

## MARITAL DISSOLUTION a RINKE-NOONAN Guide

We know that if you have come to Rinke-Noonan to seek advice about a marital dissolution you probably have a lot of questions. Many of those are questions which our clients frequently ask. We suggest that you read this brochure before the day of your first appointment, if possible, and then refer back to it from time to time. We believe that if you read this carefully, it will make this process more understandable, and may also result in a savings to you in legal fees. Of course, you should not hesitate to ask your attorney or paralegal questions.

**1. What is a marriage dissolution?** A marriage dissolution is the modern name for "divorce." A marriage dissolution terminates a marriage, distributes the property owned by husband and wife between them, decides who will have legal and physical custody of the children, apportions the debts between husband and wife, determines child support, and sets maintenance (formerly called alimony). After you are divorced, the marriage is ended and you can remarry.

**2. What are the "grounds" for a dissolution of marriage?** Marriage may be dissolved in Minnesota if either the husband or wife has been a resident of the state for at least 180 days and if the marriage is "irretrievably broken." It is not necessary for both the husband and wife to agree on this in Minnesota, in other words, the court will grant a divorce if either one of the parties testifies that the marriage cannot be saved. You need not prove other grounds such as abuse, infidelity, etc.

**3. Are there alternatives to marital dissolution?** Yes. Under limited circumstances you may be entitled to a civil annulment. (This is not the same as a religious annulment. Questions on religious annulments should be referred to your church.) Also, some clients ask for a legal separation, which does most of the things that a divorce does, except terminate the marriage. There are some differences and you should ask your attorney to explain them if you are interested in this option. Many of our clients have saved their marriages by utilizing a variety of counseling services. We encourage you to speak to your attorney or paralegal if you are interested in seeking outside intervention to save your marriage. In most cases our clients have found personal counseling to be beneficial and we strongly encourage doing so.

**4. Assuming I have decided I want to dissolve the marriage, what happens next?**

*A. Collection of Information.* Your attorney and paralegal will collect a variety of information from you which is necessary to properly represent you. This may include information about your property, debts, living expenses, income and pension plans. It may also include general family information such as information about your health and that of your children. At this time, you should discuss your goals and future plans. Typically, this information will be collected on our standard office form. The more accurately you can supply this information, the better job we can do for you. If you are aware of special or unusual facts, you should be sure to call them to our attention. Organizing your documents can be time

consuming. If you organize these materials before providing them to us it will save us time and it will save you money.

*B. Service of Petition.* Next, we prepare a Summons and Petition. These are the legal documents necessary to start a marriage dissolution proceeding. When your spouse is "served" with (receives) these papers, the dissolution proceeding is commenced. However, you only become divorced when the court administrator signs and enters the final dissolution papers after they have been signed by a judge. Most dissolution proceedings are started with the service of the Summons and Petition by a process server or a deputy sheriff. It may be that your spouse will save you the service fees by accepting these papers in the mail or coming into our office to receive them. If you think your spouse will do this, you should mention this to your attorney. If you do not know where your spouse is, there is a process to serve by publication of the Summons in the newspaper. If your spouse is already represented by an attorney, they may accept service on your spouse's behalf.

*C. Answer.* After your spouse has been served with a Summons and Petition, he or she has thirty days to "Answer." The same is true if you have been served with a Summons and Petition. An Answer is the legal paper by which your spouse responds to the divorce papers and tells us whether he or she agrees or disagrees with the various things you have requested. In some circumstances, it may be necessary to extend this thirty-day answering period. Such an extension can be granted by your attorney or by the court for proper cause. If your spouse does not serve an Answer (or obtain an extension of time to Answer), you

may be eligible for a dissolution of the marriage by default. In a default situation, the court would ordinarily grant the dissolution according to the terms requested in your Petition. Your attorney will advise you if this is appropriate in your circumstance.

*D. Restraining Provisions.* Once the Summons and Petition has been "served" you and your spouse are immediately prohibited from leaving the state with the minor children, hiding or disposing of assets, changing any insurance coverage or beneficiaries and harassing one another.

**5. What happens if my spouse responds to the dissolution Petition?** In many dissolution cases, the two parties can *agree on or "stipulate"* to the terms of the divorce. They come to an agreement on all the issues of support, property, debt, custody and parenting time (visitation). If this happens, your attorney will prepare a legal document known as a "*Marital Termination Agreement*" which sets out the terms of your agreement. This document will be provided to you for your careful review. If both parties agree, it will be filed with the court and the court will grant the dissolution consistent with the terms of this agreement.

If you and your spouse cannot come to an agreement, then your case is "*contested.*" It is possible to agree on some issues (for example custody) but to disagree on others (for example support or property disposition). In these cases, it is sometimes possible to have an agreement accepted by the court on the agreed issues and to present the remaining issues for decision by the court. This is referred to as

“bifurcation.” At Rinke-Noonan we encourage the parties to explore all possibilities for a reasonable settlement without unnecessary litigation.

**6. Do I need a Temporary Order?** Early in your case, you and your attorney must decide whether you wish to request that the court issue a *"Temporary Order."* A temporary order handles immediate problems which cannot wait until the divorce is finalized. For example, if you and your spouse cannot agree on who will take care of the children while the divorce case is going on, either of you may apply to the court for "temporary custody." Similarly, you may ask the court to provide for temporary support, temporary occupancy of the family home, temporary parenting time (visitation), temporary payment of debts, or to provide rules to help prevent situations which could lead to physical abuse. A request for a temporary order entails the drafting of additional legal documents and at least one additional court appearance by your attorney. *Therefore, the request for a temporary order entails substantial additional legal expense.* If you think a temporary order may be necessary, you should discuss this with your attorney and weigh the benefit to be gained by a temporary order against the additional expense. The husband and wife can often informally agree on these arrangements without a written agreement or if they wish, they can sign a written agreement allowing the court to sign a temporary order.

