

GENERAL INFORMATION CONCERNING DIVORCE

Introduction

In this memorandum we will try to set out for you the basic considerations involved in a divorce, including issues, law and procedure. Remember that this is only a basic outline. It is not intended to take the place of a consultation with the attorney in this firm. You should feel free to ask your attorney any questions which this memorandum does not answer. At the same time, we suggest that you refer to it throughout your case when questions arise.

Introduction to the Law Office of JENNIFER A. BROUSSARD, P. C.

The lawyers and staff in the Law Office of JENNIFER A. BROUSSARD, P.C. operate as a unit, each doing those tasks which they can most efficiently perform. For example, our legal assistant may handle much of the information gathering and status reports. You will likely be dealing with the entire staff during the course of our relationship.

Our Views on Divorce and Counseling

We feel strongly that there is no shame in divorce. Marriage is a difficult proposition for any two people. We have neither bias in favor of holding a marriage together nor any bias in favor of dissolving it. Our only biases are in favor of our clients making the decision that is right for their personal well-being, and in seeing to it that if they do seek divorce, they receive a fair settlement.

At the outset, however, we do ask that you be absolutely certain that your marriage has passed the point of saving.

Houston and its surrounding cities have a number of counseling resources such as psychologists, ministers, etc., who are skilled in marriage counseling. Counseling seldom works

magic or provides immediate solutions; a good counselor seldom makes judgments as to who is at fault and seldom dictates to either spouse as to what he, she or they should do. On the contrary, counseling helps the parties to understand what they are doing in the marriage relationship and why. Counseling often gives new perspectives on people's lives and often causes them to make changes in their lifestyles which make the marriage more satisfying. At times, also, counseling makes persons decide that they are better off divorced, but helps them to accept divorce in a positive light and to view themselves and their spouse with more understanding.

If you find that you are experiencing emotional problems while the divorce is pending, we encourage you to employ a counselor for your personal benefit. We are specialists in law, not psychology, and a counselor can help you with any emotional problems much more effectively than we can. We would be happy to furnish to you a list of counselors if you wish.

Relationship of Attorney and Client

You can be sure that we will give our complete loyalty to you and your case. Your spouse is not our client, and we will do nothing for or on account of your spouse unless you tell us to do so.

Do not be misled if you find us dealing with your spouse's lawyer on a friendly basis. Professional and common courtesy dictates that we maintain good relations with other lawyers. But you will find that good lawyers are perfectly capable of fighting zealously in a courtroom or at a negotiating table, and then discussing personal matters when the controversy is over. Please be assured that our loyalty to you comes first, and your interests are always paramount.

You can be sure that the entire staff will treat whatever you tell us in total confidence. This is our professional obligation, enforced by the Texas Disciplinary Rules of Professional Conduct.

At the same time, we insist that you be totally honest with us and give us full information on anything which we consider to be important to your case. If we have to go to trial on any part of your case, we will be in a poor position to help you if we don't know all the relevant facts, including any facts which may hurt your case. **We can do something about harmful facts if we know about them in advance. They may not be as harmful as you think.**

Sometimes we are asked to represent both spouses together. In our opinion, the Code of Professional Responsibility for attorneys prohibits this, just as it prohibits an attorney from representing any client whose interest may be in conflict with the interest of another client. Divorces can be complicated affairs, and the consequences of a divorce settlement will be felt far into the future. It is always preferable for each spouse to have counsel of his or her own choice.

Grounds

Texas is a "no-fault" divorce state. If one party to a marriage feels that the marriage has become "insupportable" (incompatible) because of personality conflict or discord, to the point where there is no reasonable expectation of a reconciliation, this is sufficient grounds for a divorce. Other grounds for a divorce still exist, but in the average case there is no need to use them. You will be advised if you should use another ground in addition to insupportability.

Timetables of Divorce

The Family Code requires that a person seeking divorce shall have been "domiciled" in the State of Texas for six months, and shall have "resided" in the County for 90 days, preceding the filing of their Petition for Divorce. The terms "residence" and "domicile" have special meaning in the law, and even if you have not been physically living in Texas or this County during the periods required, you may still have satisfied the requirements in their legal sense. Discuss this with the attorney if you think there is a problem. Even if a person has not satisfied

the residence requirement, the Family Code provides certain remedies where children are involved.

