

LET'S TALK ABOUT **FAMILY LAW**

THE PROCESS AND HOW IT EFFECTS YOU



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Family Law eBook

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Introduction

Family Law issues, such as divorce, custody of kids, and child support, are some of the most common legal issues that people face. This Guide is a general explanation of the issues that you may face during a family law case and some of the processes that you can expect to experience. It was designed to provide basic answers and explanations for some of the most common questions that we are asked as Family Law attorneys. You may not know the correct terms for what you are fighting about, but these issues are broken into broad sections covering the most common Family Law issues.

As you can imagine, nothing written by an attorney would be complete without a disclaimer: The issues discussed in this guide are published as a general overview of common family law issues. They are not intended to take the place of legal advice and the publication of this guide does not create an Attorney-Client Relationship between the authors and the reader. We highly recommend that you go beyond the pages of this broad outline of family law issues and speak with an attorney to inform yourself of your legal rights.

Divorce

Divorce is a difficult and emotional time that involves a great deal of upheaval for everyone. It affects finances, family dynamics, and personal relationships in an untold number of ways. The process may be distressing and overwhelming even when both parties agree to the process. Having a skilled and experienced divorce attorney by your side to manage your divorce will help protect your rights and ensure the process is as smooth as possible.

Getting divorced requires many decisions, and each one is unique to the family members involved. Issues such as parenting time, property division, and finances can quickly become a fight. From filing the appropriate documents, meeting Court deadlines, and understanding ever-changing laws, to the emotional impact and aftermath a divorce can leave in its wake, having an experienced attorney to aid you in navigating all of the decisions you will undoubtedly face is essential.

To get a divorce in Arkansas you must be a resident for 60 days before you can file for divorce, and you must be able to prove you have grounds for divorce. Arkansas is a fault state, which means that you must prove fault in order to obtain a divorce. The only no-fault grounds that exist in Arkansas are (1) separation without cohabitation for greater than eighteen months; and (2) incurable insanity with three years separation. Otherwise, grounds in Arkansas fall within the following categories:

- **General Indignities:** the behavior of your spouse is rendering your life intolerable and causing you to seek a divorce. This can include persistent verbal abuse that the other party refused to cease, excessive drinking or drug use, inappropriate relationships with people outside of the marriage, and physical abuse. This is the most common reason for divorce.
- **Adultery:** if your spouse had a sexual relationship with another person during your marriage, you can get divorced. The difficulty with pleading adultery is finding proof to back up your claim.
- **Felonies:** if your spouse is convicted of a felony, you can seek a divorce.
- **Cruelty:** if your spouse is so cruel to you that it endangers your life, you can request a divorce on those grounds.
- **Habitual Drunkenness:** if your spouse is an alcoholic for at least one year.

- Impotence: if your spouse was impotent when you married and is still impotent, you can use the impotence as grounds for divorce

A third party must corroborate your grounds for divorce, meaning that your testimony alone is not enough to prove grounds. Corroboration can be waived in an uncontested divorce but is always required in a contested divorce.

Along with the legal requirements to get a divorce we have to consider what else is involved in a divorce case. The main issues are division of assets and debts, custody of children, child support, and spousal support. Custody and child support are discussed in their own sections later on.

Division of Assets and Debts

When a married couple decides to divorce, their property and debts need to be divided. The division of assets and debts must be “equitable,” which many people misinterpret at “equal.” For various reasons, this may not be the case.

In some divorce cases, the division of assets and debts can be settled between the spouses by agreement between the parties. In other situations, the division will have to be ordered by the court, and a Judge decides on the equitable division of the parties’ property and debts.

However, the majority of divorces do end in settlement, and for good reason; most individuals eventually decide they would rather be masters of their own fate as opposed to leaving it to the complete discretion of a Judge.

