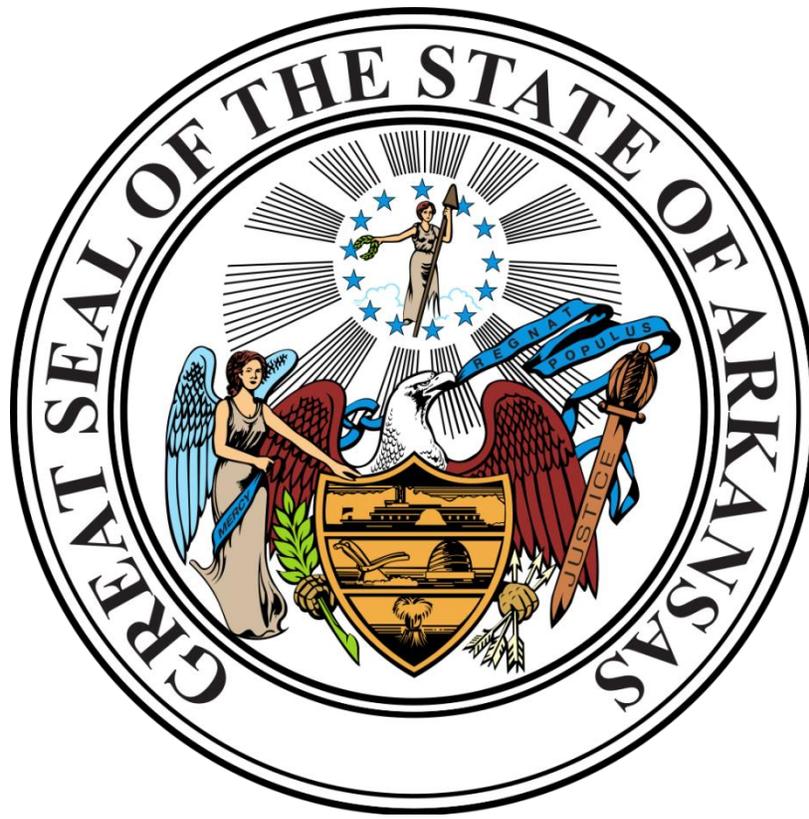


Arkansas Circuit Courts  
**Judges' Benchbook**  
Domestic Relations Division



**The Administrative Office of the Courts**

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*Updated March 2014*

**W**elcome to the updated Circuit Court Judges' Benchbook for the Domestic Relations Division. We are pleased to provide you with this up-to-date resource that we hope will aid you in your legal research and decision-making.

The new format of the Benchbook lends itself to both hardcopy and digital formats. To make the most of this Benchbook, we suggest that you utilize the embedded links to cases, court rules and other resources. In order to access the case law, you will need to sign in to your Fastcase account using your Arkansas Bar Association log in. It is easy to do. You will need to repeat this process each session that you use the Benchbook. You may consider "bookmarking" these links for future reference. If you do not have access to Fastcase because you are not a member of the Arkansas Bar, find out more about becoming a member at [https://www.arkbar.com/pages/Join\\_Renew\\_Membership\\_Online.aspx](https://www.arkbar.com/pages/Join_Renew_Membership_Online.aspx).

First, go to <https://www.arkbar.com/> and click on "Fastcase."

Then, sign in using your log in information.

Click "Fastcase" one more time, and you will be logged in.

You are now ready to use the links in the Benchbook.

Without closing out your browser, open the Benchbook, which can be found at <https://courts.arkansas.gov/administration/education/publications>.

When you click on a case, it should take you straight to Fastcase.

Note: You will continue to be signed in to Fastcase as long as your browser remains open. If you close out of your browser, you will need to sign in to Fastcase again through the arkbar.org website.

Please note that Fastcase has not yet updated the Arkansas Code Annotated with the changes from the 2013 legislative session, so there are not any hyperlinks to online statutes in the Benchbook. They will be added and the Benchbook republished as soon as they become available. To search for statutes online, you will need to use the General Assembly's website.

First, go to <http://www.lexisnexis.com/hottopics/arcodes/Default.asp>.

Then, type in the statute call numbers and press enter.

(For example, "9-13-101" will take you to the statute for Award of Custody.)

As always, the staff at the Administrative Office of the Courts is here to help. If you have any questions, please contact:

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[Donna.Gay@arkansas.gov](mailto:Donna.Gay@arkansas.gov).

Thank you and enjoy!

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jump to the designated page.

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# I. Marriage

## Age of Consent

Every male who has arrived at age of seventeen (17) years and every female who has arrived at age of sixteen (16) years shall be capable in law of contracting marriage.

However, males and females under the age of eighteen (18) years shall furnish the clerk, before the marriage license can be issued, satisfactory evidence of the consent of the parent or parents or guardian to the marriage.

The consent of both parents of each contracting party shall be necessary before the marriage license can be issued by the clerk unless:

the parents have been divorced and custody of the child has been awarded to one (1) of the parents exclusive of the other, or

unless the custody of the child has been surrendered by one (1) of the parents through abandonment or desertion, in which cases the consent of the parent who has custody of the child shall be sufficient.

The consent of the parent may be voided by the order of a circuit court on a showing by clear and convincing evidence that: (i) The parent is not fit to make decisions concerning the child; and (ii) The marriage is not in the child's best interest.

There shall be a waiting period of five (5) business days for any marriage license issued under this subsection.

If a child has a pending case in the circuit court, a parent who files consent under this subsection shall immediately notify the circuit court, all parties, and attorneys to the pending case.

Ark. Code Ann. § 9-11-102.

## Age of Consent Exceptions

If an application for a marriage license is made where one (1) or both parties are under the minimum age prescribed in § 9-11-102 and the female is pregnant, both parties may appear before a judge of the circuit court of the district where the application for a marriage license is being made. Evidence shall be submitted as to:

(A) The pregnancy of the female in the form of a certificate from a licensed and regularly practicing physician of the State of Arkansas;

(B) The birth certificates of both parties; and

(C) Parental consent of each party who may be under the minimum age.

Thereupon, after consideration of the evidence and other facts and circumstances, if the judge finds that it is to the best interest of the parties, the judge may enter an order authorizing and directing the county clerk to issue a marriage license to the parties.

The county clerk shall retain a copy of the order on file in the clerk's office with the other papers.

However, if the female has given birth to the child, the court before whom the parties are to appear, if satisfied that it would be to the best interests of all the interested parties and if all the requirements are complied with, with the exception of the physician's certificate as to the pregnancy, may enter an order authorizing and directing the county clerk to issue a marriage license as provided.

Ark. Code Ann. § 9-11-103.

In all cases in which the consent of the parent or parents or guardian is not provided, or there has been a misrepresentation of age by a contracting party, the marriage contract may be set aside and annulled upon the application of the parent or parents or guardian to the circuit court having jurisdiction of the cause. Ark. Code Ann. § 9-11-104.

The marriage of any male under the full age of seventeen (17) years and the marriage of any female under the full age of sixteen (16) years is voidable.

All marriages contracted prior to March 26, 1964, where one (1) or both parties to the contract were under the minimum age prescribed by law for contracting marriage are declared to be voidable only and shall be valid for all intents and purposes unless voided by a court of competent jurisdiction.

All marriages contracted between July 30, 2007, and April 2, 2008, in which one (1) or both parties to the contract were under the minimum age prescribed by law for contracting marriage are voidable only and are valid for all intents and purposes unless voided by a court of competent jurisdiction.

Ark. Code Ann. § 9-11-105.

See [State v. Graves, 228 Ark. 378, 307 S.W.2d 545 \(1957\)](#) (where girl and boy, both residents of Arkansas, were less than minimum age for marriage in

Arkansas, went to Mississippi which allowed marriages between persons of their ages, and were married with their parents' consent and returned to Arkansas and lived there as man and wife, marriage was not void).

### **Persons Who May Solemnize Marriage**

- (1) The Governor;
- (2) Any former justice of the Supreme Court;
- (3) Any judges of the courts of record within this state, including any former judge of a court of record who served at least four (4) years or more;
- (4) Any justice of the peace, including any former justice of the peace who served at least two (2) terms since the passage of Arkansas Constitution, Amendment 55;
- (5) Any regularly ordained minister or priest of any religious sect or denomination;
- (6) The mayor of any city or town;
- (7) Any official appointed for that purpose by the quorum court of the county where the marriage is to be solemnized; or
- (8) Any elected district court judge and any former municipal or district court judge who served at least four (4) years.
- (9) The Religious Society of Friends (Quakers) through their traditional rites.

Ark. Code Ann. § 9-11-213.

### **Marriage Licenses**

All persons contracting marriage in this state are required to first obtain a license from the clerk of the county court of some county in this state. Ark. Code Ann. § 9-11-201.

The form of the license can be found in Ark. Code Ann. § 9-11-202.

The clerks of the county courts are required to furnish the license upon 1) an application's being made, 2) being fully assured that applicants are lawfully entitled to the license, and 3) receipt of his or her fee. Ark. Code Ann. § 9-11-203.

The license is required to be returned to the clerk within 60 days. Ark. Code Ann. § 9-11-218. *But see* [Fryar v. Roberts, 346 Ark. 432, 57 S.W.3d 727 \(2001\)](#) (failure to file marriage license within 60 days does not render a marriage void).

## Common Law Marriage

Arkansas does not recognize common law marriages within the boundaries of this state. [Fryar v. Roberts, 346 Ark. 432 \(2001\)](#); [Spicer v. Spicer, 239 Ark. 3 \(1965\)](#); [Furth v. Furth, 97 Ark. 272 \(1911\)](#).

All marriages contracted in other states are valid in Arkansas, excluding marriages between persons of the same sex. [Ark. Code Ann. § 9-11-107](#).

*See* [Craig v. Carrigo, 353 Ark. 761 \(2003\)](#)(no valid common law marriage to be recognized in Arkansas because Alberta, Canada had no statutory law and the parties had not lived as married for the requisite time to meet the Alberta case law definition); [Brissett v. Sykes, 313 Ark. 515 \(1993\)](#)(although common law marriages valid in other states are recognized, evidence was insufficient to establish common law marriage so as to give man right of survivorship in real property ); [Knaus v. Relyea, 24 Ark. App. 7 \(1988\)](#)( insufficient objective evidence that agreement existed between petitioner and the deceased to establish common-law marriage according to Colorado law).

## Covenant Marriage

A covenant marriage is a marriage entered into by one (1) male and one (1) female who understand and agree that the marriage between them is a lifelong relationship.

Parties to a covenant marriage will have received authorized counseling emphasizing the nature, purposes, and responsibilities of marriage.

Only when there has been a complete and total breach of the marital covenant commitment may a party seek a declaration that the marriage is no longer legally recognized.

A man and a woman may contract a covenant marriage by declaring their intent to do so on their application for a marriage license as otherwise required under this chapter and executing a declaration of intent to contract a covenant marriage as provided in § 9-11-804. [Ark. Code Ann. § 9-11-803](#).

The application for a marriage license and the declaration of intent shall be filed with the official who issues the marriage license.

The declaration of intent shall contain:

the requisite recitation found in § 9-11-804;

an affidavit by the parties that they have received authorized counseling, such as that found in § 9-11-805;

an attestation of the counselor; and

the notarized signatures of parties, along with those required to consent if they are minors.

Ark. Code Ann. § 9-11-804.

A couple who is already married may redesignate their marriage as a covenant marriage. Ark. Code Ann. § 9-11-807.

Parties to a covenant marriage may only dissolve the covenant marriage by meeting the requirements of Ark. Code Ann. §§ 9-11-808, 809, and 810.

These requirements include the following grounds for divorce:

- (1) The other spouse has committed adultery;
- (2) The other spouse has committed a felony or other infamous crime;
- (3) The other spouse has physically or sexually abused the spouse seeking the divorce or a child of one (1) of the spouses;
- (4) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years; or two (2) years and (6) months if there is a minor child or children of the marriage; or one (1) year if there is abuse of a child, from the date the judgment of judicial separation was signed.

And the following grounds for a judicial separation:

- (1) The other spouse has committed adultery;
- (2) The other spouse has committed a felony and has been sentenced to death or imprisonment;
- (3) The other spouse has physically or sexually abused the spouse seeking the legal separation or divorce or a child of one (1) of the spouses;
- (4) The spouses have been living separate and apart continuously without reconciliation for a period of two (2) years; or
- (5) The other spouse shall:

(A) Be addicted to habitual drunkenness for one (1) year;

(B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or

(C) Offer such indignities to the person of the other as shall render his or her condition intolerable.

## II. Divorce

### Jurisdiction

The circuit court shall have power to dissolve and set aside a marriage contract. Ark. Code Ann. § 9-12-301.

*But see [Jackson v. Jackson, 81 Ark. App. 249, 100 S.W.3d 92 \(2003\)](#)(wife failed to comply with Rule 4 in attempting service by publication, so no jurisdiction was acquired over defendant and all proceedings as to him were void. Divorce was reversed and dismissed).*

The action for divorce shall be by equitable proceedings. Ark. Code Ann. § 9-12-302.

The court where the final decree of divorce is rendered shall retain jurisdiction for all matters following the entry of the decree.

However, either party, or the court on its own motion, may petition the court that granted the final decree to request that the case be transferred to another county if:

(a) Both of the parties to the divorce proceedings have established a residence in a county of another judicial district within the state; or

(b) One (1) of the parties has moved to a county of another judicial district within the state and the other party has moved from the State of Arkansas.

The decision to transfer a case is within the discretion of the court where the final decree of divorce was rendered.

The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

In cases in which children are involved and a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the custodial parent.

Ark. Code Ann. § 9-12-320.

### Venue

The proceedings shall be in the county where the complainant resides unless the complainant is a nonresident of the State of Arkansas and the defendant is a

resident of the state, in which case the proceedings shall be in the county where the defendant resides. In any event, the process may be directed to any county in the state.

*See* [Hargis v. Hargis, 292 Ark. 487, 731 S.W.2d 198 \(1987\)](#)(venue of an action may be waived).

When a spouse initiates an action against the other spouse for an absolute divorce, divorce from bed and board, or separate maintenance, then the venue for the initial action shall also be the venue for any of the three (3) named actions filed by the other spouse, regardless of the residency of the other spouse. [Ark. Code Ann. § 9-12-303](#).

*See* [Tortorich v. Tortorich \(“Tortorich III”\), 333 Ark. 15, 968 S.W.2d 53 \(1998\)](#)(order of absolute divorce, which was obtained after limited divorce was granted in another county, did not render order of chancellor from county that granted limited divorce, which order increased husband's alimony obligation, ineffectual during period before absolute divorce was reversed on appeal for improper venue).

The court issuing a final decree of divorce retains jurisdiction for all matters following entry of the decree, although either party may request and the court may agree that the case be transferred to another county in which at least one party resides if certain conditions are met. [Ark. Code Ann. § 9-12-320](#).

### **Matters Which Must Be Proved**

To obtain a divorce, the plaintiff must prove a legal cause for divorce. [Ark. Code Ann. § 9-12-301](#).

*See* [Dee v. Dee, 99 Ark. App. 159, 258 S.W.3d 405 \(2007\)](#)(petitioner failed to prove statutory grounds of general indignities; even though defendant/appellant admitted that he had waived corroboration of grounds, the injured party must always prove statutory grounds whether divorce is contested or uncontested; granting of divorce was reversed and dismissed).

The plaintiff must also prove residency by a showing of residence in the state by either the plaintiff or defendant for sixty (60) days next before the commencement of the action and a residence in the state for three (3) full months before the final judgment granting the decree of divorce. [Ark. Code Ann. § 9-12-307](#).

No decree of divorce, however, shall be granted until at least thirty (30) days have elapsed from the date of the filing of the complaint.

When personal service cannot be had upon the defendant or when the defendant fails to enter his or her appearance in the action, no decree of divorce shall be granted the plaintiff until the plaintiff has maintained an actual residence in the State of Arkansas for a period of not less than three (3) full months before the final judgment granting the decree. Ark. Code Ann. § 9-12-307.

See [Rogers v. Rogers, 90 Ark. App. 321, 205 S.W.3d 856 \(2005\)](#); [Hodges v. Hodges, 27 Ark. App. 250, 770 S.W.2d 164 \(1989\)](#) (residency must be proved and corroborated in every instance and the question of whether it has been proven and corroborated is jurisdictional).

Plaintiff must also show that the cause of the divorce occurred or existed in this state or, if out of the state, that it was a legal cause of divorce in this state, and that the cause of divorce occurred or existed within five (5) years next before the commencement of the suit. Ark. Code Ann. § 9-12-307.

### **Grounds for Divorce**

A plaintiff who seeks to dissolve and set aside a covenant marriage shall state in his or her petition for divorce that he or she is seeking to dissolve a covenant marriage. Ark. Code Ann. § 9-12-301.

Grounds for absolute divorce or divorce from bed and board are:

- (1) When either party, at the time of the contract, was and still is impotent;
- (2) When either party shall be convicted of a felony or other infamous crime;
- (3) When either party shall:
  - (A) Be addicted to habitual drunkenness for one (1) year;
  - (B) Be guilty of such cruel and barbarous treatment as to endanger the life of the other; or
  - (C) Offer such indignities to the person of the other as shall render his or her condition intolerable;
- (4) When either party shall have committed adultery subsequent to the marriage;
- (5) When husband and wife have lived separate and apart from each other for eighteen (18) continuous months without cohabitation;

(6) When husband and wife have lived separate and apart for three (3) consecutive years without cohabitation by reason of the incurable insanity of one (1) of them.

(7) When either spouse legally obligated to support the other, and having the ability to provide the other with the common necessities of life, willfully fails to do so.

Ark. Code Ann. § 9-12-301.

### **Case Law**

Existing statutory law does not allow spouse to stipulate to or waive grounds for divorce. [Rachel v. Rachel, 21 Ark.App. 77, 733 S.W.2d 735 \(1987\).](#)

Divorce is a creature of statute and can only be granted when statutory grounds have been proved and corroborated. [Harpole v. Harpole, 10 Ark. App. 298, 664 S.W.2d 480 \(1989\).](#)

To obtain limited divorce, it is necessary for moving spouse to establish grounds, which are same as those specified for “absolute divorce,” which is also called “divorce from the bonds of matrimony” or “divorce a vinculo matrimonii.” [Lytle v. Lytle, 266 Ark. 124, 583 S.W.2d 1 \(1979\).](#)

Although a husband and wife may not feel married when separated, as a matter of law they are married, and any voluntary sexual intercourse between a married person and a person other than the offender's spouse constitutes “adultery.” [Atkinson v. Atkinson, 32 S.W.3d 41, 72 Ark. App. 15 \(2000\).](#)

Adultery may be proven by evidence leading to an inference of guilt. [Lytle v. Lytle, 266 Ark. 124, 583 S.W.2d 1 \(1979\).](#)

To constitute “cruel treatment” as ground for divorce, there must be proof of willfulness or malice of offending spouse and that such treatment impairs or threatens impairment of complaining party's health or is such as to cause mental suffering sufficient to make condition of complaining party intolerable, and mere incompatibility of temperament or want of congeniality is insufficient. [Disheroon v. Disheroon, 211 Ark. 519, 201 S.W.2d 17 \(1947\).](#)

Indignities to warrant divorce under statute must be habitual and systematically pursued to extent rendering life of one on which they are imposed intolerable. [Scales v. Scales, 167 Ark. 298, 268 S.W. 9 \(1925\).](#)

Mere want of congeniality and constant quarrels are insufficient to constitute general indignities justifying a divorce. The fact that parties to a marriage are

not likely to live together again does not warrant granting of a divorce on that ground. [Copeland v. Copeland, 2 Ark.App. 55, 616 S.W.2d 773 \(1981\).](#)

Every minute detail of complainant's testimony need not be corroborated to support grounds of general indignities. [Moore v. Davidson, 85 Ark. App. 104 \(2004\).](#)

Indignities must be proven by evidence of specific acts and conduct. [Gunnell v. Gunnell, 30 Ark. App. 4 \(1989\).](#)

Mere incompatibility is not grounds for divorce in Arkansas. [Poore v. Poore, 76 Ark. App. 99 \(2001\).](#)

### **Pleadings**

The pleadings are not required to be verified by affidavit.

However, either party may file interrogatories to the other in regard to any matter of property involved in the action that shall be answered on oath as interrogatories in other actions and have the same effect. [Ark. Code Ann. § 9-12-304.](#)

However, a notarized affidavit of financial means is to be required by the trial court prior to a hearing to establish or modify child support. [Administrative Order No. 10, §IV.](#)

Unless the court initiates proceedings on its own motion, any proceeding to punish for contempt committed outside presence of court must be initiated by an affidavit of a person who witnessed the contempt or otherwise has knowledge of it. [Hilton Hilltop v. Riviere, 268 Ark. 532, 597 S.W.2d 596 \(1980\).](#)

### **No Judgment Pro Confesso**

The statements of the complaint for a divorce shall not be taken as true because of the defendant's failure to answer or admission of their truth on the part of the defendant. [Ark. Code Ann. § 9-12-305.](#)

### **Corroboration**

In uncontested divorce suits, corroboration of the plaintiff's grounds for divorce shall not be necessary or required.

In contested suits, corroboration of the injured party's grounds may be expressly waived in writing by the other spouse.

This section does not apply to proof as to residence, which must be corroborated, and does not apply to proof of separation and continuity of separation without cohabitation, which must be corroborated.

In uncontested cases, proof as to residence and proof of separation and continuity of separation without cohabitation may be corroborated by either oral testimony or verified affidavit of persons other than the parties.

Ark. Code Ann. § 9-12-306.

In contested cases where corroboration has not been waived but there is no intimation of collusion, the corroborating evidence may be relatively slight. [Gunnell v. Gunnell, 30 Ark. App. 4, 780 S.W.2d 597 \(1989\).](#)

“Divorce is a creature of statute and can only be granted when statutory grounds have been proved and corroborated... The Arkansas Court of Appeals has defined corroboration as testimony of some substantial fact or circumstance independent of the statement of a witness which leads an impartial and reasonable mind to believe that the material testimony of that witness is true... The purpose of requiring corroboration is to prevent parties from obtaining a divorce by collusion.” [Rachel v. Rachel, 21 Ark. App. 77, 733 S.W.2d 735, 737 \(1987\)](#)(internal citations omitted).

See [Hodges v. Hodges, 27 Ark. App. 250, 770 S.W.2d 164 \(1989\)](#)(separation was not element of divorce based upon general indignities and did not need to be corroborated where no one claimed cohabitation as defense).

See also [Araneda v. Araneda, 48 Ark. App. 236, 894 S.W.2d 146 \(1995\)](#)(evidence corroborating residence should not be speculative and vague in scope - in divorce action filed in November, evidence that husband had been a resident of Arkansas “for at least 60 days” prior to December of same year was insufficient to establish that husband had been resident of Arkansas for 60 days, as required for exercise of jurisdiction); and

[Russell v. Russell, 19 Ark. App. 119, 717 S.W.2d 820 \(1986\)](#)(there was insufficient corroboration of wife's grounds for divorce to entitle her to a divorce; only corroborating evidence of wife's grounds was her sister's testimony, which was not based on personal knowledge or observations to specific acts or language, and only substantive testimony was that wife had been unhappy and depressed but was a “much happier person” since separation of parties).

## **Collusion**

If it appears to the court that the adultery or other offense complained of has been occasioned by the collusion of the parties or done with an intent to procure a divorce, that the complainant was consenting thereto, or that both parties have been guilty of the adultery or other offense or injury complained of in the complaint, then no divorce shall be granted or decreed. Ark. Code Ann. § 9-12-308.

See [Oberstein v. Oberstein, 217 Ark. 80, 228 S.W.2d 615 \(1950\)](#)(where neither husband nor wife was ever domiciled in the state, divorce decree rendered in favor of wife acting in collusion with husband was a decree rendered without jurisdiction and was void, and it was not entitled to full faith and credit under the Federal Constitution).

## **Condonation Abolished**

The defense of condonation to any action for absolute divorce or divorce from bed and board is abolished. Abolition of condonation does not affect the defenses of collusion, consent, or equal guilt of the parties. Ark. Code Ann. § 9-12-325.

## **Maintenance and Attorney Fees**

During the pendency of an action for divorce, whether absolute or from bed and board, separate maintenance, or alimony, the court may:

Allow to the wife or to the husband maintenance;

Allow a reasonable fee for her or his attorneys; and

Allow expert witness fees; and

Enforce the payment of the allowance by orders and executions and proceedings as in cases of contempt.

In the final decree of an action for absolute divorce, the court may award the wife or husband costs of court, a reasonable attorney's fee, and expert witness fees.

The court may immediately reduce the sums so ordered to judgment and allow the party to execute upon the marital property for the payment of the allowance, except that the homestead shall not be executed upon for the payment of the sums so ordered.

The court may allow either party additional attorney's fees for the enforcement of alimony, maintenance, and support provided for in the decree.

All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum. *See also* [Ark. Code Ann. § 9-14-233](#) (concerning unpaid child support).

The court shall award a minimum of ten percent (10%) of the support amount due as attorney's fees in actions for the enforcement of payment of alimony, maintenance, and support provided for in the decree, judgment, or order.

Collection of interest and attorney's fees may be by executions, proceedings of contempt, or other remedies as may be available to collect the original support award.

[Ark. Code Ann. § 9-12-309](#).

### **Case Law**

In domestic-relations proceedings, the circuit court has the inherent power to award attorney's fees, and the decision to award fees and the amount thereof are matters within the discretion of the circuit court. [Baber v. Baber, 2011 Ark. 40, 378 S.W.3d 699](#).

*But see* [Coker v. Coker, 2012 Ark. 383](#) (trial court abused its discretion in awarding wife attorney fees in excess of the amount she sought and without an affidavit and reference to the requested expenses in the divorce decree).

In determining whether to award attorney's fees in a divorce case, the trial court must consider the relative financial abilities of the parties. [Page v. Page, 2010 Ark. App. 188, 373 S.W.3d 408](#).

### **Parenting Classes**

When the parties to a divorce action have minor children residing with one (1) or both parents, the court, prior to or after entering a decree of divorce, may require the parties to complete at least two (2) hours of classes concerning parenting issues faced by divorced parents.

Each party shall be responsible for his or her cost of attending classes or mediation. [Ark. Code Ann. § 9-12-322](#).

### **Effect of Separation Agreements**

Courts of equity may enforce the performance of written agreements between husband and wife made and entered into in contemplation of either separation or divorce and decrees or orders for alimony and maintenance by sequestration of the property of either party, or that of his or her sureties, or by such other lawful

ways and means, including equitable garnishments or contempt proceedings, as are in conformity with rules and practices of courts of equity. Ark. Code Ann. § 9-12-313.

The court is not bound by a stipulation entered into by the parties; rather, it is within the sound discretion of the court to approve, disapprove, or modify parties' marital separation agreement. Rutherford v. Rutherford, 81 Ark. App. 122, 98 S.W.3d 842 (2003).

## **Divorce Decree**

No decree of divorce shall be granted until at least thirty (30) days have elapsed from the date of the filing of the complaint. Ark. Code Ann. § 9-12-307.

The decree shall be followed by an order containing provisions for:

Alimony (Ark. Code Ann. § 9-12-312);

Child support, custody, visitation and dependent health care (Ark. Code Ann. § 9-12-312);

Division of property (Ark. Code Ann. § 9-12-315);

Dissolution of an estate by entirety (Ark. Code Ann. § 9-12-317); and

Additionally, the court may restore the wife's previous name. Ark. Code Ann. § 9-12-318.

In divorce decree dissolving a covenant marriage, the court shall enter a finding that the marriage being dissolved is a covenant marriage. Ark. Code Ann. § 9-12-324.

## **Causes of Action**

An **absolute divorce**, or divorce from the bonds of matrimony or divorce *a vinculo matrimonii*, is a statutory action based on the grounds set out in Ark. Code Ann. § 9-12-301. Property must be divided upon granting an absolute divorce. Ark. Code Ann. § 9-12-315. Corroboration is required in contested cases. Ark. Code Ann. § 9-12-306.

A **limited divorce**, or a divorce from bed and board, or a divorce *a mensa et thoro*, is a statutory action based on the same grounds as those specified for an absolute divorce. Property must be divided upon the granting of a divorce. Corroboration is required.

An independent cause of action will lie for **alimony** under the broad power of equity. Ark. Code Ann. § 9-12-302. There are no meaningful distinctions between

the action for alimony and an action for separate maintenance. In an action for separate maintenance it is unnecessary to establish statutory grounds; all that must be established are a separation and an absence of fault. In a suit for separate maintenance there is no statutory requirement for corroboration.

Property cannot be divided in a separate maintenance proceeding although possession may be awarded. Child custody actions between parents are actions derivative of divorce or separate maintenance. There is no independent cause of action by one parent against the other solely for child custody.

[Spencer v. Spencer, 275 Ark. 112, 627 S.W.2d 550 \(1982\).](#)

*See also* [Jones v. Earnest, 307 Ark. 294, 819 S.W.2d 280 \(1991\)](#)(divorce from bed and board does not constitute “final decree of divorce” so as to automatically dissolve tenancy by entirety).

### III. Separate Maintenance

#### Authority

Until [Lytle v. Lytle](#), a decree of separate maintenance did not exist as a separate cause of action unrelated to a decree from bed and board. [266 Ark. 124, 583 S.W.2d 1 \(1979\)](#).

There is no statutory authority. Separate maintenance is maintained under the broad powers of equity. [Kesterson v. Kesterson, 21 Ark. App. 287, 731 S.W.2d 786 \(1987\)](#).

#### Grounds

For separate maintenance, a spouse must prove only separation, absence of fault on his or her part, and financial need. The spouse is not required to prove any other grounds as listed in Ark. Code Ann. § 9-12-301.

A wife may obtain separate maintenance without having grounds sufficient for divorce. [Hill v. Rowles, 223 Ark. 115, 264 S.W.2d 638 \(1954\)](#).

Grounds and corroboration of grounds are unnecessary in an action for separate maintenance; all that must be established are a separation and an absence of fault. [Kesterson v. Kesterson, 21 Ark. App. 287, 731 S.W.2d 786 \(1987\)](#).

#### Scope

Property cannot be divided in a separate maintenance proceeding although *possession* may be awarded. [Coleman v. Coleman, 7 Ark. App. 280, 648 S.W.2d 75 \(1983\)](#).

Child custody actions between parents are actions derivative of divorce or separate maintenance or domestic abuse actions. [Kesterson v. Kesterson, 21 Ark. App. 287, 731 S.W.2d 786 \(1987\)](#).

Trial court did not err in granting an absolute divorce upon wife's filing a Complaint for Separate Maintenance only where 1) neither party raised the issue, 2) both parties agreed to a divorce, 3) both parties treated the Complaint for separate maintenance as a complaint for divorce, 4) both parties stipulated to an equal division of marital property, and husband waived corroboration of grounds for divorce, and 5) both parties consented to the hearing being one for absolute divorce. [Hiatt v. Hiatt, 86 Ark. App. 31, 158 S.W.3d 720 \(2004\)](#).

## IV. Division of Property & Debt

### Equitable Distribution

According to [Ark. Code Ann. § 9-12-315](#), at the time a divorce decree is entered, all marital property shall be distributed one-half ( ½ ) to each party unless the court finds such a division to be inequitable.

*See* [Coombe v. Coombe, 89 Ark. App. 114, 201 S.W.3d 15 \(2005\)](#)(statute governing division of property after divorce does not compel mathematical precision in the distribution of property, but simply requires that marital property be distributed equitably; statute vests the trial judge with a measure of flexibility and broad power in apportioning property, non-marital as well as marital, in order to achieve an equitable distribution, and the critical inquiry is how the total assets are divided.)

The trial court must clearly articulate whether it is making an equal or unequal distribution of assets, and if unequal, the reasons why such distribution is equitable. [Copeland v. Copeland, 84 Ark. App. 303, 139 S.W.3d 145 \(2003\)](#).

*See also* [Keathley v. Keathley, 76 Ark. App. 150, 61 S.W.3d 219 \(2001\)](#)(trial court properly considered fault--fraudulent conduct--in unequal division).

### Factors

In that event the court shall make some other division that the court deems equitable taking into consideration:

- (i) The length of the marriage;
- (ii) Age, health, and station in life of the parties;
- (iii) Occupation of the parties;
- (iv) Amount and sources of income;
- (v) Vocational skills;
- (vi) Employability;
- (vii) Estate, liabilities, and needs of each party and opportunity of each for further acquisition of capital assets and income;
- (viii) Contribution of each party in acquisition, preservation, or appreciation of marital property, including services as a homemaker; and

(ix) The federal income tax consequences of the court's division of property.

Ark. Code Ann. § 9-12-315.

When property is divided pursuant to the foregoing considerations the court must state its basis and reasons for not dividing the marital property equally between the parties, and the basis and reasons should be recited in the order entered in the matter;

All other property shall be returned to the party who owned it prior to the marriage unless the court shall make some other division that the court deems equitable taking into consideration those factors enumerated above, in which event the court must state in writing its basis and reasons for not returning the property to the party who owned it at the time of the marriage.

Ark. Code Ann. § 9-12-315.

### **Case Law**

While the court in a division of marital property case must consider the statutory factors and state its reasons for dividing marital property unequally, it is not required to list each factor in its order or to weigh all factors equally; further, the specific enumeration of the factors within the statute does not preclude a circuit court from considering other relevant factors, where exclusion of other factors would lead to absurd results or deny the intent of the legislature to allow for the equitable division of property. [Grantham v. Lucas, 2011 Ark. App. 491, 385 S.W.3d 337.](#)

Equitable considerations are always proper factors for the chancellor to consider when dividing marital property unequally upon divorce. [Keathley v. Keathley, 76 Ark. App. 150, 61 S.W.3d 219 \(2001\).](#)

The court should only consider potential taxes in valuing marital property in limited circumstances, including only that tax liability can be reasonably predicted. [Grace v. Grace, 326 Ark. 312, 930 S.W.2d 362 \(1996\).](#)

In determining at divorce the rights of a husband or wife to a spouse's partnership interest, the court cannot make specific awards of partnership assets but, rather, the court must first determine the value of the spouse's interest in the partnership, treating the accounts receivable as assets having a provable fair net present value, and then award husband or wife a monetary decree equal to one-half that amount, the same to be enforced if necessary by a charging order on the partnership interest. [Warren v. Warren, 12 Ark. App. 260, 675 S.W.2d 371 \(1984\).](#)

Every such final order or judgment shall designate the specific real and personal property to which each party is entitled.

When it appears from the evidence in the case to the satisfaction of the court that the real estate is not susceptible of the division without great prejudice to the parties interested, the court shall order a sale of the real estate. The sale shall be made by a commissioner to be appointed by the court for that purpose at public auction to the highest bidder upon the terms and conditions and at the time and place fixed by the court. The proceeds of every such sale, after deducting the cost and expenses of the sale, including the fee allowed the commissioner by the court for his or her services, shall be paid into the court and by the court divided among the parties in proportion to their respective rights in the premises.

The proceedings for enforcing these orders may be by petition of either party specifying the property the other has failed to restore or deliver, upon which the court may proceed to hear and determine the same in a summary manner after ten (10) days' notice to the opposite party. Such order, judgment, or decree shall be a bar to all claims of dower or curtesy in and to any of the lands or personalty then owned or thereafter acquired by either party;

When stocks, bonds, or other securities issued by a corporation, association, or government entity make up part of the marital property, the court shall designate in its final order or judgment the specific property in securities to which each party is entitled, or after determining the fair market value of the securities, may order and adjudge that the securities be distributed to one (1) party on condition that one-half (  $\frac{1}{2}$  ) the fair market value of the securities in money or other property be set aside and distributed to the other party in lieu of division and distribution of the securities.

Ark. Code Ann. § 9-12-315.

For the purpose of this section, “**marital property**” means all property acquired by either spouse subsequent to the marriage except:

- (1) Property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement;
- (2) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(3) Property acquired by a spouse after a decree of divorce from bed and board;

(4) Property excluded by valid agreement of the parties;

(5) The increase in value of property acquired prior to marriage or by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor;

(6) Benefits received or to be received from a workers' compensation claim, personal injury claim, or social security claim when those benefits are for any degree of permanent disability or future medical expenses; and

(7) Income from property owned prior to the marriage or from property acquired by gift or by reason of the death of another, including, but not limited to, life insurance proceeds, payments made under a deferred compensation plan, or an individual retirement account, and property acquired by right of survivorship, by a trust distribution, by bequest or inheritance, or by a payable on death or a transfer on death arrangement, or in exchange therefor.

Ark. Code Ann. § 9-12-315.

### **Case Law**

The fact that marital funds were used to pay off the mortgage loan on house that wife owned prior to the marriage did not automatically convert the house into marital property, for purposes of dividing property in divorce action. [Horton v. Horton, 2011 Ark. App. 361, 384 S.W.3d 61.](#)

Option to purchase leased real property acquired during marriage was marital asset subject to equitable distribution in divorce. [Dew v. Dew, 2012 Ark. App. 122, 390 S.W.3d 764.](#)

Husband's interest in limited partnership, which he received by inheritance, was nonmarital property. [Brown v. Brown, 373 Ark. 333, 284 S.W.3d 17 \(2008\).](#)

Once property, whether personal or real, is placed in the names of persons who are husband and wife without specifying the manner in which they take, there is a presumption that they own the property as tenants by the

entirety, and clear and convincing evidence is required to overcome that presumption. [Powell v. Powell, 82 Ark. App. 17, 110 S.W.3d 290 \(2003\)](#).

The court is not required to address the division of property at the time a divorce decree is entered if either party is involved in a bankruptcy proceeding. [Ark. Code Ann. § 9-12-315](#).

### **Debt Division**

[Ark. Code Ann. § 9-12-315](#), which mandates that marital property be divided equally, unless the court finds such a division inequitable, does not apply to the division of marital debts, and hence, there is no presumption that an equal division of debts must occur. The court's authority to consider the allocation of debt to a particular party in a divorce action or in a particular manner is a question of fact and will not be reversed on appeal unless clearly erroneous. It is not error to determine allocation of debt based on the parties' relative ability to pay; and a spouse's lifestyle is a valid consideration as well. [Williams v. Williams, 82 Ark. App 294, S.W.3d 629 \(2003\)](#).

The allocation of debt is an essential item to be resolved in a divorce dispute. The allocation of marital debt must be considered in the context of the distribution of all the parties' property. In determining division of marital debt, the key fact is that the division of debt must be equitable. [Overstreet v. Overstreet, 2013 Ark. App. 710](#) (The divorce court's failure to address and allocate a significant amount of debt required a remand for the court to address those debts, to do so in the context of an overall division of debt if necessary in order for the overall division of debt to be equitable).

## V. Temporary Orders

### Authority

During the pendency of an action for divorce, whether absolute or from bed and board, separate maintenance, or alimony, the court may allow to the wife or to the husband maintenance, allow a reasonable fee for her or his attorneys, and allow expert witness fees. The court may enforce the payment of the allowance by orders and executions and proceedings as in cases of contempt. Ark. Code Ann. § 9-12-309.

*See [Scroggins v. Scroggins, 302 Ark. 362, 790 S.W.2d 157 \(1990\)](#)*(court has authority to award attorney fees during pendency of an action under § 9-12-309(a) and to award attorney fees for enforcement of orders under § 9-12-309(b)).

