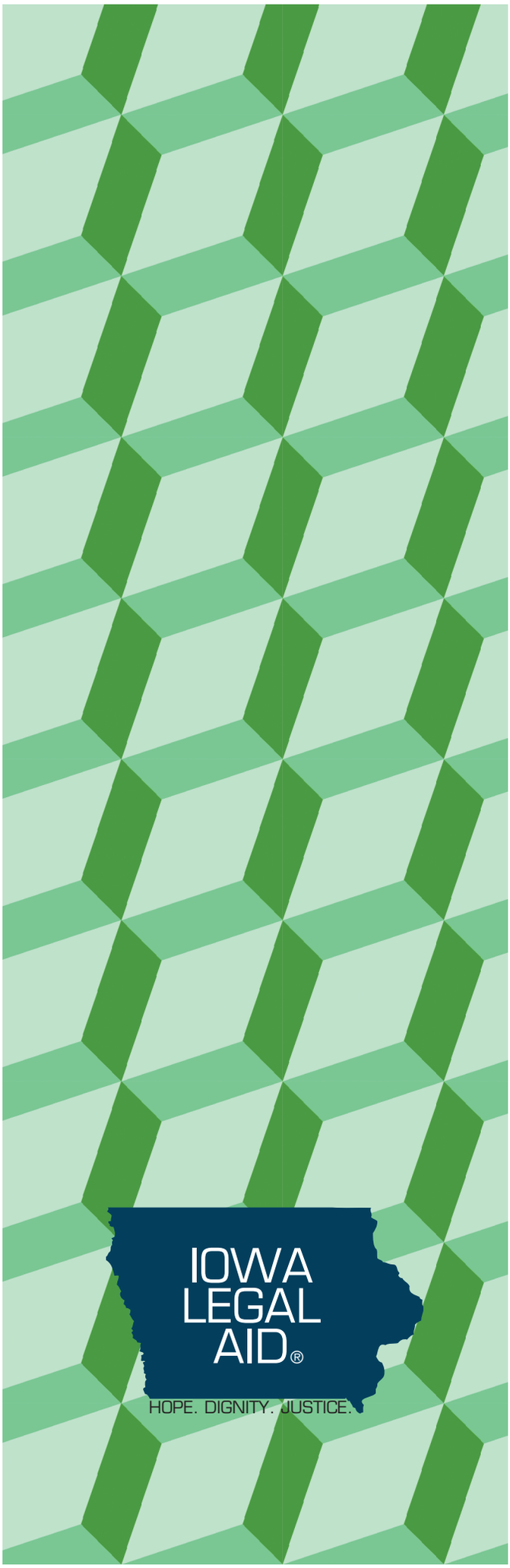
Divorce Law with Children

A Guide To Using the Court Forms For Divorce With Children

Visit our website for more self-help resources:

iowalegalaid.org



80096_MC.indd 1 4/20/21 8:00 AM

IMPORTANT NOTICE: READ THIS INFORMATION BEFORE USING ANY PART OF THIS PUBLICATION

This booklet is a general summary of the law.
It is not meant to completely explain the subjects in this booklet.

IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

The information in this booklet was correct as of the date it was printed (see the back cover).
The laws may have changed.

DO NOT ASSUME THAT THE INFORMATION IN THIS BOOKLET IS NOW CORRECT.

You should talk to an attorney to get complete, correct, and up-to-date legal advice.
Do not rely on the general information in this booklet for your specific case.

If you need an attorney but cannot afford one, contact Iowa Legal Aid. You may be able to get free legal help. Call or write Iowa Legal Aid. The address and phone numbers are on the back cover.

AS YOU READ THIS BOOKLET, REMEMBER IT IS NOT A SUBSTITUTE FOR LEGAL ADVICE.

80096_MC.indd 2 4/20/21 8:00 AM

Table Of Contents

Words Commonly Used in Custody Proceedings 4

Introduction 4

General Information

Filing as a Self Represented Litigant or Pro Se 5

How Much Does it Cost to Get a Divorce? 5

Do I Need to Have an Attorney? 5

What Is the Difference Between "Divorce" and "Annulment?" 5

What Is the Difference Between a "Divorce" and a "Legal Separation?" 6

What If I'm Not Sure That I'm Married? 6

The Divorce Process

Electronic Filing 6

How Is a Divorce Started? 6

What Is the Petition and What Information Has To Be Shared? 7

What Is "Served With Notice?" 7

What Happens During the Waiting Period? 7

What Is Mediation? 8

What If There is Domestic Abuse? 8

What Are Temporary Orders? 8

What Is the "Mandatory Child Education Course?" 9

What Should I Do If I Was Served With Divorce Papers? 9

Custody

What Is Legal Custody? 9

What Is Physical Custody or Care? 10

What Is Joint Physical Care? 10

What Is Primary Physical Care? 11

Does the Non-custodial Parent Always Have Visitation Rights? 11

Are Children Ever Placed With Someone Other Than Their Parents? 11

Can Grandparents or Great-Grandparents Get Visitation Rights? 11

What If There Is A Child, But the Spouse Is Not the Biological Parent? 11

How Does the Court Award Child Support? 11

Property and Debt

How Will the Court Divide Marital Property and Debt? 12

Will the Court Order Spousal Support (Alimony)? 13

What Is a "COLA?" 13

After The Divorce

What If a Party Ignores an Order or the Final Decree? 13

Can We Change the Final Decree Later? 13

80096_MC.indd 3 4/20/21 8:00 AM

Words Commonly Used in Custody Proceedings

ACCEPTANCE OF SERVICE: Respondent tells the Clerk of Court (in writing) the Petition has been received.

