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How We Will Represent You in Your Divorce

The following information will answer some of the questions you may have about your divorce and legal services offered by this office. You may wish to keep this information and refer to it as we proceed with your case.

1. Grounds: Texas has adopted the concept of “no-fault” divorce. This makes it generally unnecessary to prove cruelty, adultery, desertion, etc., in order to obtain a divorce. The usual ground is to show the court that the marriage has become “insupportable because of discord or conflict of personalities, which destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.” What this means is that because of personal differences that cannot be worked out, it is not possible for the husband and wife to continue living together, however, in some cases it may be appropriate to allege adultery or cruelty.

2. Residence Requirements: Prior to filing an Original Petition for Divorce, you or your spouse must be a resident of Texas for at least six (6) months and a resident of the county where the petition is filed, for ninety (90) days. There are exceptions which may apply if you do not qualify under this general rule.

3. Starting the Proceedings: The first step is the preparation and filing of a petition. The petition states the names and ages of the husband, wife, and all children born or adopted

during the marriage; when and where you married and when you separated; that the residence requirement has been satisfied; and that your marriage should be dissolved. It also asks the court to name a managing conservator who will have custody of the minor children of the marriage and a possessory conservator who will have visitation rights and if an agreement cannot be reached to provide for support, visitation, property division, attorney's fees and court costs. If your spouse has already filed, be sure to bring a copy of the petition to the office, especially if you have been served by the sheriff, constable, or private process server. The petition does not contain the division of your property or debts.

4. Actual Separation: There is no legal requirement that you or your spouse have to live apart, prior to filing the petition.

5. Who Should File: There is no legal significance as to whether the husband or the wife files the petition, although there may be procedural and tactical advantages for the one that files first, if the case is resolved by trial, or if your spouse has moved out of the county and/or state and has established residency in that county or state.

6. Waiting Period: No divorce can be granted until at least sixty (60) days after the original petition has been filed. This is a minimum time set out by law to prevent hasty divorces that are later regretted. My experience is that it takes longer for a contested divorce to become final. Contested divorce cases can conceivably take a year or even longer before the divorce becomes final. During this period, we will be assisting you in working out the details of custody, visitation, support and property settlement.

7. Service or Waiver: After the Original Petition for Divorce is filed, the other spouse must receive appropriate notification. This service can be performed by a local constable,

private process server, or the spouse being served can sign a Waiver of Service, thus eliminating the need for service to be processed by either a constable or private process server.

The Waiver of Service acknowledges receipt of the Original Petition of Divorce. If you have been served, notify this office immediately.

8. Uncontested Divorce. An uncontested divorce is where both spouses agree in all aspects of custody, visitation, support, property settlement, payment of debts, attorney fees, and court costs. If your spouse disputes any of the above referenced items, you do not have an uncontested divorce.

9. Temporary Orders. While a divorce is pending, there must be a clear understanding of the rights and obligations of each spouse. If necessary, a hearing can be requested where the Judge can be asked to make or approve temporary orders that both spouses can agree on. Some examples that might be included in temporary orders, are: temporary custody, visitation, child support, payment of bills, preventing your spouse from spending large sums of money, selling or buying real estate, causing physical harm or making threats to harm you or the children.

10. Dismissal of the Divorce. A divorce can be dismissed any time before it is granted by the court at the request of both husband and wife. If your spouse has sued you for divorce, and tells you it has been “dropped,” you need to verify with the court clerk that the divorce has in fact been dismissed. If you neglect to verify that the divorce has been dismissed, the divorce can potentially be granted against you by default, because you failed to take necessary legal action within the required time frame.

11. Custody and Joint Custody. The custodial parent is the managing conservator. The parent having visitation is called the possessory conservator. The term joint custody describes how the decision-making authority is divided between the parents: who has the right to say where the children live; which decisions are made by which parent. In 1995, Texas changed the law so that Joint Custody is the presumption unless special circumstances, such as abuse, exists. Joint custody does not automatically mean the children will spend half their time with each parent.

