

# RHAME AND ELWOOD

## Divorce and Legal Separation

We wish to take this opportunity to thank you for choosing RHAME and ELWOOD as your Counsel. We understand and acknowledge that there are hundreds of lawyers that you may have selected to assist you in this very important representation. Therefore, in representing you through this Divorce and/or Legal Separation process we have created this information letter to help you address many of the issues that may arise.

Divorce and Legal Separation in Indiana are both based on a No fault theory. Therefore, as a general rule the Court will not engage in the issues as to why you wish a divorce or separation. The elements of Divorce or Legal Separation are the same. The end resolution is the difference. In a divorce the marital ties are all severed between the spouses and in a separation the parties are still bound by marriage but legally separated by an Order. However, when a separation is filed either spouse may petition the Court to have the separation converted into a divorce action.

**TIME LIMITS:** There is a mandatory sixty (60) day waiting period. This is called the provisional period. This is the time from when a divorce is filed until when it can be finalized. This is the same waiting period for a formal legal separation or even an annulment.

**PROVISIONAL HEARING:** A Provisional hearing is generally held to provide one spouse, mainly the lesser employed spouse, or the custodial care-giver spouse, financial assistance while the action is pending. This hearing is held approximately three (3) to five (5) weeks after the filing and as soon as the Court is available.

The issues addressed at the Provisional hearing are issues that must be resolved to maintain the parties during the waiting period for the Final hearing. The issues may be: Living arrangements, custody of children, visitation, support, maintenance, restraining orders, attorney fees and vehicles. These issues may be negotiated between the parties or their respective counsel and filed with the Court as an Agreed Provisional Order. If negotiations are unsuccessful, the issues are submitted to the divorce Magistrate in an open hearing. The Magistrate, after hearing each side, will render a Provisional Order addressing the issues raised by the attorneys. This Provisional Order will remain in effect until modified by an additional Court Order or the Final Divorce Order. The Provisional Order, whether by agreement or Court Order, is binding on both parties and delegates to each party certain rights, obligations and responsibilities. This Order may seem fair, harsh and/or unfair because

RHAME AND ELWOOD

DIVORCE AND LEGAL SEPARATION

Page 2

of economics or family structure. It must be remembered that two families cannot live as economically as one. Further, when families are separating there are harsh realities concerning contact with other family members and children.

Economic issues, as a general rule, are difficult. This is accentuated if there is only one working spouse. The Indiana law states that one spouse may be ordered during a provisional period to pay up to sixty (60) percent of their gross wage to the other spouse as maintenance and support. However, most Magistrates in Lake and Porter County will Order up to Fifty (50) percent of the net wages. But, individual cases and circumstances vary. If both parties are employed then a balancing of the financial earnings and the obligations are implemented along with the financial considerations if there are children. Indiana has formalized child support guidelines based on income levels of the parties. In the provisional period support and maintenance are generally a combination of these theories. Further, if incomes are substantially different, one spouse may be ordered to make contribution to the other spouses attorney fees. This attorney fee provision is provided for by the Indiana Statutes and therefore Acause or who filed,@ is not relevant in the decision making process for the Court.

Attached and provided to you is a weekly and monthly household budget. This budget must be completed to provide your lawyers with the required information for the provisional hearing. This allows your lawyer to prepare an exhibit for the Court explaining your financial needs. You have also been provided a Financial Declaration Form that must be completed for us prior to the Provisional hearing. The Financial Declaration Form is a *Court required* financial disclosure form listing AALL@ your income and obligations, assets and values, pensions and savings. This form must be completed, verified by your signature and your counsel will exchange the completed financial form with the other attorney.

In preparing for your Court appearance wear clothing appropriate for the situation. Dress in a manner you feel comfortable. However, be sure not to over dress or under dress. For example, if you never wear a suit and tie, do not wear one to Court. You want to appear to the Court that you understand the importance of this process and are not trying to be someone or something that you are not.

**EMPLOYMENT:** If you are employed. . . stay employed. If you are not employed, you should begin seeking employment, unless you are disabled or your background and number of dependants at home prohibits such an action. As a general rule there will not be sufficient monies available to continue spending and living at the level previously enjoyed when the family was united.

**MAINTENANCE:** As a general rule Indiana law does not have maintenance for the divorced spouse. However, there are exceptions: a mentally or physically disabled spouse; or a spouse that is incapable to earn a living with their current education level or background, may qualify for up to three (3) years of rehabilitative maintenance. These are very special areas and will require you to discuss them fully with counsel if you believe these issues may apply to you.

**CUSTODY OF CHILDREN:** Indiana law does not have a gender preference for the custodial parent. The law presumes equality of parents as a base assumption. Therefore, if custody is an issue it will need to be discussed fully with counsel. The Courts and Indiana law are fully committed to joint parenting and quality time sharing with the children where appropriate. The term visitation is not politically correct and the new term is co-parenting time.

The descriptions of the general forms of custody are as follows: Sole Custody, Joint Custody, Legal Custody, Physical Custody and Control, and numerous combinations of the above. The Courts will generally adopt an Agreed Order submitted by the parties that sets forth the Custody and Co-Parenting time. If parties can not agree on the form of Custody the Court will, after evaluations and a full court hearing enter an Order designating the Custodial arrangement.

