

Divorce Demystified

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Scope Note

This chapter presents an overview of divorce practice. It opens with practical tips for conducting the initial client interview and proceeds through drafting and filing the complaint, assembling financial statements, participating in pretrial conferences, and preparing for trial. Special attention is paid to the division of marital assets and alimony. The chapter concludes with a discussion of issues arising after the judgment. An extensive collection of exhibits accompanies the chapter, including sample memorandums explaining the divorce process to clients and responses to clients' frequently asked questions.

§ 6.1 INTRODUCTION

This chapter is designed to present an overview of Massachusetts divorce law, including G.L. c. 208, the Massachusetts Rules of Domestic Relations Procedure, the Supplemental Probate Court Rules, and the Standing Orders of the Probate and Family Court, for the practitioner who does not specialize in domestic relations law. Specific cases are not discussed; rather, you should review recent case law because courts have considerable discretion in this area. Various forms and documents are included as **Exhibits 6A–6E** and **6G–6K**. Be prepared to disabuse your client of various bizarre notions derived from listening to a well-meaning relative, friend, or spouse. And always remember that the ultimate decisions belong to the client.

Standing Order 1-06, Case Management and Time Standards for Cases Filed in the Probate and Family Court Department (adopted effective April 3, 2006), should be mandatory reading for all domestic relations attorneys. A copy of the standing order is included as **Exhibit 6L**. This order replaced Standing Order 1-04, which repealed Standing Orders 1-88 and 2-88, as well as Supp. R. Prob. Ct. 409. Standing Order 1-06 is comprehensive; it sets forth time standards for divorce cases and track assignments for various steps in a divorce case, including assignment of cases to pretrial dates determined by the court. Unless your case was filed prior to September 10, 2004, you can no longer request a pretrial date by completing a form and submitting it to the court. In other words, the court will *tell you* when to appear, to ensure that the case keeps moving forward to conclusion.

* Material in §§ 6.1 and 6.7 of this chapter was originally adapted from *Trying Divorce Cases in Massachusetts* § 9.1 (MCLE, Inc. 2007).

Standing Order 1-06 is one of the most important orders in the court system. You should become familiar with its provisions, since they govern your case from the moment it is filed.

Practice Note

Be aware that Standing Order 1-06 contains a number of provisions that are inapplicable to divorce cases, relating to matters such as paternity, trusts and estates, and guardianship or conservatorship.

§ 6.2 THE INITIAL INTERVIEW

The first contact with the client is usually by telephone. During this conversation you should ascertain whether the client seeks a divorce or requires help with another domestic issue, such as guardianship or change of custody. Set up an appointment to gather specific details, and be sure to inform the caller whether you charge for a consultation and at what rate. Do not assume that the caller will expect you to charge a consultation fee; things will get off to a bad start if this is not clearly spelled out in advance.

It is important to ask whether the parties executed a prenuptial (often referred to as an antenuptial) or a postnuptial (often referred to as a marital) agreement. An agreement that has been drafted properly, with full financial disclosure, independent counsel, and without duress, must now be enforced by the court, even if it is very one-sided, if it is found to have been valid when executed. The old standard of enforcement (“was it fair and reasonable when executed and is it fair and reasonable now, when a party seeks to enforce it”) has been changed drastically. *See DeMatteo v. DeMatteo*, 436 Mass. 18 (2002). If there is such an agreement, make sure the client brings a copy to the initial interview.

Moreover, in *Ansin v. Craven-Ansin*, 457 Mass. 283 (2010), a case of first impression, the Supreme Judicial Court ruled that postnuptial agreements (marital agreements) are enforceable in Massachusetts. A postnuptial agreement is an “agreement between spouses who plan to continue their marriage that alters or confirms the legal rights and obligations that would otherwise arise under . . . [the] law governing marital dissolution.” *Ansin v. Craven-Ansin*, 457 Mass. at 284 n.1 (citation omitted).

Once the interview has begun, ascertain whether the client actually wants a divorce. Often the client is ambivalent or confused as to whether his or her marriage is over. Sometimes what you have to say about financial consequences may influence a client’s decision. If you sense that the client is unsure about a divorce, you might want to suggest the possibility of marriage counseling or therapy for one or both parties. Inform the client that divorce is not the only option. A complaint for separate support, G.L. c. 209, § 32, may be the solution. This procedure provides for custody of the children and support of the spouse and children but not division of assets. Annulment, G.L. c. 207, § 14, is also an option in very rare and limited circumstances.

Use this first interview to discuss fees and procedures. Almost all clients are concerned about the cost. While you may charge a flat fee for your services, the more

usual approach is to charge an hourly fee after receiving a retainer based on the complexity of the case. Your services should be spelled out in a contract letter (normally referred to as the fee agreement or retainer agreement), signed by both you and the client, detailing your hourly rate and whether other charges, such as for experts, will be billed to the client. You should inform the client that you cannot accept a contingency fee, nor can you represent both parties to the divorce. You can negotiate directly with the spouse who has chosen to proceed pro se. In such a case, be sure to make very clear to the opposing party that you do not represent him or her and that he or she is entitled to legal representation as well. To ensure the validity of any future agreement, suggest that the other party have an attorney review the agreement before it is executed.

Be aware of the ethical rules, particularly as to privileged information (Mass. R. Prof. C. 1.6) and duty to disclose (Mass. R. Prof. C. 3.3 and 4.1). Confidentiality may have to take second place to a duty to disclose, and each client should be made aware of this at the start.

There is also a mandatory requirement that all clients be informed of alternative dispute resolution, pursuant to Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18). The practitioner must execute a Uniform Counsel Certification Form (**Exhibit 6K**) certifying that this has been done and file it with the complaint for divorce.

The initial interview will be shaped by the facts presented by the client. Obviously, there is no point in reviewing the law as to custody and visitation for a client who has no children. However, you should have a checklist of areas to be covered, perhaps taken from a draft separation agreement, to ensure that no important facts or issues are overlooked. See **Checklist 6.1**. Many clients will have their own list of issues. Typical issues include both legal and physical custody of the children, support for the children, alimony, division of assets (what they are and how they are divided), health insurance and medical expenses, college education, and life insurance.

Take careful notes during the interview, particularly of those facts you will need in order to file the initial pleadings; not all the facts may actually go in the pleadings. Your client may well be nervous or frightened; reassuring the client is a big part of your role during the initial interview and throughout the litigation. If you have familiarized yourself with the statutory and case law, you will be able to suggest the general parameters that will be applicable to your client's circumstances. Be sure to inform your client that you cannot predict the outcome with absolute certainty.

At this point you can give the client any materials that you use, such as the client questionnaire (see **Exhibit 6A**), client's memorandum on divorce (see **Exhibit 6B**), or client's memorandum on children's concerns during divorce (see **Exhibit 6C**). To assist the client in gathering the financial and other data you will need, you may want to give him or her a blank financial statement form used by the court.

Finally, pay particular attention to the possibility of domestic abuse; if you suspect it, encourage your client to discuss it with you. (Occasionally a husband will be abused,

but most often it is the wife or children or both.) If there is abuse, discuss using an abuse prevention complaint, G.L. c. 209A or G.L. c. 208, § 18. Because an order is obtained *ex parte*, it is immediately effective without notice to the other party. Be prepared, however, to defend your client at the mandatory hearing, an evidentiary hearing, or both. A large number of these orders are being contested, and the courts are frequently requiring a hearing and evidence in the form of witnesses, medical records, threatening letters, and the like before extending the order. After the hearing, the order is usually in effect for one year. By then, a divorce probably will be concluded or at least in process.

If your client is not willing to file an abuse prevention complaint, you can move, after filing the complaint for divorce, for an order to vacate the marital home, G.L. c. 208, § 34B. Also, consider your client's right to a civil (tort) lawsuit based on the abuse.

One final caution: Do *not* file an abuse prevention complaint if you suspect your client is merely using it as a tool to get his or her spouse out of the house or to get the edge in a custody dispute. In addition to ethical considerations, an unwarranted complaint will surely inflame the innocent spouse and make future negotiations more difficult.

§ 6.3 THE DIVORCE COMPLAINT

Prior to filing a complaint for divorce, and if the circumstances seem appropriate, you may wish to write to the opposing party, informing him or her that you have been retained, that you represent only your client, and that your client wishes to proceed as amicably and reasonably as possible. Ask the opposing party or his or her attorney, if one has been retained, to contact you within a reasonable time limit. Point out that, if there is no response, you will proceed to file a complaint for divorce. You may wish to enclose a copy of the complaint you have prepared. This will demonstrate to the other party that your client is serious about ending the marriage. Remember that under the Domestic Relations Rules, the divorce complaint automatically starts a forty-five-day mandatory discovery period, during which tax returns, W-2 and 1099 forms, paystubs, and other basic financial documents must be assembled and a financial statement prepared to be exchanged with the opposing counsel. *See* Mass. Supp. Prob. Ct. R. 410.

§ 6.3.1 Completing the Complaint

While much of the information requested is self-explanatory, note the following:

- Start with full names and addresses of both parties. A street address for the defendant is necessary; a post office box address will not do. If the defendant's whereabouts are unknown, use the last known address and prepare a motion for notice of publication, pursuant to Mass. R. Dom. Rel. P. 4(d).
- It is not necessary for the parties to have lived apart for thirty days prior to filing the complaint.

- If part of the relief requested includes the transfer of the marital home, the book and page number where the deed is recorded in the appropriate registry of deeds must be included when the complaint is filed.

§ 6.3.2 Accompanying Documents

A certified copy or original of the civil, not religious, marriage certificate is required. If your client does not have the certificate, a copy may be requested from the Bureau of Vital Statistics in Boston (if the marriage took place in Massachusetts) for a small fee. If the marriage took place outside the Commonwealth, request a certified copy from the appropriate local agency. If you wish to file the complaint at once, without the certificate, you may file a motion to waive this requirement.

If the parties have minor children, the complaint *must* be accompanied by an affidavit of care and custody, executed by the client, to inform the court whether there have been any prior legal proceedings concerning the children. In order to avoid delays, it is good practice to have the client sign a blank form during the initial interview.

§ 6.3.3 Grounds for Divorce

General Laws Chapter 208, § 1 covers the “fault” grounds: adultery, impotency, cruel and abusive treatment, utter desertion, incarceration, intoxication, and nonsupport. Adultery is infrequently used because it requires adding the third-party defendant after obtaining a court order to do so. G.L. c. 208, § 11; Mass. Supp. Prob. Ct. R. 404, 405. More commonly, cruel and abusive treatment is used for adultery as well as abuse. However, testimony of adultery will not be allowed in some courts if not pleaded in the complaint.

Sections 1A and 1B cover irremediable breakdown of the marriage (the “no-fault” divorce). Section 1A requires the parties to file a joint petition for divorce (see **Exhibit 6H**) rather than a complaint for divorce, as well as a joint affidavit that the marriage is irremediably broken. All necessary documents (including the separation agreement; financial statements of both parties; affidavit of care and custody, if children are involved; Certification of Vital Statistics Form R-408; and the marriage certificate) must be filed together and a hearing must be requested to grant an uncontested divorce. At the hearing, if the separation agreement is accepted by the court as fair and reasonable in the circumstances of the parties, a divorce will be granted. Note that, unlike a “fault” or a Section 1B divorce, the judgment of divorce nisi will enter thirty days *after* the hearing date, not on the hearing date itself. Then, as with all other divorce grounds, the judgment of divorce nisi becomes final ninety days after entry as a matter of law. Therefore, the waiting period for a Section 1A divorce is 120 days after the hearing; for all other divorces, the waiting period is ninety days.

Section 1B divorces, like “fault” divorces, require the filing of a complaint for divorce (see **Exhibit 6I**), with a plaintiff and defendant. Point out that no advantage adheres to being the plaintiff other than getting the divorce moving; nor does being the defendant mean being the “bad guy.” Filing the complaint enables you to serve the other party and compel him or her to come to grips with the fact that the marriage

is over and that the divorce process has begun. Further, it enables you to file motions, as required, for any temporary orders you may think necessary. After a Section 1B complaint has been filed, no divorce hearing may occur for six months. However, if the separation agreement is executed prior to that time, you may file a motion to amend a Section 1A complaint, prepare a joint petition and affidavit, and request an immediate divorce hearing.

All fault grounds, including cruel and abusive treatment, do *not* require a waiting period before being heard. If you can arrive at a separation agreement quickly, you may request a hearing at any time.

§ 6.3.4 Contested

Any divorce may be “contested” in the sense that the parties may argue over support, division of assets, or custody. Other than a Section 1A divorce, all divorces are contested in that the parties require the intervention of the court at various times. Very few divorces are actually tried before a judge. (There are no jury trials in the Probate and Family Court.) Trial should be reserved for the rare occasions when the special issues at stake can be resolved in no other manner.

A Section 1A divorce is “uncontested” from the court’s viewpoint in that the court’s first and only contact with the parties occurs after all matters have been resolved.

§ 6.3.5 Jurisdiction and Venue

If both parties reside in the Commonwealth, the court has personal jurisdiction over both. If one party resides in the Commonwealth, you can file here, but personal jurisdiction over the nonresident defendant depends on whether the facts meet the requirements of the Long Arm Statute, G.L. c. 223A, or possibly the expanded bases of the Uniform Interstate Family Support Act (UIFSA). If the nonresident is served within the Commonwealth, the court will have personal jurisdiction over that party. A party not otherwise subject to the personal jurisdiction of the Massachusetts court may confer personal jurisdiction either by accepting service of the summons or by choosing to litigate in the Commonwealth. On the other hand, a “special” appearance to contest jurisdiction does not subject a party to personal jurisdiction. Without personal jurisdiction, the court is without authority to obligate a party to pay support.

Should the court at a later date obtain personal jurisdiction over the defendant, issues of support are dealt with *de novo* rather than by a complaint for modification.

If the parties have only recently arrived in the Commonwealth, review the requirements of G.L. c. 208, §§ 4 and 5 to make sure that the complaint can be filed without delay.

General Laws c. 208, § 6 requires that the divorce be filed in the county where the parties last lived as husband and wife so long as one party still lives in that county. If both have relocated outside that county, the complaint for divorce may be filed in the county where one party now resides. Once the complaint is filed in the appropriate county, all subsequent proceedings, e.g., contempt orders and modifications, will be

heard in that county unless permission to file in a different county is granted by the court. This is rarely allowed. It is not uncommon for clients not to know what county they live in, so check to avoid embarrassment!

§ 6.3.6 Fees

The client should be informed that, in addition to your fee, there is a \$200 filing fee, plus a \$15 surcharge, for all divorces and a nominal cost for the summons. Unless the other party is willing to accept service, you must pay the constable or sheriff's department that serves the summons; the cost will vary.

§ 6.3.7 Service and Answer

Upon the filing of a complaint for divorce, the court will issue a summons. Pursuant to Mass. Supp. Prob. Ct. R. 411, the summons must include an automatic restraining order as to assets. The order is effective on the plaintiff when the complaint for divorce is filed and on the defendant when served. With this procedure in place, it may not be necessary to attach assets, but keep in mind that unlike an attachment or trustee process, an automatic restraining order is not served on third parties, and a party may violate it.

Service within the Commonwealth is governed by Mass. R. Dom. Rel. P. 4 and is usually made by a constable or a sheriff. Service must be made within ninety days. *See* Mass. R. Dom. Rel. P. 4J. Under Mass. R. Dom. Rel. P. 4, no identifying witness is required. Service by publication may be made, on motion to the court, if the whereabouts of the defendant are not known. Any motions filed at the time of a divorce may also be served along with the summons.

An answer is not required in domestic litigation but should be filed if your client wishes to counterclaim or assert defenses. However, filing a cross-complaint will enable you to go forward if the other side withdraws. Do not answer if you seek dismissal on personal jurisdiction grounds; rather, file a motion to dismiss pursuant to Mass. R. Dom. Rel. P. 12(b).

Other than *ex parte* emergency motions filed and heard at the same time the complaint for divorce is filed, no motions will be heard until return of service is filed with the court. Always copy the summons before filing just in case the papers do not make it into the court file. Bring copies of all pleadings with you any time you go to court.

§ 6.4 FINANCIAL STATEMENT

Under the new rules, a financial statement (see **Exhibit 6J**) must be prepared and given to the opposing party within forty-five days of filing the complaint. It may also be requested during the pendency of the divorce once every ninety days or, if going to court on a financial matter, on ten days' notice to the opposing party to be received at least two days before the court date. The new financial statement forms are required: a short form, similar to the old form, for incomes under \$75,000 a year, and a

long form for incomes that equal or exceed \$75,000 a year. If the client is self-employed, both forms require a Schedule A to be attached; if rental income is received, Schedule B must be attached to either form of financial statement. Both forms also require information as to legal fees paid and anticipated, and both forms require certification by the attorney that he or she has “no knowledge that any of the information contained [in the financial statement] is false.” This is new and important. No lawyer should sign off on a financial statement in which the client reports income of \$10,000 while spending far more on a lifestyle that is not proportional to the income. Failure to produce the statement as required can justify a motion to compel with sanctions, so make your request early. Check the new rules for the requirements that determine what must now accompany a motion to compel.

The financial statement is one of the few documents that the client must sign under the pains and penalties of perjury. While you may have to help the client prepare the form, the client must understand how the data are determined and must be prepared to testify as to their accuracy. Never prepare the financial statement in court; do it beforehand to ensure its validity and to avoid the possibility of your client’s credibility being impeached on cross-examination.

§ 6.4.1 Income Schedule

The front page of the Supplemental Rule 401 Financial Statement form involves income from all sources as well as deductions, taxes, net income after deductions, and actual earnings of the prior year. If your client is an employee, all the information is available from his or her paystub.

Caution your client to include an average of overtime, average of tips, average of bonuses, and average of commissions, if applicable. See the child support guidelines for includible income. Often clients tend to disclose only their base pay and can be impeached when the opposing party subpoenas in payroll statements that show tips, commissions, bonuses, and overtime earnings.

Be familiar with ceilings on taxes such as Federal Insurance Contributions Act (FICA) taxes and self-employment taxes. Clients can also use higher or lower numbers of deductions, exemptions, or both to reduce or increase their net income, which also should be brought to the attention of the court. The seventh line on the financial statement must state your client’s earnings for the previous year, inclusive of all sources of income including bonuses and commissions.

If your client is self-employed, his or her gross weekly income is actually the net business income reported on Schedule C of the federal income tax returns (profit or loss from business or profession). However, check for depreciation because this is a “paper loss” and should not be deducted from the client’s income.

Practice Note

Remember, you must fill out Schedule A and attach it to the financial statement. The tax return schedule will assist you.

If your client is paid by his or her own corporation, check to see what retained earnings are listed in prior years; you should be prepared to either include this amount in your client's income or explain why you have not done so. If your client has rental income, question whether the amount your client states is the gross rent without deducting expenses. If your client is not financially sophisticated, you will have to question carefully to get accurate figures.

Practice Note

Remember, you must now fill out Schedule B and attach it to the financial statement. The tax return schedule will assist you.

Gross income figures are crucial in determining both child support and alimony awards.

§ 6.4.2 Expense Schedule

The expense schedule should include your client's actual and current weekly expenses. (Note that 4.3 weeks equals one month.) Often, weekly expenses will be an average figure for expenses incurred annually or seasonally. If your client has anticipated expenses (e.g., future rent, future education expenses), you should asterisk these expenses and title them as anticipated expenses as of a certain date. The expense figures will be used by the court to compute a party's "needs." Child support will be calculated using both parties' gross income, but if the guidelines do not apply or if it is an alimony case, the expense statement will be carefully scrutinized by the court and opposing counsel. The new forms require even more information than before.

Practice Note

Except for very simple financial statements, you should attach to the financial statement form separate schedules for weekly expenses, assets, and liabilities. Otherwise, the data will not easily fit the format provided.

§ 6.4.3 Assets

All assets, regardless of title, should be included in the client's assets. If a current valuation is unknown, an estimated valuation should be made and noted. Marital assets include

- real estate;
- choses-in-action;
- accounts receivable;
- pensions;
- individual retirement accounts (IRAs);
- Keoghs;
- profit-sharing plans;
- checking accounts;

- savings accounts;
- credit union accounts;
- certificates of deposit;
- money-market funds;
- stock options and restricted stock;
- stocks and bonds;
- furnishings and antiques;
- jewelry, furs, art, and collections;
- vehicles;
- cash values of whole life insurance policies; and
- a business or a corporation.

The title ownership of the asset should be noted (e.g., sole, joint, in trust, held for children). Any outstanding indebtedness against the property—such as an automobile loan, mortgage, or equity line—should be noted against the market value.

Valuing a pension or a retirement account may require an expert if the plan is a defined benefit plan with payments over time rather than a defined contribution plan in which the party has a lump-sum account. Your client may prefer to trade the pension for another asset or divide it. In either case, you should be aware of its present value. For a defined benefit plan, you will require an actuary to determine the present value of the future annuity. Division of a private pension of either type is effectuated by means of a qualified domestic relations order (QDRO) executed by the judge and sent to the administrator of the pension. If either party has a pension plan, contact the employer or administrator and request the QDRO form preferred by that plan. Doing so will ensure that the administrators accept the QDRO and will prevent having to redraft and present it again to the court for signature.

If the retirement assets are in the form of an IRA, simply request the appropriate form from the bank or other holder of the IRA; no formal QDRO is required. If the participant works for a public entity, either state or federal, the order is called a domestic relations order. These pensions are *not* treated the same as nongovernment pensions. Seek expert advice if you are not sure how to proceed. These assets are very valuable, and care should be taken to see that they are divided equitably and that all the necessary procedures are completed.

All assets should be valued at fair market value, not insured value, replacement value, or purchase price. Unless the parties have valuable jewelry, antiques, or art, the fair market value of their household goods is probably small.

§ 6.4.4 Liabilities

The third schedule should be entitled “Liabilities,” which are generally accounts payable, credit cards, loans, doctors’ bills, attorney fees, or tax liens. Do not duplicate weekly expenses listed under that schedule, but do total weekly payments. Again, you should delineate both whether these liabilities are joint or sole and the origin of the debt.

Be sure to point out to the court that the total weekly budget must provide for expenses *and* liability payments.

§ 6.5 MOTION AND TEMPORARY ORDER HEARINGS

While it may be possible to stipulate to such matters as temporary custody and support without a hearing, always present any stipulation to the court for entry as a temporary order.

Unless it is included in a temporary order, the stipulation is not enforceable through the contempt authority of the court.

Most frequently, temporary orders concern the following:

- temporary support (alimony and child support), G.L. c. 208, § 20;
- temporary restraining order from disposing of, moving, or encumbering marital assets, G.L. c. 208, §§ 12–14;
- temporary custody of minor children and visitation orders, G.L. c. 208, § 19;
- temporary vacate orders and use and occupancy orders, G.L. c. 208, § 34B; and
- temporary protection of personal liberty orders, G.L. c. 208, § 18.

Check with the appropriate Probate and Family Court for its procedures to save time and avoid embarrassment. Practices may vary from county to county and court to court. For example, calling the list is done at different times. The file may already be in court or must be requested by you. Some courts will accept a motion on any day; others will mark motions only if the court schedule is not full; and still others will hear motions only on certain days. Of course, correct notice must be given. The new rule requires ten days for a mailed notice, seven days if in-hand service. Remember that if the summons is not on file, motions will not be heard. You may also wish to check with opposing counsel to make sure that he or she is available on that day. If one party persists in going forward despite the unavailability of counsel, a protective order may be obtained to prevent the court from proceeding.

In most Probate Courts, the matter will be referred to family service probation officers for mediation. Typically, they meet first with counsel and then with the parties. While such mediation is often very helpful in arriving at a stipulation, remind your client that the probation officer has no authority to compel agreement. If the dispute is not resolved, the matter will be presented to the court. Depending on the judge’s

practice, the probation officer may be present to explain the dispute and even make recommendations. Sometimes clients wish to address the bench, but most often you will argue on their behalf.

If you require documents such as payroll or hospital records, issue a witness subpoena in advance of the hearing. You can also subpoena the opposing party to bring records. However, if an evidentiary hearing is necessary, the court probably will not have time during the motion session. You will have to specifically request such a hearing and provide for a stenographer.

If the outcome at a motion session is unsatisfactory, you may take an interlocutory appeal to a single justice of the Appeals Court. G.L. c. 231, § 118. A motion for reconsideration also may be filed, asking the trial judge to reconsider a temporary order. In some courts, this is done by written motion and opposition without oral argument. Check with your court to determine the correct procedure. If a motion for reconsideration is submitted, the interlocutory appeal may need to be refiled. Check with the Appeals Court.

The following are brief descriptions of the more typical orders. However, you can be creative in drafting motions for unusual circumstances.

§ 6.5.1 Vacate Orders

Vacate orders, which are governed by G.L. c. 208, § 34B, are increasingly difficult to obtain. Inform your client that his or her burden is to prove that the “health, safety or welfare of the moving party or any minor children . . . would be endangered or substantially impaired by a failure to enter such order” and that said order is effective for ninety days only. Section 34B vacate orders must be distinguished from G.L. c. 209A orders in that a Chapter 209A vacate order is pursuant to a complaint for abuse prevention.

§ 6.5.2 Custody and Visitation Orders

If the parties have children, you should be familiar with G.L. c. 208, § 31, which defines custody (legal versus physical). As Section 31 states, it is assumed at the temporary order stage that, absent parental abuse, neglect, or emergency conditions, both parents will share temporary legal custody. The difference between “legal custody” and “physical custody” should be explained to your client fully, and parenting plans should be discussed. Section 31 also delineates the basis for *not* granting joint legal custody in a judgment of divorce.

Prior to the hearing, discuss with your client what specific visitation schedule is desirable. The most common pattern is alternating weekends with the noncustodial parent, plus one or two evenings per week. However, this schedule is not applicable for very young children or if one parent travels or has an erratic work schedule. Listen to your client and the other party. Usually the parents are the best determiners of how their children’s time should be shared.

Be alert, however, to special circumstances. If the opposing party is seeking physical or shared physical custody, which your client opposes, do not agree to a schedule giving that party equal overnight time. If your client has not been the primary caretaker but wants physical or shared physical custody, make sure that you have a parenting plan that includes appropriate arrangements for day care, school activities, friends, and the like. If your client informs you that he or she has been the primary caretaker of the children but both parents work full time, find out who was with the children in infancy, who arranges for day care and sitters, and who takes the children to pediatricians or activities. Often a pattern emerges that will clearly define for you or your client who has really been the primary custodian.

Remind your client that the standard for the court in determining custody and visitation is “the best interest of the child.” Barring offsetting evidence, this often means remaining with the primary custodial parent. If custody is seriously at issue, you should consider asking the court to appoint a guardian ad litem pursuant to G.L. c. 215, § 56A to investigate and make recommendations to the court. Custody disputes are painful for all concerned, they are expensive, and they usually result in a trial on the merits. They should be undertaken only in the most serious of circumstances.

Practice Note

Keep in mind G.L. c. 209B, the Massachusetts Child Custody Jurisdiction Act. If your client has recently arrived in the Commonwealth, you should determine whether Massachusetts is the “home state” of the children for purposes of determining custody.

§ 6.5.3 Child Support Orders

Practice Note

Child support guidelines have been revised again, effective June 15, 2018. Copies of the guidelines, along with related reports and instructions for the child support worksheet, are available at <https://www.mass.gov/info-details/child-support-guidelines>. The 2018 guidelines have been included, along with related documents, in **Exhibits 6E** and **6G**.

The child support guidelines are applicable except where the combined annual gross income of the parties exceeds \$250,000, in which case an award of support at the \$250,000 level should be considered “the minimum presumptive order.” Child Support Guidelines § II(C). Review the guidelines carefully before proceeding.

The guidelines worksheet should be filled out using both parties’ financial statements and must be filed with the court at the temporary order hearing. You must advise your client that, when applicable, the guidelines are strictly enforced by most Probate Courts. Review with your client the definition of “includible income” (with reference to particular sources such as rent, disability, and bonuses) so he or she can properly include all income sources.

If you represent the custodial parent, do not assume that guideline support is all you may seek. Consider uninsured medical expenses, special needs of the child, and

alimony. *Cf., e.g.*, Child Support Guidelines § II(J) (“The payment of extraordinary uninsured medical and dental/vision expenses incurred for the children, absent agreement of the parties, shall be treated on a case-by-case basis . . .”). However, if the obligor’s income is in the middle-income range, it may prove difficult to obtain sums above the guidelines. Child support is nondeductible by the payor and nontaxable to the recipient. Child Support Guidelines § II(A). An order for unallocated alimony or child support may still enter but is less common, in part because of the child support guidelines and in part because of the Internal Revenue Code recapture provisions, which can recast alimony as child support in certain circumstances. Finally, if the child is (or will be) residing in another state, calculate support using that state’s guidelines. You may then wish to argue that the other state’s guidelines should be applied or travel costs for visits be deducted. However, under the Uniform Interstate Family Support Act (UIFSA), G.L. c. 209D, the guidelines for support are those of the obligor’s resident state and not those of the child’s resident state, if different. You may be able to negotiate an agreement using the other state’s guidelines, however, or to deduct the travel cost for visits from support, as suggested in the Massachusetts guidelines.

Remember that temporary support orders have a way of turning into permanent ones; do not assume that they can be ignored or modified down the road. Therefore, it is important to argue for appropriate support orders from the start.

§ 6.5.4 Injunctions and Attachments

Injunctions and attachments are available pursuant to G.L. c. 208, §§ 12–14, either on an *ex parte* or a notice basis. Such orders may be necessary, even with the automatic restraining order, if you think a party may violate it. Advise your client that, by case law, all property—regardless of title—can be considered marital property subject to equitable division and that the court will most probably freeze all property pending final adjudication and division if requested to do so. Until the final judgment, assets should remain in the “marital estate.”

Typically, you would not seek such orders in every divorce. Consider doing so on an *ex parte* basis if you or your client believes that the other party is planning to hide funds or sell assets because notice may simply accelerate the result. It may then be impossible to either regain the asset or transfer compensating assets to your client.

§ 6.5.5 Insurance Coverage Orders

Provisions on obtaining or maintaining health, dental, and vision insurance are set forth in Section II(H)–(J) of the 2017 child support guidelines. (See the Practice Note in § 6.5.3, above, regarding the issuance of new child support guidelines for 2017.) Insurance issues as well as issues relating to uninsured medical and dental expenses of the spouses and children should be addressed at the temporary order hearing. The child support guidelines provide that the “recipient shall be responsible for payment of the first \$250 each year in combined routine uninsured medical and dental/vision expenses for all the children covered by” the support order. Child Support Guidelines

§ II(H). For routine amounts above that limit, the courts allocate expenses between the parties without adjusting the order. Extraordinary uninsured medical and dental expenses are handled on a case-by-case basis. Child Support Guidelines § II(J). General Laws c. 208, § 34 provides in part as follows with respect to alimony and health insurance:

When the court makes an order for alimony on behalf of a spouse, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor do one of the following: exercise the option of additional coverage in favor of the spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse.

