# DIVORCE IN INDIANA

What to expect and best practices
to follow during the divorce process

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# TABLE OF CONTENTS

## INTRODUCTION

This handbook is provided to assist in improving your understanding of the marriage dissolution process in the State of Indiana. Like any handbook, this one is no substitute for legal advice. It is intended only to give you a rough sketch of the dissolution process, applicable law, what to expect in a divorce, and to help you and your lawyer work together more effectively.

Thanks to the American Academy of Matrimonial Lawyers for the use of portions of its materials in the preparation of this handbook.

Section 1

# AN OVERVIEW OF THE DIVORCE PROCESS

## Introduction

The goal of the legal process of divorce is to conclude the legal relationship of a marriage, and to resolve matters incident to the dissolution, such as child custody, visitation, child support, spousal maintenance, property and debt division, and attorney's fees, and costs.

A divorce decree, which is a document that usually incorporates the resolution of all applicable issues, can be based upon an agreement between the parties or as a result from a contested trial before a judge. An agreement is usually less traumatic for you (and your children, if applicable) and less expensive than a trial. Ultimately, most cases are resolved without a trial. In Indiana, when matters are resolved by agreement of the parties, the parties do not go to Court at all.

In Indiana, what is commonly known as "divorce" is frequently referred to as "dissolution of marriage" and, therefore, these terms are generally used interchangeably.

## Divorce Proceedings

The following description applies in Indiana. Legal procedures in other states may be, and frequently are, very different. The development of any case is highly fact-dependent. Be mindful of this if you hear stories from friends or relatives about their divorces, particularly if they went through the process in other states.

### The Petition

A divorce begins with the filing of a "Verified Petition for Dissolution of Marriage," or simply "the Petition," with the Court. With this document, one spouse legally notifies the Court and other spouse that the filing spouse is requesting that the Court legally terminate the marriage. The Petition usually lists additional relief requested of the Court, such as child custody, parenting time, child support, spousal maintenance, a division of property and liabilities, attorney's fees, and costs. It may also include requests for provisional support, which is discussed further below.

### The Response

Indiana law does not require the opposing party to file any type of formal response to the Petition with the Court, though a response is permitted. Sometimes, a response is filed to alert the Court to the existence of a premarital agreement, if it was not mentioned in the initial filing.

## Provisional Orders

Provisional orders, also called temporary orders or *pendente lite* orders, set the ground rules while the divorce case is pending. In most cases, a divorce can be thought of as having two stages. In the first stage, which normally occurs in the first few weeks after the filing of the Petition, the parties (or the Court, if the parties cannot agree) must decide how various issues will be handled until the divorce can be finalized. For example, until the divorce is final, who will have temporary custody of the children? How much child support will be paid? Who will have temporary possession of the marital residence? Who will pay which bills?

Generally, most divorces will also include a restraining order on assets, which prohibits either party from spending down or transferring marital assets, except "in the usual course of business or for the necessities of life." This order is intended to keep marital assets from disappearing or being spent before they can be divided between the parties pursuant to the final divorce decree.

In some cases, the parties feel comfortable informally agreeing to "maintain the status quo" and no formal provisional order or agreement is necessary.

It is usually in both spouses' best interest to agree upon reasonable arrangements while the case is pending rather than incur additional legal fees and add to bad feelings by going in front of the Court for provisional orders. In our experience, most provisional orders are agreed to by the parties through negotiation and compromise, and a hearing for a provisional order is not necessary. If an agreement is reached, it will be reduced to a written agreement by the attorneys, signed by both parties, and then submitted to the Court for its approval. Once the Court approves the agreement, the terms of the agreement will become a Court order, which must be obeyed by the parties or else a violating party may be subject to contempt sanctions.

## Discovery

During the dissolution process, each spouse is entitled to information from the other about the case. The legal procedures for obtaining that information are called "discovery." Discovery may be a simple, speedy process or one consuming a great deal of time, energy, and money. This will depend mostly on the complexity of the case, as well as the cooperation of each party in providing requested information.

There are several different common discovery procedures. Interrogatories, which are written questions, may be sent to the other party requiring a written response made under oath. Through a request for production, one party may obtain documents from the other. In a deposition, the spouses or other persons, including experts, may be required to answer questions under oath in a lawyer's office while a Court reporter takes down what is said and then prepares a transcript. If your deposition is to be taken, there will be advance notice and your lawyer will discuss the process with you.

Indiana law provides for a very broad standard for what information is "properly discoverable." In almost all divorces, any type of financial information relating to either of the parties is properly discoverable, such as paycheck stubs, tax returns, bank and brokerage statements, etc. In divorces where child custody is contested, almost any information is properly discoverable, including issues pertaining to a party's character or parenting ability, such as drug and alcohol abuse, or mental health issues.

## Negotiated Settlement

Most lawyers and judges agree that it is better to resolve a case by agreement than to have a trial in which a judge decides the outcome. Also, people who have been through a divorce value the privacy and control that a negotiated agreement gives them. People are more likely to obey a judgment which is based on their agreement than one which has been imposed on them by

a judge. Voluntary compliance is important because enforcement procedures available from the Court are usually expensive and sometimes inadequate. For these reasons, following discovery—and at any time, even during trial—the spouses and their lawyers should attempt to negotiate a settlement.

Because of the limited number of judges available to hear trials, most Courts require the parties and their lawyers to attend a mediation in which a neutral third-party tries to assist the parties (and their attorneys) in coming closer to a settlement. Mediation is discussed in greater detail below.

Although your lawyer may recommend that you accept or reject a particular settlement proposal, the decision to settle or not to settle is yours. Your lawyer cannot and will not make that decision for you.

## Mediation

As suggested above, there are other methods of resolving your case than through a trial. These methods are collectively called alternative dispute resolution. While there are many types of alternative dispute resolution, the one used most frequently in the family law setting is mediation.

In mediation, the parties meet with an impartial individual (who usually is an attorney with special training, qualifications, and experience with family law) for the purpose of assisting the parties to reach an agreement. It is important to have independent representation throughout the mediation process. The parties should consult with their respective lawyers about mediation and the legal ramifications of any proposed agreement.

It is important to underscore that mediation is different from arbitration, another method of alternative dispute resolution, which is only occasionally used in Indiana family law cases. In arbitration, each party makes his or her case to the arbitrator, who then acts much like a judge and imposes a decision on the parties. Mediation is very different from arbitration. In mediation, the mediator acts as a facilitator to help the parties in crafting a settlement agreement of their own. The mediator does not make a decision that binds the parties. If the parties, with the mediator's assistance, are unable to reach an agreement, then the mediation session is of no effect and the case usually proceeds to trial before a Court.

The cost of the mediator is generally shared equally between the parties. In our experience, mediation is frequently successful, and we normally recommend attempting mediation in all but the most unusual of cases. Sometimes, more than one mediation session is needed.

