WINTHROP
LAW OFFICES
Family Law

Ready, Set, Court!

How to Survive Your Case

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FORWARD

Read this book and you will really understand the process.

Get Prepared Now: Ready, Set, Court!

I often talk to parties who previously consulted with an attorney, and I was astonished when I discovered that they were completely uninformed about the process, their rights, duties, and overall what to expect. Many attorneys rush through the process due to their busy schedules and caseload, and their clients really do not understand the issues, often finding them lost in this process. This is one of the most trying times in your life, and you should really understand this process and what to expect.

I always endeavor and pride myself in my ability to really explain the process to our clients and really make sure that they are empowered with the knowledge of what to expect along with providing them with a case specific strategy, so we could maximize our representation of their interests.

It is very important to remember this fact: We (as attorneys) work for you! Not the other way around! The desire to really explain the law, the procedure, and what to expect, so you are empowered with the knowledge on how to navigate your case is the heart and soul of this book.

I would like to take this opportunity to introduce myself. My name is Dorian Winthrop, and the main focus of our practice is divorce and family law. I've been in practice for approximately 20 years. Divorce and other family law matters often involve complex and other challenging matters that should only be entrusted to a lawyer with experience, training, and personal knowledge of family law issues.

In writing this book, I am making a promise to you here – right at the beginning – that when you are done reading it, you will really understand the basic law and the process, so you will really know what to expect in your case.

The reason why we attribute our success is because we take the time to really explain this process to our clients, so they really know what to expect and really feel more of a semblance of control in this emotional process. By really giving them a good sense of understanding, we really help our clients navigate the progress of their case and allow them to feel more comfortable by really getting a good grasp of the process. As a result, clients know what to expect when being questioned by an opposing attorney or the judge, and they have explained to us on countless occasions how much they appreciated our thorough explanation.

THE TOP FIVE SURVIVAL TOOLS

Survival Tool #1: Choose the Right Advocate- Choose the right lawyer for you. Some clients want the warrior lawyer. Some want a compassionate lawyer. Most need a balance of both. It is extremely important that you have the right fit. This person and their representation could have a major impact on your life and future. You must make sure that you have an attorney who will properly communicate with you and one that you feel really comfortable with. Most importantly, there is simply no substitute for experience. Therefore, you want to retain an attorney who focuses most of their cases and stays focused in the area of family law.

Survival Tool #2: Stay Informed / Ask Questions- You must not only stay informed throughout the whole process, it is essential that you continue to communicate with your attorney. From our experience, clients who are in the know and routinely engage with their attorneys, thrive in this process. They feel more comfortable and truly know what to expect. It is your case. It is essential that you truly understand the process and the law.

Survival Tool #3: Think before texting or emailing your spouse- Always pretend that there is a miniature judge sitting on your shoulder every time before you email or text your spouse. Many people, due to the constant emotions throughout the proceeding, really do a disservice to their case when they become ultra combative, swear, etc., which could be very damaging. So, think before you send a text or an email or a voice mail as these are often offered into evidence at the time of trial or other hearing and could be used against you.

Survival Tool #4: Avoid Comingling / Safeguard Family Heirlooms- Since the court will look at the amount of funds that existed around the date of filing, in certain cases, you may want to open a separate account in an effort to avoid comingling of non-marital post filing assets. Some parties hold the other party's family heirlooms, jewelry, and artwork hostage in order to deprive the other party of them. It is therefore extremely important for you to safeguard them by placing them in a safe place, taking pictures, etc.

Survival Tool #5: Do Not Listen to the Other Side- This actually should be the first on this list! Do not listen to everything your spouse tells you. They will try to get in your head by telling you what their lawyer is telling them and will try to make you crazy. Don't do it! Also do not tell them what is going on regarding conversations with your own attorney. Do not say anything to them that will reveal your legal strategy.

CHAPTER 1: THE PROCESS

HOW LONG IS THE PROCESS?

A divorce proceeding, which is also called a dissolution of marriage action, can typically last 1 year to 18 months from the time it is filed. If it is contested, and depending on the issues involved, the nature of the dispute, the judge's calendar, and other issues involved in the proceeding, it could make it a shorter or longer time-frame.

On the other hand, if the parties are able to arrive at an agreement, they could be divorced as early is 20 days from the initiation of the proceeding. In many cases, assuming the parties own property and/or have children, after the parties had an opportunity to exchange financial disclosure, the case could take around 3-6 months.

DEADLINES TO RESPOND

From the date of being served, by the sheriff or process server, with the summons and divorce paperwork, you have only **twenty (20) days** to respond; otherwise, the petitioner (your spouse as the filing party) could obtain a default judgment against you. Therefore, it is extremely important that you timely file your response.

Time deadlines are strictly adhered to. It is not a sufficient excuse to say that you were ignorant of the law; therefore, you will need to make sure that you make arrangements immediately to protect you interests and ensure that you file on time.

Also, it is very important to file a counter petition in most cases, which means that in order for you to ask the court for certain relief of your own, like alimony, child support, timesharing, division of assets and liabilities (equitable distribution), you will need to file your own counter petition, seeking a divorce. It is not enough to simply file a response. In order for you to ask the court to award you affirmative relief, you will need to file a counter petition and pay the clerk the requisite filing fee.

