

DIVORCE IOI

HOW TO PLAN AND PREPARE FOR A DIVORCE ACTION

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**To apply for assistance:
1-316-267-3975 (Wichita Area)
1-800-723-6953 (outside of Wichita)**

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www.kansaslegalservices.org**

DIVORCE PREPARATION 101

Once you make the decision to file for divorce, you don't just move out, file for divorce, and hope everything goes your way. In order to achieve your desired results you need to build a strong foundation of information, knowledge, and documentation. The first thing you must do, even before hiring an attorney or preparing your paperwork, is to educate yourself. The next thing you may want to do prior to filing papers is consult with an attorney.

First, Kansas must have jurisdiction over the parties and the subject matter prior to your filing for divorce. In order for the Court to have jurisdiction over you, you must have resided in Kansas 60 days prior to filing. To have jurisdiction over your spouse, he/she either has to have resided in Kansas; or, if they have moved out of state, they must have resided in Kansas and separated from each other while he/she still lived here. If your spouse has not resided in Kansas, he or she must agree to submit to Kansas for the issues of child support, asset division, and debt division. If you want the Court to issue Orders regarding the residence and custody of your minor children, the children must have resided in Kansas for 6 months prior to filing for divorce. In the alternative, if the parties and the children have resided in Kansas less than 6 months, both spouses must have moved from their home state to Kansas and separated in Kansas. Finally, the divorce must be filed in the County where one party resides or where the Respondent can be served.

These requirements may fall in a "grey" area, and you should consult with an attorney prior to filing for divorce. Below I discuss the building blocks necessary for a "successful" divorce.

Gather All Necessary Information and Documents

1. Have contact information for both you and the opposing party. This includes family members and employers. The information should be for both you and the other party and should be someone you each will stay in contact with on a regular basis.
2. Social Security numbers of all the parties, including the children.
3. Date of births of all the parties, including children.
4. State of birth of all the parties, including children.
5. Necessary Documentation:
 - a. Credit reports for you and your spouse. You can pull one credit report per year per person at www.annualcreditreport.com.
 - b. Copy of credit card statements (at least the last three months, including transactions). If you don't have a copy, most credit card companies will allow you print off up to twelve months of reports from their websites.
 - c. Bank account information, including transaction reports.
 - d. Current pay stubs for both parties.

- e. At least last year's tax returns. If you don't have these you can request a copy from the IRS.
6. List of assets:
- a. Real Estate (legal descriptions of all property owned by you and your spouse, or each of you individually, or with other parties).
 - b. Cars
 - c. Bank accounts
 - d. Retirement accounts
7. List of all monthly expenses (and copies of debts)
- a. Monthly household expenses
 - Rent
 - Utility
 - Phone
 - Cell phone
 - Cable
 - School expenses
 - Insurance
 - Medical expenses
 - Food

Once you have gathered the above information, keep it in a safe place. You will need to be able to retrieve the documentation even if you are Court Ordered out of the marital residence.

PRE-PLANNING

1. Finances
- a. Set aside money for when you leave
 - b. Divide debts (decide what you are going to pay and what your spouse is going to pay)
 - c. Divide bank accounts. Consider closing joint accounts. At the very least, set up an account in your name only and make sure there are funds in that account.
 - d. Decide where you are going to live. If you are going to remain in the marital residence, plan to make the house payment or rent payment on your own. If you vacate the residence, take all necessary documents and important personal property with you when you leave. Don't depend on your spouse making them available to you after you move.
 - e. Create a budget for paying your bills

2. Plan on initially paying your bills without support from your spouse.
3. When the divorce is filed, a Restraining Order will be entered. This Order will prevent you and your spouse from selling or transferring assets. Also, it prevents either party from canceling insurance and changing beneficiaries on retirement and insurance plans until after the divorce has been finalized.
4. Typically, at the end of your divorce, the Court will consider both debts and assets and divide everything 50/50. Don't be greedy and take more than your 50% of the assets when you leave. Nor should you assume you'll be responsible for nothing and your spouse will be responsible for all the marital debt.
5. Moving out of the house
 - a. You will need to decide whether you or your spouse will be vacating the marital residence.
 - b. It is best if the children do not leave their current school.
 - c. You should not move out of state without the Court's permission.

Plan for Children

1. Keep a log of who provides their daily care, attends school events, and doctor's appointments.
2. Create a schedule for the children to be with both parents. Keep in mind, both parents' work schedule and the children's school schedules.
3. If you want residential custody, than it is best to maintain a work schedule that allows you to have as much time with your children as possible. Working third shift makes it difficult for you to be there to meet your children's needs.
4. If custody becomes a contested issue, you will be living under a microscope. You have to monitor who enters your life; and, most importantly, your children's lives.
 - a. Strongly consider waiting to introduce a new girlfriend or boyfriend to the children.
 - b. Know your new boyfriend or girlfriend's background. His or her problems become your problems in a divorce.
 - c. Be careful of the information and pictures you place on Facebook or other social network sites. Pictures of you and new significant others are inappropriate. Pictures of you inappropriately dressed, nude, drinking, or partying should never be placed on the internet. Also, ask your friends to watch what pictures they add to Facebook or what they tag.

