THE HOW TO FILE DIVORCE MANUAL

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DISCLAIMER: *THIS MANUAL IS A SOURCE BOOK CONTAINING GENERAL INFORMATION ONLY. IT IS IMPOSSIBLE FOR ANY ATTORNEY TO GIVE YOU SPECIFIC OR PERSONALIZED LEGAL ADVICE THROUGH A MANUAL: EVERY PERSON'S LEGAL SITUATION IS DIFFERENT. THIS MANUAL IS INTENDED ONLY TO GIVE YOU BASIC INFORMATION ON THE MOST COMMON PROBLEMS THAT ARISE BEFORE, DURING, OR AFTER A DIVORCE; WAYS TO PREVENT THESE PROBLEMS; AND METHODS YOU CAN USE TO PROTECT YOUR INTERESTS.*
IF YOU HAVE QUESTIONS ABOUT AN ACTUAL OR TENTATIVE DIVORCE, PLEASE CONTACT US. SPECIFIC QUESTIONS ABOUT YOUR CASE SHOULD ALWAYS BE DIRECTED TO A QUALIFIED ATTORNEY. AS WITH MOST OTHER LEGAL CASES, IF YOU PROCEED WITHOUT A LAWYER ("PRO-SE"), YOU ASSUME ANY LIABILITY FOR PROBLEMS THAT OCCUR.

THIS MANUAL IS WRITTEN SPECIFICALLY FOR THE STATE OF KENTUCKY; HOWEVER, MOST OTHER STATES HAVE SIMILAR RULES. YOU SHOULD ALWAYS SEEK SPECIFIC ADVICE IF YOU LIVE IN ANOTHER STATE. SOME STATES, SUCH AS CALIFORNIA AND LOUISIANA, HAVE VERY DIFFERENT LAWS IN CERTAIN AREAS, SUCH AS DIVISION OF PROPERTY.

Contents

Forward

This book is divided into three major sections. The first section is a step-by-step guide on the documents involved in filing a divorce. The second section discusses the divorce process and the steps in a contested case. In the third section we discuss tactics and specific issues such as child custody, child support, visitation with children, alimony, property separation, collections, the adoption process, paternity proceedings and termination.

If I were to file a divorce in any county outside Louisville, I would tend to use the same or similar forms that I use in Jefferson County. Every county may have local rules which may require an additional form. Every county may also have local rules that may require special procedures. In every county the Family Court local rules are available at the clerk's office, and in Louisville and Lexington Kentucky, I believe that these rules are online.

Just filing forms will not get a divorce finished unless you know how. Just like buying a car won't get you to Chicago, just buying a set of forms wont smoothly get the divorce done unless you know when, where, how and why the forms are filed. Even if you use an attorney, an educated and prepared client will always do better than one that simply hopes things will magically turn out okay. Even if you are prepared, a client always lacks the experience, training and knowledge that an attorney has. Often, tactics and strategy will determine how a case will turn out. This manual takes you form-by-form and step-by-step through the pleadings and the process. It may be possible to process an uncontested divorce on your own with this knowledge. However, the time and trouble involved may make it not worth it. Never attempt to be your own attorney if the matter is contested (i.e. you are arguing with your spouse over something, even if its whether he or she will pay child support on behalf of the children), your spouse is using their own attorney, or the case has difficult issues. However, if you can work together and agree completely on **informed**, **reasonable** and **fair** terms you should be able to end the marriage and complete a divorce easily.

The Divorce process

Preparing any petition for divorce will require financial records. One of the first things that you as a party in a divorce case need to do is to insure that you have a complete copy of the financial records. If the case involves children, the medical, school and birth records of the child will become just as important as the parents' tax records and pay stubs. In preparation for the divorce, you should expect that the most important documents and photos may disappear or be destroyed so you must take steps to safeguard documents you will need or want later. Most of the documents you will need will be required in the mandatory case disclosure. Please download that form from our website and gather those documents as soon as you realize that you are filing.

A divorce will also be a financially difficult event. Two people cannot live cheaper separately in different homes. It simply doubles the cost of housing, utilities etc. Now, add to that the cost of attorneys and child care, and it gets worse quickly. So prior to the filing of the divorce, you must plan. You may have to plan weeks, months or years in advance of giving your spouse notice that you want a divorce. You may have to go back to school so that you can be self-supporting and independent of your ex-spouse.

If your spouse will not sign and agree to a marriage settlement agreement, you may need to file a "contested" divorce. You may need to file for a default judgment if they do not file an answer. Or, you may have to request a warning order attorney if you cannot find them.

The Preliminary Paperwork

When you file the divorce, most counties in Kentucky require certain local forms. The general set of documents for a divorce is generic for any county. However, every county can adopt their own set of rules that may require a local form. Again, you will also need several financial records if your county requires you to fill out the mandatory case disclosure.

In every divorce case filed in Jefferson County, you must include forms that are only available from the county clerk's office. These forms include the VS 300 (a little form that is sent by the clerk to Frankfort), the case data sheet, and the mandatory case disclosure (the document that requires your financial information). Most of the other counties require these same 3 forms. But some may require additional forms. We will use the forms required for Jefferson County as our example.

The VS 300

The VS 300 must be signed in black ink and people commonly miss the signature line, which is turned sideways on the form. (You won't even notice the signature line until you turn the form sideways) The VS 300 merely records statistical information such as the race, birthplace and occupation of the parties and the place of the marriage. This form must be obtained from your court clerk. It is not available anywhere else. It is prepared by typing it on a typewriter.

The Mandatory Case Disclosure

The Mandatory Case disclosure is a rather lengthy document which is about 30 pages long. If you file bankruptcy later, the bankruptcy court may want a copy of this financial disclosure. Also, if you file bankruptcy, a copy of your bankruptcy may be needed by your divorce attorney. The mandatory case disclosure will require copies of your tax returns and pay stubs, and will need to be notarized. This document is useful to the judge in determining a division of marital assets (property). Marital property is that property that was acquired during the marriage. Non-marital property is the property that you owned prior to the marriage or that was willed or given to you by family during the marriage. Non-marital property is not a "fruit of the marriage" or derived from the partnership of the marriage and it is not subject to division. If a house was bought before the marriage but you lived in it during the marriage and paid marital funds (money from both the husband and the wife) as payments on the house or for upkeep of the house, then a portion of the equity in the house is considered marital property.
Notice that property is not divided equally it is instead divided equitably which is often equally, but not always equally. You may download a mandatory case disclosure from our website.

The Case Data Sheet

The case data sheet is required to be processed when children were born or adopted in the marriage. It is a simple form that you can get from the clerk similar to the VS 300, or you can get it online from www.kycourts.gov.

FIT Families in Transition

The Families in Transition Class is a class that parents and children in Jefferson County and some surrounding counties must attend. It is not a form. You will be court ordered to attend this counseling. You cannot attend the same class as your spouse. Children between the ages of 5 and 18 years of age must attend also. If you or the children are in another state you can be excused. Otherwise, this is a mandatory class and the judge can hold you in contempt dismiss your case and/or not grant you a divorce for failing to attend this class.

The Petition

Every Adoption, Divorce, or Annulment starts with a petition. The person filing the petition is the Petitioner not a Plaintiff. The person served with the petition is not the Defendant but instead is the Respondent.

Although all of the documents for an uncontested divorce may be filled all at one time, the petition is always filed initially along with some minor accompanying documents. The Petition notifies the Court, and your spouse, that you want to end the marriage. It also lists any items you are asking for, such as child custody, child visitation, child support, spousal support, property, and attorney fees. Normally, the petition should include the maximum you can possibly request; however, parties may make a marital settlement agreement for much less than what is demanded in the Petition.

In Kentucky, at least one of the parties must reside within the state for 180 days before they can file the Petition. If the parties have children, they must wait at least 60 days after filing the petitioner, and after the defendant spouse has been properly served, to have a final hearing. After 60 days a party will be allowed to submit testimony and proof to finalize the divorce. This "cooling off" (waiting) period is required for all families that have children. If no children exist, the divorce should be granted as soon as the judge has the documents and is notified that it is ready to sign.

The Petition must be properly served on your spouse. This means he or she must sign for the Petition by certified mail, be served by a Sheriff or must file an entry of appearance.

If the petitioner (the person filing for divorce) is seeking child support, custody, alimony, or property, the case must be filed in a Court that has jurisdiction over the person or the item. Jurisdiction over property is called "jurisdiction in rem." Jurisdiction over persons is called "jurisdiction in personam." The Court has no jurisdiction or power to decide certain rights until a motion or complaint is filed in the state or county that has jurisdiction over that person or thing. To grant a divorce one person (party) needs to live in that state for at least the prior 6 months. To grant custody, the children must reside in that state for the prior 6 months or the children must be abandoned. To grant child support, the motion or petition must be filed in the state and normally the county the person lives in.

If the children have not lived within the state for the prior 6 months, Kentucky does not have the right to grant custody in the case until that time has passed and the prior state instead has "jurisdiction." In the case of an emergency, Kentucky may have the jurisdiction or power to control custody of the children.

However, Kentucky normally totally lacks the "jurisdiction" or power to determine child support and/or custody unless the parent resides in the state or agrees to jurisdiction. If a spouse responds with anything more than a limited answer, then the spouse will have agreed to jurisdiction.

The petition must state:

1. That the marriage is irretrievably broken
2. Age, occupation, residence of each party, and the length of residence in Kentucky. (6 months in Kentucky is required for at least one of the parties).
3. Date and place of the marriage
4. Date of separation
5. Names, ages, and addresses of any children born, or adopted, and the places they have lived at for the past 5 years along with details of any prior litigation
6. Whether the wife is pregnant. If she is pregnant, no divorce may be granted until after birth, even if the child isn't a product of the marriage. (There will need to be a paternity test if the paternity of the child is in question).
7. Any arrangement as to the custody, visitation and support of any children or maintenance (alimony) sought
8. The relief that is sought (Divorce and dissolution of the parties etc)
9. The petition must be filed where one of the parties resides.
10. If the wife wants her name restored, it should be in the petition or the answer, and the findings of fact and decree of dissolution.

If a person is not competent, you may still divorce them, but the testimony of two or more psychologists is normally required, and a guardian will be appointed. At one time, it was required that the mentally disabled person was also required to be committed for 5 years. Persons committed to prison also have special procedures for service of process that is required for granting the divorce.

Service of process is always by sheriff, certified mail or the respondent may file an entry of appearance agreeing to jurisdiction. Service of process for the petition is normally, and almost always, through the county clerk's office.

Answers

An answer is normally only filed when the divorce is contested. A spouse may file an answer after he or she is served with the petition. The spouse may ask for property to be granted to them, child custody, and support. If a response is filed, the matter is contested, unless the answer agrees with the terms in the Petition. If no answer is filed, a default judgment may be granted as soon as a motion requesting a default is filed. Such motions require a special affidavit. If the Spouse cannot be served, then the Petitioner may still close the case and get a default judgment by asking for a warning order attorney, and then asking for a default.

Temporary Orders

A temporary restraining order may be requested by motions to prevent the destruction of property, or to custody, support or visitation. Any motion must give notice to the other side and motions are normally heard on Mondays in Jefferson County, Kentucky Divorce Courts on motion hours. In order to give the other side adequate notice, at least 3 business days is normally required. For a motion to be heard in Louisville on Monday, it must normally be filed no later than the prior Thursday at noon. Even then notice is normally faxed to an attorney. In order to give adequate notice and an opportunity to be heard if the notice is mailed it should be mailed no later than Wednesday if the motion is to be heard on Mondays.

Since child support cannot start until it is ordered, a motion should be filed or an agreed order entered into at the earliest possible moment. Many of the non-payment cases of child support are caused by persons forgetting to file motions for support until after a spouse has left for Australia. Temporary alimony is known as maintenance pendante lite. Temporary Child Support is support pendante lite. Support can be modified up or down in amount due to changes in circumstances such as incomes. However, child support must have a 15% increase or decrease to be modified, and if the child support has been recently modified a 25% increase is required.

Default Judgments

Default judgments are granted when a petition is filed, served, and no answer is filed by the respondent. If the person is served, then the court may award any and all of the issues involved within its power. In a default divorce, the court has the power to award:

1. Property
2. A Dissolution of the marriage so that a person may remarry
3. Child Custody of the children that have been inside the state for the prior 6 months
4. Child Support based on whatever the income is alleged if the Respondent was served
5. Alimony, if the Respondent was served

However, if the Respondent cannot be served and found, a slightly different type of Default must be sought and this is obtained by requesting a warning order attorney. If the respondent cannot be found, then he may be served by appointing a warning order attorney. The case will then proceed with a default.

Warning Order Attorneys

If your spouse cannot be found or served with the petition, a warning order attorney will be appointed. However, you must file a request or motion for a warning order attorney to be appointed. This normally costs from $50 to $150 depending on the amount of work the warning order attorney uses to attempt to find the person. The warning order attorney will write to the last known address of the respondent in an effort to locate him or her. If there is no response, the warning order attorney will file a report with the Court stating that the person was not found. If there is a response, the warning order attorney will file a report with the Court stating that the person was found and served with notice of the pending divorce or lawsuit. In either case, the divorce will go forward as if the person had been served; however, if the person is served by a warning order attorney, the Court can only dissolve the marriage and grant custody. It cannot award child support unless it has jurisdiction over the person.

Again, if the Court uses a warning order attorney for service of process, it cannot award child support or alimony unless the party is served. This is because the court will lack any personal jurisdiction over the person until they serve him and he is within the power of the court. If the spouse lives in another state, you may be required to start your case in that state to have jurisdiction over your spouse for child support or alimony purposes. However, as long as one of the parties has resided in Kentucky for over 180 days, the court may grant jurisdiction here for the dissolution of the marriage. As long as the marital property is here, it may also award property division in a default.