If any special needs, such as orthodontics and therapy, exist at the time of the motion session, you must address them. Do not assume that one party will continue to pay or even agree that continued treatment is necessary. General Laws c. 175, § 110I mandates continued health insurance coverage but not if the employer is a self-insurer. In that case, federal Consolidated Omnibus Budget Reconciliation Act (COBRA) regulations provide for continued coverage, but only for a limited time and usually at considerable cost. However, the federal statute was amended in 1997 and may provide an option for continued coverage when the COBRA period expires. Also consider the Social Security benefits relating to medical coverage for children, i.e., Qualified Medical Child Support Orders (QMCSO) and the Social Security Act. 29 U.S.C. § 1169 (QMCSO); 42 U.S.C. § 301 et seq. (Social Security Act).

§ 6.6 DISCOVERY

The domestic procedure rules now dictate mandatory self-discovery within forty-five days. Mass. Supp. Prob. Ct. R. 410. Both parties may agree to vary the time frame; however, this discovery includes such items as income tax returns, W-2s, 1099s, financial statements, and the like. Read these rules carefully!

In a divorce in which the parties work as employees, own the marital home, have a pension through employment, and one bank account, little more formal discovery may be required. A paystub, pension statement, and bank statement are sufficient to document the financial statement. Tax returns and the other documents in the mandatory discovery may be all you will need. Both parties in such situations usually are aware of their joint circumstances and have had neither the opportunity nor the spare

funds to squirrel away assets. However, in more complex financial situations, more discovery is necessary to protect both you and your client.

Discovery methods in divorce proceedings include

- demand for financial statement, Mass. Supp. Prob. Ct. R. 401;
- interrogatories, Mass. R. Dom. Rel. P. 33;
- request for production of documents, Mass. R. Dom. Rel. P. 34;
- depositions of parties, witnesses, keepers of records, and experts, Mass. R. Dom. Rel. P. 30;
- subpoenas, Mass. R. Dom. Rel. P. 45; and
- notice to admit facts, Mass. R. Dom. Rel. P. 36.

An ascending order of discovery is usually desirable, commencing with initial discovery; progressing through interrogatories and document requests; and finishing with deposition of parties, witnesses, keepers of records, and experts. It is preferable to obtain documents and answers to interrogatories prior to deposition, if at all possible, to better question the deponent. If time does not permit, the deposition subpoena may be *duces tecum*, and you may suspend the deposition to review the documents before continuing.

Remember to identify and mark each exhibit referred to at the deposition. If you are not familiar with deposition practice, review the procedural requirements prior to the date scheduled. *See* Mass. R. Dom. Rel. P. 26–37.

You may require expert valuation of marital assets, including businesses, pensions, and real estate. You can hire an expert jointly with the opposing party. This will avoid a costly “battle of the experts.” If you plan to use experts, they must be listed on your pretrial memoranda—or you will need the court’s permission to use them at trial. You should depose an opposing expert, and you should hire your own to advise you as to the deposition and cross-examination at trial and to prepare your own valuation. At trial, the expert must testify because any report he or she prepares is hearsay.

§ 6.7 PRETRIAL CONFERENCES AND MEMORANDA

§ 6.7.1 Overview

Pretrial conferences are governed by Rule 16 of the Massachusetts Rules of Domestic Relations Procedure, which is the same as the corresponding civil procedure rule. In addition, Standing Order 1-03, Parent Education Program Attendance, is important in determining when a pretrial conference can occur. Section 3 of Standing Order 1-03 states as follows:

No Pretrial Conference or Trial will be held by the court until the court receives a certificate of attendance from an approved program for each party, or waives the requirement.

An uncontested divorce hearing may be scheduled pending attendance if the parties file confirmations of registration with the court and so long as both parties complete the program prior to the hearing. A Pre-Trial Conference in a contested case may be similarly scheduled so long as the parties complete the program prior to the Pre-Trial Conference.

Section 8 of Standing Order 1-06 provides the following further guidance concerning pretrial conferences:

- a. The pretrial conference shall be conducted in accordance with Rule 16 of the Massachusetts Rules of Domestic Relations Procedure or the Massachusetts Rules of Civil Procedure.
- b. When scheduling a pretrial conference the court shall issue a Pre-Trial Notice and Order in a format specified by the Chief Justice of the Probate and Family court.
- c. If a case is not resolved at the pretrial conference, an order after pretrial conference shall be issued, which shall include provisions specified by the chief justice of the Probate and Family Court and may also include additional provisions at the discretion of the judge conducting the pretrial conference.

The pretrial conference is one of the most important events that will take place in any contested action, and the importance of adequate advance preparation cannot be overemphasized. Attorneys must be familiar with Mass. R. Dom. Rel. P. 16, which sets out the purposes of the pretrial conference. For a judicial statement on the underlying rationale for pretrial conferences, see *Botsaris v. Botsaris*, 26 Mass. App. Ct. 254, 255 n.2 (1968) (stating in part that “[t]he purposes of a pretrial conference are to pare and hone the legal and factual issues for subsequent trial and to explore the possibilities of settlement”).

After the pretrial conference has been requested, with a copy of the request form sent to opposing counsel, you will in time receive notice of the date, along with the list of topics to be included in your pretrial memorandum. Note that some judges are now requiring specific procedures or information for their pretrials; read the notice carefully. The court may require you to file the memorandum and financial statement at a set date prior to the actual conference and may require that it be given to the opposing party in advance.

The pretrial memorandum can be crucial. In it, you are asked to outline for the court the areas of agreement and those in dispute—whether of fact or of law—and to provide information regarding the trial, on topics such as estimated length, experts, and exhibits.

Practice Note

Although each court handles procedures for pretrial differently, some general comments are helpful. You may request a pretrial conference using the court form. Discovery may have to be completed depending on the court or judge, and you may (depending on the court) be ordered to trial the day of the pretrial conference if the case does not settle. Some courts are more prone to this practice than others, so inquire. Given the months it may take to obtain a pretrial date, you may wish to make the request early in the proceedings to avoid later delay, but some courts will not allow a conference to be scheduled without certain discovery on file. At any time, of course, if the parties settle and an agreement is executed, you may request an immediate hearing.

§ 6.7.2 What Is a Pretrial Conference?

Rule 16 of the Massachusetts Rules of Domestic Relations Procedure describes the purpose of the pretrial conference. The judge at the pretrial conference will meet with the parties and counsel in an attempt to simplify the issues, explore the possibility of settlement, and resolve issues regarding discovery. At the pretrial conference, the court may refer issues to a master or to various forms of alternative dispute resolution. The recommendations of the pretrial judge have greater weight since the adoption of the “single justice calendar” system. (The last two digits of the docket number assigned when the divorce complaint is filed dictate which judge will have the case from beginning to end.)

Practice Note

While it is certainly possible that additional evidence or trial testimony may result in a different outcome than that posited by the judge at a pretrial, the practitioner must keep in mind, and tell his or her client, that the judge’s pretrial comments should not be taken lightly.

§ 6.7.3 Why Do You Want a Pretrial Conference?

A pretrial conference is needed when it is clear that the case will not be resolved by agreement and it will be necessary to advance the case toward conclusion through the court system. Receiving a pretrial date can cause the parties to focus on the issues and help move the case toward resolution. Parties often are more willing to seriously consider compromises and settlement possibilities when there is a pretrial conference scheduled because of the work and expense involved in preparation for the conference. If the case cannot be resolved by agreement, having a pretrial conference date will also cause counsel to finalize discovery in order to be ready for a pretrial conference and trial.

It is crucial that discovery be sufficiently complete prior to the pretrial conference so the conference will not be a waste of time. It will also increase the possibility of resolving the case at or before the pretrial conference. This is a good reason to be properly prepared at the pretrial conference and to have most, if not all, of the

discovery completed. If the case is not resolved at the pretrial conference, the court will assign trial dates or possibly a further pretrial conference or status conference date. However, the pretrial is not merely a “way station” prior to trial; parties should be effectively prepared for a final hearing.

The pretrial notice and order outlines the information required in your pretrial memorandum. It also states whether the memoranda must be exchanged by counsel and submitted to the court a certain number of days prior to the pretrial date. The notice also requires that the parties and counsel hold a four-way meeting at least seven days prior to the pretrial date. It is imperative that your client attend the pretrial and be fully informed as to what may occur.

§ 6.7.4 What May Occur at the Pretrial, and How Do You Prepare for It?

At the pretrial, the judge may talk with counsel first, without clients present, in an effort to determine exactly what is keeping the parties apart and in the hope that the judge may be able to suggest an outcome acceptable to both sides. The judge will have reviewed the memoranda and financial statements, as well as any other documents submitted. It is often the case that the parties, after their respective counsel have reported the judge’s comments, will also hear from the judge directly, as to the court’s view of the case and suggestions for settlement.

The judge may also suggest a second pretrial conference or status conference, or order the parties and counsel to sit down and attempt to resolve the case in the courthouse.

Practice Note

It is good practice not to schedule another matter the day of the pretrial and inform your client that you may be spending the day in court so he or she can make appropriate arrangements for child care or coverage at work.

The Administrative Office of the Trial Court has issued guidelines for judicial practice relating to abuse prevention matters. Section 12.05 of the guidelines provides as follows: “Where a no-contact order is in effect, the parties shall not be required to meet face to face outside the courtroom regarding any Probate and Family Court proceeding.” *Guidelines for Judicial Practice Abuse Prevention Proceedings* § 12.05 (Proceedings in Probate and Family Court: Pre-Trial Conferences and Other Court Proceedings).

When the other side is a pro se litigant, it is good practice to inform him or her of the purpose and requirements of the pretrial conference and the fact that litigants proceeding without counsel are nevertheless bound by the court’s requirements. *See Mmoe v. Commonwealth*, 393 Mass. 617, 620 (1985) (holding that, although some leniency is appropriate in determining whether a pro se complaint meets requirements of the Massachusetts Rules of Civil Procedure, the rules bind a pro se litigant as they bind other litigants). Be sure that you are not, however, giving the pro se litigant legal advice regarding any particular issues in the case.

Be sure to include in your memorandum any changes that may have occurred since the case was filed and indicate whether any motions for temporary orders have been submitted. For example, a teenage child may have decided to move in with the other parent or a client may have lost or gained a job. Always update your party's financial statement prior to the pretrial and attach the financial statement to your memorandum when sending it to opposing counsel or to the court.

If custody or a parenting plan has been in dispute and a guardian ad litem (GAL) has been appointed, it is critical that, prior to the pretrial, the GAL report be filed and the clients read the copies received by counsel in counsel's offices. Since these issues are always major sources of disagreement, it is highly unlikely that the pretrial will result in settlement if the parties and counsel have been unable to read and understand the GAL's recommendations.

It is also a good idea to bring a draft separation agreement with you to the pretrial conference. After both counsel and parties have heard from the judge, there may well be momentum for settlement. If that is the case, having an agreement with blank provisions may enable you to complete the divorce that day. Or the parties and counsel can execute a specific written "memorandum of settlement terms," relevant portions of which could, in addition, be recited into the record. *See Dominick v. Dominick*, 18 Mass. App. Ct. 85, 89 (1984) (holding that a detailed oral marital separation agreement read into the record, with the express intention of the parties that the agreement be reduced to writing and signed, was binding upon the resumption of a divorce trial following a suspension for negotiation, absent a formal signed agreement). You can then resubmit a retyped "clean copy" of the agreement, for the convenience of the court and the parties, with the understanding that the agreement submitted on the day of the conference governs.

Of course, if your four-way meeting and the reactions of the parties, counsel, or both make it obvious that settlement is unlikely on the day of the conference, the case may end up being tried, or settled later.

§ 6.8 DIVISION OF ASSETS

The equitable division of marital assets and the award of spousal support or alimony are determined by G.L. c. 208, § 34.

Massachusetts is an equitable division jurisdiction, not a community property state or an equal division state. Equitable distribution is determined by the court in its discretion after review of all evidence of the Section 34 factors. No one factor is controlling, and each case will lend itself to strengths and weaknesses on different factors. Advise your client that no one factor has superior importance in the eyes of the court and, therefore, his or her best position should be set forth on each factor.

You will often be asked by your client as to how the court will treat asset division and alimony in his or her case. Be sure to caution your client that, despite what he or she may have heard about someone else's divorce, each case is unique and that you cannot absolutely predict what will happen if the case goes to trial. The trial judge

has considerable discretion to develop a rationale for division of assets and alimony based on the Section 34 factors. However, some general parameters are discernible from the case law. It is important, therefore, that you are aware of the possibilities so you can advise your client as to settlement or trial. If inherited property is involved, be very careful to find out the facts about its use in the marriage, when it was received, and the like, because these facts are crucial to a judge's decision-making process.

§ 6.8.1 Section 34 Factors

General Laws c. 208, § 34 lists some seventeen factors that the court must take into consideration in its property division and alimony award. It is counsel's responsibility to present evidence on *each* factor at the time of trial, as the court must make detailed findings of fact on each Section 34 factor to support its judgment of divorce.

At your initial interview with your client, begin gathering information as to these factors—concerning not only your client but also the opposing party. Review existing case law because the weight given to each factor may vary, and judges have broad discretion in fashioning an award.

(a) *Length of the Marriage*

Find out if the parties lived together or bought property together prior to the marriage date. While most judges will not “tack on” this period, you should bring it to the court's attention if significant. Also consider the period of separation. You may wish to argue that the marriage partnership ended at the time of separation, if this occurred years before. This is significant as to the division of assets, the date of valuation of assets, and the award of alimony, which is ordered to enable the recipient to maintain, as nearly as possible, the lifestyle enjoyed during the marriage.

Finally, the length of the marriage is significant as to how judges divide assets. In a short-term marriage of one or two years, there is a tendency to place the parties in the position they had prior to the marriage to the extent possible. Thus, if prior to the marriage one party had purchased with his or her own funds a home that became the marital residence, that party would be likely to retain it on divorce, perhaps with any appreciation divided between the parties. In middle-length marriages, perhaps five to ten years, there is more of a tendency to consider “equitable division” to mean an equal division of assets. This becomes even more true of long-term marriages because the parties probably acquired many of their assets during the marriage and commingled private assets to enhance their lifestyle.

(b) *Conduct of the Parties During the Marriage*

Both good and bad conduct of each party should be stated, as well as economic misconduct, if applicable. However, unless egregious, conduct will have little impact on how alimony is awarded or how assets are divided. You should make your client aware of this since conduct probably is of extreme importance to him or her.

(c) *Age of the Parties*

In addition to identifying the age of the parties at the time of marriage and now, you should inform the court as to the number of marriages each party has previously had and the number of children born to each of the parties in prior relationships.

(d) *Health of Each Party*

Evidence of each party's physical, emotional, and psychological health is necessary. You may have to bring in physicians or therapists for expert testimony to testify as to the diagnosis, treatment, cost, required medication, and prognosis. Remember that hospital records, on motion, are admissible without expert testimony.

(e) *Station of the Parties*

The parties' lifestyle or "station" during the marriage is an important factor, especially as it pertains to alimony. Experienced practitioners prepare their clients to testify in time-segment periods (e.g., first five years of marriage, second five years of marriage) as to the salaries, housing, automobiles, vacations, clothing, entertainment, hobbies, and so forth that they enjoyed during the marriage. If their lifestyle is broken down into time segments, it may be easier for the court to get a more complete picture of the parties' lifestyle.

(f) *Occupation of Each Party*

The current and prior occupations of each party along with the corresponding lengths of employment should be included.

(g) *Amount and Sources of Income of Each Party*

In addition, pensions, trusts and annuities, support, overtime, bonuses, commissions, inheritances, Social Security income, unemployment benefits, and disability income must be disclosed. Dividend and interest income from investments should also be disclosed. Your client's income position will be documented on his or her financial statements.

(h) *Employability of Each Party*

If a party is presently unemployed or underemployed and working beneath capacity, you can argue "attribution of income" to that particular party. Pursuant to the child support guidelines, the court can base the child support award on the "attributed" level of income. (See the Practice Note in § 6.5.3, above, regarding the issuance of new child support guidelines for 2017.) A party's employability should also include evidence as to the future of his or her employment industry, additional hours available, promotions, and salary increases available. If a party is working only part-time because of child-care responsibilities, introduce evidence as to the cost of child care should that party return to work full time.

(i) *Vocational Skills of Each Party*

This factor includes each party's educational background, training, years in his or her industry, transferable skills to another industry, and future training required. Inform the court of the parties' vocational skills historically, especially in light of today's volatile employment market.

(j) *Estate of Each Party*

The estate of each party includes the assets listed on his or her financial statement, Form 401. Include assets held in the other party's name.

(k) *Liabilities of Each Party*

Your client's liabilities must be listed on his or her financial statement and should include loans, doctors' bills, credit card balances, accounts payable, tax liens, and your attorney fees. Include liabilities, such as orthodontia, incurred for the minor children.

(l) *Needs of Each Party*

The needs of your client should correspond with the weekly expenses as listed on his or her financial statement. Testimony as to your client's actual current expenses versus anticipated future expenses is necessary. There may be future expenses—for example, therapy, auto replacement, house repair, children's education, and child care—that must be brought to the court's attention. Have actual evidence in the form of bills or estimates for introduction as evidence at trial. However, unless there are ample resources, the court will concern itself with present needs and leave future needs to a complaint for modification.

(m) *Opportunity for Each Party's Future Acquisition of Assets*

If your client or his or her spouse is expecting any inheritance, trust or annuity income, pension income, stock options, or other future expectancies, these should be brought to the attention of the court as it will reflect on that party's future needs. Courts may award a division to the opposing party of "if and when received" workers' compensation claims, lawsuits pending, etc.

(n) *Opportunity for Each Party's Future Acquisition of Income*

Under this factor, the court must consider each party's future income opportunities, such as raises, promotions, bonuses, commissions, and educational training. Again, have evidence available for introduction at trial as to historic raises, promotions, commissions, bonuses, etc.

(o) *Contribution of Each Party in the Acquisition or Appreciation in Value of Their Respective Estates*

This particular factor is of utmost importance, especially if either spouse brought assets of financial importance to the marriage. If your client owned assets at the time of the marriage, you will want to argue that your client should be credited with the value as of the marriage date—and you must be prepared to show evidence of the value at the date of marriage. Additionally, if either spouse received gifts from his or her family during the marriage, such as down payments on the marital residence or inheritances, that particular party may seek a credit for his or her contribution of same. If an inheritance was received by either party during the marriage and the inheritance has been commingled into the marital estate, especially in a long-term marriage, the court may consider the inherited monies as marital assets and divide them equitably. If most of the assets were acquired during the marriage through the joint efforts of both parties, they will generally be considered marital assets and will all be subject to equitable distribution, without credit to either party. Alternatively, in a short-term marriage where one party had the asset prior to the marriage, the court could credit the value at the date of marriage to the particular party.

Practice Note

Disproportionate divisions of assets upheld under this factor may have a substantial impact on the results achieved for your client. Consider your case carefully and review the relevant appellate decisions before deciding how to proceed.

(p) *Present and Future Needs of Children*

This factor was added to G.L. c. 208, § 34 in 1990 and is applicable to property division only. Although case law prohibits the court from awarding actual marital property to a child of the parties, it can award additional property to one of the spouses to meet the children's present and future needs.

(q) *Tax Implications*

Whether the case settles or goes to trial, you must consider the tax implications inherent in divorce. As already noted, child support remains taxable to the obligor and nontaxable to the recipient. (See the Practice Note in § 6.5.3, above, regarding the issuance of new child support guidelines for 2017.) Alimony, by contrast, is deductible by the payor and taxable to the recipient. To qualify as alimony, the payments must meet certain criteria set forth in the Internal Revenue Code. Generally, transfers of property incident to divorce are nontaxable. In a typical example, the marital home may be transferred to one spouse in exchange for a present or future payment, without tax consequences as to the transfer. However, once the property is sold to a third party, the title holder will be responsible for any capital gains tax unless otherwise specified in the separation agreement. For the marital home, the new exclusion of the first \$250,000 from capital gains taxes is important if the parties are divorced and the house is later sold. If sold with both names on the title or while the parties are still

married, the exclusion can double to \$500,000. It is a good idea to consult with a certified public accountant or a tax specialist. Also of value are the dependency exemptions for the minor children. The Internal Revenue Code provides that these exemptions are claimed by the custodial parent unless waived. Waiver may be voluntary or ordered by the court. If waived, Internal Revenue Service Form 8332 must be completed and signed by the custodial parent for the other parent to claim the exemption by attaching the form to his or her tax return. The form may be executed annually or permanently.

Frequently the dependency exemption is waived in favor of the noncustodial parent if child support is being paid. This will, to some extent, offset the tax implications of child support. The waiver should be executed annually and be contingent on payment of all amounts due the custodial parent.

Practice Note

The child-care credit is linked to the dependency exemption, so if the dependency exemption is transferred to the noncustodial parent, the custodial parent cannot get the credit. Given the complexity of the interplay among the various tax provisions, the value of the dependency exemption, and the phase-out of the exemption and tax credit at various income levels, you should consult an accountant about the tax impact.

If done by a QDRO or other appropriate form, transfers of retirement assets are non-taxable to either party, i.e., the transfer is not a taxable withdrawal.

If the divorce is tried, it is the responsibility of counsel to present the tax implications to the court. Otherwise, case law indicates that the court is not required to consider these consequences.

(r) *Amount and Duration of Alimony (Pursuant to the Alimony Reform Law)*

Under the new alimony law, 2011 Mass. Acts c. 124, G.L. c. 208, § 34 also requires that, in addition to the aforementioned factors, a judge must consider the amount and duration of an award of alimony.

§ 6.9 ALIMONY

On Monday, September 26, 2011, Massachusetts Governor Deval Patrick signed into law An Act Reforming Alimony in the Commonwealth, 2011 Mass. Acts c. 124. The new law, which took effect on March 1, 2012, encompasses a number of changes to the way alimony is determined, the amount of alimony, and the duration of alimony.

§ 6.9.1 Tax Treatment

Effective January 1, 2019, pursuant to enactment of Pub. L. No. 115-97, “An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on

the budget for fiscal year 2018,” payers of alimony and unallocated support may no longer receive a tax deduction for their payments. However, Part III, § 11051(c)(1)–(2), states the following:

(1) any divorce or separation instrument (as defined in section 71(b)(2) of the Internal Revenue Code of 1986 as in effect before the date of the enactment of this Act) executed after December 31, 2018, and

(2) any divorce or separation instrument (as so defined) executed on or before such date and modified after such date if the modification expressly provides that the amendments made by this section apply to such modification.

As of this writing, there appear to be varying views about whether prior orders and judgments will maintain tax deductible status. Presently the majority view appears to be that prior orders (even temporary orders) and judgments (even if modified after January 1, 2019) can maintain deductible status so long as there is no break (suspension or termination), even temporarily, in the payments. At this point, changing the amount of the payment does not appear to have an impact on the deductibility status.

§ 6.9.2 Types of Alimony

Under the new alimony law, there are four types of alimony. Alimony is now generally defined as “the payment of support from one spouse to another for a reasonable length of time, pursuant to a court order and for the purpose of providing a spouse in need of support periodic payments from a spouse who has the ability to pay it.” For the first time in fixing the nature and value of property, the court will consider the amount and duration of alimony. The new categories of alimony include the following:

- *General term alimony*: “the periodic payment of support to a recipient spouse who is economically dependent.” This type of alimony is for a spouse who is economically dependent on the other spouse. It may also be appropriate when one spouse has a long-term disability.

Practice Note

In *Holmes v. Holmes*, 467 Mass. 653 (2014), the Massachusetts Supreme Judicial Court ruled that an order of alimony pursuant to G.L. c. 208, § 49(b)—general term alimony—will commence upon entry of a final judgment rather than when an order of temporary support is made during the litigation phase of the divorce matter. In *Holmes*, the divorce litigation spanned a period of over two years, during which time the husband paid temporary alimony support to the wife. The court determined the duration of the husband’s alimony obligation but held that the duration would not be reduced by the two-year period in which the husband had paid temporary alimony support. Specifically, the court held that “temporary alimony is not general term alimony” and that general term

alimony cannot be ordered until the time of entry of a separation agreement of final judgment.

The provision regarding child support in G.L. c. 208, § 53(c)(2) has led many domestic relations attorneys to conclude that in any case in which the parties' total income is less than \$250,000, there will be no alimony.

- **Rehabilitative alimony:** “the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse pursuant to a judgment.” Rehabilitative alimony is paid for no more than five years unless unforeseen events prevent the recipient spouse from becoming self-supporting.

Practice Note

In *Zaleski v. Zaleski*, 469 Mass. 230 (2014), the Supreme Judicial Court held that rehabilitative alimony was appropriate for a sixteen-year marriage in which the wife had held gainful employment, had retained employment-related skills, and could reenter the workforce with reasonable efforts. The court found that “if a party’s employability in the near future is a realistic prospect, rehabilitative alimony might, with other considerations, be appropriate.” *Zaleski v. Zaleski*, 469 Mass. at 240. The court also stated that “the prospect of future employment, when based on a past history of commensurate employment followed by a brief hiatus, may be sufficiently predictable, even in the absence of an available, specifically identifiable job.” *Zaleski v. Zaleski*, 469 Mass. at 241. In this case, the wife had been employed the majority of the marriage; however, she had been unemployed for three years leading up to the divorce. Her income while employed was approximately \$200,000 per year.

- **Reimbursement alimony:** “the periodic or one-time payment of support to a recipient spouse after a marriage of not more than five years and for the purpose of compensating the recipient for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.” This applies only to marriages of not more than five years and is not extendable or modifiable.
- **Transitional alimony:** “the periodic or one-time payment of support to a recipient spouse after a marriage of not more than five years and for the purpose of transitioning the recipient to an adjusted lifestyle or location as a result of the divorce.” This applies only to marriages of not more than five years and is not extendable or modifiable. The term for transitional alimony can be no greater than three years.

In addition to these new definitions, the law defines “full retirement age” as the payor’s ordinary retirement age for United States old-age Social Security benefits, which can vary based on the year the payor was born. See the full retirement age chart at <https://secure.ssa.gov/apps10/poms.nsf/lnx/0300615003>.

§ 6.9.3 Duration of General Term Alimony

General term alimony is the only type of alimony out of the four that has an established time standard. The other three types of alimony—rehabilitative, reimbursement, and transitional—are all short term; therefore, they do not need such a structured plan.

The durational scheme for general term alimony is as follows:

- For marriages of not more than five years, the alimony term cannot be greater than one-half the number of months of the marriage.
- For marriages of five to ten years, the alimony term cannot be greater than 60 percent of the number of months of marriage.
- For marriages of ten to fifteen years, the alimony term cannot be greater than 70 percent of the number of months of marriage.
- For marriages of fifteen to twenty years, the alimony term cannot be greater than 80 percent of the number of months of marriage.
- For marriages longer than twenty years, the court has the discretion to order alimony for an indefinite period.

§ 6.9.4 Grounds for Termination of Alimony

An order for general term alimony can be reduced, suspended, or terminated upon the remarriage or cohabitation of the recipient spouse after a showing that he or she has cohabitated with a third party for at least a continuous three-month period. The statute lists several factors that the court must consider when determining if the recipient spouse shares a common household with a third party, including

- statements made to third parties about the relationship,
- economic interdependence of the couple,
- actions taken by the couple in furtherance of their relationship,
- benefits derived from the relationship, and
- the community reputation of the couple.

An order that has been terminated for this reason can be reinstated upon termination of the common household relationship. This is an important change because, historically, alimony recipients have frequently cohabitated with a third party with whom they shared an intimate relationship without any plans of remarriage in order to continue receiving alimony payments from an ex-spouse.

The law also states that general term alimony terminates when the payor reaches the full retirement age or when that person becomes eligible for the old-age retirement benefit under the United States Old-Age, Disability, and Survivors Insurance Act. Previously, retirement was not in and of itself a sufficient change in circumstance to warrant termination of an alimony obligation, absent some other countervailing

circumstance. This change will be particularly relevant to people who divorce later in life and are rapidly approaching the age of retirement.

Rehabilitative alimony terminates upon the remarriage of the recipient or the death of either spouse.

Reimbursement alimony terminates upon the death of the recipient spouse or a date certain.

The new alimony law also limits the duration of alimony when a spouse is also paying child support:

If a court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony duration available at the time of divorce; or (ii) rehabilitative alimony beginning upon the termination of child support.

G.L. c. 208, § 53(g), *added by* 2011 Mass. Acts c. 124, § 3.

The meaning of this provision is not fully clear yet; however, the implication is that a payor of alimony and child support may not be subject to payment of alimony for longer than the greater of either the standard term prescribed by the statute or a five-year rehabilitative period after child support has terminated.

§ 6.9.5 Determining the Amount of Alimony

Under the alimony reform act, the type and amount of alimony shall be determined based on the judge's consideration of several factors. However, the act specifically states that an award of alimony shall not be greater than 30 to 35 percent of the difference between the parties' gross incomes.

Practice Note

This provision has become highly controversial since January 1, 2019, with the loss of tax deductibility. Without deductibility, 30 to 35 percent of a payer's gross income could amount to more than 50 to 60 percent of the payer's net income. At present, the legislature has not proposed a fix to this issue. The need to undertake careful tax analysis when presenting these issues to the court is more important than ever: the court must understand the after-tax implications when entering such an award of alimony. These circumstances also affect the need-based analysis, which doesn't necessarily address the 30 to 35 percent language but, rather, assesses a party's actual spending and the respective need and ability to pay. This analysis can be complicated. Careful attention must be paid to actual spending; reviewing need in a vacuum is often misleading. Bringing an expert into the case is particularly important in the current state of uncertainty.

(a) *Factors for Determining the Amount of Alimony*

Factors applied in determining the amount of alimony include

- the length of the marriage;
- the ages of the parties;
- the health of the parties;
- both parties' income;
- employment and employability, including employability through reasonable diligence and additional training, if necessary;
- economic and noneconomic contribution to the marriage;
- marital lifestyle;
- the ability of each party to maintain the marital lifestyle;
- lost economic opportunity as a result of the marriage; and
- such other factors as the court may deem relevant and material.

Additionally, when calculating alimony, the court is to exclude from its income calculation

- capital gains income and dividend and interest income that came from assets equitably divided between the parties as part of the divorce and
- gross income used to determine a spouse's child support obligation.

Practice Note

The provision regarding child support in G.L. c. 208, § 53(c)(2) has led many domestic relations attorneys to conclude that in any case where the parties' total income is less than \$250,000, there will be no alimony. This is a sensible conclusion based on the letter of the law. However, it does not appear that all judges have embraced this interpretation of the statute. In many cases, a judge will determine child support based on the child support guidelines and, even where total income is less than \$250,000, set an award of alimony. A common example of this is when the higher-earning spouse is also the primary parent. In this case, many judges appear to adopt the approach of determining alimony for the nonprimary/lower-wage-earning spouse and then determining a child support amount to be paid to the primary/high-wage-earning spouse based on the income exchange resulting from the award of alimony. There is no clear-cut rule on how to deal with this issue. Expect each judge to have a slightly different approach. Additionally, the specific facts of each case could alter a judge's determination on this issue. Therefore, it is important to set an appropriate expectation with the client by explaining that this provision does not necessarily eliminate a possible award of alimony.

(b) *Factors for Ordering a Deviation in the Amount and Duration of Alimony*

Upon written findings that deviation is necessary, a judge may, in his or her discretion, deviate from the duration and amount limits imposed by G.L. c. 208, §§ 48, 49, and 53 for general term alimony and rehabilitative alimony.

