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AN INTRODUCTION TO THE DIVORCE PROCESS

This material is intended to provide some general information to you about basic divorce proceedings. It is not intended to answer specific questions about your particular case, as each case is different. This document should not be considered legal advice to you. We are always available to discuss your case with you. Please do not hesitate to call or arrange for an appointment. Please keep this packet along with other papers related to this process. Referring to the material in your packet during the process may answer questions you have without the necessity of contacting us.

As your representatives, we are here to advise you and inform you, cite the options and alternatives to you, process your divorce matter, assist you in decision making, and attempt to obtain the best possible results under the facts and circumstances of your case, taking into consideration your goals and objectives.

Sometimes divorce cases end in a reconciliation of the parties. If there is viability in your marriage and a chance to save it, we will be pleased to recommend marriage counselors to you and assist you in every possible way to effect this reconciliation. If, on the other hand, you believe the marriage is over, we will do our utmost to obtain a judgment of Dissolution or Legal Separation under the terms that are satisfactory to you.

In order to properly represent you, it is absolutely necessary for you not only to provide us with all the facts concerning your situation, but we must know your goals and objectives. We welcome your viewpoints. Withholding information from your lawyer may affect the outcome of your case, so we advise you to be completely candid with us. In addition, *providing us with financial and other documents in an organized and timely manner can assist us greatly in advising you and moving the case toward settlement or trial preparation.* Providing us with complete information, including written timelines, can eliminate the need for us to spend time tracking things down for you.

Please be fully aware that, though we will counsel and advise you throughout the entire proceeding, final decisions regarding your case must be made by you. Our experience has shown that most divorce cases are settled. This means parties usually reach an agreement which is placed in the court's record, and the terms of the agreement become court orders. This process may take many months, and most settlements will be negotiated through the attorneys. Never agree to something you do not understand or something you feel you are forced to agree to. Your consent to an agreement

must be voluntarily made after consultation with your attorney. After an agreement is placed upon the record, it is extremely difficult to change it.

GROUND FOR DIVORCE

Missouri is known as a modified “no fault” divorce state; however, the words “no fault” may be misleading. Basically, Missouri had one “ground” for divorce, which is as follows: “there has been an irretrievable breakdown of the marriage relationship, and there remains no reasonable likelihood that the marriage can be preserved.”

While no party needs to find “fault” with the other in order to obtain a divorce, misconduct can be a factor in division of property, maintenance (alimony) payments, custody of children, and attorneys’ fees. Misconduct may include, among other things, extramarital affairs, financial waste, abuse of or by your spouse, or abuse of drugs or alcohol. If there is a dispute as to maintenance, property, support, visitation, or custody, fault may become an active ingredient in resolving these issues either through the negotiation process or in presenting evidence at trial. The conduct of parties is a factor the court may take into consideration in the division of property and spousal support (maintenance). We need to know not only the allegations you may wish to raise about your spouse, but also any possible allegations your spouse may have against you in order to address those if they are advanced by the other side. *There may be something about you or your actions (such as an affair) that would cause you concern if your spouse knows of it, but you are sure he or she is unaware.* Please let us know so that we are not blindsided if indeed your spouse has such information.

Keep in mind, however, that while your spouse’s misconduct may loom large to you, the judge hearing your case may not believe it is significant enough to impact the division of property, spousal support, or attorney’s fees. If you are concerned about misconduct and its impact on your case, discuss it with your attorney.

LEGAL SEPARATION

In Missouri, there also is a provision for a legal separation, which is seldom used. The procedure and result are nearly the same as in a divorce matter. However, no one may remarry if a legal separation is granted until it is turned into a divorce through an additional court proceeding. Just as in a divorce, all matters related to the division of property, custody, and support are resolved. After ninety (90) days, either party can ask the court to turn the legal separation into a divorce. Our experience is that while sometimes our clients request a legal separation, believing there is a slight possibility of reconciliation, they usually want a divorce before the process is over. The exception seems to be that clients may want a legal separation rather than a divorce in order to maintain a spouse’s or stepchild’s health coverage or because of religious beliefs. If you believe you may wish to seek a legal separation rather than dissolution, please discuss this with us immediately.

