

# A Guide to Your Family Law Case



## **Introduction:**

As a new client, you are most likely not familiar with divorce laws or procedures, and are faced with the frightening and ugly process of being involved in a divorce. We understand the nightmare you are experiencing, and we want you to be informed and knowledgeable about what to expect, with the hope that everything will proceed as smoothly as possible and with the least amount of trauma or detriment to you. This will be an extremely difficult time in your life, and our goal is to provide you with the finest legal care while we work together with you to accomplish the most effective and satisfactory result.

You are probably experiencing a roller coaster of emotions at this time. Do not fret - these feelings are normal and you will likely need a good support system in order to work through these feelings. There are classes, support groups, and miscellaneous programs held on a regular basis throughout Kansas that are designed to help individuals through the divorce and separation process. Should you feel you need professional help in this regard, please feel free to let us know and our office can likely refer you to a professional who can assist you. While we are not mental health professionals, we do understand the personal trauma involved with divorce, separation and custody issues, and we are dedicated to helping you through the entire process as effectively and smoothly as possible while achieving the best result we can get on your behalf.

This booklet is intended to provide you with general divorce information so that you can be educated about your case and how things will proceed. Please read this booklet carefully, and you may wish to refer to it throughout the pendency of your family law action. **Remember that the information contained herein is intended for general purposes only and is not specific to your case.**

**Residence Requirement.** The petitioner in a divorce must have been an actual resident of Kansas for 60 days prior to the filing of a petition for divorce. There is no residence requirement for separate maintenance actions.

**Grounds.** Kansas recognizes the following grounds for divorce or separate maintenance:

- a) Incompatibility;
- b) Failure to perform a material marital duty or obligation; or
- c) Incompatibility by reason of mental illness or mental incapacity of one or both spouses.

The ground of incompatibility is usually used unless another is needed to protect you and minor children from embarrassment or undue publicity. Incompatibility is defined by the court as follows:

“Incompatibility, as a ground for divorce, may be broadly defined as such deep and irreconcilable conflict in the personalities or temperaments of the parties as makes it impossible for them to continue a normal marital relationship. The conflict of personalities and dispositions must be so deep as to be irreconcilable and irremediable.”

## **Papers Which Are Filed:**

**PETITION** - A petition is the document setting forth the grounds of divorce or separate maintenance which will be filed on your behalf. The aforementioned grounds are applicable to both divorce and separate maintenance cases. You are required to sign the petition under oath. This petition will then be "served" on your respective spouse by either a private process server or the sheriff. If you have already been sued by your spouse for divorce or separate maintenance, you should file an "Answer" and, if the facts warrant it, you should then prepare a "Counter-Petition" setting forth your facts and your grounds for divorce or separate maintenance. If you file the petition your spouse can, if he or she desires, file an "Answer" and/or "Counter-Petition."

**DOMESTIC RELATIONS AFFIDAVIT** - This document gives the court a look at your finances, assets and liabilities so that it can issue a Temporary Order. It should be as accurate and current as possible since you are signing it under oath. It is very important that you provide us with ALL information requested which pertains to the Domestic Relations Affidavit.

**AFFIDAVIT FOR USE IN CONNECTION WITH CHILD CUSTODY** - This document tells the court about the children so that it can issue the Temporary Order regarding custody, parenting time, etc.

**TEMPORARY ORDER** - This document is exactly what it sounds like - an Order which is temporary. The Temporary Order divides the property, determines custody, parenting time, child support, spousal maintenance and support, and restraining actions ON A TEMPORARY BASIS from the time of filing of the divorce until the case is heard. The parties must obey the Temporary Order unless it is changed by the court.

**The Parties.** The person who starts the divorce proceeding by filing the petition is called the Petitioner. The other person is called the Respondent.

**Service.** The law requires that the petition be served by the Sheriff or a special process server on your spouse. This is true unless your spouse signs an "Entry of Appearance". If you are asked to sign an "Entry of Appearance," you should realize that this starts the clock running for you to answer the petition. Generally, you have 20 days to answer.

