

DIVORCE

A Guide for Clients

By

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This booklet is part

of

The Complete Guide to Divorce Practice,

1st, 2nd and 3rd editions

also written by Larry Rice.

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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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DIVORCE

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.

This booklet describes many things; some will apply in your case and some will not. However, knowing those that apply to your case will help you avoid some problems and better deal with others. It does not and cannot cover all of the issues, laws, or rules involved.

This booklet summarizes the law, as I understood it, when I last re-wrote this booklet. The law is always subject to amendment by the legislature, reinterpretation by the courts, different application by different judges, and factual variation from case to case. If you need a lawyer outside my area, ask me or call before acting on what you have read, talk to a lawyer *in your area* - that is why they are there.

PRENUPTIAL OR ANTENUPTIAL AGREEMENT

Prenuptial and antenuptial (not *anti* although it seems that way) agreements are the same thing. They are different names for a document that sets out the terms of dissolution of a marriage when there is a death or divorce. If you signed one of these prior to your marriage, let me know. That document should control the terms of the dissolution of the marriage. The law has changed several times in this area and there are some technical requirements and loopholes, so it is important that we examine any premarital agreements.

FOUNDATIONS

Tennessee has two types of divorces: uncontested, which are usually based on irreconcilable differences, and contested, which require proof of grounds for divorce.

An irreconcilable differences divorce requires that the parties agree to be divorced and wait 90 days. You must have a written Marital Dissolution Agreement and a Parenting Plan that makes adequate and sufficient provisions in writing for the custody and support of the minor children of the marriage and makes a fair and equitable division of your property. There are also additional technical requirements, but the Marital Dissolution Agreement and an agreed Parenting Plan are the essence of an irreconcilable differences divorce (see Marital Dissolution Agreement and Parenting Plan sections below). As for assessing fault for the marriage breakdown, you only need to say that differences have arisen that will prevent you from living together as husband and wife.

A traditional contested divorce is a case in which the parties cannot agree and must go to trial. The grounds for a contested divorce are:

Adultery

Habitual drunkenness or abuse of narcotic drugs that was contracted since the marriage

Living separately and apart for two (2) years with no minor children

Inappropriate marital conduct (which may also be referred to as “cruel and inhuman treatment”)

Willful or malicious desertion for one (1) full year without a reasonable cause

Conviction of a felony and sentencing to the penitentiary

Pregnancy of the wife by another before the marriage without the husband's knowledge

Willful refusal to move to Tennessee with your spouse and living apart for two (2) years

Malicious attempt upon the life of the other

Lack of reconciliation for two (2) years after the entry of a decree of separate maintenance

Impotency and sterility

Bigamy

Indignities offered by one spouse to the other

Abandonment or refusal or neglecting to provide for spouse although able to do so.

The specific wording of the grounds statute can be found in the **Grounds Appendix**.

If you are filing for divorce, you should have your grounds before you file. If you cannot prove your grounds for divorce, accusing your spouse of these grounds may be grounds for divorce for your spouse. Pending the final divorce, you should not do anything to give your spouse any grounds for divorce because it can probably be used against you.

The legislature amended the law a few years ago and allowed parties to stipulate (agree) who is guilty of what grounds and inform the court of that stipulation.

Defenses to the grounds for divorce include:

Condonation- knowing what your spouse did wrong but forgiving him or her anyway; this is usually proven by showing that you and your spouse had sexual relations after you found out what your spouse did. This currently only applies to adultery.

Insanity- a defense to divorce if the person who is guilty of the grounds for divorce was insane when he or she committed the act. The insanity must be to the same degree as in a criminal case. If the person is insane at the time of trial, the case can still proceed against him or her but the court will appoint a lawyer to look after his or her interest.

The law of defenses is changing rapidly, and for technical reasons the defense that sounds as though it applies in your case might not apply. Ask your lawyer about it.

LEGAL SEPARATION

Although legal separation is possible, I do not generally recommend it. You are still married for most purposes (you cannot date). You usually wind up divorced anyway, and instead of paying for one lawsuit, you pay for two. If you are not ready for a divorce but you want to talk things over with someone, I recommend counseling; and I will be glad to recommend some counselors. Do not use a “trial separation” as a substitute for effective marriage counseling. If you want the marriage to work, you will probably need counseling. If you do not want a divorce, counseling is a good way to avoid it or prepare you if you must go through with it.

ANNULMENT

Annulments are granted by the court only in certain rare cases. The legal effect is to void a marriage from the very beginning – as if the parties had never married. If for religious or other reasons you want an annulment, tell me before the divorce is file.

RESIDENCE REQUIREMENTS

Prior to filing your petition, you must have resided in Tennessee for six months, or have been a bona fide resident of Tennessee when the grounds occurred here.

Some people wish to get divorced in another county; you can if both parties agree to it. At one time, this was faster than getting divorced in Shelby County now, however, Shelby County is as fast, or faster. One advantage that still remains is that *The Commercial Appeal* does not publish out-of-county divorces. However, even your dimmest family member or friend will eventually figure out that you are divorced. One disadvantage is that if anything goes wrong- and there is much that can go wrong (alimony or support does not get paid, visitation is not working, property was not transferred)- it is more expensive and complicated to straighten problems out if the divorce was granted in another county.

FILING

There are tactical advantages for the person who files first. The legal document that starts the proceeding is the **Petition for Divorce** or the **Complaint**. It also covers certain technical matters and asks the court for anything you might want.

If you and your spouse cannot agree on something (support, visitation, property division, attorney's fees, court costs, maiden name restored), then you must ask the court for it in the petition or the court cannot give it to you. If the list seems long, or if it includes more than you think is appropriate, think of it as a wish list. If the wording seems strange, remember that it is a formal legal document and much of the wording is

required by law. If your spouse has already filed, be sure that your lawyer has a copy of the petition as soon as possible.

The person who files first is the **plaintiff** or **petitioner**. The other person is the **defendant** or **respondent** and that person must respond to your petition in a formal document known as an **answer**. The defendant may also want to complain that the plaintiff was at fault. To do so the defendant files a **Counter-complaint**.

Where appropriate, talk to your spouse about divorce before you file. It is hard to keep open lines of communication if your spouse has been surprised by the sheriff serving divorce papers on him or her at 4:00 A.M. (which is when the sheriff often serves papers).

DISCOVERY

Discovery can include written questions, known as **Interrogatories**, or request for documents, known as **Request for Production of Documents**, or face-to-face questions before a court reporter known as a **Deposition**. See the **Deposition Appendix** for more information. Interrogatories and Request for Production of Documents must be responded to properly and the responses filed before thirty (30) days is up. It will take us some time to prepare your responses so you have to get them back to us well within thirty (30) days. **Request for Admissions** are a list of specific facts you are requested to admit or deny. If you fail to deny a fact within thirty (30) days, it is deemed admitted. If you deny a fact and the other side later proves the fact, then you must pay their expenses in proving that fact.

SEPARATION AND RECONCILIATION

The legal requirement for separation before filing requires at least separate sleeping arrangements and a lack of physical relations. Renewing physical relations without notifying the court and first getting the court's permission (called an Order of Reconciliation) may destroy your grounds for divorce. Reconciliation after a divorce may have tax consequences you need to explore. However, I encourage reconciliation. If you and your spouse 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. Each year, this occurs in 3 to 4 million families. Divorces often bring 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 an injunction or protective order is needed, to protect you or your children from future violence. Many spouses will simply stay away if such an order has been issued. Even if your spouse will not obey the order, it will help the police to physically remove your spouse if you can show the order to them.

If you need to go into any sort of “safe house” to protect yourself or your children from violence, tell me about this before you do so. We need to take steps in court so that your spouse cannot convince the judge you are kidnapping the children.

If there are allegations about your committing domestic abuse toward your spouse or children during the marriage, you need to tell me about it so that I 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 we need to organize our proof to defend you. If this happened there may be an explanation about why things happened, such as your spouse was hitting you and you defended yourself. If you committed abuse you will need to get counseling and stop the abuse.

Child abuse is disgusting. It is often an example of the weak being victimized by the strong. A false allegation of child abuse is just as disgusting. Both do damage that can continue through a family for generations.

Abuse can be clear cut 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. A social worker once told me she knew a child was sexually abused because the child referred to a woman's breast as "tatas."

If the police come you must be calm. Even if you called the police they will arrest the person they consider to be the "aggressor." If you are yelling or trying to get at your spouse then the police will be more likely to see you as the aggressor. Yelling at the police increases your likelihood of being arrested even more.

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 beat you, take your money out of the bank, or run off with your children, the court can enjoin or prohibit these things by issuing an injunction. In all cases other than irreconcilable differences, the court will issue a standard injunction when the case is filed. In other cases where other relief is requested such as removing someone from the home, the court may require a hearing before deciding on that relief.

The standard injunction provides as follows:

(1) Transferring, assigning, borrowing against, concealing or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any marital property.

(2) Expenditures from current income to maintain the marital standard of living and the usual and ordinary costs of operating a business are not restricted by this injunction. Each party shall maintain records of all expenditures, copies of which shall be available to the other party upon request.

(3) Voluntarily canceling, modifying, terminating, assigning or allowing to lapse for nonpayment of premiums, any insurance policy, including but not limited to life, health, disability, homeowners, renters and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties or the children as beneficiaries without the consent of the other party or an order of the court. A Modifying@ includes any change in beneficiary status.

(4) Harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party's employer.

(5) Relocating any children of the parties outside the state of Tennessee, or more than one hundred (100) miles from the marital home, without the permission of the other party or an order of the court, except in the case of a removal based upon a well-founded fear of physical abuse against either the fleeing parent or the child. In such cases, upon request of the non-relocating parent, the court will conduct an expedited hearing, by phone conference if appropriate, to determine the reasonableness of the relocation and to make such other orders as appropriate.

If you disobey an injunction or a protective order, the court can put you in jail. Even if the judge does not put you in jail, you can be fined and the judge may have a hard time trusting you later when you testify. The police do not want to get involved in problems between spouses; but if you show them an injunction, they may run the other party off, and they have to act if you have a protective order.

If you are under an Injunction or Protective Order you must **follow the order**. Failure to follow the order can result in your being put in jail. A Criminal Court judge can put you in jail for **years** for an assault on the person protected by the order after a protective order or possibly an injunction has been issued.

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 and are under a protective order, get them out of your possession 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, I will get you an injunction. However, if you feel you need the extra protection of a protective order, ask me, and I will take the steps to get it issued.

If you are under a protective order, any assault on your spouse is an aggravated assault, which is a serious criminal felony. You must obey protective orders and injunctions even if your spouse tells you it is all right to ignore the order. That spouse may be setting you up for a trap. You must obey the order until the court modifies or vacates the order.

CONTEMPT

In some cases it may be difficult to get your ex-spouse to comply with the court's orders. I recommend that you try to work out small differences yourself. The bigger problems, however, need to be brought to my attention. For example, if your ex-spouse does not pay child support, refuses to give visitation as ordered, or violates an order, there are a number of steps we can take to try force compliance. One possible step would be to ask the court to find your ex-spouse in contempt. Contempt findings can ultimately lead to jail time if the judge believes that your ex-spouse is intentionally refusing to comply with a lawful court order.

Another possibility would be an income assignment order. If your spouse is at least a month behind in child support and is employed, you may be able to get an order that will take the child support directly out of your ex-spouse's pay and require the employer to pay it to the court clerk. (It will show up as a deduction on the employee's paystub). The clerk will then pay this money over to you. Catching up on delinquent support gets more and more difficult the further behind the payor gets. Therefore, if you are not receiving child support that you should, you ought to take steps to enforce the support before it gets too far behind.

PROPERTY DIVISION

It is critical you tell me all you know about all the assets. The more I know, the more I may be able to get for you. In Tennessee, a statute covers property division. (See **Property Division Appendix** for the exact wording of the statute.)

Property includes real estate, and personal property, (both tangible and intangible). Property can include houses, pensions, businesses, coin collections- almost anything. You should also consider the legislature has set out criteria for alimony, child support, and property division. First, you must find and value the property (equity in the house, value of pensions, value of antique furniture). Next, you must determine whether the particular piece of property is separate property and remains with the person who owned it. Separate property is usually acquired before the marriage or outside the marriage, such as by gift or inheritance. Marital property is usually acquired during the marriage. Marital property can include increases in separate property that occurs during the marriage if your spouse contributed to its appreciation or preservation even if only indirectly.

To determine who gets what marital property, the court will consider:

Length of marriage;

Age, health, skills, and abilities of the parties;

Contribution to the education or to the earning power of the other;

Relative ability of the parties to acquire property in the future;

Contribution to the value of the marital property or the separate property;

Amount of separate property owned by each spouse;

Premarital property;

Financial conditions of each party;

Tax consequences;

Social Security benefits;

Allowing the custodian and children to continue to live in the home permanently or for a period of time (most often until remarriage of the custodian or until the children turn eighteen);

Other factors that the court considers appropriate.

If you and your spouse can agree on how things will be divided, and if your agreement is reasonable, it will usually be approved by the court. If you cannot agree, the court will divide the property, provided you can prove or get a stipulation to one of the grounds to divorce. If you cannot agree and prove or have a stipulation to at least one of the grounds, you cannot get divorced.

Do not hide assets. These assets are usually found; and if they are found, you will look like a crook to the court. The judge will have trouble believing what you say about anything after that, but the judge will have less trouble assessing attorney's fees against you for your behavior.

Sometimes there are important tax issues 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.

Under the right circumstances, the sale of a house by a couple can have an untaxed capital gain of Five Hundred Thousand (\$500,000.00) Dollars or an individual can get half that. This may effect your decision to sell your home before the divorce (as a couple) or after the divorce (as an individual). See the taxes section below *and* talk to your tax advisor.

DEBTS

Debts are the other side of assets and must be dealt with in a divorce. If you cannot agree, then the court will generally consider several factors in dividing debt obligations. Those factors can include:

- Who made the original debt?
- For what purpose was the debt made?
- Who received the benefit of the debt proceeds?
- Who will receive as a part of the division of marital assets the particular asset (if any) connected with the debt?
- Who is better able to pay the debt?

Despite an agreement for one spouse to pay a debt that is in both parties' names, there can still be problems with the debt. If the party responsible for the debt does not pay the debt, the other party can still be sued for the debt.

For example, the wife gets the house and the husband agrees to pay the mortgage. The husband dies or goes bankrupt. The wife may or may not be able to sue the husband. In any case, the mortgage company can foreclose on the house if the payments go unpaid

and sue the wife for any unpaid balance after foreclosure. The best way to protect the wife in this case would be for the husband to refinance the property and to remove the wife from the debt if possible. Sometimes this is financially impossible for large debts such as houses, but can still be done with smaller debts such as second mortgages and car notes.

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.

