

# THE TACTICAL DIVORCE MANUAL

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**DISCLAIMER:** THIS MANUAL IS A SOURCE BOOK CONTAINING GENERAL INFORMATION ONLY. IT IS IMPOSSIBLE FOR ANY ATTORNEY TO GIVE YOU SPECIFIC OR PERSONALIZED LEGAL ADVICE THROUGH A MANUAL: EVERY PERSON'S LEGAL SITUATION IS DIFFERENT. THIS MANUAL IS INTENDED ONLY TO GIVE YOU BASIC INFORMATION ON THE MOST COMMON PROBLEMS THAT ARISE BEFORE, DURING, OR AFTER A DIVORCE; WAYS TO PREVENT THESE PROBLEMS; AND METHODS YOU CAN USE TO PROTECT YOUR INTERESTS.

IF YOU HAVE QUESTIONS ABOUT AN ACTUAL OR TENTATIVE DIVORCE, PLEASE CONTACT US. SPECIFIC QUESTIONS ABOUT YOUR CASE SHOULD

ALWAYS BE DIRECTED TO A QUALIFIED ATTORNEY. AS WITH MOST OTHER LEGAL CASES, IF YOU PROCEED WITHOUT A LAWYER (“PRO-SE”), YOU ASSUME ANY LIABILITY FOR PROBLEMS THAT OCCUR.

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

## 1. A QUICK OVERVIEW OF THIS MANUAL

My Name is Nick Thompson, and I have been a licensed attorney since 1988. I am a former West Virginia State Tax Department attorney and a former Kentucky Assistant County attorney. I practice statewide in all of the Kentucky and Indiana Counties. I’d like to thank you for requesting our divorce manual. I believe the information in this manual will answer many of your questions about divorce and will explain how to save your assets and get the most out of your divorce.

There are some attorneys that might be upset if they knew we were sharing these secrets, but our aim is to help you prepare and plan for your case and save you from unnecessary costs and problems. We have written this manual so you will know everything we believe you should know when you file. Every year, people fail to follow directions, read this manual, or ask questions—and it always costs them money, property or, at least, their time.

Please **read** this manual very carefully and completely if you are considering filing. Some people read it more than once. If you spend just a couple of hours learning, you may save thousands of dollars when you file or win custody. If you do not understand anything in the manual, **please** call or email us, and we will answer your questions. Not only will you get the information you need, you will also let us know what needs to be added to future editions of this manual. Your questions will help others in the future and let us know what wasn’t covered.

**There is nothing wrong with planning your lemon auto, bankruptcy, or divorce case. Understanding what needs to be done makes it far more likely that you will win your case and stay out of trouble.**

This manual was written for the benefit of our clients, and others, who are going through the divorce process. The manual will give you some of the general information you need should you wish to file a divorce action on your own behalf. We do not recommend that you file for divorce on your own without consulting with an attorney to look over the agreements you are submitting to the Court. We especially wish to caution our readers against filing complicated property settlement agreements themselves.

## 2. CHOOSING AN ATTORNEY

One of the worst mistakes you can make in divorce, or any legal situation, is to use the wrong attorney. There are good attorneys and bad attorneys. Every attorney is an individual, and he/she will have strong and weak points. One may prepare excellent paperwork and pay excellent attention to detail, while the next may argue well on his feet but have no organization skills. Many states allow an attorney to specialize in some area of practice, such as domestic law or bankruptcy. (Generally, the law is interrelated—like a seamless web—so specialization may not always be an advantage.) In Kentucky, attorneys are not allowed to say that they specialize, but some Kentucky attorneys do limit their practice to a specific area or areas. Neither good grades in law school nor a limited practice guarantees quality representation. The best test you can give an attorney is to question him to determine what he believes he can do to help you. If an attorney makes promises that sound too good to be true, they probably are. If an attorney claims she can't help you, she probably can't.

Expect to pay for your attorney's time: Nothing is free. If you expect your lawyer to work for free, be aware that you will usually get what you pay for! Your attorney has a family to support and overhead such as his office to pay for. Most attorneys will simply ignore a case that doesn't pay. In the long run, you are better off paying a reasonable fee. Most attorneys will charge from \$150 to \$300 per hour. Many attorneys may ask for a lien on your home to secure payment. If the attorney is not paid, he or she will normally drop you as a client; however, he or she may finish your case but not put a full effort into it, which costs you more in the end. At the same time the attorney should fully deliver if he is fully paid. Paying a lawyer fairly—and having him or her bill you fairly—is cheap when compared to the final benefits. It is expensive to waste your attorney's time, and your money, to make small talk. Therefore, we encourage you to prepare thoroughly for meetings with your lawyer. When meeting, try to stick to the direct subject matter of your divorce.

This is a check-list of issues you may want to discuss with your attorney:

- Custodial arrangements for the children
- Child support
- Future increases in child support (COLA)
- Education expenses for the children (including camps, religious schooling, and college)
- Medical, dental, hospital, pharmacy, and psychological expenses for the children
- Income tax joint filings (who gets the refunds/who gets the liabilities)
- Tax exemptions (who claims the children on future returns)

- Motor vehicles, boats, or trailers
- Debts (who is responsible)
- Discovery of hidden assets and income
- Discovery of wasted or destroyed assets
- Non-marital vs. Marital Property
- Inheritances and pending lawsuits
- Dating and sexual relationships
- Safety of property, in general, and future payments of support
- Property Division (including 401K, Pensions, IRA, and QDRO)
- Investments (including partnerships, stocks, bonds, and savings)
- Corporations
- Proper security and protection regarding property division
- Personal property (furniture, collectibles, etc.)
- Bankruptcy issues (protection in case one spouse does go bankrupt)
- Alimony or reeducation for you or your spouse
- attorney fees, Court costs, and Expert fees
- Clauses of indemnification, in case a spouse fails to live up to his or her obligations
- COBRA or medical insurance for a former spouse
- Spouse abuse and restraining orders
- Restoration of a maiden name

Once you've chosen an attorney, follow his or her advice. He in turn owes you an explanation of what he is doing and why he is doing it. Always tell your attorney the whole truth, disclosing any and all important facts about your case: Your failure to advise your attorney of any facts may be legally fatal.

If you change attorneys several times, you may indicate to the Judge that you are a problem client and it may negatively affect how the Court perceives you. It may even imply mental instability and, if the Court feels you are unstable, could seriously damage

your chances of child custody or visitation. Therefore, it is very important to pick a good attorney at the start of your case that you stay with and to follow his or her advice.

What you should expect from your attorney is that your legal work is done on time and properly prepared. But your attorney is there only to protect you legally: He/she is not your psychiatrist, counselor, or parent. Additionally, although there are no rules from the bar association that prevent an attorney from dating a client, doing so interferes with objectivity. Romantic relationships between divorce lawyers and clients should be avoided.

**Don't try to be your own attorney.** It takes 3 years of legal training at a good law school to even begin to think like one. You are far better off leaving the surgery to surgeons and the legal work to attorneys. If you are dealing with important matters—such as child support, custody, or major property division—a mistake can be costly. You may lose custody, seriously damage your financial situation, or lose some other asset far more valuable than the cost of an attorney. **Even if you do some of the legal work on your own, get assistance and have a lawyer review your documents.**

### **3. SHOULD YOU DIVORCE?**

Before you file for divorce, you should at least consider whether or not you really should divorce. Sometimes divorce seems like the only solution; however, confronting marital difficulties may be an opportunity to resolve emotional and psychological problems that are keeping you from having the relationship you deserve with your current spouse. It may even take the initiation of a divorce to motivate some people to try and save a once cherished relationship.

There are no good or bad marriages—only ones that work and ones that don't work. Marriages that do work are partnerships that help each person to grow. The noted social worker Virginia Satir said that any marriage can be saved if both parties are willing to work together toward that goal. If you are interested in counseling, you may want to consult your attorney for the names of good qualified counselors. Don't allow anyone, even a lawyer, to talk you out of a desired reconciliation, counseling, or therapy. In some cases, an attorney may have his or her fees closer to heart than your happiness.

Unfortunately, not everyone is willing to work at a relationship or to support their spouse emotionally, mentally, and spiritually. If you are sure your marriage does not work and can't be fixed, it is time to move on. Many marriages can't be fixed because some people will not change.

One of the first steps in preparing for your divorce is to realize that life is not over. Your spouse thought you were worth being with and, after he or she is gone, someone else will have that opinion.

## 4. THE BASIC DIVORCE PROCESS

The purpose of the divorce process is to end a marriage and decide issues such as child custody, visitation, child support, alimony (sometimes called spousal support or maintenance), and property and debt division. A divorce judgment can be based on an agreement between the parties or result from a trial or hearing. An agreement, or settlement, is usually less traumatic for you and your children, and is usually far less expensive than a trial. Ultimately, most cases are resolved with a settlement. Often, the divorce process requires mediation, wherein parties work toward an agreement that both can live with. Divorce is technically called a “dissolution of marriage” in Kentucky and most other states.

