PROGRAM MATERIALS
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Divorce 101: The Divorce Legal Process Explained

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Anatomy of Divorce 101 — An Overview for Attorneys

HOW TO START A DIVORCE CASE & WHAT TO EXPECT

Weinberger Divorce & Family Law Group
Safeguarding Your Future™

Bedminster • Cranford • Freehold • Hackensack • Mount Laurel • Parsippany

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- Certified Matrimonial Attorney.
- Author.
- Frequent Keynote Speaker.
- As seen in various media: Wall Street Journal, Smart Money, Forbes, CBS, ABC, Access Hollywood, News Channel 12, Huffington Post, The Star Ledger, Divorce Magazine.
- Published in New Jersey Lawyer Magazine, New Jersey Law Journal, Matrimonial Strategist, and more.
- New Jersey Law Journal Top Woman in the Law, 2018

"Bari was wonderful!! She always explained the law thoroughly. I understood every part of the process. She was supportive, smart & professional. Everyone said "You need a shark", I said "I need a stingray". Bari has an amazing combination of elegance & intelligence & can fight the fight…"
Tara M.

DISCLAIMER

This presentation contains general information and does not constitute legal advice.

Be sure to direct specific questions about your own situation to an attorney.

Divorce is governed by state law.

Certain aspects of divorce will be the same from state to state, but there are also many state variations. Always refer directly to state laws and state and local court rules.

For example, state law can differ on issues such as:

- **Property Distribution**. Equitable distribution is the law in most states, but there are nine community property states (Louisiana, Arizona, California, Texas, Washington, Idaho, Nevada, New Mexico, and Wisconsin).
- **Alimony**. Laws differ regarding when and for how long one spouse can receive support from the other; many states have enacted reforms limiting the availability and potential duration of alimony.
- **Child support calculations**. Each state designs its own formula for calculating child support.
- **And more**.

Federal law and divorce.

At the same time, there are aspects of divorce that do fall under federal guidelines. For example:

- **Divorce's effect on federal tax returns.** Divorce has tax implications. Among other things, as part of the federal tax law changes effective this past January, federal tax treatment of alimony has radically changed.
- **LGBTQ marriage and divorce.** When the U.S. Supreme Court granted marriage equality in the 2015 *Obergefell* ruling, this also meant divorce equality across the U.S. Same-sex marriage is subject to the same divorce laws as any other divorce.
- **The Employee Retirement Income Security Act of 1974 (ERISA).** ERISA contains provisions on the division of qualified retirement account that apply to divorces in any state.
- **Military divorce**. When one or both spouses are U.S. service members, different rules apply to military pensions and other aspects of the military divorce, no matter which state has jurisdiction over the matter.

Divorce is enforced across the U.S

Divorce may look slightly or very different from state to state, but once you are divorced in one state, you are divorced in every state.

The Full Faith and Credit Clause of the United States Constitution requires states to honor valid court orders from other states.

The divorce process: An anatomy lesson.

Today, I will be taking you through the divorce process. Think of this like an anatomy lesson:

Despite superficial state variations, a common skeleton lies beneath all of what happens in divorce and all of the decisions that divorcing spouses and their attorneys need to make.

We will look at this skeleton today. Instead of talking about femurs, we'll talk about the filing process. Rather than discuss metatarsals, we'll discuss how mediation is a process available to help divorcing spouses settle out of court.

Course Outline

- Filing for Divorce
- Case Information Statement & Discovery
- Property Division
- Child Custody & Support
- Alimony (spousal support)
- Alternative Dispute Resolution
- The Court Litigation Process in Divorce
- Post-Divorce Motions: Is a divorce ever really over?

Filing for Divorce

- Regardless of whether the goal is to settle everything out of court in an uncontested divorce or to litigate a contested divorce in court, one spouse will need to file paperwork in court to start the legal process.
- In some states, such as New Jersey, the initial filing is called a "Complaint." In other states, such as California, Florida, and Texas, the initial filing is called a "Petition."
- If the goal is an uncontested divorce, clients may want to begin an Alternative Dispute Resolution (ADR) process like mediation before filing (See Part 6).
- The Complaint or Petition must state grounds for divorce, either no-fault (such as irreconcilable differences), or a fault ground accepted by the particular state (such as infidelity).
- You must file the complaint in a court with jurisdiction, and include all supporting forms required by applicable state and local rules.

Grounds for Divorce:

A central part of the initial filing statement

In your initial filing, you will need to check the grounds for divorce — the reason why the plaintiff or petitioner is seeking divorce. The available grounds will vary by state.

Here is what New Jersey's list of grounds looks like:

- Irreconcilable differences (the most common type of no-fault divorce in New Jersey).
- Adultery
- Desertion
- Extreme Cruelty
- Separation
- Voluntary Addiction to Narcotic Drugs
- Habitual Drunkenness
- Institutionalization for Mental Illness
- Imprisonment
- Deviant Sexual Conduct
- Irreconcilable Differences

Which one should your client choose?

No-Fault Divorce — Irreconcilable Differences

- Today, every state plus the District of Columbia permits no-fault divorce, though requirements for obtaining a no-fault divorce vary. The most common no-fault ground is "Irreconcilable differences."

- No-fault grounds remove the burden of spending part of the divorce process on assigning blame for the divorce. Without the need to do this, the emotional charge of the divorce process is reduced, giving parties more time and space to focus on the matters at hand in a neutral and productive way.

- California was the first U.S. state to pass a no-fault divorce law. Its law was signed by Governor Ronald Reagan, a divorced and remarried former movie actor, and came into effect in 1970. New York was the last state to pass a no-fault divorce law; that law was passed in 2010.

Fault Grounds for Divorce

- Before no-fault divorce was available, spouses seeking divorce would often allege false grounds for divorce. This no longer needs to happen.
- In 17 states (Wisconsin, Oregon, Washington, Nevada, Nebraska, Montana, Missouri, Minnesota, Michigan, Kentucky, Kansas, Iowa, Indiana, Hawaii, Florida, Colorado and California) a person seeking a divorce is **not permitted** to allege any kind of fault-based ground (e.g. adultery, abandonment or cruelty).
- In other states, including New Jersey, fault grounds are still allowed. Are they advised is another question. In general, unless there is a specific or strategic reason why a fault ground would be cited for the divorce, no fault grounds are generally preferred.
- An example of a strategic reason to cite a fault ground in a state like New Jersey where this is still allowed would be because the plaintiff is also filing a separate tort case. Then it might be a good idea to cite the fault ground of "extreme cruelty."

Initial Divorce Papers

COMPLAINT/PETITION: Paperwork that states facts and grounds for divorce.

- Spouse initiating divorce becomes the “plaintiff” or “petitioner.”
- Plaintiff/petitioner files all required initial paperwork, including a summons.
- The court stamps the paperwork “filed” and returns it to the plaintiff/petitioner.
- Plaintiff/petitioner then serves spouse according to state and local rules.
- Plaintiff/petitioner files proof of service, to say that paperwork has been served.

RESPONSE: Appearance, Answer and/or Counterclaim or Counterpetition.

- Responding spouse becomes the “defendant” or “respondent.”
- Defendant/respondent has a set amount of time (35 days in NJ) to file an appearance or answer, which may include a counterclaim.
- Defendant/respondent may also choose not to respond.

A SPECIAL CASE:
DEFAULT JUDGMENTS

- If there is no response to the initial filing within a specified number of days (35 in New Jersey), the plaintiff/petitioner can seek a default judgment.

- This can also be an intentional strategy, by agreement, as a route to uncontested divorce.

When to File and Date of Separation

In some states there may be strategic reasons for choosing a particular filing date:

- In New Jersey, the **date of filing** is generally the cutoff date for acquiring marital assets or debts.
- The filing date could potentially make a big difference in a situation involving something like a major bonus, a lottery win, a highly profitable stock split, or in a situation where one spouse begins to rack up substantial debt.

