



Benchmarks & Bar Charts

Arkansas Court Statistics Research

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Domestic Relations & Probate Court Research Issue: Disputed Custody

What is disputed custody?

For the purposes of this newsletter, “disputed custody” occurs when the custody of a child or children under the age of 18 is at stake in a court that hears domestic relations or probate matters. Disputed custody claims may occur in the following types of cases: divorce, paternity, post-divorce or post-paternity custody/visitation claims, or guardianship cases. Excluded from this analysis are disputed custody issues that arise in juvenile court.

Introduction

Disputed custody is an emotionally charged issue facing the court. Parents, grandparents, and others may have unique bonds and claims important to the child(ren) in question. Animosity is likely to exist between such parties during divorce, paternity, guardianship, or modification proceedings. The delicacy of the situation is further underscored by the child who may not fully grasp why things are happening.

While the judge is a neutral party conducting the legal proceedings and basing a decision on the child(ren)’s best interests, he or she must consider qualitative factors when deciding to whom custody will be awarded or how much visitation will be allowed. If all quantifiable factors between the parties are equal, the judge may be left with weighing and distinguishing between personalities.

So how does a judge handle disputed custody? Several possibilities exist. First, the judge may assume the responsibility for the decision based upon the legal proceedings and looking at the qualitative factors.

Second, the judge may appoint an attorney ad litem to represent the child(ren)’s best interests in the court proceedings. This option allows the judge to examine interests revolving around the child(ren) assisted by another attorney who is independent from the attorneys for the plaintiff and defendant.

Third, the judge may remove the custody decision process from the courtroom by referring a case to mediation. Mediation allows the parties to the case to work together with a trained facilitator for a mutually agreeable decision regarding custody and visitation issues.

These three possibilities are not mutually exclusive in a disputed custody case, for a judge may appoint an attorney ad litem and/or order mediation before he or she makes the custody decision based solely upon what the parties present. The point, however, is that options are available to the judge when considering qualitative issues.

The majority of this analysis will examine the use of attorneys ad litem in the disputed custody legal process. Statistics regarding the use and evaluation of attorneys ad litem will be addressed.

What does the disputed custody caseload look like?

In order to estimate the disputed custody caseload, annual filing and disposition statistics on divorce, paternity, post-divorce and post-paternity custody/visitation issues, and guardianships must be compiled (see next page Exhibit A). There are limitations to note about this data in order to keep the caseload statistics in perspective.

First, even though children may be involved in divorce and paternity cases, custody may not be in dispute.

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Furthermore, divorce and paternity proceedings may merely be uncontested formalities taking little of the court's time.

Second, guardianship statistics include both guardianships of minors and incompetent adults. Further, guardianship proceedings may be uncontested and informal when custody is not in dispute.

Finally, pre-1996-1997 post-divorce and post-paternity custody/visitation statistics are estimates as collected data for custody/visitation were grouped with child support claims for that time period (a component of Exhibit B).

So what do the statistics in Exhibits A and B tell us? First, Exhibit A shows that over half of domestic relations cases have the potential for disputed custody, where "potential" is defined with the caveats above in mind, and that a fifth of probate cases have potential for disputed custody. Exhibit B, moreover, shows high clearance rates in the ratio of dispositions to filings, suggesting that most cases are resolved within the year filed.

How does the appointment of attorneys ad litem affect overall caseload?

Exhibit C (next page) presents statistics on the use of attorneys ad litem in disputed custody cases. In fiscal year 2000-2001, approximately half of the judges hearing disputed custody cases appointed at least one attorney ad litem to represent the child(ren)'s best interests. However, there were only 104 appointments of an attorney ad litem in the same fiscal year, less than 1% of the "potential" caseload in the previous fiscal year.

Any of the following reasons (or combination thereof) may explain why the appointment numbers are low.

- *Cases may not warrant an attorney ad litem.* As the caveats to the caseload statistics above noted, not all cases need an attorney ad litem.
- *Not all judges want to appoint attorneys ad litem.* Some judges may have reservations about the effectiveness of attorneys ad litem in their courts.
- *Not all judges may be aware of state resources available.* Since January 2000, some state money has been available each fiscal year to pay attorneys ad litem in domestic relations or guardianship cases involving disputed custody. Until this fiscal year (2001-2002), the appropriation has not been fully used; however, the current year's appropriation will be. Compared to the statistics in Exhibit C, increases in the number of appointments and judges making appointments should be expected at the end of this fiscal year.

