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INTRODUCTION

The purpose of this handbook is to provide persons who are involved in the family court with information concerning actions affecting the family in Racine County. This handbook is intended to comply with the provisions of Sec. 767.105(1) and (2) of the Wisconsin Statutes.

A divorce may be completed upon the expiration of 120 days after service of the summons and petition on the respondent in the action or the expiration of 120 days after the filing of a joint petition. Some cases involving complex or contested issues may take longer to conclude. Please refer to the Divorce Timeline provided in this handbook.

Parts I and II in the Handbook deal with the divorce process, including divorce procedure and the major issues involved in a divorce such as legal custody, physical placement, child support, maintenance and property division.

Part III of the handbook deals with post-judgment procedures, including modification and enforcement of child related issues.

Part IV includes non-profit community resources available to those who are involved in a family court action. The services provided through the family court services are explained.

The handbook is the product of the staff of the Family Court Commissioner's Office (FCC) of Racine County as well as the staff of the Family Court Services of Racine County. Members of the Racine Bar Association and Circuit Court Judges have also contributed to its content.

The handbook is for informational purposes only, and should not be construed as legal advice. If you have a specific legal question concerning your case, you should contact an attorney. You can also review the Wisconsin Statutes found in Chapter 767, which contains the law on actions affecting the family. Copies of the Wisconsin Statutes may be purchased at the Family Court Commissioner's Office. All public libraries in the county also have reference copies of the Wisconsin Statutes and they can be found online at the Wisconsin State Law Library at http://wilawlibrary.gov/.

The Family Court Commissioner's Office will attempt to update this booklet from time-to-time.

Anisa M. Dunn
Family Court Commissioner
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Sample Divorce Timeline

TIME	EVENT
Day 1	1. **Case is filed with Clerk of Court** A. Matter is calendared before FCC for a First Hearing within 30 days. In the majority of cases, a party will request a First Hearing. If no first hearing is requested, the FCC, by local rule, will schedule a First Hearing. B. Parties may submit a Stipulated Temporary Order. If it is approved by the FCC, no first hearing is required and a scheduling conference date will be assigned.
Day 30	2. **Temporary Order issued by FCC** A. Temporary Orders regarding custody and placement of the children, child support, family support, maintenance, payment of debt, and use of the marital residence are issued. B. Parties are given notice for a scheduling conference and/or default hearing.
Day 127	3. **Scheduling Conference/Default hearing before FCC** A. If there is a written agreement on all issues and parties are both willing to have the case completed by the FCC, a stipulated or final hearing may occur.
Days 167-187	B. If there is not a complete written agreement, the matter will be adjourned for 30-45 day intervals depending on tasks to be completed. For example, a real estate appraisal may require a 30 day adjournment whereas recommendations on a custody/placement issue may require 45-60 days.

Days 187 – 240	C. Additional scheduling conferences to determine if an agreement may/can be reached to resolve the case.
Day 240	4. **Eight Month Old Case** A trial date will be set before the assigned judge if all necessary work is completed and negotiations have not resulted in an agreement. A trial date could be set by the FCC earlier in a single issue case. Currently, trial dates are available 30-45 days in advance.
Day 270	5. **Trial date before Circuit Court Judge, or**
Day 270	6. **Pre-trial date before FCC, if necessary**
Day 300	7. **Pre-trial date before FCC, if necessary**
Day 330	8. **Trial date before Circuit Court Judge**
Day 360	9. **Trial or Dismissal date** No cases are to go beyond 1 year without specific permission from a judge.

Note: A 90-day Suspension to Effect Reconciliation may be filed at almost any point during the proceedings, except that a 90-day suspension will generally not be granted if the 90-days would extend the case beyond the 360-day benchmark requiring dismissal or trial. Current practice is to permit a second 90-day suspension only if the parties show proof that they are actively involved in marital counseling.

DIVORCE PROCEDURES

This portion of the handbook has been prepared by the Family Court Commissioner's Office of Racine County with contributions by attorneys of the Racine County Bar Association. It is intended as a general or practical information guide. If you are involved, or about to be involved in a divorce or an action for legal separation and have questions beyond the information in this booklet about your particular situation, you can consult an attorney or other supportive person who has knowledge in this area. (See, A Divorce Lawyer's Job, page 7).

The information in this booklet was current as of January 2015. Changes in the divorce law and procedure after that date are not included in this booklet, but may be available as an update at the Family Court Commissioner's Office.

NOTE: This guide will refer to divorce rather than legal separation or annulment. Most information about custody, support and property is the same whether the action is for divorce, legal separation or annulment. If a judgment of divorce is granted, parties may not marry in this state or elsewhere until six months after the date the judgment is granted. If a judgment of legal separation is granted, a party must apply to the court to convert the judgment from legal separation to divorce before he/she remarries.

Starting the Divorce

Before the action for divorce can be started, you or your spouse must have lived in the State of Wisconsin for at least six (6) months, and also must have lived in Racine County for at least thirty (30) days. Once the residency requirement is met, then the action may be commenced. A legal separation or annulment may be commenced after a 30-day residency in Wisconsin and Racine County. The filing fee presently is $184.50; however, if there are children of the marriage or if maintenance is requested, the filing fee is $194.50. Filing fees are subject to change.

The action is commenced when the summons and petition signed by the person seeking the divorce are filed with the family court and served on the spouse. In divorce actions, the party seeking the divorce is the petitioner, and the other spouse is the respondent.

Service of the summons and petition occurs when someone, usually the sheriff or private process server, delivers the papers to the respondent spouse. **Service of the summons must be done by someone other than the petitioner.** If the papers cannot be served on the respondent personally, then the court may permit the papers to be published in the newspaper.

If both spouses want the divorce, they may complete and each sign the joint petition and they will be referred to as joint petitioners. Service of a summons is not required when a joint petition for divorce is filed because the parties are filing together.

Preparation for the First Hearing

When an action for divorce, legal separation or annulment is commenced, both parties to the action must make a full disclosure of all assets owned in full or part by either party separately or by the parties jointly. You may be asked to bring to the attorney's office, and possibly to the first hearing, the following information:

- Wage statements for the previous eight (8) weeks;
- Two (2) years income tax returns;
- Life insurance policies;
- Last bank statements for all accounts, including checking and savings accounts;
- Copy of your records for IRA's, CD's, stock certificates, bonds, savings accounts, and any other evidence of the value of your assets;
- If you own a home, bring in the last notice from your mortgage company showing balance due, a copy of the deed, and last real estate tax bill;
- Any pension information, including any pamphlets or information supplied by the employer;
- Latest bills showing balances owed to each creditor, including credit card bills, whether individually or jointly owed;
- Total utility costs for the last twelve (12) months. If necessary, call gas and electric company and ask what your monthly payment would be on a budget plan;
- Interest in any partnerships, limited liability company or corporation;
- Future interests, whether vested or non-vested;
- Any other financial interest or source of income.

You should, as soon as possible, prepare an inventory of your household furniture, equipment, appliances, tools, etc., stating a present value for each item. The value is not what it would cost to replace the item. The value should be based upon the fact that the items are now *used*.

Additionally you may be asked to sign and return, directly or through your attorney when appropriate, releases allowing your spouse and/or their attorney to obtain information concerning your pensions, 401(K), profit sharing plans or other retirement benefits, bank and stock accounts and cash values of insurance policies.

Information gathering and organizing is probably the most essential part of the divorce process. While it may be tedious, the work you do will make it easier for you to understand and participate in the divorce process.

The local rules of the Circuit Court of Racine County provide that in each action affecting the family, parties must appear for a first hearing before the Family Court Commissioner or enter into a stipulation for temporary order. If the parties filing for divorce do not schedule a first hearing, the Family Court Commissioner's office will schedule one.

First Hearing/Temporary Order

Orders of the Court Commissioner

The parties first hearing in the divorce process will be held at the Family Court Commissioner's office located on the 5th floor of the Racine County Courthouse located at 730 Wisconsin Avenue in Racine. First hearings may also be scheduled in Burlington at the Western Racine County Service Center, 209 N. Main Street or on the 3rd floor of the Courthouse.

Parties must bring completed financial disclosures and a temporary order form to the hearing. The basic information about each party required on the first page of the temporary order form should be filled in by the petitioner prior to the hearing.

At the hearing, the Family Court Commissioner will make temporary orders, including orders regarding custody and placement of any children; payment of

child support, family support or maintenance; payment of debt; and use of the marital residence. The result is a written temporary order, which remains in effect until the judgment of divorce is granted or the case is dismissed.

The temporary order also restrains the parties from harassing or molesting each other and from interfering with each other's life. The parties are ordered not to sell any property and not to change medical or life insurance coverage during the pendency of the action. The order also directs the parties not to borrow money or use credit cards during the pendency of the divorce.

The parties and their attorneys will each receive a copy of the temporary order and a notice of scheduling conference. The scheduling conference is calendared for 120-days after the date of service or the date of filing of a joint petition.

