

Melissa Pearce & Associates, PLC

# DIVORCE

A Guide for Clients

Melissa M Pearce  
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## **WARNING**

**This information is not a substitute for a lawyer.**

**Do not try to use this information as a do-it-yourself divorce guide.**

**The information it contains may not be appropriate  
for your particular situation.**

**If you attempt to use the information instead of hiring a lawyer,  
you are setting yourself up for a potential  
disaster of epic proportions.**

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## **A CLIENT'S INTRODUCTION TO DIVORCE**

Larry Rice, an attorney from Memphis, Tennessee, once wrote:

Divorce is a part of life in this country. A divorce may be necessary to clear away a problem that blocks you from leading a better life. The biggest divorce I know of was when our country divorced itself from England in 1776. Divorce is not pleasant. Some divorces are more unpleasant than others are.

Generally, the following material will answer some of your questions about divorce proceedings. It will not answer specific questions about your particular case, since each case is different and decided upon depending on the facts of the case. Your divorce will not end the same as your cousin's case, best friend or neighbor. There will be similarities among each one, but each case will have unique facts and circumstances that yield a unique Judgment of Divorce.

The dissolution of a marriage may be a traumatic experience. As your attorneys, we are well aware of the emotional involvement of the parties. Though we are not behavioral specialists, we try to relieve your anxiety by attempting to assist in solving the problems, which you face during this case. If the emotional experience of divorcing your spouse becomes overwhelming, you should seek the assistance of a trained counselor or psychologist.

In order to properly represent you, it is necessary for you to give your assigned attorney all the facts concerning your case. Your assigned attorney must also know your wishes and they welcome your viewpoints. Withholding information from your attorney may affect the outcome of your case, so it is advised that you be complete candid with your assigned attorney. Remember, that a fiduciary relationship exists between attorney and client. In addition, you have a responsibility to thoroughly read the proposed divorce judgment before signing it and feel free to ask your assigned attorney any questions about any paragraph that you don't understand or if you don't see something that you think should be in there. If it is not clear to you now, it will not be clear later.

We want to stress, though your assigned attorney will counsel and advise you throughout the case, you must make the final decisions regarding your case. Our experience has shown that most divorce cases are settled, which means in those matters, the parties reach an agreement, which is placed upon the court's record. **NEVER AGREE TO SOMETHING YOU DO NOT UNDERSTAND OR SOMETHING YOU FEEL YOU ARE FORCED TO AGREE TO. YOUR CONSENT TO AN AGREEMENT MUST BE VOLUNTARY, AFTER CONSULTATION WITH YOUR ATTORNEY.** After an agreement is placed upon the record, it is extremely difficult to change it. It may be impossible to change it.

Finally, as your representative, your assigned attorney is here to advise and inform you, cite the options and alternatives available to you, process your divorce matter, assist you in decision-making, and cooperate with you in attempting to obtain the best possible results in your behalf.

## **PRENUPTIAL AGREEMENTS**

A prenuptial agreement is an agreement that is entered into prior to the marriage. You may hear someone call it an ante nuptial agreement. These names are interchangeable. A postnuptial agreement is entered into after the marriage, and it should not be confused with a prenuptial agreement.

There is statutory authority to uphold prenuptial agreements entered into in Michigan. MCL 557.28 provides that a contract relating to property made between persons in contemplation of marriage shall remain in full force after marriage takes place. MCL 566.132(2) (1) provides that an agreement, promise, or undertaking made upon consideration of marriage, except mutual promises to marry, is void unless it is in writing.

Premarital agreements have been common and legally enforceable under English law. *Bonds v. Bonds*, 24 CAL 4<sup>th</sup>, 1; (2000). In Michigan, the landmark case regarding prenuptial agreements is *Rinvelt v. Rinvelt*, 190 Mich App 372; 475 NW2d 478 (1991). This was the first case in Michigan to hold that ante-nuptial agreements are enforceable in the context of a divorce. The thought before *Rinvelt* was that prenuptial agreements encouraged divorce. However, that is no longer the thought. Currently, judicial recognition of prenuptial agreements most likely encourages marriage.

The *Rinvelt* court indicated the following factors in determining the enforceability of a prenuptial agreement:

1. Was the agreement obtained through fraud, duress, or mistake, or misrepresentation, or nondisclosure of material fact?
2. Was the agreement unconscionable when executed?
3. Have the facts and circumstances changed since the agreement was executed, to make its enforcement unfair and unconscionable? *Id.* at 482.

The *Rinvelt* court further held that by entering the decision that it did, the court brought Michigan in line with other states that "have recognized that prenuptial agreements legally procured and ostensibly fair in result are valid and can be enforced." *Id.* at 483.

In determining what is "ostensibly fair" in determining whether to enforce the prenuptial agreement, the court consider if the parties at the time of execution consider potential changes in circumstances and addressed those potential changes in the prenuptial agreement. Some potential changes have been cited to include children of the marriage, unemployment, serious health problems, bankruptcy, significant appreciation or depreciation of assets, acquisition of property, debt accumulation, commingling separate and marital property, and breach of marital vows. The court will use a foreseeability test and determine if the change in circumstances was foreseeable at the time of the execution of the agreement. *Reed v Reed*, 265 Mich App 131; 693 NW3d 825 (2005).

The *Rinvelt* Court have further explained that each party has a special responsibility to disclose all material facts as there cannot be a meaningful waiver of rights with such a disclosure. The courts have not explicitly stated everything that must be disclosed as each couple's circumstances are unique and full disclosure would be determined on a case-by-case basis. However, some examples of what should be disclosed in a prenuptial agreement include each party's age; each party's mental and physical health; each party's educational background; each party's employment; the amount and source of all income of each party; names and ages of children; obligations of prior spouse(s), including spousal support obligation; child support obligations; list of all assets and their value; list of all liabilities and their current balance; and details of any expectancy, including possible future inheritance, especially where the goal is to have them considered separate property.

Prior case law in Michigan stated that prenuptial agreements must be entered into voluntarily by both parties with each understanding his or her rights and the extent of waiver of such rights. *Hockenberry v Donovan*, 170 Mich App 380; 136 NW2d 389 (1912). Prenuptial agreements are a special contract relationship that gives rise to a special duty of disclosure not



found in other contracts. This duty is to fully inform the parties before entering into such an agreement. *Id.* at pp 688-689.

It is important that you provide your assigned attorney with a copy of your prenuptial agreement, so they may review its contents and determine if it is enforceable under the current state of the law.

## **GROUNDS FOR DIVORCE**

Michigan is known as a "no fault" divorce state; however, the words, "no fault" may be misleading. If the parties reach a final settlement on all issues, fault is not a factor. If there is a dispute about alimony, property, support, parenting time, or custody, fault may become an active ingredient in resolving these issues. This means that the parties typically are heading to trial, which does cost more than if the parties had settled. For this reason, your assigned attorney needs to have all information regarding any indiscretions by your spouse or yourself.

Michigan has one ground for divorce; "There has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved." Most judges require only a recital of this law. No details need to be provided. You will find that the Friend of the Court Referees will not want to hear about the sordid details either and may hold you in a bad light if you are wanting to constantly drag your spouse through the mud over the reasons for the breakdown of the marriage. The Judge and Friend of the Court Referees understand that someone did somebody wrong, but typically they do not have the time to hear about it nor do they care to. This is not the forum to "get revenge."

## **SEPARATE MAINTENANCE**

In Michigan, we have legal separation, which is called Separate Maintenance. This is seldom done. However, a client may want to pursue this action for religion or health care reasons. After the passage of the Affordable Healthcare Act (also referred to as "Obamacare"), some health insurance companies are using the entry of Order of Separate Maintenance as a qualifying event to trigger the removal of non-employee spouse from the health insurance policy. In order to determine if this is the case for you, a review of your spouse's health insurance plan is necessary before we could even recommend pursuing a separate maintenance action to maintain health insurance as there would be no guarantee that it would be successful.

The procedure is similar to a divorce, except that neither party may remarry, as a divorce is not granted. The law states that if one party institutes a Separate Maintenance suit, and the other party files for divorce, the court will only consider the case as a divorce matter and cannot enter a judgment of Separate Maintenance.

The firm does not generally recommend a party pursue a Separate Maintenance action. If you are not ready for a divorce but you want to talk things over with someone, we recommend counseling and we will be happy to recommend some counselors. Some parties try to use a "trial separation" in lieu of marriage counseling. This is not the same. If you want your marriage to work, then you will need to try marriage counseling with your spouse. If you are not sure you want a divorce, individual counseling may be a good place to start and explore your options. A counselor can help you consider all of your options and prepare for the process of divorce, which is emotional and can be likened to the grieving process.

## ANNULMENT

In Michigan, we also have Annulment proceedings in Michigan, which invalidates a marriage. Marriages may be void from the beginning, or are voidable depending on the circumstances. The grounds include incapacity to marry such as insanity, bigamy, under age, or any type of fraud that goes to the heart of the marriage. Parties wishing an annulment must not cohabitate after having discovered the grounds for the annulment to the marriage.

If you have any questions about Separate Maintenance or Annulment, please ask your assigned attorney.

## RESIDENCE REQUIREMENTS

In Michigan, you must be a resident of the State of Michigan for 180 days and in the county in which the complaint will be filed for 10 days prior to filing. This is a statutory requirement that provides the court with the necessary jurisdiction to hear and try your divorce case.

Residency is the place of a permanent home where a party intends to remain. *Banfield v Banfield*, 318 Mich 38 (1947). If you are not sure that you meet the residency requirements, have a frank discussion with your assigned attorney. It is better for us to make that determination now, rather than face a motion to dismiss based on a lack of jurisdiction due to a residency issue.

## FILING AND DIVORCE PROCEDURE

There are tactical advantages to filing first. Ask your assigned attorney for further information and a quick search of court records (if possible) to determine if this is an advantage that should be pursued. If your spouse had already filed and you have been served with the initial filing documents, it is critical that you tell your assigned attorney exactly when you were served and how. It is also critical that you provide your assigned attorney with the exact packet that you received. Our office will make all necessary copies and return the originals to you.

### Initial Filing Documents:

The initial filing of a divorce case may include the following documents:

1. *Summons*. This document notifies the other spouse that a suit has been started. He or she has 21 days, if personally served in Michigan, to respond or a default may be taken (28 days if served by mail or outside of Michigan).
2. *Complaint*. This document states the names of the parties, where, when, and by whom you were married, names and birthdays of children (if any), wife's and husband's name before marriage, length of residence in county and state, date of separation, grounds for divorce, a statement as to property, whether the wife is pregnant, and the relief requested. A party must reside in Michigan for at least 180 days and in the county where suit is started for at least 10 days. There are some exceptions to the residency requirement.
3. Affidavit of Service and Return of Service is filed when service is made.

4. *Affidavit of Previous Suit.* This informs the court as to whether the parties have filed for divorce before or had any case in another court.
5. *Statement to the Friend of the Court.* This is to inform the Friend of the Court of the essential facts (not necessary in cases where Friend of the Court services are not required).
6. *Affidavit* concerning child's or children's living quarters during the past 5 years and that no custody action is pending regarding the child (only needed where there are minors).
7. *Record of Divorce.* This is a statistical record required by the State Department of Health.
8. *Injunctions.* Only requested where needed to restrain spouse from committing certain acts. Your attorney will explain this procedure to you in detail and ask if you want an injunction.
9. *Ex Parte Orders.* This may be obtained for temporary custody, support, etc. An objection timely filed to the ex parte order will negate the effectiveness of the Order until a hearing on this matter.
10. *Affidavit for Ex Parte Order.* Sworn statements that the facts stated in order to obtain the ex parte order are true.
11. *Circuit Court Filing Fee.* The fee is set by court rule and changes periodically. There is also the cost of serving papers. Later on, there may be other costs for services such as cost of appraisers, actuaries, accountants, depositions, etc. You will be advised before any of these expenses are incurred, so you may negate them. There may be Friend of the Court and Judgment fees. These are listed in Schedule A of the Retainer Agreement.
12. *Notice of Hearing, Praecipe, Motions and \$20.00 Filing Fee* for temporary relief, which requires a hearing. A motion is a request to the court for some type of relief. A Praecipe is a court form requesting that the matter be set for hearing. Notice of hearing advises that a hearing will be held. If the motions were filed simultaneously as the Complaint, the court may have waived the motion fee.

