

YOUR DIVORCE

A Guide Through
the Legal Process

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COMMUNICATING WITH YOUR LAWYER

This section is designated to facilitate communication between you and your lawyer. Many clients ask the same questions, and the ideas suggested here represent many years of experience asking and answering these same questions. Your lawyer will tailor his or her specific question or response to your particular situation; however, the facts gleaned in this section will provide your lawyer with important information about you and serve as a starting point if more information is required. Finally, although some legal terms vary from state to state, this whole process will be easier for you if you “speak the language.”

This section includes

- What You Should Know About Your Law Firm
- Communicating with Your Law Firm
- Common Questions
- Glossary of Divorce Terms

What You Should Know About Your Law Firm

1 **Office Hours.** The firm’s business hours are ____ a.m. to _____ p.m.
After-hours or Saturday appointments can occasionally be arranged.

2 **Staff Names.** These people are on your “team” and can help you:

Attorney: _____

Associate Attorney: _____

Paralegal: _____

Secretary: _____

Bookkeeper: _____

Receptionist: _____

3 **Court.** The name and address of the court at which your action is pending is

Parking is available at _____

4 **Children.** Please do not bring your children to meetings with your lawyer. It is a good policy not to involve them in the case.

5 **Fee Agreement.** Most law firms will not begin work until you sign a fee agreement and pay your initial deposit or retainer. Fees will be explained during the initial interview. At that time ask questions about any aspect of the fee agreement that you don't understand

6 **Monthly Statements.** You should receive monthly statements detailing legal services, the charges for them, and the amount drawn from your initial trust deposit. If you have questions about your statement, please call your lawyer's bookkeeper within 10 days of receiving your bill. Even though you may be seeking reimbursement of legal fees from your spouse by court order, you are responsible for your attorney's fees until a final hearing can be held and the court can rule on your request to have your spouse pay your fees. Any court order requiring your spouse to reimburse you is incidental to your responsibility to your lawyer.

7 **Telephone Conferences.** Your lawyer should always take your telephone calls during business hours if he or she is available in the office. If your lawyer is in conference or in court, a staff member should try to help you. If you cannot be helped by a staff member, your lawyer should return your call the same day if he or she is able, but at a minimum should call you back the following day at the latest. Be sure, however, that you leave a detailed message with someone at your lawyer's office that has your correct telephone number. Don't assume your lawyer has your phone number readily available. Failure to leave your phone number often results in a delay in your lawyer calling you back.

8 **Other Numbers**

Following are spaces for other important telephone numbers you may need.

Communicating with Your Law Firm

- 1 **Read all correspondence and keep it in a folder for future use and reference.** To keep you informed of your case's progress, your lawyer should provide you with copies of all pleadings that are filed in your case and all significant correspondence to and from the other side throughout your case.
- 2 **What you lawyer needs to know.** Your lawyer needs all the facts. If you are nervous or afraid to tell your lawyer something, it may be easier to put it in writing. Regardless of how you decide to communicate the information to your lawyer, remember, you are your lawyer's eyes and ears. Give your lawyer all of the pertinent information, even if you don't think it will make a difference and even if the information seems trivial. Let your lawyer decide which information is critical to your case and which information is not critical.
- 3 **Call the office regarding any questions or problems that arise.** Explain the matter to a staff member who should have an immediate solution or arrange for your lawyer to get back to you. Do not call and leave a message such as "urgent," "very important," or "I must talk to you." This is futile and time-consuming for you and your lawyer. If you find that you are calling frequently, make a list of questions and save them for one call. This will help you prioritize and focus your concerns and allow your lawyer to proceed with your case in an organized and coherent manner.
- 4 **Consider creating a detailed history of your marriage.** It is often hard if not impossible to condense all of the details of several years of marriage into usually one of two consultations with your lawyer. It is often much easier to write a history of your marriage as you lived it and as you see it. Put in such a history all of the highs and the lows of your marriage as you see them from your perspective. Try to be especially mindful of dates, and such a history is best written in chronological order. In this manner, your lawyer will be able to glean the important times, dates and events from your past at a pace set by your lawyer. Such a document also serves a useful guide for your lawyer to frame specific questions for your spouse in his or her deposition and serves as an excellent source from which to elicit your testimony when it comes time for trial. See, A History for Your Attorney below for further instructions on providing this information.
- 5 **Consider keeping a daily diary.** By keeping a written record of important daily events, you will not only be able to better communicate with your lawyer about the facts of your case while your action is pending (i.e. times, places, and dates), such a record will serve to compliment the history described in the preceding paragraph should your case proceed to trial. Talk to your lawyer about whether this will be needed in your case.
- 6 **Write down in detail any problems or questions that worry you and forward them to your lawyer.** This helps provide direct information and enables your lawyer to pinpoint and perhaps head off future problems. This record becomes a part of your file for future use and review.

Common Questions

Many clients share the same fears, questions, and beliefs about divorce. Set forth below are some of the most common questions. Your lawyer will do everything possible to structure your case so that you “lose” as little as possible. However, punishing your spouse or winning an all-out, no-holds-barred victory, is most often an unattainable goal in a divorce case. Those lawyers who tell you otherwise are simply after your money and hope to “hook” you with promises that cannot be delivered.

1 **Length of Time.** At the beginning of a lawsuit, it is difficult to foresee how long the case will take. After it is under way and your lawyer understands the issues and the manner in which your spouse and his or her lawyer will approach the case, he or she should be better able to better gauge the duration. How long it will take depends on the following five (5) factors:

- The number and complexity of contested issues;
- The vehemence of the parties’ feelings and their inclination to settle;
- The court’s calendar. A small hearing on an issue that arises while the case is pending (usually handled by a Motion) can usually be scheduled within 10 to 15 days. A full divorce trial, which takes a day or more, usually must be scheduled six months to one year in advance
- The other lawyer. Your lawyer has no control over the other lawyer’s schedule or personality. An extremely busy or uncompromising opposing counsel can prolong your divorce.
- Your spouse. Like it or not, oftentimes the length and depth you are forced to go to in a divorce action are often decided more by what your spouse wants to do than by what you want to do. However, unreasonable or unconscionable conduct by your spouse during a case will often result in your spouse paying all of the legal fees, including your own.

By far, the most common factors that prolong lawsuits are the intensity of the parties’ feelings and the degree to which the parties want to fight.

2 **Cost.** It is difficult to estimate realistically the total cost of your divorce, even when your lawyer knows the issues that will be contested and the strength of the parties’ feelings. If you and your spouse do not trust each other, want complete discovery of all assets and liabilities, and argue many issues to the bitter end, the process will be long, drawn out, and extremely expensive for both of you. Going to trial is almost always more expensive than settling the lawsuit. If you have a question about a bill, ask your lawyer immediately.

Be aware that you will pay for your divorce in three ways - with your time, with your emotions and lastly with your money.

- Time. Just as you undoubtedly did with regard to your marriage, you should view your divorce action as a commitment. You will have to spend a great deal of time preparing your lawsuit. Your lawyer will prepare your case, but only with your help. Lawyers sell their time, so if you can do some of the groundwork, your money can be used more efficiently. If you

are not prepared to spend time on your case, the outcome may not be as satisfactory or cost-effective as it might have been.

- Emotions. Divorce is one of life's most painful experiences. Your emotions will likely be on a roller coaster. In most cases, both parties do not want to end the relationship to the same degree, and one person has been more emotionally hurt than the other. That is one reason to consider counseling.

The more issues to be resolved, the more painful the divorce process. Sometimes, one party raises issues simply as a way of prolonging the matter or punishing a spouse. Be aware of this. If it seems to be happening, your lawyer will call it to your attention.

- Money. Preparing and trying a lawsuit is very expensive. Scrutinize the issues at an early stage and determine which ones can be settled. Do not make unreasonable or unnecessary concessions, but look carefully at the issues that separate you and your spouse. You do have some control and you can make concessions that will resolve your case more quickly and thus reduce your costs.

- 3 **Is my lawyer "Tough Enough"?** Some people think that lawyers who are "fighters" must refuse to cooperate with opposing counsel - for example, not consenting to mutually convenient dates for meetings, depositions, etc., and negotiating without compromise on contested issues. This notion is sadly misguided. The time to fight may be during tough negotiations or in court. Non-cooperation accomplishes only greatly increased attorney's fees, because all the legal steps must be done the hard way - by preparing special documents, appearing in court, etc. The information and documents must eventually be disclosed, and thus a lack of cooperation serves no purpose. The mark of a great attorney is knowing when to "pick your battles" so that you receive the most for your money and precious time and money are not wasted on fruitless ventures.