ANNULMENT: Legal proceeding which declared the marriage void and of no effect.

ANSWER: Written response of Respondent to Petitioner's Petition. Respondent admits or denies the separate paragraphs of the Petition.

DECREE: Legal document signed by the judge permanently determining all of the rights and responsibilities of the parties and dissolving the marriage.

DEFAULT: Failure of a party to respond to a pleading of the other. Generally it results in granting all requests not answered.

DISSOLUTION OF MARRIAGE: The legal end of the marriage, referred to in common usage as "divorce."

DOMESTIC ABUSE: An assault committed between people with certain types of legal relationships one of which is the parents of the same minor child.

EXTRAORDINARY VISITATION: Court-ordered visitation in excess of 127 overnight visits per year.

LEGAL SEPARATION: A proceeding where the couple stays married but all the other issues settled in a divorce are addressed (custody, visitation, division of debts, etc.).

MODIFICATION: A change in the decree or order from the court.

ORIGINAL NOTICE: A notice served with the Petition stating that an action has been filed against the Respondent. It says a judgment will be taken if she/he fails to answer.

PETITION: The first set of papers filed in the action. The Petitioner requests the dissolution of marriage and other relief such as custody, support, attorney fees, etc.

PETITIONER: The person who starts the dissolution proceedings.

RESPONDENT: The person against whom the action is brought.

SERVICE: Delivering the Petition to Respondent. This can be done by the Sheriff's office or a private process server. It can be done by the Petitioner or Petitioner's attorney if the Respondent will voluntarily accept service. Service of other court papers after this initial service is usually done as directed by the court (by mail, by Sheriff, etc.) or through the electronic filing system.

STIPULATION: The written agreement made by the parties resolving all issues in dispute. There can be temporary stipulations on custody, support, or attorney fees to protect one or both parties while the dissolution action is pending. A final stipulation can resolve all issues arising out of the divorce action so the case can be finalized without a trial.

Introduction

Many marriages end in divorce. A divorce takes time and requires many decisions to be made. This booklet may help people considering a divorce prepare for the dissolution of their marriage. If you are already divorced and hope to change part of your original decree, you may find the section on "After the Divorce" (starting on page 14) helpful.

Iowa is a "no-fault" state. This means you do not have to prove one spouse was at fault in the breakdown of the marriage. Courts will grant a divorce where one or both parties say there has been a breakdown of the marriage relationship with no reasonable hope of making it work.

This booklet explains the process of divorce. It is a summary of what the court looks at in making final decisions about custody, child support, alimony and property.

80096_MC.indd 4 4/20/21 8:00 AM

General Information

Filing as a Self-Represented Litigant or Pro Se

If you feel that you are able to represent yourself, you can use the divorce forms available on the Iowa Judicial Branch's website. If you do not have access to a personal computer and printer, you may be able to use a computer at your public library. The website where you can find the forms is www.iowacourts.gov. Click on "For the Public" on the top of the page. Then, click on "Court Forms" in the drop-down. Then, click on "Divorce" and choose "Divorce with Children." You will need to print out the appropriate forms and follow the instructions provided on how to complete and file them with the court. **Throughout this booklet, you will see numbers in parentheses following some sentences. These are the form numbers from the Iowa Supreme Court forms that go along with the particular topic being discussed.**

How Much Does it Cost to Get a Divorce?

You must pay a fee of $265.00 to the Clerk of Court when the divorce Petition is filed. Your spouse must then be served with notice of the action, which will be an additional fee. Depending on how you serve your spouse, this fee may range anywhere from $20 to $40. If you are unable to pay these fees upfront, you can ask the court to delay payment of the costs until the end of the court action. To do so, you must file a form with the court that provides specific details about your income and expenses (209). If granted, you will be allowed to begin the divorce action without prepaying the fees. However, these fees must still be paid when the divorce is final.

Many attorneys require money up front (called "retainers") to start a divorce action. While fees vary from city to city, attorneys generally want anywhere from a $500 to $3000 retainer. Be sure to discuss fees and payment options with your attorney. Be sure you know whether they charge per hour or a flat rate.

A "contested divorce" is when the parties cannot agree on the issues. Most of the time this costs more than an uncontested divorce because a trial is often involved. Courts may require the party in the best financial position to pay part or all of the legal fees. This may include some of the other side's fees.

Do I Need to Have an Attorney?

It is best to have an attorney. There are times when parties are able to work out a settlement on their own. However, no law says people must have an attorney in order to get a divorce. In fact, Iowa has also created forms people can use to get divorced without an attorney.