PLEADINGS STAGE

So you really understand the process, the first stage of the divorce action is called the pleadings stage. A pleading is a legal document that explains to the court what type of relief you are asking the court (the judge) to award you as well as why the court has jurisdiction (the power) to award you this certain type of relief. The typical pleadings are as follows: 1) petition; 2) answer/reply; 3) counter petition; and 4) answer to the counter petition.

This is important as it not only frames the issues for the court to determine, it also gives the other party (your spouse) notice of what issues are to be tried. Not only does it give the court jurisdiction (the power) to make a decision on those issues, but it also puts the other side on notice of what to expect, so they do not claim that they were denied due process.

I often compare it to a TV guide, where you would be able to look up and know exactly what (show) will be heard at a specific date and time well in advance. This way, everyone knows what (issues) will be heard on a given day or time, so there are no surprises.

Also, it is important to realize that that the court does not have the power to rule on issues that have not been pled (raised in the pleadings). As an example, at trial, a party requests that the other party is ordered to obtain life insurance in order to secure child support and/or alimony; however, if a request for life insurance was not plead (written) in the pleadings (petition or counter petition), over an objection from the opposing side, the court is not permitted to require insurance. Likewise, if a party does not plead alimony in their petition or counter petition, the judge may not be permitted to grant that type of relief at trial. Therefore, it is extremely important to defend the petition and to timely properly raise any of your own claims for relief with the court.

FINANCIAL AND OTHER DISCLOSURE

Within 45 days of being served with the divorce papers, each party is required to exchange mandatory disclosure documents. This reciprocal requirement means that both parties need to exchange certain financial records like a financial affidavit, which provides the other side with a summary of your income, expenses, assets, and liabilities, and other specific income records, such as recent pay stubs, last year's income tax returns, bank statements, credit card statements, etc. The purpose of this is so each party can properly evaluate, at least on a cursory level, the basic financial issues involved in a case.

Many attorneys or parties overlook the importance of completing a properly drafted financial affidavit. If not done properly, this could present a major problem in your case. This is one of the most important documents that a court would consider in a divorce case. It also lets the judge know what the basic financial issues are, an illustration of a party's need for support (alimony), and the other party's alleged corresponding ability to pay.

Even though a financial affidavit can be amended during a proceeding, you do not want to be in a position of back-pedaling, where you can lose significant credibility with the judge. There are no juries in family law cases, so a judge (one individual) will hear the entire case and make all the decisions.

What parties do not realize is that if you made a mistake on one item on your financial affidavit, the court, according to the law, may actually be permitted to discount (disbelieve) everything else that you testified about during the rest of the trial. This can be catastrophic and simply cannot be overlooked. Therefore, preparation is key!

Parties are not limited to the mandatory disclosure, and often times they request additional discovery (financial documents and other important records) throughout the proceeding to gather additional facts and to properly prepare for a case. Examples of these are supplemental requests are as follows: 1) interrogatories; 2) depositions; 3) subpoenas to non-parties; and 4) and requests for production of the documents.

MEDIATION REQUIREMENT

Before the parties go to trial, the court will require both sides to attend a mediation session, which is confidential in nature. The mediator, who is neutral, cannot make a decision or testify in court regarding what transpired at the time of mediation. Instead, they work with the attorneys and the parties in an effort to help them resolve the case on their own by coming up with a mutual agreement.

In some circuits, judge's require the parties to attend a mediation session before the parties can even set a temporary relief hearing, which will be explained in the next chapter. In fact, some judge's even require the parties to attend mediation more than once before the case is set for trial.

The main reasons for this mediation requirement is due to the court dockets being congested, which us why the court tries to encourage the parties to resolve their own dispute on their own without the court's involvement. The other reason is that most cases are resolved at mediation. The statistics have shown that approximately 95 percent of the cases are actually resolved at mediation! It is no wonder, why the judges are so likely to order the parties go back to mediation in an effort to resolve their cases if they could not get it resolved on the first attempt.

There are two huge benefits with having your case settled at mediation:

The Costs

First, the attorneys' fees required to litigate a case to trial, the costs associated with retention of experts, court reporters needed to be present at depositions, etc., could be so exorbitant that it is simply not economical or even affordable for most parties in the first place; and

Control

Next, you actually have more control than a judge! Would you rather have a stranger, who typically has only one day, to hear your entire situation, and make a decision that may significantly impact the rest of your life, or would you rather have the time to craft your own resolution to your case?

As an example, imagine that a judge awards you alimony and certain assets that you requested, which is great, but on the other hand allows your spouse to have the majority of the timesharing (custody) of your children or, even worse, allows your spouse to permanently move out of the state with the minor children. These results could be devastating. Also, in a different context, even if you were able to get awarded the exact timesharing (visitation) days that you requested, the judge could set the pick up time and drop off times to a completely inconvenient time that did not accommodate your work schedule. Once a judge rules, it is extremely difficult, if not impossible, in many cases to overturn that judge's decision. So, you may be stuck with that decision. Therefore, you will have more control at mediation to work on a compromise on what is most important to you rather than allowing a judge to decide your fate.

