TEXAS DIVORCE & CUSTODY

A Guide for Caring Men and Fathers

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Introduction

Whether you are going through or still considering divorce or the break-up of your family, this is one of the most stressful times of your life. The purpose of this book is to give you some answers to frequently asked questions or to those questions that you did not even know to ask. It is my goal to help you understand more about the legal process and practical consequences of divorce and custody issues in Texas, so that you can make better, more informed choices throughout this process, resulting in a happier, healthier, and more productive you.

Divorce and custody fall under the legal category called *family law*. Family law is any situation that deals with divorce, child custody, child support, paternity, termination of parental rights, or adoption. It does not include wills and wishes (estate planning) or the legal suit that you need to file when a family member dies (probate). Though you may find many attorneys who handle both family cases as well as estate planning/probate cases, and though we are often dealing with the same type of highly-emotional people in emotionally-charged situations (i.e. family feuds), these are two completely different areas of the law, and you should consider having separate lawyers represent you for these cases.Many lawyers who are criminal defense attorneys want nothing to do with family law, and vice versa. I have often heard lawyers say that criminal defendants are bad people on their best behavior and family law clients are good people on their worst behavior. It does not have to be that way, and I have had some amazing family law clients. But to be fair, family law is incredibly emotional, which means that it is very hard to think rationally and be the caring person that you normally are. My goal in this book is to answer some basic questions about family law and help you through this very difficult process, so that you can rediscover the wonderful, loving and generous person that you truly are, so that you can share that love and devotion with your family and friends.

In this book, I will be talking about divorce and custody, but other elements of family law are generally present in these cases. As such, my convention in this book is to just use the term Family Law throughout.

This book is specifically about divorce and custody in Texas. The law and procedures differ greatly from state to state, so the specifics of how your case is handled in Texas will be very different from how it will be handled in Illinois. Yet there is one thing that is true in all jurisdictions: how you handle yourself and treat others during this period will greatly impact the time, emotion, and expense involved!

Chapter 1 – Phases of a Family Law Case

Clients come to me at different stages of a family law case. It is important to consider the idea that divorce (and even a custody case) is a process, and not an event. There is a grieving process that the parties go through, and rarely do the parties go through each stage at the same time. Usually when a couple files for divorce or custody, or to modify a custody order, at least one of the parties is angry. This anger by one or both parties can cause great difficulty and delays in the ability to work out their differences. It is also the primary reason that family law cases get expensive. More on that later.

Figure 1 - Progression of Your Divorce or Custody Case

Phase 1: Pre-filing

The ideal time to talk with a lawyer about custody or divorce is before anything bad has happened, or before a significant change occurs. If you are thinking about, but still trying to decide whether you want a divorce, this is the ideal time to talk with a lawyer. If your girlfriend or ex-girlfriend is pregnant with your baby, this is a very good time to talk with a lawyer. If a few years have passed since your divorce or custody orders, this is a good time to talk with a lawyer. If something significant suddenly happens to your children, this is a good time to talk with a lawyer. If something significant is *about* to happen in your life that will affect your children, this is a good time to talk with a lawyer. The adage "an ounce of prevention is worth a pound of cure" is especially true in family law.

When you are considering filing a divorce or custody suit, there are many factors and priorities to consider and weigh; I will address the most common ones.

- Time
- Money and Cost
- Access to Kids
- Relationship to Kids
- Potential Liabilities
- Safety
- Mental Health
- Reputation

TIME

How long is this going to take? How much of my time is this going to require? How will this change my work and life schedule? How much work am I going to miss or have interrupted? How long will this be in effect for?

There is no standard amount of time for a family law case. If the parties are unable to come to an agreement, family cases usually last about 6 to 12 months. Sometimes shorter, but sometimes longer, depending on the issues and possible solutions in each case.

There is a significant amount of work that you, the client, need to do to help your attorney understand, prepare for, and work through your case. Ideally, you should put your stories and information in a concise, organized, written form for your lawyer. Be aware that not everything is relevant to your case, even if it is something you think is incredibly important. I have had clients come in with suitcases full of records, printed out emails, Facebook transcripts, pictures and every other type of "evidence" imaginable. Let your lawyer guide you and you will save a lot of time!

Make sure you prepare for the time commitment required by your case. Gathering and providing documentation for your lawyer can take some time, but usually can be done in off-work hours. There are often questions where you will need to respond to your lawyer in a timely manner. Time can be critical in a family case! Bear in mind that you may also need to take off a day or even a week for a mediation, hearing or trial. Finally, remember that you not only need to coordinate this with your work, but also with your childcare person or organization.

The case might require you to spend more time on your children, to accommodate their school and extracurricular activities. It might eat into your time at work, particularly if you are self-employed. Perhaps all the extra time with your kids is exactly what you want, but you need to understand how it can affect you, your work schedule, and your life schedule.

Once the dust settles and court orders are worked out, the orders might be in effect for a couple weeks or many years, depending on the situation. There might be a temporary resolution, which must be given time to see if it will work out. There might be a more permanent resolution, which goes into effect right away. Much of this will depend on your specific situation.

MONEY AND COST

How much is this process going to cost me? How much am I going to have to pay in child support, or how much is the other party going to have to pay me in child support? How much am I going to have to pay for medical insurance, or how much is the other person going to have to pay? Am I going to have to pay or am I going to be able to receive spousal support/alimony? How much is she going to get and what am I going to be left with? Am I going to be financially ruined by this? What is going to happen to my credit?

How much your case will cost in attorney fees and expenses can vary dramatically. The monetary cost depends on how well or poorly you and your spouse (or ex) communicate, what you agree on and what you fight about, what stage you are at in the process, what has been done or what has happened so far, what you expect to happen, what you want to happen, how cooperative you are with your attorney's requests for information, how much time and capability you have, what resources you have, what experts might need to be brought in, what evidence is needed and wanted, etc. You will discuss all of this with your attorney, who will then be better able to give you an idea of what this will cost. You will also need to keep in mind that this might change as circumstances change. If your first question to your lawyer is "how much will this cost?", do not be surprised when you get the only honest answer available: "it depends"!

Big ticket items like child support, medical support and spousal support can dramatically affect your life, positively or negatively. You and your spouse may decide that none of these is necessary. But your spouse may think that you need to support her for the next decade. Knowing what is likely to occur in court can help you plan better.

Sometimes, your access to your children impacts how much money you are able to make. Sometimes the legal process requires you to take time off work or effects your ability to focus at work, and therefore can significantly impact your income. Your ability to travel, or to move to new job opportunities, can be limited by the court. These are all important factors to consider.

And yes, divorce usually ruins a person's credit. Some people have no credit when they begin a divorce, because everything was done in the spouse's name. Some people's credit is simply ruined because there is not enough money to support two households on the income that previously supported one household. And for some, they are still linked to their ex-wife financially after the divorce, because she continues to live in the house; the mortgage was in both names, but she can not qualify for a mortgage on her own. The result is that his credit can still be ruined by her financial distress many years after the divorce.

The final part of the money question is really a question of money versus cost. The question then becomes what will each decision in this process cost me? I'm not only talking about the actual, financial cost, but also the cost to your relationships, to your sanity, to your future, to your children. For example, the cost of representing yourself can be extremely high. It is not hard to imagine even a highly intelligent person being outmaneuvered by the other side's lawyer. It may also be possible to imagine not being able to get your point or story across to the judge in the way you want. The impact of having the wrong lawyer represent you can also be costly. You need to make sure that you have the lawyer that best fits you, your personality, and your situation. If you and your lawyer are not on the same page, that can cause misunderstandings and problems in the presentation of your case. As with the general population, lawyers have different styles and motivations that may or may not reflect your own: for example, the

lawyer you are considering may be too aggressive and unnecessarily cause or incite disagreement, or the lawyer you are considering may be not aggressive enough for your preference and leave money on the table. In any case, you should check into the background and reputation of a lawyer before you hire them to make sure that your goals align with the lawyer's style. Furthermore, the rules about what can and cannot be introduced into evidence are complicated and local court procedures vary wildly, and that is why having the right lawyer helping you present your case can make all the difference for you, for your financial situation, for your relationships, for your children, and for your future.

I have had a clients come to me frustrated, because they did not feel therir prior attorney listened to them. In one case, the client told me that, he and his soon-to-be-ex were talking and had worked out an agreement between themselves. But then when they each took it to their attorneys, somehow, it not only didn't work out in agreement, but it turned out to be a bigger legal fight. Now, not having been involved, it's hard to say exactly what the breakdown was, but clearly, there were big communication issues that end up costing these two people a lot more money and hassle than they wanted.

Worst of all is the cost of inaction or action at the wrong time. Failing to act at the proper time can have severe effects on your children, on your relationships with others, on your mental health, and on your finances. For example, failing to act when your child's mental or physical health are in danger can have dire consequences, including having your child taken away from you. On the other hand, if you try to take action to modify a court order without enough of the right kind of proof for the judge to modify the order, then you have just wasted money on lawyers that could have been spent on your child. You may also cost yourself credibility in the eyes of the court if you act at the wrong time. Pay close attention to time limits and dates: acting too late can limit your ability to challenge or change your circumstances in court.

ACCESS TO AND RELATIONSHIP WITH KIDS

Is she preventing you from all access to your child? Are you the primary caretaker for your child? Do you want more time with your kids? Do you need a different schedule with your kids? Do your kids want more time with you?

Kids need access to both parents, no matter how good or bad of a parent that person is. Kids love and need love and attention from both their parents as well as anyone else who is willing to give them love and attention. The impact of not enough love and attention on a child can be devastating. The impact on a parent of not being able to give love and attention to their child can also be devastating. Maybe you are doing everything you can for your kids, but you need the other parent to do their fair share of raising the kids. Maybe you need a specific schedule for your time with the kids, but the other person refuses to cooperate. Access to children is the most common point of contention in a custody case, and therefore a major cost driver.

POTENTIAL LIABILITIES

How much debt has she incurred? Where is the money going? What debts am I going to be responsible for? If she takes the house and the mortgage, then what happens to me and my credit if she is unable to make the mortgage payments? What should I take on and what should I let her take?

During the divorce process, there are a couple different ways to find out exactly what your financial situation is, including information that she refuses to provide directly to you. You have the right to require the other person to provide information and documentation on property and debts in both your names or in either of your names.

How particular debt is divided upon your divorce will depend greatly upon you and the specifics of your case. Sometimes a client is able and willing to let his ex-wife continue to live in the house with his name

on the mortgage, feeling confident that she will be fiscally responsible to make the mortgage payments on time. But some people do not have that option, because that would prevent them from getting a mortgage on their own, new house. In those cases, often the house must be sold. But sometimes, further down the line, the ex lets you down by failing to make timely mortgage payments, reeking havoc on your credit, so one course of action is to foreclose on the house. In any case, you should work closely with your lawyer to make sure that you minimize your liabilities and prevent having to take further legal action in the future.

There is potential liability, not only with creditors, but also with law enforcement and others. At the end of a divorce, you want to take the credit cards that are in your sole name (so that you have control over your credit… but you may not want all the debt associated with it. Planning in advance may allow you adjust this so that by the time the final division occurs, you are protected.

One situation I have encountered is that she was using the car, but it was in his name. The issue that arose was that she had gotten a traffic ticket, failed to pay it, and incurred fees and a warrant for HIS arrest. In this particular situation, my client paid the cost of the ticket (to clear the arrest warrant), but that amount was deducted from his wife's portion of the property at the time of divorce. At the time of divorce, he also provided documentation to his ex to put the vehicle in her name, but he also sent the necessary documentation to the Secretary of State.

Another question I have heard is; I take on a community credit card, but she is still using it for herself after the divorce. Usually your divorce decree will specify exactly who can use what cards and require the parties to return the cards they are no longer authorized to use to the other person by a specific date. If a person violates that order, then the order can be enforced through the legal system.

SAFETY

If you have immediate safety concerns either for yourself or your children, these need to be addressed quickly! Don't take chances with your safety, or the safety of your children.

If you believe your child is in immediate danger, or immediately after you discover there has been abuse or neglect, you are *required* to contact either the police or CPS within 72 hours.

If you or your spouse have a long history with CPS (or the police), that is definitely going to come up in court, and it will not be pleasant. The court takes family violence seriously. Be very careful during the divorce that you do not threaten your spouse or do anything that can be considered family violence, including hitting, grabbing or pushing your spouse, or taking their phone away from them. If you are so frustrated that you feel the need to put your fist through a wall, do it at the gym to a punching bag, not at your house.

Do you want or need to get orders in place or need to change the current orders about the child? Sometimes you may need to ask the court to order that your spouse's visits be supervised and limited, particularly if the parent is not mentally stable or has put the child in danger. Sometimes, other, less intrusive options may be appropriate.

Would it be better to get a third party through the courts to investigate and evaluate my child's situations? There are many times when it is more appropriate for a third party to advocate for the child or for the child's best interest. There are different types of advocates for children in the court system, so you should work closely with your attorney to ensure that your goals are met by having the right type of advocate involved.

Can I get a protective order or a restraining order? A protective order is appropriate where there has been family violence in the recent past, and that violence or threat is likely to continue in the future. A

protective order has severe consequences on the person whom it is against and is usually limited in time. A restraining order does not necessarily have a time limit, it can apply to one or more parties, and it can address additional issues that a protective order can not. Sometimes a protective order or a restraining order can make a situation worse, so it is important for you to discuss these options with ALL of the appropriate professionals (including therapists/counselors, police, etc.).

Is the order for me only, or for me **and** the children? Often a protective order is obtained for the entire family, which sometimes even includes grandparents and pets who also live with the protected person.

