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# Amy Edwards

FAMILY LAW

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## Family Matters

E-newsletter

January 2014

Welcome to our sixth issue of  
*Family Matters*  
e-Newsletter.

This monthly divorce e-Newsletter is brought to you by Amy A. Edwards, with the law firm of Mattox, Davis, Edwards & Alexander, P.A. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please reply with the subject "Remove" or use the unsubscribe feature at the end of this e-mail.

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**Bigamy and Polygamy: The More the Marry-er?**

**By Amy A. Edwards**

With the [recent buzz](#) about the federal [court opinion](#) in Utah striking part of the state's polygamy law as unconstitutional after the five adults on

### About Us



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### Web Site of the Month

[www.benefits.gov](http://www.benefits.gov)

This is the official benefits web site of the US government. You can find all kinds of information about assistance and programs by state, category or agency. It includes data for more than 1,000 government benefits.

### Tip of the Month

**Passwords**

the cast of the reality show *Sister Wives* filed suit. I decided to take a closer look at both bigamy and polygamy.

## What is the Difference Between Polygamy and Bigamy?

### Polygamy

Polygamy, most recognizable in this country as a centerpiece of religious beliefs associated with the Church of Jesus Christ of Latter-day Saints or Mormon Church, polygamy is the act of one husband marrying multiple wives. Polygamy is multiple marriages, with one man intending to marry several women, and those women each intending to marry him. Polygamists often have private "non-legal" ceremonies recognized among themselves, friends and family but not the government. The first wife is the only wife recognized by the law as a spouse, at least for now. For the future? All bets are off. The recent litigation in Utah, and the [US Supreme Court ruling](#) on the *Defense of Marriage Act*, both reflect changes in social attitudes over the last couple of decades. Should the federal Utah case be appealed, or if someone else has a case of this nature that reaches the U.S. Supreme Court, it could impact or even overturn the 1879 U.S. Supreme Court case [Reynolds v. United States](#), 98 U.S. 145 (1879). Also a case from Utah, *Reynolds* was the first polygamy case addressed by that court, upholding the government's right to outlaw it. As a footnote, polyandry is the practice of a woman having multiple husbands, but it apparently never caught on.

### Bigamy

Unlike the multiple wives of one man in polygamist relationships, a bigamist has only two "spouses" be they husbands or wives. Usually not associated with any exercise of religion, bigamy has always been a crime in the United States. Rather than having private non-legal ceremonies, it is quite the opposite for a bigamist. The very definition of bigamy centers on a person actually going through a [legal process](#), such as getting a marriage license, seeking the services of a person vested with the authority to marry, and exchanging vows to become a lawfully wedded spouse. Bigamists who intentionally attempt to marry a second spouse while still married often conceal the first marriage from the new "spouse."



### North Carolina Law - Bigamy

While I am unaware of any direct references to polygamy in our criminal or civil statutes, bigamy is a felony in our state. [N.C. Gen. Stat. §14-183](#) says this: If any person, being married, shall marry any other

Especially if you are considering a separation or divorce, take the time to be sure all of your passwords are secure and will not be easily guessed by your spouse. Not only do you want privacy, you do not want malicious e-mails or posts on social media to be sent using your name as the sender or poster.

### Legal Term of the Month

#### Hearsay

Hearsay is a statement made by someone who is not present in court during a trial. If a witness who is testifying in court tries to testify based on what that absent person said, that is hearsay. Unless there is an exception to the general rule, hearsay cannot be used in court because an attorney can't cross examine the absent person.

### Legal Trivia

#### Did You Know?

By NC statute, any child born as the result of heterologous artificial insemination shall be considered in all respects the same as a naturally conceived legitimate child when both spouses request and consent in writing to the use of such technique.

NC Gen. Stat. §49A-1

### Suggestions For Future Newsletter Topics

Is there a topic you would like to see featured in a future newsletter?

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### Community Education Presentations

Are you interested in having

person during the life of the former husband or wife, every such offender . . . shall be punished as a Class I felon. An interesting twist to our law is that anyone "counseling, aiding or abetting such offender" is also a felon if convicted pursuant to this statute.