At mediation, if an agreement can be reached, the case will be settled, and you could get divorced without the need of a trial. If the parties come up with their own agreement, they could be divorced as early as a week or two from the date of the agreement.

TEMPORARY RELIEF (MINIATURE TRIAL)

Often, there are certain issues that arise in most family law cases that simply cannot wait a year or longer to get resolved. There would be too much chaos if the parties had to wait a year or more for the judge to make a decision after hearing a lengthy trial.

Examples of these time sensitive matters (that cannot wait until the time of trial) are as follows: 1) temporary child support; 2) temporary alimony; 3) temporary attorneys' fees and costs; and 4) a temporary timesharing (visitation) schedule with the parties children.

Imagine a situation where a husband and wife, during the pendency of a divorce action, simply cannot agree on a timesharing schedule with the children. This would cause complete chaos as I mentioned. One parent would show up even earlier at the child's school and remove the child before the other parent arrives at the school to pick up the children. In order to avoid this from happening again, the other parent tries to pick the child up earlier the following day. The police will typically not get involved in these types of situations as each parent has an equal right to their children and it is not in the law enforcement's discretion to make a decision regarding placement of the children. They often will tell the parties that it is a civil matter, which means that the parties need to submit this matter to the court, so the judge will decide this issue at a temporary relief hearing. Otherwise, the parties are left to the solution of trying to play tug-and-war when it comes to their children.

This is the very purpose of a temporary relief hearing. It is a short hearing (typically 30 minutes to an hour in length), and it is like a miniature trial where the court will allow testimony (through witnesses) and the introduction of other evidence (photos, emails, documents, etc.) Otherwise, the parties would have to wait approximately a year or more to resolve these issues at the actual trial, which would drive the parties crazy.

Another example of a temporary relief hearing is if a spouse moved out of the house and stopped paying the bills or providing child support. The court would not let the children or the other parent starve or not have any electricity without adequate funds, and the judge could afford a temporary resolution to this problem pending the trial. Otherwise, one party could become destitute if that party does not receive any support during this timeframe.

The nature of the temporary relief hearing is temporary in nature, and the court could change its decision at the time of the final hearing (trial) once the parties have had an adequate opportunity to flesh out the issues and complete the discovery process.

TRIAL

As I mentioned earlier in the section about mediation, approximately 95% of the cases settle at mediation. One reason why only 5% of the cases go to trial is because one side, who has a warped impression of reality which is usually driven by emotion that they, will not listen to their lawyer and will hold onto an unreasonable expectation of what they think will transpire at the time of trial. They are so confident that the judge will rule a certain way. The other reason is because the parties are just too far apart on coming up with an agreement, and sometimes a trial is inevitable, despite the parties' attendance at mediation and being properly advised by their attorneys.

Another reason why cases do not settle at mediation and instead go to trial is because sometimes parties hire attorneys who normally do not practice family law or handle divorce cases, like personal injury (civil) or criminal attorneys. Those attorneys, despite having much experience in their respective areas of law, do not know how to properly evaluate a case based on limited experience in the area of family law. This explains why you really need to hire an attorney with experience in family law in the first place and not another attorney who simply dabbles in it.

Trials could be very expensive, as I already mentioned, so it is very important to have a very proactive and focused (goal-oriented) attorney who will advocate for you and try to resolve your case without the need for a contentious and protracted litigation in the first place. This means that you will really want someone who is going to try to resolve the entire case at mediation by communicating effectively and persuasively to the other side's attorney in order to avoid having to go through the enormous effort of having an expensive and lengthy trial.

If your case does go to trial, you must make sure that you have appropriate witnesses who will testify for you on your behalf. Sometimes, they will need to be subpoenaed to secure their attendance.

Another crucial thing that you need to realize is that trials require an exorbitant amount of legal work and careful attention to details. For example, if two parties were fighting over the value of the marital home, and the wife, whom the parties agree will keep the home in her column, but are in

disagreement as to the actual value (dollar amount) that will be assigned to it, an appropriate figure would have to be determined. Let's say that the wife's expert (a real estate appraiser) testifies that the home's fair market value is $400,000. On the other hand, the husband's expert (also a real estate appraiser) testifies that the home's fair market value is $600,000. This is a huge discrepancy, and will make a big difference on the amount of the equitable distribution payment or offset.

Assume that both experts sound very persuasive on the witness stand and provide a very solid explanation of why his/her valuation is the correct one for the court (judge) to choose from. Let's say that both witnesses attended great schools and have other impressive credentials, and both applied what appear to be very credible methodologies. What is the judge to do in that case? Which figure does the judge accept? Many people, including some judges (which may be surprising) do not realize that a judge cannot simply just pick a number somewhere in the middle, like $500,000 as this is not permitted in the law and will be reversed on appeal. The judge can only accept one of the figures, and can only make a "judgment" call as to which expert the judge thinks is more credible based on the evidence/testimony at the time of trial. This presents a huge problem, since the swing (in this case $100,000) is enormous and can seriously affect the equitable distribution scheme and could severely prejudice a party financially.

