

HANDBOOK FOR THE DIVORCE PROCESS

**Adrian & Pankratz, P.A.
Old Mill Plaza, Suite 400
Newton, Kansas 67114
(316) 283-8746
Fax: (316) 283-8787**

This handbook is designed to help you as our client during the divorce. Many clients ask the same questions when they begin the divorce process, so we've gathered some basic information regarding our firm and information you may need to know as we work together on your case.

This handbook contains the following sections:

- 1. General Information You Should Know**
- 2. Fee Policy of Adrian & Pankratz, P.A.**
- 3. Most Frequently Asked Questions with Answers**
- 4. Glossary of Terms**
- 5. Fact Sheet**

General Information You Should Know

A. Information About Our Firm

Office Hours. Our office hours are 8:30 a.m . to 5:00 p.m., Monday through Friday. After-hours or weekend appointments may be arranged.

Staff Member: A legal assistant is assigned to your case and is available to work with you in regard to any questions you may have. Kansas law does not permit legal assistants to answer legal questions or to give legal advice; however, if the legal assistant is unable to answer your question, she will refer your question to your attorney and you will be contact with an answer or response to your concern. We try to respond promptly.

Fee Arrangements. Fees will be explained during the initial interview according to the attached Fee Policy Statement. You will also receive a letter after your case is opened which outlines in greater detail how we determine fees. At that time, or at any time during your divorce proceeding, if you have questions, feel free to ask about any aspect of the fee policy.

Keeping Costs Down. It is our goal to provide effective and quality legal service to you and to protect your interests throughout your divorce case. Feel free to call us or consult with us at any time. We want to be available to help you; however, you will be charged for the time you spend talking to your attorney or legal assistant. You will need to decide what are important issues and how much time (and expense) you want to allocate on those issues. Obviously, any matter that can be resolved between you and your spouse before the divorce is filed, or during the course of the divorce, will result in less time spent with your attorney, and less expense incurred by you. We want to work with you; however, we want you to use our services carefully and wisely.

Monthly Statements. You will received monthly statements detailing legal services, the charges, and the amount drawn from your initial retainer deposit. If you have questions about your statement, please call us immediately after receiving your bill.

Telephone Conferences. Your attorney will take your telephone calls during business hours. If he or she is unavailable, a staff member will help you.

Correspondence. For future use and reference, please read all correspondence and keep it in a fold we provide for future you and reference. To help keep you informed of the progress in the case we will provide you with copies of all pleadings and correspondence throughout your case. It is a good idea to read over this information immediately after it is received and then contact us if you have questions.

B. Miscellaneous Information about Your Divorce

Court. The attorneys in this office represent divorce clients in Harvey County, McPherson County, Marion County and Sedgwick County. The name and address of these courts are listed below:

Harvey County Courthouse
800 North Main Street
Newton, Kansas 67114-1880

Marion County Courthouse
200 South 3rd Street
Marion, Kansas 66861-1656

McPherson County Courthouse
117 North Maple Street
McPherson, Kansas 67460-4211

Sedgwick County Courthouse
525 North Main Street
Wichita, Kansas 67203-3700

Court Trustee and Kansas Payment Center. Maintenance (spousal support) and child support can be ordered in divorce cases. These orders, when final, are signed by the judge and are to be followed according to the terms set for in the order. In Harvey County, the Kansas Payment Center (1-877-KPC-KPPC [1-877-572-5722]) will be notified when orders regarding support and maintenance have been made. You may check the Kansas Payment Center's record by either calling the payment center, or by checking their web site at www.kspaycenter.com. You will need to have your court case number available to access your records. The Trustee will then be responsible for enforcing final court orders and you may work directly with the Trustee. Harold Schorn is the Harvey County Deputy District Court Trustee and may be reached by telephone at 283-6547. His address is 713 North Main Street, P.O. Box 111, Newton, Kansas. There is a fee charged by the Court Trustee and they will provide you with this information.

Court Services. Harvey and McPherson Counties utilize Court Services, an organization of employees of the district court who assist the judge in gathering information relating to child custody and parenting time. In most cases, court services are utilized after mediation has failed, or is not a feasible option.