Parent Education

In all actions where children under age 15 are involved, the parties will be ordered to attend a four (4) hour class entitled, "Children Coping with Divorce". The class addresses issues including: child development, family dynamics, how parental separation affects a child's development, and what parents can do to make raising a child in a separated situation less stressful for the child. There is a special program available for parents who will have shared placement. Attendance at a Parent Education class is mandatory.

Period of Time Between First Hearing and Scheduling Conference

Between the first hearing and the scheduling conference, the parties begin to live separately under the terms and conditions of the temporary order. Child support, family support or maintenance is paid (if ordered), a placement schedule for the children is implemented and the parties learn what it is like to lead separate lives. During this time, or any other time while the divorce is pending, the parties may choose to live together and try reconciliation without dismissing the action. This is known as a 90-day suspension.

To enter into a 90-day suspension, you must file a written document which will be prepared by your attorney or is available online at wicourts.gov. It must be signed by both parties and filed with the court. Once the 90 days has elapsed, the

parties must decide whether they are going to dismiss the divorce or proceed with the action. If the parties decide to proceed with the action, then the matter is placed on the court's calendar for further proceedings as if the suspension had not occurred. Either party may revoke the 90-day suspension at any time and the action will proceed. Wisconsin law permits a suspension up to a period of ninety (90) days. A second suspension will only be granted if parents are engaged in counseling and the suspension will not cause the case to exceed one year in duration. If reconciliation occurs, the divorce action can be dismissed.

Scheduling Conference and Final Disclosure

The law requires that a divorce may not be final until 120-days have passed from the time the respondent in the action was served with the summons and petition, or 120-days from the filing of the joint petition. After the matter has been pending for about 120-days, the first scheduling conference takes place on the 3rd or 5th floors of the Courthouse (Racine), or at the Western Racine County Service Center (Burlington). The purpose of this scheduling conference is to determine if one or both of the parties wish to proceed with the divorce and if so, to discuss a settlement and schedule further hearings as may be necessary in each case. If both parties wish to be divorced at this first scheduling conference, a stipulated or default divorce may occur. (See Stipulated Final Hearing, page 12).

At or before the final hearing, each party must submit an updated, sworn financial disclosure statement to the court and to the other party. This document states the assets, income, debts and monthly budgets of each party, under oath. All assets must be disclosed. If any asset has been sold or otherwise disposed of within one year prior to filing of the divorce, such asset(s) must also be disclosed. Even if both parties have reached an agreement as to how the assets are to be divided, the law requires that the value of the assets be listed on the disclosure.

Of particular importance on the financial disclosure is the valuation of the real estate and pension/profit sharing rights of the respective parties, as those assets may represent a substantial portion of the marital estate. It is also important to state the income of the parties accurately and fully, as this information will be referred to in later years if there is a motion to modify the support or maintenance order.

If the parties fail to reach an agreement on all issues in their divorce, the matter will be set for trial before the judge. Only a Circuit Court Judge can enter judgments on actions for legal separation or annulment and divorces where only one party appears (when both parties have previously participated in the divorce) or only one party believes the marriage is irretrievably broken.

The judge assigned to hear the case may issue pre-trial orders directing the parties and the attorneys to meet before the trial and attempt to settle the disputed issues. The parties and their attorneys may also be ordered to prepare a joint list of disputed issues, stating each party's position on every issue. Compliance with all scheduling orders and pre-trial orders is expected under the law.

The Stipulation

Most divorces are settled by an agreement known as a stipulation or marital settlement agreement. The stipulation will contain the agreement of the parties on any child custody, primary placement and periods of placement (formerly known as visitation), child support, division of property, payment of debts, maintenance, and any other matters which relate to the divorce. If a divorce is settled by a stipulation, the matter can be heard in a very short time after agreement has been reached and the 120-day waiting period has passed. The divorce can be granted either by the Family Court Commissioner or Circuit Court Judge.

Stipulated Final Hearing

The parties may have their divorce completed by a stipulated final hearing conducted by the Family Court Commissioner. This hearing, often referred to as a default hearing, can be completed before the Family Court Commissioner if **all** of the following occur:

1. Both parties appear in person; and
2. Both parties testify that the marriage is irretrievably broken; and
3. Both parties state that the terms of the marital settlement agreement (or stipulation) are fair and reasonable; and,

4. Both parties wish to incorporate the terms of the marital settlement agreement into the judgment of divorce.

The Family Court Commissioner may also conduct the final hearing if one party has never participated in the divorce proceeding.

The marital settlement agreement must be in **writing** for the matter to be completed before the Family Court Commissioner. If sole custody of a child(ren) is being awarded to one parent in the agreement, the law requires the parent without custody to disclose their medical and medical history information on a form provided by the court. The court will order that the information must be sent to the child's physician, as designated by the parent who has custody of the child. If the Family Court Commissioner does not approve an agreement between the parties on material issues, the matter will then be certified to be heard by the Circuit Court Judge.

If neither party has an attorney, the following documents must be filed with the Family Court Commissioner's Office at least 30 days before the stipulated final hearing. Please provide an original and three copies (total of four) of each document.

- Typed marital settlement agreement (stipulation);
- Updated financial disclosure statements;
- DHSS original certificate of divorce or annulment; (only need -1-, no copies)
- Completed Findings of Fact, Conclusions of Law and Judgment of Divorce;
- Completed Family Medical History Questionnaire (in sole custody cases only).

Trial

At the trial before the Judge, the parties will submit the information the court needs to decide the case.

On issues of property division, the evidence presented to the court may include appraisals of personal property and real estate, statements of income, and valuations of any retirement benefits. Pension and profit sharing accounts must be valued and are subject to division by the court as assets even though they are

not available until a future date. Federal law permits a court to divide the proceeds of a pension or profit-sharing plan between the parties by use of a qualified domestic relations order (QDRO), which provides for a division of pension benefits at the time the pension is received or sooner depending on the terms of the pension or profit sharing plan.

The assets of the marriage are divided on a presumptively equal basis, although a court does have discretion to deviate from an equal division of property. Gifted or inherited property is generally not subject to division.

The court will decide the difficult matters of child-related disputes such as custody and placement after considering the recommendations of the Guardian ad Litem and Family Court Worker, and the testimony of any other witnesses.

Contested trials may last from one hour to several days, depending on the number and complexity of the issues. Therefore, divorces that require trials are generally more expensive than divorces in which the parties are able to reach an agreement.

Divorce Judgment

The divorce judgment consists of a single document entitled Findings of Fact, Conclusions of Law and Judgment. If either party is represented, the attorney will prepare this document for the Judge's or Court Commissioner's signature. It may be submitted by the attorney at the time of the hearing or within 30-days after the hearing. The marital settlement agreement will be attached to this document; any changes made to it orally at the time of the hearing will be stated in writing in the judgment. If neither party is represented, the petitioner will be required to prepare and submit this document at least 30-days in advance of the final hearing. If the divorce is after trial rather than by agreement, the transcript of the Judge’s decision is attached.

It is important that you read the Findings of Fact, Conclusions of Law and Judgment of Divorce and understand your rights and responsibilities under the divorce judgment. Please refer to your divorce judgment, your attorney, and this booklet for any questions you may have about your divorce once it is final.

The divorce is final the day it is granted in court by the Judge or the Family Court Commissioner. However, you cannot remarry in Wisconsin or elsewhere until six (6) months after the divorce is granted.

Judgment of Legal Separation

If one of the parties has petitioned for a legal separation, the law requires that the specific reasons for requesting a legal separation be listed in the document. While the court has the power to grant a legal separation, if one party wants a divorce and the other party wants a legal separation, the court will generally grant a divorce. Once married, in order to marry again in the State of Wisconsin, or elsewhere, a person must be divorced or widowed. If you are legally separated, the only person you may marry is your spouse. A judgment of legal separation can be converted into a judgment of divorce. This may be accomplished as follows:

If in the first 12 months following the granting of a legal separation

- Both parties wish to convert the judgment of legal separation to one of divorce, they may file a stipulation requesting conversion with the court; or;
- After 12 months, either party may file a motion requesting conversion and the court is then required by law to grant the conversion. After conversion you must still wait six (6) months before marrying.

A Divorce Lawyer's Job

What does a divorce lawyer do for his/her client? What must the client do for his/her lawyer?

The main responsibility of a divorce lawyer is to protect the client's rights, promote the client's interests and secure a fair settlement of the client's disputes, using the skill, talent and knowledge that the lawyer has acquired. The lawyer must explain the divorce laws and procedures and how they will affect the client and their family, property interests and income.

A lawyer is a professional whose judgment and advice should be independent and objective. As the divorce proceeds, the lawyer must help the client define his/her

goals and understand his/her options based on the facts of the case, and then work out a proposal and strategy.

The client should assist the lawyer by compiling all relevant financial data. This includes real estate tax statements, mortgage and debt figures, savings and IRA balances, life insurance cash values, vehicle information, and a monthly budget for the client and his/her children, if they will be residing with the client.

The client should keep the lawyer informed of any significant relevant events. The client should remember, however, that the lawyer is not a counselor or psychologist. The client should get professional help for emotional problems caused by the divorce.

