ASHLEY CHRISTIAN SPECIA

ATTORNEY, MEDIATOR AND COUNSELOR AT LAW

10001 REUNION PLACE, SUITE 640
SAN ANTONIO, TEXAS 78216
(210) 225-6649 TELEPHONE
(210) 731-6401 FACSIMILE
SpeciaLawFirm@gmail.com E-MAIL

ABOUT YOUR DIVORCE

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About Your Divorce

I. GENERAL INFORMATION

The following are basic rules regarding divorce. It is extremely important that you understand them completely, so please study them carefully. Keep this document to refer to throughout the course of your case.

Remember, however, that these are only some of the basic rules and are not substitutes for detailed discussions with your attorney and his or her staff. If you have any questions, do not hesitate to ask.

CAUTION: As will be discussed in detail below, this information sheet should not be shown to anyone.

II. DECISION TO DIVORCE

At the outset, you should be absolutely sure that your marriage is beyond saving. If you are uncertain, you should encourage your spouse to join you in marriage counseling with a qualified counselor acceptable to both of you.

If you find you are experiencing emotional problems, please employ a professional counselor for your personal benefit. Your attorney is a specialist in law, not psychology or marriage counseling, and a counselor can help you with emotional problems much more effectively than your attorney.

Also, a new field of development is "divorce counseling," which consists of individual sessions or group sessions designed to assist persons through emotional trauma of a divorce. There are also such programs for children. Although somewhat new on the horizon, these programs seem to be getting very high marks. Many persons, approaching these programs with much skepticism, have reported them to be life savers and well worth the time and money.

CAUTION: Some people hope that filing for a divorce will shock their spouse into reality and, therefore, save the marriage. While filing for a divorce sometimes saves the marriage, this is a rarity. Usually, it causes the other spouse to become more hostile. Therefore, the filing of a divorce should be done with the realization that if you are asking for a divorce, that is what you will get.

III. ATTORNEY AND CLIENT

The following section discusses the relationship and inner workings between you and the attorney and his or her staff.

A. Attorney and Staff

The attorney and staff work as a team, each doing those tasks which they can do most efficiently. The legal assistant is billed out at a lower rate than the attorney; therefore, the legal assistant handles much of the time-consuming tasks involved in gathering information and day-to-day contact with the client. You will be dealing with both the attorney and the legal assistant, together and individually, throughout the relationship.

B. Your Role as Client

This is your case, not your attorney's. There are a great number of things that you must do during your case.

1. Be Informed

   You should be as informed and as involved in your case as possible. It is important that you read this document and understand all of its provisions and ask any questions that you might have at any time. You should read and understand any and all documents that are produced in your case.

2. Keep Files

All correspondence and documents produced in your case will be forwarded to you. Please establish one file in which to keep all of your divorce-related documents. Please remember to bring that file with you each time that you visit your attorney's office.

3. Tell your Attorney the Truth about all Facts

You should be totally honest with your attorney on every aspect of your case and give all information about anything of importance to your case. This includes not only information helpful to your case but, equally important, all facts which might be harmful to your case. Chances are your spouse's attorney is going to find out about them anyway, so please do not let your attorney be the last to know. These "bad facts" are usually not as harmful as you may think.

In this respect, you do need to be made aware that, at any time that you are placed under oath at a deposition or a trial, you will be required to tell the truth, the whole truth, and nothing but the truth. If you do not, you subject yourself to criminal perjury charges. Likewise, Texas law requires your attorney to see to it that you tell the truth; therefore, when you are under oath, your attorney cannot and will not condone any testimony by you which is less than the whole truth.

4. Information Gathering

Facts are the heart of your lawsuit. You will be given information sheets to fill out and requested to gather information and documents. This will be time-consuming and tedious work, but it is extremely important. It must be done. You, the client, have a much greater knowledge of and access to this factual information than your attorney. Further, as you research and piece together this information, you begin to develop the necessary understanding of your case. Also, you can do this work at no charge to yourself, whereas the lawyer or staff, if required to do it, will be billing you for their time and labor. For all of these reasons, you should do as much of the information gathering, under the direction of your attorney and staff, as possible.

5. Review Spouse's Documents

Your attorney will provide you with copies of all documents supplied by your spouse's attorney. It is very important that you review these documents immediately, familiarize yourself with them completely, and ask any questions or detect anything important or unusual in the documents (e.g., checks written for unusually high amounts or to unfamiliar persons or sources).

6. Decision Making

No final settlement of your case will be made without your approval and consent. Other major decisions will also be made with your approval and consent (e.g., to demand a jury or not, to seek child custody or not, etc.). However, you will need to allow your attorney the authority to make other decisions which bear on your case, but which involve professional judgment or courtesy. For example, your attorney should decide how to phrase allegations contained in your pleadings and when to file the pleading. On occasion, your spouse's attorney may ask for a continuance or postponement of a hearing on a motion, deposition, etc. Resistance to a legitimate request of this nature is often not in your best interest. For example, your attorney may know that your side will need to make a similar request in the future. Your attorney should be the decision maker for these and similar matters. Your attorney abides by the "Lawyers Creed." A copy of that creed will be provided to you.

C. Attorney-Client Relationship

You and your attorney and his or her staff are in an attorney-client relationship, which is recognized by law to be a very special relationship. Your attorney and staff owe one hundred percent of the allegiance to you and your case and owe no allegiance to your spouse whatsoever. Your attorney is required to represent you zealously, but within the bounds of the law.

Do not be misled if you find your attorney dealing with your spouse's attorney on a friendly basis. Professional and common courtesy dictate this. Good lawyers are perfectly capable of zealously defending and promoting their clients' best interest, without becoming personal enemies. Attorneys are in fact trained to be advocates for the children without becoming emotionally involved. One of the very reasons you hire a lawyer is to have someone on your behalf who not only has legal expertise, but who will not become emotionally involved. You want your lawyer to use his or her head, not heart. Indeed, you should expect your lawyer to be objective and to remain unemotional on your behalf, because it will often be hard for you to do so.

D. Attorney-Client Privilege

By virtue of the attorney-client relationship, there automatically arises what is known as the "attorney-client privilege." This privilege prohibits from disclosure any information, whether communicated orally or in writing, between the attorney and the client, so long as the communication was intended to be confidential. For example, this very information sheet you are reading is protected from disclosure to your spouse's attorney under the attorney-client privilege. Such communications also include all correspondence or documents from your attorney/staff to you, and vice versa (e.g., information sheets you prepare for us), as well as all telephone conversations and in-person conferences between you and your attorney and staff.