The most significant date in divorce proceedings is the date when your divorce petition is filed. (Your Petition is your statement to the Court of the basic facts of your marriage and family situation, and a request for a divorce and other Court orders.) The date of filing is the measuring stick for calculating the "domicile" and "residence" requirements. It also begins the minimum waiting period before you are entitled to a final decree of divorce, which is 60 days from date of filing. Please be clear, however, that the 60-day period is a minimum waiting period. The average divorce takes longer than 60 days to complete, simply because there are usually many things which you and the attorney must work out before the case can be concluded. We will be able to give you a rough estimate of the time required after we have learned what your case involves.

Phases of a Divorce

Notice to Your Spouse

Once the decision is made to initiate formal divorce proceedings, the first task is to give your spouse formal notice of the proceeding. This can be done in several ways. If you are on reasonably friendly terms with your spouse, and if your spouse knows that you intend to file a Divorce Petition, it is usually the best practice for us, as your attorney, simply to mail a copy of your Petition to your spouse. We will enclose a letter requesting that your spouse promptly get in touch with an attorney of his or her choice, or that your spouse sign a Waiver of Citation and return it to us. A Waiver of Citation is a document which acknowledges notice of the proceeding.

If your spouse has demonstrated an intention not to cooperate in the divorce proceedings, or if your spouse has threatened to leave the jurisdiction of the Court, or if an emergency situation exists requiring immediate action, we will place a copy of your Petition in the hands of a Deputy Sheriff or private process server, and ask him to deliver the copy to your spouse. This is what is ordinarily called "Service of Citation" or "Service of Process." It involves only the delivery of the papers and does not require any signature or other response by your spouse.

If your spouse has already left the jurisdiction, or was never present in the jurisdiction in the first place, it is still possible to proceed with the divorce action by having citation published in a newspaper or posted at the Courthouse. There are, however, certain special problems and expenses involved in this procedure, and this will be discussed further with you, if appropriate to your case.

Temporary Orders

The Court has the power to make virtually any kind of order which may be required to govern the relations of the parties while the divorce suit is pending. These include orders for temporary support of children and/or a spouse, injunctions aimed at maintaining the status quo as to property and debts, and injunctions concerning personal behavior. The Court can even make certain kinds of orders of limited duration without a hearing and without notice to your spouse. However, in all cases except where temporary orders are agreed to, a hearing must be held to obtain orders which will last until the case is concluded or until modified.

Discovery

Gathering accurate information concerning your income and expenses, property and debts, is of vital importance to your case. This is commonly referred to as the "Discovery Phase" of a divorce proceeding. You will be asked to furnish to us as much information as you have in your possession, and we will supply you with certain forms to aid you in this task. In some cases, you will not have access to all of the information which is needed. If your spouse is unwilling to cooperate in providing information, we can compel disclosure of virtually anything that is needed. Both spouses will be required to furnish a document called an "Inventory and Appraisalment," which lists property and debts and gives a value or amount for each item. Ordinarily, such information is required to be verified under oath. We encourage the voluntary exchange of information wherever possible.

Preparation of Position

Once we have all the necessary information, we will have a conference with you to work out your initial settlement proposal, covering all issues which must be resolved. We will, of course, be guided by your own desires, but we will also advise you as to what you can realistically expect to obtain.

Negotiations and Hearings*

(*A "hearing" means approximately the same thing as a trial.)

Doubtless you do not want your divorce to become a bitter conflict or to drag on in contested hearings over a long period of time. Neither do we. In fact, the law now requires that the first pleading filed by a party to a divorce include a statement that the party will attempt in good faith to resolve contested issues by alternative dispute resolution, which is a form of negotiation. Ordinarily it is possible to negotiate a

voluntary agreement settling all issues, and then go to court at the end of the negotiation process simply to ask for the termination or dissolution of the marriage and for approval of the settlement agreement. We attempt to handle our cases in this way whenever possible. This includes temporary orders as well as the final divorce.