The client will be expected to pay the lawyer. Fees should be discussed at the first meeting and it should be clear as to what is expected of the client. Written fee agreements are recommended and can prevent or resolve most disputes. Lawyers are paid for their time. Frequent phone calls, extra court appearances and extended litigation will increase fees substantially. The client should use common sense in dealing with everyday events. It helps to keep notes of questions or events, so the client can remember them when meeting with the lawyer.

A lawyer and client relationship is a confidential relationship and must be based on mutual trust and understanding. The client, therefore, has a duty to his or her lawyer to be honest and to disclose all the facts and circumstances of the situation to the lawyer. When a client is not honest, the lawyer can be "blind-sided" and unable to protect his or her client properly. The client must realize that full financial disclosure is required by the law. You can be required to sign releases for data for your lawyer and the opposing lawyer. A lawyer has a duty to the court to disclose information and cannot hide any available data.

A lawyer cannot guarantee any result to a client. Most divorce actions end with the parties agreeing on a written settlement of all disputes. The lawyers must attempt to negotiate a settlement that is fair and reasonable to both sides under the circumstances. Some matters in the agreement will be the result of compromise on both sides. If settlement efforts fail, the lawyer and client must prepare for trial before the court. Trials can be very expensive! Negotiated

settlements are almost always better. You are paying your lawyer for their expertise; you should listen to them, especially if they advise you that a settlement is reasonable or tell you that you are being unreasonable.

You may disagree with the manner in which the divorce is being handled. You have the right to substitute a different lawyer at any time. Your lawyer can also withdraw if you are not fulfilling your responsibilities or if the differences between you and the lawyer become irreconcilable.

Pro Se Divorce

Some people choose not to retain the services of an attorney and, instead choose to represent themselves during the divorce process. "Pro se" is Latin and means "by one's self". A person who is involved in litigation and has not retained an attorney is said to be appearing "pro se". If there are any disputes about child custody, support, maintenance or property division, most people find that it is best to have an attorney.

Even if both parties are in full agreement on all issues, and neither party chooses to retain an attorney, the basic divorce procedures still apply. The Office of the Family Court Commissioner is not able to give legal advice to pro se litigants. Pro se litigants are held to the same standards a lawyer is held to and must follow the same procedures that a lawyer must follow.

The Wisconsin Court System's Self-Help Family Website can be found at **prosefamily.wicourts.gov**. This site will provide the required forms at no cost together with information on how to prepare, file and serve these documents. You may also purchase these forms from the Clerk of Courts on the 8th floor of the Courthouse.

MAJOR ISSUES IN DIVORCE

Grounds: Divorce, Legal Separation

Since 1978, the grounds for granting a divorce are that the marriage is irretrievably broken and that there is no reasonable prospect of reconciliation. This no-fault concept eliminates the need for either party to make accusations against the other in order for the divorce to be granted.

If the divorce is to be granted before the Family Court Commissioner, both parties must appear and testify that the marriage is irretrievably broken. If only one party will state the marriage is irretrievably broken, the divorce can only be granted by a Circuit Court Judge.

If the petition requests a legal separation, the Judge will grant a legal separation if the parties testify the marital relationship is broken. If the respondent files a pleading with the court requesting a divorce, however, then the Circuit Court Judge will decide if a divorce or legal separation will be granted.

If a judgment of legal separation is entered, neither party may marry anyone else until six (6) months after the judgment is converted to a divorce or one spouse dies.

Custody of Children

The family court will decide, either by your agreement or by its judgment, which parent(s) should have legal custody of the children during and after the divorce. Legal custody of a child refers to the right to make major decisions concerning the child. "Major decisions" include, but are not limited to, decisions regarding consent to marry, consent to enter the military service, consent to obtain a motor vehicle license, authorization for non-emergency health care, and choice of school and religion.

Unless there is a history of violence between the parents, there is a presumption that joint legal custody is in the best interests of a child. If parties share joint legal custody, then both parents make major decisions regarding the child together. Neither parent's legal custody rights are superior to the other, unless specified by the court.

If a parent has sole legal custody, then that parent has the right and responsibility to make all of the major decisions regarding the child, without having to consult with the other parent.

If there has been a finding of domestic abuse, a court can order a party to attend and complete an Anger Management Program. A parent could also voluntarily refer himself or herself to the program or be otherwise referred to the program.

A parent who is found to have committed domestic battery or abuse must have successfully completed treatment for anger management provided through a certified treatment program or by a certified treatment provider BEFORE a court may grant that party joint or sole legal custody of a child.

An anger management program is currently provided at:

Family Services of Racine
420 7th Street
Racine, WI 53403
(262) 634-2391

If the parties are unable to agree which parent should have legal custody or primary physical placement of the child, it will be necessary for the Family Court Commissioner or Family Court Judge to determine these issues. In all cases where legal custody and/or physical placement is contested, the Family Court Judge or Family Court Commissioner will make temporary orders and refer the parties to mediation.

Parenting Plan

In any action affecting the family in which legal custody or physical placement is contested the parties must complete a parenting plan. A parenting plan must also be completed by parties seeking shared placement of their child(ren). Under the law, a party who fails to timely file a parenting plan waives their right to object to the other party's parenting plan. The parenting plan must provide information about all of the following questions:

- What legal custody or physical placement the parent is seeking;
- Where the parent lives currently and where the parent intends to live during the next 2 years;*
- Where the parent works and the hours of employment;*
- Who will provide any necessary childcare and who will pay for the child care;
- Where the child will go to school;
- What doctor or health care facility will provide medical care for the child;
- How the child's medical expenses will be paid;

- What the child's religious commitment will be, if any;
- Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities;
- How the holidays will be divided;
- What the child's summer schedule will be;
- Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan and what electronic communication is reasonably available to both parents;
- How the parent proposes to resolve disagreements related to matters over which the court orders joint decision making;
- What child support, family support, maintenance or other income transfer there will be;
- If there is evidence that either party engaged in interspousal battery or domestic abuse with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

The parenting plan will be filed with the court.

NOTE: If there is evidence that a parent engaged in inter-spousal battery or domestic abuse, the parent who was the subject of the abuse is not required to disclose in the parenting plan the specific residential or employment address, but only to provide a general description of where he or she currently lives and intends to live during the next 2 years or a general description of where he or she works.

Physical Placement

Whenever a court enters a custody order, it must allocate periods of physical placement between parents. Unlike "custody" which refers to making major decisions about the child, "physical placement" refers to where a child lives or spends time. If a parent has "primary placement" of a child, that means that the child spends the majority of the time living with that parent. “Periods of placement," formerly known as visitation, refers to the periods of time the child spends with the other parent. Parents may also want to have shared placement, in which both parents spend a substantial amount of time with the child.

If parties are unable to agree on the placement issue they will be referred to mediation to attempt to resolve that issue. If mediation is not successful, a Guardian ad Litem and a Family Court Worker will be appointed to conduct a placement or custody study. (See, Mediation/Study Process, page 14).

Children are the most important "asset" of any marriage. The court will give the Guardian ad Litem and the Family Court Worker the time they need to make final recommendations to the court on this important issue. The court will continue to review the status of the investigation at periodic intervals, which means that parties must be prepared to take time off from work to attend hearings. When the Guardian and Worker give their final recommendations to the court, the Family Court Commissioner will generally adopt those recommendations as the Order of the court. If there is still disagreement, either party may request an evidentiary hearing or trial before the Circuit Court Judge assigned to the case. (See, Trial, page 6).

It is very important for parents to understand that the issues of placement and of child support are enforced independently of one another. In other words, one parent may not deny the other parent periods of placement just because child support is not being paid. Similarly, a parent cannot refuse to pay child support, if his or her access to the child is being interfered with or denied.

The court considers the following factors in determining issues of custody and placement of children:

- The wishes of the child's parent or parents as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial;
- The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future;
- The age of the child and the child's developmental and educational needs at different ages, the child's interactions with parents and siblings and the wishes of the child.
- The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

- Whether there has been child abuse, domestic abuse or substance abuse by either parent.
- Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.
- The reports of appropriate professionals if admitted into evidence.
- Where there has been a finding of domestic abuse, how to provide for the safety and well being of the child and of the victim of the abuse in an appropriate way.

Moving Child(ren) Inside or Outside the State

Pursuant to Section 767.481 of the Wisconsin Statutes, any parent with legal custody and physical placement rights shall provide the other parent and the court with 60 days written notice of his or her intent to:

- Establish legal residence outside the State of Wisconsin;
- Remove the child from the State for a period of more than 90 consecutive days;
- Establish his or her residence <u>within the State</u> at a distance of 150 miles or more from the other parent.

The notice must be sent by certified mail. The notice must specify the parent's proposed action, including the specific date and location of the move, or the specific beginning and ending dates and the location of the removal. The notice must also include the right of the non-moving parent to object to the move or removal within 15 days of receiving the notice.

Within 15 days after receipt of the notice, the other parent may object, in writing, to the proposed move or removal. The objection must be sent by certified mail to the other the parent and a copy must be filed with the court. **If one parent files a notice of objection to a move or removal of the child(ren), the parent proposing the move is prohibited from moving the child(ren) until an order is entered by the court on the issue of the proposed move.** The parent proposing the move, upon receipt of a notice of objection to the move, may request the court to enter a temporary order permitting the move to occur.