An overview of each step in the divorce proceedings is explained in Sections 4.1-4.6. If you want to know step by step how to do it to file an uncontested divorce a person merely needs to:

- fill out the petition,
- file the vs 300 and any local forms, In Jefferson county this at least includes the financial data form and the case data sheet however the court clerks will assist anyone in this and they often wont accept a petition without it. Couples with children have additional forms. Rural counties have fewer local forms but all the counties require at least the vs 300.
- file an entry of appearance signed by the spouse or at least serve the spouse with the petition,
- file the marriage settlement agreement, if he or she wont sign you may seek a default.
- wait the 60 days after that if children were born of the marriage and then ask for a hearing,
- then file the motion for a hearing, pay for and schedule the Commissioners hearing with the Commissioner go to that hearing and before the hearing file the findings of fact and final order.

This is a lot harder though than it looks and there are problems that may cause it to never get finished if you make an error.

### 4.1. TEMPORARY ORDERS

Alimony and Child Support starts when you ask for them in a “motion” which is a request from the court. Temporary orders (also often called “pendente lite orders”) provide for property settlement, alimony, child custody, visitation, and support while the case is being litigated. Temporary orders can be granted through hearings that are usually held within a couple of days of the request, even if the divorce petition has not yet been filed.

These temporary orders may include restrict contact, restraining orders to prevent the disposal or destruction of property.

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

## **4.2. THE PETITION**

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

In Kentucky, parties must reside within the state for 180 days before they can file the Petition. If the parties have children, they must wait at least 60 days after filing (and after the defendant spouse has been properly served) to have a final hearing. This allows each party to submit testimony and proof and finalize the divorce. This “cooling off” (waiting) period is required for all families that have children.

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

If the divorce petitioner is seeking child support, custody, alimony, or property, the case must be filed in a Court that has jurisdiction over the person or the item. Jurisdiction over property is called “jurisdiction in rem”. Jurisdiction over persons is called “jurisdiction in personam”.

If your spouse cannot be found, a warning order attorney will be appointed. This normally costs about \$75. The warning order attorney will write to the last known address of the respondent in an effort to locate him or her. If there is no response, the warning order attorney will file a report with the Court stating that the person was not found. If there is a response, the warning order attorney will file a report with the Court stating that the person was found and served with notice of the pending divorce or lawsuit. In either case, the divorce will go forward as if the person had been served; however, if the person is served by a warning order attorney, the Court can only dissolve the marriage and grant custody. **If the Court uses a warning order attorney for service of process, it cannot award child support or alimony.**

## **4.3. THE ANSWER**

After the Petition is filed, the other spouse (called the defendant or respondent) will file

an Answer. The respondent may also file an “Entry of Appearance”, which certifies to the Court that they agree to jurisdiction and know about the proceeding. In Jefferson County, the answering spouse is required to sign any Entry of Appearance and the settlement agreement in the presence of the Court clerk—to guarantee that the signature is valid.

In Jefferson County, if you are served with a Petition or Complaint, you must file your Answer within 20 days or you may lose the right to present your side and a default judgment will be entered. If there are no children involved, a default judgment may be entered after 20 days. If children are involved, Kentucky requires a 60-day waiting period after the respondent has been served.

#### **4.4. DISCOVERY**

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

#### **4.5. LITIGATION, MEDIATION, AND MARRIAGE SETTLEMENT AGREEMENTS**

To resolve a divorce, there are three options: Mediation, Litigation, or Settlement. In many cases, one or more of these processes are used in combination to arrive at a final agreement.

##### **Mediation**

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

In Louisville, Kentucky, the Family Court requires a mediation conference before a trial. Divorce mediation encourages both parties to set aside resentment and work toward a solution that suits everyone. Divorce Mediators normally charge by the session but you, your spouse, and your children have everything to gain if it works. Successful mediation results in a final divorce agreement that both parties agree will work for them. Mediation

takes into consideration the needs and interests of everyone—including the children. It is usually far less expensive and much quicker than traditional divorce litigation. Coming to an agreement via mediation is a win/win situation for you and your spouse and, where children are concerned, often a win/win/win situation!

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

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

## **Litigation**

In some cases a contested divorce will be litigated in Court. A trial is the most expensive, time-consuming, and (usually) unpleasant way to work out the details of a divorce. There is no way of knowing how a Judge may rule, and it may leave both sides with an undesirable outcome. However, when the two parties simply cannot agree, it is the only alternative.

Litigation is risky. No one can predict the outcome of a trial, because there is no way of knowing how the Judge or jury will think. Each Judge has a different viewpoint, temperament, and values. Witnesses often change their testimony and may leave the state.

You may ultimately “win” the case by litigation but, if you are financially and emotionally drained after years spent embroiled in a bitter divorce, you still lose. Having a divorce Judge ultimately declare you are right may leave you with little satisfaction after the time, energy, and money it took to get that decision. There may also be years of bitter feelings after the divorce. In a hard fought divorce, everyone usually loses—especially when children are involved. Also if a spouses are far less likely to obey a court order than they are to live by an agreement.

Litigation may be done simply by depositions or affidavits. At a final hearing in a contested divorce, each side will explain their side of the case to the Commissioner or Judge and documents, witnesses, and exhibits will be placed into evidence.

How can everyone be a “winner” in a divorce? The answer may be to set aside your anger, hurt, and resentment and agree to do what is best fair and proper for everyone including the children and to divorce as reasonable adults.

## **Marriage Settlement Agreements**

You are allowed to settle your divorce with your own marriage settlement agreement under KRS 403.180. Normally, these agreements are incorporated into orders and decrees of the Court and enforced in the same way as any other Court order. The Court will honor the terms of your agreement unless the terms are unconscionable (completely

unreasonable). Even then, the Court should first allow the parties to revise the agreement rather than make its own order: Agreements that the parties have worked out with each other are far more likely to be followed than something the Court forces them to live with. It is rare that these agreements are disallowed, since bad bargains are not necessarily unconscionable. The burden of proof to show that a bargain is unconscionable is on the party trying to disprove the marital agreement.

Marriage Settlement agreements in Kentucky may grant child support differently than what is outlined in the guidelines (see Section 9.2), but the couple must state in their agreement that they have calculated and considered the guidelines. The Court, however, has continuing jurisdiction over child custody, visitation, support, and alimony and can always change it later if there is a change in circumstances.

Although a lawyer may recommend a settlement proposal, the decision about that proposal is yours.

Even if you agree on how to divorce, you must file that agreement with the Court so that property and debt division, custody, support, visitation, and other matters can be made into an official judgment. You should have an attorney review this document to insure it is properly prepared from a legal perspective. The marriage settlement and the final decrees of divorce will set your child custody, support, visitation, property and debt divisions, and many other important matters. The settlement and the final decree, which sets out the findings of fact and conclusions of law, are the most important documents in the divorce and must be prepared and reviewed in detail.

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

#### **4.6. APPEALS AND MODIFYING ORDERS**

Just because you had a trial does not mean that the process is over. Appeals can be filed and modifications can be made to the divorce agreement (especially in child custody, support, and visitation matters) for years and years to come.

If you are unhappy with a judgment made by the Commissioner or the Court, you may appeal to a higher Court. Normally, of course, you do have to appeal on a matter of law—not just because you don't like what the Court has said. Your spouse also has the right to appeal any judgment.

Child support, custody, and visitation can always be modified at a later date since the Court has continuing jurisdiction over the children. Modifications are made by a Judge, or Commissioner after a hearing. Changes in the amount of child support can be granted or custody and visitation rights can be modified. The rule for making a modification of custody or visitation specifies that the change be in the best interests of the child and that you show that there has been a change in circumstances. Some permanent orders are not

modifiable. Normally, the division of property is not subject to later modification unless fraud is proven.

## **5. OTHER STEPS THAT MAY OCCUR IN THE DIVORCE PROCESS**

The following sections deal with items that may or may not be a part of your divorce proceedings, depending on individual circumstances.

### **5.1. COUNSELING**

Divorce-related counseling is required in Jefferson County for families with children. Counseling should be a part of your divorce whether or not you are in litigation. There is a natural time of grief and adjustment that all people go through when divorcing. The process is especially hard on children. However children under and over certain ages will not be required to attend.

### **5.2. DVOS/EPOS**

If there have been instances of domestic violence, emergency protective orders (EPOs) or domestic violence orders (DVOs) can be requested. If a DVO or EPO is granted, a criminal-like record for the offending spouse is made part of a nationwide computer data bank. Many rights are lost for the subject of a DVO or EPO, including rights to purchase or possess any firearm and/or work in some types of jobs. DVOs are almost always granted if requested. Normally, no-contact restraining orders, which may restrain a spouse from coming near or contacting the filing party, or even force them to move out of the family home, are entered by the Court.

Like temporary orders for support (see Section 4.1), DVOs and EPOs are granted through hearings that are usually held very quickly after the request, even if the divorce action has not yet been filed.

### **5.3. CONTEMPT AND ENFORCEMENT**

If a spouse refuses to pay support or other financial items dictated by the Court, tax refunds can be seized and property, wages or bank accounts can be garnished. Property can also be taken and sold. Orders for contempt can provide for jail time. Further, the failure to pay child support for over 6 months, or to fall behind more than \$1000 in child support, is a felony in Kentucky and punishable by 5 years in prison.