Entry of Appearance, Acknowledgement and Waiver

An entry of appearance, acknowledgment, and waiver is a tool to help in the process an uncontested divorce. To avoid the costs and embarrassment of having a sheriff serve a complaint or having to pick up

certified mail, the respondent may wish to sign an Entry of Appearance. This is just an admission that the person has received a copy of the complaint. Once a person has received a copy of the complaint, they have 20 days to answer the complaint. If the respondent does not intend to answer the complaint and the parties have already signed an agreement, the respondent may want to file the entry of appearance himself.

A waiver is when an individual waives his rights. The waiver included in the packet waives the right to further notice. In order for an individual to waive his rights, there must be a marriage settlement agreement that the parties have already signed.

An acknowledgment is often used when the respondent has looked over and verified the accuracy of the mandatory case disclosure. Because the parties are in agreement about what they owned at the time of filing the divorce, there is little or no need for filing two copies for each party and the Respondent merely acknowledges the accuracy of the Petitioner's case disclosure. This saves the respondent the trouble of having to file his mandatory case disclosure.

Sometimes these documents can be combined. If you file all of the documents at one time, a combined entry of appearance, acknowledgement and waiver should be accepted by any judge.

The Marriage Settlement Agreement

If the parties agree to the terms of the divorce, they file a marriage settlement agreement. A marriage settlement agreement settles the issues of child custody, support, visitation, property, debts, retirement benefits and attorney fees. It is important to completely fill out this form and the mandatory case disclosure because if information is omitted, it is possible that one party may have the divorce and decree overturned due to fraud. Fraud may be the omission and failure to inform, not just an intentional misstatement of the facts. When the ex-spouse fails to include information about retirement benefits, the courts may reopen the case and include or divide those benefits later.

You are allowed to settle your divorce with your own marriage settlement agreement under KRS 403.180. Normally, marriage settlement agreements are incorporated into orders and decrees of the court and enforced in the same way as any other court order. The court will honor the terms of your agreement unless the terms are unconscionable (completely unreasonable). Even then, the court should and normally allows the parties to revise the agreement rather than make its own order. Agreements that the parties have worked out with each other are far more likely to be followed than something the Court forces them to live with. It is rare that these agreements are disallowed, since bad bargains are not necessarily unconscionable. The burden of proof to show that a bargain is unconscionable is on the party trying to disprove the marital agreement.

Marriage Settlement agreements in Kentucky may grant child support differently than what is outlined in the guidelines, but the couple must state in their agreement that they have calculated and considered the guidelines. Child Support is more fully discussed in the child support section. When the court is calculating child support, it uses the child support worksheet and the child support chart. If child support is litigated, then the judge must use the chart to determine child support. The court has continuing jurisdiction over child custody, visitation, support, and alimony and can always change these items later if there is a change in circumstances.

Although a lawyer may recommend a settlement proposal, the decision about that proposal is yours. Even if you agree on how to divorce, you must file a marriage settlement agreement with the Court so that property and debt division, custody, support, visitation, and other matters can be made into an official

judgment. You should have an attorney review this document to insure it is properly prepared from a legal perspective even if you use the forms. There are many issues such as inheritance or tax issues that you may not totally understand or have considered. The marriage settlement and the final decrees of divorce will set your child custody, support, visitation, property and debt divisions, and many other important matters. The settlement and the final decree, which sets out the findings of fact and conclusions of law, are the most important documents in the divorce and must be prepared and reviewed in detail.

Whether or not you and your spouse can settle by agreement, the Court must have a hearing or submitted testimony so that it has the evidence on which to base its order. At the final hearing, you will be asked certain questions so that the Commissioner or Judge can enter his or her divorce decree.

Discovery

After the divorce Petition and Answer are filed, each party is entitled to information and records from the other party. This is called "discovery." Discovery may involve a list of questions known as "interrogatories" or a request for documents called a "request for production." It may also include a deposition where you are asked questions in front of a Court reporter. Discovery is done in preparation for trial. There is little or no need for discovery in an uncontested divorce where all the facts are known. Discovery is most often done in cases where assets may be hidden and the attorney is, in effect, "auditing" the bookkeeping of the other side.

Proof, Final Hearing or Interrogatories

One of the most common methods for taking proof or testimony to finish the case is by interrogatory. If you take proof by interrogatory one of the parties (including yourself since you are one of the parties) is asked questions to establish certain facts that the judge needs in order to grant a divorce. Some of the facts necessary to have in your testimony so that the judge will grant the divorce include:

1. That you have lived in Kentucky for the prior 180 days or longer as a resident;
2. That the marriage is irretrievably broken;
3. That the wife is not pregnant (pregnancy will delay the divorce until after birth of the child);
4. If children are involved, the parties must wait 60 days. This 60 days includes that:
    a. The parties were separated on the date the petition was filed;
    b. No decree can be entered until the parties have lived apart for 60 days;
    c. No proof can be given until it is 60 days after the entry of appearance or service of process is made. (Respondent was served).

Proof may also be taken by the judge in a hearing. However, since the time of the court is valuable, most uncontested divorces are done by interrogatory.

Findings of Fact and Decree

The Findings of fact are when the judge makes certain conclusions from the evidence that you have provided to him, such as, that the children were the product of the marriage, or that the parties earn a specific amount of income. In order to enter a decree, the court must make four findings:

1. That one of the parties has resided in the state for 180 days;

2. That conciliation provisions of KRS 402.170 have been met or do not apply;
3. That the marriage is irretrievably broken;
4. And to the extent that the court has jurisdiction, the court must rule on the issues of child custody, child support, visitation, maintenance (alimony) and property division (property and debts including retirement).

The Decree is when the judge orders the parties to do something or orders what the status of something is. For instance, the Judge may order one spouse to pay another spouse a specific amount of support. Additionally, the judge may order that the marriage is dissolved, or that the one spouse is awarded custody of the children.

All of these documents are prepared by the person that wants the result from the judge. The judge rarely prepares these documents but in some cases the judge will do exactly that. To insure that you get what you want from a judge, it helps to prepare the order that you want from him and make his job easier. If he prepares the child support order or visitation order, it may not be what you wanted.

Appeals

Just because you had a trial does not mean that the process is over. If you go to trial, you must win at trial, because the average appeal has only a 10% chance of changing the judge's decision. Trials are like the main event in a boxing match. Normally whatever decision you get is what you got. Appeals can be filed and modifications can be made to the divorce agreement (especially in child custody, support, and visitation matters) for years and years to come.

If you are unhappy with a judgment made by the commissioner or the judge, you may appeal to a higher court. Normally, of course, you do have to appeal on a matter of law—not just because you don't like what the Court has said. Your spouse also has the right to appeal any judgment. If you have gone to trial and you need to appeal a decision, you must file your appeal on time or you will have waived your right to any appeal. For all of these reasons, if you have a contested matter you must use an attorney. It is important to win at trial if there is a trial of the issues or if your divorce is contested, otherwise, you will have little chance of changing it on appeal.

Child support, custody, and visitation can always be modified at a later date since the court has continuing jurisdiction over the children. Modifications are made by a judge or commissioner after a hearing. These motions are made because circumstances may have changed and there may be a need for a change in child support, alimony or custody. Changes in the amount of child support or custody can be granted, and visitation rights can be modified. The rule for making a modification of custody or visitation specifies that you must have waited at least 2 years after the original decision by the court, the change must be in the best interests of the child and you must show that there has been a significant change in circumstances.

Some permanent orders are not modifiable. Normally, the division of property is not subject to later modification unless fraud is proven. The amount of property you had at the time of separation does not change over time. Therefore, fraud is the only basis for a change in the amount of property or debt that is awarded. That is why the mandatory case disclosure is so important. Fraud in that document may reopen a case later.

Post Divorce Matters Motions for Support etc.

Alimony and Child Support starts when you ask for them in a motion, which is a request from the court. Temporary orders (also often called "pendante lite orders") provide for property settlement, alimony, child custody, visitation, and support while the case is being litigated. Temporary orders can be granted through hearings that are usually held within a couple of days of the request, even if the divorce petition has not yet been filed. These temporary orders may include: restricting contact, or restraining orders to prevent the disposal or destruction of property.

Motions for temporary support should be made as soon as possible, but your attorney will rarely file until you ask him to do so. Ask for support early in the litigation. Child support and alimony will not start until these motions are filed. **The support you need will not start until your motion for support is filed and, if it isn't filed, you won't earn support until you get a final hearing deciding the terms of the divorce.**

Child support, custody and visitation orders are not forever. As incomes increase and things change, things can be modified. Child support is decided by the child support chart, but it can be increased or decreased. If the last calculation of child support has been recent, then there must be a 25% increase or reduction for the judge to modify the child support. If the child custody has just recently been modified then there must be a strong showing of the changes in circumstances and an almost endangerment of the child to justify a modification of custody.

Agreed motion and orders are common. Motions are requests to establish, change or modify some issue. There is generally no right to child support until one parent requests it and files a motion for child support. If the child support is requested by the state for reimbursement of welfare benefits, then the state does not have to file its motion to collect for support it may have paid years earlier.

A check list for the process of the divorce documents

The following is a check list that I have used in insuring that all of the forms have been included in any divorce that I do. To file an uncontested divorce the attorney needs to:

- Properly prepare and fill out the petition,
- File the VS300 and any local forms. In Jefferson County, this at least includes the mandatory case disclosure form and the case data sheet. The court clerks will provide these forms and they won't accept a petition without these forms. Couples with children may have additional forms they may get from the clerks. Rural counties have fewer local forms, but all the counties require at least the VS300. In an adoption, a different VS form is required.
- File an entry of appearance, waiver and acknowledgment signed by the spouse if the matter is uncontested. In the alternative, you may have to serve the spouse with the petition if the matter is contested or serve the spouse by warning order attorney if the spouse cannot be found.
- File the marriage settlement agreement. If he or she won't sign, you may seek a default.
- wait 60 days after these documents were filed if children were born of the marriage and then ask for a hearing or file the proof and the findings of fact and the decree, if no children were born of the marriage you may file proof and the decree and findings of fact with the petition.
- Then file a motion to grant the divorce or for a final hearing to grant the divorce.
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This is a lot harder though than it looks and there are problems that may cause it to never get finished if you make an error.

Agreed Divorce These 10 must exist in the Judges file and the files at court	Default or Missing Client These 11 must exist in the Judges file and the files at court for a default
1. Complaint must be signed by verification (notarized) 2. VS 300 Case data sheet if children 3. Must wait 60 days after the date of Separation and the date of filing if children are involved 4. Children?? (FIT classes in Jefferson County must be completed) and child support calculated in accord with the guidelines and attached 5. Mandatory Case Disclosure 6. Marriage Settlement Agreement ***7.*** Entry of Appearance ***8. Motion for Final Hearing or final decree*** ***9. Proof. Deposition or hearing. A Deposition is best but you may ask for the judge to take proof however you must give adequate notice.*** ***10. Findings of Fact and Decree of Dissolution***	1. Complaint must be verified 2. VS 300 Case data sheet if children 3. If there are children then you must wait 60 days after served and 60 days after the separation if children are involved otherwise 20 days for default after service is complete. Warning order attorney completes the required service of process when he files the report. 4. Children? (FIT must be completed) and child support calculated in accord with the guidelines and attached 5. Mandatory Case Disclosure must be filed 6. If Client was never served then you must file a motion for and get a warning Order Attorney 7. Warning Order Attorney 8. **If <u>Client was served</u>** or **<u>if you have a warning order repor</u>**t then you can file the Motion for Default and support with an affidavit. 9. ***Motion for Final Hearing*** Must not refer to any Marriage Settlement Agreement ***10. Deposition or Proof, a deposition is better for time reasons but must give adequate notice. Make sure the proof does not refer to the marriage settlement agreement and that it only asks for a Limited Decree*** 11. ***Findings of Fact and Decree*** Must not refer to any Marriage Settlement Agreement

The overall Divorce process

The process of an uncontested divorce involving no children can only take a couple of days. Once all of the documents have been prepared signed and submitted there is little to do other than wait for the court to sign them. In the case of a divorce with children the parties must wait 60 days, calculate child support in accord with the chart and also attend fit (counseling) classes in Jefferson County but other than that the process of an uncontested divorce with children is identical to the process of a divorce without children. If the parties are involved in a contested divorce the court will normally require:

1. A Case management conference
2. Evaluation by a psychologist if custody is an issue
3. Mediation
4. Trial brief
5. A trial

All of these items can be expensive the evaluation of a couple with one child will normally require 3 1500 dollar fees paid to the psychologist to just evaluate the father mother and child. Mediation will often involve 2 attorneys and a former judge that attempts to settle the disputed items and this will often take 4 hours with each attorney and the mediator charging 150 per hour. A trial brief for a day long trial and preparation by an attorney will often cost 5,000 dollars or more.

Case management

If the parties cannot agree the judge will normally order a case status conference to determine what progress has been made. Case management Hearings are short hearings to advise the judge what the attorneys believe are the issues in the case. It will also decide the next steps in the process. The parties may disagree on only one or two issues and in such a case mediation, an appraisal to obtain the value of property or an evaluation may be needed.

At that time he will often order mediation. Mediation or evaluations will normally be ordered after this. Mediation involves both parties and their attorneys discussing any areas they agree on and getting them to agree on the disputed issues.

Evaluations

Custody evaluations involve the psychological stability, and the parenting skills of the parties. For some cases this may only involve a social worker but often it is an involved psychological evaluation by a psychologist involving thousands of dollars for the parties. The failure to attend or pay for the evaluation is often fatal for custody or visitation for the person who did not comply.

