**Chapter Fourteen**

# DIVORCE, DISSOLUTION, CHILD CUSTODY, & CHILD SUPPORT

*This section sets forth your rights under present law and offers suggestions on how your rights can be protected in a divorce, child custody, or dissolution proceeding in Alaska. Be aware that subjects covered in this chapter can change quite rapidly.*

*The information contained in this chapter is not intended to be and should not be used as a substitute for legal advice regarding specific factual situations. If legal advice is required, the services of an attorney should be sought.*

## THE DIVORCE PROCESS AND FINDING AN ATTORNEY

For many women, the most difficult legal issue they ever face is getting a divorce or filing for child custody. A woman's spouse or partner may threaten to harm her or take the children away and he or she may remove all the money from the joint savings account. A woman may feel isolated and scared, yet she must deal with the stress of finding an attorney and protecting herself.

In addition, divorce often causes a severe decline in the standard of living for women because of the impact it may have on her income and housing situation.

### Is it necessary to hire an attorney for divorce or child custody proceedings?

If there are no children and property, marital couples may be able to handle their own divorce without attorneys. This is called appearing pro se ("for oneself"). Although this alternative is much less costly than hiring an attorney, it can be confusing and time consuming. Anyone who has children, property, or other complex issues should seek the advice of an attorney.

*See Chapter Two for more information about finding an attorney.*

If you cannot afford an attorney, you may qualify for no-cost assistance through the Alaska Legal Services Corporation or through the Alaska Network on Domestic Violence and Sexual Assault's Pro Bono Program (if your case involves issues of domestic violence or sexual assault). If you cannot find an attorney, then you should contact the Alaska Court System's Family Law Self-Help Center. The Family Law Self-Help Center provides educational information and sample pleadings to people who are representing themselves in family law proceedings.

### If your spouse has an attorney, do you need your own attorney for divorce/ child custody proceedings even when you and your spouse have made a friendly agreement to negotiate the details?

Yes. No matter how amicable the relationship with your spouse, you have interests separate from his in a divorce and should be represented separately. This is vital. Even if you eventually decide not to retain an attorney to represent you, you should consult with an attorney at least once to get impartial advice on your situation.

## MEETING WITH YOUR ATTORNEY

Usually, you will have a first interview with an attorney before he or she will take your case. There is sometimes no fee for this interview, but you should confirm when you make an appointment.

The attorney will ask for facts about the case. If you have been a victim of domestic violence, the attorney will ask about dates of past abuse and whether you can document this. Police and medical reports will be of help. If you have witnesses to any abuse, be prepared to give their names. You will also need information about property, debts, and family income. All information provided to your attorney is confidential. Your attorney is never allowed to tell this information without your permission, except in very special circumstances, such as if you sue your attorney. Generally, you cannot be required to tell someone else what you have discussed with your attorney.

### What is divorce versus dissolution?

Alaska has two proceedings for ending a marriage – divorce and dissolution. The divorce procedure is for cases in which the parties cannot agree on all issues. Since divorce requires that strict procedural rules be followed, it is best to be represented by an attorney. [AS 25.24.050.] A dissolution proceeding requires that both parties agree on all issues in the termination of the marriage. A dissolution is easier for a person not represented by an attorney to do on their own, although an attorney is recommended if there are significant property or child custody issues.

In a divorce, one party files a "complaint" for divorce in court and the other party has 20 days to answer. If the other side fails to answer, then the person who filed the complaint may obtain a default divorce. This greatly simplifies the divorce process and generally only takes two to three months. If the other side does answer, then the parties will litigate the case toward a trial. This process generally takes six months to one year. However, even if the other side answers, it is likely that the parties will "settle" the case, or reach an agreement on all the issues, before trial. Alaska Legal Services and the Alaska Network on Domestic Violence and Sexual Assault's Pro Bono Program offer clinics to help people who might be able to get a default divorce. Contact your nearest office to find out if they offer this service. *See the Resource Directory at the end of this handbook for more information.*

In a dissolution, the court must review the agreement to see that it is fair. The court will use heightened scrutiny if:

- one person is represented by an attorney and the other is not;
- a domestic violence criminal complaint has been filed;
- there is a minor child;
- there is evidence that one party committed a crime involving domestic violence during the marriage;
- a protective order has been filed in this or another state; or
- the property division seems inequitable on its face.

Once the forms are completed and signed by both parties, a hearing will be set (usually within 60 days). Either party can change their mind and stop the proceedings before the final hearing. If the dissolution does not require heightened scrutiny, one party may sign a waiver of appearance and not attend the hearing. In a dissolution requiring heightened scrutiny, both parties must be present at the hearing unless the court finds the presence would constitute a significant hardship and that a just agreement has been reached. One party may file separately if the whereabouts of the other spouse is unknown and there are no issues of child custody or support.

You can obtain instruction packets and all necessary forms for dissolution at your local courthouse. Many women seek advice from an attorney (on issues such as child support, custody and valuation of property) and then use the dissolution process. The Family Law Self-Help Center can also help with information on representing yourself through this process. *See Chapter Two for more information on the Alaska Family Law Self-Help Center.*

**What is a child custody action?**

If a woman was not married to the father of her children, she can file a child custody action to determine custody, visitation, and child support. [AS 25.20.060.] She can also file a motion to determine property division of joint assets and payment of joint debts. *See Chapter 13 for more information.*

**What are the grounds for divorce in Alaska?**

There has been widespread adoption of "no-fault" grounds for divorce through the United States. "No fault divorce" means that the parties do not have to prove why they want to terminate the marriage. One person's assertion that they want out of the marriage because of "incompatibility of temperament" is sufficient, even without the other party's agreement. In Alaska, you can also obtain a divorce on traditional fault grounds, but this is not necessary. [AS 25.24.050.]