**7. What is mediation?** Mediation is a process where you and your spouse meet with an individual trained in family law mediation. The mediator will try to identify concerns and suggest alternatives allowing you to reach an agreement. Sometimes the parties mediating meet in the same room or

they may be in separate rooms with the mediator going back and forth. Many mediators are attorneys, however, persons with other backgrounds may also serve as a mediator. It is advised that the mediator be trained in family law mediation. Mediation is mandatory in most contested cases before going into court, unless domestic abuse is involved.

**8. Who will get custody of our children?** If you have children younger than age 18, the most perplexing issue you face is probably who are the children going to live with and who will make important decisions for them? Custody can be settled almost any way to which the parties are able to agree. At Rinke-Noonan, we believe that every effort should be explored to obtain a custody agreement in a harmonious manner. If you cannot agree on your own or through mediation, the court will decide as described in the following paragraphs.

**9. What is a co-parenting class?** If you have minor children you will be required to take a co-parenting class, even if you and your spouse agree on custody. This class does not explain how to parent, it teaches parents how to prevent your children from being placed in the middle of any disagreements you and your spouse may have. Each county uses different agencies for these classes.

**10. What is the difference between physical custody and legal custody?** There are two types of custody. *"Physical custody"* essentially refers to which parent the children primarily live with. Sole physical custody means that only one of the two parents has control over the child's day to day life and that child actually lives with that parent. *"Legal custody"* refers to which parent may make important

decisions about the child's life, including decisions about health, education and religion. It is possible for one parent to have the sole legal custody or for both to have joint (shared) legal custody.

In Minnesota, the law presumes that both parents will share legal custody of the children. That is, both parents should have shared involvement in fundamental decisions regarding the child's cultural upbringing, health, educational and religious training. In unusual circumstances, the court will decide that only one parent should have legal custody. Legal custody has no bearing on child support obligations, where the child lives or parenting time (visitation).

**11. Can we have joint physical custody?** Although it may not be as typical as one parent having sole physical custody, it is becoming more common. Whether joint custody is right for you is a highly individual decision. Joint physical custody is where both parents have shared physical custody of the children. This arrangement can be set up in several different ways. It might be that the children live primarily with one parent during the school year and the other during the summer months or it might alternate weekly or almost anything in between. Because there is almost always parenting time (visitation) between the children and parents, the difference between sole physical custody with parenting time and joint physical custody can sometimes become blurred. However, there are some differences between sole physical custody with parenting time (visitation) and joint physical custody. Some of these relate to the ease by which the living arrangement can be modified and the ability to remove the children from

the state. With joint physical custody, it may be easier to change the amount of time that each parent has the children. The designation of physical custody as sole custody or joint custody has no bearing on child support.

**12. What are Parenting Plans?** Parenting plans are a way for parents to detail where the child will live and may include other “rules” such as restrictions on moving that are not otherwise available. Although parenting plans try to avoid using phrases such as “custody” or “parenting time”, state and federal law requires that the plan indicate if one or both parents have custody.

**13. What if we cannot agree on custody?** If you and your spouse are unable to agree on custody of the children, it becomes necessary for the court to become involved. As discussed above, in most instances, the court will first order that you and your spouse participate in mediation sessions with a professional mediator appointed by the court. The purpose is to see if you and your spouse can agree on the custody. If it is suggested that there has been spousal or child abuse, the court may not order mediation. If you are still unable to agree after mediating, the court will then order that a custody evaluation be prepared. A custody evaluation is a lengthy report prepared by a court appointed person who will meet with you and your spouse, the children and perhaps contact other people, including teachers and relatives. There is usually a cost for mediation and also for a custody study. The court may order that either party pay this or that the cost be shared.

Once the custody study has been completed, if the parties still cannot agree, there will have to be a trial. After

the trial, the judge will make a decision about custody based upon the best interests of the children. This court will consider which parent can provide the most stable and satisfactory environment for the children and which parent is most likely to continue to bring up the children in the manner in which they have been raised. The court will also consider which parent is the "*primary caretaker*." The primary caretaker is the parent who provided most of the day to day care for the children prior to the parents' separation. If the child is of a "suitable" age, the court may consider where the child wishes to live. There is no magic age for this. However, it is usually around age ten to twelve, depending on the child's maturity. Even then, the court will not decide based solely on the child's preference but will take it into consideration.

It is unfortunate, but true, that sometimes parents fight for custody of their children out of anger or because they have been hurt by events leading up to the divorce. The result is generally harmful to the children and to both parents. Your children will benefit if both parents concentrate on what is best for their children rather than acting out of anger. Custody disputes can be extremely expensive. Your attorney can provide you with more information about the possible cost and discuss the factors used by the courts in deciding custody disputes.

**14. Will the parent who doesn't have custody still see the child?** Even with sole physical custody, the other parent ("*non-custodial*") nearly always has *parenting time*. That is, the non-custodial parent will have the right to spend time with their children. This might include periods as short as a few hours or may extend all the way to entire summers.

Typically, parenting schedules include some weekends and may include a weekday evening or overnight parenting time (visitation). It is also common for the non-custodial parent to get extended parenting time with the children in the summer and over school breaks. The parties will often alternate spending holidays with the children. Parenting schedules can be set up in almost any way that the parents feel comfortable. In most cases the court will encourage both parents to have as much contact with the children as possible. As we have previously stated, sometimes the difference between sole physical custody and joint physical custody is merely one of words. However, your attorney can explain the probable legal consequences before you make these decisions. Parenting time is generally beneficial to the whole family. In addition to being important to the children, it can also provide a welcome break from the rigors of sole parenting. As explained later, the parenting schedule does affect child support.

**15. May the parent having physical custody move out of the state, or move within the state?** The custodial parent may only move out of state with the children if they have either: 1) the other parent's consent; or 2) permission from the court. If the non-custodial parent opposes the move, the custodial parent will have to go into court seeking permission. The law assumes it is not in a child's best interest to move out of state away from the other parent. The parent wishing to move must show the court that the move is in the child's best interest and that the purpose is not to interfere with the non-custodial parent's relationship with the children. If the court allows the move, it may be necessary to adjust the parenting schedule and to allocate the cost of transportation.