Practical Considerations

- 1 **The Domino Effect.** Litigation often spawns more litigation. To determine whether certain issues are worth litigating, weigh the price you will pay with your time, emotional pain and money. If you wonder about dating, money, changing the locks, credit, or whether you should work, ask your lawyers.
- 2 **Lawyer Camaraderie.** Lawyers who specialize in a particular area, especially divorce, will probably try cases against each other often over the course of their careers. They will attend the same professional events and may even work on committees together. Camaraderie develops naturally over the years. Just because your lawyer and your spouse's lawyer exchange pleasantries, share a joke, or have lunch together, does not mean that they are being disloyal to you or to your spouse. Your lawyer is professionally committed to the best result for you given the facts of your case and the law. This does not mean that your lawyer must be hostile, rude or mean to opposing counsel. Such behavior often harms rather than helps your case as mentioned in the preceding paragraph.
- 3 **Your Spouse's Suggestions.** Unfortunately, clients commonly believe that an opponent's

suggestions should be routinely rejected because they either are bad ideas or they reflect an ulterior motive. Some clients want to automatically do the opposite of whatever is requested.

Let your lawyer guide your response to the other side's requests. A request, suggestion, or offer from the other side, however, is not bad per se. Most lawyers are not out to "get, trick or ruin" opposing counsel or their clients.

4 Counseling. Divorce cases are emotionally charged, so clients are encouraged to seek professional counseling before or during the process. Counseling can help clients ameliorate the pain, accept the marriage's end, learn coping skills, and pick up the pieces of their lives and go on.

Don't wait for your spouse to agree to participate. Individual counseling can often help. Many states have moved to required parenting seminars for parties going through a divorce who have minor children.

Your lawyer will know whether or not such requirements are applicable in your state.

5The Right Therapist. If you don't know where to begin with regard to finding a personal therapist for yourself, your lawyer should be able to recommend several qualified counselors. Your employment, social or religious contacts also might provide leads. When choosing a counselor, be selective. Counselors have different styles and approaches. Search until you find one with whom you feel comfortable. At the first meeting, ask about the cost. Find out if your health insurance policy will cover counseling. Reassurance from friends and family members or legal advice from your lawyer may help, but a counselor is trained to address your emotional ups and downs.

6 Emotions. In a divorce proceeding, negative emotions such as hostility, anger and revenge can needlessly delay a resolution and increase the cost. Perspective and objectivity, on the other hand, can promote a conclusion and reduce the cost.

Many factors may be involved in the breakup, and you may feel indignation, anger, and resentment toward your spouse. You may want to punish your spouse by making the process difficult and time-consuming. This type of divorce usually turns into a no-win situation. If both spouses maintain perspective and a realistic idea of a reasonable and equitable division of their marital estate, less money will be spent on legal fees, leaving more money for the divorcing couple.

One of the key factors in settling a divorce is both parties' desire and ability to set aside differences and past hurts. Lawyers often hear, "It's a matter of principle. I won't compromise on this." There have been cases in which a fair and equitable resolution was reached, but both spouses were at an impasse regarding one inexpensive item. As a result, they spent thousands of additional dollars in legal fees on who would get the lava lamp. Only the lawyers are rewarded in a lengthy and bitter divorce.

7Read all correspondence and keep it in a folder for future use and reference. To keep you informed of your case's progress, your lawyer should provide you with copies of all pleadings that

8Reconciliation. When some potential clients go to a lawyer's office to discuss divorce, they have not actually decided to take that big step. First they want to know their options. Lawyers typically encourage them to explore alternatives and often suggest how to protect themselves and meet their needs, short of divorce.

If your lawyer raises the issue of reconciliation, he or she is not questioning or judging your decision, but is clarifying and confirming that you know your options and that you want a divorce.

9Get a Will. As you begin the process, the first order of business is to review your will. If you do not have one, get one immediately. Interstate succession laws may conflict with your wishes. Your lawyer should be able to help you with regard to securing a new will or at least should be able to suggest another lawyer who could draft a will for you.

Glossary of Divorce Terms

Many times, lawyers are accused of using language that is foreign to most people. These words used by lawyers are often referred to as “legalees”. This list of definitions of some of those “legalees” should help you understand what is happening in your divorce.

Action: The legal term for lawsuit.

Affidavit: A written statement of facts, made under oath, and signed before a notary public.

Affirmation: A written statement of facts made and executed by a lawyer under penalty of perjury.

Affirmative defense: Legal response to a spouse’s pleadings, even if the allegations of the Complaint for Divorce are true.

Agreement: A transcribed or written resolution of the disputed issues when the parties have resolved issues in the case.

Alimony: Payment of support from one party to another; may include property division and attorney’s fees. See also maintenance.

Alimony pendente lite: A temporary order of court that provides support for one spouse and/or the children while the divorce is in progress.

Allegation: Statement contained in a pleading or affidavit setting forth what the pleader intends to prove.

Annulment: The legal ending of an invalid marriage; according to law, neither party was ever married, but all children born of the annulled marriage remain legitimate. Grounds for annulment var from state to state.

Answer: The second pleading in an action for divorce, separation, or annulment, which is served in response to the petition for divorce and which admits or denies the petition’s allegations and may also make claims against the other party.

Appeal: The process whereby a higher court reviews the proceedings resulting in an order or judgment of a lower court and determines whether there was reversible error.

Appearance: A respondent’s formal method of telling the court that he or she submits to the court’s jurisdiction. Appearance can also refer to a party’s physical presence at court.

Change of venue: A change of the place where the case is to be tried.

Child support: Payments that are made by one spouse to the other with whom the child lives primarily, which payments are not taxable to the recipient or deductible to the payer spouse.

Claim: A charge or allegation by one spouse against the other.

Common law marriage: A relationship between a man and a woman, recognized by law in some states as a marriage, although no license or ceremony was involved. The termination of a common law marriage takes place by divorce.

Community property: Generally, the property acquired during the marriage by the work and efforts of the parties. Applies in those states known as community property states.

Complaint (Petition): The first pleading in an action for divorce, separate maintenance, or annulment, setting forth the allegations on which the requested relief is based.

Contempt of court: The willful and intentional failure to comply with a court order, judgment, or decree by a party to the action, which may be punishable in a variety of ways.

Contested case: Any case in which the court must decide one or more issues on which the parties have not agreed.

Court order: A written document issued by the court, which becomes effective only when signed by a judge.

Cross-examination: The questioning of a witness by the opposing party during a trial or at a deposition, to test the truth of that testimony or to develop it.

Custody: The legal right and responsibility awarded by the court for the care, possession, and rearing of a child.

Default or default judgment: An order or judgment granted by the court without hearing the other side because it failed to plead or submit papers within the time allowed or failed to appear at the hearing.

Defendant (Respondent): The person (husband or wife) who is sued for divorce.

Deposition: One of the primary methods used by an attorney to obtain information in a given case. A court reporter is usually employed to take down the testimony of a party or other witness verbatim in a setting outside the Courthouse with both sides of the lawsuit attending and allowed to ask questions, the answers to which must be made under oath as if the person were testifying before a Judge.

Direct examination: The initial questioning of a witness by the lawyer who called him or her to the stand.

Discovery. The process by which attorneys gather information in a case, usually by three (3) primary methods, Interrogatories, Requests for Documents, and Depositions.

Dissolution: The act of terminating a marriage; divorce; does not include annulment.

Distributive award: A payment ordered by the court.

Emancipation: The point at which a child may be treated as an adult and in some states when the duty to

support may terminate.

Equitable distribution of property: A system of distributing property in connection with a divorce or dissolution proceeding on the basis of a variety of factors without regard to who holds title.

Evidence: Documents, testimony, or other demonstrative material offered to the court to prove or disprove allegations.

Ex parte: An application for court relief without the presence of the other party. In some states the other party is present but is given very short notice of the application.

Fee Agreement. A contract between you and your lawyer which explains how he or she will charge you for the time spent on your case and the manner in which he or she expects to be paid.

Grounds: In the eyes of the law (under statute), the reason for granting a divorce.

Guardian ad litem (GAL): A lawyer appointed by the court to represent the children.

Hearing: Any proceeding before the court for the purpose of resolving disputed issues through presentation of testimony, offers of proof, and argument.

Hold-harmless: A situation in which one spouse assumes liability for a debt or obligation and promises to protect the other from any loss or expense in connection with it.

