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DIVORCE/DISSOLUTION INFORMATION PACKET
FOR MARRIAGES WITHOUT CHILDREN

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Thank you for consulting with us concerning your domestic relations/divorce matter. It is our sincere desire to competently and fully represent you in this matter. Divorce is a difficult, emotional, and, at times, confusing legal process to go through, and it is our purpose in this communication to provide you with helpful information as you consider the initial steps in the process.

First, please remember that communication and information are essential to our adequately representing you in this matter. All matters discussed with us are confidential, and it is important that you be open and honest in providing information. Importantly, do not be hesitant to ask questions regarding your rights in property of the marriage, spousal support (formerly alimony), allocation of parental rights and responsibilities and other issues involving your children, and any other matter you feel is important. We want to have as complete a picture of your particular situation as we can have. In that regard, please assist us by filling out the divorce questionnaire provided.

If you and/or your spouse are considering ending your marriage, you should first consider whether divorce or dissolution (or simply waiting) is the appropriate avenue for you. Dissolution is Ohio's form of no-fault divorce. Essential to a dissolution, however, is that you and your spouse agree on all issues of property division and spousal support if appropriate, and, if there are children, all issues relating to your children: allocation of parental rights and responsibilities (formerly custody and visitation), tax exemptions, medical expenses, etc.

If you cannot arrive at a comprehensive agreement to end your marriage, then divorce may be the only option available. Divorce is, simply put, a lawsuit to resolve your marriage. You would sue or defend against suit brought by your spouse. Divorce may be necessary if you cannot agree to all of the issues set forth above for a dissolution. Obviously, it is less emotional, time-consuming, and expensive if you and your spouse can work out a comprehensive agreement and enter into a dissolution. However, if you are adamant in wanting to end your marriage, divorce may be necessary. Also, you should keep in mind that if, after filing (or responding to a divorce filing with an answer), you are able to come to an agreement with your spouse (through the attorneys or directly with your spouse after consulting with us), the divorce can still be resolved by agreement and concluded in a written Separation Agreement and a Divorce Decree.

If an agreement cannot be achieved on one or more of the important issues, including the termination of the marriage itself, then a contested divorce may result. In that event, either a judge or magistrate would hear testimony and receive evidence on whatever contested issues remain in a divorce and make a decision resolving the issue. Contested divorces may take anywhere from ninety days to a year to complete. A lot depends on the condition of the court's docket. A contested divorce is one which cannot be settled by agreement of the parties as to division of property, allocation of parental rights and responsibilities, support, etc. In the event that a divorce is contested, a full hearing is held in front of a

judge or magistrate setting out all of the problems and presenting evidence regarding property, allocation of parental rights and responsibilities, etc. The decision is then handed down by a judge or magistrate which may or may not be something that you would have been satisfied with in an agreed divorce. By necessity, contested divorces are more expensive than uncontested divorces as far as attorneys' fees are concerned because they take more time and effort.

In giving you some guidance as to how certain issues might ultimately be resolved by the court if an agreement cannot be reached, there are guidelines set forth by Ohio law to govern the court's decision on each of the important issues in a divorce. However, each case is different, with its own facts, circumstances, length of marriage, etc., so we prefer to discuss individual issues with you personally after reviewing the facts in your case. In that regard, it is important that you try not to compare the results of your case on a particular issue with those of a fellow worker, friend, or a case you "heard" about. No two cases are alike, and usually how one issue is decided within a given divorce may have some impact on the outcome of another issue.

There are no guarantees in a divorce case. In other words, there is no way that when commencing a divorce a lawyer can guarantee a particular result regarding division of property or any other matter. We will attempt to give our best legal judgment based on our knowledge of the law, the local rules of court, our experience with the court in other cases, and the facts in your case. It is not wise to insist on a particular position until we can thoroughly review the case and have the opportunity to make a well-reasoned decision. Likewise, circumstances change throughout a divorce proceeding, and flexibility in your thinking is helpful.

As stated, we prefer to discuss particular issues in a divorce on an individual basis; however, general guidelines may be helpful to you.

PROPERTY DIVISION

The law provides that the court look at various factors when dividing the assets and liabilities of the parties. The law further provides that an equal division is the starting point and then can go either way, depending on the circumstances, such as the length of marriage, children, relative earning abilities, health of the parties, retirement benefits, age of the parties, what property was brought to the marriage, and a number of other factors.