## **6. THE TRUTH ABOUT DIVORCE**

The truth is, normally, divorces aren't very nice. War is not fair, and divorces often seem like WWII. Sneak attacks and Blitzkrieg tactics are common, and often things happen so fast, and with such unfairness, that one side gets all and the other gets nothing.

Of course, every situation is different: Parties may be reasonable or spiteful. In some cases, you may be able to work together and divorce as friends, and act in the best interests of everyone. In other cases, a hard-line approach is the only choice. The other party may have only their own self-interests—or even revenge—in mind and many fundamental issues are at stake. A contested divorce is serious, after the Courts are involved, you will lose control how your children are raised. Important family issues such as how much money is spent on the children, who they will live with, and even what church they will attend, will be decided by a Circuit Court Judge not the parents. Social workers or mental health evaluators will normally become involved and will have a major input regarding your family's future.

If you expect WWII, the best defense is to file early, hit hard, and be well prepared. If you are considering a divorce, we suggest you contact a divorce attorney as soon as possible. We also suggest that you prepare to be divorced. You should never sit back and let divorce be something that just “happens to you”. Don't be a passive victim of the system. Preparation and the right knowledge are key items: For example, in almost half of all cases where a custodial parent receives no support, the custodial parent simply failed to ask for it.

Spouses may use any of the following unfair tactics to gain an advantage in a divorce:

- Taking control of the financial assets by opening bank accounts in his/her name only; closing accounts (including canceling utilities, credit cards, and insurance); transferring ownership of items to his/her relatives; selling assets; charging up accounts; and putting off or making repairs to property (in anticipation of a sale).
- Taking control of the financial records.
- Moving his or her residence often including the children, to other states just outside your state's jurisdiction, and filing for divorce first or after 6 months when the children become residents of that state. In such cases, the first person to file the divorce wins. Also, when it comes to support, mobile targets or targets that are out of state or out of the country are hard to hit. **If the Court lacks jurisdiction, and the other person is in another state, support can be difficult or impossible to obtain.**
- Reducing his or her income just before filing for divorce. This is done to reduce income and increase necessary expenses, either to increase the amount of support received or to show the inability to pay alimony or support.
- Using the other spouse's “sins” against them. If you have vices, or a checkered past, now is not the time to confess to or confide in your spouse or mutual friends. What you tell your spouse can, and often will be, used against you.

Be aware of these tactics. If you think a divorce is forthcoming, protect yourself. If at all possible, be the first to file and at least plan for it. Make sure you know where your assets are and how much they are worth. Make sure you have access to bank accounts,

financial records, tax returns, and other important information. If you entrust these items completely to your spouse, you may end up losing far more than his or her company.

## **6.1. MORE ON TACTICS**

Starting your case as a friendly case may seem impossible, but it gives the Court a good impression. It also allows you a chance to test how the other side will react to the filing of the divorce. Ask yourself: Will it be a friendly divorce or an all-out war?

The key is to have a good strategy from the moment you file. For example, if you live in a state where you would be awarded little in alimony or property, you may even move to another state to file the divorce. (This “forum-shopping” is done quite often in divorce actions.)

### **Have Jurisdiction**

In a case where one spouse moves to another state, the other may have to follow him or her legally for child support purposes. Jurisdiction is the power of the Court to order a person to follow its findings. A state has no jurisdiction over you unless you live in that state or have substantial contacts with the state. Normally, a Court has no power over non-residents; however, some persons mistakenly try to be their own attorneys and—by answering lawsuits accidentally—agree to jurisdiction by default. Unless you specifically deny jurisdiction early in the proceedings, you have agreed to it. Filing any answer or signing any agreement in Court normally gives a state jurisdiction over a person.

In many cases fathers have been made to pay support simply because they agreed to it when they were out of state residents and did not have to pay. In many cases, a Court may have jurisdiction to award the divorce because one spouse is in the state: It may grant child custody because the child is in the state, and it may even grant property that is in the state, but it may not be able to grant child support because the other spouse is out-of-state and, so, the Court lacks personal jurisdiction over him or her. What often happens is that the parent with the child files in his or her home state and has the out-of-state parent served. If the out-of-state parent fails to object to jurisdiction, or agrees to jurisdiction, he/she may be caught and dragged to the child’s state every time the custodial parent wishes an increase in support. This is a major disadvantage to the out-of-state parent who has to play the game as a visiting team.

These jurisdictional problems were more difficult long ago. Today, it is far easier to take the case and sue for child support in the state where the obligated parent resides. Under the Uniform Child Custody Jurisdiction Act (UCCJA), the Court assumes jurisdiction over the child if the child is in the state for more than 6 months. Under the Parental Kidnapping Prevention Act (PKPA), a subsequent suit for custody cannot be filed, and the second state must defer to the first state. If the UCCJA and the PKPA overlap, the PKPA takes priority. If a parent is not paying and lives out of state the attorney general for one state may send the case to the other state for support litigation in the other state.

## **File First**

Another tactic often used is the rush to the Courthouse. The first to file often wins. By filing for custody first, and getting a temporary award of custody first, one can obtain custody early in the case and later argue that the child has been with you for the last several months and should continue to be with you. There is also a psychological tendency not to change things that we have already resolved. Therefore, it is a major advantage to get a Judge to rule your way once: It is not likely that he or she will reverse himself later. Delaying the decision as long as possible also allows you time to argue that there has been no change in circumstances. The Judge will often be inclined to continue the status quo.

## **Be Mature**

Attaching affidavits to each request and motion allows you to tell the story of your divorce case. Exaggerating your claims, bluffing, or doing anything that seems untruthful will harm your case. The Court does not want to hear your complaints or what you think is morally wrong with your spouse. It is only concerned about what is best for the children, what the law is, and in processing the divorce. If you show up in Court emotionally distressed, you will usually harm your own case. If you appear to be an emotional wreck, it gives the Court the impression that you are in no shape to parent the children. The children need someone who is psychologically stable and mature.

Your goal should be to show the Judge you want a fair and proper outcome. Do not say the Judge unfair or doesn't know what he's doing—that can be suicide in Court. Even if the Judge is unfair, you could eventually get a different Judge and the new Judge may be concerned if you made problems for the last Judge.

## **Show Stability Responsibility**

The most damaging testimony that can happen in a Divorce hearing when both parents are almost equal is when one side proves that the other parent is unstable or cant provide for himself or herself. If a parent cannot take care of himself he can't be expected to take care of a child. Although disabled mothers may often get alimony they may also lose their children when they are so disabled that they can not reasonably take care of the children and a father can take better care of them.

The children also need a home and someone which is stable and who is psychologically and emotionally stable and mature. A home that is unstable where things are constantly changing makes for a home where a child feels insecure. A parent that constantly changes residences or that constantly changes jobs is not likely to be a person that has settled down enough or that has the ability to parent properly.

## **7. PROPERTY AND MARITAL DEBT DIVISION**

Kentucky is not a community property state. Most community property states are in the west: Texas and California are examples. Originally, these states were Mexican or Spanish territory and have kept this aspect of Spanish law. This manual does not cover

community property and there is little practical use in explaining the distinction. Property in both community property states and non-community property states is often similarly divided as marital property; however, some differences may cause tax-related or other problems. If you have a case in which some or all of your property is located in a community property state, you should consult with a lawyer who knows the law of that state. Community property considers all debts and property to be jointly earned and owned.

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

Non-marital property is not subject to division. Marital property is subject to division. Most of the law defining how to split marital property comes from case law and cannot be found in statutes; however, KRS 403.190 states that property is divided between the spouses without regard to fault or misconduct.

In Kentucky, the Court first looks at each person's contribution to acquiring the marital property. [**Smith v Smith** 497 SW 2d 418 (1973), **Ratcliff v Ratcliff** 586 S.W. 2d 292 (1979)] If you came into the marriage with non-marital property, that property should be restored to you. The duration of the marriage is also a factor in deciding what property is to be divided.

Second, the Court establishes the value of the property. The Court cannot guess what the value of property is; therefore, the Court often has to rely on evidence, such as receipts, that you supply to them. In some cases, the Court may order an appraisal or sell property in order to divide it.

Third, the circumstances of each spouse are taken into account, including the need for child support and alimony to be fully funded. [**Williams v Williams** Ky. 500 S.W. 2d 79 (1973)]

Finally, in cases where marital assets were wasted, hidden, or cannot be accounted for by one spouse, the Court should lower that spouse's part of the proceeds. [**Robinette v Robinette** Ky. App. 736 S.W. 2d 351 (1987)]

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

- Personal Injury funds are not marital property. [**Weakley v Weakley** Ky. 731 S.W. 2d 243 (1987) and **Reeves v Reeves**, Ky. App 753 S.W. 2d 301 (1988)]
- Inherited property is not marital property. [**Angel v Angel** Ky. App., 562 661 (1978)]

- Gifts or welfare funds are not marital property [**McGlone v McGlone**, Ky., 613 S.W. 2d 419 (1981)]
- Increases in the value of property that was non-marital property is not marital property [**Daniels v Daniels**, Ky. App 726 S.W. 2d 705. (1986)]

None of these items of property were acquired jointly; however, pensions are almost always viewed as the product of a couple working together (if the pension was acquired during the marriage). [**Poe v Poe** Ky. App 605 S.W. 2d 33 (1988)] Even if the pension is not vested, it is still marital property subject to division.