**What is a common law marriage?**

A common law marriage is created by an agreement to marry followed by cohabitation (holding themselves out to others as being married-living together, sharing bank accounts, etc.) A common law marriage does not involve the traditional marriage license and ceremony required by the majority states. Alaska does not recognize common law marriage. However, Alaska would recognize a valid common law marriage from another state.

**If a woman has a common law marriage from another state, does she have to get a divorce to end it?**

Yes, and it is important to do so. There is no such thing as a common-law divorce, and if she does not get a regular court divorce, any later marriage, including a ceremonial one, will be invalid.

**Does a woman have to be an Alaska resident to file for divorce or dissolution?**

Alaska does not have a residency requirement to file for divorce. The only requirement is that one spouse is living in Alaska with the intent to remain here when the complaint or petition is filed. However, for the court to have authority over other issues in the case, it must have "jurisdiction" over those issues. For example, for the court to decide property issues, the parties must have lived in Alaska for at least six months within the six years before filing the divorce. [AS 09.05.015] For an Alaska court to decide child custody, it must determine that is has jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). *See later in this chapter.* For the court to have jurisdiction to set child support against another person one of the following conditions must be met:

- the other parent can be served in the state;
- the other parent resided with the child in this state;
- the other parent resided in the state and supported the child at one time;

- the child resides in this state because of acts or directives of the other parent;
- the other parent engaged in sexual intercourse in this state through which the child may have been conceived; or
- the other parent acknowledges parentage in a writing deposited with the Bureau of Vital Statistics in Alaska.

Even if the court does not have authority to decide support, a parent should ask for it since the court can always defer the issue to the Child Support Services Division (CSSD) who can bring an interstate action. *See CSSD later in this chapter.*

**What kinds of protections are available while the divorce and/or child custody action is pending?**

When a divorce is filed with the court, a standing order issued by the presiding judge takes effect. Standing orders vary depending on the court location, but they all include three important protections. They prohibit either party from:

- disposing of assets except for reasonable and necessary expenses;
- threatening or harassing the other party; and
- removing any minor child involved from the State of Alaska.

**What other protections are available?**

While the divorce is pending the court may order:

- that one spouse pay an amount of money to allow the other to pay for an attorney or other costs to carry on the divorce;
- that one spouse pay reasonable spousal maintenance, including medical expenses;
- that one spouse pay reasonable support for minor children in the care of the spouse;
- that one spouse is entitled to necessary protective orders, including orders:
  - providing for the freedom of each spouse from the control of the other;
  - for a civil protective order under AS 18.66.100-18.66.180; *See Chapter Five for more information on civil protective orders*
  - for an order directing one spouse to vacate the marital residence or home of the other spouse;
  - restraining a spouse from communicating directly or indirectly with the other spouse;
  - restraining a spouse from entering a propelled vehicle in the possession of or occupied by the other spouse; and
  - prohibiting a spouse from disposing of the property of either spouse or marital property without the permission of the other spouse or a court order.
- interim custody and visitation order that will continue until there is a settlement or trial in the case;
- in certain circumstances, if both parties agree and after a hearing, that the parties engage in mediation or family counseling. [Important Note: The court may not order or refer parties to mediation in a proceeding concerning custody or visitation of a child if a domestic violence protective order issued or filed under AS 18.66.100-180 is in effect. See "What is mediation?" in this chapter for more information on available protections when one party objects to mediation on the grounds that domestic violence has occurred.] [AS 25.20.080(f).]

**Why would a woman want to obtain protections during the pendency of her divorce action?**

Women can be at increased risk of violence from their spouse when they attempt to leave an abusive relationship or obtain a divorce. When there has been a history of domestic violence, sexual assault or stalking in the relationship, there may be a high risk of separation violence when a victim attempts to leave an abusive partner.

**What is mediation?**

Divorce mediation is a voluntary process in which a neutral third party, a mediator, helps the couple reach a mutually acceptable agreement about their respective rights and responsibilities after divorce. It is less formal than court proceedings, and even if the people are represented by attorneys, the attorneys usually do not actively participate in the mediation process itself. The goal of mediation is to help reach an agreement, and the mediator does not have authority to impose a decision on the parties.

Mediation (using a third party to help you communicate and reach an agreement) can be used to settle any or all aspects of a divorce. Either party can petition the court to order mediation or the parties can engage in mediation without a court order. [ARCP 100; & AS 25.20.080.] However, the court cannot order a victim of domestic violence to engage in mediation unless she wants to use mediation and mediation is provided by a mediator who is trained in domestic violence in a manner that protects the safety of the victim and any household member, taking into account the results of an assessment of the potential danger posed by the perpetrator and the risk of harm to the victim. The court cannot order or refer a victim of domestic violence to mediation if a protective order is in effect. [AS 25.20.080 & AS 25.24.140.] Individuals are always permitted to have a person of the their choice, including an attorney, in attendance. Mediation is held in private and is confidential. The mediator may not testify about the mediation proceedings. [ARCP 100(g).] The cost of mediation may be paid by one party, by both parties, or by the state if the parties are indigent. If mediation or negotiation fails, the matter will proceed through court.