Here is another common question: "I have been falsely arrested for domestic violence. She tried to get a protective order against me, but was not able to. I do not want to be anywhere near her, because I am afraid she'll get me arrested again. But I want to see my children. What do I do?". This is a particularly sensitive situation that requires preventative planning and strategy, including working with both your criminal defense attorney and your divorce/custody attorney. There are some simple ways to protect yourself, including, for example, exchanging your child at the police station or another public place, preferably with cameras.

Remember that men can be abused just as much as women! We are all aware of and believe that men abuse women, but the public (and even law enforcement) has a hard time believing that a woman could be physically abusive to a man. What the general public does not realize is that men are even more shy and quiet than women about this kind of abuse. It can be embarrassing and humiliating to admit that someone has abused you. Men blame themselves rather than seeking help. Regardless, abuse is never acceptable.

MENTAL HEALTH AND/OR SUBSTANCE ABUSE

Mental health and substance abuse issues are all too common in divorce and custody cases. They are often the primary reason for the divorce. Here are just a few of the things I hear regularly:

- My spouse/ex has not been diagnosed with mental illness, but I think she is bipolar.
- My wife is great with the kids when she is taking her medications, but she keeps trying to go off them, because she doesn't like how she feels when she is on them.
- My wife has tried to kill herself in the past, and I'm really worried about her right now, especially when the kids are with her, because of this divorce.
- I am a recovering alcoholic, but I have been sober for 3 years. Is the judge going to hold that against me?I go to a therapist. Does that make me look bad?

Bear in mind that proving mental health and substance abuse in court is difficult. What you have personally seen and heard does not hold much weight with the court. Why? As shocking as it sounds, people lie all the time in family court. This "he said, she said" is exhausting to the judge, and can backfire on you! Things that can help you include testimony from a disinterested witness, which is a neutral third party. That excludes friends and family, but includes police and other governmental workers, neighbors that are not personal friends, bystanders, etc.

There is also doctor-client privilege, so even though your spouse is seeing someone for help, getting information from the doctor or psychologist often requires a court order, which is not easy to get. I can not count the number of times the judge has ruled in favor of a mentally ill or drug-addicted spouse, even when there is good evidence available.

Finally, the fact that you are getting professional help for your own issues and that you take positive steps to maintain your physical and emotional health, will generally count FOR you in court.

REPUTATION

I have clients who come to me concerned about what their friends, family and co-workers will think about their divorce or their custody battle. This is inane, as we all know people that have gone through divorce, and we do not think less of them for it. Heck, some of your friends and family may have seen the divorce coming long before you did. They may even have been waiting for it to happen, and are so happy that it is, because they want you to be happy again.

What is really sad is when a client tells me that he may have lost his best friend, because he didn't tell his friend how unhappy his marriage was. They hide the divorce from their best friend, but inevitably the truth comes out, and their friend is furious that they were kept in the dark, unable to help!

This is exactly the time to reach out to friends and family for support and assistance. This may be one of the hardest things for men to do, because men are taught not to express their feelings publicly. But you have a support network. Your friends, family, and co-workers want to be helpful, and most importantly, they want you to be happy.

I can not tell you how many people have told me that they are staying in a relationship "for the children." This is a lie that people tell themselves to make themselves feel better. Children know when their parents do not love each other; children know when their parents do not get along or are angry at each other. It does not matter if you do not argue or fight in front of the children. They pick up on all the non-verbal and verbal cues that you are broadcasting. If you and the other parent are miserable together and you insist on staying in an unhealthy relationship, then your children are the ones suffering, often in silence. Wouldn't you rather be the model of a healthy relationship for your children? Even if your kids currently seem to be doing just fine, can you imagine how much better they would be doing if you and the other parent were actually happy, separately? No one is saying that divorce or separation is easy on anyone. It can be very difficult on the children, but staying together in an unhealthy relationship can be far more harmful to a child than breaking up and reforming the family.

Finally, let's talk more about another reputation that you may be concerned about – your own, with yourself. A divorce or a break-up is *not* failure. People change over time. Some people were not who you they thought they were. Some people turned out to be exactly who you were afraid they might be. A divorce or a break-up is a new beginning. If you have no children with that person, then it is truly a fresh, new start. If you do have children with that person, then it is still a new beginning, but you have to figure out a way to deal with issues that you have been struggling with. Some people have a very hard time with change, because the unknown can be scary. Sure, the unknown is frightening, but the possibilities can be wondrous.

Albert Einstein said "the definition of insanity is doing the same thing over and over again, but expecting different results." In high conflict divorces and custody battles, I often find that this is not the first unreasonable person that my client has chosen to be with. People are often attracted to a particular type of person, sometimes an unhealthy type of person. When this occurs, it is important for you to stop the cycle, and you do this by better understanding yourself. Divorce and custody suits are the perfect time for you to do a self-evaluation. This does not mean that you are at fault. But it is an opportunity for self-improvement, which has the highly improved chance of drastically improving your self-image, your happiness and your well-being.

Another thing men are notoriously afraid of is therapy, but we all need a little therapy from time to time. Getting help is a sign of strength, not weakness. Now is an excellent time to start getting help from a therapist. If you are afraid that seeing a therapist will be used against you in court: **it will not**. Quite the opposite is true.

Phase 2: Filing of divorce/custody suit

As you can see, there is a lot to consider before filing for divorce, but once you are ready, the next step is to file a petition with the court. Please note that once a petition has been filed, there is a minimum waiting period of 60 days from the date of filing to the time that the parties can be divorced.

PETITION

The attorney files a document called the "Petition for Divorce" or the "Petition in Suit Affecting the Parent-Child Relationship." This is the document that begins the lawsuit, and lays out the basics of the situation and of what you are asking for. This is usually filed electronically with the court clerk.

If the judges in that county have created a Standing Order, then that Standing Order is attached to the petition. A Standing Order is an order that all of the local judges have approved, which sets out how the parties in a family case, divorce or custody, must and must not act. Essentially, it is telling the people in a lawsuit how NOT to look bad in front of a judge. It includes provisions that explain that the parties to the lawsuit that they must behave as normal human beings should. It includes things like 'you may not change the locks on the house' or 'you may not remove the other person from a bank or credit card account', or 'you may not hide the children from the other person.'

It may take the court clerk anywhere from a few hours to a few days to process this petition. Once it is processed, the clerk prepares the paperwork so that the petition can be given to (or served on) the other party.

SERVICE

This part of the process everybody has heard of: the dreaded "getting served with papers".

Formally, "Service" or "Service of Process" is the procedure in which a party to a lawsuit gives formal notice of the start of a lawsuit (divorce, paternity, custody suit, etc.) to the other party, so that the other party is given the opportunity to respond and participate in the lawsuit.

There are two types of service, private and constable. You can choose to have a constable or police officer serve the petition (with the standing order) on the other person, or you can have a private process server serve the other person. Where you choose to serve the other person, and who serves them, can be strategic decisions. For example, if you are trying to get custody or get divorced with minimal conflict, then you probably do not want to have a police officer show up at the person's work to serve them in front of all their coworkers. Obviously this could be very embarrassing and may cause unnecessary conflict. On the other hand, if the other person is already behaving poorly, such that you need an immediate restraining order, then having a police officer serve them sends a very clear statement.

Who you choose to have serve the document and where you choose to have them served may also depend on the circumstances of your case. If the other person has refused to tell you where she moved to, then you may not have a choice but to serve her at her work, because that is the only place that you know she'll be at. A private process server generally tends to serve more quickly and is willing to go to more effort to try to find a person.

Both methods tend to cost about the same amount of money.

Sometimes, it may be advantageous to tell the other person what you are doing, because you are working out the details together. However, other times, when the parties are already in serious conflict, you specifically do not want to tell them that you have filed a petition and that they will be served. Even when it seems clear that the person wants nothing to you with you, they will take steps to make everything as

difficult as possible. Sometimes, the worst thing you can do is tell the person that you have filed for divorce, because then they avoid being served. They will stay at someone else's house, they will take leave from work, they will have family and friends lie about their whereabouts.

Don't worry though, because if it becomes clear that a person is avoiding service, that does not stop the divorce. The process servers will work with your attorney to be sure that you get the other party served, even if not in the traditional way. There are several ways to get alternative service on the other party; however, it does mean that your attorney will have to request permission from a judge to get this documentation and information to the other party. This can be done in a variety of ways, depending on what the law allows and what is the manner most likely to get this information to the other party. For example, when we have confirmation that the person lives at a particular location, it can be posted on the door. Other times, the court has authorized us to give it to a member of that person's family. I once served an opposing party through Facebook. I served another through the opposing party's grandfather (he tried to claim he had never heard of his own granddaughter). I even had a person served when she was going to her dog's veterinarian. You can run, but you can't hide.

On many occasions, I have had the person refuse to take the divorce or custody papers from the process server, but that does not change the fact that they were served, whether or not they took the papers. I have also heard people complain that they did not think that they were really served, because they were served in a Walmart parking lot. Guess what? It still counts. Do yourself a favor: if you are served with papers, accept them gracefully and immediately contact your lawyer. Do not bother reading the details in the papers, they are there either for legal reasons or to get your goat. Just let your attorney handle it. However, you should look at them to see if there is a court date scheduled, because you do NOT want to miss that court date!

Once the person has been served, then the process server and/or your attorney will make sure that the proof of service on the other party has been filed with the court.

How a person reacts to being served with a lawsuit varies as much as anything else. Some people just accept it. Others become angry.

If the opposing party is the type to get angry, then be emotionally prepared for the nasty voicemail, text, email or visit.

NOTES FOR DISCUSSION WITH YOUR ATTORNEY

If you are concerned about your safety or that of your children, then this should be discussed with your attorney BEFORE you file for divorce/custody, so you and your attorney can strategically plan this in a way that assures your safety. If there are safety issues or issues that must be resolved quickly, then you and your attorney may need to discuss whether an emergency protective order or an emergency temporary restraining order needs to be obtained and served on the other party with the petition.

ANSWER

Along with the petition that the other party was served with, were instructions that she has been served with a lawsuit, and that she must answer within a specific period of time. An Answer is a very simple document that says who is responding to what lawsuit and that you are requiring the person who filed the lawsuit to prove the claims he or she made in the Petition. If the case is filed with the district clerk, then she should file an Answer by 10:00 a.m. of the Monday after 20 days from the date she was served. In any case, if you have been served with a lawsuit, always look at the documents to determine the date by which you need to file an Answer. Note that if you do not respond within 60 days, your spouse can go

to the judge to get default orders entered, which means you are divorced and your spouse gets whatever they can get the judge to agree to (which is usually just about anything).

Often people call my office stating that they have been served, and they are very nervous because they have to answer. However, a family case is a bit different than other types of lawsuits in Texas. As long as you answer before the person has obtained a final judgment, the judge will accept your Answer (and the judge will not let the person get an order without your signature approving the order or without your appearance in court for trial or your signature on agreed final orders).

WAIVERS OF SERVICE

If the parties are more cooperative and open about their need for a court order, then the filing party may give the other party a waiver to complete and sign instead of having them served by a process server.

It is imperative that you read the waiver carefully!!! There are two types of waivers: one in which you simply state that you have received the petition, and another in which you waive (or give up) all of your rights in this lawsuit.

I do not recommend that anyone ever sign a waiver which states something to the effect of "I waive all my rights in this case." Even if you do not wish to fight the person about this lawsuit, you want to make sure that you are not saddled with all kinds of debts, responsibilities, and liabilities that you never even knew about (for example: child support). That is a sure way to end up facing the possibility of jail someday when you least expect it. This is all too common with good fathers: they feel that the divorce is their fault, and they feel that the best thing they can do is just roll over. Speaking from experience, a divorce is not the time to let your spouse make all the decisions that will affect you for the rest of your life. Stand up for yourself, and if after careful consideration you want to make concessions during the divorce, you will have that choice.

It is also important to realize that if the other person 1) has signed a waiver and signed an agreed divorce decree ; or 2) they were served but did not respond, and you plan to get an order signed without that person's participation; then the waiver must be in the court clerk's file for a minimum of 10 days before a divorce can be finalized.

Phase 3: Temporary Orders

Some people think that a divorce is a one-step process, where all the decisions are made at the end. In reality, there is a lot that can be changed right away.

WHAT ARE TEMPORARY ORDERS?

A temporary orders hearing is needed when the parties cannot come to an agreement on timely issues, such as who continues to live in the house, who gets the children when, who makes what decisions about the kids, who pays how much to help support the children, who pays what bills, etc.

This hearing is your opportunity to present your side of the story to a judge and get some orders in place quickly. After both sides have presented their requests and arguments, a judge will make those decisions for you.

These orders are called temporary orders, because they are not permanent or final. HOWEVER, it is quite common for the contents of temporary orders to become the permanent orders (*see Status Quo*), so it is important to understand that a lot of preparation and work goes into the temporary orders, in some cases as much as for the final orders.

PREPARATION FOR TEMPORARY ORDERS HEARING

From the moment that you first hired your attorney, through the petition and service process, you should be preparing for the temporary orders hearing.

After you have returned all the documentation your attorney has requested, you should expect to spend several hours with your attorney preparing for this hearing. Your attorney should explain to you how everything will work. They will review what she will (or will NOT) ask or say. This is the time to review your goals and what you feel is important to be brought to the judge's attention. Your lawyer will explain likely objections, what happens when someone objects, and have you practice testifying.

WHAT IS NEEDED FOR HEARING

WITNESSES

Quiet often, the only witnesses during a temporary orders hearing are the parties themselves. This is because the witnesses must have personally observed or experienced something that is relevant to the case.