**Time For Trial.** Once your case is filed, Kansas law requires that it NOT be heard by the court for at least 60 days after the filing of the petition, unless the court declares that some emergency exists or that there are other extraordinary circumstances. These situations are not common. This applies only to divorce cases and not to annulment or separate maintenance cases. Therefore, please remember that your divorce case CANNOT and WILL NOT be decided by the court until AT LEAST 60 days have passed after you file your petition.

If your case is contested, it will not be heard by the court for several weeks or months after the 60 days have elapsed, because it must come up for hearing on the court docket. There are many other divorce cases ahead of your case and, therefore, it is not uncommon for many weeks or even months to elapse between the time your case is filed and the time it will be actually heard by the court because of the congested court calendar. This generally is true in complicated and contested cases.

**What happens during the time you are waiting for a hearing?** During this waiting period, there will be negotiations between the attorneys (if your spouse is represented) concerning your case. You should provide your attorney with all information requested of you in a timely manner. Please remember that without this information, your attorney is unable to give you adequate service. **This is a good time to begin gathering financial information for your attorney and to begin thinking seriously about how you want things to be divided.** In order to develop an adequate settlement proposal, your attorney **MUST** be provided with values of all assets and a statement of all liabilities, dated both as of the date of marriage and as of the date of separation. Therefore, once the petition has been filed, you will need to be gathering these statements and providing them to your attorney as soon as you possibly can. If these documents are not provided by you, the attorney will need to obtain this information by way of discovery, and this will cause your fees to increase.

Please note that it is likely that not much is happening in your case during the waiting period, and in that event, you should **NOT** expect to receive calls from your attorney. There are also times when you may have asked questions of the legal assistant, and she is trying to obtain an answer from the attorney. The attorney keeps a **VERY** busy schedule, and we appreciate your patience while you allow us to take the time to obtain the answer for you and respond to your question. Sometimes this may take a few days. We try to keep your attorney fees down, and it would not serve your interests if we had to charge you for calling on a regular basis to let you know that nothing is going on or that we do not have an answer to your question yet. Therefore, you should **NOT** expect to receive regular telephone calls or reports as to the status of your case when there is nothing to report, and if you call our office on a regular basis, you need to expect a charge for the phone call, whether anything is happening or not. If you have asked a question and did not get an immediate response, please wait a reasonable amount of time (usually a few days) before calling again. This way your bill will not be exorbitant.

During the pre-divorce waiting period, Kansas law makes provisions for temporary spousal support (some people call it alimony), for the temporary support of the minor children, if any. The court decides these matters by "Motion for Temporary Support" or support provisions may be included in the Temporary Order prepared and filed with your petition. Your spouse will be served with a copy of the "Temporary Order" entered by the court. The Temporary Order is binding upon both parties until the final order is filed and ruled upon by the court. The law provides that the court, during this interim period, can make such temporary orders as it deems advisable, concerning property matters, restraining orders, custody and expenses. Temporary custody, parenting time and support of the minor children will also be decided in this manner. The Temporary Order may be changed by the court at any time. Your attorney will determine whether or not child support or spousal maintenance (alimony) should be paid, depending upon the information you give your attorney.

**Alternative Dispute Resolution or Conciliation.** The court may require mediation, case management, or even limited case management of some or all of the issues in the divorce. This should save court and attorney time. For example, as a general rule, the court will order alternative dispute resolution or conciliation concerning child custody or parenting time issues prior to hearing any motions pertaining to these issues. If you have a custody or parenting time issue, you should be prepared to be involved in some form of alternative dispute resolution or conciliation to attempt to resolve that issue. There will be costs associated with this as well.

**Restraining Order.** The Temporary Order commonly includes a provision restraining both parties from molesting or harassing each other or adversely influencing the children in any manner. This same order can provide that one spouse shall have temporary possession of the home, together with the household goods and furnishings, and the other spouse shall vacate the premises. Both parties will be restrained from changing any beneficiaries, insurance policies, or utilities, etc., during the pendency of the action. You should familiarize yourself with the contents of the Temporary Order. Do not disobey the court order, as it may prejudice your case. If your spouse disobeys the order, call your attorney to report the violation. This may require additional legal action. You should keep an ongoing diary of violations, noting the date, time and place for use at trial.