12. Visitation. If you and your spouse mutually agree on a visitation schedule with your children, the judge will usually approve the arrangements you have agreed upon. The court can also award visitation rights to grandparents. There are standard guidelines for visitation between parents and children and this is referred to as a Standard Possession Order. There are “guidelines” for children less than three years of age, children between the ages of three and fifteen, and for children fifteen years and over, that some courts allow. The judges normally follow these guidelines, unless there are unusual circumstances.

13. Child Support. There is a formula by which the amount of child support is determined. A just amount is arrived at by reviewing the financial position and earnings of both parents, and considering the needs of the children. The court requires child support be paid for each child until that child reaches age eighteen (18), or graduates from high school whichever occurs last. If your child has mental, physical, or emotional disabilities, it may be possible to continue the support after the child becomes eighteen (18).

It is possible to provide for college costs by written agreement, although the judge cannot order it.

The law sets the following percentages based on the monthly net resources of the parent paying support:

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|----|------------|-------------------|
| a. | 1 child | 20% |
| b. | 2 children | 25% |
| c. | 3 children | 30% |
| d. | 4 children | 35% |
| e. | 5+children | not less than 35% |

These percentages may be modified if there are other children that the parent paying support is legally responsible for.

14. Property Division. There is no fixed way to determine how to divide the marital property. The law does not require a 50/50 division. Some factors to be considered in giving one spouse more than half are:

- a. length of marriage;
- b. fault in the break up;
- c. education and learning capacities of the parties;
- d. types of assets available;
- e. health;
- f. any special circumstance.

Debts as well as assets must be considered. We will try to negotiate a reasonable property division, but if a settlement cannot be reached, the judge will divide the property. A wife with custody of minor children will sometimes be awarded more property than the husband.

15. Torts. In some cases the law allows money damages in divorce cases for extreme physical or emotional abuse. This does not mean that being unhappy in the marriage or upset over the divorce means you are entitled to large sums of money for “mental cruelty.” Texas courts are still shaping our laws in this area. If you have been in an abusive marriage, let us know so that we can evaluate this aspect of your case.

16. Alimony. For years, Texas was the only state without any form of post-divorce alimony. The passage of this law in 1995 resulted from the wave of “welfare reform” sweeping the country. Alimony was passed as a measure to prevent an economically displaced spouse from going on welfare. With some minor exceptions, the basic requirements are that the party seeking alimony must have been married ten years and unable to be self-supporting. The monthly payment is limited to no more than \$2,500 or 20% of the payer’s income, whichever is less. Alimony is generally limited to no more than three years. However, if the former spouse is disabled, payments may be extended indefinitely.

Texas courts can also order a spouse to make support payments to the other spouse while the divorce is pending. Do not confuse alimony payments with child support payments. A deviation from the above alimony guidelines may be obtained by written agreement of both parties. It is possible for the spouse paying alimony to obtain income tax advantages by agreeing on payments which can qualify as alimony under federal income tax laws. The person receiving alimony must pay taxes on that amount.

17. Court Costs and Expenses. Filing fees or court costs are approximately one hundred and seventy-five dollars (\$225.00) if the case is totally uncontested. This does not include the fee for service of process, which is approximately fifty (\$50.00) to one hundred and fifty (\$150.00) depending on county, rush service, and difficulty of obtaining service. If there are depositions, investigations, property appraisals, or other expert witnesses, expenses can go as high as several thousand dollars. You must pay for these items as we proceed as it is not the firm’s policy to finance your case.

18. Fees. Fees vary according to the services required. Divorce services include the initial conference, telephone and office consultations, the preparation and filing of the petition (or the review of the petition filed by your spouse); the preparation of a waiver to be filed by your spouse or arranging for your spouse to be served; obtaining information from you concerning your assets, liabilities, income and expenses and making recommendations concerning the property division and support; settlement negotiations with your spouse's attorney; preparation or review of property settlement and child support agreements; preparation or review of the divorce decree; preparation or review of forms required by the Texas Bureau of Vital Statistics; discovery of the assets and debts; and such court hearings or trials as are necessary to obtain the entry of a final decree.

If trial is necessary, the judge can order the other spouse to pay attorneys' fees for both parties (although this is the exception rather than the rule) and most judges order each party to be responsible for their own attorney fees and court costs. As our client, you are responsible for paying our fees, and we will give you full credit for any payments made by the other party.