**Is mediation mandatory in Alaska?**

At any time within 30 days after a petition for child custody is filed under AS 25.20.060 or during the pendency of a divorce proceeding (Civil Rule 100) the court may order the parties to submit to mediation. [However, as discussed above, there are limits and prohibitions on mediation if there is domestic violence involved.] Each party has the right to challenge peremptorily one mediator appointed. Mediation shall be conducted informally as a conference or by telephone. The parties to the action and a court-appointed representative of the minor children shall attend. [AS 25.20.080.] If the mediator determines that mediation efforts are unsuccessful, the mediator shall terminate mediation and notify the court that mediation efforts have failed. The custody proceeding shall proceed in the usual manner.

**What are the advantages and disadvantages of mediation in the divorce process?**

Mediation is generally less costly and less time consuming than the litigation process. The Alaska Court System provides parties in custody actions who have combined incomes under $100,000, with ten hours of free mediation through a court-appointed mediator. Parties interested in this option should make a request to be referred to this program in their case.

The chief disadvantage of mediation is that it only works between parties of equal bargaining power, and there is still pervasive inequality between men and women in our society. Also, parties should feel comfortable being the same room with the opposing party, although shuttle mediation, whereby the

parties are placed in separate rooms, is always an option.

Even if parties decide to try mediation, it is highly recommended that they hire an attorney to review any agreements that they reach, to ensure that their rights are protected. This can often be done cost-effectively, by just hiring that attorney to review your agreement, rather than to fully represent you in your case.

**Are there any situations where mediation should definitely not be used?**

Yes. Victims of severe domestic violence including physical, sexual, or emotional abuse should be cautioned against mediation. This is because the mediation process relies on good-faith bargaining between parties who possess equal bargaining power, which does not exist in an abuser/victim situation. For example, despite a woman's needs and expectations of the process, she may be too fearful of retaliation to speak up for her own interests. It also could be dangerous for her physical safety to be in a negotiating process with her abuser.

**Besides mediation, are there other options to resolve a contested divorce or custody action instead of having a formal trial?**

Yes. Once a case is filed, parties can ask the court for a settlement hearing. Settlement hearings are done with the assistance of judges (either your judge or another judge). A settlement hearing is like mediation in that both parties are agreeing to attempt to negotiate a resolution to all or some of the issues in the case. However the judge in a settlement hearing may be more forceful in attempting to convince the parties to agree than the mediator. Parties are generally asked to file a short settlement brief with their position on each issue in dispute prior to the settlement hearing.

Another option to quickly resolving your case is the Early Dispute Resolution Program (ERP). Certain locations – including Anchorage, Juneau and Palmer – have this Program. In ERP, the court system pre-screens cases where there are no attorneys involved and where the issues seem fairly basic. These cases are calendared for a short expedited hearing before the court. Prior to this hearing, parties are given access to either pro bono attorneys or mediators to help them resolve the issues that are contested. If they resolve the issues, they then state their agreement during their expedited hearing before the judge, thereby resolving the case much quicker than a normal trial schedule.

Finally, starting in April 2015, parties will have the option of requesting an informal trial in domestic relations matters. [ARCP 16.2.] In an informal trial, you and the other person speak directly to the judge. The judge will ask questions to make sure you cover everything the judge needs to know to decide your case. When you are done speaking, the judge will ask the other person or that person's lawyer if there are other questions that they think the judge should ask. If it seems helpful, the judge will ask the questions suggested. The other person or lawyer does not question you directly or get to interrupt you. Most of the time, you and the other person will be the only witnesses. You can have an expert witness testify, such as a doctor, counselor, custody evaluator, or appraiser. Other witnesses are allowed only if the judge agrees they are needed. Fewer witnesses are needed in an informal trial because the Rules of Evidence do not strictly apply. So you can explain the issues in the case to the judge without worrying if the information is admissible and provide any relevant documents or other evidence you want the judge to review. The judge will decide the importance of what each person says and the evidence provided.

Informal trials can proceed with or without attorneys, but attorneys have more limited roles in the informal trial. If you have an attorney, the attorney will help you prepare and will sit next to you during the trial to offer advice. Your lawyer can also: identify the issues in the case, respond when the judge asks

whether there are other issues that the judge should inquire about, question expert witnesses, and make short arguments about the law at the end of the case.

The informal trial is a voluntary process. An informal trial will be used only if both people involved in the case and the judge agree to it. Before starting the trial, the judge will explain the process and how it works. This process may be easier if both parties are pro se (do not have attorneys) since litigants will be able to get a wider range of evidence before the court without formal rules of evidence. This process is generally recommended for domestic relations cases that are less complex, and do not involve serious issues of domestic violence or complicated property and debt issues.

**PROPERTY DIVISION**

Alaska is an "equitable division" state. Alaska law requires that courts go through a four step process in dividing marital property. First, the court must determine what is marital property. Generally, everything acquired during the marriage, with the exception of inheritances and gifts, is marital property subject to division. Property acquired prior to the marriage usually is not marital property. However, property acquired prior to the marriage may be considered marital property if one party can prove that it was the intent of the owner to make it marital property and there are acts to prove it.

In the second step, the court will value the marital property. The third step requires the court to divide the property with the assumption that a fifty/fifty division is equitable. However, the court will consider the following factors in deciding whether a fifty/fifty split is equitable:

- age of parties;
- earning abilities;
- duration of marriage;
- conduct of the parties during the marriage;
- circumstances and needs;
- health and physical condition; and
- financial circumstances (including the time and manner of acquisition of property, its value and its income-producing potential).

Therefore, there is no guarantee that all the property will be divided in half. Alaska statutes specifically provide that earning capacity includes length of absence from the job market and custodial responsibilities for children during the marriage and states that the court must consider the desirability of awarding the family home or right to live in it to the party with primary physical custody of the children. [AS 25.24.160(a)(4).]