If the custodial parent wishes to move within the state they do not need the permission of the non-custodial parent or the court. Obviously this can create problems as a parent who lived across town may now live 300 miles away. In this situation it may be necessary to modify the parenting schedule and to address how transportation will be handled. Generally, the court will try to provide the non-custodial parent with approximately the same amount of parenting time, although it may have to be changed to less frequent but longer visits.

**16. What is Child Support?** In almost all cases where there are children younger than 18, one parent pays child support to the other. Once ordered, child support generally continues until the child is 18 and has graduated from high school. If the child is at least 18 and is emancipated, married, in the military, not attending high school, or the child is attending high school, but has already reached age 20, support stops.

On January 1, 2007, Minnesota implemented an entirely new system for calculating child support. Under the previous system, unless the parties had joint physical custody, the parent who did not have custody paid a certain percentage of their net income as child support. Under the new law, child support is calculated after looking at both parent's gross incomes. In addition, adjustments may be made to the amount of child support based upon the parenting schedule regardless of which parent has custody.

This is intended to be a brief overview of the new laws. However, you should speak with your attorney to determine exactly how it might apply in your situation.

Under the new law, you must determine the gross income for both parents. Gross income means your income before any deductions for taxes, social security, insurance, 401K, flex plans or any other type of deduction. This number may usually be found in box 5 of your W-2 form. Next you add your gross income to the other parent's gross income. You then take the total of your two incomes, convert the annual total into a monthly amount and apply that number to the new child support guidelines based upon the number of children that you have.

For example, if your gross monthly income is \$3,000 and your spouse's is \$5,000, your combined monthly gross income is \$8,000. You would then apply that number, and the number of children to the guidelines. The guidelines tell you what the total support should be for two parents with that combined gross income. With a combined gross income of \$8,000, for one child the support would be \$1,040.\* For two children it is \$1,688\* and it increases with the number of children to a maximum of six where the support would be \$2,925.\* If you have more than six children support will have to be calculated on a case by case basis. It is important to remember, the resulting support number is not what one parent must pay to the other, it is the total cost to be divided between the two parents.

*Footnote* \*all of the dollar figures in this brochure are from the 2008 statute and are subject to change. They are provided here only as examples.

This brings us to the next step which is determining how the support cost is to be shared between the parents. You start by calculating what portion of the combined gross income

belongs to each parent. In the example given above, you are earning \$3,000 and the other parent is earning \$5,000 of the total combined income of \$8,000. You can divide \$3,000 into \$8,000 and see that you are earning approximately 37% of the combined gross income. The other parent's share is approximately 63%. Assuming you have one child as given in the example above, the total support is \$1,040. Your share would be 37% of \$1,040 or \$385 and the other parent's share would be \$655. Usually the parent with the larger amount of parenting time receives the child support. So this in example you would receive \$655.00 per month. **These percentages are referred to as the PICS which stands for Parental Income for Determining Child Support.**

These PICS are also used when determining how to share the cost of the children's medical/dental insurance, non-insured medical costs and daycare expenses. Those topics are covered separately in this brochure.

There is a final step which is the Parenting Expense Adjustment. If either parent has a parenting schedule which comes to less than 10% of the time (generally you look at the number of overnights each year) then no adjustment is made. If one of the parent has parenting time of at least 10% but less than 45.1%, there is a 12% adjustment. In the example given, the parent's support obligation of \$655 would be reduced by 12% which leaves \$577. If a parent has a parenting schedule of 45.1% or greater, the parents are presumed to have equal parenting time. This is a more complicated formula which your attorney can explain if your parenting schedule might fall into this category. It can

have a significant impact on the amount of support, depending on each parent's income.

The reason for the parenting expense adjustment is the recognition that the non-custodial parent will incur expenses for food, recreation, transportation and other household expenses while the child is in their care. It should be noted, that the parenting schedule which is used for this calculation is the one written in the court order, even if it is not the schedule you are following. If the schedule you are actually following is significantly different from that in the court order, you may wish to speak with your attorney about the pros and cons of seeking to have the order changed.

There are other adjustments sometimes made to a parent's income which might effect the amount of support paid or received depending on the specific facts of your case. Some of those circumstances would include: spousal maintenance (alimony) to be paid or received in your current case; spousal maintenance paid or received by you or the other parent pursuant to a court order in an earlier file (for example from a previous divorce); child support paid by you or the other parent pursuant to a court order in a separate proceeding (child support which is received is not considered), and whether there are non-joint (a biological child of one but not both parties) living in either parent's home. Step-children living in the home do not affect child support. Your attorney will ask you questions to determine whether there are any adjustments to be made in your case.

Each family has its own unique set of facts and circumstances and this section is not intended to address all of them. Your attorney will take the time to discuss these

with you. Very general answers are provided here for some of the more common questions. If any of these circumstances apply to your case you should discuss them with your attorney.

*Does having sole or joint physical custody affect my child support?*

No. The same formulas are used when calculating support regardless the custody designation.

*What if one of the parents is self employed?*

The gross income of a self employed individual would include all money received less the cost of goods which are sold and less general business expenses other than certain types of depreciation. This can be quite complicated and your attorney can explain how it might work in your case.

*Are overtime earnings included?*

Overtime is generally included unless it begins after the legal proceedings are commenced.

*Are bonuses and/or commissions considered?*

Bonuses and commission are generally included. However, there are various ways of addressing them.

*What if one or both of the parents are seasonally employed?*

Usually the person's annual income would be converted to an overall monthly average.

*Is the income of a parent's new spouse considered?*

No.

*Is there a maximum amount of child support?*

If your combined monthly gross income exceeds \$15,000, there is a cap on the amount of the support. However, there is not a cap when determining each parties' share (PICS) of the support amount. If one parent earns \$5,000 per month and the other parent earns \$45,000 per month, the child support amount is capped as if they earned \$15,000, but the PICS will be based on actual income. So in this example the parent earning \$5,000 is only earning 10% of the \$50,000 total so they would be responsible for 10% of the support amount as calculated under the guidelines and the other would be responsible for 90%.