### **Procedure:**

The Plaintiff is the party who starts the lawsuit. The Defendant is the person against whom the suit is filed. The Family Division of the Circuit Court resolves the divorce. There is no other court that has the statutory authority to hear a divorce action. The case will be assigned to a judge that will handle the family's matter during the divorce process and afterwards to ensure that there is "one family, one judge." The purpose of this is to ensure that the judicial system is effectively and efficiently resolving all your issues.

The Friend of the Court makes recommendations for spousal support, child support, custody, and parenting time. They also collect and distribute the spousal and child and support payments. They also may request enforcement of spousal support as well as parenting time. The court may use the Friend of the Court for other miscellaneous duties, including a recommendation on property distribution.

After the Complaint and Summons is served, the Defendant may file an answer to the Complaint, which is a paragraph-by-paragraph response to the Complaint. Once the answer is filed, the case is contested. If the Defendant files no answer, an order of default is entered, indicating the Defendant's lack of response. The matter becomes an uncontested divorce case. If the case is contested, the Defendant may not only answer the Complaint, but also file his or her own Counter-Claim. The Plaintiff must answer this.

A divorce cannot be granted in less than 60 days. When there are minor children, the parties must wait 6 months. However, the 6-month period may be waived under certain circumstances. No divorce is granted without a court hearing to determine the truth of the statements made in the Complaint.

Temporary orders for custody, child and spousal support, mortgage payments, medical payments, parenting time, injunctions, and other relief may be requested at any time during the time you start your case and a Judgment of Divorce is entered. A temporary injunction can restrain a party from doing something. There are two types of injunctions to deal with violence: one authorizes immediate arrest (criminal), the other provides for an appearance before the judge to determine what action should be taken (civil). There is also an injunction restraining a party from selling, court orders dealing with child and disposing or dissipating assets. Other types of injunctions may be requested. Child support, custody, mutual injunctions and personal protection orders are usually granted to Plaintiff without a hearing. Other orders require a hearing.

Temporary orders for child support are usually based on state-recommended calculations. Generally, spousal and child support is based on need and ability to pay. The life-style of the parties is also taken into consideration. For child custody disputes, you will be advised to study the eleven factors listed in the child custody act (see the attachment). The procedures and preparations of such a case are too involved for this discussion, and must be left to further references with your attorney.

The court may also award temporary fees to assist a party with his/her costs of obtaining legal services. This is usually obtained in the same way as any other motion. Sometimes it may be part of a motion requesting other relief.

Pre-Trial is a hearing that some judges require to have the attorneys report the status of the case. If the parties need help in moving the case along, the court may make referrals. Usually, only the attorneys are required to be present. In Oakland County, this hearing is referred to as a Settlement Conference and the parties must attend.

SMILE (Start Making It Liveable for Everyone) is a 2-hour program offered by the Friend of the Court, free of charge. You and your spouse are encouraged to attend by some counties, while other counties mandate that you must attend prior to be granting a Judgment of Divorce. Oakland County is one of those counties that mandate your attendance.

Mediation Orientation is a 1-hour program offered by the Family Law Division which better explains the various procedures, including mediation, which you may use to resolve your case. In Washtenaw County, attendance is required before Friend of the Court services are available, unless the parties are using the services of a mediator.

Settlement Conference is a hearing before trial where the judicial assistant, and sometimes the Judge, will assist the attorneys and the parties to settle the remaining issues. Your attendance is required at this hearing. If the case is not settled before or at this hearing, your case will be scheduled for trial.

## **WHILE YOUR DIVORCE IS PENDING**

This period is usually spent defining the issues and trying to resolve them. Your assigned attorney will also attempt to find the net worth of the parties and the general financial status of the family. This is done through Discovery. Discovery can be costly, especially if the other party is not cooperating.

### **DISCOVERY**

Discovery can include many forms and is often used to obtain information in possession of the other party. Interrogatories or written questions may be sent out requiring answers under oath from the recipient. The answers to this discovery request are due within 28 days of service, which is the day that they were mailed or sent out. It is critical that you do not create any unnecessary delay in answering these questions. The interrogatories usually request complete financial data. Interrogatories may be accompanied by a Request to Produce Documents. Depositions or face-to-face questions may be taken (with consent of client), to obtain further information from the other spouse or those that have the needed information. A deposition does cost more than Interrogatories as a Court Reporter is required to transcribe the deposition process. A Deposition is taken under oath. Request for Admissions are a list of specific facts that a party is asked to admit or deny. If a request is not answered within 28 days, it is deemed admitted. It is critical that there is no delay in responding to this discovery request. Be aware that the other side may have the facts necessary to rebut a denial, and there could be sanctions for answering dishonestly. The sanctions can include paying the other party's attorney's fees and expenses.

### **SEPARATION AND RECONCILIATION**

In Michigan, it is not required that you actually physically separate from your spouse. If you are still residing in the same home, do not be afraid to be candid with your living arrangements. If you and your spouse decide to reconcile, please let your assigned attorney know. They will discuss what actions we will need to take to inform the court of your reconciliation (called a Stipulated Order of Dismissal and Notice of Reconciliation). Reconciliation after the divorce may result in tax consequences you need to explore. However, we encourage reconciliation and the preservation of marriage whenever possible. If you and your spouse do get back together, you only owe the retainer and payment for the services that you have used to that point.

### **DOMESTIC VIOLENCE AND ABUSE**

Violence within the family (domestic violence) is much more common than many of us believe or care to admit. Each year, this occurs in three to 4 million families. Financial difficulties can lead to domestic violence and the stress level increases in the family. Divorce often brings on an increase in such violence; 50 percent of serious assaults occur at or after the point of separation or divorce.

If there has been any violence in your family, we need to talk about that before anything is filed in court. Together, we need to determine whether a Personal Protection Order (PPO) and/or any safety plans that are needed to protect you and your children from future violence. Even if

your spouse will not obey PPO or will contest it, it will help the police to physically remove your spouse, if you can show the order to them.

If you need to go to a domestic violence shelter to protect yourself or your children from violence, tell your assigned attorney about this before you do so. They will need to take steps in court, so that your spouse cannot convince the judge that you are kidnapping the children or denying parenting time.

If your spouse will allege that you are committing domestic abuse towards him/her or the children during the marriage, you need to tell your assigned attorney about it so that they can be prepared to deal with that issue. There is a good likelihood that your spouse will parade these allegations before the court. If you are innocent, your assigned attorney will need to organize appropriate proof to defend you. If this happened there may be an explanation about what occurred, such as your spouse hit you first and you defended yourself. If you have committed abuse, you need to seek counseling and stop the abuse.

Domestic abuse is more than just physical abuse. It includes emotional abuse, financial control, social isolation, and threats of violence.

Child abuse is disgusting and repulsive. It is often an example of the weak being victimized by the strong (i.e. bully in the family). A false allegation of child abuse is equally disgusting and repulsive. Both do damage that can continue through a family for generations.

Abuse can be clear or questionable. In some cases, one person's abuse is another person's discipline. Some experts, such as a psychologist, can be helpful while some can make the problem worse.

If the police come to your home, remain calm and answer no questions until after you have spoken with your assigned attorney. Do not be the one to call the police unless you have spoken with your assigned attorney first. When the police come to your home, they will arrest who they determine to be the "aggressor". If you are yelling, physically out-of-control, or hostile, they will more likely see you as the aggressor. Yelling at the police will only increase the likelihood that you will be taken to jail and placed under arrest. If you are arrested, inform the police that you will answer any questions only after speaking with your attorney. Hand them your assigned attorney's business card and then remain silent until you have spoken with them.

## INJUNCTIONS AND PROTECTIVE ORDERS

Injunctions and protective orders are orders of the court that are issued to prevent harm pending future hearings. If you are afraid that your spouse will harm you, take your money out of the bank, or run off with the children, the court can enjoin or prohibit these things by a court order. We may file these requests as an Ex Parte Order, which some judges do sign and others sign only for certain matters or we will file a Motion requesting the relief desired. In either case, we will need to list the specific harm feared and why an order is needed before a hearing is held. Please discuss your particular situation with your assigned attorney in detail in order to determine what is needed.

If you disobey an injunction or protective order, the court can put you in jail or order you to pay a fine. Disobeying the court's order will have consequences to come years down the road, as the judge will have a hard time believing you. The police do not want to get involved in problems between spouses; but if you show them an injunction, they may enforce the order.

If you are under an Injunction or Protective Order, you **must follow the Order**, even if you disagree. Failure to follow the order can result in you being put in jail.

If you are under an Injunction or a Protective Order, you may be the same as a felon as far as the Federal Firearms Act is concerned. Being a felon, receiving or possessing a firearm is a serious federal crime. If you have guns of any kind and are under a protective order, get them out of your possession immediately and do not acquire any while the order is in effect.

A protective order deals with domestic violence and is stronger than an injunction, but you need a more complex and expensive legal process to get a protective order. If you need protection, your assigned attorney will get you an injunction. However, if you feel you need the extra protection of a protective order, ask your assigned attorney, and they will take the steps to get it issued.

## **CONTEMPT**

In some cases, it may be difficult to get your spouse or ex-spouse to comply with the court's orders. We recommend that you try to work out small differences yourself. The bigger problems, however, need to be brought to your assigned attorney's attention. For example, if your spouse is not paying child support, is not producing the children for parenting time, or violates the provision of any order, there are a number of steps that can be taken to try to force compliance. One possible step is to bring a motion before the court asking your spouse to show cause. This means that your spouse must tell the court why the violation should not be punished. A contempt finding by the court could lead to jail time, if the judge believes that violation was intentionally refusing to comply with the court's lawful order.

Sometimes, the Friend of the Court will fight these battles for you. This will save you money in the end. However, call your assigned attorney first so you can discuss the violation and what the best course of action is.

Be careful that you have "clean hands" when you bring the contempt action. This means to be sure that you have not violated any of the court's lawful orders, as your spouse will likely point that out. Remember two wrongs do not make a right.

## **PROPERTY**

It is critical that you tell your assigned attorney all you know about all of the assets you and your spouse have in a timely fashion. The more your assigned attorney knows, the more they may be able to help you receive in the property award.

Property includes real estate and personal property (both what you can touch and what you cannot touch). Property can include houses, pensions, collections, businesses, or an inheritance. First, we will need to find and value the property. Value is not determined by how much you paid for an item at the time of purchase, but what it is worth today at its fair market value. This means what someone else would be willing to pay you for the item, if you were to sell it. Fair market value is determined by looking online for some items, such as vehicles or unique items offered for sale on E-bay or other similar auction sites. An appraiser can determine the value of items that are collectible or have a high value, such as stamp collections, wine collections, boats or motorcycles. Often we will estimate the garage sale value of the item for most personal property as this is the cost effective means of determining value.

Next, you must determine whether the particular piece of property is separate property and is not subject to division. Separate property is typically acquired before the marriage or outside of the marriage, such as a gift or inheritance. It would be advisable to start creating a list of all of the

items that you brought into the marriage and how you acquired them. Gather any supporting documents or photographs that can support your claim. In addition, list any items that you have received throughout the marriage that you have received as a gift or an inheritance. It is important to gather the supporting document or photographs that your support your claim that the item was gifted or inherited during the marriage. If you received any sum of money during your marriage can you trace where you deposited that money and what you did with the money to maintain its characteristic as a separate asset? While this may seem trivial and a cumbersome task, it is critical to remove those items that may be contested by your spouse as separate property and you will bear the burden of proving that they are separate property and not subject to the division of marital property.

Marital property is usually acquired during the marriage. Marital property can include the increase of any separate property's equity value that accrues during the marriage, if a spouse contributed to its appreciation or preservation even if only indirectly.