Mediation

When cases are contested (i.e., the two parties cannot agree on the terms), the Court will often order a mediation conference. Voluntary compliance with Court orders is important because enforcement procedures available from the Court are expensive and often don't solve the problems. For this reason, Courts often prefer and require the parties and their lawyers to attend mediation where a Judge or mediators, with special training or qualifications, help the parties reach an agreement. The mediator can often give an opinion on how a Judge would likely rule on a particular point of contention: If one party realizes litigation would mean they would lose on one or more issue, they may be persuaded to work out a compromise.

In Louisville, Kentucky, the Family Court requires a mediation conference before a trial. Divorce mediation encourages both parties to set aside resentment and work toward a solution that suits everyone. Divorce Mediators normally charge by the session but you, your spouse, and your children have everything to gain if it works. Successful mediation results in a final divorce agreement that both parties agree will work for them. Mediation takes into consideration the needs and interests of everyone—including the children. It is usually far less expensive and much quicker than traditional divorce litigation. Coming to an agreement via mediation is a win/win situation for you and your spouse and, where children are concerned, often a win/win/win situation!

Persons should mediate as soon as possible if a proper settlement can be reached. However, even if a settlement is reached, there will be certain paperwork to process to turn your agreement into a judgment and end your marriage.

If you cannot reach an agreement, the Court will decide on matters of custody child, support, visitation, alimony, and property division. Even then the matter may not end: Appeals can go on for years.

Trial Briefs

Trial briefs advise the judge of the issues facts and legal arguments that will be the focus of a trial. A trial brief is like a custom suit in that no two trial briefs have the same facts or involve the same judge and are therefore never the same. Normally trial briefs are about 20 page documents that will cost thousands of dollars for attorneys that work days in drafting them.

Trial

Trials can last minutes, hours or a day. They can even last days. These are exhausting events that require the proper presentation of facts to a judge. In the area of divorce law there is normally little legal argumentation. The rules of law have been in place just like property law for decades. In divorce trials the presentation of the evidence (or facts) control the vast majority of the time of the attorney at trial.

Often the parties have attempted negotiations for months or years and simply cannot agree. At this point they often have long forgotten how to work out any differences.

Although the facts will normally control the outcome getting the facts into the court record and before the court in a contested matter is often difficult and sometimes impossible if you fail to hire a competent attorney or attempt to hire an attorney at the last moment to clean up what is now a mess. Some attorneys will refuse to take cases that have been turned into a disaster because of earlier mismanagement.

Divorce Issues

Property Separation

Kentucky is not a community property state. Most community property states are in the west: Texas and California are examples. Originally, these states were Mexican or Spanish territory and have kept this aspect of Spanish law. This manual does not cover community property and there is little practical use in explaining the distinction. Property in both community property states and non-community property states is often similarly divided as marital property; however, some differences may cause tax-related or other problems. If you have a case in which some or all or your property is located in a community property state, you should consult with a lawyer who knows the law of that state.

Marital debts and property are the debts and property that are acquired by both parties during the marriage. Debts and property given to or inherited by you alone during the marriage, and the debts and property with which you came into the marriage, are non-marital debts and property.

Non-marital property is not subject to division. Marital property is subject to division. Most of the law defining how to split marital property comes from case law and cannot be found in statutes; however, KRS 403.190 states that property is divided between the spouses without regard to fault or misconduct. In Kentucky, the Court first looks at each person's contribution to acquiring the marital property. [**Smith v Smith** 497 SW 2d 418 (1973), **Ratcliff v Ratcliff** 586 S.W. 2d 292 (1979)] If you came into the

marriage with non-marital property, that property should be restored to you. The duration of the marriage is also a factor in deciding what property is to be divided.

Second, the Court establishes the value of the property. The Court cannot guess what the value of property is; therefore, the Court often has to rely on evidence, such as receipts, that you supply to them. In some cases, the Court may order an appraisal or sell property in order to divide it.
Third, the circumstances of each spouse are taken into account, including the need for child support and alimony to be fully funded. [**Williams v Williams** Ky. 500 S.W. 2d 79 (1973)]
Finally, in cases where marital assets were wasted, hidden, or cannot be accounted for by one spouse, the Court should lower that spouse's part of the proceeds. [**Robinette v Robinette** Ky. App. 736 S.W. 2d 351 (1987)]

As said before, marital property is the property that is acquired jointly. Some forms of property can never be marital property:

- Personal Injury funds are not marital property. [**Weakley v Weakley** Ky. 731 S.W. 2d 243 (1987) and **Reeves v Reeves,** Ky. App 753 S.W. 2d 301 (1988)]
- Inherited property is not marital property. [**Angel v Angel** Ky. App., 562 661 (1978)]
- Gifts or welfare funds are not marital property [**McGlone v McGlone**, Ky., 613 S.W. 2d 419 (1981)]
- Increases in the value of property that was non-marital property is not marital property [**Daniels v Daniels**, Ky. App 726 S.W. 2d 705. (1986)]

None of these items of property were acquired jointly; however, pensions are almost always viewed as the product of a couple working together (if the pension was acquired during the marriage). [**Poe v Poe** Ky. App 605 S.W. 2d 33 (1988)] Even if the pension is not vested, it is still marital property subject to division. The fact that non marital property increased in value does not make it subject to division unless the increase was due to the joint partnership.

Normally, marital property and debts are evenly divided, but in some cases marital property may be used for child support or alimony, or to insure the payment of support. Notice that the court is required to make a just division of the assets. This is not always a 50-50 division.
Under **Bruton v Bruton** Ky. App 569 S.W. 2d 182 (1978), marital debts are ordinarily divided the same way that marital assets are divided, but there is no presumption that a debt incurred during the marriage is a marital debt. The Court may have to consider other factors to see if a debt should be divided.

When property is fraudulently hidden or omitted from disclosure or the Court's consideration, the Court may reopen a case to divide the property. [**Taylor v Taylor** Ky. App. 598 S.W. 2d 764 (1978)] When a mistake has been made in dividing marital property, rule 60.02 will allow the Court to reconsider the division later. This is rare, however, and your attorney should never have to do this. It is important to do your divorce case properly the first time with a qualified attorney. Never forget retirement benefits as property that needs to be accounted for in the property separation.

Alimony

Child support is not tax-deductible. Alimony is tax deductible. In other words if you receive alimony then you will pay taxes on it. For that reason you may want to structure your award of alimony or child support differently to take a tax advantage.

Just as there is an official formula for child support there is an unofficial formula for maintenance. One early suggested formula was take the salaries divide by two then subtract child support and the wife's

income. Atwood v Atwood 643 SW 2d 263, 266. Presently one spouse must need the maintenance and the other spouse must be able to afford it. Normally when both parties are able bodied and have similar wage earning capacity there is not alimony or maintenance. Alimony is most often awarded when one spouse did not build a career and the other stayed home to raise children or due to a disability stayed home.

The court must make 2 findings:

1. That one party lacks sufficient property for their reasonable needs and
2. Is unable to support themself through employment or due to being the custodian of a minor child it would be improper to require her to seek employment

Alimony and child support is normally requested by motion and collected by the filing of motions supported by exhibits evidence and affidavits. Attorney fees are allowed when the non paying spouses forced the other spouse to file motions. Motions must be made for contempt and to enforce the failure to pay.

Factors include:

1. health,
2. age,
3. the time to acquire an education to support themselves,
4. time to find a new job,
5. duration of the marriage,
6. Financial condition such as income. (However the wife is not expected to consume her assets to maintain her lifestyle).
7. Standard of living during the marriage and social status to be maintained. The Queen will require more than the maid. KRS 403.200
8. emotional condition of the spouse and
9. Ability of the paying spouse to pay support.

Child Support

The right to receive child support starts from the day you file a motion for child support. If a complaint is filed and there is no request for child support filed there may be no child support granted until a motion or request is filed and served. The most common mistake is to not ask for support early. In order to ask for an increase in child support you must show that the child support would increase by at least 15% if the last child support increase was awarded within the last year you must show a 25% increase. **For further information refer to the Kentucky Revised Statutes Title 35**
Child support may be agreed upon by the parents, set by the Child Support Guideline Chart, or determined by a Judge (if unusual circumstances exist that allow him to disregard the chart). If it is agreed to in the marriage settlement agreement the parties must state that they did calculate and consider the guideline amount. In most cases, it is most important to get support in place and started immediately. The amount of support can be increased later. **Child Support and Alimony starts from the date it is requested by filing a motion in court asking for it.** It is therefore important to ask for it in a motion as early as possible. Most attorneys fail to ask for it until months after you have filed the divorce which cuts out months of your child support. If you want your child support it is up to you to make certain that a motion for child support is filed with the petition for divorce. Although you may not get child support for some time it will start to accrue from the day you file the motion.

In Kentucky, child support is enforceable by statute until the child has reached the age of 18. Children are also supported by statute to age 19 if they do not graduate from high school before that age. However, the parties may agree to support a child through college. Other states such as Indiana may require support to age 21.

A child support order is a Court-ordered debt. The statute of limitations in Kentucky for this debt is normally 20 years. The person paying support may therefore be required to produce records to show proof of payment up to 20 years later if official records are lost or destroyed. It is recommended that the paying parent keep all records in a safe place for at least 20 years after each payment is paid. The burden of proof is upon the parent that claims they paid it to produce the records of payment.
Child support is not tax-deductible. Alimony is tax deductible. Parties should work together, allowing the paying parent to pay more support as alimony to reduce his or her tax bill and top maximize deductions if alimony and child support is ordered.

Jurisdiction

To award child support, a state must have jurisdiction over the person being ordered to pay support. In an effort to get child support, persons outside Kentucky are often directly sued in Kentucky Courts. If they answer the complaint without properly denying jurisdiction, they are treated as if they agree to Kentucky jurisdiction and will have to pay support. **The paying spouse must agree to jurisdiction, file an answer, sign an agreement, or be a resident of Kentucky. If the spouse disagrees with jurisdiction, he or she must <u>clearly</u> deny jurisdiction or he agrees to it.** If your spouse lives in another state, you may have to sue him or her in that state to get alimony or child support. If the parent is a constantly moving target from state to state, it may be nearly impossible to locate and collect.

The Guideline Formulas

The calculation of support requires the worksheet and the guideline chart. These tables determine the amount it takes to support the children for any given income level. Child support is normally determined by the worksheet and Child Support Guideline Chart, but parties can ignore the amount in the chart and agree upon a different (reasonable) amount if they choose to do so. If the parties cannot agree on the amount, the Judge must award child support according to the Child Support Guideline Chart CSGC. The Judge may disregard the CSGC and set another amount, but must show that there were strong reasons to deviate from the chart—such as a disabled child with higher support needs.
The guideline formulas are based on both parent's income, any day care expenses, prior awarded support and health insurance for children. The expenses that the obligated spouse has, including later children or spouses, are not considered. The paying parent is only given a deduction for prior ordered child support, alimony, and/or health insurance.
Child Support is calculated based on gross income. Gross income is any income from any source, before taxes and other deductions. SSI or welfare payments are included as income. Reasonable business expenses may be deducted from a self-employed person's income. The child's health insurance, any child support for other children, and alimony are subtracted from the calculation. If income is off-the-chart, it is estimated based on a mathematical calculation of what the chart would say at that income level.
The Court must order health insurance. Unpaid medical expenses are paid in proportion to income.
Daycare costs are covered as part of child support costs.
Reasons for deviation from the chart can include the child's needs (including education, medical expenses, and special needs), parental job training, parental education, and parental disability. There is a catchall provision for deviation from the chart, but the Judge must issue a written finding for any deviation.

No new increase or decrease in child support is allowed unless there is a material change in circumstances. A 15% increase in income is a material change in circumstances, but less than a 15% change is not**.**

If the parent attempts to avoid payment by not working voluntarily, his or her income may be "imputed". In other words, he or she pays child support on what he or she **should** be earning. Imputed income is based on what the income would be if the person were working normally. Not working at the job level you should be is treated as being voluntarily under-employed. For example, a doctor who quits to work as a grocery stock-boy will still be required to pay the child support he or she would pay as a doctor.

The Kentucky Child Support Worksheet

INSTRUCTIONS FOR USE

1. Enter each parent's gross monthly income.
2. Enter the amount actually paid for Court ordered maintenance for prior spouse(s) plus the amount of maintenance ordered in the current proceeding.
3. Enter the amount of child support that is:
    a. paid pursuant to a Court/administrative order for prior-born children;
    b. paid, but not pursuant to a Court/administrative order, for prior-born children for whom the parent is legally responsible; and
    c. imputed for prior-born children residing with the parent.
4. Subtract any amounts on lines 2 and 3 from the amounts on line 1. If the result is less than 0, enter 0.
5. Add the amounts on line 4 in columns A and B to obtain the combined monthly adjusted parental gross income.
6. Divide each of the amounts on line 4 by the total amount on line 5. Enter the percentages.

[NOTE: If the non-custodial parent (NCP) has 100% of the combined monthly adjusted parental gross income, use the CS-71.1 to calculate the child support obligation. KRS 403.211(7) (b) provides a reduction in gross income for the entire amount of health insurance premiums incurred for the child (ren) when a parent has 100% of the combined monthly adjusted parental gross income].

7. Determine the base support obligation by referring to the Guidelines Table using the combined monthly adjusted parental gross income as entered on line 5C and the number of children for whom the parents share a joint legal responsibility.
8. Enter the monthly payment for child care costs.
9. Enter the monthly payment for the child (ren)'s health insurance.
10. Add lines 7, 8 and 9. This is the total monthly child support obligation.
11. Multiply line 10 by 6A and 6B for the monthly obligation of each parent. These amounts include each parent's share of child care costs and health insurance premium costs if these costs were included on lines 8 or 9.
12. If the NCP pays either of the amounts listed on lines 8 or 9 to the provider, enter that amount on line 12. If the NCP pays both of these amounts, add these amounts together and enter the total on line 12.