A preliminary injunction or a temporary restraining order (TRO) may be granted without written or oral notice to the adverse party or his attorney where it appears by affidavit or verified complaint that irreparable harm or damage will or might result to the applicant if such preliminary injunction or TRO is not granted. [Ark. R. Civ. P. 65.](#)

### Notice

Except in cases involving irreparable harm or damage absent a preliminary injunction or TRO granted without notice, reasonable notice must be given to the adverse parties or their attorney of the application for a preliminary injunction or a TRO, and an opportunity for hearing must be given. [Ark. R. Civ. P. 65.](#)

### Hearing

When a preliminary injunction or TRO has been issued without notice against a party, upon application by that party to the Court, the Court shall hold a hearing as soon as possible to determine whether the preliminary injunction or TRO should be dissolved. [Ark. R. Civ. P. 65.](#)

### Duration

A preliminary injunction or TRO shall remain in effect until a final judgment or decree is entered, unless it has been dissolved earlier. [Bone v. Bone, 10 Ark. App. 347, 663 S.W.2d 945 \(1984\).](#)

Upon motion and showing good cause, the preliminary injunction or TRO may be made permanent upon final hearing of the cause. [Ark. R. Civ. P. 65.](#)

## **Temporary Support**

For the purpose of calculating temporary support only, a dependent custodian may be awarded 20% of the net take-home pay for his or her support, in addition to any child support awarded.

For final hearings, the Court should consider all relevant factors, including the chart, in determining the amount of any spousal support to be paid.

[Administrative Order No. 10 § III\(e\).](#)

## **Temporary Orders of Protection**

When a petition alleges an immediate and present danger of domestic abuse or that the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and present danger of domestic abuse, the court shall grant a temporary order of protection pending a full hearing if the court finds sufficient evidence to support the petition. [Ark. Code Ann. § 9-15-206.](#)

An ex parte temporary order of protection is effective until the date of the hearing. [Ark. Code Ann. § 9-15-206.](#)

The court shall order the hearing to be held on the petition for the order of protection not later than thirty (30) days from the date on which the petition is filed or at the next court date, whichever is later. [Ark. Code Ann. § 9-15-204.](#)

A denial of an ex parte temporary order of relief does not deny the petitioner the right to a full hearing on the merits. [Ark. Code Ann. § 9-15-204.](#)

A copy of ex parte temporary order, if issued, shall be served, with copy of the petition, with notice of the date and place set for final hearing, upon the respondent:

at least 5 days before the date of the hearing;

in accordance with applicable Rules of Civil Procedure governing service.

If service cannot be made upon the respondent, the court may set a new date for the hearing. [Ark. Code Ann. § 9-15-204.](#)

An ex parte temporary order of protection may include any or all orders provided for in Ark. Code. Ann. § 9-15-203 (Form of petition) and § 9-15-205 (Relief generally). [Ark. Code Ann. § 9-15-206.](#)

*See the Appendix for a uniform Ex Parte Order of Protection.*

## VI. Annulment

### Venue

The action shall be by equitable proceedings in the county where the complainant or complainants reside.

The process may be directed in the first instance to any county in the state where the defendant may then reside or be found.

Ark. Code Ann. § 9-12-202.

### Conflict of Laws

The validity of a marriage is determined by the law of the state where the marriage was contracted. [Feigenbaum v. Feigenbaum, 210 Ark. 186, 194 S.W.2d 1012 \(1946\).](#)

### Grounds for Annulment

When either of the parties to a marriage is incapable from want of age or understanding of consenting to any marriage, or is incapable of entering into the marriage state due to physical causes, or when the consent of either party shall have been obtained by force or fraud, the marriage shall be void from the time its nullity shall be declared by a court of competent jurisdiction. Ark. Code Ann. § 9-12-201.

### Case Law

A state of marriage can be dissolved, by annulment, only during the lives of the parties to the marriage. [Stuhr v. Oliver, 2010 Ark. 189, 363 S.W.3d 316.](#)

In Arkansas, a marriage may be annulled only for causes set forth by statute. [Stuhr v. Oliver, 2010 Ark. 189, 363 S.W.3d 316.](#)

Where girl and boy, both residents of Arkansas, were less than minimum age required by Arkansas marriage statute and went to Mississippi which allowed such marriages and were married with their parents' consent and returned to Arkansas and lived there as man and wife, marriage was not void. [State v. Graves, 228 Ark. 378, 307 S.W.2d 545 \(1957\).](#)

A marriage induced by misrepresentation as to paternity of unborn child may be annulled, where parties have been having sexual intercourse before marriage and husband was induced to believe by false representations that he was father of child. [Shatford v. Shatford, 214 Ark. 612, 217 S.W.2d 917 \(1949\).](#)

Under the statute providing that in all cases where the male is under 21 years or the female is under 18 years and consent of parent or guardian is not given to a marriage, the marriage may be set aside and annulled upon application of parent or parents, the trial court has some discretion in the matter and it is not mandatory for the judge or court to grant an annulment upon application.

[Mitchell v. Mitchell, 219 Ark. 69, 239 S.W.2d 748 \(1951\).](#)

Generally, a party lacks the mental capacity to enter into a contract for marriage if that party is incapable of understanding the nature, effect, and consequences of the marriage. The mental capacity necessary to enter into marriage does not require the ability to exercise clear reason, discernment, and sound judgment.

[Porter v. Arkansas Dep't of Health & Human Servs., 374 Ark. 177, 286 S.W.3d 686 \(2008\).](#)

To annul a marriage, fraud must be established by clear and convincing evidence. [Worden v. Worden, 231 Ark. 858, 333 S.W.2d 494 \(1960\).](#)

Failure to file a marriage license within 60 days, as required by Ark. Code Ann. §9-11-218, does not render a marriage void. [Fryar v. Roberts, 346 Ark. 432, 57 S.W.3d 727 \(2001\).](#)

### **Child Custody & Support in Connection with Annulment**

A court of equity entering an annulment decree has authority to award custody of children and provide for their support. *See* [Ark. Code Ann. §9-12-312.](#)

*See also* [Kibler v. Kibler, 180 Ark. 1152, 24 S.W.2d 867 \(1930\)](#)(minor's right to annul marriage does not enable him to rid himself of duty to child born of such marriage).

### **Marriage Before Entry of Divorce**

All marriages declared void because the parties had entered into an otherwise valid marriage after the rendition of a valid decree of divorce of either of the parties but before the entry for record of the decree are declared valid for all purposes.

All children born to any marriage declared valid by this section are deemed to be the legitimate children of both parents for all purposes.

[Ark. Code Ann. § 9-11-706.](#)

The legislative intent was to validate marriages deemed void as a result of [Standridge v. Standridge, 298 Ark. 494, 769 S.W.2d 12 \(1989\).](#)

## VII. Alimony

### Authority

When a decree is entered, the court shall make an order concerning the care of the children, if there are any, and an order concerning alimony, if applicable, as are reasonable from the circumstances of the parties and the nature of the case. Ark. Code Ann. § 9-12-312.

See Hatcher v. Hatcher, 265 Ark. 681 (1979)(where gender-based statute allowing alimony to a wife, but not a husband, was declared unconstitutional).

The court's jurisdiction to grant a divorce is distinct from its jurisdiction to award alimony and child support. Rogers v. Rogers, 80 Ark. App. 430, 97 S.W.3d 429 (2003)(trial court has power and duty to enter orders regarding support of individuals regardless of its power to terminate the marriage).

### Maintenance & Attorney's Fees

The court may grant either party maintenance and reasonable attorney fees during the pendency of an action for absolute divorce, bed and board divorce, separate maintenance, or alimony, or during the enforcement of alimony, maintenance, or support action. Ark. Code Ann. § 9-12-309.

The duty of support is not the sole obligation of the husband but is allocated between the spouses according to their needs and ability to contribute. Hatcher v. Hatcher, 265 Ark. 681, 580 S.W.2d 475 (1979).

### Factors in Awarding Alimony

An award of alimony lies within the discretion of the chancellor and will not be reversed absent an abuse of that discretion. Myrick v. Myrick, 339 Ark. 1, 2 S.W.3d 60 (1999).

The purpose of alimony is to rectify the frequent economic imbalance in the earning power and standard of living of the divorced parties in light of the particular facts of each case. Hiatt v. Hiatt, 86 Ark. App. 31, 158 S.W.3d 720 (2004).

The primary factors to be considered in awarding alimony are the need of one spouse and the other spouse's ability to pay. Kuchmas v. Kuchmas, 368 Ark. 43, 49, 243 S.W.3d 270, 273 (2006).

Secondary factors to be considered include the following: the financial circumstances of both parties, the financial needs and obligations of both the couple's past standard of living, the value of jointly owned property, the amount and nature of the income, both current and anticipated, of both husband and wife, the extent and nature of the resources and assets of each of the parties, the amount of income of each that is "spendable," the amounts which, after entry of the decree, will be available to each of the parties for the payment of living expenses, the earning ability and capacity of both husband and wife, property awarded or given to one of the parties, either by the court or the other party, the disposition made of the homestead or jointly owned property, the condition of health and medical needs of both husband and wife, the relative fault of the parties and their conduct, both before and after separation, in relation to the marital status, to each other and to the property of one or the other or both, the duration of the marriage and even the amount of child support. This list is not exhaustive, but rather illustrative of the types of factors that the court should consider. [Boyles v. Boyles, 268 Ark. 120, 594 S.W.2d 17 \(1980\).](#)

Fault is not a factor in the award of alimony unless it meaningfully relates to need or ability to pay. [McKay v. McKay, 340 Ark. 171, 8 S.W.3d 525 \(2000\).](#)

In awarding temporary spousal support only, the court may award 20% of net take-home pay plus child support. For a final hearing, the court should consider all relevant factors, including the Child Support Chart, to determine the amount of any spousal support to be paid. [Supreme Court Administrative Order No. 10.](#)

*See also:*

[Hiatt v. Hiatt, 86 Ark. App. 31, 158 S.W.3d 720 \(2004\)](#)( trial court considered factors and properly found that ex-wife entitled to lifetime award of alimony);

[Holaway v. Holaway, 70 Ark. App. 240, 16 S.W.3d 302 \(2000\)](#)(while the court may consider disparate levels of parties' earning abilities and sources of income, court cannot set alimony at a rate and for a time based upon the court's inability by law to divide husband's non-vested military retirement benefits);

[Bolan v. Bolan, 32 Ark. App. 65, 796 S.W.2d 358 \(1990\)](#)(chancellor did not abuse discretion in refusing to award alimony after considering factors; found that marriage was of short duration, plaintiff was relatively young and had a college degree and teaching certificate and no health problems);

[Jones v. Jones, 22 Ark. App. 267, 739 S.W.2d 171 \(1987\)](#)(no abuse of discretion where court refused to award alimony; appellant was a licensed

real estate agent and received a substantial award of property in the decree);

[Mearns v. Mearns, 58 Ark. App. 42, 946 S.W.2d 188 \(1997\)](#)(husband was entitled to alimony where he was unemployed, 57 years old, in declining health, without college degree or professional license, and without independent financial means, while wife had secure job paying more than \$40,000 per year).

### **Rehabilitative Alimony**

Alimony may be awarded under proper circumstances concerning rehabilitation to either party in fixed installments for a specified period of time so that the payments qualify as periodic payments within the meaning of the Internal Revenue Code.

When a request for rehabilitative alimony is made to the court, the payor may request or the court may require the recipient to provide a plan of rehabilitation for the court to consider in determining (A) whether or not the plan is feasible; and (B) the amount and duration of the award.

If the recipient fails to meet the requirements of the rehabilitative plan, the payor may petition the court for a review to determine if rehabilitative alimony shall continue or be modified.

Ark. Code Ann. § 9-12-312.

“Rehabilitative alimony” is alimony payable for a short, but specific and terminable period of time, which will cease when recipient is, in exercise of reasonable efforts, in a position of self-support. [Bolan v. Bolan, 32 Ark. App. 65, 796 S.W.2d 358 \(1990\).](#)

*See also* [Page v. Page, 2010 Ark. App. 188, 373 S.W.3d 408](#)(rehabilitative alimony reasonable where although marriage was short, the award was modest and for a limited time); [Myrick v. Myrick, 339 Ark. 1, 2 S.W.3d 60 \(1999\)](#)(rehabilitative alimony for 5 years was reasonable, given the circumstances).

### **Agreement of the Parties**

The trial court is not bound by a property settlement agreement regarding alimony because the court has the authority to make an initial award of alimony when the divorce is entered. [Womack v. Womack, 16 Ark. App. 108, 697 S.W.2d 930 \(1985\).](#)

See [Hapney v. Hapney, 37 Ark. App. 100, 824 S.W.2d 408 \(1992\)](#)(when the record reflected that the parties entered into an agreement concerning the division of marital property which was incorporated into the divorce decree, and although the payments were less than one-half the military retirement, it was clear that the lesser amount was accepted in consideration for the parties' overall property settlement).

### **Enforcement of Alimony**

Income of spendthrift trust in which trustee had no discretion to withhold distributions of trust income to beneficiaries could be attached in hands of trustee to satisfy judgment for arrearages in alimony through equitable garnishment or other available means. [Council v. Owens, 28 Ark. App. 49, 770 S.W.2d 193 \(1989\)](#).

Bankruptcy does not discharge obligation to pay alimony. [Barker v. Barker, 271 Ark. 956, 611 S.W.2d 787 \(Ct. App. 1981\)](#); [11 U.S.C. §523\(a\)\(5\)](#).

### **Modification of Alimony**

The court, upon application of either party, may make such alterations from time to time, as to the allowance of alimony and maintenance as may be proper. [Ark. Code Ann. § 9-12-314](#).

See [Holaway v. Holaway, 70 Ark. App. 240, 16 S.W.3d 302 \(2000\)](#)(divorce decree ordering that alimony would terminate only upon the death of either party violated statutory and case authority; an award of alimony was always subject to modification, upon application of either party).

Modification of an award of alimony must be based on a change in the circumstances of the parties.

The burden of showing such a change in circumstances is always upon the party seeking the change in the amount of alimony.

The primary factors to be considered in making or changing an award of alimony are the need of one spouse and the ability of the other spouse to pay.

A finding of changed circumstances warranting the termination of an alimony obligation is a finding of fact that will not be reversed unless clearly erroneous or clearly against the preponderance of the evidence.

[Hass v. Hass, 80 Ark. App. 408, 97 S.W.3d 424 \(2003\)](#).

If a spouse shows a need for alimony, and the other spouse is shown to have the ability or earning capacity to pay alimony except for a circumstance at the time

the parties' decree is entered, the chancellor may reserve jurisdiction, without assigning a nominal amount. This procedure would permit the spouse requesting alimony to petition for its payment after showing a change in circumstance. [Mulling v. Mulling, 323 Ark. 88 \(1996\)](#), [overruling Ford v. Ford, 272 Ark. 506 \(1981\)](#).

When a decree of alimony is based on an independent contract between the parties which is incorporated into the decree and approved by the Court as an independent contract, it does not merge into the court's award and is not subject to modification except upon consent of the parties. [Rockefeller v. Rockefeller, 335 Ark. 145, 980 S.W.2d 255 \(1998\)](#); [Kersh v. Kersh, 254 Ark. 969, 497 S.W.2d 272 \(1973\)](#); [Kennedy v. Kennedy, 53 Ark. App. 22, 918 S.W.2d 197 \(1996\)](#).

See [Grady v. Grady, 295 Ark. 94, 747 S.W.2d 77 \(1988\)](#)(court may consider fact that supporting spouse voluntarily changes employment so as to lessen earning capacity and, in turn, ability to pay alimony and child support, and may in proper circumstances impute income to spouse according to what could be earned by use of his or her best efforts to gain employment suitable to his or her capabilities).

### **Termination of Alimony**

Unless otherwise ordered by the court or agreed to by the parties, the liability for alimony shall automatically cease upon the earlier of:

- (A) The date of the remarriage of the person who was awarded the alimony;
- (B) The establishment of a relationship that produces a child or children and results in a court order directing another person to pay support to the recipient of alimony, which circumstances shall be considered the equivalent of remarriage;
- (C) The establishment of a relationship that produces a child or children and results in a court order directing the recipient of alimony to provide support of another person who is not a descendant by birth or adoption of the payor of the alimony, which circumstances shall be considered the equivalent of remarriage;
- (D) The living full time with another person in an intimate, cohabitating relationship;
- (E) The death of either party; or
- (F) Any other contingencies as set forth in the order awarding alimony.

Ark. Code Ann. § 9-12-312.

See [Estate of Carpenter v. Carpenter, 93 Ark. App. 441, 220 S.W.3d 263 \(2005\)](#)(husband's obligation to pay wife \$500 per week in alimony for period of five years terminated upon husband's death, but estate was liable for any alimony arrearages accrued at time of death).

See also [Rockefeller v. Rockefeller, 335 Ark. 145, 980 S.W.2d 255 \(1998\)](#)(former husband's obligation to pay alimony arose from spouses' agreement incorporated into divorce decree, rather than from order of divorce court, and thus could not be terminated on theory that former wife had entered de facto marriage with another man).

## VIII. Child Support

### Jurisdiction

The circuit courts shall have exclusive jurisdiction in all civil cases and matters relating to the support of a minor child or support owed to a person eighteen (18) or older that accrued during that person's minority. Ark. Code Ann. § 9-14-105.

Any person who establishes or acquires a marital domicile in this state, who contracts marriage in this state, or who becomes a resident of this state while legally married, and subsequently absents himself or herself from the state leaving a dependent natural or adopted child in this state and fails to support the child as required by the laws of this state, is deemed to have consented and submitted to the jurisdiction of the courts of this state as to any cause of action brought against that person for the support and maintenance of the child. Ark. Code Ann. § 9-14-101.

See [Bunker v. Bunker, 261 Ark. 851, 552 S.W.2d 641 \(1977\)](#) (court had personal jurisdiction over a husband who left the state and failed to support his child when Arkansas was the last matrimonial domicile).

In an action to establish paternity or to establish or enforce a child support obligation in regard to a child who is the subject of the action, a person is deemed to have consented and submitted to the jurisdiction of the courts of this state if any of the following circumstances exists:

- (1) The person engaged in sexual intercourse with the child's mother in this state during the period of the child's conception or the affected child was conceived in this state;
- (2) The person resides or has resided with the child in this state.

Ark. Code Ann. § 9-14-101.

Service of process upon any person who is deemed by this section to have consented and submitted to the jurisdiction of the courts of this state may be made pursuant to Rule 4 of the Arkansas Rules of Civil Procedure. Ark. Code Ann. § 9-14-101.

A court's jurisdiction to grant a divorce is distinct from its jurisdiction to award child support and alimony. [Rogers v. Rogers, 80 Ark. App. 430, 97 S.W.3d 429 \(2003\).](#)

Generally, a trial court has continuing jurisdiction over support orders. [Rogers v. Rogers, 80 Ark. App. 430, 97 S.W.3d 429 \(2003\).](#)

## **Transfer of Cases Between Local Jurisdictions**

The court where the final adjudication of child support is rendered shall retain jurisdiction of all matters following the entry of the decree.

If more than six (6) months subsequent to the final adjudication, however, each of the parties to the action has established a residence in a county of another judicial district within the state, one (1) or both of the parties may petition the court that entered the final adjudication to request that the case be transferred to another county.

The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

If a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the physical custodian of the child.

At the request of the person seeking to transfer the case to another judicial district, upon proper motion and affidavit, notice and payment of a refiling fee, the court shall enter an order transferring the case and the refiling fee and charging the clerk of the court to transmit forthwith certified copies of all records pertaining to the case to the clerk of court in the judicial district where the case is being transferred.

An affidavit shall accompany the motion to transfer and recite that the parent or parents, the physical custodian, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as appropriate, have been notified in writing that a request has been made to transfer the case to another judicial district.

Notification pursuant to this section must inform each recipient that any objection must be filed within twenty (20) days from the date of receipt of the affidavit and motion for transfer.

The circuit clerk receiving a transferred case shall within fourteen (14) days of receipt set up a case file, docket the case, and afford the case full faith and credit as if the case had originated in that judicial district.

Ark. Code Ann. § 9-14-108.

## **Petition for Order of Support**

The following may file a petition to require the noncustodial parent or parents of a minor child to provide support for the minor child:

- (1) Any parent having physical custody of a minor child;
- (2) Any other person or agency to whom physical custody of a minor child has been given or relinquished;
- (3) A minor child by and through his or her guardian or next friend; or
- (4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration when the parent or person to whom physical custody has been relinquished or awarded is receiving assistance in the form of Aid to Families with Dependent Children, Medicaid, Title IV-E of the Social Security Act--Foster Care,1 or has contracted with the department for the collection of support.

Ark. Code Ann. § 9-14-105.

CSEU did not have standing to challenge order that approved private child support agreement between father and mother. [Maxwell v. State Child Support Enforcement Unit, 70 Ark. App. 249, 16 S.W.3d 293 \(2000\).](#)

In order for office to be real party in interest with standing to bring paternity action, based on contract and assignment for child support services, there is no requirement that public funds have been expended on behalf of child. [Office of Child Support Enforcement v. Harnage, 322 Ark. 461, 910 S.W.2d 207 \(1995\).](#)

Attorney employed by OCSE represents the interests of that office and does not represent the assignor. [Ark. Code Ann. § 9-14-210.](#)

Attorney representing Child Support Enforcement Unit, to whom former wife had assigned her child-support rights, was statutorily prohibited from representing wife and, thus, service of counterpetition on that attorney by former husband in response to contempt petition was not valid service as to wife and, consequently, order granting counterpetition and changing custody of children to husband was void ab initio. [Vanzant v. Purvis, 54 Ark. App. 384, 927 S.W.2d 339 \(1996\).](#)

Any person eighteen (18) years of age or above to whom support was owed during his or her minority may file a petition for a judgment against the nonsupporting parent or parents. Upon hearing, a judgment may be entered upon proof by a preponderance of the evidence for the amount of support owed and unpaid. Such a person has 5 years from his eighteenth birthday to file a petition for owed support. [Ark. Code Ann. § 9-14-105.](#)

Child was entitled to bring action for, and receive, accrued child support from his father from date on which he left his mother's residence and moved in with his maternal grandparents until his eighteenth birthday, even though father was not then under court order to pay support. [Fonken v. Fonken, 334 Ark. 637, 976 S.W.2d 952 \(1998\)](#).

Parties to a case must provide the clerk of the appropriate circuit court with the following information: names, residential and mailing addresses, social security numbers, telephone numbers, drivers' license numbers, and names and addresses of employers, where applicable.

This information shall be filed on a form provided by the AOC and maintained separately by the clerk from the file of the case. The information is considered confidential and is open to inspection only by OCSE, attorneys in the case and pro se parties, and anyone authorized access by the circuit court in which the form is filed.

[Ark. Code Ann. § 9-14-205](#).

“Child support order” or “support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or of the parent with whom the child is living, that provides for monetary support, health care, including health insurance or cash medical support, arrearages, or reimbursement, and that may include related costs and fees, interest and penalties, income withholding, attorney's fees, and other relief. [Ark. Code Ann. § 9-14-201](#).

## **Child Support Guidelines**

### **In General**

In determining a reasonable amount of child support, initially or upon review to be paid by the noncustodial parent, the court shall refer to [the most recent revision of the family support chart](#).

It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded.

Only upon a written finding or specific finding on the record that the application of the child support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

[Ark. Code Ann. § 9-12-312](#); [Ark. Code Ann. § 9-14-106](#); [Administrative Order No. 10](#).

Reference to the family-support chart is mandatory. [Allen v. Allen, 82 Ark. App. 42, 110 S.W.3d 772, \(2003\)](#).

There is a rebuttable presumption that the amount contained in the family support chart is the proper amount of child support to be awarded. In a child-support determination, the amount of child support lies within the sound discretion of the trial court, and the lower court's findings will not be reversed absent an abuse of discretion. [Taylor v. Taylor, 369 Ark. 31, 250 S.W.3d 232 \(2007\)](#).

The court can grant more or less support if the evidence shows that the needs of the dependents require a level of support different from the amount set by the chart. [Williams v. Williams, 82 Ark. App. 294, 108 S.W.3d 629 \(2003\)](#).

[Administrative Order No. 10](#) requires the court to consider the deviation factors set out in Section V. of Administrative Order No. 10 and include in its findings a justification of why the order varies from the guidelines. [Alfano v. Alfano, 77 Ark. App. 62, 72 S.W.3d 104 \(2002\)](#).

### **Definition of Income**

Income means any form of payment, periodic or otherwise, due to an individual, regardless of source, including wages, salaries, commissions, bonuses, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest less proper deductions for:

1. Federal and state income tax;
2. Withholding for Social Security (FICA), Medicare, and railroad retirement;
3. Medical insurance paid for dependent children; and
4. Presently paid support for other dependents by court order, regardless of the date of entry of the order or orders.

[Administrative Order No. 10 § III](#).

Cases reflect that the definition of “income” is “intentionally broad and designed to encompass the widest range of sources consistent with this State’s policy to interpret ‘income’ broadly for the benefit of the child.” [Evans v. Tillery, 361 Ark. 63, 204 S.W.3d 547 \(2005\)](#).

All sources of a payor's income are to be included in arriving at the sum of money upon which the amount of child support is to be derived from the Family Support Chart. [Office of Child Support Enforcement v. Longnecker](#), 67 Ark. App. 215, 997 S.W.2d 445 (1999)(court abused its discretion in excluding some of ex-husband's income in determining appropriate amount of child support).

*But see* [Ford v. Ford](#), 347 Ark. 485, 65 S.W.3d 432 (2002)(an inheritance is not income under the Child Support Guidelines; however, interest or income derived from an inheritance is income); [McWhorter v. McWhorter](#), 346 Ark. 475, 58 S.W.3d 840 (2001)(gambling winnings are “income” for child support purposes, but gambling losses must be subtracted for determining the amount); and [Davis v. Office of Child Support Enforcement](#), 341 Ark. 349, 20 S.W.3d 273 (2000)(federal SSI benefits are not income under the Child Support Guidelines).

#### **Income for nonsalaried payors:**

For Social Security Disability recipients, the court should consider the amount of any separate awards made to the disability recipient's spouse and children on account of the payor's disability. SSI benefits shall not be considered as income.

For Veteran's Administration disability recipients, Workers' Compensation disability recipients, and Unemployment Compensation recipients, the court shall consider those benefits as income.

For military personnel, see the latest military pay allocation chart and benefits. Basic Allowance for Housing (BAH) and Basic Allowance for Subsistence (BAS) should be added to other income to reach total income. Military personnel are entitled to draw BAH at a "with dependents" rate if they are providing support pursuant to a court order. However, there may be circumstances in which the payor is unable to draw BAH or may draw BAH only at the "without dependents" rate. Use the BAH for which the payor is actually eligible. In some areas, military personnel receive a variable allowance. It may not be appropriate to include this allowance in calculation of income since it is awarded to offset living expenses which exceed those normally incurred.

For commission workers, support shall be calculated based on minimum draw plus additional commissions.

For self-employed payors, support shall be calculated based on the last two years' federal and state income tax returns and the quarterly

estimates for the current year. A self-employed payor's income should include contributions made to retirement plans, alimony paid, and self-employed health insurance paid; this figure appears on line 22 of the current federal income tax form. Depreciation should be allowed as a deduction only to the extent that it reflects actual decrease in value of an asset. Also, the court shall consider the amount the payor is capable of earning or a net worth approach based on property, life-style, etc. [Administrative Order No. 10 § III.](#)

For “clarification of the procedure for determining child support by using the net-worth method,” see [Tucker v. Office of Child Support Enforcement, 368 Ark. 481, 247 S.W.3d 485 \(2007\).](#)

### **Imputed income:**

If a payor is unemployed or working below full earning capacity, the court may consider the reasons therefor. If earnings are reduced as a matter of choice and not for reasonable cause, the court may attribute income to a payor up to his or her earning capacity, including consideration of the payor's life-style. Income of at least minimum wage shall be attributed to a payor ordered to pay child support. [Administrative Order No. 10 § III.](#)

See [Allen v. Allen, 82 Ark. App. 42, 110 S.W.3d 772 \(2003\)](#)(incarceration does not relieve one of a child-support obligation; income may be imputed, and minimum from the chart has been upheld when there was no evidence of income or whether there was any income, at all).

### **Using the Guidelines**

There are four charts, one weekly, one biweekly, one semimonthly, and one monthly. All are based upon a payor's take-home (net) pay to determine support for 1-5 dependents.

A month consists of 4.334 weeks.

Biweekly means payor is paid every two weeks or 26 times a calendar year.

Semimonthly means payor is paid twice a month or 24 times a calendar year.

Use the lower figure on the chart for take-home pay which falls between two chart amounts.

For income that exceeds the chart amount, calculate the dollar amount of support by using the following percentages for 1-6 dependents: 15%; 21%; 25%; 28%; 30% and 32%.

To compute child support when income exceeds the chart, add together the maximum weekly, biweekly, semimonthly, or monthly chart amount, and the percentage of the dollar amount that exceeds that figure, using the percentage above based upon the number of dependents.

Example: The maximum on the weekly chart is \$1,000 a week. If a payor's net weekly income is \$1,200 and support will be computed for one child—add \$149 (the chart amount of support for one child when payor's net weekly income is \$1,000) and \$30 (15% of \$200, the amount exceeding the maximum chart amount), for total child support of \$179. [Hill v. Kelly, 368 Ark. 200, 243 S.W.3d 886 \(2006\)](#)(case decided before the Administrative Order was amended to include this computation and example).

Administrative costs payable to the Circuit Clerk or the Arkansas Clearinghouse are separate from the amount of child support ordered.

### **Affidavit Required**

[The Affidavit of Financial Means](#) shall be used in all family support matters. The trial court shall require each party to complete and exchange the Affidavit of Financial Means prior to a hearing to establish or modify a support order.

### **Deviation Factors**

Relevant factors to be considered by the court in determining appropriate amounts of child support shall include:

1. Food;
2. Shelter and utilities;
3. Clothing;
4. Medical expenses;
5. Educational expenses;
6. Dental expenses;
7. Child care (includes nursery, baby sitting, daycare or other expenses for supervision of children necessary for the custodial parent to work);
8. Accustomed standard of living;
9. Recreation;
10. Insurance;
11. Transportation expenses; and

12. Other income or assets available to support the child from whatever source, including the income of the custodial parent.

Additional factors may warrant adjustments to the child support obligations and shall include:

1. The procurement and maintenance of life insurance, health insurance, dental insurance for the children's benefit;
2. The provision or payment of necessary medical, dental, optical, psychological or counseling expenses of the children (e.g., orthopedic shoes, glasses, braces, etc.);
3. The creation or maintenance of a trust fund for the children;
4. The provision or payment of special education needs or expenses of the child;
5. The provision or payment of day care for a child;
6. The extraordinary time spent with the noncustodial parent, or shared or joint custody arrangements;
7. The support required and given by a payor for dependent children, even in the absence of a court order; and
8. Where the amount of child support indicated by the chart is less than the normal costs of child care, the court shall consider whether a deviation is appropriate.

These deviation factors may be considered for both the custodial and the noncustodial parents.

### **Health Insurance**

In addition to the award of child support, the court order shall provide for the child's health care needs, which normally would include health insurance if available to either parent at a reasonable cost. [Administrative Order No. 10 § III.](#)

In all cases in which the support and care of any children are involved, the court may order either parent to secure and maintain health care coverage for the benefit of the children when health care coverage is available or becomes available to the parent at a reasonable cost. [Ark. Code Ann. § 9-14-232.](#)

*See also* [Ark. Code Ann. § 9-14-501](#) et seq. for other provisions concerning “Health Care Coverage” in the Spousal and Child Support context.

In all decrees and orders that direct the noncustodial parent to provide and maintain health care coverage for any child, the court shall include a

provision directing the employer to deduct from money, income, or periodic earnings due the noncustodial parent an amount that is sufficient to provide for premiums for health care coverage offered by the employer. The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration is authorized to garnish wages for this purpose. Ark. Code Ann. § 9-14-502.

Health care coverage premiums shall not be deemed or used as a direct offset to the child support award. However, premiums for health care for a minor child can be considered in determining net take-home pay of the noncustodial parent when setting the current child support award. Ark. Code Ann. § 9-14-505.

A change in a parent's ability to provide health insurance shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the guidelines for child support and the family support chart. Ark. Code Ann. § 9-14-107.

### **Abatement of Support During Extended Visitation**

The guidelines assume that the noncustodial parent will have visitation every other weekend and for several weeks during the summer. Excluding weekend visitation with the custodial parent, in those situations in which a child spends in excess of 14 consecutive days with the noncustodial parent, the court should consider whether an adjustment in child support is appropriate, giving consideration to the fixed obligations of the custodial parent which are attributable to the child, to the increased costs of the noncustodial parent associated with the child's visit, and to the relative incomes of both parents. Any partial abatement or reduction of child support should not exceed 50% of the child support obligation during the extended visitation period of more than 14 consecutive days.

In situations in which the noncustodial parent has been granted annual visitation in excess of 14 consecutive days, the court may prorate annually the reduction in order to maintain the same amount of monthly child support payments. However, if the noncustodial parent does not exercise said extended visitations during a particular year, the noncustodial parent shall be required to pay the abated amount of child support to the custodial parent.

### [Administrative Order No. 10 § VI.](#)

In cases brought pursuant to Title IV-D of the Social Security Act, a change in the physical custodian of a child or children, other than a party to the child support order, shall require written notice to the clerk of the court to redirect the

child support to the present physical custodian when that physical custodian has had custody of the child or children for more than eight (8) consecutive weeks, other than court-ordered visitation, during which there is an obligation to pay child support. Ark. Code Ann. § 9-14-234.

### **Allocation of Dependents for Tax Purposes**

Allocation of dependents for tax purposes belongs to the custodial parent pursuant to the Internal Revenue Code. However, the Court shall have the discretion to grant dependency allocation, or any part of it, to the noncustodial parent if the benefit of the allocation to the noncustodial parent substantially outweighs the benefit to the custodial parent.

See Dumas v. Tucker, 82 Ark. App. 173, 119 S.W.3d 516 (2003)(the trial court erred in not making findings as to the benefits to the respective parties); Fontenot v. Fontenot, 49 Ark. App. 106, 898 S.W.2d 55 (1995)(the court, by awarding tax exemptions to former husband, essentially deviated from child support chart, and, thus, had to provide written findings); and Jones v. Jones, 43 Ark. App. 7, 858 S.W.2d 130 (1993)(remand was necessary for court to reconsider dependency tax exemption issue).

### **Enforcement Provisions**

In all decrees or orders that provide for the payment of money for the support and care of any children, the court shall include a provision directing a payor to deduct from:

Money, income, or periodic earnings due the noncustodial parent, an amount that is sufficient to meet the periodic child support payments imposed by the court plus an additional amount of not less than twenty percent (20%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order; and

Any lump-sum payment as defined in § 9-14-201, the full amount of past due support owed by the noncustodial parent not to exceed fifty percent (50%) of the net lump-sum payment. Ark. Code Ann. § 9-14-218.

The use of income withholding does not constitute an election of remedies and does not preclude the use of other enforcement remedies. Ark. Code Ann. § 9-14-218.

See Stewart v. Norment, 328 Ark. 133, 941 S.W.2d 419 (1997)(order for child-support arrearages is final judgment subject to garnishment or execution until order is modified or otherwise set aside, regardless of whether order also provides for income withholding to satisfy accrued

support arrearages, in view of statutes stating that remedies provided in child-support enforcement subchapter shall not be exclusive of other remedies and that use of income withholding in orders providing for child support does not constitute election of remedies and does not preclude use of other enforcement remedies).

In determining good cause, the court may take into consideration evidence of the degree of the respondent's past financial responsibility, credit references, credit history, and any other matter the court considers relevant in determining the likelihood of payment in accordance with the support order. Ark. Code Ann. § 9-14-102.

Orders of income withholding for support shall have priority over all other legal processes under state law against the money, income, or periodic earnings of the noncustodial parent. Ark. Code Ann. § 9-14-219.

If there is more than one (1) notice or order for income withholding for current child support against a noncustodial parent and the total amount requested exceeds the limits imposed under the Consumer Credit Protection Act, the payor shall make pro rata disbursements. "Pro rata" is the proportionate amount each notice or order bears to the total amount due for current support under all notices and orders. Ark. Code Ann. § 9-14-228.

*See [Bitzer v. Bitzer, 65 Ark. App. 162, 986 S.W.2d 122 \(1999\)](#) (finding that father was supporting his spouse, for purposes of determining the maximum percentage of his income that could be withheld for child support under the Federal Consumer Protection Act, was supported by evidence that father's spouse earned approximately \$3,100 per month, father earned approximately \$4,000 per month, father and spouse had a monthly mortgage payment of \$1,400, total monthly payment on two vehicles owned by father's spouse was \$900, and father's spouse was supporting a child from a previous marriage).*

Any decree, judgment, or order that contains a provision for payment of money for the support and care of any child or children through the registry of the court or through the Arkansas child support clearinghouse shall become a lien upon all real property, not otherwise exempt by the Arkansas Constitution, owned by the noncustodial parent or that the noncustodial parent may afterwards, or before the lien expires, acquire. Ark. Code Ann. § 9-14-230.

Such lien originating in another state shall be accorded full faith and credit as if such lien originated in the State of Arkansas. Ark. Code Ann. § 9-14-230.

When a person is ordered by a court of record to pay for the support of his or her children, the court, at the time an order of support is made or any time thereafter, upon a showing of good cause, may order periodic drafts of his or her accounts at a financial institution to deduct moneys due or payable for child support in amounts the court may find to be necessary to comply with its order for the support of the children. Ark. Code Ann. § 9-14-107.

### **Arrearage**

“Accrued arrearage” means a delinquency that is past due and unpaid and owed under a court order or an order of an administrative process established under state law for support of any child or children. “Accrued arrearage” may include past due support that has been reduced to a judgment if the support obligation under the order has not been terminated. Ark. Code Ann. § 9-14-201.

*See [Hendrickson v. State, Office of Child Support Enforcement ex rel. Henderson, 77 Ark. App. 103, 72 S.W.3d 124 \(2002\)](#)*(court should have considered the applicability of equitable estoppel to prevent enforcement of child support order and collection of arrears).

“Overdue support” means a delinquency pursuant to an obligation created under a court decree, order, or judgment or an order of an administrative process established under the laws of another state for the support and maintenance of a minor child.

“Past due support” is the total amount of support determined under a court order established under state law which remains unpaid.

Ark. Code Ann. § 9-14-201.

All child support that becomes due and remains unpaid shall accrue interest at the rate of ten percent (10%) per annum unless the owner of the judgment or the owner's counsel of record requests prior to the accrual of the interest that the judgment shall not accrue interest. Ark. Code Ann. § 9-14-233.

If the obligated parent who is not incapacitated refuses to pay past due support or refuses to engage in work activities or seek work activities as ordered by the court, the court may order the obligated parent to be incarcerated.

In any action brought for the enforcement of a child support obligation, whenever the court orders an obligated parent to be incarcerated for failure to obey a previous order, the court may further direct that the obligated parent be temporarily released from confinement to engage in work activity upon such terms and conditions as the court deems just.

Ark. Code Ann. § 9-14-233.

Any decree, judgment, or order that contains a provision for the payment of money for the support and care of any child or children through the registry of the court or the Arkansas child support clearinghouse shall be final judgment subject to writ of garnishment or execution as to any installment or payment of money that has accrued until the time either party moves through proper motion filed with the court and served on the other party to set aside, alter, or modify the decree, judgment, or order. Ark. Code Ann. § 9-14-234.

