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# UNDERSTANDING ALL THINGS CHILD CUSTODY- ARIZONA



By Tracey Bee  
The Divorce Solutionist

# **A STEP- BY-STEP E-GUIDE**

**BY TRACEY BEE**

**[WWW.THEDIVORCESOLUTIONIST.COM](http://WWW.THEDIVORCESOLUTIONIST.COM)**

**IN RE CLAY, IV 96 393 P.2D 257 ARIZ. 160 (1964) NO. 7274. SUPREME COURT OF ARIZONA. IN THE MATTER OF THE CUSTODY OF HARRY BRADFORD CLAY, IV, AND SHELLY DIANE CLAY, MINOR CHILDREN OF ELLEN CLAY, NOW KNOWN AS ELLEN FARMER. ELLEN CLAY, NOW KNOWN AS ELLEN FARMER, APPELLANT, V. HARRY B. CLAY, III, APPELLEE.**

## **HOW BEST INTEREST FACTORS ARE APPLIED IN CUSTODY IN ARIZONA**

- The past, present and potential future relationship between the parent and the child.
- The wishes of the child's parent or parents as to legal decision-making.
- If the child is of suitable age and maturity, the wishes of the child as to the custodian.
- The interaction and interrelationships of the child with the child's parent or parents.
- The child's siblings and any other person who may significantly affect the child's best interest.
- The child's adjustment to home, school and community.
- The mental and physical health of all individuals involved.
- Which parent is more likely to allow the child frequent, meaningful and continuing contact with the other parent.
- The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding legal decision-making.
- Whether a parent has complied with chapter 3, article 5 of this title.
- Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.

## **MODIFICATION OF CUSTODY IN ARIZONA**

### **ARS 25-411 Modification of Custody**

A. A person shall not make a motion to modify a legal decision-making or parenting time decree earlier than one year after its date, unless the court permits it to be made on the basis of affidavits that there is reason to believe the child's present environment may seriously endanger the child's physical, mental, moral or emotional health. At any time after a joint legal decision-making order is entered, a parent may petition the court for modification of the order on the basis of evidence that domestic violence involving a violation of section 13-1201 or 13-1204, spousal abuse or child abuse occurred since the entry of the joint legal decision-making order. Six months after a joint legal decision-making order is entered, a parent may petition the court for modification of the order based on the failure of the other parent to comply with the provisions of the order. A motion or petition to modify an order shall meet the requirements of this section. Except as otherwise provided in this section, if a parent is a member of the United States armed forces, the court shall consider the terms of that parent's military family care plan to determine what is in the child's best interest during that parent's military deployment.

B. If the parent with whom the parent's child resides a majority of the time receives temporary duty, deployment, activation or mobilization orders from the United States military that involve moving a substantial distance away from the parent's residence a court shall not enter a final order modifying parental rights and responsibilities and parent-child contact in an existing order until ninety days after the deployment ends, unless a modification is agreed to by the deploying parent.

C. The court shall not consider a parent's absence caused by deployment or mobilization or the potential for future deployment or mobilization as the sole factor supporting a real, substantial and unanticipated change in circumstances pursuant to this section.

Also see <https://www.arizonalawgroup.com/arizona-family-law-statutes/ars-25-411-modification-custody/>

## RELOCATION REQUEST IN ARIZONA

A.R.S. §25-408 sets forth the legal requirements for relocating with a child when both parents have “joint legal decision power and unsupervised visits.” The statute declares that the relocating parent must notify the non-relocating parent at least sixty days before the move. If they don’t agree to the move, the non-relocating parent must contest the move within thirty days. Given the strict deadlines, you need responsive attorneys to represent your interests in Arizona child relocation disputes.

A parent must have either sole custody or joint and primary physical custody to request child relocation. If parents share physical custody equally, parents cannot relocate the child without a hearing. A.R.S. §25-408 identifies relocation as moving one hundred miles within the state, or moving outside the state. Obviously, relocation can make it difficult to visit and participate in parenting decisions.

The court presumes that children will benefit from regular contact and visitation from both parents. Therefore, if a non-relocating parent objects to the move, the relocating parent must prove that the move is in the child’s best interests. A.R.S. §25-403(A) lists the factors that the court will use to determine whether the move benefits the child.

Included in These Considerations Are:

- The relationships of the children to their parents and others
- The child’s acclimation to his surroundings
- The health of all parties involved
- Whether the parents are cooperative
- The child’s preferences, if appropriate

The court also considers negative behavior of a parent that can make the court more sympathetic to the other parent.

A.R.S. §25-408(H) lays out the following factors when deciding whether to allow a parent to relocate a child:

- Is the move in “the best interests of the child”?
- Is the move in good faith or intended to disrupt the other parent’s parent-child relationship?
- Will the move improve the child or parent’s lifestyle?
- Is the custodial parent likely to comply with the “parenting time orders”?
- Will both parents be able to realistically have parenting time?
- How will relocating or not moving affect the child’s overall well-being?
- Do the parents have valid reasons for opposing or desiring the move; will either parent receive “continuing child support obligations”?
- Will relocating affect the child’s stability?