Normally, marital property and debts are evenly divided, but in some cases marital property may be used for child support or alimony, or to insure the payment of support.

Under **Bruton v Bruton** Ky. App 569 S.W. 2d 182 (1978), marital debts are ordinarily divided the same way that marital assets are divided, but there is no presumption that a debt incurred during the marriage is a marital debt. The Court may have to consider other factors to see if a debt should be divided.

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

## **8. CHILD CUSTODY**

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

### **8.1. CUSTODY STATISTICS**

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

The statistics are different if custody is decided by the Court. Only about 2-5% of cases are left to a Judge to decide custody. Women, however, lose custody in about 40% of the cases that do go to trial.

In litigated cases, over 82 % of all women want sole custody while 15% want joint custody. About 33% of all men want sole custody while 35% want joint custody.

## 8.2. JURISDICTION

If you are asking the Kentucky Court to award child custody in a divorce, the child must have lived within Kentucky within the last 180 days and be a resident of Kentucky. If the child has lived in Kentucky for 6 months, Kentucky becomes the home state of the child and Kentucky can award custody of the child to either party.

## 8.3. TYPES OF CUSTODY

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

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

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

## 8.4. DETERMINING CUSTODY

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

as possible.

Common factors that influence custody include:

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

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

## **8.5. CUSTODY LITIGATION**

Custody disputes are very emotional and often involve allegations of abuse. These situations require a cool head on the part of the attorney representing you—and a knowledge of psychology that many attorneys and Judges lack. Often, the parent who is better able to afford the fight, and who has the most determination to win at all costs, will get custody.

Many Judges require the parents to participate in mediation if they cannot agree to custody. Often investigations are performed by social workers or psychologists. These investigations may include interviews with the parents, the children, teachers, daycare

providers, neighbors, doctors, and anyone else who is involved with the children. Once an investigation is concluded, a report with recommendations is given to the Court. The Judge may either follow these recommendations or disregard them and reach his or her own conclusions from all the surrounding facts.

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

## **8.6. JOINT CUSTODY**

In joint custody cases, parents make decisions about their children together. Many studies have shown that, if the parents must divorce, they are far better off if they work together to raise the children: Child support is more likely to be paid on time and in full, the children are less likely to have psychological and emotional problems, they are less likely to divorce themselves and the children will have higher levels of self-esteem than when one parent does not participate. Divorce also creates a whole new set of child-rearing issues, which are best answered by both parents working together. As a result Judges normally rule for joint custody in Kentucky; however, they can and do rule for sole custody in cases where joint custody is not appropriate. Joint custody is not right for every family situation.

There is no standard joint custody arrangement that you have to follow. Some parents alternate weeks with the children, while others alternate months. Still others have a week/weekend arrangement. You are not required to divide the children’s time with each parent equally, but time divisions should be in the best interests of the child. Usually, it is better to work out an agreement between yourselves than to let the Court decide.

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

Unfortunately, the custodial parent will sometimes want revenge much more than what is best for the child. This is a fatal flaw in logic for many men and women involved in divorce litigation. With joint custody arrangements, the primary caregiver is far more likely to receive child support on time and in full. Parents that do not get custody, or are

barred from visitation, rarely pay support or have “spotty” histories of payment (i.e., late, insufficient, or sporadic payments). When one parent denies visitation, the other parent often feels angry and defeated and, often, withdraws completely from family obligations including paying support. The custodial parent is far better off finding a way for the other parent to be as much a part of the child’s life as is practically possible.

## **8.7. MODIFICATION**

The only thing certain in child custody is that nothing is certain. Child custody can change. Modification of child custody involves many of the same factors considered in determining custody initially.

To modify sole custody, there must be a significant change in circumstances that seriously affects the child. Since joint custody does not involve a judgment of which parent is more suited to care for a child, if one of the joint custodians later asks the Court for sole custody, it is litigated all over again—with no preference to one parent or the other. Factors that can trigger modification include moving, remarriage, custodial or visitation interference, substance addictions, and allegations of abuse. Judges are reluctant to make changes in custody unless there has been a drastic or significant change in circumstances.

## **8.8. ALLEGATIONS OF CHILD ABUSE**

Abandonment, endangerment, physical abuse, emotional abuse, neglect, or sexual abuse—or any combination of these—is considered abuse. Abuse of a parent can also be considered abuse of a child: Children do not see themselves as separate from their parents so, when a child lives in a home where a parent is being abused, the child fears for his or her own safety.

3,000,000 cases of child abuse are reported each year. 1/3 of these are substantiated, which means that some evidence was found that would suggest that the abuse does exist, but less than 1/3 are actually proven. From 1976 to 1993, child abuse accusations rose by 333% and reports of sexual abuse rose by 1400%. Allegations of child abuse are serious.

Unfounded or false claims are harmful to the children yet about ½ of all claims are false according to a Courier Journal article that investigated the Louisville judicial system.

Judges and lawyers will try to protect children from a parent who is an abuser; however, Judges are unlikely to detect false claims and may harm the child by granting custody to the parent that fraudulently claims abuse. Parents that make false reports are, in a very real sense, abusive themselves. They have put the best interests of their children second to their own desire to gain custody, child support, and property, or seek revenge against their spouse.

## **False Allegations of Child Abuse**

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

Claims of child abuse or spousal abuse are often used to gain a tactical advantage. The Louisville Courier Journal reported that about half of all substantiated claims are false: Bruises can be self-inflicted or accidental. Children may deny abuse when it did happen or claim that abuse happened when it didn't in order to punish a parent and gain pity or attention.

Making a false claim allows a parent to get revenge, gain tactical advantages, and obtain custody, support, property, and alimony—all in one blow—while often destroying the other spouse's life and relationship with the children. Although our legal system states, as a rule, a presumption of innocence, if you are charged with child abuse, you will be treated as guilty until you can prove your innocence. It is extremely difficult to prove a negative.

## **If You Are Accused of Child Abuse**

If allegations are made against you, social workers will investigate. If any possible evidence is found, they will take your children. If a case-worker removes a child from a parent's home, the social agency is protected by civil immunity; however, if they fail to remove the child, and the child is then harmed, the social agency may be sued. Therefore, agencies are likely to remove children to limit their own liability.

If accused, your name will go into state and federal databanks of abusers. Once you are in this databank, you will probably never get out of it even if you are proven innocent. The purpose of the databank is to track abusers and prevent them from becoming adoptive parents or from being in any position where they are trusted with children. Employers in day-care facilities, for example, may use the databank to check for violations and allegations. You do not have to be found guilty to be in the databank: Any allegation may brand you as an abuser.

## **If Your Spouse Abuses You or Your Children**

If your spouse abuses your child or you, you must make your own and your children's safety your highest priority. Children that stay in a home environment of abuse learn to accept abuse as a way of life and pass this on to their children. Abuse not only affects the immediate safety of you and your children, it affects the long-term mental, psychological, and physical health of children and grandchildren as they continue to repeat the conduct of their fathers and mothers.

Kentucky requires everyone but an individual's own attorney to report any information regarding child abuse. If you talk about suspected or alleged abuse with your attorney, he or she is not required to report it if the information came out in the context of attorney and client privilege. If you tell anyone else—including a doctor, priest, minister, or

rabbi—they are required to report you and be a witness against you. Any person who fails to report abuse may be prosecuted the same as if they committed the abuse. **The failure of a parent to report abuse IS abuse in Kentucky. If you fail to report abuse done by your spouse, you may have your own rights to your child terminated or be prosecuted equally with the abuser.**

## Guardian ad litem

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

## 9. CHILD SUPPORT

Child support may be agreed upon by the parents, set by the Child Support Guideline Chart, or determined by a Judge (if unusual circumstances exist that allow him to disregard the chart). In most cases, it is most important to get support in place and started immediately. The amount of support can be increased later. **Child Support and Alimony starts from the date it is requested by filing a motion in court by you asking for it and filing the motion.** It is therefore important to ask for it in a motion as early as possible most attorneys fail to ask for it until months after you have filed the divorce which cuts out months of your child support. If you want your child support it is up to you to make certain that a motion for child support is filed with the petition for divorce. Although you may not get child support for some time it will start to accrue from the day you file the motion.

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

A child support order is a Court-ordered debt. The statute of limitations in Kentucky for this debt is normally 20 years. The person paying support may therefore be required to produce records to show proof of payment up to 20 years later if official records are lost or destroyed. It is recommended that the paying parent keep all records in a safe place for at least 20 years after each payment is paid.

Child support is not tax-deductible. Alimony is tax deductible. Parties should work together, allowing the paying parent to pay more support as alimony to reduce his or her tax bill and top maximize deductions if alimony and child support is ordered.

