

LAW OFFICE OF DAVID S. BOUSCHOR II., P.C.
Attorney and Counselor at Law

Office Policies and Procedures Statement for Family Matters

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Office Hours

The office of DAVID S. BOUSCHOR II, P.C., Attorney and Counselor at Law [“Law Firm”] is open from **9:00 a.m. to 5:00 p.m. Monday through Friday**. We understand the need for after-hours appointments, telephone calls, and document delivery/pick-up, each of which are discussed below.

Appointments

The only sure means of meeting with your Attorney is to *schedule an appointment rather than dropping in*. Appointments are scheduled when necessary to the case. If something unexpected arises, call to see if you need to come in. Appointments are usually set during regular office hours, but may be scheduled at other times if necessary. Appointments are scheduled by each Attorney's legal assistant. **Notify us in advance if you are going to be late or unable to keep your appointment**; failure to do so may result in billing of ½ hour to cover preparation time and loss of office time.

Telephone Policies

Our policy is to return calls the same day a call is received; however, we may be prevented from returning your call until later because we are in Court, depositions, or meetings. Clients usually have never been involved in litigation and litigation is emotional and stressful; as a result we receive many calls from Clients. It is not unusual for the Attorney to have 20 to 30 calls to return if the Attorney is out of the office all day. There are also times that the Attorney must concentrate on a case without interruption from the phone. If the Attorney is in trial, they probably won't be able to return your call until the trial is over since trials may require 16 hours per day of undivided attention.

Telephone Guidelines

- (1) *During Office Hours:* Ask the receptionist to direct your call to your Attorney's legal assistant. The legal assistant can answer many questions and take most action required at a lower billing rate.
- (2) *After Office Hours:* If you call before or after office hours, or the office is closed for any reason, our phones are answered 24 hours by an answering machine that will be checked the next business day morning.
- (3) *Messages:* When you leave a message, **ALWAYS:**
 - ✓ Give your **name and telephone number**; while your phone number is in our records, returning your call will be expedited if you always provide the number.
 - ✓ Be **very specific** about the subject matter; don't assume that we know what your call is about.
- (4) *Limits on Information:* Don't attempt to give or request lists of items, numbers, etc. over the phone; conserve time and expense by putting them in writing and send to us.

- (5) *Organization:* Organize your thoughts and questions in writing before calling; this will ensure a more effective communication that will save you money.
- (6) *Costs Savings:* Savings can be realized if you save up and ask several questions in one call rather than calling each time you have a question. However, **do not delay emergency or significant questions.**
- (7) *Frequency of Calls:* If your call is not returned when you expected it, call again the next day -- calling many times during the same day will only delay the process.
- (8) *Status:* We welcome your inquiries about the status of your case; however, frequent calls about status take up time to repeatedly locate, pull, and review your file, look up information, ascertain if other documents are located somewhere other than in the file, and then answer your question; you will necessarily be billed for all time expended.
- (9) *Billing:* Billing for phone calls includes the **total time involved** in handling your call, not just the time on the phone and is subject to minimum billing for 2/10ths of an hour.
- (10) *EMERGENCIES:* If your telephone call pertains to an emergency, call immediately. If you reach the voice mail, please leave a specific message **advising that you have an emergency** and someone will return your call as soon as possible.

E-mail Policies

Our policy is to return E-mails within 24 hours of an E-mail being received if applicable; however, we have the same constraints on our time as have been discussed above regarding Phone Policies. In addition E-mails can be an efficient way of transferring information in text or through attachments. If you would like a response to your E-mail please make it clear so that there is no confusion as to whether you are asking for information or transferring it to us.

E-mail Guidelines

- (1) *Frequency of E-mails:* You need to determine if your communication with this office would be more efficiently handled by phone or by E-mail. If you have questions that may lead to other question you will find that a phone call will be more efficient than an E-mail. This office cannot constantly monitor the E-mail boxes; therefore, it could be the next day before a second E-mail (question) is answered.
- (2) *Format of E-mail:* Most E-mail and attachments are in a format that is readable by this office, however in cases where the format is not comparable, there may be a delay responding to at least the first E-mail until the problem can be corrected.
- (3) *Viruses:* Unfortunately viruses are a common problem that cause many E-mail messages to fail to be delivered. This firm has an anti-virus program and a fire wall program that will not let infected E-mails be received. If you have an E-mail message that we not been responded to, please call so that the problem can be corrected.