Sometimes, if a parent of one of the parties lived with the parties or personally observed a fight or an incident with a child, then that parent might be asked to come to court to describe what s/he saw. I have had a mother testify for her daughter-in-law (against her own son), because she had seen her son under the influence of drugs and she had witnessed her son being physically violent, putting her grandchildren in danger.

Sometimes, an accountant might be a necessary witness, if one spouse has no idea about the finances of the marriage, and the other party refuses to provide such information.

Other times, a police officer may be called to testify as to what happened at a particular incident between the parties or with a child.

If you have other witnesses you plan to have come to court to testify on your behalf, some of them may require to be subpoenaed. What that means is that they are ordered to appear and testify for this hearing. In Texas, an attorney can issue such a subpoena without having to get a judge's approval.

CHILDREN AS WITNESSES

The courts discourage bringing children into adult fights such as a lawsuit. Even if the child witnessed an event, if the child is under the age of 18, you are highly discouraged from bringing that child to court. See Chapter 3 for more detail on children's preferences and involvement in court proceedings.

PROPOSED REQUESTS

This is a document that you and your attorney prepare to make the judge's job easier. This is a summary of what decisions you are asking the judge to make. This includes items such as:

- who gets the exclusive right to possession of which residence and which vehicle,
- who pays what bills,
- what kind of custody each parent should have (i.e. joint or sole),
- who gets the children when and where,
- when and where are the children exchanged,
- whether there are conditions on any parent's access to the children,
- who pays how much child support,
- who provides medical insurance for the children and the spouse,

- who pays for medical insurance, etc.

PROPOSED SUPPORT DECISION

This is a document you and your attorney prepare to provide your income information to the judge. Both parties are expected to provide this documentation, no matter who is requesting whom to pay child support or spousal support. This document will summarize your income, your actual withholdings (for taxes, social security, Medicare, and insurance), the deductions that the law allows you to take, your household budget for you and the children, the monthly amounts you pay on your debts, and the amount of child support that the guidelines state you should pay if you are ordered to pay child support.

You should include your last couple pay stubs to attach to this document. You should expect to sign this document, stating that it is true and correct.

THE HEARING DAY

On the day of hearing, you may have a lot of waiting to do, depending on the court you are in. You are expected to be on your best behavior. You need to dress to show respect to the Court. That means that you dress nicely. For some, that might be a suit. For others that is jeans with no holes, dress shoes and a button-down, long sleeve shirt. You should never wear shorts, flip flops, clothes with rips or holes, or clothing with offensive images, symbols or sayings. Your hair should be neat and trim. Any tattoos should be covered up. You want to present the best image possible to the judge, so that you give yourself the most advantage you can. And if you have witnesses, you should make sure that they are on their best behavior as well, because their behavior reflects greatly on you!

Similarly, you should plan to show up early for court, giving yourself plenty of time for traffic, to find parking, to meet your attorney, and for any general mishaps.

When the judge first comes out, he or she will essentially do a roll-call ("docket call") to see who is present on each case that is scheduled for that day, who is ready to for a hearing, and how long you expect the hearing to take. If there are a bunch of cases called before yours, then you can expect to wait until those cases are done before the judge will hear your case.

When the judge comes into the courtroom, you should immediately stand and stay standing until you are told you can sit. Anytime you are addressing the judge or anyone in the entire courthouse, you should be extremely respectful (even if, and especially if, they are not respectful to you). You should never interrupt the judge. You should never make negative comments, grunts, noises, eye-rolls, nasty facial expressions, or gestures at or towards the opposing party or the opposing counsel, especially when someone else is testifying. If your ex or soon-to-be-ex is testifying about something horrible, do NOT smile or laugh, even if it is a boldfaced lie! If you are unable to control yourself during a hearing, then that tells the judge a lot about your inability to control yourself with the person you are fighting in court. Specifically, it destroys your credibility as a reasonable person, and improves the credibility of the other person.

Travis and Bexar Counties

Travis and Bexar counties handle their cases much differently than other counties. If your case is in Travis or Bexar counties, then you will have a very large docket call, for all the family cases to be heard by all judges that day. Again, they tend to be listed generally in the order they will be heard. After the docket call, you must attend the docket call to find out which judge you have been assigned, where the courtroom is and when it will start, though you might still have to wait a while to find out. Usually, you find out what judge will hear your case only when you find out that the judge is ready and waiting for you. The advantages to this system are that you can usually get in to see a judge much more quickly than in other

counties, and you usually get more time than other counties and judges can allow. The disadvantage is that you do not know in advance who the judge is, so your attorney cannot tailor the presentation to the judge. I have generally found the Travis and Bexar County systems to be much more efficient and helpful, because they allow for a quicker resolution.

Once assigned to a judge, you and your attorney will sit at one table facing the judge, and your spouse or ex and his/her attorney will sit at the other table facing the judge. The judge will sometimes speak off the record to the attorneys first to find out generally what the issues and requests are in the case. Then the judge will begin the proceedings. The attorneys may give a formal opening argument, or sometimes not. The party who began the lawsuit will present their side of the story first, by calling their witnesses. Each witness will be questioned by the attorney who called him or her. Then the other attorney will have the opportunity to question the witness. Then, the first attorney will have the opportunity to ask any additional questions for clarification. There may be some additional back and forth questioning, and the judge may even ask some questions. Once the attorney who filed the lawsuit has called all of his/her witnesses, then the other attorney will be given the opportunity to call each of his/her witnesses. Once all of the witnesses and evidence have been presented to the judge, then the judge usually announces his/her decisions on the issues requested.

Once the judge has announced his/her decisions, then it will be the attorneys' jobs to make sure that the orders are put into writing. It often takes a couple weeks for the attorneys to draft, review, comment on, and approve the orders as written. Then they are presented to the judge for signature. It is important to note that the judge's orders go into effect immediately, and you should immediately begin following them; however, they cannot be enforced until they are put into writing and signed by the judge (*see Enforcement*).

After temporary orders are either agreed to or ordered by a court, it takes some time to see if that particular arrangement is going to work out well for the parties and the children. Sometimes, there is a stair-step visitation schedule where one parent gradually gets more time with the child. Sometimes, the child needs to go to therapy and a third party needs to provide an evaluation after a certain amount of time. Temporary Orders do not expire on a certain date or after a certain amount of time. Though they are called "temporary", they can be the court orders for years.

Phase 4: Discovery

Discovery is the process and procedures in which the parties to a lawsuit obtain information about the parties and the lawsuit.

It is incredibly rare when both parties have all of the information they need to finalize a case at the beginning of the case. This usually tends to occur only when the parties are being fully cooperative and are sharing information freely.

TYPES OF DISCOVERY

Sworn inventory and appraisement

One type of discovery which is often done in a divorce is called an Inventory. This is where each party signs under oath documenting all the details on each and every asset and debt of both community property and separate property that they are aware of. Then both parties exchange these signed and sworn inventories to obtain a full picture on all of the assets and debts that need to be handled during the divorce. Often times, this may be the only type of discovery that the parties do, because they do not feel the need or have the money to go through full written discovery as described below.

Full written discovery

Another method of discovery is a series of requests for information. Usually, parties only send the first three of the four listed below. When these requests are sent, responses are required within 30 days. There are consequences, such as losing the ability to object to requests, that may occur if the answers are not provided in the required timeframe.

This process can be very time-consuming, both for you and your attorney, so you want to be sure to move as quickly as possible in providing the information to your attorney. You also want to be sure to be very thorough in your answers to your attorney, and then discuss with your attorney what you may be uncomfortable about.

Because this is a time-consuming process, it can be expensive. Many times, parties choose not to go through this formal process, and may decide to exchange information informally instead.

Rule 194 Requests for Disclosure

These are standard questions and information that are specified in the Texas Rules of Civil Procedure that allow both parties to be given the basic information that would be required for the lawsuit, such as who are the parties, who are the people who have information about this case, who are the experts in the case, what are the legal and factual reasons and arguments you are making on this case, etc.

Interrogatories

This is a series of (usually) up to 25 questions that you are expected to answer about you, the other party, the children, the property, and any extenuating circumstances. These vary dramatically between cases, depending on the circumstances of each case.

In answering, your attorney may choose to object to and not answer certain questions; however, you should provide all of the information you are aware of to your attorney. Then if you have concerns about sharing any of the information, you should discuss it with your attorney. It is always better to provide more information, and honest and complete information to your attorney – then your attorney will work with you to explain what should be provided and in what manner, and then to provide the answers to the other side.

Requests for Production

These are a series of questions for which you are required to produce any and all documentation that you have, or that you have access to. These are not limited, so there can be quite of few of these. These tend to take a lot of time to gather, let alone for your attorney to review, redact, and object to or answer.

Requests for Admission

These are a series of questions that you are required to "Admit" or "Deny." If you do not answer the Requests for Admission within 30 days, then the court can assume that you admit to each question.

Subpoenas

Third parties can often have information relevant to a case, and to obtain this information, they are required to be served with a subpoena to order them to provide any documentation and/or witnesses to testify at a hearing or trial.

Items that are often subpoenaed might be the child's school records, a video at a store where an incident occurred, a person's employment records, the police report with the officer at the scene, Child Protective Services caseworker with the redacted CPS records.

Depositions

Depositions are rare in family law cases in Texas, probably because they are expensive and require considerable coordination, and because often the parties already have some testimony from the opposing party from the temporary orders hearing. A deposition is where a witness is required to testify under oath, with a court reporter recording and/or documenting everything that is said and presented. This is done outside of court, without a judge present, but both attorneys and both parties are normally present. The parties are allowed to ask almost anything of the witness, and the witness is required to answer everything truthfully. It is quite possible that not everything will be allowed in court; however, the party is required to answer nearly every question. This is a great opportunity for a party to find out exactly what the other party is requesting, why, and to be able to nail them down on answers to certain questions. The answers a witness gives during a deposition may be used against that witness when they testify in court.

Phase 5: Mediation

Judges love when parties come to an agreement without having a trial! Mediation is highly encouraged and very often required in Texas courts. I have also found it to be extremely successful and most beneficial for my clients and their families. This is a process in which a neutral, third-party mediator helps the parties work out a solution to their issues which both parties can agree to. In my experience, when the parties can come to an agreement on the issues, there tends to be less conflict in the future, and the families tend to adjust better and faster to their new circumstances.

Mediations can be done a number of different ways; however, the method that is most common in family cases in central Texas is where the wife and her attorney are in one room, the husband and his attorney are in another room, and the mediator goes back and forth between the rooms. Most times, the parties do not even see each other. Friends and family members (even new spouses) are generally not allowed in these mediations, because they can often side-track or even completely derail the negotiations. I have found that though mediation is stressful and emotionally draining, it is significantly easier for the parties to not have to directly interact with each other at all. I also find this method helpful, because the parties and their attorneys can have honest, unguarded conversations. Another advantage of this method is that the parties can disclose important, confidential information that the mediator needs to know about the situation, and the mediator can either keep that information in mind when negotiating or share it with the other party, depending on whether the person allows that information to be shared or not.

Unlike trial, where the attorney is in charge and the client takes a back seat, mediations tend to be client-led and attorney-guided. In other words, the mediator talks mostly to the client, and the client tells the mediator what he/she wants. The attorney may have prepared an initial offer in advance and with the assistance of the client, but generally the attorney is there to provide the legal advice and guidance. The attorney is also there to let the client know what is likely to happen in court if they have to go, so the client knows what is reasonable or not.

All parties are expected to go into mediation in "good faith." That means that you have to be willing to compromise. If a person is not willing to give up on anything they want, then they are not participating in good faith. That wastes everyone's time and money, and does not look good when it is presented to the court.

It is also important to keep in mind that you are going to be appalled by the opposing party's first offer. It is probably going to be insulting and infuriating. This is when you use all the tips your therapist has told you about to control your emotions and get back to a brain that is functioning using reason, not fear. And yes, I highly recommend that every person going through divorce or custody matters seek and listen to guidance of an experienced, helpful therapist, if not for yourself, for the sake of your children or the others

around you that you care about. A team of an excellent therapist and an excellent lawyer can be very powerful and can help you look past the emotions and start to figure out what is most important to you, your children, and your ex. Then through careful negotiations, this team may be able to figure out a way to help you get what you need most and give the other person some or all of what they need most, working to an ideal agreement.

The contents of mediations (and settlement negotiations which are appropriately labeled) in Texas are confidential. This allows people to go out of their way to try to work out an agreement with no risk. For example, you can make an offer in a mediation that is incredibly generous, and if the other side still refuses it, they will not be allowed to use that against you during trial. So you will not hear: "Well, he was willing to give me full custody in mediation, and pay me $2000/month in child support, so I want that now." The idea behind this is that though you may have been willing to do that to avoid trial, it cannot be held against you later when you're stuck with trial because the other party was not reasonable.

The other great thing about mediations in family cases in Texas, is that if you get to an agreement, neither party can revoke the agreement. So when you have spent a half to a full day working hard to get an agreement, all parties and their attorneys sign a Mediated Settlement Agreement ("MSA"). The MSA puts the agreement in writing, and the parties are held to their agreement. Though the MSA usually has the basics of the agreement (some are more detailed than others), the courts still require the agreement to be put in the form of an Order. So, once the parties have an MSA, then it is up to the attorneys to draft the final order, working out all the details. Though it has been tried, it is very rare for a party to have a final trial and get an order that does not follow the MSA.

How do you know when you have a good agreement? Most mediators will say, if it is something that you can live with, then you should go with it. If you can't live with it, then you should not agree to it. However, keep in mind that "live with" is different from "want." You are not going to get everything you want. That's not the way life works. However, the ideal agreement is when you get the things that you want or need most, and you let go of the issues that you care about less. It's about compromise. You also have to keep in mind that if you were to take the case to a judge, you will also receive some sort of compromise, and that may or may not be in your favor.

