

Most Frequently Asked Family Law Questions

My child has always lived with me. Do I have custody? Custody is a legal term. If you have never been to court to get a custody order, you do not have legal custody! This means that each parent has equal rights to the child. Even if the other parent has not been very involved with the child, if there is no custody order and that parent takes the child, the police will usually not interfere. The police will want to see a court order that says who has custody.

My child's father is not listed on the birth certificate. Does that make a difference? If the child's father is not listed on the birth certificate and the child's mother and father are not and have never been married, that father is not yet the legal father. He is the biological father. Until he becomes the legal father, he has no legal rights or responsibilities to that child. This means that he has no technical right to visitation and no obligation to pay child support. Legal fatherhood is called **paternity**.

How do I establish paternity? If both parents agree that the man is the biological father and they both want him to be recognized as the legal father, they can fill out papers together **"acknowledging paternity"**. The Office of Child Support Enforcement will help parents with these papers. Call 401-222-2847.

If parents don't agree about paternity, either party can start a **"paternity suit"**. A mother can bring the paternity suit against the father to establish legal fatherhood. A father can bring the paternity suit against the mother to establish legal fatherhood. If the child in question receives welfare benefits, the Office of Child Support Enforcement will start a paternity suit. Either party can contact the Office of Child Support Enforcement for help in starting a paternity suit.

The other parent is not paying child support. What do I do? Call the Office of Child Support Enforcement at 222-2847. This office will assist either parent in setting up a child support order.

The other parent is not paying child support. Can I stop visitation? The courts look at child support and visitation as separate issues. Child support is the child's right to be financially supported by the noncustodial parent. Visitation is the noncustodial parent and the child's right to spend time with each other. Not paying court ordered child support is a violation of the court order. Stopping court ordered visitation is a violation of the court order. Two wrongs do NOT make a right! Most judges will not stop visitation just because the other parent is not paying child support. Follow the court orders!

Can I file a divorce in Rhode Island? In order to file a divorce in Rhode Island, either you or your spouse must have lived continuously in Rhode Island for at least one year before you file the complaint. If you have both moved from Rhode Island before the complaint is filed, you will have to establish residency in your new state and file for divorce in that state.

How long will a divorce take? On the day you file your complaint for divorce, you will be given a first court date, or nominal date, about 77 days from the day that you file. If you have a nominal divorce (you have a total agreement or the Defendant defaults) on your nominal date, you will be done with court dates, but you still have paperwork to file. If you do not have a nominal divorce ready on your nominal date, the court puts your case on the contested track. You will have another court date in about 4 weeks, usually at 2 P.M. This court date is called the case management conference. If you do not have a nominal divorce on the case management date, the court will schedule you for a pretrial date 2-4 weeks from the case management date, usually at 2 P.M.. If you do not have a nominal divorce on the pretrial date, the court will schedule your case for trial 1-3 weeks from your pretrial date. After nominal or trial, a decision pending entry of final judgment (a court order) has to be typed and entered. This order has to be entered within 30 days from the date of your hearing. If you had an irreconcilable differences divorce, you will then enter a final judgment 3 months and 1 day after your divorce hearing. If you had a separate and apart divorce, you will enter the final judgment 21 days after you entered the decision pending entry of final judgment.

Can I get divorced (start a custody case) if I don't know where my spouse (child's other parent) is? In order to get divorced (or to start a custody case) you will have to serve your spouse. Normally this means you need a good address for your spouse. In certain circumstances, the judge will allow you to "serve by publication". This means that the judge will give you permission to run a newspaper ad, normally for four consecutive weeks, in the location of your spouse's last known address. The ad will put your spouse on notice of the divorce complaint and court date. You will have to get proof from the newspaper (keep copies of the ad when it runs) and submit this to the court. This option can be pretty expensive. You should be prepared to spend about \$400 for publication.

Can I make the other parent visit with my child? Normally, you cannot make another parent visit with a child if he/she does not want to visit. The court can order that a parent be consistent in visitation if that parent wants to keep visitation rights, but cannot force a parent to visit. The court looks at what is best for the child. Usually, it would not be good for a child to spend time with someone who does not want to spend time with him/her. Do not expect the court to turn a "bad parent" into a "good parent".

Can I move out of state? If you have started a court case regarding your child, automatic court orders have entered. These orders prevent you from permanently removing your child from the State of Rhode Island. In order to move, you will probably need to get the other parent's written, notarized permission or the Court's permission. If there are no court orders regarding your child and you have not filed or been served with a case regarding your child, it is probably okay to move. Consult an attorney if you are unsure.

What if the other party is not following the court orders? Ask your attorney to file a motion to **adjudge in contempt**. This motion brings the issue in front of the judge. The judge will decide whether that person is violating the court order and what to do about it. Make sure that you continue to follow the court orders yourself. If a judge believes the person is not following court orders, the judge finds that person "in contempt". If the

judge believes the person is intentionally not following the orders, the judge find that person in “willful contempt”. The judge can order different types of remedies, including fines, taking away of certain privileges, or even jail time in serious cases.