### 9.1. JURISDICTION

To award child support, the state must have jurisdiction over the person being ordered to pay support. In an effort to get child support, persons outside Kentucky are often directly

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

## **9.2. THE GUIDELINE FORMULAS**

Child support is normally determined by the Child Support Guideline Chart, but parties can ignore the amount in the chart and agree upon a different (reasonable) amount if they choose to do so. If the parties cannot agree on the amount, the Judge must award child support according to the CSGC. The Judge may disregard the CSGC and set another amount, but must show that there were strong reasons to deviate from the chart—such as a disabled child with higher support needs.

The guideline formulas are based on the paying parent's income. The expenses that the obligated spouse has, including later children or spouses, are not considered. The paying parent can be given a deduction for other ordered child support, alimony, and/or health insurance.

Child Support is calculated based on gross income. Gross income is any income from any source, before taxes and other deductions. SSI or welfare payments are included as income. Reasonable business expenses may be deducted from a self-employed person's income. The child's health insurance, any child support for other children, and alimony are subtracted from the calculation. If income is off-the-chart, it is estimated based on a mathematical calculation of what the chart would say at that income level.

The Court must order health insurance. Unpaid medical expenses are paid in proportion to income. Daycare costs are covered as part of child support costs.

Reasons for deviation from the chart can include the child's needs (including education, medical expenses, and special needs), parental job training, parental education, and parental disability. There is a catchall provision for deviation from the chart, but the Judge must issue a written finding for any deviation.

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

If the parent attempts to avoid payment by not working voluntarily, his or her income may be "imputed". In other words, he or she pays child support on what he or she **should** be earning. Imputed income is based on what the income would be if the person were working normally. Not working at the job level you should be is treated as being

voluntarily under-employed. For example, a doctor who quits to work as a grocery stock-boy will still be required to pay the child support he or she would pay as a doctor.

### **9.3. THE KENTUCKY CHILD SUPPORT WORKSHEET**

#### **INSTRUCTIONS FOR USE**

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

[NOTE: If the non-custodial parent (NCP) has 100% of the combined monthly adjusted parental gross income, use the CS-71.1 to calculate the child support obligation. KRS 403.211(7)(b) provides a reduction in gross income for the entire amount of health insurance premiums incurred for the child(ren) when a parent has 100% of the combined monthly adjusted parental gross income].
7. Determine the base support obligation by referring to the Guidelines Table using the combined monthly adjusted parental gross income as entered on line 5C and the number of children for whom the parents share a joint legal responsibility.
8. Enter the monthly payment for child care costs.
9. Enter the monthly payment for the child(ren)'s health insurance.
10. Add lines 7, 8 and 9. This is the total monthly child support obligation.
11. Multiply line 10 by 6A and 6B for the monthly obligation of each parent. These amounts include each parent's share of child care costs and health insurance premium costs if these costs were included on lines 8 or 9.
12. If the NCP pays either of the amounts listed on lines 8 or 9 to the provider, enter that amount on line 12. If the NCP pays both of these amounts, add these amounts together and enter the total on line 12. [NOTE: If the NCP is paying 100 percent of either or both of these costs, then the NCP subtracts this amount from his/her monthly obligation, which reduces the amount he/she pays to the custodial parent (CP). Subtracting 100 percent includes the NCP's percentage of these expenses and also compensates the NCP for paying the CP's percentage of these costs].

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

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

#### 9.4. COLLECTING CHILD SUPPORT

In Kentucky, failure to pay child support for more than 6 months, or falling over \$1,000 dollars behind in support, is a class D felony and is punishable by up to 5 years in prison.

Being prosecuted for the failure to pay support is extremely serious. Failure to pay support of any amount is also punishable by the Court as contempt and as a misdemeanor.

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

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

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

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

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

## **9.5. HOW TO COLLECT**

People who say you can't get blood from a stone simply don't understand child support collections. Every person has to have assets or income to exist. Income can be attached, even if it is an inheritance. **If any income or asset exists, it can be taken away by child support collections.** Kentucky child support collections can even attach Social

Security funds or have an employer deduct child support directly from a paycheck. In addition, some states allow the debtor's driver's license to be taken away.

You cannot expect the federal government (or most state agencies) to effectively collect for you because it costs the federal government more to collect than what it collects. As a result it doesn't seriously support collections. In 1994 alone, over \$34 billion was owed to Aid to Families with Dependent Children (AFDC) in overdue and uncollected child support. The AFDC has failed in collections ever since it started in the 1970s: In 2000 the agency collected \$8.9 billion in child support, but spent \$9.4 billion to collect that amount. The federal child support collections program is ineffective, and the money often never gets to the children in the long run. As a result, the federal government doesn't seriously attempt to collect.

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

In one case where we represented a man in Indiana, Kentucky failed to get jurisdiction over him and child support was never set. That was in 1999. He had not paid since the child was born and, at that time, the child was age 14 in 1999. By pleading a lack of jurisdiction (and moving) the man has never had to pay child support. A large part of our ability to win that case was that the County attorney's office represented the other side. He was so overwhelmed with cases that they couldn't properly defend and collect the case. Because the County attorney's office was handling the child support matter, the man has been able to avoid child support for what is now 17 years. This would never have happened if the attorney had filed for child support in the state where the man lived.

If you want to collect (or if you do not want to pay) child support, you should use private counsel. If you use a state agency, you may get what you pay for.

## **Locating the Person Who Is Not Paying Child Support**

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

- name, and any alias(es) he or she uses
- birth date
- Social Security number
- most recent address
- past addresses
- work history (or, if self-employed, his or her customer's or client's names)
- present and past phone numbers

- driver's license number
- past spouses
- existing child support debts to other persons
- family members
- creditors
- banks
- club memberships or hobbies
- real estate holdings
- insurance company
- military service record
- voter's registration
- criminal records and probation officers

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

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

## **Ways to Collect**

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

You can collect through the IRS by attaching tax refunds—and even have the IRS collect for you (acting as a “free attorney”) using methods called 1099 and 1098 procedures. Often a person will pay when the IRS is collecting, even if they wouldn't pay after being jailed.

AFDC may also collect for you. Social Security, military benefits, unemployment, disability payments, VA benefits, and other benefits can be attached.

Statutes 5 CFR 2635.809 and 735.203 say that federal employees cannot be overdue in payments on a debt, and a federal agency will assist you in collections from a federal

employee. (Federal employees can be dismissed from their positions for having an unpaid child support debt.) There is even a procedure for garnishing child support from a federal employee, but you must follow it exactly. To collect from a federal employee, locate the person through the federal employee locator 1-800-688-9889 or [www.fic.info.gov](http://www.fic.info.gov), contact the agency he or she works for, and send in the wage withholding form. This form must be filled out absolutely correctly, or they will return it unpaid.

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

## **9.6. COLLECTIONS AND HIDING INCOME**

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

### **Compare Lifestyle**

First, look at the lifestyle of the parent. It may be that many alleged business expenses are being used as personal income. A Cancun business trip or a Lexus business car are perfect examples of how personal expenses are charged to a company, and deducted from taxes as business expenses, to lower taxable income. Examine expenses to see if they are inflated by personal or unusual expenses. Remember: Taxable income is not gross income for child support purposes.

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

### **Examine Expenses**

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

### **Inspect Records**

How are records kept? If there are good records, they tend to prove whether or not the income is there; however, people in some professional and self-employed occupations may easily hide income and assets. If the person that owns the business does the records and the bookkeeping, can the records be trusted? Is the person paid directly instead of

the business being paid? Often records may reveal other income sources or businesses you don't know about.

## Standards for Similar Persons

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

## 10. CHILD VISITATION

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

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

In some extreme cases, child visitation simply cannot occur normally. It may be that a case of abuse exists or that a parent is in prison, or there may be other very good reasons for putting reasonable limits upon visitation and when and how it occurs. However, we have never seen a case where a child shouldn't have any visitation with the parent. Visitation is almost always in the child's best interests. Even if a parent is in prison or is in a mental institution, the child should know he has a parent, and see that parent, to understand his roots. Even if the parent is a poor role model, a child may come to understand that her parent is mentally ill or has another problem that restricts parenting abilities. The past does not have to be the future: Seeing a parent with problems can actually help the child make a choice to be better than his parent.

### 10.1. FIXED VISITATION

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

anyone else. In cases where the parents act like children themselves, the Court may order that visitation take place at certain times and places or that a parent that denies visitation pay attorney fees. This may be costly to the parents, an attorney would probably bill at \$150 per hour to enforce visitation. In many cases fixed visitation may be required.

## 10.2. SUPERVISED VISITATION

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

## 11. FAQ AND APPENDIX SECTION

### 11.1. THE TOP 50+ FREQUENTLY ASKED QUESTIONS AT OUR OFFICE

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

**1) I am in need of help and I can’t afford an attorney. Can you give me some suggestions?** You may want to ask for assistance from Legal Aid. Many of their offices will do a divorce for a person with low income. Normally, attorneys charge about \$500 to \$700 or more for a divorce, and the Court costs in Jefferson County are an additional \$120, including service of process (other counties may have a different amount for their Court costs). Even though you may not have the money for an attorney, we usually don’t suggest that anyone do their own divorce. If you have only been together for a few months, your spouse may be agreeable to signing an uncontested divorce so that there isn’t a lot of expense and paperwork involved. Even if you do your own divorce, you should have an attorney look over the paperwork before you sign any settlement agreement. If there aren’t any questions about property, child support, or child custody—and the divorce is only a matter of dissolving the marriage—you may be OK in doing it yourself. The main problem with doing your own divorce is that you have to go to the trouble of going to the Courthouse and doing all of the paperwork—and you probably lack the skill and knowledge to be sure you have properly covered all aspects.