*If we have more than one child, does support change when one of the children is emancipated?*

Although parents can agree to such a provision, generally child support does not automatically change when a child is emancipated. When the last child becomes emancipated child support automatically stops.

*May child support be changed?*

Yes. As both parents' incomes change over the years, it is possible to change the amount of support which you are paying or receiving. The most common reason for changing the amount of support is when one or both of the parents has a substantial increase or decrease in his or her income. In

most cases, a cost of living adjustment (COLA) is made automatically every two years to keep pace with inflation.

*Must the parents and the courts follow these guidelines?*

Parents may not simply agree to waive child support. There will be rare cases where it might not be appropriate to strictly follow these guidelines. When this happens the court must carefully explain why they are not following the guidelines.

*What if one of the parents is unemployed?*

A significant change in the new law is that you use a parent's "Potential Income" if they are unemployed. Potential Income is the amount of income that a parent is believed to be capable of earning. There are exceptions if a parent is unable to work or if by agreement one of the parents has been a stay at home parent for the child for whom support is owing. It is somewhat unclear at this point how this new provision will be interpreted by the courts.

Finally, the new laws which went into effect in 2007 were the most significant changes made to the child support laws in Minnesota in several decades. Questions may arise which are not clearly answered by the written statutes. In these cases we rely on the Minnesota Appellate Courts to interpret the laws. In addition, the state legislature will almost certainly continue to make minor changes to the laws. It is important that your attorney is familiar with the ongoing changes to the laws and how the appellate courts are interpreting those laws.

The State of Minnesota has created a website for lay persons to use in order to calculate child support. While this is a very useful site, it cannot consider all scenarios and it does not take the place of an attorney well acquainted with the law. The website is:

<http://childsupportcalculator.dhs.state.mn.us/>

**17. Does the parent paying child support have any control over how child support is spent?** No. Although this is sometimes a sore point between parents, the parent receiving support does not have to account for how the money is spent.

**18. What if the parent obligated to pay child support does not pay it?** When a judge or child support magistrate orders the parent to pay child support, that order is legally binding and can be enforced by the state in a variety of ways. In almost all cases, support is taken directly from the person's paycheck through income withholding. Employers are required to ask new employees if they have been ordered to pay support. If a public agency becomes involved with the enforcement and collection of child support payments, not only will the parent continue to be liable for the delinquent payments, he or she can also be charged a service fee each month as the cost of agency enforcement. The state may also intercept a person's state and federal tax refunds and apply it to the past due support obligations.

If a parent gets behind in child support payments by a number of months, the state can suspend the delinquent parent's driver's license and any occupational license. Additionally, the state can have a lien placed on the delinquent person's car, which means that anytime the car

is sold or traded the state has a right to receive payment from the proceeds of the car before monies or credits go to the owner of the car. Finally, the delinquent parent can also have his or her name published in the papers with the amount of money owed for child support, and if the failure to pay is willful, the parent could ultimately be sentenced to jail.

**19. What is the “Expedited Child Support Process” in regard to child support?** The expedited child support process was developed for the child support issues that were traditionally decided by a judge in the district courts. There are three main reasons for developing the expedited child support process: (1) to allow individuals to set or adjust support without going before a judge and hopefully without an attorney, (2) to expedite the process of the hearings, and (3) to insure that the people hearing the cases were “experts” in that field. In the expedited child support process, the person appointed to hear the case is a magistrate familiar with all aspects of child support issues. The expedited child support process is used only when there are child support, medical support, or maintenance issues relating to the child. Thus, the expedited child support process cannot be used unless there is a child involved. It should be noted that the expedited child support process was not developed strictly for divorce cases. It is also used by people who are separated, or were never married, but need help with the support of their children.

The administrative process is not designed to decide any issue relating to which parent has custody, parenting schedules, property settlements between the parents, or charges of spouse or child abuse. Those issues must be

resolved in the district court. The expedited child support process was designed only for the purpose of establishing, modifying, or enforcing child support, medical support, or maintenance orders when there are children involved.

Generally, the initial divorce proceedings occur in district court. At that time, the judge will decide issues relating to custody and the division of property. Once those initial decisions are made, the court may transfer the child support issues into the expedited child support process. For various reasons, the district court will often determine the amount of child support rather than transferring it to a child support magistrate.

One final thing about the expedited child support process. If the children are receiving any form of government services, such as food stamps or welfare, the county can intervene on behalf of the children and petition in the expedited child support process to seek monies from a delinquent parent or to increase the amount of support received by a parent, or to have the government paid back for services already provided that could have been provided by the parent with means to do so. Thus, if the government is providing any financial assistance for the welfare of a child, the government may have a voice in representing the interests of the child at all proceedings. This can cause confusion as there may be the different courts (district and expedited process) addressing child support. If you or your spouse are receiving financial assistance from the government, be sure to tell us.

**20. Can the amount of child support be changed?** As both parents’ incomes change over the years, it is possible

to change the amount of child support which you are paying or receiving. The most common reason for changing the amount of support would be if the person who was paying the support (the obligor) has a substantial increase or decrease in his or her income. Although less common, it may be modified if the needs of the person receiving the payments (the obligee) had a substantial increase or decrease in his or her income or a substantial increase or decrease in his or her monthly expenses. Changing the amount of support may require the assistance of an attorney as you must go back before the court to explain why a change is appropriate. This requires the preparation of paperwork and at least one appearance by your attorney. As the cost can sometimes be substantial, you should discuss this with your attorney if you think a change might be appropriate in your case. As stated above, the expedited process was established with the hope that an attorney would not need to be involved. Whether to attempt to change support without an attorney is a decision you will have to make.

In most cases, a cost of living adjustment (COLA) is made to support automatically every two years to keep pace with inflation. COLA's are only applied to the child support obligation and not to the cost of medical insurance or daycare expenses.