> *"in most cases, the judge does not buy completely into either party's perspective of the case"*

## Trial

If you and your spouse cannot settle your case, the matter will go to trial. At trial, you (and your attorney) will tell your story to the judge. It is told through your testimony, the testimony of other supporting witnesses called by your attorney, and documents called exhibits. In Indiana, court trials are performed exclusively with a judge and never to a jury.

Trial is likely to be expensive and can be uncomfortable. However, it can be the only alternative to never-ending unreasonable settlement demands. Still, trials are risky. No lawyer can predict the outcome of a trial because every case is different. A judge, who is a stranger – possibly with a viewpoint, temperament, and values very different from yours – tells you and your spouse how to reorder your lives, divides assets and liabilities, and dictates when each of you may see your children and how decisions affecting your children will be resolved.

One reason that we encourage pre-trial settlement is because, in our experience, many clients are prone to believing that the judge will see everything the same way the client does. ("My spouse is obviously a terrible person, so I'm sure the judge will see that clearly.") In reality, and in most cases, the judge does not buy completely into either party's perspective of the case, and frequently issues a Decree that both parties find partially or completely unsatisfactory.

Sometimes, a trial does not end the case. Each party may, within a limited period of time, ask the judge to reconsider his or her decision, or appeal to a higher Court. Either of these post-trial steps adds more time and expense to the divorce process.

Section 2

# CHILDREN'S ISSUES

## Introduction

Ordinarily, parents make decisions about their children together. But when parents divorce, the hostility between them sometimes causes them to disagree on what is best for the children. In addition, divorce presents a whole new set of child-rearing challenges. Even the best parents may find it useful to consult a child development expert for help in meeting these challenges.

Issues related to children can present challenges for your lawyer as well. While your lawyer's loyalty is to you, your lawyer also has an obligation as an officer of the Court to keep the best interest of the children in mind, even if that interest is inconsistent with yours.

## Legal and Physical Custody

Indiana law makes a distinction between "physical custody" and "legal custody." Physical custody is the responsibility of having the children live with you. The parent whom the children are with at the time has the responsibility for making day-to-day decisions for them. Day-to-day decisions include what the children eat and wear, whom they play with, and when they go to bed. "Legal custody" is the right to make important long-term decisions affecting your children's welfare that include the children's education, religion, and non-emergency medical care.

Many variations of legal and physical custody are possible. There may be joint legal custody (in which important decisions are made together by the parents), but one parent has primary physical custody. Or, there may be sole legal custody with that parent also having primary physical custody. Also, there can be a joint legal and physical custody arrangement, such as where the children alternate spending some period of time (often a week) with each parent.

In most cases, a parent without primary physical custody will have defined "parenting time." (In the past, this may have commonly been referred to as "visitation." However, Courts now want to avoid the term "visitation" as both parents' ability to parent their children is important.) In Indiana, there is a presumption that the non-custodial parent will have parenting time as prescribed by the Indiana Parenting Time Guidelines (IPTG). We have copies of the IPTG which you should receive from your attorney or paralegal. At the risk of vastly oversimplifying, the IPTG provides a minimal schedule of parenting time where the non-custodial parent has a minimum of parenting time every other weekend, one mid-week evening per week, alternating major holidays, and a substantial portion of the summer.

## Joint Custody

There is no one standard “joint physical custody” arrangement. Some parents alternate weeks with the children, others alternate months. Still others divide the children’s time unequally, but in a manner that meets the needs of each particular family. Parents who work out these arrangements themselves are usually more creative than Courts are when the parents cannot agree. Legal custody, in which the parents share the right to make certain decisions for the children, can also be joint or divided in appropriate cases. Joint custody is not necessarily appropriate in every case, and some judges frown on children not having one home base.

## Parenting Coordinators

In recent years, there has been an increased use of "parenting coordinators" (or PC), especially in cases involving joint legal custody. A PC is a neutral, third-party professional, usually a therapist or experienced family law attorney, who works with the parents in an effort to resolve any disputes that arise within the joint legal custody context. In typical PC arrangements, when a dispute arises about a parenting decision (e.g., whether to change the child's primary care physician, working through parenting time schedule disagreements, etc.), the PC will initially work with the parents in a therapeutic manner. The PC will help the parents try to find a resolution through seeking compromise and common ground. However, if the parents still are unable to resolve their disagreement after this therapeutic effort, then the PC will declare an impasse and essentially make the decision for the parents. The PC's decision is "appealable" to the court, but courts are often reluctant to overturn the PC's decision. Parenting coordinators offer a positive alternative to returning to lawyers (or the court) over minor disagreements between the parents, especially as the PC will get to know the family and be in a better-informed position to guide and make decisions. It does, however, add an additional layer of cost, the expense of which is usually divided between the parties in some manner.

## Allegations of Child Abuse

Allegations of child abuse, whether sexual, physical, or psychological, are serious. Unfounded or false claims are harmful to the children and obscure the real issues. Judges and lawyers will try to protect children both from a parent who is an abuser and from a parent who fabricates such a claim.

## Custody Litigation

### Mediation

When parents cannot agree on issues of custody and parenting time, Indiana Courts will frequently require the parents to participate in mediation. The mediator tries to help the parents reach an agreement on their own. The parties usually attend mediation with their respective counsel.

It is important to understand that “mediation” is different from “arbitration.” In mediation, the mediator is an independent third party, usually an attorney who also practices in family law, who tries to help the parties find common ground and a resolution to all disputed issues in their case. A mediator never imposes or orders an outcome. If mediation produces a successful resolution, it is only because both parties agreed to the terms of that resolution.

### Investigation

Sometimes the Court will order, either on its own or at the request of one of the parties, an investigation and recommendation as to child custody/parenting time issues by a mental health professional or social worker. The investigation may include interviews with the parents, the children, teachers, day care providers, neighbors, doctors, and anyone else who is significantly involved with the children. The investigation may include psychological testing of the parents and a review of any relevant medical or psychological records of the parents. The investigator usually writes a report and makes recommendations to the Court. The recommendation can be helpful in reaching an agreement. If no agreement is reached, and the custody or parenting time dispute must be decided by the Court, the judge will probably read the report and be significantly influenced by it, though the recommendation of the report is by no means conclusive.

### Lawyer or Guardian *ad Litem* for the Children

The Court may appoint a guardian *ad litem* (or GAL) to represent the children and look out for their best interest in a custody or visitation dispute. Frequently, the GAL will prepare a written report that is submitted to the Court and reviewed by the judge.

### Trial

If, after investigation, negotiation, and mediation, the parents are still not able to settle custody and parenting time issues, these issues are presented to the Court for decision in a trial in which witnesses are called and arguments are presented. Then, the matter is out of the parents' control as the judge decides what arrangement to impose on them.

### Children as Witnesses

Parents often want to know if their children will be called as witnesses. Professionals usually advise against involving children in Court proceedings because it can be a very traumatic experience for them. This is equally true whether the dispute is over custody or something else.