CAUTION: The attorney-client privilege exists only between you and your attorney and the immediate, in-house staff. The attorney-client privilege can be waived if the otherwise confidential information is disclosed to persons other than your attorney and the immediate staff. For example, if you tell your spouse something that your attorney has told you, then that information will lose its privilege from disclosure and will have to be disclosed by you in court. Also, the privilege does not exist between you and other persons who may be involved in your case to assist you (e.g., CPAs, appraisers, etc.). Therefore, be very careful what you say to these persons, even if they are "on your side," for anything you do or as may be required to be disclosed to your spouse's attorney.

E. Contract

You should read and understand the fee contract, agreement for legal services, and/or the engagement letter supplied to you. If you do not understand the financial obligations required of you under the contract, you should immediately ask.

F. Other Professionals

Besides your attorney and his immediate, in-house staff, other outside professionals are sometimes hired to assist in divorce cases. It may be necessary to engage an appraiser, a tax expert, CPA and other such professionals. Your attorney will discuss the necessity of these experts with you and hire only those that are necessary in your case and only with your consent. Caution: Again, even though these persons are hired on your behalf, information provided to them is not protected from disclosure by the attorney-client privilege (as discussed above).

IV. ISSUES IN DIVORCE

This section covers the basic issues involved in a typical divorce case. If you have no children, you can skip the sections below regarding children. Otherwise, you should read each of these sections very carefully and go to this section first throughout your case if you have any questions regarding these issues.

A. Grounds for Divorce

A divorce may be granted on one or more "fault" or "no-fault" grounds expressly set out in the Texas Family Code. Most divorces are founded on the no-fault ground of "insupportability" (i.e. incompatibility), which can be granted to either spouse if that spouse feels that the marriage has become insupportable because of discord or conflict in personalities which makes any reasonable expectation of reconciliation impossible.

"Fault" grounds for divorce include adultery or cruel treatment. In that a court may consider "fault" in the breakup of a marriage as a factor in deciding how to divide the property and debts, a party may also choose to plead a "fault" ground for divorce.

B. Domicile and Residence

At least one spouse must have been "domiciled" in Texas for six months, and a "resident" of the county where the suit is filed for ninety days, before the petition may be filed. The terms "domicile" and "residence" have different legal meanings, which can be explained to you if need be.

C. Property and Debts

This subsection is an elementary discussion of some of the basic rules underlying Texas marital property law.

1. Types of Property

In the context of divorce law in Texas, all property, both real and personal, is characterized as two different types of property: (1) "separate property" and (2) "community property."

a. Separate Property

"Separate property" is property either (1) owned or acquired by a spouse before marriage, (2) acquired by a spouse during marriage by (a) gift or (b) inheritance, or (3) the recovery for personal injuries sustained by the spouse during marriage except for any recovery for loss of earning capacity during marriage. It is the date of acquisition and the source of the property that controls, not how it is eventually paid for. For example, if one spouse owned a house or a car before marriage, it will be characterized at the time of divorce as that spouse's separate property, even if it was paid off in whole or in part during marriage.

A gift includes, for example, any Christmas or birthday gifts from one spouse to another during marriage (even if purchased with community funds). If a gift or inheritance goes to both spouses (e.g., wedding gifts), then each spouse has an undivided fifty percent interest in that one piece of separate property.

Separate property can change forms without changing its character as separate property (this is often referred to as a "mutation"). For example, if wife has $5,000 in cash which is her separate property and uses that $5,000 cash alone to purchase outright a $5,000 boat, then the boat would likewise be her separate property.

A court has no authority to take a spouse's separate property from him or her at the time of divorce. Caution: Any property owned by either spouse at the time of divorce is, by law, presumed to be "community property" unless otherwise provided to be separate property (see discussion of "community property presumption" below); therefore, a spouse must (1) specifically plead and (2) prove by clear and convincing evidence each item of real or personal property claimed to be his separate property.

b. Community Property

"Community property" is any property acquired by either or both spouses during marriage by other than gift or inheritance. This includes virtually everything purchased during marriage. It is important to remember that a marriage legally endures even after separation; therefore, anything earned, purchased, or even merely contracted for, during your separation (whether before or after the divorce petition has been filed) will be characterized as community property. This is true even if the property is not physically received until after marriage. For example, if the day before the divorce is granted a wife contracts to purchase a new home (with closing set off for one month later), or husband enters into a partnership agreement, this will be characterized as community property.

All property which exists in whole or in part in the name of either spouse at the time of divorce is presumed by law to be community property. This is referred to as the "community property presumption." Therefore, if you have any separate property, or if you are in possession of property which does not belong to either you or your spouse, you must point these out to your attorney.

In Texas, earnings from separate property are community property. For example, if husband has $5,000 in a bank account at the date of marriage, the $5,000 remains his separate property, but all interest earned on the $5,000 becomes community property.

Unlike separate property, a court has the authority to divide community property in any manner that it deems to be "just and right" (as discussed in more detail below).

c. Out-of-State- Real Property

Real estate located outside of Texas, which was purchased while either or both spouses were domiciled outside of Texas, is treated somewhat differently than "community property" or "separate property." If such foreign realty exists, please let your attorney know.

d. Mixed Title to Property

Title to property can be both separate property and community property in character. For example, suppose a car is bought during marriage for a total of $10,000 in cash; $6,000 of that was from husband's separate property account which he had prior to marriage, while $4,000 of it was from a bank account established during marriage and containing the community property earnings of the parties. In such event, title to the automobile would be sixty percent husband's separate property and forty percent community property.

2. Debts and Liabilities: Taxes

Debts and Liabilities incurred before marriage, if still in existence at the time of divorce, shall remain the debt of liability of the party who incurred it. Debts incurred during marriage will be divided by the court between the parties at the time of divorce. One spouse may be required to assume a debt incurred solely by another spouse during marriage. Although not an absolute rule, the general rule of thumb is that, following the filing of the divorce petition, courts are usually going to award a debt to the spouse who incurred the debt during separation. Decisions will also need to be made regarding contingent liabilities, such as past income tax liabilities which may arise in the future if the parties are audited, as well as tax liabilities for the year of divorce.