At the bank you may want to divide joint accounts or put them in your name. This sometimes will make the judge angry with you, but it is often easier to *give* money back than to *get* it back. 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 anyway.

Do not cut off the 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.

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 previously only had to pay for one.

During your marriage, most of your debts were probable incurred jointly. That means that both of you are responsible for the repayment of the debt. When your divorce is finalized either through a settlement agreement or a court hearing, 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. I 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 me so that we can take steps to try to protect you in the event that happens.

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 responsibilities of paying court awarded alimony in futuro and child support should remain. However, if you get a notice or have actual knowledge that your spouse has filed for bankruptcy, contact your lawyer immediately. Although I do not handle bankruptcy matters, I can recommend a lawyer who specializes in bankruptcy.

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 me.

Subject to many qualifications, alimony in futuro paid 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 quarterly tax 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 Decree, 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.

Generally, there is no tax gain or loss recognized as a result 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. The 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 the 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 your Decree 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 exemption 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-to-be. Although your agreement may provide for your ex-spouse-to-be 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 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. I am not a tax lawyer. While I know some things about taxes and divorce, I am not a tax expert by any means. If you need tax advice, we must associate a tax lawyer or a certified public accountant in your case. They are qualified to do tax planning.

ALIMONY

Alimony is supposed to be temporary and rehabilitative, hence the term **rehabilitative alimony**. If temporary alimony cannot bring about rehabilitation, then the court can, in proper circumstances, order alimony on a long-term or indefinite basis. **Transitional alimony** is awarded when the court finds rehabilitation is not necessary, but a spouse still needs some assistance. Indefinite alimony is called **alimony in futuro**. Alimony in futuro is granted less often these days. Alimony in futuro can be raised or lowered over time if there is a change of circumstances. If you do not get alimony at the time of the divorce, you cannot get alimony later on. **Alimony in solido** is a definite amount of money or property awarded instead of periodic payments, and it cannot be modified. Technically, husbands can get alimony from wives, but it seldom happens. In Tennessee, a statute applies to alimony. See the **Alimony Appendix** for the exact wording of the statute.

Alimony is based upon the relative needs and resources of the parties. The legislature set out criteria for the court to consider and they include the following:

Relative earning capacity, needs and obligations, this includes income from pension, profit sharing and all sources;

Education and ability of the parties, as well as opportunities for additional education;

Length of the marriage;

Age, physical, and mental condition of the two parties;

Whether or not one of the parties should stay at home with the child(ren) of the parties instead of working;

Separate property a person has;

Marital property a person gets;

Standard of living the parties enjoyed during the marriage;

Tangible and intangible contributions of a homemaker and the tangible and intangible contributions of one party to the education, training, or increased earning power of the other party;

Fault of one of the parties (if the court wants to);

Tax consequences;

Other factors that the court considers appropriate.

Living with someone after the divorce, regardless of whether you have sex or not, may cause alimony in futuro or rehabilitative alimony to be lowered or stopped. Death of one of the persons paying or receiving alimony or marriage of the person receiving alimony will terminate alimony in futuro and rehabilitative alimony unless the divorce settlement agreement provides otherwise. The court can require life insurance as a bond or put a lien on property to ensure the payment of alimony or child support.

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 dissolution was final. **Only** if you file within that time period 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 my experience and reading. I am not a psychologist. 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 parents 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 usually 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 it is better to live apart. Tell the children that the divorce is not their fault and that they will still have both parents. Avoid talking badly about the other parent, if there is any possible way to do so. A child is made from both parents. If they are forced to look upon a parent as bad, they cannot help but feel badly about part of themselves. Also, the judges do not like it. Tell the children it is all 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 mother/father" are not words a child needs to hear.

I have watched this dynamic play out many times over the years. The parent who has the closest bond with his children is a client of mine who refuses to talk bad about his ex-wife to his children, although he has more than sufficient reason to do so. He also refuses to let his children talk bad about their mother. His advise is that even if you don't like what she does you must love your mother. He loves his children and gives them the time and attention they need. They return this feeling. Take the high road; it is a better trip for you and the children.

In the Memphis area, you must attend a seminar entitled "Children Cope with Divorce." I recommend that you take this seminar early on so that you can put its helpful advice into practice as early as possible.

Depending on your circumstances, you may also want to alert your children's counselors and teachers 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. I will be glad to recommend a counselor if you want one. There are also some good books out there to help your children cope with divorce. For younger children, *The Dinosaurs Divorce* by Laurence Krasny Brown and Marc Brown is helpful because they can relate to the pictures. For school-age children, *The Boys and Girls Book About Divorce* by Richard A. Gardner is a good choice. Your public library can also help you with reading material for your children. The American Bar Association publishes *My Parents Are Getting Divorce, A Handbook for Kids*.

Try to work with your spouse about the children. Many parents stand together on issues involving the children even though they are separating in a divorce. Do not let the children play the parents off against each other. Children do this. Attempting to play one parent off against the other is normal for a child. Falling for it as a parent is not. Parents in divorce can even encourage this behavior. Do not use the children as your counselor. The children are not equipped for this and it will devastate them. At best, they can only give you childish advice. Your friends, family members, minister or professional can do this for you. This will be better for you and your children. I will be glad to recommend a counselor if you want one.

If you are in a relationship with a new person, do not introduce your children to this person until after the divorce and after they have adjusted to the separation. 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 or 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.

CUSTODY

We no longer have custody and visitation. We have parenting time. However people still refer to custody as custody so I am addressing it that way. The mother generally has an edge in custody litigation. The law goes back and forth about, each judge will have an individual preference. 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 cost and in legal cost. The damage caused by winning a custody case is great; the damage caused by losing is terrifying.

Joint custody will usually be approved by the court if the parties do so by agreement. The primary custodian is the one the child primarily lives with and has final decisions on issues such as school, medical care, and other issues. By agreement one parent can be responsible for some areas and the other parent can be responsible for other areas. Joint custody is more rarely awarded in contested cases.

The legal standard in deciding who will get custody is what is in the best interest of the children. Every judge sees it differently. If the judge's father abandoned his family and the judge's mother slaved day and night to help her son through law school, then the judge will have a hard time understanding why a father should have custody. Some judges are more moderate, but the father is usually at a disadvantage. If the court takes custody away from the mother, it usually has a good reason.

The criteria for custody are set out in a statute, Tennessee Code Annotated 36-6-404(b), a copy of which is in the **Parenting Plan Statute Appendix**. They include the following:

If there is custody litigation, you must be able to show the judge that the child is better off with you. Photographs of you and your child having a good time doing things together is useful evidence. It is good to subscribe to publications such as *Parents* magazine. Buy some books about children, parenting, and getting children through divorce. Attend seminars and keep the brochures and literature. Do these things for your child and yourself, not just to impress the judge.

- (1) The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society which the child faces as an adult;

(2) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;

(3) 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, consistent with the best interests of the child;

(4) Willful refusal to attend a court-ordered parent education seminar may be considered by the court as evidence of that parent's lack of good faith in these proceedings;

(5) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(6) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(7) The love, affection, and emotional ties existing between each parent and the child;

(8) The emotional needs and developmental level of the child;

(9) The character and physical and emotional fitness of each parent as it relates to each parent's ability to parent or the welfare of the child;

(10) The child's interaction and interrelationships with siblings and with significant adults, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(11) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(12) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;

(13) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(14) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(16) Any other factors deemed relevant by the court.

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 visitation 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 me copies of report cards, tests, and anything else you get from the school. Keep a calendar or journal of significant events. You will forget details over time if you do not have a record. Be careful 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. Do not resort to drugs, alcohol, or violence. There are specific statutes that say the judge must

count this against you. Your soon to be ex-spouse will reveal any alcohol or drug incidents to the court. It is also bad for you and your children.

The Parenting Program was adopted in Tennessee. See **Parenting Plan Statute Appendix** for a copy of the parenting plan statute. It require that the parties file a “Temporary Parenting Plan” which sets forth various issues from custody to parenting time, to child support, to vacations. See **Parenting Plan Form Appendix** for a copy of a Parenting Plan. You will need to fill out a temporary parenting plan that deals with parenting issues that will arise between now and the final divorce. The parties can agree to this plan. If it is not a “joint plan” then the court can order alternative dispute methods such as mediation. See the section on mediation and other alternatives to trial. If an agreement is not possible after mediation then, you must file a verified temporary plan with a statement of income and the Judge must hear proof and set the plan as the Judge sees fit.

In evaluating competing parenting plans, the Judge will use the criteria above and the parent’s ability to instruct, inspire, and encourage the child to prepare for a life of service and to compete successfully when the child faces as an adult and each parent’s employment schedule.

There is a provision in the law for restricted visitation and exemption from mediation in cases of spousal or child abuse.

Behavior that can trigger restrictions include:

- willful abandonment, or substantial refusal to perform parenting responsibilities;

- sexual abuse;

- pattern of emotional abuse of the parent, child, or of another person living with that child;

- emotional or physical impairment;
- drug or alcohol abuse;
- substantial impairment of emotional ties with child;
- abusive use of conflict;
- past withholding of visitation without good cause;
- criminal conviction; or
- other relevant conduct.

Both parents will be required to attend the “Children Cope with Divorce” seminar or one like it. Failure to participate in these programs can lead to a party being found guilty of contempt of court.

If the litigation gets very bitter, the court may threaten to place the children with someone other than the parent. However, the parents must be shown to be unfit before the children will be given to someone else.

The children may need their own lawyer. This is a Guardian Ad Litem. The Guardian Ad Litem is appointed by the court to look into the best interest of the children. This will add significantly to the cost of your case.

VISITATION

We no longer have custody and visitation. We have parenting time. However people still refer to visitation as visitation so I am addressing it that way. If the mother and father can agree on visitation, the court will usually approve the plan. The best plans usually maximize the parent's time with the children. You need to consider everyone's schedule, school time, outside activities, sports, church, vacation, and the fact that as the children become teenagers they will have a life of their own and will usually prefer to be with their friends rather than either parent. A typical pattern is alternating weekends, a few weeks in the summer, and alternating holidays. If the parties live far apart, this pattern will not work. The pattern then calls for fewer but longer visitation periods. If the parties live far apart, you must deal with who will provide or pay for transportation. Psychologists, Judges, and I encourage visitation except in extraordinary circumstances. Try to keep the other parent involved in school activities and other events.

Sometimes when parents fight about visitation, they are really upset about something else that they do not believe they can fight about. It may be because they feel angry at the other spouse for leaving or it may be that they feel they gave up too much a divorce settlement. But for whatever reason, they are involved in an argument about the children. It can be the custodial parent wanting to restrict the other's visitation. This is normally not a good idea, because when the custodial parents says to the other, "I don't want you to visit at this time," that immediately becomes the time that the other parent wants to visit with the child.

In some cases the problem is that custodial parent wants the noncustodial parent to visit and they will not do it because the custodial parent is trying to force the other to visit with the children. The best thing to do if you do not want the noncustodial parent to visit is tell them you want them to visit. Bury the other with visitation, and remember in the back of your mind that they are a free babysitter. Also, you might remember that the noncustodial parent who visits regularly tends to be a parent who pays support regularly.

Even if your situation is that the noncustodial parent is a jerk, and you do not think it is the best thing in the world for the kids to be around the jerk, you still need to encourage visitation. The children need to know that the noncustodial parents is a jerk, and the best way for them to know it is to let them see it with their own eyes on a regular basis. Withholding visitation from the children or the noncustodial parents pits you against the child's imagination. If the children do not see the jerk, they soon forget what a

jerk he or she is and begin to blame you for the noncustodial parent's having left. The child's imagination is then on the other parent's side. The children dream about a perfect parent; and since they do not see the absent parent they do not see any flaws in that parent. You might beat many things, but you will have a hard time beating your child's imagination.

RELOCATION

Moving the child away has caused a great deal of litigation and conflicting rulings. Now, there is a statute from the legislature. (See **Relocation Appendix** for a copy of the parental relocation statute.) Basically the moving custodial parent needs to notify the other parent sixty (60) days prior to the move that the custodial parent intends to move and have a good reason to move that is not vindictive. Getting away from the other parent so that parent cannot visit is not a good reason. Being transferred by your company in a "move or lose your job" situation is usually a good reason. If the noncustodial parent is "actually spending substantially equal intervals of time with the child" then the court will require a stronger reason to move than if the relationship is not as significant. This will result in a modified visitation schedule that needs to be an order of the court.

PARENTAL KIDNAPPING

Parental kidnapping is an issue that has received a lot of attention in the media. As a result 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 visitation, do **not** take the law into your own hands by taking or keeping your children in violation of a court order. Sooner or later, you will be caught. And when you are, the judge in your divorce case will not be pleased. Also, the judge in your criminal trial will be unpleasant as well.

Many parents who kidnap their children lose their custody and/or visitation rights for a period of time. Some go to jail, which also hampers visitation. The kidnapping parent can be limited to supervised visitation- which means the children can only visit that parent while under the supervision of an agency or other person that the court trusts- with the visiting parent usually required to pay a fee to the supervisor who keeps an eye on that parent. You do **not** want this.

If your children have been taken or held by their other parent in violation of a court order or against your will in the absence of any 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.

CHILD SUPPORT

In arriving at a fair amount of child support, you should (and in the event of a contested trial, the court will) consider the needs of the children and the financial assets, earnings, and needs of each parent. In Tennessee, we use the Child Support Guidelines. See Appendix for the text of the Guidelines and see www.tennessee.gov/humanserv/is/incomeshares.htm for the [Tennessee Child Support \(Calculator\)](#).

Child Support is set on the basis of a stupefying long complex and confusing set of regulations. However the main variables are the parent's income and the time parents spend with the children. The income ratio is the biggest factor. Days with the children is the next most important. Unlike the previous guidelines items such as medical expenses, insurance, educational cost, other children are figured into the formula. As you might guess if you try to make everything part of one big calculation the rules for that calculation are going to be huge (over sixty pages). It is included in the Child Support Guidelines Appendix. Clearly you will need a computer to figure this out. The State of Tennessee provides one at www.tennessee.gov/humanserv/is/incomeshares.htm. Go to it and use that one. The one we printed in the Child Support Worksheet is not current and is dauntingly complex to do by hand and you will probably get it wrong. The court can also order the support to be deducted from the payer's paycheck. The law currently places a lot of pressure on the court to use payroll deduction.

The court can require support of a normal child only until the age of eighteen or until the child graduates with his or her regular high school class. You can provide for college, but you must do so by agreement, as the court cannot order it. Tennessee does not require a parent to put a child through college. If you have a child with a mental or physical disability, be sure to let me know, as it may be possible to have support continue after an impaired child turns eighteen. However, this should be done before the child turns eighteen. If the children's needs or the parent's ability to pay support substantially and materially changes (defined by the Guidelines as 15 percent), then child support can be raised or lowered. A bond can be required to ensure the payment of past, present, and future child support, or a lien may be placed on property for that purpose.

