

**Suzanne E. Williams, P.A.**

400 Southeast 12<sup>th</sup> Street  
Building A  
Fort Lauderdale, Florida 33316

Telephone (954) 765-1200  
Facsimile (954) 765-1227

**HOW WE WILL HANDLE YOUR DIVORCE**

A divorce is a particularly upsetting event for you to go through. This letter discusses most of the areas which concern clients. We hope it will help remove some of the uncertainties which you may have. Florida has adopted the concept of a no-fault divorce, making it generally unnecessary to prove cruelty, adultery, etc., in order to obtain a divorce. The usual ground is to show the court that the marriage is irretrievably broken because of discord or conflicts of personality that destroy the legitimate ends of the marriage relationship and prevent any reasonable expectation of reconciliation. "Irretrievably broken" is an advanced case of not getting along with each other. In a few cases, it may be appropriate to allege other grounds. We will discuss grounds with you at your first appointment. You should be advised that FAULT IS CONSIDERED in cases where ALIMONY IS REQUESTED and adultery of either party may be mentioned in court when money awards are being considered. Fault can also be considered in the distribution of assets and liabilities when there have been instances of substantial waste or misuse of assets.

**LEGAL SEPARATION**

Florida does not recognize the marital status commonly called "legally separated." Although support can be ordered without filing for divorce, it is not generally used and is not a service recommended by our office. If you are not ready for a divorce, but you want to talk things over, a consultation with our office may be obtained. Under circumstances where a divorce is not what you want, marriage counseling should be considered.

**RESIDENCE REQUIREMENTS**

Prior to filing your petition, you must have resided in Florida for six months continuously, immediately before the date of filing. There are limited exceptions which may apply if you do not qualify under this general rule, such as temporary allocation due to military service.

## **STARTING THE PROCEEDINGS**

The first step is the preparation and filing of the petition. The petition states the names of the husband and wife, and the names and birth dates of the children born or adopted during the marriage; when and where you were married and when you separated; that the spouse filing the petition meets the residency requirement; and that your marriage is irretrievably broken. It requests the court to determine parental responsibility for the children who are minors (under the age of 18), or who are mentally or physically handicapped so as to make them dependents regardless of their ages. The petition requests an award of alimony, child support, property division, attorney's fees and court costs, in cases where all or any of those items are appropriate. If your spouse has already filed, be sure to bring a copy of the petition to our office immediately as a written response is required to be filed with the court within 20 days from when you received the petition.

## **ACTUAL SEPARATION**

There is no legal requirement that you and your spouse be residing apart from each other at the time the petition is filed.

## **WHO SHOULD FILE?**

There is no legal significance to which spouse files the petition, although there may be psychological and procedural advantages for the petitioner. Pride is another matter. Talk it over with your spouse and try to avoid a race to the courthouse and further hurt feelings over this small item.

## **WAITING PERIOD**

No divorce can be granted until at least 20 days have passed following the date of filing the petition, without exceptional circumstance and the court's permission.

## **SERVICE OR ACCEPTANCE BY ATTORNEY**

After the petition is filed, the other spouse must receive proper notification. One way to do this is to ask a professional process server dressed in ordinary clothes (not a uniform) or the sheriff to hand deliver a copy of the petition to the spouse. Another option is to have your spouse or the spouse's attorney accept service of process.

## **CUSTODY**

Florida has a statute providing for shared parental responsibility. You will find a copy of the statute attached. Please read the statute carefully and be prepared to ask me any questions you might have. In general, shared decision making is required, unless it would be detrimental to the children, with one parent named as the primary residential caretaker. Custody and visitation are decided based on the best interest of the children.

## **VISITATION**

If you and your spouse can agree to details of visitation, the court will usually approve the plan you have worked out. A typical pattern is to visit on alternate weekends, perhaps one or two evenings during the school week, one-half the summer, with provisions for alternate time with each parent on birthdays, holidays and special occasions, as well as any other time acceptable to both parents. The policy of our office is to encourage liberal visitation except in extraordinary circumstances and to discourage use of the children as weapons.

There are occasions when there is such acrimony between the parents that the court may use its discretion to appoint an attorney to represent the children where the court entertains doubt as to whether the parents may be acting in the best interests of the children.