- d. Carefully consider anything you put in writing, this includes email and texting. Anything negative, angry, or spiteful you say will come back to haunt you in Court.
5. Spend as much time as possible with your children--both for their adjustment and to demonstrate to the Court you are a responsible parent.
6. Communicate with your soon to be ex-husband or ex-wife. Just because you want your spouse out of your life, does not mean it is in your children's best interest that their other parent is out of their lives. Communicate important information regarding school and medical needs. Don't make unilateral decisions. Consult the other parent about such things as school and medical needs of the children.
7. Remember the divorce is between you and your spouse--not your spouse and the children. No matter how bad your relationship is with the other parent, the children did not want this divorce. They are feeling grief and loss. You may consider entering them in counseling.
8. Watch what you say in the presence of the children: "little pictures have big ears." The children will overhear even what you say to others. They will digest it, retain it, and spit it out at the wrong time. Further, don't try to undermine the children's relationship with the other party. In most cases, even a bad parent is better than no parent.
9. Supervised parenting time is appropriate when the other parent has a drug or alcohol problem, has physically endangered the minor children, or is mentally unstable. The fact they have a new girlfriend or boyfriend is not a justification for supervised parenting time. Further, the fact that you do not like his or her new roommates or housing situation is not a good reason for supervised parenting time. Parenting time can be structured so that there is no overnight.
10. If you feel supervised parenting time is appropriate, have a plan. Have in mind a person who you and your spouse will agree upon to provide supervision. If you do not have a responsible person, the Courts will provide supervision at a neutral site for a cost.

Emotional Support

1. Consider counseling.
2. Always consider the children's needs and best interests.
3. Consider contacting a safe house or domestic violence program for counseling if domestic violence has been a part of the relationship.

Domestic Violence Issues

1. Dates and circumstances of incidents
2. Witnesses
3. Incident Numbers
4. Think about meeting the other party at a neutral site to exchange the children, usually either the police department or QuikTrip.

5. Do not let the other party return to the residence for any reason.

Privacy Challenges and Safety

When leaving a relationship it is important to think about whether or not it is necessary to change important pass codes and/or numbers that may allow the other party to track your whereabouts, activities, and/or perform personal and financial sabotage. Consider if the following secure numbers need to be changed in your individual situation.

1. Cell phone passwords/codes to retrieve your phone messages.
2. Banking/Debt card PIN numbers
3. Food Stamp Debt Card ID number
4. Direct Deposit information (Bills and/or paycheck)
5. Security codes of housing/apartments
6. Mailing Address
7. Address on Court Papers
8. Personal Phone Numbers
9. E-mail passwords
10. Myspace/Facebook passwords

Behavior

1. Court
 - a. Dress appropriately, no shorts, miniskirts, t-shirts with sayings, club wear or sleep wear.
 - b. Watch body language
 - c. Show respect, for the Court, opposing attorney, and the other party. This extends to outside of Court. Don't place bumper stickers on your car insulting the other party or messages or posts on your Facebook page.
2. Treat the Judge and Limited Case Manager with respect. Act as if they control your life--because they do. Even if you don't agree with their decision, show respect and don't argue. The Court will judge you on how you behave as much as what you say. This includes conversations outside of Court.

Conclusion

Share all information with your lawyer, whether you feel it is positive or negative, preferably before the other side shares this information. This includes reports of bad behavior and potentially embarrassing actions. Follow your attorney's advice. This may be your first time through the system; it may be your attorney's one thousandth time. An attorney is also a counselor. Listen to what they say, evaluate it, and consider following that hard-earned advice.

If you wish to have representation of an attorney please call Kansas Legal Services at 1-800-723-6953 or visit their website at www.kansaslegalservices.com.

If you wish to represent yourself and file your divorce yourself, the appropriate papers are available on our website above.

Common Definitions of Legal Terms

Child Custody is divided into legal custody (not who the child lives with; but, rather, who makes decisions regarding the children, such as medical and schooling) and residency (person designated with the right to decide where the children live).

Types of Legal Custody

Joint Legal Custody - Both parties should consult each other regarding major decisions for the children. This includes but is not limited to where the children go to school; where they go to church; who their doctors are; if they should be allowed to get piercings, tattoos, etc.; consent to marriage; whether braces are appropriate; whether therapy should be sought; and whether the child should receive certain medications. Both parents have equal access to medical and school records. Joint Legal Custody is the preferred method of custody in Kansas. It has nothing to do with who the children live with or the amount of time each party spends with the children.

Sole Legal Custody - Both parents have equal access to medical and school records. The residential parent does not have to consult with the other parent regarding major decisions for the children. It does not give the residential parent the right to move the children without notice to the other parent. The parent still must comply with the law and provide 30 day notice prior to moving. This does not prevent or limit the other party's parenting time with the children. The Judge must make the finding that there are facts to support the awarding of sole legal custody.