[NOTE: If the NCP is paying 100 percent of either or both of these costs, then the NCP subtracts this amount from his/her monthly obligation, which reduces the amount he/she pays to the custodial parent (CP). Subtracting 100 percent includes the NCP's percentage of these expenses and also compensates the NCP for paying the CP's percentage of these costs].

13. Subtract line 12 from line 11 and enter the amount. This is the amount the NCP pays to the CP. (To calculate a weekly amount, multiply line 13 by 12 and divide by 52.)

THIS WORKSHEET IS TO BE USED TOGETHER WITH THE GUIDELINE TABLES!

	Column A: Custodial Parent	Column B: Non-custodial Parent	Column C: Both Parents
1. Monthly Gross Income			
2. Deduction for maintenance payments			
3. Deduction for other child support for prior-born child(ren)			
4. Adjusted monthly income			
5. Combined monthly adjusted parental gross income			
6. Percentage of combined monthly adjusted parental gross income			
7. Base monthly support			
8. Child care costs			
9. Child(ren)' s health insurance premium cost			
10. Total child support obligation			
11. Each parent' s monthly child support obligation			
12. Subtract child care costs or health insurance premiums paid by NCP to the provider			
13. Amount the NCP pays to the CP			

Collecting Child Support

In Kentucky, failure to pay child support for more than 6 months, or falling over $1,000 dollars behind in support, is a class D felony and is punishable by up to 5 years in prison. Being prosecuted for the failure to pay support is extremely serious. Failure to pay support of any amount is also punishable by the Court as contempt and as a misdemeanor.

Property—including houses, bank accounts, and wages—can be attached and sold to recover unpaid child support. Government benefits—including tax refunds and VA, Social Security, and disability payments—can also be attached. In addition, attorney fees may be added to the child support bill and recovered. Often these attorney fees may be more than the actual child support that is owed. (Although attorneys cannot charge a contingency fee in a divorce case, they may charge a contingency fee for collecting past due child support.) Child support and alimony are not bankruptable and are the only debts that can put you in jail.

Only 51% of non-custodial parents in the US pay support on time according to the 2000 Census. 24% pay partially. 25% of all custodial parents get nothing at all. Kentucky has about the same delinquency rate as Florida and four times New Mexico's rate. Indiana has the worst delinquency rate in the United States—twice as delinquent as Kentucky. The statistics can be confusing, and differ from source-to-source.

Some parents do not pay ordered child support because they are unable to and others fail to pay out of a desire for revenge and retaliation for what they think are unfair court orders. In some cases, payments are even refused by the custodial parent. Although many people (particularly the media) berate "deadbeat dads" that fail to pay, the majority of non-payment is actually caused by the failure of the custodial parent to demand child support. 40% of all custodial parents (still most often women) fail to receive support simply because they didn't request it when they separated or divorced. **If you want child support, you must ask for it early in your case!**

Non-custodial parents that have joint custody or visitation rights are twice as likely to pay support as those that have no visitation; however, the law requires you to pay child support even if you do not have visitation and even if you are in jail.

The Office of Child Support Enforcement locates non-paying parents 70 to 80% of the time. Every state is required to have a child enforcement agency of its own. Several federal laws outline how to collect child support, even if the parent moves to another state. The Uniform Reciprocal Enforcement of Support Act (URESA), the Revised Uniform Reciprocal Enforcement of Support Act (RURESA), and the Uniform Interstate Family Support Act (UIFSA) all outline how child support can be enforced even if the spouse flees. Non-paying parents can be located by Social Security records, vehicle and driving records, IRS records, veteran records, criminal records, and credit checks. Both civil contempt and criminal non-support can be used to prosecute. Collection agencies may be used to collect, the debt may be reported on the debtor parent's credit report, and the debtor may have his or her driver's license revoked.

How to Collect

People who say you can't get blood from a stone simply don't understand child support collections. Every person has to have assets or income to exist. Income can be attached, even if it is an inheritance.

If any income or asset exists, it can be taken away by child support collections. Kentucky child support collections can even attach Social Security funds or have an employer deduct child support directly from a paycheck. In addition, some states allow the debtor's driver's license to be taken away. Collections may be by Sale of a home, filing a lien on a home, garnishment of income, taking trust funds, ordering notes to be paid to the debt, insurance policies, setting aside a fraudulent sale or mortgage. You cannot expect the federal government (or most state agencies) to effectively collect for you because it costs the federal government more to collect than what it collects. As a result it doesn't seriously support collections. In 1994 alone, over $34 billion was owed to Aid to Families with Dependent Children (AFDC) in overdue and uncollected child support. The AFDC has failed in collections ever since it started in the 1970s: In 2000 the agency collected $8.9 billion in child support, but spent $9.4 billion to collect that amount. The federal child support collections program is ineffective, and the money often never gets to the children in the long run. As a result, the federal government doesn't seriously attempt to collect.

Child support collections programs are presently understaffed and underfunded, so using a private attorney to collect may be a far better method than waiting in line at the welfare office, hoping they will eventually get to your case.

In one case where we represented a man in Indiana, Kentucky failed to get jurisdiction and child support was never set. That was in 1999. He was never asked to pay child support from the time the child was born until the child was 14 in 1999. By pleading a lack of jurisdiction the client has never had to pay child support. This would never have happened if the attorney had filed for child support in the state where the man lived. This also happened because the woman used a state agency which was overwhelmed with cases and hoped to file for child support in Kentucky. Local child support offices threaten and fail to tell someone in another state that there is no right to collect unless you agree to foreign jurisdiction. If you want to collect (or if you do not want to pay) child support, you should use private counsel. If you use a state agency, you may get what you pay for.

Locating the Person Who Is Not Paying Child Support

If you are trying to locate a child support obligator, you need information. Having most or all of the following information will be a great asset. You should know his or her

- name, and any alias(es) he or she uses
- birth date
- Social Security number
- most recent address
- past addresses
- work history (or, if self-employed, his or her customer's or client's names)
- present and past phone numbers
- driver's license number
- past spouses
- existing child support debts to other persons
- family members
- creditors
- banks
- club memberships or hobbies
- real estate holdings
- insurance company

- military service record
- voter's registration
- criminal records and probation officers

These records provide a trail to find the child support debtor. At the start of your case, you should know all these things.

You can use telephone directories, associations, reverse lookup directories, post offices, utility companies, credit reports, and other government records (such as IRS and Social Security) to track down a person and collect. You may need to contact relatives, landlords, fellow employees, employers, and neighbors.

Ways to Collect

You can find assets for child support through credit reports. The Court can attach wages or personal property, including bank accounts or real estate, and sell it in any state. The Court can subpoena records of the debtor and examine him by deposition.

You can collect through the IRS by attaching tax refunds—and even have the IRS collect for you (acting as a "free attorney") using methods called 1099 and 1098 procedures. Often a person will pay when the IRS is collecting, even if they wouldn't pay after being jailed.
AFDC may also collect for you. Social Security, military benefits, unemployment, disability payments, VA benefits, and other benefits can be attached.

Statutes 5 CFR 2635.809 and 735.203 say that federal employees cannot be overdue in payments on a debt, and a federal agency will assist you in collections from a federal employee. (Federal employees can be dismissed from their positions for having an unpaid child support debt.) There is even a procedure for garnishing child support from a federal employee, but you must follow it exactly. To collect from a federal employee, locate the person through the federal employee locator 1-800-688-9889 or www.fic.info.gov, contact the agency he or she works for, and send in the wage withholding form. This form must be filled out absolutely correctly, or they will return it unpaid.

If you don't want to collect child support yourself, you may collect it through your state child support enforcement agency. Each state is required to have a child support collection agency. In Kentucky, the agency is Division of Child Support Enforcement, P.O. Box 2150, Frankfort, KY 40602. Their phone number is 1-800-248-1163. If you need more information about child support collections, or increasing your child support, contact us.

Collections and Hiding Income

Being run by a former tax prosecutor and accountant/attorney, our office quickly learned how to find hidden assets. It is a skill few attorneys' have, but we will share a few of the secrets here. Certain things leave clues. Sometimes it takes a CPA or auditor to find hidden income. You can find a lot of assets, if you know how to look.

Compare Lifestyle

First, look at the lifestyle of the parent. It may be that many alleged business expenses are being used as personal income. A Cancun business trip or a Lexus business car are perfect examples of how personal

expenses are charged to a company, and deducted from taxes as business expenses, to lower taxable income. Examine expenses to see if they are inflated by personal or unusual expenses. Remember: Taxable income is not gross income for child support purposes.

If the lifestyle doesn't match the reported income, and isn't paid for by a business, then it must come from borrowed money, inheritances, criminal activity, or unreported income.

Examine Expenses

Certain expenses are easily verified and match the volume of a business. For example, if you know how many supplies are purchased and how much inventory is held, then the true amount of sales can be determined from the markup. Utilities, such as water or electricity, often have a direct relationship to the amount of sales.

Inspect Records

How are records kept? If there are good records, they tend to prove whether or not the income is there; however, people in some professional and self-employed occupations may easily hide income and assets.

If the person that owns the business does the records and the bookkeeping, can the records be trusted? Is the person paid directly instead of the business being paid? Often records may reveal other income sources or businesses you don't know about.

Standards for Similar Persons

The income of the person or business should generally match that of similar businesses. If other attorneys make $100,000 a year, why is he or she only making $20,000? If it costs other plants $2.00 to make a light, why does it cost your ex-spouse $5.00? Why is there no profit for a business with substantial sales? Compare the gross profit margins of other like businesses: Large variances may indicate fraud.

Child Custody

Statistically, when parents refuse to work together to raise the children or when one parent denies visitation to the other, the children are far more likely to be divorced themselves, or have other problems (emotional, behavioral, etc.) in the future. It is almost always best to work together as partners, even after a divorce, to raise your children.

Custody Statistics

Custody is agreed to without litigation in 90% of all cases. In 60-70% of agreed cases, mothers are awarded primary child custody. In about 18% of the agreed cases, the father gets custody. Joint custody occurs in around 18% of agreed cases.

The statistics are different if custody is decided by the Court. Only about 2-5% of cases are left to a Judge to decide custody. Women, however, lose custody in about 40% of the cases that do go to trial. In litigated cases, over 82 % of all women want sole custody while 15% want joint custody. About 33% of all men want sole custody while 35% want joint custody. Although there are some cases where some individuals lack the skills to make even basic decisions on how to raise a child, normally joint custody

sharing the responsibility is best and it is preferred by judges. If one parent cannot or will not then sole custody may be required.

Jurisdiction

If you are asking the Kentucky Court to award child custody in a divorce, the child must have lived within Kentucky within the last 180 days and be a resident of Kentucky. If the child has lived in Kentucky for 6 months, Kentucky becomes the home state of the child and Kentucky can award custody of the child to either party. If you are asking for child support the person you are asking to pay support must normally be served in his county and state for support. If he answers the petition and agrees to jurisdiction then jurisdiction is permitted in that state. **The failure to properly object and answer is a waiver of any objection and jurisdiction becomes agreed to**.

Types of Custody

There are several different types of custody we will refer to in the next few sections. Here are brief explanations of each:

- **Temporary Custody** may be granted until the parties receive a final order of divorce or until they are granted a permanent custody order.
- **Permanent Custody** is normally decided mutually by the parties, along with visitation rights, and is part of the final divorce settlement or decree. Only 2-5% of the time do parties fully litigate in Court to determine custody.
- **Legal Custody** is the right to make decisions about matters involving the child, such as his religious upbringing, schooling, and medical care.
- **Physical Custody** is the right to have the child with you.
- **Sole Custody** is when only one parent has custody of the child. If the parents cannot agree to work together to raise the child or one parent has a problem (such as mental instability) that prevents him or her from being a parent, the Court may award sole custody to one parent.
- **Joint Custody** is an arrangement that allows both parents to work together as partners in raising the child. In joint custody arrangements, a "primary caregiver" will still receive child support from the other parent.

A person can have physical custody, yet not have legal custody of a child, and vice-versa. Normally, the parent without physical custody has visitation rights. The person awarded physical custody is called the "custodial parent". The person paying child support is the "non-custodial" parent. The custodial parent is normally given the tax deduction unless they sign away the deduction on IRS form 8332. Signing IRS form 8332 is required to get the deduction.

Determining Custody

Child custody is determined by what is deemed to be "in the best interests of the child". What is best for the child is, usually, that he or she be in the home that is the best environment for him or her. Ideally, the child should have both parents, in a loving relationship, who provide a good model of a successful family. When a divorce is unavoidable, all efforts should be made to continue as stable and loving an environment as possible.

Common factors that influence custody include:

- The stability of an individual parent, including residence, job, and emotional or mental status and stability.
- The ability of the parent to provide a nurturing environment. Also the ability and the desire of a parent to provide for a child. A parent with a disability or a parent that is addicted is not available or able to care for a child. Even if the parent is able the parent may not be willing and have a history of poor caring.
- The individual needs of the child and, possibly, the wishes of the child (if he or she is old enough to express these wishes).
- The amount of time the child has spent with the parent prior to the divorce and the attachment of that child to the parent's established residence.
- Psychological evaluations of the parties: drinking or drug problems, history of abuse or violent behavior, or mental or psychological illness and instability may keep a parent from gaining custody.
- How the child behaves and reacts in one home or the other, including how school grades and behavior are affected.
- Practicality: In some cases it just isn't practical for one parent to be the custodian. Practical factors can include work schedules, physical disabilities, etc.
- The ability of the parent to provide for the child: funds for education, insurance, income, etc.
- What kind of model the parent sets for the child

The gender of the parent is not supposed to enter into the Judge's consideration; however, women still tend to receive custody far more often than men.