As with alimony, child support must be reasonable. Enough can be too much. If the custodial parent is awarded enough child support, it may be too much for the noncustodial parent to be able to pay. If this happens, the burden becomes too heavy; and if the ties to the children and to the community are too weak, then the noncustodial parent may leave. Once a noncustodial parent has left the state, it becomes more difficult to enforce child support rulings.

Many years ago in a Memphis courtroom, a woman divorced her biker husband. She had concluded he was worthless- even on his best day. As the lawyer was going over the terms of the settlement in court, he got to child support and said, “Fifty dollars per month.”

The Judge interrupted, “Fifty dollars is not much money. Wouldn’t one hundred dollars a month be more reasonable? I can award that if you want me to.”

The woman responded, “I wish you wouldn’t. I’m not going to get it anyway, and it only hurts half as much to not get fifty dollars a month as it would to not get one hundred a month.”

RECORDS

It is very important that you keep records of payments you make or receive for alimony and child support. If you are 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, keep 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.

A form for keeping track of payments is included in the **Support Account Sheet Appendix**.

TEMPORARY RELIEF

(Pendente Lite)

“Pendente lite” is Latin for “pending the litigation.” There are things you may need for the court to do pending the final trial. 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 at the final trial. The court can also order custody of specific visitation pending the final trial.

To prepare for this you must fill out the form in the **Expense and Income Appendix.**

CHANGE OF WIFE’S NAME

In Tennessee, a woman may go back to using her maiden name at any time. 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 final decree, even if she is not the plaintiff. I 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 me know.

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 to. If the jerk calls and curses at you over the machine, we can bring that tape to court for the judge to hear.

The telephone company offers services that may be very 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- I once had a client whose ex-spouse 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 my client 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 party to.

AIDS AND OTHER MEDICAL ISSUES

I recommend you have a **complete physical examination as soon as possible**. As a result of such an examination, one of my clients discovered 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 will be 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, visitation, or alimony. If you do date, be prepared to face the problems that may arise. Tell me about it, because if I am 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 at. Really 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 lied to. Lying under oath can result in your 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 US 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 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.

Tennessee law also makes unauthorized recording a crime and also makes it a crime to photograph a person who is in a place where that person has a reasonable expectation of privacy. It is also illegal to hire someone to do it for you.

PRIVATE INVESTIGATORS

Private investigators are professionals that are paid to investigate and testify. In Tennessee 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. We have a list of information for private investigators in the **Private Investigators Appendix.**

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) get it back and cancel it. We can draft a cancellation if necessary but it is very useful for us to have the original document.

FAMILY

Your well-meaning family and friends may offer you advice about your case. 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.

ONE ATTORNEY FOR BOTH OF YOU

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

KEEPING YOU INFORMED

You will receive copies of many of the documents that were prepared or received by me. Due to court appearances, trials, depositions, negotiations, and other commitments, I am difficult to reach on the telephone, and you may talk to my paralegal about your problems. The paralegal will be easy to reach and can give you information or take messages. The paralegal cannot answer your legal questions, but can relay them to me and get back to you with my answers. Try to work with her. It will make things

easier, and it will hold down the cost of your divorce, since the paralegal's time is billed at a much lower rate.

COOPERATION

I expect you to be cooperative and truthful. If you are not, I will not represent you. I also expect you to handle your financial commitments to our office in a prompt and business like manner. Please notify me of any change 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 I charge for the work I do on your case. See Attorney's Fee below. Court costs are the fees that are charged by the court for the filing of the divorce papers 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 we are ethically prohibited from lending clients money.

Any discussion about what 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 I 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 I handle 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'S FEES

The fee varies with the services you require, but it is based on the retainer and the hourly rate set out in the contract you sign, and it is charged in fifteen minute units. The reason I charge in fifteen minute units is that to stop doing one thing, attend to your problem, make a record of time, and then get back to where I was usually takes at least fifteen minutes. The charge is twice as much at home because I enjoy my quiet at home, and I do not have your files, my law books, clerks, computer and other necessities to help me deal with your problem.

A basic divorce includes the initial conference; the preparation and filing of the petition or the review of the petition filed by the other spouse; the preparation of the answer; the obtaining of information from you concerning your grounds for divorce, assets, liabilities, income, and expenses; the preparation of the marital dissolution agreement; the preparation or the review of a final decree of divorce; and the attendance of one court hearing to have the case disposed of as an uncontested divorce and to submit the appropriate mailings.

Additional time is spent for telephone conferences, negotiations, telephone calls, and other court appearances. If tax planning is needed, a tax lawyer must be associated, as I do not practice or advise clients in that area.

If there is a trial, one party can be ordered to pay some of the other party's attorney's fees. The court will rarely order a party to pay the full amount of the attorney's fees. You are responsible for paying the agreed fees, and I will give you full credit for any payments made by your spouse. You have probably heard of divorces in which the attorney representing the wife promises to collect the attorney's fees from the husband. This creates a conflict of interest between the attorney and the client, and the attorney might be tempted to compromise the wife's rights in more important areas to protect the fee. We will negotiate and argue about your attorney's fees; however, our focus will be on the total picture. Any discussion about the total cost of a divorce is only an estimate. Because we do not have control over many things such as what your spouse's attorney may or may not do, we cannot tell you how much time your case will require.

I require a retainer to accept your case and to begin drawing up the necessary papers. If you decide not to retain me, you will only be charged for the office conference. If you retain me, you will sign a contract setting out the terms of representation in writing.

MARITAL DISSOLUTION AGREEMENT

Most likely the next document drawn up in your case will be a Marital Dissolution Agreement. Divorces usually settle in the beginning when both parties feel guilty or in the end when both are exhausted. I will draw up the agreement, but I need to know who gets what and who pays what. You can include many things in your agreement, some of which are listed below:

Court cost and attorney's fees- Who pays?

Property- Who gets the house? Who gets the note? How does the equity get divided if it is sold?

Personal property- Who gets which car, what appliances, and what happens to the sofa in the den?

Retirement- What happens to any retirement benefits that have accrued?

Debts- Who pays what? Should the debts be paid off by refinancing?

Alimony- How much? How long?

Custody- Who gets which child? Should any aspects of custody be shared? The noncustodial parent may be the one who is a doctor and may be the one who should make medical decisions. Will joint custody work?

Child support- How much? How long? Who carries health or life insurance on children? Who gets to claim the children as income tax deductions? Private school or college tuition?

Visitation- Do you want a specific schedule or can you and your spouse work together on it?

Life insurance- Who is insured? Who is the beneficiary? Term or cash value? How much?

Health insurance- Who is covered? In many cases an employee's spouse can be covered up to thirty-six (36) months after the divorce by the employed spouse's insurance for a small additional premium.

Other- Security for obligations in the agreement, for wills, for death, and for taxes. (You cannot avoid death or taxes, so you may need to provide for them.)

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. As my father used to say, "For the client a good settlement is better than a great trial."

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

Meet on neutral ground- Not at this office or at her mother's home, but some place here both parties will feel comfortable.

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.

Set an agenda- Decide what will be dealt with at the meeting. "This week we will decide on custody and child support, next week we will decide on the house."

Do not bog down- Try to talk about what you agree on. No matter how bad it is, there are some things you agree on ("the marriage stinks" or "the kid is cute"). 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.

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.

Keep the kids out of it- Your children do not need to be involved in this. Do not have them around. They will interrupt you, and it will upset them.

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 can get more with guilt than you can get at a trial.

If you and your spouse work out something and you make notes, **do not sign the notes**. This could be considered to be 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 **Marital Dissolution Agreement** and **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. I recommend this and urge you to ask me 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
- you are permitted to have your attorney or another person accompany you

Our office has also used **judicial settlement conferences** in which a Judge from another court listens to both sides and gives a nonbinding opinion on the case. This has settled some very difficult cases.

You may want to consider **arbitration**. In arbitration, 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 such as a mini or summary trial. There has been little use of these alternatives in our area in divorce but if you are interest in these alternatives, please ask me about them.

WAITING PERIOD

Irreconcilable differences divorce cannot be granted until at least ninety (90) days after filing. This is a minimum interval. My experience indicates a normal interval of about ten (10) days more than the minimum required for uncontested divorces. The waiting period for contested divorces is a minimum of thirty (30) days, but normally between nine (9) months and twenty-four (24) months.

During the waiting period we will try to help you work out the details of custody, visitation, support, and property settlement, or if necessary, prepare for trial.

Certain circumstances may qualify for a quicker divorce, but I recommend a quicker divorce only in unusual situations.

COURT APPEARANCE- UNCONTESTED

In an uncontested divorce case, the plaintiff needs to appear in court to testify. The defendant needs only appear if it is what he or she wants to do. Unless it is a divorce on irreconcilable differences, you will need to bring two witnesses with you to testify on your grounds for divorce. You may want us to issue a subpoena to require your witnesses to appear in court. The subpoena helps your witnesses get off work and protects you if they do not appear.

FACTS

I must have all the facts to represent you properly. **Tell me everything you know:** “My husband took a trip out of town. Here is a copy of the ticket.” **Tell me 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 I do not, the information could be used against you, and I would be unprepared and unable to defend you against it. However, if you give me the information, no matter how bad it may appear, then I 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 my 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 get 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 me. You may be signing something that could harm you later on.

Furnish me immediately with the names, addresses, and telephone numbers of any and all witnesses, and tell me what they know. Advise me immediately if you hear of anything that might affect your case. If I am not in, you may leave this information with my secretary, paralegal, or associate. To help you organize the information there are forms for this in the **Divorce Incident Report Appendix**.

never lie or withhold information from your attorney.

CONFIDENTIALITY

Anything you tell any member of my office is strictly confidential and will not be disclosed outside without your permission. However, I will not allow you to lie under oath nor allow you to plan to commit a crime. If someone outside of you or my officer overhears or reads communications, 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 me, 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 me with copies of the following documents:

Prenuptial agreement;

Income tax returns;

Financial statements (these are most often filed when borrowing money and are **very important**);

Employment contracts or any explanations of benefits form you or your spouse's work;

Canceled checks and charge records;

Retirement plans, including IRAs;

Deeds;

Real estate tax bills or appraisals;

Insurance policies including life insurance, medical insurance, health insurance, or homeowner's insurance;

Bank accounts and bank statements;

Safety-deposit boxes (you will want the bank to verify and inventory if possible);

Securities;

Partnership agreements, corporations, or other documents showing any business interests;

Any inheritance or trust interests;

Wills by you or your spouse;

Any written agreements or notes between you and your spouse;

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 proceeding on grounds, you need to have corroboration (support) of your proof, even if your spouse is not disputing the grounds. Corroboration usually means two other witnesses. In a contested case you may need more than two witnesses. We can issue a subpoena for witnesses if you request it and give us their name and addresses. The subpoena will help the witnesses 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, accountants, and doctors are often expert witnesses. Expert witnesses must be paid for the time they spend in preparation and at trial.

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 guy, 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, do not wave your arms. Do not ask the judge if you have to answer a question. If it should be objected to, I 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 me. I already believe you. Don't talk to the other attorney, because he or she will never believe you. Do not look at me 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 me. I have more experience in making that call.

If you want to tell me something, pass me a note. If you talk to me, I may miss something in court that I need to hear.

Tell the truth. It usually will come out eventually anyway, and it is better coming from you than from 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 me before you tell it in court. I 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 me 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 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 questions 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. So 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 book 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 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 I have told you what to say, say that I told you to tell the truth- because I 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 my office before court to make sure your case will be heard. Often cases are continued by the court for one reason or another, and we do not want you to waste a trip downtown if it is avoidable.

FINAL DIVORCE

The dissolution of marriage and orders contained in the Final Decree are final in thirty (30) days from the entry of the Final Decree. Your remedies to change the orders in the Final Decree are to file a Motion to Alter or Amend the Judgment within thirty (30) days, 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 thirty (30) days from the date of the Final Decree or the order on the Motion to Alter or Amend to file a notice of appeal. Failure to file one of these pleadings within thirty (30) days from the date of the Decree was entered causes your right to appeal to be permanently lost. If you believe that you may wish to appeal, please contact me immediately by telephone and also schedule an appointment so that we will have ample time to evaluate the appeal and to prepare the necessary paperwork before the deadline. If you tell me right before the appeal deadline runs, I may not be able to represent you properly. Orders of the court of division of property are not modifiable at any future date. They can be changed only by amending the Final Decree, 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 futuro, rehabilitative alimony (but not alimony in solido), child support, custody, and visitation 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.”

You may not marry anyone except your spouse for thirty (30) days after the final decree of divorce. If there is an appeal this is a complicated issue that you will need to ask your lawyer about. If you do remarry, you may want a prenuptial agreement (also called premarital or antenuptial agreement). This is an agreement with your new spouse to be made before the marriage. If you are interested in this, ask me. It can help you avoid problems in your next marriage.

CHANGES

If you and your spouse or ex-spouse agree to change the terms of a court order (Temporary Support Order, Final Decree, 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 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 change 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 me and I will give you the names of some attorneys who do wills.

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 living will 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.

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 Final Decree, 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 fairly 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 really 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 at 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 the 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. You will be beset by a range of emotions, including, denial, anger, guilt, depression, fear, resignation, ambivalence, and frustration. 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. I 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 visitation 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 don't get up and demand that the pilot fly the plane your way or fight for control of the plane. If you do, and your 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 lawyer will have to help you with or, in some cases, make for you. You hired your lawyer for his or her expertise and experience. You need a lawyer you can have faith in. You must be able to accept your lawyer'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.

My father was a lawyer and I grew up around the law. I have practiced divorce law for over a quarter of a century. I wrote articles and books on divorce practice. I am invited around the country to teach other lawyers how to be better divorce lawyers. I am even one of the very few certified divorce specialists in Tennessee. But I can't control everything. However, with your cooperation we can *influence* the outcome of your case. Isn't that what you really want?

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 I tell you not to worry, you will worry.

Let me 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 nor I can do will be likely to cure the problem. After the divorce, you will be separated, but to the extent that you are still tied together by visitation, 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. Useful 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. But remember every negative comment does not demand a negative response. A fish that rises for every bait soon gets 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.

CONCLUSION

Sometimes people get into big fights over small things. One couple tried to get divorced, the case went to court, the matter was tried, and the case was so bad the judge threw it out of court. The parties had to work out a settlement if they were going to get divorced at all. With the help of their very expensive attorneys, and after much yelling and fighting, they had sold their house, set alimony, sorted out custody, and agreed to child support. They got down to dividing the contents of the house, and as they were about to finish they came upon seven crystal goblets.

The wife said, “I want four and you can have three so that our two children and my dear mother can come over for dinner and discuss the problems you have left us with.”

