

## **NLC Presentation - Issue Spotting: Dissolution Basics January 27, 2012**

### **Most Common Issues that Arise in Family Law Clinic Setting**

- 1) Divorce (usually either how do I file? or how do I conclude?)
- 2) Parenting Plan for children of unmarried parents (parentage/paternity)
- 3) Modification of parenting plan, including relocation
- 4) Modification/Adjustment of child support order
- 5) Adjustment of child support
- 6) Enforcement/Contempt Issues
- 7) DV Issues

### **Resources:**

- 1) WashingtonLawHelp.org. Indispensable free advice
- 2) [www.courts.wa.gov/forms](http://www.courts.wa.gov/forms). Helps put together the skeleton of the case.
- 3) Family Law Facilitators. At the court house, non-lawyer facilitators to help with all of the paperwork.
- 4) Domestic Violence Advocates at court house. If DV a question, have victim talk to advocate at courthouse.  
-or- EDVP, Eastside DV program, New Beginnings Seattle
- 5) <http://apps.leg.wa.gov/rcw/> - RCW Title 26 - Domestic Relations
- 6) <http://www.kingcounty.gov/courts/Clerk/Rules/LocalRulesbyIndividualLink.aspx>

## **DIVORCE**

### When to file/Whether to file

- Other party will need to be served, is there a safety issue? Emergency/fear of harm issue (see Ex Parte Restraining Order)?
- Is there any particular reason to wait to file?
- children graduating soon,
- financial considerations (not enough money for two households)

### What you need to File

- Forms are on [courts.wa.gov](http://courts.wa.gov) - "Divorce"
- Petition, Summons, confidential information form, Health information Sheet
- \$280 filing fee
- In Forma Pauperis if

### Joinder

- avoids service to have other spouse sign joinder on Petition if cooperative

Page 1 of 6

**Gwynna Biggers Norman, Law Office of Ted D. Billbe, PLLC  
9 Lake Bellevue Drive, Suite 218  
Bellevue, WA 98005 425-456-0614**

- If all issues are already agreed, can lead to faster resolution

#### How to File

- Prepare forms - may need to help with Petition (important document reserving rights)
- e-File Electronically with an Attorney
- Bring in hard copies from home to court clerk in Seattle or Kent
- Use Facilitators to assist
- When you file, you will receive the court's Order Setting Case Schedule (ORSCS) must be delivered to other party
- ORSCS provides important court deadlines and hearings that must be followed, including trial date 11 months after filing date

#### Service

- Personal service is required unless joinder or acceptance of service signed by other spouse
- Acceptance of Service - other spouse signs agreeing they received a copy of documents
- Service can be done by anyone over the age of 18 that is NOT a party to the action.

#### Temporary Orders

##### When necessary?

- Disagreement as to temporary parenting schedule
- Request alcohol/drug assessment, DV assessment, supervised visitation, therapeutic assistance for child or parent
- Request appointment of parenting evaluator
- To set temporary child support or spousal support/maintenance
- Who should live in the home? The court will not require two divorcing parties to remain in the same home and will order one party to move out.
- To set temporary payment of expenses, debts, division of income

##### Is there a dire EMERGENCY?

- can seek Ex Parte restraints if imminent harm to children or spouse feared
- must first file case (below), then can file Motion/Declaration for an Ex Parte Restraining Order and Order to Show Cause
- Return hearing 14 days after entry of Ex Parte Order.
- Order not "in force" until certified copy served upon other party, must be served, not mailed.

#### WHEN to file?

- If able to prepare motion paperwork, can be served with Petition and Summons to avoid notice issues
- Or, file any time after Petition is filed and served prior to entry of final documents
- If any type of financial relief is sought, KCLFLR 10 requires back up financial documentation accompany the motion
  - 6 months bank statements
  - 6 months paystubs
  - 2 years tax returns
  - completed financial declaration/expense budget
- Narrative declaration of moving party plus supportive declarations which must be signed under penalty of perjury under laws of State of WA
- Evidence can include police reports, medical records, letters from doctors, pictures, cds, etc. Some of these may be filed under seal to keep from public view in the court file
- hearing is 14 days from date motion delivered/served to other party
  - must add 3 days for mailing (17 days total) if delivering in US mail.
  - WORKING COPIES don't forget a copy of documents must be delivered to family law department for commissioner to review.
  - four copies total - clerk, family law, other party, moving party
- Responsive documents due four court days prior to hearing (four copies, deliver to other side)
- Reply documents due two court days prior to hearing; moving party gets last word

#### The Hearing - The Family Law Calendar

- may have to wait all morning - could have 10-15 cases and cannot pick when you are heard.
- have proof of service ready
- non testimonial, evidence is all based on written documents previously filed
- 5 minutes per side, do not interrupt commissioner or other party

#### FLO

- Family Law Orientation Seminar - new requirement in 2011
- Required for all parties without attorneys
- Information in ORSCS

#### Parenting Seminar

- Required for all parties with children under the age of 18.
- Four hours long, offered at Seattle or Kent courthouses or Mercer Island community center
- \$40 if you sign up within first 60 days then price goes up to \$75 thereafter

Page 3 of 6

**Gwynna Biggers Norman, Law Office of Ted D. Billbe, PLLC**  
**9 Lake Bellevue Drive, Suite 218**  
**Bellevue, WA 98005 425-456-0614**