Mediation. This is a service that is used to resolve child custody issues during the divorce or after the divorce is final. It is provided, at additional costs, by professionals trained to mediate. Normally, a judge will not hear a child custody dispute until mediation has been attempted. In Harvey County, if your combined annual income is below \$40,000.00, your case will be referred to The Community Mediation Center, 2515 College Avenue, P.O. Box A, North Newton, Kansas. They offer mediation services on a sliding-scale basis. If your combined annual income is above \$40,000.00, you will need to contact a private mediator. There are several private mediators in the Newton area and we will provide you with names and phone numbers when needed.

Child Impact Class. If you have a minor child and your divorce is filed in Harvey or McPherson County, you will be required to attend a Divorce Education Class at Prairie View in Newton or McPherson. Normally the class is held on the first Tuesday of every month with the occasional exception of November and December in Newton; or the second Wednesday of the month in McPherson. If your divorce is filed in Sedgwick County, you will be required to

attend the “Children of Divorce” workshop sponsored by the Wichita Guidance Center, 415 North Poplar Street, Wichita, Kansas 67214-4595.

The couple does not need to attend the class together. A divorce will not be granted until the parties have attended the class.

Fee Policy of Adrian & Pankratz, P.A.

General Statement

You have consulted us and we have agreed to represent you with regard to your divorce. We will prepare and file the necessary documents, represent you in any court proceedings related to the divorce, and provide general legal counsel.

Rate and Expenses

Clients often ask if we charge a “flat rate” for obtaining a divorce. We do not, you will be charged for the time spent on your case. Currently, Our billing rates are \$160.00 per hour for Tom Adrian, Randy Pankratz and Marilyn Wilder; \$125.00 per hour for Tim Hodge, \$75.00 per hour for legal assistants and \$65.00 per hour for clerical staff. All time expended in services for you will be included in the monthly billing. The statements you receive will be a composite of the time devoted to your case by your lawyer and staff. **A new rate of \$165 per hour for Tom Adrian, Randy Pankratz and Marilyn Wilder will be effective April 1, 2008. A new rate of \$145 per hour for Tim Hodge will be effective April 1, 2008.**

We also charge for certain expenses that we incur on your behalf which includes postage and mileage. Those costs will be set out of the statement.

Estimated Range of Fees

We will provide an estimate for legal services in this matter and we agree not to exceed the maximum amount stated without first obtaining your approval.

Retainer Provisions

We may require a retainer as we begin work on your file. This is an advance payment of the fees and expenses and will be applied to the amount due on your statement. Generally, in divorce cases, the initial retainer may be expended in fairly short order, due to the fact that family law matters require a good deal of legal work at the beginning of the case. When the unused portion of the retainer reaches \$100, we will contact you and will request an additional retainer to be deposited with our firm. That amount is to be paid within 10 days of the day of request. The additional retainer will be handled in the same matter as the original retainer.

Most Frequently Asked Questions

Many clients share the same fears, questions, and beliefs about divorce. Even though the names and faces may change, the questions and concerns are very similar. This section lists some of the questions divorce clients ask during their divorce.

1. How long is this going to take before the divorce is final?

The law requires a minimum of 60 days between the filing of the Petition and the granting of the divorce. In reality, it usually takes longer than 60 days to reach an agreement on all issues that the divorce raises. It is possible for a divorce to be granted earlier than the 60 days provided there is (1) agreement as to all of the issues, and (2) some genuine emergency exists.

2. How is child support or maintenance figured?

Child support is generally figured on a schedule primarily based upon gross income of both husband and wife and the number and ages of the child/children. This schedule is usually considered mandatory but may be varied when circumstances justify. There is no schedule of maintenance. Maintenance is usually based upon the income of the person paying maintenance and the income and needs of the person receiving maintenance, and is awarded based on the number of years the parties have been married. Maintenance, which used to be called alimony, has become less popular with the courts in recent years.

3. Why do I need to provide all of this information?

The information is required for the following reasons:

- (a) Some is required by the Division of Vital Statistics of the State of Kansas.
- (b) Some is required by court.
- (c) Most of it is needed by your lawyer so that your lawyer can adequately and competently represent you in the settlement or trial of the divorce. It is our goal to deal with as many issues as possible in the divorce so that we lessen the chance of problems arising after the divorce is final.

4. How long do I need to wait before I get married?

There is a waiting period of 30 days after the Decree of Divorce is filed.