It many states, such as California, the cut-off date is not the filing date, but the **date of separation** (DOS). Depending on the state, this could be:

- The date one spouse physically relocates from the marital residence,
- The date of physical separation, even if spouses remain in the same house,
- The date one spouse informed the other of an intention is to file for divorce, or
- The signing date of a legal separation agreement.

Case Management & Discovery

- Discovery in a divorce case begins when the parties exchange preliminary financial disclosures containing detailed personal and financial information (in New Jersey this is called a Family Case Information Statement).
- The court may set guidelines for additional discovery at the Case Management Conference.
- In a no-fault divorce, it is common for parties to exchange all relevant information and documents informally without the need for any formal discovery.
- We will discuss additional discovery later when we talk about litigated divorce, but I am going to break down the financial disclosures in detail up-front, because these contain the information that is the critical framework for determining all issues in the divorce, whether the parties settle everything themselves, go through an ADR process, or wind up in court litigation.

FULL FINANCIAL DISCLOSURE IS REQUIRED BY LAW

- Divorcing spouses have a fiduciary duty to one another, creating a legal obligation to reveal all property and income and all debts to their spouse and to the court.
- Most spouses are upfront and honest.
- Unfortunately, however, some will attempt to hide assets to prevent inclusion in equitable distribution, or will hide sources of income to prevent consideration for purposes of alimony or child support.

A lack of trust and a failure to share information openly is one of the major contributors to contested divorce.

DISCOVERY: Finding Hidden Assets

If the assets and income one spouse claims to have do not match up well with the couple's lifestyle or the record of expenses over time, asset-hiding may be a possibility.

This type of investigation and analysis can be complicated and may require the use of outside professionals, such as forensic accountants.

Methods an attorney might use to track down missing assets include:

- Performing a formal lifestyle analysis,
- Investigating all potential sources of income,
- Conducting a formal asset search,
- Getting a private investigator involved, and
- Tracking each spouse's expenses throughout the relationship.

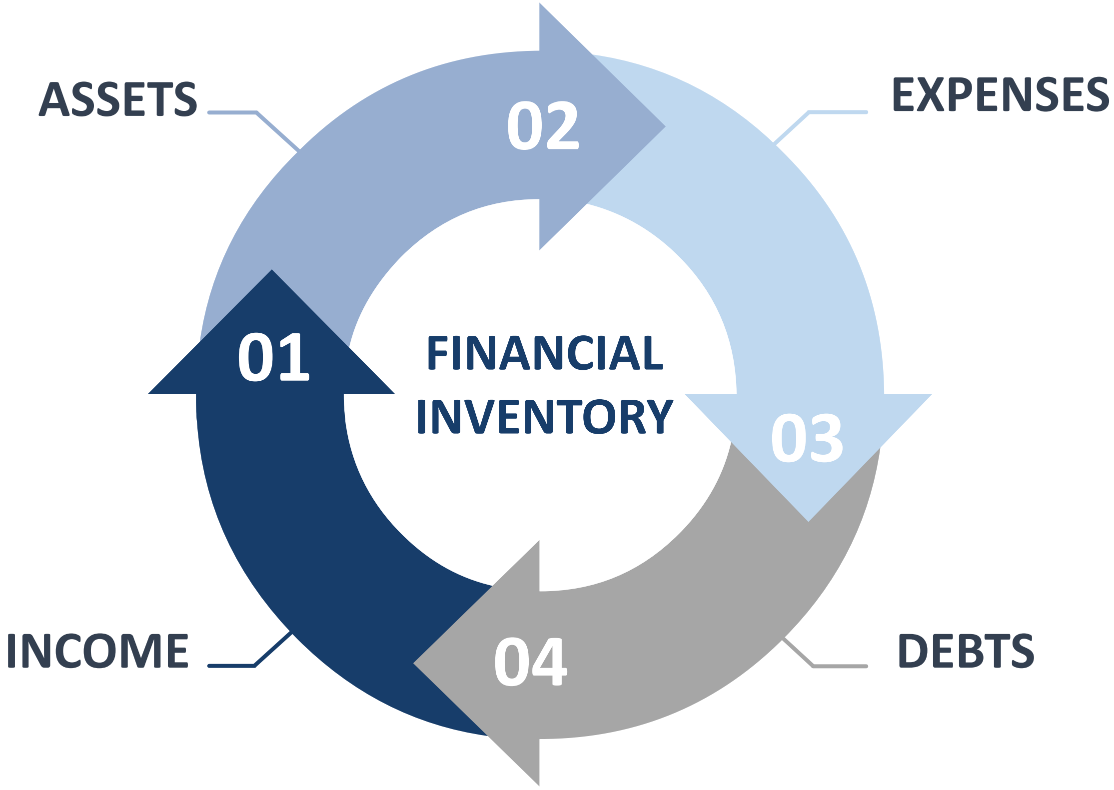
Financial disclosures can have many different names depending on the state, but whatever they are called, they are at the very heart of what is at stake in a divorce.

- **New Jersey**: Family Case Information Statement
- **California:** Declaration of Disclosure (Income & Expense Declaration and Schedule of Assets and Debts)
- **Florida:** Family Law Financial Affidavit
- **Texas:** Sworn Inventory and Appraisement and (if relevant) Proposed Support Decision

Why are the financial disclosures so critical?

- The disclosures serve as the scaffold for the entire case:
    - Attorneys can assist clients with accuracy and with carefully crafted explanatory statements to help support positions.
    - Attorneys work with clients to analyze the information received from the other party to build counter-arguments and evaluate the need for follow-up discovery.
- Detailed and accurate disclosures are essential in a contested case and highly recommended even in the simplest uncontested case.

The next 5 slides include a snapshot of the New Jersey Family CIS. Be sure to obtain and complete the applicable forms for your state.



Appendix V
Family Part Case Information Statement

This form and attachments are confidential pursuant to Rules 1:38-3(d)(1) and 5:5-2(f)

Attorney(s):
Office Address:
Tel. No./Fax No.
Attorney(s) for:

Plaintiff,
vs.
Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
COUNTY

DOCKET NO.
CASE INFORMATION STATEMENT
OF

NOTICE: This statement must be fully completed, filed and served, with all required attachments, in accordance with Court Rule 5:5-2 based upon the information available. In those cases where the Case Information Statement is required, it shall be filed within 20 days after the filing of the Answer or Appearance. Failure to file a Case Information Statement may result in the dismissal of a party's pleadings.

INSTRUCTIONS:

The Case Information Statement is a document which is filed with the court setting forth the financial details of your case. The required information includes your income, your spouse's/partner's income, a budget of your joint life style expenses, a budget of your current life style expenses including the expenses of your children, if applicable, an itemization of the amounts which you may be paying in support for your spouse/partner or children if you are contributing to their support, a summary of the value of all assets referenced on page 8 – **It is extremely important that the Case Information Statement be as accurate as possible because you are required to certify that the contents of the form are true.** It helps establish your lifestyle which is an important component of alimony/spousal support and child support.

The monthly expenses must be reviewed and should be based on actual expenditures such as those shown from checkbook registers, bank statements or credit card statements from the past 24 months. The asset values should be taken, if possible, from actual appraisals or account statements. If the values are estimates, it should be clearly noted that they are estimates.

According to the Court Rules, you **must** update the Case Information Statement as your circumstances change. For example, if you move out of your residence and acquire your own apartment, you should file an Amended Case Information Statement showing your new rental and other living expenses.

It is also very important that you **attach** copies of relevant documents as required by the Case Information Statement, including your most recent **tax returns with W-2 forms, 1099s and your three (3) most recent paystubs.**

If a request has been made for college or post-secondary school contribution, you must also attach all relevant information pertaining to that request, including but not limited to documentation of all costs and reimbursements or assistance for which contribution is sought, such as invoices or receipts for tuition, board and books; proof of enrollment; and proof of all financial aid, scholarships, grants and student loans obtained.