Finally, in the fourth step, the court will, if necessary, invade the premarital property of either spouse if an equitable division is not possible based on the parties' marital property.

Alaska statute says that the court is not to look to the fault of either of the parties in deciding how the property is to be divided, but must rather look to overall fairness. [AS 25.24.160(a)(4).] The value of private retirement pension benefits, military retirement pay, health insurance benefits, and civil service benefits are available for distribution in a divorce. Even if they are not yet vested, the court can keep control of the case to divide them when and if they vest. If you or your spouse have rights in a pension or retirement plan, vested or not, try to learn the value of that benefit and check with an attorney or accountant about how this should be considered in making a division of the property.

The order which the court must sign to award one spouse a share of the other's retirement is called a Qualified Domestic Relations Order (QDRO). There are many technical requirements for these documents so you may want to contact the plan's administrator to obtain the correct form.

Other employment benefits such as unused leave or vacation pay, supplemental benefits, and stock option plans are also subject to division. In addition, courts will consider fishing permits, stock in a Native Corporation, the cash value of insurance, stock in a closely held corporation, or an interest in a professional or other business.

In some states, any property either spouse owns or acquires during the marriage automatically becomes "community property" of both spouses such that both have an equal interest in the property. Alaska is not a "community property" state. However, a law was passed in 1998 that allows married people to agree in writing that their property shall be considered "community property."

**What are the tax consequences for property division?**

If each spouse just receives his or her own separate property or if the jointly-owned property is divided equally, there is no tax consequence. That means you do not pay income tax even if the property you get has increased in value, unless you sell it.

If there is an unequal division of joint property or one spouse transfers separate property to another, there may be a tax gain or loss. Contact an accountant, attorney, or the IRS about the tax consequences if you are considering this type of division. IRS publication 504 has helpful tax information for separated or divorced individuals and can be found online at http://www.irs.gov/publications/p504/index.html.

**DEBTS**

Debts are considered "marital property" and are divided in the same four-step process as marital assets. However, unlike assets, who owns the debt is important. While the divorce court can divide the debt or give it to one party to pay as part of the divorce decree, it is the named person on the debt who remains liable to the creditor. Therefore, it is important when you separate to stop incurring mutual debt. Additionally, you will want to take responsibility for those debts in your name, assuming this can be accomplished within an equitable division of property.

**MODIFYING DIVORCE DECREES**

Other than for issues involving children – custody, visitation, and support – the court's ability to modify issues in the divorce once the decree is final is limited. There are a few narrow grounds including fraud, newly discovered evidence, and inadvertence that would allow the court to reconsider issues within one year. After one year has elapsed, it is extremely difficult to re-litigate any property or debt issues.

**CHANGE OF NAME**

The court may order either party's name changed in a divorce or dissolution, but if it is to a name other than a prior name, the ordinary requirements for name change must be followed. [AS 25.24.165.] *See Chapter Eight for more information about names.*

## ALIMONY

### Can I receive alimony from my ex-spouse?

In the area of alimony, or financial support for one spouse from the other, Alaska law provides that either spouse may be ordered to provide support for the other. However, there is strong preference to provide support through division of property. [AS 25.24.160.] The courts seldom provide long-term alimony for spouses unless there is evidence of health problems, the woman is past middle age, the woman is unemployable, or the marriage was long-term and there are not enough assets to provide for her support.

There are two types of alimony in Alaska – reorientation and rehabilitative. Reorientation alimony is support for a short period of time that allows one spouse to adjust financially to the effects of the divorce. This might be awarded in a case with an immigrant spouse who does not yet have work authorization. Rehabilitative alimony is support to allow one spouse to do certain things to improve her financial situation, such as education or job training. This type of alimony is usually awarded in long-term marriages where the wife has left her career or training to raise children or followed her husband in his career. The court requires that any amount that is awarded as rehabilitative be closely linked to the costs of the education or job training sought. An award of alimony is to be based on the division of the marital assets, the length of the marriage and station in life, the age and health of the parties, their earning capacity and financial condition (including cost and availability of health insurance), and the parties' conduct during the marriage, including any unreasonable depletion of marital assets. [AS 25.23.160.]

### What are the tax consequences of alimony?

The person paying alimony may deduct it on their federal taxes and the person receiving it must declare it as income.

## ATTORNEY FEES

### Who pays for attorney fees in a divorce?

The earning powers of the parties are considered in deciding whether or not to make one party pay the other's attorney fees. Attorney fees can be made payable in advance or at the end of the proceedings. Women who are having trouble paying for legal representation may want to petition the court for attorney's fees in advance. Alaska Legal Services Corporation has packets that can assist pro se individuals file for attorney fees at the beginning of a case.

## CHILD CUSTODY

There are two types of custody – legal and physical. Legal custody determines who has the ability to make decisions for the child, such as the type of medical care they receive and where they go to school. Physical custody is who actually has the children. Legal custody may be sole or joint. Physical custody may be primary (one parent) or shared (if both parents have the child for more than 30 percent of the time).

Joint legal or physical custody requires that parents work together. Therefore, they need to be able to communicate well with each other. It is usually easier if the parents live close to one another. If one parent having joint custody decides to move from the community of the other, the court will have to decide where the child will live, unless both parents agree.