Knowing that the judge can only pick one expert's opinion over another, this means that your attorney must really know the case and how to effectively cross examine the opposing side's expert's at trial and to even be very diligent in taking the expert's pretrial deposition.

This issue not only applies valuations of property. The same analysis goes with income figures, custody disputes, etc. Could you imagine a case where one expert projects the earnings of a spouse who has his or her own business with a figure that is well over that person's real earnings, even if that figure was wrong? This would cause that person to potentially pay alimony, child support, and/or have to pay a lot more in the equitable distribution that far exceeds his/her actual ability to pay. This would be catastrophic and put the person in a situation where they would go to jail every year for many years to come or be forced to file bankruptcy. Keep in mind that a party cannot discharge child support and/or alimony in bankruptcy court. Therefore, you never want to be in a position where the judge makes a mistake and accepts incorrect figures!

Be careful! You may get what you are actually asking for!- Another issue to seriously consider with the trial process is even if you prevail on all the issues you wanted to at trial, the problem now is, that even if the court ruled in your favor, the other side could appeal the ruling, forcing you into the higher court (3 appellate judges). This would mean that you would the have to go through a very costly appeal. In some cases, if the appellate court reverses the trial court judge, the whole case may be sent back to the lower (trial) court to be tried again on some or all issues. Alternatively, if the case settles before a trial based upon an agreement of the parties (through mediation or otherwise), this will avoid the entire issue of an appeal and have some level of finality to the process and give the parties a sense of closure.

Now, you can not only see the importance of trying to have your case settled quickly, at mediation or beforehand, in an effort to avoid the expense and uncertainty of having your case actually go to trial.

Therefore, it is extremely important to have a very well trained attorney represent your interests and either try to settle the case at mediation, prior to having the case get out of hand. If, however, a trial becomes inevitable, despite your best efforts to settle, you will need the right attorney who will need to properly and zealously represent your interests by doing their due diligence and advocating for you in the way you deserve to be represented.

CHAPTER 2: CHILD SUPPORT

GUIDELINES / FORMULA

Florida Statute §61.30- Child support follows specific guidelines that have been set forth by the Florida legislature. Florida Statute §61.30 provides these guidelines. The amounts provided in this statue basically take both parties' respective income levels into consideration along with the amount of overnights that coincide with the time-sharing schedule.

INCOME

What is considered income- The court takes both parties net income levels into consideration when factoring the child support amounts. Therefore, in order to arrive at accurate figures, the court will consider a party's income level after deducting the taxes and certain other deductions like individual health insurance premiums and mandatory retirement. Income includes regular pay, bonuses, overtime, in-kind income (expenses paid by an employer), etc.

Unemployed party- If, however, a parent is not currently employed, the court is still able to impute (project) that parent to a certain income level whether that party is working or not. For example, let's say that a party decides to stop working and quits his/her job just to punish the other parent and escape his/her legal obligation for support. Since this is a voluntary act, the court will assume that the parent is still employed at the same income rate and will make a ruling that the child support is being based on the same figure that the parent was recently earning, whether that parent sits home and decides not to work at all. Also, if that parent tries to get themselves fired by showing up late to work or insulting their boss, under the law, a violation of company protocol will have the same effect as if the party simply quit their job. This means that the judge can impute (project) that party to their previous income level. The whole question becomes whether a parent's unemployment is voluntary or not. This becomes a factual question, which is what the judge will determine at the time of the hearing (temporary relief and/or trial).

Underemployment- Alternatively, let's say a parent has been out of work for a while, was laid off due to budget issues or some other reason outside that parent's control or is currently employed but is making far less than he or she is accustomed to earning. A court could still impute (project) that parent to a higher income level only with competent substantial evidence proving what income level that should be. This means that the court could not guess at this amount. However, on the court's own, the judge could only impute that parent to the minimum wage without any expert testimony. In most cases, however, this projection would not be sufficient given the low amount of the minimum wage. In order for the court to make a decision based on competent substantial evidence, it would need credible evidence that the parent is capable of making a certain income level. It is not, however, enough for the judge to simply look at the party and for the judge to make an educated decision on how much that person is capable of making based on the judge's own understanding of the economy and what the judge thinks is a fair imputation/projection. An actual expert would have to be retained to evaluate the party based on their education, work experience, and the current job market and make a projection based on actual available work out there in the general vicinity.

How income is figured when a parent is self-employed- Let's say that the parent is self-employed. This presents a whole other issue and is often very costly to properly evaluate. When people are self-employed, it is very difficult to make a determination of how much that party actually earns. Often some people manipulate their income figures when they report them to the IRS in the first place, so the figures reported on their income taxes may not always be reliable or accurate. Others, get to write off vehicles, gasoline, and other expenses as legitimate business expenses, but in family law, the legislature specifically stated that those expenses should be included and treated as income, which directly impacts the child support (and alimony) amount(s). It therefore may become necessary to retain a forensic accountant to review these business records in order to ascertain the correct value. Otherwise, you would be extremely limited in trying to prove your case.