Part A - Case Information:

Date of Statement
Date of Divorce, Dissolution of Civil Union or Termination of Domestic Partnership (post-Judgment matters)
Date(s) of Prior Statement(s)
Your Birthdate
Birthdate of Other Party
Date of Marriage, or entry into Civil Union or Domestic Partnership
Date of Separation
Date of Complaint
Does an agreement exist between parties relative to any issue? ☐ Yes ☐ No.
If Yes, **ATTACH** a copy (if written) or a summary (if oral).

Issues in Dispute:
Cause of Action
Custody
Parenting Time
Alimony
Child Support
Equitable Distribution
Counsel Fees
Anticipated College/Post-Secondary Education Expenses
Other issues (be specific)

1. Name and Addresses of Parties:
Your Name
Street Address City State/Zip
Other Party's Name
Street Address City State/Zip

2. Name, Address, Birthdate and Person with whom children reside:
a. Child(ren) From This Relationship

Child's Full Name	Address	Birthdate	Person's Name

b. Child(ren) From Other Relationships

Child's Full Name	Address	Birthdate	Person's Name

Part B - Miscellaneous Information:

1. Information about Employment (Provide Name & Address of Business, if Self-employed)
Name of Employer/Business Address
Name of Employer/Business Address

2. Do you have Insurance obtained through Employment/Business? ☐ Yes ☐ No. Type of Insurance:
Medical ☐Yes ☐No; Dental ☐Yes ☐No; Prescription Drug ☐Yes ☐No; Life ☐Yes ☐No; Disability ☐Yes ☐No
Other (explain)
Is Insurance available through Employment/Business? ☐Yes ☐No
Explain:

3. **ATTACH** Affidavit of Insurance Coverage as required by Court Rule *5:4-2* (f) (See Part G)

4. Additional Identification:
Confidential Litigant Information Sheet: Filed ☐ Yes ☐ No

5. **ATTACH** a list of all prior/pending family actions involving support, custody or Domestic Violence, with the Docket Number, County, State and the disposition reached. Attach copies of all existing Orders in effect.

Part C. - Income Information:

Complete this section for self and (if known) for other party. If W-2 wage earner, gross earned income refers to Medicare wages.

1. Last Year's Income

	Yours	Joint	Other Party
1. Gross earned income last calendar (year)	$	$	$
2. Unearned income (same year)	$	$	$
3. Total Income Taxes paid on income (Fed., State, F.I.C.A., and S.U.I.). If Joint Return, use middle column.	$	$	$
4. Net income (1 + 2 - 3)	$	$	$

ATTACH to this form a corporate benefits statement as well as a statement of all fringe benefits of employment. (See Part G)

ATTACH a full and complete copy of last year's Federal and State Income Tax Returns. **ATTACH** W-2 statements, 1099's, Schedule C's, etc., to show total income plus a copy of the most recently filed Tax Returns. (See Part G)
Check if attached: ☐ Federal Tax Return ☐ State Tax Return ☐ W-2 ☐ Other

2. Present Earned Income and Expenses

	Yours	Other Party (if known)
1. Average gross weekly income (based on last 3 pay periods – **ATTACH** pay stubs) Commissions and bonuses, etc., are: ☐ included ☐ not included* ☐ not paid to you.	$	$
2. Deductions per week (check all types of withholdings): ☐ Federal ☐ State ☐ F.I.C.A. ☐ S.U.I. ☐ Other	$	$
3. Net average weekly income (1 - 2)	$	$

*__ATTACH__ details of basis thereof, including, but not limited to, percentage overrides, timing of payments, etc.
ATTACH copies of last three statements of such bonuses, commissions, etc.

3. Your Current Year-to-Date Earned Income

Provide Dates: From ______ To ______

1. GROSS EARNED INCOME: $ ______ Number of Weeks ______
2. TAX DEDUCTIONS: (Number of Dependents: ____)

a.	Federal Income Taxes	a.	$
b.	N.J. Income Taxes	b.	$
c.	Other State Income Taxes	c.	$
d.	F.I.C.A.	d.	$
e.	Medicare	e.	$
f.	S.U.I. / S.D.I.	f.	$
g.	Estimated tax payments in excess of withholding	g.	$
h.		h.	$
i.		i.	$
	TOTAL		$

3. GROSS INCOME NET OF TAXES $ ______

4. OTHER DEDUCTIONS

				If mandatory, check box
a.	Hospitalization/Medical Insurance	a.	$	☐
b.	Life Insurance	b.	$	☐
c.	Union Dues	c.	$	☐
d.	401(k) Plans	d.	$	☐
e.	Pension/Retirement Plans	e.	$	☐
f.	Other Plans - specify	f.	$	☐
g.	Charity	g.	$	☐
h.	Wage Execution	h.	$	☐
i.	Medical Reimbursement (flex fund)	i.	$	☐
j.	Other:	j.	$	☐
	TOTAL		$	

5. NET YEAR-TO-DATE EARNED INCOME: $
NET AVERAGE EARNED INCOME PER MONTH: $
NET AVERAGE EARNED INCOME PER WEEK $

4. Your Year-to-Date Gross Unearned Income From All Sources

(including, but not limited to, income from unemployment, disability and/or social security payments, interest, dividends, rental income and any other miscellaneous unearned income)

Source	How often paid	Year to date amount
		$
		$
		$
		$
		$
		$
		$
		$
		$
TOTAL GROSS UNEARNED INCOME YEAR TO DATE		$

5. Additional Information:

1. How often are you paid?
2. What is your annual salary? $
3. Have you received any raises in the current year? ☐ Yes ☐ No
If yes, provide the date and the gross/net amount.
4. Do you receive bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary? ☐ Yes ☐ No
If yes, explain:
5. Does your employer pay for or provide you with an automobile (lease or purchase), automobile expenses, gas, repairs, lodging and other. ☐ Yes ☐ No
If yes, explain.:

6. Did you receive bonuses, commissions, or other compensation, including distributions, taxable or non-taxable, in addition to your regular salary during the current or immediate past 2 calendar years? ☐Yes ☐No
If yes, explain and state the date(s) of receipt and set forth the gross and net amounts received:

7. Do you receive cash or distributions not otherwise listed? ☐Yes ☐No
If yes, explain.

8. Have you received income from overtime work during either the current or immediate past calendar year? ☐Yes ☐No
If yes, explain.

9. Have you been awarded or granted stock options, restricted stock or any other non-cash compensation or entitlement during the current or immediate past calendar year? ☐Yes ☐No
If yes, explain.

10. Have you received any other supplemental compensation during either the current or immediate past calendar year? ☐Yes ☐No
If yes, state the date(s) of receipt and set forth the gross and net amounts received. Also describe the nature of any supplemental compensation received.

11. Have you received income from unemployment, disability and/or social security during either the current or immediate past calendar year? ☐Yes ☐No
If yes, state the date(s) of receipt and set forth the gross and net amounts received.

12. List the names of the dependents you claim:

13. Are you paying or receiving any alimony? ☐Yes ☐No
If yes, how much and from or to whom?

14. Are you paying or receiving any child support? ☐Yes ☐No
If yes, list names of the children, the amount paid or received for each child and to whom paid or from whom received.

15. Is there a wage execution in connection with support? ☐Yes ☐No
If yes explain.

16. Does a Safe Deposit Box exist and if so, at which bank? ☐Yes ☐No

17. Has a dependent child of yours received income from social security, SSI or other government program during either the current or immediate past calendar year? ☐Yes ☐No
If yes, explain the basis and state the date(s) of receipt and set forth the gross and net amounts received

18. Explanation of Income or Other Information:

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V) Page 5 of 10

Part D - Monthly Expenses (computed at 4.3 wks/mo.)
Joint Marital or Civil Union Life Style should reflect standard of living established during marriage or civil union. Current expenses should reflect the current life style. Do not repeat those income deductions listed in Part C – 3.