*See* [Darr v. Bankston, 327 Ark. 723, 940 S.W.2d 481 \(1997\)](#)(administrator of mother's estate had standing to bring action against father for child support arrearages, even though statute which defined “moving party” who could bring suit for child–support arrearages did not specifically list administrator. Administrator, as appointed representative of mother's estate, was entitled under Probate Code to enforce mother's estate's entitlement to any existing money or personal property judgment or decree, and statute governing who could bring suit for child support arrearages could be read in harmony with applicable probate provisions).

Existing child support order is a final order and is not subject to modification until a motion for modification is filed, and it follows that, if no motion for modification is filed, the existing judgment remains intact until such time as a proper motion is filed. [Martin v. Martin, 79 Ark. App. 309, 87 S.W.3d 817 \(2002\)](#)(since no motion for modification of child support had been filed by ex-husband, the trial court's modification of the existing support order violated statute providing that any decree which contains a provision for the payment of money for child support shall be final judgment subject to writ of garnishment or execution as to any payment of money which has accrued until the time either party moves to set aside or modify the decree).

If a child support arrearage or judgment exists at the time when any child entitled to support reaches the age majority, is emancipated, or dies, or when the obligor's current duty to pay child support otherwise ceases, the obligor shall continue to pay an amount equal to the court-ordered child support, or an amount to be determined by a court based on the application of guidelines for child support under the family support chart, until such time as the child support arrearage or judgment has been satisfied. Ark. Code Ann. § 9-14-235.

*See* [Malone v. Malone, 338 Ark. 20, 991 S.W.2d 546 \(1999\)](#)(acknowledgment of prior judgment awarding mother \$12,735.74 against divorced father for child support arrearages, contained in court order terminating father's obligation due to children's having reached age

of majority, would not operate to revive judgment for ten years or to toll ten-year statute of limitations for actions on a judgment).

*See also* [Lovelace v. Office of Child Support Enforcement, 59 Ark. App. 235, 955 S.W.2d 915 \(1997\)](#)(court adequately considered hardship that child support order created for father's other dependents when it ordered father to pay three years of back child support for child who had reached majority in child support enforcement hearing; court indicated that it was considering hardship on father's other children in the determination of the amount of his scheduled payments, and did not order father to pay amount prescribed by child support chart, but rather departed downward as father requested).

An action for arrearage may be brought at any time up to and including five (5) years beyond the date the child for whose benefit the initial support order was entered reaches eighteen (18) years of age. [Ark. Code Ann. § 9-14-236](#).

*See* [Clemmons v. Office of Child Support Enforcement, 345 Ark. 330, 47 S.W.3d 227 \(2001\)](#)(mother had statutory right to bring action against father, after child reached age 18, for arrearages of child support that had been payable before child reached age 18, and thus, mother's assignment of such right to OCSE was valid).

*See also* [Nason v. State, 55 Ark. App. 164, 934 S.W.2d 228 \(1996\)](#)(court ordered father to pay child support of \$51 per week and ordered retrospective support totaling \$15,600 over a five-year period. Father appealed. The Court of Appeals held that statute authorizing recovery of child support arrearages from the date of initial support order does not preclude recovery of support for period prior to initial support order).

No statute of limitation shall apply to an action brought for the collection of a child support obligation or arrearage against any party who leaves or remains outside the State of Arkansas with the purpose to avoid the payment of child support. [Ark. Code Ann. § 9-14-236](#).

Personal service under Ark. R. Civ. P. 4 is unnecessary where court has continuing personal jurisdiction over the obligor, and the obligee asserts no new or additional claims for relief. [Office of Child Support Enforcement v. Ragland, 330 Ark. 280, 954 S.W.2d 218 \(1997\)](#).

*But see* [Finney v. Cook, 351 Ark. 367, 94 S.W.3d 333 \(2002\)](#)(writ of prohibition was not appropriate vehicle).

Equitable estoppel may be a defense to payment of arrearages. [OCSE v. Burger, 80 Ark. App. 119, 92 S.W.3d 64 \(2002\)](#)(elements of equitable estoppel were not satisfied so estoppel did not apply to bar collection of accrued arrearage).

*Res judicata* applied to child support is a “modified *res judicata*,” which is subject to changed circumstances and the best interest of the child. [Office of Child Support Enforcement, et al. v. King, 81 Ark. App. 190, 100 S.W.3d 95 \(2003\)](#)(any past-due child support accrues and is a judgment until altered prospectively by proper motion and order of the court. Here, no court order modifying earlier order, so “modified *res judicata*” did not come into play).

The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration shall provide individual monthly reports to the county circuit clerk concerning money received by the office in payment of arrearages owed by a person convicted of nonsupport. [Ark. Code Ann. § 9-14-242](#).

### **Suspension of Licenses**

Where payor is in arrears for 3 months or more, OCSE can notify the appropriate licensing authority to suspend the payor's professional and/or any type of commercial driver's licenses where arrangements have not been made for payment.

Appeal is to circuit court, de novo.

Attorney licenses are not covered in these sections.

The court can use its contempt powers to suspend the payor’s license plate, driver’s license, or other professional license for nonpayment of support.

[Ark. Code Ann. § 9-14-239](#) (driver’s license, or occupational, professional, or business license); [Ark. Code Ann. § 27-23-125](#) (commercial driver’s license).

### **Modification of Support**

A change in gross income of the payor in an amount equal to or more than twenty percent (20%) or more than one hundred dollars (\$100) per month shall constitute a material change of circumstances sufficient to petition the court for modification of child support according to the family support chart after appropriate deductions. [Ark. Code Ann. § 9-14-107](#).

### **Case Law**

Under statute governing whether change in payor's income warrants consideration of petition for modification of child support order, change in payor's income does not necessarily support determination of changed circumstances warranting increase in child support, but merely constitutes material change of circumstances sufficient to allow petition to be filed in court for its review and adjustment of child support. [Heflin v. Bell, 52 Ark. App. 201, 916 S.W.2d 769 \(1996\).](#)

Trial court did not abuse its discretion by declining to modify former husband's alimony and child support obligation, based on former husband's 20% reduction in income, although court failed to recite presumptively correct chart amount of child support in its order; court indicated the presumptive amount in its opinion letters, and it considered former wife's health-related expenses, daughter's medical and tuition needs, length of marriage, and former husband's current and potential future income as an emergency room physician. [Bishop v. Bishop, 98 Ark. App. 111, 250 S.W.3d 570 \(2007\).](#)

Evidence that former wife had experienced negative income for two years prior to hearing on her motion for modification of child support was sufficient to establish material change of circumstances warranting reduction of her support obligation, despite lack of evidence in record as to what income figure trial court had used in establishing former wife's original child support obligation, where original child support obligation was, at minimum, consistent with assumption that former wife had had positive income at time of divorce. [Huey v. Huey, 90 Ark. App. 98, 204 S.W.3d 92 \(2005\).](#)

Court granting decree of divorce has continuing authority to revise or alter orders contained in such decree affecting support, custody, and control of minor children of parties when there is proof showing change in circumstances from those existing at time of original order. [Morsy v. Deloney, 92 Ark. App. 383, 214 S.W.3d 285 \(2005\).](#)

Father was not entitled to modification in amount of child support to be paid, though he testified that his income had decreased a little since entry of divorce agreement, absent evidence of degree of reduction or of any material increase in expenses that would prevent him from paying amount of support originally awarded. [Carter v. Carter, 19 Ark. App. 242, 719 S.W.2d 704 \(1986\).](#)

Evidence supported finding that a material change in circumstances warranted modification of former husband's child support obligation; at the time of the divorce husband had been approved for unemployment

benefit payments of \$1,000 per month, and, when husband filed his petition for modification, his unemployment benefits had expired and he was unemployed with no source of income. [McKinney v. McKinney, 94 Ark. App. 100, 226 S.W.3d 37 \(2006\)](#).

Reducing father's child support as result of decrease in income, which was due to a voluntary change in employment, was not an abuse of discretion where father testified that he took similar, but lower paying job because his previous employer was facing bankruptcy. [Grable v. Grable, 307 Ark. 410, 821 S.W.2d 16 \(1991\)](#).

Because there was an inconsistency between the existent child support award (17.5% of ex-husband's income) and the amount that resulted from the application of the family support chart (15% of ex-husband's income), a material change of circumstances existed sufficient for ex-husband to petition the court for review and adjustment of his child support obligation. [Alfano v. Alfano, 77 Ark. App. 62, 72 S.W.3d 104 \(2002\)](#).

A change in a parent's ability to provide health insurance is a material change of circumstances sufficient to petition for modification of child support. [Ark. Code Ann. § 9-14-107](#).

Any time a court orders child support, the court shall order the noncustodial parent to provide proof of income for the previous calendar year to the custodial parent.

The court shall also order the noncustodial parent to provide proof of income for a previous calendar year whenever requested in writing by certified mail by the custodial parent, but not more than one (1) time a year, and to the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, when applicable.

Whenever a custodial parent requests in writing that the noncustodial parent provide proof of income, the noncustodial parent shall respond by certified mail within fifteen (15) days.

If the noncustodial parent fails to provide proof of income as directed by the court or fails to respond to a written request for proof of income, the noncustodial parent may be subject to contempt of court.

If a custodial parent or the office has to petition the court to obtain the information, the custodial parent or the office may be entitled to recover costs and a reasonable attorney's fee.

Ark. Code Ann. § 9-14-107.

The court may not set aside, alter, or modify any decree, judgment, or order that has accrued unpaid support prior to the filing of the motion. However, the court may offset against future support to be paid those amounts accruing during time periods other than reasonable visitation in which the noncustodial parent had physical custody of the child with the knowledge and consent of the custodial parent. Ark. Code Ann. § 9-14-234.

The power of a court to modify a decree for the support of minor children cannot be defeated by an agreement between the parents even when the agreement is incorporated in the decree. The court has the right to review and modify in accordance with changing circumstances awards for support of children, increasing or reducing same as warranted. Williams v. Williams, 253 Ark. 842, 843, 489 S.W.2d 774, 775 (1973).

The court always has the jurisdiction and authority to modify child support. Warren v. Kordsmeier, 56 Ark. App. 52, 56, 938 S.W.2d 237, 239 (1997).

Equity will not intervene on behalf of party whose conduct in connection with same matter has been unconscientious or unjust. It is within the court's discretion to determine whether interests of equity and justice require application of clean hands doctrine. Reid v. Reid, 57 Ark. App. 289, 944 S.W.2d 559 (1997)(pursuant to clean hands doctrine, father was not entitled to suspension of his child-support obligation during his incarceration in prison for raping parties' daughter, to whom he owed duty of support).

Courts are not supposed to recognize private agreements modifying the amount of child support because of the mandate of statute which provides that any decree, judgment, or order for child support is final judgment. Shroyer v. Kauffman, 75 Ark. App. 267, 58 S.W.3d 861 (2001).

### **Expedited Hearings**

Child support and paternity cases brought pursuant to Title IV-D shall be heard within a reasonable period of time following service.

Title IV-D cases, including paternity, have specific time periods within which they must be heard.

The Chief Justice may direct redistribution of caseload or may appoint other trial judges to a district to insure compliance with state and federal law in meeting time requirements of IV-D cases.

Sheriff must make return of service or nonservice within 10 days in Title IV-D cases.

Court clerk must file or docket IV-D papers on the date received but no later than the close of business the day after papers are received in the clerk's office.

Ark. Code Ann. § 9-14-204.

### **Termination of Duty of Support**

Unless a court order for child support specifically extends child support after these circumstances, an obligor's duty to pay child support for a child shall automatically terminate by operation of law:

When the child reaches eighteen (18) years of age unless the child is still attending high school. If the child is still attending high school, upon the child's high school graduation or the end of the school year after the child reaches nineteen (19) years of age, whichever is earlier;

When the child is emancipated by a court of competent jurisdiction, marries, or dies; or

Upon the entry of a final decree of adoption or an interlocutory decree of adoption that has become final under § 9-9-201 et seq. and thereby relieves the obligor of all parental rights and responsibilities.

Ark. Code Ann. § 9-14-237.

The court may provide for the payment of child support beyond the eighteenth birthday of the child to address the educational needs of a child whose eighteenth birthday falls before graduation from high school so long as such child support is conditional on the child remaining in school.

The court also may provide for the continuation of support for an individual with a disability that affects the ability of the individual to live independently from the custodial parent. Ark. Code Ann. § 9-12-312.

See [Kimbrell v. Kimbrell, 47 Ark. App. 56, 884 S.W.2d 268 \(1994\)](#)(chancellor did not abuse discretion by ordering disabled father to pay \$60 a month for support of handicapped adult son; chancellor did not ignore son's independent source of income but determined that son's necessary expenses exceeded his disability income by \$100 per month and in setting amount of support, he considered poor financial conditions of both parents and concluded that each should share responsibility for providing for son's needs based on their respective incomes and relative

abilities to pay and considered fact that mother was also disabled and that her source of income was also derived from disability).

*But see* [Aikens v. Lee, 53 Ark. App. 1, 918 S.W.2d 204 \(1996\)](#)(no special circumstances existed which would require father to continue making child support payments until child finished college even though mother was contributing between \$120 and \$150 per month towards college expenses; child had reached age of majority, child worked 40 hours per week during summer, and child received college scholarships).

However, even if child support terminates by operation of law, any unpaid child support obligations owed under a judgment or in arrearage pursuant to a child support order shall be satisfied. [Ark. Code Ann. § 9-14-237](#).

*See* [Laroe v. Laroe, 48 Ark. App. 192, 893 S.W.2d 344 \(1995\)](#)(father was not automatically entitled to reduction in amount of weekly child support, as each of three children reached age of 18; father was required to seek court approval for decreases).

Additionally, even if child support terminates by operation of law, for the remaining minor children, support shall be determined:

by the court upon a motion filed within 30 days after expiration of the 10-day provision to notify of termination of support; or

by operation of law after the 30-day period expires, using the most recent version of the family support chart; or

by the court if the most recent order was entered prior to adoption of the guidelines or if the most recent order deviated from the family support chart.

[Ark. Code Ann. § 9-14-237](#).

Deviations from the chart shall be noted in the Order or on the record as appropriate. [Ark. Code Ann. § 9-14-237](#).

[Ark. Code Ann. § 9-14-240](#) provides an administrative procedure for terminating income withholding when the duty to support terminates.

## **Bankruptcy**

Bankruptcy does not discharge obligation to pay child support. [11 U.S.C. § 523\(a\)\(5\)](#).

See [Barker v. Barker, 271 Ark. 956, 611 S.W.2d 787 \(Ct. App. 1981\)](#)(obligation of former husband to pay debt on boat and motor constituted maintenance and support, and thus was not dischargeable in bankruptcy).

### **Qualified Domestic Relations Orders**

“Domestic relations order” means any judgment, decree, or order, including approval of a property settlement agreement, that relates to the provisions for child support, alimony payment, or marital property rights to a spouse, former spouse, child, or other dependents of a participant under Arkansas law.

“Qualified domestic relations order” means a domestic relations order:

(A) Which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant's retirement plan;

(B) Which clearly specifies the name and last known mailing address, if any, of the participant and the name and mailing address of each alternate payee covered by the order, the amount or percentage of the participant's benefits to be paid by the plan to each alternate payee or the manner in which the amount or percentage is determined, the number of payments or period of time to which the order applies, and each retirement plan to which the order applies; and

(C) Which does not require the retirement plan to provide any type or form of benefit, or pay options not otherwise available under the plan, does not require the plan to provide increased benefits, and does not require the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

Ark. Code Ann. § 9-18-101.

The circuit courts of Arkansas are empowered to enter qualified domestic relations orders to reach any and all retirement annuities and benefits of any retirement plan and to specify that a designated percent of a fractional interest on any retirement benefit payment may be paid to an alternate payee. Ark. Code Ann. § 9-18-102.

Any state-supported retirement system shall comply with any qualified domestic relations order. Ark. Code Ann. § 9-18-103.

# XI. Uniform Interstate Family Support Act (UIFSA)

## Jurisdiction Under UIFSA

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of Arkansas may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- (1) the individual is personally served with summons within Arkansas;
- (2) the individual submits to the jurisdiction of Arkansas by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;
- (3) the individual resided with the child in Arkansas;
- (4) the individual resided in Arkansas and provided prenatal expenses or support for the child;
- (5) the child resides in Arkansas as a result of the acts or directives of the individual;
- (6) the individual engaged in sexual intercourse in Arkansas and the child may have been conceived by that act of intercourse;
- (7) the individual asserted parentage in the Putative Father Registry maintained in Arkansas by the Department of Health; or
- (8) there is any other basis consistent with the constitutions of Arkansas and the United States for the exercise of personal jurisdiction.

Ark. Code Ann. § 9-17-201.

*See* [Clemmons v. Office of Child Support Enforcement, 345 Ark. 330, 47 S.W.3d 227 \(2001\)](#)(where Arkansas recognized collection orders from Missouri); [Jefferson Cnty. Child Support Enforcement Unit v. Hollands, 327 Ark. 456, 939 S.W.2d 302 \(1997\)](#)(Michigan's failure to enact Uniform Interstate Family Support Act (UIFSA) did not permit chancellor to decline to enforce Michigan child support decree that was filed pursuant to the Arkansas UIFSA); [Office of Child Support Enforcement v. Troxel, 326 Ark. 524, 931 S.W.2d 784 \(1996\)](#)(mother was not required to first obtain judgment for child support arrearages from Nebraska court before seeking enforcement in Arkansas); and [Tyler v. Talburt, 73 Ark. App. 260, 41 S.W.3d 431 \(2001\)](#)(Arkansas statutory law precluded trial court from entertaining petition to modify Texas spousal-support order).

## **Recognition of Controlling Order under UIFSA**

If a proceeding is brought under this chapter and only one (1) tribunal has issued a child support order, the order of that tribunal controls and must be so recognized. If a proceeding is brought under this chapter, and two (2) or more child support orders have been issued by tribunals of Arkansas or another state with regard to the same obligor and child, a circuit court of Arkansas shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one (1) of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls and must be so recognized.

(2) If more than one (1) of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

Ark. Code Ann. § 9-17-207.

If two (2) or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in Arkansas, a party may request a circuit court of this state to determine which order controls.

The request must be accompanied by a certified copy of every support order in effect.

The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

Ark. Code Ann. § 9-17-207.

The tribunal that issued the controlling order is the tribunal that has continuing, exclusive jurisdiction under § 9-17-205.

A tribunal of Arkansas which determines by order the identity of the controlling order or which issues a new controlling order shall state in that order the basis upon which the tribunal made its determination.

Within thirty (30) days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

Ark. Code Ann. § 9-17-207.

### **Civil Proceedings under UIFSA**

Civil Proceedings under UIFSA provide for the following proceedings:

- (1) establishment of an order for spousal support or child support;
- (2) enforcement of a support order and income-withholding order of another state without registration;
- (3) registration of an order for spousal support or child support of another state for enforcement;
- (4) modification of an order for child support or spousal support issued by a circuit court in Arkansas;
- (5) registration of an order for child support of another state for modification;
- (6) determination of parentage; and
- (7) assertion of jurisdiction over nonresidents.

Ark. Code Ann. § 9-17-301.

Except where otherwise noted, as a responding tribunal, Arkansas procedural and substantive law applies. Ark. Code Ann. § 9-17-303.

The respective duties of the initiating and responding tribunals are set out in Ark. Code Ann. § 9-17-304 & 305.

Responding tribunal should not address collateral matters such as visitation or setoff. Ark. Code Ann. § 9-17-305.

*See [Chaisson v. Ragsdale, 323 Ark. 373, 914 S.W.2d 739 \(1996\)](#)*(actions under UIFSA are not intended to open for renewed scrutiny all issues arising out of foreign divorce. Purpose of UIFSA is support of child and enforcement. Other issues, such as visitation and payment of debts under

divorce decree, are collateral matters that burden child support determinations and run counter to Act's goal of streamlining proceedings).

*See also* [Office of Child Support Enforcement v. Clemmons, 65 Ark. App. 84, 984 S.W.2d 837 \(1999\)](#)(mother's failure to allow father visitation with child was a collateral matter that trial court should not have considered in determining whether father owed child support arrearages).

If a petition or comparable pleading is received by an inappropriate tribunal of Arkansas, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent. [Ark. Code Ann. § 9-17-306](#).

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. [Ark. Code Ann. § 9-17-312](#).

[Ark. Code Ann. § 9-17-313](#) provides for certain fees and costs to be assessed, except that OCSE or a contract entity shall not be charged fees or costs for actions brought under UIFSA.

Nonparentage is not a defense where that issue has been previously determined by or pursuant to law. [Ark. Code Ann. § 9-17-315](#).

[Ark. Code Ann. §§ 9-17-316, 317, & 318](#) provide for certain special rules of evidence and procedure, communication between tribunals, and assistance with discovery.

*See* [State, Child Support Enforcement Unit v. Rogers, 50 Ark. App. 108, 902 S.W.2d 243 \(1995\)](#)(in uniform reciprocal support action, physical presence of mother is not required for rendition of judgment of parentage, and verified petition and affidavit of mother who resides in another state may be admitted into evidence if given under oath).

### **Establishment of Support Order**

If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a support order if:

- (1) the individual seeking the order resides in another state; or

(2) the support enforcement agency seeking the order is located in another state.

Ark. Code Ann. § 9-17-401.

The tribunal may issue a temporary child support order if:

(1) the respondent has signed a verified statement acknowledging parentage;

(2) the respondent has been determined by or pursuant to law to be the parent; or

(3) there is other clear and convincing evidence that the respondent is the child's parent.

Ark. Code Ann. § 9-17-401.

Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 9-17-305 (duties and powers of responding tribunal). Ark. Code Ann. § 9-17-401.

### **Terms of Withholding Order**

The employer shall withhold and distribute the funds as directed in the withholding order by complying with terms of the order which specify:

(1) the duration and amount of periodic payments of current child support, stated as a sum certain;

(2) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

Ark. Code Ann. § 9-17-502.

## **Direct Enforcement of Another State's Order**

An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under the income-withholding law of this state without first filing a petition or comparable pleading or registering the order with a tribunal of this state. Ark. Code Ann. § 9-17-501.

An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Ark. Code Ann. § 9-17-506.

An employer who willfully fails to comply with an income-withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state. Ark. Code Ann. § 9-17-505.

## **Enforcement and Modification after Registration**

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement. Ark. Code Ann. § 9-17-601.

The procedures for registration are found in Ark. Code Ann. §§ 9-17-602 & 603.

The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

Ark. Code Ann. § 9-17-604.

See [Clemmons v. Office of Child Support Enforcement, 72 Ark. App. 443, 37 S.W.3d 687 \(2001\)](#)(where California statute of limitations applied).

A hearing to contest the validity or enforcement of the registered order must be requested within twenty (20) days after notice. Ark. Code Ann. § 9-17-605.  
Procedure found in Ark. Code Ann. § 9-17-606.

A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one (1) or more of the defenses in Ark. Code Ann. § 9-17-607.

Statutory procedures by which obligor under foreign child support order must request hearing to contest validity of order within 20 days of notice of its registration in state do not contravene federal due process

guarantees. [State of Wash. v. Thompson, 339 Ark. 417, 6 S.W.3d 82 \(1999\)](#).

*See also* [Office of Child Support Enforcement v. Cook, 60 Ark. App. 193, 959 S.W.2d 763 \(1998\)](#)(chancery court did not have authority to modify out-of-state child support order entered at divorce, in action to register order under UIFSA, where mother and child were nonresidents and did not consent to jurisdiction of chancery court. Divorced father could not seek modification of out-of-state child support order in state, but rather had to apply to issuing tribunal, even though his support obligation exceeded his income, where he failed to appeal from child support order and failed to appeal from finding in present case that child support order would be given full faith and credit.)

[Ark. Code Ann. §§ 9-17-609 - 612](#) sets out provisions for modifying an order from another state and for recognizing an order modified by another state which was originally issued by this state.

*See* [Jefferson Cnty. Child Support Enforcement Unit v. Hollands, 327 Ark. 456, 939 S.W.2d 302 \(1997\)](#)(order filed by Arkansas court imposing child support obligation that differed from obligation originally imposed in Michigan did not change or modify Michigan child support decree).

*See also* [Office of Child Support Enforcement v. Neely, 73 Ark. App. 198, 41 S.W.3d 423 \(2001\)](#)(Arkansas court does not nullify or supersede a sister court's support decree unless it specifically provides for nullification).

### **Determination of Parentage**

A circuit court of Arkansas may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

In a proceeding to determine parentage, a responding tribunal of Arkansas shall apply the procedural and substantive law of Arkansas and the rules of Arkansas on choice of law.

[Ark. Code Ann. § 9-17-701](#).

For general questions about UIFSA, see the U.S. Dept. of Health & Human Services Child Support Enforcement [website](#).

## X. Child Custody

### Award of Custody

**Best Interest.** In an action for divorce, the award of custody of a child of the marriage shall be made without regard to the sex of a parent but solely in accordance with the welfare and best interest of the child. [Ark. Code Ann. § 9-13-101\(a\)](#).

There is no presumption in custody proceeding that young girls should be raised by their mothers. The sole issue is whether the welfare and best interests of the particular children at issue would be best served by granting custody to the particular mother or father involved. [Fox v. Fox, 31 Ark. App. 122, 788 S.W.2d 743 \(1990\)](#).

The primary consideration in awarding custody of children is the welfare and best interests of the children involved; all other considerations are secondary. [Fitzgerald v. Fitzgerald, 63 Ark. App. 254, 976 S.W.2d 956 \(1998\)](#).

In determining the best interest of the child, the court may consider the preferences of the child if the child is of a sufficient age and mental capacity to reason, regardless of chronological age. [Ark. Code Ann. § 9-13-101](#).

### Relevant Case Law

Factors the court may consider in determining what is in best interest of child include the psychological relationship between the parents and the child, the need for stability and continuity in child's relationship with the parents and siblings, the past conduct of the parents toward the child, and the reasonable preference of child. [Rector v. Rector, 58 Ark. App. 132, 947 S.W.2d 389 \(1997\)](#).

Evidence that former husband fraudulently embezzled funds while acting in fiduciary capacity as personal representative of his father's estate was relevant and admissible in proceedings on former wife's petition for change of custody of children; evidence reflected adversely on former husband's moral character which was relevant to best interest of children and to issue of custody. [James v. James, 29 Ark. App. 226, 780 S.W.2d 346 \(1989\)](#).

No error existed in chancellor's determination, on father's petition for change of custody of minor son from mother to father, that it was in best interest of child to remain with mother where testimony established child's progress in dealing with psychological problems which resulted from parents' divorce and mother was providing good home despite isolated act of indiscretion in permitting man whom

mother subsequently married to move into home. [Anderson v. Anderson, 18 Ark. App. 284, 715 S.W.2d 218 \(1986\)](#).

Even if chancellor's predetermination with respect to the credibility or weight to be given 11-year-old child's testimony in change of custody proceeding was questionable, chancellor did not abuse his discretion in not giving child's testimony that he preferred to live with his father any weight, in view of testimony of child's marginal intelligence and his need for continued supervision, and evidence which convinced chancellor that father was person given to misconduct which could affect child. [Watson v. Watson, 271 Ark. 294, 608 S.W.2d 44 \(Ct. App. 1980\)](#).

While a child's preference is not binding, it is certainly a factor to be considered by the chancellor on issue of modification of custody. [Hollinger v. Hollinger, 65 Ark. App. 110, 986 S.W.2d 105 \(1999\)](#).

**Record.** In any contested case, a verbatim record must be made; no exception is made for contested custody cases. [Administrative Order No. 4; Ark. Code Ann. § 16-13-510](#).

*See* [McNair v. Johnson, 75 Ark. App. 261, 57 S.W.3d 742 \(2001\)](#)(testimony of children in a child custody proceeding had to be unsealed in order for father to make a record on appeal that contained evidence relevant to his contention that the evidence was insufficient to support change of custody to mother and to make required abstract of that evidence).

*See also* [Mattocks v. Mattocks, 66 Ark. App. 77, 986 S.W.2d 890 \(1999\)](#)(chancery court's failure to make record of in camera hearing with minor children required remand).

**Both Parents.** When in the best interest of a child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents. [Ark. Code Ann. § 9-13-101](#).

**Domestic Violence.** If a party to an action concerning custody of or a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a direction pursuant to this section.

There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

Ark. Code Ann. § 9-13-101(c).

**Sex Offenders.** If a party to an action concerning custody of or a right to visitation with a child is a sex offender who is required to register under the Sex Offender Registration Act, the circuit court may not award custody or unsupervised visitation of the child to the sex offender unless the circuit court makes a specific finding that the sex offender poses no danger to the child.

There is a rebuttable presumption that it is not in the best interest of the child to be placed in the care or custody of a sex offender or to have unsupervised visitation with a sex offender.

There is a rebuttable presumption that it is not in the best interest of the child to be placed in the home of a sex offender or to have unsupervised visitation in a home in which a sex offender resides.

Ark. Code Ann. § 9-13-101(d).

**Tender Years Doctrine.** The presumption that the mother could best care for a young child (the "tender years" doctrine) has been abolished.

By enacting § 9–13–101, the legislature intended to abolish any gender-based legal preference in child custody determinations, and thus court should not apply tender years doctrine. [Riddle v. Riddle, 28 Ark. App. 344, 775 S.W.2d 513 \(1989\).](#) See also [Drewry v. Drewry, 3 Ark. App. 97, 622 S.W.2d 206 \(1981\).](#)

See also [Milum v. Milum, 49 Ark. App. 3, 894 S.W.2d 611 \(1995\)](#)(chancellor's remarks from bench in divorce proceeding that husband had not been primary caregiver “to two very small children who need the bonding with parents, not grandparents” did not indicate that she improperly based her decision on gender).

**Natural Parent Preference.** The law prefers child custody with a parent over a grandparent or other third person (the “natural parent preference” rule) unless the parent is proved to be incompetent or unfit; such preference is based on the child's best interests.

While there exists a preference for the natural parent to have custody over all others, the paramount consideration is at all times the best

interest of the child, which can overcome the parental preference when a child is left in the care of a non-parent for a substantial period of time. [Coffee v. Zollicoffer, 93 Ark. App. 61, 216 S.W.3d 636 \(2005\)](#).

The rights of parents are not proprietary and are subject to their related duty to care for and protect the child; the law secures their preferential rights only as long as they discharge their obligations. [Dunham v. Doyle, 84 Ark. App. 36, 129 S.W.3d 304 \(2003\)](#).

While there is a preference in child custody cases to award a child to its biological parent, that preference is not absolute; rather, of prime concern, and the controlling factor, is the best interest of the child. [Freshour v. W., 334 Ark. 100, 971 S.W.2d 263 \(1998\)](#).

*But see* [Freeman v. Rushton, 360 Ark. 445, 202 S.W.3d 485 \(2005\)](#)(where although statute granted preferential status to natural parent of child, statute did not mandate appointment once court determined whether a parent was “qualified” and “suitable,” child's best interest was of paramount consideration, and court carefully considered evidence and found that in spite of statutory preference, it was in child's best interest to for his maternal grandparents to be granted custody).

**Fault.** Fault in the divorce is not the determining factor in awarding custody since an award of custody is neither a reward nor a punishment for a parent. The children's welfare is the controlling consideration. [Burns v. Burns, 312 Ark. 61, 847 S.W.2d 23 \(1993\)](#).

**Criminal Records.** Any parent of a minor child in a circuit court case may petition the court to order a criminal records check of the other parent of the minor child or other adult members of the household eighteen (18) years of age or older who reside with the parent for custody and visitation determination purposes. [Ark. Code Ann. § 9-13-105](#).

### **Sibling Relationships**

Siblings have a right to maintain a relationship with each other, and the Court should not divide their custody absent exceptional circumstances.

*See* [Ark. Code Ann. 9-13-102](#)(*visitation* rights of children whose parents have denied such access).

*See also* [Arkansas Dep't of Human Servs. v. Couch, 38 Ark. App. 165, 832 S.W.2d 265 \(1992\)](#)(unless exceptional circumstances exist, young children should not be separated from each other by dividing their custody); [Middleton v. Middleton, 83 Ark. App. 7 \(2003\)](#)(prohibition against dividing custody does not apply equally to

half-siblings, especially when they have never lived together); [Atkinson v. Atkinson, 72 Ark. App. 15 \(2000\)](#)(awarding custody on rule that siblings should be kept together would be basing custody determination on impermissible presumption, contrary to law; basis should be best interest of children); [Eaton v. Dixon, 69 Ark. App. 9 \(2000\)](#)(general prohibition against dividing custody does not apply equally to half-siblings); and [Ketron v. Aguirre, 15 Ark. App. 325, 692 S.W.2d 261 \(1985\)](#)(one reason given by trial court for continuing custody of son in mother following divorce, i.e., reluctance to separate such child from his younger half-brother, was consistent with settled case law).

### **Modification of Custody Order**

A judicial award of custody should not be modified unless it is shown that there are changed conditions that demonstrate that a modification of the decree is in the best interest of the child, or when there is a showing of facts affecting the best interest of the child that were either not presented to the chancellor or were not known by the chancellor at the time the original custody order was entered.

[Hamilton v. Barrett, 337 Ark. 460, 466, 989 S.W.2d 520, 523 \(1999\)](#)(evidence of former wife's violation of custody and settlement agreement by having male guests overnight when children were present, former wife's remarriage, and birth of child to former husband and his new wife, demonstrated material changes in parties' circumstances arising since prior order of custody in divorce decree and justifying award of custody of parties' children to former husband).

The burden of proving such a change is on the party seeking the modification. There must be proof of material facts which were unknown to the court at that time, or proof that the conditions have so materially changed as to warrant modification *and* that the best interest of the child requires it.

[Carver v. May, 81 Ark. App. 292, 101 S.W.3d 256 \(2003\)](#)(mother's actions in alienating children from father and interfering with visitation detrimentally impacted children's well being such that best interests of the children required that custody be changed from mother to father, where mother repeatedly interfered with visitation, mother instigated a fruitless sexual-abuse investigation, children were subjected to medical examination for sexual abuse, and mother obtained a protective order to prohibit father from seeing children).

While child custody is always modifiable, the courts require a more rigid standard for custody modification than for initial custody determinations, in order to promote stability and continuity for the children and to discourage repeated litigation of the same issues.

[Vo v. Vo, 78 Ark. App. 134, 79 S.W.3d 388 \(2002\)](#)(former wife's request to relocate from Arkansas to California was not a material change of circumstances that warranted modification of child custody).

Chancery courts have continuing jurisdiction in child custody and visitation cases. However, the chancellor may not modify an order that affects custody of a child absent proof that circumstances have changed since the entry of the original order.

[Blackwood v. Floyd, 342 Ark. 498, 29 S.W.3d 694 \(2000\)](#); [Slusher v. Slusher, 73 Ark. App. 303, 43 S.W.3d 189 \(2001\)](#).

### **Case Law**

[Taylor v. Taylor, 353 Ark. 69, 110 S.W.3d 731 \(2003\)](#)(solely because ex-husband earned more money than he did when the parties divorced was not a “changed condition” demonstrating that a modification of the original divorce agreement was in the best interest of the children so as to transfer custody from ex-wife to ex-husband).

[Lloyd v. Butts, 343 Ark. 620, 37 S.W.3d 603 \(2001\)](#)(natural parents, who brought motion to modify custody order giving custody of couple's child and child's half sister to wife's former husband, failed to show material change in circumstances of custodial parent as would warrant change in custody, despite trial court's findings that natural parents were fit parents, as mother conceded that she was unaware of any facts relating to children's health and welfare that would warrant change in custody).

[Walker v. Torres, 83 Ark. App. 135, 118 S.W.3d 148 \(2003\)](#)(trial court erred in finding that positive changes in noncustodial father's situation did not “count” for purposes of determining whether there was a material change in circumstances justifying modification of child custody. Where father was taking business classes, had remarried and had purchased a home, mother had violated child custody decree by denying father visitation, failed to provide father with a phone number at which he could contact child, was temporarily living with her parents, had left a number of jobs under adverse circumstances since original decree and had a relationship with a man that was not a positive influence on the child).

[Mason v. Mason, 82 Ark. App. 133, 111 S.W.3d 855 \(2003\)](#)(wife had significantly improved her conditions since original decree by remarrying, obtaining her GED, and pursuing educational goals).

[Word v. Remick, 75 Ark. App. 390, 58 S.W.3d 422 \(2001\)](#)(evidence of discord between divorced parents such that they were unable to cooperate in sharing

physical care of their children was sufficient to constitute “material change in circumstances” necessary to support a change of child custody).

[Barnes v. Newton, 69 Ark. App. 115, 10 S.W.3d 472 \(2000\)](#)(there was no material change in circumstances to justify changing joint custody order to award primary physical custody of child to former wife, though record showed that former husband moved with child to different county and wife was diagnosed with Hodgkin's disease, where record showed that child resided with husband since divorce, child was happy and doing well in school, and there was no allegation that either parent was unfit).

[Hepp v. Hepp, 61 Ark. App. 240, 968 S.W.2d 62 \(1998\)](#)(finding that there was no change in circumstances affecting child's best interest and welfare that would warrant modifying custody award made to mother at divorce. Decision was not clearly erroneous, despite testimony about mother's alcohol and marijuana abuse and evidence that mother violated court orders by having contact with abusive former boyfriend and staying overnight with her fiancé. There was other evidence that drinking binge was isolated incident, that mother did not smoke marijuana and was not presently drinking, that child was well cared for and doing well in school, that mother did not expose child to former boyfriend, and that number of nights spent with fiancé was limited).

[Digby v. Digby, 263 Ark. 813, 567 S.W.2d 290 \(1978\)](#)(custody of two sons, ages seven and ten, was ordered changed from mother to father. Among other things, following divorce mother admitted participating in an affair with a married man; neighbors testified that they observed the ten-year-old playing late at night; there was evidence that mother had not been truthful with respect to all of her testimony; and, although not all of the evidence was favorable to father who had remarried, there was testimony that children would have a more stable home relationship and a better sense of moral values in his custody).

[Rogers v. Rogers, 46 Ark. App. 136, 877 S.W.2d 936 \(1994\)](#)(chancellor did not abuse his discretion in excluding evidence predating prior custody hearing, on ground that evidence was not of such importance that child's welfare required its admission).

[Swadley v. Krugler, 67 Ark. App. 297, 999 S.W.2d 209 \(1999\)](#)(mother's repeated and unfounded accusations against father of sexual-abuse toward one of the parties' children, occurring since prior modification-of-custody order, provided sufficient evidence of a material change of circumstances to warrant change of custody of couple's children from mother to father).

[Fitzpatrick v. Fitzpatrick, 29 Ark. App. 38, 776 S.W.2d 836 \(1989\)](#)(determination that noncustodial mother had not met her burden of proving material change in

circumstances was not error, notwithstanding conflicting testimony that child's stepmother used drugs and evidence that father had not sent child card or gift for her birthday during six-month visitation with mother, had been convicted of shoplifting and writing hot checks and had violent arguments with child's stepmother. The chancellor addressed concerns about child's home environment by entering protective order which, among other things, restrained parties from excessive use of alcohol and from any use of illegal drugs in child's presence).

[Scherm v. Scherm, 12 Ark. App. 207, 671 S.W.2d 224 \(1984\)](#)(evidence of former wife's "promiscuous lifestyle," which included entertaining overnight male visitors when her three sons were at home, warranted change of custody of the children to former husband).