Upon receipt of the objection, the Court or Family Court Commissioner will promptly refer the parents for mediation or other family court services and may appoint a Guardian ad Litem to represent the interests of the child.

If mediation is not successful, the parent objecting to the move or removal may file with the court a motion for modification of legal custody or physical placement of the child(ren). If a motion is filed, the court may modify the legal custody or physical placement of the child(ren) and/or prohibit the move or removal of the child(ren). The court will consider those factors it is required to consider in determining if there should be a modification of custody or placement. There is a rebuttable presumption that the current orders of custody and placement shall continue, however that presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interests of the minor child(ren). The burden of proof is on the parent objecting to the proposed move or removal.

Another provision under Wisconsin law is a notice requirement for removals of 90 days or more. Unless the parents agree otherwise, the parent with legal custody and physical placement rights is required to notify the other parent before removing the child from his or her primary residence for a period of more than 90 days.

Mediation/Study Process

Mediation

Mediation is offered by the Family Court Services to separated and divorced parents, who are seeking to resolve problems of custody, primary placement and periods of placement of their children.

Mediation is also offered by the Family Court Services to people with visitation rights seeking to resolve problems concerning the children of separated and divorced parents.

What is Mediation?

Mediation is an effort by the parties to reach a mutually acceptable solution through a communicative process, structured and aided by an objective third party, the mediator.

Mediation is defined by statute as a confidential and cooperative process involving the parties and a mediator, who will help the parties define and resolve their own disagreements by applying communication and dispute resolution skills. The best interests of the children are of paramount consideration.

When is Mediation Involved?

You may be referred to the Family Court Services by the Circuit Court or the Family Court Commissioner in these instances:

1. Whenever there is a contested court action affecting legal custody and/or physical placement of a child, whether on initial determination or modification of an existing court order, or
2. Whenever parents involved in an ongoing court action indicate to the court or the Family Court Commissioner's office that they wish to have shared parenting, but need some assistance in coming to an agreeable arrangement, or
3. Whenever a parent objects to the moving of a child within or out of the State pursuant to Wis. Stat. Sec. 767.481, or
4. Whenever parents indicate to the Family Court Commissioner that they both wish to make some changes in their legal custody or physical placement arrangement, but need some assistance in coming to an agreement, or
5. Whenever the Family Court Commissioner is notified by a parent of child that there is a problem with periods of physical placement OR a person with visitation rights or physical custody notifies the commissioner of such a problem.

Am I Required to be Involved in Mediation?

In the first three situations described above, the parties are required by law to attend one mediation session.

Why Mediation?

While the court system is very adept at making decisions, the courtroom may be a poor place for either party to fully express their concerns. Frequently, matters are decided but problems and needs remain. In the emotionally charged atmosphere of divorce and separation, it is often difficult, if not impossible, for two sides to effectively communicate and respond to issues where some interests are shared and others opposed. Mediation is the best method for resolving disputes because most people are capable of making major decisions which will affect their lives and the lives of their children and want to participate in making those decisions. Mediation offers people a way to resolve conflicts by finding solutions most suited to their needs.

Mediation has other inherent advantages. While mediation requires a certain amount of honest effort, the emotional and financial demands of litigation can be far more costly to all concerned.

Looking to the court as a last resort promotes the misconception that this is a final activity. Unfortunately, the court's decision may be only one step along the way in what will be an ongoing escalation, which could deplete financial resources and further alienate the parties. Mediation, in concept, is designed to offer parties the opportunity to avoid the courtroom "step(s)".

Are there Any Exceptions?

The court might determine that it is inappropriate to attempt mediation based upon presented evidence that there has been child or spousal abuse, that either party is impaired by alcohol or drug abuse, or that either party's health or safety would be endangered by attending the mediation session.

In those cases where mediation is required by law, the Family Court Commissioner will not make a referral to Family Court Services if written proof is provided that an acceptable alternate provider of mediation has met or will meet with the parents.

Who is Involved in Mediation?

Usually only the parties are involved in mediation. The attorneys for the parties and the attorney for the child (Guardian ad Litem) generally do not participate.

What Issues are Discussed in Mediation?

The mediator is only permitted to discuss the issues of custody and physical placement of children during the mediation process.

However, the issues of property division, maintenance and child support may be discussed if: (1) these issues are directly related to the issues of custody and legal placement, and (2) if both parties agree *in writing* to consider one or more of these issues in mediation.

What if Mediation Doesn't Work?

If at any point it is found to be inappropriate to continue the mediation of those cases referred as the result of court action, the parties and the court are so informed by the mediator, and mediation ceases.

Who Decides if Mediation is Over?

The mediator has the authority to suspend or terminate the mediation, if he or she determines that a party will not cooperate or mediation is not appropriate.

What Happens Then?

If the court is involved, either prior to or after the mediation attempt, the court will order the investigative process to begin. A different worker from Family Court Services will be assigned to do the investigation, because a mediator, by law, cannot disclose or reveal information which was obtained in mediation. The only exception to this requirement occurs when both parties agree in writing to the same worker from Family Court Service doing the investigation. Otherwise, all activities occurring during mediation are confidential. One other exception is that child abuse and neglect must be reported to the proper authorities.

Can Mediation be Re-entered?

If the parties agree to try the mediation process once the investigation is under way, they may return to mediation. If Family Court Services remains involved, the original mediator will be reassigned. If, at this point, mediation services are involved for the first time, a different worker than the investigative worker will be assigned to mediate.

Confidentiality

All statements made to the mediator are confidential by law, except statements concerning child abuse and neglect. The mediator will not be permitted to testify in court at any time in any proceeding involving the parties.

The parties may waive this confidentiality, but both parties' consent is necessary before the court can accept the waiver.

What Does Mediation Cost?

If mediation is not court ordered, there is a $75.00 non-refundable "walk-in" mediation fee. That fee must be paid by cash or a check or money order made payable to Clerk of Courts at the time of the application. Upon receipt of the application, a mediator will be assigned to assist the parties in resolving the issues of placement and/or custody. The fee is not refunded if the other party does not participate in the mediation process or if no agreement is reached.

In court-ordered mediation, the initial session is a screening and evaluation session to see if, (1) mediation is appropriate and (2) both parties wish to go through the mediation process. If mediation is deemed appropriate and both parties consent to mediate the dispute and either an agreement is reached at the initial session or mediation goes forward beyond the initial screening session there will be a fee of $150.00 each that is assessed when mediation is closed. It is the responsibility of each party to pay that amount. Once the fee has been paid, the parties may return to the mediator, without further costs as long as the action is still pending, to attempt to resolve any issues or disputes that arise while the action is pending. In most cases, if the mediator determines that mediation is appropriate and time permits, the mediation process will begin at the initial session.

In those cases where mediation is provided by a resource outside of the Family Court Services, the costs involved may vary and are the responsibility of the party or parties.

In those situations where mediation has been voluntarily sought and mediation fails, the parties will be informed that mediation will not continue. Then if either party wishes to pursue the matter, it becomes his/her responsibility to take the matter to court by a motion filed with the family court.

The Study Process

If mediation is not successful and no agreement is reached, the court will refer the matter for a study. A court worker from the Family Court Service will be appointed to conduct the study. That worker will be someone other than the mediator. The study will consist of the court worker interviewing both parents, the children and any other relevant persons. As a result of the study, the worker will recommend which parent(s) should have custody and what periods of physical placement either parent should have. The court will consider the recommendations of the worker in making its determination on custody and physical placement.

The court also will appoint an attorney to represent the children in the custody and placement cases. This attorney is called the Guardian ad Litem, and it is this

attorney's job to represent the best interests of the children. (See, Guardian ad Litem, page 22). The Guardian ad Litem also interviews both parties and the children, makes recommendations to the court, and provides the reasoning behind the recommendations, he or she will represent the children's best interests, if the case goes to trial.

The cost for the custody study and the attorney fees for the Guardian ad Litem are expenses which the parties must bear in addition to their own attorney's fees. The court often orders prepayment of custody study fees, in which case, each party is required to pay $325.00 before the study begins. The fee for a custody/placement study is $650.00.

A deposit of $300.00 for each parent must be made to the Clerk of Court on the 8th floor by each party within 90 days after the appointment of the Guardian ad Litem. The Guardian ad Litem will charge $70 per hour. At the conclusion of the case a statement is sent to both parties by the Clerk of Courts, giving the total amount owed for the Guardian ad Litem fees. Generally, each will be required to pay one-half of the total bill. Payment plans may be set up with the Clerk of Courts, but if a party does not pay his or her one-half of the bill in full, a judgment will be taken again him or her.

Custody and physical placement disputes may be lengthy and bitter and can be very costly, not only in terms of money, but in terms of the adverse affect on the emotional well-being of the children and the parents. Even if one parent is awarded custody in a divorce, the other parent will receive physical placement rights, which can be extensive. No one wins a custody battle. One parent only loses less than the other. A thoughtfully stipulated arrangement, determined by the parties themselves, after considering the needs of the children and the parents, often results in a more successful relationship between parents and child(ren) after the divorce.

