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# Texas Family Law Practice and Procedure

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Publication 705 Release 53

May 2006

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## HIGHLIGHTS

### Special Supplement

- This release incorporates the Family Code amendments enacted by the 79th Legislature as well as recent case law developments.

### Possession during military deployment

- A noncustodial parent who is a member of the armed forces has the right to designate a person to exercise limited possession of the child during any period that the parent is deployed on military duty outside the United States. *See Tasks B2, Determining Custody of Children; Task E2, Settling the Case; Agreements Incident to Divorce; Task F1, Preparing the Final Decree.*

### Overnight guests during periods of possession

- The trial court may permanently enjoin either parent, during periods of possession of the child, from having as an overnight guest a person of the opposite sex with

whom the parent has or might have an intimate or dating relationship. *See Task B2, Determining Custody of Children.*

### Grandparent standing.

- A grandparent may file an original suit requesting managing conservatorship if the order sought is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development. Formerly, the child's present environment had to present a serious question concerning the child's physical health or welfare. *See Task B2, Determining Custody of Children.*

### Negative paternity results and child support.

- An adjudicated father's discovery that he is not the biological father of the child is not an event that provides the basis for termination of his duty of support. *See Task B3, Calculating Child Support; Task H5, Establishing Grounds for Modification of Child Support.*

### **Reimbursement**

- The term “economic contribution” does not include purchase money expended by one spouse’s separate estate or debt assumed at closing. *See Task B7, Dividing Community Property.*

### **UCCJEA**

- When determining “the state in which a child lived with a parent” for purposes of establishing home-state jurisdiction under the UCCJEA, the trial court must consider the child’s physical presence in a state rather than a parent’s intentions regarding the child’s presence in that state. *See Task C1, Determining Jurisdiction and Venue.*

**Service of citation.** Citation must now be served on a prospective adoptive parent to whom standing has been conferred by means of a statement to confer standing, and a person designated as the managing conservator in a revoked or unrevoked affidavit of relinquishment or to whom consent to adoption has been given in writing. *See Task C4, Filing and Serving the Petition.*

**Affidavit of indigence.** Under recent amendments to Texas Rule of Civil Procedure 145, if an indigent party is represented by an attorney who is providing free legal services and the attorney is providing services from a program funded by the Interest on Lawyers Trust Accounts (IOLTA) program, the attorney may file an IOLTA certificate confirming that the IOLTA-funded program screened the party for income eligibility. A party’s affidavit of inability to pay costs, accompanied by an attorney’s IOLTA certificate, may not be

contested. *See Task C4, Filing and Serving the Petition.*

**Family violence protective order.** The common-law rule that a family violence protective order may be appealed unless the order was rendered against a party to a pending dissolution suit or SAPCR has been codified. *See, Task C6, Obtaining Temporary Orders.*

**Mediated Settlement Agreement.** An MSA reached in a SAPCR is not binding even if it meets the statutory formal requirements for effectiveness if a party to the agreement was a victim of family violence, that circumstance impaired the party’s ability to make decisions, and the agreement is not in the child’s best interest. *See Task E2, Settling the Case; Agreements Incident to Divorce.*

**Modification of child support.** If parties agree to a child support order that differs from the guideline amount, they waive their right to seek modification on the ground that the support amount differs from the amount that would be awarded under the child support guidelines. *See Task E2, Settling the Case; Agreements Incident to Divorce.*

**Bill of review.** A former husband is not entitled to a bill of review to overturn a finding in a divorce decree that the divorcing parties were the parents of a child, even if the mother misrepresented the child’s true parentage throughout the marriage and divorce. Such a misrepresentation constitutes intrinsic, rather than extrinsic, fraud, because the issue could have been litigated in the divorce proceeding. *See Task G7, Seeking Equitable Bill of Review.*

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May 2006

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