As it relates to [spousal privilege](#), a husband or wife of a defendant cannot be compelled to testify against his or her spouse with few exceptions. One of the exceptions is a criminal prosecution of a bigamy case. Unlike every other ground for an annulment, bigamy is the only "marriage" that is declared to be utterly void, even if the couple lived together and had children, and only one survives. In other words, an annulment case can be litigated and the marriage declared void *after* one of the spouses is dead. See footnote 1

As it relates to bigamy, state law presumes the second marriage is valid unless a person can meet that burden of proof to show otherwise. This means the court assumes there was a valid divorce from the first husband or wife unless the evidence proves otherwise. FN 2

If there is a property division case (*i.e.*, [equitable distribution](#)), an equal division of assets and debts is mandatory unless there is good cause to rule otherwise. In 2010, the N.C. Court of Appeals upheld an unequal division of the marital estate because the husband wasted assets. The reason he did so was because he "married" another wife overseas and had a secret family with her, diverting marital funds to the support of that family. FN 3

### **Bigamy: Why Do People Do It and How Do You Fix It?**

Usually, bigamists marry a second person for one of two reasons, money or mistake. There are many financial [benefits](#) to marriage, including tax and military benefits, pension benefits and those associated with other survivor rights. On the flip side of that coin, several alimony cases have reached our appellate courts because one of the parties realizes there is a flaw in the earlier divorce, and decides to take advantage of it by trying to wiggle out of having to pay any alimony. FN 4

I have encountered bigamy twice during my career. Both times, the client mistakenly thought the divorce from the first person had been properly completed. In both instances, my client had to file a lawsuit for a decree of [annulment](#). A divorce terminates a valid marriage, while an annulment recognizes on paper that a relationship constituted a void marriage from the very beginning, regardless of how long the relationship lasted. In the eyes of the law, the people were never married at all. However, for the sake of the children, our law permits the offspring of a void marriage to be recognized as [legitimate](#) children. FN 5

Our law clearly sets out the grounds for an annulment, but none of those grounds offer relief based on multiple spouses. As opposed to bigamist marriages, which are included as a ground for an annulment, do

one of our attorneys speak to your educational, professional, civic or other group as a public service? If so, browse our

#### List of potential topics

Contact us at 252-758-3430 to schedule a presentation for your group.

#### Quick Links

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[Pitt County](#)

[Pitt County Schools](#)

[State of NC](#)

[Collaborative Divorce Assn of Eastern Carolina](#)

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polygamist "spouses" qualify for an annulment or a [divorce](#)? This question puzzles lawyers, especially in light of the Utah court ruling in favor of the cast members of *Sister Wives*.

For example, in states such as ours that do not permit same sex marriage, how does NC divorce people who weren't married in the first place? If they move to another state that allows same sex marriage, or return to the state that married them in the first place, are they still married even if they could obtain an annulment here? Will he or she commit bigamy there if there is another marriage? Currently, the law is in flux and there is no clear answer to the issue of one state giving full faith and credit to decrees of divorce (or the legal status of marriage) under these circumstances.

For an in depth and fascinating treatment of these matters, see *Distinctions of Form or Substance: Monogamy, Polygamy and Same-sex Marriage*, North Carolina Law Review, 75 N.C.L. Review 1501 (1997), by Maura I. Strassberg.

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FN1: [NC Gen. Stat. §51-3](#)

FN 2: [In re Estate of Anderson](#), 148 N.C. App. 501, 559 S.E.2d 222 (2002).

FN 3: [Duruanyim v. Duruanyim](#), 204 N.C. App. 210, 694 S.E.2d 522 (2010).

FN 4: *Redfern v. Redfern*, 49 N.C. App. 94, 270 S.E.2 d 606 (1980), citing *McIntyre v. McIntyre*, 211 N.C. 698 (1937).

FN 5: [N.C. Gen. Stat. §50-11.1](#)

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## Legally Separated: Are We There Yet?



**Legally Separated: Are We There Yet?**

By Amy A. Edwards

This is a common question from my clients, especially in the beginning of the divorce process. After all, whether you are separated or not has an impact on the division of property and debt, support for a spouse and/or any children, and ultimately, whether you can remarry.