**Maiden Name.** Kansas law provides that a woman is entitled to restoration of her maiden name, if she so desires. If you are interested in restoration of your maiden name, advise your attorney of this at the first opportunity.

**Agreements.** It is desirable for you to try to agree with your spouse as to the disposition of the property which has been brought into and accumulated during the marriage, the spousal support, if any, and custody of your minor children, if any. Obviously, if you and your spouse are able to discuss these things, it is going to save you both considerable attorney fees. Any agreement you make, if approved by the court, will be followed by the court upon final disposition of your case. However, any agreement concerning support or custody, even though incorporated in the agreement, is NOT binding on the court. Such matters as custody, support, education of the minor children, etc., can ALWAYS be adjusted at any future time by the court until your child or children reach the age of majority. There are instances where the court will order child support past the date on which your child turned 18 years of age, specifically if your child is still in high school. If your child is still in high school and has reached 18 years of age, you should discuss this with your attorney.

Property settlements are generally binding when entered into and cannot be changed by the court in the future. Therefore, it is imperative that you use good judgment and rational thinking when entering into any property settlement agreement. Your attorney will help you and advise you of your legal rights concerning any property settlement agreement you are considering entering into.

**Custody and Child Support.** There are two parts to custody. First you have the decision-making process for your child. Kansas law states that joint custody will be ordered unless exceptional conditions exist. The other part of custody is the physical or actual parenting time with each parent. Generally this results in one parent being named the residential custodian and the other being named the noncustodial parent with parenting time. Quite often the parenting time is every other weekend and one to two evenings per week. However, this varies widely for each case. Some parents prefer a shared parenting time arrangement, wherein each of the parents receives "equal or nearly equal" blocks of time with the child. If there is a custody battle over who is going to be the residential parent, the court has but one rule to follow, which is "what is in the best interests of the child." Therefore, the court will not regard what is paid or who pays in determining custody. The Court will look at all the facts and give custody to the parent who will best promote the child's welfare.

The amount you presently receive or are ordered to pay as child support can be modified at any future time by the court, should your circumstances change, which would entitle you or your spouse to an increase or

decrease in the amount of support paid. This rule is also true with regard to the custody of the minor children and with regard to parenting time privileges. Custody and parenting time privileges can be adjusted AT ANY FUTURE TIME by the court. The court has jurisdiction of custody and parenting time of the children until they are 18. Kansas law now allows child support to continue to June 30 of the school year in which the child reaches 18, thereby extending the child support obligation past the age of 18. Further, Kansas law allows the custodial parent to file a motion to extend child support through the school year during which the child reaches the age of 19 so long as the child is a bona fide high school student and the parents jointly participated in or knowingly acquiesced in the decision which delayed the graduation of the child from high school. The noncustodial parent is entitled to parenting time WHETHER OR NOT they are current with their child support payments. If you are not getting support, there are new provisions in the law to require an income withholding order and/or garnishment to enforce the obligation.

The law provides that in each case where child support is paid, an Income Withholding Order must be prepared by the Court Trustee and served upon the payor's employer. An Income Withholding Order is similar to a garnishment for the payment of child support. This means that in EVERY case where child support is ordered to be paid, an Income Withholding Order will be prepared and the income will be deducted from the payor's income by his or her employer.

**Trial.** There are two types of cases. Your case will either be contested or it may be uncontested at the time it is heard. If it is uncontested, your case will be heard by the court and no other person will be required to be present except your attorney. An uncontested divorce will involve fewer, if any, court appearances depending on the particular judge. If your case is contested, that is, if your spouse disputes the facts which you have alleged or the requests you have made, then the matter is tried like any other lawsuit before the judge. There is no jury. If your case is contested, it takes much longer for it to come before the court for trial or hearing and it will be much more costly to you. You will likely be required to deposit additional funds into the firm's trust account to cover the cost of future trial expenses.