Grounds for deviation include

- the ages of the parties;
- the health of the parties;
- tax considerations applicable to the parties;
- whether the payor spouse provides health insurance for the recipient spouse;
- whether the payor spouse maintains a life insurance policy for the benefit of the recipient spouse;
- the sources and amounts of unearned income, such as capital gains, interest and dividends, and other income generated from assets that were not allocated in the divorce;
- the court may consider as part of the parties' length of marriage premarital cohabitation that included economic partnership and/or marital separation of a significant amount of time;
- a spouse's inability to provide for his or her own support due to physical or mental abuse by the payor; and
- such other factors as the court may deem relevant and material.

(c) *Attribution of Income*

"In determining the incomes of parties with respect to the issue of alimony, the court may attribute income to a party who is unemployed or underemployed." G.L. c. 208, § 53(f), *added by* 2011 Mass. Acts c. 124, § 3. This means that a court can calculate alimony using the parties' potential incomes, not just their actual incomes. Prior to the new alimony law, the standard was that income would be attributed to a spouse for the purpose of determining an alimony award only when the spouse was voluntarily unemployed or underemployed.

(d) *Excluding Additional Income from Alimony Amount*

The new alimony law excludes any income the payor spouse receives from a second job or overtime from a determination of alimony. It is unclear how this may affect a spouse who is paid not hourly but on a weekly basis regardless of how many hours per week he or she works.

§ 6.10 TRIAL PREPARATION

Although most divorce cases ultimately settle, thorough and diligent trial preparation is necessary if there is no settlement at the pretrial conference. Consider further four-way meetings. Stipulations as to agreed facts and agreed issues should be jointly prepared with opposing counsel for presentation to the court at the final hearing; this will streamline the trial and save your clients money. Familiarize yourself with special evidentiary rules peculiar to divorce: private husband and wife conversations are disqualified, not merely privileged, and guardian ad litem (GAL) testimony may include hearsay, for example.

§ 6.10.1 Checklist and Trial Plan Forms

Use a checklist for preparation at least thirty days before trial (see **Checklist 6.2**). This checklist includes updating your client's financial statement; updating the child support guidelines worksheet to reflect current income; filing a request for a stenographer with the Probate and Family Court; and issuing witness subpoenas to expert witnesses, lay witnesses, parties, keepers of records, guardians ad litem, and any other expected witnesses.

§ 6.10.2 Proposed Pleadings

Prior to the commencement of trial or at least prior to the conclusion of trial, you must file proposed or suggested findings of fact, proposed or suggested conclusions of law, proposed or suggested rationale for judgment of divorce nisi, and proposed judgment of divorce nisi. Case law dictates that the court make findings of fact and conclusions of law, set forth its rationale, and, of course, issue its judgment of divorce nisi; your suggested pleadings, based on evidence and testimony you presented, will assist the court in making its final judgments. Your proposed findings will also serve as a trial checklist for the evidence you plan to introduce.

§ 6.10.3 Counsel Fees Motion

If your client is seeking payment of counsel fees by his or her spouse, you must file and present a motion for counsel fees pursuant to G.L. c. 208, § 38 prior to the conclusion of trial. Once the trial has been concluded and the judgment is rendered, the court cannot award counsel fees. Any preliminary motions, such as motions in limine, must be prepared and filed at the opening of trial.

§ 6.10.4 Trial Notebooks

Many courts require trial notebooks, in which all agreed exhibits and disputed exhibits are premarked. At the pretrial hearing, the court will generally issue an order as to its requirement for trial notebooks and premarked exhibits.

§ 6.11 SEPARATION AGREEMENTS

Ultimately, most cases settle and a separation agreement is presented to the Probate Court for approval and incorporated into its judgment of divorce nisi. There are many separation agreement forms available, but carefully review and edit the boilerplate language that is inherent in each form agreement. A sample separation agreement is included as **Exhibit 6G**.

§ 6.11.1 Survival Versus Merger

This language is crucial and must be carefully explained to and understood by your client. In simplest terms, an agreement “merges” when it becomes part of the judgment of divorce nisi and has no independent legal significance as a contract between the parties. When an agreement merges, the court has continuing jurisdiction and authority to modify on a material change of circumstances. All portions of the agreement as they pertain to children’s issues should merge because children’s issues as to support, custody, visitation, schooling, medical attention, and others are ever changing; and either party should have access to call on the Probate Court to determine the responsibilities and rights in these children’s issues.

Alternatively, a “surviving” agreement is generally incorporated into the judgment of divorce but maintains separate and distinct legal significance as a contract that can be sued on and enforced by either party in Probate and Family Court or Superior Court. A surviving agreement is nonmodifiable, absent a *more than* material change of circumstances. There is a wealth of case law about surviving versus merging agreements; each practitioner must be aware of the differences and advise his or her clients accordingly.

Before a court will accept a separation agreement and incorporate it into a judgment of divorce nisi, it must find the agreement to be fair and reasonable as it pertains to both parties. Most form separation agreements state that each party has made full financial disclosure to the opposing spouse and understands that the agreement is a final resolution to their marital relationship as it pertains to property division. The court must make findings of fact that the agreement properly addresses all issues as to property division, support, and custody.

Many judges are particularly concerned about waivers of alimony, given the almost absolute finality of such a waiver. If your agreement contains waiver language, be sure the parties both understand the consequences and will be able to respond to detailed questions from the bench.

§ 6.11.2 Clauses of Importance

Because many separation agreements are handwritten at the courthouse, it is a good idea to carry in your briefcase a form agreement (so you do not omit any pertinent provisions) or at least a checklist of provisions to be included in the agreement (see **Checklist 6.1**). A properly drafted separation agreement should address the following issues.

(a) *Children*

Issues relating to children include

- legal custody,
- physical custody,
- parenting schedule,
- holiday and summer schedules,
- vacations outside the Commonwealth,
- removal from the Commonwealth,
- notification requirements,
- exchange of educational information,
- exchange of medical and dental information,
- religious upbringing of the children,
- events triggering emancipation,
- medical insurance for the children,
- dental insurance for the children,
- uninsured medical and dental expenses for the children,
- therapy for the children,
- life insurance to insure child support obligations,
- child support amounts and increases,
- college expense obligations, and
- dependency exemptions.

Remember that neither parent can waive a child's right to support.

(b) *Property Division*

Issues relating to property division include

- jointly held property,
- QDROs or other retirement transfer orders,
- tax implications—including capital gains penalties for transfer,
- events triggering sale of the marital residence,
- repairs and maintenance on the marital residence,
- transfer of vehicles,

- transfer of personalty via bills of sale,
- use and occupancy provisions, and
- liabilities.

(c) *Support of Spouse*

Issues relating to spousal support include

- amount and duration of alimony,
- the specific type of alimony as defined by the new alimony statutes,
- cost-of-living increases,
- medical and dental insurance for the spouse,
- uninsured medical and dental expenses of the spouse,
- life insurance to insure alimony payments,
- tax implications of spousal support, and
- specific grounds for termination of alimony under the new alimony statutes.

If alimony is to be waived, explain the significance of the waiver. Remember that Massachusetts does allow for long-term alimony and that the court cannot compel a waiver of the right to support. Therefore, this is a valuable right that should not be waived lightly.

(d) *Miscellaneous*

Other issues to be addressed in a properly drafted separation agreement include

- dispute resolution,
- merger versus survival,
- waiver of estate claims,
- debt responsibility,
- indemnification and hold harmless clauses, and
- counsel fees.

§ 6.12 AFTER THE DIVORCE JUDGMENT ENTERS

Time periods and procedures after the divorce becomes final are outlined as follows.

§ 6.12.1 Nisi Period

Once the judgment of divorce nisi has entered, whether by trial or by separation agreement, the parties enter into a ninety-day “nisi” waiting period. Automatically

and without further notification or judgment, the divorce becomes “absolute” on the ninetieth day. If the parties have filed a joint petition for divorce pursuant to G.L. c. 208, § 1A, there is an additional thirty-day waiting period tacked on prior to the entry of the nisi judgment, for a total of 120 days until the divorce becomes absolute.

§ 6.12.2 Postjudgment Documents

Once the judgment has entered, there are often some “housekeeping” duties to complete, such as conveying real estate, transferring bank accounts and stocks, and, if applicable, obtaining a QDRO. Try to prepare all deeds, mortgages, and other documents in advance so they may be signed along with the separation agreement or when the parties are in court. This will avoid frustrating delays after the divorce.

§ 6.12.3 Postjudgment Motions and Appeal

Check the rules for appropriate motions and procedures. If a postjudgment motion has been filed, an appeal must be filed after the motion has been acted on by the court, or the appeal will not be valid. If an appeal already has been filed, it must be refiled. Mass. R. App. P. 4(a).

§ 6.12.4 Contempt Actions

If a party violates any order or judgment of the court, a complaint for contempt should be filed. Pursuant to statute, reasonable attorney fees and costs should be awarded against the violating party.

§ 6.12.5 Modification Actions

(a) *General Principles*

Should there be a “material and substantial change in circumstances,” a complaint for modification may be filed by either party if the agreement merges or if there is a judgment after trial. Remember that if the agreement survives, a more-than-material change of circumstances must be alleged. Review G.L. c. 208, § 28A for temporary orders concerning children during the pendency of a modification.

Practice Note

Criteria for modification of a child support order are set forth in the child support guidelines. (See the Practice Note in § 6.5.3, above, regarding the issuance of new child support guidelines for 2017.)

If one or both parties no longer reside in Massachusetts, personal jurisdiction is conferred in a complaint for contempt or for modification pursuant to G.L. c. 223A, § 3(h).

(b) *Modification of Alimony Pursuant to New Alimony Law*

Past judgments on alimony may be modifiable after the enactment of the new alimony law to the extent that they exceed the durational limits set forth by the general term alimony scheme. Agreements that a judgment cannot be modified or where the alimony portion survived judgment cannot be modified under this law. Also, there is a grace period before modifications based solely on duration can be filed.

- Payors who were married to the alimony recipient for five years or less may file for modification on or after March 1, 2013.
- Payors who were married to the alimony recipient for five to ten years may file for modification on or after March 1, 2014.
- Payors who were married to the alimony recipient for ten to fifteen years may file for modification on or after March 1, 2015.
- Payors who were married to the alimony recipient for fifteen to twenty years may file for modification on or after September 1, 2015.

This chapter incorporates material originally prepared for MCLE by the Honorable Susan D. Ricci, now retired from the Probate and Family Court. MCLE also thanks Charlene A. Caldeira, Esq., Phyllis K. Kolman, Esq., and Kenneth M. Woodland, Esq., for their earlier contributions to this chapter.

Ü CHECKLIST 6.1

Important Issues in Divorce Practice

Children

- legal and physical custody
- parenting schedule
- holiday and summer schedules
- vacations outside the Commonwealth
- removal from the Commonwealth
- notification requirements
- exchange of educational information
- exchange of medical and dental information
- religious upbringing of the children
- events triggering emancipation
- medical and dental insurance for the children
- uninsured medical and dental expenses of the children
- therapy for the children
- life insurance to insure child support obligation
- child support amounts and increases
- college expense obligation
- dependency exemptions

Property Division

- Prenuptial (Antenuptial) Agreement, if any
- jointly held property
- QDROs

- q tax implications—including capital gains penalties for transfer
- q events triggering sale of the marital residence
- q repairs and maintenance on marital residence
- q transfer of vehicles
- q transfer of personalty via bills of sale
- q use and occupancy provisions

Support of Spouse

- q alimony
- q cost-of-living increases
- q medical and dental insurance for spouse
- q uninsured medical and dental expenses of spouse
- q life insurance to insure alimony payments
- q tax implications of spousal support

Miscellaneous

- q dispute resolution
- q merger versus survival
- q waiver-of-estate claim
- q debt responsibility
- q indemnification and hold harmless clauses
- q counsel fees

Ü CHECKLIST 6.2

Thirty Days Until Trial

- Pretrial Memorandum
- Depositions Summary and Pagination
- Stipulations of Agreed Facts
- Subpoenas:
 - Keeper of Records
 - Experts
 - Witnesses
 - Guardian Ad Litem
- Review:
 - Responses to Interrogatories
 - Responses to Expert Interrogatories
 - Notice to Admit Facts
- Request for Stenographer
- Updated Financial Statement
- Curriculum Vitae of Experts
- Appraisals and Valuations
- Trial Notebook with Premarking of Exhibits
- Tax Memorandum
- Trial Memorandum
- Motion in Limine
- Motion for Findings of Fact and Conclusions of Law
- Motion for Wage Assignment

- Motion for Counsel Fees
- Proposed Findings of Fact
- Proposed Conclusions of Law
- Proposed Judgment of Divorce Nisi
- Release of Claim for Exemption for Child of Divorce or Separated Parents
- Separation Agreement
- Practice Sessions with Witnesses

EXHIBIT 6A—Client Questionnaire

Goldstein & Bilodeau, PC.
 246 Walnut Street, Suite 301
 Newton, Massachusetts 02460
 617-964-8559

CONFIDENTIAL CLIENT HISTORY

Date: _____

Information provided by a client or potential client to an attorney for the purpose of obtaining legal advice or legal services or inquiring about a possible attorney-client relationship is confidential and cannot be revealed by an attorney or his or her staff, except in certain narrow legally recognized situations. Complete honesty in answering these questions will be of assistance to your attorney in providing you with the best possible legal services.

1. Full Name _____
 (maiden name, if applicable)

Home Address _____

Mailing Address _____

Home Telephone _____

Business Telephone _____

Lived at present address since _____

All home addresses for past two years:

_____ From _____ To _____

_____ From _____ To _____

2. Spouse's Full Name _____
 (maiden name, if applicable)

Spouse's Home Address _____

Spouse's Home Telephone _____

Spouse's Business Telephone _____

Spouse's Attorney _____

Address and Telephone _____

3. Marriage: Date _____ Place _____

A. Date of Birth: Self _____ Spouse _____

B. Social Security Number: Self _____
Spouse _____

4. Children of This Marriage:

Full Name	Date of Birth	Grade in School	Living With
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. Are you and your spouse living together now? _____ If not, state date of separation _____, and where you were living at the time of separation:

If separated and if all of your addresses since separation are not listed in #1, please list other here.

_____ From _____ To _____

_____ From _____ To _____

6. Have you an interest in reconciliation? _____

Does your spouse (as far as you know)? _____

7. Please give dates and names of any personal or marital counselors seen by you or your spouse.

Date	Name
_____	_____
_____	_____

8. Do you anticipate a dispute about custody of the children?

9. Employment	Self	Spouse
Employer	_____	_____
Address and	_____	_____
Telephone	_____	_____
Job Title	_____	_____
Employed since	_____	_____
Nature of job	_____	_____
Salary:		
Base (monthly)	_____	_____
Gross monthly	_____	_____
Net monthly	_____	_____
Deductions (monthly):		
FICA	_____	_____
State	_____	_____
Federal	_____	_____
Other	_____	_____
Overtime and Bonus:		
Gross	_____	_____
Net	_____	_____
Previous Employment and Dates:		
Self	_____	

Spouse	_____	

10. Educational Background

Self _____

Spouse _____

11. List all prior marriages of yourself and of your present spouse. Include names of all prior spouses of each, how, when and where prior marriages terminated, and provide copies of relevant court orders and separation agreements.

Self _____

Spouse _____

12. List names of any children of yourself or your spouse other than those listed in #4, state with whom such children live, who has their legal custody and whether they have been adopted.

Self _____

Spouse _____

13. Please list any joint bank accounts to which you or your spouse have access.

14. Please list credit cards and charge accounts, who can use them and who is responsible for the bill.

Account	May Be Used By		Responsible Party	
	H	W	H	W

15. Please indicate names and addresses of your living parents and siblings.

Can you look to any of these people for financial or other assistance if necessary?

16. Who referred you to us? _____

17. Assets (of you and your spouse)

Estimate the value of each of the following items of property. If any item is located outside of Massachusetts, indicate where such item is located and, if necessary, give details on a separate sheet. Indicate how much of each asset was contributed by husband (H) and how much by wife (W) or, where noted, joint (J).

Bank Accounts (savings & checking) Item	In Whose Name	% Contributed by Each		Present Value	Location of Article
		H	W		

Stocks & Bonds (include number of shares) Item	In Whose Name	% Contributed by Each		Present Value	Location of Article
		H	W		

Miscellaneous Property: patents, trademarks, copyrights, royalties, limited partnership interests, proprietary interests and other investments.

Significant Personal Effects: automobiles, jewelry, art, antiques, boats, aircraft, collections, furs and tangible personal property

Item	In Whose Name	% Contributed by Each		Present Value	Location of Article
		H	W		

Real Estate:

Location	Purchase Date	Purchase Price	Present Value	Mortgage Balance	Owner H/W/J	Contributed by

Business Interests: including sole proprietorship, corporations, partnerships, etc.

Item	Owned by H/W/J	Value

Money owed to you or your spouse:

Reason	Amount	By Whom	When Due

Employee Benefits: pension; retirement; profit-sharing plans, regardless of whether presently vested or by whom contributed; company car; expense account; etc.

Insurance:

1. Life Insurance for you and your spouse:

a. Individually acquired

	Insured H or W	Company	Face Value	Type	Owner	Beneficiary
Policy 1.	_____					
Policy 2.	_____					
Policy 3.	_____					
Policy 4.	_____					

	Existing Loan Who Pays	Premium & Value	Cash Surrender
Policy 1. cont'd	_____		
Policy 2. cont'd	_____		
Policy 3. cont'd	_____		
Policy 4. cont'd	_____		

b. Employment-Related

	Insured H or W	Company	Face Value	Type	Owner	Beneficiary
Policy 1.	_____					
Policy 2.	_____					
Policy 3.	_____					
Policy 4.	_____					

	Existing Loan Who Pays	Premium & Value	Cash Surrender
Policy 1. cont'd	_____		
Policy 2. cont'd	_____		
Policy 3. cont'd	_____		
Policy 4. cont'd	_____		

Other Insurance: Include insurer, persons covered, nature and extent of coverage and whether group or individual, by whom paid and how much, and whether both spouses can remain covered after divorce is final.

a. Medical:

(i) Hospital: _____

Insurer (i.e., Blue Cross/Blue Shield) _____

Policy # _____

(ii) Dental: _____

(iii) Other Insurance: _____

b. Disability: _____

c. Legal Insurance: _____

d. Other: _____

Children's Assets and Income:

Expected gifts or inheritance (you, your spouse and children): when, by whom, from whom and in what amount (if known).

18. Liabilities (of you and your spouse)

A. Mortgages on Real Estate

Item	Owned by H/W/J	Present Amount	When Due
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B. Notes or Loans Owed to Banks and Others

Item	Owned by H/W/J	Present Amount	When Due

C. Other Debts: i.e., car and tuition loans, consumer credit or alimony obligations

Item	Owned by H/W/J	Present Amount	When Due

D. Special Medical and Educational Needs:

Item	Owned by H/W/J	Present Amount	When Due

If any of your children has special educational needs, please explain on a separate sheet.

If you or your spouse or your children are presently receiving medical (including psychological or psychiatric) care, please provide full details on a separate sheet, including names and addresses of doctors' term, frequency and cost.

19. Annual Income

	Self	Spouse	Joint
Gross Salary			
Dividend Income			
Interest Income			
Income from Trusts			

Rental Income _____

Other Income _____

TOTAL ANNUAL
INCOME
(Sum of Above) _____

Existing arrangements, including court orders, as to support, visitation, family finances.

20. Monthly Expenses

Please mark "X" on any line that does not apply to you.

	Monthly Total	Remarks
A. Mortgage		
i. Principal	\$ _____	_____
ii. Interests	\$ _____	_____
iii. Real Estate Taxes	\$ _____	_____
iv. Special Assessment	\$ _____	_____
B. Apartment Rent		
i. Parking Fees	\$ _____	_____
ii. Swimming Pool Fees	\$ _____	_____
iii. Other (Specify)	\$ _____	_____
C. Utilities		
i. Electricity	\$ _____	_____
ii. Gas—Household	\$ _____	_____
iii. Water	\$ _____	_____
iv. Telephone	\$ _____	_____

Please mark "X" on any line that does not apply to you.

	Monthly Total	Remarks
D. Fuel Costs (specify type, i.e., gas, oil, electric) Do not include elsewhere.	\$ _____	_____
E. Allowance for Major Household Repairs and Maintenance (interior and exterior)	\$ _____	_____
F. Allowance for Repair and Replacement of Household Furnishings	\$ _____	_____

G. Major Housecleaning, including rugs, curtains, etc.	\$	
--	----	--

H. Domestic Help		
i. Maid	\$	
ii. Handyman	\$	
iii. Laundress	\$	
iv. Heavy Cleaner	\$	
v. Other (Specify)	\$	
vi. Social Security and Workers' Compensation Payments	\$	

I. Laundry	\$	
------------	----	--

J. Grounds Maintenance		
i. Gardener	\$	
ii. Supplies	\$	
iii. Equipment	\$	
iv. Tree and Shrub Care	\$	
v. Snow Removal	\$	
vi. Rubbish Removal	\$	
vii. Cesspool	\$	
viii. Other (Specify)	\$	

K. Food, Household Supplies	\$	
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Please mark "X" on any line that does not apply to you.

	Monthly Total	Remarks
L. Insurance (do not include car insurance)		
i. Homeowners or Floater	\$	
ii. Medical	\$	
iii. Life	\$	
iv. Disability	\$	
v. Other (Specify)	\$	

M. Medical Expenses (not covered by insurance)		
i. General Practitioner	\$	
ii. Psychiatrist/Psychologist	\$	
iii. Gynecologist	\$	
iv. Other (Specify)	\$	

v. Dentist	\$	_____
a. General	\$	_____
b. Orthodontist	\$	_____
c. Other (Specify)	\$	_____
vi. Eye Doctor	\$	_____
a. Glasses	\$	_____
b. Prescriptions	\$	_____
vii. Related Travel	\$	_____
N. Transportation		_____
i. Automobile Operation	\$	_____
a. Loan Payment	\$	_____
b. Insurance	\$	_____
c. Excise Tax	\$	_____
d. Registration, Inspection, License	\$	_____
e. AAA or ALA dues	\$	_____
f. Amortization	\$	_____
g. Gasoline	\$	_____
h. Grease and Oil	\$	_____
i. Repair Allowance	\$	_____

Please mark "X" on any line that does not apply to you.

	Monthly Total	Remarks
i. Other Transportation Expenses (Specify)	\$	_____
O. Clothing		
i. Self	\$	_____
ii. Child, Age	\$	_____
iii. Child, Age	\$	_____
iv. Child, Age	\$	_____
v. Child, Age	\$	_____
P. Personal Maintenance and Grooming		
i. Dry Cleaning	\$	_____
ii. Barber, Hairdresser	\$	_____
a. Self	\$	_____
b. Child	\$	_____
iii. Tailor, Cobbler, and Notions	\$	_____

Q. Childcare (if not included under domestic help)	\$ _____	_____
R. Education		
i. Tuition	\$ _____	_____
ii. Board and Room	\$ _____	_____
iii. Transportation	\$ _____	_____
iv. Books and Records	\$ _____	_____
v. Activities Fees	\$ _____	_____
vi. Lab Fees	\$ _____	_____
vii. Insurance	\$ _____	_____
viii. Supplies	\$ _____	_____
ix. Lunches	\$ _____	_____
x. Miscellaneous	\$ _____	_____

Please mark "X" on any line that does not apply to you.

	Monthly Total	Remarks
S. Summer Camp, including transportation and equipment		
i. Self	\$ _____	_____
ii. Child, Age	\$ _____	_____
iii. Child, Age	\$ _____	_____
iv. Child, Age	\$ _____	_____
v. Child, Age	\$ _____	_____
T. Lessons (including sports, music, arts, dance, practical skills)		
i. Self	\$ _____	_____
ii. Child, Age	\$ _____	_____
iii. Child, Age	\$ _____	_____
iv. Child, Age	\$ _____	_____
v. Child, Age	\$ _____	_____
U. Allowances		
i. Self	\$ _____	_____
ii. Child, Age	\$ _____	_____
iii. Child, Age	\$ _____	_____
iv. Child, Age	\$ _____	_____
v. Child, Age	\$ _____	_____

V. Entertainment and Recreation (including sports; sports equipment and equipment repairs; outings; sports events; theaters, restaurants, etc.; entertaining)	\$ _____	
W. Vacations		
i. Winter	\$ _____	
ii. Spring	\$ _____	
iii. Summer	\$ _____	
iv. Fall	\$ _____	
Please mark "X" on any line that does not apply to you.		
	Monthly Total	Remarks
X. Membership Dues		
i. Country Club	\$ _____	
ii. Health Club	\$ _____	
iii. Other	\$ _____	
Y. Gifts		
i. Birthdays	\$ _____	
ii. Weddings	\$ _____	
iii. Anniversaries	\$ _____	
iv. Christmas/Chanukah	\$ _____	
v. Other	\$ _____	
Z. Miscellaneous		
i. Household Pets	\$ _____	
ii. Newspapers/Magazines	\$ _____	
iii. Professional Books and Periodicals	\$ _____	
AA. Allowance for Savings	\$ _____	
BB. Consumer Debts (do not include costs already listed under clothing, furniture, gasoline, etc.)		
i. Department Store Installment Payments		
a.	\$ _____	
b.	\$ _____	
c.	\$ _____	
d.	\$ _____	
e.	\$ _____	

ii. Credit Card Payments

- | | | |
|----|----|-------|
| a. | \$ | _____ |
| b. | \$ | _____ |
| c. | \$ | _____ |
| d. | \$ | _____ |
| e. | \$ | _____ |

Please mark "X" on any line that does not apply to you.

	Monthly Total	Remarks
CC. Miscellaneous Expenses Total		
i.	\$ _____	_____
ii.	\$ _____	_____
iii.	\$ _____	_____
iv.	\$ _____	_____
v.	\$ _____	_____
Total Monthly Living Expenses	\$ _____	_____

21. Name and address of accountant, if any

EXHIBIT 6B—Client’s Memorandum on Divorce

See the Practice Note in § 6.5.3, above, regarding the recent issuance of new child support guidelines for 2017.

MEMORANDUM

TO: DOMESTIC RELATIONS CLIENTS
FROM: DAVID M. BILODEAU
RE: DIVORCE PRACTICE AND PROCEDURES

This memorandum will serve as a follow-up to our initial interview and will highlight, in general terms, some of the issues we discussed about divorce procedure and the state of the law in Massachusetts. I am reemphasizing these points to you now because it has been my experience that people going through the stress of a separation and divorce are often confronted with a vast amount of new and unfamiliar legal material in a very short time and sometimes leave my office a bit bewildered, with “fault,” “no fault,” percentages and “joint custody” buzzing randomly in their heads!

It is my own belief that the more familiar and comfortable you are with the procedures and legal concepts of the divorce process, the more able you are to work effectively on your own behalf with me. Divorce and separation are difficult enough—to thread your way through a legal system you do not understand adds unnecessary anxiety to an already stressful situation.

If you are experiencing stress, make no mistake that it is appropriate and normal. Divorce and separation are among the most traumatic of human experiences. Indeed, divorce is typically rated by mental health professionals as one of the three most stressful situations that people undergo. Short-term therapy is often extremely beneficial at this point, and I recommend it (most health insurance plans, including Blue Cross/Blue Shield, allow up to \$500 per person per year for therapy fees). To help yourself understand the emotional and technical stages of the divorce process, you might find interesting the public lecture series at the Divorce Center, Inc., in Natick, Massachusetts 617/492-3533. Additionally, I highly recommend a book entitled, *Marital Separation* by Robert Weiss (out in Signet paperback), which will give you an insight into the ways you are or may be feeling and will, I hope, reassure you that you are not alone and that it will end.

“What’s going to happen to me?” In one form or another, this is the bottom-line question most people ask in a divorce proceeding. From a legal vantage, whether the divorce is based on fault grounds or irretrievable breakdown, the issues narrow to alimony and support, division of property and custody of children. The best I can do in predicting to you “what’s going to happen” is to advise you of the law and share with you what I have observed over the years in my practice. That is, however, only a very general discussion and not a prediction or guarantee of what will happen in your divorce.

Alimony and Support

In 1987 (and most recently revised in August 2013), by virtue of federal mandate, Massachusetts enacted child support guidelines, which have become mandatory in all cases involving child support. The levels of child support under the calculations are among the highest in the nation. Broadly, the guidelines require that, at a minimum, a noncustodial parent will pay for one child, 25–27 percent of gross income; for two children, 28–30 percent of gross income; and for three or more children, 31–33 percent of gross income. There is a credit formula for the custodial parent’s income, and the basic order increases with older children. The schedule and official worksheet are attached to this memorandum to enable you to work the figures through. While the guidelines do not apply if combined gross income is in excess of \$250,000, they do suggest what minimum figures will be at that range.

Since March 1, 2012, an order of child support could affect an order of alimony. Under the new alimony law, gross income used to determine an award of child support cannot be considered in the court’s determination for an award of alimony. For many, this may mean that no alimony will be available. It is important to understand that judges have not fully embraced this provision to the exact letter of the statute but rather look at the specific circumstances of the parties in making their determination.

Parties who have an annual income greater than \$250,000 may still be required to make alimony payments; however, spouses who make less than \$250,000 will likely no longer be subject to alimony payments.

Typically, support ends or is substantially reduced when the children reach “emancipation” (age 18 in Massachusetts), although support is often extended to cover the period of time when a child is in college because a college-age child is typically not self-supporting and remains dependent on his or her parents, at least until graduation. The law now allows child support to continue until age 23 if the child is a student or otherwise dependent.

In a marriage of short duration (less than five years) with no children and a nonworking spouse, alimony for any extended length of time is unusual. Typically, short-term “rehabilitative” alimony (six months to three years, depending on the age and employability of the nonemployed spouse) is considered appropriate in order to give the nonworking spouse time to retrain and seek employment. In a short-term marriage with no children, if both parties are employed, even at very different income levels, alimony or maintenance is seldom awarded.

The court now has a strict set of criteria which will help determine what type of alimony shall be awarded, as well as the duration of the payments. In the case where one spouse is economically dependent on the other or is permanently disabled, it is likely that the court would award what is now called general term alimony. Under general term alimony, a spouse will receive alimony for a duration that is determined based on the length of the marriage. The longer the marriage, the longer the alimony will be. Indefinite alimony will now be available only for spouses who have been in a marriage of twenty years or more.

All other alimony is short term, less than five years, and is established for the purpose of helping a spouse for a period of time so that he or she can become self-sufficient. Such an award may be for the purpose of allowing a spouse time to find employment, finish an educational program, or simply to adjust to a new post-marriage life style.

While support figures can be determined in a variety of ways and the parties and attorneys can try to exercise some creativity in devising solutions, the hard reality is that in most middle-income families, divorce is an economically difficult situation and that neither party is able to maintain the same standard of living that the couple enjoyed prior to the separation. Increasingly, I am advising my nonemployed clients (who are most often women with school-age children) to begin thinking in terms of retraining, career and employment because they will most likely need to supplement support from the employed spouse and be self-supporting or somewhat self-supporting when the children are grown.