Many people worry about the cost in deciding whether or not to have an attorney. However, if you do not have an attorney, your rights may not be protected in the divorce process. This may end up costing you more in the long run. If you want to make changes to your original decree, you must pay to do so. Not only that, but it can be very difficult to make any changes unless there has been a major change in the circumstances. Property decisions cannot be changed at all. When deciding whether or not to get an attorney, you should also consider the negative feelings you might have if your wishes were not considered in the initial petition and decree. Regardless, it is usually best to talk to an attorney when:

- There are children from the marriage and the parents do not agree on custody;
- Either spouse owns real estate;
- You do not agree about how to divide your property;
- One spouse believes he or she may be entitled to financial support (called alimony); or
- There are any other hotly contested issues.

The Court may order your spouse to pay your attorney's fees. This will not occur until after a hearing on temporary support and fees has been held, or after the divorce is final. Most attorneys will want payment before this time.

Despite their best efforts, many people cannot afford to hire an attorney. This does not mean you are completely without options. In some parts of the state, special programs help reduce the expenses involved in a divorce, such as attorneys' fees. For more information, contact the Clerk of Court in the county where you live or the divorce has been filed.

If you are a victim of domestic abuse and are low-income, Iowa Legal Aid may be able to help. Call the toll-free number on the back of this booklet or go to www.iowalegalaid.org on the Web to find out which office serves your county or to apply on-line.

What Is the Difference Between "Divorce" and "Annulment?"

Both are legal processes that involve similar filing and court fees. However, a "divorce" ends a valid marriage. An "annulment" declares that the marriage was not valid to begin with. For example, a marriage may be annulled if one of the spouses was already married.

80096_MC.indd 5 4/20/21 8:00 AM

What Is the Difference Between "Divorce" and "Legal Separation?"

They are very similar. The main difference is the couple stays married after a legal separation. The couple simply asks the court to decide how to handle things like support, property, and debts while they are separated. This is usually because they plan to be separated for a long time. Legal separations are quite rare. The person whose spouse files for a legal separation can still ask the court to grant a divorce instead. In either action, the court looks at the topics this booklet covers.

What If I'm Not Sure That I'm Married?

Under Iowa law, a couple may be legally married by common law. Iowa is one of several states that recognize common law marriage. To be considered a common law marriage, you must be able to show that both parties:

- Intended to be married and agreed to the marriage;
- Lived together as partners, although no set length of time is required;
- Held each other out as married to the public. While the law is not clear exactly what amounts to this "holding out", the following activities have been considered:
    - Introducing one another as "my spouse";
    - Exchanging wedding rings;
    - Filing state taxes as a married couple;
    - Going to social events as a married couple;
    - Naming the other as a spouse in an insurance policy;
    - Sharing a joint checking account; and
    - Listing your marital status as "married" on an employment application.

It is not certain whether same-sex couples can be considered married under Iowa common law. In April of 2009, the Iowa Supreme Court decided that same-sex couples could be married in a civil ceremony. It is unlikely that same-sex couples could use evidence from before April of 2009 to show that they have been common law married. Still, the court has not yet decided if evidence after April 2009 can be used to decide whether a common law marriage exists.

If you are not sure that you are married, but want to end the relationship, it is safest to ask the court to decide. You can do so through a divorce action, or just ask the court to declare whether you are married at common law or not. Remember that while you can be married at common law, there is no such thing as a common law divorce. If you are common law married, you must get a formal divorce from the court before you can marry again.

THE DIVORCE PROCESS

Electronic Filing

All Iowa counties now use electronic filing of court papers. The electronic filing system is called "EDMS". It allows people to file papers online without going to the clerk's office. The system notifies parties by email when the judge enters an order or another party files a document. You can ask to be exempted from electronic filing by filing a motion with the court (222).

How Is a Divorce Started?

A divorce begins by filing the necessary paperwork with the Clerk of Court. If you have an attorney, your attorney will prepare and file these documents for you. If you are the spouse filing the divorce, you are called the "Petitioner" and your spouse is called the "Respondent". A person must meet the following requirements to be able to file for divorce in Iowa:

- The person filing the petition for divorce (the Petitioner) must have lived in Iowa for at least one year before bringing the divorce action, unless the person's spouse (the Respondent) is a resident of Iowa and is personally served with notice of the action;
- The petition must include a statement that Petitioner's residence in Iowa has been in good faith and not just to get a divorce.

80096_MC.indd 6 4/20/21 8:00 AM

What Is the Petition and What Information Has To Be Shared?

The Petition is the formal, written request to the Court to dissolve the marriage (201). It is one of the documents that is filed to begin the divorce process. The Petition must say that the marriage is broken and cannot be saved. The Petition should also include:

- Full names of the parties. If a spouse would like to change his/her name to his/her birth name, that should also be stated;
- Unless the Respondent is a resident of the state and is to be personally served, the Petition must state that the Petitioner has been a resident of Iowa for the last year. The Petition must also state the county where the Petitioner has lived and that the Petitioner has lived in Iowa not just to get a divorce;
- The initials, birth year and present address of each minor child affected by the divorce. The Petition should also list the places where every child has lived for the past five years, as well as the names and present addresses of the persons with whom the child was living. It must also include a list of any current court cases that could affect custody or child support, including protective orders, termination of parental rights, other child support actions and adoptions. For each lawsuit, list the name of the court, case number and type of case;
- The name and address of any person not a party to the divorce who has physical custody of the child or claims some right to physical custody of the child;
- Whether the Petitioner wants temporary and/or permanent child support and alimony;
- Who should have custody of the children; and
- What the Petitioner wants the court to do. For example, end the marriage, divide the debts, or order alimony.