The Courts are interested in promoting post divorce harmony with the children having quality access to both parents. The State of Indiana as of March 31, 2001 adopted state wide guidelines for co-parenting. A copy of this booklet has been provided to you if you have children. The Porter County courts with the thought of furthering the best interest of the children have a requirement that each spouse must attend one divorce parenting class called ATrans-Parenting.@ The booklet will be given to you if applicable. You *must attend* this class to be eligible for divorce in Porter County. In Lake County if the Court senses conflict in the family relationships the parties may be ordered to attend the class. Further, in Porter County if there appears to be severe conflict the Court may order the parties to attend and pay for multiple sessions of a program entitled AFamilies Beyond Conflict.@

If there are issues that make Joint Custody with Physical Custody to one party not acceptable then there may be a major problem in the custodial placement if the other spouse does not agree to sole custody to one parent. Sole Custody means that the parent can make all the decisions without consultation with the other parent and the non-custodial parent has access to the children by the State guidelines but has little input in any Areal@ decision making. The prevailing arrangement is Joint Custody with Physical Custody to one parent. This means that the parents are mandated to discuss issues and work toward a consensus for the best interest of the children in the area of 1) Education 2) Religion and 3) Health Care Needs. Joint Custody contemplates the co-parenting spouse has as a minimum contact guideline visitation with the general understanding that there may be more contact as the parents can agree.

If there is going to be custodial conflict the divorce proceeding will raise to an entirely different level. You and counsel will need to discuss all the alternatives and costs involved in such an undertaking. Unfortunately, custody challenges are extremely expensive and very time consuming. Further, the Courts will generally appoint evaluators and guardians for additional input.

**VISITATION:** The Indiana guidelines previously mentioned are implemented to answer many of the questions in this area. However, there are specific cases and issues that arise that may require your direct contact with counsel. For example; restricted or supervised visitation. This may occur as the result of abuse to either the parent or child. The abuse may be physical or it may be psychological. This may also arise as the result of alcohol or substance abuse.

**SUPPORT:** Indiana has adopted support work sheet guidelines. The attorney has provided you with a copy of the proposed guideline for your case. The main issue is establishing the real income of the parties. If the person has regular employment this is generally not an issue. The difficult situation is if one or more of the parties is self-employed, sporadically employed, construction worker, has side jobs, or may work for cash.

The tax exemption may be an issue. The IRS guidelines do not generally apply, A divorce Court may Order who will have the exemptions. The exemptions generally follows the rationale basis as to how much support is being paid and the income level of the custodial parent. Further, whether the support has been paid regularly throughout the year and if the support is current by the end of the year. Support is paid through the Clerk of Support at the Court House so that a permanent record is maintained. Further, support is generally Ordered to be paid by a wage withholding Order. You must remember that support and visitation rights are not co-mingled. A non-custodial parent=s support does not buy rights of visitation. Visitation is a separate right not tied to support and to withhold visitation over non-payment of support may be contempt of Court.

**FINAL PROPERTY DIVISION:** All assets and all debts of the parties are part and parcel of the marital estate. The Indiana law presumes an equal or 50/50 percent distribution of the marital estate. The law also presumes the estate is fixed in value on the date of filing. However, both of these concepts are very fluid and are certainly not fixed in stone.

A few of the variables that can substantially change the above presumptions are: 1) Length of the marriage, 2) Age of the parties, 3) Children in the home, 4) No children, 5) Earning capacities, 6) Physical health, 7) Educational level of parties, 8) Level of assets and debt, and 9) Contribution to the accumulation of the marital estate. These criteria as well as the other foundation materials are set forth in Indiana Law under IC 31-9 Family Law.

The assets of a marriage are considered all things of value accumulated during the marriage and co-mingled assets that may have been brought into the marriage. This is just a general statement and specific questions should be asked if you have questions or whether or not something is an asset. In general terms assets are thought of as: land, home, savings, pensions, 401K plans, stocks, bonds, automobiles, household products, jewelry and time-shares, just to name a few.

Likewise, the debts of the marriage must be considered and also allocated to the parties when final distribution is made.

RHAME AND ELWOOD  
DIVORCE AND LEGAL SEPARATION  
Page 5

The general concept is: the longer the marriage and the greater the disparity in the economic levels, the greater the opportunity to divide the assets in a disproportionate manner. The attorney will meet with you and fully discuss the different scenarios.

**MODIFICATIONS AND CONTEMPT CITATIONS:** Modifications are pleadings asking the Court to change or Modify an Order previously entered by the Court. For example: One party gets a better job earning more money or a party may lose their employment. A contempt citation is used to enforce a Court order. For example: A parent is ordered to pay support and the support is not being paid.

**DISCLAIMER:** This is certainly not a full or complete discussion of all the theories, possibilities or options available to you the client. These comments are generated to help you understand the process and help you be more informed about your divorce. Hopefully, you may refer to this letter when questions may arise during this process. Please feel free to call with questions and your inquiries concerning your divorce.

**THANK YOU:**        **RHAME AND ELWOOD**  
                         **Attorneys at Law**  
                         Portage Professional Building  
                         3200 Willowcreek Road  
                         Suite A  
                         Portage, Indiana 46368  
                         Telephone: (219) 762-0494  
                         Fax:            (219) 762-4047