Custody

Joint legal custody is the designation of preference not only in Massachusetts but also across the country. Indeed, it is the presumption at the level of temporary orders unless the parent opposing it can show solid reasons why it is not appropriate. Joint legal custody does not imply that the children spend 50 percent of the time with each parent but means rather that each parent must consult with the other one about major issues involving the children.

Symbolically, the designation “joint legal custody” seems to acknowledge for the noncustodial parent his or her continuing rights and responsibilities with respect to the children. Practically, there is some evidence that noncustodial parents who are joint legal custodians tend to remain more involved in the development of their children and tend to meet child support obligations with more consistency.

In general, joint legal custody is awarded to (or agreed to by) both parents, and physical custody remains with one parent, with whom the children primarily reside. In the majority of divorces, it is the mother who has physical custody. This result appears to occur not simply because of a prejudice in favor of mothers as primary caretakers but also as a pragmatic resolution because mothers are more often unemployed or partially employed outside the home while the children are young and need the greatest caretaking. Under this type of arrangement—joint legal custody with physical custody in one parent—the noncustodial parent typically has “visitation” with the children every other weekend, alternate holidays and often for as much time during the summer school vacation as is feasible. “Visitation” has increasingly become a term offensive to both parents, and more and more attorneys are attempting to characterize the concept as “father’s access schedule” or “mother’s time with the children.”

While the pattern I have sketched above (joint legal custody with physical custody to the mother and a fairly equal sharing of children during nonschool time) is common, it is not the only pattern. Sole custody to one parent with limited visitation for the other is an option. Fathers are increasingly seeking and obtaining physical custody or

expanded “visitation” rights, and some individuals manage to work out rather effective joint physical custody schedules. Joint physical custody, the sharing of both school and nonschool time, requires extraordinary goodwill and cooperation on the part of both parents, and very careful planning, to succeed.

Custody (or child-related) issues are the areas in divorce law that are never writ in stone and are modifiable based on a change of circumstance and the “best interests” of the child. Custody is also the area in which the parents themselves are most qualified to work out schedules and sharing arrangements because lawyers and judges, as third parties to the family, really cannot tell you what will work best for you and your children. Custody, frankly, is also the area in which lawyers and judges most loathe to see disputes: a contested legal battle for custody of children unfortunately and invariably tends to bring out the worst in everyone and wreaks havoc not only with the parents but also with the children themselves. While litigation is sometimes unavoidable, my own view is that every alternative (including mediation and joint counseling) should be explored before litigating a custody issue.

There is an excellent book dealing with issues of children in divorce, *Surviving the Breakup: How Children and Parents Cope with Divorce*, by Judith S. Wallerstein and Joan B. Kelly. It is now available in paperback and in local libraries and provides useful information on how children within particular age groups respond to divorce.

Division of Property

Both alimony and the division of marital property in Massachusetts are guided by statute, G.L. c. 208, § 34, often referred to simply as Section 34. The statute as a whole reads as follows:

Upon divorce or upon a complaint in an action brought at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court of the commonwealth, provided there is personal jurisdiction over both parties, may make a judgment for either of the parties to pay alimony to the other. In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other. In determining the amount of alimony, if any, to be paid, or in fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income. In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the

acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit. When the court makes an order for alimony on behalf of a spouse, said court shall also determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or other health coverage available to him at reasonable cost that may be extended to cover the spouse for whom support is ordered. When said court has determined that said obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor do one of the following: exercise the option of additional coverage in favor of the spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse.

There are several points to bear in mind about Massachusetts property division law. First, and most significantly, all property owned jointly, separately or in trust, whether as an inheritance from your parents or a gift from your spouse's great-aunt, is marital property. Pension benefits, business interests, accounts receivable, etc., are all marital property if you or your spouse have it. Massachusetts is what is known as an "equitable division" state. While the trend in the majority of "equitable distribution" states is to exclude inherited or gifted property and to exclude property acquired prior to the marriage by one spouse, Massachusetts at present remains firm in looking at all property, however or whenever acquired, as property that may be divided on divorce.

Individual judges may look at inherited or gifted property in a slightly different way, but it is unquestionably part of the asset picture.

The second point to bear in mind is that "fault" or "conduct" plays a very minimal role in determining how property is to be divided. This is also true in alimony or support awards. In my experience, conduct becomes a factor of significance only when the conduct is so egregious as to be shocking.

Courts, and therefore lawyers, typically begin an analysis of how to divide marital property with the concept that marriage is an economic partnership and that the appropriate way to allocate property is on a roughly 50-50 basis. The 50-50 concept works well if the couple has a fair amount of property that can be equalized with a minimum of disruption. For example, if the net equity in the family's house is \$50,000 (that is, the fair market value minus mortgage) and the family has \$50,000 in stocks, bonds and savings, one spouse may take the house and the other takes the stocks, bonds and savings. Unfortunately, most families do not have this level of flexibility because the bulk of their money is tied up in one major asset—the family home.

There is frankly no ideal solution about what to do with the house on divorce because generally the spouse having physical custody of the children wishes to stay in place until the children finish school. Often, while there may be significant equity in the house, it is the least expensive appropriate housing available. Refinancing to buy out the other spouse's interest may be a significant costly burden, and selling the property and dividing the proceeds immediately may not give the spouse having custody of the children enough downpayment money to be able to both purchase another residence in the same community and school district *and* keep the monthly mortgage costs at a reasonable level.

The most common solution to the problem is to allow the custodial parent to remain in the house until his or her remarriage or until the youngest child is emancipated. The property is then sold (or refinanced) and the proceeds divided. If there are no minor children involved, often the property is sold immediately with equal division of the proceeds.

Other than the marital home and savings or stocks and bonds (which can typically be divided with little difficulty), other major issues that come up in the context of division of property are furnishings within the home, business interests that require valuation and pension and profit-sharing plans and their valuation. Briefly, furnishings seldom tend to be a major problem, business interests always are. (While in almost no instances have courts awarded a percentage or share of one spouse's business interests to the other, the value of the interest is nonetheless usually used to offset some other marital asset. Thus, valuation becomes a major issue, usually requiring an accountant or other expert—also true with pension plans).

The above discussion is a general one, intended only to demystify in broad terms the concepts that inform both the courts and attorneys in handling divorce matters and to make you aware of the legal background against which your own situation will proceed.

Procedure

As we discussed, there are essentially “2½” ways to file for divorce in Massachusetts and the procedures involved in each are slightly different.

Irretrievable Breakdown, Commonly Called “No-Fault”

This ground and procedure is about ten years old in Massachusetts. A “no-fault” divorce can be filed by both parties (a mutual or “1A” procedure) or by one party (the unilateral or “1B” procedure).

Section 1A

This procedure requires the filing of a Separation Agreement (actually the divorce agreement) at the time the divorce petition is filed. Generally, in this type of divorce, both the husband and wife and their respective attorneys are satisfied that everyone has been forthright about assets and income. After one or more negotiating sessions (with attorneys and frequently the husband and wife present) as well as discussions between attorneys and their clients, all matters have been resolved to the mutual sat-

isfaction (or only slight discomfort) of the husband and wife and the agreement is reduced to writing, signed and sent with a joint petition for divorce, financial statements and affidavits of irretrievable breakdown to the probate court in the county where the couple resides or last lived together. A hearing date is set by the court (usually within four to six weeks after the papers have been filed), and on that date both the husband and wife appear in court. Generally, the hearing involves about three minutes of questions and answers (name, address, number of children and so on) to the judge, who approves the agreement and enters an order on the divorce petition. A 1A divorce does not become final until four months after the hearing date.

Section 1B

A “1B” divorce is initiated by one spouse, seeking divorce on grounds of irretrievable breakdown. Generally, in this type of action, both husband and wife acknowledge that the marriage is not salvageable but have not been able to reach agreement on property, custody or support. By statute, the divorce cannot be heard or tried for six months from the date of filing. During that six-month period, both attorneys usually conduct what is known as “discovery” and typically have at least one negotiating conference to try to reach agreement.

“Temporary orders” with respect to support and custody are often sought from the court during the six-month period if the husband and wife are unable to agree. Most often, a separation agreement is ultimately negotiated and the hearing proceeds as in a 1A. If no agreement is reached, the divorce is actually tried before a court, with both sides presenting evidence and witnesses. The divorce becomes final three months after hearing or trial.

A word here about discovery and temporary orders, both of which can be facets of a 1B divorce and a fault grounds divorce. Discovery is simply a legal technique for getting information. It can be accomplished informally with one side simply asking for information, or it can be framed more formally, requiring responses under oath. Typically, in a divorce action, three forms of formal discovery are used:

- Interrogatories, in which a list of written questions is sent to one party who must answer those questions under oath within 30 days or so;
- Requests for the Production of Documents, in which one spouse sends a list of documents he or she wishes to review to the other spouse and the documents must be produced within a specified time (typically, the documents are financial records, bank books, tax returns, wage statements, brokerage records and so on); and
- Depositions, in which a party is orally questioned, under oath, by the other spouse’s attorney and the questions and answers are taken down and transcribed in booklet form by a stenographer.

While most attorneys utilize discovery as a legitimate means of obtaining information and preparing for trial, it is also unfortunately and occasionally used to harass. Whatever the goal, however, it is a perfectly proper and legitimate legal tool and

if you are the subject of any of these techniques, be thoroughly prepared and scrupulously honest.

Temporary orders may be the initial experience you have with a judge and the probate court system. After a divorce complaint (1B or fault grounds) is filed, if you and your spouse cannot agree as to the way in which you will order your lives during the interim period before a separation agreement is reached or before trial, motions for temporary orders are filed. Most commonly, the orders sought are temporary support, temporary physical custody of children and an order by the court commanding one spouse to leave the marital home (a vacate order). Once in the courthouse on one of these motions, you are ordinarily first sent to the family service office for mediation. If mediation proves unsuccessful, the matter is presented to a judge for decision. Temporary orders, once made, typically remain in effect during the entire interim period.

Fault Grounds Divorces

In addition to irretrievable breakdown as a ground for divorce, there are, in Massachusetts, seven fault grounds on which to base a complaint for divorce. Those grounds are

- cruel and abusive treatment (the most common),
- desertion,
- adultery,
- impotency,
- gross and confirmed habits of intoxication (including drug abuse),
- prison sentence and
- nonsupport.

In general, what occurs during the interim period here is identical to what is discussed in the 1B divorce, including discovery and temporary orders. I should stress again that, with respect to alimony, custody or property, the relative faults of the parties are seldom decisive and play little role in ultimate resolution of a divorce case.

Over 90 percent of divorces in Massachusetts are settled prior to trial by agreement of the spouses. Should your case go to trial, which is unlikely, you and I will spend a good deal of time preparing for it so that you will know precisely what to expect long before the trial date. However, for purposes of this memorandum, I do not feel it necessary to get into trial techniques or strategy.

Legal Fees and Costs

To some extent, you can control the costs of your divorce by remembering that I bill for time expended, including telephone calls with you. If you can complete your client questionnaire fully, that saves me enormous amounts of time. If you can filter your questions and concerns through my staff, Colleen Cannon or Mary Beth

Sweeney, or our associate, Phyllis Kolman, that can save me time and you money. And finally, bear in mind that, while every attorney in this office and each staff member are concerned and empathetic with what you are experiencing, we are not trained therapists.

In closing, I would simply like to reiterate that I look forward to working with you over the coming months. While divorce is never an easy process, I assure you that I will do my utmost to minimize the difficulties of this period and to collaborate with you in achieving a fair resolution.

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EXHIBIT 6C—Client’s Memorandum on Children’s Concerns During Divorce

MEMORANDUM TO CLIENTS ON CHILDREN’S CONCERNS AND BEHAVIOR DURING THE DIVORCE PROCESS

This memorandum is designed to give you, as a divorcing parent, a general overview of how separation and divorce may affect your child. It has been our observation, confirmed by numerous recent studies, that children’s behavior often changes radically and apparently unpredictably during the divorce process. There are, however, very distinct patterns, based on age and sex, that have been identified, most particularly by Wallerstein and Kelley in their landmark book, *Surviving the Breakup* (available in paperback). For parents, often experiencing their own trauma in the divorce context, awareness of predictable patterns of children’s responses to separation can alleviate unnecessary anxiety and conflict.

The Law

Massachusetts law now clearly favors joint legal custody. Indeed, pending final judgment of divorce, there is a presumption under law that legal custody will be joint unless there are especially damaging circumstances that would make joint legal custody not in the child’s best interests. This pattern of joint legal custody is one that is increasingly favored throughout the country—the underlying concept being that children are entitled to the active involvement of both parents in a postdivorce context. In Massachusetts, the appropriate statute is G.L. c. 208, § 31. It should be noted here, however, that the statute does make provision for a finding of sole legal custody to one parent, if appropriate. Although there is a growing concern that shared legal custody has not lived up to the promises of its proponents, it is still presumptive and awarded in the vast majority of cases. Joint legal custody means that both parents, by law, will have decision-making responsibility in major child-related issues such as education, medical treatment, religious training, recreational activities and the like.

Joint legal custody does not mean, however, equal sharing of physical custody or equal involvement in routine daily decision making. Most commonly, physical custody of the children (primary residence and routine day-to-day decision making) remains with the parent who has been the primary caretaker. Historically, it has been the mother who has been the primary caretaker. While the past several years have seen an increase in father’s caretaking, it is still true that in the majority of situations, physical custody, particularly of young children, continues to remain with the mother. Typically, the father’s time with the children is planned around his work and the children’s school schedules.

Occasionally, parents make efforts to work out a schedule of joint physical custody with more equal timesharing such as three days at one home, four days at another or alternating weeks. Because of the disruption of the child’s life, as well as the need for parents to live and work closely to make such plans work, an effective joint physical

custody arrangement is hard to achieve for most divorcing parents and continues to be unusual.

There are no mandatory timesharing requirements as exist for child support, for time spent by divorcing parents with the child, and as the material in this memorandum makes clear, needs of children change as they mature—thus, flexibility in structuring time and devising custody arrangements is important to keep in mind. However, suggested schedules have been developed based on the evolving needs and psychological development of children from infancy to late adolescence. Two examples are included at the end of this article. It is important to note, however, that the amount of time the payor spends with the child could affect his/her child support order—the more time spent, the less support paid (on a sliding scale, 1/3 and 1/2 time).

Preliminary Steps for Divorcing Parents

One of the major concerns that children appear to have of divorce is a fear of abandonment, and mental health professionals often suggest that both parents, together, explain (1) why the separation is occurring and (2) what the plans of both parents are as to living arrangements. Since children at certain ages may feel they are to blame for the separation, they need reassurance that they are not at fault and will continue to be loved and appreciated by both mother and father.

In the early stages of a separation, it is often useful to tell adults who play a major role in the children's lives (teachers, babysitters, child care personnel) of the situation and ask them to be alert to and inform you of any significant behavioral changes.

Patterns of Behavior and Needs of the Child

Research in the area of family dissolution has identified certain patterns of behavior in children following separation and divorce that appear linked to the child's age and sex. The following summary is a brief overview. Not all children, obviously, demonstrate these patterns. Generally the patterns are short-lived and not permanent. However, the information may assist you in structuring a child custody arrangement for sharing the care of your child and enable you to minimize disorientation for your child.

Infancy, Toddlerhood (Birth to Three Years)

In infancy, the child's primary need is for a consistent major caretaker. The total dependency of the infant and the need for early emotional bonding with one central nurturing figure would appear to necessitate consistency of environment and one primary parent figure. Joint physical custody is generally viewed as inappropriate at this level. Moreover, because the infant's memory span is so undeveloped, time away from the primary caretaker should be limited. Ideally, the noncustodial parent should have short and frequent contacts with the child in the home or on brief outings. Weekend visits with the infant, away from the primary caretaker and in a new environment, are generally not recommended as the best alternative.

As the child moves into a toddler phase (14 months to three years), while he or she continues to need consistent nurturing and one primary caretaking figure, parenting

can be more broadly shared. Weekends or several days away from home base with the noncustodial parent are appropriate at this stage, although parents must recognize that for a toddler, changes in his or her physical world may be terrifying and appear dangerous. Thus, the toddler may respond with caution to visits outside the home because separation anxiety is a major concern at this stage of development.

Preschool and Kindergarten (3–5 Years)

Both parents become central figures for children, and knowledge of the differences between the sexes is a central issue in this stage of development. Access to both mother and father is critical. A core home environment continues to be more supportive of the child than a joint physical custody arrangement, but this is the age where meaningful interaction with and differentiation between parents are important for the child's progress.

At the preschool level, children respond to the divorce situation very strongly, with mixed feelings of guilt, fear of abandonment, and sadness. Loss of self-esteem is common. Boys tend to react more strongly than girls and become increasingly demanding. For girls, feelings of abandonment and desertion are prevalent. A common reaction for both male and female children is regression—a retreat to babyhood in an attempt to deal with the trauma of divorce. Bedwetting, thumb sucking and playing with outgrown toys are not unusual. Tears and trauma surrounding visitation are more usual than not—with the child fearing loss of the parent he or she is leaving. This behavior often causes great conflict between the parents if they fail to understand that its source is the child's sadness about loss of the intact family unit. Open conflict between parents with children of this age, which often erupts as a result of the child's behavior, is particularly harmful.

Early School-Age Children (6–8 Years)

In general, children of this age more clearly understand what divorce means and how it will affect them, but they still lack the emotional capacity to separate your needs, as an adult, from theirs. Their most pervasive feeling is sadness, and boys show it more openly through tears than girls do. They are afraid of being left alone or being sent to live with strangers. They have fantasies of deprivation (yours as well as theirs) focusing on food, toys or some other important aspect of their lives and may react by demanding gifts or treats. You may find them checking the refrigerator or cabinets to make sure you have enough food. Their yearning for the departed parent (especially boys for their fathers) is intense and may bear no relationship to how close they were to that parent before the separation (a reaction that may well frustrate and even anger the custodial parent). This reflects the inner need, especially for boys at this age, for a father figure. To “restore” the absent father to the family, a boy may wear his tie or plan to follow his career. It is noticeable that children this age seldom criticize their absent parent, although some (mostly boys) are angry at their custodial mother. Often, this anger is not expressed directly to the mother but at teachers, friends, siblings or in temper tantrums.

These children do not, as a rule, blame themselves for the separation but may fantasize that their parents will reconcile, even after the remarriage of one or both parents. Because children this age feel divided loyalty toward their parents (even in an intact family), any pressure from the parents to “take sides” makes the situation even more painful. The result of such pressure is that the child often stays loyal to both parents in secret, suffering considerable pain while doing so.

While parents are still crucial to the child, they are a major part of, not the central focus of, the child’s world, which has expanded to school, peers and friendships. Frequent contact with the noncustodial parent, if not face to face, at least through letters, phone calls and acknowledgment of important occasions appears important to the child’s sense of well-being.

Older School-Age Children (9–12 Years)

Because this is a period of rapid emotional growth and ego strengthening, children at this age are usually better able to withstand the stress of separation without regression than are their younger siblings. However, below the surface poise the child may exhibit, often he or she is trying to cope with underlying feelings of helplessness and rejection. For some children, coping takes the form of frantic activity designed to compel the departing parent to return: yelling, angry scenes, interference with dates are common. Physical symptoms such as headaches or stomachaches are not unusual. Because the child’s sense of identity is closely tied to the family at this age, he or she may begin to comment on real (or imagined) resemblances to one or both parents, stressing similar eye or hair color.

The clearest emotion in children this age is intense and focused anger, most commonly directed at the parent they blame for the divorce. The custodial parent is often the brunt of the most clearly expressed anger since the child may fear to risk permanent loss of the parent they see less by expressing negative emotions. Because of a desire to feel close to one parent, some children are willing to align themselves with the “good parent” against the “bad parent,” often along gender lines—sons with mothers; daughters with fathers. If the good parent is also the custodial parent, this alignment can be long lasting.

Boys appear to have a more difficult time than girls at this age and, if living with their mothers, seem to have a problem with authority. Often, the help of male teachers is useful for boys of this age. For girls, anger may be acted out in less-than-straightforward fashion with teasing, pinching and the like.

The Adolescents (13–18 Years)

The teenager’s reaction to divorce is intense and anguished because divorce reverses the normal maturation of the adolescent years.

Adolescence is a time when children must separate from the family and parents. In order to do so, the child relies on a stable and solid family unit that can withstand his or her own inner sense of turmoil and instability. Divorce places the family unit in

disarray. Often the adolescent is torn by feeling the normal need to separate from parents, combined with guilt at pushing away from a distressed and needy parent. Young teenagers particularly are conflicted with a perceived need to take care of a parent contrasted with a desire to escape.

If a parent adopts a more youthful style of dress or begins dating, the adolescent may see this as competitive behavior, which will be both criticized and resented. Often, teenagers have specific fears as to who will support them or pay for college, how they will “rate” as sexual partners (particularly if one parent denigrates the sexual performance of the other parent) and whether they, in turn, will fail at marriage. Although money issues may be a source of tension at first (since most separating families have to live on a reduced budget), time does produce a more realistic and accepting view of the new financial picture.

Adolescents mourn the passing of the family. They also are very angry. They may yell or even react with physical violence. Their anger stems from their grief, but it is also directed at their parent’s “selfishness” in breaking up the family at the very time they relied so heavily on it.

To cope, the teenager may seem to withdraw from the parent and the family crisis, spending more time with friends or at school activities. If coping takes the form of a temporary retreat from current levels of maturity, parents may notice their teenager spending time with younger children or at home or withdrawing from age-appropriate activities at school. Grades may drop, usually temporarily. An adolescent who feels betrayed (whether real or imagined) by the conduct of a parent may react with depression or delinquent and inappropriate behavior, including premature sexual activity. The family crisis can have a positive effect on the teenager: a growth in maturity and understanding, a willingness to take on extra tasks, etc. However, while he or she may be supportive, be aware that too intense an emotional dependency on your teenager, which can be very tempting in the face of loss of a spouse, can interfere with his or her own emotional development.

Overall, most children learn to cope with your divorce, which is really their divorce as well. In some cases, if it means relief from an abusive or disturbed parent, your separation will benefit both child and parent. In the majority of families, however, divorce is a painful and disruptive event in children’s lives. *Second Chances*, by Judith Wallerstein and Sandra Blakeslee, traced the children of 60 divorced families. The negative impact of divorce, it states, particularly in cases where the economic and emotional stresses have been severe and disruptive, can last into adulthood. How severe and long-lasting the effects will be depends in part on the divorcing parents. Parents must add to the already great burdens of their own distress an awareness of and sensitivity to the effects of divorce on their children, as well as an ability to separate their own feelings about their spouse as spouse from a view of the other spouse as parent.

Prepared by Phyllis K. Kolman, Associate for the law firm of Benjamin & Benson.

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SUGGESTED READINGS

Newsweek, January 13, 1992, pg. 2.

Wallerstein, Judith S. and Kelly, Joanne B., *Surviving the Breakup: How Children and Parents Cope with Divorce*. Basic Books, Inc. Publishers. New York, 1979.

Wallerstein, Judith S. and Blakeslee, Sandra, *Second Chances*.

Weis, Robert S., *Marital Separation*. Basic Books, Inc. Publishers. New York, 1975.

ADDENDUM

1. “Children of Divorce: A Need for Guidelines,” Mugged & Oborn, *Family Law Quarterly*, Vol. XX, No. 3, Fall 1986.

Guideline 1—Recommended Frequency of Contact Between Either Parent and Their Children*

Age of the Child	Frequency of Contact
Under one year	2 days
One year through two years	4 days
Three through five years	1 week
Six through nine years	2 weeks
Ten through thirteen years	4 weeks
Fourteen years plus	6 weeks

* This guideline assumes shared parental responsibility whereby each parent has equal access to and limited separation from the children.

Guideline 2—Minimal Frequency of Contact Between Either Parent and Their Children

Age of the Child	Frequency of Contact
Under one year	1 week
One through two years	10 days
Three through five years	3 weeks
Six through nine years	4 weeks
Ten through thirteen years	6 weeks
Fourteen years plus	9 weeks

2. “Visitation Guidelines,” Honorable Arline S. Rotman, *MBA Family Law Section News*, Vol. IX, No. 3, April, 1992.

EXHIBIT 6D—Child Support Guidelines

THE COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS TRIAL COURT
EXECUTIVE OFFICE OF THE TRIAL COURT
BOSTON, MASSACHUSETTS

CHILD SUPPORT GUIDELINES

The attached CHILD SUPPORT GUIDELINES supersede any previous Guidelines and are effective September 15, 2017, as amended June 15, 2018.

Preamble

These child support guidelines shall take effect on September 15, 2017, as amended on June 15, 2018, and shall be applied to all child support orders and judgments entered as of the amended date. In recognition of the priority of the interests of the children of the Commonwealth, these guidelines are formulated to be used by all of the justices of the Trial Court. There shall be a rebuttable presumption that these guidelines apply in all cases establishing or modifying a child support order, regardless of whether the parents of the child are married or unmarried, the order is temporary or final, or the Court is deciding whether to approve an agreement for child support. There shall also be a rebuttable presumption that the amount of the child support order calculated under these guidelines is the appropriate amount of child support to be ordered. These guidelines are based on various considerations, including, but not limited to, each parent’s earnings, income, and other evidence of ability to pay. These guidelines are intended to be of assistance to attorneys and to litigants in determining what level of payment would be expected given the relative income levels of the parties. In all cases where an order for child support may be established or modified, a guidelines worksheet must be filled out, regardless of the income of the parties.

Commentary 2017 – Preamble

The Child Support Guidelines Task Force for the 2016-2017 review (“Task Force”) was convened by Chief Justice of the Trial Court Paula M. Carey in the spring of 2016 to undertake the quadrennial review of the Massachusetts child support guidelines (“guidelines”) as required by federal regulations. See 45 C.F.R. § 302.56. In January 2017, amendments to § 302.56 became effective. The Task Force for this quadrennial review was not required to implement the January 2017 amendments, and thus did not do so in this review. However, where appropriate and constructive, the Task Force considered the policies underlying the 2017 amendments when making its recommendations.

The comprehensive review of the Task Force included reviewing each section of the guidelines, line by line, as a whole and in subcommittees. In formulating its recom-

mendations, the Task Force considered public comments, relevant research, information from economic consultants, and the comments and experience of Task Force members. The Task Force was cognizant that child support in Massachusetts seeks to reflect the incremental cost of raising a child, separate and distinct from expenses of other household members. The Task Force recommended edits for simplification, clarification, and policy considerations. These guidelines include commentary to indicate the reasoning and intent behind the recommendations of the Task Force. Trial Court departments, litigants and attorneys may use the commentary to resolve questions of interpretation or application of the guidelines.

The changes made in the Preamble reflect that the guidelines apply to child support orders entered as of September 15, 2017. The fifth sentence of the Preamble was added for clarification and is consistent with the January 2017 changes to 45 C.F.R. § 302.56 (c). The Task Force further clarified that the guidelines worksheet must be completed in *all* cases where a child support order may be established or modified. A guidelines worksheet is necessary for the Court to determine whether there is a deviation from the presumptive child support order such that findings must be completed. See Section IV.

Commentary 2018 – Preamble

After the promulgation of the Child Support Guidelines in September 2017, the Trial Court reviewed two issues on which it received questions: the application of the adjustment factors for children 18 years of age or older, and the adjustment for child care, health care coverage, and dental/vision insurance costs when parents share financial responsibility and parenting time approximately equally. In the June 2018 amendments, the Trial Court revised the age adjustment factors in the worksheet to eliminate counterintuitive outcomes in support orders for four or five children, at least one being 18 years of age or older. The Trial Court also redesigned the worksheet so that one worksheet can be used regardless of whether the parenting plan is shared, split, or approximately 2/3 and 1/3. It is no longer necessary to use multiple worksheets to determine the child support amount where there is shared or split parenting plans. The June 2018 amendments do not address the 2018/2019 changes to the federal tax code with regard to alimony and dependency exemptions.

Principles

In establishing these guidelines, due consideration has been given to the following principles:

1. promoting parental financial responsibility for children;
2. meeting the child's survival needs in the first instance, but, to the extent either parent enjoys a higher standard of living, allowing the child to enjoy that higher standard;
3. minimizing negative changes to the child's standard of living;
4. protecting a basic subsistence level of income of parents;

5. recognizing that deviations should be used when appropriate to tailor a child support order to the unique circumstances of a particular family;
6. recognizing that parents should bear any additional expenses resulting from the maintenance of two separate households;
7. recognizing the non-monetary contributions and involvement of both parents;
8. recognizing the monetary and/or in-kind contributions of both parents in addition to the child support order;
9. recognizing the importance, availability, and cost of health care coverage for the child;
10. promoting simplicity and consistency in establishing and modifying child support orders; and
11. streamlining administration and minimizing problems of proof.

Commentary 2017 – Principles

The Task Force refined and reorganized the Principles section for clarification. The Task Force included Principle 5 regarding deviation to highlight that, where appropriate, the Court should deviate from the presumptive child support order amount and that attorneys and litigants should offer reasons as to why a deviation may be warranted. In making this change, the Task Force acknowledged the sentiments expressed by attorneys and litigants that there may be hesitation by the Court to deviate from the presumptive child support order. The Principles section has also been revised to reflect the January 2017 changes to 45 C.F.R. § 302.56 (c) by adding “basic” in Principle 4 of the Principles and changing “health insurance coverage” to “health care coverage” in Principle 9 of the Principles.

I. INCOME DEFINITION

A. Sources of Income

For purposes of these guidelines, income is defined as gross income from whatever source, regardless of whether that income is recognized by the Internal Revenue Code or reported to the Internal Revenue Service or state Department of Revenue or other taxing authority. However, income derived from a means-tested public assistance program (for example: TAFDC, SNAP, veterans’ benefits and SSI benefits) shall not be counted as income for either parent.

Sources of income include, but are not limited to, the following:

1. salaries, wages, overtime and tips,
2. income from self-employment;
3. commissions;

4. severance pay;
5. royalties;
6. bonuses;
7. interest and dividends;
8. income derived from businesses/partnerships;
9. social security excluding any benefit due to a child's own disability¹;

¹ If a parent receives social security benefits or SSDI benefits and the children of the parties receive a dependency benefit derived from that parent's benefit, the amount of the dependency benefit shall be added to the gross income of that parent. This combined amount is that parent's gross income for purposes of the child support calculation.

If the dependency benefit derives from the payor's benefit and the amount of the dependency benefit exceeds the child support obligation calculated under the guidelines, then the payor shall not have responsibility for payment of current child support in excess of the dependency benefit. However, if the guidelines are higher than the dependency benefit that derives from the payor's benefit, the payor must pay the difference between the dependency benefit and the weekly child support amount under the guidelines. See *Rosenberg v. Merida*, 428 Mass. 182 (1998); *Schmidt v. McColluch-Schmidt*, 86 Mass. App. Ct. 902 (2014).