Indemnification: The promise to reimburse another person in case of an anticipated loss; the same as hold-harmless.

Injunction: A court order forbidding someone from committing a particular act that is likely to cause injury or property loss to another party (just as a restraining order does) but which also may command a party to do some act.

Interrogatories: One of the primary ways attorneys gather basic information from the other side in a particular case. They consist of written questions (usually 30 in number) which must be answered by the opposing party under oath and returned within a prescribed period of time (usually 30 days).

Joint custody: The shared right and responsibility awarded by the court to both parents for possession, care and rearing of the children.

Joint property: Property held in the name of more than one person.

Jurisdiction: The authority of the court to rule on issues relating to the parties, their children, or their property.

Legal separation: A judgment of the court or written agreement directing or authorizing the spouses to live separate and apart. A decree of separation does not dissolve the marriage and does not allow the parties to remarry.

Maintenance: Spousal support. See also alimony.

Marital property: Accumulated income and property acquired by the spouses, subject to certain exclusions in some states.

Marital Dissolution Agreement. The parties' settlement reduced to a written document or orally placed on the record in open court which deals with issues related to marital property, marital debts, alimony and other rights and obligations between a husband and wife. May also be called a property settlement agreement.

Mediation. This is an informal process which the parties (and sometimes attorneys as well) attend in an attempt to settle their disputes on their own. The result of a successful mediation is an agreement which is presented to a Court for approval.

Motion: A written application to the court for some particular relief such as temporary support, injunction, or attorney's or expert's fees.

Motion to modify: A formal written request to the court to change a prior order regarding custody, child support, alimony, or any other order that the court may change by law.

Motion to vacate premises: A request to the court, on the showing of good cause, ordering one spouse to leave the marital residence.

No-fault divorce: When divorce is granted without the necessity of proving one of the parties guilty of marital misconduct. Fault is marital misconduct that may be considered for some issues in some states.

Notice of hearing: A paper that is served on the opposing lawyer or other spouse listing the date and place of a hearing and the motion or motions that will be heard by the court.

Order: The court's ruling on a motion requiring the parties to do certain things or setting forth their rights and responsibilities. An order is reduced to writing, signed by the judge, and filed with the court.

Order of Protection. An Order issued by a Court which protects one party from abuse and threats of abuse by the other, and which may also provide for certain other relief, such as support, exclusive use of a residence, no contact, etc.

Parenting Plan. A written agreement that deals with issues regarding the minor children born during a marriage, such as visitation schedules, child support, health insurance, etc.

Party: The person in a divorce action whose rights and/or interests are to be affected by the divorce.

Petition (Complaint): The first pleading in an action for divorce, separate maintenance, or annulment, setting forth the allegations on which the requested relief is based.

Petitioner (Plaintiff): The party who files the Complaint for divorce or any other petition.

Plaintiff (Petitioner): The party who files the Complaint for divorce.

Pleading: Formal written application to the court for relief and the written response to it. Pleadings include petitions, answers, counterclaims, replies, and motions.

Privilege: The right of a spouse to make admissions to his or her spouse or a lawyer, member of the clergy, psychiatrist, doctor, or certified social worker that are not later admissible in evidence.

Production of Documents. The process of writing out what documents are being provided to the other side in response to “Requests for Production of Documents” and the actual giving of the documents to the other side.

Pro se: A person who is a party to a lawsuit but who is not represented by a lawyer (also “pro per”).

Protective Order. An Order entered by the Court which affects how the Discovery Process in a particular case will proceed.

Relief: Whatever a party to a divorce proceeding asks the court to do: dissolve the marriage, award support, enforce a prior court order or decree, divide property, enjoin certain behavior, dismiss the complaint of the other party and so on.

Reply: The pleading filed in answer to the allegations of a counterclaim.

Report of referee with notice: The written document prepared by a referee, or court-appointed officer, after a hearing and submitted to the parties (husband and wife) and the judge; it is not law and final or an order of the court, but what is recommended to be an order of the court.

Request for production of documents: One of the primary methods that attorneys use to find out what documents the other side may have or know of that are important to a particular case and to obtain copies of those documents.

Residential Parent. The modern way of saying “custody”, or the person with whom a child will reside the majority of the time.

Respondent (Defendant): The one who defends the divorce proceeding brought by another.

Restraining Order. An Order issued by the Court which prohibits the doing of some act by a party to the lawsuit.

Retainer. A sum of money that is paid up front to an attorney to secure his or her representation of you, which amount may be refundable or non-refundable depending on the particular case and circumstances. As a general rule, the attorney will bill against this initial payment at his or her normal hourly rate until the retainer has been applied.

Retroactive. This is a concept which basically means “starting at some point in the past” for example, in a child support situation, a Court may make an Order that is entered in July retroactive to January, meaning that the payments would be due from January through July as well.

Rules of evidence: The rules that govern the presentation and admissibility of oral and documentary evidence at court hearings or depositions.

Separate property: Property that is not “marital property.”

Setoff: A debt or financial obligation of one spouse that is deducted from the debt or financial obligation of the other spouse.

Settlement: The agreed resolution of disputed issues.

Show cause: Written application to the court for some type of relief, which is made on such notice to the other party as the court directs.

Stipulation: An agreement between the parties or their counsel.

Subpoena: A document served on a party or witness requiring appearance in court. Failure to comply with the subpoena could result in punishment by the court. A subpoena duces tecum is a subpoena requesting documents.

Summons: A written notification that legal action has commenced, requiring a response within a specified time period.

Temporary or pendente lite motions: Applications to the court for interim relief pending the final decree of divorce, separation, or annulment. Typical temporary motions include motions for temporary maintenance, child support, attorney’s fees, costs, expert fees, custody, visitation, enforcement or modification of prior temporary orders, or requests for exclusive possession. The court enters a pendente lite order after determining a motion. Motions are brought on by the service of a notice of motion or order to show cause, with affidavits.

Temporary restraining order (TRO): An order of the court prohibiting a party from doing something - for example, threatening, harassing, or beating the other spouse and/or the children, selling personal property, taking money out of accounts, denying him or her a motor vehicle.

Testimony: Statements under oath by a witness in court or during a deposition.

Transcript: A typewritten record of testimony taken by a court reporter during a deposition or court.

Trial: A formal court hearing to decide disputed issues raised by the pleadings.

Uncontested divorce: A proceeding in which a person sued for divorce does not fight it or may have reached an agreement with the spouse during the divorce proceedings.

A HISTORY FOR YOUR ATTORNEY

Your lawyer needs information about you, your spouse, and your marriage. While these questions do not cover everything that your attorney will need to know about you; however, it provides a starting point for the personal information that will be needed. Your lawyer will let you know if the following information is needed.

This section includes

- Your Autobiography
- A Description of Your Spouse
- What Your Law Firm Should Know About You

Your Autobiography

To be represented effectively, you must prepare, in writing and preferably typewritten, an autobiography and list of priorities related to your divorce. Include the following:

1. Educational background;
2. General employment history;
3. Assets and their estimated value owned by each spouse at the time of marriage, including separate funds brought into the marriage.
4. Special contributions, such as spouse assistance in the business, contributions to his or her education, use of separate funds for living expenses or to acquire assets;
5. Source of down payment on all real property;
6. Range of your spouse's and your personal income during the marriage;
7. Cause of marital breakup;
8. Dissipation or waste of assets through gambling, loans, or investments, etc.;
9. All nonfinancial contributions to child-rearing;
10. A list, in order of priority, of the results you seek in the divorce;
11. Assets acquired during the marriage, including inheritances and gifts.

What Your Law Firm Should Know About You and Your Spouse

	Husband	Wife
1. Full Name	_____	_____
2. Telephone (work)	_____	_____
(home)	_____	_____
3. Residence	_____	_____
Street	_____	_____
City, State, Zip	_____	_____
Inside city limits (yes/no)	_____	_____
Length of residency?	_____	_____
Currently living w/spouse?	_____	_____
4. Social Security Number	_____	_____
5. Maiden Name		_____
Will return to maiden name?		_____
6. Are you pregnant?		_____
7. Current occupation	_____	_____
Current employer	_____	_____
Type of work during most of working life, including		

business _____

Husband

Wife

8. Date of birth _____

State or county of birth _____

9. Race (e.g. Caucasian,
African-American, etc.) _____

10. Were/are you or your
spouse a member of U.S.
Armed Forces? _____

If so, dates of service _____

11. Date of marriage _____
Place of marriage
(City, State) _____

Date of separation _____

Is there any hope of reconciliation? _____

Either party ever started a divorce or legal separation action against current
spouse? _____

How many times? _____ For each action state the following:

Year started _____ In what court (state and county) _____

Outcome of action (dismissed, divorce, or legal separation granted)? _____

Date of dismissal or decree _____

Attorneys involved _____

12. No. of previous marriages _____

Ended by death, divorce or annulment? (Indicate one) _____

Who has custody of minor children of any previous marriage(s)? _____

Support obligations

College _____

Alimony _____

Child _____

	Name	Date of Birth, Age
13. Children of this marriage		
Indicate born (B) or adopted (A)	_____ ()	_____
	_____ ()	_____

Who is the children's primary caregiver? Please provide detailed information.