[Stone v. Steed, 54 Ark. App. 11, 923 S.W.2d 282 \(1996\)](#)(material change in circumstances occurred which warranted change in custody from mother to father; evidence included testimony regarding marijuana use in child's presence while in mother's home).

[Carter v. Carter, 19 Ark. App. 242, 719 S.W.2d 704 \(1986\)](#)(change of custody was improper absent evidence to support noncustodial parent's allegation that custodial parent was intentionally trying to prevent child from seeing noncustodial parent).

[Anderson v. Anderson, 18 Ark. App. 284, 715 S.W.2d 218 \(1986\)](#)(mother's permitting man whom she subsequently married to move in with her was not change of circumstances justifying change of custody).

[Campbell v. Campbell, 336 Ark. 379, 985 S.W.2d 724 \(1999\)](#)(evidence that son was a fearful little boy who wanted to live with his mother was insufficient to show material change of circumstances affecting children's best interests and warranting removal of children from father's custody, absent any evidence showing how removal from father's custody would relieve son's stress).

[Presley v. Presley, 66 Ark. App. 316, 989 S.W.2d 938 \(1999\)](#)(although there were some changed circumstances on both sides, they were not sufficient to warrant a change in custody from divorced father to mother. It had been only two months since father was awarded custody when mother filed for a change of custody, children had changed homes twice in less than a two-year period, and best interest of the children was stability so that they would not become yo-yos between the parents).

[Rush v. Wallace, 23 Ark. App. 61, 742 S.W.2d 952 \(1988\)](#)(evidence supported finding that it would be in child's best interest to remain in custody of her

parents, rather than to be placed in custody of maternal grandparents, despite evidence of parents' precarious financial situation).

[Malone v. Malone, 4 Ark. App. 366, 631 S.W.2d 318 \(1982\)](#)(chancellor was not clearly erroneous in finding that change of custody from divorced husband to divorced wife was not warranted by alleged changes of circumstances in that wife's financial stability was better than husband's, stressful relationship existed between 11-year-old daughter and stepmother, and daughter preferred to live with mother).

### **Relocation as a Factor in Custody**

Relocation of a custodial parent and children is not, by itself, a material change in circumstance justifying a change in custody.

A presumption exists in favor of relocation for custodial parents with primary custody, with the burden to rebut the presumption on the noncustodial parent.

A custodial parent in Arkansas no longer has to prove a real advantage to himself or herself and the children in relocating (the former rule from [Hickmon v. Hickmon, 70 Ark. App. 428 \(2000\)](#)).

Although polestar in making a relocation determination is the best interest of the child, the court should take into consideration the following matters:

- (1) the reason for the relocation;
- (2) the educational, health, and leisure opportunities available in the location in which the custodial parent and children will relocate;
- (3) visitation and communication schedule for the noncustodial parent;
- (4) the effect of the move on the extended family relationships in the location in which the custodial parent and children will relocate, as well as Arkansas; and,
- (5) preference of the child, including the age, maturity, and the reasons given by the child as to his or her preference.

[Hollandsworth v. Knyzewski, 353 Ark. 470, 109 S.W.3d 653 \(2003\)](#).

For application of the factors, see [Benedix v. Romeo, 94 Ark. App. 412 \(2006\)](#); [Sill v. Sill, 94 Ark. App. 211 \(2006\)](#); [Hurtt v. Hurtt, 93 Ark. App. 37 \(2005\)](#); and

[Stills v. Stills, 2010 Ark. 132, 361 S.W.3d 823](#)(ex-wife could not waive in a relocation agreement the *Hollandsworth* presumption in favor of her move out of state; ex-husband had the burden to prove a material change in circumstances

such that a modification of the custody decree was in the children's best interests).

*But see also* [Singletary v. Singletary, 2013 Ark. 506](#) (the *Hollandsworth* relocation presumption favoring the custodial parent does not apply when the parents share joint custody of a child).

## **Joint Custody**

As used in this section, "joint custody" means the approximate and reasonable equal division of time with the child by both parents individually as agreed to by the parents or as ordered by the court. [Ark. Code Ann. § 9-13-101](#).

When in the best interest of a child, custody shall be awarded in such a way so as to assure the frequent and continuing contact of the child with both parents. To this effect, the circuit court may consider awarding joint custody of a child to the parents in making an order for custody. [Ark. Code Ann. § 9-13-101\(b\)](#).

However, a recent amendment to the statute states, "In an action for divorce, an award of joint custody is favored in Arkansas." [Ark. Code Ann. § 9-13-101\(a\)\(1\)\(A\)\(iii\)](#).

Arkansas case law has long indicated that joint custody is not favored. The statement that "joint custody is favored in Arkansas" has not yet been cited in an Arkansas appellate case, so the impact of this provision remains to be seen.

Historically, joint custody or equally divided custody of minor children has not been favored in Arkansas unless circumstances clearly warrant such action. Mutual ability of the parties to cooperate in reaching shared decisions in matters affecting the child's welfare is a crucial factor bearing on the propriety of an award of joint custody, and such an award is reversible error where cooperation between the parents is lacking.

[Word v. Remick, 75 Ark. App. 390, 58 S.W.3d 422 \(2001\)](#)(clean hands doctrine did not bar father from asserting that parties' inability to cooperate and exercise joint care of parties' children was a material change in circumstances in proceeding for change in custody, where evidence was in sharp dispute concerning which of the parties was primarily at fault for the breakdown of the joint custody arrangement).

[Hobbs v. Hobbs, 75 Ark. App. 186, 55 S.W.3d 331 \(2001\)](#)(parties' inability to communicate and cooperate in reaching shared decisions concerning best interests of child precluded award of joint custody, where communication between parties was virtually nonexistent as of final hearing, and had been that way for over one year, parties could not agree

on counselor for court-ordered joint counseling, and never attended joint counseling with court-selected counselor).

### **Stepparent Custody**

A stepparent can be awarded custody of a minor child; however, there is preference for natural parent in custody matters, and that preference must prevail unless it is established that natural parent is unfit. [Stamps v. Rawlins, 297 Ark. 370, 761 S.W.2d 933 \(1988\)](#)(custody of five-year-old child should have been left with natural mother, rather than stepfather, in light of chancellor's finding that mother was fit and proper person for custody).

*See also* [Golden v. Golden, 57 Ark. App. 143, 942 S.W.2d 282 \(1997\)](#)(upon parties' divorce, husband, who stood in loco parentis to child but was not child's biological father, was required to prove that wife was unfit parent, in view of preference for natural parent in custody matters); and

[Abeyta v. Abeyta, 2013 Ark. App. 726](#)(circuit court awarded custody to stepmother; case was reversed and remanded for failure to join biological mother, an indispensable party).

### **Attorney's Fees**

[Ark. Code Ann. § 9-12-309\(a\)](#), which authorizes award of attorneys' fees in divorce actions, is construed to permit fees in child custody modifications. [Finkbeiner v. Finkbeiner, 226 Ark. 165, 288 \(1956\)](#).

The court has inherent authority to award attorneys' fees in custody modification cases. [Jones v. Jones, 327 Ark. 195, 938 S.W.2d 228 \(1997\)](#).

The courts' authority to award attorneys' fees applies to contempt proceedings arising from custody cases as well.

[Payne v. White, 1 Ark. App. 271, 614 S.W.2d 684 \(1981\)](#)(trial court had inherent power to allow attorney fees in proceeding for contempt brought against mother for violation of custody decree by secreting child outside jurisdiction of court, notwithstanding statute which appears to limit award of attorney fees to actions to enforce payment of alimony, maintenance and support).

### **Transfer of Custody on School Property**

The transfer of a child from a custodial parent to a noncustodial parent is prohibited on the real property of a public school on normal school days during school hours.

This does not prevent one parent from taking a child to school and the other parent from picking the child up.

Ark. Code Ann. § 9-13-104.

### **Attorneys Ad Litem**

The Director of the Administrative Office of the Courts is authorized to establish an attorney ad litem program to represent children in circuit court cases in which custody is an issue.

A circuit judge authorized to appoint private attorney to represent a child when he or she determines that appointment will facilitate a case in which custody is in issue and to further protect the rights of the child.

The Supreme Court, with the advice of the circuit judges, shall adopt standards of practice and qualifications for service for attorneys who seek to be appointed to provide legal representation for children in custody cases. See [Administrative Order No. 15.1](#).

In extraordinary cases, the circuit court may appoint an attorney ad litem who does not meet the required standards and qualifications, but the attorney may not be appointed in subsequent cases until he or she has made efforts to meet the standards and qualifications.

When attorneys are appointed pursuant to this section, the fees for services and reimbursable expenses shall be paid from funds appropriated for that purpose to the Administrative Office of the Courts.

When a circuit judge orders the payment of funds for the fees and expenses authorized by this section, the circuit judge shall transmit a copy of the order to the Administrative Office of the Courts, which is authorized to pay the funds.

The circuit court may also require the parties to pay all or a portion of the expenses, depending on the ability of the parties to pay.

The AOC shall establish guidelines to provide a maximum amount of expenses and fees per hour and per case that will be paid pursuant to this section.

The maximum rate is \$90.00 per hour. If any state money is used for payment, maximum hourly rate applies to entire attorney fee. If no state money is used, the trial court may approve an attorney fee at any reasonable hourly rate.

The maximum total is \$1,250.00 per case for fees and expenses. If the case closes and is reopened and the attorney ad litem is reappointed, fees may be awarded, with the same maximums.

Out-of-pocket expenses may also be reimbursed.

*See the Guidelines for Reimbursement for Attorneys Ad Litem in Domestic Relations and Probate Cases in the Appendix.*

In order to ensure that each judicial district will have an appropriate amount of funds to utilize for ad litem representation in custody cases, the funds appropriated shall be apportioned based upon a formula developed by the office and approved by the Arkansas Judicial Council and the Subcommittee on Administrative Rules and Regulations of the Legislative Council.

The office shall develop a statistical survey that each attorney who serves as an ad litem shall complete upon the conclusion of the case.

Statistics shall include the ages of children served, whether the custody issue arises at a divorce or post-divorce stage, whether psychological services were ordered, and any other relevant information.

*See the Attorney Ad Litem Reporting Form in the Appendix.*

Ark. Code Ann. § 9-13-101.

### **Qualifications**

To qualify as an attorney ad litem, an attorney shall be licensed and in good standing with the Supreme Court;

Before appointment, attorney shall have initial legal education:

Not less than 10, AOC-approved hours, within 2 years before date attorney qualifies for appointment, in

child development;

attorney ad litem roles and responsibilities, including ethical considerations;

relevant substantive state, federal, and case law;

custody and visitation; and

family dynamics, including substance abuse, domestic abuse, and mental health issues.

After initial qualification, attorney ad litem shall have:

- 4 hours of continuing education;
- each year, between July 1 and the following June 30;
- in any of the 5 subject-matter areas set out above, or in other areas affecting the child and family;
- subject to CLE Rules and Regulations.

An attorney ad litem who fails to obtain 4 hours of qualified CLE by July 1 of any year:

- may sign an acknowledgment of deficiency in accordance with Rule 5.(D) of the Ark. Rules and Regulations for Minimum Continuing Legal Education; and
- shall complete the 4-hour CLE requirement by December 1;

An attorney ad litem who fails to obtain the 4 hours of qualified CLE by December 1:

- is no longer qualified as an attorney ad litem; and
- his or her name shall be removed from the list of qualified attorneys ad litem that is maintained and distributed by the AOC; and
- he or she can become qualified again only by completing initial qualification of 10 hours.

[Administrative Order No. 15.1 § 4.](#)

### **Standards of Practice**

An attorney ad litem shall conduct an independent investigation. Upon entry of a final order, an attorney ad litem's obligation to represent the child shall end, unless the court directs otherwise.

An attorney ad litem shall determine the best interest of a child by considering such custody criteria as:

- Moral fitness factors;
- Stability factors;
- Love and affection factors;

Other relevant information.

An attorney ad litem shall appear at all hearings to represent the best interest of the child. All relevant facts should be presented to the court; if the child's wishes differ from the ad litem's determination of the child's best interest, the ad litem shall communicate both the wishes and the ad litem's recommendations to the court.

An attorney ad litem shall file pleadings, call witnesses, participate in the examination of witnesses, present relevant evidence, and advocate for timely hearings.

An attorney ad litem shall explain to the child the court proceedings and the role of the ad litem in terms the child can understand.

An attorney ad litem shall make recommendations to the court for specific and appropriate services for the child and the child's family, and to communicate those recommendations to the attorneys for the parties or to pro se parties.

An attorney ad litem shall not be prevented by any privilege, including the lawyer-client privilege, from sharing with the court all information relevant to the best interest of the child.

An attorney shall not accept appointment to any case for which he or she cannot devote the requisite amount of time to comply with the standards of conduct and with the Rules of Professional Conduct.

[Administrative Order No. 15.1 § 5.](#)

## XI. Visitation

### Denial of Visitation

The same evidence that warrants a finding that a parent is unfit to have custody supports a denial of visitation. Best interest of the child is the polestar for making judicial determinations concerning custody and visitation.

Divorced parent is generally entitled to visitation rights with his or her child, though there are situations in which this right may be forfeited. [Lumpkin v. Gregory, 262 Ark. 561, 559 S.W.2d 151 \(1977\)](#)(father forfeited his rights because he made no support payments, refused to bring his son home after visits, beat up appellee when she went to pick up the child, took the child to a pool hall and exposed himself to mother's teenage sister).

See also [Buckley v. Buckley, 73 Ark. App. 410, 43 S.W.3d 212 \(2001\)](#)(this father's behavior more egregious than the father's in *Lumpkin* and visitation was denied).

### Modification of Visitation

Modification of visitation rights is not permitted unless there is a sufficient change in circumstances pertinent to visitation. [Tillery v. Evans, 67 Ark. App. 43, 991 S.W.2d 644 \(1999\)](#). See also [Leonard v. Stidham, 59 Ark. App. 5, 952 S.W.2d 189 \(1997\)](#).

Grounds for modification – generally, a change in circumstances pertinent to visitation – must be shown to justify a modification of visitation privileges. [Stellpflug v. Stellpflug, 70 Ark. App. 88 \(2000\)](#)(error to reduce summer vacation with children when no material change of circumstances was found).

Any parent of a minor child in a circuit court case may petition the court to order a criminal records check of the other parent of the minor child or other adult members of the household eighteen (18) years of age or older who reside with the parent for custody and visitation determination purposes. [Ark. Code Ann. § 9-13-105](#).

A parent's threatening not to return to the state is not grounds for refusing permission for visitation. However, the court may order the custodial parent to post bond to insure compliance with the custody/visitation orders. [Ryan v. Baxter, 253 Ark. 821, 489 S.W.2d 241 \(1973\)](#).

See also [Haller v. Haller, 234 Ark. 984, 356 S.W.2d 9 \(1962\)](#)(divorce decree allowing father to visit child at reasonable times and under proper conditions was too indefinite and should have stated definite visitation rights);

[Johns v. Johns, 53 Ark. App. 90, 918 S.W.2d 728 \(1996\)](#)(noncustodial father was properly ordered to see that children attend Sunday school and church while they are in his custody during visitation); and

[Ishmael v. Ismail, 66 Ark. App. 232, 989 S.W.2d 923 \(1999\)](#)(evidence supported finding that award of supervised visitation at divorce was in child's best interest; wife testified that husband threatened to abduct child and return to Egypt, his native country, witness testified that, in course of his providing counseling to parties, husband admitted threatening wife with child's abduction, preventing husband from abducting child was important consideration for trial court in establishing and maintaining supervised visitation, and husband himself testified that removing child from country would ruin child's life).

### **Grandparent Visitation**

A grandparent (or great-grandparent) may petition a circuit court of this state for reasonable visitation rights with respect to his or her grandchild or grandchildren if:

- (1) The marital relationship between the parents of the child has been severed by death, divorce, or legal separation;
- (2) The child is illegitimate and the grandparent is a maternal grandparent of the illegitimate child; or
- (3) The child is illegitimate, the grandparent is a paternal grandparent of the illegitimate child, and paternity has been established by a court of competent jurisdiction.

[Ark. Code Ann. § 9-13-103.](#)

There is a rebuttable presumption that a custodian's decision denying or limiting visitation to the grandparent is in the best interest of the child. To rebut the presumption, the grandparent must prove by a preponderance of the evidence the following:

- (A) The grandparent has established a significant and viable relationship with the child for whom he or she is requesting visitation; and
- (B) Visitation with the grandparent is in the best interest of the child.

[Ark. Code Ann. § 9-13-103.](#)

To establish a significant and viable relationship with the child, the grandparent must prove by a preponderance of the evidence the following:

(A) The child resided with the grandparent for at least six (6) consecutive months with or without the current custodian present;

(B) The grandparent was the caregiver to the child on a regular basis for at least six (6) consecutive months; or

(C) The grandparent had frequent or regular contact with the child for at least twelve (12) consecutive months; or (2) Any other facts that establish that the loss of the relationship between the grandparent and the child is likely to harm the child.

Ark. Code Ann. § 9-13-103.

To establish that visitation with the grandparent is in the best interest of the child, the grandparent must prove by a preponderance of the evidence the following:

(1) The grandparent has the capacity to give the child love, affection, and guidance;

(2) The loss of the relationship between the grandparent and the child is likely to harm the child; and

(3) The grandparent is willing to cooperate with the custodian if visitation with the child is allowed.

Ark. Code Ann. § 9-13-103.

An order granting or denying visitation rights to grandparents and great-grandparents shall be in writing and shall state any and all factors considered by the court in its decision to grant or deny visitation.

If the court grants visitation to the grandparent, the visits may occur without regard to which parent has physical custody of the child.

Visits with a paternal grandparent or great-grandparent may occur even when the child is in the custody of the mother, and visits with a maternal grandparent or great-grandparent may occur even when the child is in the custody of the father.

Ark. Code Ann. § 9-13-103.

If the court grants visitation to the grandparent under this section, then the visitation shall be exercised in a manner consistent with all orders regarding custody of or visitation with the child unless the court makes a specific finding otherwise.

If the court finds that the grandparent's visitation should be restricted or limited in any way, then the court shall include the restrictions or limitations in the order granting visitation.

An order granting or denying visitation rights under this section is a final order for purposes of appeal.

After an order granting or denying visitation has been entered under this section, the custodian or grandparent may petition the court for the following:

(A) Contempt proceedings if one (1) party to the order fails to comply with the order;

(B) To address the issue of visitation based on a change in circumstances; or

(C) To address the need to add or modify restrictions or limitations to visitation previously awarded under this section.

Ark. Code Ann. § 9-13-103.

A court may order counseling or mediation services to resolve a visitation issue if:

mediation or counseling services are available;

both parties agree to participate; and

one or both parties agree to pay for services.

Ark. Code Ann. § 9-13-103.

### **Case Law**

There is presumption that fit parents act in best interests of their children. Whether it will be beneficial to child to have relationship with a grandparent is, in any specific case, a decision for parent to make in the first instance, and if a fit parent's decision becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination. The Due Process Clause does not permit the state to infringe on the fundamental right of parents to make child-rearing decisions simply because a state judge believes a "better" decision could be made. [Troxel v. Granville, 530 U.S. 57 \(2000\)](#).

A grandparent's right to visit a grandchild is a right created by statute. [Painter v. Kerr, 2009 Ark. App. 580, 336 S.W.3d 425](#)(grandparents failed to overcome presumption that mother's decision denying or limiting visitation was in best

interest of child, and grandparents failed to prove by preponderance of evidence that loss of their relationship with child was likely to harm her).

At common law, grandparents have no presumptive right to custody or adoption of their grandchildren, or even the right of visitation, absent an order of the chancery court. [Cox v. Stayton, 273 Ark. 298, 619 S.W.2d 617 \(1981\)](#).

Grandparents' rights in custody or visitation of their grandchildren, to the extent the grandparents have rights, are derivative of their son's or daughter's parental rights. [Burt v. Arkansas Dep't of Health & Human Servs., 99 Ark. App. 402, 261 S.W.3d 468 \(2007\)](#).

The decision whether to grant grandparent visitation is a matter of discretion for the trial court, based upon the best interest and welfare of the minor. [Boothe v. Boothe, 341 Ark. 381, 17 S.W.3d 464 \(2000\)](#).

Grandparents are not restricted to bringing their suits in the court which entered the final decree, but may bring such action in the county where the custodial parent and the child reside. [Sanders v. Sanders, 297 Ark. 621, 764 S.W.2d 443 \(1989\)](#).

*See also* [Hendershot v. Hendershot, 30 Ark. App. 184, 785 S.W.2d 34 \(1990\)](#)(great-aunt would not be treated as grandparent under grandparent visitation statute based upon her assistance in raising child's father);

[In re Adoption of J.P., 2011 Ark. 535, 385 S.W.3d 266](#)(to prove visitation with maternal grandmother and great-grandmother was in child's best interest, as required to rebut presumption that father's decision limiting visitation was in child's best interest, grandmother and great-grandmother were required to prove, by preponderance of the evidence, that: (1) they had the capacity to give child love, affection, and guidance; (2) loss of the relationship between them and child was likely to harm child; and (3) they were willing to cooperate with father if visitation with child was allowed);

[Harrison v. Phillips, 2012 Ark. App. 474](#)(evidence was sufficient to show that paternal grandparents established a significant and viable relationship with grandson, for purposes of the grandparents visitation statute, in action by grandparents seeking visitation; mother acknowledged that early in child's life there may have been 12 consecutive months of regular and frequent contact between the child and his grandparents, while the parents were still married; however, evidence was insufficient to show that the loss of the relationship between paternal grandparents and grandson was likely to harm him); and

[Hollingsworth v. Hollingsworth, 2010 Ark. App. 101, 377 S.W.3d 313](#)(paternal grandfather was not entitled to order establishing grandparent visitation rights,

since mother had not denied, but only limited, grandfather's visitation with child; grandfather continued to exercise meaningful visitation and interaction with the child, seeing child on occasions at school and at extracurricular activities such as ball games, and mother testified that she intended to continue to permit visitation and would try to accommodate grandfather's visitation requests).

### **Stepparent Visitation**

A circuit court may award visitation to a stepparent standing *in loco parentis* over the natural parent's objection. [Robinson v. Ford-Robinson, 362 Ark. 232, 208 S.W.3d 140 \(2005\)](#)(ex-wife stood in loco parentis to stepson, and thus was entitled to visitation with stepson; ex-wife was the only mother stepson had even known, stepson did not know that ex-wife was not his biological mother until he was in first grade, stepson called ex-wife "Mommy," and ex-wife described herself as stepson's mother).

*In loco parentis* is defined as "in place of a parent; instead of a parent; charged factitiously with a parent's rights, duties, and responsibilities." A person who stands *in loco parentis* to a child puts himself or herself in the situation of a lawful parent by assuming the obligations incident to the parental relation without going through the formalities necessary to a legal adoption. This relationship involves more than a duty to aid and assist, and more than a feeling of kindness, affection, or generosity. One's mere status as a stepparent does not support a finding of *in loco parentis*. A stepparent who furnishes necessities for a minor child of his or her spouse and who exercises some control over the child does not, by those acts alone, establish a parental relationship. In making a determination as to whether a nonparent stands *in loco parentis*, courts consider the totality of the circumstances and do not lightly infer the intent of the person seeking to be considered as standing *in loco parentis*. While the length of time a person spends with a child is not determinative, it is a significant factor in considering whether that person intended to assume parental obligations or has performed parental duties. [Daniel v. Spivey, 2012 Ark. 39, 386 S.W.3d 424.](#)

See [Bethany v. Jones, 2011 Ark. 67, 378 S.W.3d 731](#)(circuit court did not clearly err in finding that biological mother's former same sex partner stood in loco parentis to the child for visitation purposes; former partner was the stay-at-home mom for over three years who took care of child, child called partner mommy, child thought of partner's parents as her grandparents and spent holidays with partner's family, and intentions of mother and partner were always to co-parent until mother unilaterally determined she no longer wanted to allow partner to have visitation);

[Daniel v. Spivey, 2012 Ark. 39, 386 S.W.3d 424, reh'g denied \(Mar. 15, 2012\)](#)(stepfather did not stand in loco parentis to mother's child from previous marriage, and thus trial court could not award stepfather visitation rights with child as part of divorce decree, even though stepfather had been part of child's life for five of child's seven years, relationship between them was like that of parent and child, stepfather and child engaged in recreational activities together, and stepfather disciplined child when necessary and praised her when justified; stepfather's actions demonstrated that he assumed the role of a caring stepparent, but not that he embraced the rights, duties, and responsibilities of a parent); and

[Blackwood v. Floyd, 342 Ark. 498, 29 S.W.3d 694 \(2000\)](#)(stepmother did not request visitation with stepson at divorce hearing and did not claim *in loco parentis*; child was not mentioned in divorce proceeding; therefore, no jurisdiction to modify decree more than 90 days after entry).

### **Sibling Visitation Rights**

A brother or sister, regardless of the degree of blood relationship, may petition the Court to grant reasonable visitation rights when their parents have denied such access.

The circuit courts may issue any further order that may be necessary to enforce the visitation rights.

[Ark. Code Ann. 9-13-102.](#)

### **Domestic Violence & Sex Offenders**

If a party to an action concerning a right to visitation with a child has committed an act of domestic violence against the party making the allegation or a family or household member of either party and such allegations are proven by a preponderance of the evidence, the circuit court must consider the effect of such domestic violence upon the best interests of the child, whether or not the child was physically injured or personally witnessed the abuse, together with such facts and circumstances as the circuit court deems relevant in making a direction pursuant to this section.

There is a rebuttable presumption that it is not in the best interest of the child to be placed in the custody of an abusive parent in cases in which there is a finding by a preponderance of the evidence that the parent has engaged in a pattern of domestic abuse.

If a party to an action concerning a right to visitation with a child is a sex offender who is required to register under the Sex Offender Registration Act, the

circuit court may not award custody or unsupervised visitation of the child to the sex offender unless the circuit court makes a specific finding that the sex offender poses no danger to the child.

There is a rebuttable presumption that it is not in the best interest of the child to be placed in the care or custody of a sex offender or to have unsupervised visitation with a sex offender.

There is a rebuttable presumption that it is not in the best interest of the child to be placed in the home of a sex offender or to have unsupervised visitation in a home in which a sex offender resides.

Ark. Code Ann. § 9-13-101.

## **XII. Uniform Acts for Custody & Visitation**

### **Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA)**

See Ark. Code Ann. §9-19-101 et seq.

*Note: The Uniform Child-Custody Jurisdiction and Enforcement Act (UCCJEA) is the successor to the Uniform Child-Custody Jurisdiction Act (UCCJA). The UCCJA was repealed in Arkansas when the UCCJEA was adopted in 1999. Many of Arkansas's cases on interstate custody were decided under the UCCJA.*

#### **Proceedings Governed by Other Law**

“Child-custody proceeding” is defined as a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under subchapter 3 of this chapter (subchapter relates to the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child-custody determination).

Ark. Code Ann. § 9-19-102.

The UCCJEA does not govern adoption proceedings or proceedings pertaining to the authorization of emergency medical care for a child.

Ark. Code Ann. § 9-19-103.

The UCCJEA applies to interstate custody disputes only, not to intrastate custody matters.

[Abeyta . Abeyta, 2013 Ark. App. 726](#); [Seamans. v. Seamans, 73 Ark. App. 27 \(2001\)](#)(UCCJEA does not apply to purely intrastate custody disputes; court has no authority to award attorney fees under the Act).

#### **Application of UCCJEA to Indian Tribes**

A child-custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C., 25 § 1901 et seq., is not subject to the UCCJEA to the extent that it is governed by the Indian Child Welfare Act.

A tribe shall be treated as if it were a state for the purposes of applying subchapters 1 and 2 of this chapter.

A child-custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under subchapter 3 of this chapter.

Ark. Code Ann. §9-19-104.

### **Effect of Child-Custody Determination**

A child-custody determination made by a court of this state that had jurisdiction under the UCCJEA binds all persons who have been served in accordance with Arkansas law or in accordance with the law of the state in which service was made. Persons are also bound who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard.

Ark. Code Ann. § 9-19-106.

### **Priority**

Upon the request of a party, questions that arise in child-custody proceedings regarding the existence or exercise of jurisdiction under the UCCJEA must be given priority on the calendar and handled expeditiously.

Ark. Code Ann. § 9-19-107.

### **Appearance and Limited Immunity**

A party to a child-custody proceeding is not subject to personal jurisdiction in Arkansas for another proceeding or purpose solely for being physically present in the state to participate in that proceeding.

One subject to personal jurisdiction in Arkansas on some basis other than physical presence is not immune from service of process here.

The immunity granted for purposes of a child-custody proceeding is not immune to civil litigation based on acts unrelated to the child-custody proceeding that an individual commits while in Arkansas.

Ark. Code Ann. § 9-19-109.

### **Communication Between Courts**

Arkansas courts may communicate with a court in another state concerning a proceeding arising under the UCCJEA.

The court may allow the parties to participate in the communication. If they are not able to participate, they must have the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

Courts may communicate on schedules, calendars, records, and similar matters without informing the parties, and no record need be made of the communications. Otherwise, a record must be made of a communication and the parties must be informed and granted access to the record. For these purposes, “record” means information inscribed on a tangible medium or stored electronically or in another retrievable medium.

Ark. Code Ann. § 9-19-110.

### **Taking Testimony in Another State**

A party to a child-custody proceeding may offer testimony of witnesses who are in another state, by deposition or other means allowable in Arkansas. The court on its own motion may order that testimony of a person be taken in another state and may prescribe the manner and terms upon which the testimony is taken.

An Arkansas court may permit a person in another state to be deposed or to testify by telephone, audiovisual, or other electronic means before a designated court or at another location in that state. An Arkansas court shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

Documentary evidence transmitted from another state to an Arkansas court by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

Ark. Code Ann. § 9-19-111.

### **Cooperation Between Courts**

An Arkansas court may request a court of another state to:

Hold an evidentiary hearing;

Order a person to produce or give evidence pursuant to that state’s procedures;

Order a custody evaluation be made of a child involved in the proceeding;

Forward to the Arkansas court a certified copy of the transcript of the hearing, evidence presented, or the requested evaluation; and

Order a party to the proceeding or anyone having physical custody of the child to appear in the proceeding with or without the child.

A court of another state may request an Arkansas court to hold such a hearing or to enter an order as described above.

Travel and other necessary and reasonable expenses for the above may be assessed against the parties in accordance with Arkansas law.

Pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child-custody proceeding shall be preserved until the child is 18 years old. If a court or law enforcement official of another state requests it, the Arkansas court shall forward a certified copy of the records.

Ark. Code Ann. § 9-19-112.

## **Child-Custody Jurisdiction under the UCCJEA**

### **Initial Child Custody Jurisdiction**

Except as provided in § 9-19-204, an Arkansas court has jurisdiction to make an initial child-custody determination only if:

Arkansas is the home state of the child on the date of the commencement of the proceeding; or

Arkansas was the home state of the child within six months before the commencement of the proceeding and the child is absent from Arkansas, but a parent or person acting as a parent continues to live here; or

A court of another state does not have home state jurisdiction, or a court of the home state of the child has declined to exercise jurisdiction on the ground that Arkansas is the more appropriate forum under § 9-19-207 or § 9-19-208; and

The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with Arkansas other than mere physical presence; and substantial evidence is available in Arkansas concerning the child's care, protection, training, and personal relationships; or

All courts having jurisdiction through significant connection as set out immediately above have declined to exercise jurisdiction on the ground that a court of Arkansas is the more appropriate forum to determine the custody of the child under § 9-19-207 or § 9-19-208; or

No court of any other state would have jurisdiction under any of the criteria set out above.

The above is the exclusive jurisdictional basis for an Arkansas court to make a child-custody decision by an Arkansas court.

Physical presence of, or personal jurisdiction over a party or a child is not necessary or sufficient to make a child-custody determination.

Ark. Code Ann. § 9-19-201; [Ullrich v. Walsh, 2010 Ark. App. 290.](#)

### **Exclusive Continuing Jurisdiction**

Except as provided in § 9-19-204, an Arkansas court which has made a child-custody determination consistent with § 9-19-201 or § 9-19-203 has exclusive, continuing jurisdiction over the determination until:

- (1) An Arkansas court determines that neither the child, nor the child and one parent, nor the child and a person acting as a parent have a significant connection with Arkansas, and that substantial evidence is no longer available in Arkansas concerning the child's care, protection, training, and personal relationships; or
- (2) An Arkansas court or a court of another state determines that the child, the child's parents, and any person acting as a parent do not presently reside in Arkansas.

An Arkansas court which has made a child-custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 9-19-201.

Ark. Code Ann. § 9-19-202; [Hatfield v. Miller, 2009 Ark. App. 832, 373 S.W.3d 366;](#) [Harris v. Harris, 2010 Ark. App. 160, 379 S.W.3d 8 \(2010\);](#) [Shields v. Kimble, 2010 Ark. App. 479, 375 S.W.3d 738.](#)

The state of initial custody jurisdiction retains exclusive jurisdiction when one parent remains a resident no matter how long the child and the other parent have been away. [West v. West, 364 Ark. 73 \(2005\)](#)(Arkansas had exclusive, continuing subject-matter jurisdiction to determine modification of Arkansas custody order); [Bridges v. Bridges, 93 Ark. App. 358 \(2005\)](#)(Arkansas had jurisdiction under PKPA and UCCJEA).

### **Jurisdiction to Modify Determination**

Except as provided in § 9-19-204, an Arkansas court may not modify a child-custody determination made by a court of another state unless an Arkansas court has jurisdiction to make an initial determination under § 9-19-201(a)(1) or (2) and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under § 9-19-202 or that an Arkansas court would be a more convenient forum under § 9-19-207; or

(2) An Arkansas court or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Ark. Code Ann. § 9-19-203; Bridges v. Bridges, 93 Ark. App. 358, 219 S.W.3d 699 (2005); Devine v. Martens, 371 Ark. 60, 263 S.W.3d 515 (2007); Ullrich v. Walsh, 2010 Ark. App. 290.

### **Temporary Emergency Jurisdiction**

An Arkansas court has temporary emergency jurisdiction if the child is present in Arkansas and the child has been abandoned or it is necessary in an emergency to protect the child because the child or the child's sibling or parent is subjected to or threatened with mistreatment or abuse.

If no previous child-custody determination has been made that is entitled to enforcement under the UCCJEA, and a child-custody proceeding has not been commenced in a court of a state having jurisdiction under this Act, a child-custody determination made under this section remains in effect until an order is entered by a court of a state having jurisdiction under the Act. If a child-custody proceeding has not been or is not commenced in a court of a state having jurisdiction under the Act, a child-custody determination made under this temporary-emergency-jurisdiction section becomes a final determination, if it so provides and this state becomes the home state of the child.

If there is a previous child-custody determination that is entitled to be enforced or a child-custody proceeding has been commenced in a court of a state having jurisdiction under the Act, any order issued by an Arkansas court under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under the Act. The order issued in Arkansas remains in effect until the order is obtained from the other state within the period specified or the period expires.

An Arkansas court which has been asked to make a child-custody decision based upon this temporary-emergency-jurisdiction section, upon being informed that a child-custody proceeding has been commenced in, or a determination has been made by, a court of a state having jurisdiction under the Act, shall communicate immediately with the other court. An Arkansas Court exercising jurisdiction pursuant to the jurisdictional sections of this Act, upon being informed that a

child-custody proceeding has been commenced in, or a child-custody determination has been made by, a court of another state under a statute similar to this section, shall communicate immediately with the court of the other state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

Ark. Code Ann. § 9-19-204; [Arkansas HHS v. Jones, 97 Ark. App. 267, 248 S.W.3d 507 \(2007\)](#); [Devine v. Martens, 371 Ark. 60, 263 S.W.3d 515 \(2007\)](#); [Davis v. Arkansas HHS, 98 Ark. App. 275, 254 S.W.3d 762 \(2007\)](#).

### **Notice – Opportunity to be Heard – Joinder**

Before a child-custody determination is made under the UCCJEA, notice and an opportunity to be heard must be given, in accordance with the standards in Ark. Code Ann. § 9-19-108, to all persons entitled to notice under Arkansas law as in child-custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

This Act does not govern the enforceability of a child -custody determination made without notice or an opportunity to be heard.

Joinder and intervention as a party in a child-custody proceeding are governed by Arkansas law as in child-custody proceedings between residents of Arkansas.

Ark. Code Ann. § 9-19-205; [Ark. Dep’t of Human Servs. v. Cox, 349 Ark. 205, 82 S.W.3d 806 \(2002\)](#).

### **Simultaneous Proceedings**

Except as otherwise provided in § 9-19-204, an Arkansas court may not exercise jurisdiction if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because an Arkansas court is a more convenient forum under § 9-19-207.

Except as otherwise provided in § 9-19-204, before hearing a child-custody proceeding, an Arkansas court shall examine court documents and other information supplied by the parties pursuant to § 9-19-209. If the court determines that a child-custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the Arkansas court shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction does not determine

that the Arkansas court is a more appropriate forum, the Arkansas court shall dismiss the proceeding.

In a proceeding to modify a child-custody determination, an Arkansas court shall determine whether a proceeding to enforce the determination has been commenced in another state. If it has, the court may:

Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

Enjoin the parties from continuing with the proceeding for enforcement;  
or

Proceed with the modification under conditions it considers appropriate.

Ark. Code Ann. § 9-19-206; [Bridges v. Bridges, 93 Ark. App. 358, 219 S.W.3d 699 \(2005\)](#); [Ullrich v. Walsh, 2010 Ark. App. 290](#); [Casas-Cordero v. Mira, 2012 Ark. App. 457](#).

### **Inconvenient Forum**

An Arkansas court with jurisdiction under the UCCJEA to make a child-custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon motion of a party, the court's own motion, or request of another court.

Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

The length of time the child has resided outside the state;

The distance between the court in Arkansas and the court in the state that would assume jurisdiction;

The relative financial circumstances of the parties;

Any agreement of the parties about which state should assume jurisdiction;

The nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;

The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

The familiarity of the court of each state with the facts and issues in the pending litigation.

If an Arkansas court determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child-custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

An Arkansas court may decline to exercise its jurisdiction under this chapter if a child-custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

[Ark. Code Ann. § 9-19-207](#); [Uttley v. Bobo, 97 Ark. App. 15, 242 S.W.3d 638 \(2006\)](#); [Hatfield v. Miller, 2009 Ark. App. 832, 373 S.W.3d 366](#); [Harris v. Harris, 2010 Ark. App. 160, 379 S.W.3d 8](#); [Ullrich v. Walsh, 2010 Ark. App. 290](#); [Shields v. Kimble, 2010 Ark. App. 479, 375 S.W.3d 738](#); [Casas-Cordero v. Mira, 2012 Ark. App. 457](#).

### **Jurisdiction Declined Because of Conduct**

Except as otherwise provided in § 9-19-204 or by other Arkansas law, if an Arkansas Court has jurisdiction under the UCCJEA because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

A court of the state otherwise having jurisdiction under §§ 9-19-201–9-19-203 determines that Arkansas is a more appropriate forum under § 9-19-207; or

No court of any other state would have jurisdiction under the criteria specified in §§ 9-19-201–9-19-203.

If an Arkansas court declines to exercise its jurisdiction because of unjustifiable conduct by a person seeking to invoke its jurisdiction, the court may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child-custody

proceeding is commenced in a court having jurisdiction under §§ 9-19-201–9-19-203.