## **CHILD SUPPORT**

Florida has adopted minimum suggested guidelines for determining the amount of child support to be contributed by each parent. A copy of the guidelines worksheet is contained in the questionnaire which accompanies this letter. The court can increase or decrease the suggested support in its discretion. The court can require support of a normal healthy child only until age 18 or 19 for completion of high school, but it is possible to provide by agreement of the parents for college education. If you have a child with a mental or physical handicap, be sure to advise us as support may well be payable beyond age 18.

There is also a Gross Up Method for calculating child support that pertains to situations where there one party has 40% or more of the overnights with the child.

## **ALIMONY**

Alimony is also awarded in the judge's discretion. You will find a list of factors the

court considers in making an alimony award in the copy of the statute attached hereto. Your financial expense affidavit is very important in the process of determining the ability to pay child support and alimony, as well as the amount of child support and alimony needed. It must be carefully prepared by reviewing canceled checks and cash receipts and averaging expenses for at least the preceding year. Our office will assist you in preparing your financial affidavit, but we can assist you only if you give us adequate information. It is imperative that you fill out the preliminary financial questionnaire provided at the initial conference, with as much detail as possible, in order to assist us in advising you properly at the initial stages of the proceedings.

As soon as our office is retained, you will write a history of the marriage describing the factors listed in the alimony statute. You should deliver it to our office within 30 days after your first consultation.

### **PROPERTY DIVISION**

There is no fixed way to determine how you or the court should divide the marital property. One thing is clear. Liabilities, as well as assets, must be considered. Other factors include the nature and extent of the property and when the property was acquired; the source of monies used to pay for the property; the length of the marriage; and the economic circumstances of each spouse. In some cases, gross misconduct, such as adultery or supporting a mistress, can be considered. A copy of the law describing division of assets is also attached hereto. If you and your spouse can agree, and your agreement is reasonable, it will be approved by the court. If you cannot agree, the court will divide your property. Each judge has a different philosophy and some are inconsistent. It is always best to settle between the parties as long as the settlement is fair. Liabilities and assets will be valued as of one of the following dates:

- (a) Date the petition for dissolution of marriage is filed; (the one most frequently used)
- (b) Date of separation;  
(especially if the separation has been long term)
- (c) Date fixed by a valid marital settlement agreement;
- (d) A more "equitable date", if chosen by the court, such as if one party has intentionally manipulated the family's finances in contemplation of dissolution of marriage.

### **MANDATORY DISCLOSURE**

Effective January 1, 1995, within 45 days of serving or being served with divorce papers and sometimes sooner, it is mandatory that you provide your spouse financial information. The amount and complexity of the financial information is dependent upon whether your gross annual income from all sources or your total annual expenses exceed \$50,000.00.

If your total income or expenses do not exceed \$50,000.00 per year you must provide the following documents and information within 45 days of serving or being served with divorce papers;

1. A financial affidavit in substantial conformity with Family Law Form 3 (this requirement cannot be waived by the parties);
2. All federal and state income tax returns, gift tax returns, and intangible personal property tax returns filed by you or on your behalf for the past three years.
3. IRS forms W-2, 1099, and K-1 for the past year, if the income tax return for that year has not been prepared;
4. Pay stubs or other evidence of earned income for the 3 months prior to delivery of the financial affidavit.
5. A statement by the producing party identifying the amount and source of all income received from any source during the 3 months preceding the delivery of the financial affidavit required by this rule if not reflected on the pay stubs produced.
6. All loan applications and financial statements prepared or used within the 3 years preceding delivery of that party's financial affidavit required by this rule, whether for the purpose of obtaining or attempting to obtain credit or for any other purpose.

If your total income or expenses exceed \$50,000.00 per year you must provide, in addition to the disclosure provided above, these additional documents and information.

1. The answers to interrogatories found in Family Law Form 30.
2. All documents showing reimbursed expenses and in-kind payments that reduce your personal living expenses that were received by you or made available to you for the last 3 years.
3. All deeds, mortgages, promissory notes, and closing statements pertaining to real estate in which you own or owned an interest within the last 3 years, whether held by you in your name individually, in your name jointly with any other person, in your name as trustee or guardian for any other person, or in someone else's name on your behalf.

4. All periodic statements and passbook(s) for all checking accounts, savings accounts, money market funds, certificate(s) of deposit, or copies thereof, and credit union accounts (regardless of whether or not the account has been closed), including those held in your name individually, in your name jointly with any other person or entity, in your name as trustee or guardian for any other person, or in someone else's name on your behalf.

5. All brokerage account statements in which either party to this action held within the last 3 years or holds an interest including those held in your name individually, in your name jointly with any person or entity, in your name as trustee or guardian for any other person, or in someone else's name on your behalf.