CAUTION: Although a court will order each spouse to be solely responsible for certain debts and to pay them immediately when due, this is binding only as between the parties. This division, however, is not binding upon the third party creditors who are not parties to the lawsuit. This is unavoidable unless every creditor (e.g., Mastercard, Visa, etc.) is actually made a party to your suit and, even then, the court would probably make one party primarily liable and the other party secondarily liable. The only protection is by way of indemnification, that is, if Spouse A is obligated to pay a bill, but does not do so and the creditor goes after Spouse B, Spouse B has the right to sue Spouse A to recoup those funds. While this is not a very good solution, it is the only practical one available. While a lien can be placed against one spouse's property to assure the payment by that spouse of court-ordered debts, most parties and judges will not agree to so indefinitely tie up a person's property in this respect.

3. Reimbursement

Pursuant to the rules above, there may at the time of divorce exist three different "estates": (1) husband's separate property estate; (2) wife's separate property estate; and (3) the community estate. Each of these estates may have a "claim for reimbursement or claim for economic contribution" back against the other estate or estates. For example, if husband owned a tract of real estate before marriage, then at the time of the divorce the real estate will belong to husband's separate estate, but the community estate would have a right to ask a court to order the husband (i.e., his separate estate) to "reimburse" the community estate for community funds used to pay off real estate taxes on his separate property. This is one very simple example of the doctrine of "Reimbursement." Again, reimbursement can be by, against, and between any of the three estates.

Since Reimbursement is an "equitable" doctrine, a court is not required to order Reimbursement, but may choose to do so if the court considers it equitable under all of the circumstances of the case. It should be noted, however, that to prove Reimbursement, it often requires a great deal of time, accounting, "tracing" of funds (discussed below) and expense to prove the claim. Whether Reimbursement should be sought is a Decision you and your attorney will make after weighing all of the factors. Payment of taxes, maintenance, interest and insurance and unsecured common liabilities are reimbursement claims.

4. Tracing

To determine title to property as being separate property and/or community property, and to determine rights to Reimbursement or Economic Contribution between the different marital estates, an accounting method referred to as "tracing" is often employed in divorce cases. For

example, one bank account may contain funds which consist of both separate property and community property. Or, community property funds may be used to pay off a balance of a separate property debt. Tracing is employed to determine the title to property or the amount of Reimbursement and assist in developing economic contribution claims.

DOCTRINE OF COMMINGLING: If funds in an account contain both separate property funds and community property funds and these funds have been so commingled as to defy a clear divorce-time segregation by means of tracing, then the entire account will be characterized as community property (because of the "community property presumption" discussion above). This is referred to as the doctrine of "commingling."

5. Division of Property and Debts

The parties by settlement, or a court after trial, will divide all existing property and debts. While the parties may by agreement make any type of division that they want (e.g., give to husband certain of wife's separate property, agree to alimony, etc.), a court during litigation does not have such flexibility but is bound by the rules of law set out above with reference to property and debts. Also, these rules serve as the primary basis to guide the parties and their attorneys in reaching a settlement (see discussion regarding settlements below).

Basically, a court may give each party his or her separate property and separate debts, then may divide the community property and debts in a manner that the court deems to be "just and right." This may be an approximately 50/50 division of the net community estate, or a division which gives one of the spouses a disproportionately large share of the community property (e.g., 70% to Spouse A, 30% to Spouse B). Contrary to popular belief, the courts are not required to divide property 50/50.

The division of property refers to the net community estate (i.e., all community property less all community debts equals net community estate). Obviously, this does not require an equal division in kind of all property and debts. For example, suppose that the community estate consists of one home (with a mortgage), three cars (two with mortgages), two retirement accounts, miscellaneous personal property (e.g., furniture), and five bank accounts. All together, this amounts to $100,000 in assets, and $75,000 in debts, for a net community estate of $25,000. The court may give husband 70% of all of the assets ($70,000) and 80% of all of the debts ($60,000) for a net award to husband of $10,000 (which amounts to only 40% of the total net community estate). Simultaneously, the wife would receive only 30% of the assets ($30,000), but only 20% of the debts ($15,000), for a net to wife of $15,000 (which equals 60% of the total net community estate). Again, this is only a very simple example. Courts may enter almost any kind of order to effectuate what the court finds to be a just and right division, such as requiring the parties to sell the marital home and divide the proceeds in a certain manner, award certain community property to be held by both parties (and let them decide later to sell it or not to sell it), etc.

As a general rule of thumb, in order to reach a "just and right" division of the community estate, the court generally begins by presuming that a 50/50 division would be equitable, then varies from there based upon a number of factors, especially the length of marriage, a disparity in the earning capacity of the parties caused by the marriage (e.g., husband worked for 25 years while wife did not), whether there are minor or adult children being taken care of by a spouse,

"fault" in the breakup of the marriage, etc. As discussed in some detail below, the very nature of divorce cases makes it difficult to predict in advance with any degree of certainty exactly how a given court will divide this property in a given case on a given day.

D. Maintenance (Alimony)

Texas does not use the word "Alimony." Spousal Support is called Maintenance.

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER.
In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if the spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs and:
(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence, as defined by Section 71.004, committed during the marriage against the other spouse or the other spouse's child and the offense occurred:
(A) within two years before the date on which a suit for dissolution of the marriage is filed; or
(B) while the suit is pending; or
(2) the spouse seeking maintenance:
(A) is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability;
(B) has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse's minimum reasonable needs; or
(C) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE.
A court that determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:
(1) each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;
(2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;
(3) the duration of the marriage;
(4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
(5) the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;
(6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
(7) the contribution by one spouse to the education, training, or increased earning power of the other spouse;
(8) the property brought to the marriage by either spouse;
(9) the contribution of a spouse as homemaker;
(10) marital misconduct, including adultery and cruel treatment, by either spouse during the marriage; and

(11) any history or pattern of family violence, as defined by Section 71.004.

Sec. 8.053. PRESUMPTION.
(a) It is a rebuttable presumption that maintenance under Section 8.051(2)(B) is not warranted unless the spouse seeking maintenance has exercised diligence in:
(1) earning sufficient income to provide for the spouse's minimum reasonable needs; or
(2) developing the necessary skills to provide for the spouse's minimum reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending.