You should keep in mind that resolution of property division issues is not influenced by "marital fault." Whether or not spousal support (alimony) is appropriate is part of the overall property division issue governed by similar factors. Absent some extraordinary circumstances, spousal support is normally reserved for longer-term marriages or

“rehabilitative” spousal support where one of the spouses has no income and the other has substantial income. The issue of spousal support (alimony) is one we will have to discuss based on the particular circumstances of your case.

Recent case law and new legislation have clarified issues that may impact on your case. Such issues as what is “marital” property (subject to division) and what is separate property (generally not subject to division) are now addressed specifically in the law. We will want to identify non-marital property, such as property either of you had prior to the marriage, inheritances, gifts to one of you exclusively, or assets which, although not “premarital,” can be “traced” to a premarital source. We will discuss the impact of these new laws on your case as we identify the issues in your particular case.

TIME PARAMETERS

A dissolution will be heard and final approximately thirty-five to forty-five days after the petition is filed. There is by law a thirty-day waiting period, and either party may withdraw from the agreement/dissolution up to and including the final hearing.

A divorce may take from six weeks to a year depending upon the issues involved, the complexity of the case, and the court’s docket.

SEPARATION AGREEMENT

In either a divorce or dissolution, if an agreement is reached, the same will be reduced to a written agreement. In discussing property, never assume anything. If you reach a property settlement with your spouse, make certain that everything which interests you is included in writing in that settlement. In other words, make sure that all of the property, whether it be real estate, cash, stocks, bonds, insurance policies, furniture, cars, boats, motors, etc., is listed. Also, be certain that all debts are included and that there is a specification as to who will be required to pay each of the debts. If these items are not included in detail in the Separation Agreement, it may not be possible to add to them after the divorce is final.

A Separation Agreement is an instrument which sets in detail all property rights, responsibilities for paying of bills, questions of custody, visitation, child support, spousal support, and any other matters pertinent to the divorce. This instrument or contract is prepared as the result of an agreement between you and your spouse with the assistance of the respective attorneys and perhaps the judge during a pretrial conference. It is, therefore, very important that you make certain you understand all of the terms of the Separation Agreement and that you are totally satisfied with it as it is written. Do not sign it until you are sure that you are satisfied and that everything is included in it.

The question of payment of bills sometimes arises after a divorce, and although a Separation Agreement or a Decree of Divorce may require the husband or wife to pay outstanding marital debts, he or she may not do so. **In the event that spouse does not pay the outstanding marital debts and the wife or husband is also obligated on these debts to the creditors, the creditors very well may come after the wife or vice versa. Simply because the Divorce Decree and Separation Agreement require the husband or wife to pay the bills does not protect the other party from the creditors and from collection of the debts in the event they do not pay. The only recourse for the wife or husband is to take their spouse back to court and attempt to have the court order them to pay the debts or face punishment for contempt of court.**

PARTICULAR ISSUES

There may be issues in your case that are unique and require particular language in a Separation Agreement to protect your rights. No two cases are alike, and each has to be judged on its facts and circumstances and not that of a friend, neighbor, co-worker, or person you heard about. Your lawyer can best advise you of the expected results in your case and not some third party. Likewise, it is not wise to compare your case to someone else's, as usually you are comparing apples to oranges.

There are some issues you should consider and discuss, such as:

- A. **COBRA Medical Coverage:** This means you or your spouse may be entitled to continue (for up to three years) in a group medical insurance plan if after divorce medical insurance is not provided to that spouse through his or her employment.
- B. **Life Insurance:** Whether a divorced spouse or minor children can continue to be a beneficiary on existing or separately purchased life insurance policies. Normally this would be considered to secure child support or spousal support (alimony).
- C. **College Expenses for Children:** Although not enforceable unless specifically agreed to by the obligated spouse, this is something to discuss.
- D. **Spousal Support (Previously Alimony):** This is still determined on a case-by-case basis depending on such factors as the income of each party, length of marriage, living standards, ages of each party, education, children, etc. If spousal support is an issue, we will discuss it fully.

There can be a myriad of other particular issues we will need to discuss.

PENDING ORDERS

Certain issues are subject to temporary orders of the court which last only while the divorce is pending and only until the case is resolved by a final decree or the case is dismissed.

