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### DOMESTIC RELATIONS HANDOUT

This handout is to provide you with information concerning aspects of the domestic relations of the State of Missouri (as interpreted by my office), court procedures, and an explanation of some of my policies with regard to the handling of a dissolution of marriage, (formerly called a divorce) or a modification of an existing or dissolution decree.

**Some of the matters contained in this handout will not pertain directly to your situation.** Obviously, the contents of this handout are general in nature and each domestic relations matter is different based upon the specific facts of your case. Please ask questions of me concerning the application of these general provisions to your specific factual situation.

Keep this handout with copies of the papers relating to your case for future reference.

### HOW YOUR DISSOLUTION BEGINS

In the State of Missouri, a suit of dissolution of marriage is filed in the county where the person filing the Petition resides. A Motion to Modify is generally filed in the Court where the Decree was originally entered. There are some exceptions to these rules.

After the Petition or Motion is filed, appropriate papers (called summons) are prepared by the Clerk of the Court and forwarded to the Sheriff of the county where the other part can be served. This process usually takes approximately ten (10) days. Thereafter, it is up to the Sheriff to serve the papers. In some cases, a Special Process Server may be utilized and an extra cost will be incurred for the Special Process Server.

The Respondent is served at the address provided by you, generally either the home or the place of employment. It is important to provide the address where the Respondent is most likely to be found and/or a time Respondent is most likely to be at the address provided in order to avoid undue delay in obtaining service.

## GROUND

The Normal grounds for dissolution of marriage in Missouri are the allegations that the marriage is "irretrievably broken" and that there is no reasonable likelihood that the marriage can be preserved. Specific acts of misconduct are generally not included in the Petition.

## TIME IN COURT

After service of the summons, the other party has thirty (30) days in which to file a written answer with the Court. This answer must also be mailed to the attorney for the filing party. If no answer is filed, the person who filed the Petition or Motion may obtain a default judgement which means that the filing party will proceed in court without the participation of the party.

Often, he or she will obtain an additional thirty (30) days to file an answer. This means that from the date of service, it often takes sixty (60) days to receive a response. Most frequently, such an answer denies all the allegations made in the Petition. Do not be surprised if, in this initial answer, you find that facts which you know to be true are denied. This does not mean that the other party intends to contradict every fact, but it means that, for legal reasons, the other party will not admit these facts.

In Third Circuit, your financial statements, blank copies of which will be given to you must be completed when requested by the other party.

**These financial statements are extensively used by me and the Court and should be accurately, completely and realistically complete.** Once returned to my office, they will be prepared in final form. If you have any questions or problems completing the statements, please ask me. These statements are extremely important to me in the analysis of your case. Please complete and provide me with the completed statements as soon as reasonably possible.

## PARENTING PLAN

Since a change in the law effective August 28, 1998, any Petition For Dissolution of Marriage or Motion to Modify a previous Decree that involved the custody of children must have attached to it a "Proposed Parenting Plan." There is an abbreviated Parenting Plan form contained in your client packet. We have discussed in some detail the elements of the Parenting

Plan at our initial meeting. Give the terms of the Parenting Plan serious and reasonable consideration. Fill out the form in your packet and return it as soon as possible. If you have any questions concerning the details of the Parenting Plan, please call me. I will discuss the terms and details of the Proposed Parenting Plan (and its importance to the case) when we meet to sign your Petition.

**MOTION FOR TEMPORARY CHILD SUPPORT, CUSTODY,  
MAINTENANCE, ATTORNEY'S FEES, COSTS, SUIT MONIES**

Once a dissolution or divorce case is filed and service has been obtained, either party may file a Motion For Temporary Orders (called a PDL). The purpose of this Motion is to request the Court to order one party to provide for child support maintenance and/or the payment of some debts for the period during which the case is pending. The Court may also make a temporary determination regarding the custody of any children and will establish a visitation schedule for the non-custodial parent. This Motion may also include a request for money for attorney's fees, deposition costs and other expenses which will be necessary for the preparation of the case. Generally, attempts are made to settle these motions after consultation between the attorneys and the Court. The parties do have a right, however, to have the motion heard in open court and decided by the Judge.