How income is determined if a party is unable to work due to a disability- Let's say a party is not working do to an alleged injury or other medical condition. A different expert would have to be retained to evaluate that party in order to confirm whether they are in fact unable to work and make a determination of what, if anything, is wrong with them. This expert is typically a medical professional.

CHAPTER 3: CUSTODY / RELOCATION / TIMESHARING / PARENTAL RESPONSIBILITY

CUSTODY (TIMESHARING)

When I first started practicing family law, approximately 20 years ago, Florida would assign the following designations between the parents in a family law action: custodial parent and non-custodial parent. This title would cause a lot of issues between the parties, because neither parent wanted to be considered the non-custodial parent (or, in their mind, "lose" custody). This was problematic because the litigation continued to ensue due to the fact that neither party wanted the "stigma" associated with the title of being a non-custodial parent, despite the fact that they would still continue to enjoy a great deal of visitation with the child(ren).

In an effort to limit this issue and the resulting "stigma", the legislature, at one point, changed the designations as follows: primary residential custody (who had the majority of the overnights) for one parent and secondary residential custody for the other parent. However, this too caused the same exact issue. Neither parent wanted to be considered the "secondary" residential parent because they too considered that to be in essence "losing" custody.

Finally, in 2008, the legislature changed the designations completely eliminating the word "custody" from the title and any references to that word throughout the rest of the statutes and instead simply called it "time-sharing". This huge change, along with requiring the parties to enter into a detailed and comprehensive parenting plan, timesharing schedule, which I will discuss in more detail, was created in an effort to limit the litigation immensely. This change of the designation to "timesharing" would appear to completely resolve the issue, but now either party still wants the majority of timesharing, regardless of a specific designation, or one of the parties insists on a 50/50 (equal) timesharing schedule.

Even though in many cases currently, 50/50 (equal timesharing) seems like the norm, there are still many factors that the court will or is supposed to consider in reaching a decision when arriving at a specific timesharing schedule. For more information and to see various factors that the court should be considering in each case regarding the issue of timesharing, you may visit the statute on point, Florida Statute §61.13.

PARENTING PLAN / TIMESHARING SCHEDULE

As discussed previously, the court will require the parties to either arrive at their own mutually agreed upon parenting plan, or in the event that the parties cannot arrive at their own agreement (did not settle that particular issue on their own), the court will arrive at its own decision after considering what are the best interests of the child(ren) based on the other factors set forth in Florida Statute §61.13.

Before the 2008 overhaul of the statute, there was no specific requirement for the parties to have a detailed parenting plan and timesharing schedule. Once the legislature required this, there were far less arguments concerning disputes in the schedules because having a very detailed and comprehensive parenting plan / timesharing schedule avoided many future post judgment (after a divorce case is resolved) disputes between the parties.

After the divorce is finalized, the parties are still free to work with each other in an effort to make temporary changes to the schedule without affecting the rest of the schedule permanently. At any time, however, if there are some disagreements, the parties can always revert back to the court ordered schedule, which is great to have as a fallback. It is always great for the parents to have some flexibility when temporary changes are required.

RELOCATION

Sometimes a parent wants to have the ability to permanently relocate (a distance of over 50 miles) with the minor child(ren) to a distant town or state, which often creates huge controversy. These cases are very difficult for the court to make a decision, because there is no middle ground – it is all or nothing! A parent cannot just pick up and leave with the children permanently. That parent has to follow a specific protocol before they are able to permanently leave town with the children. The statute on point is Florida Statute §61.13001.

There are several factors that the Court will look at when allowing a parent to relocate with the minor children, which are set forth in this statute.

CHILDREN'S WISHES / SOCIAL INVESTIGATOR

One of the statutory factors for a court to look at when arriving at a timesharing determination is the preference of the child(ren) assuming that the child or children is/are of the mature age, intelligence, and understanding, which is typically 10-12 year of age. However, the Court dislikes having children being brought to the court to testify. As a least restrictive method, the court can appoint a social investigator to investigate and make a recommendation in order to assist the court in making this determination.

There are two huge advantages of having a social investigator appointed in a case.

The Costs

First, the cost is usually far less in most cases to have this investigator do much of the legwork in providing enough information to make this decision for the judge easier. This would bring down the costs of the litigation significantly and provide a lot more certainty on what to expect at the time of trial.

Hearsay Exception

Next, normally a parent cannot tell the court what the child allegedly told him/her because introducing an out of court statement is hearsay and it is not admissible. Even though there are a few limited exceptions to the hearsay rule, generally the court cannot consider statements from the children or any other witness if they are not in court testifying. There is an exception for social investigators, who can testify in the capacity of an expert, and are thus permitted to also tell the court what the child's wishes/preference is/are without putting the child(ren) in a difficult situation by having them testify in court against their parents.

PARENTAL RESPONSIBILITY

Parental responsibility is different from timesharing and should not be confused with it. Parental responsibility is a court ordered arrangement that sets forth decision-making between parents. There are 3 kinds: 1) shared parental responsibility; 2) sole parental responsibility; and 3) ultimate parental responsibility.