Exhibit A: Calendar Year 2000-2001 Caseload

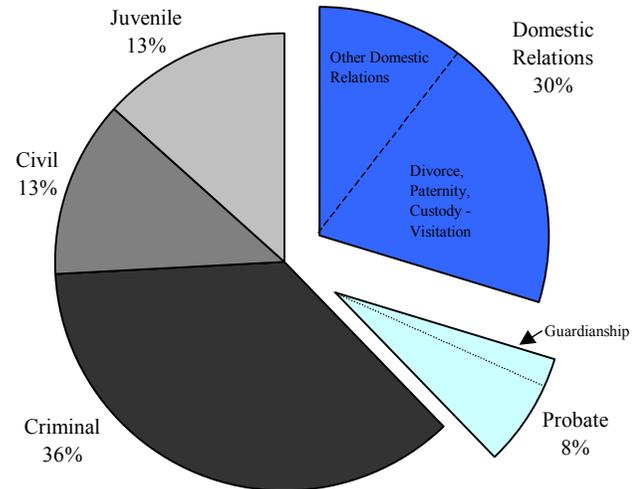


EXHIBIT B: STATEWIDE SUMMARY OF RELEVANT CHANCERY & PROBATE

FISCAL	ANNUAL STATISTICS		
	Filings	Judgments	Dismissals ¹
1990-91	34,801	25,174	6,425
1991-92	36,310	26,840	6,658
1992-93	37,723	27,293	7,019
1993-94	39,050	27,638	6,965
1994-95	40,251	29,436	6,992
1995-96	39,787	28,684	7,317
1996-97	39,578	26,412	9,438
1997-98	35,363	27,004	8,626
1998-99	34,857	26,695	7,255
1999-2000	35,876	26,609	7,491

FISCAL	JUDGMENTS + DISMISSALS ²	
	Dispositons	Dispositions/Filings Ratio
1990-91	31,600	91%
1991-92	33,498	92%
1992-93	34,313	91%
1993-94	34,603	89%
1994-95	36,427	91%
1995-96	36,001	90%
1996-97	35,850	91%
1997-98	35,630	101%
1998-99	33,950	97%
1999-2000	34,100	95%

¹Dismissals include both those dismissed with prejudice and those dismissed with no prejudice.

²Judgments plus dismissals equal "dispositions."

**Exhibit C:
Attorneys Ad Litem in Disputed Custody Cases**

Judges Appointing Attorneys Ad Litem (AAL)*

# of different judges appointing AAL since state funding	44
# of judges who appointed AAL in FY2000-2001	40
Potential # of judges who could have appointed AAL in FY2000-2001	82
# of AAL appointments in FY2000-01	104

AAL Case Statistics in FY2000-2001*

<u>Caseload</u>	
<i>Custody/Visitation Modification</i>	59%
<i>Divorce</i>	27%
<i>Guardianship</i>	6%
<i>Paternity</i>	3%
<i>Other</i>	5%
Average case duration (in months)	4.1
Average # of children involved in a case	1.6
Average age (in years) of child involved in case	8.8

Judge Assessment of AAL**

<u>AAL methods allowed by judges</u>	
<i>Present witnesses (expert or lay)</i>	48%
<i>Present written report/recommendations</i>	46%
<i>Act as an attorney (i.e., examine, cross)</i>	21%
<i>Take the stand to present recommendations</i>	15%
<i>Oral (unsworn) statements/recommendations</i>	6%
<i>Other</i>	8%
AAL requested by one or more parties to case	88%

*Statistics are based on judges who appoint attorneys ad litem using state funding for payment since FY1999-2000.

**Survey response rate is 63%, with 52 of 82 judges eligible completing the study. 42 respondents actually appointed AAL and answered applicable questions in the survey.