**21. What if I'm ordered to pay child support and I lose my job?** Under Minnesota law support arrearages are almost never forgiven. If you lose your job, but do not go back before the court or expedited child support process to change the monthly support which you are ordered to pay, you cannot later ask the court to forgive those amounts.

Therefore, if you are ordered to pay support and you have a substantial change in your income, you should immediately go back before the court to have your support obligations lowered. Although it costs money to do this, it may be minimal compared to having a judgment entered against you for back support. Once again, if in the future you believe that your income has changed so that the amount you are paying should be reduced, you should act immediately.

**22. Is child support tax deductible?** No. The person paying child support does not deduct the payments on their taxes and the person receiving the child support does not include it on their taxes.

**23. Will my spouse or I be required to maintain medical insurance coverage?** Yes. In almost all cases, the court will require that the children be covered by medical and dental insurance. In most cases, the cost of the portion attributable to the child or children is shared between the parents according to their PICS as discussed under the child support sections. In the example provided in Section 15, one parent's share of their combined gross income was 37 percent and the other parent's share is 63 percent. Once the cost of the children's insurance is determined, the first parent pays 37 percent of the cost and the other pays 63 percent. If the custodial parent is paying for the insurance, the non-custodial parent pays for their share of the insurance in addition to the child support. If the non-custodial parent is paying for the insurance, the custodial parent's contribution is an offset to the support being paid by the non-custodial parent. For example if the non-custodial parent pays \$500 per month for support and the custodial parent owes \$50 per month for insurance, the non-custodial

parent pays \$450 instead of \$500. The child support is still set at \$500, but the amount actually paid reflects the offset.

If the children are already covered by insurance the court will order that this insurance be continued. If the children are not covered but a group plan is available to a parent through a their employer or union, the court will order that the insurance be obtained. If it is available to both parents, they will have to decide what coverage to obtain or maintain, or if they are unable to agree, the court will determine which coverage is best. If the children are receiving coverage through the government (Minnesota Care or Medical Assistance) the non-custodial parent will be ordered to pay a portion of that cost. Both parents should have a current copy of a summary of the insurance plan's benefits and copies of current insurance cards. There are many other requirements as to what coverage is acceptable and when the cost is shared or when it is not shared. Your attorney can explain this to you in more detail.

**24. How are non-insured medical expenses for the children paid?** The cost of medical and dental expenses which are not paid through insurance are shared between the parties. This applies to co-pays, deductibles, non-insured expenses, glasses and orthodontia (braces). As with the cost of insurance, they are shared according to the PICS number. If you have 37 percent of the combined gross income you would pay 37 percent of these costs.

Although many parents agree on how best to handle these expenses, the law also sets out how it is done. In order to be reimbursed, the request must be made within two years of the date the expense was incurred. The request for

reimbursement must be made in writing and must include copies of bills and receipts. The person who receives the request has thirty days to pay the bills, or reimburse the parent who did, or to file a motion contesting the amount claimed. If the obligated person does not contest the charges and does not bring a motion challenging the amount claimed, child support enforcement will enforce the claim through income withholding. Although most parents work through these expenses easily, there are many detailed requirements set out in the law. This is only a brief overview and your attorney can explain it in more detail.

**25. Who pays for daycare expenses?** The cost of work or school related daycare cost are shared by the parents. Unless you and your spouse agree otherwise, you will share daycare expenses according to the PICS number. If you have 37 percent of the combined gross income, you would pay 37 percent and your spouse would pay 63 percent of these costs. However, because the parent paying for daycare often receives a state and federal tax credit, you must first find out what daycare actually costs after the tax credits. The Minnesota Department of Human Services prepares tables which show the amount of the tax credit. The child support calculator available online automatically takes the tax credit into account when calculating each parent's share of daycare expenses. Your attorney may have other software which can also calculate the tax credit when determining the amount of the daycare contribution. If the daycare expenses vary, for example if they are higher in the summertime when school is out, you must determine the average monthly cost for the entire year.

Although daycare contributions are a part of the child support obligation (COLA), they are not subject to Cost of Living Adjustments. In addition, these contributions are limited to daycare expenses which are incurred in order to allow the custodial parent to work or to attend school. Daycare contributions also end when the daycare expenses end. If the custodial parent notifies the public authority assisting with child support that the expenses have ended, the payments will be suspended. If the non-custodial parent notifies the public authority that daycare has ended, the public authority will verify that with the custodial parent. If the parents disagree as to whether the child is still in daycare, either party will have to bring a motion asking the court to determine the true facts. This is an overview of the law and your attorney can explain it in more detail as well as how it might apply to your particular case.

One final note to consider is that the non-custodial parent may be able to have the children with them instead of in daycare while the custodial parent works or attends school. Whether this is a good idea depends on the facts in your case. While this reduces the daycare costs for both parents, it is not a reason to increase or decrease child support.

**26. Will we have to obtain or maintain our life insurance?** Sometimes it is agreed that the parties will obtain *life insurance* on themselves, naming the children as beneficiaries. This is done so that the children will be taken care of financially should either the custodial or non-custodial parent die. Sometimes a party is required to continue naming his or her ex-spouse as a beneficiary under life insurance policies. If you have life insurance policies on yourself or your spouse, you should discuss this with your

attorney. *It is important that you follow up on this after the divorce and make sure insurance is obtained and the premiums kept up to date.* If the premiums are not paid, the insurance will not pay, even though your spouse was ordered to keep insurance in force. Likewise, if your spouse is no longer going to receive the proceeds from your life insurance policies, you must follow up after the divorce to insure that their name is removed. *A change in the beneficiary is not effective until this has been done.*

**27. Who can claim our children as exemptions on our tax returns?** Under federal and Minnesota law, the custodial parent is generally entitled to claim the children as tax exemptions. However, it is very common to have an agreement that the non-custodial parent is allowed to claim one or more of the children as exemptions. The court may also order which parent may claim a child as an exemption. One way of claiming the children is for the custodial parent to fill out an IRS form stating that the other parent is entitled to claim the children for that year. Or the divorce decree can say which parent may claim a child. Unless this is put into the Marital Termination Agreement and/or Court Order, the non-custodial parent may not claim the children as exemptions. Whether or not the custodial parent wants to agree to this or whether the court will order it depends on many factors which your attorney can explain to you. In most cases, if both parents work and if support is being paid, the exemptions are shared.

