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CA family law

A LAYMAN'S GUIDE

FAMILY LAW OFFICES OF RONALD M. SUPANCIC

REVISED 2005

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I. THE ACTION

A. DID CALIFORNIA DO AWAY WITH DIVORCE?

Since enactment of the Family Law Act in 1970, people no longer get a divorce in the State of California. They obtain a Dissolution of Marriage. In other words, their marriage bonds are dissolved. The law has changed significantly. Many of the words now used in the court are different than those you have been accustomed to hearing in the past.

We will use the work "divorce" and "dissolution of marriage" interchangeably in this book, as the word "divorce" is the more familiar term understood by people.

B. SHOULD I LISTEN TO MY FRIENDS?

There is hardly a person over the age of eight who does not know someone who has been divorced. An ever increasing number of American children are now raised by parents who have been divorced, and each adult recognizes that he or she is not immune from divorce. Most people today believe that they are moderately well informed as to the legal mechanics of a divorce. We wish to caution you that your friends or acquaintances who have discussed their divorces with you have related their own personal experience which may bear absolutely no relationship to what is happening to you. The information that they have related to you will probably not apply to your particular set of circumstances.

Each individual has a very specialized set of facts that will determine to a great extent the outcome of his or her case. A lawyer's job is to present facts in a way that will secure the most favorable result. It is very important that you lay aside preconceived notions you may have about your case. You must understand that the advice that you have heard from well-meaning friends comes without those persons fully understanding why their cases turned out as they did. As they explain their circumstances to you and coach you on the direction they think you should go, they are probably unaware of legal issues involved in your case that distinguishes your case from theirs.

C. WHERE CAN I FIND OUT ABOUT FAMILY LAW?

California's Family Code is some eight hundred pages in length. Volumes of case law continue to be reported interpreting the terms and the intent of the California Legislature. And the number of cases continues to grow each year. Although you will have many well- meaning friends who will give you advice and want to help you make important decisions, you must find a lawyer you can trust and with whom you feel

comfortable, so that you can take their advice and allow them to do the work for you that only a lawyer can do. You must remember that the outcome of your case will determine for many years to come your financial position as well as the future relationship you will have with your current spouse and your children. The long term effects of your case compel you to take your case seriously, always striving to secure that which is in your best interests of those of your children.

It is important to allow your attorney to make decisions regarding the procedural aspects of your case. **California Code of Civil Procedure, Section 128.5**, specifically allows the trial court to order one party to pay the other party's expenses, including attorney's fees incurred as a result of tactics or actions not based on good faith which are frivolous or which cause unnecessary delay. Frivolous actions are defined in the Code as delaying tactics which include, but are not limited to, making or opposing motions without good cause.

Occasionally a client may ask an attorney to take steps which are not necessary, but which are simply to get even. An attorney will resist these efforts if he or she is ethical, knowledgeable and committed to his client's best interests. It is his or her duty to separate the emotional from the legal issues and help you with the latter. Lawyers are not competent to handle emotional issues. A referral to a mental health professional may well be one of the most important functions your attorney can perform.

Remember, when you choose a person to represent you, you are making a very important choice. It is important that the person you select to represent you be knowledgeable and experienced.

Don't be bashful about asking that person to tell you his or her qualifications. Be sure to get the agreement that you make with this person in writing. It is important to choose an attorney who will represent your interests, not your emotions.

Be sure all of your questions have been answered and you fully understand your rights and responsibilities before you make the decision to proceed. Finally, understand that your relationship with your attorney is a partnership. You cannot dump your case on your lawyer and walk away from it. There is certainly a temptation to do so, but that is not realistic. Expect to be an active partner in this new relationship and you will stand a much better chance of enjoying the best outcome possible. Consider this: It may be more important to have a good divorce than it was to have a good marriage because you may have to live longer with the divorce than you did with the marriage.

D. DO I HAVE ANY CHOICE IN THE MATTER?

You and I are heirs to the English system of adversarial dispute resolution. This approach is combative in nature and very destructive to the family structure. It is also the most costly process, often times inflicting major economic damage to the family. There is another way. Today there are a growing number of lawyers and mental health professionals urging families in crisis to consider another alternative. They believe that crisis offers a unique opportunity to breakthroughs in communication skills and increased parenting awareness. Alternative approaches consider the family in crisis as needing positive assistance in negotiating a transition that will benefit all members of the family

even if the reorganized family will see the departure of one or more members of the family. Alternative dispute resolution emphasizes the future of the family and puts the past in the past where it belongs. If you are interested in this enlightened approach to dispute resolution you are encouraged to inquire further to see if you qualify as a candidate.

II. GROUNDS

A. WHAT ARE THE GROUNDS FOR DISSOLUTION OF MARRIAGE?

Prior to January l, 1970, the divorce laws of California and most states established "grounds for divorce" which allowed the courts to terminate marriages on the basis of adultery, desertion, mental cruelty, physical cruelty, and incurable insanity. This usually resulted in a situation in which the parties became adversaries attempting to prove these various "grounds" for divorce. At times this involved private investigators, friends, and family members who were called to testify to establish these
"grounds." Under the present law only one of these "grounds" has been retained: that of incurable insanity.

It is no longer necessary to prove adultery, beatings, desertion, mental cruelty, or anything of that sort to dissolve a marriage. The only requirement is for one of the parties to take the stand and testify that there are irreconcilable differences leading to an irremedial breakdown of the marriage and that there is no hope of reconciliation. It doesn't matter what the other party says. Any other testimony is immaterial and will not be allowed by the court. This is "no-fault" divorce.

B. WHY WERE THE GROUNDS CHANGED?

In the late sixties there was a nationwide move to take the hostility out of the divorce proceedings. During the early sixties it had become increasingly more obvious to the legislators in each state that the number of divorces was drastically on the incline.
People were (and are) getting divorced at a heretofore unheard of rate. The need to change the law was obvious. Therefore, the legislators drafted a new set of laws, changed many of the words and even the very structure of divorce, in an attempt to encourage the parties to remain on speaking terms at the conclusion of the case. They believed every effort should be made to help the parties remain friends, especially if there were children. These changes were designed to help people to communicate more effectively.

The attempt at changing the law has enjoyed a somewhat limited success. The proceedings are not as hostile as they used to be. However, do not be misled into thinking that your dissolution of marriage will be accomplished without pain. This would be an error on your part. It is most advisable that you seek professional counseling to help you through this difficult time so that you can learn as much as possible from the experience. You should understand that there are two divorces taking place. There is an emotional divorce and there is a legal divorce. Your attorney is only capable of helping you with the latter. He will be happy, however, to make referrals to you for help with the former in the event you have no one to give you assistance in this regard.

Many lawyers refuse to take divorce cases for this very reason. They are themselves unable to draw a distinction between the emotional aspects of the case and the legal proceedings which require their undivided attention. If your attorney is able to draw that distinction, then he is giving you the best possible advice when he suggests that certain matters should be taken up with a trained mental health professional. He is vitally concerned with the legal issues of your case and will devote his time and energy to their resolution. You will be doing both him and yourself a great service if you take the emotional issues that necessarily arise from time to time to a person who is properly trained to help you in that area.

Experience has shown that it takes more time to process the emotional divorce than it does to process the legal divorce. All too often this bitter lesson is learned only after costly extended proceedings have taken place that were unnecessary. It is highly advisable to enlist the assistance of a competent mental health professional who will facilitate your processing of the emotional trauma. As you succeed in putting the divorce behind you, you will discover with surprise a new and enlightened view of the entire process. As the emotional issues are resolved, you will find the legal and financial issues generally fall into place. The economic advantages of a conflict-free divorce should be obvious. However, if you happen to be a parent, an even more significant consideration should be the elimination of emotional trauma inflicted on the children who are generally the innocent casualties left forgotten on the battleground of marital strife. You are encouraged to make every effort to avoid this sad and regrettable occurrence.

C. HOW CAN I REDUCE THE HOSTILITY?

The single most important decision you make may be to seek counseling. If there is no hope for the marriage, then thought should be given to the development of a post-marital relationship that will enable you to learn from the mistakes of the past. Your future lies ahead. If you have children, the quality of your relationship with your co-parent is critically important to their healthy development. Avoidance is a poor substitute for resolution. Once the pain of the present is past, you are well advised to resolve the issue of the future in a way that will result in a sense of pride and accomplishment rather than bitter disappointment. Especially where children are concerned, it is imperative to model rational adult behavior that they can observe.

This is more important than who has custody. In their premier studies of the impact of divorce on children, “Surviving the Break-up” authors Wallerstein & Kelly arrive at a surprising conclusion. The fact is that custody does not matter. What does matter is how each parent treats the other. Children do all right when they see their parents working together as cooperative co-parents. When the parents are in conflict, so are the children. The more intense the conflict, the more irreparable the damage is to the children. If you are experiencing conflict in your dissolution you should read their book "Surviving the Breakup.”

III. INITIATING THE ACTION

A. WHO STARTS IT ALL? (IS IT BETTER FOR ME TO GO FIRST?)

The dissolution of marriage action can be started by either party filing and serving the necessary pleadings. Under the law, the party who actually commences the action is not supposed to matter. However, there is a distinct advantage to being the one who commences the action. You have the advantage of selecting the forum, choosing (to a slight degree) the judicial officer, and proceeding with the initial presentation of the evidence. This advantage is not necessarily the same in all cases, but it is something that needs to be carefully considered, especially when restraining orders are involved. Very often the first steps taken in a case are the most crucial and can determine to a large degree the ultimate outcome of the case.

An important caveat worth noting pertains to your Social Security benefits if you have been unemployed during the marriage. Since Social Security benefits do not vest for the unemployed person until after ten years of marriage, this may be a major consideration. We know of cases where individuals filed final papers too soon and lost their rights to Social Security benefits. In this case your timing for filing divorce may be a crucial tactical consideration.

B. HOW IS IT STARTED?

The dissolution of marriage action is started when your lawyer files the Petition. If it is filed in Los Angeles County, there is a choice of either the Central District downtown (which has more judicial officers) or one of a variety of branch courts which have fewer judicial officers and longer waiting periods to get to trial. There may be a distinct advantage to filing in one venue rather than another. For example, with regard to spousal support, one may make an attempt to control the length of time payments are to be made by filing the matter in a congested branch court, which would extend the period of payment. Whether you file in Ventura County, Los Angeles County, or some other county the requirements are the same. You must be a resident of California for six months and a resident of the county in which you are filing for three months before you can start your case. The six month waiting period for entering Judgment of Dissolution does not begin to run until the Petition is served on the Respondent. This waiting period is not required to file a Petition for Legal Separation. If you fail to satisfy the residency requirement, you may wish to file a Legal Separation in order to proceed with the matter. Later, you may modify the Petition for Legal Separation and proceed with Dissolution of the Marriage. These are critical strategic factors you must discuss with your lawyer.