	Joint Life Style Family, including ____ children	Current Life Style Yours and ____ children
SCHEDULE A: SHELTER		
If Tenant:		
Rent	$	$
Heat (if not furnished)	$	$
Electric & Gas (if not furnished)	$	$
Renter's Insurance	$	$
Parking (at Apartment)	$	$
Other charges (Itemize)	$	$
If Homeowner:		
Mortgage	$	$
Real Estate Taxes (if not included w/mortgage payment)	$	$
Homeowners Ins. (if not included w/mortgage payment)	$	$
Other Mortgages or Home Equity Loans	$	$
Heat (unless Electric or Gas)	$	$
Electric & Gas	$	$
Water & Sewer	$	$
Garbage Removal	$	$
Snow Removal	$	$
Lawn Care	$	$
Maintenance/Repairs	$	$
Condo, Co-op or Association Fees	$	$
Other Charges (Itemize)	$	$
Tenant or Homeowner:		
Telephone	$	$
Mobile/Cellular Telephone	$	$
Service Contracts on Equipment	$	$
Cable TV	$	$
Plumber/Electrician	$	$
Equipment & Furnishings	$	$
Internet Charges	$	$
Home Security System	$	$
Other (itemize)	$	$
TOTAL	$	$
SCHEDULE B: TRANSPORTATION		
Auto Payment	$	$
Auto Insurance (number of vehicles: ____)	$	$
Registration, License	$	$
Maintenance	$	$
Fuel and Oil	$	$
Commuting Expenses	$	$
Other Charges (Itemize)	$	$
TOTAL	$	$

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V) Page 6 of 10

SCHEDULE C: PERSONAL

	Joint Life Style Family, including ____ children	Current Life Style Yours and ____ children
Food at Home & household supplies	$	$
Prescription Drugs	$	$
Non-prescription drugs, cosmetics, toiletries & sundries	$	$
School Lunch	$	$
Restaurants	$	$
Clothing	$	$
Dry Cleaning, Commercial Laundry	$	$
Hair Care	$	$
Domestic Help	$	$
Medical (exclusive of psychiatric)*	$	$
Eye Care*	$	$
Psychiatric/psychological/counseling*	$	$
Dental (exclusive of Orthodontic*	$	$
Orthodontic*	$	$
Medical Insurance (hospital, etc.)*	$	$
Club Dues and Memberships	$	$
Sports and Hobbies	$	$
Camps	$	$
Vacations	$	$
Children's Private School Costs	$	$
Parent's Educational Costs	$	$
Children's Lessons (dancing, music, sports, etc.)	$	$
Babysitting	$	$
Day-Care Expenses	$	$
Entertainment	$	$
Alcohol and Tobacco	$	$
Newspapers and Periodicals	$	$
Gifts	$	$
Contributions	$	$
Payments to Non-Child Dependents	$	$
Prior Existing Support Obligations this family/other families (specify)	$	$
Tax Reserve (not listed elsewhere)	$	$
Life Insurance	$	$
Savings/Investment	$	$
Debt Service (from page 7) (not listed elsewhere)	$	$
Parenting Time Expenses	$	$
Professional Expenses (other than this proceeding)	$	$
Pet Care and Expenses	$	$
Other (specify)	$	$

***unreimbursed only**

TOTAL	$	$

Please Note: If you are paying expenses for a spouse or civil union partner and/or children not reflected in this budget, attach a schedule of such payments.

Schedule A: Shelter	$	$
Schedule B: Transportation	$	$
Schedule C: Personal	$	$
Grand Totals	$	$

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V) Page 7 of 10

Part E - Balance Sheet of All Family Assets and Liabilities

Statement of Assets

Description	Title to Property (P, D, J)[1]	Date of purchase/acquisition. If claim that asset is exempt, state reason and value of what is claimed to be exempt	Value $ Put * after exempt	Date of Evaluation Mo./Day/ Yr.
1. Real Property				
2. Bank Accounts, CD's (identify institution and type of account(s))				
3. Vehicles				
4. Tangible Personal Property				
5. Stocks, Bonds and Securities (identify institution and type of account(s))				
6. Pension, Profit Sharing, Retirement Plan(s), 401(k)s, etc. (identify each institution or employer)				
7. IRAs				
8. Businesses, Partnerships, Professional Practices				
9. Life Insurance (cash surrender value)				
10. Loans Receivable				
11. Other (specify)				

TOTAL GROSS ASSETS: $
TOTAL SUBJECT TO EQUITABLE DISTRIBUTION: $
TOTAL NOT SUBJECT TO EQUITABLE DISTRIBUTION: $

[1] P = Plaintiff; D = Defendant; J = Joint

Revised to be effective September 1, 2017. CN: 10482 (Court Rules Appendix V) Page 8 of 10

Statement of Liabilities

Description	Name of Responsible Party (P, D, J)	If you contend liability should not be shared, state reason	Monthly Payment	Total Owed	Date
1. Real Estate Mortgages					
2. Other Long Term Debts					
3. Revolving Charges					
4. Other Short Term Debts					
5. Contingent Liabilities					

TOTAL GROSS LIABILITIES: $__________
(excluding contingent liabilities)

NET WORTH: $__________
(subject to equitable distribution)
TOTAL SUBJECT TO EQUITABLE DISTRIBUTION: $__________
TOTAL NOT SUBJECT TO EQUITABLE DISTRIBUTION: $__________

Part F - - Statement of Special Problems

Provide a Brief Narrative Statement of Any Special Problems Involving This Case: As example, state if the matter involves complex valuation problems (such as for a closely held business) or special medical problems of any family member, etc.

Part G - Required Attachments

Check If You Have Attached the Following Required Documents

1. A full and complete copy of your last federal and state income tax returns with all schedules and attachments. (Part C-1) ☐
2. Your last calendar year's W-2 statements, 1099's, K-1 statements. ☐
3. Your three most recent pay stubs. ☐
4. Bonus information including, but not limited to, percentage overrides, timing of payments, etc.; the last three statements of such bonuses, commissions, etc. (Part C) ☐
5. Your most recent corporate benefit statement or a summary thereof showing the nature, amount and status of retirement plans, savings plans, income deferral plans, insurance benefits, etc. (Part C) ☐
6. Affidavit of Insurance Coverage as required by Court Rule 5:4-2(f) (Part B-3) ☐
7. List of all prior/pending family actions involving support, custody or Domestic Violence, with the Docket Number, County, State and the disposition reached. Attach copies of all existing Orders in effect. (Part B-5) ☐
8. Attach details of each wage execution (Part C-5) ☐
9. Schedule of payments made for a spouse or civil union partner and/or children not reflected in Part D. ☐
10. Any agreements between the parties. ☐
11. An Appendix IX Child Support Guideline Worksheet, as applicable, based upon available information. ☐
12. If a request has been made for college or post-secondary school contribution, all relevant information pertaining to that request, including but not limited to documentation of all costs and reimbursements or assistance for which contribution is sought, such as invoices or receipts for tuition, board and books; proof of enrollment; and proof of all financial aid, scholarships, grants and student loans obtained. A list of the information as promulgated by the Administrative Director of the Courts can be found on the Judiciary website. ☐

I certify that, other than in this form and its attachments, confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

I certify that the foregoing information contained herein is true. I am aware that if any of the foregoing information contained therein is willfully false, I am subject to punishment.

DATED: ________________ SIGNED: ________________

When is the New Jersey CIS Required?

- Litigants must file and serve a CIS:
  - In all contested family actions, except summary actions, in which there is any issue as to custody, support, alimony or equitable distribution. R.5:5-2(a).
  - In a default judgment, with the Notice of Application for Equitable Distribution, Alimony, Child Support and Other Relief, unless a written property settlement has been executed. R.5:5-2(e).
  - With an application for pendente lite (temporary) relief or a response thereto. R. 5:7-2(a).
  - In other family actions, when ordered by the court on its own motion or a party's motion.

