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INFORMATION FOR DIVORCE CLIENTS

This Memorandum has been prepared to answer some of your questions about divorce, and to inform you of the services offered by this firm to assist you with the legal problems you may encounter during this time. A divorce is a particularly upsetting occurrence for anyone to go through. We hope that the following will help to you alleviate some of the uncertainties. However, this information is not a substitute for personal consultation with an attorney.

GROUNDS

Effective January 1, 2016, the only grounds that can be alleged in Illinois to obtain a Judgment for Dissolution of Marriage is irreconcilable differences. This type of allegation is often referred to as "No Fault". So long as the parties have lived separate and apart from each other for six (6) months or more, a judgment for dissolution can be entered. Living separate and apart does not mean that the individuals have to live in separate homes. The parties just need to be leading separate lives and not acting as man and wife; no vacations together, no sleeping in separate bedrooms and no sexual relations. Essentially the parties need to act as if they are roommates and leading separate lives.

RESIDENCE REQUIREMENTS

The petitioning party must have resided in the State of Illinois for at least ninety (90) days prior to the date of the filing of the Petition for Dissolution of Marriage. Although not mandatory, the case should be filed in the county where the Respondent resides or the location of the marital residence of the parties. However, often times the case is filed in the county in which the Petitioner resides although that county was never the location of the marital residence and the Respondent does not reside in that county.

DOMESTIC VIOLENCE/ORDERS OF PROTECTION

At any point during a divorce (before or after filing) it may become appropriate for either the Petitioner or Respondent to request an Order of Protection. An Order of Protection is an extraordinary remedy, which is requested when one party reasonably believes either some type of domestic violence, extreme harassment or irreparable injury is likely to occur. As such, an Order of Protection is often requested before the other party is even aware that a divorce cause of action has been filed.

An Order of Protection is appropriate when one party can testify, under oath, that the other party has, in the recent past, committed some type of domestic violence or harassment against him/her or a minor child of the parties', or both, and is likely to do so in the future. An Order of Protection is also

appropriate when the Petitioner can testify, under oath, that in the event the Respondent was to be informed of the filing of the divorce Petition or the request for an Order of Protection, domestic violence would be likely to occur. In either case, the Court may waive notice of the request for the issuance of an Order of Protection so that the order may issue without further domestic violence.

A petition for an Order of Protection can seek a wide divergence of remedies. The most extreme is the removal of one of the parties from the marital home. Other remedies could include the right to exclusive use of property (such as a residence or an automobile), the return of the minor children, prohibitions against the removal of children from the area, not allowing any communication or contact with the other party, and instructing a party to obtain counseling. A court will not order child support or maintenance awards without notice to the opposing party. Once an order is issued, a certified copy of the order along with the Petition and Summons must be served on the Respondent.

Since the remedies obtained by a Petitioner are extreme and no notice may be required, a Respondent has the right, upon two days notice, to re-open the hearing in order to respond to the allegations against him or her. In such a case, the Petitioner must represent the facts of his/her petition to the court. The Respondent then can respond to the allegations. After the hearing the Court may modify, vacate or leave the Order of Protection untouched.

STARTING THE PROCEEDINGS:

The first legal step is the preparation and filing of a Petition for Dissolution of Marriage. The Petition states the names and ages of the husband, wife, and all children born or adopted to the parties; when and where the parties were married and when they separated; the grounds for the dissolution, that the residence requirement has been satisfied; that the Petitioner is seeking a dissolution of his/her marriage; and requests various forms of relief from the court. If your spouse has already filed a Petition, be sure to bring in a copy of the Petition to the meeting with your attorney, especially if the Sheriff or other special process server has served you with a Summons. As the Summons indicates, you must respond within thirty (30) days from the date of service.

WHO SHOULD FILE:

There is no legal significance in terms of property division, support, or custody of children as to whether the husband or the wife files the Petition, although there may be procedural and tactical advantages for filing first. However, the Petitioner initially incurs a higher bill for attorneys' fees, and pays the majority of the Court costs. Talk the matter over with your spouse, and try to avoid additional problems in this regard. Also, if the party not filing will agree to accept service and respond to the Petition within thirty (30) days, the cost of having a Sheriff serve the Petition and Summons can be saved.

SERVICE:

After the Petition has been filed, the Court must know that the other party has received proper notice of the Court action. This can be done by having the Sheriff or special process server serve the "Respondent" (non-filing party), or by the Respondent filing his or her own "pro se" appearance, or by retaining counsel to file an appearance on his or her behalf. Keep in mind that being served by a County Sheriff or special process server can be an embarrassing situation, and, therefore, if it can be avoided it might alleviate some of the animosity between the parties that otherwise could occur.