In determining property issues and the division of marital property, the court will usually consider the following:

1. Duration of the marriage.
2. Contributions of the parties to the marital estate;
3. Age of the parties;
4. Health of the parties;
5. Life status of the parties;
6. Necessities and circumstances of the parties;
7. Earning abilities of the parties;
8. Past relations and conduct of the parties; and
9. General principles of equity.

Typically, the parties usually arrive at a settlement of all their property rights after negotiation or Friend of the Court referee hearing. If you and your spouse reach a settlement and it is reasonable, the court will usually approve it. If settlement is not reached, the matter will be decided by the court after the trial is concluded. Again, you are advised that you must be absolutely sure that you understand and accept the settlement as written, or placed on the record in open court, as property settlements are not modifiable, except in cases of fraud, clerical error, mistake, or gross unfairness in the initial trial.

If your property includes retirement or pension plans, your assigned attorney, upon request will explain your rights under the qualified domestic relations order procedures. Understand that under current state law, your spouse is entitled to one-half of any retirement or pension plans that accrued during the marriage.

Enforcement of property settlements may be made through provisions provided in the Judgment by execution, show cause, garnishment, etc. Generally, property of the marriage is divided 50/50.

Do not hide or dispose of any of the assets. The assets or actions taken to dispose of the assets are usually discovered. If they are discovered, this can undo any settlement reached and the judge may grant a larger award to your spouse. The judge will have trouble believing what you say about anything after that, and will have less trouble assessing attorney's fees against you for your behavior.

Sometimes, there are important tax consequences to consider. Transfer of property (such as a bank account) from spouse to spouse during a divorce is usually not taxable, but transfer of income (for example, interest) from an asset can be taxable. Be careful about capital gains. As



your assigned attorney is not a tax attorney, please discuss your property settlement with your accountant or CPA to get his or her input on any tax consequences.

One such issue is the sale of a house. In the right economy, a sale of house by a couple could yield a capital gain of \$500,000 (or \$250,000 for an individual). This may affect the decision to quit claim the marital home to one spouse, who will only turn around and sell the house. You may want to consider selling the home as a couple before the divorce or owning the house as joint tenants until it sells. See the taxes section below **and** talk with your tax advisor.

## DEBTS

Debts are the other side of assets and must be dealt with in a divorce. Typically, the party who takes the asset will take the corresponding debt. However, parties are free to agree to a different arrangement.

Even if you have received an agreement approved by the court, there can be issues with debt. For instance, when one spouse takes on a joint debt and ceases to make payments, the other spouse can be sued. The creditor will not care what your Judgment of Divorce says about who will pay the debt. The creditor will rely on their contract and can seek to enforce those terms. We highly recommend that any party seeking to take on a joint debt also refinance that debt into their name alone, if possible.

Another issue arises with a debt in solely in your name that your spouse agrees to pay. If your spouse stops making payments, the creditor will come after you for payment. In order to enforce the payment, an action will have to be brought before the judge to ensure his payments. The biggest problem arises when the ex-spouse dies or files for bankruptcy as you may not be able to sue for payment or indemnification.

The best method to avoid these situations is taken on your debt; agree to refinance the debt, or to resolve joint debt issues before the Judgment of Divorce.

Do not cut off utilities on your spouse and children without giving them plenty of notice. Make sure you can prove this notice to the court, because leaving your spouse and children home without heat or light in December seldom sits well with the judge. Remember, written notice is best.

Some people get into a lot of debt shortly before their marriage falls apart. This can be because they try to buy things hoping it will make the marriage better. If you have a lot of debt, you need to take steps to correct this problem as soon as possible. There will be less money to go around after you and your spouse separate because you will be supporting two households on the income that you previously used to support one.

During your marriage, most of your debts were probably incurred jointly. That means that both of you are responsible for the repayment of that debt. When your divorce is finalized either through a settlement agreement or by order of the court, the court will make orders concerning who is to pay what debt. If your ex-spouse does not make the required payments, you can usually take your ex-spouse back into court, but you cannot stop the creditor from trying to collect from you. Your creditors are not parties to your divorce, so the order requiring your spouse to pay off the debt will not bind them. They agreed to loan money because you and your spouse **both** agreed in a signed contract that said you **both** will pay the money back. This means you can have a real problem if your spouse is financially irresponsible. If your debts are not too high, some creditors may be willing to refinance loans so that only one spouse is responsible for repayment. We recommend that you look into this option.

If there is any reason why your spouse may be considering bankruptcy, you need to discuss this with your assigned attorney so that they can take steps to protect you in the event that happens.

## **CREDIT**

Close joint accounts and notify the banks, charge cards, and others by a certified return receipt letter that you are no longer responsible for your spouse's expenses. You may want the company to reopen an account in your own name. This is a good time to request it. Be careful of closing out any accounts if the court enters a Restraining Order Regarding Marital Assets.

At the bank, you may want to divide joint accounts and place your share into a separate account. This sometimes will make the judge angry with you, but it is often easier to *give* money back than to *get* it. If you are the breadwinner, do not put your dependent spouse or children out in the cold without money to get by on. This will aggravate the judge, who will make you pay it anyway.

Do not try to survive the divorce process by living off credit cards; you will only get into a worse financial situation after the divorce is final.

## **LIFE INSURANCE**

The cash value in life insurance is property. If you are receiving alimony or child support, you will want life insurance on the payor to insure the payment should the payor die.

## **BANKRUPTCY**

Filing bankruptcy may relieve a debtor of many debts, but the responsibility of paying court awarded alimony and child support should remain. However, if you get a notice or have actual knowledge that your spouse has filed for bankruptcy, contact your assigned attorney immediately. There are important considerations when your spouse files, particularly on joint debts. There can also be implications if you receive property and your spouse files for bankruptcy immediately after the divorce.

A discharge to your spouse on a joint debt is not a discharge of that debt for you. You will become solely responsible for the debt.

## **TAXES**

The general rules outlined in the next few paragraphs are intended to alert you to issues and provide some general information. Before you sign any tax return or take any action with respect to your federal or state income returns, please review your situation with your tax advisor; that *is not* your assigned attorney.

Subject to many qualifications, alimony aid in cash is deductible to the party paying it and taxable to the party receiving it. Child support is not deductible to the party paying it or taxable to the party receiving it.

If you receive alimony, you may need to make estimated tax quarterly payments. If you are employed, you need to tell your employer about the divorce so they can change your tax filing status, which will increase your withholding.

Unless specifically addressed in your Judgment of Divorce, generally the custodial parent will be entitled to claim the dependency exemption on his or her income tax return. The custodial parent may execute I.R.S. Form 8332, releasing the dependency exemption to the noncustodial parent. This may be done as an annual election. We recommend making this release contingent on the noncustodial parent being current on the child support obligation by December 31<sup>st</sup> of the year it is given.

Generally, there is no tax gain or loss recognized because of the division of property between spouses upon divorce. Thus, there may be no tax incurred by dividing the property.

It is important to know the basis of the property that you receive in the division of your assets. This basis is generally the cost of acquiring, and in some cases developing, a capital asset. If the asset has appreciated, the person who receives that asset will be responsible for tax on appreciation when the asset is sold. Depreciation is deducting a portion of the basis of an asset. If an asset has been depreciated to a low basis, the sale of that asset can have very adverse tax consequences. This commonly occurs with rental property and business equipment.

If the Judgment of Divorce provides that you and your former spouse will sell your jointly owned residence, you will each be responsible for reporting your portion of any capital gain. Capital gain is the profit resulting from the sale of capital investments, such as the marital real estate. Under new tax law, there is a Five Hundred Thousand (\$500,000.00) Dollar exemption for capital gains for the sale of a home by a couple or Two Hundred Fifty Thousand (\$250,000.00) Dollars for any single person. If you are going to sell your home, make sure you consult your tax advisor to see if you qualify for this exemption. You are no longer required to buy another property to avoid gain on a home sale.

Beware of signing joint tax returns with your ex-spouse. Although your agreement may provide for your ex-spouse to be responsible for any tax liability, the IRS can turn to you. By the time the IRS does the audit, your ex-spouse may be bankrupt or dead and you may be the only one left to pay the taxes.

If you have moved, you need to file IRS Form 8822 to notify the I.R.S. that you moved. Without that, the I.R.S. can send notices to your old address and you may not receive the notices, but the I.R.S. can hold you responsible for any missed deadlines.

The impact of taxes can make a great difference in divorce. Your assigned attorney is not a tax lawyer. While they know some things about taxes and divorce, they are not a tax expert by any means. If you need tax advice, your assigned attorney will need to consult a tax lawyer or a certified public accountant in your case. They are qualified to do tax planning.

## **SPOUSAL SUPPORT OR ALIMONY**

Spousal support, also called alimony, is a sum of money usually paid by one spouse to another spouse for the support and maintenance of the spouse. The factors considered by the court in awarding spousal support are as follows:

1. The past relations and conduct of the parties (fault).
2. The length of the marriage.
3. The ability of the parties to work and their respective income.
4. The source and amount of property awarded to the parties.
5. The ability of the parties to pay spousal support.
6. The present situation of the parties.
7. The needs of the parties.

8. The health of the parties.
9. The prior standard of living of the parties and whether either is responsible for the support of others.
10. The age and educational level of the person claiming spousal support.
11. Generally, Judgments of Divorce in which spousal support is not granted must either expressly reserve the question of spousal support or rule that neither party is entitled to spousal support.

Regular or periodic spousal support clauses in the Judgment of Divorce are modifiable at any time. When limitations are placed in the Judgment regarding modification, it is questionable whether these limitations will be honored by the court. Spousal support may be raised, lowered, or canceled. A modification is based upon a showing of a change in circumstances, which would warrant a modification. Regular or periodic spousal support is usually taxable to the recipient, and is deductible by the payor. The phrase "payment until death", must be part of the spousal support clause, if it is to be considered as taxable spousal support. The agreement of spousal support must be contained in the Judgment of Divorce or a written order for the IRS to consider it as spousal support. This type of spousal support is not subject to bankruptcy action. It may have qualifying clauses such as "payable until remarriage".

Another type of spousal support, referred to as Spousal Support in Gross, has all the attributes of a property settlement; however, it is not taxable to the recipient, it is not deductible by the payor, and is not modifiable; however, it may be subject to being discharged in bankruptcy. This type of spousal support is for an amount certain and has no qualifying clauses such as "payable until remarriage". The court will look to the intent of the parties to determine the nature of the spousal support.

There are many tax consequences and restrictions concerning spousal support and Spousal Support in Gross, which should be explained to you by your attorney or your accountant. As tax laws and their interpretation continually change, as well as state laws and their interpretations, your attorney cannot guarantee any tax consequences resulting from your divorce proceedings and the Judgment of Divorce.

Spousal support is usually paid through the office of the Friend of the Court. This enables a party to obtain an accurate record of these payments. In addition, it makes it easier to request assistance from the Friend of the Court in the event that payments are not forthcoming, or if a spouse denies receiving said payments.

Enforcement of regular or periodic spousal support payments is usually instituted by an Order to Show Cause. Your attorney, upon request, will explain the procedure to you. Spousal Support in gross is more difficult to enforce, and there are other types of procedure available for enforcement.

## **MEDICAL INSURANCE**

If you cover your spouse or children on your insurance, do not drop them from the policy at least until the divorce is final. You are probably responsible for their medical bills until then anyway. Even after the divorce, the employed spouse may want to keep the spouse and children covered. If you are paying child support, a large unexpected medical expense for the child could be assessed against the noncustodial parent as additional child support. The same could happen with alimony and an ex-spouse.

You may have the right to apply for health benefits through your former spouse's current place of employment. Pursuant to COBRA legislation, nonemployee/spouses may be eligible after the divorce is final for certain insurance coverage at group rates. The insurance can continue up to 36 months, depending on your situation and the premiums should not exceed 105% of the current group rate. However, you must apply for this within **60 days** of the date that the divorce was final. **Only** if you file within that time will you be eligible for COBRA coverage. Please check with your former spouse or through their employer immediately, as federal statutes and deadlines may change.