C. WHAT ABOUT CUSTODY?

California law was changed in 1980 directing the courts to consider joint custody in all cases. What that means is that the parents have an equal say in making legal, educational, and medical decisions regarding the children. This statutory innovation is reflective of the desire of the legislature to promote and encourage parents to cooperate and participate in an equal way in the raising of their children. It also means that while a marriage may be terminated, the parenting responsibility is regarded as significant and continuing before, after, and during the process.

Pre-separation counseling is extremely important. The arrangements worked out by the parties prior to their filing formal documents with the court are often determinative of the issue. The court will also be concerned with the degree of cooperation between the parties in this regard. The new law makes failure to allow visitation with the non-custodial parent grounds for changing custody. At the initial **OSC (Order to Show Cause)** to determine custody, the court is usually inclined to adopt the existing arrangement of the parties. The person trying to change the status quo then has the burden of going forward with persuasive evidence in support of the requested change. If you intend to ask for custody, the issues must be raised in the initial pleadings allow your lawyer to exercise pleading options for your benefits.

If you wait until the case is under way to raise the issue, it is likely that the judge will think that you are doing so just to intimidate the other person into settling with you on your terms. Therefore, the question of custody is an extremely important initial consideration.

Custody is a very powerful force in every dissolution of marriage case and affects many other issues as well. Thorough pre-planning can make the difference between success and failure in your custody matter. The cases in which the clients seek legal counseling well in advance of initiating any formal action are the ones which have the potential for the most successful outcome.

Here, strategy and planning are keys that unlock the door to a desired result. Usually this planning involves the use of a skilled mental health professional that can provide important insights into the psychological dynamics of the family, particularly with respect to the specific needs of the children.

D. DO STEP-PARENTS OR GRANDPARENTS HAVE ANY RIGHTS?

California law was amended in 1983 to allow for stepparents visitation subject to certain specific limitations. In such cases there is a requirement for mandatory mediation through the conciliation court. The natural parent must be notified, and any orders made by the court are subject to attack by the natural parent. Step-parent visitation orders may not interfere with the visitation rights of the natural parent. The following year the law was amended to allow for grandparent visitation upon a showing that such visitation is in the child's best interests. As with step-parent visitation, there are pre-hearing mediation requirements.

E. WHAT ABOUT RESTRAINING ORDERS?

Emergency restraining orders may be issued by the court to either party at any stage of the proceeding upon a showing that serious and immediate harm will occur to one of the parties if the restraining order is not made. Restraining orders are generally granted upon presentation to the court of a sufficient detailed factual statement supporting fully all the orders requested. Restraining orders should be requested only if you are sure that there is a genuine basis for them.

Restraining orders can be issued due to kidnapping and/or by the court to stop your spouse from:

(1) Coming to your home
(2) Calling you
(3) Harassing your children
(4) Running up bills
(5) Taking assets
(6) Spending money
(7) Depleting savings accounts
(8) Destroying property
(9) Threatening to harass members of your extended family
(10) Threatening to call your place of employment
(11) Interfering with your job or personal life
(12) Any other behavior that is detrimental to you.

However, to have a spouse ordered off the premises of the family residence prior to a formal hearing, there must be allegations of actual, recent, physical or mental abuse. Restraining orders can also be obtained to restrict banks and other financial institutions from releasing funds.

Ex parte orders are those orders entered before a hearing to immediately restrain the offending party from further offensive behavior and are only available in extraordinarily aggravated circumstances. The specific events must be alleged in particularity and supported by detailed affidavits of actual witnesses. Most restraining orders are entered after the initial OSC upon a proper presentation of evidence at a court hearing.

Restraining orders can be vacated (set aside) once they have been entered. This is done by filing a motion with the court to vacate the restraining order and then presenting the proper evidence at a hearing before the judge. The judge will listen to the evidence and then will make a determination as to whether the restraining order was wrongfully entered and therefore should be vacated. In most instances, this type of hearing does not need to take place, but it is an available option if you have suffered at the hands of an overly zealous spouse. This is a disadvantage to not being the Petitioner in the case.

F. MUST I FILE FOR DIVORCE TO GET A RESTRAINING ORDER?

It is no longer to necessary to file for a divorce to obtain restraining orders to prohibit acts of physical violence. As of July 1, 1980, the California Legislature enacted **The Domestic Violence Prevention Act**. This Act authorizes broad orders for the prevention of violence in both marital and non-marital situations. Under this Act, an individual can request a restraining order to be entered against another person without filing a Petition for Dissolution of Marriage or Legal Separation. However, in filing for domestic violence restraining orders no orders can be made with regard to support, the paying of bills, attorney's fees or other financial considerations. Easy to complete forms are available at the office of the County Clerk to facilitate these procedures without the need of an attorney. If you are only interested in arresting the offensive behavior of a friend or family member you may wish to consider handling this on your own.

In 1985 an important change in the law made it a felony for either parent to deliberately hide, conceal, transport or entice a minor child in any way intended to preclude access to that child by the other parent regardless of whether any court order exists. It is now a felony to engage in any willful act of parental kidnapping and can result in a prison sentence.

Whenever there is an immediate threat of physical violence, you must call 911 to notify the police. Remain available to file a report when the police arrive. The police have the ability to obtain immediate emergency protective orders. Keep these orders on your person at all times. Keep a copy of these orders in a safe place. It is better to have a backup copy of these orders, and not need them, then to need them and not have them.

Since July 1, 1991, all Petitions for Dissolution of Marriage carry automatic restraining orders to prevent improper disposition of property and premature termination of health insurance.

IV. THE ACTUAL CASE

A. HOW LONG WILL IT TAKE?

The California Family Code at **Section 2339** makes it mandatory to wait a minimum of six months from the date the Summons and Petition are served on the Respondent before the Judgment of Dissolution of Marriage is final. We emphasize that this is a minimum. Most cases take from six months to a year, and at least 25% of the cases take more than a year. What determines how long a case takes? By the time you have finished reading this book, you will see all of the variables that may be involved in a case. If any one of these variables has to be litigated in court, a delay could result. The amount of time it takes to prepare the case, the backup of the court docket (in many of the outlying courts, the court docket is backed up more than a year already), and the availability of witnesses and attorneys, will have an effect on the amount of time that it takes to complete the case. The process you choose is the single most important decision you will make.

The court files a **Notice of Intended Judgment** after the trial is over. This may be disputed by either party or result in further delays for the entry of Judgment. In some extreme cases, the parties continue to dispute the Judgment long after the trial has concluded. If either party refuses to cooperate then the matter must repeatedly go back before the judge for further determination. In these cases, it becomes quite evident how much of an effect the emotional aspects of the case can have on the legal issues. This is why your attorney is not satisfied that the matter is over until he sees an executed Judgment on file with the court, signed by the Judge that heard the matter.

This is one of the reasons for considering the wisdom of a **Bifurcated Judgment**. Either party, upon making a proper Motion, may request the court to bifurcate (separate) the marital issue from all other issues for a separate hearing. Due to the delays in obtaining trial dates, these motions are usually granted, and are usually subject to certain standard conditions relating to tax consequences and other legal considerations such as health care liability, probate rights, and possible loss of other marital rights. This proceeding allows the parties to obtain a **Judgment of Dissolution of Marriage** while they are waiting for a trial date on reserved issues.

You should not rush to get your case completed. You will be living with results of this action for the rest of your life. Do not accept a settlement that you do not like, just to conclude your case. Lawyers often are retained to correct problems caused by people who rushed into settlements and later found that they could not live with the orders they accepted. The people then ask their lawyer to get the final orders modified. (See Section VIII for Modification of Permanent Orders). Every lawyer experienced in the field of family law practice has had the unhappy task of advising someone that the damage is beyond repair and nothing can be done to solve the dilemma in which they find themselves. This is why we cannot overemphasize the need for you to be willing to take as much time as is necessary to have your case properly completed, even if it means facing a contested trial on all of the issues.

Your case will end when the **Judgment of Dissolution** is entered and the permanent orders are made concerning your marriage, children, finances, and property. If the case has been settled by a **Marital Settlement Agreement** and is uncontested, the case may be completed in a matter of weeks at a default hearing which will take less than ten minutes. (See VI for Settlement.) However, if the entire case is not settled, then it will be necessary to go to trial on the unresolved issues in your case and this could take anywhere from a few hours to several weeks, depending upon the complexity of your case and the number of issues that are in dispute. Remember, the marriage can be dissolved without having the property settlement issues resolved, as discussed above. If this is done, then a Bifurcated Judgment of Dissolution of Marriage is entered and the trial on all other issues is deferred to a later date.

If the case appears to be one which will require a trial, it may be necessary to engage in "discovery." This means that your lawyer can take the Deposition of the other party or require the other party to answer **Interrogatories**, and/or **Requests for Admissions**, and **Notice to Produce Documents** that your lawyer feels will be necessary in presenting your case to the court. If he has some basis he can also request a medical, vocational, and/or psychiatric evaluation.

In other cases, it will be advisable to retain the services of a forensic accountant who can accurately calculate the tax consequences of various alternative scenarios for division of assets. The accountant may also be necessary to calculate the tax consequences of various types of support plans to show what will be left over for living expenses after taxes are paid.

In some cases expert appraisals and actuarial evaluations will need to be performed. With the introduction of **"no-fault divorce"** the court lost its discretion to make an unequal division. This means the battle has shifted from "how much each gets" to "what is there to get, and how much is it worth. “This is a costly process. These numerous procedural possibilities make it difficult to answer the question "How long will it take?" However, it is true that to the extent the parties choose to cooperate and make information mutually available to one another they will reduce the time to prepare and complete their matter.

Voluntary mutual exchange of information is no longer optional. As of January l, 1993, the law requires each party to a dissolution to file within sixty (60) days of the commencement of the proceeding a Declaration of Disclosure under penalty of perjury. It does not have to include values or characterization initially, but there is a further requirement for a Final Declaration prior to trial that must be complete in all respects. This will include income and expense information as well as asset and liability schedules.

B. HOW WILL I LIVE WHILE IT IS GOING ON?

California statutes allow the court to make temporary orders concerning needed restraints on conduct, custody, visitation, child support, spousal support, and payment of the family bills while the action is pending. The amount of temporary child support to be awarded is based on several criteria, including the ability of the non-custodial parent to

pay child support to the custodial parent, the number of children and the amount of time they are with each parent, and the needs of the custodial parent to support the minor children. A new statewide child support guideline took effect on July 1, 1992 which sets forth the method for computing child support in contested proceedings. The formula is lengthy and difficult requiring many calculations. For that reason, many Courts use computer software programs which incorporate all of the requirements set forth in **Family Code Section 4055**. Your attorney should be able to show you these calculations and give you some idea of what kind of support to expect. But remember, the calculations will only be as good as the information you provide to your attorney.