10. non means-tested veterans' benefits;
11. military pay, allowances and allotments;
12. insurance benefits, including those received for disability and personal injury, but excluding reimbursements for property losses;
13. workers' compensation;
14. unemployment compensation;
15. pensions;
16. annuities;
17. distributions and income from trusts;
18. capital gains in real and personal property transactions to the extent that they represent a regular source of income;
19. spousal support received from a person not a party to this order;
20. contractual agreements;
21. perquisites or in-kind compensation to the extent that they represent a regular source of income;
22. unearned income of children, in the Court's discretion;

23. income from life insurance or endowment contracts;
24. income from interest in an estate, either directly or through a trust;
25. lottery or gambling winnings received either in a lump sum or in the form of an annuity;
26. prizes or awards;
27. net rental income;
28. funds received from earned income credit; and
29. any other form of income or compensation not specifically itemized above.

B. Overtime and Secondary Jobs

1. The Court may consider none, some, or all overtime income or income from a secondary job. In determining whether to disregard none, some or all income from overtime or a secondary job, due consideration must first be given to the history of the income, the expectation that the income will continue to be available, the economic needs of the parties and the children, the impact of the overtime or secondary job on the parenting plan, and whether the overtime work is a requirement of the job.
2. If after a child support order is entered, a payor or recipient begins to work overtime or obtains a secondary job, neither of which was worked prior to the entry of the order, there shall be a presumption that the overtime or secondary job income should not be considered in a future child support order.

C. Self-Employment and Other Business Income

Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely-held corporation is defined as gross receipts minus ordinary and necessary expenses required to produce income. In general, income and expenses from self-employment or operation of a business should be carefully reviewed to determine the appropriate level of gross income available to the parent to satisfy a child support obligation. In many cases, this amount will differ from a determination of business income for tax purposes.

D. Imputation of Income

1. When the Court finds that a parent has, in whole or in part, undocumented or unreported income, the Court may reasonably impute income to the parent based on all the evidence submitted, including, but not limited to, evidence of the parent's ownership and maintenance of assets, and the parent's lifestyle, expenses and spending patterns.
2. Expense reimbursements, in-kind payments or benefits received by a parent, personal use of business property, and payment of personal expenses by a business in

the course of employment, self-employment, or operation of a business may be included as income if such payments are significant and reduce personal living expenses.

3. In circumstances where the Court finds that a parent has unreported income, the Court may adjust the amount of income upward by a reasonable percentage to take into account the absence of income taxes that normally would be due and payable on the unreported income.

E. Attribution of Income

1. Income may be attributed where a finding has been made that either parent is capable of working and is unemployed or underemployed.

2. If the Court makes a determination that either parent is earning less than he or she could earn through reasonable effort, the Court should consider potential earning capacity rather than actual earnings in making its child support order.

3. The Court shall consider the age, number, needs and care of the children covered by the child support order. The Court shall also consider the specific circumstances of the parent, to the extent known and presented to the Court, including, but not limited to, the assets, residence, education, training, job skills, literacy, criminal record and other employment barriers, age, health, past employment and earnings history, as well as the parent's record of seeking work, and the availability of employment at the attributed income level, the availability of employers willing to hire the parent, and the relevant prevailing earnings level in the local community.

F. Non-Parent Guardian

The income of a non-parent guardian shall not be considered for purposes of calculating a child support obligation.

Commentary 2017 – Section I. – Income Definition

A. Sources of Income

Although the Task Force did not recommend any substantive changes to Section I. A., Sources of Income, it considered whether to do so in light of emerging areas of income-producing activities such as transportation networking companies, crowd funding, domain site flipping, and inconsistent, short-term home rentals. The Task Force determined that these income-producing activities were encompassed by the existing list of sources of income.

The Task Force received public comment regarding means-tested and non means-tested veterans' benefits and, in response, clarified that means-tested veterans' benefits are a type of income that is not included as income for child support calculation purposes. Due to the complexity of determining whether a veteran's benefit is means-tested, the Task Force strongly recommended that the Court should inquire regarding the benefit.

If the Court determines that there has been misrepresentation of income to a taxing authority or on a court-filed financial statement and/or guidelines worksheet, the Court may be required to report the information to the appropriate authority. See Rule 2.15(B) of SJC Rule 3:09: Code of Judicial Conduct.

B. Overtime and Secondary Jobs

The Task Force recommended continuation of the presumptive exclusion of certain overtime and secondary job income from the calculation of gross income for child support purposes. The Task Force rewrote and moved for clarification the sentence that previously read, “The Court may consider none, some, or all overtime income even if overtime was earned prior to the entry of the order.” The Task Force also determined that the language in this section applies to payors and recipients since the income of both parents is considered in setting a child support order.

C. Self-Employment and Other Business Income

The Task Force renamed, reorganized and refined this section to focus on issues related to self-employment and the operation of a business. The Task Force moved the language regarding imputing income to the newly created Section I. D. entitled, “Imputation of Income”. Because the Task Force felt it was redundant, it deleted from the guidelines the sentence, “The calculation of income for purposes of this section may increase gross income by certain deductions or other adjustments taken for income tax purposes.”. The Appeals Court noted in *Whelan v. Whelan*, 74 Mass. App. Ct. 616, 626-27 (2009), “in determining income from self-employment, a judge must determine whether claimed business deductions are reasonable and necessary to the production of income, without regard to whether those deductions may be claimed for Federal or State income tax purposes.” As further direction, the Appeals Court noted in an unpublished decision, *Zoffreo v. Zoffreo*, 76 Mass. App. Ct. 1105 (2010), “[t]he fact that [a parent] is permitted under the tax laws to deduct an amount for depreciation does not mean that those funds, which are not out of pocket expenses, are not available to pay child support.”

For additional decisional guidance regarding calculating gross income, the Supreme Judicial Court held “that a determination whether and to what extent the undistributed earnings of an S corporation should be deemed available income to meet a child support obligation must be made based on the particular circumstances presented in each case.” *J.S. v. C.C.*, 454 Mass. 652, 662-63 (2009). The Supreme Judicial Court included a non-exhaustive list of relevant factors to consider when making this determination, such as “a shareholder’s level of control over corporate distributions”, “the legitimate business interests justifying corporate earnings”, the “affirmative evidence of an attempt to shield income by means of retained earnings”, and “the allocation of burden of proof in relation to the treatment of an S corporation’s undistributed earnings for purposes of determining income available for child support[.]” *J.S. v. C.C.*, 454 Mass. 652, 662-65 (2009).

In *Fehrm-Cappuccino v. Cappuccino*, 90 Mass. App. Ct. 525 (2016), the Appeals Court addressed the appropriateness of including rental income when determining

income for child support purposes. The decision notes that “there is no risk of double counting, where ‘neither the value of [the father’s interest in [the asset]] nor the [father’s] ability to earn income is diminished by treating the [father’s interest in [the asset]] as a marital asset as well as a source of income by which [the father] can meet his support obligations.’” *Fehrm-Cappuccino v. Cappuccino*, 90 Mass. App. Ct. 525, 528 (2016) (quoting *Champion v. Champion*, 54 Mass. App. Ct. 215, 221 (2002)).

D. Imputation of Income

The Task Force renamed, reorganized and refined the section previously entitled, “Unreported Income” to focus on issues related to the imputation of income. Income may be imputed when there are actual resources available to the parent that are not reported for tax purposes.

In general terms, undocumented income is income that does not result in the issuance of a tax reporting form. Unreported income is any income that is received and required to be reported that the taxpayer does not report on his or her taxes.

The Appeals Court decision in *Crowe v. Fong*, 45 Mass. App. Ct. 673 (1988) is instructional regarding Section I. D. 2. In *Crowe*, the payor earned \$275 per week working at a business owned by his mother, lived rent-free in a home owned by his father, and had use of a vehicle. The Appeals Court upheld the trial judge’s “characterization of [the payor’s] free use of the home as ‘perquisite or in-kind income’ for purposes of calculating his support obligation under the guidelines[.]” *Crowe v. Fong*, 45 Mass. App. Ct. 673, 680-81 (1988).

E. Attribution of Income

The Task Force reorganized and refined this section for clarification and to distinguish attributed income from imputed income. Income is attributed to a parent when the Court determines a parent is capable of earning more than is currently being earned and assigns a hypothetical amount of income to the parent. The Task Force, in consideration of the January 2017 changes to 45 C.F.R. § 302.56 (c) (2017), revised the factors to be considered when attributing income to a parent.

In *P.F. v. Department of Revenue*, 90 Mass. App. Ct. 707 (2016), the Appeals Court addressed attribution of income where the payor is incarcerated. “‘Income may be attributed where a finding has been made that [the payor] is capable of working and is unemployed or underemployed,’ . . . or where the payor owns ‘substantial assets.’” *P.F. v. Department of Revenue*, 90 Mass. App. Ct. 707, 710 (2016) (quoting *Wasson v. Wasson*, 81 Mass. App. Ct. 574, 581 (2012), quoting from *Flaherty v. Flaherty*, 40 Mass. App. Ct. 289, 291 (1996)). However, where there is “no income or assets from which to pay child support”, the Court may not attribute income to the payor based on the payor’s prior earning capacity, even if the payor is incarcerated due to committing a crime against the child for whom child support is being paid. *P.F. v. Department of Revenue*, 90 Mass. App. Ct. 707, 710-11 (2016).

F. Non-Parent Guardian

The Task Force did not recommend any changes to this section.

II. FACTORS TO BE CONSIDERED IN SETTING THE CHILD SUPPORT ORDER

A. Relationship to Alimony or Separate Maintenance Payments

1. These guidelines were developed with the understanding that alimony is for the support of a spouse, while child support is for the support of children.

2. These guidelines were developed with the understanding that child support is non-deductible by the payor and non-taxable to the recipient. These guidelines do not preclude the Court from deciding that any support order be designated in whole or in part as alimony or unallocated support without it being deemed a deviation, provided that the tax consequences are considered in determining the support order and the after-tax support received by the recipient is not diminished. The parties have the responsibility to present to the Court the tax consequences of proposed orders.

3. Chapter 124 of the Acts of 2011, entitled, “An Act Reforming Alimony in the Commonwealth”, amended G. L. c. 208 and prohibits the use of gross income which the Court has already considered in making a child support order from being used again in determining an alimony order. See G. L. c. 208, § 53 (c) (2). The parties may consider preparing alternate calculations of alimony and child support to determine the most equitable result for the children and the parties. Depending upon the circumstances, alimony may be calculated first, and in other circumstances child support may be calculated first. Judicial discretion is necessary and deviations shall be considered.

B. Claims of Personal Exemptions for Child Dependents

In setting a support order, the Court and the parties shall consider the allocation of personal exemptions for child dependents between the parties to the extent permitted by law.

C. Minimum and Maximum Levels

1. These guidelines are intended to protect a minimum subsistence level for those parents obligated to pay child support whose gross income is \$115 per week or less. However, it is the obligation of all parents to contribute to the support of their children. To that end, a minimum order of \$25 per week should enter. This minimum should not be construed as limiting the Court’s discretion to set a higher or lower order, should circumstances warrant, as a deviation from the guidelines. See Section IV.

2. These guidelines are calculated up to a maximum combined available annual gross income of the parties of \$250,000. In cases where combined available income is over \$250,000, the guidelines should be applied on the first \$250,000 in the same proportion as the recipient’s and payor’s actual income as provided on Line 2h of the guidelines worksheet. In cases where income exceeds this limit, the Court should consider the award of support at the \$250,000 level as the minimum presumptive order. The

child support obligation for the portion of combined available income that exceeds \$250,000 shall be at the discretion of the Court.

D. Parenting Time

1. These guidelines recognize that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests. The basic calculations under these guidelines are based upon the children having a primary residence with one parent and spending approximately one-third of the time with the other parent.

2. These guidelines apply to all types of parenting plan schedules. Information regarding whether the parents share financial responsibility and parenting time for the children, approximately equally (shared), whether the children reside primarily with one parent for approximately 2/3 of the time, and whether, in a family with more than one child covered by the order, each parent provides a primary residence for at least one child (split) is entered directly into the worksheet. The worksheet will calculate the presumptive child support order based on the information entered into the worksheet.

3. Where parenting time is substantially less than one-third for the parent who is not the residential parent, the Court may consider deviation by an upward adjustment to the amount calculated under the guidelines worksheet. See Section IV. B. 8.

E. Child Care Costs

1. Reasonable child care costs for the children covered by the child support order and due to gainful employment of either parent are to be deducted from the gross income of the parent who pays the cost. The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a parent who is paying the child care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total child care costs for both parents in proportion to their income available for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order.

2. In appropriate circumstances, child care costs may include those due to training or education reasonably necessary to obtain gainful employment or enhance earning capacity. The Court may consider a deviation where the child care cost is disproportionate to income. See Section IV. B. 7.

F. Child Support for Children Between the Ages of 18 and 23

1. By statute, the Court has discretion either to order or to decline to order child support for children age 18 or older. If the Court exercises its discretion to order child support for children age 18 or older, the guidelines formula reduces the amount of child support in accordance with Table B of the guidelines worksheet. For the guidelines calculation to account for families with children both under age 18 and age 18

or older, the guidelines worksheet requires the input of information regarding the number of children age 18 or older and under age 18.

2. A child age 18 or older who is enrolled in and attending high school shall be deemed to be under age 18 for purposes of the guidelines and Table B, absent deviation.

3. In determining whether to order child support for a child age 18 or older, the Court shall consider the reason for the child's continued residence with and principal dependence on the recipient, the child's academic circumstances, the child's living situation, the available resources of the parents, and each parent's contribution to the costs of post-secondary education for the child and/or other children of the family. The Court may also consider any other relevant factors.

G. Contribution to Post-secondary Educational Expenses

1. By statute, the Court has discretion either to order or to decline to order a parent to contribute to post-secondary educational expenses. Contribution to post-secondary educational expenses is not presumptive.

2. In determining whether to order contribution to post-secondary educational expenses, the Court shall consider the cost of the post-secondary education, the child's aptitudes, the child's living situation, the available resources of the parents and child, and the availability of financial aid. The Court may also consider any other relevant factors.

3. No parent shall be ordered to pay an amount in excess of fifty percent of the undergraduate, in-state resident costs of the University of Massachusetts-Amherst, unless the Court enters written findings that a parent has the ability to pay a higher amount. Costs for this purpose are defined as mandatory fees, tuition, and room and board for the University of Massachusetts-Amherst, as set out in the "Published Annual College Costs Before Financial Aid" in the College Board's Annual Survey of Colleges. This section applies to all orders requiring parental contribution to post-secondary educational expenses, regardless of where the child resides or attends school.

4. When exercising its discretion to order child support for a child over age 18 and contribution to the child's post-secondary educational expenses, the Court shall consider the combined amount of both orders.

H. Health Care Coverage

1. a. Each parent may deduct from gross income the reasonable cost of individual or family health care coverage actually paid by that parent. If there is an additional cost to insure a person not covered by this order, and the Court determines that such additional cost would unreasonably impact the amount of child support, then some or all of such additional cost shall not be deducted.

b. The guidelines worksheet makes an adjustment so that the parents share the burden of the cost proportionately. The adjustment involves a two-step calculation. First, a

parent who is paying the health care deducts the out-of-pocket cost from his or her gross income. Second, the parties share the total health care costs for both parents in proportion to their income available for support. The combined adjustment for child care and health care costs is capped at fifteen percent of the child support order.

2. When the Court makes an order for child support, the order shall include an order of health care coverage unless the payor and recipient agree in writing that such coverage will be provided by other means.

3. a. The Court shall determine whether health care coverage that may be extended to cover the child is available through an employer or otherwise available at a reasonable cost. Healthcare coverage shall be deemed available to the payor at reasonable cost if it is available through an employer.

b. If health care coverage is available at a reasonable cost, the Court shall then determine whether the cost of such coverage creates an undue hardship on the payor, and, if that determination is made, the payor shall not be required to provide such coverage. In determining whether the cost of health care coverage creates an undue hardship for the payor, the Court may consider whether the cost of maintaining health care coverage would prevent payment of some or all of the child support order, whether the available coverage lacks the comprehensiveness to meet the health care needs of the child such that significant uninsured medical expenses will be incurred, whether the payor's gross income is less than 300% of the federal poverty guidelines for the payor's household, and any other relevant factors.

c. When such health care coverage is available at a reasonable cost and does not cause an undue hardship, the Court shall include in the child support order a requirement that such insurance for the child be obtained or maintained.

d. If the Court determines that health care coverage is not available at a reasonable cost or that ordering health care coverage creates an undue hardship for the payor and the IV-D agency is providing services, the Court shall enter an order requiring the payor to notify the IV-D agency if access to health care coverage for the child becomes available. If the Court determines that health care coverage is not available at a reasonable cost or that ordering health care coverage creates an undue hardship for the payor and the IV-D agency is not providing services, the Court shall enter an order requiring the payor to notify the recipient if access to health care coverage for the child becomes available.

I. Dental/Vision Insurance

1. Each parent may deduct from gross income the reasonable cost actually paid by that parent of dental/vision insurance insuring the children covered by this order.

2. If there is an additional cost to insure a person not covered by this child support order, and the Court determines such additional cost would unreasonably reduce the amount of child support, then some or all of such additional cost shall not be deducted from gross income.

3. The cost of dental/vision insurance insuring the children covered by this order is included on the guidelines worksheet in the combined child care and health care costs adjustment.

J. Routine Uninsured Medical and Dental/Vision Expenses and Extraordinary Uninsured Medical and Dental/Vision Expenses

1. The recipient shall be responsible for payment of the first \$250 each year in combined routine uninsured medical and dental/vision expenses for all the children covered by this child support order. For amounts above that limit, at the time of entry of an order establishing or modifying the child support order, the Court shall allocate expenses between the parties without adjustment to the child support order.

2. The payment of extraordinary uninsured medical and dental/vision expenses incurred for the children, absent agreement of the parties, shall be treated on a case-by-case basis (for example: orthodontia, psychological/psychiatric counseling, etc.). Where the Court makes a determination that such medical and dental/vision services are necessary and are in the best interests of the children, the Court shall allocate such expenses between the parties.

K. Existing Support Obligations and Responsibility for Children Not in the Case under Consideration

1. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, the amount actually paid by a parent pursuant to a pre-existing support order for a child or spouse not in the case under consideration shall be deducted from the gross income of that parent where that parent provides sufficient proof of the order and payments made. Payments on arrearages shall not be deducted from gross income.

2. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, the amount of voluntary payments actually paid to support a child not in the case under consideration and with whom the parent does not reside shall be deducted from the gross income of that parent, but only to the extent the Court determines the payments to be reasonable. The parent who seeks the deduction must provide sufficient proof of the legal obligation to support the child and of actual payments made to the other parent or guardian.

3. When an initial order or a modification of an existing order is sought for a child covered by the order in the case under consideration, a hypothetical amount of child support for a child with whom the parent resides but for whom no child support order exists shall be deducted from the gross income of the parent. The parent seeking the deduction must provide sufficient proof of the legal obligation to support the child and of the gross income of that child's other parent. The hypothetical child support amount shall be calculated according to the guidelines worksheet using the gross incomes of both parents of the child for whom the hypothetical child support amount is being calculated.

4. Obligations to a subsequent family may be used as a defense to a request to modify an order seeking an increase in the existing order, but such obligations should not be considered a reason to decrease an existing order.

L. Families with More than Five Children

The guidelines formula applies to families with one to five children. For more than five children, the order should be at least the amount ordered for five children.

M. Contribution to Other Child-Related Expenses

In cases where the Court makes a determination that there are additional child-related expenses such as extra-curricular activities, private school, or summer camps, which are in the best interest of the child and which are affordable by the parties, the Court may allocate costs to the parties on a case-by-case basis.

Commentary 2017 – Section II. – Factors To Be Considered
In Setting The Child Support Order

A. Relationship to Alimony or Separate Maintenance Payments

The Task Force discussed the challenges related to the tax consequences of unallocated support. The Task Force recommended that the Court, especially in cases involving parties with disparate levels of income, consider an unallocated support order. By designating some, or all, of a payor’s support obligation as tax-deductible to the payor and a taxable payment to the recipient, a significant tax benefit may be achieved.

Under *Fechtor v. Fechter*, 26 Mass. App. Ct. 859 (1989), it is the responsibility of the parties to bring the tax implications of a support order to the attention of the Court. Parties and attorneys should familiarize themselves with the applicable provisions of I.R.C. § 71, which provides specific rules that must be followed in order to fashion support orders that will be deemed tax-deductible under the Internal Revenue Code.

The relationship between alimony and child support remained an issue during this review as it was during the 2012 review. When issuing an alimony order, “the court shall exclude from its income calculation gross income which the court has already considered for setting a child support order.” G. L. c. 208, § 53 (c) (2). However, the converse is not stated in the statute.

Since the 2012 review and report, the Massachusetts appellate courts have not issued any decisions on point, nor has there been a statutory change. The Task Force discussed this conundrum and determined that, despite the desire to provide more instruction, no changes to this section were recommended at this time. The Task Force recommended that this issue be reviewed again during the next quadrennial review.

B. Claims of Personal Exemptions for Child Dependents

The Task Force refined this section to emphasize the importance of considering the allocation of the dependency exemptions.

C. Minimum and Maximum Levels

The Task Force considered whether the minimum support order required adjustment. The minimum support order has not changed since 2002 when it was established at \$18.46 per week. After discussion, the Task Force recommended that the minimum support order be increased to \$25 per week. This increase is consistent with economic data on the increase in the overall cost of living in Massachusetts since 2002. The guidelines chart has been adjusted to reflect that the minimum support order applies to combined available income up to \$115 per week.

For informational assistance with regard to child support when the parents' combined gross income is over \$250,000, section 6 of the guidelines worksheet calculates the amount by which each parent's available income exceeds \$250,000. Child support based on income above \$250,000 is discretionary. The excess income information in section 6 of the guidelines worksheet may be considered on a case-by-case basis.

D. Parenting Time

The Task Force discussed at length the consequences of the changes that were incorporated by the 2012 Task Force with regard to when parenting time is more than one-third but less than fifty percent. The Task Force agreed that the provision relating to these circumstances needed to be eliminated. The Task Force considered public comment, attorney and judicial experience, the 2008 Report of the Child Support Guidelines Task Force, and the Final Report of the 2012 Task Force when making this determination. The 2012 change increased litigation and acrimony between parents, shifted the focus from a parenting plan that is in the best interests of the children to a contest about a parenting plan that attempts to reduce a child support order, and failed to create the consistency in child support orders that it sought to create.

The Task Force suggested that the first step in determining a child support order is actually creating a parenting plan that is best for the children, recognizing that children should enjoy parenting time with both parents to the greatest extent possible consistent with the children's best interests. Child support should not be driving the parenting plan. Once the parenting plan is established, then calculations may occur. It is important to note again here that the Task Force specifically created a principle regarding the appropriate use of a deviation where the circumstances of a family require one. See Principles, Principle 5.

The Task Force recommended deleting the provisions inserted in the 2009 guidelines that limited the deduction of other support orders from gross income when making certain calculations related to parenting time. This Task Force was unable to determine why the provisions were included, and thus determined that equity required their deletion.

E. Child Care Costs

The Task Force discussed at length how to address the concerns raised by many people regarding the significant costs of child care. The Task Force recommended a proportional adjustment to the child support order based on child care and health care costs. The proportional adjustment for the costs is not dollar-for-dollar because the significant costs of child care and health care coverage could unfairly skew a child support order. Instead, the adjustment is capped, either up or down, at fifteen percent of the child support order.

F. Child Support for Children Between the Ages of 18 and 23

The Task Force renamed and restructured the section previously entitled, “Age of the Children”. The Task Force clarified that these guidelines apply in all cases where a child support order is established or modified and not just in cases involving children under age 18. See 45 C.F.R. § 302.56 (a) (2017). That Massachusetts by statute allows for, but does not require, child support until age 23 does not negate the federal requirement that the guidelines must apply in all cases. However, the C.F.R. does not mandate that the guidelines be identical for children of all ages. For dependent children between 18 and 21, child support may be ordered if the dependent child is domiciled with a parent and is principally dependent on that parent. See G. L. c. 208, § 28, G. L. c. 209C, § 9 and G. L. c. 209, § 37.

For dependent children between 21 and 23, child support may be ordered if the dependent child is domiciled with a parent and is principally dependent on that parent due to enrollment in an educational program, as long as the program is not beyond an undergraduate degree. See *id.* Although the Task Force received public comment suggesting that child support end at age 18, the Task Force did not amend the provision retaining discretion in entering child support orders for children between the ages of 18 and 23 because this discretion is statutory. The Task Force strongly recommended that, until or unless the Massachusetts Legislature amends the child support statutes to clarify that child support is mandatory through graduation of high school, the Court consider child support orders for those children who have turned 18 but are still in high school as mandatory rather than permissive.

Because these guidelines apply to all child support orders, including those for children up to age 23, the Task Force discussed whether the application of the guidelines through the guidelines worksheet should result in a reduction in the base amount of child support for children who are age 18 or older and not attending high school, but nevertheless eligible for child support pursuant to Massachusetts law. The Task Force agreed that a twenty-five percent reduction is appropriate as it takes into consideration factors typical of this age group. For example, the child may be living away at school thereby reducing some of the household expenses for the recipient or the child may be living at home and is not enrolled in a post-secondary educational program and should be working and contributing to the household expenses. The reduction balances the requirement imposed by federal regulation that all child support orders are the product of a formula established by guidelines, while also considering important factors unique to children between the ages of 18 and 23. See *M.C. v. T.K.*,

463 Mass. 226, 231 (2012) (“The Chief Justice of the Trial Court is authorized to promulgate guidelines establishing presumptive child support awards, based on articulated principles and calculated according to specified mathematical formulas.”) Nothing in this section limits the ability of the Court to deviate from the presumptive order where appropriate. For example, the child may be living at home and commuting to a post-secondary educational program.

This section shall not be construed to change the rule set forth in *Feinberg v. Diamant*, 378 Mass. 131 (1979) allowing the Court to require a financially able parent to “contribute to the support of an adult child who by reason of mental or physical infirmity incurs expenses that he or she is unable to meet.” *Feinberg v. Diamant*, 378 Mass. 131, 134 (1979). These matters are addressed in equity actions.

G. Contribution to Post-secondary Educational Expenses

The Task Force created a new section to address the complexity of contributions to post-secondary educational expenses. Post-secondary educational expenses have increased exponentially since 1976 when the Massachusetts Legislature amended statutes to permit the Court to order parents to pay for educational expenses. Overall, both public and private four-year college expenses for fees, tuition, room and board, have increased approximately 250%, as adjusted for inflation. See College Board, *Annual Survey of Colleges, 2017*. The Task Force shared the pervasive concern that many parents cannot pay post-secondary educational expenses from their income, while meeting other expense obligations. The Task Force intended to discourage orders requiring parents to incur liability for loans in excess of state university costs unless the parents agree to accept such liabilities. The Task Force also intended an expense limitation to provide general uniformity in court-ordered, post-secondary educational expenses contributions.

The limitation on post-secondary educational expenses orders is recommended for most cases, but it is not mandatory. The Task Force does not intend the limitation to apply to children already enrolled in post-secondary education before the effective date of these guidelines or to parents who are financially able to pay educational expenses using assets or other resources.

The University of Massachusetts-Amherst was designated as the benchmark for maximum orders because it was the flagship, and most expensive, Massachusetts state college when these guidelines became effective.

H. Health Care Coverage

The Task Force renamed, reorganized, and revised this section. The phrase “health care coverage” was changed from “health insurance” to reflect recent changes in federal law, which now references both private and public health care coverage. Under federal regulations, child support guidelines must “[a]ddress how the parents will provide for the child’s health care needs through private *or public health care coverage* and/or through cash medical support.” 45 C.F.R. § 302.56 (c) (2) (2017) (emphasis added). Under 45 C.F.R. § 303.31 (a) (3), “[c]ash medical support or the cost of

health insurance is considered reasonable in cost if the cost to the parent responsible for providing medical support does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State law, regulations or court rule having the force of law or State child support guidelines adopted in accordance with § 302.56(c) of [Chapter 45].” The Massachusetts Legislature has not amended G. L. c. 119A to reflect the federal definition of reasonableness or to grant the authority to order cash medical support. Nor does G. L. c. 119A allow the Court to order either parent to provide health care coverage. See G. L. c. 119A, § 12 (b) (5). The Task Force strongly recommended that the Massachusetts Legislature amend G. L. c. 119A to be consistent with the federal regulations.

The Task Force also made revisions that more clearly reflect the statutory requirements relating to orders for health care coverage. Before requiring a payor to obtain health care coverage, the Court must determine that such coverage is available at reasonable cost, “provided that the cost of such coverage does not create an undue hardship upon the [payor].” G. L. c. 119A, § 12 (b) (5). Because “undue hardship” is not defined by statute or case law, factors relating to determining whether an order of health care coverage creates an undue hardship on the payor are included in these guidelines. There are circumstances where the combined child support order and the cost to the payor for obtaining and maintaining health care coverage exceed the amount allowed under law to be ordered withheld from a payor’s income. If health care coverage is ordered in these circumstances, and the costs for the health care coverage are deducted from the payor’s income before the child support order is paid, the child support order is not paid in full and the payor accrues child support arrears. For purposes of this section, an undue hardship may occur if the combined health care coverage and child support order exceeds statutory garnishment limits. The Task Force determined that it was appropriate to adopt the percentage of poverty level that MassHealth’s Children’s Health Insurance Program (CHIP) uses for eligibility screening. See <http://children.massbudget.org/masshealth>. The Court retains the discretion to consider other relevant factors in making the determination regarding undue hardship.

If health care coverage is not currently available at a reasonable cost or the payment of health care coverage causes an undue hardship, the Task Force removed the requirement that the Court enter an order requiring the payor to obtain and maintain health care coverage for the child if and when the parent has access to such coverage. Instead, the Task Force added a provision that requires the payor to notify the IV-D agency or the recipient if health care coverage becomes available. If health care coverage becomes available, a modification of the child support order may be appropriate to reflect the cost of such coverage, as well as to determine whether there is any undue hardship.

In addition to child care costs, the Task Force also discussed at length how to address the concerns raised by many people regarding the significant costs of health care coverage. The Task Force recommended a proportional adjustment to the child support order based on child care and health care costs. The proportional adjustment for the costs is not dollar-for-dollar because the significant costs of child care and health

care coverage could unfairly skew a child support order. Instead, the adjustment is capped, either up or down, at fifteen percent of the child support order.

The Task Force recommended that, where appropriate, the Court should examine whether the parent who seeks to deduct the total amount of health care coverage is including in that total amount the cost for covering persons not covered by the order under consideration. In that circumstance, the Court may determine that some or all of the additional cost should not be deducted from gross income on the guidelines worksheet.

I. Dental/Vision Insurance

The Task Force reorganized this section. The Task Force determined that the costs of the dental and vision insurance covering children under this order shall be included as a component of the child care and health care adjustment.

J. Routine Uninsured Medical and Dental/Vision Expenses and Extraordinary Uninsured Medical and Dental/Vision Expenses

The Task Force reorganized the sections previously entitled, “Routine Uninsured Medical and Dental Expenses” and “Uninsured Extraordinary Medical and Dental Expenses” into one section without any substantive changes.

K. Existing Support Obligations and Responsibility for Children Not in the Case under Consideration

The Task Force recommended changes to this section to clarify the different circumstances that may result in a deduction from gross income when a parent has a legal responsibility to support a child not part of the case currently being considered. The Task Force clarified that where applicable either parent may seek the deductions from gross income and that sufficient proof must be provided. The Task Force reviewed language from the New Jersey, North Carolina, Ohio, and Tennessee child support guidelines to assist in drafting the clarifications.