ATTORNEY FEES:

In 1996 a law was passed that increases the ability of a person with a smaller income or less access to assets to collect attorney fees, during the pendency of the proceeding, from the other party. In order to do so a certain affidavit listing income, assets, attorney fees incurred and paid and other factors must be filed with the court. The proceeding, in most cases, does not require testimony. An individual should not be afraid to bring or defend a Petition for Dissolution of Marriage because he/she does not have significant income or assets and the opposing party does have significant income or assets.

CUSTODY:

Effective January 1, 2016 the term "custody" will not be used in parenting agreements. However, the concepts of custody such as decision making for the children, a parent's designation as the parent whose home will be used to determine the children's school and visitation (now referred to as "parenting time") and all other issues still remain to be decided. The term custody was changed because it was deemed to have created conflict between the parties in that each party viewed an award of custody as a victory over the other party. Now the statute encourages parties to consider their children first and enter agreements that have nonconfrontational terms and that are applied equally to both parents.

In spite of the Equal Rights Amendment and changing society, very often the wife is named as the person with physical possession of the minor children. This is especially true when the children are infants or toddlers. The wife is often named because the husband chooses not to pursue possession or because during the children's lives the wife has been the primary caretaker of the children. However, a husband can obtain possession of the children if the facts support him.

Each party will be allowed reasonable rights of parenting time with the children. Although joint decision making is often arranged as a settlement term it is rarely awarded if the parties proceed to trial. Further, joint decision making is not usually recommended, unless the parties can demonstrate that they can cooperate for the best interests of the children.

Disagreements between the parties over parenting time are guaranteed to put parties right in the middle of a bitterly contested and expensive divorce. Therefore, we strongly encourage clients to work with their spouse to avoid such a situation. Please remember that despite the assets and income of the parties, the children are the most important people involved in a divorce. You need to take steps to protect them. Hopefully your spouse will work with you to safeguard and stabilize the home environments of the children. Children should not be used to transmit messages between the

parties and should not be exposed to a party's "significant other" until proper discussions have occurred.

VISITATION

Effective January 1, 2016 the term "visitation" will not be used in parenting agreements. Instead each parent's time with the children will be termed "parenting time". If you and your spouse can agree to details of parenting time, the Court will usually approve of the plan you come to an agreement on. A typical pattern is to visit on alternating weekends, a couple of weeks in the summer or during other school breaks, alternating holidays alternating years, alternating birthdays, plus additional or different times as you may agree upon. The policy in this office has always been to encourage liberal visitation, except in extraordinary circumstances. However, in a situation where the children are under the age of three, the parties can arrange more frequent but shorter duration visitations during a week that is preferable for the children.

CHILD SUPPORT:

In order to determine the proper amount of child support the Court begins with the following guidelines:

Number of Children	Percent of Supporting Party's Net Income
1	20%
2	28%
3	32%
4	40%
5	45%
6	50%

However, in arriving at a fair amount, you should (and in the event of a contested trial, the Court will) consider the needs of the children and the financial status and earnings of each parent. The Court can increase or decrease the amount of support from the guidelines; however, the Court almost always follows the guidelines. The Court can require support of a normally healthy child only until the age of eighteen years. After that time additional support, during the years of post high school education, can be paid either by agreement or by order of court. If you have a child with a mental or physical disability, be sure to let us know. Under those circumstances, support will most likely continue after the child becomes eighteen and will likely be in excess of the statutory minimums.

PROPERTY DIVISION:

There is no fixed way to determine how you or the Court should divide the property. Liabilities as well as assets must be considered. Other factors include, but are not limited to, the nature and extent of the property, the contribution of each party to the acquisition of the marital estate, whether it is marital or non-marital property; the duration of the marriage; and the economic circumstances of

each spouse. The court can also consider the dissipation of marital assets. If you and your spouse can agree, and your agreement seems reasonable, it will be approved by the Court. If you cannot agree, the Court will divide the property. A wife with minor children will generally be awarded more property than the husband.

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 some relief while the case is pending. The Court will require both you and your spouse to file a complete Financial Declaration of all property, income and expenses, and will restrain you both from physical abuse to each other or to the children. If you feel you may need this sort of interim Order for temporary relief, you should advise us as soon as possible.

CONTESTED v. UNCONTESTED:

Your case will be called contested unless you and your spouse agree not only that you should obtain a divorce, but also that you agree as to ALL aspects of custody, visitation, support, property settlement, and the payment of debts, attorneys' fees, and court costs. If your spouse disputes any of these matters, you do not have an uncontested divorce and further negotiation, a trial or both will be necessary. It should be noted that your spouse's failure to enter his or her Appearance does not necessarily make this an uncontested case.