As a general rule, a PDL motion cannot be filed in a case involving a motion to modify.

**CHILD SUPPORT**

Child support is money paid by one parent to the other parent to assist in the support of the minor children. In the State of Missouri, the Supreme Court has developed uniform child support guidelines (commonly referred to as the Form 14). These guidelines establish a presumption of the amount of child support to be paid and are generally based upon the monthly gross income of both of the parties. As each case is different, I will discuss the child support guidelines with you.

**MAINTENANCE**

Maintenance is money paid by one spouse to the other spouse to assist in the support of him or her. Maintenance received is generally taxable income to the party receiving it, and

deductible to the person paying it, if it is paid pursuant to a court order or written agreement and certain other requirements are met.

Each case is different and an award of maintenance is dependent upon the circumstances of your particular case. No person is automatically "entitled" to maintenance. There are no Supreme Court uniform guidelines by which the amount of maintenance is to be determined. The trial court is granted broad discretion in determining whether to award maintenance and, if so, for what amount and for what period of time.

### **DISCOVERY**

According to the Rules of Court, each party is entitled to "discover", under oath, certain relevant facts known by the other party. The tools of discovery most commonly used in domestic cases are called "Interrogatories", "Depositions", and "Requests For Production of Documents".

The purpose of these tools is to enable the attorney to discover information and to be ready for trial. The Court, under the law, is obligated to divide and allocate all Property, both marital and non-marital, and to apportion debts. These tools provide assistance in locating, identifying, and valuing all property. These tools also provide assistance in addressing the other issues which the court must also consider such as determining child custody, child support, maintenance, allocation of debts and whether to award attorney fees and litigation costs.

### **INTERROGATORIES**

Interrogatories are written questions submitted to the opposing party that must be answered under oath within thirty (30) days. Extensions of time to answer the Interrogatories can be obtained, if necessary, and often are. Your answers will be prepared in final form by my office.

If Interrogatories are directed to you, the only way they can be answered properly and economically is for you to write out your answers on the copy of the interrogatories sent to you and return them to me for review before calling on the telephone to discuss the questions. Once I have reviewed your preliminary answers, I will have them prepared in proper form to be reviewed by you and, after all necessary corrections have been made, to be filed with the Court.

If I send you a set of Interrogatories which I have received, you should answer each question completely and do so as quickly as possible. If there is a legal objection to providing certain information, I will make that decision. You can assume, if I have sent you Interrogatories, that I want your answers to them. It is not uncommon for several sets of Interrogatories to be received or for these Interrogatories to be quite extensive. Generally, it is not necessary to do an exhaustive investigation to answer interrogatories. If you do not know the answer to a question or cannot readily obtain the answer you may answer that the information is unknown or unavailable to you.

### **DEPOSITIONS**

Each party has the right to require the other party or any witness to answer questions, under oath, in person, usually in the attorney's office. Both lawyers are present during this questioning, and the testimony given is under oath. The opposing lawyer asks questions of the witness in much the same fashion as courtroom questioning. All of these questions and answers are then transcribed into a written record (called a transcript), which may be filed with the Court. Lawyers from both sides may request a copy of this transcript. I will generally require a deposit, in advance, to cover the costs of depositions.

### **REQUEST FOR PRODUCTION OF DOCUMENTS**

Each Party has the right to require the other party to produce certain documents in their possession, or under their control, for inspection. These documents may include canceled checks, bank statements, income tax returns, credit card information, stock information, business records and other relevant documents.