Because of the time involved, and the emotional expense and trouble, most people are willing to pay \$500 or more dollars to have an attorney prepare the uncontested divorce paperwork. It may be far better for you to spend a little money to know your case was properly filed and completed.

**2) What should I look for in a divorce attorney?** An initial consultation has sometimes been compared to a blind date, and the comparison is not far off-base. Did

you leave the office feeling confident about the attorney? Did he keep you waiting? Did he take calls during the meeting? Was the office shabby? Lack of attention now, when a lawyer is presumably trying to obtain your business, does not bode well for the future.

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

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

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

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

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

Mills attempt to cover an area and advertise heavily to get more business. They usually have several offices in a region, and often the branch offices are staffed by non-attorneys, paralegals, or untrained staff. Mills normally handle cases with untrained or under-qualified personnel. Mills often do not keep clients informed about the status of their cases. If you use an unqualified paralegal you may lose more in property, child custody, or child support than you save in attorney fees. If you are a young couple with no property, no children, and nothing to lose, it may be OK to spend less. However, if children, property, or debts are involved, it is not advisable to have poor representation. The average person will earn over one million dollars in his or her lifetime. You can probably afford \$1,000 to \$3,000 for a divorce better than you can afford losing your children or your home.

Attorneys now charge an average of \$150 an hour for their time, and a divorce may require one or two days of their time—even if it is uncontested. Contested divorces may take weeks and thousands of dollars. You will have to decide if you want this done right. A cheap divorce almost always costs more in the long run.

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

**5) Why do I need an attorney if my spouse and I agree on all the divorce issues?**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of the parent

- Whether or not custody arrangements would separate siblings

Income is not a directly a factor, but what each family could offer the child is a factor. The fault of the spouse in the divorce is never a factor, and conduct that does not affect a child is not considered.

Each spouse is, legally, equally entitled to custody of the child. A Court will almost always agree with the settlement agreements of the parties. If there is no agreement, the Court is forced to decide, based on evidence and testimony, what is best for the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The system designed to protect persons from domestic violence, however, is extremely sexist and often abused. In Kentucky, the Cabinet for Human Resources and some County Clerks have refused to take reports of abuse from men reporting

women. The Cabinet for Human Resources will encourage a woman reporting a man, though, and may even threaten to take her children or prosecute if she attempts to stop the prosecution against her husband.

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

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

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

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

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

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

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

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

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

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

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

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

**48) What if I forgot something in the marital settlement?** If you forgot to include certain items, you may forever lose your right to bring up the issue later. In the case of attorney's fees, for example, you probably have lost the right to recover. In a case

where parties do not agree on custody or visitation, you would be able to go back to Court because the Court has continuing jurisdiction over some issues (custody, visitation, support increases and decreases). These items may need to be modified later, especially when circumstances change.

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

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

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

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

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

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

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

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

never existed. Grounds for annulment usually include one of the following reasons:

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

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

Filing for an annulment may be an admission by you that you married someone illegally and may say things about you that could cause you problems—even to lose your children. Do you really want to admit you married a relative just to get an annulment?

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

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

## 11.2. KENTUCKY STATUTES

### How Custody is Determined

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

(1) (a) As used in this chapter and KRS 405.020, unless the context requires otherwise, “de facto custodian” means a person who has been shown by clear and convincing evidence to have been the primary caregiver for, and financial supporter of, a child who

has resided with the person for a period of six (6) months or more if the child is under three (3) years of age and for a period of one (1) year or more if the child is three (3) years of age or older or has been placed by the Department for Community Based Services. Any period of time after a legal proceeding has been commenced by a parent seeking to regain custody of the child shall not be included in determining whether the child has resided with the person for the required minimum period.

(b) A person shall not be a de facto custodian until a Court determines by clear and convincing evidence that the person meets the definition of de facto custodian established in paragraph (a) of this subsection. Once a Court determines that a person meets the definition of de facto custodian, the Court shall give the person the same standing in custody matters that is given to each parent under this section and KRS 403.280, 403.340, 403.350, 403.420, and 405.020.

(2) The Court shall determine custody in accordance with the best interests of the child and equal consideration shall be given to each parent and to any de facto custodian. The Court shall consider all relevant factors including:

(a) The wishes of the child's parent or parents, and any de facto custodian, as to his custody;

(b) The wishes of the child as to his custodian;

(c) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests;

(d) The child's adjustment to his home, school, and community; (e) The mental and physical health of all individuals involved;

(f) Information, records, and evidence of domestic violence as defined in KRS 403.720;

(g) The extent to which the child has been cared for, nurtured, and supported by any de facto custodian;

(h) The intent of the parent or parents in placing the child with a de facto custodian; and

(i) The circumstances under which the child was placed or allowed to remain in the custody of a de facto custodian, including whether the parent now seeking custody was previously prevented from doing so as a result of domestic violence as defined in KRS 403.720 and whether the child was placed with a de facto custodian to allow the parent now seeking custody to seek employment, work, or attend school.

(3) The Court shall not consider conduct of a proposed custodian that does not affect his relationship to the child. If domestic violence and abuse is alleged, the Court shall determine the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

(4) The abandonment of the family residence by a custodial party shall not be considered

where said party was physically harmed or was seriously threatened with physical harm by his or her spouse, when such harm or threat of harm was causally related to the abandonment.

(5) The Court may grant joint custody to the child's parents, or to the child's parents and a de facto custodian, if it is in the best interest of the child.

(6) If the Court grants custody to a de facto custodian, the de facto custodian shall have legal custody under the laws of the Commonwealth.

**Effective:** July 14, 2000

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

## **Changing Custody**

### **403.340 Modification of custody decree.**

(1) No motion to modify a custody decree shall be made earlier than two (2) years after its date, unless the Court permits it to be made on the basis of affidavits that there is reason to believe that:

(a) The child's present environment may endanger seriously his physical, mental, moral, or emotional health; or

(b) The custodian appointed under the prior decree has placed the child with a de facto custodian.

(2) If a Court of this state has jurisdiction pursuant to the Uniform Child Custody Jurisdiction Act, the Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that the modification is necessary to serve the best interests of the child. In applying these standards, the Court shall retain the custodian appointed pursuant to the prior decree unless:

(a) The custodian agrees to the modification;

(b) The child has been integrated into the family of the petitioner with consent of the custodian; or

(c) The child's present environment endangers seriously his physical, mental, moral, or

emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to him; or

(d) The custodian has placed the child with a de facto custodian.

(3) In determining whether a child's present environment may endanger seriously his physical, mental, moral, or emotional health, the Court shall consider all relevant factors, including, but not limited to:

(a) The interaction and interrelationship of the child with his parent or parents, his de facto custodian, his siblings, and any other person who may significantly affect the child's best interests;

(b) The mental and physical health of all individuals involved;

(c) Repeated or substantial failure, without good cause as specified in KRS 403.240, of either parent to observe visitation, child support, or other provisions of the decree which affect the child, except that modification of custody orders shall not be made solely on the basis of failure to comply with visitation or child support provisions, or on the basis of which parent is more likely to allow visitation or pay child support;

(d) If domestic violence and abuse, as defined in KRS 403.720, is found by the Court to exist, the extent to which the domestic violence and abuse has affected the child and the child's relationship to both parents.

(4) attorney fees and costs shall be assessed against a party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.

**Effective:** July 15, 1998. **History:** Amended 1998 Ky. Acts ch. 250, sec. 3, effective July 15, 1998. – Amended 1992 Ky. Acts ch. 414, sec. 3, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 182, sec. 24.

## **Visitation**

### **403.320 Visitation of minor child.**

(1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the Court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health. Upon request of either party, the Court shall issue orders which are specific as to the frequency, timing, duration, conditions, and method of scheduling visitation and which reflect the development age of the child.

(2) If domestic violence and abuse, as defined in KRS 403.720, has been alleged, the Court shall, after a hearing, determine the visitation arrangement, if any, which would not endanger seriously the child's or the custodial parent's physical, mental, or emotional health.

(3) The Court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the Court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

**Effective:** July 14, 1992

**History:** Amended 1992 Ky. Acts ch. 169, sec. 3, effective July 14, 1992; and ch. 414, sec. 1, effective July 14, 1992. -- Created 1972 Ky. Acts ch. 182, sec. 22.

**Legislative Research Commission Note (7/14/92)** This section was amended by two 1992 Acts which do not appear to be in conflict and have been compiled together.

## **Alimony**

### **403.200 Maintenance -- Court may grant order for either spouse.**

(1) In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following dissolution of a marriage by a Court which lacked personal jurisdiction over the absent spouse, the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and

(b) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the Court deems just, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age, and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

**History:** Created 1972 Ky. Acts ch. 182, sec. 10.

## **Child Support**

### **403.212 Child support guidelines -- Terms to be applied in calculations -- Table.**

(1) The following provisions and child support table shall be the child support guidelines established for the Commonwealth of Kentucky.