Do you have special needs children _____

14. Your medical history _____

When was the last time you consulted a physician? _____

Physician's name _____

For what conditions have you been treated by any doctor or dentist within the past three years? _____

Have you had any major health problems during your marriage? _____

When was the last time you were hospitalized (for a condition other than childbirth), and for what condition? _____

Does your spouse have a major health problem or any particular physical condition? _____

Do any of your children have exceptional health needs? _____

15. Are there any other actions or proceedings in which you or your spouse is involved? _____

Emergency Contact: If this office *must* reach you on short notice, give the name, relationship, address and phone number of the person most likely to know where you are.

Name _____

Phone Number _____

Address _____

Relationship _____

YOUR LAWSUIT AT A GLANCE

This section explains the divorce process from your first interview to filing of the judgment. It also describes in detail the information-gathering process, which is known as discovery. Included are descriptions of the major discovery devices, instructions for your depositions, and lists of documents to collect for your lawyer.

This section includes

- Your lawsuit
 - The Beginning
 - Negotiation
 - Temporary Orders
 - Support
 - Discovery
 - Default and Uncontested Cases
 - Contested Cases
 - Judgment
 - Bifurcation
 - Postjudgment Matters
- What is Discovery?
- The Paper Chase
- Documenting Income
- Your Deposition

Your Lawsuit

Once your lawyer has been retained, he or she will begin work on your family law problem. Alternative dispute resolutions, such as negotiation and mediation, are options you may want to talk about as well as whether or when to file for divorce.

Lawsuits proceed in different ways. Here are some examples to help you discuss strategies with your lawyer. If you institute the suit, you will be referred to as “plaintiff” or “petitioner.” The other party will be the “defendant” or “respondent.” Your lawyer will file papers (a “petition” or “complaint”) with the proper court and request service (“delivery”) of the papers to the defendant. Generally, the completed papers will be submitted to you for approval before they are filed.

After the papers have been delivered to the defendant, the law provides a specific time during which he or she may respond to your petition. This period may be extended by the court or by agreement between the attorneys.

Negotiation

Dissolving a marriage requires that everyone work together so a bad situation doesn’t get worse. It is in both sides’ best interests to act in a civilized, courteous manner and to negotiate in a way that will defuse tensions, avoid hostility, and maximize the ability of the parties and the lawyers to arrive at a fair and reasonable settlement.

Experienced family lawyers know, and countless studies confirm, that an agreement negotiated between the parties is the best possible outcome, because it allows them to fine tune matters that courts are ill-equipped to resolve. After all, the court will never know a case as well as the parties and their lawyers. A negotiated settlement almost always costs less than a litigated one.

In a small percentage of cases, however, despite everyone’s best efforts, settlement cannot be reached. This may be due to the parties’ unrealistic expectations, a dispute over the facts or the law, novel circumstances or issues, or one party’s unwillingness to grant the other a divorce.

No settlement will be reached without your consultation and approval.

Temporary Orders

Often it is necessary to get some kind of immediate relief when the divorce is filed. It may be a restraining order, immediate temporary support, control of assets, custody and visitation orders, a right to remain in the home, or payment of attorney’s fees. In such cases, a lawyer files the motion and the judge signs an order directing the other party to appear for a court hearing on why the court should not grant the relief. The hearing usually is within a few weeks after the papers are filed and served. The temporary orders, sometimes called “pendente lite,” may be changed again during the divorce case or at judgment (when your case is settled or tried).

At temporary relief hearings, the court may take testimony or may proceed on the basis of the documents filed or the lawyers’ offers of proof. Time generally is limited, and many courts prefer not to take testimony.

Support

Support needs - for children and/or one of the divorcing spouses - are one of the most common reasons for an immediate hearing. At such a hearing, the party seeking support will

present evidence of his or her needs, obligations, expenses, and income. The spouse from whom support is sought will present evidence of his or her expenses, debts, and income.

In most states, temporary child and spousal support is based solely on the income of the two parties and on state or local support guidelines. For this reason, it is important to prove your income and your spouse's income early in the process. Help your lawyer put together a complete financial history by providing any documents pertaining to income. For details, see the financial information form on page 29.

The temporary support set at this first hearing is important to both parties. Temporary orders are usually in effect from 90 days to the completion of trial.

You may ask the court to rule on other issues, such as who should remain in the family home during the divorce proceedings, who will control certain assets (such as a car), and who is responsible for certain debts.

Discovery

The next stage of the proceeding is usually a "discovery" period, during which both sides collect information necessary for settlement discussions and/or trial. Discovery is accomplished through interrogatories, depositions, and requests for documents.

Uncontested Cases

In a default or uncontested case, only one party will go to court. A respondent defaults if he or she fails to answer within the allotted time. A divorce is uncontested if the parties reach a compromise on every issue. In either case, the actual court appearance will be short. Testimony may be needed to prove that grounds for divorce exist. The judge will then grant a "Judgment of Dissolution of Marriage." The plaintiff will sign the judgement, prepared by his or her attorney. Some states require no court appearance in a default or uncontested case. The judgement and other documents are simply submitted to the court.

Contested Cases

If it seems unlikely that your case will settle, or if your lawyer determines that having a trial date might encourage settlement, he or she will request a trial date. After all pretrial discovery has been completed, the case will be certified for trial.

In some areas of the country, pretrial conferences are mandatory and serve to bring attorneys and clients together before the judge for the purpose of settlement. The pretrial conference is not a trial; no witnesses need be alerted. If at a pretrial conference you and your spouse are able to settle all matters in dispute, the resolution is usually recited on the record (before the judge and court reporter). If settlement is not reached, another pretrial conference or the trial may be scheduled. Absent agreement on all issues, the case is contested and a trial is necessary. Preparing for trial is intense, time-consuming, and expensive.

At the trial, witnesses may be called and records subpoenaed to substantiate each party's position on support, custody, property, or other issues. Testimony may be introduced to show jurisdiction (that this is the appropriate court to rule on the matter) and the legal

grounds for divorce. However, the balance of the testimony will focus on matters in dispute, and will take a relatively short time.

The judge will render a decision immediately after hearing all the testimony or study it further and inform the lawyers by mail within a few days or, occasionally, several weeks or months. After the judge notifies the lawyers of the decision, they may further clarify or argue points before the ruling becomes a formal judgment. The judge will ask one of the lawyers to prepare the Judgment of Dissolution of Marriage for approval by the other lawyer. Then the judge will sign and enter the judgment.

The time between the filing of a response to a divorce petition and the trial date will depend on the court's backlog and the time the case is expected to take. Nine months to a year is not unusual.

Judgment

In most states, a marriage may not be dissolved until a specific time has elapsed after the respondent receives the summons and petition or files an appearance, whichever occurs first.

Other matters vary by state, such as which court will hear the case, how long you must live in a state before filing for divorce, and the waiting period between commencement of an action and the judgment. Do not set a date to remarry until the judgment is entered and all required time has elapsed.

Bifurcation

Sometimes a person wants to be single and thus eligible to remarry before all the issues in the divorce are resolved - property division, support, or custody. In some states it is possible to bifurcate the divorce, which means divide it in two. The issues of marital status is separated from all other issues by stipulation or court order.

Postjudgment Matters

To complete property transfers after judgment, deeds and other documents must be signed and recorded (by settlement or trial). This can take several weeks after the judgment and requires your cooperation.

During the course of your case, you may need to provide your lawyer with certain items of personal property such as wills, stock certificates, and photographs. At the end of your case, you are responsible for having these personal items returned.

An appeal is a separate proceeding for which you may want to retain your lawyer or other counsel. Bear in mind that your time to appeal is limited.

What Is Discovery?

