

Filing Dissolution – The Basics

- I. Initial Documents:
 - A. Summons, Petition, including name change if desired
 - B. UCCJA affidavit for children
 - C. Motion for Temporary Restraining Order if desired.
 - i. This is different than a Protective Order protecting the person.
 - ii. This is an order restraining the parties from spending, encumbering or transferring assets.
 - D. Motion for Provisional orders
 - E. Notice of Hearing for provisional orders

- II. Service issues:
 - A. Personal service not required
 - Abode service (remember to mail the summons first class)
 - Sheriff Service
 - Private Process
 - Certified Mail return receipt, signed by the person
 - B. Publication is acceptable if there is no other option
 - Must have affidavit of diligent inquiry
 - Must ask court for permission, and have the affidavit
 - See rule 4.13 for what has to be contained in the summons
 - Have to publish in the best location (last known whereabouts, paper of general circulation, etc)
 - Three weeks plus 30 days to give time to process.

- III. Protective/Provisional Orders:
 - A. Exparte Order of protection, domestic or family violence, stalking a sex offense, request possession of the house.
 - B. A hearing is required if a DR or possession of house, children, protective order is requested
 - C. Financial issues:
 1. File a TRO, get the order, distribute to the bank or financial institution
 - D. Provisional Orders:
 2. Bandid, temporary orders, can't sell something, custody parenting time, child support, temporary possession of a house, temporary responsibility for bills, attorney fees, mediation orders, spousal maintenance, etc. These orders control until final agreement or final order
 - E. Can you set NOH when you file?
 1. Always file a NOH if you want a hearing.
 2. You can get a date for a provisional, but must have a NOH

- IV. Marital Settlement Agreement:
 - A. Can't file until 60 days have elapsed.
 - B. Must have both parties signatures and be notarized
 - C. Must have child support addressed and a worksheet
 - D. Must deal with name changes (if desired) in the Decree
 - E. Need a waiver of final hearing if all issues agreed upon.

- F. Pension/Property:
 1. Need a separate order following the MSA, Decree, and QDRO
 2. Law Data, Pension Appraisers, etc
 3. Make sure date of valuation is clear, losses and gains, etc
 4. Need to know the name of the pension/retirement plan

- V. When is the Child Support worksheet due?
 - A. Anytime you are seeking an order on support, you must file attachments to all agreements on child support
 - B. Even if not asking for support, it's up to the court to make that determination. The court must support the deviation

- VI. What does the Court expect at the final hearing?
 - A. If over 2 hour hearing, must do mediation
 - B. If any issue with kids, must do mediation (even if set for less than 2 hours)
 - C. Balance sheet
 - D. If parties can an reach an agreement on some issues

- VII. Personal Property and Debt:
 - A. What do you own, and does it matter if it's in one or both names?
 - B. What is it worth? Do you need an appraisal? Can you agree on the value?
 - C. What do you owe, and does it matter if it's in one or both names? When was the debt incurred?
 - D. Who gets the house?
 1. If selling who pays for and takes care of during the sale?
 2. Who's on the mortgage?
 3. Does it need refinanced? How long to give the other party to refinance? If can't refinance do I have to sell?
 - a. Look into this ahead of time to make a better decision
 - b. If selling, who is the realtor? What conditions for selling? What condition is the property in?

- VIII. Modifications to Child Support/Visitation/Custody:
 - A. How long after the original Child Support order must you wait? 1 year
 - B. What affects Modification of Child Support?
 1. 20% or a substantial change in circumstances
 - C. What needs to be filed? Petition to Modify Support
 - D. Is an NOH the same as above? Yes
 - E. Come to Court with tax returns, child care expense, health insurance information (what part of the premium is for the kids, etc) pay stubs and a proposed worksheet. You will have to share this information ahead of time
 - F. Changes to visitation/parenting time:
 1. Basically the same as above
 2. Visitation is not based on whether or not child support is current.
 3. May not restrict visitation/parenting time unless the court finds that the parenting time might endanger the child's physical health or significantly impair the child's emotional development.
 4. Mediation may be required if requesting a hearing to modify parenting time.

5. See Indiana Parenting Guidelines

G. Changes to Custody:

1. Must be a substantial and continuing change of circumstances as follows:
 - i. Modification of Custody: 31-17-2-21. Substantial change in one or more of the factors below, but the Court cannot hear evidence occurring prior to the last custody order unless it relates to a change in the factors.
 - ii. Pursuant to I.C. 31-17-2-8, the court shall determine custody and enter a custody order in accordance with the best interests of the child. In determining the best interests of the child, there is no presumption favoring either parent. The court shall consider all relevant factors, including the following:
 1. The age and sex of the child.
 2. The wishes of the child's parent or parents.
 3. The wishes of the child, with more consideration given to the child's wishes if the child is at least fourteen (14) years of age.
 4. The interaction and interrelationship of the child with:
 5. The child's parent or parents
 6. The child's sibling; and
 7. Any other person who may significantly affect the child's best interest.
 8. the child's adjustment to the child's:
 - a. home
 - b. school, and
 - c. community.
 9. the mental and physical health of all individuals involved.
 10. Evidence of a pattern of domestic or family violence by either parent
 11. Evidence that the child has been cared for by a de facto custodian, and if the evidence is sufficient, the court shall consider the factors described in section 8.5(b) of this chapter.

H. Third parties requesting custody (Grandparents or other adults seeking custody of a child).

1. Have a higher burden of proof than a natural parent: clear and convincing.
2. Always have a higher burden of proof when natural parent is seeking to regain custody.
3. Third parties can seek to intervene into a paternity or dissolution case to petition for custody. If no case, they can file their own miscellaneous custody matter.

IX. Grandparents Rights

- A. Parents have right to make a decision regarding grandparenting time, but the decision can't be contrary to the welfare of a child
- B. File action for Grandparent visits in the same court the DR or JP was filed, but not in the same file.

<http://www.in.gov/judiciary/selfservice/2332.htm>

X. Contempt

- A. An orders is an order is an order is an order is and order

- B. Someone can be in noncompliance, but not in contempt
- C. If you can establish that an order was not followed, the burden shifts to the other party to show that it wasn't intentional, willful, etc
 1. During a blizzard the children didn't get dropped off = Not intentional
 2. Doesn't like knew girlfriend = Willful
 3. Didn't understand the order = Questionable
 4. Lost job, didn't pay support, etc, = Many factors need to be considered