Exhibit C also provides actual caseload statistics for fiscal year 2000-2001. Fifty-nine percent (59%) of all attorney ad litem appointments are in custody/visitation modification, while custody/visitation cases account for only an average of 10% of potential disputed custody court filings in the 1990s. Attorney ad litem appointments in the area of divorce account for close to one-third of appointments, while divorce leads all domestic relations court filings.

What do attorneys ad litem do, and how well do they do it?

A fall 2001 survey of judges eligible to hear disputed custody cases in fiscal year 2000-2001 assessed how attorneys ad litem were utilized and how effective they were in the process of the case. The lower portion of Exhibit C lists what methods are allowed by the judge when the attorney ad litem is appointed to ensure the child(ren)'s best interests. Further, Exhibit D assesses how often attorneys ad litem engage in legal activities with regard to a case. Most responses to the lower part of Exhibit C and Exhibit D indicate that attorneys ad litem regularly act "as an attorney" in the case. However, 46% of judges may allow written reports and recommendations, presumably statements that are not made under oath nor subject to cross-examination.

Exhibit E evaluates the importance of attorneys ad litem in disputed custody cases. If "usually" is considered to be the minimum acceptable answer for a successful program evaluation, then the disputed custody attorneys ad litem in Arkansas are living up to expectations. Indeed, Exhibit E reveals that judges using attorneys ad litem have had favorable experiences with them in their courtrooms.

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Exhibit D: How often do AAL engage in the following

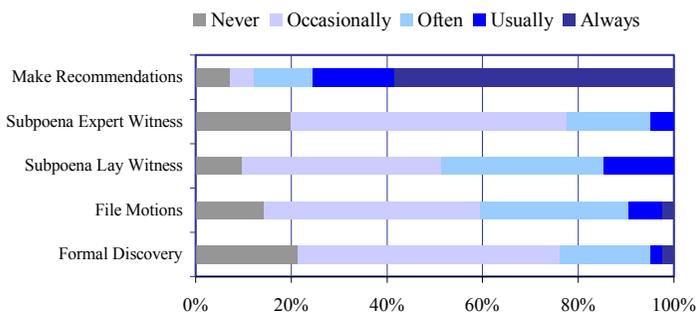
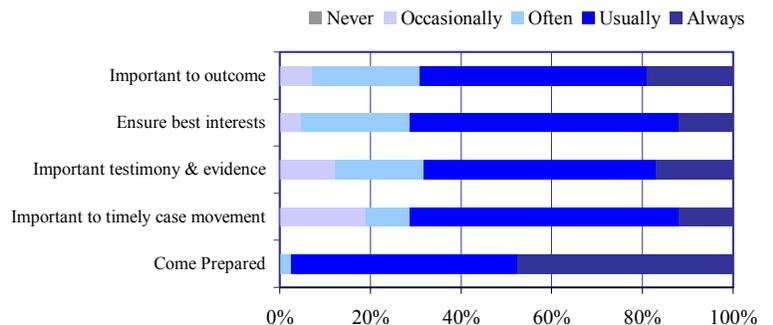


Exhibit E: Evaluation of AAL Importance



For Exhibits D & E, the following question scale was used: Never (0% of the time), Occasionally (1-33%), Often (34-66%), Usually (67-99%), & Always (100% of the time)

Conclusion

The attorney ad litem program for disputed custody cases is still new and developing in terms of judge use and guidelines for attorney ad litem conduct in the case. Baseline data for this program has been presented in this newsletter both to familiarize the reader with the program and to give a point of comparison for future program evaluations.

For More Information

Benchmarks & Bar Charts: Arkansas Court Statistics Research is available on the web with additional files to download at http://courts.state.ar.us/courts/aoc_pubs.html. Copies of statistical data files used in this analysis are included.

This report was written by Kellye Mashburn, AOC Research Analyst. Additional editorial assistance was provided by Donna Gay of the AOC.

Benchmarks & Bar Charts: Arkansas Court Statistics Research is a publication by the Arkansas Administrative Office of the Courts. Contributions, comments, or inquiries for data are welcome. Please submit to Kellye Mashburn, AOC, Justice Building, 625 Marshall, Little Rock, AR 72201. Phone (501) 682-9400.

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