Shared parental responsibility- Shared parental responsibility is ordered in most cases. Regardless of the actual timesharing schedule and how many overnights a parent has or even if that parent does not even live in Florida, both parents typically have a duty to confer with each other on making major decisions regarding their children. This does not mean that the parents have to agree on all day-to-day decisions. This mainly deals with major decisions that affect the best interests of the minor child(ren).

These major decisions typically include: health related decisions (medical) and school (academic). The court will no longer make a determination regarding religion.

Most parents are able to put their differences and disputes between each other aside and are able to consider what is best for their children, especially when it comes to major decisions affecting their upbringing such as medical decisions and academic decisions. This is why shared parental responsibility works for the most part.

Sole Parental Responsibility- In order to avoid having the case reopened every time there is a dispute and experiencing delays and legal fees and costs with those hearings, one parent could be awarded sole parental responsibility, which would allow one parent to make 100% of the decisions without ever even needing to discuss those decisions or issues with the other parent in the first place. This sounds great but is extremely difficult to be awarded in most cases. Typically, one parent would have to prove that the other parent had a history of making such bad decisions in the past and/or is incapable of making a rationale decision in the future. Basically, there needs to be a showing that shared parental responsibility would be detrimental to the best interests of the minor child. This is often a very difficult burden.

Ultimate Parental Responsibility- There is a hybrid, which has been pretty effective, which is called ultimate parental responsibility. This still requires the parties to adhere to conferring on major decisions with each other and trying to come up with a mutual agreement without court intervention (much like it is under shared parental responsibility). However, in the event of a dispute, rather than bringing that particular matter back to the court for a determination, one parent has the last word and can make the final decision over the other parent's objection.

This is often great for one parent, but could be problematic for the objecting parent. This basically allows one parent to go through the charade of pretending to discuss an issue and trying to have a meeting of the minds, but basically gives that one parent the ability to overrule/veto the other parent's desire.

When crafting our settlement agreements, in order to try to keep both parties working on a level playing field, depending on the nature of the case of course, we try to have the parents exercise shared parental responsibility, but we add additional language that provides in the event of a conflict, if the parents have to litigate the matter by reopening the case, the prevailing party shall be entitled to reimbursement of his/her attorneys fees and costs.

This often will provide some caution to the parties before allowing the matter be submitted to court as, if they do not prevail, they may be responsible for the other side's reasonable attorneys fees and costs, which can be exorbitant. This actually forces the parties to really reconsider their positions and really attempt to work with each other in an effort to resolve their matters amicably and thus keeping them from litigating the matter in the first place.

CHAPTER 4: ALIMONY

WHAT IS ALIMONY

Alimony is court ordered support for another parent. It is similar to child support in the sense that it constitutes funds or other support for the parent who has demonstrated a need for it.

Alimony is governed by Florida Statute §61.08. There are various forms of alimony. A court could order one ore more types of alimony depending on the circumstances. Examples are: 1) permanent periodic alimony (lifetime until remarriage, death of a party, or cohabitation in a supportive relationship); 2) bridge the gap; 3) temporary alimony (throughout the pendency of the litigation); 4) durational alimony (for a specific period of time); and 5) rehabilitative alimony (to allow a spouse to be brought back to the same level they were at typically before the marriage).

NEED / ABILITY TO PAY

Main Factors- According to Florida Statute §61.08, there are two main components to the court ordering alimony, before the court considers the other statutory factors. Those threshold determinations are need and ability to pay. Once a party requesting alimony satisfies this burden, then the court will consider the other factors that are set forth in that statute.

Income- Each party's respective income levels have a direct correlation with the amount of alimony. In order to see a more in depth analysis of the calculation of income, refer to the child support section above, which applies in this section as well even though the parties do not have any minor children. This would provide much guidance as to how income is calculated or factored in a particular case. So please read that section, if you have not done so already, even though your case may not have a child support component associated with it. The analysis is very similar and could provide great guidance for you to see how the court's deal with the issue of income levels.

Need- Need is very easy to prove typically. If you ask anyone, they will always say they "need" more money. However, the court will look at the party's particular situation, and really evaluate what their need really is. Need is not enough to just allow that person to have the basic necessities and nothing else. On the other hand, the issue of need is not meant to provide them with the same exact lifestyle that they have been accustomed to during the course of the marriage. The standard of living during the course of the marriage is definitely an important factor that the court will ultimately consider.

Ability to pay- Ability to pay is difficult in some situations when the breadwinner, who normally had no problem paying the bills when the parties both lived under one roof, is now living in a separate household with two different mortgage or rent payments, insurance, real estate taxes, electricity, water, etc. As a result, the payor's ability to support the other spouse is not the same.

Discretionary Ruling- Unlike child support, which has specific guidelines and figures according to the statute, the actual amount of alimony is based on the judge's individual discretion. This means that of the various judges who preside in most counties, they could theoretically all come up with different figures, depending on which judge hears the case. So, for example, let's say that the wife earns only $40,000 per year, and the husband earns $80,000 per year. One judge could order $700 per month in alimony and another judge could order $1,500 per month in alimony, and neither decision would be disturbed on appeal as the appellate court will show much deference to the trial judge's decision. The standard of review (the type of appellate review of a lower trial court decision) is what is considered an abuse of discretion. This means that as long as the trial judge did not completely disregard common sense and abuse their discretion, the judge's ruling would be upheld on appeal (not reversed).