Discovery refers to both parties' right and responsibility to gather and disclose

information - primarily financial - to the other side. The most common discovery proceeding is deposition or examination before trial (sometimes called an “EBT”). A deposition, which generally takes place in a lawyer’s office, is the sworn testimony of you and/or your spouse. Generally, you, your spouse, both lawyers, and a court reporter are present.

If you are deposed, you will receive advance written notice of the date and the documents requested by your spouse’s attorney. Your lawyer may help you prepare. Review the notice carefully and bring two copies of each document to your deposition.

The actual discovery procedures may be informal as a telephone call from your lawyer requesting any checking-account records you have, or as formal as a long list of questions you will be required to answer under oath (see “interrogatories” below).

In most family law cases, both spouses will be asked to produce documents and records and respond to questions. It is essential that both sides have all the information and documentation necessary to prepare for trial and to form the basis for meaningful settlement discussions.

By approaching these matters in the spirit of cooperation, you will reduce the time required for discovery and the cost of your case. Many lawyers try to gather as much information as possible informally. However, when this is inadequate, your lawyer must resort to the procedures provided by law in legal adversary proceedings. They are:

- 1 **Admissions.** You or your opponent may be required to admit or deny specific written statements. These require immediate attention because by law a response must be received within a specified time - for example, if you do not respond in 30 days to a statement made by your spouse, it is deemed admitted and the court accepts it as fact.
- 2 **Interrogatories.** You or your opponent may submit a list of detailed written questions. These must be answered (under oath) within the allotted time. If you fail to respond within the time required, you may be fined or your case dismissed.
- 3 **Depositions.** This is the most common form of discovery. In its simplest form, a discovery deposition is the oral testimony of a witness taken under oath before trial. Most of the objections available at trial do not apply. Questions must focus exclusively on relevant case information.
- 4 **Production of Documents.** This is a written request to the opposing party for a specific list of documents to be produced at a specific date and time.
- 5 **Requests for Entry on Land.** It may be necessary for your lawyer to formally request access to property to appraise a house or business or value their contents. The request will specify when and why access is necessary.
- 6 **Requests for Vocational Evaluation.** This permits a trained vocational evaluator to assess earnings potential by interviewing and testing the person to find out what career choices would be appropriate and what training might be required to achieve those

career goals. The evaluator will also report on the job market possibilities and potential earnings. In many states, the court considering spousal support will want this information to find out if the spouse seeking support can contribute toward his or her living expenses. The court generally gives considerable weight to such testimony.

- 7 **Requests for Physical and Mental Examination.** Such requests are not as common in family law cases as they are in personal injury cases. However, such a request is appropriate if a party has put either mental or physical condition in issue. Generally, a party may not request a mental examination just because he or she thinks the other party is “crazy”.

The Paper Chase

Documents contain a great deal of information that will help your attorney prepare for settlement or trial. Your case may require documents for many categories of information or just a few. Your attorney will indicate which items you should obtain.

Documents for Divorce Proceedings

1. **Financial Affidavit** - a completed affidavit or declaration on the form your attorney gives you.
2. **Estimated Taxes** - income tax records, including estimated tax returns, W-2, 1099, and K-1 forms, payroll stubs, and all other evidence of income since the filing of your last tax return.
3. **Income Tax Returns** - personal, corporate, partnerships, joint ventures, or other income tax returns, state and federal, including W-2, 1099, and K-1 forms, in your possession or control from the inception of the marriage.
4. **Personal Property Tax Returns** - filed in this state or elsewhere at any time throughout the marriage.
5. **Banking Information** - all monthly bank statements, passbooks, check stubs or registers, deposit slips, canceled checks, and bank charge notices on personal and business accounts, certificates of deposit, money management, and retirement accounts in your possession or control from banks, savings and loan institutions, credit unions, or other institutions, which have been or are maintained at any time for or by you, individually, jointly or as a trustee or guardian, and in which you sign or have had any legal or equitable interest.
6. **Financial Statements** - submitted to banks, lending institutions, or any persons or entities, which were prepared by or on your behalf at any time during the last five years
7. **Loan Application** - and statements of loan accounts for all loans applied for, whether approved or not, for the last five years.
8. **Broker's Statements** - all statements of account from securities and commodities dealers and mutual funds you maintained and received during the marriage and held

individually, jointly, or as a trustee or guardian.

9. **Stocks, Bonds and Mutual Funds** - certificates held individually, jointly or as a trustee or guardian, including any stock brokerage accounts (and statements) owned during the marriage.
10. **Stock Options** - all records pertaining to stock options held in any corporation or other entity, exercised or not.
11. **Pension, Profit Sharing, Deferred Compensation Agreement, and Retirement Plans** - or any other kind of plan owned by you or by any corporation in which you are or have been a participant during the marriage.
12. **Wills and Trust Agreements** - executed by you or in which you have a present or contingent interest or in which you are named a beneficiary, trustee, executor, or guardian and from which benefits have been received, are being received, or will be received and which are or were in existence during the past five years, including *inter vivos* (those made while the parties are living). All records of declaration of trust and minute books for all trusts to which you are a party, including the certificates, if any, indicating such interest and copies of all statements, receipts, disbursements, investments, and other transactions.
13. **Life Insurance** - or certificates of life insurance currently in existence, insuring your life or the life of any other person, in which you are named as either primary or contingent beneficiary, including any disability insurance currently in existence.
14. **General Insurance** - insurance policies, including, but not limited to, annuities, health, accident, casualty, motor vehicles of any kind, property liability, including contents insurance in which you are or have been the named insured for the last three years.
15. **Outstanding Debts** - documents reflecting all debts owed to you or by you, secured or unsecured, including personal loans and lawsuits now pending or previously filed in any court, showing the name of the debtor and/or creditors, the date each debt was incurred, the total amount, and the unpaid balance.
16. **Accounts Payable and Receivable** - ledgers in your possession and control that are personal or business related, together with all accounts and journals.
17. **Cash Receipt Books** - evidence of budgets, cash projections, and other financial documents in your possession. This applies to all items that existed at any time throughout the marriage.

- 18. Real Property** - all deeds, closing statements, tax bills, appraisals, mortgages, security agreements, leases, and other evidence (including monthly payments and present principal and interest balances) of any type of interest or ownership, whether as owner, co-owner, fiduciary, trust beneficiary (vested or contingent), partner, limited partner, shareholder, joint venturer, mortgagee, developer, manager, or otherwise, during the term of the marriage; together with evidence of all contributions, in cash or otherwise, made by you or on your behalf, toward the acquisition of such real estate during the marriage or afterward.
- 19. Sale and Option Agreements** - on any real estate owned by you either individually, through another person or entity, jointly or as trustee or guardian.
- 20. Personal Property** - documents, invoices, contracts, and appraisals on all personal property, including furniture, fixtures, furnishings, equipment, antiques, and any type of collections, owned by you individually, jointly, as trustee or guardian, or through any other person or entity during the term of the marriage, together with the amount of their respective liens. An excellent source of information is on the insurance riders corresponding to your homeowner's insurance.
- 21. Motor Vehicles** - purchase orders, contracts, financing agreements, invoices, appraisals, lease agreements, registrations, and payment books and titles to all motor vehicles owned by you, individually or jointly, at any time during the last five years, including airplanes, boats, automobiles, or any other type of motor vehicle.
- 22. Corporate Interests** - all records indicating any kind of personal interest in any corporation (foreign or domestic) or any other entities not evidenced by certificates or other instrument.
- 23. Partnership and Joint Venture Agreements** - to which you have been a party during the marriage.
- 24. Employment Records** - during the term of the marriage, showing evidence of wages, salaries, bonuses, commissions, raises, promotions, expense accounts, and other benefits or deductions of any kind that were, are, or may be paid, available, credited, or withheld for any purpose by any individual or entity or to which you were, are, or may become entitled in the future.
- 25. Fringe Benefits** - all records serving as evidence of any benefits available to you from any business entity in which you have legal or equitable ownership interest, including, without limitation, auto, travel, entertainment, educational, and personal living expenses.
- 26. Employment Contracts** - under which you are performing services and/or rendering

merchandise or materials, or under which someone is indebted to you for services and/or merchandise and materials already furnished, during the past three years, including a list describing any oral contracts.

- 27. Business Records** - If you are self-employed, a partner, or own more than 10 percent of the outstanding capital stock of any corporation, produce the documents requested in numbers 6, 8, 13, 14, 15 and 25 with respect to that business.