The equitable division of assets and debts can differ greatly from case to case. The types of assets subject to equitable distribution typically include:

- Money - Financial assets will include funds in checking and savings accounts, investments, and retirement funds.
- Home and Property - The family home and land is considered real property and an asset that must be addressed in a divorce.
- Retirement - This includes 401(k) accounts and pensions, IRAs, and other tax deferred accounts.
- Businesses - Any family-owned business, as well as business-owned property, accounts receivable and good will may be considered marital assets.
- Taxes - This includes tax refunds and tax credits.

- Investments - Interests, stock options, and brokerage accounts will be considered during the division of property.
- Other - This category can include valuable collections, art, patents/copyrights, insurance policies, the contents of safety deposit boxes, vehicles, boats, and household furnishings, among other things, which have to be divided and awarded to one party or the other.

There are a variety of factors that will be considered by the court during your divorce that will contribute to the division of property. Some of these factors can include:

- The length of your marriage
- The ages of both spouses
- Current income and income potential
- Level of education achieved by each spouse
- Financial needs
- Medical conditions that create a financial need
- Non-marital resources (eg. a trust)
- The existence of a prenuptial agreement
- Whether the couple was living together prior marriage

It is important for those going through the divorce process to understand that when a court divides property and debts, it is done based upon the above considerations. As a result, an equitable division is not always an equal division.

For example, if one spouse has the skills and career positioning to fully provide for themselves, but the other spouse has a medical condition that impeded their ability to be self-supporting, the court may award the second spouse a greater portion of assets.

Spousal Support

Spousal support is a payment from one spouse to the other after the couple has separated or divorced. It may also be referred to as maintenance or alimony. Spousal support is generally based upon financial and economic factors, similar to those that determine the distribution of assets and debts that were discussed in previously.

The court generally awards spousal support based on two factors: The receiving spouse's need for payment and the providing spouse's ability to pay.

The awarding of spousal support is not automatic in a divorce. It must be determined by the court whether or not maintenance should be awarded at all. If maintenance is deemed appropriate, then decisions have to be made as to how long the maintenance will be paid and in what amount.

It must also be noted that spousal maintenance is not affected by the bad behavior of one of the spouses. Spousal support is awarded (or denied) based on need, and the relative fault of one party or the other is not relevant.

Child Custody

There may be no other area of family law more emotional and life-altering than custody of children. Custody can come up as part of a divorce case, a paternity case, or as it's completely own case. No matter how it comes up the court's job is to determine what is in the child(ren)'s best interest.

There are different types of custody that a court can choose from in order to ensure that the best interest of the child is protected. The types of custody include: (1) Joint Custody, in which parents share equal parenting time and responsibility; and (2) Primary Custody, in which one parent is awarded greater parenting time and rights.

Joint custody is when both parents remain as equally involved in the parenting process as possible, both physically, and legally. In a pure joint custody situation, the parents will share as close to equal parenting time as possible. This may be scheduled in a near infinite number of ways, taking into consideration the schedules of the parents and the child. Most commonly, parents will agree to a two-day or a one-week rotation in which the child lives in both homes an equal amount of time. In a two-day rotation, one parent will have Monday and Tuesday while the other will have Wednesday and Thursday. Friday through Sunday will alternate every week. The weekly rotation is even simpler. One parent has the child for an entire week and then the other parent gets the child for the next week.

Legal decisions in joint custody arrangements are something that the parents will have to learn to agree on. Each parent will have an equal say in medical and educational decisions. Each parent is responsible for ensuring that the other parent has equal access to doctors, teachers, records, and all of the other little parts of the child's life.

The other common type of custody in Arkansas is when one parent has primary custody. In this situation, one parent is awarded the bulk of the parenting time and responsibilities. When the court awards one parent primary custody, it will generally award the non-custodial parent visitation unless there is a good reason not to do so. Visitation is usually one to three days per week but can be significantly more.

In Arkansas, there is a presumption that joint custody is in the best interest of the child. If one party believes joint custody is not the best option, is it up to that party to prove why joint custody is not best. The court will only deviate from joint custody for reasons that affect the health or safety of the child. The court may consider factors, such as:

- Instability of either parent including moving often, changing jobs frequently, frequent new romantic relationships;
- Drug or alcohol addiction;
- Criminal activity;
- Domestic abuse.