### **What is a *Legal Separation*?**

In North Carolina, the term "legally separated" is a term of art used by attorneys, and misused by many non-attorneys. This legal separation is a decree made by a judge after a special trial based on marital fault. The court enters an official decree, stating that only the husband or the wife shall have the right to live in the marital home. In that event, the other spouse must leave the home. Why do all of this to separate? Because people are correctly reluctant to move out of the family home for fear of committing abandonment. If a judge rules there is marital fault, it can easily cause a great deal of harm to a spouse during divorce litigation. This process of a judge declaring a person to be legally separated is a rare event indeed, but it is still alive and well in our state. In legal terms, this process of declaring people to be separated, but still married to each other, is called a *divorce from bed and board*.

### **What is a *Traditional Separation*?**

What people usually mean when they talk about a legal separation is a traditional separation of husband and wife. Two main things are required to be separated for purposes of a divorce at some later date. First, the husband and wife must not live together in the same residence for at least one year. Living in the same residence in different parts of the house is not adequate. Second, either the husband or the wife must intend for the separation to be permanent. Note there is no requirement that *both* intend the separation to be permanent; only one person must. If they are living separately but neither intends to be separated, such as those separated by military service or extensive travel, they are not separated for the purpose of getting divorced.

Occasionally, there is a question about whether spouses actually live apart. I have had clients who had several buildings on one parcel of land, such as a farm where there was a farmhouse or homestead house and various out buildings. Another time, I had a question about one person living in the recreational vehicle in the back yard. People with unconventional marriage relationships can also be confused about whether they have actually separated. There is no easy "one size fits all" answer for these types of legal questions, which must be addressed on a case-by-case basis. There is no legal requirement for any documents to be drafted or signed for people to be separated. The fact that people live apart, and one of them intends the separation to be permanent, is sufficient to be separated for the purpose of filing for a divorce after one year has passed.

## What About the Divorce?

After spouses are separated for one year, either of them may file a complaint for divorce based upon the year of separation in this state. The only exception to this rule is in the case of incurable insanity, which requires the separation to be for three years. There is no way under the law to shorten the time required to be separated before one person can file a lawsuit for the divorce. The Legislature intentionally created the twelve-month waiting period in order to allow husbands and wives enough time to be sure a divorce is what they truly need. The parties do not have to "agree" to the divorce. As long as the statutory requirements listed above are met, either spouse is eligible to file for a divorce, regardless of whether the other party consents.

Clients sometimes ask me if they can agree to say they have been separated for a whole year, when they have only been separated a few months. The answer is always NO. Alleging untruthful things in a divorce complaint (the document that generates the lawsuit) constitutes the crime of perjury, whether one person commits perjury or both do, regardless of whether you agree to do so. The process of a judge entering a divorce based on one year of separation is called an *absolute divorce*. Once this type of divorce is entered, each person is legally free to remarry if he or she chooses to do so.

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## What Are Divorce Papers?



## What Are Divorce Papers?

By Amy A. Edwards

People frequently contact an attorney when they receive documents from an attorney or their ex. When someone uses the term *divorce papers* it can mean a variety of things. Although there are other

possibilities, the overwhelming majority of people who receive what they call divorce papers have received one of two things: a proposed contract or a lawsuit. These two things are completely different, and anyone who receives divorce papers from an attorney (or the ex) should immediately consult with an attorney. The attorney will explain what the documents actually are, and advise you of your rights and responsibilities.

### **Separation Agreements**

When spouses can agree about dividing debts and property, alimony if applicable, or child support and custody, they may sign a Separation Agreement and Property Settlement. Attorneys sometimes send a proposed Separation Agreement to the other party to see if there is room to negotiate an out of court settlement. A Separation Agreement is a contract, not a court order. Because it is a contract, a person who violates it can be liable for breach of contract. Contrary to what most people think, there is really not a "standard separation agreement" although there are several paragraphs that are almost always included in most separation agreements.

Like all contracts, the parties must agree to be bound by the terms of the contract, and properly sign or "execute" it and any related companion documents such as deeds or car titles. There is no way to force the agreement if the other person is unwilling to negotiate. No contract can create an actual divorce, which must always be granted by a judge after a lawsuit is filed, even if the divorce is uncontested.

### **Lawsuits**

When people say they are going to get divorce papers that definition might mean they are filing a lawsuit and asking the court for any number of things. A lawsuit might be one for divorce after a separation of at least one year, an emergency domestic violence order, an order for alimony or child custody and support, or equitable distribution, which is the division of property and debts.