Many people incorrectly assume that at a certain age, children have an absolute right to pick the parent with whom they will live. While the child's preference as to custodial parent is never binding on the Court's decision, Indiana law does require the judge to give serious consideration to the wishes of any child who is at least 14 years old. However, even where the child's input is relevant, it is highly unusual for a child to be called as a witness. Generally, the wishes of a child are conveyed to the judge indirectly through a mental health professional or GAL who sensitively discusses custody matters with the child, outside of Court and prior to trial, and then the professional testifies as to the child's input.

Other times, the judge will conduct an "*in camera* interview" with the child, in which the judge meets privately and informally with the child, usually outside the presence of the parents or their attorneys.

## Child Support

Under Indiana law, child support is determined under the Indiana Child Support Rules and Guidelines (the Guidelines). The Guidelines are, essentially, a mathematical formula in which various information is input into the formula (such as each parent's gross weekly income, the number of children, any weekly child care costs, any weekly health care premium for the children, *etc.*). The formula then produces an output, which is the non-custodial parent's weekly child support obligation.

The Guidelines support level is presumed by Indiana law to be the correct level of child support. While Courts may deviate from the amount calculated under the Guidelines, this is fairly unusual and requires special findings by the Court.

In Indiana, a weekly child support obligation generally continues until the child turns 19 years old. The support obligation can carry on beyond the 19th birthday if the child suffers from an incapacity. Alternatively, child support can be terminated prior to the child's 19th birthday under various circumstances, including the child's marriage, the child joining the armed forces, or the child living completely independently of both parents.

Indiana law is fairly unusual in that it also allows a Court to enter a support order for parents to pay some or all of a child's college expenses. While a judge has broad discretion in fashioning a college expense order, a common order is one which (1) divides the college costs between the parents pro rata based upon their respective incomes, (2) limits the parents' obligation to four years of undergraduate tuition, and (3) limits the parents' financial responsibility to the cost of an in-state public school (even if the child attends a private or out-of-state institution). However, higher-income parents are sometimes required to contribute in greater amounts.

## Misuse of Children

In the heat of divorce proceedings, it's easy to lose sight of the fact that the parents are getting divorced and not the children.

It is inappropriate to raise custody and visitation issues to gain an advantage in negotiations over financial issues (e.g., Mother indicates that she will agree to Father sharing joint legal custody, but only if Father agrees to increase his property settlement offer). Such tactics only heighten the emotional tension and make settlement more difficult. Your lawyer is not ethically permitted to raise custody or parenting time issues in order to gain an advantage in financial matters. You should not ask your lawyer to act contrary to this ethical obligation.

## Your Conduct with Your Children

The behavior of parents before and after divorce has a great influence on the emotional adjustment of their children. The following guidelines may be helpful:

- Put your children's welfare first. Never use your children as a weapon against your spouse.

- Under Indiana law, child support cannot be withheld by a non-custodial parent because the custodial parent does not allow Court ordered parenting time. Conversely, a custodial parent cannot deny Court ordered parenting time because the non-custodial parent is behind on child support. Talk to your attorney if there are problems with parenting time or child support, but resist the temptation to view a link between the two.

- Be sure your children have ample time with the other parent. Absent unusual circumstances in which the other parent poses a danger to the children, they need frequent and meaningful time with the other parent.

- Don't introduce your children to your new romantic interest until the children have adjusted to your separation and your new relationship is stable.

- Don't bring your children to Court or to your lawyer's office.

- Don't have phone calls with your lawyer when your children can overhear your end of the call, such as in the car with them.

- Follow the parenting time schedule. Give the other parent and the children as much notice as you can when you will not be able to keep to the schedule. Be considerate.

- Be flexible. You may both need to adjust the schedule from time to time. You cannot expect the other parent to accommodate your schedule change requests if you did not make a comparable effort to accommodate changes requested of you.

- Giving of yourself is more important than giving material things. Feverish rounds of holiday type activities during every parenting time or lavish gifts may be viewed as a crude effort to purchase affection and is not good for the children.

- Do not use your children as spies to report to you about the other parent.

- Do not use the children as couriers to deliver messages, money, or information.

- Try to agree on decisions about the children, especially matters of discipline, so that one parent is not undermining the other parent's efforts.

- Avoid arguments or confrontations while dropping off or picking up the children and at other times when your children are present.

- Don't listen in on (or record) your children's phone calls with the other parent.

- Maintain your composure. Try to keep a sense of humor. Remember that your children's behavior is affected by your attitude and conduct.

- Assure your children they are not to blame for the breakup and are not being rejected or abandoned by either parent.

- Don't criticize the other parent in front of your children. Your children need to respect both parents.

- Do not let the guilt you may feel about the marriage breakdown interfere with the discipline of your children. Parents must be ready to say "No" when necessary.

- You are only human. You cannot be a perfect parent. When you make a mistake, acknowledge it and try to do better next time.

## Some Questions and Answers about Children's Issues

1. ***I once had a brief affair. My husband says he will take the kids away from me. Can he?***
   *Misconduct or fault, which does not involve the children, is seldom significant in determining child custody. Tell your lawyer about these concerns.*

2. ***I have had some problems during my marriage with depression. I saw a psychiatrist. My spouse says I'm crazy and will lose custody of the children. Is that right?***
   *The mere fact that you have sought help for the problems you have encountered in your marriage is not a basis to lose custody if it is otherwise in the best interest of the children for you to have it. In fact, the ability to recognize the need for and to get professional help is usually seen as a good sign of maturity and responsible action, both desirable characteristics in a custodial parent.*

3. ***I am a good father. Are judges prejudiced against fathers?***
   *Under Indiana law, both parents are equally entitled to seek custody of children. Absent other circumstances, the Court is likely to give primary physical custody to the parent who was the children's primary caretaker while you were married.*

4. ***I want to move from the residence I had at the time the custody order was issued. Can I?***
   *Under Indiana law, a parent must file a specific notice with the Court and send to the other parent. This generally must be done at least 30 days prior to the intended move. The other parent may object to the move and ask the Court to hold a hearing on the proposed move.*

Section 3

# PROPERTY ISSUES

## Marital Property

Parties to a divorce in Indiana are commonly surprised by our state's legal definition of "marital property" because it is so broad. Under Indiana law, marital property includes all property interests owned by either party on the date the petition for dissolution was filed (often referred to as "the date of filing"). There are no exceptions.

Therefore, marital property includes property that a party owned on the date of filing, even if the property was owned by that party before marriage. Marital property also includes property owned by a party on the date of filing that was inherited by or gifted to the party. For purposes of whether an item of property is marital property, it does not matter in which party's name the property is titled; divorce litigants often believe erroneously that, for example, because a car is titled in his or her name only, that the car is not marital property. This is incorrect. If it was owned by either party (or both parties) on the date of filing, it is marital property.