DEFINITIONS AND THE DIVORCE PROCESS

Dissolution: Under Missouri law, divorce is referred to as dissolution. Do not be confused as you move through the legal process and rarely hear the word “divorce”.

Petitioner and Respondent: The Petitioner is the party who starts the lawsuit and the Respondent is the person against whom the suit is filed. All proceedings in the dissolution matter are finally resolved by the Circuit Court in which the case is started. The Petitioner and Respondent are the parties to the lawsuit.

Pleadings: Pleadings are documents filed with the court related to your case. The pleading that initiates the lawsuit is the Petition. The Respondent files a response or Answer and, generally, a Counter claim (sometimes called a Counter-Petition or Cross-Petition). Your names, the case number and the Division number (indicating the judge you are assigned to) will appear at the top of each pleading.

At the beginning of a divorce case, we will generally file the following pleadings with the court:

- Petition. This pleading states the names of the parties, where and when they were married, names and ages of the children (if any), length of residence in their county and state, date of separation (if you have separated), and relief requested. One of the parties must reside in Missouri for at least 90 days immediately prior to the filing of the Petition for Dissolution. The petition will most likely be filed in the county where you reside.
- Statement of Income and Expenses. Required to be filed by each party, an accounting of income from all sources and the expenses of the individual and the children. Financial statements must be filed by the Petitioner with the dissolution petition. In most courts, the Respondent must file his or her financial statement within 60 days of receiving the service of the petition.
- Statement of Property. Required to be filed by each party, detailing all assets and financial obligations of both spouses.
- Proposed Parenting Plan. In cases where minor (under age 19) children are involved, each party must provide a detailed proposal of the custody arrangements he/she believes to be in the children’s best interest. The plans are due at different times, depending upon the county in which you reside.

Please be aware that each court determines how much it costs to file a petition for dissolution:

- Filing Fee and Costs. The person initiating the dissolution proceeding must pay a filing fee to the court. It varies depending upon the county in which the divorce is filed; it is in the neighborhood of \$250.00. Later on, there may be other costs for services such as mental health specialists, appraisers, actuaries, accountants, depositions, etc. The client is responsible for all costs related to the case.

Once we have filed the initial pleadings, you may see some of the following:

- Summons. When we file your dissolution petition, the court issues a document called a summons, which, when delivered, tells the person who is the Respondent that the dissolution process has begun. The summons, along with the petition and certain other documents must be given to the Respondent by a person charged with this duty. This will be either the Sheriff or a “special process server”. We generally use a process server within St. Louis and St. Charles counties and the Sheriff department for all other counties. This delivery process is called service of process or service of summons. If you are the initiating party, we must determine together how service on your spouse will be achieved and paid for.
- Affidavit of Service and Return of Service. This is the statement by the person serving the summons that service has been achieved. It is filed when service is made.
- Entry of Appearance. Frequently, if, by the time we file your petition your spouse has selected a lawyer, the lawyer will file an “entry of appearance” voluntarily, thus eliminating the need for us to serve your spouse personally with a summons. Similarly, if your spouse is the one to file the petition, we can, with your permission, file our entry of appearance and avoid the necessity of your being personally served.
- Answer and Counterclaim. After the Petition is served, the Respondent may file an Answer to the Petition, which is the person’s response to the Petition. If no action is taken by the respondent, an order of default may be entered at the request of the Petitioner, indicating the Respondent’s lack of response, and the matter becomes an uncontested divorce case. The Respondent may desire not only to answer the Petition, but desire to file his or her own Petition. This is known as a Counterclaim (sometimes called a Counter-Petition or Cross-Petition), and this must be answered by the Petitioner. We generally file counterclaims in divorce cases because it allows us to maintain additional control over the process. If your spouse is the one to file the petition and we do not file a counterclaim, then if your spouse dismisses the petition but you still want to go forward with the divorce, you will have to start the process all over again. A counterclaim will keep the original matter alive and eliminate the need for refiling. Again, an Answer must be filed within thirty (30) days of service.