Written Communications and Documents

Copies of all documents prepared in your case will be mailed to you the same day they are filed with the Court, mailed, or received. Keep all papers and documents about your case in a confidential, readily accessible location. When you are requested to gather documents, be **thorough** and act **without delay**. If you need to deliver items to the office after hours or the door is locked, please use the mail slot in the front door.

Retention of File

It is the policy of this office that your file will be maintained in our storage facility for a period of seven (7) years from the date your file is closed. Thereafter, it will no longer be maintained by this office and the contents destroyed.

Legal Fees and Costs

- *Agreement with Law Firm:* You will be required to sign an "Agreement for Professional Legal Services" prior to engagement, and is a contract between you and the LAW OFFICE OF DAVID S. BOUSCHOR II, P.C. The Agreement specifies the matter for which the Law Firm is retained, the fee arrangement, and other aspects of the contractual relationship. This "Policies and Procedures" statement is an important part of the Agreement, together which form your contract with the Law Firm. Read both documents carefully; ask if you have any questions about your rights and obligations.
- *Fees:* All professional legal services are rendered on an hourly fee basis in minimum increments of 1/10th of an hour with established minimum fees for certain documents and activities. Your responsibility for paying legal fees and expenses and costs incurred in representing you will be discussed in your initial conference with your Attorney and specifically stated in the "Agreement for Professional Legal Services". **Only the Attorney is authorized to establish or modify fee arrangements; fee agreements/arrangements are binding only if in writing.** If you have any questions about how fees are earned, expenses are incurred, or the amount you owe, ask as soon as possible.
- *Retainer:* Almost without exception, you will be required to prepay a retainer, and may be required to deposit additional retainers depending on your case. Retainers are deposited into a "Client Trust Account", a separate account where clients' funds are maintained separate from the firm's operating funds. Professional fees will be deducted from your retainer as earned and expenses and costs deducted as incurred. By law we cannot pay interest on these funds.
- *Payment of Retainers and Invoices:* You will be mailed monthly invoices specifying services rendered, fees earned, costs incurred, deductions from your retainer, and a current balance on your retainer or account. **All outstanding unpaid balances and additional retainers are due and payable at the Law Firm office within 10 days of receipt of the invoice. Unpaid account balances will be subject to interest on the unpaid amount at the rate of 12% per annum [1.0% monthly].**
- *How Fees Are Set:* Every legal matter is different from every other legal matter. Your Attorney will draw upon experience in establishing an initial retainer and any subsequent retainer; however, we cannot and will not warrant that your case can be handled for a fixed fee or fee cap except in only the most limited, uncontested cases. Fees for professional services rendered are based on many factors, including time and labor required, novelty and difficulty of issues involved, skill requisite to perform the services properly, likelihood that acceptance of this particular employment will preclude other employment of your Attorney, fees customarily charged for similar services in this locality, the values and relationships involved and results obtained, time limitations imposed by the client or courts or circumstances, and the Attorney's experience, reputation, and ability.
- *Fee Disputes:* This lawfirm is committed to rendering quality legal services for a reasonable fee. If you believe that the fees charged are unreasonable, this firm participates in the Denton County Bar Association Fee Arbitration procedure, which allows you and the firm to present information about any fee dispute. The decision of the Fee Arbitration Committee is binding upon both the attorney and the client.

Conflict or Disagreement

In the event that any disagreement, dissatisfaction, or conflict of interest arises between you and the Law Firm, you must notify us immediately and employ every good faith effort to resolve any problem, just as we will. Without notification, we will not be able to resolve the conflict.