5. Can I date during the divorce proceedings?

You can date during the divorce proceedings, but we do not recommend it. There are many and varied reasons for that recommendation. The most common reason, however, is that it can unnecessarily complicate negotiations.

6. Can I take the child out of the state?

Unless the judge has specifically prohibited you from removing the child from the state, you may temporarily travel outside the boundaries of the state.

7. I may be taking a new job and moving out of state. What do I need to do?

The general answer to this question varies greatly with each circumstance; there is no simple answer. If you have a minor child and the divorce is not yet final, your spouse must be notified of your intended move. You also must recognize that this will not end the divorce proceeding and that you may be making trips back to the state for purposes of resolving the divorce.

If your divorce is final, and you have been granted legal custody, residency, or parenting time with the child, you are required to give the other parent written notice by restricted mail, return receipt requested, to the last known address, not less than 30 days prior to: (1) Changing the residence of the child; or (2) removing the child from this state for a period of time exceeding 90 days.

8. When debts and property are divided, if I get the property, do I also need to take the debt against that property?

Yes, usually. Courts normally attempt to equally divide net assets, meaning it is common to add up the total assets given to either party and subtract the total debts assigned to either party so that the net of each is relatively equal. That is not necessarily a rule but it is commonly a habit. As such, it is again custom that the judges will assign debts arising from a specific item of property along with the assignment of that item of property.

9. Am I entitled to a portion of my spouse's retirement accounts?

Retirement accounts are definitely considered an asset in any divorce and they may be divided by means of a court order called a Qualified Domestic Relations Order.

10. How long will I receive or pay maintenance? What happens to the maintenance in case of remarriage?

By the agreement of the person paying maintenance, it can continue until death and even past the time that you may remarry. Absent agreement, the court cannot order maintenance for a period of longer than 10 years. When maintenance is ordered, it is usually for a period considerably shorter than 10 years, and is based on the number of years the parties have been married.

11. What do I do if the child support and/or maintenance payments are late?

The Kansas Payment Center is responsible for the collection of child support. If your child support is late, the court trustee will know. He or she is vested with the responsibility to

make reasonable efforts to collect those payments, but will only collect on final orders of the court, usually not on temporary orders. If your payment is more than 1 month late, you should contact the Court Trustee at the phone number listed on page 4, and discuss the possibility of doing an Income Withholding Order.

12. Once the divorce is final, and the child support level is established, can it ever be changed?

The court will maintain jurisdiction of matters relating to the child until they reach the age of 18. To obtain an increase or decrease in the amount of child support a motion must be filed with the Court explaining that there has been a “change of circumstances” (i.e., significant change in income levels) asking the Court to review the level of child support. The Court Trustee does not file motions to increase or decrease support. You should plan on hiring an attorney to that on your behalf.

13. What do I do if my spouse does not abide by the parenting time guidelines? For instance, what do I do if he or she does not bring the kids back at the agreed upon time?

Failure to follow the Court’s orders with regard to parenting time is a basis for a request that the judge finds your spouse in contempt of court. Although your spouse may not be fined or jailed, the Court can, when appropriate, limit or stop all parenting time based on failure to abide by the Court’s orders. If your parenting time order is very specific, the police may be able to assist you in getting the child back at the end of a parenting time period.

14. What do I wear to the hearing? What will it be like?

While there is no “dress code,” you should wear clothing appropriate for a job interview or other setting in which you want to make a favorable impression. You should be tastefully and neatly dressed. If the divorce is not contested, the hearing will take place in the judge’s office and will be relatively informal. It will take about 15 minutes. If the divorce is contested, the hearing will be in the courtroom and your attorney can give more specific instructions as the hearing draws near.

15. Can I take someone along with me to the hearing?

You are welcome to bring a friend or family member with you. If the hearing takes place in the judge’s office, your friend or family member may not feel comfortable going in the office with you. If the hearing is in the courtroom, your friend or family member will be seated at the back of the courtroom to observe.

16. Does my spouse have to pay my attorney fees?

The Court may order your spouse to pay your attorney fees, but as a general rule, the Court does not order one party to pay the attorney fees of another.