GUIDELINES TO ASSIST BOTH PARENTS IN DEALING WITH THEIR CHILDREN

When parents separate, neither becomes less of a parent unless they choose to do so. The parties divorce one another, not the children. Admittedly, each

parenting role may become more difficult but if the motivating factor is the children's best interests you each have a greater chance to continue to be effective parents. Children love both parents, divorced or not. They also continue to learn from, or imitate behaviors of, both parents. Your behavior at this time will affect your children's growth, as well as your relationship with them in later years. You may find it difficult, at times, to deal with your children as a single parent. If you apply the following guidelines, prepared by the staff of Family Court Services, you will find the matter made easier.

Both Parents Should:

- Continue to teach their children to respect the other parent and continue to allow them to love both parents.
- Protect the children from displays of anger, hurt, mistrust and all other bitterness toward the other parent. Do not question the children about your spouse's activities; do not demean, or say nasty things about your spouse in front of the children.
- Communicate with each other regarding visitation/periods of physical placement and the children in general. Do not arrange visitation through the children. Not only does this imply lack of respect for your spouse, but depending on your children to arrange such plans places unnecessary responsibilities on them and will cause many problems.
- Treat the children normally by not making promises of lavish gifts, exciting outings, etc., to outdo the other parent.
- If plans between parents conflict, decide which activity is most beneficial to your children, and allow them to attend that activity. This is not a win-lose situation as far as you or your spouse is concerned.
- Never encourage your children to take sides between parents. Many children blame themselves for the divorce. Forcing them to decide between parents will only reinforce this misguided notion.

The Parent with Periods of Physical Placement is Responsible for:

- Seeing the children frequently and consistently. Avoid making your children feel unwanted or rejected by making last minute cancellations or

by not seeing them on a regular basis. Notify your spouse in advance, if you cannot see the children, to avoid disappointing them.

- Being on time to receive or deliver the children. This will not only benefit the other parent, but the children as well who will be excited to see you, ready and waiting.
- Spending time with the children. Your children are individuals. Give each child individual time during these periods.
- Following through with any promises made.
- Being with the children at reasonable, mutually agreed upon times.
- Abstaining from the use of alcohol or illegal drugs before or during times with the children.

The Parent with Whom the Children Live is Responsible for:

- Preparing the children for time with the other parent, both physically and mentally. Don't deprive them of the anticipation. Let them know they are not hurting your feelings by enjoying these times. Have them ready on time to accommodate the other parent, as well as the children.
- Making the children available for periods of physical placement when possible, instead of continually making excuses, or trying to bribe them with more exciting activities.
- Keeping the other parent informed as to the health, schooling and special events involving the children.
- Informing the other parent, as soon as possible, should the children be unable to visit due to illness, unexpected events, etc.

While everyone understands that in these situations a third party or a new "significant other" may become involved, remember that your children need time to adjust to the separation. They may, in time, become accustomed to a third party, but the situation cannot be forced. At no time should your child(ren) be coerced into accepting a third party as a replacement for mother or father. Children should never be encouraged or expected to call a third party Mother or Father.

Always consider what would most benefit your child(ren). You are the adults. Do not allow the child(ren) to play upon the guilt or anger you may carry. They may

be capable of using these circumstances to their own advantage. Only you, communicating with your former spouse and not jumping to conclusions, can prevent this situation.

Remember, this can be a painful and disruptive period for everyone involved. You may very well have difficulty adjusting to your new situation. Most people do. You cannot help your children adapt if you have not. There are any number of mental health professionals in our area who can assist you. Generally, all medical insurance policies provide for counseling services and many agencies charge on the basis of ability to pay. The Family Court Counseling Service is available to refer you to these persons, as well as to assist with any other problems or questions you have.

Child's Bill of Rights

1. To be told that my mother and father still love me and will never divorce me.
2. To be told that the divorce is not my fault, and not to be told about the adult problems that caused it.
3. To be considered as a human being, and not as another piece of property to be fought for, bargained over or threatened.
4. To have decisions about me based on what is in my best interest, not on past wrongs, hurt feelings or my parents' needs.
5. To be allowed to love both my father and my mother without being forced to choose or feel guilty.
6. To know both my father and my mother through regular and frequent involvement in my life.
7. To have the financial support of both my father and my mother.
8. To be spared having to listen to bad, hurtful comments about either of my parents which have no useful purpose.
9. To be a child, and not to be asked to tell a lie or act as a spy or messenger.
10. To be allowed to have affection for the other people who may come into my life without being forced to choose or feel guilty.

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GUARDIAN AD LITEM

The Guardian ad Litem is an attorney appointed by the Family Court to represent the best interests of your child. During legal conflicts involving families, pending divorces, post-divorce actions and paternity actions, the interests of children are separated from those of the parents. For example, if custody is contested, the court relies on the Guardian ad Litem to investigate, evaluate and submit evidence at a custody trial from the perspective of the child's best interests. Similarly, a Guardian ad Litem represents the child's best interests if visitation or paternity is in dispute. If a parent with custody and physical placement should wish to move outside Wisconsin or establish a new residence more than 150 miles from the other parent within Wisconsin, and this move is opposed by the other parent, a Guardian ad Litem will be appointed to represent the child's best interest.

The court expects the Guardian ad Litem to recommend what he or she believes is in the best interests of the child. This does not mean that the Guardian ad Litem merely states what the child says he or she wants. To make this important recommendation, the Guardian ad Litem will need to gather information from all the parties, including the children, and from other sources such as family, friends, schools, counselors and doctors. The investigation centers on the child, to determine his or her unique needs and preferences. The Guardian ad Litem will work independently from the attorneys representing the parties.

The Guardian ad Litem's investigation will almost always include interviews with the parents or the person(s) caring for the child. The parents are required to cooperate. Typically, each parent will be interviewed separately at the Guardian ad Litem's office.

Most cases will also require a conversation between the child and the Guardian ad Litem in private, out of the hearing of the parents or other adults in the child's life. The Guardian ad Litem may choose to visit with the child at the office, home or any other setting in which the child feels comfortable and confident. The goal is to develop a sense of trust between the child and the Guardian ad Litem, and this may require more than one visit with the child.

As a representative of the best interests of the child, the Guardian ad Litem considers all facts in the best interest of the child. The Guardian ad Litem does not prefer one parent over the other on the basis of sex or race. When considering the facts, a Guardian ad Litem pays attention to the following factors:

a. The wishes of the child's parent or parents, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court;
b. The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future;
c. The age of the child and the child's developmental and educational needs at different ages;
d. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child;
e. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party;
f. Whether each party can support the other party's relationship with the child including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party;
g. The reports of appropriate professionals if admitted into evidence.
h. Evidence of significant problems of alcohol or drug abuse by either parent.
i. Evidence of spouse or child abuse.
j. Any other factors that may be important.

After all this information is gathered, the Guardian ad Litem will make a recommendation to the court and the parties as to what he or she believes will be in the best interests of the child regarding the issues in dispute. If a trial is necessary, the Guardian ad Litem will appear for the child, questioning witnesses and introducing evidence on behalf of the child. Helping restore stability, security and harmony in the child's life is an important goal of the Guardian ad Litem.

Payment of the Guardian ad Litem fees will be made by either or both of the parents. It is important that the parties understand their responsibility to pay the Guardian ad Litem fees. Unless the court orders otherwise, each party is responsible for one-half of the total cost of the Guardian ad Litem.

MAINTENANCE; FAMILY SUPPORT

The Court and Family Court Commissioner may order a spouse to make certain payments designated as maintenance or family support to the other spouse during the pendency of the divorce action or at the time of the final divorce hearing. Maintenance and family support are different from child support. Maintenance, which used to be called alimony, is a series of payments made by one spouse for the support of the other spouse. Maintenance payments may be ordered separately from, or in addition to, child support. Family support is a payment generally made at regular intervals (weekly, bi-weekly, monthly) which combines maintenance and child support.

The designation of payments as maintenance is important because payments under maintenance orders are generally tax deductible to the person making the payments. On the other hand, the person who receives maintenance payments is required to report the amount so received as taxable income and may have to pay income taxes on these amounts. In contrast, child support payments are not deductible by the person who makes the payment, nor are they taxable income to the person who receives them.

A party who decides to give up (or waive) any right he or she may have to maintenance in the divorce judgment will not be allowed under any circumstances to later seek maintenance from his or her former spouse.

If the parties to a divorce cannot agree as to whether maintenance should be paid by one to the other or as to the amount or length of time maintenance payments should be made, the court will decide these issues. The court will consider the following factors in determining maintenance issues:

- The length of the marriage.
- The age, physical and emotional health of the parties.

- The division of the parties' property in the divorce.
- The educational level of each party at the time of the marriage and at the time the divorce is started.
- The present and future earning capacity of the party requesting maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to obtain education or training to enable the party to find appropriate employment.
- The feasibility that the party requesting maintenance can become self-supporting at a standard of living reasonably similar to that enjoyed during the marriage, and if so, the length of time necessary to achieve this goal.
- The tax consequences to each party.
- Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.
- The contribution by one party to the education, training or increased earning ability of the other.
- Other relevant factors the court considers important in the individual case.