Custody Litigation

Custody disputes are very emotional and often involve allegations of abuse. These situations require a cool head on the part of the attorney representing you—and knowledge of psychology that many attorneys and some judges lack. Often, the parent who is better able to afford the fight, and who has the most determination to win at all costs, will get custody. However if the facts favor one side or the other as the best home then getting the facts into evidence will almost always win the case. The problem has always been getting the facts into evidence and to the judge so that he understands and gives custody to the person that is the best home for the child. This is often called the best interest of the child test. If one side demonstrated that it is in the best interest of the child for the child to be with them then the judge will rule appropriately.

Many Judges require the parents to participate in mediation if they cannot agree to custody. Often investigations are performed by social workers or psychologists. These investigations for the facts may include interviews with the parents, the children, teachers, daycare providers, neighbors, doctors, and anyone else who is involved with the children. Once an investigation is concluded, a report with recommendations is given to the Court. The Judge may either follow these recommendations or disregard them and reach his or her own conclusions from all the surrounding facts. Normally judges follow the report.

Child custody battles often involve thousands of dollars and months or years of "wearing down the other side" in bitter and hotly-contested fights. If both parties can agree to do what is best for the children, it is better to do so than proceed with litigation. Often, what is best is a joint custody arrangement. Parents that jointly raise a child are far more likely to have a happy, healthy and well adjusted child.

Joint Custody

In joint custody cases, parents make decisions about their children together. Many studies have shown that, if the parents must divorce, they are far better off if they work together to raise the children: Child support is more likely to be paid on time and in full, the children are less likely to have psychological and emotional problems, they are less likely to divorce themselves and the children will have higher levels of self-esteem than when one parent does not participate. Children that are raised without both parents are far more likely to commit crimes and have poor careers. Divorce creates a whole new set of child-rearing issues, which are best answered by both parents working together. As a result Judges normally rule for joint custody in Kentucky; however, they can and do rule for sole custody in cases where joint custody is not appropriate. Joint custody is not right for every family situation.
There is no standard joint custody arrangement that you have to follow. Some parents alternate weeks with the children, while others alternate months. Still others have a week/weekend arrangement. You are not required to divide the children's time with each parent equally, but time divisions should be in the best interests of the child. Usually, it is better to work out an agreement between yourselves than to let the Court decide.

Even if you have joint custody, you can often enjoy all the rights and most of the rewards of sole custody by being the "primary caregiver". Often, "joint" custody will be like having sole custody simply because one person will normally have physical custody of the child most of the time and will therefore still have to make most decisions about the child. If the mother is the primary caregiver, this gives her, in effect, the best aspects of sole custody: She will have the child living with her and will be responsible for the child's day-to-day care and environment. Often, allowing the other side to have joint custody is more for diplomatic, rather than practical, reasons and may encourage the other party to help with the child, make timely child support payments, and meet other obligations. Studies show repeatedly that custodial parents will often fail to ask for child support in an effort to obtain control of the child: In over 40% of all cases, they will fail to ask for, and may never be paid any, child support.

Unfortunately, the custodial parent will sometimes want revenge much more than what is best for the child. This is a fatal flaw in logic for many men and women involved in divorce litigation. With joint custody arrangements, the primary caregiver is far more likely to receive child support on time and in full. Parents that do not get custody, or are barred from visitation, rarely pay support or have "spotty" histories of payment (i.e., late, insufficient, or sporadic payments). When one parent denies visitation, the other parent often feels angry and defeated and, often, withdraws completely from family obligations including paying support. The custodial parent is far better off finding a way for the other parent to be as much a part of the child's life as is practically possible.

Modification

The only thing certain in child custody is that nothing is certain. Child custody can change. Modification of child custody involves many of the same factors considered in determining custody initially.
To modify custody, there must be a significant change in circumstances that seriously affects the child. Since joint custody does not involve a judgment of which parent is more suited to care for a child, if one of the joint custodians later asks the Court for sole custody, it is litigated all over again—with no preference to one parent or the other. Factors that can trigger modification include moving, remarriage, custodial or visitation interference, substance addictions, and allegations of abuse. Judges are reluctant to make changes in custody unless there has been a drastic or significant change in circumstances.

Allegations of Child Abuse

Abandonment, endangerment, physical abuse, emotional abuse, neglect, or sexual abuse—or any combination of these—is considered abuse. Abuse of a parent can also be considered abuse of a child: Children do not see themselves as separate from their parents so, when a child lives in a home where a parent is being abused, the child fears for his or her own safety.
3,000,000 cases of child abuse are reported each year. 1/3 of these are substantiated, which means that some evidence was found that would suggest that the abuse does exist, but less than 1/3 are actually proven. From 1976 to 1993, child abuse accusations rose by 333% and reports of sexual abuse rose by 1400%. Allegations of child abuse are serious. Unfounded or false claims are harmful to the children yet about ½ of all claims are false according to a Courier Journal article that investigated the Louisville judicial system. There are some cases of abuse however it is also obvious that some persons use the allegation of abuse to punish or attempt to control others.
Judges and lawyers will try to protect children from a parent who is an abuser; however, Judges are unlikely to detect false claims and may harm the child by granting custody to the parent that fraudulently claims abuse. Parents that make false reports are, in a very real sense, abusive themselves. They have put the best interests of their children second to their own desire to gain custody, child support, and property, or seek revenge against their spouse.

False Allegations of Child Abuse

Child abuse allegations are a two-sided problem: It is difficult to prove real abuse, but it is also difficult to defend yourself against a false allegation when you are presumed guilty by many persons and there is no tangible proof of your innocence.

Claims of child abuse or spousal abuse are often used to gain a tactical advantage. The Louisville Courier Journal reported that about half of all substantiated claims are false: Bruises can be self-inflicted or accidental. Children may deny abuse when it did happen or claim that abuse happened when it didn't in order to punish a parent and gain pity or attention from a parent that they feel offers their only support. Making a false claim allows a parent to get revenge, gain tactical advantages, and obtain custody, support, property, and alimony— all in one blow— while destroying the other spouse's life and relationship with the children. Although our legal system states, as a rule, a presumption of innocence, if you are charged with child abuse, you will be treated as guilty until you can prove your innocence. And it is extremely difficult to prove you didn't do something. This is often called a negative presumption and it is rarely a legal principle. However because the protective nature of the court and the overriding concern for the best interests of the child judges will require a person to prove that abuse didn't happen.

If You Are Accused of Child Abuse

If allegations are made against you, social workers will investigate. If any possible evidence is found, they will attempt take your children. They have no legal right to do so unless they have a court order but this is often easy to obtain if they have evidence of abuse. If a case-worker removes a child from a parent's home, the social agency is protected by civil immunity; however, if they fail to remove the child, and the child is then harmed, the social agency may be sued. Therefore, agencies are likely to remove children to limit their own liability.

If accused, your name will go into a state and federal databanks of abusers. Once you are in this databank, you will probably never get out of it even if you are proven innocent. The purpose of the

databank is to track abusers and prevent them from becoming adoptive parents or from being in any position where they are trusted with children. Employers in day-care facilities, for example, may use the databank to check for violations and allegations. You do not have to be found guilty to be in the databank: Any allegation may brand you as an abuser.

If Your Spouse Abuses You or Your Children

If your spouse abuses your child or you, you must make your own and your children's safety your highest priority. Children that stay in a home environment of abuse learn to accept abuse as a way of life and pass this on to their children by abusing them. Abuse not only affects the immediate safety of you and your children, it affects the long-term mental, psychological, and physical health of children and grandchildren as they continue to repeat the conduct of their fathers and mothers.
Kentucky requires everyone but an individual's own attorney to report any information regarding child abuse. If you talk about suspected or alleged abuse with your attorney, he or she is not required to report it if the information came out in the context of attorney and client privilege. If you tell anyone else—including a doctor, priest, minister, or rabbi—they are required to report and be a witness against you. Any person who fails to report abuse may be prosecuted the same as if they committed the abuse. **The failure of a parent to report abuse is abuse in Kentucky. If you fail to report the abuse of a child done by your spouse, you may have your own rights to your child terminated or be prosecuted equally with the abuser for allowing the abuse to continue.**
Guardian ad litem

In cases of abuse, or when the minor may have his or her own money or assets, a guardian ad litem may be appointed. This person is an attorney who represents the child. At trial, the Guardian insures that the child is legally protected in any situation where the parents may place the child at risk. Children rarely give testimony at trial because they are minors. Older children, however, may be allowed to voice their concerns at trial. Guardian ad litem are always appointed in adoption and termination cases.

Visitation

If you are involved in a divorce, it is important for you to know that visitation is important to your child. If one parent denies visitation, the child may see them as being unfair to the other parent. Denying visitation often backfires against parents in their relationships with their own children. A child that does not see both parents may feel unloved, undeserving of love, or may have low self-esteem. Parents that do not get visitation pay child support poorly. Children that see their parents divorcing, not visiting, and not paying child support often become fathers or mothers who divorce or abandon their own children. These cycles repeat in families—often for generations. Protecting a child, while seeing to it that visitation is reasonable, is an obligation of the custodial parent.

The normal child visitation awarded to the non-custodial parent is two weeks during the summer, alternate weekends, and alternate holidays. Parties may agree to any other reasonable visitation schedule. When the term **reasonable visitation** is used in a divorce order, the Court hopes that the parties can be adult enough to agree to a schedule. As needs change, the parties can change the schedule as appropriate for the best interests of the child.

In some extreme cases, child visitation simply cannot occur normally. It may be that a case of abuse exists or that a parent is in prison, or there may be other very good reasons for putting reasonable limits upon visitation and when and how it occurs. However, we have never seen a case where a child shouldn't have any visitation with the parent. Visitation is almost always in the child's best interests. Even if a

parent is in prison or is in a mental institution, the child should know he has a parent, and see that parent, to understand his roots. Even if the parent is a poor role model, a child may come to understand that her parent is mentally ill or has another problem that restricts parenting abilities. The past does not have to be the future: Seeing a parent with problems can actually help the child make a choice to be better than his parent.

Fixed Visitation

In some cases, parents may refuse to let one spouse see the child. Sometimes it's due to that spouse not following agreements, such as returning the child late. Some spouses may not allow visitation at all, just to get revenge—which hurts the child more than anyone else.

In cases where the parents act like children themselves, the Court may order that visitation take place at certain times and places or that a parent that denies visitation pay attorney fees. In some cases fixed visitation may be required. Visitation is normally granted as every other weekend 2 weeks per summer and alternating holidays.

Supervised Visitation

In cases where there is a risk to the child, or abuse may exist, supervised visitation may be required. We believe it is important for the child to see the parent even if it must be supervised: Children who do not see their parents may develop low levels of self-esteem and other problems. But in rare cases where the parent is a great risk to the child, visitation may be cancelled all together.

Termination of Parental Rights

Terminations of parental rights are done under KRS 625. This terminates the rights of a parent but does not terminate the rights of the child to inherit. Only a later adoption will affect the child's right to inherit KRS 625.104. Termination is normally only for certain reasons such as:

1. Abandonment
2. Neglect
3. Abuse
4. Substantial repeated or continuous failure to give care to and/or support the child

The court looks at the seriousness of the abuse, the length of time that the abuse occurred and the possibility for the parent to reform. Normally termination will only be done if it is in the best interests of the child. Requiring a parent to pay support and have no visitation may be far better in the best interests of the child than terminating all child support. Therefore unless there is a new parent that can assume the duty of a mother or father and adopt the child it is rare that rights are terminated. Normally visitation is eliminated for an abusive parent, unless a parent places a child at risk and will never pay support. Examples of when termination without adoption is proper are child abusers that have long term prison sentences.

Adoption

The adoption statutes are found in KRS 199 and because adoption is a statutory right that statute must be strictly complied to protect the rights of the natural parents and the rights of a child. What is a strong

factor is that no one shall profit economically from the adoption. If a parent's rights are being terminated then a new and similar or equal parent is normally required to support the child. Often a parent will want their rights terminated by an adoption to end support. However when one parent wants their rights terminated then a judge will often want a new parent to replace the original for support. The Adoption process normally requires a report from the Secretary of Human Resources which will be asked to perform a study of the home and make a recommendation.

Three federal laws may come into play in any adoption, the adoption and safe families act of 1997, the multiethnic placement act and Child Abuse Prevention and Treatment Act (**CAPTA**) and **Adoption** Reform Act of 1978 P.L. 95-266. Enacted 1974. All of these laws are intended to insure that children are not abducted or placed in improper homes. In any adoption the best interests of the child is what is in control and the rights of parents or other considerations are always secondary.

Adoption:

1. Cuts off the legal responsibilities of the prior parents
2. Makes the new parents primarily responsible for the child.
3. The procedure is so confidential that a new birth certificate is issued and the child will take the name of the new parties. No reference to the former name or birth parents will be used.
4. The child will now inherit from the new parents

Certain items must be in the petition (Hint: this is a checklist)

1. If the new parent is married the spouse must be joined as a party
2. If the old parents consents their signature must be notarized
3. The adoptive parents must be a resident of Kentucky for prior 12 months
4. Name address date and place of birth of the petitioners and the child are in the petition
5. Similarly the name address date and place of birth of the biological parents
6. Name of the institution that has present custody of the child if any
7. Childs relationship to the new parents if any and a complete description of any property
8. If the child is under 16 the child must have lived in the home for 3 months prior to the adoption and the pleading must state this.
9. The child shall have a court appointed guardian who will prepare a report as well for the court unless the parents consent and a child must be at least 5 days old before a parent may consent. Consent may also be withdrawn if for sufficient reasons. Withdrawing consent is normally only allowed if fraud or duress is used to obtain the consent.
10. If the parents consent their consent must be under oath and notarized to be valid. The fathers consent or termination is required under KRS 625.
11. Service of process must be on all of the parties including the Cabinet and named as a party. When the cabinet is served two copies of the petition are required. Although the Cabinet is being asked to make a recommendation it is not mandatory that they do so or investigate the adoptive parents. In that case the trial court may use the hearing as its investigation in making findings of fact. If the Cabinet makes a report the report is not binding on the court.