The husband responded, "I'll take the four goblets and you can have three so that I can have my two children over for dinner along with my girlfriend, and the children can see how a man and a woman who love each other behave."

The yelling and screaming began again. One of the attorneys had all that he could take. He grabbed a goblet, threw it into the fireplace, and shattered it. He said, "Now you each have three and you can bill me for the broken one."

That ended the case and it also ends this part of this book.

Appendices

The following are some of the statutes or forms previously mentioned.

As you are reading, you may notice that the outlining in the statutes fails to follow the proper form for outlining. This is, however, the actual outlining by the Legislature and is one of the many excuses for why the law is so confusing.

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Grounds

36-4-101. Grounds for divorce from bonds of matrimony.

The following are causes of divorce from the bonds of matrimony:

- (1) Either party, at the time of the contract, was and still is naturally impotent and incapable of procreation;
- (2) Either party has knowingly entered into a second marriage, in violation of a previous marriage, still subsisting;
- (3) Either party has committed adultery;
- (4) Willful or malicious desertion or absence of either party, without a reasonable cause, for one (1) whole year;
- (5) Being convicted of any crime which, by the laws of the state, renders the party infamous;
- (6) Being convicted of a crime which, by the laws of the state, is declared to be a felony, and sentenced to confinement in the penitentiary;
- (7) Either party has attempted the life of the other, by poison or any other means showing malice;

(8) Refusal, on the part of a spouse, to remove with that person's spouse to this state, without a reasonable cause, and being willfully absent from the spouse residing in Tennessee for two (2) years;

(9) The woman was pregnant at the time of the marriage, by another person, without the knowledge of the husband;

(10) Habitual drunkenness or abuse of narcotic drugs of either party, when the spouse has contracted either such habit after marriage;

(11) The husband or wife is guilty of such cruel and inhuman treatment or conduct towards the spouse as renders cohabitation unsafe and improper which may also be referred to in pleadings as inappropriate marital conduct;

(12) The husband or wife has offered such indignities to the spouse's person as to render the spouse's position intolerable, and thereby forced the spouse to withdraw;

(13) The husband or wife has abandoned the spouse or turned the spouse out of doors for no just cause, and has refused or neglected to provide for the spouse while having the ability to so provide;

(14) Irreconcilable differences between the parties; and

(15) For a continuous period of two (2) or more years which commenced prior to or after April 18, 1985, both parties have lived in separate residences, have not cohabited as man and wife during such period, and there are no minor children of the parties.

(b) If the other party specifically objects to legal separation, the court may, after a hearing, grant an order of legal separation, notwithstanding such objections if grounds are established pursuant to § 36-4-101. The court also has the power to grant an absolute divorce to either party where there has been an order of legal separation for more than two (2) years upon a petition being filed by either party which sets forth the original order for legal separation and that the parties have not become reconciled. The court granting the divorce shall make a final and complete adjudication of the support and property rights of the parties. However, nothing in this subsection shall preclude the court from granting an absolute divorce before the two-year period has expired.

Private Investigator

1. Name of the spouse

2. Appearance of spouse – Photographs are best

Age

Color 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 location

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 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.

Deposition

By law, the opposing attorney has a right to take your deposition. This means that you will be put under oath just as you would be in court, and an attorney will ask you questions relating to this case. The attorney's questions and your answers will be taken down by a court reporter. Your attorney will also be present. No judge will be present. After the deposition, if one of the attorneys orders it, the court reporter will type the questions and answers. You, the opposing party, and the attorneys can buy copies. The original eventually may be filed with the court.

If the case goes to trial and your testimony at trial differs from your deposition testimony, the deposition can be used by opposing counsel to cross-examine you. Any part of your deposition or your spouse's deposition can be read by opposing counsel at the final hearing. **Careful what you say.**

I will review your case with you before your deposition, but it is helpful for you to refresh your recollection before you meet with us. It is extremely important that you have everything in mind about the case at your deposition. Prior to your testimony, refresh your recollection by reading your notes about the case as well as the pleadings and notes provided. Do not memorize any statement you have given or anything that you are going to say in response to questions. You should simply visualize what happened and in your own words answer any question concerning it. You should prepare a list of questions or any concerns you have about responding to certain lines of inquiry and a list of questions that you want us to ask the opposition.

During your deposition, opposing counsel can ask you questions that are admissible in court under the rules of evidence. In addition, he or she can ask questions that may seem to be none of his or her business and would not be admissible in court. The law allows any question that could lead to relevant material. The courts allow discovery in these depositions, and you may be asked for hearsay (something you heard another person say, but about which you have no direct knowledge) and other things that will enable the other side to make further investigations of the case. Because of the broad scope of discovery, do not be surprised if I do not object to questions that seem to be out of line. If the opposing attorney asks improper questions, I will object to the question. Only if I object to the question and instruct you not to answer it should you refuse to answer the question. Please do not refuse to answer any question unless I instruct you to do so.

The rules of procedure require the court reporter to submit a typed copy of your testimony for your review so that you can make corrections. You will be asked at the end of the deposition whether you waive that right. If you waive that right, then the transcript will remain as typed. Usually I will announce whether or not you will be waiving your right to review and sign the deposition. **If, however, you are in doubt, do not waive that right.**

When the court reporter makes the transcript available to you, you may make changes in form or substance. You should be ready to provide your reasons for making changes.

Rarely will I ask you questions during your deposition. Because I may want an opportunity to discuss your testimony with you, I may save questions for the final hearing. If, however, it is advantageous to ask some leading questions, your answers should be very brief. Don't be disappointed if I don't ask any questions.

If you are a witness in this case (rather than a party), you must understand that neither attorney represents you. Counsel for the parties can make suggestions to you, but they cannot instruct you. It may be advisable for you to bring your own attorney.

Why Is My Deposition Being Taken

The opposition is taking your deposition for at least three reasons:

They want to *find out what facts* you have in your actual knowledge and possession regarding the issues in the case. In other words, they are interested in what your story is now and what it is going to be at trial.

They want to *pin you down* to a specific story so that you will have to tell the same story at trial.

They may hope to *catch you in a lie* to show at trial that you are not a truthful person and, therefore, that your testimony should not be believed, particularly on crucial points.

Your deposition also will assist the other side in evaluating this case for settlement purposes. This is often the first and only opportunity the opposition has to see you before the case comes to trial. You should answer the questions in an honest and straightforward manner so that the opposition will be impressed with the potential impact your honest and sincere testimony will have on the judge at trial.

If the facts to which you testify at the final hearing differ from the facts you give at the deposition, the opposing counsel can use that difference to undermine or impeach the believability of your testimony at the final hearing.

How to Behave at the Deposition

Tell the truth. Almost nothing you can admit to can be as damaging as being caught in a lie. In a lawsuit, as in all other matters, honesty is the best policy. A lie may lose the case. Telling the truth means more than refraining from telling a deliberate falsehood. It requires that a witness testify accurately about what he or she knows. If you tell the truth and tell it accurately, nobody can cross you up. It is important that you not be trapped into telling something that is not true.

Be straightforward in your answers. Respond to counsel's questions in an attentive and polite manner.

Do not try to anticipate whether your response will help or hinder your case. Answer each question truthfully. Your attorney can deal with the truth effectively, but he or she will be handicapped by any other kind of answer.

Listen to each question carefully and be sure that you understand it before answering. If you do not understand the question, ask the attorney to repeat the question or rephrase it so that you understand it. When you understand the question, answer it

honestly and accurately. If you don't know the answer, say "I don't know" or "I don't remember." No one can remember everything. However, you should remember the important things and must give honest and accurate answers to these questions.

Listen to the question. Do not answer until you hear the entire question.

Hear the question. If the attorney lowers his or her voice or a noise in the room prevents you from hearing every word, ask to have that particular question repeated.

Understand the question. Before you attempt to give an answer, make sure that you understand the question. You can't possibly give a truthful and accurate answer unless you know what is being asked. If you don't understand, ask the attorney to repeat the question. The attorney may ask the court reporter to read the question aloud. Keep a lookout for a question with a double meaning or a question that assumes you have testified to a fact when you have not. Make sure the question is exact. If you are not certain about the meaning of a word, do not be embarrassed. Ask the attorney to explain it.

Take your time. Pause after the question is asked before you answer it. Count one, two, and tap a finger on your knee under the table with each count. Give each question the thought it requires and formulate your answers carefully. Do not give a snap answer without thinking. Do not hurry. If you need a break, ask for one.

Take a break. Feel free to request a cup of coffee or tea, a cold drink of water, or whatever you need. *Do not hesitate to request a recess of the proceedings if you are tired or you need to use the restroom or to make an important telephone call.* If you must smoke, request a break.

Do not volunteer information. Listen carefully to each question and answer only what is asked. Do not ramble or elaborate. If opposing counsel wants an explanation, he or she must ask for one. If I want you to explain further, I will ask when it comes time for questions. What you volunteer will turn out to be harmful to you.

Don't worry about silence. Do not be tempted to fill the silence with words. Keep quiet and wait. They may be trying to manipulate you to fill the silence with the information they want.

Repetitious questions. You may hear the same question more than once. If your original answer was accurate, stick to it even if you are challenged. Don't let opposing counsel shake your confidence.

Speak slowly and clearly. Do not nod or shake your head in response to a question. Answer audibly. The court reporter must hear your answer in order to record it. If you point or motion, try to describe what you are pointing to or indicating. It is up to counsel to describe for the record what you are pointing to or indicating. Avoid "uhu" and "uhhu": they are difficult to tell apart and they will be confusing when read back in court.

Beware of compound questions. Answer only one question at a time. If you are confused by a complicated or multipart question, ask to have it repeated and clarified.

Don't look to me for assistance to answer. When you are being questioned, you must answer the question yourself. *Do not watch us for some "signal" for how to answer.* You may be asked to sign an authorization to allow opposing counsel to obtain medical reports or be asked to submit to an examination by a doctor of the other attorney's choosing or to allow an inspection of papers or to furnish other information. Respond by saying that you will follow your attorney's recommendation.

Beware of questions involving distance and time. If you estimate something, make sure that everyone understands that it is your best effort to answer the question accurately. Think clearly about distances and intervals of time. Be sure your estimates are reasonable.

If counsel insists on an estimate. If you respond to a question with an estimate, make it clear that it is only an estimate.

Do not guess. If you do not know the answer, say so.

Limit your testimony. Testify only to facts within your knowledge and do not speculate about anything, unless specifically asked to do so.

Do not exaggerate.

Give only the information that is readily available to you. If you know an answer to a question, answer it. If you do not know certain information, do not try to answer. Do not turn to your counsel and ask him or her for the information, and do not ask another witness. Do not promise to get information that you do not have at hand unless we advise you to.

Do not search for documents. Do not reach into your pocket for a social security card or other document unless your counsel requests it. The purpose of a discovery deposition is to elicit the facts that you know, not to produce documents. If the opposition is interested in obtaining documents from you, there are other legal procedures through which to obtain them. Do not ask your attorney to produce anything in his or her file, because similar rules apply.

Do not joke. Humor is not apparent on a transcript and may make you look crude or cavalier about the truth. This is serious business. If you joke, you may lower your guard. Then you make a mistake and the joke is on you.

Do not chat with the opposing attorneys. Remember, the opposing counsel is your legal enemy. Do not let his or her friendly manner cause you to drop your guard. They may be using this conversation as an underhanded discovery tool.

Do not make friends. Depositions are not social occasions. If the deposition becomes friendly, beware. They are probably trying to get you to lower your guard so you will talk more freely. You do not want to talk freely.

Off-the-record statements. Frequently attorneys will make an “off-the-record statement.” That means that the court reporter does not write down what is said. Be careful, however. This can be disarming. When the deposition resumes “on the record,” the attorney can question you about something that was said off the record.

Do not attempt to outwit opposing counsel. If opposing counsel is asking improper questions or harassing you, your attorney will protect you.

Do not argue with opposing counsel. Opposing counsel has a right to question you, and if you respond with smart talk or give evasive answers, opposing counsel may jump down your throat. Don’t answer a question with a question unless the question you are asked is not clear.

Do not lose your temper. No matter how hard you are pressed, maintain your composure. Lose your temper and you may lose the case. If the other attorney gets you mad, you are easier to fight.

If asked. . . Opposing counsel may ask if you have talked to your attorney about the facts about which you are testifying. Admit it. If we came to your deposition without discussing the facts about which you are testifying, we would both be idiots. If you are a party to the lawsuit and you are asked this question, we could object because of attorney-client privilege. You are expected to have talked with your attorney. A good attorney would not let you testify without first discussing the matter with you. If asked whether the attorney told you what to say, respond, “He told me to tell the truth!”

Don’t be afraid to answer under oath. Don’t let opposing counsel unnerve you by asking whether you are willing to swear to testify. If you were there and know what happened or didn’t happen, don’t hesitate to “swear” to it. You were “sworn” to tell the truth when you began the deposition.

If I make an objection. When I make an objection, wait for me to advise you whether to answer the question.

Your appearance. Dress modestly and conservatively. Be on time.

Your manner. Treat everyone at the deposition with respect.

Maintain your composure. Try not to become upset over the length or detail of the questions. Frequently such questions will provide insight into the approach your opponent's attorney plans to use at trial.

Correct and clarify. If your answer was wrong, correct it immediately or as soon as you realize you made an error.

Don't box yourself in. Don't say, "that's the whole conversation" or "nothing else happened." Say instead, "that's all I recall," or "that's all I remember now." It may be that after more thought or another question, you will remember something important.

Sinful words. "Always," "all," "never," and "ever" are sinful words. If you use these words in your deposition testimony, the law god will punish you. There is nothing so certain in this world, that these would be the proper words to describe it with in a deposition. It will blow up in your face, embarrass you, and aggravate me.

Documents. If you are shown documents, take your time to read them carefully and thoroughly. Look at the date, the author, the signature, the addressee, and to whom copies were sent.

Depositions are not fun. On the other hand, it will not kill you. To be entirely honest, the real danger is driving to and from a deposition. A good deposition is an easy deposition and the best way to give an easy deposition is to tell the truth.

Property Division

36-4-121 Distribution of marital property.

(a) (1) In all actions for divorce or legal separation, the court having jurisdiction thereof may, upon request of either party, and prior to any determination as to whether it is appropriate to order the support and maintenance of one (1) party by the other, equitably divide, distribute or assign the marital property between the parties without regard to marital fault in proportions as the court deems just.

(2) In all actions for legal separation, the court, in its discretion, may equitably divide, distribute, or assign the marital property in whole or in part, or reserve the division or assignment of marital property until a later time. If the court makes a final distribution of marital property at the time of the decree of legal separation, any after-acquired property is separate property.

(3) To this end, the court shall be empowered to effectuate its decree by divesting and reinvesting title to such property and, where deemed necessary, to order a sale of such property and to order the proceeds divided between the parties.