## CHILDREN

The following advice about children is based on our experience and reading. Your assigned attorney is not a mental health professional. Realize that your situation is unique and that this advice is general.

If you have children, the divorce can be as difficult for them as it is for you. Children will normally feel fear, confusion, guilt, depression, anger, and other emotions. Although you will be feeling these emotions, too, you have a lifetime of experience to help you. The children have two parents. Generally, they look up to their parent and find security. Now, those parents seem to be a source of stress rather than of reassurance.

The loss of their family is often worse for the children than the parents. Even infants are affected by parental conflict. They may not understand what their parents are arguing about but they understand the emotional intensity of the conflict. It is not uncommon to see infants or toddlers withdrawn and regress in their development.

You need to take steps to ease the burden on your children. Part of this involves how you tell them about the divorce and what you say about your spouse. It is unusually better if both parents together tell the children about the divorce. Do not dump your bad feelings about your spouse on your children. Simply tell them that the grown-ups have decided that it is better to live apart. Tell the children that the divorce is not their fault and that they will still have two parents. Avoid talking badly about the other parent, and try to prevent others from talking badly about the other parent in front of the children. Venting about the other parent must take place when there is no possibility of the children overhearing as the children is made from both parents and may internalize what they hear about the other parent as a quality the child has. Judges do not like to hear that this is occurring as well. Tell the children that they have the right to love both parents. Never get mad and compare your child to the other parent. "You are just as bad as your no good father/mother" are not words a child needs to hear, or anything similar.

The parent that has the closest bond with the children is the one who refuses to talk badly about the other parent in front of the children, even when there is a reason to do so. This parent will not allow the children to talk badly about the other parent and encourages healthy discussions on feelings. This parent talks about not liking behavior, while still caring about a person and teaches the children to do so.

Take the high road now and throughout the rest of your children's lives. It is a better trip for you and the children.

Depending on your circumstances, you may want to alert your children's teachers and counselors to the family change, so that they can be on the lookout for behavior changes. Counseling can help many children as they adapt to life after their parents separate. Books out there that can help your children and yourself cope with the changes that will occur. A

recommended reading list has been enclosed. The firm keeps a resource library for clients and may have some of these books available to loan out. Please ask.

Try to work with our spouse about the children, as you will need to continue to co-parent. Many parents stand together on issues involving the children even though they are separating or divorcing. Do not let the children play the parents off against each other. Children do this. Attempting to play one parent off the other is normal for a child. Falling for it as a parent is not. Parents in divorce can even encourage this behavior in attempts to get back at the other. Do not do this. Do not use the children as your counselor. They are not equipped to help you and it will devastate them. Remember, children need to be children as long as possible. Your friends, family members, minister, or professional can do this for you. This will be better for you and your children.

If you are in a relationship with a new person, do not introduce your children to this person until after the divorce and after the children have adjusted to the changes. If the divorce is pending, then you may have made your children witnesses to your adultery.

Discuss support and property division with your spouse, not your children. **Do not use the children as messengers and spies.** Do not recruit your child into the divorce war. Make a special effort to spend time with your children during this difficult time. Give them your full attention. Reassure them that both parents love them, even if you do not believe it. **Give them extra love, attention, and understanding now - they need it.** Although it is your divorce, the children's needs come before yours.

## **SUPPORT**

The custodial parent is entitled to take the minor child or children, as dependents, for all tax purposes. The parties may agree that the noncustodial parent shall have this allowance and enter this agreement into the Judgment. If the noncustodial parent is entitled to the allowance by the Judgment, that parent must obtain each year, from the custodial parent a signed Form 8332, which must be filed with the noncustodial parent's other federal income tax forms.

Child support is modifiable on the same basis as spousal support. This support is usually ordered until the child attains the age of 18 years, or graduates from high school, so long as the minor child regularly attends high school on a full-time basis with a reasonable expectation of completing sufficient credits to graduate from high school while residing on a full time basis with the payee of support or at an institution, but in no case after the child reaches nineteen years and six months of age, or until further order of the court. Enforcement of payments is the same as for spousal support.

Child support is based mainly on the child's needs (in conformity with the life style of the parties), and the ability to pay. Nonpayment of court ordered support might lead to a contempt of court citation, resulting in a jail term.

If there is an arrearage of child support payments, medical expenses, etc., the Judgment of Divorce must contain a provision preserving this arrearage. The same provision holds true for any monies owing under any temporary order. In order to preserve a temporary order, it must be so ordered in the Judgment of Divorce. If it is not so ordered, it is cancelled.

Every child support order now provides for the immediate and automatic withholding of child support payments from any source of the payor's income if paid through the Friend of the Court unless the payee waives it.

A federal law now provides for group health care coverage for the non-custodian children of employees by their employers, it is called qualified medical child support orders. Your attorney will explain this to you if applicable.

## **CHILD CUSTODY**

There is no longer custody and visitation. There is no parenting time, despite the custody arrangement agreed upon. However, most people still refer to custody. It used to be that mothers were always awarded full custody. That is not true today. The general rule is that both parents are awarded some type of joint custody arrangement. When referring to custody, there are two types: legal custody and physical custody. Legal custody is the decision making part of raising the child and physical custody is about who physically raises the child. There is sole custody or joint custody under each of these headings. The basis for determining child custody is "what is in the best interests of the child".

Disagreement over custody is almost guaranteed to put you right in the middle of a bitterly contested and expensive divorce. Custody cases are the most destructive litigation. Be sure that the children would be significantly better off with you than the other parent before you get involved in a custody fight. Custody cases are expensive in both emotional and in legal cost. The damage caused by winning a custody case is great; the damage caused by losing is terrifying.

A party involved in a child custody matter should become acquainted with the Child Custody Act and study and be prepared to discuss the following factors:

- (a) The love, affection, and other emotional ties existing between the parties involved and the child.
- (b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and continuation of the education and raising of the child in its religion or creed, if any.
- (c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of the medical care, and other material needs.
- (d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- (e) The permanence, as a family unit, of the existing or proposed custodial home or homes.
- (f) The moral fitness of the parties involved.
- (g) The mental and physical health of the parties involved.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient age to express preference.
- (j) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent.
- (k) Domestic violence, whether or not it occurred in the child's presence.
- (l) Any other factor considered by the court to be relevant to a particular child custody dispute.

When there are custody disputes, the parents must be advised as to joint custody:

- (1) At the request of either parent, the court shall consider an award of joint custody, and shall state why joint custody may or may not be considered by the court. The court shall determine whether joint custody is in the best interest of the child by considering the following factors:
  - (a) The factors enumerated above.
  - (b) Whether the parents will be able to cooperate and generally agree concerning important decisions affecting the welfare of the child.
- (2) If the parents agree on joint custody, the court shall award joint custody unless the court determines on the record, that clear and convincing evidence affecting the welfare of the child dictates otherwise.
- (3) That if the court awards joint custody, the court may include in its award a statement regarding when the child shall reside with each parent, or may provide that physical custody be shared by the parents in a manner to assure the child continuing contact with both parents.
- (4) During the time the child resides with a parent, that parent shall decide all routine matters concerning the child.
- (5) If there is a dispute regarding residence, the court shall state the basis for a residency award on the record in writing.
- (6) Joint custody shall not eliminate the responsibility for child support. Each parent shall be responsible for child support based on the needs of the child and the actual resources of each parent. If a parent would otherwise be unable to maintain adequate housing for the child and the other parent has sufficient resources, the court may order modified support payments for a portion of housing expenses, even during a period when the child is not residing in the home of the parent receiving support. An order of joint custody, in and of itself, shall not constitute grounds for modifying a support order.
- (7) As used in this section, "joint custody" means an order of the court in which one or both of the following is specified:
  - (a) That the child shall reside alternately for specific periods with each of the parents.
  - (b) That the parents shall share decision-making authority as to the important decisions affecting the welfare of the child.

Child custody orders are modifiable. The court will consider the time the child has lived in a stable custodial environment and what is in the best interest of the child. It should be remembered that the child's preference, though an important factor, is just one factor to be considered in the 11 factors cited above.

If you are concerned that a custody dispute is likely to happen, then feel free to have an in-depth discussion with the attorney on what you can do and should not do. Each situation is unique, and there is no one way to advise everyone. However, do not change your behavior temporarily to gain an advantage. Everyone involved in the process will see through this; instead, change your behavior for life and make a positive impact on your life and your children's lives.

If you have been the primary caretaker of the children, take the children with you, if you move out. Continuity of placement is a factor for the court. If the other parent does not object and the children do well in your custody, it works to your favor. Stay close to your children. Make sure you use your parenting time with them for their enjoyment and development. Take them to interesting places like museums, parades, church, and appropriate movies. Have someone (not boyfriend or girlfriend) take pictures to show the court. Be involved in their school. Get and send



your assigned attorney copies of report cards, tests, and anything else you can get from the school. Keep a calendar or journal of significant events. You will forget details over time, if you do not have a written record. Be careful about what you write. Often these documents turn up in court and the other side will cast the worse possible light on anything you write. This is not where you vent your anger at your spouse. Have a private journal for that. Do not resort to drugs, alcohol or violence. This can be used to show why you should not have custody or to limit your parenting time.

## **PARENTING TIME**

Parenting time is generally granted to the noncustodial parent. The Judgment may state that general parenting time is granted and leave it up to the parties to decide the dates; or specific parenting time hours and dates may be written in the Judgment. If long distances must be traveled to exercise this parenting time, some arrangements can be made concerning the cost of it. Enforcement of parenting time rights is the same as for spousal support.

Judgments of Divorce provide that the minor child may not be permanently removed from the jurisdiction of the court without the court's approval. To move with the child from the state, the custodial parent must petition the court for an Order granting it. Parenting time orders are modifiable upon a showing of a change in circumstances warranting same. There is also a provision in the law for the makeup of parenting time that has been wrongfully denied, and contempt of court action against the offending parent that can lead to a fine or jail term. Failure to pay child support is not an acceptable reason to deny parenting time.

## **RELOCATION**

Moving the child away has caused a great deal of litigation and conflicting rulings. Now, there is a statute from the legislature. This is known as the 100-mile rule. If joint custody is granted, neither parent is allowed to move more than 100 miles from the current legal address without first securing the permission of the other parent and the court. Be sure to discuss this law with your assigned attorney prior to entry of the Judgment of Divorce. It is imperative that you understand if you are subject to this law and what you must do to move a distance greater than 100 miles.

If you are receiving a job offer out of the State of Michigan and want to take your children with you, then you will need to seek both your soon-to-be ex-spouse's permission and the court's permission before you accept the offer and move. This is referred to as a change of domicile. It will take time to bring this motion before the court, if your spouse does not agree to the move.

## **PARENTAL KIDNAPPING**

Parental kidnapping is an issue that has received a lot of attention in the media. Because of this publicity, legislation has been passed in every state and by the federal government trying to stop this ugly situation. If you are unhappy with a court ruling on custody or parenting time, do **not** take the law into your own hands by taking or keeping your children in violation of a court order. Eventually, you will be caught. Moreover, when you are, the judge in your divorce case will not be pleased. In addition, the judge in your criminal trial will be unpleasant as well.

Many parents who kidnap their children lose their custody and/or parenting time for a period. The result may be prison time and loss of a right to have your children unsupervised. Supervised parenting time means that the children can only visit you under the supervision of an agency or other person that the court trusts. You typically will have to pay a fee to the supervisor for the time spent keeping an eye on you. For the children, this is not quality parenting time as every action and conversation is subject to scrutiny from a third party. If you are unhappy with the court's ruling, let your assigned attorney know and you can discuss the situation with them and try to find a legal resolution to the situation.

If your children have been taken or held by the other parent in violation of a court order or against your will in the absence of a court order, you need to get legal help right away. There are many ways to track down kidnapping parents, and it is usually easier to find them when the trail is still fresh.