**Evidence in Contested Cases.** You should write down what you want out of the marriage and keep a diary of events that occur. A diary is EXTREMELY helpful in contested custody cases. Please provide your attorney with a list of witnesses, giving their names, addresses and phone numbers, who have seen you care for the children. Additionally, addresses and phone numbers for teachers, physicians, ministers, etc., are needed. Any checkbooks, canceled checks, pay-stubs, income tax returns and loan applications may be helpful in contested property and support cases.

**Finalizing the Case.** After hearing the evidence in a contested case, a decree will be rendered by the judge granting the divorce and adjudicating the division of property, alimony, child support, attorneys fees and other matters. The judge will order one of the attorneys to prepare the final decree and it will be presented to the other attorney for approval before it can be filed with the court. Based upon each attorney's understanding of the judge's ruling, it may take some time before the attorneys are able to agree on final paperwork. Sometimes the attorneys are not able to reach an agreement and the matter must be taken to court again to clarify the judge's ruling. While we realize it is natural to be anxious about getting your paperwork finalized, it is obviously important to have the paperwork drafted accurately in accordance with the judge's ruling, and therefore we must request your patience during this final process. The final papers in an uncontested divorce or a divorce in which the parties have reached an agreement will be prepared more quickly.

**Remarriage.** When the divorce is granted, the law provides that unless you sign an agreement otherwise, you cannot marry any person other than your present spouse for 30 days unless the time is waived for appeal. Any marriage that you would enter into before that time is void.

**Fees.** Attorney fees vary, depending on the complexity of each case. Unfortunately there is no way for our office to determine how much a divorce will ultimately cost, as a lot of it will depend on your spouse's actions and how badly he or she wishes to contest the issues. The fee which is quoted is usually a minimum retainer fee, and the terms of our agreement with you are spelled out in detail in our engagement letter, which is signed by both you and your attorney. Your attorney may request an additional retainer fee at any time for expected future expenses. Other costs for expert witnesses, appraisers, depositions, copying, long distance telephone calls and travel are usually in addition to the attorney fees.

**Payment of Support.** For your protection, all payments of temporary or permanent alimony, child support or attorney fees should be made as directed by the court to the Kansas Payment Center.

Failure to make payments to the proper person may result in the court requiring you to pay twice even though you may have canceled checks. Make sure you put your name, the case name and the case number on each check or money order to get proper credit.

**Your Conduct.** At the time you file your petition and until the case is finalized, you are still married. Therefore, you should use mature judgment in your relations with other persons, remembering that it is not the "actual misconduct" but the "appearance of misconduct" which may prejudice your case. This appearance is likely to make your spouse mad enough to contest the case even though your actions are innocent.

**What Are You Entitled To?** You are entitled to an equitable division of the property acquired by the parties both jointly or individually, whether acquired before or during the marriage. Basically, this means that everything owned by both parties is "fair game" for the court to divide. There are various criteria which the court uses to make an equitable division. You are entitled to request custody of any children, support for yourself and the children, a division of the property and anything else you want the court to order. The court will consider your requests and enter an order. Please don't agree with your spouse on any property division, custody or support without discussing it with your attorney first, as an agreement may have serious future consequences.

**What To Expect In Conclusion.** There may be a great deal of bitterness and many hard feelings between you and your spouse. You should bear in mind that your case is a legal action for divorce, and it does not contemplate that your spouse will be penalized for his or her wrongful conduct. The court will not impose a great deal of personal or economic hardship on your spouse to "get back" at him or her for you. In other words, it is not like a criminal case where the court punishes the wrongdoer. Also, the court will not "use" the children or award custody with the idea of penalizing your spouse.

The court has broad "equitable powers." The court is going to listen to your spouse's side of the case, too, and it will render its judgment after hearing both sides of the case and all of the facts.