Some property interests are obvious, such as a house, car, or bank account owned by one or both of the parties. However, be aware of other, less obvious marital assets. For example, vested pension interests are marital assets under Indiana law, even where the participant is not in pay status and has no present right to access those pension funds. Pensions will usually be valued by an expert.

It may be helpful to know that most post-filing income (that is, income earned by either party after the date the petition for dissolution was filed) is not marital property. For example, if you take your employment income earned after the date of filing and deposit it into a newly opened bank account, this account will not be marital property, nor will any tangible property that you purchase with that money will be marital property. There are, however, exceptions to the post-filing income rule. The most significant exception concerns post-filing income that is earned on marital property. For example, if the parties owned a rental unit as marital property, then rental income generated on that asset after the date of filing will nonetheless probably be considered marital property. If you have a question about what is or is not marital property, ask your attorney. At times, this is a very fact-dependent inquiry with substantial gray areas.

## The Importance of the "Date of Filing"

The date on which the petition for dissolution is filed remains a critical date for the balance of the case. With some exceptions, Indiana law attempts to take a "snapshot" of the property and liabilities of the marriage on the date of filing. Indiana law will not usually be concerned with assets or account balances as they existed in the weeks and months before or after the date of filing. The date of filing is usually the critical valuation date.

Therefore, it is important to gather as much financial documentation as you can that covers the date of filing and provide that to your attorney. For example, if your date of filing is January 3 of this year, try to provide your attorney with all financial statements that cover that date. If you do not have these in your possession, consider contacting your bank, credit card company, etc., to request those statements. Your acquisition of these materials can save your attorney time and, therefore, save you money.

There are plenty of exceptions to the date of filing being used as the valuation date for a given asset and, in fact, Indiana law specifically allows the Court to value an asset as of the date of filing, as of the trial date, or any date in between. As a general rule, however, the date of filing will be used. The principal exception to this general rule involves assets that fluctuate in value while the case is pending, and such change in value had nothing to do with the actions of the parties. In these cases, the most current value will generally be used. The most common example are stocks and other marketable securities which go up and down in value while the case is pending.

## Equitable Division and the 50/50 Presumption

Indiana is considered an "equitable division" state. This means that a judge is required to divide all marital property between the parties in an "equitable" manner. Since this directive to the judge is a bit hazy, the Indiana legislature gives judges some additional instruction on marital property division.

Indiana law creates a rebuttable presumption that all marital property is to be divided equally between the parties. First, this does not mean that each individual item of property is to be divided, literally, in half. Instead, this means that the net value of all marital property awarded to one party should approximately equal the net value of all marital property awarded to the other party. For example, in a simple marital estate which contained nothing other than a $1,000 automobile and a savings account with $1,000 on deposit, a Court could effect an equal division by awarding the car to one party and the savings account to the other.

Second, the presumption of an equal division is rebuttable. Courts may look at any relevant factor in determining that a deviation from an equal division of marital property is appropriate. The most common reasons that a Court will deviate from an equal division of marital property include:

- one spouse has a significantly higher income than the other (in which case the Court might award the lesser-income spouse more than 50 percent);
- one party had significantly more premarital property than the other party (in which case the Court might award the party owning that premarital property more than 50 percent); or
- a substantial portion of the marital property consists of a gift or inheritance received by one of the parties (in which case the Court might deviate from an equal division in favor of the recipient of the inheritance or gift).

There are other factors that can lead to a deviation from an equal division, so ask your attorney. In any event, it is unusual for a Court to divide a marital estate more unevenly than a 60/40 percent division; however, the Indiana Court of Appeals has affirmed divisions of marital property which gave one party over 80 percent of the marital estate due to his sizeable premarital contributions to the marital estate.

It is also important to understand what facts will usually not give rise to a deviation from an equal division of property. The fact that your spouse was unfaithful will not give rise to an unequal division of the marital estate in your favor. The fact that your spouse is the one who filed the divorce will not give rise to an unequal division of the marital estate in your favor. The fact that you spouse is not likeable will not give rise to an unequal division of the marital estate in your favor. The fact that all of the marital property was acquired with your income, while your spouse stayed home (with or without children), will not give rise to an unequal division in your favor.

*“It is unusual for a Court to divide a marital estate more unevenly than a 60/40 percent division”*

Section 4

# SPOUSAL MAINTENANCE

While Indiana has abolished "alimony," it nevertheless recognizes the concept of "spousal maintenance." Spousal maintenance may be ordered as part of the provisional order and/or as part of the final decree. Generally, provisional spousal maintenance is ordered in cases where one spouse (often due to unemployment or underemployment) is unable to support herself or himself, and where the other spouse has sufficient income to afford to pay spousal maintenance. Your attorney may acquire information about your spouse's income, as well as ask you to complete a budget, to determine whether spousal maintenance should be requested in your case.

Under Indiana law, permanent spousal maintenance (that is, spousal maintenance that is paid after the divorce decree is issued) is available only in limited circumstances, such as where one spouse is incapacitated or disabled, or where one spouse is the caretaker of a child with special needs (and therefore must forgo employment).

A Court may also order "rehabilitative spousal maintenance," which is spousal maintenance that commences at the time of the decree. Rehabilitative spousal maintenance is generally ordered only where the recipient spouse put his or her education or career "on hold" during the marriage, needs additional education to improve employment skills, and the paying spouse can afford to pay for spousal maintenance. Even where a Court determines rehabilitative maintenance to be appropriate, it is limited to a period not to exceed three years.

While spousal maintenance is not ordered in most cases, it is also not rare for it to be ordered. Ask your attorney about whether spousal maintenance might be ordered in your case.

Section 5

# CONDUCT DURING THE DISSOLUTION AND ANSWERS TO COMMON QUESTIONS

## Social Media and Electronic Communications

Most people have a cellular telephone, an e-mail account, and at least one social media account. All pose different risks in the divorce process. The following provides you with some information regarding how to protect your attorney-client confidentiality, communicate with your attorney, create a record of communications, and avoid creating evidence that could negatively impact your case.

A cell phone is often used to communicate via text message and calls. You might leave someone a voice mail or receive a voice mail. You may also have both work and personal e-mail accounts both on your cell phone and on your personal computer.

No one can guarantee the security of any method of communication. However, cell phones and e-mails are particularly susceptible to compromise. Your cell phone conversations can be overheard or intercepted. You might accidentally send an email to the wrong person or the dreaded "reply all." If your attorney copies you on an email to opposing counsel, be careful about replying. If you "reply all" you might inadvertently provide the opposing attorney with otherwise confidential information.

Text messages and voice mails can be entered into evidence in a paternity, divorce, or post-divorce matter. It is easy to get upset and dash off an angry text message to your soon-to-be-ex spouse or co-parent, but once you have sent the text it is available to use as evidence. Text messages are particularly tricky because they do not convey tone and are easily misread and misused against you. Similarly, it is easy to leave an angry, rude, or expletive-ridden voice mail message that preserves for evidence your emotional instability and anger. It is best to limit text communications and voice mail messages. We recommend sticking to e-mail which permits you to draft an e-mail, hold it for a few hours, and then revisit the content to ensure it is both civil and factual.