Timing: Must be Filed Within 20 Days After Answer or Appearance

- A New Jersey CIS, or a certification that no CIS is required, must be filed:
    - within 20 days after the filing of an Answer or Appearance. R. 5:5-2(b);
    - not less than 20 days prior to a default judgment hearing date. R. 5:5-2(e);
    - as an attachment to a pendente lite application for support, counsel fees and costs, or a response to such application, whether such application is made with the complaint or by a later notice of motion. R. 5:7-2(a).
- If a party fails to file a CIS, the court, after notice to all parties, may dismiss the party's pleadings (subject to conditional reinstatement).

Amendments: Must be Up-to-Date Before Any Hearings

- Parties are under a continuing duty to update the CIS.
- All amendments must be filed:
  - no later than 20 days before the final hearing. R. 5:5-2 (c);
  - no later than eight days prior to the motion hearing date on a pendente lite application. R. 5:7-2 (a).
- The court may prohibit introduction into evidence of any undisclosed information, or enter other orders deemed appropriate. R. 5:5-2 (c).

Disclosure requirements in other states

- Most states require detailed disclosure.
- **California** requires a preliminary financial disclosure in every divorce case. Spouses can agree to waive the final disclosure.
- **Florida** requires a short form financial affidavit when income is under $50,000 and a long form when income is higher. Parties who qualify for a "simplified dissolution" (no minor children, no support claims, and a written settlement of all financial issues) can agree to waive disclosures.
- **In Texas**, local court rules dictate whether a party must file a sworn Inventory and Appraisement. Only a spouse seeking support must file a Proposed Support Decision and Information (and this is rare in Texas, as we will discuss later).

Property Division in Divorce

Property division in divorce follows a predictable process. We'll look at the overall sequence first and then go into further detail on each step.

1. Identify the law in your state:
    - The majority of states are "**equitable distribution states**."
    - Nine states are "**community property states"**: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.
2. Inventory all assets and debts and identify each item as either marital (or community) property or separate property.
3. Provide an accurate value for each item.
4. Appropriately assign the property or the value of the property to one spouse or the other.

How is property division different in equitable vs. community states?

- Equitable distribution requires a fair division of marital property—not an exactly equal division.
- Community property states require a 50/50 split of all community property.

What is marital property or community property?

- Marital property or community property includes all assets (and debts) that either or both spouses acquire during marriage.
- It generally does not include “separate property,” which is property owned before marriage, inherited property, and gifts from someone other than the spouse.
- State law determines whether income from separate property remains separate or is considered marital or community property.
- There are a few states that will include separate property in the division at least sometimes. These “all property” or “kitchen sink” states include Connecticut, Indiana, Kansas, Massachusetts, Michigan, Mississippi, Montana, New Hampshire, North and South Dakota, Oregon, Vermont, Washington, and Wyoming. Eight other states will include separate property when the court finds a need. These are Alabama, Alaska, Arkansas, Hawaii, Iowa, Minnesota, Ohio, Wisconsin.

Examples of Property

What types of property might be subject to division in divorce?

PERSONAL PROPERTY

- Vehicles, such as cars, boats, or private planes
- Clothing
- Jewelry
- Furniture
- Art work, antiques, collectibles
- Cash or cash value assets, such as checking and savings accounts, stocks and bonds
- Retirement accounts
- Stock options
- Certain types of intangible property, such as trademarks or patents
- Pets (in most states, but not California)

BUSINESS INTERESTS

- Closely held corporations
- Partnerships
- Professional practices

REAL ESTATE

- Marital homes
- Vacation homes
- Investment properties
- Time shares

The Property Distribution Process

After determining accurate values for assets and tallying all debts, the divorcing spouses exchange or offset financial accounts and property to achieve a fair (or equal) balance.

There are generally no immediate tax consequences, but it is critical to consider possible deferred tax consequences when comparing the relative value of different types of assets

If the parties are unable to reach agreement on distribution, the court will divide the assets and debts after consideration of the factors in the state's property distribution statute.

Financial experts are often necessary for property valuation and distribution

A few examples:

- Financial Advisor
- Forensic Accountant
- Real Estate Appraiser
- Business Appraiser
- Pension Appraiser/Actuary

Separate Property: Commingling and Transmutation

- A spouse asserting that an asset is separate property generally has the initial responsibility of providing proof.
- Proof requires "tracing" the separate source. This can be challenging if the property has become mixed—or "commingled"—with marital or community property.
- Property can also be intentionally "transmuted" from separate property into marital or community property, or vice versa.
- Transmutation is most clearly accomplished through an express written agreement to make a gift of the property to the other spouse.
- State laws differ regarding whether or not certain actions can amount to transmutation without an express written agreement.

Marital Contributions to Separate Property

- A frequent issue arises when one spouse owns mortgaged real estate separately prior to marriage and then both spouses pay the mortgage out of earnings accrued during the marriage.
- A similar issue arises when one spouse owns a business prior to marriage and the other spouse makes personal or financial contributions to the business.
- In some states, such as the equitable distribution state of New Jersey, any increase in the equity of separate property that results from marital financial contributions becomes marital property.
- An increase in property value due to the hands-on "sweat equity" efforts of either spouse (as opposed to passive or market forces) may also be treated as marital property.
- In other states, such as the community property state of California, any appreciation of the separate property does not become community property, but the contributing spouse can obtain reimbursement of financial contributions.
- These are complex issues and require careful analysis of the statutory and case law in the particular state.
- The analysis can be particularly complex when the division of a business is involved.
- We'll discuss businesses a bit more in a later slide.

Marital Home - Often the Biggest Asset in Divorce

Factors to Consider in “Buying Out” a Spouse

- **Home Equity:** Generally the current value minus any outstanding mortgage balance.
  - Example: if a home is currently valued at $750,000 and the outstanding mortgage balance is $350,000, there is $400,000 of equity in the home. If each spouse is entitled to 50% of the equity, each will receive $200,000 of value.
- **Market Trends:** If the market is dropping or has recently dropped, you may not get the best value in a buy-out.
- **Future Tax liability:** The transfer of a home between divorcing spouses neither triggers current tax payments nor raises the home’s basis. Therefore, a spouse who keeps the home is potentially subject to higher capital gains taxes down the road. Married couples currently receive a $500,000 exemption on profit from the sale of a principal residence, while single owners receive only $250,000.
  - Example: If a married couple purchases a home together for $400,000 and sells it for $900,000, receiving a gain (before deducting allowable costs of sale) of $500,000, they will pay no capital gains tax. If one spouse buys out the other and then sells the home later for the same $500,000 gain, however, that sole owner will have to pay capital gains tax on $250,000 of the profit (minus allowable costs).
- **Costs of Sale:** A sole owner must foot commissions and fees alone when selling the property to a third party.
- **Maintenance Expenses:** A high value home often requires high maintenance costs.
- **Current Mortgage Rates:** Refinancing is often the preferable way to buy out a spouse. The new mortgage and deed will reflect the new form of ownership.

Dividing a Business: Valuations

- If one or both spouses own and operate a business, then you will probably need a formal valuation and report.
- You can hire joint or separate forensic accountants or actuarial experts to determine the "fair value" or "fair market value" (depending on your state).
- The business valuation process typically includes a thorough inspection of the business site and records, including general ledgers, payroll registers, receivables, machinery, inventory, real estate, client lists, and partnership interests.
- Analysis includes valuation of enterprise and personal "goodwill," as well as dollar value.
- Whether or not personal goodwill is divisible will depend on your state.
- If the business is separate property, then the valuation can include a calculation of any spousal share.
- Business valuations are complex and it is not uncommon for different professionals to employ different methodologies and reach disparate conclusions.

Business Valuations

Understanding Terms

GOODWILL

- "Goodwill" is that part of a business's value that comes from things like personal reputation, a higher than average skill level, a great location, or the employment of particularly capable staff.
- "Personal" goodwill requires the presence of a specific individual.
- "Enterprise" goodwill is associate with the business in general.
- Goodwill is not tangible, but it is can greatly affect a business's worth.