Every once in a while, I have had friends or family members of clients tell me that they thought my client could have gotten the same deal without an attorney; however, they were not present in the middle of the heat of those negotiations. Outsiders do not know all of the issues that have been raised and dealt with; they do not know what is most important to you; they do not know what issues you were willing to let go of; they do not fully understand the risks you may have been facing; they are not the ones who would have to air all their dirty laundry in public; they are not the ones who would have to pay for a trial. Most importantly, they are not the ones who have to live with the outcome. With trial, you can never guarantee an outcome, but with mediation, you know exactly what the outcome is.

The other wonderful thing about Texas courts is that they generally will approve anything the parties agree to, as long as the judge is convinced that the agreement about property contains a 'just and right" division of the property, and the agreement about the children is in the "best interest of the children." In my experience, the judges briefly review the agreements and approve the agreed orders, particularly if at least one lawyer has been involved in the creation of the orders.

Phase 6: Final Trial

Final trials are rare in Texas. Part of that is due to the fact that most Texas courts require mediation. Part of that is due to the fact that if you have been to trial once, most people do not want to go back. That's because trials are incredibly stressful and costly, in terms of time, energy, emotion, reputation and money.

Once you file for divorce, there is a minimum of 60 days that you must wait before your divorce can be finalized. However, it is usually much longer than that. In a custody case or modification case, there is no waiting period. When I practiced in Illinois, I saw that the average divorce took 18 months to 2 years, which is a very long time to be in tumult. However, in Texas, the judges encourage the parties to finalize their cases as quickly as possible. In my experience, Texas judges generally do not want to see a divorce or custody case last a full year or longer, unless there is a very good reason. One such reason might be to give a parent or a child time to complete a rehabilitation or therapy program, do a stepped-up visitation program, and/or have a third party evaluate the situation to determine what would be in the best interests of the child.

The preparation for a final trial is significant. After the discovery process has been completed and the parties have attempted mediation, if there is still no agreement, then the parties have to finalize the case by having a trial. The final trial is going to look much like a temporary orders hearing, except that there are more deadlines and a few more requirements.

PREPARATION FOR FINAL TRIAL

REVIEW OF DISCOVERY PROVIDED BY OPPOSING PARTY

The first thing that you and your attorney should do as soon as it is received is review the discovery responses provided by the opposing party. This is important because it gives you an idea of what requests, arguments and evidence the opposing party is planning to present. It can also give you a good idea of what claims they are going to make against you and what evidence they have to support those claims. In any case, you may change tactics, bring in additional evidence or witnesses, and refocus the emphasis on your story.

DOCUMENTED EVIDENCE

It is important to understand that not everything can be presented in trial. If you watch any courtroom drama TV shows, then you have probably heard the word "hearsay." Hearsay is defined as "a statement made out of court that is offered in court as evidence to prove the truth of the matter asserted." Hearsay is not allowed as evidence in court. This can be a confusing topic, even for lawyers. So for example, people can only testify about things they have personally seen, heard or experienced. People cannot testify about things that others' have told them about. So if a parent wants to testify in court that the child should live with him, because the child told him, that is hearsay and not proper evidence. On the other hand, an exception to this would be if a person is telling the court what one of the ***parties*** in the case told them. So, if the wife told a friend, "I took all the money from our joint checking account and put it all in an account in my name, so that he couldn't get to it.", and the friend wants to testify that this is what the wife said, it would be allowed in court.

Similarly, for documents, if a party wants to bring in bank statements from the mail to show who spent what and where, it is hearsay. Or if a party wants to show the drug test results and tries to introduce the test results that he received, that is hearsay. There are exceptions to the hearsay rule, such as for "business records." So, if there is a business records affidavit signed by a bank employee stating that there are x number of pages and these are the bank statements for John and Jane Doe's joint checking account from this date to that date, then those records are admissible in court. Similarly, if you have an expert from the drug testing company come to testify about the drug testing process and the results, then the report and the testimony would be admissible.

Any documentation that a party plans to use at a final trial is usually required to be given to the opposing party (if discovery was done) and sometimes, it is required to be filed with the court clerk a certain number of days prior to the trial.

SUBPOENAS FOR WITNESSES AND WITNESS PREPARATION

If you plan to have witnesses besides the parties, then the attorney will probably need to send them a subpoena far enough in advance for the witness to coordinate with their work and family. Additionally, if at all possible, you want to be sure that there is enough time for that witness to meet with your lawyer to prepare for trial.

PRETRIALS (PROPOSED REQUESTS, SUPPORT DECISION, PARENTING PLAN)

In the section on Temporary Orders, we discussed the fact that you need to present 1) proposed requests (called Proposed Disposition of Issues) and 2) proposed support decision. For final trial where there are children, you also need to submit a third document: proposed parenting plan.

Three items that make up the "Pretrials"

- Proposed Disposition of Issues (proposed requests)
- Proposed Support Decision (income, budget, and child support amounts)
- Proposed Parenting Plan (if there are children)

The first two items are described above in the section called Temporary Orders. The parenting plan is where each parent makes their request for the parenting issues they want:

- Are the parents Joint Managing Conservators or is one the Sole Managing Conservator?
- Which parent has what rights?
- Who gets to see the children on particular days?
- Under what circumstances does each parent get to have time with the children?
- How and where do the parents exchange the children?
- Who pays how much child support?
- How is the child support paid?
- Who provides the medical insurance?
- Who pays how much for the medical insurance?
- Who pays for uninsured medical expenses?

In Travis County, if you do not file these three documents with the court clerk by a particular date, then you are put at the end of the line on the day of trial, and risk not being able to have the final trial on that particular day. Other counties may not be as strict, but these documents are very important and very helpful for the judges.

SETTING AND ANNOUNCEMENT

Texas law requires you to give the opposing party a minimum of 45 days' notice of a final trial. This must be given in a particular manner. Depending on how long your case is expected to take, you may have to wait significantly longer than the 45 days just to get a date where the judge can set aside enough time to hear your case. Furthermore, you are almost always required to try to get an agreement with the other party on the date and time that the final trial will be held.

In many counties in Texas, you or your attorney must also contact the court a certain number of days ahead of time to confirm that you do indeed intend to have a trial, and how long you expect it to take. In

some counties, such as Travis, you can be punished for not doing this, by again being sent to the end of the line (even if you were the first person to set a trial for that date).

JURY TRIAL

Texas is one of the few states that will allow a party to have a jury trial on a family matter, such as divorce or custody. This is even more rare than a final trial itself, because it takes much more coordination and because it can be an even bigger unknown risk.

JUDGES

In the more populated counties in Texas, your divorce or custody temporary orders hearing will almost always be heard by an associate judge. This is a judge who only hears family cases. An associate judge is appointed by a local committee. A district judge is an elected official. An associate judge reports to and is supervised by a district judge. The decision of an associate judge can be appealed to a district judge, but this must be requested within 3 business days of the associate judge's ruling. This is called a "de novo appeal", which means that you get a do-over for your trial. If you ask for it, you get it – there are no requirements other than an associate judge heard your case. Most courts will force you to have your temporary orders hearing before an associate judge, unless you have a good reason for requesting a district judge. However, because the courts to not want to cause uncertainty for final orders, for this reason, most parties will request that a district judge hear their final trial.

DEFAULT JUDGMENT

Sometimes you have served the other party (given them official notice of the case), but they choose not to work with you to finalize the case. Sometimes, the person is long gone and has no intention of coming back. You can still divorce this person. And you can still get new custody orders for the children. However, there are some extra hoops that need to be jumped through to assure the courts that you have taken every step possible to reach and involve this person and that you are not taking advantage of this person being deployed with the military.

If you follow the additional required steps, you can get a judge to sign your order without that person showing up or agreeing to the orders presented; however, you still run the risk of your order being "undone." When the person receives notice in the mail that a final order has been obtained, if she makes an argument that she was not given notice or that it was unfair or that certain circumstances caused her to not be able to get involved in the case, then a judge may decide to vacate your order, or make it as if it never happened. Then you have to reset your final trial and have a contested trial anyway.

Chapter 2 – Alimony, Spousal Support and Division of Property (Divorce)

Where does all the money go?!?

If you know someone who has gotten divorced in another state, their story is likely going to be very different from yours! Texas has very different philosophies on spousal support and property division than other states.

ALIMONY, SPOUSAL SUPPORT AND SPOUSAL MAINTENANCE

In many marriages, there is a difference in the amount of money each spouse brings in to the household. As a result, when a couple divorces, it is often harder for the lower-earning spouse to support himself/herself. It is even harder when one spouse has given up a career, even temporarily, to raise children and support the family, and this spouse must now re-enter the workforce after a significant period of time not working outside the home, and maybe the spouse must even re-educate before re-entering the workforce. This disparity of income or even income-producing ability, is why most states automatically require the higher-earning spouse to help support the lower-earning spouse for a significant period of time. However, this is Texas.

In Texas, this support of the lower-earning spouse from the higher-earning spouse's future income is called spousal maintenance, but you might also hear it called alimony or spousal support. This is completely separate from the division of the marital estate.

It is incredibly difficult to get court-ordered spousal maintenance in Texas. The reason for rarely giving spousal maintenance in Texas is because according to the Texas courts, the marital estate is divided in a manner that provides sufficiently for each spouse, accounting for this disparity. Essentially, you can get spousal maintenance if there was family violence or if one spouse is disabled or otherwise truly unable to work. Then, even if it is ordered, it may not be as much money as expected or last nearly as long as you might think.

Eligibility for Court-Ordered Spousal Maintenance

First, the spouse requesting maintenance must prove to the court that there will not be sufficient resources from the division of property for that spouse to be able to meet his/her minimum reasonable needs.

Next, the spouse requesting maintenance must prove one of the following:

- The spouse being asked to pay maintenance was convicted of or received a deferred adjudication for a criminal offense equating to family violence against the spouse requesting support or that spouse's child; and
    - The violence occurred within two years before the petition for divorce was filed; OR
    - The violence occurred during the divorce process.

The spouse seeking support:

- Has an incapacitating physical or mental disability which prevents him/her from earning enough to provide for his/her minimum reasonable needs; OR
- Has been married for 10 or more years to this person and does not have the ability to provide for his/her minimum reasonable needs; OR

- Is unable to work enough to provide for his/her minimum reasonable needs because s/he cares for a child of the marriage who requires substantial care and personal supervision due to a physical or mental disability.

Once a court determines that a person is eligible for court-ordered maintenance, then the court looks at many different factors to determine the nature of the support, how much support should be provided, how often, and for how long. A few of these factors include the educational and employment background of the person seeking support, the duration of the marriage, the contribution of one spouse to the education, training or increased earning power of the other spouse, the effect of child support, and more.

It is important to note that the court will first assume that spousal maintenance is not required. So that means that the spouse requesting support must show either that s/he has reasonably tried to earn enough income to meet his/her reasonable minimum needs or that since the parties separated and during the divorce process, s/eh has tried to develop the skills necessary to earn enough income to support himself/herself.

Important Note: A person will NOT have a better chance at getting spousal support if he quits a job to become "unemployed" or voluntarily chooses to be underemployed. In fact, a deceit like that will probably make the judge very upset and end up with some unintended and undesired consequences.

Duration of Spousal Maintenance

The courts are ordered to limit the duration of support to be the shortest reasonable time period, unless the spouse is unable to provide for himself or herself due to reasons such as disability or caring for an infant or disabled child. Generally speaking, how long the support will last depends on how long the parties were married. If the parties were married for less than 10 years and there was family violence, or the parties were married for 10 to 20 years, court-ordered support cannot be for more than 5 years. If the parties were married for 20 to 30 years, then support is maxed out at 7 years. If the parties were married for 30 or more years, then support can be provided for up to a maximum of 10 years. It is also important to note that this support can be modified later as needed, if the circumstances of the parties significantly changes.

Amount of Spousal Maintenance

The court can order spousal maintenance that amounts to no more than the lesser of these two choices:

- $5000/month or
- 20% of the spouse's gross monthly income.

Enforcement of Spousal Maintenance

Like child support, if a person ordered to pay spousal maintenance does not do so, then the court can find that person in contempt, order him/her to pay fines, and even send him/her to jail. It is important to remember though that if a person has stopped paying support, they are probably having financial issues, and as such, they may request that the court reduce or eliminate the support.

Contractual Spousal Alimony

Contractual Spousal Alimony is spousal support that a spouse agrees to provide to the other spouse after the divorce, even though there is not necessarily any court-required reason provide such support. As with most provisions in a divorce decree, if the parties agree to a provision, then the judges will approve it. What that means is that if the parties agree that one spouse will provide support for the other spouse,

then they can do that. So for example, if a wife is willing and able to pay the husband who was the stay-at-home dad $4,000 per month for 10 years after the divorce, they can put that in writing in their divorce decree and the judge will sign it.

Parties may often agree to contractual maintenance if one person is self-employed, starting a business, or unemployed while they get themselves established. Also, parties may agree to this if a spouse needs to go to school to get training, a certificate, or a degree for a particular career. Another common reason parties may also agree to spousal maintenance is to build the credit and income stream needed for a spouse to obtain a mortgage or refinance a house.

However, it is important to note that there is no guarantee for contractual maintenance, because it cannot be enforced by contempt, like court-ordered maintenance. In other words, the court cannot order the person obligated to pay fines or go to jail if they do not pay. They cannot enforce anything more than what the court itself could have ordered.