Modification of Custody Orders

When a court issues a custody order is in intended to be permanent but there may be circumstances that require the order to be changed. This process is called a modification.

To modify a custody order you must show there has been a significant change in circumstances that requires the court to act. Reasons to modify a custody order can include:

- One of the parents moving so the custody schedule is no longer practical
- A parent remarries
- A parent loses a job
- A parent loses a house or gets evicted
- A parent is drinking too much or using illegal drugs
- The child is being neglected by a parent
- The child is missing school when at a parent's house
- The child is doing poorly in school

Any of the above reasons might be enough to modify a custody order. The reason could also be a combination of a lot of small issues. If you think a custody order needs to be changed you should discuss your options with a family law attorney.

Child Support

Child support in Arkansas is calculated under Administrative Order 10, which establishes how income is calculated and what child support payment is appropriate for a given income. Arkansas uses the income shares model for child support. The Income Shares Model is based on the concept that children should receive the same proportion of parental income that they would have received had the parents lived together and shared financial resources. Under the income shares model, a child support obligation is calculated using the income of the custodial as well as the non-custodial parent.

A parent's support obligation is based on both parents' gross monthly income. The idea is for "income" to be a broad term in order to benefit the child. Under Arkansas' child support guidelines, income means any form of payment (for example wages, commissions, bonuses, worker's compensation, and interest). What it all boils down to is Arkansas uses the gross monthly income of both parents to calculate child support.

If a parent doesn't have an income the court may consider whether the parent is under-employed as a matter of choice or not. If the court determines that the parent is working below their full earning capacity without reasonable cause, the court may impute income to the parent. This means the court may make a parent pay based on what they could make, not based on what they do make.

Once a court has determined the parents' income it will then look in Administrative Order 10 to determine the amount of support that should be paid. For example, Administrative Order No. 10 dictates that if the custodial and non-custodial parents earn a combined \$3,000 monthly and if you have one child, \$469.00 should be devoted to him or her. The next step is to determine how much each of the parents contribute to that \$3,000. If you earn \$2,000 and the custodial parent earns \$1,000, you're responsible for 66.66 percent of the \$469.00 figure and the custodial parent is responsible for 33.33 percent. The non-custodial parent makes a cash contribution to the custodial parent – child support – and the custodial parent pays her or his percentage directly toward the children's needs. If the parents are paying for daycare or health insurance for the child the cost gets included in the calculation above.

There is a presumption that the amount of child support listed in the child support guidelines is the appropriate amount. However, the court has the power to deviate from the guidelines if there is evidence showing that the child needs a different amount of support. When deciding whether or not to deviate, the court will strive to do what is in the best interest of the child and will only deviate from the guidelines if the award resulting under the guidelines would be unjust or inappropriate. Here are some reasons you can deviate from the determined child support:

- The procurement and maintenance of life insurance, health insurance, and/or dental insurance for the children's benefit;
- The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g., orthopedic shoes, glasses, braces, etc.);
- The creation or maintenance of a trust fund for the children;
- The provision or payment of special education needs or expenses of the child;
- The extraordinary time spent with the noncustodial parent, or shared or joint custody arrangements;
- The cost of transportation to and from visitation
- The cost of school tuition

In some instances, the court may determine that child support is not appropriate. For example, in a pure joint custody situation, the court may decide that each parent is financially responsible for all expenses while the child is in his or her care and that child support is not required. However, the court must still consider ordering child support and must review the parents' income before making that determination.

Guardianship of a Minor

A guardianship is simply a court's recognition that a person is not able to live without the help of another. This is called incapacity, and you can have an incapacity for several different reasons. A child is incapacitated because he or she is a child.

Once a court agrees that a person has incapacity, it will appoint someone to take care of the person. Grandparents are often appointed guardians of children when, for some reason, the parents are not currently able to take care of the child.