If you have children under the age of 19, you need to be aware of the following requirements:

- Mandatory Parent Education Class. The Family Courts of St. Louis County, St. Louis City, Jefferson County, and St. Charles County require all divorcing parents with at least one child in common under age 19 to attend a Parent Education Class sponsored through the court. The class covers the impact divorce has on adults as well as children, and presents ways to help the family cope with changes resulting from the divorce process. The class focuses on increasing cooperation between divorcing parents with an emphasis upon reducing potential trauma for children.

Please check with your attorney to see which class you need to take based on the county you will be filing your petition. After attendance, please forward to your attorney the certification of completion of attendance at this class.

In all cases filed in St. Louis County, you will need to be aware of the following:

- Automatic Court Order. The Family Court issues an Automatic Family Court Order, covered under Local Court Rule 68.3, which prohibits the spouses from certain behaviors relating to contact between the two parties, parenting issues, custody, and relocation of children, incurring unnecessary debt, wasting assets of the marriage, etc. Both parties receive a copy of this order, either upon the filing of the case or with the service of summons. If you do not receive a copy, please ask your attorney for a copy.

DEFAULT OR NON-CONTESTED DIVORCE

Sometimes the parties reach agreements quickly and have the terms put in writing even before the case is filed. Sometimes the agreement is reached by the parties without any assistance. Sometimes mediation is used and concluded before one party files for divorce.

A divorce cannot be granted until thirty (30) days have passed from filing of the initial pleadings and service on the Respondent. Generally speaking, when a case is settled, we are able to submit the settlement documents to the court without the necessity of a court hearing. This is often referred to as a Dissolution by Affidavit. Certain courts and certain judges, however, require a “non-contested” hearing, particularly if children are involved. In that case, if you are the Petitioner and the Respondent is in default, you will be the only one in attendance at the hearing. Otherwise, both you and your spouse will likely attend. You can anticipate the hearing itself taking only a few moments. Generally, attorneys want their clients to be in attendance, even if the other party will do the testifying. It is our policy to request that our clients make themselves available for this hearing. It has been our experience that problems occasionally arise at the last moment at court on the day of the hearing. *Without your presence, something that could be taken care of becomes a major problem.* Therefore, we request all of our clients attend even non-contested hearings.

ORDERS PENDENTE LITE (called PDL orders)

These words are used to refer to orders of the court that guide the parties’ actions while the case is pending. As an example, if matters of temporary child support and time with the children cannot be resolved by agreement, a party may seek PDL orders from the court. A party seeking such orders must file a written motion for these orders with the court. When the motion is filed, the attorney seeking the orders also schedules a hearing and notifies the opposing side of the date of the hearing. You should know that judges are often quite reluctant to hold trials on PDL motions. While unfair, as they are provided for by statute, it is a basic fact of domestic law practice, particularly in St. Louis County.

Generally, before filing a PDL motion, we try to reach some agreement by contacting the other attorney with our client's request. Likewise, if a PDL motion is filed by the other side; we will contact them to see if we can assist in getting the matter resolved. Before you decide you want to file a PDL motion, you must realize that any court appearance increases the cost to you of the litigation. If matters can be resolved without a hearing, it may be to your advantage. Sometimes there is no choice, and we must request formal orders from the court in order to protect a client's interest while the case is pending. We do not want to wait too long to determine if this is necessary, as we want to stabilize your situation as quickly as possible.

Temporary orders for custody, child support, maintenance, mortgage payments, medical payments, visitation, restraining orders, injunctions and other relief may be requested from the time after you start your case until a Judgment of Dissolution is entered. The sooner, the better.

An injunction or restraining order restrains a party from doing something. There may be orders that no assets be transferred or that the children remain in their schools. There are orders dealing with domestic violence. You and your spouse may file a petition for protective order against the other if there has been violence or threats of violence.

The court may also award temporary attorney's fees to assist a party with the costs of obtaining counsel. This may be part of a PDL motion containing other requests. It is to everyone's advantage if the parties can work out issues between themselves without the necessity of filing motions with the court.