However, there is a certain point when the appellate court would consider it to be an abuse of discretion and would reverse the trial judge's ruling. For example, if one judge ruled that a wife who was on disability and was unable to earn an income received zero in alimony when her husband is earning more than $150,000 per year, this would be considered an abuse of discretion.

At the other end of the spectrum, if the court were to order a husband who only makes $80,000 to pay the wife $5,000 per month, this too would be considered to be an abuse of discretion. Where the ordered amount would be more than 50% of the husband's income, forcing him into poverty and allowing the wife to earn a substantial amount of money more than the husband at the end of the day, this would be considered to be an abuse of discretion as well.

Even if the alimony amount was within an acceptable range of $500 to $2,000 per month, I don't know about you, but this type of swing could drive someone crazy. It would be very difficult to sleep at night not knowing what a court could do in a particular case. It is almost like flipping a coin sometimes. Imagine going into a car dealership and really liking a car that you want to purchase or lease. When the salesman asks you where you would like to see your monthly payments, imagine that the salesman tells you that your monthly payments will be somewhere between $500 to $2,000 per month and that they just need to flip a coin to pick one of those figures. Would you ever buy a car?

Just to put your mind at ease, it may not be so cut and dry in a court of law, but not having a real great of certainty could really affect your future.

The legislature has been trying to come up with a formula or a range to give some parties a sense of certainty of a more accurate projection based on the limits of alimony with an alimony figure on the low end and one on the high end.

It seems that having a range would give litigants more of an idea on what to expect if the matter were to proceed to trial, but we are not there yet. Until there is more guidance that can be reached, this can present a problem for either or both parties as there is a lot of uncertainty with the current law on this issue.

Therefore, it is crucial to have a lawyer who is really adept at being able to properly cross examine a spouse on the stand with regards to their figures.

CHAPTER 5: ATTORNEY'S FEES AND COSTS

ATTORNEY'S FEES AND COSTS

The individual trial judge has discretion on whether or not to order one party to pay for the other party's attorneys' fees and costs (which includes but is not limited to court costs, deposition costs, and the costs associated with the retention of experts, assuming that it is applicable in that particular proceeding). According to Florida Statute §61.16, each party should be able to litigate the divorce case on equal footing. As I mentioned above, it has a very similar analysis like the alimony was mentioned regarding one party's need and the other party's ability to pay.

As an example, even though this may be an exaggeration, picture a man who earns $400,000 per year compared to his wife, a stay-at-home mom, who did not earn an income during the marriage. To challenge child custody (timesharing) or any other issue, this husband could theoretically hire a team of 10 attorneys to out-litigate his wife by outspending her, thus depriving her an appropriate defense, causing her to lose because she cannot even afford one attorney, let alone 10. According to the statute, in that scenario, in order to allow the parties to litigate on equal foot-

ing and level the playing field, the court may compel the husband to pay for some, if not all of the wife's attorneys' fees and costs. As I said, this may be an exaggerated example, but for illustration purposes, it lets us know how the court could handle this issue. A court could also award fees against a husband who makes $60,000 per year compared to his wife who is not working or is instead making a low income.

This is important because parties need to first know that they may actually have access to the courts, and the party with the money may soon realize that the more they fight, they may also end up having to potentially pay some, if not all, of the other party's attorneys fees and costs.

This often gets parties to try to work even harder on a settlement agreement resolving their case without a need for trial due to the uncertainty of what could happen with this issue at the time of trial, and the uncertainty that is associated with having fees and costs assessed against them.

There also is a flip side to this. Knowing that the court may not potentially give all of the attorneys fees and costs to the other party may also let them realize that there is no guarantee that they will be able to get all of their fees and costs paid by the other side. This means that they may actually end up paying a large portion of their own attorneys' fees and costs.

Knowing both sides of the coin makes the parties often come to the bargaining table with a more grounded approach, trying to resolve their issues without the need for a trial or further litigation because neither party wants to risk a negative result and/or having to be responsible for some, if not all, of the other side's attorneys' fees and costs.

CHAPTER 6: EQUITABLE DISTRIBUTION OF ASSETS AND LIABILITIES

EQUITABLE DISTRIBUTION OF ASSETS AND LIABILITIES

Property Distribution or Equitable Distribution as it is called in Florida is one of the most prevalent issues in any divorce action. The good news is that most of the time, alimony and timesharing (child custody) are the most contentious issues. From my experience, cases involving primarily the division of assets and liabilities are not, for the most part, as contentious as custody or alimony cases. The good news is that most property disputes quickly resolve themselves at mediation. The reason for this is that unlike the issue of attorneys fees and costs and alimony, which are discretionary in nature, the statute affecting property division (property distribution or equitable distribution) absent certain circumstances like business valuations and/or a battle of experts, is pretty straightforward.

Florida does not have equal distribution necessarily, but often, the court will attempt to have cases resolved by dividing assets and liabilities as equal as possible, as a starting point. If everything were divided equally, this would mean that every single asset or liability would have to be sold and/or divided in half, which is not always desirable.

