

DIVORCE

OVERVIEW:

There are several grounds for which an individual may seek a divorce in Oklahoma. However, the overwhelming majority of divorces are granted on the grounds that the married couple are now incompatible. Any other grounds such as adultery requires specific proof. Oklahoma generally has jurisdiction to grant a divorce if one or both of the parties have resided in Oklahoma for the at least six months. A divorce is commenced with the filing of a Petition in the county in which one or both of the parties has resided for the preceding six months. Common Law Marriage is still recognized in Oklahoma, but requires evidence that parties actually believed they were married by presentation of evidence such as joint tax returns or a spouse designation for health insurance coverage.

A divorce can be obtained by agreement or by a Judge at trial. When the parties have reached an agreement before commencing proceedings, our firm charges a flat fee to represent one of the parties to draft, file, and obtain a Decree of Divorce with the Court. An agreed Decree of Divorce can be entered by the Court as early as ten (10) days after filing the petition where there are no minor children of the marriage, and ninety (90) days after filing the petition when there are minor children of the marriage.

If the parties are unable to reach an agreement regarding the terms of a divorce, our firm will aggressively litigate to a conclusion all issues of the divorce at the attorney's hourly rate. Our firm requests an initial retainer fee commensurate with the issues and facts of each particular case. The case will then proceed with the attorney billing for all services on the case at the attorney's hourly rate.

Things to do if you are about to go through a divorce:

1. Secure Financial Information - Secure and maintain separate records of all financial holdings such as a bank account, IRA, 401k, land purchases, and stocks; including separate holdings only in your spouses name.
2. Document All Personal Property - There is generally no documentation of the extent of a person's personal property such as jewelry, furniture, household goods, and tools. Take pictures and or video of everything you and your spouse own with a date stamp in case you need to prove such items were in possession.
3. Do Not Move Out of the Marital Residence - Moving out of the marital residence before a divorce is commenced can often place the party that moved at a significant disadvantage in the divorce proceeding depending upon the facts of the particular case.
4. Freeze or Close Spousal Access to Joint Credit Accounts - To protect your credit, make sure your spouse lacks the ability to increase marital debt before the commencement of the divorce.

5. Insist Upon Maintaining a Significant and Positive Relationship with Your Children at All Times - Insist upon establishing and maintaining a schedule of physical custody/visitation that is reasonable and reflects the best interests of the children.

The Divorce Procedure:

The divorce commences with a filing a Petition. A Summons will be issued and served upon your spouse commanding a response to be filed with the Court within twenty (20) days of service. The Summons is also accompanied with a Notice of Automatic Temporary Injunction forbidding either party from such things as transferring property or altering financial accounts. In most cases, there is a need to request a Temporary Order from the Court. The purpose of a Temporary Order is to establish the rules of conduct between the parties concerning the children, property, and debt until the Court has the time to have a trial on the merits of the case. Most Temporary Order Hearings occur within forty-five (45) days of the filing of a Petition. Throughout the proceeding, it is usually necessary to obtain information from the opposing party. The process by which information is obtained from the opposing party is called "discovery". There are several different means of discovery available and depend upon the type of information that is being requested. The divorce trial will be heard by the Judge in which the case was assigned at the time the case is filed.

Sole Custody or Joint Custody:

The difference between a "sole custody" and "Joint Custody" lies conceptually within the realm of decision making, not time spent with a child. A parent that is awarded sole custody by the Court, has the right to make all material decisions concerning the child subject only to other parent's designated visitation periods. A parent with Joint Custody is required to jointly make material decisions and share physical custody of the child according to the provisions of a "Joint Custody Plan". Joint Custody does not require equal physical custody periods between the parents.

Guardian AD Litem

A child may express a preference if the Court determines the child has sufficient maturity to make a preference. The Court will many times appoint a Guardian Ad Litem to represent a child, investigate the family dynamic, and make recommendations to the Court regarding the child's best interest. The costs of the Guardian Ad Litem are shared by the parents as ordered by the Court.

Visitation or Physical Custody Periods:

Visitation issues can be the most important issue with some divorce cases. Well the decision to get a divorce to be painful, the thought of losing day-to-day contact with one's children is often more painful. As more and more couple share in the parenting role of their children, the sense of loss and the divorce for both the children and the noncustodial parent has intensified. Every decree is required to provide a specific minimum amount of visitation between the noncustodial parent and the children. Each county has adopted a minimum standard visitation schedule. Although the schedules vary slightly some minor degrees, they generally provide the following framework.

REGULAR VISITATION:

- a. The Father shall have visitation every other weekend from Friday after school or day care until Monday morning when the Father returns the child(ren) to school or day care.
- b. If a child is not attending school or daycare, the Father shall pick up the child(ren) from the Mother's home at 6:00 p.m. on Friday and shall return the child(ren) to the Mother's home at 7:30 a.m. on Monday.
- c. All visitation weekends that include a Federal or State Monday holiday shall be part of the regular weekend and return time on Tuesday shall be the same as the Monday return time.
- d. Regular visitation shall occur during the school year and shall not occur from June 1st until the 1st day of school.