6. All title certificates, lease agreements, and registration certificates for all motor vehicles, boats, airplanes, and any other vehicle requiring registration that you regularly use, own, or owned in the last three (3) years.

7. The most recent statement for any profit sharing, retirement, or pension plan in which you are a participant or alternate payee and the summary plan description for any retirement, profit sharing, or pension plan in which you are a participant or an alternate payee (The summary plan description must be furnished to you on request by the plan administrator as required by 29 U.S.C. § 1024 (B) (4).)

8. All documents pertaining to any money owed to you or your spouse.

9. All life insurance policies insuring your life or the life of your spouse.

10. Periodic statements, amortization schedules, or other records showing your indebtedness as of the, date of the filing of this action and for the last 3 years.

11. All written premarital or marital agreements entered into at any time between the parties to this marriage, whether before or during the marriage.

12. All documents and tangible evidence supporting the producing party's claim of special equity or non-marital status of an asset or debt for the time period from the date of acquisition of the asset or debt to the date of production or from the date of marriage, if based on premarital acquisition.

13. Any court orders directing a party to pay or receive spousal. or child support.

Your failure to provide documents within your possession or control will be met with potentially disastrous sanctions from the Court. Once you have provided the information you have a continuing -duty to review your disclosure and advise the other spouse of any "material change" takes place.

These rules are new and are mandatory excepting only few and difficult to obtain exceptions and delay in providing these documents to our office no less than 30 days after we are retained compromises our ability to have your case resolved most favorably to you.

### **TEMPORARY RELIEF**

If your spouse is being physically abusive to you or to the children, refuses to provide reasonable support, or to give you information concerning property, or refuses to permit reasonable visitation, the court will hear your evidence and determine if you will get this relief while the case is pending. The court will require both you and your spouse to file complete financial affidavits of income and expenses prior to the hearing, and will restrain you both from physical abuse of each other or of the children. The court will also provide for custody, visitation, alimony and child support where need is demonstrated. If you feel you will need this type of temporary relief, be sure to advise me at our first consultation.

### **UNCONTESTED DIVORCE**

Your divorce will be considered contested unless you and your spouse agree that a divorce should be granted and agree to ALL aspects of custody, support, alimony, property division, payment of liabilities, court costs and attorney's fees. If you or your spouse dispute any of these matters, you do not have an uncontested divorce and a trial will be necessary.

### **HEALTH AND OTHER INSURANCE**

Be sure to contact your health, automobile, property, life and other insurance carriers periodically during the separation and divorce proceedings to verify continuous coverage. You will be required to make important health insurance elections under state and federal laws within 30 (state law) and 60 (federal law) days of your divorce judgment. Failure to make these elections can have serious consequences, such as a lapse in coverage or denial of coverage for pre-existing illnesses. Pay close attention to all written communications from insurance carriers which will ordinarily be sent to you, not your lawyer.

### **COURT COSTS**

Minimum court costs are approximately \$364.00, if the case *is* totally uncontested. If there are depositions, investigations, or expert witnesses, costs can easily cost thousands of dollars. You must pay for these items as we go since it is not our policy

to lend money or finance your case. Consideration must be given to the amount of assets and liabilities in controversy in comparison to the cost of litigation. Every dollar spent on attorney's fees and costs is one less available for equitable distribution between the parties.

## **ATTORNEY'S FEES**

The exact fee will vary with the services you require. Our basic divorce services include our initial conference, the preparation and filing of the petition (or review and answering of the petition filed by your spouse), arranging for the sheriff to serve your spouse with a copy of the petition, obtaining information from you and your spouse concerning assets, liabilities, income and expenses, making recommendations concerning property division and support, routine settlement negotiations with your spouse's attorney, preparation or review of any property settlement and support agreement, preparation or review of the final judgment, and attending court hearings necessary to complete your case through the final hearing and judgment, but not including any appeal you or your spouse may wish to initiate.

You are billed for all attorney services, including phone calls, emails, faxes, conferences, legal research, factual investigations and court hearings on a monthly basis. It is sometimes necessary to employ the services of an accountant, business appraiser, real estate appraiser or a private investigator. You will be consulted before any such person is employed to assist in your case. You will be required to pay these fees directly to the retained expert.