(A) Any auction sale of property ordered pursuant to this section shall be conducted in accordance with the provisions of title 35, chapter 5.

(B) The court may order the provisions of title 35, chapter 5, to apply to any sale ordered by the court pursuant to this section.

(C) The court, in its discretion, may impose any additional conditions or procedures upon the sale of property in divorce cases as are reasonably designed to ensure that such property is sold for its fair market value.

(b) For purposes of this chapter:

(1) (A) "Marital property" means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing or up to the date of the legal separation hearing unless equity would require another valuation date and owned by either or both spouses as of the date of filing of a complaint for divorce or complaint for legal separation, except in the case of fraudulent conveyance in anticipation of filing and including any property to which a right was acquired up to the date of the final divorce hearing, or the date of legal separation hearing unless equity would require another valuation date, and valued as of a date as near as reasonably possible to the final divorce hearing date or the date of the legal separation hearing.

(B) "Marital property" includes income from, and any increase in value during the marriage of, property determined to be separate property in accordance with subdivision (b)(2) if each party substantially contributed to its preservation and appreciation, and the value of vested and unvested pension, vested and unvested stock option rights, retirement or other fringe benefit rights relating to employment that accrued during the period of the marriage.

(C) "Marital property" includes recovery in personal injury, workers' compensation, social security disability actions, and other similar actions for the following: wages lost during the marriage, reimbursement for medical bills incurred and paid with marital property, and property damage to marital property.

(D) As used in this subsection, "substantial contribution" may include, but not be limited to, the direct or indirect contribution of a spouse as homemaker, wage earner, parent or family financial manager, together with such other factors as the court having jurisdiction thereof may determine.

(E) Property shall be considered marital property as defined by this subsection for the sole purpose of dividing assets upon divorce or legal separation and for no other purpose; and assets distributed as marital property will not be considered as income for child support or alimony purposes, except to the extent the asset will create additional income after the division.

(2) "Separate property" means:

- (A) All real and personal property owned by a spouse before marriage;
 - (B) Property acquired in exchange for property acquired before the marriage;
 - (C) Income from and appreciation of property owned by a spouse before marriage except when characterized as marital property under subdivision (b)(1);
 - (D) Property acquired by a spouse at any time by gift, bequest, devise or descent;
 - (E) Pain and suffering awards, victim of crime compensation awards, future medical expenses, and future lost wages; and
 - (F) Property acquired by a spouse after an order of legal separation where the court has made a final disposition of property.
- (c) In making equitable division of marital property, the court shall consider all relevant factors including:
- (1) The duration of the marriage;
 - (2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;
 - (3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

(10) The amount of social security benefits available to each spouse; and

(11) Such other factors as are necessary to consider the equities between the parties.

(d) The court may award the family home and household effects, or the right to live therein and use the household effects for a reasonable period, to either party, but shall give special consideration to a spouse having physical custody of a child or children of the marriage.

(e) (1) The court may impose a lien upon the marital real property assigned to a party, or upon such party's separate real property, or both, as security for the payment of child support.

(2) The court may impose a lien upon the marital real property assigned to a party as security for the payment of spouse support or payment pursuant to property division.

(f) (1) If, in making equitable distribution of marital property, the court determines that the distribution of an interest in a business, corporation or profession would be contrary to law, the court may make a distributive award of money or other property in order to achieve equity between the parties. The court, in its discretion, may also make a distributive award of money or other property to supplement, facilitate or effectuate a distribution of marital property.

(2) The court may provide that any distributive award payable over a period of time be secured by a lien on specific property.

(g) (1) Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties regarding the division of property.

(2) Nothing in this section shall affect validity of an antenuptial agreement which is enforceable under § 36-3-501.

Alimony

(d) (1) (A) Spouses have traditionally strengthened the family unit through private arrangements whereby one (1) spouse focuses on nurturing the personal side of the marriage, including the care and nurturing of the children, while the other spouse focuses primarily on building the economic strength of the family unit. This arrangement often results in economic detriment to the spouse who subordinated such spouse's own personal career for the benefit of the marriage. It is the public policy of this state to encourage and support marriage, and to encourage family arrangements that provide for the rearing of healthy and productive children who will become healthy and productive citizens of our state.

(B) The general assembly finds that the contributions to the marriage as homemaker or parent are of equal dignity and importance as economic contributions to the marriage. Further, where one (1) spouse suffers economic detriment for the benefit of the marriage, the general assembly finds that the economically disadvantaged spouse's standard of living after the divorce should be reasonably comparable to the standard of living enjoyed during the marriage or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties.

(C) It is the intent of the general assembly that a spouse who is economically disadvantaged relative to the other spouse, be rehabilitated whenever possible by the granting of an order for payment of rehabilitative, temporary support and maintenance. To be rehabilitated means to achieve, with reasonable effort, an earning capacity that will permit the economically disadvantaged spouse's standard of living after the divorce to be reasonably comparable to the standard of living enjoyed during the marriage, or to the post-divorce standard of living expected to be available to the other spouse, considering the relevant statutory factors and the equities between the parties. Where there is relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors, including those set out in this subsection (d), the court may grant an order for payment of support and maintenance on a long-term basis or until the death or remarriage of the recipient except as otherwise provided in subdivision (a)(3). An award of periodic alimony may be made either in addition to a rehabilitation award, where a spouse may be partially rehabilitated as defined in this subdivision (d)(1)(C), or instead of a rehabilitation award, where rehabilitation is not feasible. When appropriate, the court may also award transitional alimony as provided in subdivision (d)(1)(D). Rehabilitative support and maintenance is a separate class of spousal support as distinguished from alimony in solido, periodic alimony, and transitional alimony. An award of rehabilitative, temporary support and maintenance shall remain in the court's control for the duration of

such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of a substantial and material change in circumstances. Rehabilitative support and maintenance shall terminate upon the death of the recipient. Such support and maintenance shall also terminate upon the death of the payor unless otherwise specifically stated. The recipient of the support and maintenance shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

(D) Transitional alimony means a sum of money payable by one (1) party to, or on behalf of, the other party for a determinate period of time. Transitional alimony shall terminate upon the death of the recipient and as provided in subdivision (a)(3) which provision shall apply to transitional alimony. Such support and maintenance shall also terminate upon the death of the payor unless otherwise specifically stated. The court may at the time of entry of the order to pay transitional alimony, order that it may terminate upon the occurrence of other conditions such as, but not limited to, the remarriage of the party receiving transitional alimony. Transitional alimony shall be nonmodifiable unless the parties otherwise agree in an agreement incorporated into the initial order of divorce, legal separation or order of protection or the court otherwise orders in the initial order or divorce, legal separation or order of protection. Transitional alimony is awarded when the court finds that rehabilitation is not necessary, but the economically disadvantaged spouse needs assistance to adjust to the economic consequences of a divorce, legal separation or other proceeding where spousal support may be awarded, such as a petition for an order of protection.

(E) In determining whether the granting of an order for payment of support and maintenance to a party is appropriate, and in determining the nature, amount, length of term, and manner of payment, the court shall consider all relevant factors, including:

(i) The relative earning capacity, obligations, needs, and financial resources of each party including income from pension, profit sharing or retirement plans and all other sources;

(ii) The relative education and training of each party, the ability and opportunity of each party to secure such education and training, and the necessity of a party to secure further education and training to improve such party's earning capacity to a reasonable level;

(iii) The duration of the marriage;

(iv) The age and mental condition of each party;

(v) The physical condition of each party, including, but not limited to, physical disability or incapacity due to a chronic debilitating disease;

(vi) The extent to which it would be undesirable for a party to seek employment outside the home because such party will be custodian of a minor child of the marriage;

(vii) The separate assets of each party, both real and personal, tangible and intangible;

(viii) The provisions made with regard to the marital property as defined in § 36-4-121;

(ix) The standard of living of the parties established during the marriage;

(x) The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by a party to the education, training or increased earning power of the other party;

(xi) The relative fault of the parties in cases where the court, in its discretion, deems it appropriate to do so; and

(xii) Such other factors, including the tax consequences to each party, as are necessary to consider the equities between the parties.

(2) An award of rehabilitative, temporary support and maintenance shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in circumstances. Rehabilitative support and maintenance shall terminate upon the death of the recipient. Such support and maintenance shall also terminate upon the death of the payor unless otherwise specifically stated. The recipient of the support and maintenance shall have the burden of proving that all reasonable efforts at rehabilitation have been made and have been unsuccessful.

Expense and Income Statement

Wife's Employment:

Wife's gross salary: _____ Per _____ Net _____ Per _____

Wife's other income:

Husband's Employment:

Husband's gross salary: _____ Per _____ Net _____ Per

Husband's other income:

Number of children you must support:

Children Adult

Rent or house note, taxes, insurance, etc. _____

Utilities, cable _____

Telephone _____

Maid, grasscutter, gardener _____

Yardwork, maintenance _____

Repair & replacement of appliances _____

Groceries and meals out _____

Tuition and books, etc. _____

School lunches _____

Work lunches _____

Automobile note and insurance _____

Gasoline, licenses, parking, etc. _____

Clothing, shoes _____

Laundry and dry cleaning _____

Haircuts, beauty parlor _____

Babysitter, nursery fees _____

Medical insurance _____

Life insurance _____

Homeowner's insurance _____

Hospitals, doctors' and dentists' bills _____

Drugs, etc. _____

Lessons, tutoring, reading _____

Furniture, notes/replacement _____

Pets, hobbies, sports equipment _____

Entertainment _____

Allowances _____

Christmas, birthday presents, toys _____

Vacation _____

Contribution to church/charity _____

Clubs, dues _____

Other expense _____

Future expenses (repairs to house, medical,

Dental, etc.) _____

DEBTS: Attorney's Fees \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

_____ \$ _____

TOTAL _____

NET INCOME _____

MONTHLY *SURPLUS / SHORTFALL* _____

Support Account Sheet Example

SPOUSE VS. SPOUSE

Support due per Pendente Lite Order:\$500/month, ½ medical expenses, \$250 attorney's fee

Date 4/30/91

Date	Date	Amount	Amount	Balance	
Due	Paid	Owed	Paid	Owed	Notes
05/01/01		250.00		250.00	Attorney's f
05/01/01	05/10/01	500.00	350.00	400.00	Check #556
05/03/01		125.00		525.00	Medical em

06/01/91	06/02/01	500.00	400.00	625.00	Check #715 Suzie Smith
07/01/01	07/01/01	500.00	600.00	525.00	Check #715
08/01/01	08/01/01	500.00	1,000.00	25.00	Check #800 attorney's f
	08/14/01		125.00	-100.00	Check #812
				-100.00	
				-100.00	
				-100.00	
TOTAL		2,375.00	2,475.00	-200.00	

TOTAL					

*If you need more than one line for Notes, please take them. The information could be critical to your case.

Parenting Plan Statute

36-6-401 Findings.

(a) Parents have the responsibility to make decisions and perform other parental duties necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The general assembly recognizes the detrimental effect of divorce on many children and that divorce, by its nature, means that neither parent will have the same access to the child as would have been possible had they been able to maintain an intact family. The general assembly finds the need for stability and consistency in children's lives. The general assembly also has an interest in educating parents concerning the impact of divorce on children. The general assembly recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.

(b) The general assembly finds that mothers and fathers in families are the backbone of this state and this nation. They teach children right from wrong, respect for others, and the value of working hard to make a good life for themselves and for their future families. Most children do best when they receive the emotional and financial support of both parents. The general assembly finds that a different approach to dispute resolution in child custody and visitation matters is useful.

36-6-402. Definitions.

As used in this part, unless the context requires otherwise:

(1) "Dispute resolution" means the mediation process or alternative dispute resolution process in accordance with Supreme Court Rule 31 unless the parties agree otherwise.

For the purposes of this part, such process may include: mediation, the neutral party to be chosen by the parties or the court; arbitration, the neutral party to be chosen by the parties or the court; or a mandatory settlement conference presided over by the court or a special master.

(2) "Parenting responsibilities" means those aspects of the parent-child relationship in which the parent makes decisions and performs duties necessary for the care and growth of the child. "Parenting responsibilities," the establishment of which is the objective of a permanent parenting plan, include:

(A) Providing for the child's emotional care and stability, including maintaining a loving, stable, consistent, and nurturing relationship with the child and supervising the child to encourage and protect emotional, intellectual, moral, and spiritual development;

(B) Providing for the child's physical care, including attending to the daily needs of the child, such as feeding, clothing, physical care, and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(C) Providing encouragement and protection of the child's intellectual and moral development, including attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(D) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(E) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(F) Providing any financial security and support of the child in addition to child support obligations;

(3) "Permanent parenting plan" means a written plan for the parenting and best interests of the child, including the allocation of parenting responsibilities and the establishment of a Residential Schedule, as well as an award of child support consistent with title 36, chapter 5;

(4) "Primary residential parent" means the parent with whom the child resides more than fifty percent (50%) of the time; and

(5) "Residential schedule" is the schedule of when the child is in each parent's physical care, and it shall designate the primary residential parent; in addition, the residential schedule shall designate in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria of this part; provided, that nothing contained herein shall be construed to modify any provision of § 36-6-108;

(6) "Temporary parenting plan" means a plan for the temporary parenting and the best interests of the child, including the establishment of a temporary residential schedule, and the establishment of temporary financial support designed to maintain the financial status quo to the extent possible, consistent with title 36, chapter 5, and the guidelines thereunder.

36-6-403 Requirement of and procedure for determining temporary parenting plan

Except as may be specifically provided otherwise herein a temporary parenting plan shall be incorporated in any temporary order of the court in actions for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child. A temporary parenting plan shall comply with those provisions for a permanent parenting plan under § 36-6-404(a) that are applicable for the time frame and shall include a residential schedule as described in § 36-6-404(b). The court shall approve a temporary parenting plan as follows:

(1) If the parties can agree to a temporary parenting plan, no written temporary parenting plan is required to be entered; or

(2) If the parties cannot agree to a temporary parenting plan, either or both parties may request the court to order dispute resolution. The court may immediately order the parties to participate in dispute resolution to establish a temporary parenting plan unless one (1) of the restrictions in § 36-6-406(a) exists. If dispute resolution is not available either party may request and the court may order an expedited hearing to establish a temporary parenting plan. In either mediation or in a hearing before the Court each party shall submit a proposed temporary parenting plan and a verified statement of income as defined by title 36, chapter 5, and a verified statement that the plan is proposed in good faith and is in the best interest of the child. If only one (1) party files a proposed temporary parenting plan in compliance with this section, that party may petition the court for an order adopting that party's plan by default, upon a finding by the court that the plan is in the child's best interest. In determining whether the proposed temporary parenting plan serves the best interests of the child, the court shall be governed by the allocation of residential time and support obligations contained in the child support guidelines and related provisions in title 36, chapter 5.