Both parties are required to exchange certain information at the beginning of the divorce action. For example, both parties are under a duty to disclose:

- Paystubs or other documentation showing all sources of income, deductions for federal and state taxes, health insurance premiums, union dues, and mandatory pension withholdings for the past 6 months;
- The spouse who has been providing health insurance for the children must provide a breakdown of the cost of an individual health insurance plan and cost of a family plan;
- The last 3 years of state and federal income tax returns, as well as W-2's; and
- A current financial affidavit (224) and any additional documents to support the assets or liabilities listed. Assets required to be listed include cars, real estate, cash value of life insurance policies, cash and bank accounts, household contents, investments, pension or retirement plans, and other property.

What Is "Served With Notice?"

The Respondent must be notified that a divorce action has been filed. The Petitioner does this by "serving" the Respondent with the necessary papers (204-210). The Petitioner has 90-days from filing to complete service. Once served, a spouse has 20 days to respond by filing an Answer with the court (215, 216). Then, a 90-day waiting period begins.

If you do not know where your spouse is, you can still file for divorce. However, your spouse must still receive notice of the lawsuit. You can serve your spouse by putting notice in the newspaper, called "service by publication" (207, 208). Be aware that if you serve by publication, the court is limited in what it can order. For example, the court cannot order your spouse to pay child support or alimony (also called spousal support).

What Happens During the Waiting Period?

Generally, the court will not enter a final decree until this 90-day period is over. However, in certain situations, the court can shorten the 90-day waiting period upon the request of one of the parties (222).

There are several things that spouses typically complete during this waiting period. Either spouse or the Court may request counseling. The Court may require the parties to take part in these efforts for a period of 60 days or less. Most spouses will be ordered to complete mediation during the waiting period. This also a good time to take the Mandatory Child Education Course like "Children in the Middle" or "Children Cope With Divorce" (see page 9 for more information).

The parties may be able to work out the terms of the divorce and settle without going to a hearing. If the parties are unable to work out an agreement, their divorce is contested. Then, a trial will be scheduled. Depending on the number

80096_MC.indd 7 4/20/21 8:00 AM

of contested issues and how busy the court schedule is, a trial date may be months away. Once a judge hears the case, it may be weeks or even months before a final decision and decree is entered.

What Is Mediation?

Mediation is when both parties meet with a neutral third person to try and work out an agreement. Many jurisdictions require spouses to go through mediation to try and reach an agreement without going to trial. Trained mediators usually charge by the hour and can be expensive. However, you can request an application for a reduction in fees. Most mediation centers provide a sliding scale fee arrangement.

The parties may negotiate a settlement on their own or with the help of a mediator anytime before the final decree is entered. Matters such as custody, visitation, child support, property ownership, spousal support (alimony), and division of debts need to be decided. If the spouses can work out the terms of their divorce, a "stipulation", which is the written agreement between the spouses, can be filed and a hearing scheduled to approve the agreement (228). Once a judge approves the agreement, it will be entered as the final divorce decree and the dissolution is complete.

What If There is Domestic Abuse?

You may be filing for divorce because your spouse has harassed or physically abused you. It is important that you tell this to your attorney. If you have a protective order or no-contact order, you should note this on the petition. If you do not have a protective order but need one, you can ask for a protective order in the divorce. The protective order forbids your spouse from contacting you. Also, evidence of abuse has an effect on decisions about counseling and mediation. Some courts require mediation in divorce cases (see "What is Mediation?" on page 8). If domestic abuse is involved in the relationship, the victim can ask the court to waive any court-ordered mediation.

An abusive spouse tends to say he or she is sorry and promises not to repeat the abusive behavior. However, the abuse usually continues. It often becomes more violent in time, especially when the abuser believes he/she is "losing" the other spouse. Domestic violence intervention programs offer temporary housing and counseling for victims of violence. Contact Iowa Legal Aid and ask for the booklet Domestic Abuse and the Law. Call the 24-hour statewide, toll-free number to find out about the local Domestic Abuse Program that can help you.

Statewide Domestic Abuse Hotline:
1-800-770-1650

What are Temporary Orders?

Certain issues may need to be dealt with between the time a Petition is filed and the Divorce is final. For example, one spouse may have concerns about finances or the welfare of the children. If so, a spouse may request a temporary order from the court for temporary custody of the children, child support, or alimony (222). Possession of the family home can also be included in a temporary order, but only if there is a risk of immediate physical harm to you or your children. Once a spouse has requested a temporary order, a hearing will be scheduled. You will be able to either testify or submit affidavits in support of your case. Affidavits are written statements that are sworn under oath and signed in front of a notary (221). You may be able to submit your own affidavit, as well as those written by family members, friends, doctors, childcare providers, etc. The judge will listen to both sides and then enter a temporary order. This order will be controlling until the final decree is entered.