Age is not a decisive factor in new parents adopting a child. Kanttorowicz v Reams Ky 332 SW (2d) 269 (1960). Even elderly (age 73) grandparents can adopt. Williams v Neumann KY 405 SW 2d 556 (1966) If the parents work and are away is not an important factor Lee v Thomas 181 SW 2d 62 457 (1966) There is a strong presumption almost of the validity for blood related adoptions and no prior approval may not be required for blood related adoptions see KRS 199.470 (4) (a)
As soon as the reports of the guardian and the Cabinet are made the court or any party may move to conclude the adoption and request a hearing. The Court on its own may order the hearing but it is best for the adoptive parents to order it as soon as the reports to approve and consent from the prior parents are entered.

All hearings are held in the privacy of chambers and are not conducted in public. The child is 12 or older he normally must be present to give his consent unless the judge waives this requirement. At least one of the adoptive parents and the guardian must be present. Necessary parties must have 10 days notice and opportunity to appear or must have waived notice. There are two exceptions to this.

They have answered and agreed to the adoption.
They have failed to answer and the time to answer has expired in default.

At the final hearing for the adoption the judge must find that

- The facts in the petition were established (including facts necessary for adoption, and termination or consent)
- That all legal requirements including jurisdiction were complied with
- That the petitioners were of good moral character and standing in the community and of proper ability to maintain and educate the child
- That the child is suitable for adoption and
- That the adoption is in "the best interests of the child".

If all of the facts listed are found by the judge then the judgment grant the adoption. Even if one of the factors is not found the judge may grant the adoption if it is in the best interests of the child and may override the lack of a factor. See Dickey v Boxley 481 SW 2d 283 (1972)
Once the adoption is approved the adoption is subject to an attack collaterally or directly for 2 years for any irregularity of the proceedings KRS 199.540 (2). Such a proceeding is inpersonam in its jurisdiction and must be by service of process. Since the right of adoption is statutory the failure to give notice of the hearing to adopt is mandatory and the proceeding must give actual notice to the parties. The failure to give notice of the hearing is often the reason for an appeal. Also jurisdiction is also a common reason for annulling an adoption. Barber v Barber 134 SW 2d 933 (1939) where an adoption was set aside for fraud.

However a bad bargain is not the reason to set aside an adoption and there is a policy to presume that an adoption judgment is valid and should not be set aside. Thomas v Thomas 554 SW 2d 98, 99 (1977)

Paternity

Not all children are born in wedlock. In this case there is often a need to have child support and shared parental responsibility for people that still need to raise a child. In such a case you may need the forms for establishing paternity and child support. DNA testing is often ordered by the court and done through the county attorney's office at a reasonable price to establish paternity. If paying party does not request testing paternity testing it will be waived. However if a parent is that has been ordered to pay support later requests a DNA test he will often have to pay for it through a private testing which is an expensive process costing about 200 per person for the lab testing and requiring the child mother and father to be tested.

Important Kentucky Statutes

How Custody is Determined

403.270 Custodial issues -- Best interests of child shall determine -- Joint custody Permitted -- De facto custodian.

(1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, “de facto custodian” means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.
(b) A person shall not be a de facto custodian until a Court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a Court determines that a person meets the definition of de facto custodian, the Court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.420, and 405.020.
(2) The Court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The Court shall consider all relevant factors including:
(a) The wishes of the child’s parent or parents, and any de facto custodian, as to his custody;
(b) The wishes of the child as to his custodian;
(c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child’s best interests;
(d) The child’s adjustment to his home, school, and community; (e) The mental and physical health of all individuals involved;
(f) Information, records, and evidence of domestic violence as defined in KRS 403.720;
(g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;
(h) The intent of the parent or parents in placing the child with a de facto custodian; and
(i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.
(3) The Court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the Court shall determine the extent to which the domestic violence and abuse has affected the child and the child’s relationship to both parents.
(4) The abandonment of the family residence by a custodial party shall not be considered where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.
(5) The Court may grant joint custody to the child’s parents, or to the child’s parents and a de facto custodian, if it is in the best interest of the child.
(6) If the Court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

Effective: July 14, 2000
History: Amended 2000 Ky. Acts ch. 14, sec. 51, effective July 14, 2000. – Amended 1998 Ky. Acts ch. 250, sec. 1, effective July 15, 1998. -- Amended 1992 Ky. Acts ch. 169, sec. 2, effective July 14, 1992. -- Amended 1980 Ky. Acts ch. 158, sec. 1, effective July 15, 1980. -- Amended 1978 Ky. Acts ch. 86, sec. 1, effective June 17, 1978; and ch. 369, sec. 1, effective June 17, 1978. --Created 1972 Ky. Acts ch. 182, sec. 17.

Changing Custody

403.340 Modification of custody decree.
(1) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the Court permits it to be made on the basis of affidavits that there is reason to believe that:
(a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or
(b) The custodian appointed under the prior decree has placed the child with a de facto custodian.
(2) If a Court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. In applying these standards, the Court shall retain the custodian appointed pursuant to the prior decree unless:
(a) The custodian agrees to the modification;
(b) The child has been integrated into the family of the petitioner with consent of the custodian; or
(c) The child's present environment endangers seriously his physical, mental, moral, or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him; or
(d) The custodian has placed the child with a de facto custodian.
(3) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the Court shall consider all relevant factors, including, but not limited to:
(a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;
(b) The mental and physical health of all individuals involved;
(c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;
(d) If domestic violence and abuse, as defined in KRS 403.720, is found by the Court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.
(4) Attorney fees and costs shall be assessed against a party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.
Effective: July 15, 1998.**History:** Amended 1998 Ky. Acts ch. 250, sec. 3, effective July 15, 1998. – Amended 1992 Ky. Acts ch. 414, sec. 3, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 182, sec. 24.

Visitation

403.320 Visitation of minor child.
(1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the Court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.
(2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the Court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.
(3) The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the Court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.
Effective: July 14, 1992
History: Amended 1992 Ky. Acts ch. 169, sec. 3, effective July 14, 1992; and ch. 414, sec. 1, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 182, sec. 22.
Legislative Research Commission Note (7/14/92) This section was amended by two 1992 Acts which do not appear to be in conflict and have been compiled together.

Alimony

403.200 Maintenance -- Court may grant order for either spouse.
(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a Court which lacked personal jurisdiction over the absent spouse, the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
(b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.
(2) The maintenance order shall be in such amounts and for such periods of time as the Court deems just, and after considering all relevant factors including:
(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
(c) The standard of living established during the marriage;
(d) The duration of the marriage;
(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and
(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.
History: Created 1972 Ky. Acts ch. 182, sec. 10.

Child Support

403.212 Child support guidelines -- Terms to be applied in calculations -- Table.
(1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.
(2) For the purposes of the child support guidelines:
(a) “Income” means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed.
(b) “Gross income” includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps.
(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, “gross income” means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight-line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income.
Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.
(d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility.
Potential income shall be determined based upon employment potential and probable earnings level based on the obligor’s or obligee’s recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A Court may find a parent to be voluntarily
Page 1 of 6. Unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.
(e) “Imputed child support obligation” means the amount of child support the parent would be required to pay from application of the child support guidelines.
(f) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include, but shall not be limited to, income tax returns, pay-stubs, employer statements, or receipts and expenses if self-employed.
(g) “Combined monthly adjusted parental gross income” means the combined monthly gross incomes of both parents, less any of the following payments made by the parent:
1. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the Court;

2. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and
3. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children.
(h) "Split custody arrangement" means a situation where each parent is the residential custodian for one (1) or more children for whom the parents share a joint legal responsibility.
(3) The child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.
(4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars ($60) per month.
(5) The Court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.
(6) The child support obligation in a split custody arrangement shall be calculated in the following manner:
(a) Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.
Page 2 of 6.(b) The nonresidential custodian with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.
(7) The child support guidelines table is as follows:

Guidelines Table - ***to be used with obligation WORKSHEET***

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX OR MORE CHILDREN
$ 0	$ 60	$ 60	$ 60	$ 60	$ 60	$ 60
100	60	60	60	60	60	60
200	70	70	70	70	70	70
300	80	80	80	80	80	80
400	90	90	90	90	90	90
500	100	105	110	115	120	125
600	120	125	130	135	140	145
700	140	156	161	166	171	176
800	160	203	208	213	218	223
900	180	261	266	271	276	281
1,000	195	303	325	330	335	340
1,100	212	324	384	389	394	399
1,200	229	346	433	446	451	456
1,300	246	367	460	504	510	515

1,400	262	392	491	554	576	582
1,500	277	417	522	588	642	650
1,600	293	437	548	618	674	717
1,700	308	458	574	647	706	755
1,800	322	478	599	675	736	788
1,900	336	495	620	699	763	816
2,000	350	512	642	723	789	844
2,100	364	529	663	747	815	872
2,200	376	546	684	771	841	900
2,300	389	563	706	795	868	928
2,400	401	580	727	819	894	956
2,500	413	597	749	843	920	984
2,600	424	614	770	867	946	1,012
2,700	435	630	790	889	970	1,038
2,800	445	646	809	911	994	1,064
2,900	455	662	829	934	1,019	1,090
3,000	465	677	849	956	1,043	1,116
3,100	475	693	868	978	1,067	1,142
3,200	485	709	888	1,001	1,092	1,168
3,300	495	725	908	1,023	1,116	1,194
3,400	506	741	928	1,045	1,140	1,220
3,500	516	757	947	1,067	1,164	1,246
3,600	526	773	967	1,090	1,189	1,272
3,700	536	790	988	1,113	1,215	1,299
3,800	548	808	1,011	1,139	1,243	1,329
3,900	559	826	1,033	1,164	1,270	1,359
4,000	571	844	1,056	1,190	1,298	1,388
4,100	580	862	1,078	1,215	1,326	1,418
4,200	592	880	1,101	1,240	1,353	1,448
4,300	603	898	1,123	1,266	1,381	1,477
4,400	615	916	1,146	1,291	1,409	1,507
4,500	626	933	1,161	1,316	1,435	1,535
4,600	636	949	1,181	1,338	1,459	1,561
4,700	647	964	1,200	1,360	1,483	1,586
4,800	657	980	1,220	1,381	1,507	1,612
4,900	667	995	1,239	1,403	1,531	1,637
5,000	676	1,010	1,257	1,424	1,554	1,661

5,100	686	1,025	1,275	1,444	1,576	1,685
5,200	695	1,039	1,294	1,465	1,599	1,709
5,300	705	1,054	1,312	1,486	1,621	1,733
5,400	714	1,069	1,330	1,506	1,644	1,757
5,500	724	1,083	1,348	1,527	1,666	1,781
5,600	733	1,098	1,367	1,548	1,689	1,805
5,700	743	1,113	1,385	1,568	1,712	1,829
5,800	753	1,127	1,403	1,589	1,734	1,853
5,900	762	1,142	1,421	1,610	1,757	1,877
6,000	772	1,157	1,440	1,630	1,779	1,901
6,100	781	1,171	1,458	1,651	1,802	1,926
6,200	791	1,186	1,476	1,672	1,824	1,950
6,300	800	1,198	1,498	1,690	1,844	1,970
6,400	808	1,209	1,511	1,705	1,860	1,988
6,500	816	1,219	1,524	1,720	1,876	2,005
6,600	823	1,230	1,538	1,735	1,893	2,023
6,700	830	1,240	1,551	1,750	1,909	2,040
6,800	837	1,251	1,564	1,764	1,925	2,058
6,900	844	1,261	1,577	1,779	1,942	2,075
7,000	851	1,272	1,591	1,794	1,958	2,093
7,100	858	1,282	1,604	1,809	1,975	2,110
7,200	865	1,293	1,617	1,824	1,991	2,127
7,300	872	1,303	1,630	1,839	2,007	2,145
7,400	879	1,313	1,644	1,854	2,024	2,162
7,500	885	1,324	1,657	1,869	2,040	2,179
7,600	891	1,333	1,668	1,881	2,053	2,194
7,700	896	1,342	1,679	1,893	2,066	2,208
7,800	901	1,350	1,691	1,905	2,079	2,223
7,900	907	1,359	1,702	1,917	2,093	2,238
8,000	912	1,368	1,713	1,929	2,106	2,252
8,100	917	1,377	1,724	1,941	2,119	2,267
8,200	922	1,386	1,736	1,953	2,133	2,281
8,300	928	1,395	1,747	1,965	2,146	2,296
8,400	933	1,404	1,758	1,977	2,159	2,311
8,500	938	1,413	1,769	1,989	2,173	2,325
8,600	944	1,421	1,780	2,002	2,186	2,340
8,700	949	1,430	1,792	2,014	2,199	2,354

8,800	954	1,437	1,800	2,024	2,210	2,366
8,900	958	1,444	1,809	2,033	2,220	2,376
9,000	962	1,450	1,817	2,042	2,230	2,387
9,100	966	1,457	1,825	2,052	2,241	2,398
9,200	971	1,463	1,833	2,061	2,251	2,408
9,300	975	1,470	1,842	2,070	2,261	2,419
9,400	979	1,476	1,850	2,079	2,271	2,430
9,500	983	1,483	1,858	2,089	2,281	2,440
9,600	988	1,489	1,866	2,098	2,291	2,451
9,700	992	1,496	1,874	2,107	2,301	2,461
9,800	996	1,502	1,883	2,117	2,311	2,472
9,900	1,000	1,508	1,891	2,126	2,321	2,483
10,000	1,005	1,515	1,899	2,165	2,331	2,493

Effective: July 14, 2000
History: Amended 2000 Ky. Acts ch. 430, sec. 9, effective July 14, 2000. – Amended 1998 Ky. Acts ch. 100, sec. 8, effective July 15, 1998; and ch. 255, sec. 20, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 365, sec. 6, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 330, sec. 11, effective July 15, 1994. -- Created 1990 Ky. Acts ch. 418, sec. 3, effective July 13, 1990. Page 6 of 6

Property Separation

403.190 Disposition of property.
(1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a Court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the Court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:
(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;
(b) Value of the property set apart to each spouse;
(c) Duration of the marriage; and
(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.
(2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:
(a) Property acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom;
(b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;
(c) Property acquired by a spouse after a decree of legal separation;
(d) Property excluded by valid agreement of the parties; and
(e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.
(4) If the retirement benefits of one spouse are excepted from classification as marital property, or not considered as an economic circumstance during the division of marital property, then the retirement benefits of the other spouse shall also be excepted, or not considered, as the case may be. However, the level of exception provided to the spouse with the greater retirement benefit shall not exceed the level of exception provided to the other spouse. Retirement benefits, for the purposes of this subsection shall include retirement or disability allowances, accumulated contributions, or any other benefit of a retirement system or plan regulated by the Employees Retirement Income Security Act of 1974, or of a public retirement system administered by an agency of a state or local government, including deferred compensation plans created pursuant to KRS 18A.230 to 18A.275 or defined contribution or money purchase plans qualified under Section 401(a) of the Internal Revenue Code of 1954, as amended.
Effective: July 15, 1996
History: Amended 1996 Ky. Acts ch. 328, secs. 1 and 2, effective July 15, 1996. -- Amended 1986 Ky. Acts ch. 441, sec. 1, effective July 15, 1986. -- Created 1972 Ky. Acts ch. 182, sec. 9.
Legislative Research Commission Note (7/15/96). This section was amended by 1996 Ky. Acts ch. 328, secs. 1 and 2 which do not appear to be in conflict and have been codified together.