Sec. 8.054. DURATION OF MAINTENANCE ORDER.
(a) Except as provided by Subsection (b), a court:
(1) may not order maintenance that remains in effect for more than:
(A) five years after the date of the order, if:
(i) the spouses were married to each other for less than 10 years and the eligibility of the spouse for whom maintenance is ordered is established under Section 8.051(1); or
(ii) the spouses were married to each other for at least 10 years but not more than 20 years;
(B) seven years after the date of the order, if the spouses were married to each other for at least 20 years but not more than 30 years; or
(C) 10 years after the date of the order, if the spouses were married to each other for 30 years or more; and
(2) shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the spouse's minimum reasonable needs, unless the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished because of:
(A) physical or mental disability of the spouse seeking maintenance;
(B) duties as the custodian of an infant or young child of the marriage; or
(C) another compelling impediment to earning sufficient income to provide for the spouse's minimum reasonable needs.
(b) The court may order maintenance for a spouse to whom Section 8.051(2)(A) or (C) applies for as long as the spouse continues to satisfy the eligibility criteria prescribed by the applicable provision.
(c) On the request of either party or on the court's own motion, the court may order the periodic review of its order for maintenance under Subsection (b).
(d) The continuation of maintenance ordered under Subsection (b) is subject to a motion to modify as provided by Section 8.057.

Sec. 8.055. AMOUNT OF MAINTENANCE.
(a) A court may not order maintenance that requires an obligor to pay monthly more than the lesser of:
(1) $5,000; or
(2) 20 percent of the spouse's average monthly gross income.
(a-1) For purposes of this chapter, gross income:
(1) includes:
(A) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);
(B) interest, dividends, and royalty income;
(C) self-employment income;
(D) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and
(E) all other income actually being received, including severance pay, retirement benefits, pensions, trust

income, annuities, capital gains, unemployment benefits, interest income from notes regardless of the source, gifts and prizes, maintenance, and alimony; and

(2) does not include:

(A) return of principal or capital;
(B) accounts receivable;
(C) benefits paid in accordance with federal public assistance programs;
(D) benefits paid in accordance with the Temporary Assistance for Needy Families program;
(E) payments for foster care of a child;
(F) Department of Veterans Affairs service-connected disability compensation;
(G) supplemental security income (SSI), social security benefits, and disability benefits; or
(H) workers' compensation benefits.

Sec. 8.056. TERMINATION.
(a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee.
(b) After a hearing, the court shall order the termination of the maintenance obligation if the court finds that the obligee cohabits with another person with whom the obligee has a dating or romantic relationship in a permanent place of abode on a continuing basis.
(c) Termination of the maintenance obligation does not terminate the obligation to pay any maintenance that accrued before the date of termination, whether as a result of death or remarriage under Subsection (a) or a court order under Subsection (b).

E. Children

If there are minor or disabled children of the parties, all divorce decrees and settlements will contain orders governing the custody, possession and support of the children after the divorce. A "child"is any minor who was born or adopted by the parties. Once a child turns eighteen, the court's jurisdiction over the adult child ends (with several exceptions regarding child support, which are discussed below).

1. Conservatorship

The Texas Family Code speaks in terms of post-divorce "conservatorship" of children, meaning the legal status between the children and their parents after the divorce as it relates to controlling the children's lives, having possession of and access to the children, having the right to determine primary residence of the children and supporting the children.

The Code expressly sets out a non-exclusive list of the rights, privileges, duties and powers of Parents. In a nutshell, these rights and duties may be categorized into three areas: (1) the right to make major decisions regarding the children; (2) the right to have physical possession of the children; and (3) the duty to financially support the children. Conservatorship orders divide these various rights and duties among the parents after the divorce.

a. Conservators

The Code refers to two types of conservators: (1) the managing conservator(s) and (2) the possessory conservator. These terms are confusing, because the "managing" conservator is, generally speaking, the primary custodian of the children, while the "possessory" conservator is not the primary custodian and person with right to determine primary residence of the children (the "possessory conservator") has "possessory" rights to the children, e.g., visitation and rights during visitation).

(1) Managing Conservator(s)

A "managing conservator" is generally given all of the rights, privileges, duties and powers of a parent, to the exclusion of all others, including the other parent, except as otherwise ordered by the court. In short, the managing conservator is the primary custodian of the children, and (1) has the right to make all or most of the major decisions governing the children's lives, (2) has the primary physical possession of the children (custody) and right to determine residence and (3) has the right to receive child support on behalf of the children. As discussed below, there are now two types of managing conservators, "sole managing conservatorship" and "joint managing conservatorship."

(2) Possessory Conservator

A "possessory conservator" is generally given (1) rights and duties to make decisions for the children which can be exercised only when the children are actually in the physical possession of the possessory conservator, (2) the right to certain limited times of possession of the children (often referred to as "visitation rights"), and (3) the duty to pay the managing conservator child support for the benefit of the children.

b. Types of Managing Conservatorship

A managing conservatorship can be either a "sole managing conservator" or a "joint managing conservatorship" [Unless very extreme circumstances exist, a parent will be appointed the managing conservator of the children. A non-parental managing conservator (e.g., grandparent) can only be appointed if the appointment of a parent would create an extreme danger to the child, or unless the parents agree.]

(1) Joint Managing Conservatorship

Courts are now required by the Texas Family Code to appoint joint managing conservatorship unless there are good reasons not to do so. (i.e., evidence of family violence, abuse, etc.). Thus, in most instances, both parents are, appointed as joint managing conservators in every divorce.

It should be noted, however, that joint managing conservatorships vary. A joint managing conservatorship order may be either a "pure" or real joint managing conservator, or a joint managing conservatorship in name only, or any combination thereof. On the other hand, under a joint managing conservatorship which exists in name only, while both parents are given the title of joint managing conservator, one parent is in reality, by the detailed terms of the joint managing conservatorship order, given all of the rights and duties of a sole managing conservator, while the other "joint managing conservator is in reality treated like a possessory conservator. There are advantages and disadvantages to going either route, which will be discussed with you by your attorney.

(2) Sole Managing Conservatorship

A "sole managing conservatorship" exists when one parent alone is appointed the managing conservator of the child and given virtually all of the rights, privileges, duties and powers of a parent to the exclusion of the other parent. In such event, the other parent will be the "possessory conservator."

c. Parenting Plan / Parenting Coordinator / Possession of and Access to Child (e.g., Visitation)

(1) The managing conservator and the possessory conservator will be given certain exact times of possession of and access to the children. Usually, one parent (e.g., sole managing conservator) is considered to be the primary custodian of the child with the right to determine primary residence and has the child or children at all times except for those times of possession given to the other parent, while the other parent (e.g., other joint managing conservator or possessory conservator) is given certain court-ordered times of possession of and access to the children (sometimes referred to as 'visitation rights").