**Support And Maintenance.** With regard to the support and/or maintenance you receive or are obligated to pay, you should keep in mind that no two divorce cases are exactly the same. Because you are an individual, the facts and circumstances of your case will differ from other cases; therefore, the facts and circumstances of your case are important. However, the fact that you receive a certain sum of money, or the fact that you are required to pay a certain sum of money to your spouse each month has no relationship to what your neighbor or a friend of yours may have to pay or receive. This is a matter solely in the discretion of the court after hearing all of the facts, and because people and judges differ, so will the amount of support, alimony and attorney fees differ. The courts are required to follow state-wide child support guidelines so as to standardize child support awards.

**Adjustment in Standard of Living.** All divorce cases require a serious adjustment in both parties' former standards of living. It is simply impossible to maintain the former standard of living for both parties when there are now two households to support. A wife must now maintain her own separate household and the husband must maintain his separate household. If the husband is the only party working, then both households must be maintained on one paycheck. Therefore, anything you can do to economize will create less friction between you and your spouse and hopefully curtail the bitterness which often arises.

**Post-Divorce Counseling.** Remember that a divorce causes serious hardship emotionally, physically, and economically to both you and your spouse. Therefore, you should approach the matter as maturely and realistically as possible. You may want to consider post-divorce counseling to help you adjust to your new role.

**Self Help.** Orders may be entered by the court which you do not like or with which you disagree, however, until they are modified or changed, THEY ARE STILL THE LAW and you are not entitled to take the law into your own hands. In other words, you cannot resort to "helping yourself." For example, if your spouse fails to pay or is slow with support, you cannot arbitrarily refuse to allow him or her to see the children. If you have trouble seeing the children, you cannot decide for yourself that you won't pay the support. Another example would be incurring bills to your spouse's account without his or her knowledge because your spouse failed in some respect with the court's order on another payment, or stopping support on one child when that child starts to work. This type of action is wrong and can seriously hurt your case. If your spouse fails to do what the court has ordered, contact your attorney and he or she will take necessary legal steps to correct the situation. Do not try to correct it yourself by your own action.

**Annulment.** These rules do not apply to annulment actions.

**Address Changes.** Advise your attorney and the court immediately of any change of address or change in your job or telephone number.

**Disposing Of Or Selling Property.** While the case is pending, you cannot sell, dispose, transfer, or mortgage any property without prior approval of the court or your spouse and his or her attorney.

**Insurance.** If you have health insurance which covers your spouse and children, keep it in force during pendency of the case. If you want to stop the insurance, contact your attorney first. Car insurance should be continued in effect during the action. You may not change, add, or delete any beneficiary on your life, disability, automobile, homeowners or other insurance policies so that your spouse would not receive the

insurance if you died during the pendency of the divorce or separate maintenance proceedings.

**Leaving the State.** Unless you are restrained from leaving the state in the Temporary Order, you can leave the state on a temporary basis. If you intend to permanently change your residency after filing, you should contact your attorney first. The law now requires that if you have custody of a child and you are leaving the state permanently or for more than 90 days, you must give the noncustodial spouse 21 days written notice of your intent to move. Failure to give the required notice may result in a change of custody, plus costs and attorney fees. There are specific statutory requirements, so be sure to talk to your attorney if you intend to leave the state for more than 90 days.

**Appointments.** If you need a personal visit with either your attorney or a legal assistant, please be sure to schedule an appointment. Quite often our days are already scheduled with tasks or appointments, and therefore if you "drop in" you are likely not going to be able to meet with anyone. Just like the doctor's office, please be sure to schedule an appointment, and then please be courteous enough to keep the appointments that you have scheduled.

**Attorney vs. Legal Assistant.** In an effort to keep your costs down, you will likely be utilizing the services of the legal assistant as well as the attorney. Your case is of utmost importance to us, but many questions can be answered through the legal assistant, which frees up the attorney to attend court, meet with clients for trial preparation and other necessary meetings, and basically handle the tasks that require the services of only an attorney. If you feel you **MUST** speak with an attorney when you call, please do say so, but please also bear in mind that you will be charged the attorney's hourly rate and not that of the legal assistant.