SPOUSAL MAINTENANCE:

Maintenance was formerly referred to as alimony. Effective January 1, 2015 and modified slightly effective January 1, 2016 a new maintenance statute was enacted to guide the actions of the judge when awarding maintenance. However, in order for the new statute to apply, the Judge must first determine, or the parties agree, that an award of maintenance is appropriate.

The new maintenance statute provides a formula for calculating both the amount and duration of maintenance when the combined gross income of the parties does not exceed \$250,000.00. Under the formula, the amount of maintenance is calculated by taking 30% of the payor's (party with the higher gross income) gross income minus 20% of the payee's gross income. The amount calculated is the maintenance to be paid so long as the total amount of the payee's gross income (initial gross income plus maintenance to be paid) does exceed 40% of the parties combined gross income. In other words the 40% figure represents a cap on the total amount of maintenance to be received by the payee.

The duration of maintenance is calculated by determining the length of the marriage at the time of the filing of the Petition for Dissolution of Marriage and multiplying the number of months of the marriage by one of the following percentages:

- a. under 5 years - .20

- b. under 10 years but at least 5 years - .40
- c. under 15 years but at least 10 years- .60
- d. under 20 years but at least 15 years- .80
- e. 20 years or over – the court can either order permanent maintenance or maintenance for a time period that is equal to the length of the marriage.

When the parties’ combined gross incomes exceeds \$250,000.00, then the court can exercise its discretion in fashioning a maintenance award. In other words, the amount of and the duration of the maintenance is open for negotiation. Despite having discretion in the maintenance order in such cases, we expect that courts will look to the statute for guidance in both the amount and duration of their maintenance order.

COURT COSTS:

Court costs are approximately as follows:

Filing Fee for Petition (Petitioner pays)	\$257.00
Filing Fee for Appearance (Respondent pays)	\$142.00
Transcript of Prove-Up Hearing (only required in some counties)	between \$30.00 and \$150.00 (depending on length of hearing)
Copies of Court Documents	\$ 1.50 per page
Sheriff service charges:	between \$30.00 and \$100.00 (depends on Respondent’s whereabouts)

If depositions are required, or expert testimony, or home study reports, or other investigative services, the costs can easily go over \$3,000.00. Each party's court costs, like fees, are his or her own responsibility, although the Court has discretion to award them against one of the parties. It is considered unethical for an attorney to "support a case" by making advances of court costs, which are not timely, reimbursed.

OUR FEES:

The exact fee charges by this office will vary with the services you require. Our basic divorce services include our initial conference; the preparation and filing of the Petition, obtaining information from you concerning your assets, liabilities, income and expenses and making recommendations concerning your property division and support; settlement negotiations with your spouse's attorney; the preparation or review of a Marital Settlement Agreement; the preparation or review of a Judgment of Dissolution of Marriage; the preparation or review of other standard forms such as a Certificate of Dissolution required by the State Bureau of Vital Statistics, Support Orders, and Default Stipulation; and a court appearance for the prove-up hearing. The fees for these services in an uncomplicated and quickly agreed upon case generally run between \$3,000.00 and \$3,500.00. However, the exact amount of fees is determined on a time basis in accordance with the Table of Fees included in our Retainer Agreement. A minimum of two tenths of an hour (.2) is billed whenever work is performed on your file. In addition to the above, fees are also charged for telephone conversations, additional conferences, extensive negotiation, complicated tax planning

and advice, and any other Court appearances. In some rare instances, the husband may be required by the Court to pay some of the wife's attorneys' fees, especially if there is a contested trial. If you are the wife, you are responsible for paying the full amount of our fees, but will be credited for any payments made by your husband.

Although you have retained a specific attorney, and he or she will be performing the majority of the work on your file, there will be times when it will be more expeditious, as well as more economical, to use a different staff member for a specific service (i.e., the newest associate to do research, or a paralegal to prepare simple cover letters or schedule meetings).

We require a Retainer of \$3,000.00 to be paid at the time you choose to retain this firm. You will receive Statements on a monthly basis as to the amount owing for fees and costs advanced on your behalf. The \$3,000.00 retainer will be used to satisfy the monthly invoices. After the retainer is exhausted and as indicated on our Retainer Agreement, all future Statements will then be payable upon receipt. In some cases, we are willing to work out a regular monthly payment schedule, but this must be discussed in advance with our office. Following the prove-up hearing and before entry of the final Judgment, we will submit a final Statement on your account. We will apply the remaining Retainer amount, if any, to your outstanding balance. If the final bill is under \$3,000.00 you will receive a refund of the difference. Should your outstanding balance at any time exceed your \$3,000.00 Retainer and if payment is not made on a monthly basis, all work will cease on your file until you become current.