Termination of Employment

Sometimes it is necessary to conclude the Attorney-Client relationship. Therefore, please be aware of the following terms and conditions of termination:

- *By Law Firm:* The Law Firm may withdraw from representation at any time if (a) representation will result in violation of rules of professional conduct; (b) you persist in or use the Law Firm's services to accomplish a course of action reasonably believed to be criminal or fraudulent; (c) you insist upon pursuing an objective the Attorney considers repugnant or imprudent or with which the Attorney has fundamental disagreement; (d) you substantially fail to fulfill an obligation to the Law Firm, including payment of fees as agreed, after you have been given reasonable warning; (e) representation will result in an unreasonable financial burden on the Law Firm or has been rendered unreasonably difficult by you; or (f) other good cause.
- *By Client:* The Law Firm will immediately undertake withdrawal from representation if discharged by you. You must communicate the discharge in writing to the Law Firm. Notwithstanding your desires, an Attorney's withdrawal from a suit requires Court approval.
- *Results of Termination:* In the event of termination, the Law Firm will take steps reasonably practicable to protect your interests, including giving reasonable notice to you, allowing time for employment of other counsel, surrendering papers and property to which you are entitled, and refunding unearned fees. However, the Law Firm may retain papers relating to you and the matter undertaken to the extent permitted by law.
- *Contractual Obligation:* In the event of termination, whether by you or the Law Firm, you remain obligated to pay then-earned professional fees and incurred expenses and costs and must pay same pursuant to the terms of the Agreement. In the event of non-payment, any action to enforce payment or collection of amounts due will be maintained in Denton County, Texas and you will be responsible for attorney's fees and costs incurred in enforcement and collection.

No Representation of Results

Because every legal matter is different, and since many human factors are involved, neither your Attorney nor the Law Firm can or will warrant or represent results of representation nor recovery or reimbursement of fees or costs. Statements by anyone in the Law Firm on these matters are opinions only.

Applicable Professional Rules

All aspects of the Attorney-Client relationship are subject to the Texas Disciplinary Rules of Professional Conduct. Therefore, we must sometimes decline to take certain steps that you may request. Further, although not every complaint against or dispute with an Attorney involves professional misconduct, the State Bar Office of General Counsel, which investigates and prosecutes professional misconduct, will provide information about how to file a complaint by calling 1-800-932-1900.

Client Information on Attorney-Client Relationship

Our Handling of your Case

Rather than retaining an individual Attorney, you are retaining the "Law Firm" of DAVID S. BOUSCHOR II, P.C., Attorney and Counselor at Law, which is comprised of a Family Law Board-Certified Attorney, a legal assistant, secretaries, and office manager. While your case will be handled primarily by your Attorney, it is unusual for only one person to do everything in your case. Therefore, professional services will be rendered and work will be assigned, as appropriate and reasonable, to the Attorney or the legal assistant according to the level of expertise and experience required, familiarity with your case, and work and trial schedules. Because we draw upon the experience and expertise of each member of the Law Firm, feel free to speak with the legal assistant if you cannot reach your Attorney.

Relationship of Attorney and Client

- *Loyalty:* You are assured of your Attorney's and the Law Firm's complete loyalty. The opposing party, whether a present/former spouse or family member, is not our client and we will do nothing for or on account of anyone else except upon your instructions after consultation. Don't misunderstand your Attorney's dealing with other lawyers on a friendly basis. Professional and common courtesy dictates that we maintain good relations with other lawyers. You will find that good lawyers are perfectly capable of zealously representing their client in court or in negotiations, then resuming a more friendly demeanor when the controversy is over. Your interests and our loyalty are always paramount.
- *Confidentiality:* **Every communication between Attorney and Client is confidential.** Confidentiality is our professional obligation, enforced by law and the Texas Disciplinary Rules of Professional Conduct. Because legal assistants and office staff will be handling your file and discussing your case with you and your Attorney, you should rely upon their confidentiality and cooperate with them just as though you were dealing directly with your Attorney. Anything your Attorney tells you should also remain confidential. **Do not disclose to anyone any communication with your Attorney, verbal or written.** Discussing your case with family or friends waives the confidentiality protection afforded to these communications.
- *Honesty and Completeness:* You must be **totally and completely honest** with your Attorney and provide full information on anything pertaining to your case. Clients often think that some little fact is insignificant; however, that fact may be crucial and possibly the turning point in your case. Remember, the laws are complex and intertwined; don't leave any details out. Your Attorney will be in a poor position to help you if they don't know all the relevant facts, **including any facts which may be embarrassing or hurt your case.** Your Attorney can do something about harmful facts if they know about them in advance and therefore not be as harmful as you think; failing to disclose the full truth will usually give rise to a worse result
- *Current Personal Information:* You must keep this Law Firm informed on your most current address, phone numbers, and E-mails if applicable. Failure to do so makes your representation by this Law Firm considerable harder and more expensive. In the most extreme cases, if the failure to keep personal information current renders representation impossible, the Law Firm will have to withdraw from representing a client.