## **RECORDS**

It is very important that you keep records of payments you make or receive for alimony and child support until the Friend of the Court has opened your account. If you paying, pay by check and keep all canceled checks. If you cannot prove you paid it, you might as well have not paid it. If you are receiving payments, keeping a running account in a permanent place. If you cannot prove what you did get, the court might not believe you when you testify about what you did not get. It is easier for both parties to have payments deducted from the paycheck of the person who is paying.

It is handy to keep a record of the parenting time exercised by both parents as well. You will never know when communication breaks down and you will have to prove how many overnights the other parent is exercising. We recommend doing this as soon as it happens in a portable calendar. You can also record the reasons why parenting time is missed or extra parenting time is granted and when.

## **TEMPORARY ORDERS OR RELIEF**

"Pendente lite" is Latin for "pending the litigation." There are things you may need for the court to do pending the final Judgment. The court, upon request, can set a hearing to determine the needs and the abilities of the parties and children and order support accordingly. This award is subject to rehearing and modification at the final trial. The court can also order custody and parenting time pending the final trial. The court may also grant exclusive use of the marital home to one party pending the final trial, if necessary.

## **CHANGE OF WIFE'S LAST NAME**

In Michigan, a woman may go back to using her maiden name. However, sometimes it is hard to convince the Social Security Administration that she has legally returned to her maiden name. A woman can have the court order the restoration of her maiden name in the Judgment of Divorce, even if she is not the plaintiff. We suggest that you go back to your maiden name only when there are no children, or go back to a former married name when there are children of that former marriage. If you want to do this, let your assigned attorney know. Be sure to check the

Judgment of Divorce for a paragraph that deals with provision. If it is not in the Judgment, then you will have to file a separate action after the divorce to change your last name.

Husbands cannot force their soon-to-be ex-wife to restore a former name.

## TELEPHONE

All too often people use the telephone not to communicate but to destroy communication. The angry spouse may call to scream insults or make hang-up calls.

The first case is the easiest to deal with - hang up. If you choose to stay on the telephone and to listen to the rude jerk that called, then you have made a bad choice. You can change that choice by simply hanging up; the sooner the better.

Hang-up calls are tough. Once you pick up the telephone, you have lost. The answer is technology. Get an answering machine. The machine will screen your calls, and you can return the calls of the people you want to talk. If the jerk calls and curses at you over the machine, we can bring that tape to court for the judge to hear. Cell phone voice mail is just as wonderful.

The telephone company offers services that may be worthwhile to you at this time, including the following:

**Caller Identification** - At a glance, you can see who calls even before you pick up

**Call tracing** - this traces calls so we can prove to the court who made the call

**Call block** - this locks out calls from certain numbers. You can block out your ex-spouse-to-be and many of your ex-in-laws-to-be.

**Call forwarding** - A woman once had an ex-spouse who called every night at 3:00 a.m. to plead with her to come back. His offer of reconciliation was somewhat tarnished by his ongoing relationships with other women. His late-night pleadings both upset the woman and deprived her of sleep. She solved the problem herself by ordering call forwarding. When she went to bed, she would forward her calls to Dial-A-Prayer because she was of the opinion he did not have a prayer of getting her to come back.

If the other side is abusing you with the telephone, keep a calendar with the calls documented by date, time, and number. You have the legal right to record phone calls that you are a participating in.

## AIDS AND OTHER MEDICAL ISSUES

We recommend you have a complete physical examination as soon as possible. Because of such examination, a woman once discovered that she had a medical condition that would normally not have been diagnosed and would have been fatal if it was not treated. She underwent an expensive series of treatments. The cost of these treatments was part of her case. If you have cancer or other medical problems, it can dramatically affect your case.

Your examination should include an HIV test. If you suspect your spouse may have been exposed to AIDS virus or a sexually transmitted disease, you must have yourself tested. Your exposure is not only to your spouse but also to everyone who had sex with anyone who had sex with your spouse. The most frequent avenue of exposure is sexual contact. However, that is not the only means of contracting AIDS; exposure to blood is also a risk. Therefore, spouses of physicians, dentists, undertakers, or any medical workers have a special concern. Consult your physician and let us know the results of any tests.

## **DATING**

Do not date. You are married. Your spouse can use it against you. If you are divorced, moving in with your lover could cause problems with custody, parenting time, or alimony. If you do date, be prepared to face the problems that may arise. Tell your assigned attorney about it, because if they are surprised by it in court, it will hurt your case. If you date, do not throw it in your spouse's face. This will make bad feelings worse and is proof against you at trial (confession). Avoid dating at social events your spouse will be attending. Avoid having your picture taken and published in a society column or magazine. Remember it will be hard to explain why you "did not pay" or "cannot afford" it, if you took your date on an expensive event or trip.

**Do not lie about dating.** Although Judges do not like people "fooling around," they are not usually too angry when they hear about it. Judges are much more likely to get mad, if they are being told lies. Lying under oath can result in you going to jail for contempt of court or the crime of perjury.

## **SNOOPING**

The Omnibus Crime Control and Safe Street Act of 1968 makes it a federal crime and a civil tort for anyone to listen in on a telephone conversation or to record any conversation if they are not a party to that conversation or do not have permission from someone who is a party. Such recordings are not admissible as evidence. If you record your spouse's conversation with his or her "lover," you cannot use that tape in court and you could end up in a federal prison (See U.S. v Jones, an east Tennessee case where this actually happened).

It is lawful for a person to record a telephone conversation or other conversation in which you or one of the parties to the communication has given prior consent to record it. Your spouse can tape the conversation between you and your spouse, and then ask you if you will stop seeing your "lover." The tape with your answer would be admissible in court. If you are depending on the consent of a party to the conversation other than yourself, make sure you get that consent in writing.

## **PRIVATE INVESTIGATORS**

Private investigators are professionals that are paid to investigate and testify. In Michigan, they are licensed professionals. They can be the key to success or an expensive dead end. It is important to give them all the help that you can. The more information you give them, the less they have to find out and the less it will cost you.

You may be on the other end. Your spouse may have hired an investigator to follow you. If you are not doing anything wrong, do not worry. If you are, quit it.

One woman looked upon the investigators, who followed her, as her private security guards. She brought them snacks and told them where she was going, so they would not get lost. They followed her to her grandmother's house, which was not in a good part of town. She told them how much more secure she felt when they were with her in that neighborhood. After a few reports like this from the investigators, the husband called off the investigators and the wife quietly picked back up with her boyfriend.

## **POWER OF ATTORNEY**

If you have given your spouse power of attorney (the legal authority to act for you), revoke it in writing. Your assigned attorney can draft the revocation for you, but it is better to get the original document back.

## **FAMILY**

Your well-meaning family and friends may offer you advice about your case. Especially if they have been through a divorce themselves. Frequently, such advice is not accurate. The facts surrounding your marriage, divorce, children, and property are unique and different from any other case. The only thing your divorce and your Aunt Harriet's divorce may have in common is that you and your Aunt Harriet are related to each other. Remember, what Aunt Harriet received in her divorce will **be** different from what you receive in yours.

## **ONE ATTORNEY FOR BOTH PARTIES**

If there ever was a conflict of interest, it has to be two people getting a divorce. The attorneys in our firm do not represent both parties in a divorce, although some attorneys may. If you and your spouse have agreed on everything, it may be possible for your assigned attorney to do all the legal work, but they will represent **only one** of you. If you and your spouse later disagree, your assigned attorney will continue to represent that person.

## **KEEPING YOU INFORMED**

You will receive copies of many of the documents that were prepared or received by your assigned attorney. Due to court appearances, trials, depositions, negotiations, and other commitments, your assigned attorney is difficult to reach on the telephone. Please see the telephone call policy that you signed when you retained the firm for our policies on access to our attorneys by telephone.

Understand that each telephone call is billed. You can keep the cost lower by sending your assigned attorney an email (preferably no more than once a week) and they can respond to you when their schedule allows and they have had time to thoroughly think through their response and perform any necessary research.

## **COOPERATION**

We expect you to be cooperative and truthful. If you are not, our firm will not represent you. We also expect you to handle your financial commitments to our office in a prompt and businesslike manner. Please notify the firm of any changes of address or telephone number or of any new information that may affect your case.

## **COST AND EXPENSES**

There are different types of costs in divorce cases. The largest cost is usually attorney's fees, which is what the firm charges for the work the firm does on your case. See Attorney's Fees below. Court costs are the fees that are charged by the court for the filing of the divorce complaint and various other papers.

In contested cases, attorney's fees and court costs are higher and there may be other costs for things such as depositions, private investigators, photographs, psychological evaluations, and tax consultants. You must pay these costs, as attorneys are ethically prohibited from lending clients any money.

Any discussion about the costs or attorney's fees will be is the roughest of estimates. There are many variables in any divorce case, including some over which we have no control. Who your spouse will hire as a lawyer, how complex the financial issues are, or what mood the judge is in on the day of trial will affect how your assigned attorney handles your case and, therefore, what it will cost you.

The emotional cost of a divorce can be greater than the dollar cost. The damage of having a broken marriage examined in court is something only those who have lived through it can understand.

## **ATTORNEY FEES**

Our fees are based on the Rules of Professional Conduct.

We have no way of knowing how much time must be spent on your case. We cannot estimate with specificity what your ultimate fees will be at the conclusion of your case. Our fees are based on a number of factors, which includes: the amount and nature of the services rendered, the time, labor and difficulty involved, the character and importance of the litigation, the amount of assets and value of the estate affected, and the requisite professional skill and expertise exercised by your attorney as well as novelty and difficulty of the questions involved and the results obtained. An hourly rate will be quoted to you, which may be helpful in assessing the amount of fees due. You will also be responsible for disbursements made on your behalf by your assigned attorney for such items as court costs, filing fees, service of pleadings, appraisals, expert witness fees, etc. You will be charged for consultations, correspondence, phone calls, office and research work, court time, filing, and hearings. In the event your spouse is ordered to contribute to your attorney's fees, you will be given credit on the amount your spouse pays. This is typically a refund of the monies that you have already paid to the firm once your account is paid in full. Lawyers are prohibited from entering into an agreement for, charging, or collecting a contingent fee in a divorce case.

## **JUDGMENT OF DIVORCE**

The Judgment of Divorce is the most important document you will receive. Be sure to place your copy in a safe place.

After a settlement is reached and/or the case is tried, the Judgment of Divorce will be entered by the court, as your final decree granting you a divorce. It will also contain clauses dealing with such issues as spousal support, custody, child support, parenting time, insurance, dower rights, property settlement and other miscellaneous clauses. If a settlement has been reached, you must

carefully read and examine this Judgment, and have your attorney explain it to you before you approve it.

## NEGOTIATIONS WITH YOUR SPOUSE

Over two thousand years ago, Sun Tzu wrote in the *Art of War*, "Those who know when to fight and when not to fight are victorious."

This applies to ancient Chinese warfare and your divorce. If you can work out a satisfactory settlement with your spouse, you will have a victory. Even if you win at a great trial, there is a great cost in money and emotion.

In trying to work something out with your spouse, the following are some useful pointers to remember:

1. **Meet on neutral ground** - Not at this office or at her mother's home, but some place where both parties will feel comfortable.
2. **Put aside time** - A reasonable amount of time should be set aside to deal with the issues. If you leave to answer a telephone call just as you almost have things worked out, you may find that things have fallen apart when you get back. On the other hand, do not leave the meeting time open-ended. A meeting without a deadline will drag on and issues will not get resolved.
3. **Set an agenda** - Decide what will be dealt with at the meeting.
4. **Do not bog down** - Try to talk about what you agree. No matter how bad it is, you agree on some things. If you hit a point that gives you trouble, move on to something else and come back to the problem after you have resolved some other issues.
5. **Reschedule as needed** - If things start to turn nasty, if someone gets angry, or if you think you are losing everything, reschedule the meeting for another time. It is important that both of you feel that the agreement is a good thing.
6. **Keep the kids out of it.** - Your children (adult or young) do not need to be involved in this. Do not have them around. They will interrupt you, and it will upset them. Do not call your adult children for their advice.
7. **Start talking early** - Divorces usually settle early on when both parties feel guilty and are not locked into a position, or divorces settle after much litigation when the parties are too exhausted to fight anymore. Sometimes you get more with guilt than you get at a trial.