### **NON-CONTESTED CASES**

After discovery is completed, the case is ready for trial. If the parties are in agreement as to all issues and desire to settle the case it is called a "non-contested" case. When a settlement is reached, the attorneys will draft an agreement setting forth all the provisions of that settlement and both parties will have an opportunity to review the agreement to make sure it expresses their understanding of the settlement. A copy is then filed with the Court at the time of the hearing. One of the parties must be present to testify; this party is generally the person who filed the petition or motion. The Court will examine the agreement to make sure that it satisfies certain

basic legal requirements. In “non-contested” cases, this agreement settles all aspects of the case and at the conclusion of the hearing, the judgement of dissolution is granted.

### **CONTESTED CASES**

If the parties cannot come to a settlement, the information gathered by the discovery process will be assembled by the lawyers and a date will be set by the Court for a trial. Both parties will generally testify at the hearing, and the Court will consider their testimony and other evidence presented at the hearing. Sometimes, additional witnesses are necessary, including what we call “expert witnesses”, (such as a doctor, psychologist, real estate appraiser or actuary). An expert witness will charge a fee for his or her time for preparation and for testifying. The use of an expert witness on your behalf will be discussed with you before the expert witness is hired. The anticipated costs of the expert witness will generally have to be paid prior to the rendering of his or her services. These anticipated costs may be included in the Motion For Temporary Allowances discussed above.

### **COURT DATE**

In Thirty-first Circuit County and most surrounding Counties, cases are set for trial after a conference with the Judge and a review of all parties’ “trial” calendars. You can anticipate receiving a trial setting within thirty (30) to Sixty (60) days of the request. The length of time necessary to set a case will depend to a large extent on the nature of the issue to be tried (i. e., custody, support and/or property division) and the anticipated length of the trial on those issues.

Appropriate dress should always be worn when you are appearing in Court. Ask me about proper dress.

### **WHEN IS MY DISSOLUTION FINAL?**

A Judgment of Dissolution is final 30 days after it is entered by the Court, unless an appeal or post-trial motions are filed. During this 30 day period or until the motions are resolved, you may or may not remarry. Should an appeal be taken, the Decree of Dissolution as it relates to actually dissolving the marriage is deemed final, unless the appeal challenges that portion of the decree regarding the status of the marriage. If the appeal does not specifically challenge the status of the marriage and relates only to the Court’s decree regarding property division, child

custody, child support, maintenance or attorney's fees, you are free to remarry while the appeal is pending.

### **COURT COSTS**

The filing fee for a Dissolution of Marriage is \$150.00 plus additional cost for serving. These costs are subject to change. Additionally, supplemental Court costs may be levied after trial, depending on the length of trial and other costs involved.

### **REQUIRED COUNSELING**

The Courts in all Counties in the State of Missouri, in any case in which there are minor children now require that the parents attend, separately, a series of counseling sessions (usually in the form of videotapes) as a pre-condition to granting a decree of dissolution. Ask me for the information on enrollment in these sessions.

### **APPEALS**

An entire second tier of the judicial process lies in the Court of Appeals. While the trial judges of the Circuit Court are granted broad discretion as to the propriety of their decisions, as an additional safeguard to meet the ends of justice, you may decide to seek appellate relief should you determine that are not satisfied with the decision of the trial judge.

The appellate process is expensive and time consuming. Few appeals can be heard and decided in less than a year. My estimate is that it takes approximately twelve (12) months to eighteen (18) months to complete the process. Generally, most parties to a dissolution do not need to resort to the appellate courts. I will, after the Decree is rendered, provide to you my advice and recommendation as to whether an appeal would be advisable. If so I will discuss with you mt estimates as to attorney's fees and other expenses.

### **ATTORNEY'S FEES**

My goal is to provide you, my client, with quality legal services at the most economical cost. When you first agreed to utilize my services, you signed a fee agreement which set forth my current billing rates as well as the rates of the paralegal in my office. Obviously, I will be available to you for consultation should the need to arise. Fees for your case are based on time expended, including telephone calls.

**OTHER SERVICES WE CAN PROVIDE**

I provide comprehensive legal services in the areas of litigation, family law, and personal bankruptcy. Once your dissolution is completed, I recommend that you prepare a new Will. If you have the need for other legal services, please contact me.