17. How much will this cost?

Currently, Our billing rates are \$160.00 per hour for Tom Adrian, Randy Pankratz and Marilyn Wilder; \$125.00 per hour for Tim Hodge, \$75.00 per hour for legal assistants and \$65.00 per hour for clerical staff. All time expended in services for you will be included in the monthly billing. The statements you receive will be a composite of the time devoted to your case by your lawyer and staff. **A new rate of \$165 per hour for Tom Adrian, Randy Pankratz and Marilyn Wilder will be effective April 1, 2008. A new rate of \$145 per hour for Tim Hodge will be effective April 1, 2008.**

We also charge for certain expenses that we incur on your behalf which includes postage and mileage. Those costs will be set on the statement.

The cost of the divorce will vary according to the time spent on your case. You can expect to pay a minimum of approximately \$1,500.00, but the cost can easily rise to \$5,000.00 to \$6,000.00 or more if custody or property issues cannot be resolved without a court hearing.

18. What can I do if my spouse threatens me?

Once Temporary Orders are filed, your spouse can be cited for Contempt of Court. Depending upon the nature of the threat, you may also want to consider calling the police to make a report.

19. Do my spouse and I both need to hire an attorney?

One attorney cannot represent both of you; however, one attorney can prepare all necessary documents if there are not disputed issues. The spouse who is not represented may wish to consult an attorney at least for the purpose of reviewing any proposed Property Settlement Agreement.

20. If I don't want this divorce, what can I do?

You cannot prevent your spouse from getting a divorce.

21. What happens if my spouse does not want this divorce?

Your spouse cannot prevent you from getting a divorce, although he or she may make it more difficult and/or expensive for you to do so by failing to agree to anything and being generally difficult about each step in the process.

22. What happens if my spouse simply does not answer our Petition?

In short, nothing will happen if your spouse ignores the divorce Petition. You will still be able to get the divorce, but the court will not grant a divorce more quickly or award property simply because the spouse fails to answer. Evidence of some type will still have to be presented to allow the judge to make his rulings related to the divorce. If your spouse has not answered the Petition and does not appear at the final hearing, the effect is that the judge will grant all of your requests in terms of property, debt, and issues involving the child.

Glossary of Terms

Every organization or business has their own unique language and we want you to understand the terms that are being used in your divorce case. For example, in some settings, a journal entry refers to a debit or credit and is written on a journal voucher. Here, it refers to an order of the court. The following is a list of the most commonly used terms.

Action: The legal term for a lawsuit.

Affidavit: A written statement of facts made under oath and signed before a notary public.

Answer: The second pleading in an action for divorce or separation which is served in response to the petition for divorce and which admits or denies the petition's allegations and may also make claims against the other party.

Appearance: The respondent's formal method of telling the court that he or she submits to the court's jurisdiction.

Child Support: Support for a child. Child support is not taxable to the recipient or deductible to the payer.

Contempt of Court: The willful and intentional failure to comply with a court order, judgment, or decree by a party to the action, which may be punishable in a variety of ways.

Contested Case: Any case in which the court must decide one or more issues on which the parties have not agreed.

Court Order: A written document issued by the court which becomes effective only when signed by a judge.

Custody:

Joint legal custody: the parents have equal rights to make decisions in the best interest of the child.

Sole legal custody: one parent has the right to make decisions in the best interest of the child. The award of sole legal custody to one parent shall not deprive the other parent of access to information regarding the child unless the court shall so order. Sole legal custody is only awarded in extreme cases, and your attorney can answer questions on the criteria of being granted sole legal custody.

Decree of Divorce: A final order from the judge which grants the divorce.

Defendant (Respondent): The person (husband or wife) who is sued for divorce.

Deposition: The testimony of a witness taken out of court under oath and in writing.

Disclosure, Discovery, or Production of Documents: Procedures followed by lawyers to determine the nature, scope, and credibility of the opposing party's claim and his or financial status.

Equitable Distribution of Property: A system of distributing property in connection with a divorce on the basis of a variety of factors without regard to who holds title.

Evidence: Documents, testimony, or other material offered to the court to prove or disprove allegations.

File Stamped Copy: An official copy of a pleading document. When a pleading document is filed with the court, the clerk date-stamps the original and several copies, and returns the file stamped copy to the attorney. This is commonly referred to as a certified copy.