- 28. Charge Accounts** - controlled or authorized for your personal or business use, including all statements and receipts you received in connection with the use of such charge accounts, together with a list of those businesses for which you are or have been authorized to charge items to another person's or entity's account during the marriage.

- 29. Membership Cards** - or documents identifying participation rights in any country clubs, key clubs, private clubs, associations, or fraternal organizations during the marriage, together with all monthly statements.

- 30. Judgments** - and pleadings to which you have been a party, either as plaintiff or defendant, during the marriage.

- 31. Gifts** - all records pertaining to the gifts of any kind made to you or by you to any person or entity, together with all records in connection with the transfer of personal property, by sale, gift, or otherwise, during the marriage.

- 32. Charitable Contributions** - receipts, canceled checks, or other tangible evidence of charitable donations you made.

- 33. Medical Bills** - prescriptions, evaluation reports, or diagnosis for psychiatric treatment received during the last five years.

- 34. Telephone and Long Distance Charges** - received in the form of monthly telephone statements for numbers that have been in your name or the name of any corporation, partnership, or other entity in which you have been a major shareholder, officer, or director for the past three years.

- 35. Tapes and Photographs** - all written memorandums, reports, and photographs submitted to you or your attorney by any other person; all tape recordings and other evidence prepared from tape recordings made in connection with any wiretapping or other electronic surveillance conducted by you or others on your behalf.

- 36. Inventory of Safe Deposit Boxes** - of husband and/or wife.

Documenting Income

Determining a person's income would seem to be a fairly straightforward endeavor on its face; however, as any lawyer who has chased the proverbial "income rabbit" will attest, the process can get complicated in a hurry. The following list provides a good starting point in accounting for all of a person's income.

Documented Income

1. Gross income from employment.
2. Tips.
3. Commissions.
4. Bonuses.
5. Profit-sharing.
6. Deferred compensation.
7. Severance pay.
8. Cost-of-living allowances.
9. Overtime.
10. Second jobs.
11. Part-time jobs.
12. Contract income.
13. Investments.
14. Interest and dividends.
15. Pensions.
16. Trust and estate income.
17. Royalties.
18. Annuities.
19. Structured settlements.
20. Capital gains.
21. Social Security benefits.
22. Veterans' benefits.
23. Military personnel fringe benefits.
24. National guard and reserve drill pay.
25. Workers' compensation.
26. Unemployment insurance.
27. Strike pay.
28. Disability insurance.
29. Retirement/pensions.
30. Gifts.
31. Prizes, lottery winnings.
32. Educational grants.

33. Income of new spouse or live-in companion.
34. Alimony received.
35. Support from cohabitant.
36. Business income from sources such as self-employment, partnership, close corporations, independent contracts.
37. Type of business expenses claimed to arrive at net business income.
38. Rental income.
39. Public assistance.

Less Obvious Income

1. Employment perquisites, including use of car, yacht, housing, reimbursed expenses such as moving and relocations costs, business and professional memberships, medical services, subsidized travel, paid vacations, first-class air travel, recreational facilities, barber/beauty shop services, home entertainment allowance, tickets for theater and sports.
2. Forgiveness of debt.
3. Use of property at less than customary charge.
4. Profit-and-loss statements of closely held business.
5. Excessive deductions.
6. Excessive prepayment of debts.
7. Unusual expenditures.

Deductions

1. Federal, state and local income taxes.
2. FICA or self-employment tax (annualized).
3. Mandatory union dues.
4. Mandatory retirement.
5. Health insurance payments.
6. Court-ordered support payments for children actually paid.
7. Alimony actually paid.

Imputed Income

1. Lifestyle of parent versus stated income.
2. Work history.
3. Mental and physical condition.
4. Educational background.
5. Efforts to find and retain employment.
6. Current job market.
7. Voluntary vs. involuntary act resulting in a decrease of earnings.

Your Deposition

Your deposition may be taken during the divorce action. A deposition is an important procedure, for which you and your lawyer will prepare. The following instructions will help you understand what a deposition is, why it is being taken, how it works, how you should act, and the pitfalls to avoid.

Predeposition Instructions

1. What is a deposition? A deposition is the testimony of a witness taken under oath before trial. Opposing counsel will ask the questions, and a court reporter will record the lawyer's questions and your answers. Your lawyer will be present, but the judge will not. In all likelihood, the deposition will take place in one of the lawyer's offices. The testimony you give at your deposition will be similar to what you will later testify to in court.

2. The purpose of a deposition. Opposing counsel will take your deposition for three main reasons:

- To find out your personal knowledge of the facts and issues in the case; in other words, to know your story and what you will say in court.
- To pin you down to a specific story so that you will have to tell that same version of your story in court.
- To catch you in a lie so as to persuade the court that you are not a truthful person and therefore your testimony should not be believed on any of the points, particularly the crucial ones.

These are legitimate purposes, and opposing counsel has every right to take your deposition. Likewise, you have the same right to take the depositions of the opposing party and all witnesses.

3. Pitfalls to avoid. Always remember that as a litigant or a witness your only goal is to give the facts as you know them.

- Do not give opinions. Generally speaking, if you are asked a question that calls for an opinion, your attorney will object to the question. However, if your lawyer advises you to go ahead and answer after the objection, then answer.
- Never state facts that you do not know. Even if saying you don't know makes you appear ignorant or evasive, do not guess or estimate an answer. If your answer is wrong, your opponent can use it to show that you do not know what you are talking about or to imply that you are deliberately not telling the truth.
- Never try to explain or justify your answer. Doing so might make it appear

- that you doubt the accuracy or authenticity of your testimony.
- Only give readily available information. Do not ask your lawyer for information or ask another witness. Do not volunteer to look up anything or supplement your answer unless your lawyer tells you to.
 - Do not reach into your pocketbook, wallet, or briefcase for any documents or information, unless your lawyer tells you to. Likewise, do not ask your lawyer for any document in his or her file.
 - Do not get angry. This destroys the effect of your testimony and may cause you to say things that can be used against you later.
 - Do not argue with the lawyer. Give the information you have - that is all opposing counsel is entitled to. Answer questions in an ordinary tone of voice. An emotional response to certain matters could give your opponent an advantage.
 - If your lawyer starts to speak, stop answering immediately and allow him or her to talk. If your lawyer is objecting to the question, do not speak until he or she advises you to answer or opposing counsel asks the next question.
 - Take your time. The transcript of your deposition does not show how long it takes you to answer. Think about each question and answer it in a straightforward manner.
 - Tell the truth. The truth will never hurt you. Your lawyer may explain away the truth, but cannot explain away your lie or your concealment of the truth.
 - Never joke in a deposition. Humor will not be apparent on the transcript and will make you look crude or cavalier about the truth.
 - Do not volunteer facts. Simply answer yes or no. Do not elaborate unless asked to do so. Such information can only hinder your case.
 - After the deposition, do not chat with your opponent or your opponent's lawyer. Remember, they are your legal enemies. Do not let good manners cause you to drop your guard.
 - If you do not understand a question, ask that it be rephrased or repeated.

After reading these suggestions, write down any questions you have and ask your lawyer about them before your deposition.

YOUR DAY IN COURT

Although most divorce cases are settled out of court, some cases require temporary orders from the court, and others require a trial to resolve some or all issues. Whatever the reason for them, court appearances can raise the anxiety of even the most stout-hearted. Knowing what awaits you, how to dress, and how to act will alleviate some of the stress. This section gives you an overview of what to expect in court.

This section includes

- Going to Court
- Your Case is Called
- Your Testimony

Going to Court

Your case is pending in this court on _____

Your case number is _____

The address of the court is _____

Parking is available at _____

Some General Thoughts:

1. Going to court is bound to raise your anxiety. Knowing what is going to happen and how to act helps diminish your nervousness.
2. You should dress comfortably, conservatively, and in a manner that shows respect.
3. If you are uncertain about what is appropriate, ask your attorney.
4. The court personnel will usually include a judge, a court reporter, a court clerk, and a bailiff. In a contested trial, your spouse, his or her attorney, experts, and other witnesses will be present.
5. If more than one case is set, you may have to wait while other cases are handled.
6. Because being in court can be tedious, bring supplies to get you through the day: a pen or pencil and small notepad, aspirin, hard candy or a snack, and a book (in case you have to wait).

