Overview of Divorce Initiation in Florida

Grounds for Dissolution of Marriage

Many clients still believe that in order to obtain a dissolution of their marriage, one spouse must be guilty of some wrongdoing, such as adultery or desertion. The client should be told that in Florida there are only two grounds upon which a divorce may be granted. A court will dissolve a marriage if it determines that the marriage is irretrievably broken or if one of the parties has been decreed incompetent in a prior proceeding [§ 61.052(1), Fla. Stat.].

Most divorces are based on the grounds that the marriage is irretrievably broken [§ 61.052(1)(a), Fla. Stat.]. A marriage is irretrievably broken if the marriage relationship is "for all intents and purposes ended, no longer viable, a hollow sham beyond hope of reconciliation or repair" [*Ryan v. Ryan, 277 So. 2d 266, 271 (Fla. 1973)*]. In practice, if one spouse believes the marriage to be over and not capable of reconciliation, then the court will end the marriage even if the other spouse wants the marriage to continue. When appropriate, the attorney should explain to the client that even if the breakdown of the marriage is the fault of the other spouse, that spouse can successfully sue to dissolve the marriage [*see* § 61.052(1), Fla. Stat.].

Under appropriate circumstances, the attorney should explain the other ground for dissolution of marriage: the mental incapacity of one of the spouses [§ 61.052(1)(b), Fla. Stat.]

Residence Requirements

The attorney should advise the client that one of the parties to an action for dissolution must have resided in Florida for at least six months prior to the filing of the petition [§ 61.021, Fla. Stat.]. Counsel should inform the client that, although the usual ground for dissolution is the irretrievable breakdown of the marriage, there is no requirement that in order to commence or maintain an action for dissolution, the parties live in separate residences.

Pleadings

--Petition.

The first legal step in a dissolution is the filing of pleadings [*see also* ch. 53, *Pleadings*]. If the attorney represents the petitioner, the first pleading on behalf of the client will be the petition. The petition must state the grounds for the court's jurisdiction to grant a dissolution of marriage and the other relief sought and the factual allegations which give rise to entitlement to the legal relief desired by the client. Both the attorney and the client should bear in mind that the client will not be entitled to any benefits provided by law unless the pleadings specifically set forth factual allegations for the relief desired [*see* Fla. R. Civ. P. 1.110(b) ; Fla. Fam. L. R. P. 12.110].

If the parties have minor children, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) [§ 61.501-61.542 et seq., Fla. Stat. ; *see* Ch. 74, *Interstate Child Custody*] requires that certain statements be included in either the petition or an affidavit attached to the petition. In addition, the petition should include factual

allegations concerning shared parental responsibility, the parent who should be designated as the primary residential custodian, and visitation. The petitioner should request temporary and permanent child support and health care coverage, as appropriate.

If the spouse is in need of any form of alimony, the petition should include factual allegations concerning the need for alimony, as well as the type of alimony requested. The petition need only contain general allegations concerning equitable distribution of the marital assets and liabilities. However, special equities must be specifically pled [*see Ervin v. Ervin, 553 So. 2d 230, 231 (Fla. 1st DCA 1989)*], and the petition should list the non-marital assets that should be set aside to the client and not included in the equitable distribution. If the client seeks to have the other spouse pay his or her attorneys' fees, a request for fees must be included in the petition [Fla. R. Civ. P. 1.110(b) ; *see also Agudo v. Agudo, 449 So. 2d 909, 911 (Fla. 3d DCA 1984)*].

If the client wishes to enforce a pre-nuptial agreement, the agreement should be attached to the petition and the petition should request enforcement. If the parties have already executed a marital settlement agreement, the petition should ask the court to affirm and incorporate the agreement in its judgment. Otherwise, the petition should set forth the petitioner's position with regard to such issues as child support, alimony, visitation, property division, attorneys' fees, and court costs [*see* Fla. Fam. L. R. P. Form 12.901(a),(b)].

A petition filed by a limited appearance attorney must identify the attorney in bold type on the signature page as follows [*see* Fla. Fam. L. R. P. 12.040(e) ; (definition of limited representation, also known as "unbundled legal services")]:

Attorney for Petitioner, _____ [*state attorney's address and telephone number*], for the limited purpose of [*describe matter or proceeding for which limited representation has been contracted*].