Termination of Spousal Maintenance

Whether the maintenance is court-ordered or contractual, maintenance will end on the earlier of the following dates:

The date a court order states it ends; or

The date of death of either party.

Texas law also states that, unless the parties agreed to something other than this, the maintenance will end when:

the person receiving support marries someone else; or

the court makes a finding that the person receiving support has moved in with a person with whom they are in a dating or romantic relationship.

Temporary Spousal Maintenance

The court can and does order temporary spousal maintenance much more frequently. Temporary Spousal Maintenance is that extra support from the higher-earning spouse while the divorce is pending. This is obtained at a Temporary Orders Hearing, usually within weeks after the start of the divorce process. It then also ends when the parties agree, when the judge says it ends, or when the Final Decree of Divorce is signed by the judge.

The requirements for temporary spousal maintenance are not nearly as strict and rigid as post-divorce spousal maintenance. Essentially, if the court decides that one spouse does not have enough means to support himself/herself, there is not enough money readily available, and the other spouse has sufficient income to help, then the court will order that spouse to pay temporary spousal maintenance. Additionally, if a spouse has been at home and needs to finish or even begin an education or training program to enter or re-enter the workforce in the future, then the court may order temporary spousal support while the divorce is pending. The reason temporary spousal maintenance is so easy to obtain is because while the parties are still married, all of the property belongs to the community, so both parties should have equal access to the entirety of the community funds.

PROPERTY DIVISION

Who gets what property and how do we divide everything?

As I mentioned before, Texas does everything a bit differently than the vast majority of other states. In Texas, property is classified into two types, community and separate property, depending on when and how the property was acquired.

When a couple marries, they accumulate what is called Community Property. Community property is anything that is earned, acquired, purchased or obtained during the marriage. This applies to property as well as to debt. It does not matter whose name is on the title or on the loan. What matters is when the property was acquired or the debt was incurred. If the couple buys a house during the marriage and puts the title in the husband's name only and the mortgage in the husband's name only, the house is still community property and the mortgage is still community debt. If a husband has a 401(k) from his employer, only his name is on the account, but it is still community property.

Texas also has a kind of property called Separate Property. Separate property (or debt) includes property (or debt) that was:

- acquired prior to the marriage,
- received as a gift,
- inherited, or
- awarded as damages for pain and suffering from a personal injury lawsuit.

Additionally, it is important to note that interest earned on separate (or community) property during a marriage is community property.

Texas is also an "Inception of Title" state, which means that whether property is defined as community or separate is determined at the time of its acquisition and by the character of the assets that were used to acquire that property. I have had a situation where a couple went house-hunting, and the man purchased a house a few months before the couple was married, and for the down payment, he used money that he earned as well as some money that was given to him by his parents. Much to his wife's dismay at the divorce trial, this house was determined to be his separate property.

So let's say that you inherited a piece of land while you were married. That is your separate property. In the common situation is where a man purchases a house, he meets and marries a woman, and then she moves in with him, we have determined that the house is the husband's separate property, even though they both live in it. But we'll also discuss the concept of "Reimbursement" shortly.

Now let's complicate things a little bit. You started working at a company 10 years before you married your wife. You received and put money into the 401(k) since the day you started. You have now been married for 10 years. The money in that 401(k) is both separate property and community property. The money that was put in prior to marriage is separate, and the money put in since the date of marriage is community property. Also, any interest earned on the 401(k) investment during the marriage is also community property.

Let's try another. A man buys a house with $30,000 down and has a mortgage on it; he meets and marries a woman; the wife moves in; the wife's income is used to pay the mortgage on the house for 10 years; now the couple divorces. The house is separate property, but the community (and therefore the wife) is owed money back for payments on the house made with community income. This is called Reimbursement This one actually gets even more complicated though, because the law says that the

community is reimbursed only for the difference in the principal balance (in other words, the interest paid does not count).

A common situation is where your wife has student loans from before you married. It is possible that she paid off the loans with money she inherited from her grandfather. In that case, the debt was separate, and the debt was paid off with separate property. That is very clean. However, let's now say that the payments she made on those loans were made with money she earned during the marriage. That means that she paid off separate debts with community property, so at divorce, she needs to reimburse the community for the amounts paid with community funds.

It is important to understand that in the case of divorce, the courts start by assuming that all property is community property. It is up to the owner of the separate property to prove that it is separate property.

There is another issue called comingling. This is where the property was separate property, but it has been so mixed in with the community property, that no one can tell that apart from the community property.

One example of comingling would be when a husband received some money about 15 years ago as an inheritance from when his grandfather passed away. The couple put that money into their joint bank account and used it, mostly for daily living. It's hard to say where exactly that money went, other than for general spending. When they went to evaluate their situation during divorce, they didn't have much money to speak of. Essentially, that original separate property was considered to be so co-mingled that it became community property. Furthermore, there was the issue that they had spent it, so it was not recoverable either.

Another situation I encountered was where a wife received $1,000,000 in damages for pain and suffering from a personal injury lawsuit. She put this into a new investment account in her name. This account was invested well and earned interest. Each time that the account earned interest or dividends, the amount of earned interest and dividends was automatically transferred into the couple's joint bank account. This was the perfect way to maintain her separate property and make sure that it did not get comingled.

Just and Right Division

Texas courts are required to divide property from a marriage in a manner that is "just and right." That sounds about as clear cut as you think. Most people and most courts tend to start with an assumption that the property should be divided in half between the spouses. However, there are cases which explain circumstances in which there could be an unequal division of the property. Such reasons might include issues such as whether there was family violence, a disparity of earning power, how much and what type of property is available to be divided, fault in the breakup of the marriage, fraud, health of the spouses, education and future employability of the spouses, and many more. Even if the court do find a reason for awarding a disproportionate division of the property, generally speaking, the courts tend to award only about a 5% difference, so the division of property ends up being 55% and 45%, or in extreme cases something like 60% and 40%. On the other hand, if the parties agree to something bigger, Texas judges will likely simply approve the parties' agreement.

Even if a court awards the community property to be divided 50/50 between the parties, that does not necessarily mean that each piece of property will be equally divided. It may be that the husband wants to keep the entirety of the retirement account, but the wife keeps the house with whatever equity it has. It depends on the parties and their circumstances.

Retirement Accounts

As I've previously discussed, money that is put into a retirement account such as a 401(k) during the marriage is still community property, despite the fact that it's only in one spouse's name. However, any money that was earned prior to the marriage would be separate property. I have frequently had a worried client ask me how that is going to be separated. With the assistance of the financial companies that manage such funds and a special type of Order, called a Qualified Domestic Relations Order (or "QDRO"), this can actually be pretty easy. The hard part is left to the managing company to figure out. In the QDRO, we specify the date the parties were married, the date and details of the employee's employment, and generally how the funds are to be divided. Then the company actually figures out the financial split.

So let's say that you have a 401(k) from a company that you've been working at for the last 30 years, and you have only been married for the last 15 of those years. You have decided that you will split the community retirement proceeds 50/50. So, the financial company will do the hard work of figuring out how much of the 401(k) was your separate property based on the date of marriage. Then they will divide the rest in half, so you keep 50% and your ex receives 50%. Your ex will then have several options for what she wants to do with her share. She might decide to have it immediately distributed to her, at which point she will incur taxes and a penalty for early distribution. She might decide to keep it in a retirement account with the same company, and if she does, the company will actually move it into a separate account in her name. She may decide to do some variation of both of those choices. In any case, when dividing retirement accounts, it is important to talk with an accountant to figure out what would be in your best interest financially, given your specific goals.

Real Estate

Real estate can be another tricky issue. The keys here are:

Is the house going to be sold? If so, how will the proceeds be divided?

Is someone going to keep the house?

Can the person keeping the house afford the mortgage and taxes?

Can the person keeping the house refinance the mortgage?

Is one person going to stay in the house until the children finish high school?

What if one spouse is awarded money, but that can only be collected when the house is sold, and that is not anytime in the near future?

If the house is going to be sold, what are the conditions? What if we can't agree?

How much money is going to be spent on repairing the house or making it look good for sale?

The easiest situation is where the parties are able to sell the house before the divorce is finalized. In a case like this, if the parties have decided how the proceeds will be divided, then the money can be distributed as agreed upon the closing of the house. If they have not agreed on how the profit will be divided, then the proceeds can be held in an attorney's trust account for safe-keeping until the divorce is finalized. The attorney has an ethical and legal duty to safeguard the client's money, and the title company will not normally agree to hold the money, so the attorney trust account is generally the safest place for the money to sit.

I have had a situation where as part of the division of property, the husband owed the wife money, and he was keeping the house. The judge ordered a lien to be placed on the house and the husband had to

make monthly payments until the money was paid out to the wife. The lien would then be released only after the husband had paid the entire sum of money the wife was owed.

Probably the most common situation is where one spouse keeps the house and the mortgage as part of the division of property and debt. Often both spouses are listed on the mortgage, but the spouse keeping the house is unable to refinance. In this situation, in addition to the divorce decree, there are two deeds that are prepared, signed and filed in the county deed records office. One deed gives the full ownership of the property to the spouse keeping the house. This deed is called a Special Warranty Deed. The other deed releases the spouse who is not taking the house from the responsibility of the mortgage. This is called a Deed of Trust to Secure Assumption. This is not the ideal situation; however, because that mortgage is still on both parties' credit and if the person keeping the house defaults or is late on payments, that can affect the spouse who has nothing to do with the house anymore. Furthermore, if there are late payments or no payments, the creditor may still come after the spouse who is still named on the mortgage despite having a signed Deed of Trust to Secure Assumption, because that was the deal you agreed to when you received that credit. On the other hand, with being stuck with that possible responsibility also comes the ability to foreclose on your ex-spouse, but that is probably an issue you would prefer to NOT to have to deal with. So ideally, you would like for the person keeping the house to refinance. Unless the person has been pre-approved to refinance, this is hard to be put in orders, because that person does not necessarily have control over whether she can refinance.

Sometimes there are multiple homes owned by the parties and it works out that one spouse takes one home and the other spouse takes the other home. They may still end up doing the two kinds of deeds for each piece of real estate. Sometimes one of the parties may still decide to sell the real estate that they took, because they really do not want to or can not live in that house, but that's how they received their fair share of the community property.

If the house is being sold, it is ideal to put all the details and conditions of this process into the divorce decree. Will the parties have to agree to everything? How do they choose a realtor? What will be the listing price? At what point will the price be dropped, and by how much? If the parties can't agree, how will a decision be made? Will the costs of repairs be split evenly or covered by one party? These are a few of the issue that often arise. Sometimes, no matter how many details you put in the decree, the house just isn't sold according to the expected timeline. In those cases, the court can appoint a neutral third party, called a Receiver, to make those decisions and get the house sold for the best price possible in the time frame outlined by the court. I have been the Receiver in several post-divorce cases where the parties just couldn't agree on the details for selling the house, so they were stuck in a stale-mate. As a result, I try to make sure that there is always a third party decision-maker, such as the realtor, who can break a stale-mate between the parties.

In any property division, before you make any decisions or take a case to court, it is a good idea to talk with your accountant or financial advisor to understand all of the financial and tax consequences of each possible choice and division of the property and debt. You should make a financial plan for post-divorce before you make any agreements for the divorce. This will help you in being able to make educated decisions about property division. For example, it may not be your best move to take your share of her 401(k) as a lump sum, or you may need spousal support for the next 3 years so that you can qualify for a mortgage on your own credit. Additionally, divorcing couples should understand the financial and tax consequences of the different kinds of support, because spousal support and child support are treated differently by the IRS. All too often, people are not focused on the long-term financial consequences of their decisions and agreements, and are just focused on getting the divorce over-with.

Chapter 3 – Kids

Often the most contentious part of a divorce or break-up is the kids. This can also be a continuing battle until the child is at least 18 years old (and sometimes even longer). When it comes to the children, the main issues include the parents' rights to make decisions for the children, possession of the children by each parent, and payment of child support and medical support.

What most people refer to as "custody" is called "conservatorship" in Texas. What this means is, who gets to get information and make decisions about the child, and what are the conditions and/or restrictions on those decisions. There are certain rights and duties that parents have at all times, certain rights and duties and that parents have when the child is with them, and then certain rights that can be designated differently, based on the circumstances. Texas courts default to Joint Managing Conservatorship, which means that most decisions must be made by agreement of both parents. The opposite option is called Sole Managing Conservatorship, and this is where one parent gets to make those decisions. Even when the courts designate the parents as joint managing conservators, one of those parents is usually given the exclusive right to designate the primary residence of the child (usually within a specific geographic region) and the right to receive child support. This is what most people refer to as the "primary parent," but this is not a legal term. The legal term, and the term that the Office of the Attorney General uses is "custodial parent" or "home parent." However, I will continue to use the term "primary parent" in this ebook. We will discuss the differences and other options in more detail later in this chapter.

CHILD SUPPORT

First, let's discuss child support, as this is one of the first questions always asked. As discussed above, the primary parent has the right to receive child support, which means that the non-primary parent is the one who has to pay child support. The real question then is: How much child support am I going to have to pay? The legislature has put together guidelines so that the amount a person must pay in child support is predictable; however, it is important to keep in mind that this is where the court starts. The court will calculate the guideline support and may increase or decrease the amount of child support, given certain circumstances in a case.

The Courts calculate the guideline child support by taking the parent's gross monthly income and deducting federal income tax, social security and Medicare taxes, health insurance premiums, and union dues to obtain a net income. Then the Courts use a chart with the total number of children this parent has and the number of children in this particular case, to determine what percentage of the parent's net income to multiply by to obtain the guideline child support amount.