In *Department of Revenue v. Mason M.*, the Supreme Judicial Court endorsed the use of deducting a hypothetical support order from a parent’s gross income where that parent had multiple children to support. *Department of Revenue v. Mason M.*, 439 Mass. 665, 671-72 (2003). However, to calculate a hypothetical amount of child support, the gross incomes of both parents of that child must be used. This calculation can be difficult to compute because the Court does not have the non-party parent’s gross income. The burden is on the parent who seeks to deduct a hypothetical amount to provide to the Court the information necessary for calculating the hypothetical amount, including the non-party parent’s gross income.

L. Families with More than Five Children

The Task Force did not recommend any substantive changes to this section.

M. Contribution to Other Child-Related Expenses

The Task Force renamed this section for consistency. “Post-secondary education” was deleted from this section only because the Task Force created a new section that addresses contribution to post-secondary educational expenses. See Section II. G.

III. MODIFICATION

A. A child support order may be modified if any of the circumstances listed below exist.

1. There is an inconsistency between the amount of the existing order and the amount that would result from the application of the guidelines.
2. Previously ordered health care coverage is no longer available.
3. Previously ordered health care coverage is still available but no longer at a reasonable cost or without an undue hardship.
4. Access to health care coverage not previously available to a parent has become available.
5. Any other material and substantial change in circumstances has occurred.

B. Upon a request for modification of an order that deviated from the guidelines at the time it was entered, the Court shall apply the existing deviation to the modification action if:

1. the facts that gave rise to deviation still exist; and
2. deviation continues to be in the child’s best interest; and
3. the guidelines amount would be unjust or inappropriate under the circumstances.

C. Section III. B. does not preclude deviations based on other grounds set forth in Section IV. or grounds for modification as set forth in Section III. A.

Commentary 2017 – Section III. – Modification

The Task Force deleted Paragraph B of the 2013 guidelines because it was premised on the assumption that Massachusetts law provides for a separate standard to be used by the Court when the Department of Revenue is providing IV-D services in a case where the order is less than three years old. While the Department of Revenue is not required to use the inconsistency standard when determining whether to provide IV-D services to seek a modification of an order that is less than three years old, the Court must apply the inconsistency standard once any complaint for modification is filed and is before the Court. See 57 Fed. Reg. 61559, 61577 (1992). See also G. L. c. 208, § 28, G. L. c. 209C, § 20 and G. L. c. 209, § 37.

The Department of Revenue’s review process does not prohibit an individual from filing a complaint for modification on his or her own, regardless of whether the case is receiving IV-D services.

The Task Force refined the language to clarify that if circumstances that resulted in a deviation are still in existence during a modification action, those circumstances shall be considered to remain even though it may be appropriate to modify the existing order. For example, a child may have a medical condition that results in ongoing, extraordinary medical expenses and the existing child support order deviates from the guidelines amount. The recipient is now unemployed and files a complaint for modification. The underlying circumstances for the existing deviation remains; however, the Court also considers the additional circumstances.

IV. DEVIATION

A. The Court, or the parties by agreement approved by the Court, may deviate from these guidelines and overcome the presumptive application of these guidelines, provided the Court enters specific written findings stating:

1. the amount of the order that would result from application of the guidelines;
2. that the guidelines amount would be unjust or inappropriate under the circumstances;
3. the specific facts of the case which justify departure from the guidelines; and
4. that such departure is consistent with the best interests of the child.

B. Circumstances which may support deviating, above or below the presumptive guidelines amount, including the minimum order amount, are as follows:

1. the parties agree and the Court determines the agreement to be fair and reasonable and approves their agreement;
2. a child has ongoing special needs or aptitudes with financial consequences;
3. a child has ongoing extraordinary mental, physical, or developmental needs with financial consequences;
4. a parent has ongoing extraordinary mental, physical, or developmental needs with financial consequences;
5. a parent has extraordinary expenses for health care coverage;
6. a parent has extraordinary travel or other expenses related to parenting;
7. a parent is absorbing a child care cost that is disproportionate in relation to his or her income;
8. a parent provides substantially less than one-third of the parenting time for a child or children;
9. the payor is incarcerated and has insufficient financial resources to pay support;

10. application of the guidelines, particularly in low income cases, leaves a parent without the ability to self-support;
11. application of the guidelines would result in a gross disparity in the standard of living between the two households such that one household is left with an unreasonably low percentage of the combined available income;
12. application of the guidelines may adversely impact reunification of a parent and child where the child has been temporarily removed from the household in accordance with G.L. c. 119; and
13. absent deviation, application of the guidelines would lead to an order that is unjust, inappropriate or not in the best interests of the child, considering the Principles of these guidelines.

Commentary 2017 – Section IV. – Deviation

The Task Force refined and clarified the circumstances where deviation may be appropriate. The Task Force reordered this section for clarification purposes only and not to prioritize any one factor over another. The Task Force emphasized that a deviation may be appropriate for a family and encourages the Court to deviate where circumstances require it.

The Task Force clarified in the first phrase of Section IV. B. that it is permissible to deviate to an amount below the presumptive guidelines amount. Because the deviation circumstances affect an ongoing child support award, rather than a one-time or occasional allocation, the Task Force emphasized that certain circumstances must be ongoing and with financial consequences for them to be considered appropriate for a deviation. In Section IV. B. 8., the Task Force added “substantially” to emphasize as it did in Section II. D. that a parenting plan that is in the best interest of the child is the first step in determining a child support order. The inclusion of “substantially” provides a parameter with the goal of reducing acrimony and litigation between parents regarding the interaction of the parenting plan and the amount of the child support order.

EXHIBIT 6E—Child Support Guidelines Worksheet

Sample

Case Name _____ Date Prepared _____
 Docket Number _____ Name of Preparer _____

CHILD SUPPORT GUIDELINES WORKSHEET

All dollar amounts are weekly. Round all numbers to the nearest whole dollar or percentage.

1. AGE, NUMBER, AND PARENTING OF CHILDREN

a. Number of children who may be eligible to be covered by this order

	Reset Form
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b. Check the box that applies to the children listed in 1(a) (check **one** box only):

The parents share financial responsibility and parenting time approximately equally (shared)

Box 1

The children primarily reside with one parent for approximately 2/3 of the time

Box 2

There is more than one child covered by the order and each parent provides a primary residence for at least one child (split)

Box 3

c. Enter each parent's name

If you checked Box 2 above, enter the name of the parent with whom the children primarily reside in the column for Parent A, and the other parent's name as Parent B; otherwise, enter either parent's name in either column.

Parent A	Parent B

Enter the number and age of children for whom each parent may be eligible to receive support

If you checked Box 2 above, check both, enter the number of children from 1(a) in the columns for both parents.

If you checked Box 2 above, enter the number of children from 1(a) in the column for Parent A, and enter 0 in the column for Parent B.

If you checked Box 3 above, enter the number of children primarily residing with each parent in each column.

d. Number of children under age 18

e. Number of children 18 years or older

f. Total number of children

=

 =

2. INCOME

a. Gross weekly income

b. Minus Child care cost paid

c. Minus Health care cost paid

d. Minus Dental/vision insurance cost paid

e. Minus Other support obligations paid

f. Available income

(Sum of all through (e), but not less than 0)

g. Combined available income

(Parent A 2(f) + Parent B 2(f))

h. Share of combined available income

2(f) / 2(g)

(Min 5%, Max 100%)

=

/

3. GROSS SUPPORT AMOUNTS

a. Applicable available income

2(f) or 2(g) 80%, whichever is less

b. Support amount for one child

(200% 1-20% Age-Relatedness, Max 10%)

c. Adjustment for the number of children in 1(f) *From Table D*

d. Combined support amount

2(b) x 3(c)

x

 x

=

 =

4. ADJUSTMENT FOR CHILDREN 18 YEARS OR OLDER

a. Adjustment percentage for the ages of the children listed in 1(d) and 1(e)

From Table E

b. Adjustment for children 18 years or older

2(d) x 4(b)

c. Adjusted combined support amount

2(d) - 4(b)

x

 x

=

 =

Case Name _____	Docket No. _____				
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align:center;">Parent A</td> <td style="width:50%; text-align:center;">Parent B</td> </tr> <tr> <td style="border: 1px solid black; height: 20px;"></td> <td style="border: 1px solid black; height: 20px;"></td> </tr> </table>	Parent A	Parent B		
Parent A	Parent B				
5. PROPORTIONAL SUPPORT AMOUNTS					
a. <i>Minus</i> Each parent's share of support <i>200 x 40%</i>	-				
b. Other parent's share of support <i>400 - 500</i>	=				
c. Support as % of each parent's available income <i>Wages checked Box 2 on 1041, enter 100%</i>					
d. Other parent's adjusted share of support <i>If 50% is 10%, enter 500 or \$25, whichever is more for Parent A and 50 for Parent B</i>					
e. Recipient and Payor <i>Enter "Recipient" in the column where 500 is higher and "Payor" in the other column</i>					
f. Payor's net share of support <i>Recipient 500 - Payor 500</i>					
6. ADJUSTMENT FOR CHILD CARE AND HEALTH CARE COSTS					
a. Child care and health care cost paid <i>200 + 200 + 200</i>					
b. Payor's share of Recipient's cost <i>Payor 200 x Recipient 50%</i>					
c. <i>Minus</i> Recipient's share of Payor's cost <i>Recipient 200 x Payor 50%</i>	-				
d. Payor's net cost <i>400 - 100</i>	=				
e. Maximum adjustment amount <i>Wages = \$0 for both parents, enter \$0; otherwise enter 40% of 400</i>	+/-				
f. <i>Adjustment applied to this order</i>					
g. <i>If 400 > \$0, enter \$0; otherwise enter 600 or 600, whichever is less</i>	+				
h. Payor's adjusted net share of support <i>500 - 500 - 400</i>	=				
7. PAYOR'S NET SUPPORT OBLIGATION					
a. Support as % of Recipient's available income					
b. Payor's final support obligation <i>If 200 < 100, enter 100 or \$25, whichever is more</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align:center; padding: 5px;"> <div style="border: 1px solid black; width: 50px; height: 20px; margin: 0 auto;"></div> <p style="font-size: 8px; margin: 0;">Payor pays Recipient</p> </td> </tr> </table>	<div style="border: 1px solid black; width: 50px; height: 20px; margin: 0 auto;"></div> <p style="font-size: 8px; margin: 0;">Payor pays Recipient</p>			
<div style="border: 1px solid black; width: 50px; height: 20px; margin: 0 auto;"></div> <p style="font-size: 8px; margin: 0;">Payor pays Recipient</p>					
8. ADDITIONAL INCOME ABOVE \$4,800					
a. Combined additional income <i>200 + 4,000 or 50, some 50,000</i>					
b. Share of combined additional income <i>50% x 200</i>					

TABLE A: CHILD SUPPORT OBLIGATION SCHEDULE			
<i>All dollar amounts are weekly and rounded to the nearest dollar</i>			
INCOME FROM LINE 2(g)	CHILD SUPPORT AMOUNT (1 CHILD)		
Minimum	Maximum		
\$0	\$115	\$25 per week, unless the court deviates	
\$116 →	\$750	22%	
\$751 →	\$1250	\$165 + 21% above \$750	
\$1251 →	\$2000	\$270 + 19% above \$1250	
\$2001 →	\$3000	\$413 + 15% above \$2000	
\$3001 →	\$4000	\$563 + 12% above \$3000	
\$4001 →	\$4808	\$683 + 11% above \$4000	

TABLE B: ADJUSTMENT FOR NUMBER OF CHILDREN	
NUMBER OF CHILDREN	ADJUSTMENT FACTOR
0	0.00
1	1.00
2	1.25
3	1.38
4	1.45
5	1.48

TABLE C: ADJUSTMENT FOR CHILDREN 18 YEARS OR OLDER						
CHILDREN UNDER 18	CHILDREN 18 OR OLDER					
	0	1	2	3	4	5
0	0%	25%	25%	25%	25%	25%
1	0%	5%	8%	9%	9%	
2	0%	3%	4%	4%		
3	0%	1%	2%			
4	0%	1%				
5	0%					

EXHIBIT 6F—

(Exhibit 6F reserved for future content.)

EXHIBIT 6G—Sample Separation Agreement

This AGREEMENT of SEPARATION is entered into this 18th day of November 1992 by Deborah Smith (hereinafter “the Wife” or “Mother”) of Arlington, Middlesex County, Massachusetts, and James B. Smith (hereafter “the Husband” or “Father”) of Belmont, Middlesex County, Massachusetts.

Recitals and General Provisions

- A. The Husband and Wife were married at Hartford, Connecticut, on November 10, 1981.
- B. Two children were born to them:

Anne B. Smith, date of birth March 18, 1986, and
Thomas C. Smith, date of birth September 1, 1989.
- C. The Husband and Wife have separated and are living apart; and the Wife has filed an action for divorce in the Middlesex County Probate and Family Court (Docket No.-92D-1234-D1).
- D. The Husband and Wife desire by this Agreement to settle and determine:
 - 1. Their respective property rights;
 - 2. What should be paid to either party for support and maintenance and for the support and maintenance of the unemancipated children in consideration of the provisions of G.L. c. 208, § 34;
 - 3. Whether and to what extent all or any part of the estate of the Husband or Wife should be assigned to the other in consideration of the provisions of G.L. c. 208, § 34;
 - 4. All other rights and obligations arising from the marital relationship; and
 - 5. All other matters which should be settled in view of their separation and anticipated divorce.

Agreement

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the Husband and Wife mutually agree as follows:

Separate Status

From the date hereof, the Husband and Wife may continue to live separate and apart from each other for the rest of their lives, as fully as if sole and unmarried, and free from the authority of, or interference by, the other. However, nothing contained herein

shall be interpreted or intended by the parties to qualify as a restraining order requiring registration, the violation of which would be a criminal offense.

Debts

The Wife warrants and represents that she has not contracted any indebtedness for which the Husband is or may be liable. The Husband warrants and represents that he has not contracted any indebtedness for which the Wife is or may be liable. The Husband and Wife further warrant and represent that neither will contract from and after the date hereof any indebtedness for which the other is or may be liable, except such as has specifically been assumed by the provisions of this Agreement elsewhere contained. If either of the parties hereto shall be called on to pay any obligation for which the other shall be liable, he or she shall promptly give notice to the other party, who shall have the opportunity in good faith and at his or her expense to defend any such claim. If either party shall nevertheless be called on to pay any such claim, the other party shall indemnify and hold him or her harmless therefrom, including attorney fees and related expenses. The parties represent that neither of them has nor will hereafter use or utilize the other's name or business name for purposes of having credit extended to him or her.

Full Disclosure

The Husband and the Wife declare and acknowledge that each of them understands the position, circumstances and prospects of the other, and that each has fully described his or her assets and liabilities to the other party to the best of his or her knowledge and ability, both orally and otherwise and by the exchange of copies of current Probate Court Supplemental Rule 401 Financial Statements, duplicate signed copies of which shall be filed with the court.

Each party has carefully considered the future projected income, financial resources, liabilities and expenses of the other and of himself or herself, and the within Agreement is executed based on said knowledge of each. It is agreed and understood by the parties that they have been afforded the opportunity for full discovery of any and all pertinent data with regard to the income, assets, liabilities and expenses of the other, and that each executed this Agreement based on his or her personal knowledge and the written representations of the other party, as set forth in the Probate Court Supplemental Rule 401 Financial Statements the parties have exchanged, which each believes to be a true, complete and accurate reflection of the current fair market value of the other party's assets, and a complete and accurate reflection of the other party's expenses, financial status and circumstances, and on which each relies in executing this Agreement.

Voluntary Execution

The parties state that they have negotiated the terms of this Agreement directly, that each has had independent legal advice by counsel of his or her own choosing and that after consultation with their respective attorneys, after being advised fully as to all the facts and circumstances herein set forth and after having read this Agreement line

by line, each freely and fully accepts the terms, conditions and provisions hereof and enters into this Agreement voluntarily and without coercion.

Entire Agreement

The Husband and Wife have incorporated in this Agreement their entire understanding. No oral statement or prior written matter, extrinsic to this Agreement, shall have any force or effect. Neither the Husband nor the Wife is relying on any representations other than those expressly set forth herein.

Waiver of Estate Claim

Except as provided herein, the Husband and Wife each hereby waive any right at law or in equity to elect to take against any last will made by the other, including all rights of dower or of courtesy, and each hereby waives, renounces and relinquishes unto the other, and to each other's respective heirs, executors, administrators, and assigns forever, all and every interest of any kind or character that either may now have or may hereafter acquire, in or to any real or personal property of the other, regardless whether such property is now owned or may be hereafter acquired by the other.

Except as provided herein, the Husband and Wife shall each have the right to dispose of his or her property, by will or otherwise, in such manner as each may, in his or her uncontrolled and unlimited discretion deems proper; and neither will claim any interest in the estate of the other, except to enforce any obligations imposed by this Agreement.

It is the intention of the parties that their respective estates shall be administered as though no marriage between them had ever existed. However, nothing in this Paragraph is intended to or shall constitute a waiver by either party of any rights or claims he or she may have against the estate of the other by reason of a breach of this Agreement or a waiver by either party of any testamentary provisions that the other may voluntarily make for him or her.

Mutual Releases

Except for any cause of action for divorce, or any enforcement of any probate and family court judgment concerning dissolution of the marital relationship, or to enforce the provisions of this Agreement in any court, the Husband and Wife hereby release and forever discharge each other with respect to matters arising out of the marital relationship from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity, that either of them has ever had, now has or may hereafter have against the other, on or by reason of any matter, cause or thing up to the date of this Agreement, including but not limited to, claims against the property of the other, it being the intention of the parties that henceforth there shall exist as between them only such rights and obligations as are specifically provided for in this Agreement.

Acceptance as Full Satisfaction

The Husband and Wife agree to accept the provisions set forth in this Agreement in full satisfaction and discharge of all claims, past, present and future, that either party may have against the other, and that in any way arise out of the marital relationship.

Exhibits

The Husband and Wife agree to be bound by and to perform and carry out all of the terms of the Exhibits annexed hereto and hereby made a part hereof to the same extent as if each of the said Exhibits were fully set forth in the text of this Agreement.

Strict Performances

The failure of the Husband or of the Wife to insist in any instance on the strict performance of any of the terms hereof shall not be construed as a waiver of such terms for the future, and such terms shall nevertheless continue in full force and effect.

Effect of Divorce Judgment

At any hearing on the divorce complaint, an executed copy of this Agreement shall be submitted to the court with the request that the Agreement be incorporated into the judgment of divorce, and that all terms or conditions of this Agreement that apply to the custody, care, visitation, support, education and medical care of the parties, minor children shall be merged into such judgment of divorce and thereafter have no further independent legal significance.

All the other terms and conditions of this Agreement, not relating to the minor children, shall thereafter retain independent legal significance as a contract between the parties that is forever binding on the Husband and Wife and their respective heirs, executors, administrators, assigns and other legal representatives. The purposes of this Paragraph are: (1) to protect both parties against any attempt by the other party to vary the terms of this Agreement as to interspousal support and property division after entry of judgment and (2) to enable the Husband and Wife to procure an enforcement of the terms of this Agreement incorporated into a judgment of divorce in the Middlesex County Probate and Family Court or as a binding contract in any court with jurisdiction over the person or property of the other party.

Documents

Whenever called on to do so by the other party, each party shall forthwith execute, acknowledge and deliver to or for the other without consideration any and all deeds, assignments, bills of sale or other instruments that may be necessary or convenient to carry out the provisions of this Agreement or that may be required to enable the other party to sell, encumber or otherwise dispose of the property now or hereafter owned or acquired by the other party.

Counsel Fees

Each party shall pay the fees and expenses of his or her counsel incurred in connection with the negotiation of this Agreement and any services incident to an action of divorce between the parties.

Court Cost and Counsel Fees in the Event of Breach

If either the Husband or the Wife shall commit a breach of any of the provisions of this Agreement and legal action shall be reasonably required to enforce such provisions and be instituted by the other, the party in breach shall be liable for all court costs and reasonable attorney fees incurred in instituting and prosecuting such action.

Validity

In the event any part of this Agreement shall be held invalid, such invalidity shall not invalidate the whole Agreement, but the remaining provisions of this Agreement shall continue to be valid and binding and deemed to reflect fairly the intent and understanding of the parties in executing this Agreement.

Governing Law

This Agreement shall be construed and governed according to the laws of the Commonwealth of Massachusetts.

Duplicate Originals

This Agreement is executed in multiple counterparts, each of which shall be deemed an original and all constituting together one and the same instrument, this being one of the counterparts.

Modification

This Agreement shall not be altered or modified except by an instrument signed and acknowledged by the Husband and Wife.

WITNESS our hands and seals this 18th day of November 1992.

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

November 18, 1992

Then personally appeared the within-named Deborah Smith and acknowledged that she signed the foregoing instrument of her free act and deed for the purposes therein set forth, before me,

Notary Public

My Commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex ss.

November 18, 1992

Then personally appeared the within-named James B. Smith and acknowledged that he signed the foregoing instrument of his free act and deed for the purposes therein set forth, before me,

Notary Public

My Commission expires: _____

Custody and Visitation

Legal and Physical Custody

(a) The Husband and Wife, subject to the approval of the Middlesex County Probate and Family Court, shall have shared legal custody of their minor children, with physical custody to the Wife.

(b) The Husband and Wife agree that it is of paramount importance for each of them to remain involved in the major parental decisions and guidance of the children, for the children to feel affection and respect for each parent, and for each parent to foster and nurture in the children respect and affection for the other parent, all to the end that each parent's relationship with the children should remain as close as possible.

(c) Accordingly, each party agrees to keep the other timely informed of the academic, physical, emotional and social status and activities of each child. Each may, without further permission of the other, review all school, medical and dental, and other reports or written communications concerning the welfare of the children and consult with any individuals who provide medical, psychological, dental or educational services for the children. Each may give authorization for providing emergency services for the children. Each may also exercise sole authority and responsibility for decisions concerning the daily living needs, cares and activities of each child who is in his or her physical custody.

(d) The parties shall consult about significant issues concerning the welfare of each child, including but not limited to each child's medical, mental health, dental treatment, educational choices and alternatives, social and recreational activities and the time spent by each child with each of the parties. The parties agree that in all such matters, the interests and desires of the children shall be determined and given primary consideration.

Notification—Illness of Child

In the event of any serious illness of a child, the parent with whom the child is then staying shall immediately notify the other parent.

Father's Time with the Children

(a) The Father shall have the children with him every Wednesday from 6:00 p.m. to 8:00 p.m. and on alternating weekends from Friday at 6:00 p.m. to Sunday at 5:00 p.m.

(b) The Father shall visit with the children on Father's Day whether or not the children are visiting with him on the weekend on which Father's Day falls; and the Mother shall have the children on Mother's Day.

(c) Each party shall be allowed telephone access to the children at reasonable times while the children are with the other parent.

(d) The parties shall visit with the children on the holidays of Thanksgiving, Christmas and Easter on an alternating basis, such that, if the children spend Thanksgiving with one parent in a given year, then they will spend Christmas with the other parent in that year and the following Easter with the parent with whom they had Thanksgiving visitation. This pattern will alternate from year to year.

(e) Each party shall be entitled to at least two weeks' vacation with the children each year, which may be consecutive or divided as the parties agree.

(f) The Monday holidays shall be shared equally between the parties. Unless it results in an unequal division of said holidays during the year, the party with whom the children are staying the weekend immediately preceding such a Monday shall have the children that Monday as well. If it is the Father who has the children on a Monday holiday, he shall return the children at 5:00 p.m.

(g) Any of the schedules and arrangements set out herein may be varied by mutual agreement of the parties consistent with the schedule and wishes of the children, provided that each party gives the other reasonable advance notice of any request to change the visitation schedule.

(h) The Father shall provide the transportation for his time with the children unless he is unable to do so due to an emergency, in which case he will notify the Mother and make other arrangements. If a visit is missed due to illness or other unavoidable circumstances, the parties shall work out a reasonable substitution consistent with the schedule and wishes of the children, provided that each party gives the other reasonable advance notice of any request to change the visitation schedule.

Notification—Visitation

(a) Each party shall promptly notify the other of any circumstances that would prohibit or limit the exercise of any visitation rights hereunder.

(b) Each party shall also promptly notify the other of any unusual or noteworthy event or behavior of the children that took place while he or she was with the children.

Permanent/Temporary Removal of Children from Massachusetts

Neither party shall permanently remove the children or change their principal residence from the Commonwealth of Massachusetts without the prior written consent of the other or the permission of the probate court obtained pursuant to G.L. c. 208, § 30.

Both the Husband and Wife shall have the right to remove the children from the Commonwealth of Massachusetts for trips and vacations that are temporary in nature, but each shall notify the other party in advance of such trips and vacations and advise where the children will be and how the other parent can be reached by telephone.

Death Arrangements

In the event of the Wife's death, the Husband shall have the sole care, custody and control of the children. In the event of the Husband's death, the Wife shall have the sole care, custody and control of the children. Neither the Husband nor the Wife shall include in his or her respective wills any provision that undermines or contradicts the foregoing, and any such provision in any such will shall be void.

Child Support

Basic Child Support Obligation

Commencing forthwith, the Husband shall pay to the Wife the sum of \$_____ each and every week as child support until such time as the children are emancipated, at which time his obligation shall cease and be forever discharged. Nothing herein, however, is intended to prevent either party from seeking modification of support based on material change of circumstances. Said payments shall be nontaxable to the Wife and nondeductible by the Husband for his income tax purposes.

Dependency Exemptions

The Husband shall be entitled to claim both the children as dependency exemptions for state and federal income tax purposes when payments are made pursuant to the paragraph above. The Wife agrees to complete, execute and timely provide for the Husband all documents (including federal Form 8332) required by the U.S. Internal Revenue Service and the Massachusetts Department of Revenue to indicate her release of one dependency exemption in favor of the Husband.

Emancipation

With respect to a child, emancipation shall occur or be deemed to have occurred on the earliest happening of any of the following:

- Attaining the age of 18 years or graduation from high school without plans for post-high school education as a full-time student; or if attending a vocational training school or college as a full-time student at age 23 or the completion of such college or school, whichever occurs first, provided that
 - a child's engagement in part-time employment while said child is pursuing his education as a full-time student shall not be deemed emancipating; and
 - full-time employment by a child during school vacations shall not be deemed emancipation. Emancipation under this paragraph shall be deemed to terminate on a child's subsequently entering vocational training school or college; thereafter, emancipation shall be determined in accordance with other applicable provisions of this paragraph;
- Marriage;
- Permanent residence away from the residence of the Wife. Residence at boarding school, camp or college is not to be deemed a residence away from the Wife;

- Death;
- Entry into the military service of the United States (provided that emancipation shall be deemed to terminate on discharge from such service; thereafter, emancipation shall be determined in accordance with other applicable provisions of this paragraph).

Medical Insurance and Expenses

Medical Insurance

(a) The Husband currently provides medical insurance for both parties and the children through his employer. As long as he is able to do so at no extra cost, the Husband agrees to continue to provide medical insurance coverage for the Wife in addition to the coverage for herself and the children. If coverage is available for the Wife only at additional cost, then the Wife shall pay any such additional costs and the Husband shall cooperate fully to enable the Wife to participate in such insurance.

(b) In all events the Husband shall continue to provide medical coverage for the children until each child is emancipated as defined in Emancipation above. As provided in the Child Support Guidelines, the Husband shall be entitled to a credit against his child support obligations pursuant to Exhibit B of this Agreement for any payments he makes toward the costs of such medical insurance for the benefit of the children, should child support be modified at any time in the future.

(c) Both parties agree that they will promptly fill out, execute and deliver to the insured party all forms and provide all information in connection with any application for reimbursement of medical, dental and drug expenses under any such insurance policies for the benefit of the parties and the children. When either party advances money for such expenses that are covered by insurance and for which a recovery is available for insurance claims filed by such party, the payments by the insurance carrier shall belong to the party who advanced the money for such expenses and any checks from the insurance carrier shall be promptly endorsed and turned over to such party. If either party fails to fill out, execute and deliver all claim forms in a timely manner such that the expense in question is not covered by insurance, the party shall then be responsible to pay for such expenses.

Uninsured Medical and Dental Expenses

Until the emancipation of each child, as herein later defined, the parties shall pay for the uninsured medical and dental expenses of the children, including but not limited to surgical, hospital, prescriptions, psychological or orthodontic care and treatment, in the same proportion as their separate annual earnings related to their combined gross annual earnings. "Gross annual earnings" shall be defined for purposes of this paragraph as the Wife's annual earnings including child support and alimony that she receives and the Husband's earnings less amounts he pays to the Wife as child support.

Consultation Regarding Treatment

Except in emergencies, the Husband and Wife shall be consulted in advance of contemplated major surgery, medical, dental, orthodontia or psychological care. The parties agree that no such nonemergency care or treatment expenses shall be incurred on behalf of the children without the consent of both parties; that no payment shall be required of either party without such consent; and that neither party will unreasonably withhold his or her consent for such care.

Emergency Situations

In all cases of an emergency nature, the parent with whom the child needing emergency care is then staying shall make a reasonable and immediate effort to contact and consult with the other parent but shall be able to authorize any immediately required emergency medical treatment for the children.

Uninsured Medical Expenses of the Parties

The Husband and the Wife shall henceforth each be responsible for his or her own uninsured medical expenses including but not limited to dental, psychiatric or psychological care.

Education of the Children

Post-High School Education

(a) The Husband and Wife agree that the children should receive the best education available to them in light of their aptitudes and interests, including education at the college level. Both parties recognize that the education of the children may require substantial financial expenditures.

(b) The parties agree that the choice of college or other institutions shall be made jointly, with due regard to the children's wishes, welfare, needs and aptitudes, and the parties' respective financial circumstances. Neither party shall make commitments to a private school, college or other institution without first notifying the other and obtaining his or her approval, such approval not to be unreasonably withheld.

Cooperation—Other Sources of Financial Assistance

The Husband and Wife agree that they and the children will fully cooperate in seeking other sources of financial assistance for education expenses, including scholarships, student loans and the like, that may be available to assist the parties to finance the children's education.

Both parties shall assist each child to obtain financial assistance for his or her education by completing and submitting in timely manner any and all applications or financial disclosure statements that may be required by the educational institutions to which the child is applying for admission and financial assistance and by providing

to such institutions or their designees copies of tax returns or any other documents that may be called for as part of the child's application process.

After utilizing all other sources of financial assistance, the parties shall share the remaining costs of college as follows based on their respective financial circumstances. Any support paid by the Father at that time shall be deducted from his gross annual income in determining his financial circumstances.

College costs are defined as tuition, room and board, books, fees and travel at the start and end of each semester.

Summer Camp and Extracurricular Activities

The parties shall divide between them the costs of the children's attendance at summer camp, such costs to include tuition, board and transportation to and from such camp in the same proportion as their separate annual earnings related to their combined gross annual earnings. The parties also agree to share in the same ratio the costs of extracurricular activities of the children including but not limited to music lessons, sports classes and equipment, or remedial or enrichment programs for the children that exceed \$100 per year. "Gross annual earnings" shall be defined for purposes of this paragraph as the Wife's annual earnings including child support and alimony that she receives and the Husband's earnings less amounts he pays to the Wife as child support, if any.