The legislature has by statute adopted what is referred to as a "Standard Possession Order." Basically, the Standard Possession Order gives the non-custodial parent the right to possession of the children on every first, third and fifth Friday (Friday through Sunday), every Thursday evening or overnight, and one-half of all holidays. Excluding the time that the children are asleep or in school, the schedule gives the non-custodial parent about 40% of the quality time with the children. For many reasons, judges rarely vary from this Standard Possession Order and only do so under unusual circumstances (e.g., child is under three years of age).

(2) Parenting Plan / Parenting Coordinator

The Texas Family Code now requires every final order in a Suit Affecting the Parent Child Relationship to incorporate a parenting plan that establishes rights and duties of each parent with the child to minimize the child's exposure to harmful parental conflict and minimize further need for modification as the child grows and matures while also providing for a dispute resolution process before court action is resorted to. The idea of the plan is to facilitate co-parenting. The plan will also deal with child support hereafter discussed. For those cases that are high conflict (repetitious litigation, anger and distrust present, breakdown in communication) a parenting coordinator is to be appointed to assist in attempts at resolution of conflict before resort to court action is made.

2. Child Support

The non-custodial parent (e.g., other joint managing conservator or possessory

conservator), who has less physical possession of the children, is generally required to pay financial child support to the primary custodial parent for the benefit of the children. Although this can take many forms, child support usually consists of periodic (e.g., monthly) payments to the custodial parent.

The legislature by statute has adopted Child Support Guidelines. Basically, the amount of child support under the Guidelines will be based upon percentages (based on the number of children) of the support payor's "net resources" (as defined in the Guidelines). For example, the guidelines require the payor to pay 20% of his "net resources" for one child, 25% for two children, 30% for three children and 35% for four or more children. Most courts generally follow the guidelines in the usual case, absent unusual circumstances.

Also, the Family Code requires that, if the support payor is a salaried employee, the payor' s child support (or a portion thereof) be withheld from his wages by his employer and paid directly to the custodial parent. Although this can be waived, it rarely is.

Child support is usually ordered to be paid through the Attorney General's Office - Child Support Disbursement Unit charged with recording child support payments, which agency then keeps a record of all payments received and forwards the payment to the child support recipient. A major reason this is done is that, if the support obligor fails to pay support as ordered, the agency has attorneys who will usually represent the payee free of charge in a future contempt hearing.

Other "child support" is also required in the form of health insurance for the children, orders requiring the payment of non-covered medical expenses, etc.

Child support is due until the child turns eighteen or, thereafter, until the end of the school year in which the child graduates from high school. IMPORTANT: If a child is mentally or physically impaired to the extent of requiring continuous care, child support may be ordered to be paid indefinitely past the child's 18th birthday. If this is the case with any of your children, be sure to inform your attorney.

3. Tax Considerations

Generally, the custodial parent is entitled to the tax exemption for the child, unless otherwise agreed to by the parties. Also, certain child care deductions are available. Discuss these with your attorney or tax advisor.

F. Other Issues

There are also a number of other issues which may or may not directly relate to the dissolution of your marriage, but which are available to you at the time of your divorce and which, as a general rule, must be raised at the time of divorce, or they will be waived. These issues do not arise in the typical case, but they may be applicable to yours. If so, you should discuss them with your attorney.

1. Causes of Action Against Spouse

Besides the typical causes of action raised in a divorce, one spouse may have a cause of action back against the other spouse for acts or omissions which may directly relate to the dissolution of the marriage. These include, for example, a civil cause of action for assault (e.g., one spouse hits the other), false imprisonment (e.g., one spouse locks the other up in the basement), invasion of privacy (e.g., one spouse installs a telephone tap on the phone of the other spouse), one spouse intentionally defrauds the other out of their separate property, one spouse takes the other's separate property and gives it to

another person, etc. There also may be a cause of action for mental anguish against a spouse. If anything like these examples seems to apply to your case, discuss it with your attorney.

2. Causes of Action Against Third Persons

There are also certain causes of action which one spouse may have against third persons which may be joined with the divorce. These include, for example, a request that a third party transfer back to one spouse property that was wrongfully given to that third person by the other spouse in an attempt to defraud the spouse, a suit against a trustee of a trust being held for the benefit of a spouse, etc. If any of these or similar matters exist in your case, let your attorney know.

NOTE: The action known as "alienation of affection" which allowed a spouse to sue the lover of the other spouse, has been abolished in Texas.

G. Attorney's Fees, Costs and Expenses

Attorney's fees, costs and expenses related to litigation are treated as any other debt or liability of the parties and will be divided by the court in a manner that the court deems "just and right." The court can sometimes order one spouse to pay the other spouse's fees, costs and expenses either in whole, or in part. An order to pay these fees and expenses is within the discretion of the judge. There is no automatic right to the award of these fees and expenses.

CAUTION: One of the reasons a judge might require a spouse to pay the fees of the other is if that spouse has been uncooperative and has not followed the law and the rules with reference to the divorce proceeding.

V. STEPS IN DIVORCE

A. Generally

While these proceedings may be confusing and strange to you, there are six typical phases which the average divorce case may go through:

1st - Initiating the divorce
2nd - Temporary orders
3rd - Discovery of evidence
4th - Settlement negotiations
5th - Trial (if no settlement)
6th - After trial/settlement

Although each divorce case takes on its own unique personality, these basic steps occur in one form or another in most divorce cases.

NOTE: The law prohibits a divorce decree from being entered until at least 60 days have elapsed from the date the divorce petition was filed. This "cooling off" period is, of course, just a minimum period of time. Most cases take much longer to complete.

B. Initiating the Divorce

A divorce is initiated by the filing of a divorce petition by one of the spouses (the "petitioner"), the service of the petition on the other spouse (the "respondent") and the filing of a written response (and usually a counter-petition) by the respondent. The manner in which a divorce is initiated can set the tone for the rest of the divorce case; therefore, how it is initiated must be carefully considered.

1. Emergencies

Sometimes emergencies may exist requiring immediate action. For example, one spouse may be destroying property, running up unusual debts, hiding or threatening to run off with the children, abusing or threatening the other spouse or the children, etc. In these cases, a Temporary Restraining Order (discussed in detail below) can be issued.