Filing Fee: The cost of court assesses to file the petition. Currently the filing fee is \$147.00. The petitioner pays the filing fee. The filing fee is usually the only court cost.

Hearing: Any proceeding before the court for the purpose of resolving disputed issues through presentation of testimony and argument.

Interrogatories: A series of written questions served on the opposing party to discover certain facts regarding the disputed issues in a matrimonial proceeding. The answers to interrogatories must be under oath and served within a prescribed period of time.

Joint Property: Property held in the name of more than one person.

Jurisdiction: The authority of the court to rule on issues relating to the parties, their child, or their property.

Legal Assistant: Also referred to as a paralegal.

Maintenance: Spousal support.

Martial property: Accumulated income and property acquired by the spouses.

Motion: A written application to the court for some particular relief such as temporary support.

Motion to Modify: A formal written requests to the court to change a prior order regarding custody, child support or any other order that the court may change by law.

Notice of Hearing: A paper that is served on the opposing lawyer or other spouse listing the date and place of a hearing and the motion or motions that will be heard by the court.

Order: The court's ruling on a motion requiring the parties to do certain things or setting forth their rights and responsibilities. An order is reduced to writing, signed by the judge, and filed with the court.

Party: The person in a divorce action whose rights and/or interests are to be affected by the divorce.

Petition: The first pleading in an action for divorce.

Petitioner: The party who files the petition for divorce.

Pleading: Documents filed with the court. Pleadings include petitions, answers, counterclaims, motions and orders.

Pleading File: A permanent record maintained at the attorney's office of all pleadings that were filed with the court.

Pretrial Conference: Often called a "get organized" meeting between the parties, their attorneys, and the judge. At the pretrial conference, unresolved issues are discussed.

Property Settlement Agreement (PSA): The final agreement between the parties which distributes the property and debt obligations of the parties.

Qualified Domestic Relations Order (QDRO): An order issued by the court for the purpose of dividing retirement accounts funds or pension funds.

Relief: Whatever a party to a divorce proceeding asks the court to do: dissolve the marriage, award support, enforce a prior court order or decree, divide property, enjoin certain behavior, etc.

Residency: The court may order a residential arrangement in which the child resides with one or both parents on a basis consistent with the best interests of the child.

Divided residency: an arrangement in which one or more children reside with each parent and have parenting time with the other.

Nonparental residency: an arrangement in which the child or children reside with someone other than a parent.

Respondent: The one who defends the divorce proceeding brought by another.

Request for Production of Documents: Documents and/or other information to be produced.

Separate Property: Property that is not "marital property."

Settlement: The agreement resolution of disputed issues.

Summons: A written notification that legal action has commenced requiring a response within a specified time period.

Temporary Order: The order of the court which is to be followed by the parties until the time the final divorce order is granted. The Temporary Order is usually filed when the petition is filed.

Temporary Restraining Order (TRO): An order of the court prohibiting a party from doing something—i.e., threatening, harassing, or beating the other spouse and/or child, selling personal property, taking money out of accounts, etc.

Transcript: A typewritten record of testimony taken by a court reporter during court proceedings or a deposition.

Trial: A formal court hearing to decide disputed issues raised by the pleadings.

Uncontested Divorce: A proceeding in which a person sued for divorce does not fight it or may have reached an agreement with the spouse during the divorce proceedings.

Fact Sheet

Before we begin, we need information from you. We have prepared a questionnaire based on the data we need to complete court documents. In many cases, our clients complete this questionnaire at home and then return it to our office. Once we receive the fact sheet from you, the answers you provide will be used to prepare the court pleadings. These pleadings will be reviewed in court and by your spouse's attorney, so we may ask for documentation to support your answers. The more complete your answers, the better we will be able to represent you.

Answering the questions may take several hours and may require you to look through your personal records and make several telephone calls. If you prefer to have us gather this information, we will do that for you. An Authorization for Release of Records and Reports is attached at the end of this Fact Sheet. Please sign this form and we will proceed with contacting banks, mortgage companies, credit card companies, or medical/dental offices to obtain information to complete the Fact Sheet.

If you have questions, don't hesitate to make a note in the margin of that page. When you return the fact sheet, we will work with you in completing any unanswered questions. Also, we will make copies of any information (i.e. deed, wage statement, bank statement) that was requested in the Fact Sheet.