36-6-404. Requirement of and procedure for determining permanent parenting plan

(a) Any final decree or decree of modification in an action for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child shall incorporate a permanent parenting plan. A permanent parenting plan shall:

(1) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications to the permanent parenting plan;

(2) Establish the authority and responsibilities of each parent with respect to the child, consistent with the criteria in this part;

(3) Minimize the child's exposure to harmful parental conflict;

(4) Provide for a process for dispute resolution, before court action, unless precluded or limited by § 36-6-406; provided, that state agency cases are excluded from the requirement of dispute resolution as to any child support issue involved. In the process for dispute resolution:

(A) Preference shall be given to carrying out the parenting plan;

(B) The parents shall use the designated process to resolve disputes relating to the implementation of the plan;

(C) A written record shall be prepared of any agreement reached in mediation, arbitration, or settlement conference and shall be provided to each party to be drafted into a consent order of modification;

(D) If the court finds that a parent willfully failed to appear at a scheduled dispute resolution process without good reason, the court may, upon motion, award attorney fees and financial sanctions to the prevailing parent;

(E) The provisions of this subsection shall be set forth in the decree; and

(F) Nothing in this part shall preclude court action, if required to protect the welfare of the child or a party;

(5) Allocate decision-making authority to one (1) or both parties regarding the child's education, health care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in this part. Regardless of the allocation of decision making in the parenting plan, the parties may agree that either parent may make emergency decisions affecting the health or safety of the child.

(6) Provide that each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent.

(7) Provide that when mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the appropriate dispute resolution process, subject to the exception set forth in subdivision (a)(4)(F).

(8) Require the obligor to report annually on a date certain to the obligee, and the department of human services or its contractor in Title IV-D cases, on a form provided by the court, the obligor's income as defined by the child support guidelines and related provisions contained in title 36, chapter 5.

(b) Any permanent parenting plan shall include a residential schedule as defined in § 36-6-402(3). The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(1) The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society which the child faces as an adult;

(2) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;

(3) 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, consistent with the best interests of the child;

(4) Willful refusal to attend a court-ordered parent education seminar may be considered by the court as evidence of that parent's lack of good faith in these proceedings;

(5) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(6) The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

(7) The love, affection, and emotional ties existing between each parent and the child;

(8) The emotional needs and developmental level of the child;

(9) The character and physical and emotional fitness of each parent as it relates to each parent's ability to parent or the welfare of the child;

(10) The child's interaction and interrelationships with siblings and with significant adults, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

(11) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(12) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;

(13) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(14) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(16) Any other factors deemed relevant by the court.

(c) The court shall approve a permanent parenting plan as follows:

(1) Upon agreement of the parties:

(A) with the entry of a final decree or judgment; or

(B) with a consent order to modify a final decree or judgment involving a minor child.

(2) If the parties cannot reach agreement on a permanent parenting plan, upon the motion of either party, or upon its own motion, the court may order appropriate dispute resolution proceedings pursuant to Rule 31 of the Rules of the Supreme Court, to determine a permanent parenting plan.

(3) If the parties have not reached agreement on a permanent parenting plan on or before forty-five (45) days before the date set for trial, each party shall file and serve a proposed permanent parenting plan, even though the parties may continue to mediate or negotiate. Failure to comply by a party may result in the court's adoption of the plan filed by the opposing party if the court finds such plan to be in the best interests of the child. In determining whether the proposed plan is in the best interests of the child, the court may consider the allocation of residential time and support obligations contained in the child support guidelines and related provisions contained in chapter 5 of this title. Each parent submitting a proposed permanent parenting plan shall attach a verified statement of income pursuant to the child support guidelines and related provisions contained in title 36, chapter 5, and a verified statement that the plan is proposed in good faith and is in the best interest of the child.

36-6-405. Modifying permanent parenting plans

(a) In a proceeding for a modification of a permanent parenting plan, a proposed parenting plan shall be filed and served with the petition for modification and with the response to the petition for modification. Such plan is not required if the modification pertains only to child support. The obligor parent's proposed parenting plan shall be accompanied by a verified statement of that party's income pursuant to the child support guidelines and related provisions contained in chapter 5 of this title. The process established by § 36-6-404(b) shall be used to establish an amended permanent parenting plan or final decree or judgment.

(b) Title IV-D child support cases involving the department of human services or any of its public or private contractors shall be bifurcated from the remaining parental responsibility issues. Separate orders shall be issued concerning Title IV-D issues, which shall not be contained in, or part of, temporary, permanent or modified parenting plans. The department and its public or private contractors shall not be required to participate in mediation or dispute resolution pursuant to this part.

36-6-406. Restrictions in temporary or permanent parenting plans

(a) The permanent parenting plan and the mechanism for approval of the permanent parenting plan shall not utilize dispute resolution, and a parent's residential time as provided in the permanent parenting plan or temporary parenting plan shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that a parent has engaged in any of the following conduct:

(1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities; or

(2) Physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in § 36-3-601.

(b) The parent's residential time with the child shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that the parent resides with a person who has engaged in physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in § 36-3-601.

(c) If a parent has been convicted as an adult of a sexual offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-501 - 39-13-511, or has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain the parent from contact with a child that would otherwise be allowed under this part. If a parent resides with an adult who has been convicted, or with a juvenile who has been adjudicated guilty of a sexual offense under § 39-15-302, title 39, chapter 17, part 10, or §§ 39-13-501 - 39-13-511, or who has been found to be a sexual offender under title 39, chapter 13, part 7, the court shall restrain that parent from contact with the child unless the contact occurs outside the adult's or juvenile's presence and sufficient provisions are established to protect the child.

(d) A parent's involvement or conduct may have an adverse effect on the child's best interest, and the court may preclude or limit any provisions of a parenting plan, if any of the following limiting factors are found to exist after a hearing:

(1) A parent's neglect or substantial nonperformance of parenting responsibilities;

(2) An emotional or physical impairment which interferes with the parent's performance of parenting responsibilities as defined in § 36-6-402;

(3) An impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting responsibilities;

(4) The absence or substantial impairment of emotional ties between the parent and the child;

(5) The abusive use of conflict by the parent which creates the danger of damage to the child's psychological development;

(6) A parent has withheld from the other parent access to the child for a protracted period without good cause;

(7) A parent's criminal convictions as they relate to such parent's ability to parent or to the welfare of the child; or

(8) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(e) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

36-6-407. Allocation of parenting responsibilities

(a) The court shall approve agreements of the parties allocating parenting responsibilities, or specifying rules, if it finds that:

(1) The agreement is consistent with any limitations on a parent's decision-making authority mandated by § 36-6-406;

(2) The agreement is knowing and voluntary; and

(3) The agreement is in the best interest of the child and is agreed to by the guardian ad litem, if one has been appointed by the court.

(b) The court may consider a parent's refusal, without just cause, to attend a court-ordered parental educational seminar in making an award of sole decision-making authority to the other parent. The court shall order sole decision-making to one (1) parent when it finds that:

(1) A limitation on the other parent's decision-making authority is mandated by § 36-6-406;

(2) Both parents are opposed to mutual decision making; or

(3) One (1) parent is opposed to mutual decision making, and such opposition is reasonable in light of the parties' inability to satisfy the criteria for mutual decision-making authority.

(c) Except as provided in subsections (a) and (b), the court shall consider the following criteria in allocating decision-making authority:

(1) The existence of a limitation under § 36-6-406;

(2) The history of participation of each parent in decision making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court ordered parent education seminar;

(3) Whether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and

(4) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

36-6-408. Parent educational seminar

(a) In an action where a permanent parenting plan is or will be entered, each parent shall attend a parent educational seminar as soon as possible after the filing of the complaint. The seminar shall educate parents concerning how to protect and enhance the child's emotional development and informing the parents regarding the legal process. The seminar shall also include a discussion of alternative dispute resolution, marriage counseling, the judicial process, and common perpetrator attitudes and conduct involving domestic violence. The program may be divided into sessions, which in the aggregate shall not be less than four (4) hours in duration. The seminar shall be educational in nature and not designed for individual therapy. The minor children shall be excluded from attending these sessions. The requirement of attendance at such a seminar may be waived upon motion by either party and the agreement of the court upon the showing of good cause for such relief.

(b) The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by the parties and may be assessed by the court as it deems equitable. Such fees may be waived for indigent persons.

(c) No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or both parties to attend the educational session.

36-6-409. Procedures and restrictions applicable to dispute resolution

The following procedures and restrictions are applicable to the use of the dispute resolution process under this part:

(1) Each neutral party, the court, or the special master shall apply or, in the case of mediation, assist the parties to uphold as a standard for making decisions in mediation, the criteria in this part. Nothing in this part shall be construed to prevent a party from having the party's attorney present at a mediation or other dispute resolution procedure.

(2) The Tennessee Rules of Evidence do not apply in any mediation or alternative dispute resolution process; the neutral party may rely upon evidence submitted that reasonably prudent persons would rely upon in the conduct of their affairs.

(3) When dispute resolution is utilized in this chapter, it shall be preceded by a pretrial conference and the attendance by parents at the parent education seminar set forth in § 36-6-408.

(4) The court shall not order a dispute resolution process, except court action, if the court:

(A) Finds that any limiting factor under § 36-6-406 applies;

(B) Finds that either parent is unable to afford the cost of the proposed dispute resolution process, unless such cost is waived or subsidized by the state; or

(C) Preempts such process upon motion of either party for just cause.

(5) If an order of protection issued in or recognized by this state is in effect or if there is a court finding of domestic abuse or criminal conviction involving domestic abuse within the marriage which is the subject of the proceeding for divorce or separate support and maintenance, the court may order mediation or refer the parties to mediation only if:

(A) Mediation is agreed to by the victim of the alleged domestic or family violence;

(B) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(C) The victim is permitted to have in attendance at mediation a supporting person of the victim's choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation. The other party may also have in attendance at mediation a supporting person of such party's choice, including, but not limited to, an attorney or advocate.

(6) If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(A) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(B) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(C) The financial circumstances of the parties to pay for alternative dispute resolution processes where court sanctioned alternative dispute resolution programs are unavailable.

36-6-410. Designation of custody for the purpose of other state and federal statutes

Solely for the purpose of all other state and federal statutes and any applicable policies of insurance which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child; provided, that this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside a majority of the time shall be deemed to be the custodian for the purposes of such federal and state statutes.

36-6-411. Juvenile court jurisdiction

Nothing in this part shall be construed to alter, modify or restrict the exclusive jurisdiction of the juvenile court pursuant to § 37-1-103.

36-6-412. Gender

It is the legislative intent that the gender of the party seeking to be the primary residential parent shall not give rise to a presumption of parental fitness or cause a presumption in favor of or against such party.

STATE OF TENNESSEE	Insert Name of Court COURT <i>(Must be completed)</i>	Ins comp
PERMANENT PARENTING PLAN ORDER <input type="checkbox"/> Proposed <input type="checkbox"/> Agreed <input type="checkbox"/> Ordered by the Court		file div
Plaintiff <i>(Name: First, Middle, Last)</i> Please Type Full Name of Plaintiff <input type="checkbox"/> Mother <input type="checkbox"/> Father	Defendant <i>(Name: First, Middle, Last)</i> Please Type Full Name of Defendant <input type="checkbox"/> Mother <input type="checkbox"/> Father	

The mother and father will behave with each other and each child so as to provide a loving, stable, consistent and nurturing relationship with the child even though they are divorced. They will not speak badly of each other or the members of the family of the other parent. They will encourage each child to continue to love the other parent and be comfortable in both families.

This plan is a new plan.

modifies an existing Parenting Plan dated Type Date .

modifies an existing Order dated Type Date.

Child's Name	
---------------------	--

Type Full Name of Child	
Type Full Name of Child	
Type Full Name of Child	
Type Full Name of Child	
Type Full Name of Child	
Type Full Name of Child	

I. RESIDENTIAL PARENTING SCHEDULE

A. RESIDENTIAL TIME WITH EACH PARENT

The Primary Residential Parent is Type Primary Residential Parent.

Under the schedule set forth below, each parent will spend the following number of days with the children:

Mother Type Number days Father Type Number days.

B. DAY-TO-DAY SCHEDULE

The mother father shall have responsibility for the care of the child or children except at the following times when the other parent shall have responsibility:

From Start Day and Time to End Day and Time

every week every other week other: Enter Other Day and Time.

The other parent shall also have responsibility for the care of the child or children at the additional parenting times specified below:

From Enter Additional Start Day and Time to Additional Other End Day and Time

every week every other week other: Enter Additional Information.

This parenting schedule begins Please Enter Start Date **or** date of the Court Order.

C. HOLIDAY SCHEDULE AND OTHER SCHOOL FREE DAYS

Indicate if child or children will be with parent in ODD or EVEN numbered years or EVERY year:

MOTHER FATHER

New Year's Day	<u>Enter Odd or Even</u>	
Martin Luther King Day	<u>Enter Odd or Even</u>	
Presidents' Day	<u>Enter Odd or Even</u>	
Easter Day(unless otherwise coinciding with Spring Vacation)	<u>Enter Odd or Even</u>	
Passover Day(unless otherwise coinciding with Spring Vacation)	<u>Enter Odd or Even</u>	
Mother's Day	<u>Enter Odd or Even</u>	
Memorial Day (if no school)	<u>Enter Odd or Even</u>	
Father's Day	<u>Enter Odd or Even</u>	
July 4 th	<u>Enter Odd or Even</u>	
Labor Day	<u>Enter Odd or Even</u>	
Halloween	<u>Enter Odd or Even</u>	
Thanksgiving Day & Friday	<u>Enter Odd or Even</u>	
Children's Birthdays	<u>Enter Odd or Even</u>	
Other School-Free Days	<u>Enter Odd or Even</u>	
Mother's Birthday	<u>Enter Odd or Even</u>	
Father's Birthday	<u>Enter Odd or Even</u>	
Other: Enter Any Other Special Days	<u>Enter Odd or Even</u>	

A holiday shall begin at 6:00 p.m. on the night preceding the holiday and end at 6:00 p.m. the night of the holiday, unless otherwise noted here Please enter other holiday start time.

D. FALL VACATION (If applicable)

The day to day schedule shall apply except as follows Enter Exception beginning Enter Date.

E. WINTER (CHRISTMAS) VACATION

The mother father shall have the child or children for the first period from the day and time school is dismissed until December Please Type Date at Please Type Time a.m. p.m. in odd-numbered years in even-numbered years every year. The other parent will have the child or children for the second period from the day and time indicated above until 6:00 p.m. on the evening before school resumes. The parties shall alternate the first and second periods each year.

Other agreement of the parents: Please Enter Other Parental Agreements

F. SPRING VACATION *(If applicable)*

The day-to-day schedule shall apply except as follows Please Enter Spring Exception beginning Please Enter Spring Exception Start Date.