2. Petition for Divorce

The first legal step taken by the petitioner's attorney is the drafting of a Petition for Divorce. It sets out the basic information required by the Texas Family Code, states the grounds for and requests a divorce, requests a division of community property and a recognition of the petitioner's separate property, and requests orders concerning the children, etc. These are standard provisions. If an emergency exists, the Petition may contain a request for a Temporary Restraining Order (discussed in detail below), and it may request the court to make temporary orders (discussed below).

A Petition can be amended time and again when necessary, provided it is not later than seven days prior to trial or some other deadline imposed by the court. Often the original Petition is very mild, without containing any inflammatory allegation, like adultery. There are several reasons for this. First, it helps start the process on a less combative basis, which may help to keep the costs of the litigation from escalating. Second, your attorney may not want to reveal all of your legal positions at the beginning, unless to do so might promote settlement or otherwise benefit you.

The Petition will be filed with the court clerk (for which a filing fee is charged), and the clerk will assign your case a cause number. The clerk keeps a file and docket sheet on your case.

3. Service of Petition

The respondent must receive a copy of the Petition. This may be done in one of two ways. The petition may be <u>formerly served</u> on the respondent by a Sheriff, Constable or private process server. Or, the petition may be <u>informally given</u> or mailed to the respondent or his attorney. Formal service is required if a Temporary Restraining Order is requested and it may be preferred in many situations; however, it also can be embarrassing to the respondent to be served at his place of business, and this in turn starts the case off on a bad footing. While informal service may be less antagonistic, it has its drawbacks. A respondent is required to file a formal "response" (discussed below) within a time certain, but only if formally served. Your attorney will discuss these options with you before the filing of the Petition.

4. Response & Counter-Petition

If formally served, the respondent must file a written response to the Petition within a stated time from the date of service, usually 20 days. This response is usually called an "answer" in which the respondent "denies all of the allegations in the original Petition." This is a standard form which serves to prevent the petitioner from taking a default judgment against the respondent. The respondent may file a counter-Petition for divorce against the petitioner. It is usually delivered to the petitioner's attorney, without formal service on the petitioner.

C. <u>Temporary Orders</u>

Between the time of the filing of the petition and the granting of the divorce, the parties usually enter into temporary orders, either by agreement or by court order, to govern the parties, their property, debts and children pending the granting of the final divorce.

1. Temporary Restraining Order (TRO)/ Protective Orders

If emergencies exist requiring immediate action to protect a spouse, a child, or any property, a Temporary Restraining Order (TRO) or a Protective Order can be signed by the judge and served on the respondent along with the Petition. It immediately restrains the respondent from the acts

described in the order. If you are served with a TRO or Protective Order, you should be certain to obey all of its terms. Failure to do so is punishable by contempt of court. The TRO expires 14 days after it is issued; therefore, a hearing on temporary orders must be held within the 14-day period, so that temporary orders of a more indefinite duration can be entered. A Protective Order is granted for 20 days and then a hearing is required to extend it. Discern these options with your attorney.

2. Temporary Orders

A temporary order may be entered by agreement of the parties or by the court after a temporary hearing. If by agreement, the parties save the expense of a pre-trial hearing. A temporary order may be entered whether or not a TRO has been issued. Temporary orders normally stay in effect until the final decree is granted.

The temporary order may provide for an injunction against the parties hiding, wasting or destroying property, prohibiting them from incurring any unusual debts, and contain orders for temporary custody and support of children . The court may also order one spouse to pay temporary alimony to the other spouse. You should be prepared to provide your attorney with details of your monthly living expenses as well as payments on debts. This information is essential for determining amount of temporary support to be paid or received. The temporary order usually requires the parties to produce documents and/or to file a formal inventory (discussed below).

D. Discovery of Evidence

The facts regarding the property, debts, the parties and the children form the foundation of any divorce case. Therefore, information gathering is one of the most important and time consuming aspects of the divorce. You have more knowledge of or access to the necessary information and documents than does your attorney. The more you can gather, the less time must be spent on this aspect of your case by the attorney. The more you are involved in this process, the more you learn about the facts necessary to make appropriate decisions regarding your own case. For all of these reasons, you need to be as personally involved as possible in gathering information.

1. Information Sheets

You will be given detailed information sheets to be completed. While tedious and time-consuming, it is extremely important for you to complete these with as much detail as possible.

2. Gathering Documents

You may be requested to gather and bring to your attorney many different documents, such as real estate deeds, bank statement, insurance policies, etc. If you do not have these in your possession, try to get them from other sources (except your spouse). If you cannot, notify your attorney as soon as possible.

3. Inventory

In most cases, the parties are required to prepare and file an "Inventory and Appraisement" which is a listing of all community and separate real and personal property as well as liabilities of the parties. Your attorney will assist you with the form of the Inventory. You will be asked to state the value of the property and the exact amount of any liability. You are required to sign the Inventory, under oath.

This is a very important part of your case. You must be complete and truthful in your Inventory. If your case is not settled and a trial becomes necessary, the judge uses the information contained in the Inventory to

assist in dividing the property. If you swear to one thing in your Inventory and later, at the trial, attempt to take a different position, your testimony will be suspect.

4. Appraisers

   Often it is necessary to hire appraisers to help establish the value of property, including real estate, retirement benefits, businesses, or other assets. Your attorney will advise you if this is necessary in your case.

5. Formal Discovery

   Under Texas law, parties to any suit, including divorce, are allowed to discover a great deal of information from the other party by means of formal discovery devices. These include Request for Disclosure, oral deposition of a party or witness, interrogatories (written questions which are answered in writing and under oath), requests for production of documents and requests for admissions. One or more of these may be used in your case. Your attorney will advise you with respect to these maters.

   CAUTION: Most forms of formal discovery require strict compliance deadlines, usually 30 days from the day they are served on your attorney. There are harsh sanctions for failure to comply, including payment of fines and/or attorney's fees. Further, failure to supplement your answers 30 days prior to trial may result in undesirable consequences. For example, failure to list a witness in answer to an interrogatory will mean that person is excluded from testifying at the time of trial.

E. Settlement/Mediation

After all discovery is concluded, the parties will enter into settlement negotiations. Rest assured that no settlement offer will be made or accepted by your attorney until you have fully understood and approved the proposal. Usually several offers and counter-offers are made back and forth between the parties before a settlement is hammered out.

