service for personal and family problems: www.jfshouston.org

Learning Support Center.....832/822-3700

Texas Children's Hospital parent education groups

Northwest Assistance Ministries - 9 a.m. to 3 p.m. 281/885-4555

Program Assistance281/583-5600

www.namonline.org

CHILD SUPPORT ASSISTANCE

Attorney General's Office713/974-4876

Enforcement of child support payments that are more than two months overdue

www.oag.state.tx.us

Domestic Relations Office.....	713/755-6757
Enforcement of child support payments and some visitation and paternity problems	
www.dro.hctx.net	
Harris County Child Support Office- District Clerk's Office	713/755-6077
For information on an account: www.hcdistrictclerk.com	
Harris County District Clerk's Office	713/755-5758
For information on garnishing wages from a non-custodial parent.....	
www.hcdistrictclerk.com	
DOMESTIC ABUSE ASSISTANCE	
Aid to Victims of Domestic Abuse	713/224-9911
www.avda-tx.org	
New Horizon Family Center (Crisis Center)	281/422-2292
Bridge Crisis Center Hotline.....	713/473-2801
Child Advocates, Inc.	713/529-1396
Advocates for the rights of abused and neglected children in the custody of Children's Protective Services. www.childadvocates.org	
The Children's Assessment Center	713/986-3300
Program which helps coordinate therapy, treatment, and intervention services for child sexual abuse victims. www.cahouston.org	
Children's Protective Services.....	800/252-5400
For placement of children in foster homes and investigating child abuse	
Escape Family Resource Center.....	713/942-9500
www.learntoparent.org	
Family Outreach Centers (for child abuse prevention services)	
www.familyoutreachcenter.org	
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
For crisis intervention and counseling www.familytimeecc.org	
Family Violence Legal Hotline	800/374-4673
Sponsored by the Women's Advocacy Project, provides legal counseling and information about legal rights and options for victims of family violence	

Family Violence Unit of Harris County District Attorney's Office713/755-5888
For issues related to parental kidnapping, family violence and protective orders and bigamy

Fathers for Equal Rights, Inc.....713/226-8485
Offers education, legal advice and support for parents, grandparents and others trying
to navigate the judicial system. www.fathers4kids.com

Healthy Family Initiatives713/270-8849

Houston Area Women's Center713/528-6798
www.hawc.org

Rape Crisis Hotline/24-hours.....713/528-RAPE (7273)

Emergency Shelter/Domestic Violence Hotline, Houston Area Women's Center
www.hawc.org713/528-2121

Northwest Assistance Ministries281/583-5600
Women's and children's counseling www.namonline.org

Sheltering Arms713/956-1888
Assistance to victims of elderly abuse www.shelteringarms.org

Victim's Assistance Center713/755-5625
Counseling, support and some financial aid

CHILDREN'S MENTAL HEALTH SERVICES

DePelchin Children's Center713/730-2335
Offering outpatient services, partial hospital services, residential treatment,
for individuals, families, and group therapy www.depelchin.org

Casa de Esperanza.....713/529-0639
Residential care for abused and HIV children under 6 www.casahope.org

Covenant House Texas800/999-9999/713/523-2231
Shelter for youth under 21, counseling, emergency shelter offering food, and
clothing www.covenanthousetx.org

MHMRA/Administration Number713/970-7000
County Mental Health Mental Retardation Administration www.mhmraharris.org
County Mental Health Mental Retardation Administration Crisis Line.....713/970-4600

University of Texas Psychiatric Services.....713/500-2666
<http://hcpc.uth.tmc.edu>

PARENT EDUCATION

Children Cope.....713/952-2673
www.childrencope.org

Memorial Drive Methodist Church.....713/468-0500
Children in the Middle www.mdumc.org

Depelchin Children’s Center
Parent Education and Support Programs713/730-2335
www.depelchin.org

Escape Family Resource Center.....713/942-9500

Families and Divorce and Building New Beginnings www.icanparent.org

PARENTING CLASSES AND SKILLS RESOURCES

AVANCE Family Support and Education Program.....713/812-0033

Woman’s Hospital of Texas Parenting Education Program.....713/791-7495
www.womanshospital.com

Depelchin Children’s Center713/730-2335
www.depelchin.org

Escape Family Resource Center
Parenting Workshops/Building Confident Families.....713/942-9500
www.escapefrc.org

Family Service of Greater Houston.....713/861-4849
www.familyservices.org

Parent Education Project/University of Houston.....713/743-5435

St. Andrew’s Presbyterian Church.....713/667-1703
www.sapch.org

Early Literacy Programs/Houston Public Library832/393-2027

SUBSTANCE ABUSE SERVICES

Al-Anon.....713/683-7227
www.alanon.org

Alcoholics Anonymous713/686-6300
www.alcoholics-anonymous.org

Center for Recovering Families.....713/914-0556

www.council-houston.org/Services_Programs/Center_for_Recovering_Families.aqf

Houston Council on Alcoholism and Drug Abuse.....713/942-4100
www.council-houston.org

LEGAL SERVICES AND INFORMATION

Dispute Resolution Center713/755-8274
www.drchouston.org

Lone Star Legal Aid713/652-0077 or 800/733-8394
www.lonestarlegal.org

Houston Bar Association's LegalLine713/759-1133
Legal advice over the phone, 5 p.m. to 9 p.m., 1st & 3rd Wednesday of each month
www.hba.org

Houston Lawyer Referral Service.....713/237-9429 or 800/289-4577
www.hlrs.org

Houston Volunteer Lawyers Program713/228-0732
www.hvlp.org

Family Law Information Booth.....In Person Only
In the basement of the Family Law Center, 1115 Congress. A booth where the public can ask for simple legal advice for family law in person. Hours: 8:30 a.m. - 3:00 p.m.

Hispanic and Mexican-American Bar Association's Consejos Legales713/759-1133
Spanish language legal advice over the phone, 6 p.m. to 8 p.m., 1st Thursday of each month

Vietnamese LegalLine713/759-1133
Vietnamese language legal advice over the phone, 5 p.m. to 7 p.m., 3rd Tuesday of each month

South Texas Legal Aid Clinic713/652-0009
Handles simple, uncontested divorce, will & probate matters, social security disability cases and name changes

University of Houston Law Center Legal Aid Clinic713/743-2094

UH Center for Consumer Law/ Texas Consumer Complaint Center.....www.texasccc.com

Harris County Switchboard.....713/755-5000
District Clerk's Office713/755-5734
www.hcdistrictclerk.com

County Clerk's Office713/755-6405
www.cclerk.hctx.net

District Attorney's Office.....713/755-5800
www.houstonda.org
City Attorney's Office.....713/247-2000
Harris County Attorney's Office.....713/755-5101
www.co.harris.tx.us/coatty

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. Please call the HBA office at 713/759-1133 for more information about obtaining additional copies. This handbook is also available in Spanish.

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



Houston Bar Association
Family Law Section
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Houston, Texas 77002
713/759-1133
www.hba.org