Life Insurance

Life Insurance

Except as hereinafter provided, until the youngest living child is emancipated as defined above, both parties shall cause to be maintained and regularly paid the premiums on life insurance policies on their lives with a net claim value at the time of each party's death in the amount of Two Hundred Thousand (\$200,000) Dollars. In the event of death of either party, said policy shall be payable to a trust established by the party with the children as the sole beneficiaries. Such trust shall provide that the trustee or trustees shall be obligated, at a minimum, to distribute income and/or principal of the trust to satisfy the party's obligations as though the party was still living. When the party establishes such trust, he or she shall forthwith provide the other party with a copy thereof.

If any of the said policies referred to in this section contain an accidental death benefit provision, in excess of the amounts designated above net claim values, the said designated beneficiaries shall be entitled to receive any such additional benefit payable on the party's accidental death.

The obligations under this section will terminate on the emancipation of the children.

Real Estate

The parties own as tenants by the entirety the former marital home, located at 6 Adams Street, Arlington, Massachusetts. On the execution of this Agreement, the Husband will execute a quitclaim deed to the Wife, transferring to her all of his right, title and interest to said property, in exchange for a promissory note from the Wife for 50 percent of the net proceeds on sale, to be paid no later than _____, or earlier at the Wife's option. The note shall bear straight interest at the rate of _____ percent annually, which interest payment may be deferred until payment of the note in full. Net proceeds are defined as sales price less mortgage balance, broker's commission, if any, and reasonable and ordinary costs of closing.

The Husband's fifty-percent interest in the property shall be further secured in addition to the promissory note by a mortgage on the property executed by the Wife, which mortgage shall be filed with the South Middlesex Registry of Deeds. The payment to the Husband is a nontaxable division of assets incident to a divorce. The Wife shall be solely responsible for any capital gains tax due on future sale to third parties. In no event shall one party be obligated to share in the capital gains tax owed by the other party.

Until such time as the property is sold, the Wife shall have the sole right to the use, occupancy and enjoyment of said property, and she shall be solely responsible for payment of mortgage, both principal and interest, real estate taxes, insurance, utilities and ordinary and reasonable maintenance. If any repairs or improvements are necessary to effectuate the sale of the property or to obtain a higher selling price, the parties shall each pay 50 percent of said costs; however, the Husband shall have the right to be consulted and his approval obtained prior to the repairs being made, which approval will not be unreasonably withheld. If one party is unable to do so, the other shall pay the full cost of said repairs and improvements, and shall be reimbursed by the other party on sale of the property from said other party's 50% share of the net proceeds.

[**Note:** The above represents only one option. Other options, such as future sale with both parties remaining on the title, transfer of the home in exchange for other assets such as a pension, or transfer for an amount certain, should all be considered, with particular attention paid to the attendant tax consequences of each.]

Alimony

Alimony

At present, neither party seeks past or present alimony from the other for his or her own support. However, neither party waives any right to seek alimony from the other at some future time, depending on their then respective financial circumstances.

Division of Personal Property***Tangible Property in the Marital Home***

The parties have made a satisfactory division of the furniture, furnishings, personal belongings and other contents located at 6 Adams Street, Arlington, the former marital home. Each shall retain as his or her sole property, the contents of said home presently in his/her possession.

Automobiles

The Husband shall retain the automobile that he is currently using and the Wife hereby releases and waives any claim to such automobile. The Wife shall retain the automobile that she is currently using and the Husband hereby releases and waives any claim to such automobile. Thenceforth, the parties shall each be separately responsible for the costs of maintenance, repair and insurance of their respective automobiles.

The parties also acknowledge that they have divided between them all their intangible personal property to their mutual satisfaction. Except only as otherwise specifically set forth herein, each party shall remain the owner of all intangible personal property now in his or her respective name, including bank accounts, brokerage accounts, and the like.

Pension and Retirement Benefits

The Husband is presently fully vested in a retirement plan provided through his employer _____, No. _____, which is the subject to the provisions of the Retirement Equity Act of 1984.

Within 60 days of the execution of this Agreement the Husband shall have prepared a Domestic Relations Order regarding assignment of a share of the Husband's interest in said Plan to the Wife in a form acceptable to the Plan Administrator of said Plan as being a Qualified Domestic Relations Order (QDRO) according to the provisions of the Retirement Equity Act of 1984 and the Plan rules and regulations.

The QDRO shall call for an assignment to the Wife of one-half of a fraction of the Husband's present and future interest in the Plan benefits, the denominator of which fraction is the total number of years the Husband has been employed by _____ at the time of this agreement (_____ years) and the numerator is the number of years the parties have been married at the time of this agreement (_____ years) ("Wife's Share"). The QDRO shall provide that the plan shall pay to the Wife periodic payments corresponding to the Wife's share as defined above, when, as and if the Husband receives periodic payments on his retirement or would be eligible to elect to receive periodic payments on his early retirement under the terms of the plan; or, in the event the Husband dies before such payments are begun, then at the earliest possible date at which the Husband would have been eligible to receive such periodic payments under the terms of the plan, had he survived.

Other Property

Mutual Waivers with Respect to All Other Property

The parties hereby forever waive and release any right, claim or interest in any other real or personal property they may now own or hereafter acquire, except in fulfillment of any obligation under this Agreement.

Henceforth, each of them shall own, have and enjoy, independently of any claim or right of the other, all items of personal property of every kind now or hereafter owned or held by him or her, with full power to dispose of the same as fully and effectually, in all respects and for all purposes as if he or she were not married.

Taxes

1. Each party represents and warrants to the other to have duly paid all income taxes, state and federal, on all joint returns heretofore filed by the parties; that to each party's knowledge no interest or penalties are due and owing with respect thereto on income earned by each, no tax deficiency proceeding is pending or threatened thereon, and no audit thereof is pending.
2. If there is a deficiency assessment in connection with any of the aforesaid returns (heretofore or hereafter filed), the party responsible shall notify the other immediately in writing. He or she shall pay the amount ultimately determined to be due thereon, together with interest and penalties, and any expenses that may be incurred if he or she decides to contest the assessment.
3. The party responsible shall in all respects indemnify the other against, and hold him or her harmless from, any deficiency assessment or tax lien arising out of any joint return heretofore or hereafter filed by the parties, as well as any damages and expenses whatsoever in connection therewith. Each shall keep the other fully informed of any and all steps taken by him or her with respect to a deficiency assessment.
4. The term "party responsible" shall mean that party who is in equity and good conscience responsible for any tax deficiency or lien. If both parties are equally responsible, they shall share equally the responsibility for any defense or payment.
5. If there is a refund on any of the aforesaid returns, it shall belong to both parties equally.

EXHIBIT 6H—Joint Petition for Divorce

An updated version of the form used in this sample petition, along with instructions and printing standards, is available at <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#4>.

Commonwealth of Massachusetts
The Trial Court

MIDDLESEX Division Probate and Family Court Department Docket No. _____

Joint Petition For Divorce Under M.G.L. Ch. 208, Sec. 1A

DEBORAH SMITH and JAMES B. SMITH
Petitioner Petitioner
of 6 Adams Street of 22B Stuart Street
(Street and No.) (Street and No.)
Arlington, MA 02174 Belmont, MA 02178
(City or Town) (State) (Zip) (City or Town) (State) (Zip)

1. Now come the Husband and Wife in a joint petition for divorce pursuant to Massachusetts General Laws, Chapter 208, Sec. 1A.
2. The parties were lawfully married at Hartford, Connecticut on November 10, 1981 and last lived together at 6 Adams St., Arlington, MA on April 16 19 92.
3. The minor child ren of this marriage and date(s) of birth ~~is~~/are:

Anne B. Smith March 18, 1992
Thomas C. Smith September 1, 1989

4. The parties certify that no previous action for divorce, annulment, affirmation of marriage, separate support, desorption, living apart for justifiable cause, or custody of child ren has been brought by either party against the other. ~~except~~ x

5. On or about April 16, 19 92, an irretrievable breakdown of the marriage under M.G.L. Ch. 208, Sec. 1A occurred and continues to exist.

6. Wherefore, the parties pray that the Court:
 grant a divorce on the ground of irretrievable breakdown
 approve the separation agreement executed by the parties
 incorporate and merge said agreement executed by the parties, as to the children.
 incorporate but not merge said agreement, which shall survive and remain as an independent contract, except as
 allow Wife to resume her former name of Deborah Jones to the children.

Date November 18, 1992

SIGNATURE OF WIFE OR ATTORNEY
DEBORAH SMITH
(Print address if not pro se)
6 Adams Street
Arlington, MA 02174
Tel. No. ()

SIGNATURE OF HUSBAND OR ATTORNEY
JAMES B. SMITH
(Print address if not pro se)
22B Stuart Street
Belmont, MA 02178
Tel. No. ()

**Joint Petition for Divorce
Under M.G.L. c. 208, Sec. 1A**

For Wife:

Address _____

Tel No. (____) _____

Docket No. _____

Filed _____ 19 ____

Agreement Approved _____ 19 ____

Judgment _____ 19 ____

For Husband:

Address _____

Tel. No. (____) _____

Documents filed:

Marriage Certificate

Wife's Financial Statement

Husband's Financial Statement

Separation Agreement

Affidavit of Irretrievable Breakdown

Affidavit Disclosing Care
or Custody Proceedings

Child Support Guidelines
Worksheet

EXHIBIT 6I—Complaint for Divorce

An updated version of the form used in this sample complaint, along with instructions and printing standards, is available at <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#4>.

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT

Middlesex Division

Docket No. _____

COMPLAINT FOR DIVORCE

DEBOPAH SMITH, Plaintiff

v.

JAMES B. SMITH, Defendant

1. Plaintiff, who resides at 6 Adams Street, Arlington, Massachusetts was lawfully married to the defendant who now resides at 22B Stuart Street, Belmont Massachusetts.
2. The parties were married at Hartford, Connecticut on November 10, 1981 and last living together at Arlington, Massachusetts on April 16, 1992

3. The minor children of this marriage, and date(s) of birth - & - are:

<u>Anne B. Smith</u>	<u>March 18, 1986</u>
<u>Thomas C. Smith</u>	<u>September 1, 1989</u>

4. Plaintiff certifies that no previous action for divorce, annulling or affirming marriage, separate support, desertion, living apart for justifiable cause, or custody of children has been brought by either party against the other ~~except~~ _____

5. On or about April 16, 1992, the ~~defendant~~ plaintiff states there was an irretrievable breakdown of the marriage which continues to exist.

6. Wherefore, plaintiff requests that the Court:

- ~~grant a divorce for irretrievable breakdown of the marriage pursuant to MGL 208 §1B~~
- grant a divorce for irretrievable breakdown of the marriage pursuant to MGL 208 §1B
- prohibit defendant from imposing any restraint on plaintiff's personal liberty
- grant her custody of the above-named child ren
- order a suitable amount for support of the plaintiff and said minor child ren
- order conveyance of the real estate located at _____ standing in the name of _____ as recorded with _____

Registry of Deeds, Bk. _____ Pg. _____

- allow plaintiff to resume her former name of _____
- order an equitable division of marital assets pursuant to MGL 208§34. and such other relief as the Court deems meet and just.

Dated: November 18, 1992

Signature of Attorney
~~Phyllis K. Kolman~~
 Phyllis K. Kolman
 Print name & address Benjamin I. Benson
43 Thorndike Street
Cambridge, MA 02141

CJD 101 (3/94)

COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
THE PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX Division

Docket No. _____

COMPLAINT FOR DIVORCE

DEBORAH SMITH, Plaintiff

v.

JAMES B. SMITH, Defendant

For Plaintiff:

Phyllis K. Kolman

Address Benjamin & Benson
43 Thorndike Street
Cambridge, Massachusetts 02141

Tel. No. 617-577-1515

Filed _____ 198

Judgment _____ 198

Temporary Orders _____ 198

For Defendant:

Address _____

Tel. No. _____

Documents filed:

Marriage Certificate

Plaintiff's Financial Statement

Defendant's Financial Statement

Service on Summons

INSTRUCTIONS

Refer to Massachusetts General Laws Chapter 208 and Massachusetts Rules of Domestic Relations Procedure.

- 1) A certified copy of your civil marriage certificate must be filed with this Complaint.
- 2) Recite street address, city or town, and county in paragraphs one and two; city or town and county or state in paragraph five.
- 3) In completing paragraph four, please provide only the docket number and county.
- 4) The allegations in paragraph five must comply with General Laws Chapter 208, Sections 1 and 2 and Massachusetts Rules of Domestic Relations Procedure Rule 8.
- 5) All requests for temporary relief must be made by motion, although several prayers may be contained in one. For temporary restraining orders see Mass. R. Dom. Rel. P. Rule 65, affidavit requirement.
- 6) If attachment or trustee process is desired, a motion with affidavit must be filed. A certificate of insurance is normally not required in domestic relations cases. See Massachusetts Rules of Domestic Relations Procedure Rule 4.1 and 4.2.
- 7) Plaintiff must sign this Complaint if appearing pro se; otherwise plaintiff's attorney must sign and give his address in the space provided.

EXHIBIT 6J—Financial Statement

Updated versions of the forms used in this sample statement, along with instructions and printing standards, are available at <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#4>.

Commonwealth of Massachusetts
The Trial Court

Middlesex Division

Probate and Family Court Department

Docket No. 92D-1234-D1

Financial Statement
(LONG FORM)

Deborah Smith

V.

James B. Smith

Plaintiff/Petitioner

Defendant/Petitioner

INSTRUCTIONS: This financial statement should be completed if your income equals or exceeds \$75,000.00 or if ordered by the court. All items on both sides of this form must be addressed either with the appropriate amount or the word "none" inserted for items that are not applicable to your personal situation. Additional sheets may be attached to supplement any item. You must complete and attach Schedule A if you are self-employed or have other business income, and/or Schedule B if you own rental property.

I. PERSONAL INFORMATION

Your Name James B. Smith Social Security Number 123 - 12 - 1234

Address 19 Hoder Road, Cambridge, Massachusetts 02141
(street address) (city or town) (state) (zip code)

Telephone Number (617) 577-4567 Date of Birth 10/23/51 Age 46

Occupation Executive

Employer The Corporation Employer's Telephone Number (617) 861-4321

Employer's Address 124 X Street, Boston, Massachusetts 02109
(street address) (city or town) (state) (zip code)

Do you have health insurance coverage Yes No If yes, name of health insurance provider HMO

Do you have any natural, adopted, stepchild(ren), foster child(ren) or children of partners who are living in your household half time or more?

Yes No If so, how many child(ren)? _____

II. GROSS WEEKLY INCOME/ RECEIPTS FROM ALL SOURCES (strike inapplicable words)

a) Base pay, salary, wages	<u>1,476.92</u>
b) Dividends - interest	<u>None</u>
c) Retirement pay	<u>None</u>
d) Income from rental property	<u>None</u>
e) Gifts	<u>None</u>
f) Income from business or profession	<u>None</u>
g) Dividends - interest	<u>4.83</u>
h) Income from real estate	<u>None</u>
i) Income from annuities	<u>None</u>
j) Income from trusts	<u>None</u>
k) Income from partnerships	<u>None</u>
l) Income from other sources	<u>None</u>
m) Income from Social Security	<u>None</u>
n) Income from other sources (if not completed, Schedule B)	<u>None</u>
o) Income from other sources	<u>None</u>
p) Income from other sources	<u>None</u>
q) Income from other sources	<u>None</u>

TOTAL GROSS WEEKLY INCOME/RECEIPTS (Add items a-q) 1,481.75

CJD 301-L (11/97)

III. WEEKLY DEDUCTIONS FROM GROSS INCOME

TAX WITHHOLDING

a)	Federal tax withholding/estimated payments		241.02
	Number of withholding allowances claimed	0	
b)	State tax withholding/estimated payments		69.08
	Number of withholding allowances claimed	0	

OTHER DEDUCTIONS

c)	F.I.C.A.		88.90
d)	Medicare		None
e)	Medical Insurance		50.37
f)	Union Dues		None
g)	Child Support		None
h)	Spousal Support		73.85
i)	Retirement		None
j)	Savings		None
k)	Deferred Compensation		None
l)	Credit Union (Loan)		39.23
m)	Credit Union (Savings)		None
n)	Charitable Contributions		9.77
o)	Life Insurance		None
p)	Other (specify) _____		None
q)	Other (specify) _____		None
r)	Other (specify) _____		None

TOTAL WEEKLY DEDUCTIONS FROM PAY (Add items a-r) 262.12

IV. NET WEEKLY INCOME

a)	Enter total gross weekly income/receipts		1,481.75
b)	Enter total weekly deductions from pay		262.12

NET WEEKLY INCOME (Subtract IV(b) from IV(a)) 1,219.63

V. GROSS INCOME FROM PRIOR YEAR

(attach copy of all W-2 and 1099 forms for prior year and Schedule A, if self employed)

74,523.58

Number of years you have paid into Social Security 25

VI. COUNSEL FEES

Retainer amount(s) paid to your attorney(s)			2,000.00
Legal fees incurred, to date, against the retainer(s)			500.00
Anticipated range of total legal expense to prosecute this action			2,000.00 to 5,000.00

VII. WEEKLY EXPENSES NOT DEDUCTED FROM PAY

INSTRUCTIONS: All expense figures must be listed by their WEEKLY total. DO NOT list expenses by their MONTHLY total. In order to compute the weekly expense, divide the monthly expense by 4.3. For example, if your rent is \$500.00 per month, divide 500 by 4.3. This will give you a weekly expense of \$116.28. Do not duplicate weekly expenses. Strike inapplicable words.

Rent	85.69
Mortgage (P & I, Taxes/Insurance, if escrowed)	None
Property taxes and assessments	None
Homeowner's Insurance	1.71
Tenant's Insurance	None
Maintenance Fees - Condominium Fees	None
Maintenance/Repairs	None
Heat (type: _____)	
Electricity	5.49
Propane/Natural Gas	
Telephone	11.37
Water/Sewer	None
Food	85.00
House Supplies	13.00
Laundry	12.50
Dry cleaning	None
Clothing	15.77
Life insurance	None
Medical insurance	None
Uninsured medical - dental expenses	32.77
Incidentals/toiletries	5.00
Motor vehicle expenses	52.00
Fuel	
Insurance	
Maintenance	
Loan payment(s)	
Entertainment	
Vacation	
Cable TV	
Child Support (attach a copy of the order, if issued by a different court)	420.00
Child(ren)'s Day Care Expense	
Child(ren)'s Education	
Education (self)	
Employment related expenses (which are not reimbursed)	
Uniforms	
Travel	68.00
Required continuing education	
Other (specify) _____	
Lottery tickets	
Charitable contributions/Church giving	5.00
Child(ren)'s allowance	
Extraordinary travel expenses for visitation with child(ren)	
Other (specify) <u> G i f t s </u>	10.00
Other (specify) _____	
Other (specify) _____	
TOTAL WEEKLY EXPENSES NOT DEDUCTED FROM PAY	823.30

VIII. ASSETS

INSTRUCTIONS: List all assets including, but not limited to the following. If additional space is needed for any answer or to disclose additional assets an attached sheet may be filed.

A. REAL ESTATE

Real Estate — Primary Residence

Address 6 Adams Street, Arlington, Massachusetts
(street address) (city or town) (state)

Title held Joint

Outstanding 1st mortgage 125,000.00

Outstanding 2nd mortgage or home equity loan 100,000.00

Equity _____

Purchase Price of the Property _____

Year of Purchase _____

Current Assessed Value of the Property _____

Date of Last Assessment _____

Fair Market Value of the Property 225,000.00

Real Estate — Vacation or Second Home (including interest in time share)

Address _____
(street address) (city or town) (state)

Title held _____

Outstanding 1st mortgage _____

Outstanding 2nd mortgage or home equity loan _____

Equity _____

Purchase Price of the Property _____

Year of Purchase _____

Current Assessed Value of the Property _____

Date of Last Assessment _____

Fair Market Value of the Property _____

B. MOTOR VEHICLES, including cars, trucks, ATVs, snowmobiles, tractors, motorcycles, boats, recreational vehicles, aircraft, farm machinery, etc.

Type Sedan

Make Honda

Model Accord

Purchase Price of vehicle 15,000.00

Year of Purchase 1991

Fair Market Value 4,775.00

Outstanding Loan None

Equity 4,775.00

Type _____

Make _____

Model _____

Purchase Price of vehicle _____

Year of Purchase _____

Fair Market Value _____

Outstanding Loan _____

Equity _____

VIII. **ASSETS CONTINUED**

C. **PENSIONS**

	Institution	Account Number	Listed Beneficiary	Current Balance/Value
Defined Benefit Plan				
Defined Contribution Plan				

D. **OTHER ASSETS.** List assets which are held individually, jointly, in the name of another person for your benefit, or held by you for the benefit of your minor child(ren). (List particulars as indicated, e.g., institution/plan name(s) and account number(s), named beneficiaries and current balances, if applicable)

	Institution	Account Number	Listed Beneficiary	Current Balance
Checking Account(s)	BayBank	#38766038		3,257.49
Savings Account(s)	BayBank	#38766038		5,468.56
Cash on Hand				
Certificate(s) of Deposit				
Credit Union Account(s)	Corp. Credit Union	1427C		21,000.39
Funds Held in Escrow				
Stocks				
Bonds				
Bond Fund(s)				
Notes Held				
Cash in Brokerage Account(s)				
Money Market Account(s)				

Divorce Demystified

	Institution	Account Number	Listed Beneficiary	Current Balance
U.S. Savings Bond(s)				
IRAs				
Keough				
Profit Sharing				
Deferred Compensation				
Other Retirement Plans 401 (K)				206,262.86
Annuity (please specify whether a tax deferred annuity or a tax sheltered annuity).				
Life Insurance Cash Value (please specify whether a term or a whole/universal life insurance policy).				
Judgments/Liens				
Pending Legacies and/or Inheritances				
Jewelry				
Contents of Safe or Safe Deposit Box				
Firearms				
Collections				
Tools/Equipment				3,000.00
Crops/Livestock				
Home Furnishings (value)				
Art and Antiques				
Other (specify Stereo, VCR, Computer)				3,000.00
Other (specify)				

TOTAL ASSETS

346,764.30

XI. **LIABILITIES** (List loans, credit card debt, consumer debt, installment debt, etc. which are not listed elsewhere)

INSTRUCTIONS: All payment figures must be listed by their WEEKLY amount. DO NOT list payments by their MONTHLY amount. In order to compute the weekly payment, divide the monthly payment by 4.3. For example, if your credit card liability is \$500.00 per month, divide 500 by 4.3. This will give you a weekly payment of \$116.28.

CREDITOR	KIND OF DEBT	DATE INCURRED	AMOUNT DUE	WEEKLY PAYMENT
Misc. Cr. Card	personal	revolving	3,211.65	20.00
Filene's	miscellaneous	revolving	372.00	10.00
TOTALS			3,583.65	30.00

CERTIFICATION BY AFFIANT

I certify under the penalties of perjury that the information stated on this Financial Statement and the attached Schedules, if any, is complete, true, and accurate. I UNDERSTAND THAT WILLFUL MISREPRESENTATION OF ANY OF THE INFORMATION PROVIDED WILL SUBJECT ME TO SANCTIONS AND MAY RESULT IN CRIMINAL CHARGES BEING FILED AGAINST ME.

May 26, 1998
Date

Signature

COMMONWEALTH OF MASSACHUSETTS

County of Middlesex

Then personally appeared the above James B. Smith and declared the foregoing to be true and correct, before me this 26 day of May, 1998.

Notary Public

My Commission Expires: 1/1/2002

INSTRUCTIONS: In any case where an attorney is appearing for a party, said attorney **MUST** complete the Statement by Attorney.

STATEMENT BY ATTORNEY

I, the undersigned attorney, am admitted to practice law in the Commonwealth of Massachusetts — am admitted pro hoc vice for the purposes of this case — and am an officer of the court. As the attorney for the party on whose behalf this Financial Statement is submitted, I hereby state to the court that I have no knowledge that any of the information contained herein is false.

May 26, 1998
Date

Signature

Name of Attorney Phyllis K. Kolman, Benjamin & Benson
Please Print

Address 43 Thorndike Street, Cambridge, MA 02141-1717

Tel. No. (617) 577-1515

BBO # 547976

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Middlesex Division

Docket No. 92D-1234-D1

Financial Statement
(SHORT FORM)

Deborah Smith v. James B. Smith
Plaintiff/Petitioner Defendant/ Petitioner

INSTRUCTIONS: If your income equals or exceeds \$75,000.00 you must complete the LONG FORM financial statement, unless otherwise ordered by the Court. All questions on both sides of this form must be answered in full or the word "none" inserted. If additional space is needed for any answer, an attached sheet may be filed in addition to, but not in lieu of, the answer. Information contained herein is confidential and only available to the parties and persons authorized under Probate and Family Court Department Supplemental Rule 401.

1. Your Name Deborah Smith Soc. Sec. No. 111-22-3344
Address 6 Adams Street, Arlington, MA 02174
(street and no.) (city or town) (state) (zip)
Age 43 Tel. No. (617) 230-0000 No. of Children living with you 2
Occupation Admin. Assistant Employer XYZ Corporation
Employer's Address 111 Commonwealth Avenue, Boston, Massachusetts 02108
(street and no.) (city or town) (state) (zip)
Employer's Tel. No. (617) 876-5432 Health Ins. Coverage [] YES [] NO
Health Insurance Provider HMO (Husband) Cert. No. 123456789

2. **Gross Weekly Income from All Sources (strike inapplicable words)**

a). Base pay from salary, wages	\$ 520.00
b). Self Employment income (attach a completed Schedule A)	\$ None
c). Income from overtime-commissions-tips-bonuses-part-time job	\$ Nominal
d). Dividends - interest	\$ None
e). Income from trusts or annuities	\$ None
f). Pensions and retirement funds	\$ None
g). Social Security	\$ None
h). Disability, unemployment insurance or worker's compensation	\$ None
i). Public Assistance (welfare, A.F.D.C. payments)	\$ None
j). Rental from Income Producing Property (attach a completed Schedule B)	\$ None
k). All other sources (including child support, alimony)	\$ None
i). Total Gross Weekly Income (a through k) \$ 520.00	

3. **Itemize Deductions from Gross Income**

a). Federal income tax deductions (claiming _____ exemptions)	\$ 67.00
b). State income tax deductions (claiming _____ exemptions)	\$ 26.00
c). F.I.C.A./Medicare	\$ 39.00
d). Medical Insurance	\$ 13.00
e). Union Dues	\$ None
f). Total Deductions (a through e) \$ 145.00	

4. **Adjusted Net Weekly Income**
2 (l) minus 3 (f) \$ 375.00

5. **Other Deductions from Salary**

a). Credit Union (Loan Repayment or Savings)	\$ None
b). Savings	\$ None
c). Retirement	\$ None
d). Other - Specify (such as Deferred Compensation or 401K) <u>Parking</u>	\$ 12.00
e). Total Deductions (a through d) \$ 12.00	

6. **Net Weekly Income** 4 minus 5 (e) \$ 363.00

7. **Gross Yearly Income from Prior Year** 1991 \$ 27,074.00
(attach copy of all W-2 and 1099 forms for prior year)

CJ-D 301S (11/97)

Divorce Demystified

8. **Weekly Expenses** (Do Not Duplicate Weekly Expenses - Strike Inapplicable Words)

a) Rent - Mortgage (PIT)	\$ 65.00	j) Life Insurance	\$ None
b) Homeowner's/Tenant Insurance	\$ 12.00	m) Medical Insurance	\$ None
c) Maintenance and Repair	\$ 50.00	n) Uninsured Medicals	\$ 110.00
d) Heat (Type _____)	\$ 50.00	o) Incidentals and Toiletries	\$ 15.00
e) Electricity and/or Gas	\$ 46.61	p) Motor Vehicle Expenses	\$ 56.00
f) Telephone	\$ 31.00	q) Motor Vehicle Loan Payment	\$ None
g) Water/Sewer	\$ 7.00	r) Child Care	\$ 100.00
h) Food	\$ 120.00	s) Other (attach additional schedule, if necessary)	\$ _____
i) House Supplies	\$ 15.38	Pers./Grooming	\$ 17.30
j) Laundry and Cleaning	\$ 20.00	Vacations (self & ch.)	\$ 20.00
k) Clothing	\$ 115.38	Gifts/Ent	\$ 42.00
		Domestic Help	\$ 20.00
		Total Weekly Expenses (a through s)	\$ 912.67

9. **Counsel Fees**

a) Retainer amount(s) paid to your attorney(s)	\$ 2,000.00
b) Legal fees incurred, to date, against retainer(s)	\$ 300.00
c) Anticipated range of total legal expense to prosecute this action	\$ 2,000.00 to \$ 4,000.00

10. **Assets** (Attach additional schedule for additional real estate and other assets, if necessary)

a) Real Estate
 Location 6 Adams Street, Arlington, Massachusetts
 Title Joint
 Fair Market Value \$ 235,000.00 - Mortgage(s) \$ 125,000 = Equity \$ 110,000.00

b) IRA, Keogh, Pension, Profit Sharing, Other Retirement Plans
List Financial Institution or Plan Names and Account Numbers
Fleet Bank (IRA) \$ 26,432.00
 _____ \$ None
 _____ \$ None
 _____ \$ None
 _____ \$ None

c) Tax Deferred Annuity Plan(s) _____ \$ _____

d) Life Insurance: Present Cash Value _____ \$ _____

e) Savings & Checking Accounts, Money Market Accounts, and CDs - which are held individually, jointly, in the name of another person for your benefit, or held by you for the benefit of your minor child(ren). **List Financial Institution Names and Account Numbers**
Bank of Boston checking account (#99887766) \$ 100.00
Bank of Boston first rate acct. (#66778899) \$ 1,600.00
 _____ \$ _____

f) Motor Vehicles
 Fair Market Value \$ 3,925.00 - Motor Vehicle Loan \$ None = Equity \$ 3,925.00
 Fair Market Value \$ _____ - Motor Vehicle Loan \$ _____ = Equity \$ _____

g) Other (such as - stocks, bonds, collections)
Miscellaneous Personalty \$ Nominal
 _____ \$ _____
 _____ \$ _____

h) **Total Assets** (a through g) \$ 142,057.00

11. **Liabilities** (DO NOT list weekly expenses but DO list all liabilities)

Creditor	Nature of Debt	Date of Origin	Amount Due	Weekly Payment
a) _____				
b) Misc. cr. cards	personal	revolving	1,924.32	15.00
c) Father	personal	1992	3,000.00	
d) _____				
e) Total Amount Due and Total Weekly Payment			\$ 4,924.32	\$ 15.00

12. **Number of Years you have paid to Social Security** 8 years

I certify under the penalties of perjury that my income and expenses, assets, and liabilities as stated herein are true to the best of my knowledge and belief. I have carefully read this financial statement and I certify the information is true and complete.
 Date May 26, 1998 Signature DEBORAH SMITH

STATEMENT BY ATTORNEY

I, the undersigned attorney, am admitted to practice law in the Commonwealth of Massachusetts -- ~~and am admitted to practice law in the Commonwealth of Massachusetts~~ -- and am an officer of the court. As the attorney for the party on whose behalf this Financial Statement is submitted, I hereby state to the court that I have no knowledge that any of the information contained herein is false.