G. SUMMER VACATION

The day-to-day schedule shall apply except as follows: Please Enter Summer Exception beginning Enter Start Date of Summer Exception.

Is written notice required? Yes No. If so, Please Type Number of Days number of days.

H. TRANSPORTATION ARRANGEMENTS

The place of meeting for the exchange of the child or children shall be Please Type the Meeting Place for Exchange of Children.

Payment of long distance transportation costs *(if applicable)*: mother father both equally.

Other arrangements: Please Type Other Arrangements

If a parent does not possess a valid driver's license, he or she must make reasonable transportation arrangements to protect the child or children while in the care of that parent.

I. SUPERVISION OF PARENTING TIME *(If applicable)*

Check if applicable

Supervised parenting time shall apply during the day-to-day schedule as follows:

- Place: Type Location of Parenting Time.
- Person or organization supervising: Type Person or Organization Supervising
- Responsibility for cost, if any: mother father both equally.

J. OTHER

The following special provisions apply:

Please Type other special provisions that apply

II.DECISION-MAKING

A. DAY-TO-DAY DECISIONS

Each parent shall make decisions regarding the day-to-day care of a child while the child is residing with that parent, including any emergency decisions affecting the health or safety of a child.

B. MAJOR DECISIONS

Major decisions regarding each child shall be made as follows:

ons mother father joint

health care mother father joint

ng mother father joint

ivities mother father joint

ation mother father joint

III. FINANCIAL SUPPORT

ORT

Monthly income is \$ Please Type Father's Gross Monthly Income.

Monthly income is \$ Please Type Mother's Gross Monthly Income.

Support order is as follows:

a. The mother father shall pay to the other parent as regular child support the sum of \$Type amount of Child Support weekly monthly twice per month every two weeks. **The Child Support Worksheet shall be attached to this Order as an Exhibit.***

From the Child Support Guidelines, explain why: Please Type Reason For Deviation

2. Retroactive Support: A judgment is hereby awarded in the amount of \$Amount to mother father against the child support payor representing retroactive support required under Section 1240-2-4.06 of the D.H.S. Income Shares Child Support Guidelines dating from Please Type Date of Child Support Start which shall be paid (including pre/post judgment interest) at the rate of \$Please Type Rate of Payment per week month twice per month every two weeks until the judgment is paid in full.

3. Payments shall begin on the Please Type Day of Payment Start day of Please Type Month of Payment Start, 20Please Type last two Digits of Year.

This support shall be paid:

- directly to the other parent.
- to the Central Child Support Receipting Unit, P. O. Box 305200, Nashville, Tennessee 37229, and sent from there to the other parent at: Please Type Address of Receiving Parent.

A Wage Assignment Order is attached to this Parenting Plan

- by direct deposit to the other parent at Please Type Name of Bank for deposit in account no. Please Type Account Number.

- income assignment not required; Explanation: _____.
- other: Please Enter Any Other Information Here.

The parents acknowledge that court approval must be obtained before child support can be reduced or modified.

*Child Support Worksheet can be found on D.S. website at <http://www.state.tn.us/humanserv/is/incomeshares.htm> or at your local child support offices.

B. FEDERAL INCOME TAX EXEMPTION

The mother father is the parent receiving child support.

The Mother shall claim the following children: Please Type Children' Names

The Father shall claim the following children: Please TypeChildrens' Names

The mother father may claim the exemptions for the child or children so long as child support payments are current by the claiming parent on January 15 of the year when the return is due. The exemptions may be claimed in: alternate years starting Type Start Date each year other: Please Type Other Information.

The mother father will furnish IRS Form 8332 to the parent entitled to the exemption by February 15 of the year the tax return is due.

C. PROOF OF INCOME AND WORK-RELATED CHILD CARE EXPENSES

Each parent shall send proof of income to the other parent for the prior calendar year as follows:

1. IRS Forms W-2 and 1099 shall be sent to the other parent on or before February 15.
2. A copy of his or her federal income tax return shall be sent to the other parent on or before April 15 or any later date when it is due because of an extension of time for filing.

3. The completed form required by the Department of Human Services shall be sent to the Department on or before the date the federal income tax return is due by the parent paying child support. *This requirement applies only if a parent is receiving benefits from the Department for a child.*

The parent paying work-related child care expenses shall send proof of expenses to the other parent for the prior calendar year and an estimate for the next calendar year, on or before February 15.

D. HEALTH AND DENTAL INSURANCE

Reasonable health insurance on the child or children will be:

- maintained by the mother
- maintained by the father
- maintained by both

Proof of continuing coverage shall be furnished to the other parent annually or as coverage changes. The parent maintaining coverage shall authorize the other parent to consult with the insurance carrier regarding the coverage in effect.

Uncovered reasonable and necessary medical expenses, which may include but is not limited to, deductibles or co-payments, eyeglasses, contact lens, routine annual physicals, and counseling will be paid by mother father pro rata in accordance with their incomes. After insurance has paid its portion, the parent receiving the bill will send it to the other parent within ten days. The other parent will pay his or her share within 30 days of receipt of the bill.

If available through work, the mother father shall maintain dental, orthodontic, and optical insurance on the minor child or children.

E. LIFE INSURANCE

If agreed upon by the parties, the mother father both shall insure his/her own life in the minimum amount of \$Type Amount by whole life or term insurance. Until the child

support obligation has been completed, each policy shall name the child/children as sole irrevocable primary beneficiary, with: the other parent other Type Other Information, as trustee for the benefit of the child(ren), to serve without bond or accounting.

IV. PRIMARY RESIDENTIAL PARENT (CUSTODIAN) FOR OTHER LEGAL PURPOSES

The child or children are scheduled to reside the majority of the time with the mother father. This parent is designated as the primary residential parent also known as the custodian, **SOLELY** for purposes of any other applicable state and federal laws. If the parents are listed in Section II as joint decision-makers, then, for purposes of obtaining health or other insurance, they shall be considered to be joint custodians. **THIS DESIGNATION DOES NOT AFFECT EITHER PARENT'S RIGHTS OR RESPONSIBILITIES UNDER THIS PARENTING PLAN.**

V. DISAGREEMENTS OR MODIFICATION OF PLAN

Should the parents disagree about this Parenting Plan or wish to modify it, they must make a good faith effort to resolve the issue by the process selected below before returning to Court. *Except for financial support issues including child support, health and dental insurance, uncovered medical and dental expenses, and life insurance*, disputes must be submitted to:

- Mediation by a neutral party chosen by the parents or the Court.
- Arbitration by a neutral party selected by parents or the Court.
- The Court **DUE TO ORDER OF PROTECTION OR RESTRICTIONS.**

The costs of this process may be determined by the alternative dispute process or may be assessed by the Court based upon the incomes of the parents. It must be commenced by notifying the other parent and the Court by written request certified mail

other: Please Type Other Information

In the dispute resolution process:

- a. Preference shall be given to carrying out this Parenting Plan.

- b. The parents shall use the process to resolve disputes relating to implementation of the Plan.
- c. A written record shall be prepared of any agreement reached, and it shall be provided to each parent.
- d. If the Court finds that a parent willfully failed to appear without good reason, the Court, upon motion, may award attorney fees and financial sanctions to the prevailing parent.

VI. RIGHTS OF PARENTS

Under T.C.A. § 36-6-101 of Tennessee law, both parents are entitled to the following rights:

The right to unimpeded telephone conversations with the child at least twice a week at reasonable times and for reasonable durations;

1. The right to send mail to the child which the other parent shall not open or censor;
2. The right to receive notice and relevant information as soon as practicable but within twenty-four (24) hours of any event of hospitalization, major illness or death of the child;
3. The right to receive directly from the child's school any school records customarily made available to parents. (The school may require a written request which includes a current mailing address and upon payment of reasonable costs of duplicating.) These include copies of the child's report cards, attendance records, names of teachers, class schedules, and standardized test scores;
4. Unless otherwise provided by law, the right to receive copies of the child's medical health or other treatment records directly from the physician or health care provider who provided treatment or health care. (The keeper of the records may require a written request which contains a current mailing address and the payment of reasonable costs of duplication.) No person who receives the mailing address of a parent as a result of this requirement shall provide such address to the other parent or a third person;
5. The right to be free of unwarranted derogatory remarks made about the parent or his or her family by the other parent to the child or in the presence of the child;
6. The right to be given at least forty-eight (48) hours notice, whenever possible, of all extra-curricular activities, and the opportunity to participate or observe them. These include the following: school activities, athletic activities, church activities and other activities where parental participation or observation would be appropriate;

7. The right to receive from the other parent, in the event the other parent leaves the state with the minor child or children for more than two (2) days, an itinerary including telephone numbers for use in the event of an emergency;

8. The right to access and participation in education on the same basis that is provided to all parents. This includes the right of access to the child for lunch and other activities. However participation or access must be reasonable and not interfere with day-to-day operations or with the child's educational performance.

VII. NOTICE REGARDING PARENTAL RELOCATION

The Tennessee statute (T.C.A. § 36-6-108) which governs the notice to be given in connection with the relocation of a parent reads in pertinent part as follows:

If a parent who is spending intervals of time with a child desires to relocate outside the state or more than one hundred (100) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

1. Statement of intent to move;
2. Location of proposed new residence;
3. Reasons for proposed relocation; and
4. Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.

VIII. PARENT EDUCATION CLASS

This requirement has been fulfilled by both parents mother father neither.

Failure to attend the parent education class within 60 days of this order is punishable by contempt.

Under penalty of perjury, we declare that this plan has been proposed in good faith and is in the best interest of each minor child and that the statements herein and on the attached child support worksheets are true and correct. (A notary public is required if this is a proposed plan by one parent rather than one agreed by both parents.)

Mother Date and Place Signed

Sworn to and subscribed before me this _____ day of _____, 20_____.

My commission expires: _____

Notary Public

Father Date and Place Signed

Sworn to and subscribed before me this _____ day of _____, 20_____.

My commission expires:

Notary Public

APPROVED FOR ENTRY:

Name of Mother's Attorney Name of Father's Attorney

Attorney for Mother Attorney for Father

Address Address

Address Address

Address Address

Address Address

Phone and BPR Number Phone and BPR Number

Phone and BPR Number Phone and BPR Number

Note: The judge or chancellor may sign below or, instead, sign a Final Decree or a separate Order incorporating this plan.

COURT COSTS (If applicable)

Court costs, if any, are taxed as follows:

Enter How Court Costs Will Be Taxed.

It is so ORDERED this the _____ day of _____, _____.

Judge or Chancellor

Parenting Class Providers

PARENT EDUCATIONAL SEMINAR

Pursuant to Tennessee Code Annotated Section 36-6-408, in an action where a permanent parenting plan is or will be entered, each parent shall attend a parent educational seminar. The Judges of Circuit Court and the Chancellors of Chancery Court of Shelby County, Tennessee will accept certificates of completion from the following providers as evidence of compliance with the Order on Procedure in Divorces with Children issued by the Courts and with Tennessee Code Annotated Section 36-6-408:

Agape Child and Family Services, Inc.

111 Racine Street

Memphis, TN 38111

(901) 323-3600

The Atrium Family Center

www.positiveparentingthroughdivorce.com

Christian Psychological Center, Inc.

3978 Central Ave.

Memphis, TN 38111

(901) 458-6291 Ext. 256

The Exchange Club of Memphis

2180 Union Ave.

Memphis, TN 38104

(901) 276-2200

Family Services of the Mid-South

Contact Person: David Frankle

2400 Poplar Ave., #500

Memphis, TN 38112

(901) 324-3637

Innovative Counseling & Consulting, Inc.

Paula Honeycutt

PO Box 38774

Germantown, TN 38183-0774

(901) 755-7747

Offered at Collierville Community Center and Agricenter International

Jewish Family Service

6560 Poplar Ave.

Memphis, TN 38138

(901) 767-8511

LeBonheur Center for Children & Parents

2400 Poplar Ave., #318

Memphis, TN 38112

(901) 287-4700

Turning Point Counseling

Contact Person: Bobby Scott, MA, LMTT

6915 Crumpler Blvd., #I

Olive Branch, MS 38654

(901) 382-8324

Southwest Tennessee Community College

8757 Rankin Branch Road

Memphis, TN 38053

(901) 333-4207

University of Tennessee

Agricultural Extension Service

Contact Person: Cathy Faust

5565 Shelby Oaks Drive

Memphis, TN 38134

(901) 752-1207

Each of the above providers offers the required seminar at different times and dates. Contact one of the above facilities for scheduling information. Following the class, a Certificate of Completion will be provided. The certificate must be filed with the appropriate court clerk.

http://www.probate.co.shelby.tn.us/court_clerks/circuit_court/forms/parenting_plan_seminar_locations.pdf

Revised July 10, 2006

PARENTAL RELOCATION

(a) If a parent who is spending intervals of time with a child desires to relocate outside the state or more than one hundred (100) miles from the other parent within the state, the relocating parent shall send a notice to the other parent at the other parent's last known address by registered or certified mail. Unless excused by the court for exigent circumstances, the notice shall be mailed not later than sixty (60) days prior to the move. The notice shall contain the following:

- (1) Statement of intent to move;
- (2) Location of proposed new residence;
- (3) Reasons for proposed relocation; and
- (4) Statement that the other parent may file a petition in opposition to the move within thirty (30) days of receipt of the notice.

(b) Unless the parents can agree on a new visitation schedule, the relocating parent shall file a petition seeking to alter visitation. The court shall consider all relevant factors, including those factors enumerated within subsection (d). The court shall also consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(c) If the parents are actually spending substantially equal intervals of time with the child and the relocating parent seeks to move with the child, the other parent may, within thirty (30) days of receipt of notice, file a petition in opposition to removal of the child. No presumption in favor of or against the request to relocate with the child shall arise. The court shall determine whether or not to permit relocation of the child based upon the best interests of the child. The court shall consider all relevant factors including the following where applicable:

- (1) The extent to which visitation rights have been allowed and exercised;
- (2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;
- (3) The love, affection and emotional ties existing between the parents and child;
- (4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;
- (5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
- (6) The stability of the family unit of the parents;
- (7) The mental and physical health of the parents;
- (8) The home, school and community record of the child;
- (9) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;
- (10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and
- (11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

(d) If the parents are not actually spending substantially equal intervals of time with the child and the parent spending the greater amount of time with the child proposes to relocate with the child, the other parent may, within thirty (30) days of receipt of the notice, file a petition in opposition to removal of the child. The other parent may not attempt to relocate with the child unless expressly authorized to do so by the court pursuant to a change of custody or primary custodial responsibility. The parent spending the greater amount of time with the child shall be permitted to relocate with the child unless the court finds:

- (1) The relocation does not have a reasonable purpose;
- (2) The relocation would pose a threat of specific and serious harm to the child which outweighs the threat of harm to the child of a change of custody; or
- (3) The parent's motive for relocating with the child is vindictive in that it is intended to defeat or deter visitation rights of the non-custodial parent or the parent spending less time with the child.