ONE LAWYER FOR BOTH OF YOU?

We do not think that it is either practical or ethical for a lawyer to represent conflicting interests, which is exactly what the situation is when a husband and wife are in the midst of a divorce action. Further, the attorneys' code of ethics precludes one attorney from representing two people when those parties have adverse and opposing interests. However, in those rare instances where you and your spouse have agreed on EVERYTHING, it may be possible for us to do all the legal work. We can draft all of the documents but we will not review them or explain them to the party we do not represent. This is for our protection and the protection of our client. If we were to place our firm in the position of appearing to give legal advice to the opposing party the door may be left open to re-litigate a case months after the case is "over". We will only represent one of you and if later you and your spouse disagree on any point, we will continue to represent you unless we have been directed otherwise. We will also ask the other party to file his own appearance and certain documents, which state that he/she acknowledges that we represent you and not him/her. We can, however, provide in the agreement that the party that does not retain this law firm shall pay to the other party a sum certain as a contribution towards the attorney fees.

RECONCILIATION:

After a divorce action has been commenced, the couple may decide that they want to try to work things out. We always encourage efforts toward reconciliation, and if you ask we would be happy to recommend marriage counselors. If you decided to drop the divorce action, we would be happy to either terminate the Court proceeding or put it into an inactive status for a number of months. Our

minimum retainer, or whatever may be owing over that depending on the time spent for services performed to date, would be billed to you and due upon your receipt of the Statement.

CHANGE OF WIFE'S NAME:

A wife may change her surname as part of the divorce Judgment. This is limited to resuming a maiden name, or restoring a former married name. You must inform us prior to the prove-up hearing if you wish to change your name. If you do not make the change at the time of the divorce, at a later date you will need to petition the Court in a separate, and comparatively expensive, action for a Name Change.

FINALIZATION OF DIVORCE:

Your divorce is not final until a Judge of the Circuit Court has signed the actual Judgment. Unless unusual circumstances exist the Judge will sign the Judgment for Dissolution of Marriage on the date of the prove-up hearing and the marriage will be dissolved on the same day you appear in court.

CONFIDENTIALITY:

We must have all of the facts to represent you properly. We have questionnaires for you to complete so that we may obtain the basic information we need. Anything you tell anyone in this office is strictly confidential and will not be disclosed without your express permission.

KEEPING YOU INFORMED:

We will make every effort to keep you informed of the progress of your case and any developments. You will receive copies of all documents prepared or received by us. At the time of your initial appointment, an attorney will be assigned to your case. Either he or she or their secretary will be available to answer your calls during normal work hours. If the attorney is unavailable, as is very often the situation due to court, an assistant can take messages and give you information as to the status of your case. However, an assistant cannot answer your legal questions. Try to work with the assistant as much as possible. It will make things easier and cut down on the cost of the fees you will be incurring.

OFFICE HOURS:

The office is open between 8:00 A.M. and 5:00 P.M. Monday through Friday. We do make appointments beyond these hours if necessary to accommodate your schedule. If you wish to leave a message any time the office is closed, we have voicemail 24 hours a day, 7 days a week.

Please keep in mind that the office will not divulge an attorney's home phone number.

OUR PROFESSIONAL SERVICES:

Although we are interested in helping you to resolve your personal problems, we are not trained to provide counseling services.

What we do provide is a staff of experienced attorneys, competent assistants, modern equipment, and up-to-date research facilities in order to give you the best possible results in a reasonable amount of time and for a reasonable rate. It is important to remember that if something is happening in your case, we will contact you as soon as we are able. However, if there is nothing to tell you, there is no reason for us to call or write you and charge you for unnecessary work.

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. Also, please notify us of any change of address or telephone number, or a change in your employment, or if you learn anything that may affect your case. Should you have any complaints, questions, or apprehensions about anything that is going on with your case and/or this firm's representation of you, it is important that you tell us.

GENERAL SUGGESTIONS:

Your well-meaning friends and acquaintances will most likely be offering you advice. You should be cautious because such advice is often not accurate or not based on the facts of your particular situation. The facts surrounding your marriage, property, and children are unique, as is the divorce action affecting them. Portions of the law change over time. What someone else went through at some other point in time is not the same as what you are experiencing. Divorce proceedings are always very emotional. If you have children, you should prepare them for the divorce without poisoning their minds about your spouse. Attempt to cooperate with your spouse where the children are involved. Try to discuss support, and attempt to settle the question of property distribution between the two of you. Be fair.