When there is no agreement on financial matters or issues concerning children, the only way to force a resolution is to file a lawsuit. In our state, *divorce papers* for a lawsuit consist of a complaint, which is the document that activates a lawsuit, and a summons. The summons gives the court jurisdiction or the right to order you to do something or stop doing something, like pay child support or divide property by signing a deed or paying a debt.

In family law cases, unlike criminal court, it does not matter if you are the plaintiff or the defendant. You will be asking the court to do the same things regardless of whether you file the lawsuit first. Lawsuits may or may not be related to the divorce itself, although a divorce operates as a deadline for certain claims. Unlike contracts, lawsuit documents must be "served" on the other person. Service is the act of a sheriff handing documents to you, or a few other alternatives. If you

are served with a lawsuit, you have a specific deadline to respond. If you fail to act on the documents served upon you, or if you wait too long to act, you risk forever losing the right to file your claims or certain defenses.

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## What Exactly is Child Abuse and Who Must Report It?

### What Exactly is Child Abuse and Who Must Report It?

By Amy A. Edwards

This is the first of three articles. Child abuse is the topic of this article, to be followed by articles on child neglect and the abuse and neglect courts in NC. Although child abuse is also crime, this article addresses civil law (*i.e.*, family law).

By North Carolina statute, anyone who has reason to believe a child is being abused must make a report to [CPS \(Child Protective Services\)](#). This also applies to suspected neglect or dependency upon the state when a child is abandoned. The identity of a person who reports suspected child abuse is sealed by the State so that the parent or caretaker of the child will not know who made the report to CPS. As long as you have a good faith basis to report child abuse, you do not have any legal liability if CPS decides no abuse has occurred.

The policy of the law is to trigger an investigation into a child's circumstances so CPS can prevent potential harm to the child, or remove the child from an abusive environment. People sometimes hesitate to report suspected abuse because they feel the parent will be punished. Reporting doesn't always result in a finding that abuse or neglect has occurred. Upon receiving a report of suspected abuse, there is an investigation by social workers and/or other trained and licensed professionals. If the CPS investigation finds evidence there is abuse or neglect, a lawsuit may be filed and the parent will usually be entitled to an appointed attorney to represent him or her in the case. Parents are then given access to resources that give them tools for dealing with their inclination to abuse their child. Punishment is not the goal in these civil (non-criminal) courts. The constitutional rights of parents must be respected, just as they are in criminal cases.

### What Counts as Child Abuse?

In a perfect world, there would be a simple definition for child abuse. But we live in an imperfect world where it is necessary to include lots of examples of abuse as we try to define it. Taken together, this patchwork of situations creates the legal definition of child abuse in our state. It gives you a flavor of the sort of thing you must report. Fortunately, you

don't have to figure all of that out because it is the task of the NC Department of Social Services through CPS to decide exactly what fits into the definition of child abuse or neglect. All you have to do is err on the side of caution and call CPS when you see abusive behavior or evidence that indicates a child is in danger. A n [abused child](#) is one whose parent, guardian, custodian, or caretaker:

- Inflicts serious physical injury by other than accidental means. This includes an adult allowing someone else to inflict injury on the child;
- Creates a substantial risk of serious physical injury to the child by other than accidental means (or allows someone else to create that risk);
- Uses or allows . . . cruel or grossly inappropriate procedures or cruel or grossly inappropriate devices to modify behavior;
- Commits, permits, or encourages the commission of various sexual and obscenity offenses;
- Creates (or allows to be created) serious emotional damage to the juvenile shown by the child's severe anxiety, depression, withdrawal, or aggressive behavior toward himself or others; or
- Encourages, directs, or approves of delinquent acts involving moral turpitude committed by the child.

#### **What are the Signs of Child Abuse?**

For the [signs of suspected abuse](#), see the list on the NC Department of Social Services web site. If you suspect a child is being abused in [Pitt County](#), call 252-902-1110 during the day, and 252-830-4141 after hours. See the list of phone numbers for [other NC counties](#), or call law enforcement. There is a [good pamphlet](#) about the basics of reporting suspected abuse in NC, offered by the [TEDI Bear](#) Children's Advocacy Center.

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Thank you for reading our newsletter.

**Sincerely,**

**Amy A. Edwards**

*Mattox, Davis, Edwards & Alexander, P.A.*

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