If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction because of the unjustifiable conduct of the person seeking to invoke its jurisdiction, it shall assess against that party necessary and reasonable expenses including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess fees, costs, or expenses against Arkansas unless authorized by law other than the UCCJEA.

Ark. Code Ann. § 9-19-208; Blosser v. Blosser, 2 Ark. App. 37, 617 S.W.2d 29 (1981).

### **Information to be Submitted to the Court**

In a child-custody proceeding, information to be provided in the first pleading or in attached affidavit:

Child’s present address or whereabouts;

Places where child has lived during the past five years;

Names and present addresses of persons with whom child has lived during that period;

Whether a party has participated in any capacity in any other proceeding concerning custody or visitation with the child, and if so, the particulars;

Details of any proceedings that could affect the current action, including the particulars; and

Names and addresses of persons not parties who have or claim custody or visitation rights.

Each party has continuing duty to inform court of any proceeding any place that could affect the current proceeding.

If a party alleges that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders disclosure after a hearing on the issue.

Ark. Code Ann. § 9-19-209; [Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205 \(2002\)](#).

### **Expedited Enforcement**

This section provides for the production of the child in a summary, remedial process based on habeas corpus.

Ark. Code Ann. § 9-19-308.

### **Enforcement**

Courts shall enforce other states' child-custody determinations entered pursuant to the UCCJEA and PKPA, unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under this Act.

Ark. Code Ann. §9-19-313.

Emergency jurisdiction still exists even though a child custody order entitled to enforcement is in effect. If emergency jurisdiction is exercised, court communication is required to resolve the emergency, protect the safety of the parties and the child(ren), and determine the period of duration of the order.

Ark. Code Ann. §9-19-204.

### **Registration of Out-of-State Order**

An order from another state may be registered in Arkansas with or without a request for enforcement.

Ark. Code Ann. §9-19-305; [Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205 \(2002\)](#).

Upon receipt of a document requesting registration and two copies, including one certified copy of the order sought to be registered, and an affidavit that the order has not been modified, as well as names and addresses of the parties, the Arkansas court shall:

Cause the order and one copy of the accompanying documentation to be filed as a foreign judgment; and

Serve notice on the parties and provide an opportunity to contest within 20 days after service of notice.

At the hearing requested under this section, the court shall confirm the registered order unless:

The issuing court did not have jurisdiction;

The order sought to be registered has been changed in some way by a court with jurisdiction; or

The person contesting registration did not receive notice as entitled and in accordance with this Act.

If no timely request for hearing is made, registration is confirmed as a matter of law with notice to all parties, and this precludes further contest of the order with respect to any matter that could have been asserted at registration.

Ark. Code Ann. §9-19-305; [Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205 \(2002\)](#).

### **Enforcement Hearing**

Enforcement hearing:

Produce certified copy of custody determination to be enforced; and

Show evidence of violation; and

Ask for relief; and

If a party exercises 5<sup>th</sup> Amendment rights, the court may draw an adverse inference from the refusal to testify about the subject; and

The spousal communication privilege and a defense of spousal or parental immunity may not be invoked.

The enforcement court may issue an order to take physical custody of a child if the court is concerned that a physical custodian may flee or harm the child(ren).

Ark. Code Ann. § 9-19-310; [Ark. Dep't of Human Servs. v. Cox, 349 Ark. 205 \(2002\)](#)(Florida court order at issue was not a “child-custody determination” that was enforceable pursuant to the UCCJEA. It was an *ex parte* order; the required notice and opportunity to be heard were not provided in the Florida *ex parte* proceedings).

### **Warrant to Take Physical Custody of Child**

A petitioner who files a petition seeking enforcement of a child-custody determination may file a verified application for the issuance of a warrant to take physical custody of the child if the child is immediately likely to suffer serious physical harm or be removed from Arkansas.

If the court finds, after hearing the testimony of the petitioner or other witness, that the child is imminently likely to suffer serious physical harm or be removed from Arkansas, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible; if impossible, on the first judicial day possible.

Statements required in the application for the warrant are set out in § 9-19-308(b).

A warrant to take physical custody of a child must:

Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

Direct law enforcement to take physical custody of the child immediately; and

Provide for the placement of the child pending final relief.

A warrant to take physical custody of a child is enforceable throughout this state. If the court finds that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If exigent circumstances require, the court may authorize law enforcement officers to make a forcible entry at any hour.

The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Ark. Code Ann. § 9-19-311.

## **Appeals**

Final order is appealable under Arkansas Rules of Appellate Procedure - Civil.

Absent a temporary emergency order under this Act, an enforcing court may not stay an order enforcing a custody determination pending appeal.

Ark. Code Ann. §9-19-314.

## **Enforcement under Hague Convention**

An Arkansas court may enforce an order for the return of a child made under the Hague Convention on the Civil Aspects of International Child Abduction as if were a child-custody determination.

Ark. Code Ann. § 9-19-302.

### **Role of Prosecutor or Public Official**

In a case arising under the UCCJEA or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecuting attorney may take any lawful action, including a proceeding under the UCCJEA or other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child-custody determination if there is:

An existing child-custody determination;

A request to do so from a court in a pending child-custody proceeding;

A reasonable belief that a criminal statute has been violated; or

A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

A prosecuting attorney acting under this section acts on behalf of the court and may not represent any party.

Ark. Code Ann. § 9-19-315.

### **Role of Law Enforcement**

At the request of a prosecuting attorney acting under § 9-19-315, a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecuting attorney with responsibilities under § 9-19-315.

Ark. Code Ann. § 9-19-316.

### **Costs and Expenses**

If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecuting attorney and law enforcement officers under § 9-19-315 or § 9-19-316.

Ark. Code Ann. § 9-19-317.

## XIII. Paternity

### Jurisdiction

An action to establish paternity shall be brought and shall proceed under the Arkansas Rules of Civil Procedure applicable in circuit court. Ark. Code Ann. § 9-10-102.

### Limitation Periods & Venue

Actions brought in the State of Arkansas to establish paternity may be brought at any time.

Any action brought prior to August 1, 1985, but dismissed because of a statute of limitations in effect prior to that date, may be brought for any person for whom paternity has not yet been established.

Venue of paternity actions shall be in the county in which the plaintiff resides or, in cases involving a juvenile, in the county in which the juvenile resides.

Ark. Code Ann. § 9-10-102.

*See also* [Rager ex rel. Rager v. Turley, 342 Ark. 223, 27 S.W.3d 729 \(2000\)](#)(paternity issue within the context of a child's participation in a wrongful death recovery for the death of his putative father; paternity does not have to be brought within 180 days of the death as required for filing a claim against the estate); [Overton v. Jones, 74 Ark. App. 122, 45 S.W.3d 427 \(2001\)](#)(after child's mother died, venue to determine child's custody was not proper in county in which father resided, but in county in which child had lived with his mother and in which he continued to live with his grandparents after her death); [Patterson v. Isom, 338 Ark. 234, 992 S.W.2d 792 \(1999\)](#)(issue of paternity arose during pendency of divorce action already within jurisdiction of chancery court, and thus chancery court had exclusive jurisdiction over paternity dispute); and [Barnes v. Barnes, 311 Ark. 287, 843 S.W.2d 835 \(1992\)](#)(juvenile division of chancery court had jurisdiction to make paternity determination, and case was not required to be transferred to chancery court).

### Transfer Between Local Jurisdictions

The court where the final decree of paternity is rendered shall retain jurisdiction of all matters following the entry of the decree.

If more than six (6) months subsequent to the final adjudication, however, each of the parties to the action has established a residence in a county of another judicial district within the state, one (1) or both of the parties may petition the

court that entered the final adjudication to request that the case be transferred to another county.

The case shall not be transferred absent a showing that the best interest of the parties justifies the transfer.

If a justification for transfer of the case has been made, there shall be an initial presumption for transfer of the case to the county of residence of the physical custodian of the child.

If the court that entered the final adjudication agrees to transfer the case to another judicial district, upon proper motion and affidavit and notice and payment of a refiling fee, the court shall enter an order transferring the case and the refiling fee and charging the clerk of the court to transmit forthwith certified copies of all records pertaining to the case to the clerk of the court in the county where the case is being transferred.

An affidavit shall accompany the motion to transfer and recite that the parent or parents, the physical custodian, and the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration, as appropriate, have been notified in writing that a request has been made to transfer the case.

Notification pursuant to this section must inform each recipient that any objection must be filed within twenty (20) days from the date of receipt of the affidavit and motion for transfer.

The clerk receiving a transferred case shall within fourteen (14) days of receipt set up a case file, docket the case, and afford the case full faith and credit as if the case had originated in that judicial district.

Ark. Code Ann. § 9-10-102.

### **Standing & Burdens of Proof**

Petitions for paternity establishment may be filed by:

- (1) A biological mother;
- (2) A putative father;
- (3) A person for whom paternity is not presumed or established by court order, including a parent or grandparent of a deceased putative father; or
- (4) The Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration.

Ark. Code Ann. § 9-10-104.

A “putative father” is defined throughout the Arkansas Code as any man not legally presumed or adjudicated to be the biological father of a child, but who claims or is alleged to be the biological father of the child. [R.N. v. J.M., 347 Ark. 203, 61 S.W.3d 149 \(2001\).](#)

*See also:*

[McAdams v. McAdams, 353 Ark. 494, 109 S.W.3d 649 \(2003\)](#)(adoptive father who had been adjudicated to be the biological father of child was not a “putative father” who had standing to request paternity testing);

[State Office of Child Support Enforcement v. Willis, 347 Ark. 6, 59 S.W.3d 438 \(2001\)](#)(prior action for divorce between husband and wife was neither an adjudication nor a voluntary acknowledgement of paternity, and, thus, subsequent order declaring that husband was not child's biological father was result of an original action to establish paternity, rather than an action to modify to which statute of limitations for filing such action would apply);

[R.N. v. J.M., 347 Ark. 203, 61 S.W.3d 149 \(2001\)](#)(putative father, who had a sexual relationship with a married woman, had standing under paternity statute to petition to determine the paternity of minor child, even though statute applied to suits to determine paternity of an “illegitimate child,” and child was presumed legitimate because she was born during marriage); and

[Hall v. Freeman, 327 Ark. 148, 936 S.W.2d 761 \(1997\)](#)(child who was conceived and born during mother's marriage to person other than putative father was presumed to be child of marital partners and, thus, did not have standing to bring paternity action against putative father pursuant to statute permitting persons for whom paternity is not presumed or established by court order to bring petition for paternity establishment).

A rebuttable presumption arises that a child conceived, but not born, during the marriage is a legitimate child. Only upon clear and convincing evidence may the court find this presumption overcome.

[Leach v. Leach, 57 Ark. App. 155, 942 S.W.2d 286 \(1997\)](#)(trial court should not have determined legitimacy of first-born child of marriage, even though husband and wife agreed that husband was not the biological father, where husband and wife never intended to make paternity an

issue in their divorce proceeding and it was not in child's best interest to declare that she was illegitimate);

The presumption of legitimacy of a child born during a marriage is a presumption to protect the child whose interests should be considered first and foremost. And while this presumption is rebuttable according to law, the challenging party must first show that rebutting that presumption is in the best interest of a child.

See Ark. Code Ann. § 16-43-901; and

R.N. v. J.M., 347 Ark. 203, 61 S.W.3d 149 (2001)(putative father, who had sexual relationship with married woman, was not equitably estopped from bringing action to determine paternity of minor child, even though he waited until child was almost nine months old before initiating the action; husband was the proper party to assert the estoppel claim, but he did not establish that he relied on putative father's conduct to his detriment).

The major purpose of Arkansas's filiation law is to identify the putative father so that he may assume his equitable share of the responsibility to his child.

Davis v. Office of Child Support Enforcement, 322 Ark. 352, 908 S.W.2d 649 (1995).

In a paternity proceeding brought against a living putative father, the mother's burden of proof is a mere preponderance of the evidence, as the proceeding is civil in nature. Erwin L.D. v. Myla Jean L., 41 Ark. App. 16, 847 S.W.2d 45 (1993).

### **Default Paternity Judgment**

Upon a default by the defendant, the court shall grant a finding of paternity and shall establish a child support order based on an application in accordance with the Arkansas Rules of Civil Procedure and the family support chart.

The court's granting of a default paternity judgment shall be based on the presumed mother's affidavit of facts in which the presumed mother names the defendant as the father of her child and states the defendant's access during the probable period of conception.

Ark. Code Ann. § 9-10-102(e).

## **Temporary Orders**

If the child is not born when the accused appears before the circuit court, the court may hear evidence and may make temporary orders and findings pending the birth of the child.

In all cases brought pursuant to Title IV-D of the Social Security Act, OCSE shall issue an administrative order for paternity testing. OCSE bears initial cost, to be assessed against the putative father if paternity is established or the applicant if the putative father is excluded.

Any paternity testing results obtained pursuant to an administrative order for paternity testing shall be admissible into evidence in any circuit court for the purpose of adjudicating paternity, as provided by § 9-10-108.

Upon motion by a party, the court shall issue a temporary child support order in accordance with § 9-10-101 et seq., the guidelines for child support, and the family support chart, when paternity is disputed and a judicial or administrative determination of paternity is pending, if there is clear and convincing genetic evidence of paternity.

If the mother should die before the final order, the action may be revived in the name of the child, and the mother's testimony at the temporary hearing may be introduced in the final hearing.

If the results of paternity testing exclude an alleged parent from being the biological parent of the child, the office shall issue an administrative determination that declares that the excluded person is not a parent of the child.

Ark. Code Ann. § 9-10-103.

## **Paternity Test**

Upon motion of either party in a paternity action, the trial court shall order that the putative father, mother, and child submit to scientific testing for paternity, which may include deoxyribonucleic acid testing, to determine whether or not the putative father can be excluded as being the biological father of the child and to establish the probability of paternity if the testing does not exclude the putative father.

If the results of the paternity tests establish a ninety-five percent (95%) or more probability of inclusion that the putative father is the biological father of the child, after corroborating testimony concerning the conception, birth, and history of the child, this shall constitute a prima facie case of establishment of paternity, and the burden of proof shall shift to the putative father to rebut that proof.

Whenever the court orders scientific testing for paternity and one (1) of the parties refuses to submit to the testing, that fact shall be disclosed upon the trial and may be considered civil contempt of court.

Ark. Code Ann. § 9-10-108.

An order for a blood test is not a final order and therefore, is not appealable. [Helton v. Arkansas Dep't of Human Servs., 309 Ark. 268, 828 S.W.2d 842 \(1992\).](#)

Putative fathers do not have a guaranteed right to counsel in paternity actions when their physical liberty is not in jeopardy. [Burrell v. Arkansas Dep't of Human Servs., 41 Ark. App. 140, 850 S.W.2d 8 \(1993\).](#)

Similarly, Sixth Amendment right to confrontation does not apply as paternity is not a criminal matter. [Davis v. Child Support Enforcement Unit, 326 Ark. 677, 933 S.W.2d 798 \(1996\).](#)

*See* [State, Child Support Enforcement Unit v. Rogers, 50 Ark. App. 108, 902 S.W.2d 243 \(1995\)](#)(in uniform reciprocal support action, putative father sufficiently rebutted any presumption of paternity arising out of blood test results setting probability of his paternity at 99.99%, where three witnesses testified that putative father had vasectomy prior to conception of child, lab report prepared eight years after birth of child indicated putative father had zero sperm count, and mother swore in affidavit that she had sexual intercourse only with one man other than putative father within thirty-day period of date child was conceived).

*See also* [Ross v. Moore, 30 Ark. App. 207, 785 S.W.2d 243 \(1990\)](#)(proper foundation was not laid for admission in paternity proceeding of laboratory report on blood tests where there was nothing to show that person who signed the report and stated that he was the laboratory director was the person who performed the test, or that he was a qualified expert).

### **Lying-In Expenses**

If it is found by the court that the accused is the father of the child, the court shall render judgment against him for the lying-in expenses in favor of the mother, person, or agency incurring the lying-in expenses, if claimed.

If the lying-in expenses are not paid upon the rendition of the judgment, together with all costs that may be adjudged against him in the case, then the court shall have the power to commit the accused person to jail until the lying-in expenses are paid, with all costs.

Bills and invoices for pregnancy and childbirth expenses and paternity testing are admissible as evidence in the circuit court or juvenile division of circuit court without third-party foundation testimony if such bills or invoices are regular on their face.

Such bills or invoices shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

Ark. Code Ann. § 9-10-110.

### **Custody & Visitation in Paternity Cases**

When a child is born to an unmarried woman, legal custody of that child shall be in the woman giving birth to the child until the child reaches eighteen (18) years of age unless a court of competent jurisdiction enters an order placing the child in the custody of another party.

A biological father, provided he has established paternity in a court of competent jurisdiction, may petition the circuit court in the county where the child resides for custody of the child.

The court may award custody to the biological father upon a showing that:

- (1) He is a fit parent to raise the child;
- (2) He has assumed his responsibilities toward the child by providing care, supervision, protection, and financial support for the child; and
- (3) It is in the best interest of the child to award custody to the biological father.

When in the best interest of a child, visitation shall be awarded in a way that assures the frequent and continuing contact of the child with the mother and the biological father.

Ark. Code Ann. § 9-10-113.

*But see* [Thomas v. Avant, 370 Ark. 377, 260 S.W.3d 266, \(2007\)](#) (where the jurisdictional requirements of the UCCJEA and the PKPA may preempt state law).

*See also* Ark. Code Ann. § 9-10-109 (subsequent to the execution of an acknowledgment or finding of paternity by the father and mother of a child, the court shall follow the same guidelines, procedures, and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the circuit court as if it were a case involving a child born of a marriage in

awarding custody, visitation, setting amounts of support, costs, and attorney's fees).

See [Norwood v. Robinson, 315 Ark. 255, 866 S.W.2d 398 \(1993\)](#)(the Supreme Court of Arkansas affirmed the trial court's decision to require the biological father to show a change in circumstances bearing on the best interests of the child in order to justify a change of custody).

### **Case Law**

[Sheppard v. Speir, 85 Ark. App. 481, 157 S.W.3d 583 \(2004\)](#)(father seeking custody of illegitimate child was not required to show material change in circumstances, where issue of custody was not resolved in prior paternity order. And evidence supported trial court's finding that award of custody of illegitimate child to father was in child's best interests; father had stable employment and stable marriage, father had responsibly supported and visited child, mother was unable to maintain employment and had no means to support child, mother had interfered in father's visitation, and mental-health issues of mother's older sons posed danger to child);

[Cranston v. Carroll, 97 Ark. App. 23, 242 S.W.3d 643 \(2006\)](#)(trial court's decision changing custody from unwed mother to father was not clearly erroneous; mother often changed residences and employment, there were periods when mother was not employed even though she was well-educated and capable of working, child was frequently absent from school and tardy while in mother's care, child did poorly in school while in mother's custody, mother physically and forcibly dragged the child out of father's home during visitation exchange when she was not even supposed to pick up child, and child had thrived while in father's care).

[Sory v. Woodall, 73 Ark. App. 344, 43 S.W.3d 765 \(2001\)](#)(although there is a preference to award custody of a child to a biological parent, this preference is not absolute; in this case, it was in the children's best interests to be in the custody of their grandmother); and

### **Name Change**

The only relevant inquiry in determining whether to change the surname of a minor child is what is in that child's best interest.

The burden of proof is on the moving party to demonstrate that the change is in the best interest of the child.

The court must make the determination on a case-by-case basis through "thoughtful and careful consideration" of the following six factors:

- (1) the child's preference;
- (2) the effect of the change of the child's surname on the preservation and development of the child's relationship with each parent;
- (3) the length of time the child has borne a given name;
- (4) the degree of community respect associated with the present and proposed surnames;
- (5) the difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed surname; and
- (6) the existence of any parental misconduct or neglect.

[Huffman v. Fisher, 343 Ark. 737, 38 S.W.3d 327 \(2001\).](#)

*See also* [Matthews v. Smith, 80 Ark. App. 396, 97 S.W.3d 418 \(2003\)](#)(trial court adequately applied all factors when it determined whether change of child's surname was in the child's best interest; trial court acknowledged that the primary consideration was the best interest of the child, that father bore the burden of proof, and it considered the child's age and possible confusion to the child due to the name change);

[Carter v. Reddell, 75 Ark. App. 8, 52 S.W.3d 506 \(2001\)](#)(evidence of time that child had borne her given name, effect of name change on her relationship with each of her parents, and the difficulties she may experience from bearing present or proposed surname was sufficient to support finding that changing child's surname to that of father was in child's best interest; child was four years old, each parent had established bond with child unlikely to be altered by name change, stigma of name change minimal where she was just starting school, mother had married and her surname was different from child's surname, and mother had no plans to change child's surname to that of mother's husband);

[Putt v. Suttles, 2011 Ark. App. 688, 386 S.W.3d 623](#)(the trial court is given discretion in divorce cases on whether to order paternity testing and is instructed to consider the child's best interest before ordering a test that could forever change a child's life merely because the adults who caused such a tumultuous situation are curious to know the results of their infidelity);

[Bell v. Wardell, 72 Ark. App. 94, 34 S.W.3d 745 \(2000\)](#)(chancery court's decision that it was in seven-month-old child's best interest to change her surname from mother's surname to that of father was not clearly erroneous, in paternity proceeding; father filed paternity action only 19 days after child's birth, father

offered to pay child support and child's medical expenses, and father and his mother had sought visitation with child); and

[Moon v. Marquez, 65 Ark. App. 78, 986 S.W.2d 103 \(1999\)](#)(father's petition to modify paternity order, requesting that child's surname be changed to the same as his, was not barred by res judicata; although the order was final in that it could be appealed, in custody cases, the order could later be modified upon a showing of sufficient change in circumstances to justify modification).

### **Modification of Orders or Judgments**

The circuit court may at any time enlarge, diminish, or vacate any order or judgment except in regard to the issue of paternity as justice may require and on such notice to the defendant as the court may prescribe.

The court shall not set aside, alter, or modify any final decree, order, or judgment of paternity in which paternity blood testing, genetic testing, or other scientific evidence was used to determine the adjudicated father as the biological father.

[Ark. Code Ann. § 9-10-115.](#)

*See* [Moon v. Marquez, 65 Ark. App. 78, 986 S.W.2d 103 \(1999\)](#)(father's petition to modify paternity order, requesting that child's surname be changed to the same as his, was not barred by res judicata; although the order was final in that it could be appealed, in custody cases, the order could later be modified upon a showing of sufficient change in circumstances to justify modification);

[State Office of Child Support Enforcement v. Williams, 338 Ark. 347, 995 S.W.2d 338 \(1999\)](#)(statute addressing modification of child-support order following determination in paternity suit that man is not biological father of child does not apply to issues of scientific testing of paternity after adjudication of paternity in divorce decree).

Either party may rescind a voluntary acknowledgment by completing a form to be filed with the Division of Vital Records before hearing date or within 60 days of executing a voluntary acknowledgment, whichever date comes first.

Beyond sixty days, acknowledgment may be set aside only upon a filing of a petition and a finding of fraud, duress, or material mistake of fact.

The burden of proof shall be upon the person challenging the establishment of paternity.

[Ark. Code Ann. § 9-10-115.](#)

When any man has been adjudicated to be the father of a child or is deemed to be the father of a child pursuant to an acknowledgment of paternity without the benefit of scientific testing for paternity and as a result was ordered to pay child support, he shall be entitled to one (1) paternity test, pursuant to § 9-10-108, at any time during the period of time that he is required to pay child support upon the filing of a motion challenging the adjudication or acknowledgment of paternity in a court of competent jurisdiction.

The duty to pay child support and other legal obligations shall not be suspended while the motion is pending except for good cause shown.

Ark. Code Ann. § 9-10-115.

If the test excludes the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity as the biological father of the child and the court so finds, the court shall:

- (A) Set aside the previous finding or establishment of paternity;
- (B) Find that there is no future obligation of support;
- (C) Order that any unpaid support owed under the previous order is vacated; and
- (D) Order that any support previously paid is not subject to refund.

If the name of the adjudicated father or man deemed to be the father pursuant to an acknowledgment of paternity appears on the birth certificate of the child, the court shall issue an order requiring the birth certificate to be amended to delete the name of the father.

Ark. Code Ann. § 9-10-115.

### ***Res Judicata***

*Res judicata* does not apply to bar a name change petition subsequent to the initial paternity determination proceeding.

[Moon v. Marquez, 65 Ark. App. 78, 986 S.W.2d 103 \(1999\).](#)

*Res judicata* does not apply when two actions do not involve the same parties or their privies.

[State Office of Child Support Enforcement v. Willis, 347 Ark. 6, 59 S.W.3d 438 \(2001\)](#)(court defined *res judicata* and collateral estoppel and adopted the principle of collateral estoppel for the first time; collateral estoppel

does not apply where the issue of paternity was not litigated in the parties' first divorce).

### **Acknowledgment of Paternity**

A man is the father of a child for all intents and purposes if he and the mother execute an acknowledgment of paternity of the child pursuant to § 20-18-408 or § 20-18-409, or a similar acknowledgment executed during the child's minority. Ark. Code Ann. § 9-10-120.

Acknowledgments of paternity shall by operation of law constitute a conclusive finding of paternity, subject to the modification of orders or judgments under § 9-10-115, and shall be recognized by the chancery courts and juvenile divisions thereof as creating a parent and child relationship between father and child. Ark. Code Ann. § 9-10-120.

Such acknowledgments of paternity shall also be recognized as forming the basis for establishment and enforcement of a child support or visitation order without a further proceeding to establish paternity. Ark. Code Ann. § 9-10-120.

The Department of Health shall offer voluntary paternity establishment services in all of its offices throughout the state. The Department of Health shall coordinate such services with the Office of Child Support Enforcement of the Revenue Division of the Department of Finance and Administration. Upon submission of the acknowledgment of paternity to the Division of Vital Records of the Department of Health, the State Registrar of Vital Records shall accordingly establish a new or amended certificate of birth reflecting the name of the father as recited in the acknowledgment of paternity. Ark. Code Ann. § 9-10-120.

This statute, which establishes paternity by operation of law upon signing acknowledgement of paternity, does not apply retroactively. Bean v. Office of Child Support Enforcement, 340 Ark. 286, 9 S.W.3d 520 (2000) (“Affidavit of Birth Out of Wedlock” was type of “similar acknowledgment” of paternity contemplated by statute that establishes paternity by operation of law upon signing acknowledgement of paternity; signatures of both mother and purported father appeared on form, and form noted that child was to carry purported father's surname, which was surname that appeared on child's birth certificate).

*See also* Madison v. Osburn, 2012 Ark. App. 212, 396 S.W.3d 264 (in paternity action, biological mother was not entitled to order that her former boyfriend was required to submit to DNA testing to determine whether he was her out-of-wedlock child's biological father, because, by boyfriend's act of signing and filing acknowledgment of paternity, he became child's legal father).

## XIV. Domestic Abuse

### General Provisions

**Petitions.** The petition shall be filed in the county where the petitioner resides, where the alleged incident of abuse occurred, or where the respondent may be served. Ark. Code Ann. § 9-15-201.

“County where the petitioner resides” means the county in which the petitioner physically resides at the time the petition is filed and may include a county where the petitioner is located for a short-term stay in a domestic violence shelter. Ark. Code Ann. § 9-15-103.

A petition may be filed by:

- (1) Any adult family or household member on behalf of himself or herself;
- (2) Any adult family or household member on behalf of another family or household member who is a minor, including a married minor;
- (3) Any adult family or household member on behalf of another family or household member who has been adjudicated an incompetent; or
- (4) An employee or volunteer of a domestic-violence shelter or program on behalf of a minor, including a married minor.

Ark. Code Ann. § 9-15-201.

A petition for relief shall:

- (A) Allege the existence of domestic abuse;
- (B) Disclose the existence of any pending litigation between the parties;  
and
- (C) Disclose any prior filings of a petition for an order of protection under this chapter.

The petition shall be accompanied by an affidavit made under oath that states the specific facts and circumstances of the domestic abuse and the specific relief sought.

Ark. Code Ann. § 9-15-201.

When a petition alleges an immediate and present danger of domestic abuse or that the respondent is scheduled to be released from incarceration within thirty (30) days and upon the respondent's release there will be an immediate and

present danger of domestic abuse, the court shall grant a temporary order of protection pending a full hearing if the court finds sufficient evidence to support the petition. Ark. Code Ann. § 9-15-206.

**Persons.** Persons covered by the act include spouses, former spouses, parents and children, persons related by blood within fourth degree of consanguinity (generally through great-great-grandparents, great-great grandchildren, etc.), any children residing in the household, persons who presently or in the past have resided or cohabited together, persons who have or have had a child in common, and persons who presently have or in the past have had a dating relationship.

“Dating relationship” means a romantic or intimate social relationship between two individuals that shall be determined after examining the length and type of the relationship and the frequency of interaction between the two people involved.

“Dating relationship” does not mean a casual relationship or ordinary fraternization in a business or social context.

Ark. Code Ann. § 9-15-103.

See [Pablo v. Crowder, 95 Ark. App. 268, 236 S.W.3d 559 \(2006\)](#)(parties’ dating relationship of a couple of months, which appellant characterized as “serious,” came within the definition of the applicable statute).

**Fees & Costs.** The court, clerks of the court, and law enforcement agencies shall not require any initial filing fees or service costs. Ark. Code Ann. § 9-15-202.

**Time.** The circuit court shall not deny a petitioner relief solely because the act of domestic or family violence and the filing of the petition did not occur within one hundred twenty (120) days. Ark. Code Ann. § 9-15-214.

**Incarceration.** Incarceration or imprisonment of the abusing party shall not bar the court from issuing an ex parte temporary order of protection. Ark. Code Ann. § 9-15-206.

**Relief.** An ex parte **temporary** order of protection may provide the following relief:

(1) Include any of the orders provided in §§ 9-15-203 and 9-15-205; and

(2) Provide the following relief:

(A) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(B) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(C) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties;

(D) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

(E) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order; and

(F) Order such other relief as the court considers necessary or appropriate for the protection of a family or household member.

The relief may include without limitation enjoining and restraining the abusing party from doing, attempting to do, or threatening to do an act injuring, mistreating, molesting, or harassing the petitioner.

Ark. Code Ann. § 9-15-206.

A **final** order of protection may provide the following relief:

(1) Exclude the abusing party from the dwelling that the parties share or from the residence of the petitioner or victim;

(2) Exclude the abusing party from the place of business or employment, school, or other location of the petitioner or victim;

(3) Award temporary custody or establish temporary visitation rights with regard to minor children of the parties;

If a previous child custody or visitation determination has been made by another court with continuing jurisdiction with regard to the minor children of the parties, a temporary child custody or visitation determination may be made. The order shall remain in effect until the court with original jurisdiction enters a subsequent order regarding the children.

(4) Order temporary support for minor children or a spouse, with such support to be enforced in the manner prescribed by law for other child support and alimony awards;

- (5) Allow the prevailing party a reasonable attorney's fee as part of the costs;
- (6) Prohibit the abusing party directly or through an agent from contacting the petitioner or victim except under specific conditions named in the order;
- (7) Direct the care, custody, or control of any pet owned, possessed, leased, kept, or held by either party residing in the household; and
- (8) Order other relief as the court deems necessary or appropriate for the protection of a family or household member.

The relief may include, but not be limited to, enjoining and restraining the abusing party from doing, attempting to do, or threatening to do any act injuring, mistreating, molesting, or harassing the petitioner.

Ark. Code Ann. § 9-15-205.

**Time Limit.** An order of protection shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court, and may be renewed at a subsequent hearing upon proof and a finding by the court that the threat of domestic abuse still exists. Ark. Code Ann. § 9-15-205.

**Home Address.** In the final order of protection, the petitioner's home or business address may be excluded from notice to the respondent.

A court shall also order that the petitioner's copy of the order of protection be excluded from any address where the respondent happens to reside.

Ark. Code Ann. § 9-15-207.

A petitioner may omit his or her home address or business address from all documents filed with the court. If a petitioner omits his or her home address, the petitioner shall provide the court with a mailing address. If disclosure of a petitioner's home address is necessary to determine jurisdiction or consider venue, the court may order the disclosure of the petitioner's home address:

- (A) After receiving the petitioner's consent;
- (B) Orally and in chambers, out of the presence of the respondent, and a sealed record to be made; or
- (C) After a hearing, if the court takes into consideration the safety of the petitioner and finds the disclosure in the interest of justice.

Ark. Code Ann. § 9-15-203.

**Time Frames**

When a petition is filed pursuant to this chapter, the court shall order a hearing to be held on the petition for the order of protection not later than thirty (30) days from the date on which the petition is filed or at the next court date, whichever is later.

An ex parte temporary order of protection is effective until the date of the hearing on the petition for the order of protection.

A denial of an ex parte temporary order of relief does not deny the petitioner the right to a full hearing on the merits.

Ark. Code Ann. § 9-15-204.

An order of protection shall be for a fixed period of time not less than ninety (90) days nor more than ten (10) years in duration, in the discretion of the court, and may be renewed at a subsequent hearing upon proof and a finding by the court that the threat of domestic abuse still exists. Ark. Code Ann. § 9-15-205.

**Service**

Service of a copy of the petition, the ex parte temporary order of protection, if issued, and notice of the date and place set for the hearing shall be made upon the respondent:

(A) At least five (5) days before the date of the hearing; and

(B) In accordance with the applicable rules of service under the Arkansas Rules of Civil Procedure.

If service cannot be made on the respondent, the court may set a new date for the hearing.

Ark. Code Ann. § 9-15-204.

**Duties of the Clerk of the Court**

The circuit clerk shall provide simplified forms and clerical assistance to help petitioners with the writing and filing of a petition under this chapter if the petitioner is not represented by counsel. Ark. Code Ann. § 9-15-203.

Uniform Ex Parte and Final Orders of Protection can be found in the Appendix.

Filing and service fees cannot be assessed against the petitioner at the time of filing.

A claim or counterclaim for other relief, including without limitation divorce, annulment, separate maintenance, or paternity shall not be asserted in a domestic violence petition.

Established filing fees may be assessed against the respondent at the full hearing, and when collected by the designated county official, shall be remitted on or before the tenth day of each month to the office of county treasurer for deposit to the county administration of justice fund.

The abused in a domestic violence petition for relief for a protection order shall not bear the cost associated with its filing or the costs associated with the issuance or service of a warrant and witness subpoena.

A judge is not prohibited from assessing costs against a petitioner if the allegations of abuse are determined after a hearing to be false.

Ark. Code Ann. § 9-15-202.

### **Duties of Law Enforcement**

Any order of protection is enforceable by a law enforcement agency with proper jurisdiction. Ark. Code Ann. § 9-15-207.

The circuit court may order a law enforcement officer with jurisdiction to accompany the petitioner and assist in placing the petitioner in possession of the dwelling or residence or to otherwise assist in execution or service of the order of protection.

The court may also order a law enforcement officer to assist the petitioner in returning to the residence and getting personal effects. Ark. Code Ann. § 9-15-208.

A law enforcement officer may file an affidavit alleging a violation of an order of protection, after which a court may issue an order to respondent to appear and show cause why he or she should not be held in contempt. Ark. Code Ann. § 9-15-210.

A law enforcement officer shall not arrest a petitioner for the violation of an order of protection issued against a respondent.

However, when a law enforcement officer has probable cause to believe that a respondent has violated an order of protection and has been presented verification of the existence of the order of protection, the

officer may arrest the respondent without a warrant whether or not the violation occurred in the presence of the officer if the order of protection was obtained according to this chapter and the Arkansas Rules of Criminal Procedure.

An order of protection issued by a court of competent jurisdiction in any county of this state is enforceable in every county of this state by any court or law enforcement officer.

Ark. Code Ann. § 9-15-207.

A law enforcement officer may make a warrantless arrest for domestic abuse, upon probable cause that an act constituting domestic abuse was committed within the preceding 4 hours or the preceding 12 hours when physical injury is involved, even if the incident did not take place in the officer's presence.

When officer receives conflicting accounts of domestic violence, he or she shall evaluate each account separately to determine if one party was the predominant aggressor. When making determination, officer shall consider the following, based upon his or her observation:

- statements from parties to domestic violence and from other witnesses;
- extent of personal injuries of parties;
- evidence of self-defense;
- prior complaints of domestic abuse if history is reasonably ascertainable;
- any other relevant factors.

When officer has probable cause to believe that a party to an act of domestic abuse is the predominant aggressor, and the act would constitute a felony, the officer shall arrest that person with or without a warrant, under the circumstances set out in the provision. If the act would be a misdemeanor, arrest is the preferred action, if there is reason to believe there is an imminent risk of further injury .

An officer acting in good faith and exercising due care in making an arrest for domestic abuse is immune from civil liability.

Ark. Code Ann. § 16-81-113.

## **Full Faith & Credit**

Any order of protection issued by a court of another state, a federally recognized Indian tribe, or a territory shall be afforded full faith and credit by the courts of this state and shall be enforced by law enforcement as if it were issued in this state if:

The court had jurisdiction over the parties and matters under the laws of the other state, the federally recognized Indian tribe, or the territory; and

Reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right to due process.

In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by the laws or rules of the other state, the federally recognized Indian tribe, or the territory and, in any event, within a reasonable time after the order is issued sufficient to protect the due process rights of the party against whom the order is enforced.

### Ark. Code Ann. § 9-15-302.

An order of protection issued against both the petitioner and the respondent by a court of another state, a federally recognized Indian tribe, or a territory shall not be enforceable against the petitioner unless:

- (1) The respondent filed a cross or counter petition, complaint, or other written pleading seeking an order of protection;
- (2) The issuing court made specific findings against both the petitioner and the respondent; and
- (3) The issuing court determined that each party was entitled to an order.

A person seeking recognition and enforcement of an out-of-state order of protection under this section may present a copy of the order of protection to the local law enforcement office in the city or county where enforcement of the order may be necessary. After receiving a copy of the order of protection, the local law enforcement office shall enter the order into the Arkansas Crime Information Center's protection order registry file. There shall be no fee for entering the out-of-state order of protection. The law enforcement office shall not notify the party against whom the order has been issued that an out-of-state order of protection has been entered in this state. Entry of the out-of-state order of protection into the center's protection order registry file shall not be required for enforcement of the order of protection in this state.

Ark. Code Ann. § 9-15-302.

When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that an out-of-state order of protection exists. A law enforcement officer may rely upon:

An out-of-state order of protection that has been provided to the officer by any source; or

The statement of any person protected by an out-of-state order of protection that the order exists; and verification by the clerk of the court of the other state, the federally recognized Indian tribe, or the territory in writing, by telephone, or by facsimile transmission or other electronic transmission.

When enforcing an out-of-state order of protection, a law enforcement officer shall determine if there is probable cause to believe that the terms of the order have been violated. The law enforcement officer may rely upon:

- (i) Any events he or she witnessed;
- (ii) The statement of any person who claims to be a witness; or
- (iii) Any other evidence.

A law enforcement officer shall not refuse to enforce the terms of the order of protection on the grounds that the order has not been filed with the local law enforcement office or entered into the center's protection order registry file unless the law enforcement officer has a reasonable belief that the order is not authentic on its face.

Ark. Code Ann. § 9-15-302.

**Violation of an Order of Protection**

An order of protection shall include a notice to the respondent or party restrained that:

- (1) A violation of the order of protection is a Class A misdemeanor carrying a maximum penalty of one (1) year imprisonment in the county jail or a fine of up to one thousand dollars (\$1,000), or both;
- (2) A violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony;
- (3) It is unlawful for an individual who is subject to an order of protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a

firearm or ammunition pursuant to 18 U.S.C. § 922(g)(8) and (9) as it existed on January 1, 2007; and

(4) A conviction of violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a Class D felony.