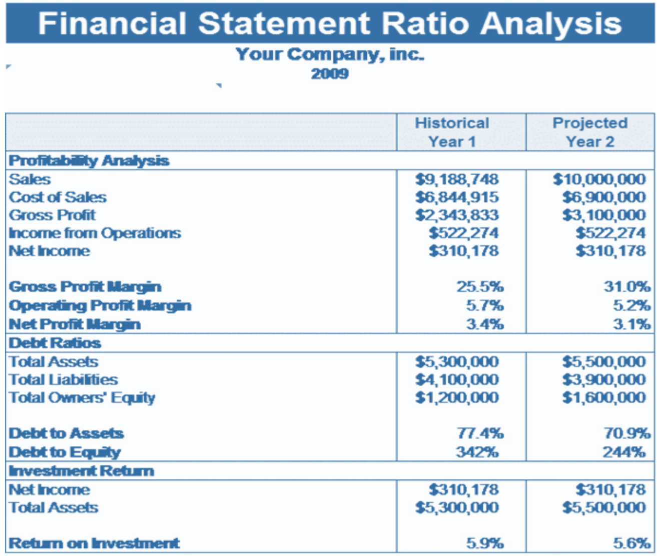
FAIR VALUE

- Fair value is essentially "fair market value," minus certain discounts.
- The disallowed discounts are
  - **marketability discounts**, reflecting a decrease in value due to the time it might take to sell the business, and
  - **minority interest discounts**, reflecting a decrease in value due to a particular owner's lack of control resulting from ownership of less than 50% of the voting interest.
- Excluding these discounts may result in a higher value than fair market value.

Business and Professional Practices

Distribution Issues

- Most divorcing couples prefer to assign a business to the most involved party after divorce, rather than continuing to run it together.
- This will be critical with any kind of professional practice or highly skilled work.
- A spouse entitled to a portion of the value of the other's business can accomplish a buy-out by balancing the value with other assets, or if necessary, by setting up some kind of payment plan, such as an annuitized settlement.



Financial Statement Ratio Analysis

Your Company, inc.

2009

	Historical Year 1	Projected Year 2
Profitability Analysis		
Sales	$9,188,748	$10,000,000
Cost of Sales	$6,844,915	$6,900,000
Gross Profit	$2,343,833	$3,100,000
Income from Operations	$522,274	$522,274
Net Income	$310,178	$310,178
Gross Profit Margin	25.5%	31.0%
Operating Profit Margin	5.7%	5.2%
Net Profit Margin	3.4%	3.1%
Debt Ratios		
Total Assets	$5,300,000	$5,500,000
Total Liabilities	$4,100,000	$3,900,000
Total Owners' Equity	$1,200,000	$1,600,000
Debt to Assets	77.4%	70.9%
Debt to Equity	342%	244%
Investment Return		
Net Income	$310,178	$310,178
Total Assets	$5,300,000	$5,500,000
Return on Investment	5.9%	5.6%

www.report-templates.org/financial-statement-ratios-analysis.html

Retirement Asset Valuations

- **Defined benefit plans** are not separate accounts, but rather the right to receive a predetermined amount of money on retirement, subject to variables such as years of service and salary.
- Obtaining a present value of a defined benefit plan, or a hybrid plan with defined benefit features, requires an actuarial calculation based on assumptions regarding indefinite future events, including the employee's future retirement date and probable eventual salary.

- **Defined contribution plans** are separate accounts containing a specific amount of money, although the amount may fluctuate quite a bit based on the allocation of assets in the account and market conditions.
- Because defined contribution plans contain a clearly defined amount of money at any particular time, they are relatively easy to value and divide.

Any type of retirement account either spouse has contributed to during marriage, whether vested or not, is subject to equitable distribution in New Jersey.

Separately Owned Retirement Accounts:

Marital Contributions

- Where one spouse acquired an interest in a pension or retirement account prior to marriage and continued to make contributions during marriage, the account will be partly marital and partly separate.
- The spouse claiming a separate property interest will have to prove the value of that interest and may need to hire a forensic accountant for this purpose.
- Proof will require documentation of the account balance as of the date of marriage, and also throughout the marriage.
- An accountant can then determine how much of the current balance consists of premarital contributions and gains on such contributions and how much consists of marital contributions and gains on those.

Retirement Asset Distributions

Most corporate retirement accounts, such as 401(k) or 403(b) accounts, are subject to a federal law called the Employee Retirement Income Security Act (ERISA).

ERISA requires a Qualified Domestic Relations Order (QDRO) for distribution to the spouse of the plan participant as an alternate payee.

The plan administrator will have to approve the QDRO before the plan can distribute any funds.

An individual retirement account (IRA) can be divided in divorce without tax penalties.

Your bank may need a form or letter of instruction with a copy of your divorce decree and court order or settlement agreement.

A divorcing participant or spouse can withdraw funds from an ERISA plan regardless of age or retirement status without incurring the usual early withdrawal penalty of 10%.

The plan can also transfer funds directly from the original account into an IRA account set up in the spouse's name.

Some plans, including government pension plans, are not subject to ERISA but have their own rules governing division. E.g., military pensions require a Military Pension Division Order (MPDO). These other rules may or may not be similar to ERISA. Some plans, such as certain supplemental or excess plans, may not be divisible at all.

Child Custody and Support

Every state has its own child custody laws and its own child support formula, but there are a few common principles:

1. All states consider the **best interests of the child** to be paramount when making custody decisions.
2. All states have replaced laws which favor mothers in "tender years" cases (up to about age 6) with laws that are **gender-neutral** regardless of age.
3. Mothers are still granted primary or sole residential custody more often than fathers, possibly because:
   - More mothers are primary caretakers and courts general favor keeping the status quo,
   - More mothers ask for primary custody, and
   - Some judges may still apply an unconscious prejudice in favor of a mother.
4. Equal time sharing is on the rise, but it is still relatively uncommon.
5. Most (but not all) states have changed their child support formulas from a "percentage of income" model to an "income shares" model (we will look more closely at this later).

LEGAL CUSTODY

Governs a parent's authority to participate in major decisions regarding a child's health, education, and general welfare, including:

- School attendance,
- Religious upbringing, and
- Medical treatment beyond routine or emergency care.

Sole Legal Custody vs. Joint Legal Custody

Most states favor joint legal custody. In New Jersey it is generally the default unless one parent is absent or abusive.

Joint legal custody usually means parents make all decisions together.

In some cases, one parent will have authority over certain aspects and the other will have authority over other aspects.

PHYSICAL CUSTODY

Governs which parent a child lives with.

Sole Physical Custody vs. Shared Custody

- Sole custody generally allows liberal visitation by the noncustodial parent unless there are safety concerns or one parent chooses more limited physical custody.
- In New Jersey, physical custody is considered “shared” when it approaches equal time-sharing and there is full sharing of parenting responsibilities.
- Child support may be calculated differently for sole custody and shared custody.

All states in the U.S. Encourage Parents to Make their Own Parenting Agreements

- Except in situations of abuse or alienation, a judge will rarely have the ability to make better decisions for children than parents who collaborate.
- Parents who have complex work schedules, or who travel frequently, can benefit from creative time-sharing arrangements.
- If parents cannot reach agreement, a child custody evaluator can provide a professional opinion.
- High conflict parents sometimes obtain separate opinions.
- Alternative dispute resolution (ADR) processes, such as private mediation and collaborative law are especially helpful for resolving parenting disputes. We will discuss ADR in more detail later.

IF PARENTS CANNOT AGREE, THE COURT WILL ENTER ORDERS AFTER CONSIDERATION OF STATUTORY FACTORS :

NEW JERSEY CUSTODY FACTORS (NJSA 9:2-4)

- The parents' ability to agree, communicate and cooperate in matters relating to the child;
- The parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse;
- The interaction and relationship of the child with parents and siblings;
- The history of domestic violence, if any;
- The safety of the child and the safety of either parent from physical abuse by the other parent;
- The preference of a child of sufficient age and capacity to reason so as to form an intelligent decision;
- The needs of the child;
- The stability of the home environment offered;
- The quality and continuity of the child's education;
- The fitness of the parents;
- The geographical proximity of the parents' homes;
- The extent and quality of the time spent with the child prior to or subsequent to the separation;
- The parents' employment responsibilities;
- And the age and number of the children.