It is important to note that even though you may have additional deductions taken from your income, whether or not you control them, those additional deductions such as 401(k), life insurance premiums, employee stock purchase plans, vacation buys, extra withholdings, savings plans, etc. do not get to be deducted in the calculation of your net income for child support purposes.

The guideline child support of a parent who has only one child would be 20% of her net income. However, the guideline support of a parent who has one child from this relationship and one child from another relationship that she supports, would be 17.5% of her net income.

I encourage you to calculate your child support payments on our website at www.MargaglioneLaw.com.

The Courts will look at your income, but they can also look at your non-income assets, the child's needs and the child's standard of living to determine the amount of child support awarded. For example, if a

parent does not have a regular-paying job, but receives income from a separate property trust, then the court will consider the trust in determining the amount of child support to be awarded. Also, if the non-primary parent makes significantly more money than the primary parent, the court may order the non-primary parent to pay more than guideline child support as well as the child's extracurricular activities, so that the children can maintain their standard of living.

There is also a cap to these child support guidelines, where if a parent makes over a certain amount per month, the amount of child support the parent pays is capped off at a certain income level. The level of income for the cap increases at times, but is currently at a net resources level of $8,550 per month. However, depending on the judge, the Courts may choose to ignore the cap and order the parent to pay more than the capped guideline.

If a person is self-employed, then there are additional self-employment taxes that are accounted for in the calculation. When a parent is self-employed, there is a lot of additional information that is needed to give to the judge for the judge to make a decision on child support. If a parent's income varies significantly from one year to the next, the courts will evaluate the prior years of income with the present level of income. If the income has consistently gone up, then the court will probably use the current level of income. If the income has gone down, then the courts will want to know why, and they may go with the current level of income or with an average of the last couple years. If the income has gone up and down, the courts may use an average of a few years. Furthermore, if a parent is self-employed, there are personal expenses that may be paid for by the business to take advantage of tax advantages, that can be excluded from the business expenses for the purpose of increasing the income of the owner for child support calculation. These expenses tend to be evaluated more closely when the parent has claimed large deductions and/or has very little taxable income due to business write-offs. Examples of these expenses might include the owner's car, cell phone, meals, entertainment, vacations, and other such expenses.

It is important to note that if the courts determine, or even suspect, that a person has purposefully decreased their income so that they can pay less in child support, then the courts will most likely still require that parent to pay child support at the level when he was making the most amount of money. Similarly, if a parent is not working, the courts will make the assumption that the parent has the ability to get a job paying at least minimum wage, and the court will order that parent to pay guideline child support based on an income of minimum wage.

So what if the primary parent makes a large income and the non-primary parent makes barely enough to support herself? Will the court still make the non-primary parent pay child support? The answer is yes! Whether that non-primary parent is a father or a mother, the courts will still order that parent to pay child support to help support their own child. If the person does not earn a full-time minimum wage salary, the court may elect to make that parent pay according to the guidelines based on minimum wage or the judge may decide to make her pay something less than guideline support, but unless there are extraordinary circumstances, you can count on the low-income non-primary parent having to pay something in child support.

State Involvement: Office of the Attorney General "OAG"

When and how does the state get involved in my case? The Office of the Attorney General, or "OAG," represents the State of Texas in these cases. If the child is on government benefits, then the state will likely intervene in your case. They get involved in this situation, because they want the parent paying child support or medical support to reimburse the state for the government benefit the child is receiving.

Another situation where the state will get involved is when one parent requests assistance. This is common when the parents of a child were never married, but they split up, and the father is not paying

child support. Or the father might also request assistance from the OAG when the mother is not giving him access to the child, so the state can assist him to get visitation orders in place. A critical piece of information is that the state does NOT represent the parent requesting the assistance – the OAG represents the interests of the State of Texas. The OAG's job is to minimize the situations where the child is on government assistance, or to have one of the parents reimburse part of the cost of that government assistance.

One advantage of requesting OAG assistance for a child support case is that the OAG has access to the Texas Workforce Commission records. This means that when a parent starts working for a new employer, that employer must report the income paid to that employee, and the OAG has access to these records. This is particularly advantageous when a parent refuses to provide or update the income information to the other parent, or when a parent is untruthful about the income.

There are also some disadvantages of requesting OAG assistance. One is that they will not file for divorce, they will only assist on the child issues. Another, that has already been mentioned, is that they do not represent you. A third is that you are not going to get orders that are super customized for you – they will all be a variation on the standard forms. Finally, the OAG tends to take a very long time to file a case on your behalf (I've known people to wait over 6 months), so if you need something now, this is not the way to go.

State Disbursement Center and Automatic Employer Withholding

The state is also involved in most cases because the parties are normally required to pay, and therefore receive, child support through the State Disbursement Center. This is done so that the state can monitor, track and keep records of the payments, including exactly who paid how much, when, and through what method. Often parties do not want to have their child support payments go through the State Disbursement Center, because it takes extra time for processing, there is a small fee, or they do not want the government to track them. However, I recommend that EVERY parent use the State Disbursement Center for their child support payments. I can not tell you how many poor souls faithfully paid their ex directly for years, and then suddenly the ex claimed that he never paid child support, so now the government is going after him saying that he owes tens of thousands of dollars in arrearages. Worse yet is when he paid her in cash and did not keep any receipts. Now the poor soul has to spend thousands of dollars to rebut the dead-beat-dad accusations and to keep from being sent to jail! No matter how much she complains about how long the payments are taking to get to her, it is so much cheaper and worth the peace of mind to pay through the State Disbursement Center.

Do I want my child support automatically deducted from my paycheck? Once again, this is the most likely the best way for you to be assured that the full payments are being made timely, and with minimal effort on your part! Furthermore, if you are paid more than once per month, then your child support payment is automatically split evenly between your paychecks. So if you are paid twice per month, then the $1000/month child support payment is deducted as $500 from your first paycheck of the month and $500 from your second paycheck. The courts almost always send a withholding order to your employer to have your child support payments automatically withdrawn and sent to the State Disbursement Center. Employers are used to theses withholding orders, and they have processes in place to follow the court orders. It is still your responsibility to make sure that your employer begins the deductions when expected, continues them, and pays the correct amount, but once the deductions start, you can usually count on them continuing as ordered. It is also noteworthy that your employer can not pay more than 50% of your net income for child support. So, if your pay varies and you made very little this pay period, and as a result, your employer only paid a portion of the child support owed, you must still pay the difference. It is still recommended that you pay this through the State Disbursement Center. On occasion,

I am asked if an employer will look down on an employee or fire an employee when they receive a child support withholding order. First, employers are not allowed by law to hold that against you. Second, it is so common for employers to receive these withholding orders that they do not think anything about it. Finally, money for child support that is automatically deducted from your paycheck is automatically sent to the State Disbursement Center, so it is tracked and recorded by the State, by your employer, and by you. That's good insurance.

Arrearages and Enforcement

When a parent is ordered to pay child support, but does not pay it or does not pay the full amount, then that parent begins accumulating what are called "child support arrearages." Eventually, the OAG or the opposing party will file a "motion for enforcement" or "petition for enforcement" to make you pay these past-due child support payments. This is a quasi-criminal lawsuit, because you can be sent to jail for non-payment of child support. As a result of the potential jail-time, you also have a right to a court-appointed lawyer if you can not afford a lawyer. In addition to potential jail time, you can be fined, held in contempt of court, and ordered to pay attorney fees and costs of the other party and the government. You will also have to pay interest on the arrearages, and this can add up quickly.

You will generally not be sent to jail the first time you are brought to court for child support arrearages; however, if you repeatedly do not pay your court-ordered obligations, then it is more likely that you will spend some time in jail.

If you find yourself having to defend an enforcement suit, then you should make sure that you hire a lawyer (or at least accept a court-appointed lawyer) to keep you from making irreversible mistakes and to help you get the best resolution possible for your circumstances.

Furthermore, the OAG can initiate certain actions without even taking you to court. This usually occurs when that poor soul paid the ex directly, but the ex refuses to provide a notarized statement that he paid the child support. In these cases, the OAG sees in their records that the "dead-beat dad" has not made a single child support payment and it has now been years. As a result, they can and will seize your tax refund, retirement accounts, as well as your checking and savings accounts. They can also have that parent's professional licenses or driver's license suspended. And they can do all of this without even taking you to court. This is yet another reason to use the State Disbursement Center.

If your visitation and custody situation has changed significantly since the last orders particularly if you are now the primary parent, then it is critical that you talk with a lawyer about changing the court orders officially! You do not want to just stop paying child support without changing the court orders. Again, the sad and not infrequent situation is the dad who was previously ordered to pay child support, who is the only parent currently being a parent, who has essentially been the sole caretaker for the child, who stopped paying child support to the mom, and is now having to defend himself against the state for child support arrearages.

Modifying Child Support

Generally the courts require you to wait three (3) years before coming back to court to modify a child support order. However, if the parent who has been ordered to provide child support has had his/her income change significantly, then that may be reason to change it sooner. Specifically, if the projected child support is 20% or $100 per month higher or lower than the current child support obligation, then you may be eligible to change the amount of child support sooner. Use the child support calculator on our website at www.MargaglioneLaw.com to help you determine if your child support should change.

The process to change the amount of child support is pretty much the same as for filing a new divorce or custody suit. You need to file the petition, serve the other party and appear in court for either a hearing or to have the agreed order signed by the judge.

MEDICAL SUPPORT

The person who is ordered to provide child support is usually also ordered to provide medical support. This means that the parent either 1) has medical insurance through his/her work (or other method) and has the child covered on that policy, or 2) the other parent has the child covered on insurance s/he provides and the non-primary parent must reimburse him/her for the premiums, or 3) the child is on government benefits and the non-primary parent must reimburse the State for the cost.

If there is an employer withholding order in place for child support and the non-primary parent must reimburse the primary parent or the State for the insurance premiums, this amount is also included in the automatic withholding.

For all intents and purposes, it is still considered support of the child, and as such, can be enforced as child support.

In most cases, even when one parent is ordered to pay the medical insurance premiums, both parents are ordered to evenly split the cost of uninsured medical expenses such as deductibles and copays. The process to reimburse each other for these expenses should be clearly outlined in your court order.

PARENTAL RIGHTS

We started this chapter with a brief description of the terms of "custody", "conservatorship", "Joint Managing Conservatorship" versus "Sole Managing Conservatorship", and "primary parent" or "custodial parent." Now, we can get into a bit more detail on these. Let me explain that the Texas courts presume that Joint Managing Conservatorship is in the "Best Interest of the Child." This is another legal term that is very important. The courts will make all of their decisions about the child using this standard of "best interest of the child." This means that the judge may entirely ignore any needs or desires of the parents, because the judge is trying to do what s/he believes will be the best for the child, in terms of physical and mental health, physical well-being, costs and expenses, minimizing the change and conflict for the child, etc. Though the best interest of the child may inconvenience or actually burden a parent, it is the most important interest in all of these cases.

This means that even if you are having a nearly impossible time getting along with your ex, you may have to figure it out anyway. The Court expects you, as the adult, to figure out a way to create a new, business relationship with your ex, so that you can be a good example for your child. If you are struggling with this, there are all kinds of resources available to help you with this process. Specifically, there is a book called "Mom's House, Dad's House" written by Isolina Ricci, that comes highly recommended by judges, attorneys and mediators. There is also a companion book for the children, as well as a co-parenting toolkit by the same author.

For those families that are high conflict, there are some wonderful resources written by High Conflict Institute founder Bill Eddy. Mr. Eddy is a lawyer, therapist, and mediator, and has some wonderful insights into dealing with the most difficult people in our society and in our lives. I encourage you to check out his website at www.highconflictinstitute.com and read any of his books to help you deal with the difficult people anywhere in your life. I want to point out that my husband, who is not in the legal field at all, immediately started using the tips from these resources with some of his employees, colleagues, and

managers, and he was very impressed with how much they help him every day! And no, I do not get a cut from his sales.

Now that we've gotten past the most difficult point, let's discuss parents' rights. There are certain rights that every parent has at all times. They are the following:

- the right to receive information from any other conservator of the child concerning the health, education, and welfare of the child;
- the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
- the right of access to medical, dental, psychological, and educational records of the child;
- the right to consult with a physician, dentist, or psychologist of the child;
- the right to consult with school officials concerning the child's welfare and educational status, including school activities;
- the right to attend school activities;
- the right to be designated on the child's records as a person to be notified in case of an emergency;
- the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
- the right to manage the estate of the child to the extent the estate has been created by the parent or the parent's family.

There are also certain duties that both parents have at all times. These are the following:

- the duty to inform the other conservator of the child in a timely manner of significant information concerning the health, education, and welfare of the child;
- the duty to inform the other conservator of the child if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the fortieth day after the date the conservator of the child begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that the notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE; and
- the duty to inform the other conservator of the child if the conservator establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established, or the conservator resides with or allows unsupervised access to a child, by a person who is the subject of a final protective order sought by the conservator after the expiration of 60-day period following the date the final protective order is issued, or the conservator is the subject of a final protective order issued after the date of the order establishing conservatorship. IT IS ORDERED that this information shall be tendered in the form of a notice made as soon as practicable, but not later than the thirtieth day after the date the conservator of the child establishes residence with the person who is the subject of the final protective order, or the ninetieth day after the date the final protective order was issued if the conservator of the child resides with or allows unsupervised access to the person who is the subject of a final protective

order sought by the conservator, or the thirtieth day after the date the final protective order issued against the conservator which is issued after the date of the order establishing conservatorship, as appropriate. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

Then there are certain rights and duties that each parent has while in possession of the child. These are:

- the duty of care, control, protection, and reasonable discipline of the child;
- the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
- the right to consent for the child to medical and dental care not involving an invasive procedure; and
- the right to direct the moral and religious training of the child.