Emergency Protection and Domestic Violence Orders

403.740 Emergency protective order.

(1) If, upon review of the petition, as provided for in KRS 403.735, the Court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the Court shall issue, upon proper motion, ex parte, an emergency protective order:
(a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the Court;
(b) Restraining the adverse party from committing further acts of domestic violence and abuse;
(c) Restraining the adverse party from disposing of or damaging any of the property of the parties;
(d) Directing the adverse party to vacate the residence shared by the parties to the action;
(e) Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.420, grant temporary custody; or
(f) Enter other orders the Court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof.
(2) Except as provided in KRS 403.036, if the Court issues an emergency protective order pursuant to subsection (1) of this section, the Court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.
(3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.
(4) An emergency protective order issued in accordance with this section shall be effective for a period of time fixed in the order, but not to exceed fourteen (14) days. Upon the issuance of an emergency protective order, a date for a full hearing, as provided for in KRS 403.745, shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed fourteen (14) days if service has not been made on the adverse party by the fixed Court date and time or as the Court determines is necessary for the protection of the petitioner.
(5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the notice setting the full hearing, and a copy of the petition. Service may be made in the manner and by

the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.
Effective: July 15, 1996
History: Amended 1996 Ky. Acts ch. 99, sec. 16, effective July 15, 1996. – Amended 1992 Ky. Acts ch. 172, sec. 6, effective July 14, 1992. -- Created 1984 Ky. Acts ch. 152, sec. 6, effective July 13, 1984.

The Top 50+ Frequently Asked Questions at Our Office

This is not legal advice. Each individual case is different, but these are the "standard" answers to these questions. If you have a question about your case, you need to ask your attorney for an answer based on the facts and particular circumstances of your case.

1) I am in need of help and I can't afford an attorney. Can you give me some suggestions? You may want to ask for assistance from Legal Aid. You can also use legal forms to process a simple uncontested or default divorce. Adoptions are far more difficult to do. Many offices will do a divorce for a person with low income. Normally, attorneys charge about $500 to $700 or more for a divorce, and the Court costs in Jefferson County are an additional $118, (other counties may have a different amount for their Court costs). Even though you may not have the money for an attorney, we usually don't suggest that anyone do their own divorce. If you have only been together for a few months, your spouse may be agreeable to signing an uncontested divorce so that there isn't a lot of expense and paperwork involved. Even if you do your own divorce, you should have an attorney look over the paperwork before you sign any settlement agreement. If there aren't any questions about property, child support, or child custody—and the divorce is only a matter of dissolving the marriage—you may be OK in doing it yourself. The main problem with doing your own divorce is that you have to go to the trouble of going to the Courthouse and doing all of the paperwork—and you probably lack the skill and knowledge to be sure you have properly covered all aspects. Because of the time involved, and the emotional expense and trouble, most people are willing to pay $500 or more dollars to have an attorney prepare the uncontested divorce paperwork. It may be far better for you to spend a little money to know your case was properly filed and completed.

2) What should I look for in a divorce attorney? An initial consultation has sometimes been compared to a blind date, and the comparison is not far off-base. Did you leave the office feeling confident about the attorney? Did he keep you waiting? Did he take calls during the meeting? Was the office shabby? Lack of attention now, when a lawyer is presumably trying to obtain your business, does not bode well for the future.

The lawyer you choose should be qualified in and have experience with divorces. He or she should do quality work, put effort into your case, and not overcharge. He or she needs to have respect for your feelings and what you want, answer your questions, and return your calls. He or she must tell you the truth about how the legal system works so you can use the information to plan and protect yourself. He or she shouldn't guarantee you will win. If your attorney doesn't fulfill these criteria, get a refund of your retainer and find a better attorney.

3) What should I expect from an attorney? A divorce, by its nature, requires you to divulge information to your lawyer that even your spouse may not know. Your lawyer must have this information to advise you. An attorney will listen to your version of the problems in the marriage and, possibly, take notes. After hearing your problems and concerns, the attorney might give you a brief overview of the law, explain the different options available to you, and tell you what he or she hopes to accomplish for you. It is impossible to predict the future of any case, but your attorney

should be able to tell you what he or she expects after the initial consultation. Be wary of any attorney who guarantees results.

The attorney should also describe his or her professional background and explain his or her fee structure.

Remember, your attorney is not your psychologist and is not qualified to give you psychological advice. Questions concerning the children's welfare or your emotional state should be addressed to the appropriate social or mental health expert.

4) What are divorce mills? Should I use a divorce mill to get a cheap divorce? You can save money, time, and effort by working with each other in the divorce, but don't cut costs by using a divorce mill: You tend to get what you pay for. The eventual outcome of your divorce depends on the facts, the law, how the Judge views your case, and other factors—including how good your attorney is.

Divorce mills attempt to cover an area and advertise heavily to get more business. They usually have several offices in a region, and often the branch offices are staffed by non-attorneys, paralegals, or untrained staff. Mills normally handle cases with untrained or under-qualified personnel. Mills often do not keep clients informed about the status of their cases. If you use an unqualified paralegal you may lose more in property, child custody, or child support than you save in attorney fees. If you are a young couple with no property, no children, and nothing to lose, it may be OK to spend less. However, if children, property, or debts are involved, it is not advisable to have poor representation. The average person will earn over one million dollars in his or her lifetime. You can probably afford $1,000 to $3,000 for a divorce better than you can afford losing your children or your home. Attorneys now charge an average of $150 an hour for their time, and a divorce may require one or two days of their time—even if it is uncontested. Contested divorces may take weeks and thousands of dollars. You will have to decide if you want this done right. A cheap divorce almost always costs more in the long run.

We are attorneys. Our practice is based on referrals from clients that are treated like family, not high-pressure advertising. Our personnel and resources are located in one office. We send clients a copy of virtually everything we send or receive. We keep you informed and give status reports by telephone or mail or in person.

5) Why would I need an attorney if my spouse and I agree on all the divorce issues? You still need an attorney because the agreement that you are signing is often drafted by the attorney for the other spouse, and it may be written to protect them and to place you at a disadvantage. Unless you have a divorce attorney's understanding of the law, you may be signing away your children or our property. **Never sign any important document without legal advice.** What you sign away, you may not be able to get back later. Having a lawyer will insure that you have all the matters resolved properly. Not having a lawyer almost always guarantees that you will lose property, child support, custody, or visitation. Further, you may not understand exactly what will later result from special terms that may be in the divorce documents.

6) Do we have a common-law marriage? There is only one state that allows and honors common-law marriages, and it isn't Kentucky. If you live with someone, you generally have none of the rights that marriage gives you. You cannot receive alimony or marital property—only child support. Living with someone gives you no legal status or rights in 49 states.

7) How long do I have to be a resident to file for divorce? In Kentucky, you are a resident after 6 months. Other states vary from a few days to one year. No state has a waiting period longer than one year.

8) How long do I have to be a resident if children are involved? In Kentucky, you are a resident after 6 months. Other states vary from a few days to one year. No state has a waiting period longer than one year.

9) Do I have to move out of the house to file for divorce? No, but you cannot share the same bedroom or have sexual relations. You may be "separated" and still share the same house.

10) What are "grounds for divorce"? What is a "no-fault" divorce? Though there are legal grounds for divorce (adultery, abuse, abandonment, etc.), Kentucky (like almost all other states) grants divorces based on "irreconcilable differences". One party must establish that he or she has not lived with the other for 6 months and that the marriage is "irretrievably broken". In a no-fault divorce, there is no need to show any wrongdoing or fault for either party. All states have no-fault laws and, except in rare cases, there are few reasons for alleging fault.

11) I am planning to file. What should I do? When should we separate our joint bank and credit cards? If you suspect a contested divorce, consider doing the following: (1) Get control of the financial records as soon as possible and make sure the records are safe. (2) Cancel or close-out checking, savings, and credit accounts and take control of the assets. (3) If you have important or valuable items, move them to a safe location. (4) Do not incur any new debt and, if you know you will also be filing bankruptcy, make certain you do not charge more than $1,000 dollars on any one credit card within 90 days of filing bankruptcy.

Although you should not delay consulting a lawyer, you should learn as much as you can about your family's finances as soon as possible. Know the monthly and annual costs of running the family home, how much you and your spouse earn, what each of you have in savings, and where the assets are located. Find out what insurance policies you and your spouse have, make photocopies of past filed tax returns, and find out what assets and debts both of you have.

12) My husband claims he will not grant me a divorce. What if he will not let me? You cannot be held prisoner in a marriage. If you want a divorce, you do not need your spouse's consent. You need his agreement to marry him, but not to divorce him. A spouse can contest a divorce and disagree about the amount of child support or alimony, how the property is to be divided, who should get custody, and what kind of visitation should be allowed—but he can't force you to stay married. If one partner strongly objects to the divorce, a Judge may order a reconciliation conference to see if the marriage is truly "broken".

13) What should I do if I am served with a divorce complaint? You should find an attorney immediately. If you fail to answer the complaint, you may find yourself losing marital property, paying too much child support, or losing your right to custody or visitation with the children. In Kentucky, you normally have just 20 days to file an Answer in writing. If you fail to answer the complaint, a default judgment may be granted to your spouse giving them everything and denying you everything—even visitation with the children. You may never get the children or the property back. In some states, like Georgia, you may forever lose the right to argue against the complaint if you do not file an answer within 30 days.

14) What is an uncontested divorce? An uncontested divorce is a divorce wherein both parties agree to all the terms of the divorce (i.e., no litigation is needed).

15) What is mediation? Does mediation have any advantages over traditional litigation? In order to discourage expensive and time-consuming trials, mediation is required in many Courts. It is required in Louisville, Kentucky. In mediation, a neutral attorney (not your or your spouse's attorney) will attempt to help you arrive at a settlement agreement and avoid litigation. In Jefferson County, if a divorce is contested, the parties have to attempt mediation before a hearing is held. The cost of mediation is divided between the two parties. Mediation is much less expensive—and quicker—than litigation.

16) Must I go to Court to get a Divorce? No. Most states allow evidence by deposition, which allows you take testimony in the attorney's office with a Court reporter or by a notary.

17) What if I don't like the Judge? Judges can recuse (remove) themselves if there is a conflict between them and some aspect of the case. For example, if a Judge is assigned to your case, and he is your spouse's relative, he will recuse himself from the case and a different Judge will be assigned. The fact that you don't like a Judge is not a basis for recusing him.

18) How long does it take to get a divorce? In Kentucky, if there are no children, the divorce can take less than 30 days—as long as the parties have been physically separated for 60 days. (You can still be living in the same house, but you can't be sharing a bed and having sex.) If there are children involved, it will take at least 60 days, even if all the parties are in agreement. If the divorce is contested, it may take years. If child abuse or spousal abuse is alleged, visitation disputes can lengthen the divorce even more. It can take up to a year to get any divorce in some states, like Maryland.

19) What happens while I wait for the divorce? Either spouse may request a temporary hearing while waiting for the final order so that child custody, support, visitation, and even property may be temporarily be awarded. These temporary orders may also include restraining orders to prevent the disposal or destruction of property. The Judge will issue a temporary order that awards items until the final trial; however, these temporary orders are very important because they have a tendency to become permanent. Emergency Protective Orders and other Domestic Violence Orders act like temporary orders and tend to become permanent orders influencing support or custody.

20) How does the Court decide who gets Custody? The Court considers what is "in the best interests of the child". Factors that may be used to decide who gets custody include:

- Parent's job and residence stability
- Parent's emotional stability (psychological evidence is a strong factor, and a Judge may order psychological exams)
- How the child performs in school, and behaves with others, while with the parent
- What type of model the parent would be for the child
- Parent's drug or alcohol addiction
- Previous child abuse allegations against the parent
- Whether or not the child has become used to, and is integrated into, the home of the parent
- Whether or not custody arrangements would separate siblings

Income is not a directly a factor, but what each family could offer the child is a factor. The fault of the spouse in the divorce is never a factor, and conduct that does not affect a child is not considered. Each spouse is, legally, equally entitled to custody of the child. A Court will almost always agree with the settlement agreements of the parties. If there is no agreement, the Court is forced to decide, based on evidence and testimony, what is best for the child.