The designation of the limited appearance attorney must be followed by the name, current address, and telephone number of the petitioner [Fla. Fam. L. R. P. 12.040(e)].

A petition that is prepared with the assistance of an attorney and that is subsequently filed by the petitioner *pro se* must certify that he or she received assistance from an attorney in preparing the petition. The name, address, and telephone number of the petitioner must appear on the petition [*see* Fla. Fam. L. R. P. 12.040(d)].

A petition for dissolution of marriage must include the petitioner's social security number on a separate page attached to the petition. The purpose of this requirement is to comply with the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [P.L. 104-193, 110 Stat. 2105, 22 Aug. 1996]. The social security number may only be used for Title IV-D child support enforcement [*see § 61.052(7)-(8), Fla. Stat.*]. In addition, court clerks are prohibited from placing copies of public records on Internet websites for general public display if the copies are of court records relating to matters governed by the Florida Family Law Rules of Procedure [*see § 28.2221(5)(a), Fla. Stat*].

Counsel should advise the client that the court ordinarily will not enter a final judgment of dissolution until at least twenty days have elapsed after the filing of the original petition [§ 61.19, Fla. Stat.]. The client should also be told that the average divorce takes longer, because there are generally many matters to be resolved before the conclusion of the case, even if the parties reach a settlement agreement. As matters proceed, the attorney should inform the client in a timely fashion of any delays in obtaining hearing dates because of a crowded hearing docket in the court where the petition has been or will be filed, and that, if there is no appeal, the dissolution of marriage will be final on the day the judgment is filed in the court clerk's office [§ 61.19, Fla. Stat.]. Further, counsel should advise the client that even if some portion of the final judgment is appealed, generally the dissolution itself is not questioned and remains final.

An attorney who is providing limited representation should advise his or her client if the attorney receives a notice of hearing that he or she will not be attending because it concerns a matter outside the scope of the limited representation. Further, the attorney must notify the court and the opposing party that he or she will not attend the hearing because it is outside the scope of his or her representation [see Fla. Fam. L. R. P. 12.040(f)].

--Answer and Counterpetition.

After reviewing the petition that has been served on his or her client, counsel who is drafting or assisting in the preparation of an answer or counterpetition should advise the client that the answer or counterpetition will specifically admit or deny the allegations contained in the petition, recite the client's version of relevant factual matters, and set forth any counter-requests for relief. If the respondent does not bring the petition to the interview, he or she should be asked to deliver a copy of it to counsel as soon as possible.

An answer must include the respondent's social security number on a separate page attached to the answer [see § 61.052(7)-(8), Fla. Stat].

An answer or counterpetition that is filed by a party pro se following its preparation with the assistance of counsel must certify that the party has received assistance from an attorney in preparing the pleading. The name, address, and telephone number of the respondent must appear on the answer or counterpetition [see Fla. Fam. L. R. P. 12.040(d)]. If an answer or counterpetition is filed by a limited appearance attorney, the pleading must identify the attorney in the same manner that a petition must identify an attorney who is making a limited appearance for the petitioner [see Fla. Fam. L. R. P. 12.040(e)].

--Venue

If venue is an issue, the attorney should discuss the venue rules with the client. The petitioner should be advised as to the appropriate and most convenient forum [see § 47.011, Fla. Stat.], while the respondent should be counseled on possible changes of venue [see Fla. R. Civ. P. 1.060, 1.170(j) ; Fla. Fam. L. R. P. 12.060, 12.170]. If the respondent is a Florida resident, the proper venue is one of the following [§ 47.011, Fla. Stat.]:

(1) the county where the respondent resides;
(2) the county in which the cause of action accrued; or
(3) any county in which the spouses own property that is in dispute.

In a dissolution proceeding, the cause of action "accrues" at the last place where the parties lived together as husband and wife with a common intent to remain married [*Carroll v. Carroll, 341 So. 2d 771, 772 (Fla. 1977)*]. The action can be maintained in any county, however, if the respondent is not a Florida resident [*McGowin v. McGowin, 122 Fla. 394, 165 So. 274, 276 (1936)*] or if the respondent is a Florida resident but does not make a timely objection to venue in that county [*MacDonald v. MacDonald, 444 So. 2d 531, 532 (Fla. 1st DCA 1984)*].