There are two rights that are usually exclusively given to one parent (often referred to as the "primary parent" or "custodial parent"), and these include:

- the exclusive right to designate the primary residence of the child (usually within a specific geographic region); and
- the exclusive right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child.

Even though these are usually designated exclusively to one parent, there can be variations, based on your specific family circumstances.

Finally, there are certain rights that can be given solely to one parent or the other, can be made jointly by both parents, can be made by the parent who is in possession of the child at the time (independent rights), can be made by one parent after consulting with the other parent, or some variation thereof, depending on the circumstances of the family. Since the court presumes that the parents are joint managing conservators, that means that it presumes that all of these rights are made jointly by both parents, or in other words, "subject to the agreement of the other parent conservator." These rights and duty include:

- the right to consent to medical, dental, and surgical treatment involving invasive procedures;
- the right to consent to psychiatric and psychological treatment of the child;
- the right to make decisions concerning the child's education;
- the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- the right to consent to marriage and to enlistment in the armed forces of the United States;
- except as provided by section 264.0111 of the Texas Family Code, the right to the services and earnings of the child;
- except when a guardian of the child's estates or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estates if the child's action is required by a state, the United States, or a foreign government; and

the duty to manage the estates of the child to the extent the estates have been created by community property or the joint property of the parent.

So that is the default, and where the courts start. If you disagree, it is up to you to prove how and why it should be different. On the other hand, if you and your ex agree that it should be different, then the court will most likely agree with you and sign off on your agreement.

When a parent is designated Sole Managing Conservator, they usually have the exclusive right to both of these last two sets of rights and duties. However, sometimes the parents can be called joint managing

conservators, and yet one parent is given all ten of those exclusive rights. This is often done so that the other parent does not realize what he is losing out on, and so he'll agree to the order.

A lot of times parents will also agree that these last 8 rights can be made when each parent has the child. These are referred to as "independent rights." This can prevent a lot of fights about therapists and non-emergency medical issues. You may also see rights 1-3 as independent and 4-8 as joint. That's because situations for rights and duty 4 through 8 above rarely occur, and if they do, the parents probably will agree anyway.

The huge area of concern is who decides what is the primary residence of the child. Usually, the courts will require this parent to continue to reside in a small geographic area, because the courts understand that children need both parents, and they are very unlikely to have a meaningful parent-child relationship if one parent lives more than a couple hours away. When I first moved to Texas, I would usually hear the judge order that one parent is awarded the exclusive right to designate the child's residence within Travis and contiguous counties. Before you start questioning yourself on your vocabulary prowess, I had to look up the word "contiguous," even after going through law school. It means "touching." So the parent was restricted to living in Travis County or any county that touches Travis County. These days, however, I will often hear Travis and Williamson counties or Travis and Hays counties. Because if one parent is in the southern part of Hays County and the other lives in the northern part of Williamson County, it could easily take two hours or more to go between the homes in rush hour traffic. As a result, it is not likely that a parent is going to make such travel during the week when there is school and work, and therefore, the non-primary parent is likely to get less contact with the child, and therefore have less of a relationship with the child. So the courts are starting to take that into account. They have probably already been doing that in the Dallas and Houston areas as well.

Every once in a while, I see parents who agree that neither parent should have the right to designate the primary residence of the child, but they agree that the child must continue to live in an even smaller geographic area, such as within a particular school district. This is highly favored by judges, because it shows that the parents are truly considering the child, and want to do everything to ensure that the child's life is minimally disrupted by their own issues.

Another common question is, does one person have to pay child support? What if we decide to do a 50/50 visitation schedule? Can't we just split the parenting in half and neither parent pays child support? On a rare occasion, I have recommended this: when both parents truly had the child 50% of the time AND both parents made about the same amount of money AND both parents split all expenses for the child 50/50. But most of the time, it doesn't work out so perfectly. More often, one parent makes significantly more money than the other. And if the parents are truly joint managing conservators, the parent with fewer resources and a lower income is likely going to be granted some amount of child support by the court. How much will depend on the specific circumstances of the family.

The Myth of the Child's Decision

Parents always want to know when the child gets to decide which parent he or she lives with. Let's now talk about the myth of the child's decision. The law currently says that in a custody case, if a parent requests it, when a child is 12 years or older, then a judge is required to meet with that child. If the child is under the age of 12, then it is up to the judge's discretion as to whether the judge wants to meet with the child.

If the judge meets with the child, this does not mean that your child is going to sit on the stand and be grilled by lawyers in the courtroom, like you are as an adult witness. This does not mean that the child

tells the judge where she wants to live, and the judge acts like a genie and grants the request. This also does not mean that the judge ignores all of the other evidence that is presented.

The decision of where a child primarily lives, like all other decisions that can not be agreed on in a custody case, belongs solely to the judge. The judge is going to hear all of the other evidence in the case first, before even talking with the child. Sometimes, there is enough evidence that the judge will not even need to talk with the child and the judge will grant or deny the change. But if the judge does talk with the child, it will often be after the child is done with school for the day, to minimize the disruption of the child's schedule and education. Then, the judge meets with the child in the judge's office, usually with only members of the judge's staff also present. Rarely are the attorneys allowed in the room. This is because the judge wants to be able to have an honest and meaningful conversation with the child about what life is like. The judge listens to the child, including what the child says and does not say, and observes the child during this conversation. After listening to all of the evidence that was presented during the hearing and after evaluating the conversation with the child, the judge then will make a determination as to where the child should live, under what circumstances, with what periods of possession by each parent, and more.

In my experience, judges are very good at spotting a teen who wants to live with the other parent just so they can get away with more and not have to live by rules. They are also very good a spotting children whose parents have told them what to tell the judge. No matter how much your child tells you that they want to live with you, and they ask you why they have to live where they are now, take the high road. Your child does not belong in the middle of your battle with your ex. You should never speak poorly about the other parent in front of the child, but it takes more than that to take the high road. You should encourage the love between your child and the other parent. You should encourage the relationship between your child and the other parent, no matter how you feel about the other parent. If the child is truly in danger, then you need to take action immediately, so talk with your lawyer about it. However, the more likely scenario is that the situation is not ideal, maybe even slightly harmful to the child, but not as bad as you think it is. The child still needs that parent's love, no matter how bad the parent. If your child feels strongly about a change of living circumstances, then you have the opportunity to give your child a voice in the court system. But be sure that you do not corrupt that voice. You will do best for your child by advocating for your child, with the minimal involvement of your child.

POSSESSION/VISITATION

Now that we've discussed who has what rights for the kids, who makes decisions about the kids, and how much is someone going to have to pay for the kids… let's talk about the all-important question: When do I get to see my kids? You might hear or see this issue called "visitation", "possession" or "access."

Let me first point out that whether or not a parent is current on paying child support is completely irrelevant to whether or not that parent gets time with the kids. Some parents who are using their kids as pawns might be inclined to withhold time with the kids if the other parent is not paying or is behind on child support. Not only is this bad behavior, but it is specifically written in most orders that a parent can not withhold time with the kids to try to make the other parent pay child support. This is just asking to be taken back to court on an enforcement motion and to pay the delinquent parent's attorney fees.

Standard Possession Order

Let's start with what the court assumes is in the best interest of the child. In Texas, there is something called a Standard Possession Order (SPO). The non-primary parent (the one paying child support), gets to have time with the child every first, third and fifth weekend of each month, starting at 6:00 p.m. on Friday and ending at 6:00 p.m. on Sunday. Then, during the school year, that parent will get the child every

Thursday from 6:00 p.m. to 8:00 p.m. Then there are the holidays. The parents alternate Thanksgiving from one year to the next. They also alternate spring break each year. Then, for the Christmas holiday, one parent gets the child on the day the child is let out for Christmas break until noon on December 28, and the other parent gets the child from noon on December 28 until school resumes after the break. Finally, the non-primary parent gets a 30-day period with the child in the summer.

There is a variation on this called the Extended Standard Possession Order. That gives the non-primary parent more time with the child. Specifically, the weekends start immediately after school on Friday and end at drop-off at school on Monday. Also, the Thursday possession during the school year goes from Thursday after school to drop-off at school on Friday. The holidays are also school to school. I am told that this is closer to giving each parent about 50% of the time with the kids, but in my experience, the non-primary parent usually does not feel like it is.

50/50 and Other Non-Standard Schedules

I am often asked about doing a 50/50 schedule with the kids. First, there are couple different ways of doing a 50/50 schedule, and we'll get to those details momentarily. Second, whether this will work completely depends on your specific situation. Some judges have said that a 50/50 schedule only works when the parents work well together. Keep in mind that the judge is required to presume that the SPO or Extended SPO is in the best interest of the child, so that is usually what the judge will order. However, the status quo (or what schedule you have already established) may override the presumption. So, if you have already agreed to and implemented a 50/50 schedule, the judge is more likely to order that this schedule continue. On the other hand, if it is not working well (i.e. a child is struggling with grades or behavior), then the judge may switch the visitation schedule to the SPO.

As I mentioned, there are a couple of different ways to do a 50/50 schedule. The simplest to describe is week on / week off. This is where one parent gets the child for one entire week, and the other parent gets the child for the entire next week. The exchange day and time depend on the family's circumstances, but are most often Friday after school or Monday drop-off at school.

The other common 50/50 schedule is called a 2-2-5, 2-2-5-5, or 2-2-3 schedule. An example of this type of schedule is that Mom has the child every Monday and Tuesday, Dad has the child every Wednesday and Thursday, and they alternate the weekends. It would look something like this:

Week 1:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Mom	Mom	Dad	Dad	Mom	Mom	Mom

Week 2:

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
Mom	Mom	Dad	Dad	Dad	Dad	Dad

Week 3 would then be the same as Week 1, etc. Personally, I believe that this type of schedule could wreak havoc on the child, because it would be very difficult for the child to keep track of what homework,

books, supplies, instruments, uniforms and equipment are at which parent's house. In my opinion, this schedule seems to put the biggest burden on the child. But for some families, this works. It all depends on the circumstances.

Sometimes, a parents' work schedule can create a need for modifications to a normal visitation schedule. In particular, I have custom-created schedules for airline pilots (who are out of town for 14 days at a time), firefighters (who are on call for 24 to 36 hours at a time), and other parents who work nights or have non-customary work schedules. What it boils down to are the very specific circumstances of your family. However, in the vast majority of situations, the court will order the SPO or extended SPO.

In some situations, it is not appropriate for both parents to have equal (or near to equal) time with the kids. For example, if a child is under the age of three, studies show that it is more important for the father to have more frequent, but shorter periods with the child. This has to do with the child's development and attachment. In other situations, no matter the age of the child, the family circumstances require some safety precautions to be taken. We'll address some of those issues shortly.

Military

If a parent is in the military, there are many specific provisions for those circumstances. For example, a deployed military parent may choose to designate a person(s) to exercise his/her visitation while deployed. What this can mean is that the deployed parent might choose to have his own parents use his visitation periods. Additionally, when the parent returns home from deployment, he can get extra, make-up visitation periods with the child.

Alienation

Parental alienation can be defined as the process and the result of a child unreasonably and unjustifiably rejecting a parent, and sometimes other family members, due to the other parent's manipulations. This rejection can be seen in the form of disrespect, hostility, or unwarranted fear on the part of the child towards the other parent. Sometimes the child acts consciously, but sometimes not. There are specific symptoms that are common to such alienation. Parental alienation is an awful thing for the entire family, particularly for the short- and long-term effects on the physical and mental well-being of the child. The problem is that it can be very hard to prove without the assistance of a qualified mental-health professional. In such cases, lawyers need to bring in experts to investigate the situation, and the judges rely on those expert opinions. Furthermore, experts are needed to attempt to try to help the child heal and undue the harmful influence of that parent, and therapy is critical in these situations to try to help the child and alienated parent restore their love and trust.

Safety Precautions, Drug/Alcohol/Mental Health Issues, Physical Abuse/Child Neglect Issues

As we mentioned before, it is not always appropriate for both parents to have equal time with the kids. When there is a concern for the child's safety, the Court might order any number of possible precautions, including anything from supervised visitations, limited visitations, visitations in a specific location, or rarely, no visitation. There might also be specific requirements that a parent must meet, such as therapy, drug awareness classes, parenting classes, anger management or family violence prevention classes. There might also be specific conditions on the visitation, such as submitting to drug or alcohol testing, submitting to a psychological evaluation, time and place restrictions, and more. We might also get other professionals involved, including a Guardian Ad Litem (to represent the child's best interests), an Attorney Ad Litem (to represent the child's interests), a therapist, or a doctor. These situations, however, tend to be extreme situations, such as where there is alcohol or drug abuse, physical violence, mental illness and/or child neglect.

I have seen cases where a mother took her child to a crack house, where a mother drove drunk with the child in the car, where a mother physically attacked her husband while holding their child. This is not to say that I haven't seen situations where the father has done equally bad things. In fact, there have been many situations in which I have helped the grandparents, a distant relative, an ex-step-dad, and other caring people get legal custody of children they love, because both parents are simply unable and unwilling to be the caring parents they should be. Children need access to all the people who are willing to love them, but sometimes that access needs to have conditions, for the safety of the children.

If a dad is a first-time dad and has never been around babies, that is NOT a reason for that dad to have to have supervised visitation with the child. This is no different from a first-time mom. Parents are not given a handbook on how to raise children. However, it is not a bad idea for any parent, particularly a first-time parent, to take a parenting course. It is also a very good idea for parents to take a co-parenting course when they split up, so that the child has some consistency and so that the child has less opportunity to play the parents against each other.