Full Custody - There is no such thing as "full custody" in Kansas.

Types of Residency

Shared Residential Custody -each parent spends 50% time with the children.

Primary Residential Custody -One parent is designated for the children to reside with the majority of the time. The other party may be granted parenting time.

Divided Residential Custody - Each party has one or more the children residing primarily with them.

Types of Cases

Divorce - A divorce terminates a ceremonial or common law marriage. Marriage is a voidable contract and the divorce cancels that contract.

Annulment - An annulment erases a marriage, as if it did not happen. There must be a material mistake of fact or the marriage had to be void due to capacity to be married (i.e., your spouse was only 17 years old at the time of marriage, or your spouse was already married to someone else)

Legal Separation – A legal separation can be filed, but the parties are still married upon completion. However, debts and assets are divided; custody, parenting time, and child support can be ordered. The marriage can be terminated at a later date.

Alternative Dispute Resolution

Judges are happiest when the parties work out their issues themselves. In order to promote this, the Court may turn to different forms of ADR, such as:

Mediation - parties sit down with a neutral third party who tries to help the parties reach an agreement regarding parenting time and custody of the minor children. It is non-binding and anything that occurs or is said in mediation is confidential.

Limited Case Management - process where the parties meet with a trained third party who, upon interviewing the parties, looking at evidence, and interviewing witnesses, makes recommendations to the Court on who the children should live with and the other parties' parenting time based on statutory factors.

Types of Service

A party must be “served” a copy of the initial pleadings through an official source. This means that the party must be given a copy of the legal papers. A party cannot give the papers to the other party and have that consider proper service by the Courts. A person must be “officially given” a set of the papers in order for the Courts to divide property, debts and order child support.

- Sheriff- a Sheriff Deputy delivers copies of the papers to the other party where they work or live. Cost is \$5.00 within Kansas or up to \$100.00 out of State.
- Voluntary Entry of Appearance-a form signed by the other party and notarized. It does not mean that they agree with the papers but it alleviates the need to have the Sheriff deliver the papers to them.
- Special process server, either a friend or family member who is considered to be of “good” character who agrees to deliver the papers to the other party. They must be appointed by the Court and complete documents swearing that they delivered the papers to the other parties. There are also people who will serve papers for a fee.
- Certified Mail
- Publication - If you do not know how to locate the other party, you can serve them by publication. However, you cannot divide debts or receive child support.

Parties to a case

Petitioner – The person who files the papers, starts the action.

Respondent – The person who is served the papers.

There is no long term advantage between being the Petitioner or Respondent. The parties will always remain the same, even in post-judgment actions. Once the Petitioner, always the Petitioner. Once the Respondent, always the Respondent.

Child Support

Child Support is payment from one parent to the other parent for support of the minor children. Child Support may be ordered whether the parties exercise shared residential custody or primary residential custody. It is based on a formula created by the Kansas Supreme Court. It is based on the income of the parties, the number of children of the parties, other children that the paying party may be financially responsible for, daycare expenses, and health care expenses. The tables are located at www.kscourts.org. There is a child support calculator at www.kansaslegalservices.org.

Spousal Maintenance

Spousal Maintenance (alimony) is payment made from one spouse for the care of the other spouse. It is not a guarantee just because you have been married. Spousal Support is generally based on the concept that one party has a need and the other party has the ability to pay. If incomes are equal than probably won't be ordered. It is generally not ordered in short-term marriages.

Marital Assets

Marital assets are property accumulated during the marriage. This includes houses, cars, RV's, collections or personal items, refrigerators, bank accounts, retirement accounts, inheritance, or lawsuits. It can be any type of property with value. You must have an ownership interest in the property, i.e., your name or your spouse's name is on the title.

Marital Debt

Marital debt is any bill that occurred during the marriage. It does not matter if it is just in your name, just in your spouse's name, or in both names. If either party accrues debt during the marriage, it is a marital debt. This includes loans, credit cards, medical bills, etc.

Equity

Equity is used to figure the value of houses, trailers, cars, etc. It is the amount something is worth minus what you owe. For example, if you could sell your house for \$100,000, but you owe \$80,000, your equity is \$20,000 ($\$100,000 - \$80,000 = \$20,000$). You can get a value either by hiring an appraiser or looking at the tax statement (tax value is usually a little less than what an appraiser will value your house).

Venue

A divorce can only be filed in the County where the parties reside or where the Respondent lives or works.

Jurisdiction

Jurisdiction means the Judge can tell you what to do.

Subject Matter

Means the Judge can divide your stuff and divorce you

Best Interest

When determining placement or custody of the minor children the Court generally looks at the children's best interest, not the parent's wishes. The Court considers the child's best interests to be whatever promotes the children's physical and mental health and safety.

Home State

This is the state where the children have resided for the 6 months prior to the filing of a case. Generally, Kansas must be the children's home state prior to a Judge granting either party residency or custody. There are exceptions to this rule.