For respondents eighteen (18) years of age or older or emancipated minors, jurisdiction for the criminal offense of violating the terms of an order of protection is with the circuit court or other courts having jurisdiction over criminal matters.

Ark. Code Ann. § 9-15-207.

A person who is charged with violating an order of protection (ex parte or final) may be ordered as a condition of his or her release from custody to be placed under electronic surveillance at his or her expense until the charge is adjudicated.

“Electronic surveillance” is a defined term in the statute.

Ark. Code Ann. § 9-15-217.

A person who is found guilty of violating an order of protection may be placed under electronic surveillance at his or her expense as part of his or her sentence for a minimum of four (4) months but not to exceed one (1) year.

Ark. Code Ann. § 9-15-217.

### **Case Law**

[Claver v. Wilbur, 102 Ark. App. 53 \(2008\)](#)(the Court of Appeals reversed the trial court’s entry of a protective order as erroneous and unsupported by the evidence. The Court found no statutory reason for issuing an order. The appellee’s 16-year-old daughter and the 20-year old appellant were dating. The Court said the only proof showed that appellant continued to see the teenager after her parents prohibited contact between them and that the appellant had given the teenager a morning-after pill. No finding was made of sexual conduct that would constitute a crime. No evidence was presented about physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault. Simply maintaining contact with a boyfriend or girlfriend without parental consent does not rise to the level of domestic abuse).

[Chiolak v. Chiolak, 99 Ark. App. 277 \(2007\)](#)(the trial court did not err in deciding the issue of visitation in a protective order case even though the parties had just divorced in another division of the same circuit. In ordering that visitation

would cease, the trial court made it clear that the protective order was subject to modification by the division that had granted the divorce. Visitation was discontinued only until the divorce court could conduct a hearing and rule in light of the child's allegations of abuse against the father. Res judicata did not bar issues raised by the order of protection, according to the Court, which said that custody and visitation orders are always subject to modification for changed circumstances and the best interest of the child).

[Simmons v. Dixon, 96 Ark. App. 260 \(2006\)](#)(trial court's granting of an order of protection based upon appellee's petition alleging that appellant threatened her and her dog was affirmed. The Court of Appeals found that the evidence was sufficient to show that appellant sent threatening text messages to appellee and that appellee claimed she was afraid after receiving the messages. That was sufficient to show the infliction of fear of "imminent" physical harm under the domestic abuse statutes).

[Pablo v. Crowder, 95 Ark. App. 268 \(2006\)](#)(parties' dating relationship of a couple of months, which appellant characterized as "serious," was long enough to bring it within the definition of the Domestic Abuse Act).

[Davis v. Davis, 360 Ark. 233 \(2005\)](#)(on appellant's petition for order of protection, a temporary order was entered for 30 days. At the subsequent hearing, the trial court dismissed the domestic abuse case because the appellee husband had filed a separate divorce action in which a restraining order had been entered. The circuit court said that questions concerning custody, visitation, and paternity would have to be worked out in a divorce action. *See* Ark. Code Ann. §9-15-201(f)(petition for order of protection may be filed regardless of whether there is any pending litigation between the parties)(provision not cited in case)).

[Clark v. Hendrix, 84 Ark. App. 106 \(2003\)](#)(the Court of Appeals held that the Circuit Court in White County erred in issuing a no-contact order for a mother and child (the child was the subject of the petition for order of protection) against the child's father after a hearing on an incident of violence that occurred in White County because, at the time, a Circuit Court of Pulaski County had ongoing jurisdiction of the parties' visitation dispute concerning the same parties and involving the same child. Dealing with the matter as a jurisdictional issue, the Court of Appeals said that the court in White County erred in assuming jurisdiction and should have refrained from exercising jurisdiction. The Court did not cite the applicable domestic abuse statutes).

## XV. Premarital Agreements

The Arkansas Premarital Agreement Act - Ark. Code Ann. § 9-11-401 et seq.

### Requirements

“Premarital agreement” means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

“Property” means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

Ark. Code Ann. § 9-11-401.

A premarital agreement must be in writing and signed and acknowledged by both parties. It is enforceable without consideration.

Ark. Code Ann. § 9-11-402.

Parties to a premarital agreement may contract with respect to:

- (1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- (2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- (3) the disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
- (4) the modification or elimination of spousal support;
- (5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;
- (6) the ownership rights in and disposition of the death benefit from a life insurance policy;
- (7) the choice of law governing the construction of the agreement; and
- (8) any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

The right of a child to support may not be adversely affected by a premarital agreement.

Ark. Code Ann. § 9-11-403.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

Ark. Code Ann. § 9-11-405. See also [Lee v. Lee, 35 Ark. App. 192 \(1991\)](#)(parties contemplating marriage may agree to fix the rights of each in the other's property differently than by law so long as the agreement was made contemplating marriage lasting until death and not divorce); and

[Banks v. Evans, 347 Ark. 383, 64 S.W.3d 746 \(2002\)](#)(attempted reconciliation between husband and wife did not abrogate the premarital agreement; it could only be amended or revoked by written agreement signed by both parties).

## **Enforcement**

A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

- (1) that party did not execute the agreement voluntarily; or
- (2) the agreement was unconscionable when it was executed and, before execution of the agreement, that party:
  - (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;
  - (ii) did not voluntarily and expressly waive after consulting with legal counsel, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and
  - (iii) did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one (1) party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

Ark. Code Ann. § 9-11-406.

Prenuptial agreement statutes only apply to agreements made prior to marriage. [Stewart v. Combs, 368 Ark. 121, 243 S.W.3d 294 \(2006\)](#).

An antenuptial agreement will be enforced where agreement was freely entered into by both parties, and is not unjust, inequitable, or tainted with fraud. [Lee v. Lee, 35 Ark. App. 192, 816 S.W.2d 625 \(1991\)](#).

*See also* [Rogers v. Rogers, 90 Ark. App. 321, 205 S.W.3d 856 \(2005\)](#)(the rule of evidence that governed the admissibility of compromises and offers to compromise did not apply to preclude admission of two partial stipulated property agreements executed by husband and wife, in divorce proceeding; the partial stipulated agreements were fully executed agreements, and they were offered for enforcement and were not offered for the purpose of “proving liability for, invalidity of, or amount of the claim.”).

## XVI. Reconciliation Agreements

### Policy

Reconciliation agreements are an exception to the marital property law. See [Ark. Code Ann. § 9-12-315](#).

Reconciliation agreements are not against public policy since the law encourages the resumption of marital relations.

See [Schichtel v. Schichtel, 3 Ark. App. 36, 621 S.W.2d 504 \(1981\)](#)(the law encourages the resumption of marital relations. Since the purpose of a reconciliation agreement is to restore marital relations, it harmonizes with public policy and will be upheld. The Court held that a contract between husband and wife, made when they were separated for just cause, whereby the husband agrees to pay his wife a specified sum if she will resume marital relations, rests upon a valuable consideration and is enforceable);

[Grover v. Grover, 101 Ark. App. 346, 276 S.W.3d 740 \(2008\)](#)(circuit court's finding that wife signed the reconciliation agreement under duress, which was grounds for setting aside the agreement under Florida law, was not clearly erroneous; husband had not fully disclosed the nature of his military benefits, the parties had ended the divorce litigation and resumed their fiduciary relationship, wife signed the agreement without the benefit of legal counsel, and wife had returned to Florida with the parties' minor child to begin reconciliation efforts);

[Arnold v. Arnold, 261 Ark. 734, 553 S.W.2d 251\(1977\)](#)(concerning the question of whether a separation agreement survives a reconciliation; the court held that it depends on the intention of the parties. But, when there is a property settlement, it is generally held to be a final and binding contract between the parties which can only be voided by mutual agreement. Reconciliation alone does not terminate the settlement. Therefore the settlement survives the reconciliation unless the court can find an intention or an express agreement that it shall not survive); and

[Ducharme v. Ducharme, 316 Ark. 482, 872 S.W.2d 392 \(1994\)](#)(Louisiana law, rather than Arkansas law, applied to determine legal efficacy of act of donation whereby wife gave up her usufruct for her husband's life in certain notes receivable and real property located in Louisiana, considering that Louisiana was place of contracting, and was location of real property specified in agreement).

## **XVII. Mediation and Alternative Dispute Resolution**

### **Duty & Authority of Courts**

It is the duty of each trial and appellate court of this state and each court is hereby vested with the authority to encourage the settlement of cases and controversies pending before it by suggesting the referral of a case or controversy to an appropriate dispute resolution process agreeable to the parties.

On motion of all the parties, the court must make such an order of reference and continue the case or controversy pending the outcome of the selected dispute resolution process.

In addition, each circuit and appellate court of this state is vested with the authority to order any civil, juvenile, probate, or domestic relations case or controversy pending before it to mediation.

If a case or controversy is ordered to mediation, the parties may:

- (1) Choose an appropriate mediator from a roster provided by the Arkansas Alternative Dispute Resolution Commission of those mediators who meet the commission's requirement guidelines for that type of case; or
- (2) Select a mediator not on the commission's roster, if approved by the court.

A party may move to dispense with the order to mediate for good cause shown.

“Good cause shown” shall include, but not be limited to, a party's inability to pay the costs of mediation.

Each court is further granted the discretionary authority to make at the request of a party appropriate orders to confirm and enforce the results produced by the dispute resolution process.

Ark. Code Ann. § 16-7-202.

### **Confidentiality**

Except as provided below, a communication relating to the subject matter of any civil or criminal dispute made by a participant in a dispute resolution process, whether before or after the institution of formal judicial proceedings, is confidential and is not subject to disclosure and may not be used as evidence against a participant in any judicial or administrative proceeding.

Any record or writing made at a dispute resolution process is confidential, and the participants or third party or parties facilitating the process shall not be required to testify in any proceedings related to or arising out of the matter in dispute or be subject to process requiring disclosure or production of information or data relating to or arising out of the matter in dispute.

If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine in camera whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the court or whether the communications or materials are subject to disclosure.

Ark. Code Ann. § 16-7-206.

### **Immunity**

No impartial third party administering or participating in a dispute resolution process shall be held liable for civil damages for any statement or decision made in connection with or arising out of the conduct of a dispute resolution process unless the person acted in a manner exhibiting willful or wanton misconduct.

Ark. Code Ann. § 16-7-207.

### **Options Available to Courts**

When the parties to a divorce action have minor children residing with one (1) or both parents, the court, prior to or after entering a decree of divorce, may require the parties to:

- (1) Complete at least two (2) hours of classes concerning parenting issues faced by divorced parents; or
- (2) Submit to mediation in regard to addressing parenting, custody, and visitation issues.

Each party shall be responsible for his or her cost of attending classes or mediation.

The parties may:

- (1) Choose a mediator from a list provided by the judge of those mediators who have met the Arkansas Alternative Dispute Resolution Commission's requirement guidelines for inclusion on a court-connected mediation roster; or

(2) Select a mediator not on the roster, if approved by the judge.

A party may move to dispense with the referral to mediation for good cause shown.

Ark. Code Ann. § 9-12-322.

See also Ark. Code Ann. § 16-7-102 (Establishment of commission) and Ark. Code Ann. § 16-7-104 (Powers and authority of commission).

*The [Arkansas Alternative Dispute Resolution Commission](#) is staffed and is housed within the Administrative Office of the Courts. Additional information and printed materials are available through the Commission at 625 Marshall Street, Little Rock, Arkansas 72201, (501) 682-9402.*

## XVIII. Name Change for a Child

### Best Interest & Factors

The controlling consideration is whether the name change is in the child's best interest. [Poindexter v. Poindexter, 360 Ark. 538, 203 S.W.3d 84 \(2005\)](#)(the rule was applied to middle names as well as to surnames).

In determining the child's best interest, the controlling consideration, the trial court should consider at least the following factors:

- (1) the child's preference;
- (2) the effect of the change of the child's surname on the preservation and development of the child's relationship with each parent;
- (3) the length of time the child has borne a given name;
- (4) the degree of community respect associated with the present and proposed surnames;
- (5) the difficulties, harassment, or embarrassment that the child may experience from bearing the present or proposed surname; and
- (6) the existence of any parental misconduct or neglect.

[Huffman v. Fisher, 337 Ark. 58, 987 S.W.2d 269 \(1999\)](#)(where the factors were first enumerated; “norm in the locale,” as to how children receive surnames, is not one of the factors to be considered in determining the child's best interest, although such evidence may be relevant in determining whether the child may experience difficulties, harassment, or embarrassment from bearing a particular surname).

Where a full inquiry is made by the trial court regarding the implication of *Huffman* factors governing requests to change a child's name and a determination is made with due regard to the best interest of the child, the trial court's decision regarding change of surname will be upheld where it is not clearly erroneous.

The burden of proof is on the party seeking change of child's surname to demonstrate that the name change is in the best interest of the child.

[Gangi v. Edmonds, 93 Ark. App. 217, 218 S.W.3d 339 \(2005\)](#)(trial court's finding that, if child continued to bear his mother's surname, everyone would know that his parents had not been married and this would cause child embarrassment was not supported by any evidence; the marriage of

a child's mother and her consequent assumption of her husband's surname, as is customary in the state, should not provide a basis for changing the child's surname to that of his father, where no such consequence may be triggered by the father's marriage; evidence in connection with unwed father's petition to change the surname of parties' minor child from that of mother to father indicated that father exhibited such parental misconduct and neglect as to weigh heavily against changing child's surname to that of his father).

*See also* [Boudreaux v. Mauterstock, 88 Ark. App. 389, 199 S.W.3d 120 \(2004\)](#)(child's adjudicated father failed to carry his burden, in proceedings on his petition for change of child's surname, of demonstrating that change was in child's best interest, where father presented no evidence other than what could be gleaned from testimony regarding his petition for change of custody, and mere fact that child would have last name different from that of her father in absence of change did not establish that it was in child's best interest that her surname be changed);

[Sheppard v. Speir, 85 Ark. App. 481, 157 S.W.3d 583 \(2004\)](#)(following change of custody of illegitimate child from mother to father, change of child's name from “Weather'By Dot Com Chanel Fourcast Sheppard” to “Samuel Charles Speir” was in child's best interests; child was of a very tender age and could show no preference, mother had been married multiple times and her other children had different surnames, father shared surname with his wife and other children, mother's surname was associated in the community with her numerous arrests, no disrespect was associated with father's surname, and child's unusual birth name, as argued by father and implicitly recognized by mother, would subject child to difficulties, harassment, and embarrassment); and

[Walker v. Burton, 2011 Ark. App. 439, 384 S.W.3d 605](#)(evidence was sufficient to establish that child's best interests would be served by granting maternal stepgrandfather's petition to change child's surname to that of stepgrandfather's; child wanted to assume the last name of his stepgrandfather who had been awarded custody of child shortly before death of child's mother and maternal grandmother, child's father, who objected to stepgrandfather's name-change petition, had been incarcerated for committing offense related to mother's death, and evidence tended to show that changing child's name would have little effect on the preservation and development of child's relationship with his father since there was hardly a relationship there to begin with, father having been incarcerated for half of child's life).

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## OTHER INCOME, FUNDS & LIQUID ASSETS AVAILABLE TO ME

|      |   |         |                         |
|------|---|---------|-------------------------|
| 4.   | Funds:  | Amount: | Source of funds/assets: |
| 4.a. | All other income received<br>(state source, amount, and<br>how often received): | \$      | See attached sheet.     |
| 4.b. | Cash on hand or in banks:   | \$      |                         |
| 4.c. | Stocks & bonds, etc.:   | \$      |                         |
| 4.d. | All other child support:  | \$      |                         |

## THE CHILDREN

|      |   |                     |
|------|---|---------------------|
| 5.   | Financial responsibility of my children:                | Number of children: |
| 5.a. | Number of children I have with opposing party:          | #                   |
| 5.b. | Number of other children I have and support:            | #                   |
| 5.c. | Total Number of children living with me whom I support: | #                   |

|      |   |                |
|------|---|----------------|
| 5.d. | Full Name of child(ren) born or legally adopted of this marriage: | Date of Birth: |
| 1.   |   |                |
| 2.   |   |                |
| 3.   |   |                |
| 4.   |   |                |

## MY MONTHLY EXPENSES

|    |                     |         |    |                   |         |
|----|---------------------|---------|----|-------------------|---------|
| 6. | Expense:            | Amount: |    | Expense:          | Amount: |
| a. | Rent/house payment: | \$      | k. | Drugs:            | \$      |
| b. | Gas & electricity:  | \$      | l. | Life Insurance:   | \$      |
| c. | Water:              | \$      | m. | Health Insurance: | \$      |
| d. | Telephone:          | \$      | n. | Auto Insurance:   | \$      |
| e. | Food:               | \$      | o. | Fire Insurance:   | \$      |
| f. | Clothing:           | \$      | p. | Transportation:   | \$      |
| g. | Laundry & cleaning: | \$      | q. | Other:            | \$      |
| h. | Child care:         | \$      | r. | Other:            | \$      |
| i. | Car payment:        | \$      | s. | Other:            | \$      |
| j. | Medical:            | \$      | t. | Other:            | \$      |
|    |                     |         |    |                   |         |
|    |                     |         |    | <b>Total:</b>     | \$      |

Place a check mark by all expenses which are not being paid currently.

## CREDITORS

(Complete items 26, 27, & 28 on pages 6 & 7 FIRST)

|    | Whose Debts:       | Total Owed: (A) | Total of Monthly payments: (B) |
|----|--------------------|-----------------|--------------------------------|
| 7. | Joint Debts:       | \$              | \$                             |
| 8. | Plaintiff's Debts: | \$              | \$                             |
| 9. | Defendant's Debts: | \$              | \$                             |

## GENERAL INFORMATION ABOUT PARTIES

(Do not guess concerning information about opposing party)

|     | Information about:   | Plaintiff | Defendant |
|-----|--|-----------|-----------|
| 10. | Name:  |           |           |
| 11. | Address:   |           |           |
| 12. | SSN: (last four digits)  |           |           |
| 13. | Date of Birth:   |           |           |
| 14. | Phone No.: (home)  |           |           |
| 15. | Phone No.: (work)  |           |           |
| 16. | Employer:  |           |           |
| 17. | Employer Address:  |           |           |
| 18. | Employer Phone No.:  |           |           |
| 19. | Opposing party's net<br>___ weekly, ___ biweekly,<br>___ monthly or ___ semimonthly<br>income: |           |           |
| 20. | Other income of opposing<br>party:   |           |           |
| 21. | Number of children of opposing<br>party:   |           |           |

### INCOME FROM SALARY

22. How often are you paid?

weekly       biweekly       semimonthly       monthly       other  
 52 times a year      26 times a year      24 times a year      12 times a year      Explain

### YOUR NET PAY

**(Gross pay minus payroll deductions)**

|       |  |  |               |               |
|-------|--|--|---------------|---------------|
| 23.   | <b>Income:</b>   |  | <b>Amount</b> |               |
| 23.a. | Gross Wages<br>per pay period:   |  | \$            | xxxxxxxxxxx   |
|       |  | <b>Deductions per check:</b>   | xxxxxxx       | <b>Amount</b> |
| 23.b. |  | Federal Income Taxes Withheld:   | xxxxxxx       | \$            |
| 23.c. |  | State Income Taxes Withheld:   | xxxxxxx       | \$            |
| 23.d. |  | F.I.C.A., and medicare <sup>1</sup> :  | xxxxxxx       | \$            |
| 23.e. |  | Health Insurance (children only) <sup>2</sup> :                                  | xxxxxxx       | \$            |
| 23.f. |  | Court ordered child support <sup>3</sup> :                                       | xxxxxxx       | \$            |
| 23.g. |  | <b>Total Withheld: (b) thru (f) above:<br/>Carry to line 1.b. on first page.</b> | xxxxxxx       | \$            |
| 23.h. | <b>Net take-home pay per pay period: (Subtract 23.g from 23.a)</b>   |  |               | \$            |
| 23.i. | <sup>1</sup> F.I.C.A. is Social Security; Include any railroad retirement in F.I.C.A. block.<br><sup>2</sup> Include the amount you pay to cover the children only.<br><sup>3</sup> Include any court ordered child support for dependents of previous marriages or previously legally legitimated children and adopted children withheld from current paycheck. |  |               |               |

Repeat salary information on a separate attachment for any other salaried positions you have.

**OTHER DEDUCTIONS FROM MY PAYCHECK**

| 24.   | Item:                                      | Amount: |
|-------|--|---------|
| 24.a. | Union dues:                                | \$      |
| 24.b. | Credit Union, thrift plan payments:        | \$      |
| 24.c. | Pension Benefits and stock purchase plans: | \$      |
| 24.d. | Charitable contributions:                  | \$      |
| 24.e. | Debt payments and/or garnishments:         | \$      |
| 24.f. | Life Insurance payments:                   | \$      |

|       |   |    |
|-------|---|----|
| 24.g. | Other (Identify):   | \$ |
| 24.h. | Other (Identify):   | \$ |
| 24.i. | Total Withheld (total of 24.a. thru 24.h.) (Carry to 1.c. on page 1): | \$ |

The above deductions will not be considered as direct deductions from your gross pay. However, they may affect the amount of the child support obligation.

### OTHER COURT ORDERED CHILD SUPPORT

|     |   |    |
|-----|---|----|
| 25. | Other court-ordered child support being paid other than by deduction:<br>Attach child support order and proof of payment. | \$ |
|-----|---|----|

### CREDITORS & DEBTS

26. Debts in the names of **BOTH PARTIES** are:

|       | Creditor:      | Total amount owed: | Monthly payment: |
|-------|----------------|--------------------|------------------|
| 26.a. |                | \$                 | \$               |
| 26.b. |                | \$                 | \$               |
| 26.c. |                | \$                 | \$               |
| 26.d. |                | \$                 | \$               |
| 26.e. |                | \$                 | \$               |
| 26.f. |                | \$                 | \$               |
| 26.g. |                | \$                 | \$               |
| 26.h. |                | \$                 | \$               |
|       | <b>Totals:</b> | \$                 | \$               |

Attach additional schedules as needed, and then total - Carry to lines 7(A) & 7(B) on page 3.

27. Debts in the name of only the **PLAINTIFF** are:

|       | Creditor: | Total amount owed: | Monthly payment: |
|-------|-----------|--------------------|------------------|
| 27.a. |           | \$                 | \$               |
| 27.b. |           | \$                 | \$               |
| 27.c. |           | \$                 | \$               |
| 27.d. |           | \$                 | \$               |

|       |                |    |    |
|-------|----------------|----|----|
| 27.e. |                | \$ | \$ |
|       | <b>Totals:</b> | \$ | \$ |

Attach additional schedules as needed, and then total - Carry to lines 8(A) & 8(B) on page 3.

28. Debts in the name of only the **DEFENDANT** are:

|       | <b>Creditor:</b> | <b>Total amount owed:</b> | <b>Monthly payment:</b> |
|-------|------------------|---------------------------|-------------------------|
| 28.a. |                  | \$                        | \$                      |
| 28.b. |                  | \$                        | \$                      |
| 28.c. |                  | \$                        | \$                      |
| 28.d. |                  | \$                        | \$                      |
| 28.e. |                  | \$                        | \$                      |
|       | <b>Totals:</b>   | \$                        | \$                      |

Attach additional schedules as needed, and then total - Carry to lines 9(A) & 9(B) on page 3.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Affiant

Subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**NOTICE**

**BOTH PARTIES MUST COMPLETE AND EXCHANGE THIS SEVEN-PAGE AFFIDAVIT PRIOR TO THE TEMPORARY HEARING. BOTH PARTIES MUST SUPPLY THE ORIGINAL NOTARIZED AFFIDAVIT TO THE COURT. THE COURT WILL PUNISH PERJURY BY APPROPRIATE ACTION.**

**Current Family Support Charts**  
**(May 3, 2007 – Present)**

# Weekly Family Support Chart

**Arkansas**  
**Weekly Family Support Chart**  
Arkansas Adjusted

| Payer Net Weekly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|-------------------------|-----------|--------------|----------------|---------------|---------------|
| 100                     | 26        | 37           | 44             | 49            | 54            |
| 110                     | 28        | 41           | 49             | 54            | 59            |
| 120                     | 31        | 45           | 53             | 58            | 64            |
| 130                     | 33        | 48           | 57             | 63            | 70            |
| 140                     | 36        | 52           | 61             | 68            | 75            |
| 150                     | 38        | 55           | 66             | 72            | 80            |
| 160                     | 40        | 59           | 70             | 77            | 85            |
| 170                     | 43        | 62           | 74             | 81            | 90            |
| 180                     | 45        | 66           | 77             | 85            | 94            |
| 190                     | 47        | 69           | 81             | 90            | 99            |
| 200                     | 50        | 72           | 85             | 94            | 104           |
| 210                     | 52        | 76           | 89             | 98            | 108           |
| 220                     | 55        | 79           | 93             | 102           | 113           |
| 230                     | 57        | 83           | 97             | 107           | 118           |
| 240                     | 60        | 86           | 102            | 112           | 124           |
| 250                     | 62        | 90           | 106            | 117           | 129           |
| 260                     | 65        | 94           | 110            | 122           | 135           |
| 270                     | 67        | 97           | 115            | 127           | 140           |
| 280                     | 70        | 101          | 119            | 132           | 145           |
| 290                     | 72        | 104          | 123            | 136           | 150           |
| 300                     | 74        | 107          | 126            | 139           | 154           |
| 310                     | 76        | 110          | 129            | 143           | 158           |
| 320                     | 78        | 113          | 133            | 147           | 162           |
| 330                     | 80        | 116          | 136            | 150           | 166           |
| 340                     | 82        | 119          | 139            | 154           | 170           |
| 350                     | 84        | 121          | 142            | 157           | 173           |
| 360                     | 85        | 123          | 144            | 159           | 176           |
| 370                     | 86        | 124          | 146            | 162           | 178           |
| 380                     | 87        | 126          | 148            | 164           | 181           |
| 390                     | 89        | 128          | 150            | 166           | 183           |
| 400                     | 90        | 130          | 152            | 168           | 186           |
| 410                     | 91        | 132          | 154            | 171           | 188           |
| 420                     | 92        | 133          | 157            | 173           | 191           |
| 430                     | 94        | 135          | 159            | 175           | 194           |
| 440                     | 95        | 137          | 161            | 178           | 196           |
| 450                     | 97        | 139          | 163            | 180           | 199           |
| 460                     | 98        | 141          | 165            | 183           | 202           |
| 470                     | 100       | 143          | 167            | 185           | 204           |
| 480                     | 100       | 144          | 169            | 186           | 206           |
| 490                     | 101       | 145          | 170            | 187           | 207           |
| 500                     | 102       | 146          | 171            | 189           | 208           |
| 510                     | 102       | 147          | 172            | 190           | 210           |
| 520                     | 103       | 148          | 173            | 191           | 211           |
| 530                     | 104       | 149          | 174            | 192           | 212           |
| 540                     | 104       | 150          | 175            | 193           | 213           |
| 550                     | 105       | 150          | 175            | 193           | 214           |
| 560                     | 105       | 151          | 176            | 194           | 214           |
| 570                     | 106       | 151          | 176            | 195           | 215           |
| 580                     | 106       | 152          | 177            | 195           | 215           |
| 590                     | 107       | 153          | 177            | 196           | 216           |

**Arkansas**  
**Weekly Family Support Chart**  
Arkansas Adjusted

| Payor Net Weekly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|-------------------------|-----------|--------------|----------------|---------------|---------------|
| 600                     | 108       | 154          | 178            | 197           | 218           |
| 610                     | 109       | 156          | 181            | 200           | 220           |
| 620                     | 110       | 158          | 183            | 202           | 223           |
| 630                     | 112       | 160          | 185            | 205           | 226           |
| 640                     | 113       | 162          | 188            | 207           | 229           |
| 650                     | 115       | 164          | 190            | 210           | 232           |
| 660                     | 116       | 166          | 192            | 212           | 234           |
| 670                     | 117       | 168          | 195            | 215           | 237           |
| 680                     | 119       | 169          | 197            | 218           | 240           |
| 690                     | 120       | 171          | 199            | 220           | 243           |
| 700                     | 121       | 173          | 201            | 222           | 245           |
| 710                     | 122       | 174          | 202            | 224           | 247           |
| 720                     | 123       | 176          | 204            | 226           | 249           |
| 730                     | 124       | 177          | 206            | 227           | 251           |
| 740                     | 125       | 179          | 207            | 229           | 253           |
| 750                     | 126       | 180          | 209            | 231           | 255           |
| 760                     | 127       | 182          | 211            | 233           | 257           |
| 770                     | 128       | 183          | 212            | 235           | 259           |
| 780                     | 129       | 185          | 214            | 237           | 261           |
| 790                     | 130       | 186          | 216            | 238           | 263           |
| 800                     | 131       | 187          | 217            | 240           | 265           |
| 810                     | 133       | 189          | 219            | 242           | 267           |
| 820                     | 134       | 190          | 221            | 244           | 269           |
| 830                     | 135       | 192          | 222            | 246           | 271           |
| 840                     | 136       | 193          | 224            | 247           | 273           |
| 850                     | 137       | 195          | 226            | 249           | 275           |
| 860                     | 137       | 196          | 227            | 251           | 277           |
| 870                     | 138       | 197          | 228            | 252           | 278           |
| 880                     | 139       | 198          | 230            | 254           | 280           |
| 890                     | 140       | 199          | 231            | 255           | 282           |
| 900                     | 141       | 201          | 232            | 257           | 284           |
| 910                     | 142       | 202          | 234            | 258           | 285           |
| 920                     | 143       | 203          | 235            | 260           | 287           |
| 930                     | 143       | 204          | 237            | 261           | 289           |
| 940                     | 144       | 205          | 238            | 263           | 290           |
| 950                     | 145       | 207          | 239            | 264           | 292           |
| 960                     | 146       | 208          | 241            | 266           | 294           |
| 970                     | 147       | 209          | 242            | 268           | 295           |
| 980                     | 148       | 210          | 244            | 269           | 297           |
| 990                     | 148       | 211          | 245            | 271           | 299           |
| 1000                    | 149       | 213          | 246            | 272           | 300           |

# Biweekly Family Support Chart

## Arkansas

### *Bi-Weekly Family Support Chart*

Arkansas Adjusted

| Payor Net Bi-Weekly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|----------------------------|-----------|--------------|----------------|---------------|---------------|
| 200                        | 51        | 75           | 89             | 98            | 108           |
| 220                        | 56        | 82           | 97             | 107           | 118           |
| 240                        | 61        | 89           | 106            | 117           | 129           |
| 260                        | 66        | 96           | 114            | 126           | 139           |
| 280                        | 71        | 104          | 123            | 135           | 150           |
| 300                        | 76        | 111          | 131            | 145           | 160           |
| 320                        | 81        | 118          | 139            | 154           | 170           |
| 340                        | 86        | 124          | 147            | 162           | 179           |
| 360                        | 90        | 131          | 155            | 171           | 189           |
| 380                        | 95        | 138          | 162            | 179           | 198           |
| 400                        | 100       | 144          | 170            | 188           | 207           |
| 420                        | 104       | 151          | 178            | 196           | 217           |
| 440                        | 109       | 158          | 185            | 205           | 226           |
| 460                        | 114       | 165          | 194            | 215           | 237           |
| 480                        | 119       | 172          | 203            | 224           | 248           |
| 500                        | 124       | 180          | 212            | 234           | 258           |
| 520                        | 129       | 187          | 221            | 244           | 269           |
| 540                        | 134       | 195          | 230            | 254           | 280           |
| 560                        | 139       | 202          | 238            | 263           | 291           |
| 580                        | 144       | 208          | 245            | 271           | 299           |
| 600                        | 148       | 214          | 252            | 279           | 308           |
| 620                        | 152       | 220          | 259            | 286           | 316           |
| 640                        | 156       | 226          | 265            | 293           | 324           |
| 660                        | 160       | 231          | 272            | 301           | 332           |
| 680                        | 164       | 237          | 279            | 308           | 340           |
| 700                        | 167       | 242          | 284            | 314           | 347           |
| 720                        | 170       | 245          | 288            | 319           | 352           |
| 740                        | 172       | 249          | 292            | 323           | 357           |
| 760                        | 175       | 252          | 297            | 328           | 362           |
| 780                        | 177       | 256          | 301            | 332           | 367           |
| 800                        | 180       | 259          | 305            | 337           | 372           |
| 820                        | 182       | 263          | 309            | 341           | 377           |
| 840                        | 185       | 267          | 313            | 346           | 382           |
| 860                        | 188       | 271          | 318            | 351           | 387           |
| 880                        | 191       | 275          | 322            | 356           | 393           |
| 900                        | 193       | 279          | 326            | 361           | 398           |
| 920                        | 196       | 282          | 331            | 365           | 403           |
| 940                        | 199       | 286          | 335            | 370           | 409           |
| 960                        | 201       | 288          | 337            | 373           | 411           |
| 980                        | 202       | 290          | 339            | 375           | 414           |
| 1000                       | 203       | 292          | 341            | 377           | 416           |
| 1020                       | 205       | 294          | 344            | 380           | 419           |
| 1040                       | 206       | 296          | 346            | 382           | 422           |
| 1060                       | 208       | 298          | 348            | 384           | 424           |
| 1080                       | 209       | 299          | 349            | 386           | 426           |
| 1100                       | 210       | 301          | 350            | 387           | 427           |
| 1120                       | 211       | 302          | 351            | 388           | 428           |
| 1140                       | 212       | 303          | 352            | 389           | 429           |
| 1160                       | 213       | 304          | 353            | 390           | 431           |
| 1180                       | 214       | 305          | 354            | 391           | 432           |
| 1200                       | 216       | 307          | 357            | 394           | 435           |

## Arkansas

### Bi-Weekly Family Support Chart

Arkansas Adjusted

| Payor Net Bi-Weekly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|----------------------------|-----------|--------------|----------------|---------------|---------------|
| 1220                       | 218       | 311          | 361            | 399           | 441           |
| 1240                       | 221       | 315          | 366            | 404           | 446           |
| 1260                       | 224       | 319          | 371            | 409           | 452           |
| 1280                       | 226       | 323          | 375            | 415           | 458           |
| 1300                       | 229       | 327          | 380            | 420           | 463           |
| 1320                       | 232       | 331          | 384            | 425           | 469           |
| 1340                       | 235       | 335          | 389            | 430           | 475           |
| 1360                       | 237       | 339          | 394            | 435           | 480           |
| 1380                       | 240       | 343          | 398            | 440           | 486           |
| 1400                       | 242       | 346          | 402            | 444           | 490           |
| 1420                       | 244       | 349          | 405            | 447           | 494           |
| 1440                       | 246       | 352          | 408            | 451           | 498           |
| 1460                       | 248       | 355          | 412            | 455           | 502           |
| 1480                       | 251       | 357          | 415            | 458           | 506           |
| 1500                       | 253       | 360          | 418            | 462           | 510           |
| 1520                       | 255       | 363          | 421            | 466           | 514           |
| 1540                       | 257       | 366          | 425            | 469           | 518           |
| 1560                       | 259       | 369          | 428            | 473           | 522           |
| 1580                       | 261       | 372          | 431            | 477           | 526           |
| 1600                       | 263       | 375          | 435            | 480           | 530           |
| 1620                       | 265       | 378          | 438            | 484           | 534           |
| 1640                       | 267       | 381          | 441            | 488           | 538           |
| 1660                       | 269       | 384          | 445            | 491           | 542           |
| 1680                       | 271       | 386          | 448            | 495           | 546           |
| 1700                       | 273       | 389          | 451            | 498           | 550           |
| 1720                       | 275       | 392          | 454            | 501           | 554           |
| 1740                       | 277       | 394          | 457            | 505           | 557           |
| 1760                       | 278       | 396          | 459            | 508           | 560           |
| 1780                       | 280       | 399          | 462            | 511           | 564           |
| 1800                       | 282       | 401          | 465            | 514           | 567           |
| 1820                       | 283       | 404          | 468            | 517           | 570           |
| 1840                       | 285       | 406          | 470            | 520           | 574           |
| 1860                       | 287       | 408          | 473            | 523           | 577           |
| 1880                       | 288       | 411          | 476            | 526           | 581           |
| 1900                       | 290       | 413          | 479            | 529           | 584           |
| 1920                       | 292       | 416          | 481            | 532           | 587           |
| 1940                       | 294       | 418          | 484            | 535           | 591           |
| 1960                       | 295       | 420          | 487            | 538           | 594           |
| 1980                       | 297       | 423          | 490            | 541           | 597           |
| 2000                       | 299       | 425          | 493            | 544           | 601           |

# Semimonthly Family Support Chart

**Arkansas**  
**Semi-Monthly Family Support Chart**  
Arkansas Adjusted

| Payor Net Semi-Monthly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|-------------------------------|-----------|--------------|----------------|---------------|---------------|
| 250                           | 64        | 93           | 110            | 122           | 134           |
| 275                           | 70        | 102          | 121            | 133           | 147           |
| 300                           | 76        | 111          | 131            | 145           | 160           |
| 325                           | 82        | 120          | 142            | 157           | 173           |
| 350                           | 88        | 129          | 152            | 168           | 186           |
| 375                           | 94        | 137          | 162            | 179           | 197           |
| 400                           | 100       | 145          | 171            | 189           | 209           |
| 425                           | 106       | 154          | 181            | 200           | 221           |
| 450                           | 112       | 162          | 191            | 211           | 232           |
| 475                           | 118       | 170          | 200            | 221           | 244           |
| 500                           | 124       | 179          | 211            | 233           | 258           |
| 525                           | 130       | 189          | 222            | 245           | 271           |
| 550                           | 137       | 198          | 233            | 258           | 284           |
| 575                           | 143       | 207          | 244            | 270           | 298           |
| 600                           | 149       | 216          | 255            | 282           | 311           |
| 625                           | 155       | 225          | 265            | 293           | 323           |
| 650                           | 160       | 232          | 273            | 302           | 333           |
| 675                           | 165       | 239          | 281            | 311           | 343           |
| 700                           | 170       | 246          | 290            | 320           | 354           |
| 725                           | 175       | 253          | 298            | 329           | 364           |
| 750                           | 180       | 260          | 306            | 338           | 373           |
| 775                           | 183       | 265          | 311            | 344           | 380           |
| 800                           | 186       | 269          | 316            | 350           | 386           |
| 825                           | 189       | 274          | 322            | 355           | 392           |
| 850                           | 192       | 278          | 327            | 361           | 398           |
| 875                           | 196       | 282          | 332            | 367           | 405           |
| 900                           | 199       | 287          | 337            | 373           | 411           |
| 925                           | 202       | 292          | 343            | 379           | 418           |
| 950                           | 206       | 297          | 348            | 384           | 424           |
| 975                           | 210       | 302          | 353            | 390           | 431           |
| 1000                          | 213       | 307          | 359            | 396           | 438           |
| 1025                          | 216       | 311          | 363            | 402           | 443           |
| 1050                          | 218       | 313          | 366            | 405           | 447           |
| 1075                          | 220       | 316          | 369            | 407           | 450           |
| 1100                          | 222       | 318          | 371            | 410           | 453           |
| 1125                          | 223       | 320          | 374            | 413           | 456           |
| 1150                          | 225       | 323          | 377            | 416           | 460           |
| 1175                          | 226       | 324          | 378            | 418           | 461           |
| 1200                          | 228       | 326          | 379            | 419           | 463           |
| 1225                          | 229       | 327          | 381            | 421           | 464           |
| 1250                          | 230       | 329          | 382            | 422           | 466           |
| 1275                          | 231       | 330          | 383            | 423           | 467           |
| 1300                          | 233       | 333          | 386            | 427           | 471           |
| 1325                          | 237       | 338          | 392            | 433           | 478           |
| 1350                          | 240       | 343          | 398            | 440           | 485           |
| 1375                          | 244       | 348          | 404            | 446           | 492           |
| 1400                          | 247       | 353          | 409            | 452           | 499           |
| 1425                          | 251       | 358          | 415            | 459           | 507           |
| 1450                          | 254       | 363          | 421            | 465           | 514           |