80096_MC.indd 8 4/20/21 8:00 AM

What Is the "Mandatory Child Education Course?"

A divorce can be hard on children. In any case that involves custody of children, the law requires the parents to take a special class. This class is designed to teach parents how to minimize the negative effects of separation on their children. A final decree will not be granted unless the parents attend the class. Agencies in various places offer the class on a regular basis for a fee. The requirement may be waived only under limited circumstances, such as if the parties already took part in a similar class.

What Should I Do If I Was Served Divorce Papers?

If you are the Respondent and have been served with notice that your spouse has filed for divorce, you must file an Answer (215, 216) with the Court within 20 days. In your Answer, you tell the Court which parts of the Petition you agree or disagree with. It is also the place to ask the court for certain things you might want that are not in the Petition. For example, you may ask for both spouses to go to counseling to try to save the marriage.

If you do not file an Answer, your spouse may ask the Court for a "divorce by default". This means the Court will enter a final divorce decree without your input. So, if you get notice and cannot afford an attorney, you should still file an Answer with the Court. If you are not serving your spouse or the spouse's attorney through the EDMS system, be sure to send a copy of your Answer to your spouse's attorney (or your spouse if he/she is unrepresented) and keep a copy for yourself.

CUSTODY

There are two parts to "custody." One is legal custody and the other is physical custody. Both are explained below.

What Is Legal Custody?

Legal custody is the right to ask questions and make decisions about important matters concerning minor children. This may include decisions that affect the child's legal status, education, extracurricular activities, or religious education. The judge can decide that the parents have joint legal custody or that only one parent has sole legal custody. However, Iowa law favors joint legal custody. This is because joint legal care gives both parents the opportunity to participate in important decisions in the child's life.

If a judge believes it will be better for the child to have one parent making the decisions about the child, then the judge will award that parent sole legal custody. When this happens, the court must cite clear and convincing evidence that joint custody is unreasonable and not in the best interest of the child. Factors that the court might consider include:

- Whether each parent is suited to raise the child;
- Whether the child will suffer emotionally/psychologically due to lack of contact with both parents;
- Whether the parents can communicate with each other regarding the needs of the child;
- Whether both parents have actively cared for the child before and after they separated;
- Whether each parent can support and foster the other parent's relationship with the child;
- The child's wishes about custody;
- Whether one or both parents agree or disagree about joint custody;
- How far apart the parents live;
- Whether the child or the other parent will be safe if joint custody is awarded; and
- Whether there is a history of domestic abuse in the relationship.

There is a legal presumption in Iowa that if there is a history of domestic abuse, the court should not automatically award joint custody. "History of domestic abuse" can mean any of the following:

- Starting an action under the Domestic Abuse Act to obtain a protective order;
- The issuance of a protective order;
- The police have been called to the scene of alleged domestic abuse; or
- An arrest or conviction for domestic assault.

80096_MC.indd 9 4/20/21 8:00 AM

What Is Physical Custody or Care?

The judge will also decide the physical custody or care of the child. The judge can decide that one parent will have the child most of the time (primary physical care). The judge could also decide that the child will split time equally between both parents (joint physical care). Ultimately, the judge will consider the long-term best interests of the child. This means the judge looks at the big picture and considers many factors, such as:

- Characteristics of the child such as the child's age, maturity, mental and physical health;
- Emotional, social, moral, material, and educational needs of the child;
- Characteristics of each parent including age, stability, mental and physical health, and character;
- The interest and ability of each parent to provide for the emotional, social, material, and educational needs of the child;
- The relationship between each parent and the child;
- Relationship between the child and any brothers or sisters of the family;
- What effect there will be on the child if the court continues or changes the current custody arrangement;
- The home environment that the child will be living in. For example, the court may look at whether one party moves frequently from one home to another, while the other party has lived at the same place for a longer period of time;
- Where the child wants to live. How much weight the court gives this factor depends on how old and mature the child is;
- The report and recommendation of either an independent person who investigated both parties concerning who should get primary physical care or an attorney representing the child's interests;
- A parent's immoral behavior that is shown to adversely affect the child;
- A parent's substance abuse or if the parent is inclined to be violent or abusive; and
- Any other important information that was given to the court.

What Is Joint Physical Care?

Joint physical care (sometimes called "shared care") means both parents have rights and responsibilities to maintain a home for the child. Neither parent will have physical care rights superior to those of the other parent. Some people call this "shared parenting" or "shared custody" because each parent tends to spend about the same amount of time with the child. The law says if joint legal custody is awarded to both parents, the court may award joint physical care to both parents if either parent requests it. Prior to ruling on the request, the court may require each parent to submit a proposed joint physical care parenting plan (229, 230). The plan should tell how the parents will decide to divide time with the child. It should explain how the parents will resolve disputes. If the court denies the request for joint physical care, the court's decision must include specific findings and conclusions showing why joint physical care is not in the best interests of
the child.