A significant aspect of this new legislation is that enactment alone constitutes a sufficient change of circumstances to permit judicial review of all child support orders now existing. This means that it is unnecessary to prove any change in circumstance in order to reconsider the adequacy of pre-1992 child support orders in the context of the new state-wide guidelines.

With regard to spousal support, the court considers both the needs of the spouse requesting support and the ability of the spouse asked to pay spousal support while continuing to meet his or her own necessary expenses. The court will consider any assistance either party may receive from any third party. The court may award more for temporary spousal support than it will award for permanent spousal support. There is no fixed rule or formula for the length of payments or the amounts thereof. However, the statute indicates that it is California policy for spouses to become financially independent within a reasonable period of time. A reasonable period of time is defined as half the length of the marriage, and long marriages usually mean long support awards. And courts differ in the approach that they take in making these important decisions. That is why it is so important that you be properly represented in this area to obtain the best results.

There is often a relationship between the award of temporary spousal support and the award of permanent order. If there is no temporary spousal support ordered, it is possible that permanent spousal support will not be ordered. The converse of this is also true. If temporary spousal support is ordered, it is more likely that spousal support will be continued for some time in the permanent orders. Failure to prepare your case thoroughly and present it properly at the initial OSC can result in adverse consequences that may prove impossible to correct in subsequent proceedings. It is very important to furnish your lawyer with all relevant information and assist him in every way possible to assure the best possible result at this critical stage of your divorce.

C. WHAT SHOULD I TELL MY LAWYER?

You should tell your lawyer everything. Anything that you hold back from your lawyer will hurt your case. Under the new disclosure rules, failure to disclose can result in the imposition of sanctions and fees. Your lawyer must have all information available to him in order to determine what can be used on your behalf. Not all the information you make available to him will be used, but it is important for him to know all the facts so that he can decide the most effective strategy to be advanced on your behalf.

However, it is important for you to know that he is an Officer of the Court. He has an obligation and responsibility as an Officer of the Court to present cases honestly and in good faith. It is improper to assert frivolous or fraudulent claims. It is improper to bring an action only for the purpose of putting pressure on someone. No action should be started unless there is every intention to pursue it to completion. It is illegal to threaten someone with an action when you know that there is no valid cause of action and/or you have no intention of following through. It is also illegal to threaten to reveal information about your spouse which would be protected by the Husband/Wife privilege in order to obtain an agreement on your terms. It is important for you to know that your attorney is personally responsible to the court for the truth of the allegations made on your behalf.

If you tell your lawyer of a fraudulent or criminal act for which you are responsible, he is bound to keep your confidence. However, if you intend to commit a future crime or a fraud upon the court, such as filing a false affidavit or declaration, then he must advise you not to do so. If you persist in your determination to do so despite his advice, then he is bound to withdraw from the case. He is barred (at the risk of losing his license to practice law) from participating in any fraud that you may wish to commit upon the court or the other party. He is not obligated to tell the court why he is withdrawing from the case, but when a lawyer withdraws from a case without giving his reasons, there may well be a suspicion raised in the mind of the court as to the true circumstances.

A frequent example of this problem that arises in family law matters involve clients who are secreting funds which they have accumulated in the course of the marriage without the knowledge of their spouse. The financial disclosure declaration which must be filed with the court, requires each party to set forth all of the assets and liabilities known to them, in their possession or under their control. If you file your Income and Expense Declaration and deliberately omit that information, you are committing fraud upon the court. You can be prosecuted for perjury and your attorney can be disbarred if he knowingly cooperates in the commission of the fraud.

D. WHAT VISITATION RIGHTS MAY I EXPECT?

Visitation rights will be awarded to the non-custodial parent, unless there is overwhelming evidence that the non-custodial parent is totally unfit to have visitation. Even when the parties to the action have engaged in violent acts toward each other, visitation will most likely be awarded on the assumption that the violence between the parties was caused by the stress of living together in the same household. It is believed by the court that when the parties separate, the cause of violence will have abated and the children should have the right to visit the non-custodial parent. Under proper and very limited circumstances, restraining orders can be obtained to limit or stop visitation on a temporary basis. However, by the time the case is ready for trial, it is most likely that some visitation will be awarded.

In this regard, it is important to note that the unwillingness of a custodial parent to participate in a cooperative parenting plan may be grounds for changing custody to the more cooperative parent. The point to keep in mind is the paramount right of the minor

child to enjoy a continuing relationship with both parents. The simple fact that one parent may be involved with a third party will not be considered by the court as a reason for limiting in any way either parent's relationship with the children. In fact, the parent most cooperative in allowing access to the other is generally preferred as the primary custodian.

E. SHOULD I KEEP A VISITATION JOURNAL?

It is very important to keep an accurate record of visitation. Even before you go to court or see a lawyer, the pattern you establish with respect to visitation will have a substantial effect on the type of order the court will make in a contested matter.

There are 168 hours in each week. You should know how many hours each child spends with each parent and regularly compute the fractional time sharing of the children. This will have a direct impact upon the support levels ordered by the court. If you fail to keep an accurate, well documented comprehensive record, it will be difficult for you to present your case and prove your claim.

F. WHAT SUPPORT MAY I EXPECT?

Understanding that there is no absolute formula for determination of support, here are some general guidelines as to what you might expect. If the spouse that is seeking temporary spousal support is unemployed or employed part-time, it is likely that the spouse will obtain spousal support in an amount sufficient to meet his or her monthly bills. The court will be concerned there be sufficient funds left for the payer spouse to meet his or her monthly bills. The court tends toward the view that the party who has physical custody of any minor children usually requires more support than the one who does not in those cases where children are involved. Balancing the needs of the respective parties is more of an art than a science and the same set of facts can be decided differently by as many individuals as may have opportunity to hear the facts.

California Law insists that a **Family Law Facilitator** is made available to the public to help with completing forms and filing papers. The Los Angeles County Superior Court, Family Law Department, offers a free voluntary mediation service supported by the local bar which affords parties and counsel an advance opportunity to confidentially preview their respective positions in the reasonable expectation that this will produce more settlements. And it does. The program's success is a testimony to the character of those who elect to avail themselves of this option. Even where total settlement is not achieved, this preliminary process often results in a reduction of the original time estimate of the litigants, economizing on available judicial hearing time, and resulting in substantial savings of attorneys' fees to the parties.

If a hearing is necessary, the court will attempt to make an order to meet the needs that are presented. The court may order one party to pay all of the household bills of the other party, but not specifically order spousal support. Likewise, the court may enter an

amount for spousal support with an eye toward giving a tax advantage to one of the parties. The court may also grant spousal support for a limited period of time to encourage the unemployed spouse to get sufficient training to obtain gainful employment. There are innumerable combinations and possibilities, and every consideration should be given to all of the possibilities of your case.

The division of property, amount of debt, previous standard of living, length of marriage, individual assets of each party, inheritances, gifts from relatives, future potential income, present income, medical disabilities, and many other factors, all influence how the court will finally determine the judicial mix of spousal and child support and temporary use of physical property.

It is essential that you understand that the term "child support" refers to payments that will be made until the child is 18 years of age. Just a $50.00 per month difference for one child will amount to over $10,000.00 in child support during an 18 year period. It is important to understand the tremendous effect seemingly minor aspects of the case will have on your economic future.

G. SHOULD I STOP WORKING?

If you are presently working you should continue to do so. Any changes in your employment for reasons related to your divorce will be regarded with suspicion by the court. If you are unemployed, you should seek employment. The day of the full-time homemaker is no longer regarded as important as it has been in the past. Today you are expected to assist the family financially. If you refuse to work, do not expect the court to give you support. If you are the one who has supported the family in the past and you refuse to work or deliberately reduce your income, expect the court to disregard your reduced income and look only at your ability to earn income in the past.

If support is an issue, then you will be required to provide your spouse with all records in your possession reasonably related to cash flow analysis, income and property rights. Refusal to provide records on a voluntary basis can result in the court ordering you to pay your spouse's attorney fees. Deliberate withholding or hiding records can result in sanctions and worse. It is costly and counter-productive to frustrate the discovery process.

H. HOW WILL THE PROPERTY BE DIVIDED?

There are three preliminary steps that precede actual property division. They are:

(1) Identification
(2) Characterization, and
(3) Valuation.

It is unusual to find both partners to a marriage equally informed and knowledgeable as to all the assets acquired by the parties during the course of the marriage. Usually, some considerable effort must be expended in developing a complete inventory of all marital assets.

Problems of characterization most frequently arise where a party has commingled separate property with community property and never made a record of an agreement to retain a separate interest in part or all of the commingled property. Recent legislation creates a presumption with regard to property acquired in joint tenancy during the marriage. If your case is a complicated one involving substantial amounts of commingled separate property, or values that have appreciated during marriage, then you will appreciate the desirability of a premarital. Only an expert very familiar with the most recent legislation and appellate decisions can advise you accurately. Be wary of well-intentioned advice of friends who may have had cases decided before the laws were changed. That is one important reason for seeking the advice of a **Certified Family Law Specialist**.

Only the community property of the parties is subject to equal division in the courts of California. The court treats all the property of the parties as though it were community property. The party who alleges any property to be separate must prove the separate character of such property. **California Family Code Sections 770, 771, 772** define separate property as any property acquired by either party:

(1) Prior to marriage,
(2) After date of separation, or
(3) During the marriage by individual gift or bequest.

Property wholly generated by separate property is also treated as separate property. All property acquired by the efforts of either party during the marriage is presumed to be community property. Also, the enhancement of separate property due to the efforts of a party to the marriage during the marriage can create a divisible community interest.

California Family Code Section 2500 requires an equal division of all community property. Once it has been characterized, it must be valued by someone competent to testify in a court of law. Your attorney will help you locate the experts needed to provide competent appraisals of home, businesses, investment interests, pensions/retirement plans, and other assets that might be part of the total matrimonial inventory. Separate property is not subject to division. Division of property need not be in kind and there are numerous creative alternatives available to the experienced practitioner that offer advantages to the individual that are usually overlooked by the trial judge who is unable to take the time necessary to develop a sophisticated plan when faced with the exigencies of an overburdened trial calendar. It is always advisable to investigate methods of dispute resolution outside of court. Some of these methods include Arbitration, Mediation, and Collaboration. These methods of Alternative Dispute Resolution will give you much more decision-making authority. They also offer a higher degree of privacy and creativity.