There is a preference in the law for parties to share legal custody. There is not a similar preference for shared physical custody. Instead, the court determines physical custody in accordance with the best interests of the child, considering all relevant factors, including:

- the physical, emotional, mental, religious, and social needs of the child;
- the capability and desire of each parent to meet these needs;
- the child's preference;
- the love and affection existing between the child and each parent;
- the length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity;
- the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child, except that the court may not consider this willingness and ability if one parent shows that the other parent has sexually assaulted or engaged in domestic violence against the parent or a child, and that a continuing relationship with the other parent will endanger the health or safety of either the parent or the child;
- any evidence of domestic violence, child abuse or child neglect in the proposed custodial household or a history of domestic violence between the parents;
- evidence of drug abuse by either parent or any other member of the household that may affect the physical or emotional well-being of the child; and
- other factors that the court finds important such as the past history of the parents with respect to their compliance with child support orders, if the parent had knowledge of the order and through reasonable efforts had the ability to comply. [AS 25.24.150.]

There is a rebuttable presumption that a parent who has "history of perpetrating domestic violence" against another parent should not be awarded sole or joint legal or primary or shared physical custody. A history of perpetrating domestic violence includes one incidence of violence that causes serious physical injury or more than one incident of domestic violence. If one parent can prove that the other parent has a "history of perpetrating domestic violence," then the other parent must show that they have successfully completed a batterer's intervention program, that they do not engage in substance abuse, and that the best interests of the child require their participation as a custodial parent because the other parent is absent, has a mental illness, or has a substance abuse problem that affects parenting abilities. If the abusive parent cannot prove this, they generally are permitted only supervised visitation. [A.S. 25.24.150(g)(h).]

If the court finds that both parents have a history of perpetrating domestic violence, the court is supposed to either award sole legal and primary physical custody to the parent who is less likely to perpetrate violence and order that person into a batterer's intervention program or award custody to a third party if necessary to protect the child. [AS 25.24.150(i).]

If the court finds that a parent or child is a victim of domestic violence, the court may order that the address and telephone number of the parent or child be kept confidential in the proceedings. [AS 25.20.060.]

The courts have indicated that consideration should be given to the desirability of keeping children together so they can grow up as brothers and sisters, rather than separating them, unless their welfare clearly requires such a course.

The Alaska Supreme Court has also ruled that a parent's conduct, including sexual preference, cannot be considered in determining custody unless it can be shown that it has or reasonably will have an adverse

impact on the child.

The Alaska Supreme Court also has indicated that no single factor should be allowed to outweigh all others when analyzing the best interest of the child. While a parent's past is not determinative, it can be considered in evaluating current stability and parenting ability. Therefore, the fact that you have committed adultery or are or have been on welfare is not a factor to be considered by the court unless it can be shown that it either affects the well-being of the child or is evidence of a lack of stability on your part.

It is generally advisable for women to be concerned about the factors that may be brought up regarding stability and predictability of the child's environment including:

- use of alcohol and/or drugs;
- excessive changes in living, overuse of other caretakers, particularly for extended periods of time;
- negative comments to children about absent spouses; and
- denial of visitation.

If custody is in any way an issue, you should consider immediately hiring an attorney with experience in the area or, if you qualify, obtaining assistance from Alaska Legal Services or from the Alaska Network on Domestic Violence and Sexual Assault's Pro Bono Program (if your case involves issues of domestic violence or sexual assault). Once a custody determination has been made by divorce or dissolution, it is difficult to modify.

**RELOCATION ISSUES AND CUSTODY**

Parents may have to move with their children because of safety issues or because they need the support of family or a community with more economic opportunities. Parents may be allowed to move if they can show that the move is in the child's best interests and there is a legitimate reason for the move. Parents who move without a court order or who deny the other legal parent access to the children may be charged with custodial interference. *See below, "Sanctions for Interference with Custody or Denial of Visitation."* It is highly recommended to speak with an attorney if you are considering moving out of state with your children, or even out of their home community.

**CHILD CUSTODY INVESTIGATORS AND GUARDIAN AD LITEMS**

If custody is at issue in your case, then the court may refer the parties to child custody investigator (CCI) or a guardian ad litem (GAL) to investigate the custody issues. The parties can also make the request to the court for one of these professionals to make an investigation. CCIs are experts that are appointed by the court to give an expert opinion as to what custodial placement is in the children's best interests. A GAL is a person, attorney or non-attorney, who is appointed by the court to represent the child's best interests.

Both the CCI and the GAL are required to have similar qualifications including an understanding of child development, the impact of divorce on children, issues related to child custody, the impact of domestic violence and substance abuse on children, Alaska rules and statutes relating to custody, and the ability to communicate effectively with children. The CCI or GAL will generally interview both parents and the children, speak with parent references, and obtain access to criminal, Office of Children's Services, and mental health records. They will then compile all this information into a report that will be given to the court with recommendations for custody. Parents who are indigent may qualify for a CCI or a GAL at no

cost. [Alaska Rules of Civil Procedure 90.6. and 90.7.]

## CUSTODY MODIFICATION

The court may change or modify a custody determination at any time during the minority of the child; however, the courts favor stability and the parent wishing a modification must show a substantial change of circumstances that directly affects the best interests of the child. [AS 25.24.150; AS 25.20.110.] In a proceeding involving the modification of an award for custody of a child or visitation with a child, a finding that a crime involving domestic violence has occurred since the last custody or visitation determination is a finding of change of circumstances. [AS 25.20.110(c).]

In making a decision in a custody modification, the court should take into consideration the past history of child support payments. In post-divorce motions to modify custody or visitation, the court may award fees based on ability to pay and the good faith of the parties' actions.