Scope of Representation

Your "Agreement for Professional Legal Services" specifies the particular legal matters for which you have retained the Law Firm, and representation is confined to that matter. If you wish your Attorney to address or handle another legal matter, you must separately retain the Attorney for that purpose. "Professional Legal Services" in the "Agreement for Professional Legal Services" and this Guidelines and Policies and Procedures Statement mean services rendered to you or on your behalf by the Law Firm and

its attorneys, legal assistants, and staff in the preparation, prosecution, and defense of your legal claims, rights, and causes of action specified in the Agreement, including but not limited to telephone calls, conferences, meetings, settlement negotiations, court appearances, depositions, legal and factual research and discovery, acquisition and preparation of evidence, pleadings, documents, discovery, and correspondence, and preparation for court appearances, conferences, and meetings.

Time Pressures and Constraints

We fully understand that your legal matter is one of the most important focuses in your life right now. At the same time, the Attorney's other clients likewise are singularly focused on their legal matter. As a result, the Attorney must effectively manage each Client's legal matter while endeavoring to provide the best and fullest legal services to each client. Please remember that **an Attorney's time is usually controlled by others** (i.e. Courts, Judges, docket calls, trial settings, depositions, and client conferences). An Attorney is often required to be in Court for long periods on very short notice or in a trial that lasts several days.

Views on Family Law Matters and Counseling

We feel strongly that there is no shame in divorce or other family law matters requiring legal intervention. Marriage, children, and resulting legal obligations are difficult propositions for anyone, regardless of the circumstances. As your Attorneys, we have no bias in favor of holding together or dissolving a marriage or in seeking to establish the best custody situations. Our only biases are in favor of assisting our clients in making decisions that are proper for their personal well-being and diligently advocating their rights after both we and our clients are sufficiently apprised of the facts and our clients' rights.

If you are experiencing emotional difficulties during the pendency of your family law matter, we encourage you to seek the help of a counselor. The Attorney and staff at THE LAW OFFICE OF DAVID S. BOUSCHOR II, P.C., Attorney and Counselor at Law practice family law, not family psychology. Just as you sought out an experienced and competent Attorney to assist in your legal matter, we urge you to seek similar professional counseling or psychological assistance. While counseling is not always required by the Court, it may be ordered if requested by one or both of the parties. If you feel reconciliation is possible, we can recommend a choice of counselors and apply to the Court for same.

Coordination with Other Professionals

It is often necessary to obtain information from and work with other professionals that have rendered services to or for you, including accountants, tax preparers, doctors, psychologists, counselors, or others. Please let us know of each professional with whom you have worked or that has relevant information. If the employment of a professional becomes necessary during your case, please let us know your preferences.

Reconciliation or Independent Settlement

Unless specifically instructed by your Attorney, we strongly advise that you limit communications with the opposing party except for necessary information, i.e. visitation with the children, etc. **Under no circumstances should you communicate with the other attorney, the Judge, or court personnel.** If you feel that reconciliation is best for you, or that you wish to undertake settlement discussions on your own, please advise your Attorney immediately. Not only must we not work at cross purposes, but even reconciliation and settlement have significant legal consequences.