Custody Investigations & Evaluations

Family Division Investigations

- A judge can order a social investigation and "best interests of the child" report.
- May include home inspections for shared parenting time.
- May also include psychological, psychiatric, parental functioning assessments or mental health evaluations if necessary.
- A judge can also interview a child in chambers.

Private Custody Evaluations

- Can be used by agreement in an ADR process, but are more common in a contested court case.
- Parents can jointly hire a mental health expert to conduct the investigation and prepare the report, or
- Parents can each hire their own expert.
- Child custody evaluators must be neutral and follow uniform standards, regardless of who hires them.

State Child Support Formulas

Federal law requires all states to establish presumptive child support guidelines by statute, administrative rule, or judicial rule

- **Percentage of Income Model.** This model calculates child support based only on the number of children in a family and the paying (non-custodial) parent's income. This model is now uncommon as most states have replaced it with the income shares model. States that still use some variation of the percentage of income model include Alaska, Arkansas, Mississippi, Nevada, North Dakota, Texas, and Wisconsin.
- **Income Shares Model.** This model considers the total income of both parents and the number of children in a family and then assigns a share of responsibility for support to each parent based on that parent's income and the time a child spends with that parent. Forty states, including New Jersey, now use some form of the income shares model. A few states (Delaware, Hawaii and Montana) use a more complex variation known as the Melson Formula.

Common Features of Child Support Formulas

Child Support Guidelines Share Certain Features from State to State

- Most incorporate a "self-support" reserve for the obligor.
- All have provisions relating to imputed income.
- By federal regulation, all take into consideration the health care expenses for the children, whether by insurance or other means.
- Most incorporate the following into the presumptive child support formula:
  - special additions for child care expenses,
  - special formulas for shared custody, split custody, and extraordinary visitation, and
  - special deductions for support of previous and subsequent children.

NEW JERSEY CHILD SUPPORT

STATUTORY FACTORS

The New Jersey Child Support Guidelines appear in Appendix IX to the States Court Rules. A statute (NJSA 2A:34-23) includes factors that courts consider when varying from the Guidelines

1. Needs of the child;
2. Standard of living and economic circumstances of each parent;
3. All sources of income and assets of each parent;
4. Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost for each parent to obtain training or experience for appropriate employment;
5. Need and capacity of the child for education, including higher education;
6. Age and health of the child and each parent;
7. Income, assets and earning ability of the child;
8. Responsibility of the parents for the court-ordered support of others;
9. Reasonable debts and liabilities of each child and parent; and
10. Any other factors the court may deem relevant.

Child Support Age Limits and Post-Secondary School Contributions

- In most states, child support ends at 18 or may continue up to age 19 if the child is still in high school; in a very few states, child support can continue for longer because the age of majority is higher.
- Most courts will uphold a written settlement agreement that provides for payment of post-secondary education, but will not order the parent to contribute.
- A few states, including New Jersey, will order a divorced parent to contribute under certain circumstances, and usually up to a specified age limit, such as 23.
- Even in a state that might order contributions, the most efficient way to address such expenses is usually through a Marital Settlement Agreement, with the help of a mediator if necessary.

Alimony/Spousal Support

The Changing Face of Alimony:

1. Alimony was established when most women stayed home and raised children while the husband worked, which meant that permanent alimony was often a woman's only means of support after a marriage ended.
2. In recent years alimony reform has limited the availability of permanent alimony and also limited the potential duration of other types of alimony.
3. Alimony is always based on one's party's need and the other party's ability to pay. Dependent spouses are expected to become self-supporting whenever possible (a vocational expert may be necessary to evaluate employability).
4. Alimony exists to help a former spouse maintain the standard of living (SOL) of a marriage, but unless the marriage has been long and the supported spouse cannot reasonably be expected to become self-supporting due to advanced age or some other circumstance, it will be limited in duration.
5. States differ widely in the ways that they award (or don't award) alimony.

New Jersey Alimony Statute

New Jersey reformed its alimony laws in 2014. The legislature made several changes, including the following:

- "Permanent alimony" became "open durational alimony" and its availability was limited in most cases to marriages of at least 20 years.
- The duration of alimony in marriages of less than 20 years was limited, in most cases, to no longer than the length of the marriage.

Even after this reform, New Jersey remains a relatively generous state when it comes to alimony.

In many other states, if alimony is awarded at all, it will usually not exceed half the length of a marriage.

Alimony in Other States

California:

- California's alimony statute includes a presumption that a reasonable duration of alimony in a marriage of less than 10 years is half the length of the marriage.
- After a 10 year marriage, the court retains jurisdiction over the issue of alimony indefinitely, but this does not mean that a spouse will get a longer award; a court may implement a "step-down" order that awards alimony for a few years, and then retain jurisdiction by means of a nominal ongoing award, such as $1 per year.

Texas:

- A court can order post-divorce spousal support only if the spouse seeking support will not have enough property at the time of the divorce to provide for basic needs and one of the following circumstances also exists:
    - The marriage lasted 10 years or more,
    - There has been a family violence conviction against the supporting spouse during the marriage, and the violence occurred during the divorce proceedings or within two years before the filing of the divorce action,
    - The supported spouse has a physical or mental disability preventing self-support, *or*
    - The supported spouse has custody of a special needs child.

Types of Alimony

In New Jersey

Other states may differ slightly

TEMPORARY (pendente lite)

Maintains the "status quo" during the divorce.

AFTER FINAL JUDGMENT

Four different types, each with a specific purpose:

Durational alimony generally ends upon death, remarriage, or cohabitation (see state law) of the recipient.

Rehabilitative and reimbursement alimony do not.

1 OPEN DURATIONAL

- No predetermined end date.
- Absent exceptional circumstances, available only after marriages of at least 20 years.
- Purpose is to help recipient maintain marital SOL.

2 LIMITED DURATION

- Term specified in advance.
- Absent exceptional circumstances, limited to length of marriage
- Purpose is to help recipient maintain marital SOL.

3 REHABILITATIVE

- Limited duration alimony with s specific purpose
- Purpose is to helping a lower earning spouse obtain tools necessary for self-support.

4 REIMBURSEMENT

- Single payment or limited duration with a specific purpose.
- Purpose is to compensate one spouse for financial contributions to the education or career advancement of the other.

Calculating Alimony

- Many jurisdictions have formulas governing temporary alimony during divorce proceedings, but most do not have formulas for post-divorce alimony; make sure to check both state and local court rules.
- Awards are based on one spouse's need and the other spouse's ability to pay.
- In most states "need" is based on the marital SOL.
- If a luxurious SOL was the norm during the marriage, and the high earner has the ability to continue paying for this, then the lifestyle may be maintained for some period of time through alimony.
- An alimony claim requires preparation of detailed budgets tallying expenses during the marriage, and current expenses post-separation.
- If necessary, a forensic accountant can prepare a "lifestyle analysis."

Analyzing Income Available for Spousal Support

Income available for alimony, also called spousal support, or spousal maintenance, is generally net income, or gross income minus allowable deductions.

Gross income includes most type of earned or unearned income. If you have unusual sources of income, you may need a forensic accountant for calculation.

Common examples of income include wages, commissions, self-employment income, bonuses, dividend or interest income, alimony, rents received, worker’s compensation or unemployment insurance benefits, and pensions.

Calculating Alimony: Imputing Income

Recipient Spouse:

- Alimony recipients must make efforts to become self-supporting.
- A court will "impute" income to a spouse who is unemployed or underemployed.
- If the party requesting alimony has no significant earning potential, the court will impute a minimum wage income (which may have little impact on alimony payments from a high income spouse).
- A spouse with poor income potential who will be receiving alimony for a limited period of time may want to request "rehabilitative" alimony, if available, to pay for an advanced degree or professional training.