#### FCS mediation (Family Court Services)

- Filing Confirmation of Issues document is a procedural requirement early in case schedule and transfers case to Family Court Services

#### Discovery

- Must be completed before discovery cut off in case schedule
- can send written interrogatories with 30 days to answer, schedule deposition, or send subpoena for records (bank, credit card, retirement, pay records)

#### Mediation

- Good faith attempt at Alternative Dispute Resolution/Mediation is required before trial
- Each party in separate room, mediator shuttles back and forth with settlement offers
- No requirement to settle, just act in good faith

#### Finalizing the Case -- By Agreement

- If no children, need TWO documents signed by both parties:
  - Findings of Fact and Conclusions of Law and
  - Decree of Dissolution
- If children, need SEVEN documents:
  - Findings of Fact and Conclusions of Law and
  - Decree of Dissolution
  - Order of Child Support
  - Child Support Worksheet
  - Final Parenting Plan
  - Certificates of Completion of Parenting Seminar (both parties)

#### Final Document - Findings

- Sets forth basic information about parties, assets, children, jurisdiction

#### Final Document - Divorce Decree

- Awards property and debts to each party.
- Awards spousal maintenance.
- Provides details for property transfers, refinance, taxes, and any other property/debt issue.
- EXTREMELY IMPORTANT DOCUMENT, very hard to change
- think ahead about enforcement issues, as seeking to enforce a Decree is challenging, better to get money upfront, debts paid right away, etc.

#### Final Document - Worksheets

Page 4 of 6

**Gwynna Biggers Norman, Law Office of Ted D. Billbe, PLLC**  
**9 Lake Bellevue Drive, Suite 218**  
**Bellevue, WA 98005 425-456-0614**

- Child Support must be ordered for minor children.
- Income based, NOT income after expense based. Expenses/budget not considered.
- Spousal maintenance is included as income and shall be reduced from income of parent paying maintenance
- Take the Combined net income, number of children, ages of children, and WA state support schedule/table will determine total amount of child support
- total figure is then divided based prorata on each parent's income
- Use worksheets to calculate child support based on income.
- Fictional income can be "imputed" to a parent who is voluntarily under-employed (less than 40 hours), or voluntarily unemployed

#### Final Document - Order of Child Support

- lists basic child support amount
- deviations can be appropriate - when parents agree to a basic number for the children lower or higher than number from worksheet
- defines what expenses are shared beyond the basic transfer payment?
- in what proportion are the expenses shared?
- is obligor paying directly or through DCS?
- when does child support terminate?
- defines post-secondary college support

#### Final Document - Parenting Plan

- restrictions - 191 -->therapeutic requirements-->decision making
- regular residential schedule, with specific times and overnights
- all school breaks and summer
- all holidays and special occasions
- dispute resolution provision - usually mediation
- MAKE IT AS SPECIFIC AS POSSIBLE!!!! times, times, dates,
- goal is to know on any given day exactly where the child will be residing

#### Agreed Orders Procedure

- ⇒ If both pro-se: Must note a motion for Presentation at Ex Parte on the uncontested dissolution calendar, with 14 days notice.
- ⇒ At least one party must be present to present final proof
- ⇒ If attorney, no party need be present, and no advance notice required, just go to ex parte and present the agreed orders, with declaration in lieu of formal proof or testimony by one party

#### Trial

- Bench trials, not jury trials - Judge is assigned when case filed

Page 5 of 6

**Gwynna Biggers Norman, Law Office of Ted D. Billbe, PLLC**  
**9 Lake Bellevue Drive, Suite 218**  
**Bellevue, WA 98005 425-456-0614**

- Judges are normally accustomed to pro se parties without attorneys. Judges rotate through a year to two year long family law rotation
- Judge will set a pre-trial conference approximately 3 weeks prior to trial date that must be in person if either side is pro se. Will discuss any scheduling issues, witness issues, and sign an order regarding joint statement of evidence, preparing evidence binders, and attending trial

#### Default

- Appropriate when other side has been properly served with initial Petition for Dissolution, Summons, and Case Schedule and ignores the case.
- If no appearance by the other party (appearance defined broadly, if anything filed with court, any correspondence sent to other, side, that is appearance), can seek default Ex Parte

#### Domestic Violence

- Can seek a emergency/temporary DV Protection Order with out attorney
- Go to court house, go to DV facilitators, hand write description of events into Petition
- DEFINITION: RCW 26.50.010 (1) "Domestic violence" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking as defined in RCW [9A.46.110](#) of one family or household member by another family or household member.
- Request Temporary DVPO at Ex Parte. Facilitators will make service package and advise about service
- Return hearing in two weeks. Lax briefing schedule, testimonial hearing, no evidence rules,
- Permanent DVPO enters for one year if petitioner can meet standard in definition.

#### Child Support Modification vs. Adjustment

##### **Adjustment - changing the numbers**

- child support may be adjusted every 24 months
- two week motion, 14 days notice if delivered, 17 days notice if mailed
- must include all LFLR 10 financial requirements

##### **Modification - changing the words**

- requires a Petition which must be served or mailed certified mail
- must have a showing of a substantial change in circumstances other than obligor's voluntary unemployment.