On the basis of these factors, the court may order an amount of maintenance to be paid for a limited period of time or for an indefinite period of time. Maintenance may be revised, terminated or extended by the court based upon a substantial change in the financial circumstances of one or the other party after the final divorce hearing. The party seeking a revision, termination or extension of maintenance must petition the court in writing, with notice to the other party, for a hearing on the issue.

Limited maintenance will automatically terminate at the end of the term specified in the court's order unless the person receiving maintenance petitions the court in writing with notice to the other party for an extension of maintenance prior to the expiration of the original order.

The court will terminate maintenance payments on the remarriage of the person receiving the payments upon the application of the person making the payments and upon proof of such remarriage.

Family Support

Family support is child support and maintenance combined. In the past, family support was used because of its tax advantages. These tax advantages have been greatly diminished, and it is now used very sparingly. Before family support is ordered, it is very important that parties and attorneys understand clearly the rights and responsibilities both parties have in reporting payments of family support and deducting family support on their income taxes.

CHILD SUPPORT

Child support in Wisconsin is based upon the percentage of income standard. The percentage of income standard states that the court shall order child support from the parent without primary placement in the following amounts:

- 17% of parent's gross income for one child
- 25% of parent's gross income for two children
- 29% of parent's gross income for three children
- 31% of parent's gross income for four children
- 34% of parent's gross income for five children or more

Child support must be expressed as a fixed dollar amount based upon the appropriate percentage listed above. The parties may stipulate to expressing the amount as a percentage of the payer's income only if the following requirements are satisfied:

- The state is not a real party in interest in the action;
- The payer is not subject to any other order, in any other action, for the payment of child support or maintenance; and,
- All payment obligations included in the order, other than the annual receiving and disbursing fee, are expressed as a percentage of the payer's income.

In every case where support is ordered, the court must require the parties to annually exchange financial information. A party who fails to furnish the information as required by the court may be proceeded against for contempt. In addition, costs, including reasonable attorney fees, may be awarded. (See, Enforcement of Child Support, page 49).

Child support may be determined by a different formula or modified percentage standards in certain special circumstances such as:

- Serial Family: where a payer has children living in more than one household
- Shared Placement: where both parents have the children more than 25% of the time
- Split Placement: parents who have 2 more children and each parent has placement of one or more but not all of the children
- Low Income Payers: a parent who income or earning capacity is below approximately 125% of the federal poverty rate
- High Income Payers: a parent whose annual income exceeds $84,000.

The discretionary guidelines for determining support in these special circumstances which the court may consider can be found in DCF150 which is available at http://www.dcf.wisconsin.gov/bcs/

If a party requests it, the court may deviate from the amount of support due under the percentage of income standard if the court finds by the greater weight of the credible evidence that the use of the percentage is unfair to the child or to any of the parties considering the following factors:

- The financial resources of both parties and the child;
- Maintenance received by either party;
- The needs of each party to support himself or herself on a level equal to at least the federal poverty level;
- The obligation either party has, if any, to support another person;
- If the parties were married, the standard of living the child would have enjoyed had the parents not divorced;
- The desirability that a parent live at home as a full-time parent;
- Cost of day-care or value of services of custodial parent;

- The award of substantial periods of placement to both parents;
- Extraordinary travel expenses incurred in exercising placement with the child(ren);
- The child's physical, mental, and emotional health care needs including the costs of insurance and any uninsured health care of the child;
- The child's educational needs;
- The tax consequences to each party;
- The best interests of the child;
- The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community;
- Any other factors which the court considers relevant.

If the court determines, using one or more of the above factors, that the application of the percentage of income standard is unfair, the court must state in writing or on the record:

- Amount of support that would be required by using the percentage standard;
- Amount by which the court's order deviates from that amount, and its reasons for finding that the use of the percentage standard is unfair to the child or to the party; and
- Reasons for the amount of the modification and the basis of the modification.

Paying and Receiving Support

Wisconsin law requires that payments for child support, family support and maintenance be paid by income withholding. All payments of child support, family support and maintenance are to be paid to the Wisconsin Support Collections Trust Fund. The address for the Wisconsin Support Collections Trust Fund is:

Wisconsin Support Collections Trust Fund
Box 74200
Milwaukee, WI 53274-0200

The payer should always include the case number and the payer's PIN number or social security number on any check or money order to ensure proper credit for the payment.

A payer should never pay the support directly to the payee as those payments may be considered gifts. While the law does provide for the granting of credit for direct payments in certain limited circumstances, an evidentiary hearing may be required before a Circuit Court Judge.

Child support payments are due when your order says they are due. Generally, child support payments are for the time period following the date the payment is due. Simple interest accrues at the rate of 0.5% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month.

If you are ordered to pay support, it is your responsibility to make the required payments to the Wisconsin Support Collections Trust Fund until the money is withheld from your earnings or other source of income.

Each year the payer must pay a receiving and disbursement fee to the Wisconsin Support Collections Trust Fund. As of August 1, 2015, the annual receipt and disbursement fee is $65.00 per year. This fee must be paid at the time of, and in addition to, the first payment of support due each year. If the $65.00 fee is not paid in a given year, the Racine County Child Support Enforcement, on behalf of the State, may request that the payer be found in contempt of court or may request that the fee be paid by wage assignment.

If You are to Receive Support

Wisconsin law requires that all payments of support or maintenance be made through the Wisconsin Support Collections Trust Fund. Upon receipt of the payment the WSCTF will deposit the amount in a bank account or on a debit card. Wisconsin law requires Child Support Enforcement to disburse child support within 15 days of receiving it, however, the turn-around time is generally much faster.

You must make sure that Racine County Child Support Enforcement has your current address at all times so the payments will promptly be paid. If you are receiving public assistance benefits, such as W2 or kinship care, the child support payment may go to the State of Wisconsin for the duration of the assistance.

There is an annual fee assessed of $25.00 to the recipient of child support. This fee is assessed after the first $500.00 in support is paid in a federal fiscal year (October 1 – September 30).

If you have questions regarding your child support case, you can call the Wisconsin Support Collection Trust Fund, an automated voice response system by dialing 1-800-991-5530. You must have your KIDS personal identification number (PIN number) handy, or your Social Security Number and Date of Birth. If you need further information, you may call or write Racine County Child Support Enforcement. Written inquiries should include your case number and the name of the payer on all correspondence. The address of Racine County Child Support Enforcement is:

Racine County Child Support Enforcement
Dennis Kornwolf Racine County Service Center
1717 Taylor Avenue, 2nd Floor North
Racine, WI 53403
(262) 636-3268

Income Assignments

Each order for child support, maintenance, or family support constitutes an assignment of income. The assignment of income is accomplished by an order of withholding which will be sent to the payer's employer, or other source of income, by Racine County Child Support Enforcement. Generally, the frequency of the required payment corresponds with the obligor's pay period.

Once the support payment is withheld from the paycheck of the payer, the employer will send it to the Wisconsin Support Collections Trust Fund. The employer is entitled to charge up to $3 for this service each time. This fee is in addition to the amount of the support.

An employer is prohibited by law from disciplining an employee because of the existence of an income assignment.

<u>IVD: FREE</u> Income withholding is provided by Racine County Child Support Enforcement free in all IVD cases. Any party can apply for IVD services, which include income withholding orders, for free.

<u>Non IVD: $35.00 Fee.</u> Racine County Child Support Enforcement charges a $35.00 fee to prepare and send an income withholding order for a non-IVD case. This fee must be paid by check or money order, payable to Racine Child Support Enforcement at the time the order is submitted for processing. The fee must be paid every time a new wage assignment is issued.

Whenever support is ordered, both parties are required to notify Racine County Child Support Enforcement of any change of address within 10 business days of such change. In addition, the person ordered to pay the support is under a continuing order to notify Child Support Enforcement and the payee, within 10 business days, of any change of employer and of any substantial change in the amount of his or her income, including receipt of bonus compensation, such that his or her ability to pay support is affected. Notification of any change in the amount of the payer's income will not result in a change of the order unless a revision of the order is sought pursuant to Wis. Stat. sec. 767.553 or 767.59.

Wisconsin law provides that if support is delinquent the court may increase withholding by up to 50% of the current order to satisfy the delinquency. The payer has ten days, from receiving notice that the withholding will be increased in which to request a hearing before the Family Court Commissioner's Office to challenge the increase.

TAX EXEMPTION

Federal (rather than State) tax law provides that the parent with primary physical placement of a child may claim that child as an exemption on his or her income tax return, unless otherwise specified by a court order. Given the present value of an exemption and the child tax credit, allocation of the tax exemption often enters into settlement negotiations. The exemption may be more valuable to one parent than the other after considering the income of the parties, the ability of a

party to claim head of household status, qualification for the earned income credit and other factors.