(2) For the purposes of the child support guidelines:

(a) “Income” means actual gross income of the parent if employed to full capacity or potential income if unemployed or underemployed.

(b) “Gross income” includes income from any source, except as excluded in this subsection, and includes but is not limited to income from salaries, wages, retirement and pension funds, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers’ compensation benefits, unemployment insurance benefits, disability insurance benefits, Supplemental Security Income (SSI), gifts, prizes, and alimony or maintenance received. Specifically excluded are benefits received from means-tested public assistance programs, including but not limited to public assistance as defined under Title IV-A of the Federal Social Security Act, and food stamps.

(c) For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, “gross income” means gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Straight-line depreciation, using Internal Revenue Service (IRS) guidelines, shall be the only allowable method of calculating depreciation expense in determining gross income.

Specifically excluded from ordinary and necessary expenses for purposes of this guideline shall be investment tax credits or any other business expenses inappropriate for determining gross income for purposes of calculating child support. Income and expenses from self-employment or operation of a business shall be carefully reviewed to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. In most cases, this amount will differ from a determination of business income for tax purposes. Expense reimbursement or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business or personal use of business property or payments of expenses by a business, shall be counted as income if they are significant and reduce personal living expenses such as a company or business car, free housing, reimbursed meals, or club dues.

(d) If a parent is voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, except that a determination of potential income shall not be made for a parent who is physically or mentally incapacitated or is caring for a very young child, age three (3) or younger, for whom the parents owe a joint legal responsibility.

Potential income shall be determined based upon employment potential and probable earnings level based on the obligor's or obligee's recent work history, occupational qualifications, and prevailing job opportunities and earnings levels in the community. A Court may find a parent to be voluntarily

Page 1 of 6. unemployed or underemployed without finding that the parent intended to avoid or reduce the child support obligation.

(e) "Imputed child support obligation" means the amount of child support the parent would be required to pay from application of the child support guidelines.

(f) Income statements of the parents shall be verified by documentation of both current and past income. Suitable documentation shall include, but shall not be limited to, income tax returns, pay-stubs, employer statements, or receipts and expenses if self-employed.

(g) "Combined monthly adjusted parental gross income" means the combined monthly gross incomes of both parents, less any of the following payments made by the parent:

1. The amount of pre-existing orders for current maintenance for prior spouses to the extent payment is actually made and the amount of current maintenance, if any, ordered paid in the proceeding before the Court;

2. The amount of pre-existing orders of current child support for prior-born children to the extent payment is actually made under those orders; and

3. A deduction for the support to the extent payment is made, if a parent is legally responsible for and is actually providing support for other prior-born children who are not the subject of a particular proceeding. If the prior-born children reside with that parent, an "imputed child support obligation" shall be allowed in the amount which would result from application of the guidelines for the support of the prior-born children.

(h) "Split custody arrangement" means a situation where each parent is the residential custodian for one (1) or more children for whom the parents share a joint legal responsibility.

(3) The child support obligation set forth in the child support guidelines table shall be divided between the parents in proportion to their combined monthly adjusted parental gross income.

(4) The child support obligation shall be the appropriate amount for the number of children in the table for whom the parents share a joint legal responsibility. The minimum amount of child support shall be sixty dollars (\$60) per month.

(5) The Court may use its judicial discretion in determining child support in circumstances where combined adjusted parental gross income exceeds the uppermost levels of the guideline table.

(6) The child support obligation in a split custody arrangement shall be calculated in the following manner:

(a) Two (2) separate child support obligation worksheets shall be prepared, one (1) for each household, using the number of children born of the relationship in each separate household, rather than the total number of children born of the relationship.

Page 2 of 6.(b) The nonresidential custodian with the greater monthly obligation amount shall pay the difference between the obligation amounts, as determined by the worksheets, to the other parent.

(7) The child support guidelines table is as follows:

**11.3. GUIDELINES TABLE - TO BE USED WITH OBLIGATION WORKSHEET**

COMBINED MONTHLY ADJUSTED PARENTAL GROSS INCOME	ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX OR MORE CHILDREN
\$ 0	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60	\$ 60
100	60	60	60	60	60	60
200	70	70	70	70	70	70
300	80	80	80	80	80	80
400	90	90	90	90	90	90
500	100	105	110	115	120	125
600	120	125	130	135	140	145
700	140	156	161	166	171	176
800	160	203	208	213	218	223

900	180	261	266	271	276	281
1,000	195	303	325	330	335	340
1,100	212	324	384	389	394	399
1,200	229	346	433	446	451	456
1,300	246	367	460	504	510	515
1,400	262	392	491	554	576	582
1,500	277	417	522	588	642	650
1,600	293	437	548	618	674	717
1,700	308	458	574	647	706	755
1,800	322	478	599	675	736	788
1,900	336	495	620	699	763	816
2,000	350	512	642	723	789	844
2,100	364	529	663	747	815	872
2,200	376	546	684	771	841	900
2,300	389	563	706	795	868	928
2,400	401	580	727	819	894	956
2,500	413	597	749	843	920	984
2,600	424	614	770	867	946	1,012

2,700	435	630	790	889	970	1,038
2,800	445	646	809	911	994	1,064
2,900	455	662	829	934	1,019	1,090
3,000	465	677	849	956	1,043	1,116
3,100	475	693	868	978	1,067	1,142
3,200	485	709	888	1,001	1,092	1,168
3,300	495	725	908	1,023	1,116	1,194
3,400	506	741	928	1,045	1,140	1,220
3,500	516	757	947	1,067	1,164	1,246
3,600	526	773	967	1,090	1,189	1,272
3,700	536	790	988	1,113	1,215	1,299
3,800	548	808	1,011	1,139	1,243	1,329
3,900	559	826	1,033	1,164	1,270	1,359
4,000	571	844	1,056	1,190	1,298	1,388
4,100	580	862	1,078	1,215	1,326	1,418
4,200	592	880	1,101	1,240	1,353	1,448
4,300	603	898	1,123	1,266	1,381	1,477
4,400	615	916	1,146	1,291	1,409	1,507

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4,500	626	933	1,161	1,316	1,435	1,535
4,600	636	949	1,181	1,338	1,459	1,561
4,700	647	964	1,200	1,360	1,483	1,586
4,800	657	980	1,220	1,381	1,507	1,612
4,900	667	995	1,239	1,403	1,531	1,637
5,000	676	1,010	1,257	1,424	1,554	1,661
5,100	686	1,025	1,275	1,444	1,576	1,685
5,200	695	1,039	1,294	1,465	1,599	1,709
5,300	705	1,054	1,312	1,486	1,621	1,733
5,400	714	1,069	1,330	1,506	1,644	1,757
5,500	724	1,083	1,348	1,527	1,666	1,781
5,600	733	1,098	1,367	1,548	1,689	1,805
5,700	743	1,113	1,385	1,568	1,712	1,829
5,800	753	1,127	1,403	1,589	1,734	1,853
5,900	762	1,142	1,421	1,610	1,757	1,877
6,000	772	1,157	1,440	1,630	1,779	1,901
6,100	781	1,171	1,458	1,651	1,802	1,926
6,200	791	1,186	1,476	1,672	1,824	1,950

6,300	800	1,198	1,498	1,690	1,844	1,970
6,400	808	1,209	1,511	1,705	1,860	1,988
6,500	816	1,219	1,524	1,720	1,876	2,005
6,600	823	1,230	1,538	1,735	1,893	2,023
6,700	830	1,240	1,551	1,750	1,909	2,040
6,800	837	1,251	1,564	1,764	1,925	2,058
6,900	844	1,261	1,577	1,779	1,942	2,075
7,000	851	1,272	1,591	1,794	1,958	2,093
7,100	858	1,282	1,604	1,809	1,975	2,110
7,200	865	1,293	1,617	1,824	1,991	2,127
7,300	872	1,303	1,630	1,839	2,007	2,145
7,400	879	1,313	1,644	1,854	2,024	2,162
7,500	885	1,324	1,657	1,869	2,040	2,179
7,600	891	1,333	1,668	1,881	2,053	2,194
7,700	896	1,342	1,679	1,893	2,066	2,208
7,800	901	1,350	1,691	1,905	2,079	2,223
7,900	907	1,359	1,702	1,917	2,093	2,238
8,000	912	1,368	1,713	1,929	2,106	2,252

8,100	917	1,377	1,724	1,941	2,119	2,267
8,200	922	1,386	1,736	1,953	2,133	2,281
8,300	928	1,395	1,747	1,965	2,146	2,296
8,400	933	1,404	1,758	1,977	2,159	2,311
8,500	938	1,413	1,769	1,989	2,173	2,325
8,600	944	1,421	1,780	2,002	2,186	2,340
8,700	949	1,430	1,792	2,014	2,199	2,354
8,800	954	1,437	1,800	2,024	2,210	2,366
8,900	958	1,444	1,809	2,033	2,220	2,376
9,000	962	1,450	1,817	2,042	2,230	2,387
9,100	966	1,457	1,825	2,052	2,241	2,398
9,200	971	1,463	1,833	2,061	2,251	2,408
9,300	975	1,470	1,842	2,070	2,261	2,419
9,400	979	1,476	1,850	2,079	2,271	2,430
9,500	983	1,483	1,858	2,089	2,281	2,440
9,600	988	1,489	1,866	2,098	2,291	2,451
9,700	992	1,496	1,874	2,107	2,301	2,461
9,800	996	1,502	1,883	2,117	2,311	2,472