19. One Lawyer for Both of You. It is not ethical for a lawyer to represent two sides of a lawsuit. When both parties agree on all aspects of their divorce and how their divorce is to be handled, then one attorney can prepare all of the documents as per instruction of the client. Prior to any documentation being filed with the court, your spouse will have the opportunity to review and comment on the content. We have only one client, you, and we cannot and will not give your spouse any legal advice and risk being disqualified as your counsel should your case become contested.

20. Reconciliation. We encourage efforts toward reconciliation if there is a chance the marriage can be saved. We have information on marriage counseling you might find helpful. On occasion, when a divorce is filed, a client may change his/her mind and try to work things out. If you wish to postpone the divorce proceedings to work on a reconciliation, please do so with our very best wishes.

21. Change of Wife's Name. A wife's name may be changed as part of the final decree of divorce. If you require a name change, please advise before we prepare the Original Petition for Divorce. Failing that, we must know before preparation begins on the Final Decree of Divorce.

22. Prove-Up. If there is no appeal, your divorce will be final the day it is granted in court. The judge however, may not sign the decree until a later date.

23. Remarriage. By law you may not marry anyone, except your spouse, for thirty (30) days after the judge signs the decree unless special permission from the judge is sought and granted on the day of the divorce.

24. Dating. Although we like to think that we live in modern times, the fact remains that you are married. You are an adult and you must make your own decision regarding dating. If you decide to date before your divorce is final, be prepared to face any problems that might arise if your spouse decides to use this against you. Dating becomes particularly risky if there is a chance that custody of the children is an issue.

25. Confidentiality. In order for you to receive appropriate representation, we must have all the facts. Anything told to anyone in this office is strictly confidential and will not be disclosed without your permission. If we are aware of potential problems ahead of time, we can

deal with them accordingly. If your case goes to trial and we learn of problems during a hearing or at a trial, it may be too late to do “damage control.”

26. Keeping You Informed. Every effort will be made to keep you informed of the progress of your case. You will receive copies of documents prepared or received by us.

27. Your Responsibilities. We expect you to be **truthful** and **cooperative**. If you are not truthful, we will not continue to represent you. **We also expect you to handle your financial commitments to this office in a prompt and businesslike manner as outlined in your employment contract.** Please notify us of any change of address or telephone number, or if you learn anything that may affect your case. This is your divorce and you will be actively involved in the process of reaching a final resolution.

28. General Suggestions. Your well-meaning friends and associates may offer you advice about your case. Frequently, such advice is not accurate and you should be cautious following it. The facts surrounding your marriage, divorce, children, and property are different from every other case. Divorce proceedings are very emotional and can become quite complex. Your friends and relatives may not be aware of certain legal and factual situations when they offer you suggestions. It is our experience that your divorce will be less of an emotional strain if you understand that the law is not designed to solve emotional problems—only legal problems.

Prepare your children without poisoning their minds about your spouse. Obtain professional counseling and advice if you are having a difficult time. If you think you might benefit from counseling, we can assist by recommending the names of several counselors. Attempt to cooperate with your spouse where the children are concerned and remember, the

children are not divorcing their parents.

Refrain from discussing your divorce proceedings with your friends and/or family, via a social networking site, such as Face Book, and/or My Space, and never display photographs or other information you would not want a Judge to see. Do not expect privacy on a social networking site, and be vary wary about what is posted, as what you say or do, can come back to haunt you.

29. New Wills. The Texas Probate Code invalidates certain provisions made to Wills, prior to a divorce. After the divorce becomes final, you and your spouse will probably need new Wills. If you wish to pursue this, please let us know.

If it appears that the divorce proceedings may remain pending for a length of time, it is advisable to have your current Will updated, or a Will put into place, in order to protect against unforeseen tragedy and/or unforeseen results regarding the division of your estate.

30. Other Legal Matters. If you become involved in other legal matters not directly related to your divorce, it is important to let us know about them. Potentially, what appears to be unrelated, may actually affect the division of your property, or the amount of child support awarded.

31. Thank You. We sincerely appreciate the confidence you have shown us by asking us to represent you in your divorce. Any time you have questions or information that you believe we should be aware of, please do not hesitate to contact us.