I. SHOULD I MOVE OUT?

If it is true that possession is nine tenths of the law, then in family law matters it is one hundred percent. Rarely will the courts disturb the initial distribution affected by the parties, which is unfortunate. This tendency does reward avarice and usually works to the disadvantage of the more tolerant, less aggressive partner. If you have items with high emotional value it is better strategy to take a custodial posture at the outset. In either event, it is always important to document and make lists. Remember, the more work you do the less work is left for the attorney. The better prepared you are, the more effective your lawyer will be on your behalf. Your participation, cooperation and assistance are crucial to a final determination that takes into account all of the facts assembled and presented on your behalf. The stronger the presentation, the more likely you will receive a satisfactory final result. In family law, there is rarely fairness. There are simply more or less satisfying outcomes that are directly proportional to the amount of effort you put into your case.

If there is some liquidity in the marital estate, it is important to put yourself in a posture to prepare and present your case properly. Dividing assets before consulting an attorney may result in strategic losses that could prove irreparable. Again, it is important to emphasize the advantage of seeking legal counsel as soon as possible. Don't wait until it's too late to see an attorney. The opportunity to make important strategic decisions pass quickly and are lost forever.

J. CAN I DELAY THE PROCEEDINGS?

California also has a special provision which permits sanctions to be imposed against either party, an attorney, or both. **The Code of Civil Procedure Section 128.5** states:

(a) Every trial court shall have the power to order a party or the party ' s attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by another party as a result of tactics or actions not based on good faith which are frivolous or which cause unnecessary delay. Frivolous actions or delaying tactics include, but are not limited to, making or opposing motion without good faith.

(b) Expenses pursuant to this section shall not be imposed except on notice contained in a party ' s moving or responding papers; or the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the conduct or circumstances justifying the order.

This section makes it clear that if parties engage in dilatory or deliberate delay tactics, they will be accountable to the court for penalties and possibly for the expenses and fees incurred.

This is why your attorney is not able to do whatever you want him to do. You may be making a request based on emotional needs which bear little or no relationship to the legal issues of the case. He can be held personally responsible by the court if he engages in activities which the court does not deem justified by the circumstances. Your attorney must develop strategy on a logical basis, and must keep the case focused on the legal and financial issues. If he is regarded by the court as motivated in his actions by spite, revenge or an attempt to harass the opposition, you can be sure the response of the court will be swift and predictable.

V. FEES AND COSTS

A. HOW MUCH ARE THE COURT FEES?

The charge for filing dissolution of marriage or a legal separation case, plus the fee for service of the papers on the other party is under $200.00. If transcripts of court proceedings are made necessary by the circumstances of your case, an individual quote can be obtained in advance by calling the court reporter that was present at your hearing. You must advance fees to have a court reporter record your hearing. The fees you pay do not include the cost of a transcript if that is requested at a later time. Court costs in family law matters are not usually substantial.

It is the cost of attorneys, accountants and mental health professionals which can be very substantial.

B. HOW MUCH DO ATTORNEYS CHARGE?

We know that people are fearful of beginning a case without knowing in advance how much it will cost. Unfortunately there is no way to accurately predict the amount of time it will take for any given procedure, either in court or out of court. Not is it possible to predict precisely what procedures will be required in an individual case. Your lawyer must creatively develop strategy designed to advance your interests in an adversarial setting. He is constantly challenged and opposed by the attorney representing your spouse, the judicial council that keep changing the court forms and rules, and the various judicial officers that all exercise their own individual prerogatives and impose their peculiar idiosyncrasies on the process.

Abraham Lincoln said: "All a lawyer has to sell is his time and his advice." Since advice is difficult to measure by the pound, most lawyers charge by the hour. In family law matters, expertise varies widely as do the hourly rates which range from $200.00 to $650.00. Expect to pay more for a specialist than you would for a general practitioner. Not all specialists are certified. In 1978 the State Bar of California initiated a program intended to provide some safety in this regard. To become certified, a lawyer must have considerable experience handling family law matters in California. He must prove that he has participated in twenty contested hearings and has negotiated and drafted thirty family law judgments or negotiated Marital Settlement Agreements. There is also a requirement that he regularly attend continuing education courses for a minimum of sixty-hours each five (5) years to demonstrate that he is keeping current with the new cases and statutes affecting family law. While this is still no guarantee of skill and competence, it at least provides some measure of assurance of some minimal levels of experience not otherwise available to the public.

Clients are sometimes hesitant to call their attorneys because of their fear of incurring fees. The client's hesitation to "stay in touch" with the attorney for this reason

will have a very detrimental effect on the attorney's ability to properly represent the client. The result is discord between the client and his attorney. You must stay in constant contact with your attorney and his staff to keep your attorney fully advised of everything that affects your case. One way to reduce unnecessary costs and to keep your attorney informed is by keeping a journal of what is going on in your case, sending copies of your journal to your attorney regularly, and leaving occasional messages with his secretary so that he can call you if in his opinion it is necessary. It is important that he knows everything about your case. It is not important that you tell him everything. He can read six times faster than you can speak, and he will definitely call you if your correspondence or messages raise an issue of importance. Do not expect him to answer every phone call or phone message or written correspondence. If he is operating efficiently he will use office staff to handle much of the communication. If he is ethical, competent and experienced, he will undoubtedly be representing other clients besides you and will often be in court when you leave messages. When he is in court representing you on your case, you will want his undivided attention. Understand then, that when he is in court representing someone else, he will not be thinking about your case. It should be obvious that we are referring to routine matters, rather than emergencies. Call your attorney anytime you have an emergency. Your attorney will be available for those times that are important. If your attorney is not available to you in a time of crisis, you probably have the wrong attorney. If you have a true emergency, call 911.

If you are represented by a specialist, there will be times when he will not be able to avoid multiple appearances. You may find yourself in court with your attorney answering the calendar call on a variety of matters. Most lawyers dislike this situation as it can be terribly stressful. The good news is that you will probably be sharing the expense of the portal-to-portal charges with your fellow clients who are on the same calendar call. The disadvantage is that your attorney will not be able to spend every minute of his time with you. He will probably attempt to continue, stipulate or resolve quickly the simple matters saving the more complex and difficult cases for last. For example, if your attorney appears with you on a post-dissolution custody modification and request for child support termination in which there are financial and psychological issues, he will probably take the default hearing and mandatory settlement conference scheduled for the same morning first. The default hearing will probably take fifteen minutes, the conference, an hour, leaving the balance of the day to attend to your more complex matters.

Here are some important points to remember:

1. Don't be afraid to interview your attorney as to experience, competence, expertise and ability. If he is offended by your questions that should be your first clue to his competence.

2. Do keep records, diaries, journals, ledgers and documents of importance for your attorney to review. Make sure your attorney has copies of everything you have. Keep all the copies of court papers your attorney sends you.

3. Correspond regularly and keep in touch with your attorney's secretary. Be nice to her and let her know how much you appreciate the personal attention she gives to you. She always knows where your attorney is and how to get urgent information to him on an expedited basis.

4. Always bring your complete file, correspondence, evidence, and everything else relative to your case whenever you go to court, visit your attorney's office, or attend any important meeting with your attorney.

5. Do not expect to talk to your attorney every time you call. When you call, leave detailed messages so that he can call you back with all the information you need.

6. Don't expect him to comment on every bit of information that you may bring to his attention. Understand that it is his job to determine what information is relevant and material to your case. For that reason he does need all the information you are able to provide. He will sift through all available evidence and make strategic decisions with regard to relevancy and admissibility in subsequent court proceedings.

7. Do work with his secretary, legal assistant, and/or paralegal. That is why he hired them. They are trained to sift through your messages and correspondence to bring to his attention those matters that affect the proper presentation of your case.

8. If you have a question about your case or the way it is being handled, ask it. The only "dumb" question is the one you don't ask. Remember it is your case. No one knows the facts of your case better than you. Your attorney knows law and procedure. He tries to learn the facts of your case and should do a relatively good job of presenting them to the court, but he is not perfect. Few lawyers have photographic memories.

9. Expect to be an active partner in your case and make yourself available at all times, which leads to the last important point.

10. Always keep your attorney advised of your whereabouts so that he can contact you day or night, anytime any emergency arises.

C. WILL THE COURT ORDER ATTORNEY'S FEES TO BE PAID?

The court is bound by **California Family Code Section 270** with regard to attorney's fees. It requires that before attorneys fees can be awarded, there must be proof that the party has the reasonable ability to pay fees. Briefly, the legislature has said that attorney's fees may be awarded to either party in such amounts as may be reasonable or necessary for the costs of maintaining or defending the proceeding. The case law has indicated that the court may award attorney's fees to a party with a lesser ability to hire an attorney so that the party with lesser ability can be on equal footing with the other party. This means that if one spouse has superior financial resources, the court may order that

spouse to pay some attorney's fees to equalize the ability of the other spouse to obtain equally competent legal counsel. As a practical matter, this generally means the supported spouse will receive some contributory attorney's fees. That is not necessarily the case where there are substantial assets and each party is awarded sufficient assets to bear their own expenses.

D. WHAT ABOUT COURT ORDERED INVESTIGATION FEES?

Where child custody is contested, the court may order that an investigation be performed by the court appointed **Child Custody Investigator**. There is generally a charge for this investigation, and the court will assess the cost of this investigation the same as it assesses attorney's fees, spousal support, and other costs. It is also possible to have a psychological or psychiatric evaluation performed by a member of the Superior court panel or some other private mental health professional. This is some times deemed necessary where some doubt exists as to which parent is best suited to serve as a primary parent. In that case, the party requesting the evaluation will generally be required to advance the cost. These fees are often in the area of $4,500.00 or more. Whether the costs should be borne equally by the parties is usually reserved for final determination at the time of the trial. The custody investigation and psychological evaluation is an extremely important aspect of your case. You should meet with your lawyer well in advance of filing your suit in all cases involving custody to discuss the basic strategy to be used. It is always a good idea to meet with an experienced Divorce Coach to discuss vocabulary, affect, presentation, and techniques of parenting. Many advantages occur when thought is given to the approach to be taken prior to preparation and filing of legal documents.

E. WHAT WILL THE COSTS BE?

There are many different types of costs associated with the handling of a family law case. The more frequent types of costs include costs of service of process of pleadings on parties and, subpoenas of witnesses, banks, employers, and other institutions to obtain necessary documents, records and files in the preparation of evidence for time of trial. In taking the depositions of parties and important witnesses, there are stenographic reporter costs. Additionally, there may be substantial copy costs related to financial documents used as attachments which will be needed at the time of trial. There are also costs associated with the appearances of some witnesses who must be compensated for their time. **California Code of Civil Procedure Section 1986.5** imposes the further requirement that these costs be paid in advance. It is impossible to say with any certainty what the costs will be in a particular case. They can range a few hundred dollars in a small uncontested case to thousands of dollars in a very substantial case. The more contested a case is, the more the costs will be. Where parties agree to cooperate, the costs can be minimal.