Harassment or Violence

No one has the right to harass or assault another person, even if they are married. **If your spouse harms you or threatens to harm you, immediately call the police and then call our office.** You must let your Attorney know of every abusive, intimidating, or threatening act as well as actual physical violence. The Court can and usually does enter orders that prohibit such conduct, and can and usually does take strong action in response to such acts.

General Family Law Guidelines

These are guidelines for general information purposes and are not a substitute for specific legal advice.

Texas Family Code

The Family Code is the body of law that governs all causes of action for divorce, child custody and support, property division, modification, adoption, termination of parent-child relationship, and other family law matters. However, the laws of real estate, corporations, contracts, commercial transactions, personal injury, and other areas must be considered. Never assume that your family law matter is "simple".

Jurisdiction

- *Divorce:* Generally, a Texas court has jurisdiction over a divorce if the person seeking divorce has been 'domiciled' within the State for the six months, and 'resided' in the county in which suit is filed, for the 90 days preceding the date of filing of a divorce petition.
- *Suit Affecting Parent-Child Relationship(SAPCR):* Jurisdiction over any suit involving children, whether as part of a divorce, modification of a prior court order, or adoption, generally lies in the County where the children have lived for the preceding six months, but significant additional considerations apply. There are exceptions to these rules, so discuss this issue with your Attorney if you think there is a problem.

Divorce in General

- *Divorce Grounds:* Texas is generally a "no-fault" divorce state. Sufficient grounds exist for granting a divorce if one party feels that the marriage has become 'insupportable' because of personality conflict or discord (incompatibility) to the point where there is no reasonable expectation of reconciliation. There are other grounds, such as adultery, abandonment, or cruelty, but are not alleged except in the most egregious cases. Your Attorney will advise you if another ground should be alleged in addition to insupportability.
- *Duration of a Divorce:* A divorce cannot be granted until the petition has been on file for 60 days. This is the **minimum waiting period**. The average divorce takes longer than 60 days to conclude because of the numerous issues that must be resolved, complexity of property division, as well as ensuring that you have sufficient information to make an informed decision about your case. Your Attorney will usually be able to give you a rough estimate of the time required after becoming thoroughly familiar with your case.

- *Modification of Orders Regarding Children:* To modify a prior court order regarding children, the Movant must prove a change in circumstances of the parents or children since the rendition of the prior order. There are several other significant requirements for each type of modification, i.e. custody, support, visitation, etc.
- *Enforcement of Court Orders:* To enforce the terms of a court order, the order itself must be very specific about the obligations to be enforced, and the proof of violations must be very clear. Therefore, enforcement proceedings may not always be as easy as you think; your attorney will review these aspects of the case and advise you if a clarification or modification of the prior order is advisable.

Phases of a Family Law Case [Applicable to all family law cases]

- (1) *Commencement by Petition or Motion:* Like every other lawsuit, family law cases commence with the filing of a petition or a motion (a general statement of the cause of action, i.e. requesting a divorce based on certain grounds with division of property and resolving issues about the children or requesting modification of a prior order). The person filing the petition is the 'Petitioner' in a divorce and 'Movant' in a modification; the other party is the 'Respondent'.
- (2) *Notice to Opposing Party:*
 - a. *Generally:* The Respondent must be given notice of the suit, allegations against them, and the time and place for responding. Failure to give required notice prevents continuing the suit or entry of a judgment.
 - b. *Citation and Service:* The usual procedure for giving notice of a lawsuit is by "Service of Process". In this procedure the Clerk issues a citation and the Sheriff or other court-appointed agent "serves" the citation and a copy of the petition upon the Respondent. It is simply delivery of the papers and does not require any signature or other response by the Respondent. This procedure is typically used when the Respondent has not been informed of Petitioner's intent to file, the Respondent has demonstrated an intention not to cooperate in the proceedings, the Respondent has threatened to leave the Court's jurisdiction, or immediate action is required.
 - c. *Waiver of Citation and Service:* If both parties are reasonably cooperative and know of the impending filing, it is preferable to use the "Waiver of Citation" procedure. This requires delivery (by mail or in person) of the petition to the Respondent, who then signs a "Waiver of Citation" acknowledging receipt of the petition and waiving the requirement of being formally served with citation. A "Waiver of Citation" is not a consent to a judgment or to any particular terms; it merely saves time and money and avoids the embarrassment of serving the Respondent in public. The Respondent still has the right to retain an attorney to represent them in the case.
 - d. *Alternative Service:* If the Respondent has left the jurisdiction or was not subject to service in Texas, it is possible to proceed with the suit by having citation served in an alternate manner. There are, however, certain special problems and additional expenses involved in this procedure which will be discussed if appropriate and applicable to your case.
- (3) *Respondent's Appearance and Answer:* After receiving notice of the suit (except 'Waiver of Citation' cases), Respondent files an "Answer". This pleading invariably is a 'general denial', which simply states that they are appearing in the case and require the filing party to prove their case and justify the relief requested. Respondent's failure to timely file an answer may result in Petitioner obtaining a default judgment.
- (4) *Temporary Orders:* Temporary orders are entered as the result of a hearing or on the basis of an agreement between the parties; they specify the rights, powers, and responsibilities of the