Your Case Is Called

1. As your legal representative, your lawyer will give a brief statement of the facts or basis for your suit. This may occur in open court or may take place informally in the judge's chambers.
2. In uncontested cases you will be asked to come forward, be sworn, and take the witness stand. You will be asked questions that will enable you to present your story to the court. It is not unusual for the judge to ask one or two questions. After your case has been heard, it is submitted to the court, and a judgment is requested. An executed marital settlement agreement may be presented to the judge for approval and/or review.
3. When a contested case is called, you will be offered a chair beside your attorney at the counsel table, which will be your place during the trial. The petitioner will put on his or her case and witnesses first. Witnesses will be called and sworn, and will testify. 4. Each party's attorney will have the opportunity to question each witness as well as the petitioner and the respondent.
5. If you are the respondent in the case, you may be called for cross-examination. (The opposing attorney may request your testimony under oath before your attorney questions you.) You also may be called as the first witness. This is the usual procedure, so your lawyer will assist and prepare you for this.
6. After the case is heard, your attorney argues the issues. Sometimes each lawyer submits briefs and/or memorandums after the trial. The judge may decide the case immediately, may spend some time studying it, or may wait to hand down a judgment until he or she has further memorandums and briefs.

Your Testimony

Whether or not your case is contested the following suggestions will improve your appearance and testimony in court:

Tell the truth. Don't guess. Be sure you understand each question, and answer only that question. As with depositions, do not volunteer information when testifying in court. If you are asked how many children are in your family, for example, simply give the number. Do not volunteer additional information, such as "We have two children. I wanted more, but because I spent five years in the penitentiary, we were unable to have a larger family."

Take your time, and talk loudly enough for everyone to hear. Don't chew gum, and keep your hands away from your mouth.

Be courteous. Don't argue with the other lawyer and do not lose your temper.

Don't be afraid. Look at the person who asks the questions, and be as positive as you can. Just tell your story in your own words to the best of your ability.

Be sincere and direct. Keep to the point.

Do not be ashamed to tell the whole story. This is your one day in court. The outcome of the case may well depend on the facts you and your witnesses disclose.

Your lawyer will consult with you during the course of the trial. As the trial progresses, tell your lawyer, by a note or a whisper, anything that you believe he or she should know. Be careful not to distract your attorney, however. Particularly during testimony, your lawyer must concentrate totally on each question and answer, watch the reactions of the judge and the opposing counsel, and be ready to object instantly.

CHILDREN, PARENTS, AND RESIDENTIAL TIME (CUSTODY)

This section defines the most commonly used custody designations and highlights the factors a court examines in making a custody determination. Factors determining child support vary from state to state, but each state does have guidelines and those are discussed here. Tips for Better Parenting should be useful for years to come. This section also explains how you can best communicate your parent/child relationship to the court.

This section includes

- Custody and Child Support
 - Determining Custody
 - Types of Custody
 - Time-sharing
 - Dispute Resolution
 - A Definition
 - Guidelines
 - Enforcement
 - Modification
- Tips for Better Parenting
- Communicating About Your Children

Custody and Child Support

This is not meant to be a complete guide to custody and support. Each case is unique, and your situation may not be covered here.

When children are involved, your relationship with your spouse does not end with the final decree. You will continue to have contact with your spouse regarding support, visitation, and other parental responsibilities. For the sake of your children, keep the lines of communication with your spouse open. Don't let your children be the losers in your divorce.

Custody of minors consists of two distinct concepts: decision making and time-sharing. Both or one of the parents may be responsible for decisions affecting the children. Time-sharing refers to the amount of time each parent will spend with the children.

Determining Custody

The Court determines custody on the basis of what it believes to be the best interests of the children. The court considers all relevant factors, including the:

- Child's relationship with the parents, siblings, and any other person who may significantly affect the child;
- Parent's wishes;
- Child's wishes, depending on the age and maturity of the child;
- Mental and physical health of all individuals involved;
- Ability and willingness of each parent to care for the children;
- Respect each parent shows for the parental rights of the other parent;
- Adherence to a time-sharing schedule;
- Suitability of parenting plans submitted by each party;
- Geographic distance between the parties; and
- Willingness and ability of each parent to cooperate.

Types of Custody

A variety of terms describe the way parents share their children's time:

Sole physical custody. The child resides with and under the supervision of one parent, subject to the power of the court to order visitation with the other parent.

Joint physical custody. Each parent spends significant periods of time with the child. This arrangement generally assures frequent and continuing contact with both parents. It does not necessarily mean that the parents share equal time with the child.

Sole legal custody. One parent has the right to make the decisions regarding the health, education, and welfare of the child.

Joint legal custody. Both parents share decision-making responsibilities relating to the health, education and welfare of the child. In some states, it is necessary to specify which of those decisions are to be made by both parents. All other decisions can be made by either parent. There is a presumption in some states that joint legal custody is in the best interests of the child.

Time-sharing. Time-sharing describes an arrangement through which both parents share the children. Time-sharing can be as varied as the families that use it. There is no “right” schedule that fits all families or all age groups.

Dispute Resolution

If the parents cannot agree on custody and a parenting plan, a variety of methods exist for arriving at a custody agreement and order: mediation, arbitration, and evaluation and trial. In those states that require mediation, the parties must attempt to resolve their dispute with a trained mediator before the court will address the custody issues. If the parties do not reach an agreement with the help of the mediator, they must return to the Court to determine the issues related to the minor child(ren).

What is Child Support (and what isn't)

Child support is a court-ordered payment made to a spouse weekly or monthly for the support, maintenance, and education of the children. Voluntary gifts, clothes, transportation, vacation expenses, and rent, which benefit the child, may not be considered support. The court does not usually require the custodial parent to account for the support. Child support stops when the child reaches maturity (age varies by state) or when state law decrees it or agreement is reached to that effect. The parents may agree to care for the child beyond age 18, for example, until the child completes a college education or reaches the age of 21.

Guidelines

All states have guidelines by which courts determine support. The guidelines may contain formulas or tables that define the incomes of both parents and the time-sharing schedule. The guidelines may provide that parents share the cost of certain expenses, such as work-related child care and medical insurance, in proportion to their incomes. Statutes permit deviation from guidelines on an appropriate showing.

Enforcement

Child support may be enforced in a variety of ways, the primary way being contempt of court charges, which can result in an obligor being jailed until the support is paid.

Modification

Until the child is emancipated (an adult), the court has the power to modify custody and child support whenever necessary. A change of circumstances is generally required for the court to modify a previous order. Remarriage of either parent does not automatically result in a change of circumstances.

Tips for Better Parenting

Suggested guidelines for parents after divorce:

1. Put your children's welfare ahead of your conflict with your former spouse. Avoid involving your children in any conflict with your former spouse.
2. Remember that children need two parents. Help your children maintain a positive relationship with their other parent; give them permission to love that parent.
3. Show respect for the other parent. Do not make derogatory remarks to or in front of the children.
4. Honor your time-sharing schedule. Always notify the other parent if you will be late or cannot spend time with the children. Children may view missed visits, especially without notification, as rejection.
5. If you are the noncustodial parent, do not fill every minute with the children with special activities. They need at-home time with you.
6. Do not use the children as messengers or spies. Don't pump them for information about the other parent.
7. Strive for agreement on major decisions about your child's welfare and discipline so that you are not undermining the other parent.
8. Use common sense in exercising your custodial and visitation rights. Follow the old adage, "Do not make a mountain out of a molehill" and follow the Golden Rule: "Do unto others as you would have them do unto you."
9. Don't send or collect child support through the children.

Communicating About Your Children

It's important that you communicate the kind of relationship you have with your children. You can be the best parent in the world and have an impressive relationship with your children, but if you are unable to demonstrate that to the judge, the counselors, and the psychologists, you probably will not succeed in your case. Some people verbalize better than others. If you have good communication skills, it's a big help. If you are not able to communicate effectively about your relationship with your children, you must work to improve that ability.

When asked to describe their children, most people do a terrible job. They have a difficult time saying much more than, "Johnny's a great little kid." You should make the judge and evaluator believe that Johnny is "a great little kid" by helping them understand and visualize Johnny. If you can make the judge and evaluator feel close to Johnny by demonstrating that you do, chances are they are going to think that your relationship with Johnny should not be disturbed.

Speak in "word pictures." For example, "I have a headache" means different things to different people. "I have a throbbing headache" is more communicative. And, "I have a throbbing headache that is making me nauseated" is even more descriptive.

These are word pictures and are the kinds of descriptions you should use when talking about your children and your relationship with them. Remember that the judge who hears your case will have heard hundreds of cases; the names on the papers filed with the court often seem to be just that - names. You must humanize yourself and your children so that the judge can see that the names on paper represent real people - children with distinct characteristics and personalities, and a parent who cares about and loves children.