Specific and serious harm to the child includes, but is not limited to, the following:

- (1) If a parent wishes to take a child with a serious medical problem to an area where no adequate treatment is readily available;
- (2) If a parent wishes to take a child with specific educational requirements to an area with no acceptable education facilities;
- (3) If a parent wishes to relocate and take up residence with a person with a history of child or domestic abuse or who is currently abusing alcohol or other drugs;
- (4) If the child relies on the parent not relocating who provides emotional support, nurturing and development such that removal would result in severe emotional detriment to the child;
- (5) If the custodial parent is emotionally disturbed or dependent such that the custodial parent is not capable of adequately parenting the child in the absence of support systems currently in place in this state, and such support system is not available at the proposed relocation site; or
- (6) If the proposed relocation is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, which does not have an adequately functioning legal system or which otherwise presents a substantial risk of specific and serious harm to the child.

(e) If the court finds one (1) or more of the grounds designated in subsection (d), the court shall determine whether or not to permit relocation of the child based on the best interest of the child. If the court finds it is not in the best interests of the child to relocate as defined herein, but the parent with whom the child resides the majority of the time elects to relocate, the court shall make a custody determination and shall consider all relevant factors including the following where applicable:

- (1) The extent to which visitation rights have been allowed and exercised;
- (2) Whether the primary residential parent, once out of the jurisdiction, is likely to comply with any new visitation arrangement;

- (3) The love, affection and emotional ties existing between the parents and child;
- (4) The disposition of the parents to provide the child with food, clothing, medical care, education and other necessary care and the degree to which a parent has been the primary caregiver;
- (5) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;
- (6) The stability of the family unit of the parents;
- (7) The mental and physical health of the parents;
- (8) The home, school and community record of the child;
- (9) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preferences of older children should normally be given greater weight than those of younger children;
- (10) Evidence of physical or emotional abuse to the child, to the other parent or to any other person; and
- (11) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child.

The court shall consider the availability of alternative arrangements to foster and continue the child's relationship with and access to the other parent. The court shall assess the costs of transporting the child for visitation, and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(f) Nothing in this section shall prohibit either parent from petitioning the court at any time to address issues, (such as, but not limited to visitation), other than a change of custody related to the move. In the event no petition in opposition to a proposed relocation is filed within thirty (30) days of receipt of the notice, the parent proposing to relocate with the child shall be permitted to do so.

(g) It is the legislative intent that the gender of the parent who seeks to relocate for the reason of career, educational, professional, or job opportunities, or otherwise, shall not be a factor in favor or against the relocation of such parent with the child.

Child Support Guidelines

TENNESSEE RULES AND REGULATIONS

1240. TENNESSEE DEPARTMENT OF HUMAN SERVICES

1240-2. CHILD SUPPORT SERVICES DIVISION

CHAPTER 1240-2-4. CHILD SUPPORT GUIDELINES

Current through June 26, 2006

1240-2-4-.02. PURPOSES AND PREMISES

(1) The Department of Human Services will comply with federal and state requirements to promulgate guidelines to be used in setting awards of child support.

(2) The major goals in the development of these guidelines are:

(a) To decrease the number of impoverished children living in single parent families.

(b) To make child support awards more equitable by ensuring more consistent treatment of persons in similar circumstances.

(c) To improve the efficiency of the court process by promoting settlements and by giving courts and parties guidance in establishing levels of support awards.

(d) To encourage parents paying support to maintain contact with their child(ren).

(e) To ensure that when parents live separately, the economic impact on the child(ren) is minimized and to the extent that either parent enjoys a higher standard of living, the child(ren) share(s) in that higher standard.

(f) To ensure that a minimum amount of child support is set for parents with a low income in order to maintain a bond between the parent and the child, to establish patterns of regular payment, and to enable the enforcement agency and party receiving support to maintain contact with the parent paying support.

(3) These guidelines shall be applicable in any action brought to establish or modify child support, whether temporary or permanent. For the purposes of defining a significant variance between the guideline amount and the current support order pursuant to [TCA § 36-5-101](#), a significant variance shall be at least 15% if the current support is one hundred

dollars (\$100.00) or greater per month and at least fifteen dollars (\$15.00) if the current support is less than \$100.00 per month. Such variance would justify the modification of a child support order unless, in situations where a downward modification is sought, the obligor is willfully and voluntarily unemployed or underemployed. Upon a petition for adjustment by either party, the court shall increase or decrease the award amount as appropriate in accordance with these guidelines unless the significant variance occurs due to a previous decision of the court to deviate from the guidelines and the circumstances which caused the deviation have not changed.

(4) Stipulations presented to the court shall be reviewed by the court before approval. No hearing shall be required. However, the court shall use the guidelines in reviewing the adequacy of child support orders negotiated by the parties. The court shall require that stipulations in which the guidelines are not met must provide a justification for the deviation which takes into consideration the best interest of the child and must state the amount which would have been required under the guidelines.

(5) These guidelines are a minimum base for determining child support obligations. Factors justifying upward adjustments for support include expenses for health care insurance coverage for the child if the parent paying support is not already providing this, less than average overnight visitation being exercised by the parent paying support as provided in (6) below, extraordinary educational expenses, extraordinary medical expenses for the child which are not paid by insurance, and the like.

(6) These guidelines are designed to apply to situations where children are living primarily with one parent but stay overnight with the other parent at least as often as every other weekend from Friday to Sunday, two weeks in the summer and two weeks during holidays throughout the year. These guidelines are designed to consider the actual physical custody of the child(ren), regardless of whether custody is awarded to one parent and visitation to the other or such an arrangement is ordered to be joint custody or split custody. In situations where overnight time is divided more equally between the parents, the courts will have to make a case-by-case determination as to the appropriate amount of support (reference 1240-2-4-.04).

(7) These guidelines shall be applied as a rebuttable presumption in all child support cases. If the court finds that the evidence is sufficient to rebut the presumption that the application of the guidelines is the correct amount to be awarded, then the court must make a written or specific finding that the application of the child support guidelines would be unjust or inappropriate in that particular case. Findings that rebut these guidelines must state the amount that would have been required under the guidelines and include a justification for deviation from the guidelines which takes into consideration the best interest of the child.

1240-2-4-.03. GUIDELINES FOR CALCULATING CHILD SUPPORT AWARDS.

(1) For clarity, the parent with whom the child(ren) live primarily will be referred to as

the obligee and the parent with whom the child(ren) do not primarily live will be referred to as the obligor.

(2) the child support award is based on a flat percentage of the obligor's net income as defined in paragraph (4) below depending on the number of children for whom support is being set in the instant case. While the income of the obligee should not be considered in the calculation of or as a reason for deviation from the guidelines in determining the support award amount, the formula presumes that the obligee will be expending at least an equal percentage of net income as that of the obligor for the support of the children for whom support is sought.

(3) Gross income.

(a) Gross income shall include all income from any source (before taxes and other deductions), whether earned or unearned, and includes but is not limited to, the following: wages, salaries, commissions, bonuses, overtime payments, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, benefits received from the Social Security Administration, i.e., Title II Social Security benefits, workers compensation benefits whether temporary or permanent, judgments recovered for personal injuries, unemployment insurance benefits, gifts, prizes, lottery winnings, alimony or maintenance, and income from self-employment. Income from self-employment includes income from business operations and rental properties, etc., less reasonable expenses necessary to produce such income. Depreciation, home offices, excessive promotional, excessive travel, excessive car expenses or excessive personal expenses, etc., should not be considered reasonable expenses. "In kind" remuneration must also be imputed as income, i.e., fringe benefits such as a company car, the value of on-base lodging and means in lieu of BAQ and BAS for a military member, etc.

(b) Variable income such as commissions, bonuses, overtime pay, dividends, etc., should be averaged and added to the obligor's fixed salary.

(c) Gross income does not include the following: child support payments received by either parent for the benefit of other children; benefits received from means-tested public assistance programs otherwise exempt by federal law or regulations such as aid to families with dependent children (AFDC) and food stamps or Supplemental Security Income (SSI).

(d) If an obligor is willfully and voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, as evidenced by educational level and/or previous work experience.

(e) When establishing an initial order and the obligor fails to produce evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years), and the court has no other reliable evidence of the obligor's income or income potential, gross income for the current and prior years should be determined by imputing annual income of \$25,761.

This figure represents an average of the medial annual income for Tennessee families as provided by the 1990 US Census of Income and Poverty data for Tennessee Counties.

(f) When cases with established orders are reviewed for adjustment and the obligor fails to produce evidence of income (such as tax returns for prior years, check stubs, or other information for determining current ability to support), and the court has no other reliable evidence of the obligor's income or income potential, the court should enter an order to increase the child support obligation by an increment not to exceed ten percent (10%) per year for each year since the support order was entered or last modified.

(4) Net income is calculated by subtracting from gross income of the obligor FICA (6.2% Social Security + 1.45% Medicare for regular wage earners and 12.4% Social Security + 2.9% Medicare for self-employed, as of 1991, or any amount subsequently set by federal law as FICA tax), the amount of withholding tax deducted for a single wage earner claiming one withholding allowance (copies of appropriate table will be provided to courts with guidelines), and the amount of child support ordered pursuant to a previous order of child support for other children. Payment may be ordered to be weekly, biweekly (every two weeks), semi-monthly, or monthly. In calculating net income for obligors who are under federal or railroad retirement programs or any other mandatory retirement plan which operates in lieu of the Social Security retirement program, the retirement contribution up to the current FICA tax rate should be subtracted from the gross income. Children of the obligor who are not included in a decree of child support shall not be considered for the purposes of reducing the obligor's net income or in calculating the guideline amount. In addition, these children should not be considered by the court as a reason for deviation unless they meet the requirements of rule 1240-2-4-.04(4).

(5) After determining the net income of the obligor, that amount is to be rounded up to the next dollar. That amount is then multiplied by the percentage below that corresponds to the number of children for whom support is being set in the instant case. The percentages are:

No. of children	1	2	3	4	5	or more
% of income	21%	32%	41%	46%	50%	

After this calculation is made, if there are no changes to be made pursuant to paragraph 1240-2-4-.04 below, then this is the amount of the child support award.

1240-2-4-.04. CRITERIA FOR DEVIATION FROM GUIDELINES

(1) Since these percentage amounts are minimums, the court shall increase the award calculated in Rule 1240-2-4-.03 for the following reasons:

(a) If the obligor is not providing health insurance for the child(ren), an amount equal to the amount necessary for the obligee to obtain such insurance shall be added to the percentage calculated in the above rule.

(b) If the child(ren) is/are not staying overnight with the obligor for the average visitation period of every other weekend from Friday evening to Sunday evening, two weeks during the summer and two weeks during holiday periods throughout the year, then an amount shall be added to the percentage calculated in the above rule to compensate the obligee for the cost of providing care for the child(ren) for the amount of time during the average visitation period that the child(ren) is/are not with the obligor [reference 1240-2-4-.02(6)]. The court may consider a downward deviation from the guidelines if the obligor demonstrates that he/she is consistently providing more care and supervision for the children than contemplated in the rule.

(c) Extraordinary educational expenses and extraordinary medical expenses not covered by insurance shall be added to the percentage calculated in the above rule.

(d) Any other extraordinary expenses for the child(ren) may justify increasing the support calculated in the above rule if the court finds that equity requires it.

(e) In cases where initial support is being set, a judgment must be entered to include an amount due for monthly support from the date of the child's birth or date of separation or date of abandonment whichever is appropriate, until the current support order is entered. This amount must be calculated based upon the guidelines using the average income of the obligor over the past two years and is presumed to be correct unless rebutted by either party. An amount should be included in the order to reduce the arrears judgment on a monthly basis within a reasonable time.

(f) Valuable assets and resources (expensive home or automobile which seem inappropriate for the income claimed by the obligor) of the obligor should be considered for the purpose of imputing income and increasing the support award in any case if the court finds that equity requires it.

(2) Deviation from the guidelines may be appropriate in other cases when the court finds it is in the best interest of the child(ren) including, but not limited to, the following:

(a) In cases where the Department of Human services has taken custody of the child(ren) pursuant to a neglect, dependent, or abuse action and where the parent(s) is/are making reasonable efforts to secure the return of the child(ren) to the family; and/or

b) In cases where physical custody of the child(ren) is more equally divided between the parties than occurs in a situation where one party has an average amount of overnight visitation as defined in 1240-2-4-.02(6).

(3) The court must consider all net income of the obligor as defined according to 1240-2-4-.03 of this rule. The court must order child support based upon the appropriate percentage to the custodial parent up to a net \$10,000 per month of the obligor's income. When the net income of the obligor exceeds \$10,000 per month, the court may consider a downward deviation from the guidelines if the obligor demonstrates that the percentage applied to the excess of the net income above \$10,000 a month exceeds a reasonable

amount of child support based upon the best interest of the child and the circumstances of the parties. The court may require that sums paid above the percentage applied to the net income above \$10,000 be placed in an educational or other trust fund for the benefit of the child.

(4) In instances of extreme economic hardship, such as in cases involving extraordinary medical needs not covered by insurance or other extraordinary special needs for the child(ren) of the obligor's current family, [child(ren) living in the home with the obligor for whom the obligor is legally responsible] deviation from the guidelines may be considered in order to achieve equity between the parties when the court so finds.

(5) In deviating from the guidelines, primary consideration must be given to the best interest of the child(ren) for whose support the guidelines are being utilized.

Tennessee Code § 36-5-101

Decree for support of spouse and children.

(e)(1)(B) Notwithstanding any provision of this section or any other law or rule to the contrary, if the net income of the obligor exceeds ten thousand dollars (\$10,000.00) per month, then the custodial parent must prove by a preponderance of the evidence that child support in excess of the amount, [calculated by multiplying the appropriate percentage set forth in the child support guidelines by a net income of ten thousand dollars (\$10,000.00) per month], is reasonably necessary to provide for the needs of the minor child or children of the parties. In making its determination, the court shall consider all available income of the obligor, as required by this chapter, and shall make a written finding that child support in excess of the amount so calculated is or is not reasonably necessary to provide for the needs of the minor child or children of the parties.

Child Support Worksheet

The Child Support Worksheet is a two page form that can be easily worked by anyone with an advanced degree in mathematics. The rest of us including me, my staff, and the judges use the child support calculator that you can find at the following web address.

www.state.tn.us/humanserv/is/incomeshares.htm

If you try to do it by hand on a printed form, you will make errors. From my experience, the form at the Department of Human Services website contains errors but since everyone will be suffering from the same errors including the judges, the errors tend to cancel themselves out.

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.

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