WHILE THE DIVORCE IS PENDING: THE DISCOVERY PROCESS AND NEGOTIATIONS

After both parties have filed their initial pleadings, including financial statements, weeks or months are spent in defining the issues and trying to resolve them. We attempt to find the net worth and the general financial status of the family. The court issues an order calling for the parties to exchange certain documents to aid us in accomplishing this goal. This is called the Mandatory Exchange of Documents, and is covered under Local Rule 68.5. Both parties receive a copy of this order, either upon the filing of the case or with the service of summons. If you do not receive a copy, please ask our attorney for a copy. Interrogatories (written questions) maybe sent out requiring answers under oath from the recipient, which may, in part request financial data. A Request for Production of Documents may also be made to either side, requesting that a party provide documents reflecting assets, debt, etc. In some counties interrogatories must be answered by you prior to sending them to your spouse. Documents must also be produced prior to requesting them from your spouse. Either attorney may subpoena the other party's employment records, bank records, etc. The subpoena is a formal request for documents to a third party or entity to produce the requested records at a certain date and time. Depositions (oral questions before a court reporter) may be taken to obtain further information from the other spouse or those that have the needed information. Appraisers, actuaries (if pensions are involved), accountants, or other professionals may be used. You and your attorney, after the initial work has been completed, will set goals and determine which tools you wish to use.

Court Settlement Conferences. While your case is pending, there usually is a series of settlement conferences with the judge. The number and frequency depend upon the number and complexity of issues in your case as well as the particular judge. Clients are required to attend settlement conferences, but they USUALLY do not see or speak to the judge. The attorneys meet with the judge, outlining the issues and their clients' views. At these conferences, the judge often recommends how particular issues could be resolved. These recommendations are not binding. Some judges are more involved than others. Often the judge's view of the case can guide the settlement process. If the judge has a particular view, and it is not your view, it is difficult to get the other side to agree with your position. While settlement conferences may resolve the issues, it may become apparent from the settlement conferences that the case will have to be set for trial because the parties do not appear able to reach settlement.

Written Proposals. Settlement proposals may be made by either you or your spouse (through the attorneys). You will evaluate proposed terms of settlement in light of your own particular goals as well as taking into consideration what the judge might do if your case were before him or her at a trial.

Clients are often anxious to have the case over as quickly as possible. Usually we can accommodate this, if you are willing to do all the compromising and give up things you are entitled to. However, to get a fair and complete settlement, it may require your being willing to "hold out" or wait at times. Sometimes an offer is made before the attorneys could possibly know the nature of the family assets and liabilities. If you want your attorney to advise you, you need to let the attorney gather the necessary information to do so.

Anticipate that the months before your dissolution is settled or the case is tried will be very unsettling for you. Much is at stake and anxiety can run high. The dissolution of a marriage may be a traumatic experience, and your attorney (or attorneys) are well aware of the emotional involvement of the parties. Though we are not therapists, we attempt to relieve your anxiety by assisting you in resolving the issues confronting you during these proceedings. Do not hesitate to gain other assistance, including that of a mental health specialist or financial adviser. We are able to assist you with referrals, if request.

SETTLEMENT OR TRIAL

As stated previously, most dissolutions end with a written settlement agreement of the parties being presented to the court for its approval. In theory, the judge must review any agreement reached between the parties to be sure it is fair and "not unconscionable". In reality, if both parties are represented by attorneys and a settlement agreement is presented to the court, it will generally be approved. There are a few judges who scrutinize these agreements more carefully and require certain changes be made to a settlement before they will approve it.

Settlement can be reached in many ways. Sometimes the parties get together, reach agreements, and give their attorneys the details so that the attorneys can draft the necessary documents. This is unusual and sometimes, when it does happen, it is only after heated negotiations over many months, at some point during which the parties conclude they are better off reaching an agreement through compromise with each other than leaving the decisions to a judge.