Furthermore, it does not matter to the child how broken or how horrible a parent is – the child craves and needs the parent's love and attention. If the child does not get the love and attention s/he needs, it may have a very detrimental effect on the child, for that child's entire life. What that means, is if there is a "bad" parent, then precautions can be put into place for the child to have time with that parent, but in a safe environment.

The biggest issue that separating parents often have to deal with is the lack of control of how your child is raised. It is important (and difficult) for caring parents to let go of the fact that the other parent is going to raise the child differently from how they would, and they must simply do the best they can in the time that the child is with them. The urge to micromanage the other parent is very strong, and in most cases, it needs to be tempered. However, there are circumstances where safety precautions are truly needed.

For example, there are situations in which a parent has a mental illness, and this can have significant effects on the children. A mental illness by itself does not necessarily mean that the parent should only have supervised and/or limited visitation with the child. In fact, if a parent has been diagnosed, is under the supervision of a licensed professional, and the condition is under control (through medication, therapy, or a combination thereof), and a professional has determined that the child is safe with the parent, then that parent may be able to parent under a normal schedule. However, a court order might say that this parent must continue medications and therapy as prescribed by a licensed physician. There might also be emergency provisions in the order that state what happens if the person goes out of control. On the other hand, if the parent chooses not to get control of her mental illness, then she may end up with supervised and/or limited possession with the child.

Another common situation is when a parent has a history of drug or alcohol abuse. If a parent has a pattern of neglect of the child or putting the child in a dangerous situation, then that would be reason to ask for and require certain provisions in an order. Such provisions might include inpatient or outpatient drug rehabilitation, random drug testing, proof of regular attendance at Alcoholics Anonymous or Narcotics Anonymous meetings, a drug or alcohol monitoring device, or more.

What we try to do is to give the debilitated parent the opportunity and the map to change the direction of his/her life. Sometimes, it works, but unfortunately it often does not.

PATERNITY

Unlike with mothers, when a child is born, there is no obvious father. However, the courts still make certain presumptions and they have certain rules and procedures set up for fathers. For example, if the mother is married when a child is born, the courts will assume that the child is the husband's. So, if a

married woman has a child with another man, it can be very important to clarify for both men involved as well as with the courts, who the biological and actual father is. I have seen situations where, for many years, an ex-husband has unknowingly cared for and paid for a child that was not his biological child.

At times, a mother is reluctant to allow the biological father into the picture. In this case, the father can file a document to state that the child this woman is carrying is his. This document is called an Acknowledgment of Paternity (AOP). However, it is not recommended that you file this document unless you are sure that the child is yours, because you can then be held legally responsible for the child (in other words, you may be required to pay child support to the mother).

If a father is unsure if a child is his, he can ask the court to order the mother to allow the child to be genetically tested. This does not usually happen until after the child is born, due to the safety of the child.

If a mother refuses to allow a father to have any access to his child, he can take her to court to force the mother to give him access.

If a man thinks that a child is his, but chooses to not force the issue, he takes a huge risk. A parent can go after the other parent for child support up to 2 years after the child turns 18. This means that a father can be found to be the father when the child is 19, and then suddenly have to pay tens of thousands or hundreds of thousands of dollars in child support. This is not a risk that anyone should take. Even if the mother tells you that she won't come after you for child support, you never know if she will go back on her word. You should assume that she will. Always, always, always document your communications and agreements. But do not make the assumption that this documentation will save you in every case.

Chapter 4 – What Happens Next?

LENGTH OF OBLIGATIONS AND/OR ORDERS

Custody orders in Texas are generally in force until the child has turned 18 years old AND graduated high school, whichever comes last. So if your child turned 18 in February but does not graduate until May, then the orders end in May. As for the child and medical support obligations, the last payments will be in May, as long as you are current. But if your child graduated in May, but does not turn 18 until December that year, then your orders end in December. That means that the last child and medical support payments would be in December.

One exception to this general rule would be if the child is disabled. Child and medical support for a disabled child may continue for the child's life. However, once the child has turned 18 years old, one or both parents will likely need to obtain guardianship for that child if he or she is unable to care for himself/herself.

If the parties do not agree, the Texas Courts can not initiate and can not force any obligations for a child beyond high school. That means that the court can not order a parent to pay for a child's college against the parent's will. However, if the parents choose to and agree to do so in a court order, then a Texas judge will sign that order, thus requiring the parents to uphold their part of that agreement. This can then later be enforced against the parties, even if the circumstances have changed. If a parent wants to pay for a child's higher education, I believe that to be very noble and loving, but I do not recommend putting it in a court order, even if you have no intention of changing your mind.

Normally, when your child ages out as described above and is no longer considered a child in the court's eyes, child support payments should automatically stop. But occasionally, there is an extra step or two that needs to happen. Sometimes, you may just need to provide proof of your child's age and graduation to your employer. Sometimes, you need to actually go to court to have an order signed by the judge to terminate child support. If you are not contacted within a month of the scheduled ending of child support, I suggest you contact a lawyer to make sure that an order gets signed to terminate the child support obligation officially.

APPEAL

Within 30 days after a final hearing, a person can appeal a trial judge's decision in a divorce or custody case. Quite honestly, an appeal of a family case in Texas is generally a waste of time and money. This is because an appeal is going to have to be about the judge not following the law or the judge abusing discretion, and so many of the decisions in a family case are fact-based rather than law-based. "Abuse of discretion" is incredibly difficult to show in a family case, because nearly everything is left to the trial judge's discretion. The judge uses his or her own judgment to determine how believable each witness is and to determine how much weight to put on different factors and issues. Though there is law that the trial judge must follow, the appellate courts have generally found that the law is followed – the person just disagreed with the trial judge's determination of how to apply it. Thus the appeal is almost always denied.

There are other, more effective, ways to have your situation re-evaluated, but these also must be acted upon within the 30 days immediately following your trial. There is something called a Motion to Reconsider, where if something new happened or was brought to a party's attention, the person go back in front of the judge to present this new information to try to get the judge to change his or her mind.

There is also another option called a Motion for Clarification, if a judge's decision has turned out to be unclear.

There is also something called a "de novo" appeal, which can occur if a judge other than a district judge presided over your trial. This de novo appeal essentially gives you the opportunity to redo your hearing in front of a different level of judge (specifically a district judge). I would like to clarify that you do not request a do novo hearing so that you can have a different district judge hear your case, nor do you get the opportunity to choose your judge. In larger counties, you will find that your trial or hearing, particularly a temporary orders hearing, will usually be heard by an associate judge. An associate judge is an appointed judge and hears family cases all day every day. It is very important to note that a motion for de novo appeal must be filed within 3 business days of the hearing and has very particular requirements that must be met.

MODIFICATION OF FINAL ORDERS

The Courts generally want you to wait about 3 years before you go back to court to modify an order. You better have a REALLY good reason to try to modify an order if it has been less than a year since the last order.

The standard that the court requires to make a change to a prior order is a "substantial and material change" in the circumstances of a child or a parent.

When it comes to child support, the court actually defines this for us. If the parent who is ordered to pay child support has an increase or a decrease in income or resources that would result in the amount of child support paid to be either 20% or $100 more or less than the current monthly amount, then you can bring it back to court. Also, if it has been 3 years since the court evaluated your case for child support, then it is okay to bring it back to court to reevaluate the situation.

When it comes to the non-monetary issues, this is much less clear. Examples may include a parent's work schedule changing so that the visitation schedule must be adjusted, a parent going to prison or to a mental health facility, a child suddenly failing school, a child starting to act out in unacceptable ways, or a teenager expressing that she wants to live with the other parent (see the section on *The Myth of the Child's Decision*).

Another reason to modify an order is if one parent was ordered to provide the medical insurance for the child, the parents' circumstances change, and the other parent is now providing the medical insurance. In circumstances such as the medical situation, it is a very good idea to change the order so that it is clear to all parties (including the OAG, who may not currently be involved) what the situation is and who is paying for what. I have seen situations where the parents did not change the order at the time they agreed to the change, and it came back at one parent years later, when the other parent was upset about something else and not so agreeable about anything anymore.

What most people do not understand is that when you file a modification, it can be like the original divorce or custody battle all over again. Sometimes it can be better, but more often I have seen it actually be worse. When it is worse, I have found that it is usually because the parents did not address some serious issues in the original case, or the parties have not figured out how to change their relationship with their ex to be that of a business relationship rather than a broken, emotional relationship. You need to be prepared for the cost to be as much as or more than your original divorce or custody case. Yes, this can cost in the tens of thousands of dollars. It costs this much because you are still fighting over the same issues – rights and duties, child support, medical support, visitation and conditions – and these issues are highly emotionally charged. The more that each parent can look at the issues from a logical standpoint rather than an emotional standpoint, the more likely that the parents can come to a partial or full

agreement, therefore minimizing or even avoiding the emotional, physical, and financial costs of the court battle.

OFFICE OF THE ATTORNEY GENERAL ("OAG")

The OAG can get involved in a case to either modify or enforce orders at the request of either party. If you request assistance from the OAG and they begin or reopen your case, it is important for you to know that the OAG does not represent you. The OAG represents the interests of the State of Texas. Requesting OAG assistance can be to your advantage and can save you thousands of dollars in attorney fees if your case is very simple and everything is standard. However, if your needs or wants are outside of basic and standard in any way, you should hire your own attorney. If you are in the situation where your ex's interests are being presented by the OAG, then you most definitely should hire an attorney to represent your interests. Remember that you are automatically at a disadvantage by having a lawyer on the other side, even if that lawyer does not truly represent your ex.

What happens when the OAG files the enforcement? If the OAG files a motion for enforcement against you, then it is for enforcement of child support and/or medical support. The OAG often holds these types of case in bulk. In the larger counties, these cases are usually held in their own courtroom, with a specific, associate judge. In these cases, both parties are ordered to appear in court on a specific day. In most of these situations, there a chance that you could be sent to jail. In fact, if you do not appear in court when you were ordered to, a warrant can be issued for your arrest. When you are found, they will put you in jail until a hearing can be had (usually within the week). Though this is not a criminal court, a possible end result could be a stay in prison. As a result, if you are defending against an enforcement for child support and medical support, you have a right to have a court-appointed lawyer. If you can not afford a lawyer, then by all means, ask for and take a court-appointed lawyer. Do not assume that you are getting an inexperienced or incompetent lawyer. Because of the ways our system in Texas is set up, the court-appointment system is not what you assume. You might end up with an amazing lawyer!

ENFORCEMENT

If one party is not following the court orders, then the way to attempt to force this person to follow the court orders is by filing what is called a Motion for Enforcement. This is a hearing in which you present to the judge how the other side has violated court orders and what you would like done about it. Note that your options about what you want done about it are limited by the law. For example, you can not have a person thrown in jail for talking badly about you in front of the child, no matter what she says.

If you are on the receiving side of a motion for enforcement, you need to know the possible consequences. Specifically, if it is for child support or medical support you can be sent to jail or sentenced to prison, you can be given a suspended commitment and be on supervision for 10 years, you can be fined, you can be required to pay attorney fees for the state or your ex, you can lose your license, you can have your assets taken away, and you can be humiliated and labeled as a dead-beat dad.

If you are intending to file your own motion for enforcement, you will want to be sure that you are in complete compliance before you file. An enforcement will bring the issue before the court, and as long as you succeed, you are likely to receive some attorney fees for the enforcement.

The real question is when should you file a motion for enforcement? There needs to be enough violation of the court orders that it is worth all the time and money for filing the enforcement. It may also be worth having your lawyer try to resolve the issue with your ex without going to court first. You might also consider mediating before you go to court, because you are more likely to get to the real issues and it is likely to cost a whole lot less than a court battle.

Within a few weeks to a couple months after we finalize a case, I often have a client call up to tell me what awful things the other parent is doing, and ask how we make her stop doing those things. My usual response is something to the effect of, "Let's give it some time." There are a couple reasons for this response. One reason may be that the ex is particularly emotional right now and not acting normally (i.e. responsibly). Whether or not you want to admit it, you are also probably emotional and more likely to still react poorly to your ex, because you have not healed enough to let the little things go. Given some time, you and your ex might each make strides towards healing, which in turn will make your ex less likely to do those awful (and annoying) things and you less inclined to react. On the other hand, if you continue to react to your ex's antics, then she is more likely to continue or even increase the antics, because she is getting exactly what she wanted: your attention. Another reason to wait before filing an enforcement is that we need to be able to show a pattern of this poor behavior. Usually the act or acts in and of themselves, though incredibly frustrating, are not significant enough to warrant taking her back to court. If she continues to regularly engage in behavior that is disruptive and harmful to the emotional or physical well-being of the child, then when we have enough evidence 1) to show a pattern, 2) to show the harmful impact on the child and 3) to show that this person is not likely to stop this behavior without the court's intervention, that is the point at which we go back to court.

The waiting game applies to money issues as well. You do not want to spend $5,000 going back to court to enforce $3,000 of child support not paid. Even if you do get the court to award you attorney's fees (i.e. your ex has to pay for your attorney), I have rarely seen the judge require her to pay the full amount it cost you for your lawyer to do her job well.

When you file a motion for enforcement, there is also a risk that the other side may file a counter motion for enforcement or even a petition to modify the parent-child relationship. If you have complied with the court orders, then you have nothing to worry about, however, there is usually something they can find on you too. And even if you do not think there is, your ex will present a story that will make you go through hoops to prove your story is right and your ex's story is wrong. In any case, before you file anything, you want to know what the potential ramifications are, understand whether you are willing to take that risk, and be prepared for what may happen.