If you and your spouse work out something and you can make notes, but **do not sign the notes**. This could be considered an agreement. If it is not in the correct legal language, you may be bound by something other than what you thought you agreed to.

## MEDIATION AND OTHER ALTERNATIVES TO TRIAL

Normally, the parties will try to settle their case. See section on **Negotiations with Your Spouse**. If that does not work, the attorneys will normally try to settle the case. These approaches are dynamic and can both go on at the same time. Sometimes despite the best efforts of everyone, the case will not settle. Before going to the ultimate test of a trial, there are alternatives.

**Mediation** is negotiations with a neutral party assisting the negotiations. The mediator is not an advocate for either spouse. The mediator facilitates the process and does not "take sides" or make decisions for you. They merely facilitate settlement. We recommend this and urge you to ask

your assigned attorney more about it for your specific case. Even if your spouse is opposed to mediation, the court can still order it. If you have been the victim of abuse, the court may not order mediation unless:

- you agree to mediation;
- the mediator is certified in both mediation and domestic violence; and
- You are permitted to have your attorney or another person accompany you.

**Judicial settlement conference** is where a Judge from another court listens to both sides and gives a nonbinding opinion on the case. This has settled some very difficult cases.

**Arbitration** is where a third party, the arbitrator, makes a final decision. This is like a judge, but you must pay the arbitrator and you are bound by the decision.

There are other alternatives. Ask your assigned attorney about them for your particular case.

## WAITING PERIOD

For a divorce without minor children and uncontested, the statutory waiting period in Michigan is sixty (60) days. There is no way around this.

For a divorce with minor children, the statutory waiting period in Michigan is six months. In some cases, where the parties have agreed on all issues, the judge may waive the statutory waiting period and grant the divorce. This is done for the best interests of the children. Your assigned attorney will let you know if this is available in your case.

## COURT APPEARANCE - UNCONTESTED

In an uncontested divorce, the plaintiff needs to appear in court to testify. The defendant needs only appear if it is what he or she wants to do. At the final hearing, the court will take proofs - statements that assist the court in deciding to grant the divorce and that all statutory requirements are met.

## FACTS

Your assigned attorney must have all the facts to represent you properly. **Tell them everything you know:** "My husband took a trip out of town. Here is a copy of the receipt." **Tell them what you suspect:** "I bet he met his girlfriend down there." Something that may not seem important to you may be critical to your case. If the other side knows something that your assigned attorney does not, the information could be used against you, and your assigned attorney would be unprepared and unable to defend you against it. However, if you give your assigned attorney the information, no matter how bad it may appear, then they can take the proper steps to prepare a defense to avert what could otherwise turn out to be a disaster.

Except when talking to your witnesses, try not to discuss your case with anyone unless you have your assigned attorney's permission. One of the best ways for the opposition to trip you up is to get a statement from you before trial that does not coincide exactly with your testimony at trial. When you do say something, be careful what you say. Anything you say may be played back to you on the stand. If you say something petty or wrong, it may hurt your case. Until the divorce is over, do not say anything you would not want the judge to hear.



Do not sign anything involving this case unless you have approval from your assigned attorney. You may be signing something that could harm you later on.

Immediately provide your assigned attorney with the names, addresses, and telephone numbers of all witnesses, and state what they know. Advise your assigned attorney immediately if you hear of anything that might affect your case. To help you organize the information, there are forms for this in the Appendix under Divorce Incident Reports.

**Never lie or withhold information from your attorney.**

## **CONFIDENTIALITY**

Anything you tell any member of our office is strictly confidential and will not be disclosed outside without your permission. However, your assigned attorney will not allow you to lie under oath nor allow you to plan to commit a crime. If someone outside of you or our office overhears or reads communication, the privilege is lost as to those communications.

If you communicate with us by a method that allows access to that communication, you may well have lost the privileged nature of the communication. If you email our office, do not leave a copy of the email on your computer so others can read it. Remember that merely hitting the delete key will *not* delete the email. Intercepting other persons wire communication is a serious crime.

All papers filed in your case and all testimony in your case are theoretically matters of public record, and the public has a right to see or hear it. However, the only people you are likely to see at court are the other people, who are getting divorced themselves that day, and they are far more concerned with their own problems than with your case.

## **EVIDENCE**

If you have not done so already, start looking for evidence. Check desk drawers, safety-deposit boxes, bank boxes, or other places where documents might be hidden. This is a good time to visit with your family banker, stockbroker, or accountant to discuss the family financial situation, although you may not want to tell them about the divorce.

You need to supply your assigned attorney with copies of the following documents:

1. Prenuptial Agreement
2. Income Tax Returns
3. Financial Statements (these are most often filed when borrowing money and are **very important**)
4. Employment contracts or any explanations of benefits from you or your spouse's work
5. Canceled checks and charge records
6. Retirement plans, including IRAs
7. Deeds

8. Real Estate tax bills or appraisals
9. Insurance policies including life insurance, medical insurance, health insurance, or homeowner's insurance
10. Bank accounts and bank statements
11. Safety-deposit boxes (you will want the bank to verify and inventory if possible)
12. Securities
13. Partnership agreements, corporations, or other documents showing any business interests
14. Any inheritance or trust interests
15. Wills by you or your spouse
16. Any written agreements or notes between you and your spouse
17. Any evidence you have such as photographs or letters.

## **WITNESSES**

When you must prove something in court, you must have legally admissible proof. Most proof comes from witnesses. If you are alleging fault, you need to have corroboration (support) of your proof, even if your spouse is not disputing the allegation of fault. Corroboration usually means two other witnesses. In a contested case, you may need more than two witnesses. Your assigned attorney can issue a subpoena for witnesses, if you request it and give your assigned attorney their name and address. The subpoena will help the witness get off work to appear in court. If the witnesses do not appear in court, you can usually have the case put off until you can get them to appear in court.

An expert witness is a witness who has such training or expertise that the witness' opinion is valuable to the court. Psychologists, doctors, and accountants are often expert witnesses. Expert witnesses must be paid for the time they spend in preparation and at trial. They are expensive.

## **TRIAL**

Before you come to court, decide what you want to accomplish. Do you want to persuade the judge or do you want to vent your feelings? The likelihood of the judge paying attention to one more angry party to a divorce case is small; giving sympathy on the basis of an emotional rant is even less. Judges can be persuaded by facts clearly and appropriately presented. The following suggestions can increase the likelihood of persuasions.

Dress neatly and nicely for all court appearances, especially those in which you will be testifying. It is unfortunate that people judge other people by the clothes they wear, but they do. If

you want the judge to think you are one of the "good guys" then dress like a good person, not like a biker. Women should wear little or no makeup or jewelry.

Stand and sit erect. When you take the oath, clearly say, "I do." Do not slouch in the witness stand or slur your words. Be serious. When speaking, minimize your hand gestures. Do not ask the judge if you have to answer a question. If it should be objected to, your assigned attorney will object to it; otherwise, you must answer it. **Never** interrupt the judge. Do not speak unless spoken to. Do not cover your mouth or avert your eyes.

Look at the judge when you talk. Remember, you are trying to convince the judge. So talk to the judge and not to your assigned attorney. They already believe you. Do not talk to the other attorney, because he or she will never believe you. Do not look at your assigned attorney before you answer the question as if you are seeking help or after you answer the question as if you are seeking approval.

Do not react to other witnesses' testimony. Your reaction will aggravate the judge and you will look childish.

Be polite; it makes a good impression on the court. Answer, "Yes sir" or "madam" and address the judge as "Your Honor." Do not be a smart-aleck, or appear nervous or angry. If the other side baits you into becoming angry, it is probably trying to set you up for a trap, so keep your cool. Lose your temper, and you may lose your case.

Be nice. Judges tend to like nice people. If someone needs to get tough, let it be your assigned attorney. They have more experience in making that call.

If you want to tell your assigned attorney something, pass them a note. If you talk to them, they may miss something in court that they need to hear.

**Tell the truth.** It usually will come out eventually anyway, and it is better coming from you than the other side. If the other side catches you in a lie, you may lose your case. However, make sure you told the truth to your assigned attorney before you tell it in court. They have watched more than one person ruin a good case by not telling the truth on an unimportant point. Then when the person tells the truth on a critical point, no one believes them.

Listen carefully to all questions, whether posed by your attorney or by the other side. Pause, make sure you understand the question, then take your time and answer that question. You cannot give a truthful and accurate answer, if you do not understand the question. If you ask, the attorney will repeat the question. Do not tell the court "I think" or what it "must have been." The court does not normally care what you think or what could have happened. It wants to know what actually happened. However, if you estimate a time or a cost, make sure the court knows it is an estimate. If you make a mistake during your testimony, correct it as soon as possible. Politely say something such as, "May I correct something I said earlier?"

When the other side asks you a question that you do not know the answer to, say, "I do not know." Being led into areas about which their knowledge is inadequate often traps witnesses. They try to save face and end up making a statement that is incorrect. This gives the other side what it needs to shoot them down. You can usually avoid the problem by saying "I do not know."

In cross-examinations most question can be answered with "yes," "no," "I do not know," or with a simple sentence. Do not use "Watergate" words. Everybody in the United States believed the witnesses at the Watergate hearing were lying. Therefore, when you say "to the best of my recollection," people think you are getting ready to lie to them. If it is all you remember, say, "It is all I remember." If you remember something else later, tell what you remember.

Do not volunteer information. Do not let the other attorney pull you into testifying more than you need to by standing there looking at you, waiting for you to add material. When you are finished with your answer, **shut up**.

One of the oldest tricks in the books is for the other side to ask you if you have discussed the case with your attorney or other witnesses. If the other side asks that, tell the truth - you have. The other side is not asking you if you have fabricated the story, but it is asking if you have talked about it. Only a fool would go to court without having discussed the case with his or her attorney and his or her witnesses. If the other side asks you if your attorney has told you what to say, say that they told you to tell the truth - because they have.

Do not let the other side trick you by asking you if you are willing to swear to what you are saying. You already did when you took the oath as a witness.

We are all afraid of things we do not understand. A visit to the court before your case may make you more comfortable about your court appearance. After you watch a few cases, you will see that no one dies or is seriously injured when testifying. You will feel better when it is your turn. To help yourself, you will want to review any documents you will refer to during your testimony. Also, review any statement you made, and talk to friends, family, or coworkers to recall details you have forgotten.

**Always check with our office before court to make sure your case will be heard.** The court for one reason or another continues often cases, and we do not want you to waste a trip to court, if it is avoidable.

## FINAL DIVORCE

The dissolution of marriage and orders contained in the Judgment of Divorce are final in twenty-one (21) days from entry of the Judgment of Divorce. Your remedies to change the orders in the Judgment of Divorce are to file a motion to alter or amend the judgment or notice of appeal of the court's decision to the Court of Appeals.

If you wish to appeal any of the orders of the court, you have twenty-one (21) days from the date of the Judgment of Divorce or the order on a motion to alter or amend to file a notice of appeal. Failure to file one of these pleadings within twenty-one (21) days from the date the Judgment was entered causes your right to appeal to be permanently lost. If you believe that, you may wish to appeal, please contact your assigned attorney immediately by telephone and schedule an appointment so that they will have ample time to evaluate the appeal and to prepare the necessary paperwork before the deadline. If you tell your attorney right before the appeal deadline runs, they may not be able to represent you properly. Orders of the court of division of property are modifiable at any future date. They can be changed only by amending the Judgment of Divorce, an appeal to the Court of Appeals, or by written agreement signed by both parties and filed with the court as an order.

Orders of the Court for alimony, child support, child custody, and parenting time may be modified upon a showing of a substantial change of circumstances. Any modification of these orders must be done prospectively. This means that the court cannot retroactively modify any court orders. Any agreements to modify these orders must be in writing, executed by both parties and **entered by the court as an order** or such agreement is not binding.