Either parent can ask for joint physical care. The Iowa Supreme Court has said that several factors have to be considered when deciding about joint physical care:

- The amount of time that both parents have spent with the children. If the time is about equal, it is more likely that joint physical care would be ordered.
- The ability of parents to communicate and show mutual respect. If one parent shows controlling behavior or there is evidence of domestic abuse, it is less likely that joint physical care would be ordered.
- The degree of conflict between parents. It will be less likely that joint physical care is awarded if one parent objects or if there is a history of conflict.
- The ability of parents to agree about approaches to daily matters. If the parents cannot agree about things like discipline and education, it is less likely that joint physical care will be ordered.
- Whether awarding custody to one parent would separate siblings.
- A parent's immoral behavior that is shown to adversely affect the child.
- A parent's substance abuse or if the parent is inclined to be violent or abusive.
- Any other important information that was given to the court.

Joint physical care may have an impact on child support, public benefits, and tax issues.

80096_MC.indd 10 4/20/21 8:00 AM

What is Primary Physical Care?

If joint physical care is not an option, the judge will decide which parent will have primary physical care. This means one parent (sometimes called the "custodial parent") will be granted primary physical care, while the other parent usually receives some sort of a visitation schedule.

Does the Non-custodial Parent Always Have Visitation Rights?

The law favors giving a child the opportunity for maximum contact with both parents. If the judge orders primary physical care to one parent, the other parent will get a visitation schedule. Even a parent who has physically or sexually abused their children will likely get at least supervised visits. If the other parent doesn't get supervised visitation, a typical visitation schedule for the other parent could be every other weekend, one night a week (sometimes overnight), every other holiday and 2-4 weeks in the summer. However parents are encouraged to be flexible and to work out visitation whenever possible. If the court orders visitation, it is important that the custodial parent comply with the visitation.

A party who is awarded visitation can expect a number of safeguards from the court. For example, the custodial parent cannot simply cut off visitation rights if the noncustodial parent fails to pay child support. Also, courts will not approve or enforce arrangements between parties where one parent gives up visitation rights in order to get out of paying child support. It is easier for a court to enforce a visitation schedule if it is clearly explained in the divorce decree. It is fairly common for decrees to state a parent is entitled to "reasonable visitation." If this happens, the parent with physical custody usually has a lot of say over what is "reasonable." While it is best that the divorce decree be specific in regard to visitation, a noncustodial parent may still arrange for visitation even where there is no mention of visitation in the decree.

Keep in mind that if "extraordinary visitation" is agreed to or ordered, this will impact the amount of child support. "Extraordinary visitation" is when one parent has more than 127 overnight visits per year. In these cases, the custodial parent will likely receive less child support from the noncustodial parent.

Are Children Ever Placed With Someone Other Than Their Parents?

A court can award custody to a third party if that arrangement is in the child's best interest. When this happens, the third party must prove to the Court that the parents are unsuitable and unfit.

Can Grandparents or Great-Grandparents Get Visitation Rights?

Grandparents and great-grandparents can only petition the court for visitation rights in one very limited situation. The law says that a grandparent can only ask for visitation if the grandparent's child, who is the parent of the minor child, is deceased. In addition, the court has to give strong consideration to a fit parent's decision about grandparent visitation. The court must generally follow that decision unless there are strong reasons to the contrary. The grandparent must show that the parent is not fit to make the decision. The grandparent must show that the grandparent and child have a substantial relationship. It must also be in the best interest of the child to have the visitation.

What If There Is A Child, But the Spouse Is Not the Biological Parent?

Spouses are automatically presumed to be the parents of any child born or conceived during the marriage. This is true even if the spouses have been separated for a long time or if one spouse admits to having an affair. In a divorce, the spouse can then be ordered to pay child support or be awarded custody/visitation rights for the child. Fortunately, the divorce law provides a specific procedure to "Disestablish Legal Parent" (212, 213). It is much easier to take care of this problem during a divorce than to wait until later. If the parties do it outside of the divorce, a genetic test is required. If done within a divorce, it is possible that no genetic test is required. For same sex couples, the law is not clear about who will be considered a parent.

How Does the Court Award Child Support?

The Court will order child support to be paid by the person not receiving primary physical custody of the children. If the parents have been awarded joint physical care, the Court may still award child support if one parent's income is less than the other's income. To determine how much child support is owed, the Court must follow the "Guidelines" that are established by the Iowa Supreme Court. These Guidelines are basically a chart that considers each parent's monthly net income and the number of children. "Net income" is defined as the money left after taxes, Social Security, prior child

80096_MC.indd 11 4/20/21 8:00 AM

support obligations, medical support paid pursuant to an order, and child care expenses paid while the custodial parent is employed. It is important to note that public assistance payments are not included in the definition of "income" under the Guidelines.