**28. Is there still such a thing as alimony (spousal maintenance)?** Yes. Alimony still exists. In Minnesota, alimony is referred to as "*spousal maintenance*" or "*maintenance*." Quite often, maintenance is only for a set

period of time (rehabilitative maintenance) such as for two or three years so as to allow the spouse some time to get back on his or her feet financially. In some cases, a permanent award of maintenance will be made. With a permanent award, maintenance would continue to be paid for an indefinite period, usually until the person receiving it dies or remarries, or perhaps the retirement of the person paying it. Whether a person is entitled to receive maintenance depends on many factors including: (1) the person's age and health, (2) length of marriage, (3) education, (4) work history, (5) each party's income, (6) the amount of child support being paid, and (7) each party's monthly budget based on their lifestyle prior to the divorce. There are no precise formulas or guidelines dictating the amount of maintenance to be paid. It varies in each situation. In many cases, the parties waive the right to maintenance. This is sometimes referred to as a "Karon Waiver." If this is done, maintenance cannot be obtained at a later date. In other cases, the parties reserve maintenance, which means that no maintenance is paid at the time of the divorce, but the court may later award maintenance if circumstances change.

### **29. Are spousal maintenance payments tax deductible?**

One important difference between child support and maintenance relates to taxes. When filing your tax returns, child support is not subtracted from the income of the person who pays it. Likewise, it is not included as income for the person who receives it. On the other hand, a person who is paying maintenance deducts that amount from his or her income when filing tax returns. Additionally, the person who is receiving the maintenance must declare those payments as income for their taxes.

**30. Can the amount of maintenance be changed?** As both parents' incomes change over the years, it is possible to change the amount of maintenance which you are paying or receiving. The most common reason for changing the amount of maintenance would be if the person who was paying the support (the obligor) has a substantial increase or decrease in his or her income. It may also be modified if the needs of the person receiving the payments (the obligee) has a substantial increase or decrease in his or her income or a substantial increase or decrease in his or her monthly expenses. Changing the amount of maintenance may require the assistance of an attorney as you must go back before the court to explain why a change is appropriate. This requires the preparation of paperwork and at least one appearance by your attorney. As the cost can sometimes be substantial, you should discuss this with your attorney if you think a change might be appropriate in your case. In most cases, a cost of living adjustment (COLA) is made to maintenance automatically every two years to keep pace with inflation.

### **31. What if I'm ordered to pay maintenance and I lose my job?**

Under Minnesota law maintenance arrearages are rarely forgiven. If you lose your job, but do not go back before the court to change the monthly support which you are ordered to pay, you cannot later ask the court to forgive those amounts. Therefore, if you are ordered to pay maintenance and you have a substantial change in your income, you should immediately go back before the court to have your maintenance obligations lowered. Although it costs money to do this, it may be minimal compared to having a judgment entered against you for arrears. Once again, if in the future you believe that your income has

changed so that the amount you are paying should be reduced, you should act immediately.

**32. Will we have to obtain or maintain our life insurance?** As discussed earlier, when there are minor children, sometimes it is agreed that the parties will obtain *life insurance* on themselves, naming the children as beneficiaries. When spousal maintenance is ordered, sometimes a party may be required to continue naming his or her ex-spouse as a beneficiary under life insurance policies. If you have life insurance policies on yourself or your spouse, you should discuss this with your attorney. *It is important that you follow up on this after the divorce and make sure insurance is obtained and the premiums kept up to date.* If the premiums are not paid, the insurance will not pay, even though your spouse was ordered to keep insurance in force. Likewise, if your spouse is no longer going to receive the proceeds from your life insurance policies, you must follow up after the divorce to insure that their name is removed. *A change in the beneficiary is not effective until this has been done.*

**33. How will our property be divided?** In Minnesota some property is considered to be "*marital property*" while other property is considered to be "*non-marital property*." "Marital property" includes most property which is acquired during the marriage regardless of which party earned the money used to purchase the item. Marital property is usually divided as close to 50/50 in value as possible. Naturally, it is necessary to determine what your assets are worth. This can be done by agreement between the parties or by hiring someone who is qualified to appraise the value of the various item to determine what they are worth. The value of

your property is what it could be sold for now rather than its original cost or replacement cost. The basic approach is to determine what all of the property together is worth. Sometimes one party will receive property of a greater value than the other and a cash award is necessary to equalize the division.

Rarely, one party has unusual needs and is therefore awarded more than 50% of the property. As a general rule, however, every attempt is made to divide the property equally. You will note that your attorney generally speaks of "*real property*" (real estate) and "*personal property*" (anything which is not real estate, such as cars, furniture, savings accounts and pension plans).

Briefly, "*non-marital property*" refers to any property which was acquired prior to the marriage. Non-marital property may also include some property received during the marriage such as inheritances received by one of the parties, certain types of personal injury claims, gifts to one party from someone other than the spouse and, sometimes, property which was received in exchange for non-marital property. For example, money received from a home owned prior to the marriage being used as a down payment on a house purchased during the marriage. Distinguishing between marital and non-marital property can be complicated. If you have property you consider non-marital, be sure to discuss this with your attorney.

**34. Who receives the non-marital property?** Normally, non-marital property is awarded to the person who originally owned it. However, there are some extremely rare circumstances where one party has unusual needs so

that they might be entitled to a portion of the non-marital property.

**35. What if I have a prenuptial agreement?** If you and your spouse have a valid prenuptial (sometimes referred to as an antenuptial agreement) or a valid postnuptial agreement, your property will be divided according to the terms of that agreement. A prenuptial agreement may also say whether you may receive or pay spousal maintenance. Be sure to tell your attorney if you have a prenuptial or postnuptial agreement.