If you move a child without following the proper procedure you could lose custody. Sometimes the court will allow the relocating parent to make a temporary move.

## **PARENTAL ALIENATION IN ARIZONA**

Parental alienation is deemed to occur in Arizona when one parent makes a deliberate attempt to turn a child against the other parent. This can happen if a parent makes derogatory comments about the other parent directly to the child. In addition, alienation may not be limited to the parent, but involve other family members as well. If this happens on a regular basis, such comments can have a negative impact on the child and seriously damage the parent-child relationship.

Examples of parental behavior that can cause alienation include:

- Frequently criticizing the other parent in the child's presence
- Blaming the other parent for the marital break-up
- Making false allegations about the other parent
- Trying to make the child feel guilty for wanting to spend time with the other parent
- Creating unnecessary drama and tension during the other parent's visitation time
- Not telling the child about phone calls from the other parent
- Excluding the other parent from the child's extracurricular activities
- Refusing to share medical or other information about the child
- Failing to follow a visitation schedule

Ultimately, parental alienation is a form of child abuse that the court will seriously consider when making a child custody determination.

## **DO THE COURTS IN THE STATE OF ARIZONA HAVE THE RIGHT TO APPOINT AN ATTORNEY OR GUARDIAN AD LITEM TO REPRESENT THE CHILD?**

1. Rule 40.1 - Duties and Responsibilities of Appointed Counsel and Guardians AD Litem [Effective until July 1, 2022]
2. A. Attorneys appointed for children shall make clear to children and their caregivers whether their appointment is as a guardian ad litem or as an attorney and the ethical obligations associated with their role.
3. B. Attorneys and guardian's ad litem shall inform the child, in an age and developmentally appropriate manner, about the nature of the proceedings, the attorney's role, that the child has the right to attend hearings and speak to the judge, the consequences of the child's participation or lack of participation, the possible outcomes of each hearing, and other legal rights with regards to the dependency proceeding and the outcomes of each substantive hearing.
4. See all, <https://casetext.com/rule/arizona-court-rules/arizona-rules-of-procedure-for-the-juvenile-court/part-iii-dependency-guardianship-and-termination-of-parental-rights-effective-until-july-1-2022/general-provisions-effective-until-july-1-2022/rule-401-duties-and-responsibilities-of-appointed-counsel-and-guardians-ad-litem-effective-until-july-1-2022>

## **JUDGE RECUSAL IN ARIZONA**

<https://casetext.com/rule/arizona-court-rules/arizona-code-of-judicial-conduct/canon-2-a-judge-shall-perform-the-duties-of-judicial-office-impartially-competently-and-diligently/rule-211-disqualification>



## **ATTORNEY ETHICS IN ARIZONA**

1. <https://www.azbar.org/for-lawyers/ethics/rules-of-professional-conduct/>
2. <https://www.azbar.org/for-lawyers/ethics/>
3. <https://www.azcourts.gov/attorneydiscipline>
4. <https://azethicslaw.com/>

## **RULES ON CONDUCT OF JUDGES**

Canon 1. A judge shall uphold and promote the independence, integrity, [9] and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Canon 2. A judge shall perform the duties of judicial office impartially, [11] competently, and diligently.

<https://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Judicial%20Conduct.pdf>

## **GAL IN ARIZONA**

Arizona law defines a GAL as a person appointed by the court to protect the interest of a child, minor, or an incompetent person in certain types of court cases (Ariz. Rev. Stat. § 8-531(7), also see [https://www.cga.ct.gov/2014/rpt/2014-R-0051.htm#:~:text=Arizona%20law%20defines%20a%20GAL,8%2D531\(7\)\)](https://www.cga.ct.gov/2014/rpt/2014-R-0051.htm#:~:text=Arizona%20law%20defines%20a%20GAL,8%2D531(7)))).

## **RULES OF EVIDENCE AND PROCEDURE IN ARIZONA**

Arizona Revised Statutes Annotated, Rules of Evidence for Courts in the State of Arizona.

(a) In General. The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

<https://govt.westlaw.com/azrules/Document/N93DE0940E7D411E0B453835EEBAB0BCD?contextData=>

[\(sc.Default\)#:~:text=Arizona%20Revised%20Statutes%20AnnotatedRules,in%20the%20State%20of%20Arizona&text=](https://govt.westlaw.com/azrules/Document/N93DE0940E7D411E0B453835EEBAB0BCD?contextData=(sc.Default)#:~:text=Arizona%20Revised%20Statutes%20AnnotatedRules,in%20the%20State%20of%20Arizona&text=)

[\(a\)%20In%20General.,rules%2C%20except%20those%20on%20privilege.](https://govt.westlaw.com/azrules/Document/N93DE0940E7D411E0B453835EEBAB0BCD?contextData=(a)%20In%20General.,rules%2C%20except%20those%20on%20privilege.)

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