**Arkansas**  
**Semi-Monthly Family Support Chart**  
Arkansas Adjusted

| Payor Net Semi-Monthly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|-------------------------------|-----------|--------------|----------------|---------------|---------------|
| 1475                          | 257       | 367          | 427            | 472           | 521           |
| 1500                          | 261       | 372          | 432            | 478           | 527           |
| 1525                          | 263       | 376          | 436            | 482           | 532           |
| 1550                          | 266       | 379          | 440            | 487           | 537           |
| 1575                          | 268       | 383          | 445            | 491           | 542           |
| 1600                          | 271       | 387          | 449            | 496           | 547           |
| 1625                          | 274       | 390          | 453            | 500           | 552           |
| 1650                          | 276       | 394          | 457            | 505           | 557           |
| 1675                          | 279       | 397          | 461            | 510           | 563           |
| 1700                          | 281       | 401          | 465            | 514           | 568           |
| 1725                          | 284       | 405          | 469            | 519           | 573           |
| 1750                          | 287       | 408          | 474            | 523           | 578           |
| 1775                          | 289       | 412          | 478            | 528           | 583           |
| 1800                          | 292       | 416          | 482            | 532           | 588           |
| 1825                          | 294       | 419          | 486            | 537           | 593           |
| 1850                          | 297       | 422          | 490            | 541           | 597           |
| 1875                          | 299       | 425          | 493            | 545           | 601           |
| 1900                          | 301       | 428          | 497            | 549           | 606           |
| 1925                          | 303       | 431          | 500            | 552           | 610           |
| 1950                          | 305       | 434          | 503            | 556           | 614           |
| 1975                          | 307       | 437          | 507            | 560           | 618           |
| 2000                          | 309       | 440          | 510            | 564           | 623           |
| 2025                          | 311       | 443          | 514            | 568           | 627           |
| 2050                          | 313       | 446          | 517            | 572           | 631           |
| 2075                          | 316       | 449          | 521            | 575           | 635           |
| 2100                          | 318       | 452          | 524            | 579           | 639           |
| 2125                          | 320       | 455          | 528            | 583           | 644           |
| 2150                          | 322       | 458          | 531            | 587           | 648           |
| 2175                          | 324       | 461          | 535            | 591           | 652           |
| 2200                          | 326       | 464          | 538            | 595           | 656           |
| 2225                          | 328       | 467          | 541            | 598           | 661           |
| 2250                          | 330       | 470          | 545            | 602           | 665           |
| 2275                          | 333       | 473          | 548            | 606           | 669           |
| 2300                          | 335       | 476          | 552            | 610           | 673           |
| 2325                          | 337       | 479          | 555            | 614           | 677           |
| 2350                          | 339       | 482          | 559            | 617           | 682           |
| 2375                          | 341       | 485          | 562            | 621           | 686           |
| 2400                          | 342       | 487          | 563            | 623           | 687           |
| 2425                          | 343       | 488          | 565            | 624           | 689           |
| 2450                          | 344       | 489          | 566            | 625           | 690           |
| 2475                          | 345       | 490          | 567            | 627           | 692           |
| 2500                          | 346       | 491          | 568            | 628           | 693           |

# Monthly Family Support Chart

**Arkansas**  
**Monthly Family Support Chart**  
Arkansas Adjusted

| Payor Net Monthly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|--------------------------|-----------|--------------|----------------|---------------|---------------|
| 500                      | 127       | 186          | 220            | 243           | 269           |
| 550                      | 140       | 204          | 242            | 267           | 295           |
| 600                      | 152       | 222          | 263            | 290           | 321           |
| 650                      | 165       | 240          | 284            | 314           | 347           |
| 700                      | 177       | 257          | 304            | 336           | 371           |
| 750                      | 189       | 274          | 324            | 358           | 395           |
| 800                      | 200       | 291          | 343            | 379           | 418           |
| 850                      | 212       | 307          | 362            | 400           | 441           |
| 900                      | 224       | 324          | 381            | 421           | 465           |
| 950                      | 235       | 340          | 400            | 442           | 488           |
| 1000                     | 248       | 359          | 422            | 467           | 515           |
| 1050                     | 261       | 377          | 444            | 491           | 542           |
| 1100                     | 273       | 396          | 466            | 515           | 569           |
| 1150                     | 286       | 414          | 488            | 540           | 596           |
| 1200                     | 298       | 433          | 511            | 564           | 623           |
| 1250                     | 310       | 449          | 530            | 585           | 646           |
| 1300                     | 320       | 464          | 546            | 604           | 666           |
| 1350                     | 330       | 478          | 563            | 622           | 687           |
| 1400                     | 340       | 493          | 580            | 640           | 707           |
| 1450                     | 351       | 507          | 596            | 659           | 727           |
| 1500                     | 360       | 521          | 612            | 676           | 747           |
| 1550                     | 366       | 530          | 622            | 688           | 759           |
| 1600                     | 373       | 538          | 633            | 699           | 772           |
| 1650                     | 379       | 547          | 643            | 711           | 784           |
| 1700                     | 385       | 556          | 653            | 722           | 797           |
| 1750                     | 391       | 565          | 664            | 733           | 810           |
| 1800                     | 398       | 574          | 674            | 745           | 823           |
| 1850                     | 405       | 584          | 685            | 757           | 836           |
| 1900                     | 412       | 594          | 696            | 769           | 849           |
| 1950                     | 419       | 603          | 707            | 781           | 862           |
| 2000                     | 426       | 613          | 718            | 793           | 875           |
| 2050                     | 432       | 622          | 727            | 803           | 887           |
| 2100                     | 436       | 626          | 732            | 809           | 893           |
| 2150                     | 439       | 631          | 738            | 815           | 900           |
| 2200                     | 443       | 636          | 743            | 821           | 906           |
| 2250                     | 447       | 641          | 748            | 827           | 913           |
| 2300                     | 450       | 646          | 753            | 833           | 919           |
| 2350                     | 453       | 649          | 756            | 836           | 923           |
| 2400                     | 455       | 652          | 759            | 839           | 926           |
| 2450                     | 458       | 655          | 761            | 841           | 929           |
| 2500                     | 460       | 657          | 764            | 844           | 932           |
| 2550                     | 463       | 660          | 766            | 847           | 935           |
| 2600                     | 467       | 666          | 773            | 854           | 942           |
| 2650                     | 474       | 676          | 784            | 866           | 957           |
| 2700                     | 481       | 686          | 796            | 879           | 971           |
| 2750                     | 487       | 695          | 807            | 892           | 985           |
| 2800                     | 494       | 705          | 819            | 905           | 999           |
| 2850                     | 501       | 715          | 830            | 918           | 1013          |
| 2900                     | 508       | 725          | 842            | 930           | 1027          |
| 2950                     | 515       | 735          | 854            | 943           | 1041          |

**Arkansas**  
**Monthly Family Support Chart**  
Arkansas Adjusted

| Payor Net<br>Monthly Income | One Child | Two Children | Three Children | Four Children | Five Children |
|-----------------------------|-----------|--------------|----------------|---------------|---------------|
| 3000                        | 521       | 744          | 864            | 955           | 1054          |
| 3050                        | 526       | 751          | 873            | 964           | 1064          |
| 3100                        | 532       | 759          | 881            | 973           | 1075          |
| 3150                        | 537       | 766          | 889            | 982           | 1085          |
| 3200                        | 542       | 773          | 897            | 992           | 1095          |
| 3250                        | 547       | 780          | 906            | 1001          | 1105          |
| 3300                        | 552       | 788          | 914            | 1010          | 1115          |
| 3350                        | 558       | 795          | 922            | 1019          | 1125          |
| 3400                        | 563       | 802          | 930            | 1028          | 1135          |
| 3450                        | 568       | 809          | 939            | 1037          | 1145          |
| 3500                        | 573       | 817          | 947            | 1046          | 1155          |
| 3550                        | 578       | 824          | 955            | 1056          | 1165          |
| 3600                        | 583       | 831          | 964            | 1065          | 1175          |
| 3650                        | 589       | 839          | 972            | 1074          | 1186          |
| 3700                        | 593       | 845          | 979            | 1082          | 1195          |
| 3750                        | 597       | 851          | 986            | 1090          | 1203          |
| 3800                        | 602       | 857          | 993            | 1097          | 1211          |
| 3850                        | 606       | 863          | 1000           | 1105          | 1220          |
| 3900                        | 610       | 869          | 1007           | 1113          | 1228          |
| 3950                        | 614       | 875          | 1014           | 1120          | 1237          |
| 4000                        | 619       | 881          | 1021           | 1128          | 1245          |
| 4050                        | 623       | 887          | 1028           | 1136          | 1254          |
| 4100                        | 627       | 893          | 1035           | 1143          | 1262          |
| 4150                        | 631       | 899          | 1041           | 1151          | 1270          |
| 4200                        | 635       | 905          | 1048           | 1158          | 1279          |
| 4250                        | 640       | 911          | 1055           | 1166          | 1287          |
| 4300                        | 644       | 917          | 1062           | 1174          | 1296          |
| 4350                        | 648       | 923          | 1069           | 1181          | 1304          |
| 4400                        | 652       | 929          | 1076           | 1189          | 1313          |
| 4450                        | 657       | 935          | 1083           | 1197          | 1321          |
| 4500                        | 661       | 941          | 1090           | 1204          | 1330          |
| 4550                        | 665       | 947          | 1097           | 1212          | 1338          |
| 4600                        | 669       | 953          | 1104           | 1220          | 1346          |
| 4650                        | 674       | 959          | 1111           | 1227          | 1355          |
| 4700                        | 678       | 965          | 1118           | 1235          | 1363          |
| 4750                        | 682       | 971          | 1124           | 1243          | 1372          |
| 4800                        | 684       | 973          | 1127           | 1245          | 1375          |
| 4850                        | 686       | 976          | 1129           | 1248          | 1378          |
| 4900                        | 688       | 978          | 1132           | 1251          | 1381          |
| 4950                        | 690       | 980          | 1134           | 1253          | 1383          |
| 5000                        | 691       | 983          | 1136           | 1256          | 1386          |

**Previous Family Support Charts**  
**(February 11, 2002 –**  
**May 3, 2007)**

**ARKANSAS**  
**Weekly Family Support Chart**  
effective February 11, 2002

| PAYOR<br>NET<br>WEEKLY<br>INCOME | ONE<br>CHILD | TWO<br>CHILDREN | THREE<br>CHILDREN | FOUR<br>CHILDREN | FIVE<br>CHILDREN |
|----------------------------------|--------------|-----------------|-------------------|------------------|------------------|
| 100                              | 24           | 35              | 42                | 46               | 50               |
| 110                              | 27           | 39              | 46                | 51               | 55               |
| 120                              | 29           | 42              | 50                | 55               | 60               |
| 130                              | 31           | 46              | 54                | 60               | 65               |
| 140                              | 34           | 49              | 58                | 64               | 69               |
| 150                              | 36           | 52              | 62                | 69               | 74               |
| 160                              | 38           | 56              | 66                | 73               | 79               |
| 170                              | 41           | 59              | 70                | 77               | 84               |
| 180                              | 43           | 63              | 74                | 82               | 88               |
| 190                              | 45           | 66              | 78                | 86               | 93               |
| 200                              | 47           | 69              | 81                | 90               | 97               |
| 210                              | 50           | 72              | 85                | 94               | 102              |
| 220                              | 52           | 75              | 89                | 98               | 106              |
| 230                              | 54           | 79              | 93                | 102              | 111              |
| 240                              | 56           | 82              | 96                | 107              | 115              |
| 250                              | 59           | 85              | 100               | 111              | 120              |
| 260                              | 61           | 89              | 104               | 115              | 125              |
| 270                              | 63           | 92              | 108               | 120              | 130              |
| 280                              | 66           | 95              | 112               | 124              | 134              |
| 290                              | 68           | 99              | 116               | 128              | 139              |
| 300                              | 70           | 102             | 120               | 133              | 144              |
| 310                              | 72           | 104             | 123               | 136              | 147              |
| 320                              | 73           | 106             | 125               | 138              | 149              |
| 330                              | 74           | 108             | 127               | 140              | 152              |
| 340                              | 76           | 109             | 129               | 142              | 154              |
| 350                              | 77           | 111             | 131               | 144              | 156              |

|     |     |     |     |     |     |
|-----|-----|-----|-----|-----|-----|
| 360 | 78  | 113 | 132 | 146 | 159 |
| 370 | 79  | 114 | 134 | 148 | 161 |
| 380 | 80  | 116 | 136 | 150 | 163 |
| 390 | 81  | 117 | 138 | 152 | 165 |
| 400 | 82  | 119 | 140 | 154 | 167 |
| 410 | 83  | 120 | 141 | 156 | 169 |
| 420 | 84  | 122 | 143 | 158 | 171 |
| 430 | 86  | 123 | 145 | 160 | 173 |
| 440 | 87  | 125 | 147 | 162 | 176 |
| 450 | 88  | 127 | 149 | 165 | 178 |
| 460 | 90  | 129 | 152 | 167 | 182 |
| 470 | 91  | 132 | 154 | 170 | 185 |
| 480 | 93  | 134 | 157 | 173 | 188 |
| 490 | 94  | 136 | 159 | 176 | 191 |
| 500 | 96  | 138 | 162 | 179 | 194 |
| 510 | 98  | 140 | 164 | 182 | 197 |
| 520 | 99  | 143 | 167 | 184 | 200 |
| 530 | 100 | 145 | 169 | 187 | 203 |
| 540 | 102 | 147 | 172 | 190 | 206 |
| 550 | 103 | 149 | 174 | 193 | 209 |
| 560 | 105 | 151 | 177 | 195 | 212 |
| 570 | 106 | 153 | 179 | 198 | 215 |
| 580 | 108 | 155 | 182 | 201 | 218 |
| 590 | 109 | 157 | 184 | 203 | 220 |
| 600 | 111 | 159 | 186 | 206 | 223 |
| 610 | 112 | 161 | 189 | 208 | 226 |
| 620 | 113 | 163 | 191 | 211 | 229 |
| 630 | 115 | 165 | 193 | 214 | 232 |
| 640 | 116 | 167 | 196 | 216 | 234 |
| 650 | 118 | 169 | 198 | 219 | 237 |
| 660 | 119 | 171 | 200 | 221 | 240 |
| 670 | 120 | 173 | 203 | 224 | 243 |
| 680 | 122 | 175 | 205 | 227 | 246 |
| 690 | 123 | 177 | 207 | 229 | 248 |
| 700 | 124 | 179 | 210 | 232 | 251 |
| 710 | 126 | 181 | 212 | 234 | 254 |
| 720 | 127 | 183 | 214 | 237 | 257 |
| 730 | 129 | 185 | 217 | 240 | 260 |
| 740 | 130 | 187 | 219 | 242 | 263 |

|      |     |     |     |     |     |
|------|-----|-----|-----|-----|-----|
| 750  | 131 | 189 | 221 | 245 | 265 |
| 760  | 132 | 190 | 223 | 247 | 267 |
| 770  | 133 | 192 | 225 | 249 | 270 |
| 780  | 134 | 193 | 227 | 251 | 272 |
| 790  | 135 | 195 | 229 | 253 | 274 |
| 800  | 136 | 196 | 230 | 255 | 276 |
| 810  | 137 | 198 | 232 | 257 | 278 |
| 820  | 138 | 199 | 234 | 259 | 280 |
| 830  | 139 | 201 | 236 | 261 | 283 |
| 840  | 140 | 202 | 238 | 263 | 285 |
| 850  | 141 | 204 | 240 | 265 | 287 |
| 860  | 142 | 205 | 241 | 267 | 289 |
| 870  | 143 | 207 | 243 | 269 | 291 |
| 880  | 144 | 208 | 245 | 271 | 294 |
| 890  | 145 | 210 | 247 | 273 | 296 |
| 900  | 147 | 212 | 249 | 275 | 299 |
| 910  | 148 | 214 | 251 | 278 | 301 |
| 920  | 149 | 215 | 253 | 280 | 304 |
| 930  | 150 | 217 | 256 | 282 | 306 |
| 940  | 151 | 219 | 258 | 285 | 309 |
| 950  | 153 | 221 | 260 | 287 | 311 |
| 960  | 154 | 222 | 262 | 289 | 314 |
| 970  | 155 | 224 | 264 | 292 | 316 |
| 980  | 156 | 226 | 266 | 294 | 319 |
| 990  | 157 | 228 | 268 | 296 | 321 |
| 1000 | 159 | 229 | 270 | 298 | 324 |

Source: Arkansas Supreme Court Administrative Order Number 10 (January 31, 2002)

# ARKANSAS

## *Monthly Family Support Chart*

effective February 11, 2002

| PAYOR NET<br>MONTHLY<br>INCOME | ONE<br>CHILD | TWO<br>CHILDREN | THREE<br>CHILDREN | FOUR<br>CHILDREN | FIVE<br>CHILDREN |
|--------------------------------|--------------|-----------------|-------------------|------------------|------------------|
| 500                            | 121          | 176             | 209               | 230              | 250              |
| 550                            | 133          | 193             | 229               | 253              | 274              |
| 600                            | 145          | 211             | 249               | 275              | 298              |
| 650                            | 156          | 228             | 269               | 297              | 322              |
| 700                            | 168          | 245             | 289               | 320              | 347              |
| 750                            | 180          | 262             | 309               | 342              | 370              |
| 800                            | 191          | 278             | 328               | 362              | 393              |
| 850                            | 202          | 294             | 347               | 383              | 415              |
| 900                            | 214          | 310             | 366               | 404              | 438              |
| 950                            | 225          | 326             | 384               | 425              | 460              |
| 1000                           | 236          | 342             | 403               | 445              | 483              |
| 1050                           | 247          | 359             | 422               | 467              | 506              |
| 1100                           | 259          | 375             | 442               | 488              | 529              |
| 1150                           | 271          | 392             | 462               | 510              | 553              |
| 1200                           | 282          | 409             | 481               | 532              | 576              |
| 1250                           | 294          | 425             | 501               | 553              | 600              |
| 1300                           | 305          | 442             | 520               | 575              | 623              |
| 1350                           | 314          | 454             | 534               | 591              | 640              |
| 1400                           | 319          | 462             | 544               | 601              | 652              |
| 1450                           | 325          | 470             | 554               | 612              | 663              |
| 1500                           | 331          | 479             | 563               | 622              | 675              |
| 1550                           | 337          | 487             | 573               | 633              | 686              |
| 1600                           | 342          | 495             | 582               | 643              | 697              |
| 1650                           | 348          | 503             | 591               | 653              | 708              |
| 1700                           | 354          | 511             | 600               | 663              | 719              |
| 1750                           | 359          | 518             | 609               | 672              | 729              |
| 1800                           | 364          | 526             | 617               | 682              | 739              |
| 1850                           | 370          | 533             | 626               | 692              | 750              |
| 1900                           | 375          | 541             | 635               | 701              | 760              |
| 1950                           | 383          | 551             | 647               | 714              | 774              |

|      |     |     |      |      |      |
|------|-----|-----|------|------|------|
| 2000 | 391 | 563 | 659  | 729  | 790  |
| 2050 | 398 | 574 | 672  | 743  | 805  |
| 2100 | 406 | 585 | 685  | 757  | 821  |
| 2150 | 414 | 596 | 698  | 771  | 836  |
| 2200 | 422 | 607 | 711  | 785  | 851  |
| 2250 | 429 | 618 | 723  | 799  | 866  |
| 2300 | 437 | 628 | 736  | 813  | 881  |
| 2350 | 444 | 639 | 748  | 827  | 896  |
| 2400 | 451 | 649 | 761  | 841  | 911  |
| 2450 | 458 | 660 | 773  | 854  | 926  |
| 2500 | 466 | 671 | 786  | 868  | 941  |
| 2550 | 473 | 681 | 797  | 881  | 955  |
| 2600 | 480 | 691 | 809  | 894  | 969  |
| 2650 | 487 | 701 | 820  | 906  | 982  |
| 2700 | 494 | 711 | 832  | 919  | 996  |
| 2750 | 501 | 721 | 843  | 932  | 1010 |
| 2800 | 508 | 731 | 855  | 945  | 1024 |
| 2850 | 515 | 741 | 867  | 958  | 1038 |
| 2900 | 522 | 751 | 879  | 971  | 1052 |
| 2950 | 529 | 761 | 890  | 984  | 1067 |
| 3000 | 536 | 771 | 902  | 997  | 1081 |
| 3050 | 542 | 780 | 914  | 1010 | 1095 |
| 3100 | 549 | 790 | 926  | 1023 | 1109 |
| 3150 | 556 | 800 | 938  | 1036 | 1123 |
| 3200 | 563 | 810 | 950  | 1049 | 1137 |
| 3250 | 569 | 819 | 960  | 1061 | 1150 |
| 3300 | 574 | 827 | 970  | 1071 | 1161 |
| 3350 | 579 | 834 | 979  | 1081 | 1172 |
| 3400 | 584 | 842 | 988  | 1092 | 1183 |
| 3450 | 589 | 849 | 997  | 1102 | 1194 |
| 3500 | 594 | 857 | 1006 | 1112 | 1205 |
| 3550 | 599 | 864 | 1015 | 1122 | 1216 |
| 3600 | 604 | 872 | 1024 | 1132 | 1227 |
| 3650 | 609 | 879 | 1034 | 1142 | 1238 |
| 3700 | 614 | 887 | 1043 | 1152 | 1249 |
| 3750 | 619 | 895 | 1052 | 1162 | 1260 |
| 3800 | 624 | 902 | 1061 | 1172 | 1271 |
| 3850 | 630 | 910 | 1071 | 1184 | 1283 |
| 3900 | 636 | 919 | 1082 | 1195 | 1295 |
| 3950 | 642 | 928 | 1092 | 1207 | 1308 |
| 4000 | 648 | 937 | 1102 | 1218 | 1321 |

|      |     |      |      |      |      |
|------|-----|------|------|------|------|
| 4050 | 654 | 946  | 1113 | 1230 | 1333 |
| 4100 | 660 | 954  | 1123 | 1241 | 1346 |
| 4150 | 666 | 963  | 1134 | 1253 | 1358 |
| 4200 | 672 | 972  | 1144 | 1264 | 1371 |
| 4250 | 678 | 981  | 1155 | 1276 | 1383 |
| 4300 | 684 | 989  | 1165 | 1288 | 1396 |
| 4350 | 690 | 998  | 1176 | 1299 | 1408 |
| 4400 | 696 | 1007 | 1186 | 1311 | 1421 |
| 4450 | 702 | 1015 | 1195 | 1321 | 1432 |
| 4500 | 707 | 1023 | 1205 | 1331 | 1443 |
| 4550 | 713 | 1031 | 1214 | 1341 | 1454 |
| 4600 | 718 | 1039 | 1223 | 1352 | 1465 |
| 4650 | 724 | 1047 | 1232 | 1362 | 1476 |
| 4700 | 729 | 1054 | 1242 | 1372 | 1487 |
| 4750 | 735 | 1062 | 1251 | 1382 | 1498 |
| 4800 | 740 | 1070 | 1260 | 1392 | 1509 |
| 4850 | 746 | 1078 | 1269 | 1403 | 1520 |
| 4900 | 751 | 1086 | 1278 | 1413 | 1531 |
| 4950 | 757 | 1094 | 1288 | 1423 | 1542 |
| 5000 | 762 | 1102 | 1297 | 1433 | 1553 |

Source: Arkansas Supreme Court Administrative Order Number 10 (January 31, 2002).

# INCOME WITHHOLDING FOR SUPPORT

- ORIGINAL INCOME WITHHOLDING ORDER/NOTICE FOR SUPPORT (IWO)
- ORDER/NOTICE - LUMP-SUM PAYMENTS
- TERMINATION OF IWO
- AMENDED IWO

**Date:** \_\_\_\_\_

Child Support Enforcement (CSE) Agency     Court     Attorney     Private Individual/Entity (Check One)

NOTE: If you receive this document from someone other than a State or Tribal Child Support Enforcement agency or a court, a copy of the underlying order that contains a provision authorizing income withholding must be attached. Or if under State law an attorney in that State, or if under Tribal law a Tribal legal representative, may issue an income withholding order, the attorney or Tribal legal representative must include a copy of the State or Tribal law authorizing the attorney or Tribal legal representative to issue an income withholding order.

State/Tribe/Territory      ARKANSAS      Case Identifier \_\_\_\_\_  
 City/County/Dist./Tribe      \_\_\_\_\_      Order Identifier \_\_\_\_\_  
 Private Individual/Entity      \_\_\_\_\_

RE: \_\_\_\_\_

|  |  |
|--|--|
| Employer/Income Withholder's Name<br>_____<br>Employer/Income Withholder's Address<br>_____<br>_____<br>_____<br>Employer/Income Withholder's Federal EIN<br>_____ | Employee/Obligor's Name (Last, First, MI)<br>_____<br>Employee/Obligor's Social Security Number (if known)<br>_____<br>Custodial Party/Obligee's Name (Last, First, MI)<br>_____ |
|--|--|

| Child's Name (Last, First, MI) | Child's Birth Date | Child's Name (Last, First, MI) | Child's Birth Date |
|--------------------------------|--------------------|--------------------------------|--------------------|
| _____                          | _____              | _____                          | _____              |
| _____                          | _____              | _____                          | _____              |
| _____                          | _____              | _____                          | _____              |

**ORDER INFORMATION:** This document is based on the support or withholding order from \_\_\_\_\_. You are required by law to deduct these amounts from the employee/obligor's income until further notice.

- \$ \_\_\_\_\_ Per \_\_\_\_\_ current child support
- \$ \_\_\_\_\_ Per \_\_\_\_\_ past-due child support - Arrears greater than 12 weeks?     Yes     No
- \$ \_\_\_\_\_ Per \_\_\_\_\_ current cash medical support
- \$ \_\_\_\_\_ Per \_\_\_\_\_ past-due cash medical support
- \$ \_\_\_\_\_ Per \_\_\_\_\_ current spousal support
- \$ \_\_\_\_\_ Per \_\_\_\_\_ past-due spousal support
- \$ \_\_\_\_\_ Per \_\_\_\_\_ other (must specify) \_\_\_\_\_

for a total of \$ \_\_\_\_\_ Per \_\_\_\_\_ to be forwarded to the payee below.

**AMOUNTS TO WITHHOLD:** You do not have to vary your pay cycle to be in compliance with the *Order Information*. If your pay cycle does not match the ordered payment cycle, withhold one of the following amounts:

- \$ \_\_\_\_\_ per weekly pay period      \$ \_\_\_\_\_ per semimonthly pay period (twice a month)
- \$ \_\_\_\_\_ per biweekly pay period (every two weeks)      \$ \_\_\_\_\_ per monthly pay period

Withhold 50% of any net lump-sum payment not to exceed the amount of the past-due child support.

**Remittance Information:** If the employee/obligor's principal place of employment is Arkansas, you must begin withholding no later than the first pay period that occurs 14 days after the date of this notice. Send payment within 1 working day of the pay date. If you cannot withhold the full amount of support for any or all orders for this employee/obligor, withhold up to \_\_\_\_ % (CCPA withholding limits) of disposable income for all orders. If the employee/obligor's principal place of employment is not Arkansas see the ADDITIONAL INFORMATION FOR EMPLOYERS AND OTHER INCOME WITHHOLDERS for limitations on withholding, applicable time requirements and any allowable employer's fees.

For EFT/EDI instructions, contact the EFT/EDI office at the website listed below. **If paying by check, make check payable to: Office of Child Support Enforcement. Include this Remittance Identifier with payment: \_\_\_\_ Send check to: Arkansas Child Support Clearinghouse, P.O. Box 8125, Little Rock, AR 72203.**

**FIPS code (if necessary):** \_\_\_\_\_

Signature (if required by State or Tribal law): \_\_\_\_\_

Print Name: \_\_\_\_\_

Title of Issuing Official: \_\_\_\_\_

If checked, you are required to provide a copy of this form to the employee/obligor. If your employee/obligor works in a State or for a Tribe that is different from the State or Tribe that issued this order, a copy must be provided to the employee/obligor even if the box is not checked.

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### ADDITIONAL INFORMATION TO EMPLOYERS AND WITHHOLDERS

State-specific information may be viewed on the OCSE Employer Services website located at:

<http://www.acf.hhs.gov/programs/cse/newhire/employer/contacts/contacts.htm>

**Priority:** Withholding for support has priority over any other legal process under State law (or Tribal law if applicable) against the same income. If a Federal tax levy is in effect, please notify the contact person listed below.

**Combining Payments:** You may combine withheld amounts from more than one employee/obligor's income in a single payment to each agency/party requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

**Reporting the Pay Date:** You must report the pay date when sending the payment. The pay date is the date on which the amount was withheld from the employee/obligor's wages. You must comply with the law of the State (or Tribal law if applicable) of the employee/obligor's principal place of employment with respect to the time periods within which you must implement the withholding and forward the support payments.

**Employee/Obligor with Multiple Support Withholdings:** If there is more than one Order/Notice against this employee/obligor and you are unable to fully honor all support Orders/Notices due to Federal, State or Tribal withholding limits, you must follow the State or Tribal law/procedure of the employee/obligor's principal place of employment. You must honor all Orders/Notices to the greatest extent possible, giving priority to current support before payment of any past-due support.

**Lump-Sum Payments:** You may be required to withhold from net lump-sum payments such as bonuses, commissions, or severance pay. Contact the agency or person listed below to determine if you are required to withhold or if you have any questions about lump-sum payments.

**Liability:** If you have any doubts about the validity of the Order/Notice, contact the agency or person listed below. If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State or Tribal law/procedure.

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**Anti-Discrimination:** You are subject to a fine determined under State or Tribal law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against an employee/obligor because of a child support withholding.

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**Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (CCPA) (15 U.S.C. 1673(b)); or 2) the amounts allowed by the State or Tribe of the employee/obligor's principal place of employment. Disposable income is the net income left after making mandatory deductions such as: State, Federal, local taxes, Social Security taxes, statutory pension contributions, and Medicare taxes. The Federal limit is 50% of the disposable income if the obligor is supporting another family and 60% of the disposable income if the obligor is not supporting another family. However, that 50% limit is increased to 55% and that 60% is increased to 65% if the arrears are greater than 12 weeks. If permitted by the State, you may deduct a fee for administrative costs. The support amount and the fee may not exceed the limit indicated in this section.

OMB Expiration Date - 10/31/2010. The OMB Expiration Date has no bearing on the termination date or validity of the income withholding order; it identifies the version of the form currently in use.

Employee/Obligor's Name: \_\_\_\_\_ Case Identifier: \_\_\_\_\_

Order Identifier: \_\_\_\_\_ Employer's Name: \_\_\_\_\_

**Arrears greater than 12 weeks?** If the *Order Information* does not indicate whether the arrears are greater than 12 weeks, then the employer should calculate the CCPA limit using the lower percentage.

For Tribal orders, you may not withhold more than the amounts allowed under the law of the issuing Tribe. For Tribal employers who receive a State order, you may not withhold more than the lesser of the limit set by the law of the jurisdiction in which the employer is located or the maximum amount permitted under section 303(d) of the CCPA (15 U.S.C. 1673 (b)).

Depending upon applicable State law, you may need to take into consideration the amounts paid for health care premiums in determining disposable income and applying appropriate withholding limits.

**Additional Information:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTIFICATION OF TERMINATION OF EMPLOYMENT:** You must promptly notify the Child Support Enforcement agency and/or the person listed below by returning this form to the correspondence address if:

- This person has never worked for this employer.
- This person no longer works for this employer.

Please provide the following information for the terminated employee:

Termination date: \_\_\_\_\_ Last known phone number: \_\_\_\_\_

Last known home address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date final payment made to the State Disbursement Unit or Tribal CSE Agency: \_\_\_\_\_

Final payment amount: \_\_\_\_\_ New employer's name: \_\_\_\_\_

New employer's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTACT INFORMATION**

**To employer:** If the employer/income withholder has any questions, contact OCSE Employer Relations Unit, by phone at (501) 683-7954 or (800) 216-0224, by fax at (501) 683-0049, by email or website at: employer.relations@ocse.state.ar.us or https://www.ark.org/EPortal/

Send termination notice and other correspondence to: Employer Relations Department  
P.O. Box 8128  
Little Rock, AR 72203

**To employee/obligor:** If the employee/obligor has questions, contact \_\_\_\_\_, by phone at \_\_\_\_\_, by fax at \_\_\_\_\_, by email or website at: http://www.arkansas.gov/dfa/childsupport.

**IMPORTANT:** The person completing this form is advised that the information may be shared with the employee/obligor.







**DOMESTIC RELATIONS/PROBATE ATTORNEYS AD LITEM  
GUIDELINES FOR AUTHORIZATION AND PAYMENT OF FEES  
PURSUANT TO ACT 708 OF 1999**

ARK. CODE ANN. § 9-13-101(e) & § 9-13-106(g)

Act 708 of 1999, with pertinent provisions codified at ARK. CODE ANN. § 9-13-101(e) & § 9-13-106, authorized the Administrative Office of the Courts to establish an attorney ad litem program in then-chancery court cases (now Domestic Relations Division of Circuit Court) and guardianship cases in probate court (now Probate Division of Circuit Court) where custody is an issue. In furtherance of the Act, the General Assembly appropriated \$50,000 in FY 99-00 and \$100,000 in FY 00-01 with which to reimburse attorneys. Pursuant to the Act, the Administrative Office of the Courts (“AOC”) prepared a funding formula for apportionment of the funds to ensure that each judicial circuit had access to the funds. The formula was approved by the Arkansas Judicial Council and by the Rules and Regulations Subcommittee of the Arkansas Legislative Council, in conformity with Act 708.

The amount of funding has increased over the years and the funding formula has changed, but the current formula is the same as it was the first year. The funds are allocated pro rata to judicial circuits based upon the number of divorce filings for a previous calendar year. The Administrative Judge for a circuit decides how the funds allocated to his or her circuit will be distributed to the judges in the circuit or whether the funds will be used by all the judges in the circuit first-come, first-served. The circuit judge then notifies the Administrative Office of the Courts how the funds will be used. The current appropriation for the state is \$261,750 a year.

The following guidelines for the authorization and payment of fees to be paid from the appropriation are adopted pursuant to Ark. Code Ann. § 9-13-101 (e)(6). The maximums for fees (number 4 below) apply when any portion of the costs of the attorneys ad litem is ordered to be paid from state funds.

1. When a circuit judge determines that an appointment of an attorney ad litem would facilitate a domestic relations or probate case in which custody is an issue and would further protect the rights of the child, the judge may appoint a private attorney to represent the child.
2. To be considered for appointment, an attorney must meet the prescribed standards of practice and qualifications adopted by the Arkansas Supreme Court and ~~now~~ set out in Administrative Order Number 15. In extraordinary cases, the trial court may appoint an attorney ad litem who does not meet the required standards and qualifications. The attorney may

not be appointed in subsequent cases, however, until he or she has made efforts to meet the standards and qualifications. Attorneys who serve as an attorney ad litem shall file with the trial court a fee petition for services rendered and any out-of-pocket expenses.

3. The judge shall review and approve the fee which shall be contained in an order of the court. The judge or the attorney shall then transmit a copy of the order to the AOC, which is authorized to pay the attorney. This action shall not limit the ability of the court to require the parties to pay all or a portion of the expenses, depending upon the ability of the parties to pay.
4. If a circuit judge appoints an attorney ad litem and determines that the parties can afford to pay the attorney ad litem's fee without state assistance, the judge can approve any fee the judge finds reasonable. However, if the judge authorizes part or all of the attorney ad litem fee to be paid by the state the judge shall not approve an hourly rate in excess of \$90 per hour for either the portion to be paid by the state or the portion to be paid by the litigants. In addition, the judge may award out-of-pocket expenses including long-distance telephone calls, mileage at the approved state rate, witness fees, and other incidental costs. The total award to be paid from the appropriation in any single case shall not exceed \$1,250. If a case is completed and then reopens, the case is eligible for additional payment, up to \$1,250 for each reopening.
5. An attorney who receives payment from state funds shall be required to complete a statistical survey prepared by the AOC which will include information about the amount of time expended on the case and the type of services provided.
6. Orders for payment shall be received by June 1 of each fiscal year, or by a date set by the AOC. The AOC shall pay each of the ordered amounts from the appropriation for that fiscal year, in the order they are received. Once the funds appropriated for this purpose have been expended, the Administrative Office of the Courts shall have no further obligation to pay for attorney ad litem services in that fiscal year.
7. The AOC shall maintain and distribute to the circuit judges, on a monthly basis, the status of the funds available. The AOC also shall prepare an accounting on a quarterly basis of all funds distributed for review by the Arkansas Supreme Court.