**36. What happens to our home?** If you own a home, you will have to decide what is to be done with it after the divorce. There are several ways of dealing with this. In some cases the house is sold and then, after the mortgage is paid in full, the remaining money is split between the parties. There are times when the home is worth less than what is owing. In this case the loss may have to be divided as a debt. Sometimes one person may wish to continue to own the home. In this case he or she may buy out the other person's interest in it. This might be done by actually paying cash, by trading other assets at the time of the divorce, or it might be done by placing a marital lien or a mortgage on the home. The marital lien or mortgage would specify how much money is going to the person who no longer owns the home and also specifies when and in what manner that money will be paid. If you have minor children, the party who has custody of the children is sometimes allowed to stay in the homestead until the children reach age 18 if the custodial parent so desires. The court may do this to insure that the children's lives remain

as stable as possible. This is not as common as it once was, but is sometimes done.

**37. What if we own a cabin or other real estate?** Any other real property would be dealt with in the same way as the homestead, except that the property would most likely be awarded to one of the parties or else it would be sold now rather than waiting.

**38. Are there immediate tax consequences related to property settlements?** No. Property settlements are not taxable at the time of the divorce. However, when the person awarded the property sells it at a later time, they may be responsible for any taxable capital gain. For example, when determining what you originally paid for your home and what money you have put into it over the years, you do not include the money you paid to your ex-spouse at the time of the divorce. It is always wise to discuss these issues with your accountant or other tax professional.

**39. What if my spouse or I own a business?** If you or your spouse own a business or own a portion of a business, it will be treated like any other property. In most cases at least a portion of it is going to be marital and must be divided. Even if the business was bought before the marriage, it may have increased in value and that increase in value may be considered marital property.

The toughest part of dividing a business is trying to decide what it is worth. This may require hiring an accountant to determine what the value is or perhaps it can be done by agreement between you and your spouse after looking at the various business records. It might be that you

would remain joint owners after the dissolution, although it would be more typical to have some type of a Buy-Out Agreement. In rare cases, this is not possible and it is necessary that the business be sold, the debts paid and the left over funds divided between the two parties. Dissolutions where one or both parties own a business may be very complicated and it will affect the total cost of your divorce.

**40. Are pension plans and similar items divided?** Yes. Pension plans, profit sharing plans, 401(k)'s, IRA'S, ESOP's, annuities and other similar retirement plans are divided upon a divorce. We will need to know whether you and your spouse have any such plans, whether through their present or past employment, or privately obtained. It is possible that a portion of these retirement plans could be non-marital if some money was contributed prior to the marriage. If so, only that portion which is considered to be marital would normally be divided. There are tax considerations in dividing up retirement plans which your attorney will discuss with you. It is possible to assign a portion of most retirement plans through a Qualified Domestic Relations Order (QDRO) or other similar order so the former spouse will have money for their retirement. This can avoid taxes and penalties becoming immediately due. The most important thing is to find out whether or not you or your spouse have any such retirement benefits.

**41. Who will pay our bills?** Debts are considered when property is divided. Debts can be divided so that the net effect of dividing property and debts will be an equal division between the husband and wife. Your attorney will ask you for detailed information about all of your property

as well as all of your debts. Typically when a party receives a major item, such as a car, as a part of the divorce, the party who received the car will be liable for the debt owing on it. This would also usually apply to home mortgages. Once again, there may be exceptions to this general rule. *You should be aware that while the court can order you or your spouse to pay a particular bill, that does not prevent the creditor from asking either of you to pay it if you were both originally obligated on the debt.* It is not unheard of for a person to have a credit card company pursuing them for a debt that the other party was ordered to pay. Your attorney can explain what this means in greater detail.

**42. How do I find out what property my spouse owns?** Sometimes you may not know about everything your spouse owns. It is possible that your spouse may have retirement funds, pension plans or insurance policies of which you are not aware. There may be other assets such as bank accounts which you do not know much about. In order to help you find out this information, your attorney can conduct "discovery." This may include sending out written questions to your spouse which must be answered under oath disclosing exactly what property is owned and where that property is located. Your attorney can request that your spouse produce copies of tax returns, bank records and other documents which might indicate what assets are owned. This discovery process involves increased legal fees. In addition, discovery is sometimes necessary to find out additional information about assets and debts that you do know exist. Therefore, you will need to balance the cost of engaging in discovery against the possibility of there being assets or property of which you were not aware. Divorces are generally faster, cheaper and less acrimonious if both

parties freely and fully provide the necessary documentation and information.

**43. How long will it take before my dissolution is final?**

As previously stated, the marital dissolution is not final until the Findings of Fact, Conclusions of Law and Order for Judgment and Judgment and Decree (often called decree or divorce decree) has been signed by the judge and signed and filed by the court administrator. In Minnesota this must be at least 30 days from the date on which you or your spouse receives (is served with) the Summons and Petition. The purpose of this 30 day period is to allow time to respond to the statements and requests made in the Petition. In most cases, however, it takes longer than this for the decree to be finalized.

If you do not have any children, real estate, substantial property or major debts to divide, the whole process might take eight to twelve weeks. In more typical situations, there is at least some property to divide and a period of three to six months would be more likely.

If there is any dispute which arises regarding custody of the children, support, or division of property or debts, the process can take much longer. If it is necessary to go through a trial, you should expect it to take at least six to nine months. Again, there are exceptions where it may take less or more time.

**44. How much will my dissolution cost?** This is one of the most commonly asked questions and one of the most difficult to answer. The cost can range from a thousand dollars to tens of thousands of dollars depending on

numerous factors. We can tell you how much it will cost to prepare the Summons and Petition and to have it served upon your spouse. However, at that point, the cost is going to depend in large part upon how you and your spouse act. There are numerous factors which can affect the cost of your dissolution. This includes whether there is a need for a temporary hearing, if there is a custody dispute, and how much property is involved. Another very important factor is the couple's cooperation with one another and cooperation between you and your attorney. If your spouse attempts to fight you every step of the way, the cost will go up. Also, if you do not promptly respond to your attorney's requests for information, it requires that extra time be spent getting information from you and your cost will rise accordingly. You can help keep your costs down by providing information to your attorney promptly in an organized fashion rather than say just providing a box full of documents and asking your attorney to sort through them.