Under Wisconsin law, the court is required to make a decision on allocation of tax exemptions if the parties have not decided between themselves which parent should take the exemption. The court shall make the decision in accordance with state and federal law, and must also take into account whether the medical insurance plan of either parent requires that the parent with medical coverage be awarded the exemption.

If, as a parent without primary placement, you are awarded an exemption, either by the court or by stipulation, you will need to attach to your income tax return an original Form 8332 (available at the IRS office only) signed by the parent with primary placement. If the other parent will not cooperate, the IRS may accept a certified copy of your court order or you may seek court enforcement of the other parent's responsibility to sign Form 8332. For further information, you should consult IRS Publication 505 or your attorney.

PROPERTY DIVISION

The court is required to presume that all property is to be divided equally between the parties at the time of the judgment of divorce. The only exception is property which was inherited or gifted to one party. Gifted or inherited property remains the property of the party who received the gift or inheritance and is generally not subject to division.

Property owned before the marriage of the parties **is** subject to division unless the parties have entered a prenuptial or postnuptial agreement which identifies the property as that which was owned by the parties before the marriage and not subject to division.

The court will also consider the following factors when dividing the property:

- The length of the marriage.
- The property brought to the marriage by either party.

- Whether one party has substantial assets (received by gift or inheritance) that are not subject to division.
- Economic contribution each party made to the marriage including economic value of childcare and homemaking.
- The age, physical and emotional health of the parties.
- Contributions by one party to the education, training or increased earning power of the other party.
- Earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.
- The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.
- The amount and duration of an order under s.767.56, Wis. Stats. granting maintenance payments to either party, any order for periodic family support payments under s.767.531, Wis. Stats., and whether the property division is in lieu of such payments.
- Other economic circumstances of each party, including pension benefits, vested or non-vested, and future interests.
- The tax consequences to each party.
- Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.
- Such other factors as the court may in each individual case determine to be relevant.

POST JUDGMENT PROCEDURES AND ISSUES

Modifiable Issues in General

After the judgment is entered, the court can always modify the provisions of the judgment concerning the child related issues of custody, placement and child support during the minority of the child. On custody and placement issues, children are no longer subject to the jurisdiction of the court when the children are 18 years of age. Child support may be modified until the child is 18 years of age or graduates high school, but in no instance past his/her 19th birthday.

Maintenance can only be modified if it is awarded or held open in the original judgment. If maintenance is waived or denied in the original judgment, it cannot be granted at a later time. If limited maintenance is awarded, the motion to modify or extend the maintenance must be filed prior to the end of the term of maintenance.

Property division is also final as of the date of the divorce and may not be modified at any time after the judgment of divorce is entered. The only exception is if the judgment of divorce is reopened. A judgment of divorce cannot be reopened except under circumstances of fraud or excusable neglect.

Modification of Child Support

Orders relating to child support may later be changed or modified upon request of either party after the entry of a judgment of annulment, divorce or legal separation, either by written agreement of the parties or after a court hearing. The modification generally requested is for a decrease or increase in the existing order.

An order for support may provide for an annual adjustment in the amount to be paid based upon a change in the payer's income. An adjustment may not be made more than once in a year. No adjustment is effective until the order is signed by the Court or Court Commissioner.

If the underlying order does not provide for an annual adjustment, then the court will not change a child support order unless the party requesting such a change

presents proof of a substantial change in circumstances. The burden of proving that a modification is necessary rests with the party seeking to alter the provision of the existing judgment. [If a party is requesting a revision of an order for child support from a percentage expressed order to a fixed dollar order, the court is not required to make a finding of substantial change of circumstances to change the form of the order.]

Procedure

If the parties and/or their attorney can reach an agreement to modify the amount of child support, the written agreement can be made part of a stipulation and order to be filed with the court which states the terms of the agreement. If the parties reach an agreement, the stipulation and order must be filed with the court with provision for the signature of a Judge or Family Court Commissioner and approval by Racine Child Support Enforcement if the state is a party to the case. An agreement to modify child support without an order is not enforceable and is of no effect. The order must accompany any agreement. The stipulation must be in accordance with Wisconsin Law. It is not sufficient merely that both parties agree.

If the parties and/or their attorney cannot reach a signed, written agreement to modify the support out of court, the party seeking the modification must file a motion or order to show cause with the court. The filing fee, which may be adjusted annually by the Clerk of Court, must be paid before the motion or order to show cause is filed. If the moving party is indigent, the filing fee may be waived. The documents necessary for waiver of the filing fee are available from the Clerk of Court's office on the 8th floor of the courthouse. You may retain an attorney to represent you in such an action. If you do so, the attorney will prepare and file the appropriate documents for you. If you are unable to afford an attorney, you may be eligible for representation through Legal Action of Wisconsin. (See, Community Resources), or you may proceed pro se. Certain pro se forms are available at Child Support Enforcement Agency or at www.wicourts.gov on the internet.

Once the action has been filed, it is the responsibility of the party requesting modification to have the documents served on the other party. A party may not serve the paperwork themselves. You may contact the sheriff's department in the

county where the other party resides or a private process server in that area to serve the motion or order to show cause. An affidavit of service must be filed with the court to provide proof of service before any action will be taken.

At the time the action is filed, the family court clerk will give you a court date, which must be inserted in the motion or order to show cause. On the hearing date, you will be appearing before a Family Court Commissioner who has been authorized by the Family Court Judge to hear and make final decisions on child support issues. Both parties should bring as much income information as possible to the hearing including their most recent eight weeks of pay stubs, most recent income tax returns, and business records.

After reviewing the information submitted by the parties, the Commissioner will announce a decision. The Commissioner will generally ask the prevailing party to prepare an order for the Commissioner to sign which puts in writing the Commissioner's decision. The order is a necessary step in the process of modifying the order on the court's records, so it must not be overlooked.

If a party disagrees with the Commissioner's decision, they may appeal the decision to the Circuit Court Judge. This is referred to as a de novo hearing; a request for de novo hearing must be filed within 15 days of the Commissioner's decision to be considered timely. You will need to file new paperwork with the court in order to do this. Your attorney can assist you with this, or you can contact the clerk of family court for further information.

The Court or Court Commissioner cannot, except under very limited circumstances, modify the amount of child support due prior to the date of service of the motion on the respondent.

Modification of Maintenance

In any application for modification of a maintenance award, the court is required to again consider all of the statutory factors it considered in the original award of maintenance, as well as an increase in income of either party, an increase in the cost of living, or receipt of an inheritance by the payee. Once a maintenance order has been entered, it may be extended indefinitely by the court if the motion is timely filed, and if the moving party makes a proper showing to the court of a

substantial change in circumstances. This may occur even though the original order may have provided for a definite term of maintenance and even though the parties may have originally agreed upon a date certain when maintenance should terminate. Any request for extension of maintenance must be filed and served upon the other party prior to the expiration of the maintenance order.

Maintenance cannot be retroactively increased or decreased.

The remarriage of the recipient/obligee of maintenance or death of either party will result in termination of the maintenance obligation, if the obligor files a motion to terminate the maintenance based upon the remarriage or death of the obligee.

Modification of Custody/Placement

There are two different standards of proof required to modify a custody or physical placement order. Generally it is more difficult to modify an order within the first two years after the initial order. After two years, it is less difficult to modify an order of custody or physical placement.

Within two years, it must be shown that the current legal custody or physical placement arrangement is physically or emotionally harmful to the child, and that modification of legal custody or physical placement or both is necessary.

After two years, it must be shown that the modification of legal custody or physical placement is in the best interest of the child, and that there is a substantial change in circumstances since the date of the last order. Even after two years, it is presumed that the current legal custody and physical placement arrangement is in the best interest of the child.

A change in economic or marital status is an insufficient basis upon which to modify an existing legal custody or physical placement arrangement.

The above standards for modification are the same regardless of whether the parents have sole legal custody or joint legal custody.

If parties have substantially equal periods of physical placement, the court at any time may modify the arrangement upon motion of a party if the court finds that circumstances make it impractical for the parties to continue to have substantially equal placement and that the modification is in the best interests of the child(ren).

Modification of legal custody or physical placement motions are referred to mediation, similar to initial determination of those issues. (See Mediation, page 23). The fee for mediation is $300.00. If mediation is not appropriate or successful, the court will order a custody or physical placement study. The fee for a custody study is $650. 00. Also, if mediation does not produce an agreement the court will appoint a Guardian ad Litem. (See, Guardian ad Litem, page 28).

Modification of Periods of Physical Placement

To modify periods of physical placement, previously known as visitation, the court uses the same analysis as for modifications of custody/placement set forth above. Additionally, the court at any time may modify periods of physical placement if the court finds that the modification does not substantially alter the period of time a parent may spend with a child, and the modification is in the best interest of the child.

The court may also modify periods of physical placement if it finds that a parent has repeatedly and unreasonably failed to exercise specific periods of placement. This provision is sometimes referred to as "use it or lose it."