**ADMINISTRATIVE OFFICE OF THE COURTS  
CIRCUIT COURT ATTORNEY AD LITEM REPORT FORM**

Attorney Ad Litem: \_\_\_\_\_ Judge: \_\_\_\_\_  
(please print)

Attorney Address: \_\_\_\_\_ Telephone: \_\_\_\_\_

County: \_\_\_\_\_ Judicial Circuit #: \_\_\_\_\_ Case Docket #: \_\_\_\_\_

Date Appointed: \_\_\_\_\_ # of children represented \_\_\_\_\_ Ages of children \_\_\_\_\_

Duration of Appointment: \_\_\_\_\_

Type of case or issue:    \_\_\_ divorce    \_\_\_ paternity    \_\_\_ guardianship  
                                 \_\_\_ initial custody    \_\_\_ custody modification    \_\_\_ other

**\_\_\_ Please attach statement showing breakdown of fees and expenses, time spent, and hourly rate. Hourly rate is not to exceed \$90.00 per hour. Total fee and out-of-pocket expenses are not to exceed \$1,250.00.**

Amount requested for ad litem services:

Attorney fee                                \$ \_\_\_\_\_

Out-of-pocket expenses                \$ \_\_\_\_\_

Total requested                            \$ \_\_\_\_\_

Was a portion of fee paid by others?   \_\_\_ yes    \_\_\_ no. If yes, by whom? \_\_\_\_\_

Services requested on behalf of child(ren): \_\_\_ psychological    \_\_\_ educational    \_\_\_ medical  
\_\_\_ parenting    \_\_\_ mediation    \_\_\_ other (describe):

Services ordered: \_\_\_ psychological    \_\_\_ educational    \_\_\_ medical    \_\_\_ parenting  
\_\_\_ mediation    \_\_\_ other (describe):

Attorney Signature: \_\_\_\_\_

Bar #: \_\_\_\_\_ Date: \_\_\_\_\_

***Report must be returned to AOC before payment can be made.***

ADMINISTRATIVE OFFICE OF THE COURTS  
CIRCUIT COURT ATTORNEY AD LITEM REPORT FORM

Attorney Ad Litem: \_\_\_\_\_ Judge: \_\_\_\_\_  
(please print)

Attorney Address: \_\_\_\_\_ Telephone \_\_\_\_\_

County: \_\_\_\_\_ Judicial Circuit #: \_\_\_\_\_ Case Docket #: \_\_\_\_\_

Date Appointed: \_\_\_\_\_ # of children represented \_\_\_\_\_ Ages of children \_\_\_\_\_

Duration of Appointment: \_\_\_\_\_

Type of case or issue:    \_\_\_ divorce            \_\_\_ paternity            \_\_\_ guardianship  
                                 \_\_\_ initial custody    \_\_\_ custody modification    \_\_\_ other

**\_\_\_ Please attach statement showing breakdown of fees and expenses, time spent, and hourly rate. Hourly rate is not to exceed \$90.00 per hour. Total fee and out-of-pocket expenses are not to exceed \$1,250.00.**

Amount requested for ad litem services:

Attorney fee                            \$ \_\_\_\_\_

out-of-pocket expenses            \$ \_\_\_\_\_

Total requested                      \$ \_\_\_\_\_

Was a portion of fee paid by others? \_\_\_ yes \_\_\_ no. If yes, by whom? \_\_\_\_\_

Services requested on behalf of child(ren): \_\_\_ psychological \_\_\_ educational \_\_\_ medical  
\_\_\_ parenting \_\_\_ mediation \_\_\_ other (describe): \_\_\_\_\_

Services ordered: \_\_\_ psychological \_\_\_ educational \_\_\_ medical \_\_\_ parenting  
\_\_\_ mediation \_\_\_ other (describe): \_\_\_\_\_

Attorney Signature: \_\_\_\_\_

Bar #: \_\_\_\_\_ Date: \_\_\_\_\_

***Report must be returned to AOC before payment can be made.***

**CONFIDENTIAL INFORMATION  
FOR USE ONLY BY THOSE AUTHORIZED BY  
Arkansas Code Annotated 9-14-205**

**Custodial Parent/Custodian:** \_\_\_\_\_

**Residential Addr:** \_\_\_\_\_  
(Street) (City) (St) (Zip)

**Mailing Addr:** \_\_\_\_\_  
(Street or PO Box) (City) (St) (Zip)

**Phone Numbers: (Home)** \_\_\_\_\_ **(Cell)** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_ **DOB:** \_\_\_\_\_

**Driver's License Number: (State)** \_\_\_\_\_ **(Number)** \_\_\_\_\_

**Employer's Name or Business:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** \_\_\_\_\_

**State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

---

**Non-Custodial Parent:** \_\_\_\_\_

**Residential Addr:** \_\_\_\_\_  
(Street) (City) (St) (Zip)

**Mailing Addr:** \_\_\_\_\_  
(Street or PO Box) (City) (St) (Zip)

**Phone Numbers: (Home)** \_\_\_\_\_ **(Cell)** \_\_\_\_\_

**Social Security Number:** \_\_\_\_\_ **DOB:** \_\_\_\_\_

**Driver's License Number: (State)** \_\_\_\_\_ **(Number)** \_\_\_\_\_

**Employer's Name or Business:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** \_\_\_\_\_

**State:** \_\_\_\_\_ **Zip Code:** \_\_\_\_\_

---

**Children's Names and Birth Dates:**

**Name:** \_\_\_\_\_ **DOB:** \_\_\_\_\_ **SSN:** \_\_\_\_\_

**Print or Type preparer's name:** \_\_\_\_\_

Docket Number \_\_\_\_\_

OCSE Case Number \_\_\_\_\_

Style of Case \_\_\_\_\_

1. The intent of this form is to provide a degree of privacy to the parties, and to help deter and prevent identity theft.
2. The form must be used in all Domestic Relations cases in which minor children are involved. The form must be filed with the Domestic Relations Cover sheet at initial filing. Additionally, a copy of this form must be filed with the Office of Child Support Enforcement (P.O. Box 8128, Little Rock, AR 72203). The parties in each case should update and re-file this form with the Circuit Clerk and the Office of Child Support Enforcement whenever either parties' information changes.
3. The parties or their attorney should provide the information available to the clerk at the initial filing.
4. If any of the designated information is unavailable, please so indicate by marking the appropriate field (s) with N/A (not available). With this documentation, the clerk must accept a partially completed form.
5. The clerk will **not** file this form in the case file. It should be maintained in a separate file, folder or book. Access to this form is limited to the Office of Child Support Enforcement, attorneys of record, parties appearing Pro Se, or persons authorized in writing by the circuit court.
6. The custodial parent or custodian of the children should be entered in the top section of the form. If custody has not been determined, the person who has physical custody of the children should be entered in the top section. If the parties are dividing the care of the child, enter one in this section and one in the non-custodial section.
7. Enter all children with their dates of birth and Social Security numbers in the bottom section of the form.
8. If there are more than four children, make a second copy of this sheet to add the remaining children.
9. The OCSE Case number is to be used **only** by the Office of Child Support Enforcement.
10. The preparer's line should be completed by the person providing the information. Please type or print the name of the preparer.
11. The instructions are based upon Act 1877 of 2005 which amends Arkansas Code § 9-14-205.
12. The clerk if reporting by paper form should send a copy of the Domestic Relations Cover sheet and a copy of the Confidential Data sheet to the Administrative Office of the Courts. For clerks reporting by floppy diskette, please contact your AOC regional auditor for instructions to report by email. If the clerk provides a copy of the DR Cover sheet or court order to OCSE, a Confidential Data sheet must be provided also.

[revised 09-09-2005]

**Multiple claims. If a complaint asserts multiple claims which involve different subject matter divisions of the circuit court, the cover sheet for that division which is most definitive of the nature of the case should be selected and completed.**

**COVER SHEET  
STATE OF ARKANSAS  
CIRCUIT COURT: DOMESTIC RELATIONS**

The domestic relations reporting form and the information contained herein shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. This form is required pursuant to Administrative Order Number 8. Instructions are located on the back of the form.

**FILING INFORMATION**

County: \_\_\_\_\_ District: \_\_\_\_\_ Docket Number: DR

Judge: \_\_\_\_\_ Division: \_\_\_\_\_ Filing Date: \_\_\_\_\_

Plaintiff: \_\_\_\_\_ Defendant: \_\_\_\_\_  
Last Name First Name Last Name First Name

Date of Marriage: \_\_\_\_\_  
Month Day Year

Attorney Providing Information: \_\_\_\_\_ Address \_\_\_\_\_  
 Plaintiff  Defendant

Litigant, if Pro Se: \_\_\_\_\_ Address \_\_\_\_\_

Related Case(s): Judge \_\_\_\_\_ Case Number(s) \_\_\_\_\_

**Type of Case: (Select One)**

**IV-D Case (For OCSE use only)**

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> (DV) Divorce              | <input type="checkbox"/> (CS) Custody/Visitation | <input type="checkbox"/> (DA) Domestic Abuse   |
| <input type="checkbox"/> (DS) Divorce w/Support    | <input type="checkbox"/> (SP) Child Support      | <input type="checkbox"/> (FJ) Foreign Judgment |
| <input type="checkbox"/> (AN) Annulment            | <input type="checkbox"/> (PT) Paternity          | <input type="checkbox"/> (CT) Contempt         |
| <input type="checkbox"/> (SM) Separate Maintenance | <input type="checkbox"/> (PS) Paternity/Support  | <input type="checkbox"/> (BA) Body Attachment  |
|  |  | <input type="checkbox"/> (OT) Other _____      |

**Manner of Filing:**  Original  Re-Open  Transfer

**DISPOSITION INFORMATION**

Disposition Date: \_\_\_\_\_  Bench Trial  Non-Trial  Jury Trial

- |   |   |   |
|---|---|---|
| <b>Decree or Judgment Type:</b>               | <b>Dismissal Type:</b>                                    | <b>Other:</b>   |
| <input type="checkbox"/> (JD) Divorce Granted | <input type="checkbox"/> (DW) Dismissed with Prejudice    | <input type="checkbox"/> (TR) Transferred to Another Jurisdiction |
| <input type="checkbox"/> (OD) Other Decree    | <input type="checkbox"/> (DN) Dismissed without Prejudice |   |
| <input type="checkbox"/> (OJ) Other Judgment  |   |   |

**Family Information:**

- There are no children born of the marriage.  
 There are children born of the marriage; See Confidential Data AOC Form 35

**Public Law 104-193 Information:**

- |   |                                    |                                    |   |
|---|------------------------------------|------------------------------------|---|
| <input type="checkbox"/> ( ) Custody Placed With: | <input type="checkbox"/> Plaintiff | <input type="checkbox"/> Defendant | <input type="checkbox"/> Other (Name) _____ |
| <input type="checkbox"/> ( ) Child Support        | <input type="checkbox"/> New       | <input type="checkbox"/> Modified  | <input type="checkbox"/> Terminated         |
| <input type="checkbox"/> ( ) Spousal Support      | <input type="checkbox"/> New       | <input type="checkbox"/> Modified  | <input type="checkbox"/> Terminated         |
| <input type="checkbox"/> ( ) Order of Protection  | <input type="checkbox"/> Plaintiff | <input type="checkbox"/> Defendant | <input type="checkbox"/> Child              |
| <input type="checkbox"/> ( ) Income Withholding   |                                    |                                    |   |

**Judgment Amount \$** \_\_\_\_\_

Clerk Signature \_\_\_\_\_  
AOC 24 7-05  
625 Marshall Street  
Little Rock AR 72201

Date \_\_\_\_\_  
Send 1 paper or electronic copy to AOC upon Filing.  
Send 1 paper or electronic copy to AOC upon Disposition.  
Keep original in Court file.

**Effective 8-12-2005**

## INSTRUCTIONS FOR COMPLETING DOMESTIC RELATIONS COVER SHEET

The domestic relations reporting form and the information contained herein is intended for case assignment and statistical purposes. It shall not be admissible as evidence in any court proceeding or replace or supplement the filing and service of pleadings, orders, or other papers as required by law or Supreme Court Rule. Authority: Supreme Court Administrative Order Number 8.

### FILING INFORMATION

The filing information must be completed by the attorney or pro se litigant filing an initial pleading with the court Clerk. The Clerk shall not accept the pleading unless accompanied by this reporting form. The Clerk shall place the original reporting form in the case file and send a paper or electronic copy of the filing information to the Administrative Office of the Courts in a weekly mailing.

**Line 1:** Fill in the blanks for County and Judicial District where this pleading is being filed. Unless this is a re-open case, the Clerk will assign you the docket number to fill in that blank.

**Line 2:** Fill in the blanks for Judge's name and division (if applicable). In a multi-judge county, the Clerk will tell you the correct Name and Division or will complete this information. The Filing Date is the month, day, and year you are filing this pleading.

**Line 3 - 4:** Fill in the blanks for the Plaintiff and Defendant names as they appear in the style of the pleading you are filing and enter the last name and then the first name. Fill in the date of marriage on the appropriate line.

**Lines 5 - 7:** Fill in the name and address of the attorney providing the information and check the appropriate box of the party the attorney is representing. If you are a Pro Se litigant please complete that information. "Pro Se" means you are filing this pleading on your own behalf and are not represented by an attorney.

**Line 8:** Reference any related case(s).

**Type of Case:** Place an "X" in the single box which best describes the subject matter of the pleading you are filing. If no Type accurately describes the subject matter, place an "X" in the box for Other and specify the type of filing in the blank. (DV)=Divorce without support issues. (DS)=Divorce with child or spousal support. (CS)=Modification of either custody or visitation. (SP)= Modification of child support. (PT)= Paternity without support issues. (PS)=Paternity with support.

**Manner of Filing:** Place an "X" in the appropriate box. For the purposes of this reporting form, the following definitions apply. "Original" means a filing of a complaint or petition at the beginning of a case. "Re-open" means a case which has been disposed of but is now being resubmitted to the court. For example, the plaintiff and defendant have divorced each other, and the subject of this pleading is a change of custody or modification of child support. "Transfer" means a case filed with this court from another court due to invalid jurisdiction, venue, etc. A form should not be completed when enforcing a judgment, e.g. contempt motion.

### DISPOSITION INFORMATION

When the final order/decreed/judgment is presented for filing with the Clerk, the Clerk or other official as the trial court may designate, shall complete the following disposition information on the reporting form which was placed in the case file when the initial pleading was filed. The order shall not be filed unless the Disposition Information is completed.

**Disposition Date:** This is the month, day, and year of the Clerk's date stamp.

Place an "X" in the appropriate box for type of trial. For the purposes of this reporting form the following definitions apply. A "Bench Trial" is a trial in which there is no jury and in which a judge determines both the issue of fact and law in a case. A "Non-Trial" is where a case is disposed of by one of the following methods: a) a settlement by agreement of the parties; b) an order of dismissal; c) an order granted prior to the trial which concludes the case; d) the defendant did not respond to the allegations contained in the complaint, e.g., an uncontested divorce.

**Decree or Judgment Type:** Place an "X" in the box which best describes the type of final order/decreed/judgment that is being filed.

**Dismissal Type/Other:** Place an "X" in the box which describes the manner of disposition.

**Family Information:** Place an "X" in the appropriate box. If there are children born of the marriage see Confidential Data AOC Form (35).

**Public Law 104-193 Information:** Effective 10-98, Public Law 104-193 requires this information in all cases involving support. Place an "X" in each box that applies. Order of Protection information should identify the party(ies) being protected.

**Judgment Amount:** If applicable, fill in the dollar amount granted. Fees and costs are not included.

The Clerk or a Deputy Clerk shall sign on the signature line. A Clerk's signature stamp will suffice. The date is the same as the Disposition Date. The clerk shall retain the original reporting form in the case file and shall send a paper or electronic copy of the completed form to the Administrative Office of the Courts in a weekly mailing.

# Ex Parte Order of Protection

Amended Order

Case No.

Court:  Div.

County: , Arkansas

## Petitioner/Plaintiff

First Middle Last

Petitioner's Date of Birth (mm/dd/yyyy) Race Sex

### Minor Children Protected under this Order:

\_\_\_\_\_ d.o.b. \_\_\_\_\_  
 \_\_\_\_\_ d.o.b. \_\_\_\_\_  
 \_\_\_\_\_ d.o.b. \_\_\_\_\_  
 \_\_\_\_\_ d.o.b. \_\_\_\_\_

## Versus

## Respondent/Defendant

First Middle Last

Address: \_\_\_\_\_  
 \_\_\_\_\_

**CAUTION:**  Respondent possesses a firearm  
 Respondent has history of extreme violence

**Relationship Identifiers:**  Current or former spouses  Parents of child(ren) in common  
 Lived together  Current or past dating relationship  Other Relative (Explain) \_\_\_\_\_

## This Order is Effective Until:

*Pursuant to Federal law, this Order shall be enforced by law enforcement officers in all states, territories, districts and tribal lands regardless of whether this Order of Protection is registered locally.*

## Respondent Identifiers

| Sex                  | Race                 | DOB<br>mm/dd/yyyy    | Ht                   | Wt                   |
|----------------------|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> |

| Eyes                 | Hair                 | SS#                  |
|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Phone #              |                      | DL # or other ID#    |
| <input type="text"/> |                      | <input type="text"/> |

### THE COURT HEREBY FINDS AND ORDERS:

That there is jurisdiction over the parties and subject matter, and the Petitioner has presented sufficient evidence to show: 1.) that the victim(s) is (are) in immediate and present danger of domestic abuse or 2.) that the Respondent is scheduled to be released from incarceration within thirty(30) days, and upon the Respondent's release there will be an immediate and present danger of domestic abuse. The Ex Parte Temporary Order of Protection is hereby granted pursuant to the terms herein.

The Respondent is ordered to appear before the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_ at \_\_\_\_\_ a.m./p.m. in the Courthouse located at \_\_\_\_\_, \_\_\_\_\_, AR.

**If you fail to appear, the Court will likely make this Order permanent without further notice to you.**

The Respondent is hereby restrained from committing any criminal act against the victim(s) including, but not limited to: acts of violence or Domestic Abuse, A.C.A §9-15-103 (3); Harassment A.C.A §5-71-208; Harassing Communications A.C.A. §5-71-209; Stalking A.C.A. §5-71-229; or Terroristic Threatening A.C.A. §5-13-301.

The Respondent is prohibited from initiating any contact with the victim(s) including but not limited to physical presence, telephonic, electronic, oral, written, visual, or video. Respondent also shall not use a third party to contact the victim(s) except by legal counsel or as authorized by law or court order.

The Respondent is excluded from the Petitioner's residence and the immediate vicinity thereof.

**Petitioner's Address:** \_\_\_\_\_ (or)

The Petitioner's address is excluded from notice to the Respondent.

The Respondent is prohibited from the following places:

**Petitioner's Workplace:** \_\_\_\_\_

**School:** \_\_\_\_\_

**Other (Identify):** \_\_\_\_\_

\_\_\_\_\_ is awarded temporary custody of the minor child(ren):

(Names) \_\_\_\_\_

Any law enforcement officer with jurisdiction is ordered to assist the Petitioner in gaining possession of the dwelling, and/or to otherwise assist in execution or service of the Order of Protection.

**Other Orders:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

If the parties (or other persons named herein) are subject to the jurisdiction of another court (i.e. through a divorce or paternity action), upon proper notice and the opportunity to be heard, said court may amend the terms of this Order as appropriate.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, IT IS SO ORDERED.

\_\_\_\_\_  
CIRCUIT JUDGE

Office of the Circuit Clerk, \_\_\_\_\_ County, \_\_\_\_\_, AR \_\_\_\_\_

Phone: \_\_\_\_\_

**WARNINGS TO RESPONDENT**

--Pursuant to A.C.A. §9-15-207, a violation of an Order of Protection is a Class A misdemeanor carrying a maximum penalty of one year imprisonment in the county jail or a fine of up to \$2,500, or both. A violation of an Order of Protection under this section within five (5) years of a previous conviction for violation of an Order of Protection is a Class D felony punishable by up to six years in prison or up to a \$10,000 fine or both.

--It is a federal offense for an individual who is subject to a Final Order of Protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition pursuant to 18 U.S.C. §922(g)(8) and (9).

--Crossing state, territorial, or tribal boundaries to violate this Order may result in federal imprisonment pursuant to 18 U.S.C. §2262.

**NOTICE TO LAW ENFORCEMENT**

--This Order of Protection is enforceable in every county of this state by any court or law enforcement officer. See A.C.A. §9-15-207(g).

**PROOF OF SERVICE**

Case # \_\_\_\_\_ Court Date: \_\_\_\_\_

SERVED: Date \_\_\_\_\_ Time: \_\_\_\_\_ Place \_\_\_\_\_

Attempts Made: List only date and time

1) \_\_\_\_\_ 2) \_\_\_\_\_ 3) \_\_\_\_\_

\_\_\_\_\_  
Served On (Print Name) Manner of Service

\_\_\_\_\_  
Served By (Print Name) Title Badge #

**DECLARATION OF SERVER**

I declare, under penalty of perjury under the laws of the State of Arkansas that the foregoing information contained in the proof of service is true and correct.

Executed on \_\_\_\_\_  
Date Signature of Server

\_\_\_\_\_  
Address of Server

# Final Order of Protection

Amended Order

Case No.

Circuit Court, Div.

County: , Arkansas

## Petitioner/Plaintiff

First Middle Last

Petitioner's Date of Birth (mm/dd/yyyy)

Race

Sex

## Minor Children Protected under this Order

\_\_\_\_\_ d.o.b. \_\_\_\_\_

\_\_\_\_\_ d.o.b. \_\_\_\_\_

\_\_\_\_\_ d.o.b. \_\_\_\_\_

\_\_\_\_\_ d.o.b. \_\_\_\_\_

## Versus

## Respondent/Defendant

First Middle Last

Address: \_\_\_\_\_

\_\_\_\_\_

Employer: \_\_\_\_\_

**CAUTION:**  Respondent possesses a firearm  
 Respondent has history of extreme violence

**Relationship Identifiers:**  Current or former spouses  Parents of child(ren) in common  
 Lived together  Current or past dating relationship  Other Relative (Explain) \_\_\_\_\_

## This Order is Effective Until:

*Pursuant to Federal law, this Order shall be enforced by law enforcement officers in all states, territories, districts and tribal lands regardless of whether this Order of Protection is registered locally.*

## Respondent Identifiers

| Sex                  | Race                 | DOB<br>mm/dd/yyyy    | Ht                   | Wt                   |
|----------------------|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> |

| Eyes                 | Hair                 | SS#                  |
|----------------------|----------------------|----------------------|
| <input type="text"/> | <input type="text"/> | <input type="text"/> |
| Phone #              |                      | DL # or other ID#    |
| <input type="text"/> |                      | <input type="text"/> |

Distinguishing Characteristics: \_\_\_\_\_

\_\_\_\_\_

## THE COURT HEREBY FINDS AND ORDERS:

That there is jurisdiction over the parties and subject matter, and the Respondent has been provided with proper notice and the opportunity to be heard. That the victim(s) is (are) in immediate and present danger of domestic abuse and therefore an Order of Protection is hereby granted pursuant to the terms herein.

A hearing on this matter was held on the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

The Petitioner appeared pro se.

The Petitioner was represented by counsel \_\_\_\_\_.

The Respondent appeared pro se.

The Respondent was represented by counsel \_\_\_\_\_.

The Respondent failed to appear despite proper notice.

=====

The Respondent is restrained from committing any criminal act against the victim(s) including, but not limited to: acts of violence or Domestic Abuse, A.C.A §9-15-103 (3); Harassment A.C.A §5-71-208; Harassing Communications A.C.A. §5-71-209; Stalking A.C.A. §5-71-229; or Terroristic Threatening A.C.A. §5-13-301.

The Respondent is prohibited from initiating any contact with the victim(s) including but not limited to physical presence, telephonic, electronic, oral, written, visual, or video. Respondent also shall not use a third party to contact the victim(s) except by legal counsel or as authorized by law or court order.

The Respondent is excluded from the Petitioner’s residence and the immediate vicinity thereof.

**Petitioner’s Address:** \_\_\_\_\_

(or)  The Petitioner’s address is excluded from notice to the Respondent.

The Respondent is prohibited from the following places:

**Petitioner’s Workplace:** \_\_\_\_\_

**School:** \_\_\_\_\_

**Other (Identify):** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ is awarded temporary custody of the minor child(ren) for the duration of this order or until future orders shall be issued from a Court with jurisdiction over the parties:

(Children's Names) \_\_\_\_\_

Visitation with regard to the minor child(ren) is established as follows: \_\_\_\_\_

\_\_\_\_\_ is ordered to pay child support to \_\_\_\_\_ through the Circuit Clerk's Office in the amount of \$ \_\_\_\_\_ per \_\_\_\_\_, plus any Clerk fees as they come due with said payments to begin on \_\_\_\_\_. This amount is according to the Child Support Chart based upon the payor's income of \_\_\_\_\_ per \_\_\_\_\_.

This amount does/does not (circle one) deviate from the Child Support Chart.

*(If the amount deviates from the Chart, the justification is included below in the "Other Order's section)*

\_\_\_\_\_ is ordered to pay spousal support in the amount of \$ \_\_\_\_\_ per \_\_\_\_\_, beginning on \_\_\_\_\_. The spousal support shall be paid until \_\_\_\_\_. Method of payment shall be: \_\_\_\_\_

**Note: As there is an expiration date on all Orders of Protection, future matters regarding Child Support, Alimony and Visitation should be handled through another Domestic Relations case (i.e. divorce, paternity, or through the Office of Child Support Enforcement).**

A law enforcement officer with jurisdiction is ordered to assist the Petitioner in gaining possession of the dwelling, and/or to otherwise assist in execution or service of the Order of Protection.

A law enforcement officer with jurisdiction is ordered to assist the Respondent in obtaining their personal effects from the dwelling upon proper and timely request of the Respondent.



## **WARNINGS TO RESPONDENT**

--Pursuant to A.C.A. § 9-15-207, a violation of an Order of Protection is a Class A misdemeanor carrying a maximum penalty of one year imprisonment in the county jail or a fine of up to \$2,500, or both. A violation of an order of protection under this section within five (5) years of a previous conviction for violation of an order of protection is a **Class D felony** punishable by up to six years in prison or up to a \$10,000 fine or both.

--It is a federal offense for an individual who is subject to an Order of Protection or convicted of a misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition pursuant to 18 U.S.C. § 922(g)(8) and (9).

--Crossing state, territorial, or tribal boundaries to violate this Order may result in federal imprisonment pursuant to 18 U.S.C. §2262.

## **NOTICE TO LAW ENFORCEMENT**

--In the event that any Law enforcement officer has probable cause to believe that the Respondent named in the above Order has violated this Order and has verification of this Order the officer, may, without a warrant, arrest the violator whether the violation was in or outside the officer's presence. See A.C.A. §9-15-207(f).

--A law enforcement officer SHALL NOT arrest a Petitioner for the violation of an Order of Protection issued against a Respondent. See A.C.A. §9-15-207(e).

--This Order of Protection is enforceable in every county of this state by any court or law enforcement officer. See A.C.A. §9-15-207(g).

--This Order is entitled to full faith and credit in any jurisdiction of the United States. See 18 U.S.C. §2265.

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS  
DOMESTIC RELATIONS DIVISION

\_\_\_\_\_, PETITIONER

v.

No. DR 20\_\_ - \_\_\_\_

\_\_\_\_\_, RESPONDENT

NOTICE OF HEARING ON PETITION FOR ORDER OF PROTECTION

You are hereby notified that a petition has been filed in this Court for an Order of Protection by \_\_\_\_\_, Petitioner, naming you as Respondent. This petition will be heard on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ a.m./p.m., in Room \_\_\_\_\_, at the \_\_\_\_\_ County Courthouse located at \_\_\_\_\_, \_\_\_\_\_, AR.

If you fail to appear, the Court may enter a Final Order of Protection without further Notice to you.

\_\_\_\_\_  
CIRCUIT JUDGE

\_\_\_\_\_  
DATE

**In Forma Pauperis Affidavit**  
**[see Rule 72, Rules of Civil Procedure]**

IN THE \_\_\_\_\_ COURT \_\_\_\_\_, COUNTY, ARKANSAS

IN RE PETITION OF \_\_\_\_\_  
TO PROCEED IN FORMA PAUPERIS

NO. \_\_\_\_

AFFIDAVIT IN SUPPORT OF  
REQUEST TO PROCEED IN FORMA PAUPERIS

I, \_\_\_\_\_, being first duly sworn, depose and say that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor; that I believe I am entitled to redress.

I further swear that the responses which I have made to questions and instructions below are true.

1. Are you presently employed? Yes \_\_\_ No \_\_\_

(a) If the answer is yes, state the amount of your salary or wages per month, and give the name and address of your employer.

(b) If the answer is no, state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources?

(a) Business, profession or any form of self-employment?

Yes \_\_\_ No \_\_\_

(b) Rent payments, interest or dividends?

Yes \_\_\_ No \_\_\_

(c) Pensions, annuities or life insurance payments?

Yes \_\_\_ No \_\_\_

(d) Gifts or inheritances?

Yes \_\_\_ No \_\_\_

(e) Any other sources?

Yes \_\_\_ No \_\_\_

If the answer to any of the above is yes, describe each source of money and state the amount received from each during the past twelve months.

3. Do you own any cash, or do you have money in a checking or savings account?

Yes \_\_\_ No \_\_\_

If the answer is yes, state the total amount in each account.

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

Yes \_\_\_ No \_\_\_

If the answer is yes, describe the property and state its approximate value.

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support.

[6. TO BE COMPLETED ONLY IF PETITIONER IS INCARCERATED IN THE ARKANSAS DEPARTMENT OF CORRECTION OR ANY OTHER PENAL INSTITUTION.

Do you have any funds in the inmate welfare funds?

Yes \_\_\_ No \_\_\_

If the answer is yes, state the total amount in such account and have the certificate found below completed by the authorized officer of the institution.]

I understand that false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

\_\_\_\_\_

Signature of Petitioner

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Petitioner, \_\_\_\_\_, being first duly sworn under oath, presents that he/she has read and subscribed to the above and states that the information therein is true and correct.

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_

[(To be completed by authorized officer of penal institution)]

CERTIFICATE

I hereby certify that the petitioner herein, \_\_\_\_\_, has the sum of \$ \_\_\_\_\_ on account to his/her credit at the \_\_\_\_\_ institution where he/she is confined.

I further certify that petitioner likewise has the following securities to his/her credit according to the records of said institution:

\_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_

Authorized Officer of Institution]

IN THE \_\_\_\_\_ COURT OF \_\_\_\_\_ COUNTY, ARKANSAS

IN RE PETITION OF \_\_\_\_\_  
TO PROCEED IN FORMA PAUPERIS

CASE NO. \_\_\_\_\_

**PETITION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

COMES NOW the Plaintiff, \_\_\_\_\_, *pro se*, who hereby petitions the court for Leave to Proceed *In Forma Pauperis* and does allege and state as follows:

1. That Plaintiff, a resident of the State of Arkansas, has prepared and desires to file with this Court a \_\_\_\_\_.

2. That Plaintiff has completed an Affidavit in Support of Request to *Proceed In Forma Pauperis* setting out his/her income and assets. Plaintiff's Affidavit accompanies this petition.

3. That Plaintiff's income barely suffices to meet the costs of life's daily essentials and includes no allotment that could be budgeted to pay for court fees and costs incident to this proceeding.

4. That Plaintiff has no other income in addition to that described in his/her Affidavit and no means of paying such costs without being reduced to total impoverishment.

6. That Plaintiff believes that he/she is entitled to the relief requested in the accompanying \_\_\_\_\_ and that such action is not brought for a frivolous or malicious purpose.

WHEREFORE, Plaintiff prays that the court enter an order allowing the Plaintiff to prosecute this action *In Forma Pauperis* and that the Plaintiff may have the necessary writs and processes without payment of fees or costs for the same.

Respectfully submitted,

SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

# ARKANSAS ALTERNATIVE DISPUTE RESOLUTION COMMISSION

Mediators certified by the Arkansas Alternative Dispute Resolution Commission must abide by the following standards as set forth in *The Requirements for the Conduct of Mediation and Mediators*:

## STANDARD 7. MEDIATOR REPORTS

**A. Prohibited Mediator Reports.** Except as required in section (B), a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

**B. Permitted Disclosures.** A mediator **may** disclose whether the mediation occurred or has terminated, whether a settlement was reached, and attendance.

This form is designed to be used when a judge requests a mediator's report on a court ordered case.

## MEDIATOR'S REPORT TO COURT

Judge: \_\_\_\_\_ County: \_\_\_\_\_

Case: \_\_\_\_\_ vs \_\_\_\_\_  
*Plaintiff* *Defendant*

Case #: \_\_\_\_\_

The above referenced case was mediated by:

Mediator's Name: \_\_\_\_\_

An agreement  was  was not reached.

Mediator's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Procedures for the Discipline of Mediators

### Disciplinary Action

The Commission may take disciplinary, adverse, or other action against any applicant or mediator included on the Commission's Roster of Certified Mediators for any of the following:

1. Fraud, deceit, material misrepresentation or omission, in application to the Commission's Roster of Mediators or any other information provided to the Commission whenever discovered.
2. Any gross negligence, incompetence, or misconduct in the practice of mediation.
3. Any felony; or any misdemeanor involving violence, threatened violence or moral turpitude or adversely affecting the practice of mediation.
4. Any violation of the Commission's *Requirements for the Certification of Mediators for Circuit Courts*.
5. Any violation of the *Requirements for the Conduct of Mediations and Mediators*.
6. A violation of the policies or procedures of any program administered by the Commission.

### Method for Hearings

*Complaints/Allegations*-- Complaints or allegations made against any person shall be in writing, and signed by the person or persons making them, and shall be filed with the Coordinator for the Commission. Reports, complaints, or allegations may also be made to the Commission by the Coordinator or Commission members.

Unless dismissed by the Commission as unfounded or trivial, all charges shall be heard by the Commission within a reasonable time.

*Investigation* - The Commission may appoint an investigation committee. The Committee may include one member of the Commission, the Coordinator, Assistant Coordinator for the Commission, and may be advised by the Assistant Attorney General assigned to advise the Commission. The Committee may serve in the following capacities: 1) to gather information to determine if a complaint or allegation is founded or legitimate; and 2) to provide evidence to be used in presenting the case; and 3) such other capacities as permitted or not prohibited by law or regulation.

*Notice*- All parties shall be given an opportunity for hearing after reasonable notice consistent with the Administrative Procedures Act codified at Ark. Code Ann. § 25-15-201 et seq.

*Continuances*-- A continuance shall be granted only for good cause. Requests for continuances must be made to the Commission in writing and received no less than 10 working days prior to the scheduled hearing.

*Hearing*--Opportunity shall be given to all parties to respond and present evidence and argument on all issues involved.

1. at any hearing, the party shall have the right to appear in person. The party may also be represented by counsel.
2. to cross examine witnesses and evidence in his or her defense

*Failure to Appear*-- If, after being served notice, the party fails to appear and has not been granted a continuance, the Commission may conduct the proceedings without the party's presence.

*Panel to Hear Case* - Four of the seven Commission members must be present to conduct a hearing. Any member of the Commission who has served on the investigation committee for the case, or who initiated the complaint, is prohibited from sitting on the panel.

*Presiding Officer* – The Chair of the Commission may be the presiding officer at hearings, or the Commission may elect to have a hearing officer preside over any hearing. If the Chair is unavailable, a majority of the Commission members present may select a presiding officer from among the Commission members present or elect to have a hearing officer preside over the hearing.

The presiding officer shall have the power to maintain order and generally regulate and guide the course of the pending proceeding.

*Legal Assistance* - The Attorney General of the State of Arkansas or one of his or her assistants may act as legal advisor to the Commission and render legal assistance needed in fulfilling the provisions of the Commission's Rules

## **Decisions**

If, after hearing the evidence, a majority of the Commission members present and participating sustain the disciplinary, adverse, or other action the Commission may reprimand, suspend, revoke, limit or otherwise condition the mediator's certificate, remove or refuse to include his or her name on the Commission's Roster of Certified Mediators.

A final decision will be made in writing within 15 days of the hearing. A final decision shall include findings of fact and conclusions made in the hearing. Findings of fact shall include a concise and explicit statement of the underlying facts supporting the findings. A copy of the findings shall be served to the party by registered mail.

## **Appeal**

The decision of the Commission may be appealed within 30 days of service of the same upon

respondent as specified in the Administrative Procedures Act codified at Ark. Code Ann. § 25-15-201 et seq.

### **Informal Disposition of Complaints**

Nothing contained herein shall prohibit informal disposition of complaints or allegations by settlement, consent or agreement of parties.

### **Amendments to the Procedures**

These rules, regulations, and definitions may be modified, added to, or deleted as deemed appropriate by the Arkansas Alternative Dispute Resolution Commission in the method prescribed for such changes by the laws of the State of Arkansas.

**Arkansas Alternative Dispute Resolution Commission  
Statistical Reporting Form for Court Ordered Mediation**

*Please complete this form for all court ordered mediations. If a referral fails to attend mediation, fill in as much information as possible in order for the Commission to compile accurate statistics.*

**MEDIATOR INFORMATION**

Last First M.I. Certification Number

City State Zip Phone

**FILING INFORMATION**

County Judge Circuit # Docket # (Include subject prefix, i.e. JV, DR, PR,CV)

Plaintiff's Name Defendant's Name Date Mediation was ordered

Division (please check one):  JUVENILE  DOMESTIC RELATIONS  PROBATE  CIVIL

Is this case an Arkansas Access & Visitation Mediation Program Case?  YES  NO

**MEDIATION ISSUES**

**Case Type: Please check all that apply. For "Other" categories, please describe case characteristics.**

- |   |  |   |
|---|--|---|
| 1. <input type="checkbox"/> Motor Vehicle Negligence                  | 8. <input type="checkbox"/> Decedent Estates     | 16. <input type="checkbox"/> Separate Maintenance           |
| 2. <input type="checkbox"/> Other Negligence                          | 9. <input type="checkbox"/> Trust Administration | 17. <input type="checkbox"/> Domestic Abuse                 |
| 3. <input type="checkbox"/> Malpractice                               | 10. <input type="checkbox"/> Guardianship        | 18. <input type="checkbox"/> Families in Need of Services   |
| 4. <input type="checkbox"/> Product Liability                         | 11. <input type="checkbox"/> Adoption            | 19. <input type="checkbox"/> Juvenile Delinquency           |
| 5. <input type="checkbox"/> Contracts (Please specify<br>type): _____ | 12. <input type="checkbox"/> Divorce             | 20. <input type="checkbox"/> Dependency Neglect             |
| 6. <input type="checkbox"/> Equity                                    | 13. <input type="checkbox"/> Paternity           | 21. <input type="checkbox"/> Termination of Parental Rights |
| 7. <input type="checkbox"/> Partnership                               | 14. <input type="checkbox"/> Custody/Visitation  | 22. <input type="checkbox"/> Extended Juvenile Jurisdiction |
|   | 15. <input type="checkbox"/> Child Support       | 23. <input type="checkbox"/> Other: _____                   |

**MEDIATION SESSION(S)**

**1. Did the mediation take place?**

- A.  No, mediation never began.
- B.  Yes, but mediation was halted.
- C.  Yes, mediation was completed on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ with a full agreement.
- D.  Yes, mediation was completed on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ with a partial agreement.

**2. Did the judge send all issues of the case to mediation or limited issues of the case?**  All Issues  Limited Issues

**3. How many mediation sessions were conducted?** \_\_\_\_\_ **4. How many TOTAL hours were spent in mediation?** \_\_\_\_\_

*Please complete and return to:*

**Arkansas Alternative Dispute Resolution Commission  
Administrative Office of the Courts  
625 Marshall Street  
Little Rock, AR 72201  
FAX: (501) 682-9410**

# SAMPLE ORDER FOR CUSTODY, VISITATION & CHILD SUPPORT

IN THE CIRCUIT COURT OF \_\_\_\_\_ COUNTY, ARKANSAS

NAME PLAINTIFF

VS. NO. DR 2009- ###

NAME DEFENDANT

## MEDIATION ORDER

Pursuant to Ark. Code Ann. § 16-7-202(b), the parties are hereby ordered and directed to participate in mediation of [*specify all issues or specific issues*] which are pending before the Court. The parties may choose an appropriate mediator from the Roster of Certified Mediators provided by the Arkansas Alternative Dispute Resolution Commission. In the alternative, the parties may select a mediator who is not on the Commission's Roster and submit the name of the mediator to the Court for approval.

A copy of the Roster is available online at <https://courts.arkansas.gov/administration/adr> or the attorneys may contact Jennifer Taylor at the Administrative Office of the Courts (501) 682-9400 to obtain a copy of the Roster. Within \_\_\_\_ days of this order, the attorneys for the parties shall provide the Court, in writing, with the name of the selected mediator and the date(s) of the mediation.

The attorneys may contact Stephanie Smith, Director of the Arkansas Access and Visitation Mediation Program at (501) 803-9675 to determine if their clients qualify for free or reduced cost mediation services through the program. In the event the parties do not qualify for mediation services through the Access and Visitation Mediation Program, the costs of the mediation shall be [*equally divided or apportioned in some other way*] among the parties.

Within \_\_\_\_ days of completion of mediation, the attorneys for the parties shall notify the Court regarding the status of the pending issues.