If you choose to communicate via e-mail, we recommend that you provide your attorney with an e-mail address that only you can access and not to use a work e-mail account or e-mail addresses for which family members or friends have the password. If you use a work e-mail for communications with your attorney, the communications may be subject to discovery thereby destroying the typically confidential nature of attorney-client communications. It is best to open a new e-mail account and to choose a unique password you have never used before when communicating with your attorney. Absent an absolute emergency, all electronic communication with the opposing party should be via one e-mail address that you maintain for authentication purposes. Divorce can involve a lot of "he-said-she-said" and written evidence such as e-mails can help prove your case.

Information on any social media accounts you have may potentially have an impact on your case, either positively or negatively. Information you place on your social media site(s) in the future may also potentially affect your case. Generally, it is advisable not to discuss the merits or details of your case, the opposing party, counsel, judge, witnesses, etc. in any open forum. Your postings on social media sites are not private to the extent they are discoverable by the other party in your litigation. Parties to litigation have been ordered by judges to provide the opposing party with access codes, passwords, and other access to social media sites, and those postings have been reviewed by judges, parties, and their attorneys for potentially relevant information. We recommend that you disable or deactivate all social media accounts while your case is pending. DO NOT destroy or delete any postings or accounts previously posted to your site(s). If you choose not to follow this advice, at the very least, security settings should be such that only "friends" or those specifically authorized can view social media information.

### *Here are a few other tips for social media use and divorce:*

- *Do not discuss the divorce publicly on social media. Even divorce-related quotes that you think are vague could be easily misconstrued in a way you did not intend.*

- *Never speak poorly about your spouse/child's parent on social media. As mentioned above, even vague or general quotes related to divorce or relationships could be misinterpreted.*

- *Do not post pictures that depict you spending a lot of money. If you are claiming you need more child support or cannot afford to pay spousal maintenance but fill your social media feed with pictures of vacations and expensive purchases, that could come back to haunt you.*

- *Do you not post pictures that depict partying or show you under the influence of alcohol or drugs. Social media posts have been used to show a parent claiming to be caring for a child was actually out at a party.*

- *Watch when you are "tagged" in the social media posts of your friends. You might not post an inappropriate picture, but if your friend posts it and tags you, it will appear on your timeline or account.*

- *Do not post pictures with a new romantic interest until the divorce is complete. While it is not necessarily inappropriate to date, it could upset your spouse/other parent and result in delays or difficulties in working out a reasonable settlement.*

- *Before you post anything, think about whether you would want the opposing attorney or the judge to see the post. If you have any concerns, it is best not to post at all.*

When in doubt, pause before posting and contact your attorney to discuss how to handle your social media presence during the divorce or post-divorce process.

## General Guidelines

Here are some good rules to follow during divorce:

- Do try to maintain good communication with your spouse and children.
- Do talk to your lawyer before agreeing to a settlement.
- Don't physically or verbally abuse your spouse or children.
- Don't say anything to others that you wouldn't want your spouse or the judge to hear.
- Don't go on a spending spree. Excessive spending on yourself or others may harm your case.
- If you communicate with your attorney or others by e-mail, or the use of your voicemail, be sure both are secure and private. It is a good time to change your passwords on all accounts to new, secure passwords.
- Don't throw away financial records or other possible evidence.
- Don't try to hide evidence or assets.
- Do keep your perspective and try to be rational.

Divorce is stressful, but not the end of the world. How you or your spouse feels during your divorce can change dramatically as the case progresses. It's normal to go through stages of denial, anger, guilt, depression, and acceptance on the way to a resolution. These stages don't necessarily occur in any order or only once. So, if you're depressed, for example, you can take some comfort in knowing that you'll probably feel different next week. In any event, do not be reluctant to seek professional assistance from a therapist and/or your primary care physician.

## Some Questions and Answers About the Divorce Process

1. ***Should I be the first to file?***
   *That depends. In some instances, the first person to file has a choice of more than one Court. In that case, your lawyer may have a preference about which Court would be best for you. Otherwise, it doesn't usually matter who files first.*

2. ***Why did my spouse ask for so much in the Petition? I thought we agreed on some of those things.***
   *Before knowing what the issues will be and what might happen under the law and the facts of the case, no one wants to take the chance of asking for too little. This means people tend to ask for more than they really expect. What is demanded in the Petition often has little relation to the party's real demands or expectations.*

3. ***What are the chances my case can be settled?***
   *Most divorce cases are settled.*

4. ***May I date?***
   *As a general rule, in cases where either there are no children or children's issues are not contested, then the Court will not be concerned with your private life. In other instances, especially where child custody or parenting time is contested, a dating relationship may hurt your case, especially if the other side is able to raise serious questions about the character of the new boyfriend or girlfriend, or their relationship with the children. The answer to this question is usually very fact-dependent, so you should consult your attorney if you have questions.*

5. ***May I spend money on my new romantic relationship?***
   *There are at least two reasons why you shouldn't. First, the Court may award more property to your spouse than it would have otherwise if, during the marriage, you spent money on a lover. In effect, you may have to "pay back" that money when the property is divided. Second, your spouse may be very angry. That anger could lead to distrust and unnecessary emotions that could complicate the divorce proceedings.*

6. ***How long will my divorce take?***
   *That depends on many factors. Every divorce is different. Factors that can make a difference include the schedules of both parties, both lawyers, and the Court, the cooperation of witnesses, the speed of the appraisers and evaluators, and the complexity of the case.*

7. ***Nothing is happening in my case; what can I do?***
   *Talk to your lawyer. You are entitled to know the status of your case. There may be a very good reason for a pause or delay. For example, appraisals may not yet be completed. Information or documentation requests may still be pending.*

> *"People tend to ask for more than they really expect"*

Section 6

# RECONCILIATION

Sometimes divorce seems the only solution to problems in a marriage; often it is not. Sometimes it takes the start of a divorce to motivate people to make an effort to save a once-cherished relationship. Don't be embarrassed to tell your lawyer if you're interested in reconciliation. Every experienced matrimonial lawyer knows how important it is to exhaust all possibilities of saving a marriage before finally deciding to end it.

If you are considering trying to reconcile, talk to your lawyer about the effect that your efforts will have on your divorce if reconciliation fails. In some cases, parties can reconcile and at the same time enter into a "post-nuptial agreement," which can determine property rights in the event that the parties subsequently file for divorce again.

While trying to save your marriage, counseling can be very helpful. Your lawyer is not trained as a therapist but can recommend a counselor if you need one.

