

## SETTLEMENT ISSUES PROFILE OF A DIVORCE

A divorce can be broken down into basically twelve (12) “issues” – well, actually eleven (11) issues plus a miscellaneous category. These issues are discussed below in paragraphs 1 through 12. Obviously, not every issue will apply in every divorce.

If each of the applicable issues can be resolved by agreement between the parties an uncontested divorce can be achieved and thousands of dollars can be saved. However, if one or more of the issues must be litigated a contested divorce must be instituted with the filing of a divorce petition.

In an uncontested divorce, often one party will hire a lawyer to “draw up the papers” reflecting the agreement of the parties. While it is not necessary for the other party to hire a lawyer it is important to note that the lawyer represents only the party that hired his or her.

In a contested divorce, each party will need to hire an attorney. Alabama does not provide for appointed lawyers in divorce proceedings except in rare circumstances and then the attorney appointed is a Guardian ad Litem appointed to represent only the child.

### 1. CUSTODY:

There are two types of custody in Alabama:

- 1) Legal Custody; and,
- 2) Physical Custody.

**Physical custody** is the type of custody that comes to mind when people discuss custody and visitation. That party in whose home the children live the majority of time (except for every other weekend, for example) is the party who has primary physical custody.

Physical custody can be either joint or primary. Joint physical custody is a true sharing of custody and is generally shared on a weekly basis. Some courts prefer this arrangement while other courts simply will not enter an order such as this if the case goes to trial. Generally, any type of custody arrangement can be made where the parties are able to agree to the arrangement without a trial.

Primary physical custody is where one party is “awarded” custody and the other party is awarded visitation. In this type of arrangement legal custody can still be joint (see discussion below).

**Factors the court would consider in determining custody include:**

- i. The age and sex of the children;
- ii. The characteristics and needs of each child, including their emotional, social, moral, material and educational needs;
- iii. The respective home environments offered by each party;
- iv. The characteristics of those seeking custody, including age, character, stability, mental and physical health;
- v. The capacity and interest of each parent to provide for the emotional, social, moral, material and educational needs of the children;
- vi. The interpersonal relationship between each child and each parent;
- vii. The interpersonal relationship between the children;
- viii. The effect on the child of disrupting or continuing an existing custodial status;
- ix. Preference of the child, if the child is of sufficient age and maturity;
- x. The report and recommendation of any expert witness or other independent investigator;
- xi. The available alternatives; and,
- xii. Any other relevant matter which may be present.

**Legal custody** is a creation of the State legislature that enables the party who does not have actual physical custody to have the same rights that were historically reserved for the custodial parent. These rights include such rights as getting medical records, school records, etc. Joint legal custody can exist even where one parent has primary physical custody and the other parent only has visitation on an every other weekend basis.

Absent evidence to the contrary, courts in Alabama presume that legal custody is in the best interest of children and it is the preferred status of legal custody.

**2. RULE 32 CHILD SUPPORT:**

Child support in Alabama is determined based on the application of **Rule 32** of the Alabama Rules of Judicial Administration. The following information is necessary for your attorney to calculate child support:

Gross Income:    Husband        \$ \_\_\_\_\_ month  
                                  Wife                \$ \_\_\_\_\_ month

Work-Related  
Child Care Costs:                        \$ \_\_\_\_\_ month

Medical Insurance Premium        \$ \_\_\_\_\_ month  
(paid by \_\_\_\_\_)

If one party is unemployed and has no income, that party can be treated as though he or she works full time and earns minimum wage. Additionally, if one party is underemployed the amount of money he or she is reasonably capable of earning can be used instead of the amount of money he or she actually earns. While this rule exists primarily to deter vindictiveness it is not necessary to prove vindictiveness in order to receive the benefit of this rule. It is necessary, however, to show that they are capable of earning more than they do. In appropriate circumstances, the Rule does provide for a deviation from the calculated amount.