You should be advised that you are my client and I WILL LOOK TO YOU FOR PAYMENT OF MY FEES AND OUT-OF-POCKET EXPENSES. If you are a financially needy spouse, and the court orders your spouse to pay a certain amount toward the fee, your account will be credited upon receipt of those funds. You should read your retainer agreement carefully and be prepared to meet its terms or seek the services of another attorney. If you have questions concerning the retainer agreement, you are urged to seek independent legal advice.

## **ONE ATTORNEY FOR BOTH SPOUSES?**

The Bible says you cannot serve two masters and we believe it. Therefore, we do not believe it is either practical or ethical for one lawyer to represent competing interests. In those instances where you and your spouse have agreed on EVERYTHING, it may be possible for us to do all of the legal work. Even if it looks like you will both agree on everything, we will follow our policy of only representing one party.

## **RECONCILIATION**

Sometimes divorce seems like the only solution. Often it is not. After a divorce action is commenced, you may decide to change your mind and try to work things out. We encourage reconciliation and if you decide to reconcile, you will owe us only for work done in excess of the non-refundable portion of your retainer deposit and out-of-pocket expenses incurred through the date we are advised of the reconciliation, absent required filings, etc. to comply with court deadlines and in order to inform the Court and opposing counsel.

## **CHANGE OF NAME**

A wife may have her maiden name or prior name restored to her in the divorce. Please advise us at your first opportunity if you wish a prior name restored, keeping in mind the best interests of any children of this marriage.

## **MEDIATION**

Settlement of your marital rights and obligations can often be settled by the use of a mediator, who is most often a retired judge or disinterested experienced divorce lawyer. Local judges require participation in mediation before trial absent very exceptional circumstances. The mediator facilitates you in making your own customized resolution rather than have the Court do it. The fee is ordinarily \$175.00 to \$350.00 per hour. It is often shared by spouses of similar earning abilities or advanced by the higher wage earner when there is a significant disparity in incomes.

## **FINAL JUDGMENT**

You are divorced only when the judge has signed a written judgment, regardless of the date you may actually appear in court. The divorce is not final” until thirty (30) days after the Final Judgment is signed, during which period either spouse may appeal the judge’s ruling. If an appeal is prosecuted# the judgment is not final until the appellate court disposes of the appeal.

## **REHEARING AND APPEAL**

If you wish to contest the final trial outcome, you may file a motion for rehearing within ten (10) days of the date of the written Final Judgment of the trial judge. You may

also wish to appeal to a higher court. In that event, a notice of appeal must be filed within thirty (30) days of the date of the written Final Judgment or determination of a timely filed Motion for Rehearing. Although we do not handle appeals usually, we invite you to discuss your likelihood of success. You may discuss appeal with *any* lawyer of your choice since our representation of you technically ends with the Final Judgment.

### **REMARRIAGE**

Since your divorce is not technically a final judgment until after thirty days have expired from the written Final Judgment, and further provided that neither spouse has filed a notice, of appeal, we recommend that any remarriage be delayed until at least after the appeal time has run.

### **DATING PRIOR TO FINAL JUDGMENT**

From a purely legal standpoint, it is better that you don't date if you wish to avoid embarrassment and criticism at trial. While the suit is pending, you are still married. We all know this is not 1890, but your spouse might attempt to use it against you. Make your own decision, but be prepared to face problems that may arise if you are dissipating assets on a significant other as well as allegations of adultery both of which may significantly affect the issue of alimony. Be truthful in discussing this subject with us.

### **KEEPING YOU INFORMED**

We will make every effort to keep you informed of the progress of your case. You will receive copies of all documents prepared or received by us.

### **PROFESSIONAL SERVICES**

Your legal problems are given our continuing personal attention in an effort to obtain for you the best results possible in the most reasonable time and at a reasonable cost, keeping in mind that there are some things out of our control. Although we are interested in helping you to resolve your personal problems, we are not trained to provide counseling services. Several inexpensive support groups are available if you cannot afford individual counseling. Ask for this information if you are interested.

### **YOUR RESPONSIBILITIES**

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

represent you. We also expect you to handle your financial commitments to our office in a prompt and business-like manner. Please notify us of any change of address or telephone number, of if you learn anything that may affect your case.

### **GENERAL SUGGESTIONS**

Your well-meaning friends and acquaintances may offer you advice about your case from time to time. Frequently, such advice is not accurate and you should be cautious in following it. The facts surrounding your marriage, divorce, children, earnings and property are unique. They differ from every other case and impact the likely outcome of each case. This is especially true since the Supreme Court of Florida in January of 1996 did a "major overhaul" of the Rules and Procedures used in Family Law Matters.