But keep in mind that what you can get in a negotiated settlement depends in large part on what you would probably get from the Court if the issues were presented to the Court to decide. This means two things: first, your lawyer will base his/her advice in large part on what he or she believes would be the division ordered by the Court, and will often talk in terms of "the Court" and "trial" even though a negotiated settlement is being sought; and second, you will have to be prepared to go to court if your spouse is unwilling to agree to what you and your attorney believe is the proper settlement.

Keep in mind, also, that compromise lies at the core of negotiations. All good negotiators begin the process by asking for more than what they would actually settle for, and a good negotiator seldom reveals his "bottom line" or minimum position. Accordingly, unless we specify to the contrary, we recommend that you not discuss settlement of any issues with your spouse, nor tell your spouse what the minimum is that you are willing to settle for. (One exception to this rule concerns visitation arrangements with children, when custody is not an issue. Here we recommend free and open communication between the parents, with the primary concern being what is best for the children.)

Preparation of Settlement Agreement

If an agreement is reached through negotiations, it will then be reduced to writing, either in the form of a Decree of Divorce alone, or in the form of a Settlement

Agreement drawn in conjunction with a Decree of Divorce. The specifics of the language used in such documents is very important and ordinarily a considerable amount of time is required in working out an agreement as to specific language, if your spouse is also represented by counsel. If no agreement is reached through negotiations, trial preparation begins.

Trial

If negotiations do not produce a settlement, your only recourse is to present the facts and your proposals to the Court and let the Court decide the issues. Ordinarily a judge, sitting alone without a jury, will make the decisions. However, in some cases, including child custody cases, you have a right to require a jury of twelve citizens to decide certain questions. We will advise you whether we think you should ask for a jury trial.

We hope we can save you the time and expense of contested hearings. But if you make the decision to take one or more issues to a court hearing, don't be afraid of the experience. Contested hearings usually don't have the tension and spectacle of the trials one sees on the TV. Moreover, we will prepare you fully for whatever role you will have to play.

Division of Property

One of the major considerations in any divorce is "who gets what property." The Family Code provides that anything you and your spouse have acquired since marriage is "community property," except for property which you have inherited or which has been given to you. Property which you owned before you married and property which you acquired during marriage by gift or inheritance is called your "separate property." In a normal case, the

community property will be divided, but any separate property will remain the separate property of the original owner (absent agreement to the contrary).

Keep in mind that these are only the basic laws. There are other laws which sometimes come into play, and we will advise you of any special laws which affect your case.

During a marriage, each spouse has a one-half interest in all community property and debts, but **fifty-fifty is not necessarily the way community property and debts are divided when divorce occurs. There is no automatic formula for division**, but certain principles do exist to guide us. What the future holds is important. If one spouse is capable of earning a great deal more money in the future, the other spouse has a good argument that he or she should receive more than half of the community property. Age can be important. Older women normally get a larger share of the community estate than younger women. Fault can sometimes be important. If one spouse has done certain things which have effectively forced the other party to seek a divorce, the spouse at fault will sometimes be penalized in the division of property. Custody of children can be important. The spouse who is awarded custody will sometimes receive a larger share.

Obviously, these principles are general in nature. It is our job to know when these or other principles may affect your case. We will discuss this with you, and we will advise you in light of the facts and of our experience. We will always try to get the best possible settlement, but we must necessarily be realistic in our advice and our approach. The uncertainty and expense of a court-ordered division of property encourages parties to negotiate a settlement if at all possible.

Alimony/Spousal Maintenance

"Alimony" is the term used to describe payments made for the support of a spouse after divorce, as distinguished from payments made for the support of children. Effective September 1, 1995, Texas has alimony, referred to as "spousal maintenance." There are a number of requirements which must be met before spousal maintenance is ordered. Your attorney will discuss this matter with you in detail to determine whether spousal maintenance will be an issue in your case.

In addition to court-ordered spousal maintenance, parties may enter into a written agreement to pay alimony. This written agreement is as enforceable as any other contract and may be enforceable by contempt. We will discuss this with you and will advise whether you should consider alimony as part of your settlement.

Children

(If you do not have children, born or adopted, to this marriage, you may skip this section.)