To calculate child support, the Guidelines combine the two parents' net income and assign a portion of the total amount to the custodial parent as a monthly child support amount. For example, a couple getting a divorce has one child who will be living with Mom. Dad's net income is $2400 a month, and Mom's is $600 a month. The total parental net income is $3000 a month. Applying the Guidelines, the total support amount is $732. Dad's net income is 80% of the total parental income. Dad's support amount is $732 x .8= $586. There may be an additional adjustment for health insurance or medical costs.

If the custodial parent is low-income, only the noncustodial parent's income is counted. For example, if the noncustodial parent's adjusted net income is $1000 per month and there is one child, then the noncustodial parent's child support obligation is $104.

A child support estimator can be found at https://secureapp.dhs.state.ia.us/estimator. The Guidelines will be applied in every case unless the Court finds special circumstances which make it unfair to use them. In those cases, the Court must make a written finding as to why the Guidelines are not being followed.

A parent's child support obligation extends only to natural or adopted children who are under the age of 18 years old. However, support must continue to age 19 if a child is still in high school but will graduate before turning 19. Support can continue for a child of any age if the child is dependent due to a physical or mental disability. A noncustodial parent may also be ordered to pay a "post secondary education subsidy." "Post secondary" means after high school. This is money paid directly to the child or the school they attend. The child must earn good grades in order to keep getting the subsidy. The amount of the subsidy depends on the financial condition of the parents and the child.

If the parents have been separated for a while, there may already be a child support order in place through the Child Support Recovery Unit. If so, it is important to notify CSRU of the divorce, especially if the final decree changes the amount of child support owed. Keep in mind that regardless of the amount set by the divorce decree, CSRU will enforce the order which is highest. Take a look at Iowa Legal Aid's Paternity and Child Support Law in Iowa booklet if you have more questions.

PROPERTY AND DEBT

How Will the Court Divide Marital Property and Debt?

Iowa is called an "equitable distribution" state. This means that a judge will try and split up all the marital property and debt as fairly as possible. However, "equitable" does not always mean each party will get half of the property or debt. The Court will consider many factors when dividing the property, including:

- Current income and expenses of each spouse;
- The length of the marriage;
- The age and physical and emotional health of the parties;
- How much each party contributed to the marriage, including what each party paid towards setting up the home;
- The property brought to the marriage by each party;
- How much one party contributed to the education, training or increased earning power of the other;
- How much each party is able to earn; and
- Which spouse has custody of the children.

Gifts received by either party should continue to be separate property unless it would be unfair to the other party. Gifts given to the parties jointly are subject to division, just like all other marital assets.

Spouses should know that the property settlement is final once a divorce decree is entered. A property settlement can only be challenged within one year of the entry of the decree, and only where one party deceived or threatened the other with harm to force an agreement, or where there was a mistake.

80096_MC.indd 12 4/20/21 8:00 AM

Will the Court Order Spousal Support (Alimony)?

The Court may order alimony payments to either party. However, alimony is hard to get. The Court will look at many of the same factors considered when dividing marital property. Other factors the Court may look at include:

- The ages and health of each spouse;
- Whether or not the party asking for support can become self-supporting at a standard of living close to that enjoyed during the marriage;
- What property has been awarded to the spouse asking for support;
- Any tax consequences to each party; and
- The length of the marriage.

There are three types of alimony – traditional, rehabilitative, and reimbursement. Traditional alimony is generally more long-term and only awarded when the spouse is unable to be self-supporting. Courts typically only award traditional alimony in long-term marriages. Rehabilitative alimony is temporary and meant to help a spouse while the spouse is re-educating or re-training to be self-sufficient. Reimbursement alimony is also temporary and generally awarded to repay a spouse for a contribution the spouse made while the other spouse pursued an education or career. Parties who receive alimony should know that the support will end if they remarry. In some situations, living with someone else may be enough to stop alimony payments.

What Is a "COLA?"

COLA stands for "cost-of-living adjustment." In five years, prices for basic necessities such as food and clothing will probably be higher. Because of this, you may want to include an automatic adjustment for alimony payments as costs rise from year to year.

AFTER THE DIVORCE

What If a Party Ignores an Order or the Final Decree?

Sometimes a party fails to pay support, turn over property, or disobeys some part of the divorce decree. When this happens, the other party may bring a contempt action to try and force the uncooperative party to obey the Court's orders. There is a court fee of $50 to file a contempt.

Can We Change the Final Decree Later?

Property divisions established in the divorce cannot be changed once the divorce is final. However, a party may request to change other parts (i.e. custody, child support, or alimony) of a divorce decree by filing a Petition to Modify a Divorce Decree. The party requesting the modification must show the Court that there has been a substantial and material change in circumstances that has occurred after the order was final. The change in circumstances must be one that the Court would not have considered when the order was issued and the change should be permanent. Because of these requirements, it can be very difficult to change an order.

It is difficult to change a custody order because children benefit from stability. So long as a custodial parent is caring for the child's social, moral and educational needs, a court will be reluctant to change custody. The requesting party would have to show he or she would provide superior care in order to change custody.

If a party asks the court to change the amount of child support owed, the court will look at each parent's earnings. If the original order for child support varies by ten percent or more from the amount which would be due under the child support Guidelines at that time, the court will consider it to be a substantial change in circumstance. However, any reduction in the noncustodial parent's income must be involuntary. Parents will usually not be allowed to lower their support payments if they quit a high-paying job and took one that pays less in order to lower the support obligation.