parties **while the case is pending, and become void when the final decree or order is entered.** Temporary orders usually include provisions regarding possession and use of property and require payment of specific debts during the pendency of the case, appoint one of the parents as the custodial parent and require payment of child support and accord visitation rights, require other steps to be taken while the case is pending, and may order payment of temporary spousal support and possibly interim attorney's fees and costs, as well as possibly include an injunction prohibiting certain conduct.

- (5) When properly requested, the Court can issue a "**Temporary Restraining Order**" without prior notice to the Respondent or opportunity for hearing. These are effective for up to 14 days and are used only when emergency action must be taken to protect persons or preserve property; a hearing must be held to obtain orders that continue for the duration of the case except where the parties agree to entry of temporary orders.
- (6) *Discovery*: No legal matter can be resolved without obtaining accurate and complete information regarding the facts and issues. This information is obtained both informally and formally and usually involves obtaining information from you, from the opposing party, and from other persons or entities that have knowledge or information. This is commonly referred to as the "**Discovery Phase**" of a case.
- (7) Throughout the case you will be requested to provide your attorney with as much information in as much detail as possible that you have in your possession or to which you have access. You will be provided with certain forms to aid you in this task. **Always be diligent and thorough.** Obtain and provide as much information as possible, even if you don't presently have all of the requested information.
- (8) In many cases your Attorney will send formal requests for information to the opposing attorney. These are often in the form of 'Interrogatories' (questions to be answered by the other party under oath) and 'Requests for Production' (requiring that specific documents and other items to be produced for copying or inspection). Another form of discovery is a 'Deposition' (a party or witness gives testimony under oath before a court reporter). You should expect to be on the receiving end of these types of discovery requests. Two forms of discovery required in divorces are a 'Financial Statement' (listing of personal income and expenses) and an 'Inventory and Appraisal' (sworn listing of all property and debts and their values).
- (9) Barring agreement with opposing counsel or by order from the Court, Texas law requires counsel to retain discovery responses for a period of two (2) years from the date your case is finalized.
- (10) *Negotiation and Settlement Process*: When your Attorney is thoroughly informed about your case and understands your objectives and preferences, an office conference will be scheduled to discuss a possible initial settlement proposal. Although your Attorney will be guided by your objectives and preferences, you will also be advised regarding realistic expectations and possible and probable results. It is invariably preferable to avoid having your family law matter become a bitter conflict or to drag on in contested hearings over a long period of time. In most situations it is possible to negotiate an agreement settling all issues and briefly appear in Court at the end of the negotiation process simply to obtain court approval of the settlement agreement. We always attempt to handle our cases in this way whenever possible.
- (11) Remember that compromise lies at the core of negotiations. A good negotiator begins by asking for more than what they would actually settle for and seldom reveals the "bottom line" or minimum acceptable position. Unless directed by your Attorney, **we strongly recommend that you not discuss settlement of any issues with the opposing party nor tell them what you are willing to settle for.** (An exception to this rule pertains to visitation arrangements with children when custody is not an issue; free and open communication between the parents is recommended, with the primary focus on what is best for the children.)