Probably over 90% of all cases are settled out of court, although this often happens just prior to trial (e.g., "on the courthouse steps") or, sometimes, in the middle of trial. Although settlements may appear to be possible, your attorney cannot ignore trial preparations if settlement negotiations are not successful and the trial date is approaching.

One reason parties settle is to avoid the expense of trial. Also, neither party nor their attorneys can predict in advance exactly how a particular judge on a particular day is going to rule in any given case.

The key to any settlement is compromise. While no settlement can be forced on you or your spouse, both you and your spouse need to understand that compromise and a reasonable attitude of "give and take" is necessary if there is going to be any reasonable chance of a meaningful settlement. Neither party ever gets all that they want.

IMPORTANT: To effectively negotiate a settlement, you must try to look at these settlement negotiations from your spouse's point of view; a good negotiator always attempts to put himself in the shoes of the opponent and try to determine what issues are most important to the opponent, where the opponent will draw the line on what issues, etc.

As can be expected, attorneys generally advise clients with regard to settlement based on a number of factors, but the major factor is a determination by the attorney of what a court would probably do if the case went to trial. Any settlement offers which are unreasonably out of line with what a court would probably do are rarely accepted except under the most extreme and unusual circumstances.

Settlement may be achieved by way of a process known as mediation. The parties may agree to seek mediation or they may be ordered to mediation by the court. A neutral third party, usually an experienced lawyer or a retired judge, is selected to serve as the mediator. The fees for the mediator are usually shared by the parties. Both spouses and their attorneys appear before the mediator in efforts to settle the case.

The mediator is not an arbitrator. That is, he or she has no power to "force" a settlement or otherwise adjudicate the dispute. He or she does attempt to compromise the legal differences between the parties and encourage a resolution. Usually, a portion of the time spent with the mediator is devoted to the parties "venting" their grievances against the other. Following that phase, the mediator will ask each side to express his or her suggestion for settlement. From there the mediator discusses, in private with each side, possible compromises to the differences. If successful, this process eventually results in a settlement. Most cases are mediated in one day's time. Normally, it does not occur over days or weeks. Statements made in mediation are confidential and are subject to the "settlement rule," discussed below. This allows the parties to freely exchange their views without fear that they will be admissible at the time of trial. Your attorney will advise you as to the suitability of mediation for your particular case.

Finally, there often comes a time when settlement negotiations reach the point of negative return, and the attorneys must finally turn their energies to preparing for trial.

CAUTION: In Texas, a rule referred to as the "settlement rule" generally keeps out of evidence any settlement negotiations going on between attorneys however, this only applies to formal settlement negotiations between or conducted by the attorneys. This rule does not apply to private settlement discussions between the individual spouses; therefore, anything that you say to your spouse can (and most likely will) be admissible into evidence if the case goes to trial. This can be devastating. For example, in one case, a husband told his wife in a phone conversation that he really didn't want the children, that he was only asking for custody of the children in order to try to help him on the property settlement, and that if she would just not ask for so much property and child support, then he would gladly let her have custody of the children. As you can expect, all of this conversation was brought out to the court, and it was quite harmful to husband's case.

F. Trial (If No Settlement)

If settlement negotiations fail, then the case must go to trial. Do not be unduly fearful of trial. Trials in real life are not what they are on TV or in the movies. Rarely is there anybody present in the entire courtroom except the two parties and their attorneys and staff, the judge, a clerk and the court reporter. The atmosphere is usually very formal and subdued. No one gets up in a witness's face and mercilessly grills the witness on cross-examination until they break down. No judge would allow such conduct in real life. Your attorney and the staff will prepare you extensively for any and all roles you will have at trial.

Sometimes only the parties testify, while in other trials a large number of expert and fact witnesses will be called to testify. The vast majority of divorce cases are tried before the judge, not a jury. For one reason, jury trials are much more expensive and time-consuming than trial to the court. In some cases, however, jury trials are appropriate. Your attorney will discuss these two options with you.

At the conclusion of trial, the judge will enter his rulings and orders, usually right there in the courtroom or, sometimes, days later by way of a letter to the attorneys.

G. After Settlement/Trial

After a settlement has been reached or the trial court has entered its orders, there is still a great deal of work to be completed.

1. Post-Trial Motions

   If the case has been tried, very often one or both parties may file various post-trial motions with the court, asking the court to reconsider its rulings, etc. There are certain deadlines for the filing of these motions (e.g., 30 days after the divorce decree is signed). You and your attorney can decide whether or not you need to file any post-trial motions, but you cannot control what your spouse and his/her attorney does. In any event, these post-trial matters can sometimes be quite time-consuming.

2. Drafting Documents

   Whether your case is settled or tried, there is a great deal of work to be done with respect to drafting of the divorce decree and other documents. Any agreed or litigated judgment for divorce is only as good as it is enforceable, and its enforceability depends in large part on how carefully it is drafted. Many lawyers have done well for their clients at trial or in settlement, only to end up losing much of what they had gained because of the attorney "outdrafting" them with respect to the decree and/or agreement (lawyers sometimes refer to this as getting "pencil whipped"). Therefore a great deal of time and care must go into the tedious drafting of your unique decree and the documents related to your divorce.

   Rest assured that you will approve in advance any and all documents before they are finalized and signed by the parties and the court.

   a. Divorce Decree (Agreement Incident to Divorce)

      If your divorce case is settled, it may result in two documents - a lengthy Agreement Incident to Divorce, which is signed by the parties (this is a contract between the parties), and a short Agreed Final Decree of Divorce, which incorporates and approves the parties' agreement and is signed by the judge (this is a judgment by the court). Of, your settled divorce may result in only one document entitled an Agreed Decree of Divorce, which is signed by the parties and the judge and serves, simultaneously, as both a contract between the parties and a judgment of the court. The consensual decree is enforceable not only as a private contract between the parties, but also as a decree which is enforceable as any other judgment entered by a court.

      If your divorce is litigated, then only one judgment - a Final Decree of Divorce - will be signed by the judge. It is enforceable as any other civil judgment, but it is not enforceable as a contract between the parties.

   b. Other Documents

      Besides the decree and the agreement discussed above, many other documents often need to be drafted to implement the terms of the divorce decree or agreement, such as real estate attorneys, etc. Again, your attorney and you will fully review these documents before they are signed.