Attorney's Signature John Public, Esquire, Public & Public Date May 26, 1998
 Address 92 Federal St., Boston, MA 02108 Tel. No. () 617-654-3210
 B.B.O. # _____

FINANCIAL STATEMENT SCHEDULE A

Name: _____ Docket No. _____

MONTHLY SELF-EMPLOYMENT OR BUSINESS INCOME

GROSS MONTHLY RECEIPTS

Monthly Business Expenses

- Cost of goods sold _____
- Advertising _____
- Bad debts _____
- Auto: _____
- Gas _____
- Insurance _____
- Maintenance _____
- Registration _____
- Commissions _____
- Depletion _____
- Dues and Publications _____
- Employee Benefit Programs _____
- Freight _____
- Insurance (other than health), please specify type of insurance:

- Interest on mortgage to banks _____
- Interest on loans _____
- Legal and professional services _____
- Office expenses _____
- Laundry and cleaning _____
- Pension and profit sharing _____
- Rent on leased equipment _____
- Machinery/Equipment _____
- Other business property _____
- Repairs _____
- Supplies _____
- Taxes _____
- Travel _____
- Meals and entertainment _____
- Utilities and phone _____
- Wages _____
- Other expenses (specify)

TOTAL MONTHLY EXPENSES

WEEKLY BUSINESS INCOME (Gross monthly receipts less total monthly expenses divided by 4.3.) Enter this amount in Section II, line (d) of CJ-D 301-L or Section 2(b). of CJ-D 301-S.

FINANCIAL STATEMENT SCHEDULE A—Continued

NATURE OF SELF-EMPLOYMENT OR BUSINESS

1. Is this business seasonal in nature? Yes No
2. If a seasonal business, please specify percentage of income received and expenses incurred for each month of the year.

MONTH	PERCENTAGE OF INCOME RECEIVED	EXPENSES INCURRED
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

3. State whether your business accounts on a calendar year basis or fiscal year basis: CALENDAR FISCAL
4. If your business accounts on a fiscal year basis, give the starting and ending dates of your chosen fiscal year:

_____ starting _____ ending _____

5. State your gross receipts, year to date (note whether calendar or fiscal year).

6. State your gross expenses, year to date (note whether a calendar or fiscal year).

FINANCIAL STATEMENT SCHEDULE B

Name: _____ Docket No. _____

RENT FROM INCOME PRODUCING PROPERTY

ANNUAL RENT RECEIVED

ANNUAL RENTAL EXPENSES

- Advertising _____
- Auto and travel _____
- Insurance _____
- Cleaning and Maintenance _____
- Commissions _____
- Interest on mortgage to banks _____
- Other interest (specify)

- Legal and professional services _____
- Repairs _____
- Supplies _____
- Taxes _____
- Utilities _____
- Wages _____
- Other expense (specify)

TOTAL ANNUAL EXPENSES

TOTAL WEEKLY RENTAL INCOME (Gross rent received less expenses, divided by 52) Enter this amount in Section II, line (n) of CJ-D 301-L or Section 2(j), of CJ-D 301-S.

EXHIBIT 6K—Uniform Counsel Certification Form

This form, along with instructions and printing standards, is available at <http://www.mass.gov/courts/forms/pfc/pfc-forms-gen.html#4>.

Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department

Division _____ Docket No. _____

UNIFORM COUNSEL CERTIFICATION FORM

Case Caption: _____

I am the attorney-of-record for: _____

plaintiff defendant petitioner respondent in the above-entitled matter.

In accordance with Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part:

"...Attorneys shall provide their clients with this information about court-connected dispute resolution services; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent."

I hereby certify that I have complied with this requirement.

(Signature of Attorney-of-Record)

(Print name)

B.B.O. # _____

Date _____

EXHIBIT 6L—Standing Order 1-06

Probate and Family Court Standing Order 1-06: Case Management and Time Standards for Cases Filed in the Probate and Family Court Department

Preamble

The fair and efficient administration of justice requires that all cases and actions before the Probate and Family Court receive timely attention and action from the court. This requires that the judicial system dispose of cases as expeditiously as is consistent with care, fairness and sound decisions. It is the responsibility of the court to manage the process and disposition of the cases before the court. These time standards are intended to provide the Probate and Family Court with recognized goals for the timely disposition of cases.

These time standards represent aspirational goals to measure the movement of cases in the Probate and Family Court. Each case is unique and the Judges must, consistent with the rules of court and statutes, exercise sound judgment in such a manner as to provide the parties with a fair opportunity to be heard and to allow the court to achieve a reasoned disposition. Those individuals who appear before our courts have distinct needs that must be addressed on an individual basis, case by case. These time standards preserve discretion for judges to schedule individual cases according to the particular needs of the individuals involved.

These time standards recognize that there are many factors that determine the flow of cases in the Probate and Family Court which are not within the control of the court. These standards also recognize that the cases heard in the Probate and Family Court require consideration of the individual needs of the families who come before the court. Accordingly:

1. General Provisions

This Standing Order applies to all actions filed in the Probate and Family Court.

This Standing Order applies to all Divisions of the Probate and Family Court.

The timing for the completion of the case, from filing to trial, settlement, or dismissal, shall be calculated from the date of filing the petition or complaint.

At time of filing, all cases shall be assigned to a caseflow track according to the type of case. Most cases shall be assigned to one of the following tracks; 3-6 months to trial, 8 months to trial, or 14 months to trial.

2. Track Assignment and Case Management

a. Track Assignment

At filing each case is assigned to a track.

The Plaintiff/Petitioner shall be provided with a Track Assignment Notice except as set forth below. The Plaintiff/Petitioner shall serve the Track Assignment Notice upon the Defendant/Respondent along with the summons or notice (citation). No service of the Track Assignment Notice will be required in cases where service is by publication.

No Track Assignment Notice shall be issued for cases in the 3-6 month track: Probate of Will, Administration, Accounts, Real Estate Sales, and Change of Name. No Track Assignment Notice shall be issued for cases described in sections 10 through 17 of this Standing Order. No Track Assignment Notice shall be issued at the time of filing for any case filed by the Department of Revenue, Child Support Enforcement Division.

The goals for completion of all cases filed in the Probate and Family Court are outlined in the chart in section 7(a) and in sections 10 through 17 of this Standing Order. A Judge, at any time, may change the track designation for a case and issue a new Track Assignment Notice.

b. Next Event Scheduling

At the conclusion of every court event, until a judgment has issued or the complaint has been dismissed, or until a permanent decree has issued or the petition has been dismissed, the Court shall schedule the next court event for the case.

Once a motion hearing, conference, or any other court event has been scheduled and placed on a court list, whether at the request of a party, a party's lawyer, the Register, or the Court, it can be removed from the list or continued only if a next court event is scheduled.

c. Case Management Conferences: Generally

Case Management Conferences will be scheduled by the court for the case types set forth in sections 2(d),(e), and (f) below, when a return of service, answer, objection, or counterclaim is filed and there is no future court event scheduled for the case.

In scheduling a case management conference, the Register shall issue a Case Management Conference Notice and Order in the format specified by the Chief Justice of the Probate and Family Court.

The purpose of the Case Management Conference is to establish the Court's control of the progress of the case, to provide early intervention by the Court, to offer Alternative Dispute Resolution processes, to establish discovery limitations and deadlines, to discuss settlement progress and opportunities for settlement, and to assign a date for the pre-trial conference, if needed.

d. Case Management Conference: Equity, Petition to Partition, and Domestic Relations, including Paternity (except Joint Petitions for Divorce,

Joint Petitions for Modification and Complaint for Divorce filed under G. L. c. 208, § 1B).

Upon the filing of the return of service, answer, objection, or counterclaim, the Register shall review the case to determine if a future court event has been scheduled in the case. If no future court event has been scheduled, the Register shall schedule a Case Management Conference on the next available date, but no sooner than thirty (30) days from the filing of the return of service, answer, objection, or counterclaim. The Register shall send the Case Management Conference Notice and Order to all parties.

e. Case Management Conference: 1B Divorce, Guardianship and Conservatorship**All G. L. c. 208, § 1B Divorce Cases**

The Register shall review the case one hundred twenty (120) days after the case is filed. If no return of service has been filed, and no answer, appearance, motion, or other paper has been filed by a defendant, the Register shall mail to the plaintiff a written notice of dismissal in accordance with section 3 of this Standing Order. If the return of service or an answer, objection, or counterclaim has been filed, but no future court event has been scheduled, a Case Management Conference shall be scheduled on the next available date, but no sooner than thirty (30) days from the filing of the return of service. The Register shall send the Case Management Conference Notice and Order to all parties.

Guardianship and Conservatorship Cases

The Register shall review the case one hundred twenty (120) days after the case is filed. If no future court event has been scheduled, the Register shall schedule a Case Management Conference on the next available date. The Register shall send the Case Management Conference Notice and Order to all parties. All temporary guardianships shall include an expiration date and a further hearing date. All guardianships with approval and authorization of an anti-psychotic medication treatment plan shall include an expiration date and a review date, which may be the same date. All guardianships with authority to approve other extraordinary medical treatment shall include an expiration date for the authority.

f. Case Management Conference for Certain Probate Matters

A Track Assignment Notice shall not be issued at the time of filing for the cases assigned to the 3-6 Month Track: Probate of Will, Administration, Accounts, Real Estate Sales, and Change of Name. If a timely appearance in opposition or objection is filed in a case initially assigned to the 3-6 Month Track, the Register shall reassign the case to the 8 Month Track and issue to all parties a Track Assignment Notice. The Register shall also issue a Pre-Trial Notice and Order in the form specified by the Chief Justice of the Probate and Family Court with an established date for a Pre-Trial Conference unless another future court event has

been scheduled. The date for the Pre-Trial Conference shall be after the return date, but no more than forty-five (45) days after the return date.

g. Case Management Conference conducted at Motion Hearing

If a motion, or other hearing, is scheduled and held prior to the date of the Case Management Conference, the Judge may conduct a Case Management Conference in connection with the motion hearing, even if there has been no notice of a Case Management Conference for that day, and may cancel any previously scheduled Case Management Conference, making sure to schedule a next event in the order on the motion or the order after Case Management Conference.

Motions shall not be heard at a scheduled Case Management Conference without prior approval of the Court. As a general rule, the discovery schedule and deadline and a Pre-Trial Conference date should be assigned the first time the case is before a Judge with both parties or counsel present.

h. Joint Stipulation on Case Management Conference

Counsel and pro se parties may, at any time after a complaint is filed, file a Joint Stipulation signed by counsel for each represented party and by each pro se party which, at a minimum, requests a pre-trial conference date and agrees to a specific date to be the discovery deadline for that case. The discovery deadline date shall be not more than 180 days after the date of filing of the complaint.

Counsel and pro se parties may, after receiving notice that a Case Management Conference has been scheduled, file, on or before the date of the Case Management Conference, a Joint Stipulation signed by counsel for each represented party and by each pro se party which, at a minimum, requests a pre-trial conference date and agrees to a specific date to be the discovery deadline for that case. The discovery deadline date shall be not more than 120 days after the date of filing of the Joint Stipulation. If the Joint Stipulation is filed prior to the time scheduled for the Case Management Conference, no one need appear for the Case Management Conference.

Upon the filing of such a Joint Stipulation, the Register shall schedule a pre-trial conference for the next available date not sooner than 14 days after the discovery deadline and issue a Pre-Trial Notice and Order in the form specified by the Chief Justice of the Probate and Family Court. The scheduled pre-trial conference is a “future court event” so that a Case Management Conference will not be automatically scheduled upon the 120 day review or upon the filing of a return of service, answer, objection or counterclaim.

i. Joint Requests to Continue Case Management Conference

Parties engaged in alternative dispute resolution may request an extension of a scheduled Case Management Conference date by filing a joint or assented to motion which attests that the parties are engaged in alternative dispute resolution and includes:

- the name of the alternative dispute resolution provider;
- the dates and number of sessions held and;
- the dates and number of future sessions scheduled.

All other joint requests to continue shall be by written motion stating detailed and specific reasons for the request. All motions shall include proposed dates for the rescheduling of the Case Management Conference. Joint or assented to motions shall be considered without an in person hearing, unless otherwise ordered by the Court. If the motion is allowed, the court shall reschedule the Case Management Conference and send notice to all parties.

j. Citations in Probate, Guardianship, Child Welfare, and Adoption Petitions

Unless all required assents are filed with a probate petition, including guardianship petitions, custody petitions under G. L. c.119, and adoption petitions, the Register shall issue a citation no later than three (3) court days after the date of filing.

k. General Provisions

Nothing in this Standing Order precludes the marking of an earlier hearing date for a motion or other case event when appropriate.

The Court may schedule conferences, including Case Management, Pre-Trial and Status Conferences, as well as Trials, in its discretion.

Any party to any matter filed in the Probate and Family Court may request a Case Management Conference or Pre-Trial Conference after service of the complaint or petition, with notice to the other side of such request.

When a Case Management Conference is held, the conference will include discussion of all actions pending between the named parties. Other pending actions shall be scheduled for a future court event or shall be dismissed.

3. Dismissal for Lack of Service

The Register shall review all Domestic Relations and Equity cases 120 days after filing of the complaint to determine whether a return of service has been filed. If a return of service has not been filed, and no future court event has been scheduled, the Register shall issue a notice in a format specified by the Chief Justice of the Probate and Family Court. The notice shall inform the plaintiff that, because no return of service has been filed to show that service was made within 90 days of filing as required by Mass. R. Civ. P./Mass. R. Dom. Rel. P. 4 (j), the case will be dismissed 21 days after the date of the notice unless the plaintiff files the return of service showing that service was made within ninety (90) days after the filing of the complaint or unless within those twenty-one (21) days, the plaintiff files and has scheduled a motion for extension of time which shows good cause why service was not made within ninety (90) days after the filing of the complaint.

4. Conduct of Case Management Conference

a. Counsel and/or Parties Encouraged to Confer.

Prior to the Case Management Conference, counsel and/or parties are encouraged to confer for the purpose of agreeing on a proposed schedule of deadlines and dates through trial. If a domestic violence restraining order (G. L. c. 209A) or a domestic violence protective order (G. L. c. 208) has been issued for one party against the other, then the parties are not expected to confer. The Case Management Conference shall still be held.

b. At a Case Management Conference the Court may:

- (1) explore the possibility of settlement including but not limited to exploring the use of Alternate Dispute Resolution (ADR) processes;
- (2) identify or formulate (or order attorneys or parties to formulate) the principal issues and disputes;
- (3) prepare (or order attorneys or parties to prepare) a discovery schedule including discovery parameters and deadlines;
- (4) establish deadlines for filing motions, including but not limited to motions for summary judgment and a time frame for their disposition;
- (5) explore any other matters that the court determines appropriate for the fair and efficient management of the litigation;
- (6) hear the case on an uncontested basis if settlement has been achieved, or if no appearance or answer is filed after service and return of service and there is no opposition; or
- (7) dismiss the case if no parties are present for the Case Management Conference or if the plaintiff or petitioner is not present.

c. Next Event Scheduling

At the Case Management Conference, the next court date shall be assigned unless a judgment or permanent decree is issued or the case is dismissed.

d. Requirement to Appear

Counsel and parties, or parties alone if not represented by counsel, shall be required to appear at the Case Management Conference, except as provided in section 2(h) above. The Court, in its discretion, may waive the requirement for the appearance of the parties if they are represented by counsel. The Court may conduct Case Management Conferences by telephone, in its discretion.

e. Sanctions for Failure to Appear.

The court may impose sanctions for failure to attend the Case Management Conference without good cause, including dismissal, or may hear the case as if it were uncontested.

5. Alternate Dispute Resolution Services

When appropriate, cases may be referred to:

- a. Probation Officers for dispute intervention services in contested matters at any court event; or
- b. Other approved providers of court connected dispute resolution services as defined in S.J.C. Rule 1:18, Uniform Rules on Dispute Resolution.

6. Changes to Track Assignment and Rescheduling of Scheduled Events

- a. A party may file and serve a motion requesting a change in track assignment or rescheduling of scheduled events. Changes in track assignment or rescheduling of scheduled events shall be allowed only at the discretion of the Judge. A Probation Officer, in connection with an investigation, may file and serve on all parties a motion requesting a change in track assignment or rescheduling of scheduled events.
- b. Motions to continue a trial may be allowed, only for good cause shown, with notice and hearing, in accordance with Mass. R. Dom. Rel. P. 40 (b) and Mass. R. Civ. P. 40 (b).
- c. All requests for rescheduling shall include proposed future dates. No action shall be “continued generally.” Any rescheduling shall be to a date and event certain.
- d. In cases involving allegations or a history of domestic violence, or a prior or current abuse prevention order, the Judge shall take into account the safety of alleged victims and victims and the reduction of conflict when considering any requests for changes in track assignment or rescheduling of scheduled events.

7. Assignment to Tracks

- a. At filing, all Probate, Equity, Domestic Relations (including Paternity) cases (except Joint Petitions for Divorce, Joint Petitions for Modification of Child Support, and Complaints for Contempt, which shall be heard as outlined in sections 10 through 12) shall be assigned to a track according to the chart below:

3-6 Month Track [Note 1]	8 Month Track	14 Month Track
Probate of Wills and Administration of Estates	Complaint to Establish Paternity	Complaint for Divorce
Accounts	Complaint for Custody, Visitation, and Support (Paternity)	Complaints in Equity
All Other “Probate” except Guardianships and Conservatorships	Complaint for Modification (except Joint Petition for Modification of Child Support)	Petitions to Partition
Real Estate Sales	Probate-Guardianships Conservatorships	Other “Divorce” Case Types (except Joint Petition for Divorce)
Change of Name	Complaint for Separate Support	
	Other Paternity Case Types	

- b.** G. L. c. 209A Complaints and G.L. c.19A Petitions for Protection from Abuse, cases concerning the custody of children under G. L. c.119, § 23A, G. L. c.119, § 23C, and G. L. c.210, § 3, and Adoptions shall be heard as outlined below in sections 13 through 17.
- c.** Assignment to a track indicates the maximum amount of time in which a case should be tried, settled, or dismissed. Most cases should be tried, settled, or dismissed before the maximum time period of the track.
- d.** There may be extraordinary cases which cannot be disposed of within the time frames set forth in their track designations.
- e.** The Register shall issue a Track Assignment Notice for each case in the 8 month and 14 month tracks, except as outlined in section 2 (a) of this Standing Order, in a format specified by the Chief Justice of the Probate and Family Court. The Track Assignment Notice shall reflect the time requirements for each track.

8. Conduct of Pre-Trial Conferences

- a.** The Pre-Trial Conference shall be conducted in accordance with Rule 16 of the Massachusetts Rules of Domestic Relations Procedure or the Massachusetts Rules of Civil Procedure.

- b. In scheduling a Pre-Trial Conference the court shall issue a Pre-Trial Notice and Order in a format specified by the Chief Justice of the Probate and Family Court.
- c. If a case is not resolved at the Pre-Trial Conference, an Order After Pre-Trial Conference shall be issued which shall include provisions specified by the Chief Justice of the Probate and Family Court, and may also include additional provisions at the discretion of the Judge conducting the Pre-Trial Conference.

9. Sequential Trial Days

When trial dates are originally assigned, they shall be scheduled on days as close to sequential trial days as the calendar of the trial Judge permits. When trials are not completed in the number of days originally scheduled, the Court shall schedule the remaining trial days as soon as possible using the earliest available trial days, with the goal of minimizing intervals between trial days.

10. Track for Complaints for Contempt

At time of filing, a summons shall issue with the date for the contempt hearing. The hearing date shall be set for no later than twenty-eight (28) days from the date of filing.

11. Joint Petitions For Divorce Under G. L. c. 208, § 1A

All Joint Petitions for Divorce shall be scheduled for hearing within thirty (30) days of filing of all required documents. [Note 2]

12. Joint Petition for Modification of Child Support

Pursuant to Probate and Family Court Supplemental Rule 412 and Protocol, these cases shall be decided on the pleadings without hearing, within fourteen (14) days of filing, unless otherwise ordered by the Court. If a hearing is ordered by the Court, the Court shall set the time and date for the hearing and shall notify the parties within fourteen (14) days of the filing of the joint petition. If a case is ready for hearing at time of filing, a hearing shall be scheduled within 30 days. If a case is uncontested at time of filing, but incomplete, the case shall be scheduled for hearing within thirty (30) days of the date of filing all required documents.

13. G. L. c. 209A Complaint for Protection from Abuse

All proceedings pursuant to G. L. c. 209A shall be processed in accordance with the existing statutory time requirements and each order shall specifically state the next hearing date and expiration date of the order, unless the order is permanent. If the order is permanent, it shall so specify.

14. Complaints for Protection from Elder and Disabled Abuse, G. L. c. 19A, § 20, G. L. c. 19C, § 7

An initial hearing shall be held within fourteen (14) days of the filing of a petition. Emergency hearings may be held with at least twenty-four (24) hours notice to the elderly or disabled person. The court may dispense with notice upon finding that immediate and foreseeable physical harm to the individual or others will result from the twenty-four (24) hour delay and that reasonable attempts have been made to give notice.

15. Track for Petitions Filed Pursuant to G. L. c. 210, § 3 and Petitions Filed Pursuant to G. L. c. 119, § 23C

- a.** If the Petition is uncontested, due to the assent of all parties or completion of proper notice, with no appearance in opposition filed, the Register shall, within fourteen (14) days of the return date, notify the petitioners that the case is uncontested, and schedule an uncontested hearing within 30 days of the return date. For cases filed under G. L. c.210, § 3, an adoption plan shall be filed, in accordance with Uniform Probate Court Practice X prior to the hearing date.
- b.** If, by virtue of an appearance the case is contested, the Register shall issue a Track Assignment and Scheduling Notice for a Case Management Conference to be held not more than thirty (30) days after the return date.
- c.** At the Case Management Conference, referral to Permanency Mediation shall be considered and a Pre-Trial Conference shall be scheduled for a date within seventy-five (75) days of the Case Management Conference. At the Pre-Trial Conference, a trial date shall be set for no later than one hundred twenty (120) days from the date of the Pre-Trial Conference.
- d.** If a sua sponte or ex parte custody order under G. L. c. 119, § 23C is issued, the Court shall schedule a hearing within 72 hours of the sua sponte or ex parte custody order, unless a prior evidentiary hearing has been held. Notice shall be given to all parties and counsel.

16. Track for Adoption Petitions

- a.** If a Petition is filed as uncontested, due to the filing of necessary surrenders or termination decrees, and notice is not required, a hearing shall be scheduled within thirty (30) days of the filing of the Petition. [Note 3]
- b.** If a timely appearance is filed, a Case Management Conference shall be scheduled for not more than thirty (30) days after the return date.
- c.** At the Case Management Conference, a Pre-Trial Conference shall be scheduled for a date within seventy-five (75) days of the Case Management Conference. At the Pre-Trial Conference, a trial date shall be set for no later than one hundred twenty (120) days from the date of the Pre-Trial Conference.

17. Petitions Filed Pursuant to G. L. c. 119, § 23(A), Voluntary Placement with Department of Social Services

At time of filing, all petitions filed pursuant to G. L. c.119, § 23A shall be scheduled for hearing within thirty (30) days.

18. Issuance of Temporary Orders

Temporary orders shall be issued as expeditiously as possible, but in no event more than fourteen (14) days from the conclusion of the hearing, or the receipt by the court of all written submissions. On motions for summary judgment, orders shall be issued within thirty (30) days of the conclusion of the hearing, or the receipt by the court of all written submissions.

19. Issuance of Judgment or Decree

Except as otherwise indicated in this Standing Order, or with notice to the Chief Justice of the Probate and Family Court, and counsel or parties, the judgment or decree shall be issued as follows:

Trial Time	Entry of Judgment or Decree
One day or less	Within 30 days of the conclusion of the trial
Two days	Within 60 days of the conclusion of the trial
Three to Seven days	Within 90 days of the conclusion of the trial
Exceeds Seven days	Within 120 days of the conclusion of the trial

Effective April 3, 2006.

[Note 1] As described in section 2(f) above, if a case assigned to this track becomes contested due to the filing of an appearance and, if required, objections, the Register shall change the track designation to an 8 month track.

[Note 2] If a case is ready for hearing at time of filing, a hearing shall be scheduled within 30 days. If a case is uncontested at time of filing, but incomplete, the case shall be scheduled for hearing within thirty (30) days of the date of filing all required documents.

[Note 3] If a case is ready for hearing at time of filing, a hearing shall be scheduled within 30 days. If a case is uncontested at time of filing, but incomplete, the case shall be scheduled for hearing within thirty (30) days of the date of filing all required documents.

EXHIBIT 6M—Ten Frequently Asked Questions

1. How much will my divorce cost me?

Most family law practitioners, including me, charge for an initial consultation, but each lawyer may decide on a case-by-case basis as he or she wishes. [Just be sure to make it clear to the client *before* he or she comes in.] As for the divorce, some lawyers may charge a flat fee, but this is unusual because it is difficult to say with certainty what the total cost will be. We can discuss certain cost parameters and my hourly rate, but your spouse's behavior will have an impact on time and, therefore, cost.

2. How long will it take me to get divorced?

Again, this cannot be predicted with certainty because a lot will depend on the behavior of your spouse (and you, of course). If one or both of you is unreasonable or litigious, the case will take longer. Unfortunately, the behavior of the spouses' lawyers may also lengthen the process. An uncontested divorce may take a month, a contested asset or custody case a year or two.

3. Can my spouse prevent the divorce? Will I have to go to court?

No, your spouse cannot stop the divorce. Divorce is unilateral, i.e., you cannot be compelled to stay married to someone. Your spouse can delay the divorce, however, if determined to be difficult. Also, your divorce probably will not involve a trial. Most divorces settle, as they should. Trials are costly—both in terms of emotions and finances—and should be only a final resort to determine serious disputes.

4. What about custody of the children?

Typically, even today, children remain with the primary caretaker parent, who is usually the mother. However, this is not set in stone, and the court can award custody depending on the "best interest of the child." Getting sole *legal* custody is difficult and does not automatically convey the right to permanently remove the children from the Commonwealth.

5. What about support for the children and spouse?

Child support is mandated pursuant to the child support guidelines and can be calculated quickly based on your and your spouse's gross incomes. Alimony can be awarded for any duration, including life, depending on the circumstances. Alimony awards are usually a combination of the needs of the parties and a percentage of the obligor's income. Wage assignments, if the obligor is employed, are now mandatory for child support (unless suspended by the agreement of the recipient) and prevent nonpayment. If payment is in arrears, you can file a complaint for contempt.

6. Can we date during the divorce?

Use common sense and be discreet. If there are no children and you are separated, it probably will not prejudice the court against you, but it may anger your spouse and make negotiations more difficult. If you have children and custody is at issue, do not date if you are the custodial parent, at least in the presence of the children. If you do not have custody but do have visitation, your companion should not be with you when you have the children. Quite frankly, a “significant other”—of either parent—is upsetting to children, particularly in the early stages of separation. Many judges will order that no third-party companion be present when the children are with you.

7. My spouse will try to cheat me financially, so what can you do about it?

We can act quickly to “freeze” known assets on an ex parte basis and restrain your spouse from selling or hiding assets; appraise assets to prevent them from undervaluation; check sources of income from bank records, tax returns, credit card statements and the like; and consider lifestyle and expenditures to impute income. However, if your spouse is very slippery and very determined, discovery will be costly—and still something may slip between the cracks.

8. Can he or she get my inherited property?

Probably not. Particularly if the marriage is short, most judges like to leave family assets with that spouse but may compensate in dividing other assets viewed as “joint.” Because all assets, however acquired, whenever acquired and regardless of title are by statute subject to division, do not assume that any asset is safe from division.

9. What happens to our health insurance?

The children will remain covered by present health insurance. The divorced spouse also is covered at no extra cost until such time as the insured remarries. At that time, the divorced spouse may continue on the plan, but it is usually specified that the additional cost will be paid for by the divorced spouse. However, this statute, G.L. c. 175, § 110I, does not apply if the employer is a self-insurer. In that case, the federal COBRA regulations apply. They provide short-term coverage, usually eighteen months, at an immediate and substantial cost to the divorced spouse. (Health insurance is an increasingly important issue: the cost is escalating, and fewer parties have low-cost, continued coverage.) If alimony is awarded, judges must also require that the obligor obtain or reimburse the spouse for the cost of health insurance *without* reducing the alimony award. G.L. c. 208, § 34.

10. Who will pay for college?

College costs are a troublesome issue, and the answer is far from clear. You may both agree to share the costs in some equitable way depending on your respective financial circumstances at the time. It is not a good idea to commit yourself to a specific percentage or amount unless the costs are certain and the funds are not in doubt. However, a vague agreement may have to be litigated when the time to pay up arrives. Perhaps the separation agreement could contain language that you and your ex-spouse

begin negotiations at the start of the child's junior year in high school to avoid "under the gun" agreements the following year. The court does have authority to enter orders until the child reaches age twenty-three, although what financial arrangements will be ordered varies from judge to judge.



MCLE : HANDLING A DIVORCE

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YOUR FIRST DIVORCE CASE

- 1. Introduction
- 2. You've been retained!
- 3. How to Handle a Divorce Case
 - Prepare your case as if you are going to trial

CLIENT INTAKE

Initial Interview

- 208 sec. 34 factors; Marital History; Finances
- What does your client want?
- custody; support; asset division – relevant law
- Is there a pre-nuptial/post-nuptial agreement?
- Is there a need to impound file?
- Counsel fees?
- Conversation about social media

FILING A COMPLAINT FOR DIVORCE

- 1. Filing a Complaint for Divorce or Joint Petition for Divorce
- 2. Supplemental Probate Court Rules
 - Rule 401 – Financial Statement
 - Rule 410 – Mandatory Disclosure
 - Rule 411 – Automatic Restraining Order
 - Parenting Ed Class is no longer a requirement

MOTION FOR TEMPORARY ORDERS

- Why do you need them?
- What do you ask for in a Motion for Temporary Orders?
- Parenting Plan
- Custody
- Child Support/Alimony/Attorney's Fees Pendente Lite
- Residence
- Abuse/Emergency Orders
- How to schedule motion for hearing

DISCOVERY

- Why do you do it?
- Rules 26 – general rules
- Rule 30 – depositions
- Rule 33 - interrogatories
- Rule 34 – request for document productions
- Rule 36 – request for admissions
- Rule 37 - Motions to Compel and Rule 26(g) and (h)

PRE-TRIAL CONFERENCE

- Pre-trial Conference Scheduling Order
 - Date and time of Pre-Trial Conference
 - Discovery Deadline
 - Mandatory 4-way meeting
 - Pre-Trial Memorandum - **check to see when memo is due**
 - Updated Financial Statement
- What can you expect at the Pre-Trial Conference

CONCLUSION

- If you are not able to settle your divorce and bring it to Judgment at the Pre-Trial Conference (or shortly thereafter) you will be assigned trial dates.
- Trial Prep – a another MCLE course!
- Thank you.
- Any questions, please feel free to send an e-mail: tbr@joshtraceylaw.com