## VISITATION

If one person has primary physical custody of a child, then the other party has what is called "visitation rights." A typical visitation schedule would be for the non-custodial parent to have the children every other weekend from Friday night until Sunday night, one weeknight evening, alternate holidays, (i.e., Thanksgiving in even years and Christmas in odd years, Spring Break in even years, etc.), and half of summer vacation. Parents should take into consideration the age and emotional health of their children in deciding on a visitation schedule. The custody investigator's office has guidelines for visitation which may be helpful in setting a schedule. Any costs for visitation are generally split by the parents with each parent paying the cost of transporting the child to that parent.

Grandparents may also petition the court for an award of visitation rights. [AS 25.20.065.] However, the court shall consider whether there is a history of domestic violence attributable to the grandparent's son or daughter when fashioning any order regarding visitation.

## SANCTIONS FOR INTERFERENCE WITH CUSTODY OR DENIAL OF VISITATION

Every parent should know that interference with the custodial rights of another, even if the children are their natural children, may constitute a crime. Custodial interference in the first degree involves taking a child from the lawful parent/ guardian and leaving the state. Custodial interference in the second degree is taking a child from the custody of another for a long period of time. [AS 11.41.320-330]. There does not have to be a court order granting custody to one or another parent in place to commit custodial interference. Legally both biological parents have a right to custody of their child.

If a divorce or child custody complaint has been filed, there may be an automatic court order prohibiting either party from taking the children out of the judicial district and a parent must get permission from the judge or the other parent to do so.

If no court orders have been entered regarding the children, a woman can take the children with her when leaving a relationship, as long as she doesn't have the intent to *permanently* deny the other custodial parent access to the children. This means that it is not a crime for a woman to take her children (natural or adopted) with her to a battered women's shelter or to a friend's home when immediate safety is at issue. The court will look at many factors to determine a parent's intent to keep children away from another custodial parent. It is highly advisable to get the advice of an attorney if you are considering taking your children away from another custodial parent to ensure that you are not committing a crime.

If the custodian of a child fails without excuse to permit visitation as allowed by court order, the custodian may be punished by fine. A just excuse includes illness of a child which makes it dangerous to the health of the child for visitation to take place, but does not include the wish of the child not to have visitation with the person entitled to it. [AS 11.51.125.]

A person who interferes with another's court ordered visitation with children may also be made to pay $200 in damages for each time that visitation is denied without a good reason. [AS 25.24.140.]

**VISITATION IN PROCEEDINGS INVOLVING DOMESTIC VIOLENCE**

If visitation is awarded to a parent who has committed a crime involving domestic violence against the other parent or a child of the two parents within the five years preceding the award of visitation, the court may set conditions for the visitation, including:

- the transfer of the child for visitation must occur in a protected setting;
- visitation shall be supervised by another person or agency and under specified conditions as ordered by the court;
- the perpetrator shall attend and complete, to the satisfaction of the court, a program for the rehabilitation of perpetrators of domestic violence;
- the perpetrator shall abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours before visitation;
- the perpetrator shall pay costs of supervised visitation as set by the court;
- the prohibition of overnight visitation;
- the perpetrator shall post a bond to the court for the return and safety of the child; and
- any other condition necessary for the safety of the child, the other parent, or other household member. [AS 25.20.061.]

If one parent has shown that the other parent has a "history of perpetrating domestic violence" (as defined in the previous custody section), then the other parent is only supposed to get supervised visitation conditioned on the abusive parent participating in a batterer's intervention program and a parenting class. Unsupervised visitation will only be allowed if the abusive parent has completed a substance abuse program, is not abusing substances, and does not pose a danger of mental or physical harm to the child. [AS 25.24.150(j).]

**CONFIDENTIALITY PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE**

If the court finds that a parent or child is a victim of domestic violence, the court may order that the address and telephone number of the parent or child be kept confidential in the divorce or child custody proceedings. [AS 25.20.060.]

**UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)**

An Alaskan's court authority to hear a child custody case is determined by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). If the case involves an inter-jurisdictional dispute, then the federal Parental Kidnapping Prevention Act (PKPA) and the other state's custody jurisdiction law will be relevant to determining if Alaska has jurisdiction.

In general, Alaska has jurisdiction if Alaska is the child's home state or former home state. "Home state" is defined as the place where the child has resided for six months preceding the date the action was filed. The UCCJEA also has an emergency temporary custody provision that allows Alaska to enter an emergency custody order if necessary to protect the child because the child or a parent or sibling of the child is threatened with mistreatment or abuse. Once a custody case is heard in this state, Alaska maintains exclusive continuing jurisdiction to modify its decree unless the child and a parent no longer have significant connections with Alaska or if all the parties (the child and both parents) leave the state.

The UCCJEA also permits a court to determine that it is an inconvenient forum and that a court of another state is more appropriate. In making this determination, the court 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 UCCJEA defines the information to be submitted to the court by the parties including whether the party knows of a proceeding relating to domestic violence and protective orders. The law also allows for the information to be sealed and prohibits disclosure to the other party if the court finds that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information.

If your case involves an inter-jurisdictional dispute, it is highly recommended that you seek the assistance of an attorney since these cases tend to be complex.

**CHILD SUPPORT**

In Alaska, both parents, even if they do not have custody of their children, have a duty to support them.

In divorce, dissolution, or child custody cases, child support is awarded according to court guidelines contained in Alaska Rules of Civil Procedure 90.3. If one parent has sole or primary physical custody of the child, the other parent pays a percentage of their adjusted annual income as child support.