While a divorce is pending, the parties may occupy the same residence or may not, and the choice is left entirely up to them with some exceptions which will be discussed. In the event that the parties occupy the same residence, an order will be placed on the record ordering the husband to provide an adequate support for the parties, taking into consideration the earnings of the wife if she is employed. In other words, the court will order the parties to maintain close to their same financial situation that they had maintained prior to the filing of the complaint for divorce. However, at the final hearing, the court prefers the parties not be occupying the same residence. There are exceptions to that rule we can discuss.

If the parties are living separate and apart, it may become necessary to work out questions regarding use of property, visitation, and payment of support, etc. These matters can be heard in front of a magistrate on a temporary basis. The magistrate then will issue a temporary order that he or she feels is fair under the circumstances. However, most problems regarding the situation should be worked out, if at all possible, with your spouse rather than taking him or her to court because you may or may not be satisfied with the result and because your attorney's fees may be increased, depending on the amount of time required to go to court on pretrial motions.

While the divorce is pending, there is normally issued a restraining order, restraining each party from disposing of marital assets and from harming, molesting, bothering, or annoying each other. The court will enforce the restraining orders through pretrial contempt of court proceedings in the event that they are violated. The police will not enforce restraining orders, although they may quiet a disturbance. They have no power to enforce a restraining order as such and will refer you back to your attorney. If there is physical violence, however, you should consider filing a "domestic violence" charge in the Butler County Domestic Relations Court. The court can issue and the police will enforce orders in such a case. A domestic violence case is separate from the divorce case and can have serious consequences we should discuss. A violent spouse can be evicted "ex parte" (without being present to object at a hearing) if the court is convinced by the complaining spouse that violence or threat of violence actually occurred. We can further discuss this situation if appropriate to your case.

In addition, while the divorce is pending, if the parties are living separate and apart, it will be necessary for a temporary order concerning allocation of parental rights and responsibilities (custody) to be placed on the record. This temporary order may or may not become a final order. Temporary custody is normally given to the party who has the

children at the time of the filing of the complaint for divorce assuming the child/children have been living with that party for at least five (5) days. (In other words, you cannot simply “snatch” the children and then file a divorce and obtain temporary “custody.” However, this is subject to change, depending on the circumstances, the living situation of each party, and what is in the best interest of the children, either before the divorce is final, at the time of the divorce, or after the divorce is final if the circumstances substantially change.

If it is your desire to obtain residential parent status (custody) of your children, you are well advised to make certain that you do nothing to affect the physical, mental, or moral well-being of your children during the pendency of the divorce. This means that you will pay careful attention to your living situation, the people with whom you associate, the requirements and, most importantly, the needs of your children. The court will consider all of these circumstances and more in determining who should obtain residential parent status.

Temporary support is set understanding court rules according to the support guidelines the court has enacted. We can discuss the calculations with you and give you the approximate figures.

TAX CONSEQUENCES

There are many “tax issues” which can arise in divorce cases. Tax exemptions for minor children, income tax liability for past years (and audits on past returns), tax basis in property received by one spouse as a property settlement, deductibility of spousal support (alimony), whether to file a joint tax return for a present or past year, capital gain consequences from the sale of the marital residence, or other taxable sales, are the most common examples of tax issues involved in divorce cases. We should examine each potential issue and discuss the consequences on your particular case. Please consider those issues or others you may be aware of and discuss them with me.

ATTORNEY FEES

You will be asked to sign a fee agreement before we can commence our representation. That agreement indicates the non-refundable retainer which must be paid prior to the time we can file pleadings on your behalf. Court costs/filing fees must also be paid by you before we can commence our representation. The retainer pays for a certain number of hours of time to be spent. The retainer may or may not be sufficient to cover the entire fees in your case.

It is important that you understand that our fee is based on time spent on the case. We will keep track of our time involved in the case and send you periodic billings. In essence, time is money. We want to fully represent you and answer any questions you may have, but you should keep in mind that any time spent on the case, including phone calls, will be billed at the hourly rate as indicated on the fee agreement. Likewise, any consultations, phone calls, or time spent on other post-decree (issues arising after the divorce is final) matters will be billed as well. The size of the fee in the case, therefore, depends on the length of the case and the hours spent. We do not want any misunderstandings or confusion about our fees, and it is important that you recognize that divorce can be an expensive matter. You should also be aware of the fact that, even if you do not go through with the divorce/dissolution to a final decree, you will still be billed for the time spent.