VI. SETTLEMENT

A. WILL MY CASE SETTLE?

Our experience is that approximately 90% of all dissolution of marriage cases settles without the necessity of a contested trial. Most settlements are made possible by the aggressive preparation of your case right from the start. You need to understand that for your case to settle, all issues of your case must be worked out. It is not always advisable to settle some of the property issues and leave others for the court to decide in a contested trial. Each case must be considered on its own merits. There are some situations in which it is more likely that you will be dissatisfied with the ruling if you piece meal the settlement of your case.

You must take caution not to allow your desire to settle to interfere with good judgment. Your attorney wants to settle your case as much as you do, but he realizes how often settlements fail. Unfortunately, some attorneys hold out the "carrot" of a settlement when their real objective is to lull the opposing counsel into a false sense of security which results in the failure to go forward with discovery in a timely fashion. It is a good idea to regularly discuss the status of the discovery proceedings with the attorney handling your case to be properly prepared at the time of trial. Some judges consider lack of preparation inexcusable and may refuse to grant continuances as punishment to the side that is unprepared even though it may produce an inequitable result.

B. WHAT ARE THE ISSUES THAT NEED TO BE RESOLVED?

Generally, the most difficult issue on which to reach an agreement with the other spouse is the payment of money: child support, spousal support, expert costs, and attorney's fees. Although this is typically the most difficult area to resolve, there are many other areas that must be resolved as well. Although the specific of each are too numerous to list, the general areas are: custody, visitation, child and spousal support, restraints, property division, disposition of the family residence, and attorney's fees. In addition, there are considerations of tax consequences, Social Security benefits, insurance provisions, security for support, unpaid obligations, characterization of separate property, reimbursement for after-separation payments on community debts, deferred benefits such as accrued vacation, pension and retirement, and inheritances, to name just a few.

The above is not meant to be inclusive of every possible area of controversy, but is offered as a general guideline of the points that need to be worked out. Each one of these categories has behind it a very extensive, specific legal basis. There are volumes of case law which give general guidelines as to how each of these categories will be resolved with regard to the specific set of facts contained in your case.

C. WHAT IF A SETTLEMENT CANNOT BE REACHED?

If you are unable to resolve the issues satisfactorily, and your spouse is unwilling to mediate or arbitrate, the only other alternative is to go to court and present the case to the judge, letting him make the decision as to how all of the issues will be resolved. This

is what we refer to as a contested proceeding, which can be either an OSC or a trial. It is possible, and in some cases necessary, to have both. Once your lawyer becomes acquainted with you and your case, he can give you general guidelines for your particular situation. The determining factor for settlement will be the willingness of you and your spouse to reach an agreement regarding the disputed issues.

You must be ready and willing to go through a trial; however, should it be necessary to protect your future rights. Please keep in mind that the agreement that is reached (or the order entered by the court) will be the governing terms which will control the way you live with regard to your ex- spouse and children for many years to come.

The time may come when you may wish to give up and let your spouse have anything that he or she wants, in order to bring the unpleasant situation to an end. If you yield to this temptation, you may later regret that you did not do all that you could to obtain a fair result for yourself. When you think of the length of time with which you will have to live with the results of your case, you will see the great importance of being confident that you did all you could to obtain the best possible result. This includes being willing to go through a contested trial if it is necessary.

D. WHAT IF WE CAN'T AGREE ABOUT THE DIVISION OF PROPERTY?

The division of property is one of the most contested areas of dissolution of marriage. All of the assets that the two of you have acquired since you were married will need to be divided between the two of you. Anytime that you take a whole pie and divide it into two parts, you never end up with as much as you had to start with. I once knew a bench officer in a Los Angeles County Branch court that routinely began his call of the calendar with this statement:

"Ladies and Gentlemen, you have come here this morning to tell this court what you want this court to give you. I am sorry to tell you that this court has nothing to give you. You will leave here with only a part of what you came with. Nothing more. Usually less. That is all there is. I am sorry."

In that simple statement, he made the point very clear. And he expressed the point of view of most family law judges. Understand that after a court decision has taken place, you will be unhappy. Expect to be unhappy. There are no winners in divorce. What sometimes makes it even more painful is to have items that mean a lot to you go to the other party. It is foolish when a settlement is blocked by one party or the other placing an inappropriate emphasis on a minor item of property that really has more emotional than financial value. While emotional values may be very important to you, they mean nothing to the court. Some parties irrationally spend hundreds of dollars in attorney's fees arguing over items that have little or no financial value. Again, this is why you need to be properly represented in the division of property by an objective advisor who is able to distinguish between financial and emotional issues. The court is only interested in the former. It has no interest in the latter.

E. HOW MUCH OF A SAY WILL I HAVE IN HOW THE PROPERTY GETS DIVIDED?

If the case settles, your input will be significant as you will have actively participated in the negotiations and/or mediation effort that produced the settlement. However, if your case goes to trial and is presented to the court it is difficult to say what the result will be. You do not get fairness. You get what the judge gives you. And it is rarely everything you want. The house may get sold. You may have to give your spouse one-half the appraised value of your pension even though you may not get it for many years to come. The list of household contents may be cut into separate pieces, placed in a hat, and drawn out by you and your spouse on an alternating basis at random. The variety of arbitrary methods used by the courts are too numerous to list.

They are usually selected by the court in an honest effort to "be fair."

In such situations justice is truly blind. The courts are prevented from applying traditional rules of equity and are increasingly limited in their discretion by the legislature. Present day rules are based on the concept of "no-fault" and the approach of the court is necessarily arithmetic. Emotional considerations are eliminated. Legislative research suggests unfairness in the system that has gone heretofore unnoticed but it is unlikely much change will occur to correct the problem in the immediate future. The new changes added every year by the Legislature only seem to complicate matters further and add to the costs of the people unfortunate enough to be going through the process. That is why more and more people are looking for methods of avoiding the traditional judicial process. Fortunately, today there are some creative alternatives to traditional marital dispute resolution.

F. THE SIX MODELS OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

Most people come to a lawyer and want to know: Who gets the house? Who gets the car? Who gets the kids? How does the property get divided? They ask questions that are all related to substance. It is hard for them to even think about what kind of a process they should choose. My experience has shown me that over many years of handling family law matters that is the single most important decision a client makes. What kind of a process are they going to use to complete the divorce? There are six different choices available. Most people don't even know there is more than one.

The first choice is called **The Kitchen Table.** Some people are able to sit down at a kitchen table with a yellow pad and a pen, and write down who gets the kids, who gets the cars, who gets the house, and how are resources allocated and apportioned. They do it themselves at the kitchen table, and take their notes to a legal document assistant who then writes everything up.

Unfortunately, not everyone is eligible for resolving their own matters at the kitchen table. And, so, there is a second process called Mediation. **Mediation** is facilitated negotiation. A neutral third party helps a couple through the process, answering questions, giving guidance, structure, and support. The mediator must be neutral, and cannot represent either party. The mediator cannot give legal advice. When parties go to a lawyer, after they've completed mediation, very often the lawyer raises a

lot of issues that were never thought about or considered in the mediation process. And sometimes those agreements go south because of thoughts, ideas, and suggestions that were omitted in the mediation process. Thus, a third alternative is arisen called Collaborative Law.

In **Collaborative Law**, the parties are both represented by attorneys who may not go to court, may not threaten to go to court, and are never allowed to go to court. **The Evidence Code** protects all discussions, and the Collaborative Lawyers are excluded from contested, formal proceedings. Collaborative Divorce is a more amicable, client friendly, child focused process in which the parties retain the right to litigate. They always have the right to go to court if they choose, but they hire attorneys who sign a Stipulated Disqualification, which limits their representation to the collaborative process.

Collaborative Lawyers can use mental health professionals, financial specialists, appraisers, and anyone else they deem necessary and essential to assisting and supporting the process. However, in Collaborative Law the parties always retain the right to litigate, and can always opt out and litigate if they find the collaborative process unsatisfactory.

The next three choices cause the individual to step over the line of self-determination. The first of these is the default position for divorce in California. It is known as **Negotiation in the Shadow of Litigation**. Parties hire traditional Family Law Litigation Attorneys who file their Order to Show Cause Hearings, and serve their Depositions and Interrogatories. The matter drags on for two or three years. Huge sums of money are squandered, and eventually the parties run out of money and have to settle. This is what passes for divorce in California today.

The fifth model is a hybrid. Approximately 20 years ago, arbitration was replaced by **Rent-A-Judge** under the California system. A supervising judge can appoint a retired bench officer to sit as a judge pro-tem and hear cases privately in offices, libraries, and conference rooms. There are literally hundreds of Private Divorces taking place throughout the state of California at the present time. It is still litigation, but it is done so on a private basis, in the black billing, and delays from Court are eliminated, saving substantial sums of money to the contestants.

The last choice is that in which the parties **litigate** on every occasion, on every issues, at every opportunity, and spend tens of thousands of dollars, upwards to hundreds of thousands of dollars in many cases. These divorces are so expensive that very few people can afford to litigate entire cases. Only the wealthiest can afford to litigate. It is therefore very important for parties to ask themselves these questions: What kind of a process do I want to choose? How much money do I want to spend? What is my budget for divorce? What kind of a behavior am I willing to manifest to support my decision in this important regard?

Apart from the financial considerations, there are emotional consequences of litigation that should also be considered. The best mental health professionals in the field agree that litigation is very destructive to parenting relationships, and minor children. I've heard some mental health professionals go so far as to say that the worst thing parents can do to damage their children is to litigate their divorce.

VII. ALTERNATIVES TO DIVORCE

A. WHAT IS A LEGAL SEPARATION?

There is a great deal of confusion over the meaning of legal separation. This confusion stems from the old law and its meaning. It is very simple to understand a legal separation under today's statutes. To sum it up, legal separation means that the parties will go through all of the same procedures as if they were going to get dissolution of marriage, except that the court will enter a Judgment of Legal Separation rather than a Judgment of Dissolution of Marriage. Thus the procedure is identical except that after the case is over, neither party is free to remarry. After a Judgment of Legal Separation, either party may petition the court in a separate additional hearing to have the dissolution of marriage entered. The court will grant this request. Until a Judgment of Dissolution has been entered, both parties may be exposed to continued liability for the action of the other. This can create a variety of difficulties, including problems relating to future employment. For this reason, most attorneys recommend against filing for a Legal Separation.

The sole exception to this general rule occurs where an employed spouse wishes to maintain insurance benefits for an unemployed spouse who may be anticipating major medical expenses. Entry of the Judgment of Dissolution ends the medical coverage for the dependant spouse.

Potential liability for anticipated medical costs may constitute a need for additional consideration in this regard.