9,900	1,000	1,508	1,891	2,126	2,321	2,483
10,000	1,005	1,515	1,899	2,165	2,331	2,493

**Effective:** July 14, 2000

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

## Property Separation

### 403.190 Disposition of property.

(1) In a proceeding for dissolution of the marriage or for legal separation, or in a proceeding for disposition of property following dissolution of the marriage by a Court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the Court shall assign each spouse's property to him. It also shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors including:

(a) Contribution of each spouse to acquisition of the marital property, including contribution of a spouse as homemaker;

(b) Value of the property set apart to each spouse;

(c) Duration of the marriage; and

(d) Economic circumstances of each spouse when the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

(2) For the purpose of this chapter, "marital property" means all property acquired by either spouse subsequent to the marriage except:

(a) Property acquired by gift, bequest, devise, or descent during the marriage and the income derived therefrom unless there are significant activities of either spouse which contributed to the increase in value of said property and the income earned therefrom;

(b) Property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent;

(c) Property acquired by a spouse after a decree of legal separation;

(d) Property excluded by valid agreement of the parties; and

(e) The increase in value of property acquired before the marriage to the extent that such increase did not result from the efforts of the parties during marriage.

(3) All property acquired by either spouse after the marriage and before a decree of legal separation is presumed to be marital property, regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection (2) of this section.

(4) If the retirement benefits of one spouse are excepted from classification as marital property, or not considered as an economic circumstance during the division of marital property, then the retirement benefits of the other spouse shall also be excepted, or not considered, as the case may be. However, the level of exception provided to the spouse with the greater retirement benefit shall not exceed the level of exception provided to the other spouse. Retirement benefits, for the purposes of this subsection shall include retirement or disability allowances, accumulated contributions, or any other benefit of a retirement system or plan regulated by the Employees Retirement Income Security Act of 1974, or of a public retirement system administered by an agency of a state or local government, including deferred compensation plans created pursuant to KRS 18A.230 to 18A.275 or defined contribution or money purchase plans qualified under Section 401(a) of the Internal Revenue Code of 1954, as amended.

**Effective:** July 15, 1996

**History:** Amended 1996 Ky. Acts ch. 328, secs. 1 and 2, effective July 15, 1996. -- Amended 1986 Ky. Acts ch. 441, sec. 1, effective July 15, 1986. -- Created 1972 Ky. Acts ch. 182, sec. 9.

**Legislative Research Commission Note (7/15/96).** This section was amended by 1996 Ky. Acts ch. 328, secs. 1 and 2 which do not appear to be in conflict and have been codified together.

## **Emergency Protection and Domestic Violence Orders**

### **403.740 Emergency protective order.**

(1) If, upon review of the petition, as provided for in KRS 403.735, the Court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the Court shall issue, upon proper motion, ex parte, an emergency protective order:

(a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the Court;

(b) Restraining the adverse party from committing further acts of domestic violence and abuse;

(c) Restraining the adverse party from disposing of or damaging any of the property of

the parties;

(d) Directing the adverse party to vacate the residence shared by the parties to the action;

(e) Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.420, grant temporary custody; or

(f) Enter other orders the Court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof.

(2) Except as provided in KRS 403.036, if the Court issues an emergency protective order pursuant to subsection (1) of this section, the Court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.

(3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.

(4) An emergency protective order issued in accordance with this section shall be effective for a period of time fixed in the order, but not to exceed fourteen (14) days. Upon the issuance of an emergency protective order, a date for a full hearing, as provided for in KRS 403.745, shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed fourteen (14) days if service has not been made on the adverse party by the fixed Court date and time or as the Court determines is necessary for the protection of the petitioner.

(5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the notice setting the full hearing, and a copy of the petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.

**Effective:** July 15, 1996

**History:** Amended 1996 Ky. Acts ch. 99, sec. 16, effective July 15, 1996. – Amended 1992 Ky. Acts ch. 172, sec. 6, effective July 14, 1992. -- Created 1984 Ky. Acts ch. 152, sec. 6, effective July 13, 1984.

## 11.4. DIRECTIONS TO OUR OFFICE

We are presently at the corner of Hurstbourne and Shelbyville Road. We are at 105 Daventry which is the street behind Garretts and Qmodo's Mexican Grill. Go to the end of Daventry we are in 105.

## 11.5. DIRECTIONS TO THE LOUISVILLE COURTHOUSE

If your Court appearance is in Louisville, the Courthouse is at 7<sup>th</sup> and Jefferson. If you have a Commissioners hearing, it will be in the top floor of the old jail. Every year, people go to the wrong Courthouse. Do not go to the Gene Snyder Federal Courthouse.

If you are coming from south Louisville, travel north on I-65 and exit in downtown Louisville, on Jefferson Street, and head west. Do not park in front of the Courthouse: You will be towed. You should park in one of the many downtown parking lots and garages. Parking at a meter could cause you to get a ticket or be towed: There may be a delay and the Court hearing may run into overtime. It may also start early, so arrive a few minutes early to prepare for your hearing.

## 11.6. IMPORTANT PHONE NUMBERS

Please Note: Unless otherwise listed, all prefixes are "595". The Area Code for Louisville, Jefferson County, Kentucky is "502". This list is not complete. New numbers may be added and existing numbers changed without notice.

**Child Protective Services Hotline - 4550**

**Mental Inquest/Disability - 3261**

**Jefferson Family Court - 4745 (Cases Assigned by First Letter(s) of Last Name)**

**Division 1 - Judge Joan Byer (A-Brt) - 4656**

**Division 2 - Judge Mary L. Corey (Bru-De) - 4996**

**Division 3 - Judge Patricia Walker-FitzGerald (Gr-Ja) - 4326**

**Division 4 - Judge Juda Hellmann (Ti-Z) - 4969**

**Division 5 - Judge Eleanore Garber (Sci-Th) - 3013**

**Division 6 - Judge Jerry Bowles (Mar-O) - 4502**

**Division 7 - Judge Denise Clayton (P-Sch) - 4993**

**Division 8 - Judge Kevin L. Garvey (Df-Go) - 4043**

**Division 9 - Chief Judge Richard J. FitzGerald (Je-Map) - 4998**

**Family Court Support Workers**

**Division 1 - Kathy Clemons - 4786**

**Division 2 - Mary Lou Cambron - 4787**

**Division 3 - Rebecca Johnson - 4785**

**Division 4 - Karen DeFazio - 4741**

**Division 5 - Mari Carlton - 4783**

**Division 6 - Philip Moore - 4788**

**Division 7 - Jerrila Paul - 2326**

**Division 8 - Patrick Mudd - 4171**

**Division 9 - Kelly Williamson - 4786**

**Families in Transition Program - 3639**

**Family Court Clerks - 3116**

**Juvenile - 4840**

**Child Protective Services - 4550**

**Commonwealth's attorney - 2340**

**Emergency Protective Orders (EPOs) - 4697**

**Archives/Records – 3042**

**Adoptions/Termination of Parental Rights (TPR) - 4433**

**Child Support - 574-7280**

## 11.7. STANDARD ATTORNEY CONTRACT

I have received a copy of the above 60+ page explanation of my rights. I have read the above document (manual), and I understand the terms and principles involved. I have also reviewed my Divorce petition and the papers signed by me. After having the terms, property rights, and child custody and support issues explained to me, I hereby state that the facts contained therein are true to the best of my personal knowledge and belief and that I have advised my attorney of all of my property, income, and information so that my divorce attorney can properly prepare my case. I hereby agree that I shall pay a 450 dollar flat fee for my uncontested divorce and that this fee is non-refundable once the divorce is filed but it may be applied to any later divorce that I file. Prior to filing and after the paperwork is prepared only one half of the fee is refundable.

If any work beyond the filing of an uncontested Divorce is undertaken it will be billed at the rate of 150 dollars an hour. The filing of an uncontested Divorce does not include any later child support increase or enforcement proceedings such as a motion for contempt or to increase support. These are separate lawsuits and will be billed and paid for separately. Also, if the divorce becomes contested it may be billed on an hourly rate for the work to be done. A default divorce is considered as uncontested and is billed the same as if uncontested.

Unless attorney fees are paid promptly the attorney retains the right to withdraw from the proceeding at any time. Should the client write any returned checks a service fee of 25 dollars shall be paid. If the client fails to pay fees and it requires that the firm hires separate counsel to collect any return check or unpaid legal fees the client shall pay interests and any and all reasonable attorney expenses to collect any owed sum even if the attorney fees to collect exceed the cost of the original attorney fee sought to be collected.

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Client

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Attorney

**THIS IS AN ADVERTISEMENT**