How do you reach terms of agreement? First of all, your attorney will inform you of the Missouri Dissolution Laws, as well as the inclinations of trial courts in Missouri in their interpretation of the law. Part of your attorney's role is to assist you in understanding the law as it applies to your case as well as the range of possible outcomes to your case if it were tried by the court. Whenever possible, we will provide you with information regarding your particular judge, if we know he or she is likely to rule in a particular way on your issues. Very few people are willing to agree to terms less favorable than what they believe they would get at trial. Therefore, you will hear your attorney saying to you what the likely or possible range of outcomes may be if there is a trial. While not completely predictable by any means, when discussing settlement terms, we always want to bear in mind what the possible outcome is if the matter were to be tried. Negotiations are going to feel better to you if you are the party who has little to lose at trial and much to gain. You can anticipate that your spouse, if he or she has more to lose, will be more open to negotiations. However, not everyone has an objective view in this process. Knowing the range of outcomes will help you in determining what is a reasonable offer to make or accept in negotiations.

The discovery process discussed above is designed to assist in bringing the case to settlement as well as being prepared if a trial is required. If your spouse is denying certain income, we may issue a subpoena to the employer and find out if the actual income is higher than he or she stated. This information may leave him or her being more agreeable to settling, at least in the issues where income is a factor. Likewise, if you only suspect an affair and discovery gives you information that your spouse has been spending money on another person, this too may work in your favor. Obviously, you could be at the short end of the bargaining stick, depending upon the facts and circumstances.

You rarely will be totally satisfied with the settlement package. Neither will your spouse. Generally, however, people are more satisfied when they have reached terms through negotiation than when they leave matters up to the court at trial. Rarely do the trial judges take the time and consideration necessary to fine-tune orders that will make your life run more smoothly post-dissolution. While you may not like all the terms in a settlement, you have the opportunity to negotiate some things that are extremely important to you in exchange for giving up on other matters that are less important to you. In addition, you can work with your attorney to make sure your rights are protected through the language in the settlement document that becomes the court order. This is not to say you should be unwilling to go to trial if matters cannot be resolved fairly through negotiated settlement.

Separation Agreement. If you and your spouse reach a settlement without a trial, the terms of the settlement are put into writing called a Separation Agreement or a Marital Settlement and Separation Agreement. This document is a contract between you and your spouse as to how you are dividing the property and debt and proceeding through the next years of your lives as former spouses. If there are no issues of custody, maintenance, or child support, this document will be less involved. In addition, if there are no children, once each of you carries out the terms of the agreement, you can be finished with your relationship with each other. This process is usually concluded within a few months following the dissolution. With issues of maintenance, custody, and child support, your relationship with each other may last for many years.

The Separation Agreement is presented to the court at the time of your hearing, and this document is “incorporated” into the court’s Judgment of Dissolution, meaning that these terms are as binding as any orders a judge would enter after a trial. This document is enforceable in a court of law by either of you, should the other fail to follow the court’s orders. Both of you are under an obligation to follow these orders, and both of you have the right to come to court to seek enforcement against the other party.

Issues of child support and custody are always subject to modification or change by the court upon showing by either party that there is a substantial change in circumstances making the present orders unreasonable. Maintenance can be subject to modification or not, depending upon the terms of the settlement or the terms outlined in a judge’s order after trial. In fact, with maintenance, the major risk in going to trial is that the judge is likely to make the maintenance modifiable and indefinite in duration, leaving both parties with less certainty at the conclusion of the divorce. This leaves many people to compromise on the maintenance issue to create a settlement with non-modifiable maintenance.

The parties may arrive at a settlement of all their property rights after negotiation. If settlement is not reached, the matter will be decided by the court after the trial is concluded. Again, you are advised that you must be absolutely sure that you understand and accept the settlement as written, or placed on the record or spoken in court, as property settlements are not modifiable, except in the cases of fraud, clerical error or mistake.

PROPERTY

Please keep in mind that with limited exceptions, all property accumulated during the marriage, even after separation, belongs to you and your spouse jointly. It does not matter who holds the title, nor who earned the money to buy the property. This includes retirement funds. One of the most difficult things for our clients to understand seems to be that retirement plans and other deferred compensation do not belong solely to the worker, but to the marriage. There are exceptions to this general rule. For instance, property either of you has inherited or received by a gift is your own “separate” property. We must present to the court your Statement of Property when we file.

CONFIDENTIALITY

Tell us what you believe may be brought up against you. If you give the information in advance to your attorney, no matter how bad it may appear, then the proper steps can be taken to avert what could otherwise turn out to be a disaster.