- (12) **You should bear in mind that the results that can be obtained in a negotiated settlement depend in large part on the results that would probably be obtained as the result of a contested hearing or trial if the issues were presented to the Court to decide.** This means two things: First, your Attorney's advice will be based in large part on what your Attorney reasonably believes would be the result ordered by the Court; Second, you must be prepared to go to Court if the opposing party is unwilling to agree to what you believe is the proper settlement or if you are unwilling to agree to the opposing party's settlement offer.
- (13) *Settlement Agreements and Agreed Orders:* If an agreement is reached through negotiation, it will be reduced to writing in the form of an agreed decree or order. The words and terms used in agreed decrees, orders, and settlement agreements are just as important as an order entered after a contested hearing or trial, and parties sometimes have a very different perception of the agreement when it is reduced to black and white; therefore, be patient while these documents are being prepared.
- (14) *Contested Hearings and Trial:* If negotiations don't result in settlement, whether temporary or final matters, your only recourse is to present evidence and arguments in support of your position to the Court for ultimate determination. All temporary hearings and most final trials are heard by a judge sitting alone without a jury; however, you have the right to request a jury trial to decide certain issues. Your Attorney will advise you about this decision. Although our Law Firm is committed to saving clients the time and expense of contested hearings by negotiating an agreement, you should not be afraid of a contested hearing or trial. Hearings and trials seldom have the tension or spectacle of those seen on "L.A. Law" or "Perry Mason". Moreover, your Attorney will work with you in fully preparing your testimony. Your best preparation for any contested hearing is to relax and tell the truth when called to testify.
- (15) *Final Decree or Order:* Your family law matter will be concluded on the date the Court signs the final decree or order; however, for 30 days after a decree or order is signed, an appeal of your case or motion for new trial could be filed. Also, remarriage within 30 days of divorce is generally prohibited by law.

Division of Property

- A major consideration in divorce is "who gets what?" Property division is complex in a community property state like Texas, and is generally governed by the Texas Family Code and is further bound by appellate court decisions. Generally, a spouse's separate property is always awarded to that spouse. "**Separate Property**" is defined as that property owned by that person before marriage, acquired during marriage by gift or by inheritance, and includes recoveries for personal injuries. However, separate property may be subject to certain claims of the community property estate. "**Community property**" is all property, other than separate property, acquired by the spouses during marriage and is divided upon divorce. During a marriage, each spouse owns an **equal, undivided interest in all community property; this does not mean 50/50 nor is community property always divided 50/50 upon divorce.**
- Division of property upon divorce is not automatic, nor is there a simple formula. The Court takes into consideration a myriad of factors such as the respective earning capacities of the spouses, the size of the respective separate property estates, the needs of children and the spouse having custody of the children. Also, if one spouse has committed acts that effectively forced the other party to seek a divorce, fault grounds and a disproportionate division may be urged as a means of penalizing the offending party. Also, claims of fraud, reimbursement rights, and other factors are weighed. Irrespective of these factors, the Court must always divide the property in a manner that is just and right having regard for the parties' and children's rights.

- These principles are general in nature. It is your Attorney's job to know when these or other factors may affect your case and to advise you accordingly. **Your Attorney will attempt the best possible settlement, but accept your Attorney's realistic advice and approach.**