Enforcement of Child Support Payments

If the person who has been ordered to make child support, family support or maintenance payments fails to do so, then the person who is entitled to receive the payments may do the following:

- Contact his or her attorney to bring appropriate action in the court to enforce the order, including income or wage assignment and contempt.
- Contact Racine Child Support Enforcement located at Dennis Kornwolf Racine County Service Center, 1717 Taylor Avenue, 2nd Floor North, Racine, WI 53403. Racine County Child Support Enforcement is the designated

local child support enforcement IV-D authority under the Federal Child Support Program. Child Support Enforcement serves the public interest, not you individually, by enforcing child support obligations. It does not represent you, but rather the State of Wisconsin.

If W-2 benefits are or have been provided to your dependents, services will be provided without an application. However, you may want to notify Child Support Enforcement of your current situation or circumstances. If W-2 benefits have never been provided, you must file a completed Application for Services with Child Support Enforcement. To discontinue services, you must notify the agency in writing and complete a 'Termination of Services' form.

Services that will be provided include location of the absent parent, enforcement and modification of a current order for child support, enforcement of an order to provide health insurance, and tax-intercept. Most services will be provided without any fee. However, fees may be charged for some services. You will be notified if a fee is necessary. Child Support Enforcement determines which services will be provided on each case. For further information, contact Child Support Enforcement.

- Failure to pay child support under certain circumstances is a crime. Racine County Child Support Enforcement may refer cases to the District Attorney for criminal prosecution, or parties may write to the District Attorney's office directly to request an investigation.

Any order entered by the Court for child support, maintenance or family support constitutes an assignment of income as will be sufficient to meet the payments required of the payer under the order, including any arrearage that may be due.

If the income assignment is not effective, then the person who failed to pay support can be ordered to appear before the Family Court Commissioner to show cause why he or she should not be held in contempt of court for failing to make the payments. Contempt of court is when one intentionally violates the court's order. If a person is found in contempt, the circuit court judge has the power to order that person to pay a certain amount of money to purge the contempt or go to jail.

For more information about these enforcement techniques and others, you may contact Racine County Child Support Enforcement.

Enforcement of Custody and Physical Placement Rights

If a parent with custody or physical placement rights believes those rights are being interfered with, he or she may apply for walk-in mediation at the Family Court Commissioner's Office. (See Mediation, page 13). Upon application, the Family Court Commissioner will refer the party or parties to a mediator. If the mediator believes mediation is appropriate, then the mediation process will proceed until settlement, or until mediation terminates. If an agreement is reached in mediation, the mediator will send each party a letter that sets forth the agreement in writing. The parties must then file a stipulation and order with the court, based upon their agreement as written by the mediator. The agreement must be signed by both parties and provide for the signature of the Family Court Commissioner or Judge. If the stipulation is not filed and signed by the Family Court Commissioner or Judge, the parties' agreement is not enforceable as an order of the court.

A parent may also file a petition for remedial sanctions or an order to show cause for contempt if: 1) the parent has had one or more periods of physical placement denied, or substantially interfered with by the other parent, or 2) the parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

Personal service of the petition or order to show cause is required. Service must be accomplished by someone other than the person bringing the petition or order to show cause.

If, after a hearing, the court finds that a parent did intentionally and unreasonably interfere with placement, a court will enter orders ranging from awarding the parent make-up time to granting an injunction to ensure strict compliance with the placement schedule, depending upon the facts and circumstances of the case.

Periods of physical placement with a child may not be denied by the parent with placement of the child for failure of the other parent to pay child support or meet

any other financial obligation. Similarly, violation of physical placement rights by a parent does not constitute a reason for failure or refusal to meet child support or other financial obligations.

Wisconsin law provides a child is entitled to periods of placement with both parents unless after a hearing the court finds placement with a parent would endanger the child's physical, mental or emotional health.

RESOURCES AVAILABLE TO ASSIST PARTIES

Family Court Services

Located in the Family Court Commissioner's office is Family Court Services. Mediation services and physical placement/custody studies are available to parents who are having difficulty with legal custody and physical placement issues. There are three mediators in the office to assist parents. The fee for court mediation services is $300.00 ($150 per party). The fee for a Family Court Worker custody or physical placement study is $650.00 ($325.00 per party).

The walk-in mediation service is also offered to parents who are having difficulty with the physical placement rights, but who do not have a matter pending before the court. There is a $75.00 non-refundable fee for this service. A form is available at our office for this request.

Community Resources

Family Service of Racine
420 Seventh Street
Racine, Wisconsin 53403
Phone 634-2391

This non-profit agency offers counseling for:

- Individuals going through divorce who are dealing with fear, frustration, hurt, hopelessness, anger, feelings of rejection, etc.;
- The non-custodial parent experiencing the absence of his/her family;
- The children experiencing divorce;
- Individuals or couples confused about the choices of divorce or reconciliation;

- Individuals involved in domestic violence as victim or abuser

Fees: Based on ability to pay and insurance billed when available.

Catholic Charities
800 Wisconsin Avenue
Racine, WI 53403
Phone: 262-637-8888

Catholic Charities is a fully certified and accredited agency for parent/child, marriage/divorce, and other personal counseling. Catholic Charities serves both Catholics and non-Catholics.

Counseling can take several forms (one-to-one, joint couple, or joint parent with or without children, etc.) and may be effective. The typical length of time of counseling varies depending on the number and severity of problems.

Most Catholic Charities' counselors hold Master Degrees in such field as clinical social work or psychology and many have developed special skills through advanced training programs in family/marital therapy.

Appointments are required and made be made by calling 262-637-8888. Normal business hours are Monday through Friday from 8:30 a.m. until 5:00 p.m.

Insurance often covers the cost of counseling. Client fees are based on the individual's ability to pay. Medical Assistance (Title XIX) is accepted.

Children's Service Society of Wisconsin
8800 Washington Avenue, Suite 100
Mt Pleasant, Wisconsin 53406
Phone: 262-633-3591

A non-profit agency, Children's Service Society offers services to children and their families who often have difficulties they cannot resolve themselves.

Children's Service Society of Wisconsin provides child and family counseling to assist families in resolving interpersonal, developmental or adjustment problems.

Fees are based on ability to pay. Insurance and Medical Assistance can also be used to cover services.

Legal Action of Wisconsin, Inc.
4900 Spring Street, Suite 100
Racine, WI 53406
(262) 635-8836 or 1-800-242-5840

This office handles legal problems for low-income people. Call for an appointment.

Communication Tool

Our Family Wizard

- www.OurFamilyWizard.com
- info@OurFamilyWizard.com
- Toll Free: 866-755-9991
- Fees are $99 for a one-year subscription; $179 for a two-year subscription
- Child accounts are FREE of charge

Helping divorced and separated families communicate. Online communication tools to make shared parenting easier. Goals include:

- Protect your children
- Eliminate miscommunication
- Avoid Arguments
- Reduce Stress
- Improve Parenting

Includes calendar, expense log, message board, journal and information bank.

HELPFUL TELEPHONE NUMBERS

- Women's Resource Center - (262) 633-3233
- Hand-to-Hand - (262) 633-3274
    - Supervised transfers and periods of placement
- Family Court Commissioners Office - (262) 636-3181
- Family Court Services - (262) 636-3162
- Racine County Human Services Dept., located at 1717 Taylor Avenue, Racine, WI 53403
    - Information and Referral - (262) 638-6321
    - 24-Hr. Crisis Line - (262) 638-6321
    - Burlington Office - (262) 767-2900 or 1-800-794-7057
    - Fiscal Information - (262) 638-6694
    - Racine County Child Support Enforcement - (262)-636-3268

BIBLIOGRAPHY

These and many other books are available from the Racine Public Library.

For Parents:

The Truth About Children and Divorce, Robert E. Emery, Ph.D. Plume, 2006

Helping Children Cope with Divorce, Edward Teyber, Jossey-Bass, 2001.

The Co-Parenting Survival Guide, Letting Go of Conflict After a Difficult Divorce, Elizabeth S. Thayer Ph.D. And Jeffrey Zimmerman, Ph.D. New Harbinger, 2001.

Ex-Etiquette for Parents: Good Behavior After a Divorce or Separation, Jann Blackstone-Ford, Chicago Review Press, 2004

For Children:

Dinosaurs Divorce: A Guide for Changing Families, Laurene Krasny Brown and Marc Brown, Little Brown & Co. 1986

The Divorce Helpbook for Kids, Cynthia MacGregor, Impact Publishers 2001

Divorce is Not the End of the World, Zoe Stern, Tricycle Press, 1997

Priscilla Twice, Judith Caseley, Greenwillow Books, 1995

A New Room for William, Sally Grindley, Candlewick Press, 2000

Mama and Daddy Bear's Divorce, Cornelia Spelman, Albert Whitman and Co. 1998

Its Not the End of the World, Judy Blume, Dell 1986.

INTERNET RESOURCES

Self-Representation (Pro se)

- Divorce or Legal Separation Forms: http://www.prosefamily.wicourts.gov
- Court Forms: http://www.wicourts.gov/forms1/index.htm
- State Bar of Wisconsin: http://www.wisbar.com
- Racine County Divorce Resource: http://www.DonaldLaFave.com
- Our Family Wizard: www.OurFamilyWizard.com