

After Divorce

Divorce does not always mean the end of legal issues with your former spouse. Legal issues that arise after divorce are of 2 types:

- A. One or both parties wants the orders changed; or
- B. One side is not living up to what was agreed to or ordered by the court.

It is best to try to avoid further legal problems after a divorce. If both sides try to live up to both the spirit and words of the agreements/orders, problems can usually be avoided. I suggest keeping a copy of the divorce documents available for reference.

How Decisions are Made - If some problem comes up, try to work with your ex-spouse to resolve it without resorting to lawyers and the courts. Consider mediation with a trained neutral person may help or other **decision-making** option. If you and your ex-spouse can't resolve the problem, even with the help of mediation, try to have the lawyers negotiate a solution. Only if these efforts fail should the problem be taken to the court.

How to Avoid Disputes - Child support is a common source of problems after divorce. I recommend keeping a careful records of every payment made or received. If you are *paying* support, pay by electronic transfer, check or wage assignment, and keep records documenting the payments. Do not give cash. (Also, do not hand a check to your ex-spouse when you exchange the children - this can confuse the children - *mail* the check or arrange for an electronic transfer.) If you are *receiving* support by check, deposit the check in a bank account. Do not simply cash it. Deposit it by itself (not with your paycheck) and note in your check register that the deposit is a child support payment.

The same principle of keeping records holds if you are having problems about parenting periods. If you are the "less time" parent and the other parent refuses or cancels your time with the child, keep a diary of your attempts to set up time with the children and the response of the other parent. If you are the "more time" parent, keep a diary of when the other parent has the children and when a parenting period is canceled (with or without notice), the child returned late, etc.

Changing Court Orders - People often want to change something about their divorce orders. There are 3 methods of doing this:

- A. If you agree with your ex-spouse on the change, this can be written up and filed with the court. It will be signed by a judge, making it a court order;
- B. Return to mediation or collaborative practice and work out the issues; or
- C. Reopen the divorce.

Any agreed-on change must be in writing, signed by both parties, and filed with the court. Unless it is filed with the court, it is not "legal." Note: a change in child support is not legal unless the judge signs it.

If you choose to reopen the divorce, this is done by filing either a petition for modification or a petition for contempt. If someone is not living up to the court order, he/she may be found in

"contempt of court" and ordered to pay the innocent person's attorney's fees. Attorney's fees are not always awarded and the person filing the petition should expect to pay for his/her own lawyer. If the contempt is serious enough or is repeated, the court may order the person be arrested and jailed.

Changing Specific Issues - Under New Hampshire law, only certain parts of divorce orders may be changed. It is very difficult to change anything about the *property division* (who gets which assets and debts). To change this, you must show that there was fraud or other major legal problem with the court orders. The following types of orders *may* be changed: parenting, child support and alimony, and *use* of assets.

It's difficult to change where the child lives most of the time after a divorce, except by agreement. To do so, you must prove that the child *will be harmed* if he/she continues to stay with the "most time" parent. This is a difficult test to meet. However, if the parenting schedule is 50/50, the test for change is "best interest."

However, if the child is a teenager, there is a different and easier test. If a child is a "mature minor" (probably about 14 or 15), the child's opinion about who he/she wants to live with is given considerable weight, unless the child's choice is based on "improper influences." This means that teenagers are usually allowed to move to the other parent's house, if they wish to.

If the parties cannot agree on a change in primary residence, the court may appoint a *guardian ad litem* to represent the child and investigate whether there should be a change. This is a time consuming and expensive procedure. In some cases, the judge will talk to the child. If the child may be a mature minor, sometimes the parents agree to have the child talk with a child psychologist. The psychologist determines whether the child is mature, and if so, where the child wants to live.

It is much easier to change decision-making rights or make minimal changes in parenting schedule. The schedule arrangements often have to be changed as the children get older or if one parent moves out of the area. Usually this is worked out by agreement.

Child *support* can be changed if it has been 3 years since your divorce or last support orders. Or it can be changed earlier based on a *substantial change* in circumstances. The substantial change can be on either side and must consist of major, unexpected increases in expenses or increases or decreases income.

Most alimony awards are based on substantial differences in income. Alimony may be ordered for the first time up to 5 years after the divorce. If alimony is changed, it is more likely to be decreased or ended than increased.

This information was written by Honey Hastings
Counselor at Law and Mediator

P. O. Box 1112 • 17 Main Street • Wilton, NH 03086 • Phone 603.654.5000 • Fax 603.654.6000
www.NHDivorce.com www.FamilyMediationNH.com