## REMARRIAGE

Oscar Wilde described remarriages as the "triumph of hope over experience."

Be cautious on immediately marrying someone other than your spouse in the initial months following the divorce. If there is an appeal, this is a complicated issue that you will need to ask your assigned attorney about. If you do remarry, you may want a prenuptial agreement (also called premarital or ante nuptial agreement). This is an agreement with your new spouse to be made before the marriage. If you are interested in this, ask your assigned attorney. It can help you avoid problems in your next marriage.

## CHANGES

If you and your ex-spouse agree to change the terms of a court order (Temporary Support Order, Judgment of Divorce, or any other), you **must** change it with another order. If your spouse says, "You don't have to pay alimony for the next year, if you will take the children to Disneyland this summer," you must get it in writing and entered in court for it to be a binding on your spouse and to protect you from contempt.

If you need to change child support or certain types of alimony, you can petition the court for a change. If you show a change of circumstances, then the court may modify these provisions. The changes of circumstances that most impress the court are those changes that you do not expect: "I lost my job because the company went bankrupt." The courts are less sympathetic to "I just don't want to work as hard as I used to work."

## WILLS

You probably need a new will now. If you wish to pursue this, ask your assigned attorney.

If you have given your spouse a power of attorney, cancel it as soon as possible. Until you do, your spouse has control over your property and can sell it or give it away.

If you have a patient advocate designation in which your ex-spouse has the right to tell the hospital to pull the plug and let you die, you may want that changed. Ask your assigned attorney about this.

## SOCIAL SECURITY

If you and your former spouse were married for longer than ten (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 upon reaching age 62, regardless of whether your former spouse has retired at that time. These benefits are provided by the federal government and are not usually addressed in a Decree.

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; for spouse's benefits, three months before turning age 62.

When applying for Social Security benefits, you should have your Social Security Number, Birth Certificate, Marriage Certificate and Judgment of Divorce, showing your marriage termination date.

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 and contact them now.

## **EMOTIONS**

If you are going through a divorce and you feel uncertain, insecure, or depressed, then you have a normal problem. You may want some counseling for the problem.

If you are going through a divorce and you feel no uncertainty, insecurity, or depression, then you probably have a big problem. You should get professional help immediately.

It is easy to use anger as a cover for the hurt you will experience in the divorce. Rather than feeling hurt and lonely, it is much easier emotionally to be angry with your spouse. This is true whether you have good reason to be angry or not. Anger is a powerful drug. Like drugs, anger has side effects such as clouded judgment and is addictive. If you use a divorce only as a device to express your anger, you will be disappointed. You should expect to feel hurt, angry, betrayed, lonely, and confused. That is why you should seek counsel. While the litigation may secure a fair dissolution of the marriage, it cannot heal your hurt.

Divorce is an unpleasant time at best. A range of emotions, including, denial, anger, guilt, depression, fear, resignation, ambivalence, and frustration will beset you. Remember this is normally only temporary. You probably will feel different next week. Instead of feeling angry next week you might feel fearful, next week indifferent, next week depressed, next week ambivalent, and so on until finally one week you are happy that it is all over.

Counseling is helpful. Individual or group therapy will be useful to help you work through this difficult change in your life. We can recommend counselors and divorce recovery programs that are helpful. Getting counseling is not usually seen as a sign of weakness but intelligent planning in a difficult situation.

Excessive drugs or alcohol are bad for you and your case. The severity of the judge's reaction varies depending on their background and the specific facts. You can be ordered to participate in random drug tests and lose custody or parenting time of your child.

## **FEAR**

Fear is a normal human response to uncertainty. As you go through a divorce, there will be times when you cannot control what will happen. You will be afraid of what your future will be. Will I go broke? Will the other lawyer ask me about \_\_\_\_\_ (fill in with whatever you didn't tell your lawyer)? Will I die alone and unloved? Will this case ever end? Your imagination will usually be worse than reality. If you let your fear control you, it will destroy your case.

When you get on a plane, you decide where you want to go; but not how the plane will be flown. You cannot control the weather along your route or how the pilot flies the plane. When the ride gets bumpy, you do not get up and demand that the pilot fly the plane your way or fight for control of the plane. If you do, and you are lucky, you end up in jail; if not, you crash the plane and destroy everything.

Your lawyer has been through this before and will look out for you. However to do this the lawyer *must* have your cooperation. There will be many decisions for you to make, but there are critical decisions that your assigned attorney will have to help you with or, in some cases, make for

you. You hired us for our expertise and experience. You need an attorney you can have faith in. You must be able to accept your attorney's counsel for you to have a successful case. Do not destroy your case (crash the plane) by a fear-induced demand to control everything.

## **WORRY**

Human beings, among all the animals of the earth, have a unique ability for worry. Even during good times, people find things to worry about. When going through a divorce, you will find many things to worry about, and you will have good reason to worry. Even if we tell you not to worry, you will worry.

Let us suggest that instead of worrying **about** your problems, you worry **at** your problems. Instead of letting your mind be consumed with worrying about how bad the problem is, you should concern yourself with what you can do to solve the problems.

## **DEALING WITH YOUR EX-SPOUSE**

After the divorce, you and your ex-spouse will have two separate households. You will have to maintain those two homes on the money with which you maintained one earlier. "Two" cannot live as cheaply as "one," especially when "two" are two separate households.

Furthermore, if your ex-spouse has been a jerk all of his or her life, it is very unlikely that going through a divorce will make him or her less of a jerk. A drunken wastrel will probably continue to be a drunken wastrel, and nothing the court or your attorney can do will be likely to cure the problem. After the divorce, you will be separate, but to the extent that you are still tied together by parenting time, child support, alimony, or debt payments, you will still have to deal with the problems together.

If your ex-spouse-to-be is garbage, then no matter how hard we try or how well we succeed in court, your ex-spouse-to-be will probably still be garbage.

Once you are divorced, you have an ex-spouse to deal with. The level of dealing varies from "You still have my red hammer" to "Will you contribute to your daughter's wedding?" You can do this in ways that will help create a greater likelihood of calm discussion or you can help create a situation that can be emotionally chaotic. Many of the recommendations in the **Negotiating with Spouse** section will apply. Use recommendations are:

- Remain calm. Your ex-spouse may not have gotten over you. He or she may want to engage you emotionally, and if anger works, they will go there.
- Let go of your anger.
- Do not send mixed messages.
- Stay focused on business matters.
- If you state consequences, you must follow through. However, remember not every negative comment demands a negative response. A fish that rises for every bait soon is caught. You are smarter than a fish.
- Do not use the children as messengers or spies.
- Comply with agreements and orders. This minimizes areas of conflict.

## **MISCELLANEOUS**

Many matters may arise after the case is concluded for which counsel should be retained. These matters may be for enforcement of child support, spousal support, parenting time, or property provisions. Further, Michigan now permits personal injury actions for physical or emotional injuries inflicted by a spouse or former spouse during the marriage or afterwards.

## **CONCLUSION**

Many divorce cases end in a reconciliation of the parties. If there is viability in your marriage and a chance to save it, we will be pleased to recommend marriage counselors to you and assist you in every possible way to affect this reconciliation. If, on the other hand, you believe the marriage is over, we will do our utmost to obtain a Judgment of Divorce that is satisfactory to you.

As divorce proceedings today are difficult, and extensive work may be necessary, we use a team effort: other attorneys, paralegals and legal assistants in the office are available to assist us at the office, or in court. However, your primary attorney will oversee and advise on all work performed.

This document, in effect, merely touches the basic elements of divorce and divorce procedures. It is not to be considered as the last word on the subject, but merely as a helpful guide. It is provided for the purpose of making you more aware of procedures and more knowledgeable about divorce laws generally. You must also be advised that family laws constantly change and some of the statements made may become obsolete. If this occurs while your case is pending, we will apprise you of it. Literature on divorce and divorce stress will be recommended to you upon request, as well as divorce matters dealing with children.

As your attorneys, we have had substantial experience and expertise in the field of family law. We are aware of the pressures and the personal difficulties faced by a person involved in the divorce process. We will attempt to ease and work toward eliminating the cause and effect of these problems. If you have any questions, please do not hesitate to call or arrange for an appointment.



## **APPENDIX**

1. How to Minimize your legal fees.
2. Equitable Distribution - Property Division
3. Books for Divorcing Families
4. Dos and Don'ts: Keeping Children Out of the Middle in a Divorce
5. Effects of Divorce on Children
6. Parenting Hints
7. Private Investigator
8. Divorce Incident Report

## HOW TO MINIMIZE YOUR LEGAL FEES

The purpose of this is to suggest ways in which we can work together to control your legal fees. Attorneys do cost money, but as you will see there are ways, in which you can help to limit those costs.

1. You can greatly reduce "legal footwork" by clearly and concisely completing all the information requested on the Divorce Information Sheet.
2. Any documentation you can get regarding bank accounts, annual pension reports, stocks etc. will help and save you from paying for your attorney's time spent in trying to obtain this information through the other attorney or other legal process.
3. A letter or email is an inexpensive way of keeping your assigned attorney up to date on information they need to know about your case. If you wish advice on a current situation, a letter or an email gives them a chance to think about your problem before they communicate with you. It takes much less time for them to read a letter to have a telephone conversation or conference.

Lengthy telephone conversations add up quickly. In addition, a letter provides a written document, which will be kept in your file for review. In addition, if you are confused about something, putting it down on paper and seeing it in black and white is often helpful to both you and your assigned attorney.

4. Since you will be billed for all of the time that our office spends working on your case, you will save money whenever you can do your own negotiations e.g. on day-to-day issues such as who pays the car insurance and/or other bills, visitation arrangements, etc. Whenever a lawyer is asked to negotiate on your behalf, costs will escalate. You will pay for (1) your telephone call to your assigned attorney; (2) their telephone call to the other attorney; (3) his/her reply to your attorney after contacting his/her client; and (4) your attorney's response to you.
5. If you find that you are spending a lot of time talking with your attorney about your frustrations or anxieties, consider sharing this information with a therapist. Often they are better qualified to deal with these issues and charge a lower hourly rate for their consultation.
6. Make a list of questions that you wish to have answered before you initiate a phone conversation or an office conference with us.
7. If your attorney refers you to use the services of other professionals, such as accountants, financial advisors, and therapists, follow that advice soon after you receive it. Often you can save unnecessary follow-up from our office, if you handle the task and supply us with the information that the other professional helps you supply. For example, we may need you to check out some tax information, or how best to structure your investments. If you can get that information quickly, we can

proceed with the next step in your case, without getting back to you for a status check.

You may be able to think of other ways we can work together efficiently. If each of us considers what needs to be done and the cost and benefits of each task, we can do the best job for the case with the available resources.

If you have any questions about the cost of a case, we will not charge you for the time spent discussing costs.

## EQUITABLE DISTRIBUTION

### Real Estate

If home to be sold, who occupies until sale?

Who pays expenses until sale:

- Mortgage
- Taxes
- Utilities
- Insurance
- Repairs

### Sale of House

When?

- Age or graduation of children
- Remarriage or cohabitation

How sale price to be determined

Option to buy

Expenses of sale

Division of proceeds

Capital gains consequences

### Division of Personal Property

Bank accounts and liquid assets

Stocks, bonds, tax shelters

Cars

Jewelry

Collectibles

Household furniture

Family Photographs

If home to be retained one person:  
Who remains in house?

Valuation of home

Division of value: lump sum and/or payout

### Business Interests

Method of valuation

Division of value: lump sum and/or payout

### Retirement Funds

Valuation

Division of value: lump sum and/or payout

### OTHER ISSUES

#### Estate Waivers

Effect of waivers

Provisions for children of this marriage

#### Tax Returns

Liability or refunds on:

Past returns

Future Filings

#### Costs of Divorce

How to divide legal fees and filing fees

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## **DOS AND DON'TS KEEPING CHILDREN OUT OF THE MIDDLE IN A DIVORCE**

Source: St. Clair County Probate Court pamphlet, Guidelines for Divorced and Separated Parents.