> *"Don't be embarrassed to tell your lawyer if you're interested in reconciliation"*

Section 7

# COUNSELING

## Purposes of Counseling

Here are some ways that counseling can benefit you and members of your family:

1. **Help you help your children through the breakup of their family**
   How you act and what you say during the divorce affects your children. Your conduct makes a big difference in how your children feel and how they relate to you and your spouse. A mental health professional can give you guidance to help minimize the damage and speed the healing process.

2. **Help you and your spouse work together for your children's welfare**
   Cooperating during the divorce can set the tone for how you and your spouse will work together in the future for your children's welfare. Even after you are divorced, you both are still the parents of your children. The children's best interests are served if each of you is courteous to the other and maintains an active role in the lives of the children and in the decision-making that affects them. If you and your spouse are not yet able to put aside your differences and put the children first, counseling can help.

3. **Help you deal with the stress of divorce**
   Some people cope better with stress than others. Talking with a counselor about how to deal with stress is often helpful.

4. **Help you work with your lawyer**
   Counseling may help you see emotional issues for what they are so that you can make better judgments as to legal and financial matters. Lawyers are not trained to do psychological counseling, just as mental health professionals are not trained to give legal advice.

5. **Help you rebuild your life**
   If you understand and appreciate the problems of your marriage, you will be better equipped to recover from your anger and frustration, and to rebuild and get on with your life. Although you may think that you will never marry again, most divorced people do remarry. A better understanding of your role in the breakup of this marriage will maximize your chances of success next time.

6. **Reconciliation**
   If there is a chance of saving your marriage, explore it.

## If You Have Been to Counseling

If you have had some counseling, and you find during the process of the divorce that there are still unresolved emotional issues, don't be reluctant to return to a counselor to deal further with those issues. Many times, our problems and issues do not surface until we are in the middle of a divorce.

## Some Questions and Answers about Counseling

1. ***Are my conversations with my counselor confidential?***
   *This is very fact-dependent. In a contested custody case, your counselor's records may be disclosed. Ask your lawyer about your particular circumstances.*

2. ***Must I go to counseling even if I don't want to?***
   *No, unless the Court orders you to, which is very unusual. If you and your spouse don't agree about custody or parenting time, you may be interviewed by a mental health professional or* Guardian ad Litem *who will make a recommendation to the Court about how the issue should be decided. Oftentimes, these people are favorably impressed that a parent has had some psychotherapy or counseling.*

3. ***Do we have to go to counseling together?***
   *It depends. If the purpose of going to a counselor is to help save your marriage or to work on problems the two of you are having, you may need to go together. However, if the purpose is to work on problems of your own, you will usually go alone.*

4. ***Do we have to see the same counselor?***
   *If you are going for individual counseling or therapy, it is usually a good idea to go to separate mental health professionals. You or your spouse might question the loyalty of someone that the other is also seeing individually, unless that person is specifically working with both of you.*

5. ***Should I consider counseling for my children?***
   *Yes. Many children have trouble dealing with divorce. They are frightened and feel responsible. Your children may benefit from counseling or support groups.*

Section 8

# AFTER THE DIVORCE

## Modification

Whether the issues in your divorce are settled by you and your spouse, or they are decided by a judge, some things in your judgment can be modified (changed) by a judge long after the divorce is over. Absent fraud or some other highly unusual circumstance, the property division portion of a divorce decree is not modifiable. Children's issues (such as child custody, parenting time, and support) are always modifiable. Child custody may be modified where (1) the modification is in the best interests of the child, and (2) there has been a substantial and continuing change in one of several circumstances, including the child's age, evidence of domestic violence, the wishes of a child age 14 or older, etc.

Under Indiana law, child support generally may be modified only when (1) at least 12 months have passed since the current support order was issued, and (2) the support amount, if calculated under the Guidelines at the time a modification is contemplated, would be at least 20 percent different than the existing order. For example, if an existing child support order provides for support of $300 per week, that order generally may not be modified until (1) that order is at least one year old, and (2) a re-calculation of child support would lead to a support level that is at least 20 percent different than the current order (i.e., more than $360 per week or less than $240 per week).

## Enforcement

If you or your spouse disobeys an order that the Court makes in your divorce judgment, there are ways to enforce those orders. Examples of disobedience of an order are failure to pay support, failure to turn over property that was awarded, and refusal to allow the parenting time that was ordered.

Orders to pay money can be enforced by garnishing wages or bank accounts or by having the sheriff or marshal seize and sell property belonging to the person who hasn't paid. Orders for support, to turn over property, and for parenting time can usually be enforced by contempt of Court proceedings. Papers are prepared and served on the disobedient person, ordering that person to appear in Court. After a hearing, the judge can issue any of a number of sanctions against the non-complying party, even time in jail for serious or repeated violations.

Section 9

# THE LAWYER-CLIENT RELATIONSHIP

## Introduction

Whenever a relationship is established, its participants form expectations of each other. The lawyer-client relationship is no different. And as in any other relationship, lawyers and clients have rules and boundaries, which govern those expectations. Some expectations are appropriate; others are not. Here is an overview of what you can and cannot expect of your lawyer.

## What You Can Expect from Your Lawyer

Having the assistance of a skilled lawyer during your divorce gives you the security of having someone on your side who knows what to do. Furthermore, you will have someone you can talk to in confidence about your situation and how best to deal with it.

Lawyers provide a variety of specific services for clients going through a divorce. These services include:

- Consulting with you
- Educating you about the law and facts
- Devising and carrying out case strategy
- Investigating the law and the facts
- Preparing and reviewing documents
- Negotiating a settlement
- Preparing and filing all necessary Court papers
- Preparing you to testify
- Preparing other witnesses to testify
- Hiring experts and appraisers
- Conducting discovery
- Responding to discovery initiated by your spouse
- Preparing for Court appearances including trial
- Conducting trials and hearings
- Advising you about what to expect
- Advising you on conduct and alternatives
- Taking the heat for tough decisions

*“Lawyers and clients have rules and boundaries, which govern those expectations.”*

## What You Cannot Expect from Your Lawyer

1. **Your lawyer will not handle matters that are beyond the scope of your agreement.**

   The lawyer you have hired to represent you in your divorce will not usually represent you in other matters unrelated to your divorce, unless the two of you specifically agree otherwise. For example, if you need legal assistance in selling your home, dealing with tax issues, preparing your will, or defending against a civil lawsuit, it will be necessary to make specific arrangements with your lawyer, or to work with another lawyer, possibly in the same firm, with the appropriate expertise.

2. **Your lawyer cannot guarantee results.**

   The eventual outcome of your divorce depends on the facts, the law, how the judge views your case, and other factors. Every case is different. Although your lawyer may express an opinion on possible or probable outcomes, nobody can be sure of the result until it happens.

3. **Your lawyer cannot do anything unethical or illegal.**

   Lawyers work under very strict legal and ethical codes and take them very seriously. If you ask your lawyer to do anything unethical or illegal, your lawyer will refuse. If you insist, your lawyer will withdraw from your case. Examples of forbidden conduct are encouraging or permitting perjury, hiding assets or income, and in any manner deceiving the Court or the other side.