3. Appeal

   Either party can appeal the ruling of a court following a litigated divorce. Although appeals are extremely difficult to win and can be very costly, they are available. Your

attorney will discuss the option of an appeal with you should the need arise.

VI. THINGS TO AVOID

There are a number of very important things for you to carefully avoid throughout your entire divorce case. Despite what your spouse may do, it is important that you keep a "white hat" on throughout these proceedings. Violating any of the following rules can be very detrimental to your case. Although most of these rules have been discussed above, they bear repeating.

A. Don't Disclose Confidential Information to Others

Remember, the attorney-client privilege only exists between you and your attorney and his immediate, in-house staff. Therefore, in order to keep this type of confidential information privileged from disclosure, do not discuss this with or give it to anybody, including your spouse and including any professional hired to assist you in this case.

B. Don't Hide/Destroy Property or Documents

Whether or not any temporary orders have been entered, never destroy, waste, hide, alter, collateralize or otherwise do anything to affect the title or the value of any property, or destroy or alter any documents. Be sure to consult with your attorney regarding any question that you have with respect to dealing with present property and existing documents.

C. Don't Incur Unusual Debts/Liabilities

Whether or not temporary orders have been entered, never incur unusual debts or liabilities (e.g., charge an unusually high amount of clothes, an expensive vacation, etc.). This will generally be considered against you by the judge and, more often than not, the judge will first make an overall "just and right" division of the property and debts and then, thereafter, order that you be solely responsible for any such unusual liabilities.

D. Don't Discuss the Settlement with Spouse

As discussed, the rule precluding evidence at trial of settlement negotiations between attorneys does not apply to settlement negotiations between spouses. Therefore, do not discuss settlement with your spouse unless authorized in advance by your attorney.

E. Beware of Telephone Tape Recordings

It is not unusual for one spouse to tape record the telephone conversations he has with the other spouse. These recordings are admissible into evidence and have been the downfall of many irrational spouses. Any time you speak to your spouse on the phone, you should presume that it is being taped.

F. Don't Belittle Your Spouse To Other People, Especially The Children

Judges and juries do not take kindly to one spouse belittling the other spouse to third persons, and especially the children. Everyone realizes that there are certain people with whom you will confide about your divorce and that some criticism of your spouse is natural; however, try as hard as you can to keep this to a minimum, for these people may have to testify under oath as to all of the negative remarks or hot-headed threats you may have made against your spouse in a moment of anger. It is not uncommon to take the deposition of the best friend of one of the spouses, who will admit that the spouse has stated that "I'm going to take that so-and-so to the cleaners, and I don't care what it costs, even if I have to lie to the court to do it." These remarks will have extremely undesirable consequences.

Above all else, never criticize your spouse in front of or to the children. It cannot be overemphasized how detrimental this will be to your case. It has literally cost many a parent

custody of the children. Judges and juries are extremely critical of this behavior. Most mental health professionals will tell you that the children get their own self-esteem from both parents; therefore, when one parent tells the child that the other parent is "no good," this can leave long-lasting scars on the child's self-image. Also, child psychologists warn that eventually this criticism of the other parent will backfire on the criticizing parent; the child, as he grows older, starts to know the other parent in a different and better light and feels that his earlier alienation from that parent was unjustified and caused by the other parent; they eventually resent the criticizing parent. In any event, you are strongly advised against making any criticism of the other parent or taking any action which could remotely tend to alienate the affections of the children for the other parent.

G. Don't Start A Business, Or Contract For Or Purchase Property

Even if you are separated and the divorce petition has been filed, you are still legally married, and any property purchased, even if it is on the day before the divorce, will be considered community property. If that property is not divided at the time of the divorce, then it will be considered undivided community property to which both parties have an interest. Even years after the divorce, the court can require you to partition that property or order it sold, so that your spouse can own a share of the property. The same rule applies to the establishment of a business. Before you purchase any property or enter into any contracts during the pendency of your divorce, consult your attorney.

VII. COMMON QUESTIONS

The following are questions frequently asked by persons at the beginning of divorce litigation. The answers provided are general. You should ask your attorney to discuss the specifics of your case.

WHEN CAN I BEGIN TO DATE?

Not until the divorce is final. Adultery is a ground for the granting of a divorce based upon fault. Your legal status as a married person does not change until a divorce is granted. Although some judges are lenient regarding dating while a divorce is pending, you should be cautious about taking this risk. The fact that your spouse may be dating should not be an excuse or justification for your conduct. You need to wear the "white hat." If you do decide to date, you should know that it may impact adversely on a child custody dispute. In no event should you introduce the children to your dates. No community funds should be spent for the entertainment of third parties.

HOW DO I GET A "LEGAL SEPARATION?"

There is no such thing as a "legal separation" under Texas law. Even though temporary orders may be entered by the court, they are not to be construed as a legal separation.

CAN I OPEN MY SPOUSE'S MAIL?

NO. If you receive any mail addressed solely to your spouse, it should be forwarded to him or to her by you or through your attorney.

SHOULD I CLOSE BANK ACCOUNTS AND/OR CREDIT ACCOUNTS?

If you have been served with a Temporary Restraining Order, you will be prohibited from closing accounts. If you have not, you are free to close the accounts. You should consider the possible consequences. Closing an account without notice to your spouse may cause unnecessary embarrassment. It may also increase hostility and mistrust.

If your spouse is likely to spend or hide money in an account or run up large balances on a

credit card, it may be a wise decision. If you close bank accounts, you should not spend the funds. The best plan is to deposit all the funds from the closed account into a new account, solely in your name, so that you can fully account for the transaction later.

Because of all of the above, it has become an unfortunate but often-stated saying among divorce attorneys that, if the court enters an order which is not satisfactory to either party, it is probably a fair decision.

Also, because of the above, it is very difficult for any attorney to predict with any degree of certainty exactly what a judge will do in a particular case. All attorneys have won some that they thought they should lose and have lost some that they thought they should have won, and while attorneys can generally give a broad ballpark idea of what a judge will probably do (if everything falls into place), there is no way for any lawyer to guarantee what a judge is going to do on a given case. This is one of the reasons so many cases settle.

Finally, it is very difficult for any party to come out of a divorce feeling as if he is the "winner," no matter what the result is. Sometimes this is because of false expectations, and often it is because there is simply no way for either party to be a "winner" or "loser" in the overall scheme of things.