Divorce proceedings are very emotional. Parties sometimes use them to seek revenge. Sometimes one parent will use the children in an attempt to punish the other parent. Prepare your children properly without poisoning their minds about your spouse. Often threats of exposure of family secrets are made in an effort to obtain advantage in settlement. Such threats constitute criminal extortion and jeopardize the validity of any settlement obtained under such duress. Obtain professional advice if possible. Information obtained by secretly recording a spouse is not admissible in court. This conduct is also criminal and is to be avoided. Attempt to cooperate with your spouse in matters concerning the children.

### **NEW WILL**

We recommend you consult with us at the end of your case regarding revision of an existing will or preparation of a will if you do not have one.

We appreciate the opportunity to be of service to you at this particularly difficult time. Thank you for your trust and confidence.

## **RECOMMENDATIONS REGARDING CHILDREN INVOLVED IN DISSOLUTION OF MARRIAGE PROCEEDINGS**

Ernest Miller, M.D. has published the following guidelines which you may find useful regarding children affected by this dissolution of marriage:

“1. The children should be told that it is the parents’ intent to end their marriage and they are to live separately and no longer be husband and wife. They have stopped loving each other and cannot live comfortably and peacefully with each other and the dissolution has not been caused by anything the children have done.

2. The mother and father intend to remain as parents to their children, to love them and care for their needs, and that will continue no matter whether the parents remarry or have additional children.

3. The children will live in one of the parents’ home and will visit the other regularly, and the children should have continued contact with both parents. Each parent wants the children to be close to both of them.

4. The dissolution is permanent and even if the parents become friendly and do not quarrel as they did before, when the dissolution of marriage is final the parents will not reunite.

5. The parents are both aware that the children do not like the idea of the dissolution because it breaks up the home but that the children cannot change the parents’ decision in this matter and should not attempt to change it. The dissolution decision has been made by adults because of adult problems.

6. The parents know that the children feel hurt and worried and they have taken these things into account. They are sorry about it and they will help the children to get over these feelings.

7. Dissolution is very common and every marriage can end. The children should not feel any different than other children and they should not feel ashamed over their parents’ dissolution. Although a private matter, the children should feel free to talk about it with each other or to their close friends or teachers as it often helps to share such feelings. If the children’s thoughts are troubling and causing them to have difficulty in school, the teacher may need to know what is happening to help with these temporary difficulties.

8. Children should not join in the quarrels between their parents and definitely not take sides. Even though the parents have stopped loving each other, they will continue to love the children. They want the children to love the other parent. Because of anger

parents may not always be successful in not saying critical things about the other parent and hope that the children will be forgiving.

9. Parents do not wish the children to carry messages from one parent to the other and promise not to send messages through them. They do want the children to tell them what the other parent has been doing.

10. The parents will from time to time be talking to the children about these things before and after the dissolution, and they know it is hard for the children to understand and come to terms with what is happening—and that it will take them a long time to adjust to the separation of the family in their separate home. Children should feel free to express their feelings in any way that is comfortable and to ask questions which the parents will attempt to answer. The Impact of Dissolution on Children, 7 Fla. Bar Journal 62, July, 1988.

### **Suggested Reading List for Parents and Children:**

Berger, Terry - Stepchild (NY: Julian Messner, 1980)

Boekman, Charles - Surviving Your Parents' Divorce (NY: Franklin Watts, 1980)

Booher, Diana Daniels - Coping - When Your Family Falls Apart  
(NY: Julian Messner, 1979)

Cain, Barbara S., MSW and Benedeck, Elissa P., M.D. - What Would You Do? A Child's Book About Divorce, (Indianapolis, Ind: The Saturday Evening Post, 1976)

Hazan, Barbara Shook - Two Homes To Live In - A Child's Eye View of Divorce  
(NY: Human Science Press, 1978)

List, Julie Autumn - The Day The Loving Stopped (NY: Fawcett Juniper, 1980)

Mayle, Peter - Divorce Can Happen To The Nicest People (NY: MacMillan Publishing Co., Inc., 1979)

Robson, Bonnie, M.D. - My Parents Are Divorced Too (NY: Everest House, 1980)

Sinberg, Janet - Divorce Is A Grown-up Problem (NY: Avon Books, 1978)

Spilke, Francine - The Family That Changed (NY: Crown Publishers, Inc., 1979)