Practice describing your children. First write down their descriptions. Focus on their imaginations, senses of humor, or sensitivities. Then try describing the children aloud.

When you describe a child, begin with physical characteristics. Your Johnny may be blond, blue-eyed, four feet tall, 80 pounds, and 8 years old. You will also want to show a current picture of Johnny so that the judge and evaluator can see him. Next, help the judge and evaluator understand Johnny's personality, strengths, weaknesses, and the characteristics that make him unique. Again, do this in word pictures. Anecdotes about Johnny make him come alive.

The evaluator and judge want to know how much you really know about your children. For example, what size dress does your daughter wear? What size shirt does your son wear? Who is your daughter's music teacher? Who is your son's assistant principal? What's your daughter's favorite color? What's your son's favorite ice cream? You should know the answers to all those questions.

A large part of the process is assessing your relationship with your children; building your parenting skills and talents; recording information about you, your spouse, your children; and perhaps most important, improving the quality of the relationship you have with your children.

Your children simply can't lose in this effort if they come out of this case with a more caring, understanding, attentive, and skilled parent. If your spouse has made the same efforts, your children will emerge from the divorce with two parents who are functioning, both physically and

emotionally, on a higher plateau.

You may even notice that some of your problems with and complaints about your spouse have disappeared during the divorce. Don't be surprised if your spouse "cleans up his/her act" before going to court.

ADDITIONAL RESOURCES

Agencies, books, and organizations can lend a helping hand. Here, we give you information about interacting with agencies such as the Internal Revenue Service, Social Security Administration, and credit reporting agencies. Also included are detailed reading lists divided according to topic.

This section includes

- You and the I.R.S.
- Tax Form Request
- Social Security Spouse's and Survivor Benefits
- You and Your Credit
- National Organizations
- Resources
- Bibliography

You and the I.R.S.

These general rules are intended to alert you to issues and provide general information. Before you sign any tax returns or take any actions with respect to your federal or state income tax returns, review your situation with your tax adviser.

- 1.** If both you and your spouse sign a joint income tax return, each of you can be held responsible for all of the taxes due.
- 2.** If you are separated from your spouse, do not sign or file a joint return without clearing it with your attorney.
- 3.** If you are having trouble securing past joint tax returns, you may get them directly from the Internal Revenue Service (I.R.S.) By completing I.R.S. Form 4506.
- 4.** You may officially notify the I.R.S. that you have changed your mailing address from the address used on your last tax return by filing I.R.S. Form 8822. You should not do this without consulting your tax adviser, as there may be circumstances under which it may not be appropriate.

- 5.** Spousal support or alimony is taxable to the recipient spouse and deductible from the income of the payer spouse if all I.R.S. requirements are met. However, you and your spouse may elect not to make spousal support or alimony taxable. Such a decision should only be made by you after getting advice from your attorney and a certified public accountant.
- 6.** There are some very technical requirements imposed by the I.R.S. with respect to deductibility of spousal support or alimony. Your attorney or accountant can help you understand these rules.
- 7.** Child support payments are not deductible from the income of the payer spouse or taxable to the recipient spouse.
- 8.** Generally, the custodial parent will be entitled to claim the dependency exemption on his or her income tax return. The custodial parent (that is, the parent who has custody) may execute I.R.S. Form 8332, releasing the dependency exemption to the noncustodial parent. Some states will determine who gets the dependency exemption and require the other spouse to sign a waiver.
- 9.** Generally, there is no tax gain or loss recognized as a result of the division of property between spouses upon divorce. Thus, there is no tax incurred by dividing the property among the parties.
- 10.** It is important to know the basis of the property that you receive in the division of your assets. The basis is generally the cost of acquiring a capital asset. If the asset has appreciated, the person who receives that asset will be responsible for tax on the appreciation when the asset is sold.
- 11.** When you and you spouse sell your jointly owned residence, you will each be responsible for reporting half of any capital gain. Capital gain is the profit resulting from the sale of capital investments, such as stocks and real estate. Since the Federal Government routinely changes the tax laws with regard to the sale of a principal residence, you should consult your attorney or a certified public accountant for the most recent regulations applicable to such a sale.
- 12.** Generally, fees incurred for the production of income, such as obtaining spousal support or alimony, are deductible. IRC §212. Fees for tax advice are also deductible. Fees incurred defending against paying alimony are not deductible. If your spouse pays your fees, you may not take the deduction.
- 13.** A person qualifies as head of the household for income tax purposes if he or she provides

more than half the costs of a home for him or herself and a child or other dependent.

Social Security Spouse's and Survivor Benefits

If you and your former spouse were married for longer than 10 years and paid into the Social Security Trust Funds, you may be entitled to spouse's or survivor benefits on your former spouse's account. These benefits are provided by the federal government and do not need to be addressed in a state divorce judgment.

To meet the 10-year marriage requirement, you must be married to the same person for 10 full years from the date of your marriage. The "date of separation" or other such date recognized under state laws to be the operative date affecting married parties' rights does not affect your right to receive spouse's or survivor benefits - the date of a judgment terminating your marriage controls this determination.

The benefits you receive from your former spouse's account will not affect the amount of benefits he or she receives. But you will not receive these benefits if you are receiving benefits from Social Security as a result of your own employment in an amount of *equal to or higher than* the amount of your spousal benefits from your former spouse's account. Also, if you are receiving spouse's or survivor benefits on some other person's account, you will not be eligible for spouse's benefits from your former spouse's account.

Survivor Benefits

Former spouses are also eligible for survivor benefits. If your former spouse dies, and you meet the 10-year marriage requirement, you will be eligible for reduced survivor benefits at a specified age and full survivor benefits thereafter upon attaining a second specified age. Once again, the Federal Government continues to modify the specific ages set forth in the applicable regulations so you should consult with your attorney about the specific ages requirements that will pertain to your specific situation. As with spouse's benefits, your receipt of Social Security survivor benefits does not affect the amount of benefits paid to anyone else on your former spouse's account.

You cannot receive both spouse's benefits and survivor benefits from your current spouse. If you are receiving benefits at the time your former spouse dies, your benefits will automatically be converted to survivor benefits by the Social Security Administration.

Contacting Social Security

The Social Security Administration advises contacting it three months in advance of your anticipated eligibility date. For survivor benefits, this could be as early as three months before turning age 60, and for spouse's benefits, three months before turning age 62. Before that date, you may request an estimate of your benefits from the Social Security Administration by

completing an Application for Estimated Benefits available from Social Security on request.

When applying for Social Security benefits, you should have your

- Social Security card
- Birth certificate
- Marriage certificate
- Divorce judgment or decree, showing your marriage termination date

You may contact the Social Security Administration either in writing or by phone:

Department of Health and Human Services
Social Security Admin.
Baltimore, MD 21235
1/800-772-1213

Important Notice. Social Security laws are constantly changing, and your future benefits may be affected by those changes. To be sure of the exact benefits to which you are entitled, and your earliest eligibility to receive the benefits, contact the Social Security Administration directly. The Department of Health and Human Services issues numerous free pamphlets spelling out exactly what your benefits are and how they have been affected by recent legislation. Two booklets that may be helpful to you are “Understanding Social Security” (Jan. 1991) and “Survivors” (Jan 1991).

You and Your Credit

If you have joint credit cards with your spouse, you are both liable for *all* charges incurred on the cards. The only sure way to protect yourself against liability for further charges is to cancel the credit card. You may have seen notices in newspapers stating, “John Jones is no longer responsible for any debts incurred by Mary Jones.” This is not considered an effective way to limit your liability.

Options to limit your liability include:

- 1.** Notifying the credit card company directly by certified mail, return receipt requested, that you wish to close the account.
- 2.** Obtaining court orders regarding the use of the card and responsibility for payment. Such orders are effective between you and your spouse *but do not bind the creditor*.
- 3.** Establishing your own credit by obtaining a credit card in your own name immediately upon filing for divorce. Montgomery Ward and Sears cards are good ones to try first. Establish a credit history by using the card for several months and paying it promptly each month.
- 4.** Learning about your debt history by finding out whether there are liens against real property that has your name and/or your spouse’s name on it by checking with the county recorder. If you can pay for it, you may also contact a title company and ask for a copy of liens recorded. Title companies usually charge a modest fee for this service.

Contact a credit reporting bureau to get your credit history.

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