Instead, the Florida courts try to figure out the net estate (assets minus liabilities), and then try to distribute them so that each party is left with approximately the same net dollar value of the assets in each party's respective column. This does not mean that each party will have the exact same number of assets or liabilities in their column. I often provide an example to clients where I liken the process to trading baseball cards. One card may be more valuable than 10 cards combined, yet the court would award one asset (card) to one party and the remaining 10 assets (cards) to the other party. As long as the total net values awarded to each party is equal or close to it, then arguably it is considered an equitable (fair) distribution.

ASSETS

Florida Statute §61.075 governs the equitable distribution of assets. According to that statute, the general rule is that any asset that has been acquired during the course of the marriage is marital in nature, which means that it is subject to equitable distribution (divided or distributed equitably).

There are some exceptions to this that are set forth in the statute. Even though, as I just mentioned, the general rule is that any asset that is acquired during the course of the marriage is marital, an inheritance received during the marriage would not be marital and would belong solely to the party who received it. This asset or assets would be carved out and not factored as part of the marital equitable distribution scheme.

Comingling- There are some problems with the above scenario, however, as any party who happens to comingle the funds from a non-marital asset can convert part, or even all, of that asset and thus have it treated as marital in nature. This is especially the case when it becomes so difficult for the court to differentiate between the marital portion and the non-marital portion. Another problem that I often see is when the other party adds the other spouse's name to that asset (usually a home and/or joint bank account), this unfortunately creates a legal presumption that the asset in question is marital in nature. This becomes extremely difficult to contest later as one party would be obligated to prove by clear and convincing evidence that a gift was not intended.

Some other examples of what is considered marital or non-marital assets are set forth in specific detail in Florida Statute §61.075.

LIABILITIES / DEBT

This same Florida Statute §61.075 governs the equitable distribution of liabilities/debt. It is very similar in its application as marital and non-marital assets are dealt. If a liability was incurred during the course of the marriage, it is presumed to be marital in nature, and is subject to equitable distribution.

Adultery- In the case of adultery, even though Florida happens to be a no fault jurisdiction, it does not have really an impact in most cases. However, when it comes to equitable distribution, if one party has spent marital funds on an adulterous affair, the Florida court's will allow the other party to recoup one-half of the that portion that was dissipated or spent on that adulterous affair (note: the court can only go back 2 years).

Some other examples of what is considered marital or non-marital liabilities/debts are set forth in specific detail in Florida Statute §61.075 itself.

CONCLUSION

As I promised you at the beginning of this book, you should now really understand the process and the law, so you will really know what to expect in your case and truly embrace this as a survival guide and navigate through this process.

The reason why we attribute our success is because we really take the time to thoroughly explain this process and the law to our clients, so they really know what to expect and feel a semblance of control in this emotional process. By really understanding how the process works, we really help our clients know what to expect and feel far more comfortable.

Our firm spends a significant amount of time with our clients and their witnesses to make sure that they not only understand the process, but the law as well. Additionally, they know what to expect at depositions, at the time of trial, or any other hearing. This includes the type of questions that will likely be asked by the opposing counsel and/or the judge.

We pride ourselves in spending the extra time and going the extra mile in the amount of preparation we take in advance of trial.

After reading this book, you should be empowered with a much better sense of what to expect and can embrace this process with much more clarity. **Ready, Set, Court!**

WINTHROP LAW OFFICES, P.A. (ABOUT THE FIRM)

Winthrop Law Offices, P.A. handles all aspects of divorce and family law matters. We recognize both the legal and emotional issues involved in family law cases, and we can assist you in resolving your situation in an effective and efficient manner. Our goal in every case is to protect our clients' interests by proving the highest standard of legal representation.

Each case is unique, with different issues, concerns, and facts, and we ensure that all of our clients receive our full attention. We are committed to helping clients through each stage of development of a legal proceeding. Our ultimate goal is your complete satisfaction.

Here at Winthrop Law Offices, we strive to provide results-oriented representation that is personalized to the specific needs of each client. Under some circumstances, a steady and gentle approach is best for achieving a favorable resolution to a dispute. In others, a more aggressive stance may be necessary. Though we may initially seek the least acrimonious solution to the matter at hand (i.e., going through mediation and negotiating a settlement compromise), we are willing and able to aggressively advocate on your behalf should negotiations break down.

The founding partner, Dorian Winthrop, Esq., has been a member of the Florida Bar since 1999. His practice is concentrated mainly in Divorce/Family Law Matters. Mr. Winthrop obtained his Juris Doctorate Degree in 1998 from Nova Southeastern University, where he made the Dean's list and was a member of the Nova Law Review.

Our firm handles several counties in the State of Florida, and our firm focuses most of its concentration/efforts in the areas of divorce and family law. We have extensive experience litigating divorce matters ranging from simple to complex.

We provide each client with individual attention he or she deserves, and will do everything in our power to reach out clients' overall needs and goals. If you are facing the difficult challenges of a divorce proceeding or need trusted legal advice concerning a marital or other family law matter, please contact our law firm to arrange an appointment.

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