

Family Law Terms

Access to Records: Access to records is the right to look at your children's records. Sometimes if one parent has sole custody, the other parent will have access to records so that she/he can look at their children's records and keep informed about what is going on in his/her children's lives.

Affidavit: A written document listing allegations against a party, signed and sworn to by the person making the allegations. An affidavit is usually filed along with a petition asking for emergency relief.

Alimony: Alimony is the regular payment of money from one spouse to another for the support of the other spouse. In Rhode Island alimony is usually "rehabilitative". This means that the spouse who wants alimony will have to prove to the judge that he/she needs alimony because they are not able to financially support him/herself AND that the other spouse also has enough money to support him/herself and the spouse asking for alimony. Some of the most common reasons a court will consider in deciding whether to order one spouse to pay alimony to another spouse are that the marriage was a long marriage, one spouse never worked because the couple decided that it was more important for that spouse to stay home to take care of the children, one spouse is disabled or suffering from serious health problems, one spouse needs to go back to school to be able to make money, or one spouse makes significantly more money than another spouse and the lower-income spouse should be allowed to continue in the lifestyle enjoyed during the marriage (this usually happens only with very wealthy people).

Allegations (Averments): The statements a party makes in a legal document, stating that they are facts. These are usually the "facts" a party will try to prove.

Answer: The legal paper that the defendant files to "answer" the allegations in the complaint.

Arrearage: An arrearage is money that is overdue or unpaid. If you are court-ordered to pay child support or alimony and you are late with the payments or don't make the payments, you will build an arrearage. Usually, the court will also charge you interest on this arrearage.

Automatic Court Orders: Court orders that take effect immediately when a case is started. The court orders apply to the Plaintiff as soon as the Plaintiff files the case. The court orders apply to the Defendant as soon as the Defendant is served. Either party could get in trouble for violating, or disobeying, the automatic court orders. A paper listing all of the automatic court orders can be picked up at the family court clerks' office.

Child Support: Child support is the money the noncustodial parent pays to the primary custodial parent for the financial support of the children. In Rhode Island, child support is calculated by using the Rhode Island Child Support Guidelines. This is basically a chart that you plug each parent's income into and you come up with a set weekly amount for child support.

Complaint (Petition): The legal paper that starts the case and tells the court what the plaintiff wants.

Counterclaim: The legal paper that the defendant files to tell the court what he/she wants, in response to a complaint.

Custodial Parent/ Primary Custodian: If one parent has the children living with him/her for the majority of the time, that parent is the primary custodial parent.

Custody: Custody is about who gets to make the major decisions regarding a child's life. Custody is not necessarily about where the child lives. Major decisions are usually decisions

about medical issues (ex: whether a child needs surgery, counseling), school issues (ex: where will the child go to school), or religious issues (ex: in what religion will your child be raised). Day to day or small decisions will be made by the parent who has the child with him/her when the decision needs to be made.

Default: The defendant does not answer the case or show up at the required court date. The judge will grant the orders the Plaintiff is asking for without the defendant being present, because the defendant has defaulted.

Defendant (Respondent): The defendant is the person who has a case brought against him/her (is served with the case= has a complaint filed against him/her).

Divorce(Dissolution): Divorce is the legal end of a marriage.

Docket Number (Case number): This is a unique number the clerk will assign to the case. This number must be used on all future documents relating to the same case. This number is usually on the top right side of the document. This number is how the clerk finds your case in the computer or in the file room.

DR6: This is a legal paper that is a sworn statement of income, expenses, property, and debts. Each party who wishes to submit any type of document to the court must submit a DR6. The court will not accept documents from a party who has not filed a DR6.

Emergency Ex Parte Motion: This is a petition brought without giving notice to the other party. The person bringing the petition is saying to the judge: "This is such an emergency that I need an order before my hearing date, even before I can serve the other party".

Emergency Ex Parte Order: If the judge believes that the petitioner has shown a sufficient emergency and need for an order, the judge will grant an emergency ex parte order. This order gives the petitioner the order they need immediately and sets up a court date for the respondent to "contest", or argue against, the order.

Entry of Appearance: The legal paper that tells the court that a particular attorney represents one of the parties.

Filing: Giving the clerk the legal papers.