Confidential information given to this office is treated as such and will not be disclosed to others without your permission. However, we expect to be able to reveal all facts necessary to opposing counsel as required by court rules and statutes. We will not allow you to lie under oath. Do not request assistance in hiding income, or attempt to hide income, property, information, etc., from the other side. If it appears that a client is prepared to make false representations to the court or opposing party, we will withdraw from representation.

Do not discuss your case with anyone, other than your attorney's office, because information you give to others will not be protected as confidential.

Do not sign anything involving your case unless you have your attorney's approval. You may be signing something that could harm you later.

Furnish the office immediately with the names, addresses, and telephone numbers of any and all witnesses, and tell us what they know that can be helpful to your case. Advise the office immediately if you hear of anything that might affect your case.

KEEPING YOU INFORMED

You will receive copies of the documents that are prepared or received in relation to your case. Due to court appearances, trials, depositions, negotiations, and other commitments, you may need to discuss things with our legal assistant before you speak with your attorney. Our staff is well prepared to work with you and give you information or take detailed messages from you. They cannot answer your legal questions or give you legal advice, but can handle many other matters more quickly and at less cost to you than the attorneys. Your attorney's availability for you at "critical" times may require our staff to assist you at other times.

COOPERATION

We expect you to be cooperative and truthful. If you are not, we will not represent you.

We expect you to behave with courtesy to your spouse and his or her attorney. We also expect you to treat our staff courteously and with respect. We will do the same towards you and towards opposing counsel. You also are expected to handle your financial commitments to our office in a prompt and businesslike manner.

We understand that this process is difficult, but please do not take your frustrations out on your attorney or the staff. We are here to help you.

SORTING THROUGH OTHER "LEGAL" ADVICE

Your well-meaning family and friends may offer you advice about your case or tell you what you can expect to achieve from the judge. Frequently such advice is not accurate, and you should be cautious in following it. The facts surrounding your marriage, divorce, children and property are unique and are 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.

Attorneys often hear about the divorce of their clients' relatives, neighbors, and co-workers. Bear in mind that the outcome of any case is due to many factors, and it is very difficult to predict the outcome of one case based on the outcome of another case, particularly if you do not know all the factors affecting each one.

KEEPING YOUR ATTORNEY INFORMED

You can understand the need for us to have as complete information as possible on your situation, including finances. In order for us to prepare for trial or to attempt to make a reasonable settlement in your case, we must have complete and accurate information at all times. Please copy all of your pay stubs and other financial information, providing it to us on a periodic basis, perhaps monthly.

Also, please inform us immediately when a telephone number or e-mail address is changed or added, as well as any address changes. Often our clients seem to put us on the end of the list with changes. Sometimes important mail is delayed. Important information should be transmitted to us in writing. An e-mail or hand-written note via fax machine can expedite matters. Please bring our attention to any errors we have made in our documents or in our bills.

We cannot emphasize to you enough about keeping us informed. We need to know changes in your situation as quickly as possible. This can save you money. We have drafted petitions and Parenting Plans based on the status the client informed us of when we were retained. Three weeks later when the client comes to sign the petition, we find out the entire situation has changed, and all of the pleadings must be redrafted.

OTHER

When we refer you to other professionals, they are usually professionals whom we ourselves have had contact with or our clients have recommended to us after their own positive experiences. These other professionals you may need, either during or after your dissolution, such as financial advisors and therapists, are also going to contribute to your overall ability to feel comfortable in moving forward and achieving satisfactory results with the particular individual. Please interview and discuss your questions before retaining specialists to assist you. Not only are their professional credentials important, but so is their interactions with you. We appreciate hearing from our clients if they have experience with a professional that is particularly positive so that we can add that person's name to our referral list. Similarly, do not hesitate to let us know if you have a negative experience.

TECHNOLOGY

Please do not use social media sites to post information about what you are doing. These posts are admissible in court. If you post pictures of you and your girlfriend/boyfriend on a trip, it will appear in court. Do not discuss your divorce, or what you do not like about your spouse, the other attorney, or the judge. Before considering recording a phone call, discuss your plans with your attorney. Do not access your spouse's cell phone or e-mail, as we will not review this information.