Please remember that such things as phone calls, letters, hearings, and office consultations are matters that take an attorney's time and will be billed accordingly.

All attorney fees will be due on or before the final hearing.

POST-DECREE

After your divorce or dissolution has been completed and a decree/final order filed, many times "post-decree" problems arise. In other words, one party or the other fails to abide by the order. Primarily this occurs in the areas involving allocation of parental rights and responsibilities (previously child custody, support, and visitation). Occasionally one party fails to or refuses to follow the court's order regarding some property issue or perhaps a spousal support issue. The court retains jurisdiction to enforce its order/decree. If this occurs in your case, you may want to or have to take the matter back to court for enforcement of the issue.

It is important you realize that the fact that a spouse does not comply with the order is not the fault or responsibility of the lawyer. If a divorced spouse refuses to comply with the court's order, you may have to take that spouse back to court. If necessary to do so, additional attorney fees and court costs will be incurred, again billed based upon the time spent (including phone calls after the decree concerning enforcement issues). This is not spelled out to discourage you from enforcing the decree but to make it clear that post-decree enforcement of the court's order will require additional attorney fees and costs.

PHONE CALLS

We know there are numerous issues/problems which develop in the course of a divorce/dissolution/post-decree litigation. Many times phone calls may help resolve that

issue. However, keep in mind not all issues are appropriate to spend your money and the lawyer's time discussing. Keep your calls for important legal issues requiring the lawyer's time. If you call and the lawyer is not available, please ask to talk to his secretary and leave as complete a message as possible. I bring this up so that you are aware phone calls are added to the billing and, therefore, should be reserved for important legal issues.

REVIEW

We have attempted to answer the questions most commonly asked and occurring during a divorce proceeding. It is impossible to cover everything which will occur during a particular case. Your attorney is on your side and there to assist you. Do not hide anything from him, and confide in him as to your problems and your questions. He can only help you if he has a complete awareness of your situation.

One last piece of information – simply because you have filed a complaint for divorce or dissolution petition and have proceeded partially does not mean that you are required to complete that divorce. You may call it off at any time if you and your spouse have decided to attempt to reconcile. You owe no obligation to the court or any other party to complete a divorce once is filed unless you truly want it. In the event that you decide to call off the divorce, you will be billed for the time and labor expended on your behalf up to your decision to terminate the divorce proceedings.

NOTICE OF YOUR RIGHTS IN A DIVORCE CASE

As I will discuss with you in person, and as in any type of legal matter I handle for clients, a divorce case is **your** case. It is not the attorney's case, although obviously I take great pride in working extremely hard on your case and becoming knowledgeable about all of the necessary issues. However, you should always remember that this is your case and I need your active participation, input, and information to obtain the best possible result for you.

The court may have several different types of hearings, and it is important for you to understand that you have the right to be at all of those hearings and, in fact, the Court requires your presence at some of the hearings. In this manner, it is my belief that you can remain well informed on the progress of your case and on decisions made which will affect you in the future. The court may have scheduling conferences, pretrials, and various motion hearings prior to the actual final hearing, and you certainly are entitled to be present and in the courtroom and listen to those proceedings. There are hearings, such as a scheduling conference, where the court meets with the attorneys and parties to determine what issues are litigated, and to set time parameters and hearings to litigate the contested issues. That is a hearing that you certainly are entitled to be present at; however, if we

have discussed the matter thoroughly before that hearing and you do not want to miss work or have the inconvenience of a hearing, it is not mandatory you be at that hearing. We would need to discuss that matter ahead of time.

Frankly, it is my suggestion that since this is your case and you live with the results we obtain, I suggest you be at all court hearings and participate in all court hearings. In that manner your evaluation of the case can remain informed and realistic. We will discuss these matters further when we actually meet in person throughout the course of the case. If you have any questions about your rights to be present at various hearings, please feel free to ask me, but the court does have a rule that the parties are entitled to, and have every right to, be present at all hearings.

Obviously this is a lot of material to digest in a short time. We will be happy to answer all of your questions as they arise. Thank you.

Sincerely,

GARRETSON & HOLCOMB, L.L.C.