- I. Dos
  - A. Be discreet when you expose your children to any member of the opposite sex with whom you may be emotionally involved.
  - B. Notify your spouse as soon as possible if you are unable to keep your parenting time schedule. It's unfair to keep your children waiting - and worse to disappoint them by not coming at all.
  - C. Make your parenting time as pleasant as possible for your children by not questioning them regarding the activities of your spouse and by not making extravagant promises which you know you cannot or will not keep.
  - D. Minimize the amount of time the children are in the care of strangers or relatives.
  - E. Always work for the spiritual well-being, health, happiness and safety of your children.
  - F. Make child support payments on time. It is unfair to the children for their support payments to be late.
  - G. Treat each of your children equally.
  - H. Do unto your children and your former spouse as you would have them do unto you if you were in the situation.
  
- II. Don'ts
  - A. Don't poison your child's mind against either the mother or father by discussing their shortcomings.
  - B. Don't use your parenting time as an excuse to continue arguments with your spouse.
  - C. Don't spend time with your children if you have been drinking.
  - D. Don't deny parenting time because child support has not been received.
  - E. Don't fail or refuse to pay child support because of parenting time problems.
  - F. Don't make promises to the children you cannot or will not keep.
  - G. Don't attempt to cut off the children's communications with their grandparents or other relatives or friends with whom they have a close relationship.
  - H. Don't lose your temper or become involved in unpleasantness in the presence of the children.

### **Children's Bill of Rights**

1. The right to be treated as important human beings, with unique feelings, ideas and desires, not as a source of argument between parents.
2. The right to a continuing relationship with both parents and the freedom to receive love from and express love for both.
3. The right to express love and affection for each parent without having to stifle that love because of fear of disapproval by the other parent.



4. The right to know that their parents' decision to divorce is not their responsibility and that they may primarily be with one parent and spend time with the other.
5. The right to continuing care and guidance from both parents.
6. The right to honest age appropriate answers to questions about the changing family relationships.
7. The right to know and appreciate what is good in each parent without one parent degrading the other.
8. The right to have a relaxed, secure relationship with both parents without being placed in a position to manipulate one parent against the other.
9. The right to have the custodial parent not undermine parenting time by suggesting tempting alternatives or by threatening to withhold parenting time as a punishment for the children's wrongdoing.
10. The right to be able to experienced regular and consistent parenting time and the right to know the reason for canceled visits.

## EFFECTS OF DIVORCE ON CHILDREN

From Surviving the Breakup, Judy Wallerstein and Joan Kelly, The Free Press, 1982; Compiled by Susan Webster MA, MSW.

- I. Central themes of the experience for all children:
  - A. Divorce is frightening. Fear of abandonment is present in all ages. "Who will take care of me?"
  - B. Divorce is a time of rejection and feeling unloved.
  - C. Divorce is sadness and yearning - for the intact family, for the absent parent.
  - D. Divorce is a time of profound loneliness. There may be many daydreams, and little concentration.
  - E. Divorce is worry - over own vulnerability, and that of both parents.
  - F. Divorce is a time of conflicted loyalties that are close to unbearable. Custody fights will make things worse.
  - G. Divorce is anger; a feeling of betrayal. Temper tantrums may come followed by hitting and verbal attacks.
- II. Factors correlated with resolution of the divorce crisis and continued normal development:
  - A. Children have been given appropriate explanations as to parents' decision to divorce.
  - B. Lifestyle is stable with minimal friction between parents.
  - C. There is adequate contact with both parents. The child's view of "adequate" is to be considered.
  - D. The love and approval of both parents is presented in the child's life.
  - E. The importance of good father-child relationship and its link to high self-esteem and lack of depression, especially in 9-12 boys, has been acknowledged and acted upon.
  - F. There is freedom from economic woes.
  - G. There is a realization that the outcome of the divorce process depends partly on what has been lost, but also upon what has been created, and that the child's need for stability and emotional support is the same as in an intact family.
  - H. A "new chance" philosophy seems to describe many family attitudes and orientations.

## Common Responses of Children to Divorce by Age Group

### First Year to 18 Months

#### 3-5

- Fear - worries about being abandoned by both parents
- Behavioral regression
- Bewilderment
- Separation troubles during day and night
- Need reassurance that will be cared for
- Rise aggression, irritability, tearfulness and clinging
- Fantasy, denial
- Fears more intense but easier to allay

#### 6-8

- Insufficient master of cause and effect therefore guilt; responsibility-taking
- Grief - pervasive sadness, crying, sobbing
- Fear leading to disorganization, panic
- Feeling of deprivation, fantasies related to food, asking for toys
- Reconciliation fantasies
- Acute yearning for father, inhibition of aggression towards father, anger at mother
- Conflict in loyalties

#### 9-12

- Greater poise, layering of responses
- Fully conscious, intense anger.
- Ability to see ahead makes them even more incensed.
- Shaken sense of identity, offended morality
- Somatic symptoms
- Mastery through activity and play
- Alignment with one parent, clearly taking sides

#### 13-18

- Divorce associated with death of family, no more time to grow up
- Anguished appeals for reconciliation
- Normal developmental process of separation and individuation may be impeded
- Parent-child role reversal ensues.
- Sexual competition with same sexed parent
- May take responsibility for needy parent
- Mourning
- Anger, blaming
- Loyalty conflicts - despair, depression, guilt
- Regression or "ultra-sophistication" which is pseudo. No one setting limits
- Increased participation in family strategic withdrawal - both may work well in helping with adjustment
- Prolonged trouble likely when one parents leans heavily on adolescent for an extended amount of time

## **PARENTING HINTS**

Separation and divorce impose tough tasks on all family members, including the children. Children feel as though they are the powerless losers deprived of the full-time proper guidance of their two parents.

Although there may be some bitterness between you and your spouse, it should not be inflicted on your children. In every child's mind, there should be an image of two loving parents. In order to foster this image, you should remember that parenting time is a time for the parent and the children to be with each other, to enjoy each other, to maintain positive relationships. Parenting time really belongs to the children.

## **PARENTS' RESPONSIBILITIES**

Parents should prepare children positively for the continued relationship with the other parent by themselves speaking respectfully of the other parent and encouraging the children to have and express their positive feelings for that parent. Making it clear to the children that your separation and divorce does not mean that the children have to take sides or stifle their love for the other parent - even if that parent has hurt you personally - will go a long way toward allowing the children the freedom to get on with the usual tasks of growing up, secure in their parents' love. If children hear and see cooperation between their parents, at least as it concerns them, they will relax about this separation being their "fault".

Children should be ready to go at the designated time, dressed appropriately for the weather and having with them any necessary clothing changes, equipment, books, etc. It is good training in responsibility to have children assist with the packing of their things.

Events that will disrupt a visit should be communicated to the other parent as soon as you are aware of them. Remember that the other parent may be just as able to take the child to the Scout meetings or dance recital. Avoid scheduling activities for the children at times customarily the other parent's unless s/he specifically consents. Do not discuss with the children parenting opportunities, which conflict with scheduled parenting times unless the other parent first agrees to a change.

## **PARENTING TIME**

Having other people participate may dilute the parent child experience and it may appear to the children that you do not have time or interest in them that allows you to give them your undivided attention during parenting time.

Visits to grandparents are almost certainly okay but should not become the norm for all visits and should not be an excuse for you to disappear. If your parents are displeased with the divorce and angry with your soon-to-be ex-spouse, it is your responsibility to request that they keep their views to themselves in the presence of the children.

You may be concerned about what to do with or where to take your children during your parenting time, particularly if they are very young. Planned amusements may add to the pleasure of a visit, but most important of all is your involvement with the children. Avoid boredom (yours and the child) by finding out what interests the child has and giving of yourself. This might be getting down on the floor with stacking toys, reading the same story repeatedly to a toddler, making up stories or a batch of cookies, supervising homework or working on a science fair project together, teaching a child to ride a bike or throw a ball or program a computer, gardening or playing chess. Material things and holiday-type outings cannot compare with the steady influence such "real life" parenting provides. This divorce provides you with an opportunity to establish your own traditions for bedtimes, Saturday mornings, holidays, etc.

This is not saying that an occasional special trip, outing, or present is inappropriate. You should avoid having a feverish round of tiring activity or plying a child with expensive gifts each visitation. This can be interpreted by the child or your soon-to-be former spouse as a shallow and counter-productive effort to purchase the child's affection or sympathy.

**These suggestions may improve your chances of having your contacts with your children be helpful to you and to them.**

**1. Do not use parenting time** as an opportunity to grill the children about the other parent's activities or visitors. Make it gently clear that you respect the other parent's privacy and expect the children to respect yours, that what is going on between Mom and Dad is grown-ups' business that need not further affect the children. In the child's eyes, the parents may seem to hate one another and if the child does anything to please a parent, s/he fears that the other parent may reject him or her. S/he may feel that she has already lost one parent and will not want to lose another. These intense feelings of discomfort take time and diligence to dispel, once present. Your best remedy is to project mutual respect for each other and make the time with your children as pleasant as possible.

**2. Don't discuss** with the children what you believe to be the other parent's shortcomings or faults.

**3. If a child asks why** you and their other parent broke up, give a succinct answer appropriate to the child's age. Your answer should not try to prove the other parent was to blame; nor should you bear your soul to a child if you have hurt their other parent. Let them know that you are not going to be able to get back together but assure them that you will carry on as their parents.

**4. Don't plan parenting time at unreasonable hours.**

**5. Arrive and remain sober** for parenting time. If you cannot face an overnight or weekend without drinking, seek treatment and forego longer time with your child until you feel you can control your dependency.

**6. Notify the other parent** as soon as possible if you are unable to keep your parenting time. It is unfair to keep the children waiting. The other parent may have planned her/his time around the time the children were to be with you. Lastly, it is terribly disappointing to children to be ready

and not be picked up at all. If this happens repeatedly, they begin to protect their feelings by locking you out of their hearts.

**7. Don't make extravagant promises** to the children that will most difficult to keep or you know you cannot or will not keep.

**8. If one parent has plans for the children** that conflict with your parenting time, you have the right to say "No". Still, if the plans are in the best interests of the children and not interposed too frequently, be adults and work out the problem together.

**9. Always work for the emotional well-being**, health, happiness and safety of the children.

**10. The child may feel sad, mad**, or withdrawn at the start of or following time with the other parent. Again, every effort should be made by both parents to discuss openly the child's anxieties about separating from each of you in turn and what to do about them.

**11. Both parents should strive to agree** on general discipline standards and on specific discipline issues so that one parent is not undermining the reasonable efforts of the other. **DO UNTO OTHERS, AS YOU WOULD HAVE THEM DO UNTO YOU!**

## Private Investigator

1. Name of the spouse

2. Appearance of spouse - Photographs are best

Age  
Color of hair  
Height  
Weight  
Any distinguishing marks

3. Vehicle driven by the spouse

Model  
Color  
License plate

4. Residence of the spouse

Who lives with the spouse

5. Employment of the spouse

Address  
What does the spouse do at his/her employment

6. Hours at his/her employment

7. What establishments does the spouse like to go after work

Restaurant, bars and their locations  
Shops  
Workout facilities he/she is a member

Friends he/she visits

8. Who is the "intimate" friend of your spouse

Residence

Vehicle that person drives

Appearance - age, weight, height, color of hair

Other information

9. When can the investigator "catch" your spouse and his/her "intimate" friend

10. Budget for investigator

Example - I want you to spend up to \$500 following my husband on October 23 after he gets off work at 5:00 PM at 1234 Easy Street.



## **Divorce Incident Report**

**Notes prepared for only my attorney. Not to be shown to anyone else.**

**Protected by attorney-client and work product privilege.**

DATE OF INCIDENT:

DESCRIPTION OF INCIDENT:

WITNESSES:

Name: \_\_\_\_\_

Address:

Phone:

What witness saw?

Name: \_\_\_\_\_

Address:

Phone:

What witness saw?

**Notes prepared for only my attorney. Not to be shown to anyone else.**

**Protected by attorney-client and work product privilege.**