4. **Your lawyer may be reluctant to act against the best interests of your children.**

   A lawyer’s first duty is to look out for the client’s best interest. Yet divorce lawyers are also concerned about the welfare of the children, and some ethical guidelines encourage lawyers to keep the children’s interest in mind.

Section 10

# COMMUNICATION BETWEEN LAWYER AND CLIENT

## The Importance of Communication

The lawyer-client relationship works best when the two of you are able to communicate, not only about the facts of your case, but also about your working relationship.

Information should flow both ways between you and your lawyer. Just as your lawyer should satisfy your need for information, you should provide your lawyer with all information that your lawyer requests. Advice based on incorrect or incomplete facts may be worse than no advice at all.

If you do not understand the advice you are given, or find it hard to accept, tell your lawyer. If, for example, you do not understand why your lawyer is recommending that you accept or reject a particular settlement proposal, you should ask why the recommendation is being made. Only by giving your lawyer the opportunity to explain things will you know whether there is a real problem to be addressed.

Some clients have frequent questions or concerns that they wish to share with the attorney. In such cases, it may be advisable – and thrifty – to send a periodic fax or e-mail to your attorney listing all the questions or concerns you've thought of in recent days or weeks. This is often easier and less expensive than picking up the phone to call your lawyer every time you think of something to ask, or share with, your attorney.

## Financial Information

Your lawyer will ask you for financial information, and perhaps ask you to fill out a questionnaire. Financial information includes income, expenses, assets, and liabilities. Your lawyer may also want to see papers such as income tax returns, paycheck stubs, statements of savings and investments, employee benefit statements, and papers regarding your debts. Your cooperation in getting this information to your lawyer, although time consuming, is essential to the proper preparation of your case. The more detailed information you can provide to your attorney, the more effective job your attorney can do while representing you.

## Marital History

Your lawyer may also ask you to prepare a history of your marriage which includes personal as well as financial information. Where the custody of your children is in dispute, more than financial information will certainly be necessary. In addition to a history, some lawyers ask their clients to keep a diary of events related to the divorce. Complete candor, including any negative facts about you, is crucial. It is axiomatic that one of the greatest disservices a client can do him/herself is to not share potentially harmful information with the attorney, such that the attorney learns about the information for the first time at trial; with advance notice, even the most potentially damaging allegations or facts can usually be attenuated or prepared for.

## Keeping in Touch

Your lawyer will be communicating with you. There may be periods of inactivity, but when something important happens, your lawyer will want to let you know. If you move, or are planning to be away, be sure your lawyer knows where you are.

## Calling Your Lawyer and Returning Calls

Lawyers work on more than one case at a time and the practice of matrimonial law requires lawyers to spend time in Court, at depositions, in conference, and on the telephone. You should not expect your lawyer always to be available immediately when you call. You should, however, expect that your lawyer or a staff member will respond to your telephone calls promptly. If a genuine emergency arises, tell the person who answers the telephone that it is an emergency and explain the situation.

Likewise, if your lawyer calls and leaves a message for you to call back, you should do so as soon as possible. Your lawyer will understand that you also have commitments that may make you temporarily unavailable.

Your lawyer will appreciate your calling during regular business hours. But most lawyers will make every effort to be available when needed for a real emergency.

## Being Available

You and your lawyer will have a hard time communicating if you are not available to each other. Before hiring any lawyer you should consider whether your schedules are compatible. If you can't meet with your lawyer during normal business hours, make that clear before you hire the lawyer. Remember that your lawyer is a human being who has family and other outside commitments just as you do.

## Correspondence

When you receive correspondence from your lawyer, read it and respond. Delay in responding to correspondence could be harmful to your case. It can also add to your fees if your lawyer or legal staff needs to spend time following up with you regarding these matters.

## Your Involvement in Other Legal Proceedings

If at any time during your divorce, you are involved with any other legal proceeding, such as criminal, traffic, juvenile, probate, tax, bankruptcy, or a civil lawsuit, let your lawyer know as soon as possible. It may affect your divorce.

## Open and Review Your Lawyer's Invoices upon Receipt

Be sure to open and review your lawyer's invoices upon receipt. Any questions or concerns you may have about time entries and billings are easiest to resolve when they are discussed promptly.

## Some Questions and Answers about Communication

1. ***What result can I expect?***
   *Don't be concerned if your lawyer's opinions and advice are guarded. There is little that is black and white, and much that is gray, in divorce. First impressions of a case can be wrong, so be wary of lawyers who say at the beginning that they can accurately predict the results. As the case progresses, your lawyer will be able to give you an increasingly defined range of possible results.*

2. ***Can I get a second opinion?***
   *Yes, but keep a few things in mind when you do. Many lawyers believe it's best to tell your lawyer you're going to do it and ask if it's OK to have the second lawyer call for information. They feel that second opinions can be valuable, but only if based on accurate information. Other lawyers do not like to limit a client's ability to get a second opinion without telling their lawyer.*

3. ***Do I really have to tell my lawyer everything?***
   *Generally, yes. It is extremely difficult for your lawyer to represent you effectively without knowing everything.*

Section 11

# THE RELATIONSHIP BETWEEN OPPOSING COUNSEL

## Introduction

People watching the interaction between the lawyers in their divorce sometimes have a hard time making sense out of what they see. One client said at the end of the divorce, “I could never understand how they could be at each other’s throats one minute and cracking jokes the next.” In spite of appearances, it is usually to your benefit if the two lawyers get along with each other.

## You Benefit from Cooperation between the Lawyers

Stipulations can be reached which simplify the case, move it toward settlement, and save you money. Lawyers often speak with each other without their clients to try to isolate areas of agreement and disagreement and to cooperate in exchanging information. Your lawyer will discuss any such agreements with you.

All this can be done without compromising your position. If negotiations don’t result in a settlement, your lawyer can and will vigorously represent you in trial. The time spent exchanging information and negotiating will make you and your lawyer better prepared for trial.

Lawyers routinely extend simple courtesies to each other such as agreeing to extend deadlines and postpone hearings. You may feel like every advantage should be pressed in your favor, and that if the other side is under time pressure, your lawyer should take advantage of it. But in the long run, it doesn’t help you for your lawyer to be uncooperative. In most cases, an extension is available by Court order anyway. Refusing to agree just costs you and your spouse more legal fees, and the shoe will be on the other foot some day; when you need more time, the other side will remember your discourtesy and refuse. Then you will have to go to Court for relief and both of your legal fees will again increase. Still, you are not powerless in these matters. If you truly believe that a delay will work to your detriment, tell your lawyer so that you can discuss what to do.

Finally, it is important for lawyers to treat each other in a way that makes it possible to work together in all cases. The good reputation your lawyer has developed for cooperation and reasonableness in previous cases will benefit you in your case.