6. HOLIDAY VISITATION:

HOLIDAY	EVEN-YEARS	ODD-YEARS
Spring Break	Mother	Father
Fall Break	Father	Mother
Thanksgiving	Mother	Father
First Week of Christmas Break (from after school or day care on the last day of school before the break until 6:00 p.m. on December 27 th)	Father	Mother
Balance of Christmas Break (from 6:00 p.m. on December 27 th until return to school or day care on the day school resumes)	Mother	Father

- a. All Mother's Day weekends shall be spent with the Mother. All Father's Day weekends shall be spent with the Father. The weekend shall begin at 6:00 p.m. on Friday before Mother's Day or Father's Day and conclude on the following Monday morning at the return time for regular weekend visitation. Father's Day weekend is not available for Mother's summer visitation.

b. THE HOLIDAY SCHEDULE SUPERSEDES ALL REGULARLY SCHEDULED VISITATION. The Holiday Schedule shall be governed by the school the child(ren) attend(s) or would attend if not of school age. If a child not yet attending school has an older sibling who attends school, holiday visitation with the child not attending school shall be governed by the schedule for the school that the older sibling attends.

7. SUMMER VISITATION:

a. The Father shall have summer visitation for two (2) weeks in June and must notify the Mother of the dates in writing by March 30.

b. The Father shall have summer visitation for two (2) weeks in July and must notify the Mother of the dates by March 30. The July 4th holiday (from 6:00 p.m. on July 3rd to 6:00 p.m. on July 5th) shall alternate between the parties on a yearly basis. The Father shall not select date in July that include the July 4th holiday in consecutive years.

c. Two weeks shall mean one period of 14 consecutive days or two periods of 7 consecutive days, with the visitation beginning and ending at 6:00 p.m.

d. The Father shall have summer visitation from 6:00 p.m. on August 1st until 6:00 p.m. on August 8th. If the child(ren)'s school year does not begin until September, an additional week of visitation in August will be available with dates to be agreed upon by the parents by June 1.

e. The Father shall not schedule periods of summer visitation consecutively to create a period of 3 consecutive weeks (such as the last 2 weeks of July and the first week of August) or a period of 4 consecutive weeks (such as the last 2 weeks of June and the first 2 weeks of July).

f. If the Father fails to give proper notice of when she/he will exercise summer visitation in June and/or July, then the Father shall have visitation from 6:00 p.m. on June 1st until 6:00 p.m. on June 15th and from 6:00 p.m. on July 1st until 6:00 p.m. on July 15th in even numbered years and from 6:00 p.m. on July 6th until 6:00 p.m. on July 20th in odd numbered years.

g. The Regular Visitation schedule shall resume on the weekend immediately following the first day of school and the Father shall have visitation on that weekend. Weekends shall thereafter alternate between the parents until May 31st, with the Summer Schedule beginning on June 1st.

8. OTHER PROVISIONS:

a. All toys and clothes belong to the child(ren) should travel freely between households and shall be returned with the child(ren) in a clean and orderly manner.

b. Parents are allowed to deviate from this schedule by mutual agreement.
c. It is important to be aware that this visitation schedule is for the purpose of providing assured minimum amounts of visitation between Father and child(ren). Visitation should exceed the number of occasions set out herein.

d. In addition, liberal telephone communications between the Father and child(ren) are encouraged and should occur. Liberal telephone communications are also encouraged and should occur between the child(ren) and the Mother during the Father's visitation.

The courts are trending towards more equal time splits between the parents. The court typically look for evidence of a status quo of visitation before the parents separation, and the current schedules of the parents and the child. In some cases, the child may express a preference.

Child Support

All custody orders are to be accompanied by a calculation of child support pursuant to the child support guidelines. Under the child support guidelines, the gross income of the mother and father are added together to obtain a combined gross income. Statutory table provides the total amount that the legislature has estimated it will cost to support number of children of the parties. The noncustodial parent must pay his or her proportionate share of the support figure from the table. The parents also share their proportionate amount of the cost of health insurance, uninsured medical expenses, and take daycare. Child support is generally paid by way of an employer income assignment. Below is a link to the Oklahoma Department of Human Services child support calculator.

<http://www.okdhs.org/onlineservices/cscalculator/>

The payor is given a "shared parenting" adjustment from base child support for the number of overnight visitation periods that the Court awards exceeding 120 overnight periods per year.

Property and Debt Division

The marital estate includes all property and debt which was acquired through the joint industry of marriage. Marital property includes retirement acquired during the marriage. A person can have separate property that is not part of the marital estate if it was acquired by gift, inheritance, or was acquired exclusively before the marriage. The court will make a division of all marital property and debt based upon the equities and facts of each case.

Alimony

In many divorces, one spouse has the need for continued support after the conclusion of the marriage. In order to support an award of support alimony, a party must prove a need for the support alimony and that the opposing party has the ability to pay. For example, The need can be established at a minimum by showing that reasonable monthly expenses exceed the party's income and that the spouse has enough disposable income after expenses to pay the deficit.



Military

Our firm handles many military divorce and custody matters each year. There are certain statutory protections for service members and their spouses that do not apply to civilians. Our firm is well versed in the regulations and federal statutes applicable to military divorce, custody, and retirements.

www.military.com/money/retirement/military-retirement/understanding-divorce-in-the-military.html

www.dfas.mil/garnishment/usfspa/faqs.html

Modification of Custody or Support Orders