**3. MEDICAL INSURANCE FOR CHILDREN:**

This is an issue that should simply be resolved in the finest old fashioned, time tested, manner available. Whoever gets the best rates should pay the premiums. Since this figure is factored in to the Rule 32 calculation, the amount will actually be shared by the parties regardless of who actually pays the premium.

Non-covered medical and dental expenses are nearly always split 50/50 but, like every other issue involved, this figure can be adjusted according to the equities of the marriage and divorce.

**4. PROPERTY DIVISION:**

Determining how to divide property can be made much simpler by printing a copy of the Domestic Relations Financial Statement (Form 2) and using it to inventory all assets

associated with the marriage. There is a category for inherited property and property owned prior to the marriage as well as all assets accrued during the marriage in this form. A division of the assets can be best accomplished with a proper inventory of the same.

**5. DEBTS:**

A division of the debts can be made much simpler by printing the Domestic Relations Financial Statement (Form 2) and using it to inventory all debts associated with the marriage. A division of the debts can be best accomplished with a proper inventory of the same.

**6. ALIMONY: (If applicable)**

There are two types of alimony in Alabama. Periodic alimony (which is to preserve the status quo of the parties) and alimony in gross (which is the property settlement). Periodic alimony is modifiable. Alimony in gross is non-modifiable. Periodic alimony is largely extinct in Alabama today. There are, however, circumstances where alimony may be properly awarded. To the extent that alimony would be awarded, the following factors would be considered:

- i. The parties' standard of living during the marriage;
- ii. The parties' future prospects;
- iii. The parties' potential for maintaining their standard of living after their divorce;
- iv. Their ages;
- v. Their sex;
- vi. their health;
- vii. The length of marriage;
- viii. The source or sources of their common property; and,
- ix. The conduct of the parties with reference to the cause of divorce.

**7. TAX EXEMPTION FOR CHILDREN: (Who Claims)**

If a trial is necessary, the courts will - in nearly all cases - allow the custodial parent to have the tax exemptions each year. The parties can agree, however, to share this benefit in alternating years.

**8. MEDICAL INSURANCE FOR WIFE (COBRA, IF AVAILABLE):**

Married couples typically have insurance through one of their respective employers. When a married couple divorces that party whose employer was not providing insurance typically loses the benefit of the insurance coverage. If that party does not have the opportunity to get health care coverage, provisions under federal law provide for continuing coverage for up to three years after the divorce.

**9. LIFE INSURANCE:**

As long as child support and/or alimony are payable, life insurance is not only appropriate but should be made a part of the divorce decree. Your lawyer can help you decide what amount is appropriate and who the appropriate beneficiary should be.

EXAMPLE:

\$\_\_\_\_\_ to be carried with children as beneficiaries, for as long as child support payable.

\$\_\_\_\_\_ with Wife as beneficiary (if alimony payable).

**10. ATTORNEY'S FEES/COURT COSTS: (Who pays)**

This issue can be agreed upon in whatever manner imaginable. If a trial is necessary, the trial judge will determine if one party should bear the burden of the other party's attorney fees. This, typically, will only be done if there is significant misconduct on the part of one party.

**11. COLLEGE EXPENSES FOR CHILDREN: (Who pays)**

Courts in Alabama, today, provide for post minority support to provide for the child's college education. However, the proper time for making such a request and/or determination is when the child is in high school at some time after the 9<sup>th</sup> grade. The reason for this is that Alabama law requires that, for a parent to be obligated to pay for the child's college education, the child must first demonstrate an aptitude for college. As a practical matter this cannot be done until later in high school. Therefore, a request for this type of relief will generally be considered premature by the courts if requested too early.

**\*\*\* IMPORTANT NOTE \*\*\*:** A petition requesting post minority support must be filed prior to the child's 19<sup>th</sup> birthday.

**12. MISCELLANEOUS TERMS: (Add as needed)**

This last item can include anything and everything that may be unique to your marriage. The possibilities are limited only by the limitations, whatever those may be, on the various circumstances surrounding your marriage.