## You Will Be Hurt if the Lawyers Are Drawn into an Emotional Fight

Part of the job of a matrimonial lawyer is to be objective and to stay calm and rational during the emotional crossfire of a divorce. Experienced lawyers know that anger can impair their judgment, so they try to avoid personal feuds with the opposing lawyer. Still, some clients are pleased at first when their lawyers attack opposing counsel. Their pleasure usually lasts only until they realize the cost in fees and lost settlement opportunities caused by belligerence. If you feel your lawyer is not being aggressive enough, the two of you should talk about your concerns. Some cases require more aggressiveness than others. But if your desire for a more militant approach is motivated by anger, your best interests may not be served, and your fees will certainly be higher.

## Dirty Tricks Do Not Help

Your lawyer will be honest with opposing counsel and will expect you to do the same. Concealing information, lying, or in other ways being dishonest or trying to hide behind legal technicalities will almost always hurt your case. Lawyers and judges are angered by conduct which violates the rules requiring full and truthful information. Your case could suffer if you are less than candid. Another reason to do things right is your lawyer's duty to the judicial system. Lawyers have good reasons to obey all the rules that govern their profession. Breaking the rules means losing the respect of judges and other lawyers, and even risking the loss of a license to practice law.

## Some Questions and Answers about the Relationship between Opposing Counsel

1. ***Can lawyers be friends and still put their clients' interests first?***
   *Yes. Matrimonial lawyers take their work very seriously. Even if the opposing lawyer is a friend of your lawyer, both lawyers can and will work zealously for their clients' best interest. Although it is sometimes hard for clients to understand, lawyers learn early in their career to take their client's side and argue positions with great conviction, even if they are arguing against a lawyer who is a close friend.*

2. ***Why is the other lawyer being so nasty when my lawyer is being so nice?***
   *Lawyers are people, each with an individual style. Some think they gain an advantage by trying to intimidate the other side. Other lawyers are overly aggressive because they think their clients expect it. Intimidation almost never works. Keeping calm and polite in the face of inappropriate behavior is usually the best way to a settlement or success at trial.*

> *"It is important for lawyers to treat each other in a way that makes it possible to work together in all cases"*

Section 12

# ATTORNEY'S FEES AND COSTS

## Introduction

It is important to both you and your lawyer that you talk about fees and costs at your initial conference. Unless fees and costs are discussed, either of you might make incorrect assumptions about what the other expects. False assumptions can lead to misunderstandings, which can harm the lawyer-client relationship.

If you are concerned about the cost of your divorce, discuss with your lawyer how much you can afford to pay, how extensive the lawyer's work needs to be, and any limits you think should be placed on fees. If you feel you can't afford the fees of the lawyer you consult, say so and ask for the names of other lawyers or agencies that can handle your case. You should make an agreement to pay fees only if you know you will be able to honor it.

## Written Fee Agreements

Your lawyer will likely ask you to sign a written fee agreement. You are entitled to an opportunity to review the fee agreement, to think about it, and to get answers to any questions you have about it. You should read and understand it. Once you sign, the fee agreement is a legally binding and enforceable contract.

## Some Questions and Answers about Fees and Costs

1. ***I don't want the divorce; why do I have to pay for it?***
   *We all have expenses for things that happen to us that we don't bring on ourselves. We don't ask to get sick, but if we use health care professionals, we have to pay our medical bills. If you are involved in a divorce and choose to be represented by a lawyer, you must expect to pay for those services.*

2. ***Will the Court order my spouse to be responsible for my attorney's fees, or me to be responsible for my spouse's attorney's fees?***
   *Maybe. In most family law matters, Indiana law allows a Court broad discretion to order one party to pay the other party's attorney's fees. Most attorney fee awards occur in cases where there is a significant disparity of income between the parties and/or where one party's obstinance or frivolity caused the other party's fees to increase excessively. Nevertheless, attorney fee awards are not made in most cases and, when they are made, they are usually for only a portion of the client's total fee. Clients should always remember that they are primarily responsible for attorney's fees that they incur.*

3. ***Why do lawyers charge the fees that they do?***
*Lawyers are professionals who run a business with all the usual overhead. Supply and demand influence legal fees, as they do the cost of most things. Therefore, lawyers who are in greater demand and/or have more experience generally charge higher fees.*

4. ***How much will my divorce cost?***
*It's impossible to predict how much your divorce will cost, although your lawyer may be able to give you a range. The cost of the case depends on many factors, many beyond your lawyer's control. These factors include the complexity of the case, the kind of lawyer your spouse hires, how you and your spouse behave in the litigation, and the Court to which your case is assigned. Generally, the more things you and your spouse can agree on, the lower your fees will be.*

5. ***Is there anything I can do to help keep the fees down?***
*Yes. Be actively involved in your case. Take the time and trouble to learn what's going on. Follow your lawyer's instructions. Volunteer to help with the work whenever possible. Have reasonable expectations of your lawyer. Watch for ways to settle issues. Don't insist on fighting to the last drop of blood over small issues or for a supposed principle.*

6. ***What if I can't pay for appraisers and other experts?***
*If you don't have money to hire experts, you may have no choice but to proceed without experts. It may also be possible to get a Court order for expert's fees to be advanced by your spouse or from marital property. In any event, it is not your lawyer's obligation to pay for experts which might be needed on your case.*

7. ***Why do I have to pay a lawyer to force my ex-spouse to comply with the marital settlement or judgment?*** *No one can guarantee that your spouse will honor agreements or Court orders. Courts will enforce orders if an appropriate request is made, but it is not the lawyer's responsibility to provide enforcement for no fee.*

## CONCLUSION

This handbook should have presented you with some basic information about the divorce process in Indiana. Remember that this handbook is not an exhaustive description of Indiana family law and is provided only to offer a basic roadmap for the family law process in Indiana. Be sure to consult your attorney about specific issues that affect your case.

**The Cross Glazier Reed Burroughs Team**
With one of Indiana's largest and most respected family law groups, Cross Glazier Reed Burroughs is well known for its family law and matrimonial work.

Our team of attorneys assist with separation and divorce, focusing on the primary issues of property division, spousal maintenance, custody/parenting time, and child support through mediation and trial, if necessary. We also practice collaborative divorce and offer an alternative to traditional divorce.

As lawyers in some of the highest-profile divorces in Indiana, we understand the significance of confidentiality. Perceptive to each individual client's need for privacy, we provide personal service throughout the process with the appropriate judgment, experience, advocacy, and compassion.

As counselors to high-net worth individuals, we know that protecting a client's wealth and lifestyle are critical. We listen to clients' needs as we provide responsive and sensitive counsel during these important relationship transitions. Our effective attorneys have been elected by their peers to the American Academy of Matrimonial Lawyers, Best Lawyers in Indiana, and Indiana Super Lawyers. A number of our team members are Certified Family Law Specialists – Family Law Certification Board, and Registered Domestic Relations Mediators.

**If you have questions, please contact:**

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