80096_MC.indd 13 4/20/21 8:00 AM

You can find out more about the topics discussed in this booklet from Iowa Legal Aid or on the website www.iowalegalaid.org.

IOWA LEGAL AID

1111 9th Street, Suite 230, Des Moines, Iowa 50314-2527

Toll-Free Phone: 1-(800)-532-1275 or call 1-(515)-243-2151

Visit Iowa Legal Aid's Website for More Self-Help Resources:

iowalegalaid.org

80096_MC.indd 14 4/20/21 8:00 AM

Iowa Legal Aid office hours are Monday through Friday from 8:30 a.m. to 4:30 p.m. Offices are closed on holidays. To apply for help, call Iowa Legal Aid during intake hours: 9:00 a.m. to 11:00 a.m. and 1:30 p.m. to 3:30 p.m., except Thursday afternoon. Emergencies are taken during regular office hours. You may also apply online at iowalegalaid.org. You may come to the regional office listed below serving your county but it is helpful to first call for an appointment.

Toll-Free: 1-800-532-1275

CEDAR RAPIDS REGIONAL OFFICE
317 7th Avenue SE, Suite 404
Cedar Rapids, Iowa 52401-1407
Serving:
Benton, Iowa, Linn, Marshall, Poweshiek and Tama Counties

SOUTHWEST IOWA REGIONAL OFFICE
532 1st Avenue, Suite 300
Council Bluffs, Iowa 51503-0803
Serving:
Adams, Audubon, Carroll, Cass, Crawford, Fremont, Harrison, Mills, Montgomery, Page, Pottawattamie, Ringgold, Shelby and Taylor Counties

HELP REGIONAL OFFICE
736 Federal Street, Suite 2309
Davenport, Iowa 52803-5723
(563) 322-6216
Serving:
Scott and Clinton Counties

CENTRAL IOWA REGIONAL OFFICE
1111 9th Street, Suite 230
Des Moines, Iowa 50314-2527
Serving:
Adair, Boone, Clarke, Dallas, Greene, Guthrie, Hamilton, Jasper, Madison, Polk, Story, Union, Warren and Webster Counties

NORTHEAST IOWA REGIONAL OFFICE
799 Main Street, Suite 280
Dubuque, Iowa 52001-6825
Serving:
Allamakee, Clayton, Delaware, Dubuque, Fayette, Jackson, Jones and Winneshiek Counties

IOWA CITY REGIONAL OFFICE
1700 South 1st Avenue, Suite 10
Iowa City, Iowa 52240-1810
Serving:
Cedar, Des Moines, Henry, Johnson, Louisa, Muscatine and Washington Counties

NORTH CENTRAL IOWA REGIONAL OFFICE
202 1st Street SE, Suite 112
Mason City, Iowa 50401-2947
Serving:
Calhoun, Cerro Gordo, Emmet, Floyd, Franklin, Hancock, Humboldt, Kossuth, Mitchell, Palo Alto, Pocahontas, Winnebago, Worth and Wright Counties

SOUTHEAST IOWA REGIONAL OFFICE
112 East 3rd Street
Ottumwa, Iowa 52501-2903
Serving:
Appanoose, Davis, Decatur, Jefferson, Keokuk, Lee, Lucas, Mahaska, Marion, Monroe, Van Buren, Wapello and Wayne Counties

NORTHWEST IOWA REGIONAL OFFICE
507 7th St, Suite 402
Sioux City, Iowa 51101-1118
Serving:
Buena Vista, Cherokee, Clay, Dickinson, Ida, Lyon, Monona, O'Brien, Osceola, Plymouth, Sac, Sioux and Woodbury Counties

WATERLOO REGIONAL OFFICE
607 Sycamore Street, Suite 206
Waterloo, Iowa 50703-4799
Serving:
Black Hawk, Bremer, Buchanan, Butler, Chickasaw, Grundy, Hardin and Howard Counties

---

Iowa Legal Aid is committed to providing quality legal services to eligible low-income people. However, due to limits placed on the program, Iowa Legal Aid cannot help every person who applies for service. Complaint procedures have been established for clients and members of the general public who disagree with Iowa Legal Aid decisions. For a detailed copy of the program's complaint procedures, contact any Iowa Legal Aid office.

80096_MC.indd 15 4/20/21 8:00 AM

REVISED AND REPRINTED March 2021

by

IOWA LEGAL AID

No part of this booklet may be reproduced without written permission of the publisher. Send requests for use of this material to the address given below.

For Additional Copies, Contact:

Iowa Legal Aid

1111 9th Street, Suite 230
Des Moines, Iowa 50314-2527

1-(800)-532-1275

Visit Iowa Legal Aid on the Web at iowalegalaid.org

Previous editions © 1989, 1990, 1991, 1994, 1995, 1997, 1999, 2000, 2001, 2002, 2004, 2005, 2007, 2009, 2011 and 2016 by Iowa Legal Aid

©2021 Iowa Legal Aid