Conservatorship

Effective September 1, 1995, there is a presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child. As joint managing conservators, parents are given almost identical rights. When joint managing conservatorship is ordered, the best interest of the child ordinarily requires the court to designate one parent to furnish the primary residence of the child (primary caretaker). Also, keep in mind that joint managing conservatorship in Texas does not require "equal or nearly equal periods of physical possession." Periods of possession by the non-primary caretaker usually follow the Standard Possession Order followed

by most courts throughout Texas. This swing toward the appointment of joint managing conservators is an attempt to eliminate custody battles and to move on to a new attitude about the custody of children after divorce.

Custody fights should be made only when absolutely necessary. Custody fights inevitably cause anxiety and bitterness to everyone involved, and they are especially damaging to the children. They are protracted and expensive. Typically, a divorce involving a custody contest will take six months to resolve and will cost each spouse \$25,000.00 or more in attorney's fees, child expert fees, and cost of litigation.

Obviously then, every effort should be used to avoid a custody fight. We strongly recommend that spouses who cannot agree on custody seek professional counseling from a professional who is knowledgeable in the area of child psychology or psychiatry. We can and will recommend professional persons in this area.

Support

Another concern regarding children is, what amount of child support shall be paid? The courts use guidelines set by the Texas legislature to determine the amount of support. Any and all sources of income and expense may be considered. The actual amount depends on a number of factors, most of which are obvious: number of children, income of the parent obligated to pay child support, cost of caring for children, living expenses of the parents and any special needs of the child.

Visitation

Visitation rights shall be granted to the parent who does not have primary custody. If the parents are not named joint managing conservators, the parent without primary custody is named the "possessory conservator." It is an ideal situation when

both parents strive to assure the children that the divorce will not affect their love and devotion to the children and when the parents continue to work together on matters involving the children. This is not always possible. But where it is possible, the parents should try to arrange their lives so that each can have a fair share of time with the children, and especially a fair share of time to play with and enjoy the children. Even where the parents can work together and agree on their own schedules of visitation, it is best to spell out certain specified times when the possessory conservator will have the children. There are certain guidelines that will be imposed absent an agreement by the parents.

For purposes of litigation and, more particularly, for the benefit of the children, we encourage you (and your spouse) not to speak disparagingly of the other parent to or in front of your children. In fact, family courts usually include injunctive language in temporary orders and final orders or decrees which order both parents to refrain from using the children in any way against the other parent.

Restoration of Prior Name

The Family Code permits either party, in a divorce action, to request that a prior name be restored. If you wish to restore a prior name, be sure and advise us, preferably at the initial conference, so that such a request can be included in the Petition for Divorce.

Attorney's Fees and Costs

Neither divorce nor any other legal action is inexpensive. This memorandum has already given you a superficial idea of the complexities which may arise in a divorce and of the many and varied tasks which lawyers and their staff may perform. We will give you an estimate

of your legal costs in our first conference. Also, we will send you a bill periodically showing services rendered and costs incurred to date, so as to keep you fully informed.

You may be assured that your legal costs will be proportionate to the difficulty of the case. For example, a case involving no children and no significant amount of property will cost less than child-related suits. However, where significant amounts of property and income are involved, or where custody of the children is involved, the stakes are higher and the complexities greater; accordingly, the cost is greater. We will never suggest that you invest more legal expense than the case is worth.

We require an advance retainer in every case, calculated as a percentage of the estimated total cost. We also require that a written agreement be entered into between our office and you to avoid any misunderstanding regarding the payment of fees and expenses. As set out in the contract, the obligation to this firm for your fees and costs is yours alone. However, the Family Code permits you to request that your attorney's fees and costs be paid by your spouse. Whether or not attorney's fees are charged against the other spouse depends upon several factors, including the relative incomes of the parties, the manner in which property and debts are divided, fault, and others. Absent special circumstances, courts generally require each spouse to pay his or her own fees. We will discuss this with you and will advise whether you should seek to have your attorney's fees paid by your spouse.

Any fees and costs actually collected from your spouse will be reimbursed to you or credited to your account, as the case may be. However, please keep in mind that your obligation for the fees and costs must be borne by you in the first instance.

Please keep in mind that you are in control of your lawsuit. While we may advise you, the ultimate decisions are yours. Please also remember there is no shame in reconciliation at any point or in reaching a settlement to preserve a working relationship for the sake of the children.