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UNDERSTANDING ALL THINGS CHILD CUSTODY- ARKANSAS



**By Tracey Bee
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A STEP- BY-STEP E-GUIDE

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UNDERSTANDING CUSTODY IN ARKANSAS

Arkansas Code Title 9. Family Law § 9-13-101. Award of custody. When parents split, the parents or a judge will draft a custody order which sets forth daily visitation plans and other custodial arrangements. Parents who are able to reach an agreement on their own or through mediation, can simply submit a custody agreement (also called a "parenting plan") to the court for approval. A judge will ensure that the agreement serves a child's best interests.

In situations where parents can't agree, any custody decision will be based on numerous factors that affect the child's needs. Specifically, a judge may consider:

- each parent's stability
- each parent's physical and mental health
- the child's physical and mental health, and
- the child's relationships with siblings and extended family.

A judge can order parents to share legal custody (decision-making power on child's behalf) and/or physical custody (parent with whom child resides) or one parent may have sole legal and physical custody. Arkansas law prefers to give parents joint physical custody. However, in cases where one parent has sole physical custody (also called the "primary custodial parent"), that parent has a real advantage in relocation cases. The noncustodial parent bears the burden of proving that a move would not serve the child's best interests.

MODIFICATION OF CUSTODY IN ARKANSAS

Generally, a court won't modify custody unless there has been a marital change in circumstances or a certain period of time has elapsed. While one parent's relocation may be a big change, a relocation in and of itself doesn't necessarily constitute a material change in circumstances. A relocation can constitute a marital change in circumstances if a child's overall well-being would suffer as a result of the move.

Specifically, in one Arkansas case, a father was able to obtain custody of his kids following the mother's relocation because the move was so detrimental to the children. The mother (formerly the custodial parent) had denied visitation between the children and their father on numerous occasions. The mother had moved with the children to Georgia two years prior to the relocation hearing and the children had failing grades and extreme behavioral problems.

Despite all this, the mother lied about the children's progress, repeatedly claiming the children were doing well in school. Because the father was able to offer the children more stability and help with their educational and emotional struggles, the court modified custody, granting custody to the father and requested that the children be returned to live with him in Arkansas.

HOW WILL A JUDGE DECIDE A RELOCATION CASE?

Like any case involving custody, a judge will consider a child's best interests to decide a relocation case. Specifically, a judge will look at the following factors to decide if a relocation is appropriate:

- the parent's reasons for the relocation
- educational, health, and leisure opportunities available in the new location
- the noncustodial parent's present visitation and communication schedule and potential impact of relocation
- the effects of the relocation on immediate and extended family relationships, and
- the child's preference, if the child is of a sufficient age and maturity level to form an opinion.

Arkansas case law typically favors a custodial parent's right to relocate with the child. However, a noncustodial parent can rebut that presumption by showing that the relocation would negatively impact the child. All a custodial parent needs to demonstrate is there is some advantage to the family unit with a relocation.

For example, in one Arkansas case, the court allowed a mother to relocate with her children even though the divorce decree said neither parent can permanently leave the state. The mother filed a motion to modify custody allowing her to move with the children to North Carolina with her fiancé. Because the children's mother was able to show that with a move, she would be able to spend more time with her children and improve their educational opportunities, the court allowed the mother to move with the children and maintain primary custody.

MATTERS OF JUDGES RECUSAL.

It is governed by AR Code § 16-13-214 (2012)

No judge of the circuit court shall sit on the determination of any case in which he or she is interested in the outcome, is related to any party within the third degree of consanguinity or affinity, has been of counsel in the case or presided over it in any inferior court, or is otherwise disqualified under the Arkansas Code of Judicial Conduct, unless the parties waive the disqualification as provided therein. Further information on the recusal process is contained in the supreme court decision Disqualification Rules in Light of Ferguson v. State

RULES FOR CONDUCT FOR JUDGES

<https://lawrepository.ualr.edu/cgi/viewcontent.cgi?article=2010&context=lawreview>

ATTORNEY ETHICS IN ARKANSAS

<https://casetext.com/rule/arkansas-court-rules/arkansas-rules-of-professional-conduct>

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- ✓ Family Court Strategist,
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