At Rinke-Noonan, you will be billed at an hourly rate. You will receive monthly billings showing what work was performed and at what cost. Some of the work will be performed by a paralegal under your attorney's supervision. The paralegal's work is billed at a lower hourly rate than your attorney's work. You can help keep the cost of your dissolution down by dealing with the paralegal when it is appropriate. However, if you have any questions which involve a legal opinion, you should ask to speak with your attorney. In any event, you should never hesitate to ask to speak with your attorney if you wish to do so.

One common misconception is that a client is not billed for telephone calls or email with their attorney.

Attorneys charge for their time including most telephone calls and reviewing or replying to emails. When your attorney speaks with you, it is usually necessary to take notes and then to put those notes in your file. This requires time beyond that actually time spent on the telephone. You should not be discouraged from talking with your attorney. However, when possible you should consolidate your questions or information so that you do not increase your cost unnecessarily.

If you are comfortable using email this may be an effective way to communicate with your attorney or paralegal. Using email to ask questions, relay information or send documentation, can be quicker and less expensive than telephone calls or mail.

In addition to the hourly rate, you will have to pay for any "costs" which are incurred by Rinke-Noonan on your behalf. This includes the cost of having the sheriff serve papers on your spouse and other things such as the fee which the court charges in order to file your dissolution papers. In recent years, these costs have increased dramatically. Your attorney or paralegal will explain this to you. There are some lower income situations where your attorney may ask the court to allow you to proceed "*in forma pauperis*." This means that you would not have to pay fees for a sheriff's service or filing fees. Your attorney can tell you whether your income is such where you might be eligible.

In most cases, it will be necessary for you to provide your attorney with a lump sum payment prior to initiating the dissolution action. This is called a "*retainer*" and the

amount varies with the complexity of the case. As a general rule, if there are substantial assets or a custody dispute involved, the amount of the retainer will be larger than if it is a fairly simple dissolution. Any retainer amounts not needed to cover your legal fees will be returned to you. If the retainer is used up you will need to pay your bill in full each month unless you have a specific agreement to do otherwise. Remember, a retainer is not an agreement to complete the divorce for that amount. It is more of a down payment toward the total cost.

**45. What information will my attorney require in order to start the dissolution action?** In order to do the best job for you, your attorney needs to have a complete listing of all of the things you own, their value, and all of your debts. As much of this information as possible should be brought to your first meeting with your attorney. Again, providing this information in an organized manner may save you attorney fees. You should be prepared to provide your attorney with the following:

- Tax returns for the past three to five years with all attachments such as W-2's and 1099's
- Five or six recent pay stubs for you and your spouse showing all deductions.
- Most recent six months statements on checking and savings accounts.
- Current account statements for 401(k)'s, IRA's, annuities and other retirement funds.

- Information about your own and your spouse's employment benefits, especially details of pensions, retirement or profit sharing plans.
- Information regarding health insurance coverage and its cost.
- Personal financial statements provided to banks for the purpose of borrowing.
- Deeds, contract for deeds, and other documents involving real estate and mortgages. We will need accurate legal descriptions for all of your land. Property tax statements are not a reliable means of getting them. The deed or a copy of the cover page of your title abstract is preferred.
- Documentation showing the value of any major asset which you may own.
- Corporate or partnership tax returns and financial statements.
- A list of your existing debts.
- Most recent six months charge account statements.
- Copies of any prenuptial or postnuptial agreements.

In addition, in all cases involving maintenance or child support, your attorney will need to have a detailed breakdown of your monthly expenses. Your attorney or your paralegal can provide you with a form to assist you

with this. You may be able to determine your monthly expenses just by using this form or it might be necessary for you to refer to your checkbook and credit card statements to see where your money really goes. If spousal maintenance is involved we would like copies of documents showing the previous 12 months of all recurring expenses such as utility bills, credit cards and check book ledgers or other documents showing money spent in the previous 12 months.

**46. Should I draft a Will or amend my existing Will?**

Once your dissolution is final, you should consider making a Will or, if you already have one, amending your current Will. Even though your dissolution automatically revokes any provisions in your current Will for your ex-spouse, you might wish to remove any references to him or her. Also if you have minor children, your Will should designate either a guardian, custodian, or trustee (presumably other than your ex-spouse) to manage any assets which your child or children might inherit as minors. This work would be separate from your dissolution and is generally done for a specific set fee. We will provide you with the name of an attorney at Rinke-Noonan to discuss these issues.

**47. Is this process the same in all counties?** There are some differences in court proceedings depending on what county your divorce is (venued) in. Counties in the Minneapolis / St. Paul area may use referees rather than judges in some court hearings. Your attorney can explain how the process works in your county.

**48. Some final thoughts.** We hope that this information explains the divorce process and answers many of your questions about what is involved in obtaining a marital

dissolution. However, your attorney can explain these issues in greater detail or answer any additional questions which you might have, and we would be happy to do so.

At best, going through a marital dissolution is a difficult and trying time. At worst, it can become a nightmare. At Rinke-Noonan we try to help take the worries away from you and assure you that all of the issues are being handled in a thorough and professional manner. One of the worst things that can happen is to go through a dissolution and then have problems arise later due to poor choices which were made or questions which went unanswered. We make every attempt to assure that this does not happen by trying to address not only the issues and problems which presently face you but any that might arise in the future.

Because this is a difficult time, we would be more than happy to provide you with the names of various counselors in the area to help you deal with the personal concerns you may have. It has been our experience that counseling helps the parties cope with this difficult period in their lives. Finally, we will attempt to cooperate, if possible, with your spouse. We have found that even though your spouse is the opposing party, dealing with him or her or their attorney in a professional and realistic manner is the best way to come to a speedy resolution that you will be happy with both now and in the future. We look forward to being of service to you.

### **Notes**

*This is who we are...  
and what we do*

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