Under **California Family Code Section 770**, once you physically separate you are legally separated in that your earnings and accumulations are legally your separate property. In addition, all debts and obligations incurred after your date of separation are likewise your individual responsibility absent some oral or written agreement to the contrary. This is an important consideration which should be discussed with your attorney at the early stages of your planning, prior to filing a Petition for Dissolution of Marriage. That is why the precise date of physical separation is so important to your attorney. There can be the danger of one spouse using community property to support the other while accumulating separate property for himself from his earnings after separation. This is often done by individuals who wish to deplete the community estate while building their own separate property without the knowledge of the other party. However, if one spouse makes payments after separation on community debts, reimbursement can be requested at time of trial and the court will generally honor the request.

B. MORE ON MEDIATION & COLLABORATION

Both Mediation and Collaboration are innovative alternatives to litigation in the area of Marital Dispute Resolution. Ideally, it involves a cooperative effort between

attorney and mental health professional designed to assist the parties to creatively restructure the familial and financial arrangements in a marital dissolution proceeding. The traditional adversarial process has long been criticized as tending to inflame the already highly volatile and emotionally charged setting in which individuals so typically find themselves when considering dissolution of marriage. For that reason, many couples are exploring the possibilities of this more positive approach to conflict resolution.

Not all couples contemplating divorce possess the emotional maturity to qualify for mediation. By definition, mediation excludes the opportunity to "get even" and requires the parties to look forward, rather than back, and plan for their future and the future of their children.

It effectively frustrates and eliminates the battleground for revenge which characterizes all too many dissolution proceedings today.

To qualify for mediation, couples must agree to full and open disclosure of all financial matters. They must recognize that the marriage is over and regard the process as short term. They must be willing to accept the finality of the process. They must agree to jointly selected accountants, appraisers, actuaries, and other experts determined necessary to the valuation process. This requires a degree of honesty and trust most couples seem unable to manage when caught in the trauma of divorce. They must also bear equally all the costs of mediation. Unless both parties are "equally invested" in the venture, it will most generally prove unworkable. It is inappropriate in those situations where there is an imbalance of power; that is, where one party is able to effectively control and dominate the other. This is because mediation is a cooperative joint venture which requires equal participation, cooperation and involvement.

The advantages of mediation and collaboration are threefold:

(1) Mediation/Collaboration saves time;
(2) Mediation/Collaboration saves money; and
(3) Mediation/Collaboration saves emotional injury.

Mediation saves time because it is not dependent on the congested courts to operate. It can move as swiftly as can the parties and their respective counsel. Mediation saves money because time is money and the longer a case is dragged through the courts, the more costly it becomes to the parties who ultimately suffer from delays and continuances. Mediation saves emotions because it is basically a creative process. Unlike litigation, which tends to polarize parties by focusing on the past, the focus in mediation is toward the future and assisting people to rebuild their familial and financial relationships in a way that will work to everyone's mutual benefit. Where children are concerned, this can make a difference that cannot be calculated in dollars and cents. Mediation and Collaboration offer a win/win option.

C. WHAT IS ARBITRATION?

Arbitration is quite different from mediation. Mediation is a cooperative effort between individuals to reach a mutual agreement based on consensus and compromise.

Arbitration is more like litigation in that the parties present their respective positions, evidence, testimony and witnesses to a trial of fact. However, in arbitration the arbitrator may be a retired judge, an experienced trial lawyer, or some other professional selected from a panel of competent arbitrators such as the American Arbitration Association. The Los Angeles County Superior Court sponsors an arbitration program. Arbitration is desirable where agreement cannot be reached, but the parties still wish to save the costs and expenses of litigating through the usual judicial system which has built-in delays and attendant increased costs.

Los Angeles County is host to a "Rent-A-Judge" program wherein retired Superior Court judges are available as arbitrators or will sit as judges on a private basis. In the "Rent-A-Judge" program you try your case in a conference room just as you would in a court room ordinarily, but without the delays and interruptions you experience with a judicial officer who is subject to the interruptions of a heavy caseload. This can save you a lot of money if you have a case with a lengthy trial estimate.

D. DOES COUNSELING REALLY HELP?

Counseling is essential. It is also a good idea to contact your pastor or rabbi if that resource is available to you, so that the situation is addressed. It is also advisable to consult your physician to make sure your health is not neglected. The tremendous emotional strain involved in a marital breakdown is often unmanageable without outside help. If you have children, it is very important to involve your children in a counseling program. Often, children are so concerned about their parents that they do not show the outward signs of their own turmoil. These pent up feelings, hurts and questions can explode in irrational, damaging, and "unexplainable" behavior later on if not dealt with adequately at the time of the divorce.

Divorce counseling is another important alternative that should continue through the entire term of the proceedings, at least on an intermittent basis. There is an emotional reaction that occurs when the finality of the entry of the Judgment of Dissolution of Marriage is realized. You should not be surprised if the actual termination of the marriage results in an emotional response very similar to that experienced at the death of a loved one. The marriage bond creates an entity which is separate and distinct from the two individuals who comprise it. When this entity is dissolved, there has, indeed, been a "death" of something loved and valued.

Where custody is at issue, the court now requires the parties to participate in discussions with trained family counselors in the Conciliation Court. These counselors have a very high success rate in helping families rearrange their affairs with regard to child custody and visitation. They are extremely helpful in assisting individuals in managing the post-dissolution challenges each one faces in restructuring future relationships. Their services are available on an as requested basis, although you may experience some delay owing to the shortage of counselors and the demands for their services. It is recommended that you take advantage of this resource as soon as possible. It is in your best interests to reduce and/or eliminate the emotional issues from your divorce to the greatest extent possible.

VIII. MODIFICATION OF PERMANENT ORDERS

A. WHEN SHOULD I MODIFY?

Many people find that with the passage of time the orders originally made by the court become outdated and inadequate. From time to time it is advisable to review your circumstances to determine whether a modification is appropriate. If you are presently seeking a dissolution of marriage, this section will be informative should you ever desire a modification of your permanent orders in the future.

The California Legislature has stated that a modification of the permanent orders may be granted upon the showing of a material change in circumstances subsequent to the last previous order, so substantial and continuing as to make the terms of the previous order inequitable, impractical, or unreasonable. This means that if the circumstances of one of the spouses have changed substantially since the last permanent orders were entered, then either spouse may petition the court to reopen the case and reconsider the orders previously entered. Once the issue is before the court, either party may request modification upon the specific points raised in the pleadings only.

Here are examples of two actual cases:

(1) A woman with custody of her four children had agreed to a child support award of $200.00 per month per child, for a total of $800.00 per month. One child had turned eighteen, and the father had gone from $80,000.00 per year as a staff attorney to $160,000.00 per year as General Counsel to his employer. The question presented by the mother was: "Could child support be increased?" This was definitely a material change of circumstances that would allow the court to reopen and reconsider the $100.00 per month child support order.

(2) A young man, going through college when he was divorced, had since become a doctor. His income had increased over ten times since his divorce. The question was "Could child support and spousal support be increased?" This is definitely a change of circumstances sufficient to allow the court to reopen the case. The financial position of the wife would also be examined. In these cases, the court will also consider the present income and earning ability of a new spouse, if either or both parties have remarried in the interim.

B. WHAT SHOULD I MODIFY?

The first thing you should do is read your judgment to see what executory provisions remain under the supervision of the court. It is a good idea to keep a copy of your judgment and your will with your tax records so you are reminded to re-read those

documents annually. They will not need revision every year, but from time to time you will want to consider whether there has been a change of circumstances in your particular case.

Other obvious changes include: **custody, visitation** and **support**. Less obvious ones may include restraining orders, orders to sell property, divide income streams and report financial events in the future. Remember that some orders are like ticking time bombs with a short fuse. This is particularly true of spousal support orders with built in termination dates. Once those dates have passed the court loses jurisdiction to reconsider circumstances regardless of how desperate they may have become.

Remember that you are the person responsible for your case once it is concluded. No one will be watching out for your interests unless you specifically ask for help. When your case is over, your attorney must direct his attention to the open files he is still actively pursuing. The court never looks at your file unless requested in specifically formal proceedings. If you are not diligent and watchful, important rights can and will be lost. If you do not understand your judgment, seek assistance; it is extremely important.

C. CAN I DO IT MYSELF?

The first step in bringing a modification is the voluntary exchange of financial information. If the parties are able to discuss the matter in calm fashion, and exchange essential, detailed financial information, they should do so and schedule time to sit down and discuss the changes of the financial needs of the children, and the financial abilities of the parties. The court has a Family Law Facilitator who will help the parties fill out the forms and complete the paperwork, if the parties are able to reach an agreement. Legal Document Assistants are also available to assist the parties in preparing papers. If the parties have difficulty discussing the matter, they should probably consider mediation or a collaborative approach using lawyers skilled in Alternative Dispute Resolution.

IX. ENFORCEMENT OF SUPPORT

A. WHAT ABOUT MISSED CHILD SUPPORT?

It is a crime not to support your children and most people are familiar with District Attorney proceedings which can be brought to enforce child support. These criminal proceedings are used to initiate support where none has been paid. The proceedings are conducted at the expense of the state and do not result in any cost recovery to the supported spouse who initiates the action. However, the proceedings are usually handled by a Deputy District Attorney swamped with other cases who has a limited amount of time to devote to any particular case. The net result is usually a rather small support order when compared with the orders normally awarded in family law courts. If you wish to proceed in this manner you may do so without legal advice, and you may find the results somewhat satisfactory. Do not expect the District Attorney's office to enforce existing judgments. Any payments made under a District Attorney order will reduce the liability on the existing order, but will not eliminate it. Collecting this order does not preclude you from bringing an action on the original court order for the remaining uncollected support at a later time. The District Attorney will only enforce child support orders. He does not enforce visitation orders. Furthermore, the fact that visitation is denied is not grounds for failing to pay child support. And the reverse is equally true. Failure to pay child support is not grounds for denying visitation.

B. WHAT REMEDIES ARE THERE?

The remedies available through the civil courts are:

1. Attachment
2. Contempt
3. Wage Assignment
4. Motion for Accounting
5. Motion for Sanctions

1. **Attachment** is a proceeding which your attorney can bring to attach bank accounts, earnings and other assets readily available for execution on a Judgment. You must provide this detailed and complete information to your attorney in order for him to bring these proceedings.