Adjusted annual income is a parent's total income from all sources minus any mandatory deductions, such as federal income tax, social security tax, mandatory retirement deductions and union dues, other court-ordered child support, and work-related child care expenses for the children. The parent without custody pays a percentage of their adjusted income per month for child support. This equals 20 percent of adjusted income for one child, 27 percent for two children, 33 percent for three children, and an extra three percent for each additional child.

If the parent has an adjusted annual income of over $120,000, the court cannot award more than the parent would pay based on a $120,000 adjusted annual income unless it is just and proper, taking into account the needs of the children and their standards of living. Alaska Civil Rule 90.3 specifies that the minimum child support which should be paid is $50 per month (except in cases of shared, divided, or hybrid cases).

The parent paying child support also gets credit for health insurance and medical costs that are required by the court and actually paid. There are some narrow exceptions to setting child support according to Civil Rule 90.3 guidelines including a large family, significant income of a child, divided custody, and/or extraordinary high or low expenses. However, in working out a dissolution agreement, the parents cannot just agree to reduce the child support amount below the guidelines unless the court finds that unusual circumstances justify varying the child support obligation in the manner provided by the agreement.

The court can allow the non-custodial parent to reduce child support payments for any period the parent has an extended visitation (defined as over 27 consecutive days), but the order needs to specify the

amount of the reduction which cannot be greater than 75 percent of the total monthly award. Also, a parent is considered to have shared physical custody, for purposes of child support rules, if the children are with that parent for at least 30 percent of the year, regardless of who has legal custody. If the parents have shared physical custody, then each parent calculates under the guidelines what they would pay to the other, and then they multiply that amount by the percentage of time the parent will have physical custody of the children. The parent with the larger figure then pays the other parent the difference between the two multiplied by 1.5.

You can obtain a copy of a booklet entitled *How to Calculate Child Support Under Civil Rule 90.3* from your local courthouse so that you can calculate child support requirements.

## CHANGES TO CHILD SUPPORT

Either party or the state has the right to request a review of a child support order. There are several reasons why an order could be modified. Some of the situations that could result in a modification follow:

- child support guidelines were adopted or significantly amended after the existing support order;
- the income of the obligor changes so that the support order is 15 percent higher or lower than the present support order; or
- there is no medical support order in effect.

If either party requests a review, both parties will be required to provide Child Support Services Division (CSSD) with financial information. Private agreements between parties are not valid unless they are approved by a judge or entered in a court order of a case in which the child support order is being enforced by CSSD. It is important to note that child support payments cannot be changed retroactively except in very limited circumstances. Therefore, if you are paying too much or receiving too little, you should act immediately to modify the support calculation.

Pro se packets are now available to modify child support. You can request the court to modify child support without using CSSD or an attorney.

The Alaska Court System has forms for pro se parties to request that the court modify child support without CSSD or attorneys. The forms are available in the Clerk's Office, and they are fill-in-the-blank type forms. They require that the other party and CSSD be legally served with the motion and supporting documents.

## CHILD SUPPORT SERVICES DIVISION (CSSD)

Every state has a child support enforcement program to collect child support from parents who are legally obligated to pay it. In Alaska, the Child Support Services Division (CSSD) provides these services. State enforcement programs locate absent parents, establish paternity, establish and enforce support orders, and collect child support payments. While programs vary from state to state, their services are available to all parents who need them. [Note: The custodian is the person who has the care, control and maintenance of a child(ren) as determined by a court or agreed upon by both parents. This person will receive the support as specified in a child support order. The Office of Children's Services is the custodian for children in state custody. The obligor/non-custodial parent is the person who must pay support because they do not have daily care or maintenance responsibilities.]

**What services are available in Alaska from CSSD?**

The Child Support Services Division can:

- provide child support services when either parent or a third-party custodian applies;
- establish paternity if it has not already been established;
- establish a child support order;
- enforce a child support order, even if the paying parent is not in Alaska;
- obtain an order to modify an existing child support order;
- send orders to withhold funds for child support to employers, banks, the Permanent Fund Dividend Division, and other places the paying parent may have income or assets;
- collect and mail out payments; and
- revoke the driver's licenses and occupational licenses of obligors who do not pay child support.

If you or the other parent are receiving temporary assistance benefits, CSSD will automatically collect child support payments to repay the state debt. [Important Note: Public assistance recipients are normally required to cooperate with efforts by CSSD to establish paternity and to collect child support. However, a recipient may not be required to cooperate if there is good cause not to require such cooperation. Inform CSSD and your public assistance worker if recovering child support or establishing paternity would put you and/or your children's safety at risk due to domestic violence.] *See Chapter 15 under the Domestic Violence Policy section for additional protections for victims of domestic violence.*

**PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE**

The Child Support Services Division may be required to provide information about you or your children to others included in your child support case. If it would put your safety at risk for the obligor to receive information about you and your children, you can request that your address and other information not be released to the obligor. [AS 25.27.275.] It is a good idea to make this request in writing so that a copy of your request gets into your file.

Child Support Services will not release information to the general public. However, if your case is filed with the court, information in your court case is available to the public. If you and/or your children have been a victim of domestic violence, you may request that this information not be released. [AS 25.27.275.] In general, domestic violence includes:

- harassment;
- threats;
- emotional abuse;
- physical violence, including sexual assault or incest; and/or
- parental kidnapping. *See Chapter Five for a more detailed definition of domestic violence.*

**How is a support order established by CSSD?**

Child support orders may be established by a court or by CSSD through the use of an administrative process. If CSSD establishes a child support order administratively, they will set the support amount using Alaska Civil Rule 90.3, as outlined above. If the obligor does not provide income information, CSSD will use the best information available to determine the parent's total income from all sources.