Alimony, or Spousal Maintenance

- Alimony, or spousal maintenance, refers to payments made for support of a spouse after divorce, as distinguished from payments made for the support of children. Texas law has always permitted *contractual* alimony, i.e. the parties may agree for the payment of alimony, and has been used in equalizing property divisions in higher income divorce situations. Now, “limited” alimony may be ordered by the Court. The Texas legislature stated that court-ordered alimony is intended to “provide spousal maintenance primarily as a *temporary rehabilitative measure* for a divorced spouse whose ability for self-support is lacking or has deteriorated through the passage of time while the spouse was engaged in homemaking activities and whose capital assets are insufficient to provide support . . . spousal support should be terminated in the shortest reasonable time, not to exceed three years, in which the former spouse is able to be employed or to acquire the necessary skills to become self-supporting.”
- Alimony may be ordered only when the marriage has lasted 10 years or longer, the payee spouse lacks sufficient property to provide for *minimum* reasonable needs, *and* that spouse (a) is unable to support themselves because of an incapacitating disability, (b) is custodian of a child requiring substantial care preventing the spouse from working outside the home, or (c) lacks earning ability adequate to provide support for the spouse’s minimum reasonable needs. Court-ordered alimony cannot exceed the *lesser* of \$2,500/mo. or 20% of payor spouse’s gross income and has a maximum duration of 3 years. Therefore, alimony is not intended as a permanent means of support.
- When alimony is paid, the payor spouse is entitled to a federal income tax deduction for amounts paid as alimony and the payee spouse must declare all alimony received as income and pay tax on it.

Children

There are four primary issues pertaining to children: who will have primary custody of the children, what powers does each parent have regarding the children, what form and amount of child support will be paid, and what possession and visitation rights will adhere.

- (1) *Custody*: "**Sole Managing Conservator**" is the person having primary custody of the children. The "**Possessory Conservator**" has specific rights of possession of the children for certain periods of time under specified conditions and usually is required to pay child support. In addition to having primary custody of the children, the sole managing conservator generally has the exclusive legal authority to decide most of the matters which affect a child's life, i.e. what school to go to, what doctor to use, how the child's money will be spent or saved, etc. The possessory conservator has rights regarding the child, though not as extensive as the managing conservator.
- (2) *Joint Managing Conservatorship*: It is presumed in Texas law that it is in the children’s best interests that both parents be appointed joint managing conservators to ensure the continued, active participation by *both* parents in the lives, activities, and decisions concerning the children. This arrangement provides for a greater sharing of powers between the parents, but which does not have to be equal.
- (3) *Child Support*: Child support is comprised of periodic payments for financial support of the children, provision of health insurance, and payment of medical expenses, and usually continues after Obligor's death as an obligation of that person's estate. Periodic payments of child support are primarily set according to the **Child Support Guidelines**; variations from the Guidelines require good cause. The Guidelines also usually require the Obligor to

maintain health insurance, with payment of uninsured medical expenses allocated between the Conservators. Other factors considered in setting child support include the number of children, income of the "**Obligor**" (the paying parent), cost of caring for children, living expenses of the respective parents, income tax dependency exemptions, and other financial arrangements.

- (4) *Possession and Visitation*: Commonly called "**visitation**", the preferred term is "**rights of possession**" since both Conservators have specific rights and periods of possession of the children. Since both parents should ensure that the children continue to have productive and caring relationships with the other parent, all possession orders provide that the Possessory Conservator will have possession of the Children as the Conservators mutually agree. If they cannot agree, each Conservator will have possession of the Children according to a schedule setting specific periods of possession for each parent and the terms and conditions under which possession is exercised. Typically, a "**Standard Possession Order**" is ordered which contains the presumably minimum amount of contact between a non-custodial parent and the children.

"Custody Fights"

Parents should engage in a custody fight only when absolutely necessary, i.e. there are serious fact situations and problems. Custody fights inevitably cause much anxiety and hostility, are especially traumatic for children, and are usually protracted and expensive (typically taking up to a year to resolve and costing each parent a minimum of \$15,000 in attorney's fees, litigation expenses, and court costs). Every reasonable effort should be taken to avoid a custody fight; therefore, prior to commencing a contested custody case, we recommend that both parents seek advice of a professional knowledgeable in the area of child psychology.

Change of Name in Divorce

A wife can restore her maiden name, taking into consideration ramifications when there are children of the marriage. Otherwise, restoration of a former name may be had for the asking.

IF THERE ARE OTHER ISSUES THAT YOU FEEL SHOULD BE SPECIFICALLY ADDRESSED, DISCUSS THEM IN DETAIL WITH YOUR ATTORNEY.

5/04