Final Decision Making Power: Sometimes parents will have joint custody, but one parent will have "final decision making power". This means that if the other parent refuses to communicate with that parent, or will not agree with that parent, the parent with "final decision making power" gets to make the decision. Having joint custody with final decision making power to one parent ensures that the parents will discuss every major decision, but allows one parent to make a decision if the discussion isn't successful.

Garnishment/Income Withholding Order: A court order to deduct (take) child support or alimony payments from someone's paycheck. In the State of Rhode Island, all child support orders must be garnished unless the judge finds a good reason not to garnish.

Grounds for divorce: Grounds for divorce means the reason the husband and wife are divorcing. Although there are fault based (one person tries to prove it was the other person's fault the marriage ended, like adultery, or extreme cruelty) reasons to get a divorce, the most common grounds for divorce are no-fault based (the husband and wife are saying they just want a divorce, not necessarily trying to prove one or the other was more at fault in causing

the marriage to fall apart). The most common grounds for divorce in Rhode Island are Irreconcilable Differences and Having Lived Separate and Apart.

Irreconcilable Differences: Irreconcilable differences is the basis for a divorce if there are problems in a marriage that cannot be fixed and have made it so that the parties feel they cannot continue to stay married.

Joint Custody: Joint custody means that both parents have to talk to each other and then agree about major decisions that affect their children's lives. Joint custody means that both parents have full access to their children's school, medical, and religious records. If parents who have joint custody cannot agree on a major decision, they will probably have to take that issue to court to decide it.

Miscellaneous Petition for Custody: A miscellaneous petition for custody is the type of motion you file if the parents were never married, the father is listed on the birth certificate of the child (ren) and you want to establish custody, placement, visitation, and child support.

Noncustodial Parent: The noncustodial parent is the parent who does not have the children living with him/her for the majority of the time.

Obligee (Payee): This is the person who receives the child support or alimony.

Obligor (Payor): This is the person who pays the child support or alimony.

Paternity: Paternity means legal fatherhood. A father can be a biological father without having established paternity. If a father is not on his child's birth certificate, the father or mother (or state) can bring a case to establish paternity. Establishing paternity means that the court decides and makes a court order that a man is the legal father of the child. This order makes sure that the man has all the rights and responsibilities that fathers typically have (like rights to custody, visitation, responsibility to pay child support, etc.).

Party: Both the Plaintiff and Defendant are the "parties" in the case.

Physical Placement: Physical placement is where the children physically live the majority of the time. If the children live with each parent for an equal time, the parents have shared (split) physical placement.

Plaintiff (Petitioner): The plaintiff is the person who starts the case (files the case= files the complaint).

Presumed father: A husband is legally presumed to be the father of any child born during the marriage and for a time period after a divorce. This means that the court will consider him to be the legal father even if he is not the biological father, until proven otherwise.

Pro Se: Pro se means "represent oneself".

Pro Se Entry of Appearance: If a person is going to represent him/herself in court, he/she has to file a legal paper called a pro se entry of appearance. This paper lists that person's name, address, and telephone number so that the court can contact or send mail regarding the court case to that person. The person who is representing him/herself pro se should always make sure that his/her address is updated with the court.

Separate and Apart: Separate and Apart is the basis for a divorce if the parties (husband and wife) have been living separate and apart for more than three years before one party files for divorce. This means that the couple cannot have lived or acted in any way as husband and wife

in the last three years. If the husband and wife have had sex within the last three years, the Plaintiff should file an Irreconcilable Differences divorce.

Service: The legal method for giving the defendant a copy of the court papers being filed and a summons to come to court.

Sole Custody: Sole custody means that the parent who has sole custody (granted by the court) gets to make all the major decisions that affect his/her children's lives. This parent does not have to consult with the other parent about these major decisions. This parent is the only parent who has access to any of the children's records.

Summons: The legal document that is given with the complaint that tells the defendant when and where to come to court and how to answer the complaint.

Supervised visitation: Sometimes a parent will have the right to visit with their children, but will be ordered by the court to be supervised. Usually a parent will have supervision if he/she has no relationship with the children and is trying to establish a relationship, has had past/present drug or alcohol problems, or has been violent/harmful to the other parent or to the children in the past. A supervisor can be appointed by the court through the Family Court Investigating Unit or can be picked by the parties together. The supervisor must be present and watchful at all times during the visitation.

Visitation: Visitation is the right to visit with a child that does not live with you the majority of the time. If one parent is the primary custodial parent, the other parent usually has visitation with the children.