21) Do women automatically get the children? Gender is no longer a legal factor in granting custody; however, women are more likely to be the petitioner (filer) in a divorce action and tend to win custody far more often than men and receive alimony far more often.

22) What is the normal visitation the Court will award? Normally, the Court will award every other weekend, two weeks during the summer, and alternating major holidays. Additional time can be agreed upon by the parties. If there is absolute joint and equal custody, each side will get equal amounts of time with the child.

23) What about grandparents? Do they have rights? Yes. They can have visitation awarded.

24) What is Joint Custody and why do Judges prefer it? Joint custody means that the parents raise the child together. It is preferred by the Court because it shows the parties are more mature and will provide a better family situation. Joint custody does not usually mean equal rights for both parents. Normally, one person is the "primary caregiver" and controls the child the majority of the time.

25) Why share custody? Almost every study has shown that the more both parents involve themselves with raising the children the better adjusted the child will be. When parents share the responsibilities of raising the child, the child will do better in life. In Kentucky, and many other states, Judges will automatically order joint custody with one parent being the "primary caretaker" of the child. Usually, there is very little difference between this and one parent having sole custody—since one parent still has primary care of the child. Some cases of joint custody provide equal caretaking of the child, with the child living exactly half the time with one parent and half the time with the other.

26) What do I have to do to change custody? This may be done by the agreement of both patents or by showing there has been a change in conditions since the time of the original judgment. The change must endanger the mental, emotional, or moral health of the child. The child's welfare and best interests are the primary factors in allowing a modification.

27) Can I remove the children from the state if my job changes? Normally, the custodial parent is free to move to another state for a new job.

28) How serious a crime is parental kidnapping? If the state the child was taken from has a felony statute, it may be a Federal crime. In Kentucky, custodial interference is a felony, and any person wrongfully taking a child from his or her custodial parent has committed a felony.

29) How is child support decided? Child support is decided by the Child Support worksheet and Guidelines Chart. Each parent pays a pro rata share of the costs of raising the child, including day care. Deviations from the chart are allowed. If the parents agree on a different amount, they must show that they calculated and considered the guidelines. If the Court sets a different amount, the Judge must submit a written explanation of why this deviation is appropriate.

30) My ex isn't paying child support. What do I do? If you know where your ex lives and works, you can hire an attorney to enforce the child support order. Some Commonwealth attorneys and County attorneys work very hard to criminally prosecute non-payment of support; however, often cases are left alone for months or years because of an overload. Many parents skip town and change identities to avoid prosecution and this makes locating them difficult.

There is a very strong correlation between visitation and support: Parents who don't see their children have a much higher rate of non-payment. Often just allowing or increasing visitation will improve support payment.

31) Is there any way to avoid paying support? A person has a duty to support their children. In a divorce, the obligation to pay support starts with being properly served by a motion for support. If the parent skips town before being served, support never starts; however, if the parent is served, there are federal income tax intercepts and many other ways to enforce collection. If a non-custodial parent fails to pay support, he or she may be jailed—either for contempt or for the criminal failure to pay support.

Although it is unusual, a parent's rights may be terminated, eliminating the obligation to pay support and ending parental rights altogether. This may be done by agreement of the parties and is usually done because one parent is a danger or extremely negative influence to the child. Non-payment of child support is not, by itself, sufficient to terminate a parent's rights to a child—normally, abandonment or more is required. Termination requires evidence that it is in the best interests of the child.

32) Can my spouse be made to pay support while the child is in college? In Kentucky, the Judge normally cannot and will not award support past age 18, unless the child is still in high school. In no case will the Judge award support past age 19. The parties may agree between themselves, however, that the child will be supported through college. Other states allow support through age 21.

33) What are the tax issues involved with divorce? Alimony is a tax deduction. It is earned income for the person who gets it, and it is a deduction for the person who pays it. Child support is not tax-deductible. By labeling support payments alimony, instead of child support, you may reduce the taxes for one party and increase the other's taxes. By using this method, a couple can increase child support by 10% or more and still have a tax savings for the wealthier spouse.

34) I don't have the kids, but I want the tax deduction. What do I do? If the other parent has custody, you don't qualify for the exemption unless you obtain IRS "Release of Claim to Exemption for Child of Divorced or Separated Parents" (Form 8332). The form must signed by the other parent. The US Tax Court may deny a non-custodial parent's claim for a child's exemption even if the divorce Court ordered that he or she be allowed the exemption.

35) How can I enforce the support order? Support orders can be enforced just like any other garnishment or debt. They can also be enforced by contempt orders that jail the offender or grant you property and attorney fees. Child Support may also be enforced as a criminal action. In Kentucky, if child support is not paid for 6 months, or if the payer is $1000 dollars behind, it may be enforced as a felony conviction. The non-paying person can be put in prison and fined, in addition to being made to pay the delinquent amount of support.

36) What is contempt? Contempt is the willful refusal to obey Court orders. A person may be jailed, imprisoned, or fined for contempt.

37) Should I withhold visitation from my ex until he starts making child support payments on time and in full? Many spouses use this as a tactic to force child support payments, and it may work. The "official" legal answer, though, is NO. You cannot violate one Court order in an attempt to enforce another. Support and visitation are separate issues, and you should take your spouse back to Court if he or she will not pay.

In addition, if you use this tactic, you are using the children—and harming them by keeping them from their parent. You will probably escalate the argument, and you are acting as badly as your spouse…or worse. Your children are watching you and, eventually, they may resent you for keeping them from their other parent.

38) What should I do if I am the victim of family violence? If you are a victim of family violence, you need to protect yourself and your children. It is important that you remove yourself and any children from the abusive spouse and get to safety. You must also report the abuse to the authorities. In Kentucky, and in many other states, if you know of the abuse of a child and you do not report it, you will be prosecuted and can be found just as guilty as the actual abuser.

The system is designed to protect persons from domestic violence; however, it is extremely sexist and often abused. In Kentucky, the Cabinet for Human Resources and some County Clerks have refused to take reports of abuse from men reporting women for abuse. The Cabinet for Human Resources will encourage a woman reporting a man, though, and may even threaten to take her children or prosecute if she attempts to stop the prosecution against her husband.

Victims of abuse can get a Court order to protect them from an abusive spouse. This order may grant the victim custody, child support, the marital residence, and property. Therefore, the system is often abused by persons making false claims to quickly grab custody or property. Once the orders have been in effect for a time, they often become permanent orders as the child becomes integrated into the new environment. The Judge is forced by Kentucky law to grant the order, essentially ignoring any evidence that the accused abuser brings to Court and only considering the claim of the person alleging abuse. An article in the Louisville Courier-Journal claimed that almost one-half of all domestic violence cases in our Courts were false claims filed to obtain an advantage in the divorce system.

39) What is an Emergency Protective Order? An EPO is a judicial order forbidding a person from destroying property, harming a spouse, or contacting a spouse. The order may often include granting one spouse custody, child support, and even alimony. Under Kentucky law, a spouse that makes a claim of domestic violence and requests an EPO is given an almost automatic grant of custody and child support—with the other spouse having little or no right to defend the claim.

40) What happens to our property in a divorce? Unless you and your spouse can agree on how to divide the property, it will be divided by the Judge. The debts will also be divided. Normally, property and debts are evenly divided; however, there are factors that may change the division of property. (These factors may include one person destroying or converting property.) Parties can agree to any division they like, rather than having the Judge decide. As long as the property agreement is not unconscionable, it will be granted.

41) What is marital property? What is non-marital property? Marital property is any property that the parties earn or purchase together during the marriage. Property that is given to or inherited by one party during the marriage, or that is earned or owned before the marriage, is non-marital property and is not subject to division.

42) What are prenuptial agreements? A prenuptial agreement is an agreement made prior to a marriage that dictates what each party will get in the event of a divorce. Prenuptial agreements are often reviewed for unfairness, and they are not favored by the Courts. Despite this, someone with large amounts of property may be well-advised to get a prenuptial agreement. It can document that certain property is non-marital property.

43) My ex declared bankruptcy. Can the creditors come after me? Yes. The divorce decree does not stop bill collectors from collecting the debt from you, even if your spouse was ordered to pay it. It is also possible that your spouse will file bankruptcy and that you will have to pay the debt.

Seriously consider whether you or your spouse will file bankruptcy and what guarantees your spouse will pay. For instance, if he or she cannot afford the house, it may be best for you to either force the sale of house or to take the house (and the debt for it), rather than trust your spouse to pay for it. It is common for a spouse to file bankruptcy and sit in the house until foreclosure. The mortgage company will then attempt to collect from you. A situation like this could destroy your credit.

44) Years ago my spouse and I divorced. She got the house in the divorce settlement. I am on the loan for the house and she is not making the payments which she is required to do in the divorce settlement. It is ruining my credit and they are asking me to pay. What can I do? The Court may reopen the case in order to divide the property or resolve the situation fairly. The Court may order the sale of the house. Divorce Courts have "continuing jurisdiction" and can enter new orders when custody, child support, visitation, or marital property needs to be changed to reach fair or proper results. Judges may refuse to reopen a case if you simply failed to ask for some things you should have asked for in the first place, or if the request is late or untimely.

45) What is alimony? Alimony is money paid by one spouse to the other for support and maintenance. It may be granted to the husband or the wife; however, it is rarely granted to males (statistically). Alimony is not usually given unless one spouse is unable to provide for themselves. Even then, it must be proven that the other spouse is able to afford the alimony. Alimony can't be awarded to one person if the other person won't be able to afford his or her own normal living expenses.

Alimony is usually granted for a limited period of time, until the receiving spouse learns new job skills and becomes self-sufficient, but can continue until the remarriage or death of the receiving spouse. Alimony may be paid over time or in one lump sum. (Child support can also be paid in one lump sum.)

46) Can I get alimony or child support in a no-fault case? Alimony, child support, custody, and property division are generally not awarded based on fault. In rare cases, fault may be a defense to alimony.

47) How do I get my maiden name back? To get your maiden name back, remember to tell your attorney to include it in the Petition. Your attorney also needs to include it in the Judge's final order. It is more expensive to go back and get it done later. It is very important that you resolve all the issues at your final trial, or in your marital settlement agreement. If you fail to have all matters resolved you will, at least, end up paying extra legal fees for changes later.

48) What if I forgot something in the marital settlement? If you forgot to include certain items, you may forever lose your right to bring up the issue later. In the case of attorney's fees, for example, you probably have lost the right to recover. In a case where parties do not agree on custody or visitation, you would be able to go back to Court because the Court has continuing jurisdiction over some issues (custody, visitation, support increases and decreases). These items may need to be modified later, especially when circumstances change.

If you simply failed to ask for something out of your own incompetence, the Judge will not like wasting his time to reopen the case. Also, handling these issues in several small hearings, rather than resolving them in the main divorce trial, will dramatically increase the cost of the divorce.

49) Is it all right to date? There are no rules against dating someone while you are divorcing, but be careful! When you are divorcing, it is a very emotional time and you may be vulnerable. If a person comes along who seems to meet your needs, you feel thankful. You may be inclined to fill the void in your life by starting a new relationship.

You are changing. You are learning make better choices than the ones that led to this divorce. Hopefully, you are learning that some of the strategies and models you thought were right are wrong. You need this time alone while you re-think the roles in your relationships. Getting into a relationship at this time may also complicate your divorce, or heat up any existing arguments, by triggering your spouse's jealousy.

Of course, if a person comes along that is the perfect match for you; there is no rule against pursuing the happiness you could have. But, if you do choose to have any romantic or sexual relationship, keep it private. Don't throw it your spouse's face: He or she might respond by trying to cause you problems in Court.

50) When can I remarry? You should not remarry, or believe that you are single, until you receive the final decree of divorce. The fact that there has been a final hearing does not mean you can remarry.

51) My wife has remarried. Can she change the name of my child? No, your spouse cannot change the child's name without your permission.

52) How old do you have to be to get married? You have to be at least 18 years old to get married in Kentucky, but you may get married under the age of 18 with parental consent. Age is not a problem if the District Court declares you to be emancipated and an adult. (This can be done in the case of pregnancy.) You don't have to be residents of the state of Kentucky to be married here, but it may cause problems if you marry in Kentucky and return to another state that has more strict laws about marrying.

53) What is an annulment? An annulment is a Court procedure that determines the marriage was invalid and, so, never happened. For some people, divorce carries a stigma and they would rather their marriage be annulled. Others prefer an annulment because of their religion: It may be easier to remarry in their church if they have an annulment rather than a divorce. An annulment is a claim that the marriage contract never existed. Grounds for annulment usually include one of the following reasons:

- **Underage:** Either party was not of legal age at the time of the marriage.
- **Relative:** The parties have an existing family relationship (siblings, cousins, etc.) that makes it illegal for them to marry.
- **Mental incapacity:** Either party lacked the mental capacity to make the decision to marry.
- **Inability or refusal to consummate the marriage:** Either party lacked the ability to have sexual relationship or to have children.
- **Bigamy:** Either party was already married to someone else.
- **Concealment:** Either party concealed the fact that they were already married, had an addiction to alcohol or drugs, had a criminal history, had children from a prior relationship, had a sexually transmitted disease, or was impotent.
- **Misunderstanding:** For example, one person wanted children and the other did not.

Most annulments are granted for religious reasons and take place after a marriage of very short duration. An annulment is rarely granted if there are children.

Filing for an annulment is normally an admission by you that you married someone illegally and may say things about you that could cause you problems later—even to lose your children.

54) What if I want a separation? Generally, people that want a separation end up filing two lawsuits: the separation and the divorce. There is no benefit to doing this—except for the attorney who charges for two separate lawsuits.

55) If you have any questions, please send them to us so we can add them to this section

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