Paying Spouse:

- A court can also impute income to a spouse responsible for paying alimony.
- Quitting a high-paying job or divesting of high income investments will not be effective in avoiding payment of alimony.

Negotiating Alimony

- It is generally much easier to negotiate alimony in a settlement agreement than to leave the matter to a court decision.
- Negotiating alimony provides parties with the greatest opportunity to consider need and ability to pay in the context of the entire divorce settlement.
- Alimony interacts with both property distribution and child support; it may make sense therefore, to agree, for example, to an exchange of certain property for some amount of alimony, or to make a plan to fund a 529 account for college in exchange for lower alimony payments.
- Parties are generally free to change the usual rules that apply to termination or modification of alimony in a written settlement agreement; be sure to consult state law regarding any specific language that must be used.
- In California a dependent spouse in a marriage of over 10 years may agree that the court will relinquish jurisdiction over alimony after a specified period of time in exchange for a slightly larger alimony payment up front.
- Recent changes in the tax treatment of alimony have made alimony negotiations more difficult.

Tax Issues in Alimony

- For decades alimony has been tax deductible for the paying spouse and taxable to the recipient spouse.
- This provided a benefit for the paying spouse and often made it easier for a recipient to negotiate a slightly higher amount.
- Under the Tax Cuts and Jobs Act of 2018 (“Trump Tax”) alimony payments are no longer either deductible for the payer or taxable to the recipient in all orders and agreements effective after December 31, 2018.
- While this appears on its face to be a benefit to the recipient, in reality it increases the tax burden on both parties.
- Shifting the tax burden to the party with a higher income generally increases the total tax paid, leaving a smaller pot of income available for the parties to divide.

Health Insurance and Alimony Negotiations

- Once the parties are no longer married, a dependent spouse will lose eligibility for any benefits obtained through the employment of the former spouse.
- The Consolidated Omnibus Budget Reconciliation Act (COBRA) requires eligible employer-sponsored plans (employers of 20 plus employees) to provide short-term coverage for a spouse losing coverage due to separation or divorce.
- COBRA coverage, even if available, tends to be more expensive than a regular employee plan.
- Losing job-based coverage is a special enrollment event in the Health Insurance Marketplace.
- Spouses negotiating alimony need to investigate the cost of continuing health coverage under various options and include this as an item of need.

Military Divorce and Temporary Support

- It can sometimes be challenging for servicemembers to establish a case in state court due to jurisdictional issues and other aspects of frequent relocation or deployment.
- Going to court as soon as possible will provide the best protections, but in the interim, each branch of the military has regulations that require payment of temporary support
- For details see:
    - **Navy Personnel Manual (MILPERSMAN) 1754-030**
    - **Marine Corps Legal Administration Manual Chapter 15**
    - **Army Regulation 608-99**
    - **Coast Guard Discipline and Conduct Manual Section 2.E.3**
    - **Air Force Instruction 36-2906**

Alternative Dispute Resolution (ADR)

Once you have identified all your issues, how do you get to a Settlement Agreement or Final Court Orders?

Divorce cases, even complex divorce cases, are especially well suited to resolution through various forms of Alternative Dispute Resolution (ADR), including:

- **Mediation**
- **Collaborative law**, and
- **Arbitration**

ADR reduces conflict and streamlines the divorce process, often providing a lower cost and faster resolution.

Parties who have children or who are very committed to maintaining privacy and confidentiality can benefit greatly from ADR.

Private Divorce Mediation

A Popular ADR Process

- Parties work directly with a neutral third-party *mediator* who helps them negotiate their own solutions.
- The mediator does not represent either party, so couples dividing substantial assets still need separate attorneys.
- Parties generally hire attorneys only as consultants, and attorneys rarely attend mediation sessions.
- Parties can bring in experts or expert reports as necessary.
- If parties fail to reach agreements during mediation, they can proceed to litigation with the same attorneys.

Collaborative Law

An ADR Process Offering Increased Legal Support

- Parties sign a *Collaborative Law Participation Agreement*, promising in writing to pursue only an out of court settlement.
- Unlike mediation, there is no neutral party overseeing the collaborative law process.
- Attorneys and clients all meet together to negotiate solutions.
- The written agreement includes promises to communicate honestly and completely and to negotiate in good faith toward a full resolution of all issues.
- Experts are retained jointly as members of the *collaborative team*.
- If parties fail to reach agreement through the collaborative process, they must retain new attorneys before proceeding to court.

Private Arbitration

An ADR Process Offering A Final Decision

- Going to arbitration is like going to a private court.
- Most arbitrators are either retired judges or attorneys with expertise in particular matters, such as complex business distributions in divorce.
- Like a judge, an arbitrator will consider all evidence, but you may agree to follow somewhat less formal procedures than those required in a courtroom.
- You will receive a binding decision on any issues you submit, just like a court order.
- The decision of the arbitrator will be incorporated into your divorce judgement.

Court Litigation

If you are unable to settle a contested divorce case, you will need to follow your state and local court rules for how to proceed in court:

- In some cases a court battle is inevitable, but don’t make the mistake of becoming so zealous for your client that avenues for settlement are lost.
- Some contested divorces can go on for *years*, draining time and resources, and resulting in highly stressful public battles.
- You can generally return to an ADR process at any point during the case, and it can be a great benefit to take one or more issues out of the courtroom.

Discovery in Contested Divorce

1 Document Demands:

Requests for relevant documents like credit card statements, deeds, other property titles, business records, etc.

2 Interrogatories:

Formal written questions asking for information necessary to resolve an issue.

3 Requests for Admissions:

Either party may ask the other party to admit or deny certain information.

4 Depositions:

Oral testimony of a party or witness in the case, transcribed by a court reporter.

Complex Discovery in a Prenuptial Agreement Challenge

- The challenging party must prove either lack of voluntariness or unconscionability.
- The court may therefore need to begin by gathering evidence dating back to the execution of the agreement.

Motions for Temporary Relief

- A complicated divorce can take many months, or even several years.
- While the divorce is pending, the court will issue temporary orders as needed, aimed at preserving the "status quo."
- You can file a *pendente lite* motion for temporary relief at any time during your case, for:

Financial Support

- Temporary Spousal Support
- Temporary Child Support

Parenting Schedules

- Temporary custody and visitation (parenting time)

Court-Mandated Dispute Resolution Processes

Trials are expensive and burdensome for both the parties and the courts.

Many courts require most divorcing couples to participate in a series of court-mandated settlement efforts before going to trial.

Required processes may include:

- **Child Custody Mediation**
- **Settlement Panel for Economic Issues**
- **Economic Mediation**
- **Pre-Trial Settlement Conference**

Proceeding to a Divorce Trial

- If your case goes to trial, a family court judge will review evidence and hear testimony from your client, the other spouse, your experts, and any other relevant witnesses, before ultimately making a final decision on all unresolved issues.
- Barring any appeals of the judge's decision, your client will have a judgment of divorce with final orders.
- Some issues remain open to post-judgment modification.

Post-Divorce Motions

Is a divorce ever really over?

- The Judgment of Divorce generally permanently settles all property distribution issues.
- Other issues remain open to modification. These include:
  - Child custody and support, and
  - Some types of alimony, depending on state law or the terms of the parties' settlement agreement.

Post Divorce Motions for Enforcement

- The majority of post-divorce issues occur when one party fails to carry out the terms of the final orders in the case.
- You may need to file a motion to enforce litigants' rights asking the court to enforce existing orders for child custody, visitation, child support or spousal support.

Post Divorce Modifications

- Child custody and child support orders can be modified until children are emancipated (deemed to be independent).
- Most alimony orders also remain modifiable under certain conditions.
- All modifications require a substantial change in circumstances.
- Parties can generally agree to modifications and file consent orders.

Do you have other questions?

CALL US: **(888) 888-0919** EMAIL US: **help@WLG.com**

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The process and information contained in this presentation pertains to New Jersey Divorce Law.

This presentation is for information purposes only and does not constitute legal advice.

For guidance on your specific situation, please contact a divorce attorney.

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