2. **Contempt Action** is a quasi-criminal proceeding brought in the civil court, and amounts to an enforcement of an order on the basis of the willful and deliberate disobedience of a valid existing court order. These elements must be specifically proved. Such cases can be very frustrating because the courts do not like to find parties in family

law matters guilty of crimes. The strong tendency of the courts is to dismiss contempt proceedings, because the burden of proof is beyond reasonable doubt. We have seen exaggerated cases in which courts have given every benefit to the "criminal" parent with regard to the burden of proof which is "beyond a reasonable doubt." In one particular case, the ex- husband, in direct violation of a court order made while he was present in court, put a ladder up to a second story window and removed his two year old son in the middle of the night without the mother's knowledge. After proving all of these elements the court still ruled that there was reasonable doubt and would not find him in contempt. The court finds contempt in only the most extreme cases and after repeated violations and expressions of total unwillingness to comply. Then the parties engage in counter allegations of harassment and verbal abuse, the courts tend to throw up their hands and refuse to get involved in escalating fees caused by such emotional problems between the parties.

3. **A Wage Assignment** is the best way to ensure payment. They are routinely granted upon application. They are not granted unless requested. There is no effective remedy for late payments, but if a payer is regularly employed, the courts will, order the employer of the payer to pay directly to the recipient spouse. The person seeking support should always request a Wage Assignment.

4. **Motion for Accounting** is necessary to establish the correct arrearages in complicated cases where support has not been paid for some period of time. It is very important for a recipient spouse to keep an accurate journal of all payments that have been received under the terms of any court ordered support to avoid the costs of a Motion for Accounting before being able to initiate other collection procedures.

If you are the party making the payments, it is just as important for you to keep all receipts and cancelled checks as evidence of your payments for any later dispute that may arise. If you have paid support in cash and your former spouse now claims no payments have been made, the courts generally conclude that absent tangible evidence to the contrary it is more likely that no support has been paid.

C. CAN I GET PAYMENTS ORDERED THROUGH THE COURT?

Courts in Los Angeles County do not order payments to be made through the Court Trustee unless the recipient spouse is on welfare. If you are on welfare and your spouse is able to give you some financial help the office of the District Attorney will attempt to locate your spouse to collect payments based on the evidence of present ability. Only the payments collected to offset welfare payments are made through the Court Trustee. You cannot obtain any guarantee of support payments until there has been a demonstration of actual bad faith. The only remedies are those set forth above.

X. REMARRIAGE

A. DOES IT AFFECT MY PROPERTY RIGHTS?

The terms of the Marital Settlement Agreement or the permanent orders of the court determine whether a remarriage affects your property rights. Sometimes, the wife is given the family residence to live in until her death, until the youngest child reaches the age of 18 years of age, or until her remarriage. At that time, she may be required to pay to the husband a certain amount of money that has been determined by the court. You must be aware that a remarriage could trigger certain payoff responsibilities, or even the sale of the family residence, in addition to the termination of spousal support.

B. DOES IT AFFECT MY SPOUSAL SUPPORT AND/OR CHILD SUPPORT?

Spousal support terminates upon remarriage unless the parties specifically agree otherwise. In some instances a permanent spousal support award is negotiated by the attorneys to accomplish certain tax advantages which would not otherwise be available if the matters were litigated. **Family Code Section 4323** creates a presumption of decreased need for support where the supported party begins living with a person of the opposite sex.

While remarriage certainly affects the spouse's need for support, remarriage may not affect the financial resources used to support the minor children. The cases are quite clear that the entire financial resources of the custodial parent will be examined after he or she has remarried, to see if there has been a material change in circumstances. If a party has married someone who makes a substantial amount of money after entry of the permanent orders, and this new spouse is supporting the party and the minor children, then the courts may modify child support to reflect the changes in the financial circumstances of the parties to the case. In post-dissolution support proceedings the court may not consider the earnings of a new spouse. Courts use a variety of approaches to determine how much new spousal income is to be used in post- dissolution proceedings and there seems to be no consistency in the approaches that are used. It is important to discuss this with your attorney before initiating an action.

C. DO I NEED A PREMARITAL AGREEMENT?

In all cases I recommend a **Premarital Agreement**. The Lee Marvin case made headlines and is probably the most misunderstood of all family law cases. It has created the illusion that "living together" automatically establishes potential liability for division of property and possible support. It is very dangerous to enter into such a relationship

without some type of written agreement such as a **Living Together Agreement**. In the Lee Marvin case the court held that the living together arrangement could give rise to contractual relationships enforceable by law, but found none present in that particular case. All of the cases I have heard of have reached a similar conclusion.

A Premarital Agreement is different than a Living Together Agreement. It is a legal contract whereby two individuals enter into an agreement before marriage to determine in advance what will happen to their property in the event either party elects to terminate the marriage. A Premarital Agreement outlines the income and assets that the individuals are bringing into the marriage and establishes what their rights will be regardless of other claims to the contrary once the marriage has taken place.

If you are contemplating marriage or a living together arrangement and are concerned about the possible legal ramifications, you should take the time to consult a lawyer regarding some type of written agreement. A Premarital or Living Together Agreement is a convenient tool for securing the rights of your children from a previous marriage and to insure that they do not lose their right to inherit your property if you should die after remarriage. It also serves as a tool to discover problem areas couples tend to ignore when they are blinded by the emotions of a romantic relationship. I believe it is essential in every case where people come into a relationship with previously acquired property. It will eliminate confusion, misunderstanding and assist in making clear each persons expectations of the other.

In 1985 the California legislature adopted **The Uniform Premarital Agreement Act** which now sets forth the minimum standards required by law in this important area. This was done to provide greater protection to people who wish to record their agreements with the County Recorder to protect important property rights.

If you are contemplating a Premarital Agreement, be sure you are independently represented by counsel. Assets must be disclosed and terms must be approved well in advance of the date of marriage. Waiting until the last minute will render the agreement invalid. If you do not have independent representation, you may have difficulty with a court enforcing the terms of the agreement. It can be a very frustrating experience to see a court throw out a Premarital Agreement because one of the parties was not represented or the terms of the contract were found to be inconsistent with California law.

D. CAN MY NEW SPOUSE ADOPT MY CHILDREN?

Stepparent adoptions, when consented to by the natural parent of the child, are relatively simple. The courts require a complete relinquishment (termination) of all parental rights by the natural parent before the court will permit adoption by the stepparent. Additionally, the Department of Adoptions will examine the quality of the relationship between the stepparent and the children.

The more difficult question is, "Can my new spouse adopt my children without their natural parent's consent?" The court procedure for accomplishing a Stepparent adoption with out a voluntary waiver involves additional effort. The courts are very hesitant to terminate parental rights without good cause. The courts have said that the consent of the natural non-custodial parent is not necessary when he or she has willfully

failed to communicate with the child and has failed to pay for any of the care, support, and education of the child for a period of one year, when he or she is able to do so. There is a very strict requirement for notice being given to the natural parent. Any objection raised by the natural parent will probably result in the court not granting the termination of the natural parent's rights; or at the very least, providing for a contested trial in which the objecting parent is given a full hearing on all the facts.

XI. YOUR LAWYER

A. WILL I NEED ONE?

If you have read the material that is contained in this book, you have undoubtedly arrived at the conclusion that it is not practical to represent yourself in dissolution of marriage involving complex issues. The issues are very difficult and have lifelong significance to you and your family. If you could see the people who have come to lawyers after they tried to handle their own divorce, and are now asking the lawyers to straighten out the problem, this would be very clear to you. It is sad to tell someone that it will cost more to straighten out a problem than it would have cost to be properly represented in the first place. This is often the case. It is even sadder when someone is told that it is simply too late to correct the mistake.

The only way to receive any semblance of fairness from the legal system is to recognize its complexity, and the complexity of the marital and economic relationship that is breaking up. If you decide to represent yourself, you will have a fool for a client. You will be held to a very high standard of knowledge, even if your spouse is represented by a lawyer. If you only learn one thing from this book, it should be the importance of proper representation.

Lawyers are sometimes asked to represent both spouses. This should not be done. Despite a "No Fault" Dissolution of Marriage Statute, the divorce action remains an adversary proceeding, and representation of both spouses where there are any contested matters is unethical, if not impossible. However, it is not uncommon to represent one of the parties on a cooperative basis with the other party who represents himself. The sole purpose of this arrangement is to arrive at a total settlement. However, if any controversy arises, it is understood from the beginning that the unrepresented party will be advised to obtain independent representation. And, in all cases the unrepresented party is advised to have the final settlement reviewed by a competent expert prior to executing the final Judgment.

B. WHAT ABOUT "DO-IT-YOURSELF" DIVORCE?

There are two procedures now available which allow for individuals to represent themselves in an uncontested matter. One is called "Summary Dissolution" (see Family Code Section 2400). The other procedure provides parties with a complete agreement the opportunity for an "Affidavit Dissolution of Marriage." This means they can avoid going to court altogether.

The Summary Dissolution Procedure is available if the parties are willing to cooperate and certain conditions exist: there must be no children; both parties must waive spousal support; the marriage cannot be more than five years in duration; there can be no real property (land or houses) involved; there can be no unpaid obligation in excess of

$4,000.00; the total fair market value of the community property assets cannot exceed $25,000.00; there can be no claim of separate property in excess of $25,000.00; and the parties must have executed a complete Marital Settlement Agreement. With these (and other) requirements fulfilled, one individual can appear and handle the matters that need to be taken care of in court without an attorney.

The Affidavit Dissolution of Marriage which became effective in 1981 is designed to eliminate the need to go to court for couples who are in complete agreement. This means that the individuals must reach a complete agreement and then submit affidavits to the court. After the court reviews the affidavits and decides that the agreements are fair and equitable and not unconscionable, the judge can then enter the stipulated affidavits as an order of court without the need of a personal appearance by either party. Under the Affidavit Divorce the parties are not limited to the many restrictions in the Summary Dissolution Procedure.

If you choose either of the above mention "Do-It-Yourself" divorces, you should have any attorney look over the agreement in which you have entered into. He will review all the facts and circumstances to determine whether all the conditions have been satisfactorily met, and thereby avoid future motions to set aside the judgment for fraud, mistake, or excusable neglect. It is a mistake to conclude that there are no important issues and so no legal opinion is necessary. That very determination is probably a legal decision you are incompetent to make.

XII. DEFINITIONS

Abandonment - The voluntary forfeiture of parental rights based on a twelve (12) month period of no visitation and no support where support could be paid and visitation could be exercised.

Affidavit - A written declaration stating the facts of a particular circumstance or event and signed by the cognizant person under penalty of perjury setting forth the date, city, and state where the declaration was made.

Alimony - See Spousal support. In 1970 when California Legislature passed its no-fault law, the term for support payments made to a spouse was changed to reflect the new approach which attempted to eliminate gender bias.

Appeal - An optional legal process whereby trial court orders are brought before the Court of Appeal for review.

Arbitration - A privately ordered alternative dispute resolution process in which evidence is presented to a trier of fact mutually selected by the parties. The result can be binding or non-binding, depending on the decision of the participants. It is usually quicker and less expensive than litigation.