When one is given guardianship, a court grants a person temporary or permanent custody over a minor or otherwise incapacitated individual. A guardian is a person (or persons) who is appointed by the court to have the care and custody of the person, or estate, or both, of an incapacitated person.

For a guardian to be appointed a court must determine that a guardianship is necessary. Some reasons a guardianship may be necessary are:

- The parents are impaired by reason of a disability, such as a mental illness, mental deficiency, or physical illness;
- The parents are incarcerated;
- The parents have passed away;
- The parents have abandoned him or her;
- The parents fail to properly care for the him or her;
- The parents are addicted, or chronically under the influence, of alcohol, drugs, or (misused) prescriptions medications; or
- Parents consent to the guardianship.

All of the above reasons come down to the parents of the child being currently unfit to care for the child. If the parents are unfit someone else must be appointed to care for the child.

When requesting a guardianship appointment in Arkansas, there are four conditions the individual must meet. A guardian must be:

- A resident in the State of Arkansas or have a registered agent in Arkansas
- At least 18 years of age

- Of sound mind
- Not a convicted who has not been pardoned (with limited exceptions)

Arkansas guardianships can be referred to as permanent or temporary, but they only last for as long as they are necessary. A temporary guardianship may last for 90 days, and a permanent guardianship may last until a child turns 18 but if a court determines a guardianship is no longer necessary it will be terminated early.

Arkansas recognizes two types of guardianships:

- **Guardianship of the Person:** Person guardianships allow the guardian to make personal decisions on behalf of the ward. Authority includes handling care, living arrangement, school, and medical decisions.
- **Guardianship of the Estate:** Estate guardianships give control of the ward's financial and legal affairs. The estate guardian can act as the ward's agent with full or limited authority as provided in the court order. For children this comes up when guardians need to handle social security benefits, trust funds, proceeds from a settlement, or life insurance proceeds.

While every case is unique, getting legal guardianship in Arkansas generally follows the same process as outlined below:

- A Petition for Appointment of Guardian of the Person and/or Estate must be filed with the probate court.
- Provide notice of the petition and any court date to the required individuals.
- The court will hold a hearing to review the petition.
- Receive the guardianship court order and review it with your legal team.
- Follow through on the court order's provisions.

If a judge doesn't issue a court order, your family has the right to appeal the decision to a higher court. This choice adds a tremendous amount of time to your case, making it imperative to work with an experienced attorney the first time around to help prevent costly legal mistakes.

Adoption

Adoption can be a wonderful thing for a child or for the parents-to-be. An adoption grants legal parental rights for a child to another person. The adoptive parent assumes all responsibilities for the child and the child becomes entitled to inherit from that parent just as a natural child would. Likewise, depending on the nature of the adoption, one or more of the natural parents will have their legal rights in the child severed.

The most common types of adoptions are step-parent, single parent, or grandparent adoptions, in which the child to be adopted is related to one or more of the adopters by blood or marriage. These adoptions are typically more streamlined as the court has fewer concerns regarding the placement of the child in homes with familiar relatives.

An adoption requires a petition to the court stating the reasons why you should be permitted to have legal care and responsibility over a child. Notice must be given to certain persons (such as any natural parents). If the natural parent(s) will consent to the adoption, this is simply a matter of showing the court that you are ready, willing, and able to provide for the child as a parent should. But you may also have to convince the court why the rights of a natural parent should be severed if that natural parent will not consent to the adoption.

If the natural parent(s) will not consent, you must present clear and convincing evidence that the adoption is in the best interest of the child. For example, Arkansas law permits the court to grant an adoption over the objection of the natural parent where that parent has failed to see, support, or communicate with the child for a period of one year. Courts may also grant an adoption where there is a history of abuse or neglect.

In some cases, adoptions are straightforward or uncontested, but in some cases the natural parent may put up a fight. In these cases, you should hire an attorney who will fight for you.

In some adoptions, there are other requirements which may slow down the process. Putative father inquiries, home studies, accountings, and child study reports may be required, depending on the facts in your case.