CSSD uses an Administrative Support Order when they issue a child support or medical support order. Both parties receive a copy of this order and either party can appeal the findings. If you appeal, you must present evidence supporting your claim. After an administrative review, CSSD will decide whether they should change the findings. Either party may appeal CSSD's decision to a formal hearing officer appointed by the Commissioner of the Department of Revenue. The hearing officer's decision may be appealed to the Superior Court by either party.

**How are support payments made to CSSD?**

Money that CSSD collects will be paid to the custodian unless the custodian or child is receiving temporary assistance or Medicaid. If the custodian received temporary assistance, they are required to assign the child support payments to the State of Alaska. Custodial parents receive a $50 pass through payment on each child support payment received.

**How long does it take for the custodial parent to receive support payments made to CSSD?**

In most cases, CSSD mails support checks to the custodial parent the next business day after CSSD receives the payment.

**How can I find out about the payment status of my case?**

CSSD has a computerized telephone system called the KIDS line. The KIDS line will give you answers to many commonly asked questions and allows access to payment information about your case. You can also leave messages for your caseworker and hear informational announcements about CSSD services. You can call the KIDS line 24 hours a day, seven days a week at 1-800-478-3300. You can also access the CSSD website.

**What happens if support payments are not made?**

If child support is owed and CSSD locates an employer or a financial institution of the obligor, CSSD is required to issue an Order to Withhold and Deliver wages or assets. Earnings are withheld directly from the payroll office or from an account in a financial institution.

Failure to make support payments may also result in other enforcement actions for collections. These actions include liens, judgments, Permanent Fund Dividend and IRS refund attachments, credit bureau reporting, taking possession of money in checking and bank accounts, and other actions allowed under civil and criminal law. Anyone owing more than four months of child support might also lose his or her occupational or driver's license. CSSD can file liens on real estate if arrears are at least equal to one month of unpaid support.

CSSD may take the obligor's federal income tax refunds to pay support debts. The IRS money will only be applied to debts that are in arrears (as of the date of certification to IRS); it will not apply to current support.

**What if either parent moves out of state?**

CSSD can continue to collect payments and can coordinate enforcement of the support order with the child support agency in the other state, if necessary.

**What happens if there is a custody order in place and the non-custodial parent under the order takes over custody without changing the order?**

If the parent who has legal custody under the existing court order does not object or agrees to the other parent taking custody for nine months or more, then the Court can enter an order precluding that parent from collecting child support arrears that accumulated under the order. However, this is not automatic and you have to prove the requisite facts to the court before they will order it.

**What happens if there is a custody order in place and the non-custodial parent under the order takes over custody without changing the order and starts to collect public assistance?**

CSSD will apply to the court for an interim order requiring the person who formerly had custody to pay support during any month during that the other person had custody and collected public benefits. CSSD will not address the custody situation, but they will secure an interim order that reimbursement can be sought from the now non-custodial parent.

**Can CSSD establish paternity?**

Yes. If paternity has not been established and child support is pursued, CSSD can establish paternity. This generally occurs when a child is born out of wedlock. Both parties can sign an affidavit when they agree about paternity. If they do not agree, then CSSD will require genetic tests to determine the father of the child. CSSD will not establish paternity for children who are born out of incest or forcible rape unless the mother is legally competent and requests the establishment of paternity.

**Does CSSD charge for services?**

No. CSSD does not charge a fee for services. However, an alleged father must pay CSSD for genetic testing if it is proved that he is the biological father.

**How do I apply for CSSD services?**

Either parent can apply for CSSD services at any time. To apply for services, you must fill out an application form. You can obtain an application at the court or at CSSD's offices. *See the Resource Directory for locations.* You can also request an application by mail/email or by leaving a message on the KIDS line.

**What are your rights and responsibilities in working with CSSD?**

During any CSSD proceeding, you are not required, but may hire and bring your own attorney. You can attend and participate in case proceedings and hearings that concern your child support order with or without an attorney. Participating in child support proceedings can help you protect your interests.

If you are working with CSSD, you are required to notify them of the following:

- new addresses;
- custody changes of the children;
- visitation of the children when a court order for visitation exists;
- payments received directly from the non-custodial parent;
- new employment or changes to earnings;

- availability of medical insurance coverage for the children; and
- any action that you start on your own which may affect support such as seeking a new or modified court order, custody changes, or other collections.

**Is there a duty to support children past 18?**

As a general rule, parents do not have a legal obligation to provide support for their children past the age of 18, including paying for post-secondary education. However, there are important exceptions to this rule: (1) for unmarried 18-year-old children who are actively pursuing a high school diploma or an equivalent level of technical or vocational training and living as dependents with a parent or designee of the parent and (2) when an adult child is incapable of self-support due to physical or mental disability.

**Are there criminal sanctions for non-support?**

It is a crime for any person not to support his or her children if they have the financial ability to pay support through available funds or could obtain funds through reasonable efforts. [AS 11.51.120.]

**What are the tax consequences of child support?**

Child support is not deductible on federal income tax by the person paying it or taxable to the person receiving it. If you are unmarried and a child lives with you, you may be eligible for special tax treatment as head of household. If you have the children with you more than 50 percent of the time, you are entitled to claim the child as a dependent for tax purposes unless you waive that right. You can waive it each year, and you can condition your waiver on your spouse being current in child support throughout the year.

Under Alaska law, a parent who is delinquent in child support up to four times the amount of their monthly obligation at the end of the tax year may not claim the child as a dependent for tax purposes. [A.S. 25.24.152.]