Bifurcation - The procedure whereby the dissolution of the marriage is ordered at one time with the ruling on all other issues set over to a future date for a Further Judgment on Reserved Issues. In this manner the marriage can be terminated even though other issues remain unresolved.

Child Support - The money that is paid by one parent to help the cover the costs of raising the children.

Cohabitation - Domestic living together arrangements between parties in lieu of marriage. California law at Civil Code Section 4801.5 creates a presumption at law which requires treatment of cohabitation as a marriage for purposes of terminating a spousal support obligation unless the presumption is met and successfully rebutted.

Common Lair Marriage - There is no common law marriage in California. Marriage is only recognized when it meets the statutory requirements. However, a common law marriage contracted elsewhere will be recognized in California if it was a valid marriage where it was contracted.

Conciliation Court - This is not really a court, but rather a panel of licensed mental health professionals available through the court to assist families, and particularly the children, to deal with the mental and emotional trauma so often experienced in family

law matters. It was originally intended to help people reconcile their marriages. Today it primarily functions to mediate child custody and visitation disputes.

Contempt of Court - A quasi-criminal proceeding which can be brought against a party or witness for the disobedience of a specific court order. When the court has ordered a party or witness to do or not to do certain things and one or the other disobeys any of the orders, a proceeding may be started to have the person found in contempt of court. Conviction can result in a fine, imprisonment, or both.

Custodial Parent - The person who has physical custody of the minor children of the parties.

Custody, Divided - Alternating physical custody: e.g., one (1) week with mother, one (1) week with father, and so forth.

Custody, Joint Legal - Usually ordered by the court to give parents equal rights regarding important decisions to be made on behalf of children. Inability or unwillingness of the parties to work together on a co-parenting plan may be grounds for denying joint legal custody.

Custody, Joint Physical - Each parent enjoys "significant periods" of physical custody bordering on, if not actually resulting in 50/50 time with each parent.

Custody, Sole Legal - One (1) parent is awarded exclusive decision- making power with regard to the best interests of the minor child(ren).

Custody. Sole Physical - One (1) parent is awarded exclusive physical possession of the minor child(ren).

Custody, Split - One (1) or more children with one (1) parent, one (1) or more children with other parent, each parent awarded reciprocal periods of secondary physical custody with the other.

Default Proceeding - Appearance at court by one (1) party to prove- up the elements of an uncontested Marital Settlement Agreement and proposed Judgment of Dissolution after all issues have been settled without a contested hearing. Either party may appear to prove-up the agreement but an appearance is no longer necessary since the courts have been permitted to accept an affidavit in lieu of the traditional personal appearance. See Affidavit Dissolution of Marriage, page 36, for more detail.

Deposition - An oral discovery proceeding taken under oath, and recorded by a Certified Shorthand Reporter. The transcript may be used in any subsequent judicial hearing.

Discovery Proceedings - Various procedures available to lawyers to facilitate the accumulations of evidence needed by the lawyer to prepare the case.

Dissolution of Marriage – AKA Divorce.

Executory Provisions - Those provisions in the Judgment of Dissolution that are not executed (that is finalized) immediately upon entry of the judgment over which the court retains jurisdiction to make future orders such as visitation, support, restraining orders, and further orders for future disposition of property.

Ex Parte Hearing - An emergency hearing in judge's chambers presented in affidavits to the court which permit the court to make immediate orders pending a more formal hearing in open court where there is fear of immediate physical danger or loss of property.

In Pro Per - In Propria Persona: The abbreviated form of a Latin expression which means "as a private person" to indicate someone representing themselves in court without an attorney.

Interrogatories - Written questions which you must research and answer in writing, under penalty of perjury. Failure to respond will cause you to lose the opportunity to present evidence on your own behalf in regards to the areas under inquiry. The court has the power to dismiss your pleadings if you refuse to answer interrogatories, and may impose sanctions as well.

Interlocutory Judgment - The permanent orders of court made at the conclusion of the case setting forth the property rights, the custodial rights, the support rights, and financial obligations of the parties. Effective July 1984, the legislature discontinued the use of the Interlocutory Judgments. Now all judgments are Final Judgments of Dissolution of Marriage.

Judge Pro Tem - A judicial officer hired by the County or appointed by the court to make up for the lack of judicial appointments. They are usually selected by examination and must satisfy stringent qualification requirements. Their correct title is "Commissioner," but they are addressed as "Your Honor." The Commissioners sitting in the Los Angeles County Family Law Department are among the most knowledgeable in the State of California regarding family law matters. Most family law matters in Los Angeles County are heard by Commissioners.

Judgment - The orders of the court made at the conclusion of the case which resolves all of the issues pending before the court.

Legal Separation - A legal process whereby all issues are decided exactly as if you were dissolving the marriage, except that you do not obtain a Judgment of Dissolution of Marriage. Instead, you are granted a Judgment of Legal Separation. During a Legal Separation you are still married. This can present problems of future potential legal liability in subsequent employment. If you ever wish to remarry you must still go through with a Dissolution of Marriage. A Legal Separation is generally not advisable.

Litigation - The process of conflict resolution in which the parties present their respective positions regarding the disputed issues to a judicial officer for ultimate determination in accordance with existing case law and current statutes.

Marital Settlement Agreement - The optional civil contract that is drawn up between the parties to the dissolution of marriage, wherein all of the legal issues are resolved and written into a final agreement. This agreement is then submitted to the court with a Judgment of Dissolution of Marriage containing all the executory provisions of the agreement which constitute the permanent orders.

Mediation - The process of conflict resolution in which the parties work together to resolve the disputed issues and reconstruct the familial relationships with the assistance of both lawyers and mental health professionals trained in mediation techniques.

Minor Child - Any child who is under the age of 18 years who is not emancipated. No minor child may become emancipated under sixteen years of age.

Notice - A court document advising the parties of the time, place, and reason for court proceedings that will be heard in the court.

Orders Pendente Lite - The temporary orders entered by the court describing the rights and responsibilities of the parties until permanent orders are made by the court.

OSC (Order to Show Cause) - The legal proceeding prior to trial in which either party may request the court to make temporary restraining orders (T R Os) and orders for custody, visitation, support, and fees.

Petitioner - The spouse who begins the action by filing the initial pleadings with the court and having papers served on the other party. There are strategic advantages to being the Petitioner in the action which have to do with forum selection, presentation of evidence, and timing of the action.

Pleadings - All of the legal documents that are filed with the court in a lawsuit. Always remember to take these with you when you go to court or see your attorney.

Post-Dissolution Proceedings - Any family law matters brought after the entry Judgment of Dissolution to reopen any of the executory provisions contained therein.

Premarital Agreement - A binding legal contract between parties contemplating marriage intended to define the rights and responsibilities of each party, articulate their respective expectations, and provide for the disposition of property in the event of divorce.

Request for Admissions - A less frequently used discovery tool which requires the person served to answer certain written questions under penalty of perjury. Failure to

respond will be deemed by the court to be an admission of the facts in the question sometimes used in conjunction with Interrogatories.

Respondent - The spouse who responds to the papers which the Petitioner has caused to be filed and served. There is a disadvantage to being the Respondent in the action which has to do with trial strategy, the presentation of evidence, and the order of Final argument.

Restraining Orders - Any order of the court requiring a person, either to do, or to refrain from doing, certain defined acts. (See Contempt of Court.)

Service of Process - The act of having a process server or sheriff deliver any of the court papers to another party or some potential witness. Any person over 18 years of age not a party to the action may serve process. Either party may accept service by signing an Acknowledgment of Service and thereby avoid the costs of service of process. If a person refuses to accept service, the court then has jurisdiction to charge that person with the costs of having them served. The six (6) month waiting period for entry of the Judgment of Dissolution begins to run upon service of process of the Petition on the Respondent.

Spousal Support - Alimony. This is the money that is paid by one spouse for the support of the other. These payments may be reportable income to the payee and deducted for tax purposes by the payer. To be deductible for tax purposes, the payments must meet the requirements of the 1984 Domestic Relations Tax Reform Act. A tax expert should be consulted in this regard.

Spouse - Your marriage partner; refers to either husband or wife.

Stipulation - An agreement between the parties that is arrived at without the necessity of going through a court hearing. The agreement is drafted into a legal document and submitted to the court for its review, approval and enforcement as a court order.

Subpoena - Written order to compel the appearance of a person in court. Must be personally served on the person whose appearance is requested.

SDT - Subpoena Duces Tecum is a subpoena which requires, in addition to the appearance of the person, certain documents described in the subpoenas which are in the possession of the person served and which must be produced at the time and place indicated in the subpoena.

Trial - The court proceeding at which a final determination is made on all remaining issues by the assigned judicial officer after a full hearing on the merits. Each party is afforded the opportunity to testify, call witnesses, and present all relevant evidence essential to informing the court of the facts to be weighed in its determination of the issues presented for disposition and resolution.

Vacate - To have a previous order dismissed, such as a restraining order, thereby allowing the person to do the act or acts previously forbidden by the court.

Visitation - An agreed upon, or court ordered, period of time during which the non-custodial parent will have the same right of access to the minor children as does the custodial parent.

XIII. APPENDIX

Ronald M. Supancic has dedicated more thirty years of his professional life to the study of law. Mr. Supancic has limited his professional practice to family law litigation, handling countless hundreds of contested dissolutions, child custody cases, and disputed post-marital proceedings. In 1979 he was among the first group of lawyers to be certified by the California Bar Association as a Specialist in Family Law Practice. He is a member of the American Academy of Matrimonial Lawyers and the Association of Certified Family Law Specialists. He has been admitted to practice before the Supreme Court of the United States, the California Supreme Court, and the Federal Appellate Court, Second District. He is a member in good standing of the American Bar Association, the California Bar Association, the Los Angeles County Bar Association, and the San Fernando Valley Bar Association. He has served as Judge Pro Tem in Superior Court, Small Claims and Traffic Court. He presently serves as an Arbitrator for the Los Angeles County Superior Court and also as a Mediator for the Family Law Department of the Los Angeles County Superior Court. He is the author of "Win-Win Custody Agreements", 2005, and the co-author of "When All Else Fails: The Real Cost of Ending a Marriage", Fleming Revelle, 1986.

Mr. Supancic would appreciate your questions and comments regarding this book. Pastors, marriage counselors, and mental health professionals wishing to consult on a professional basis are encouraged to do so, and will not be charged. It is his belief that every effort should be made to avoid divorce and its devastating consequences. He is pleased to be a part of the reconciliation process whenever possible. And, while recognizing the need for aggressive advocacy in many cases, he advocates arbitration, collaboration, and mediation as less destructive alternatives to marital dispute resolution where both parties agree and qualify for these preferred approaches.

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