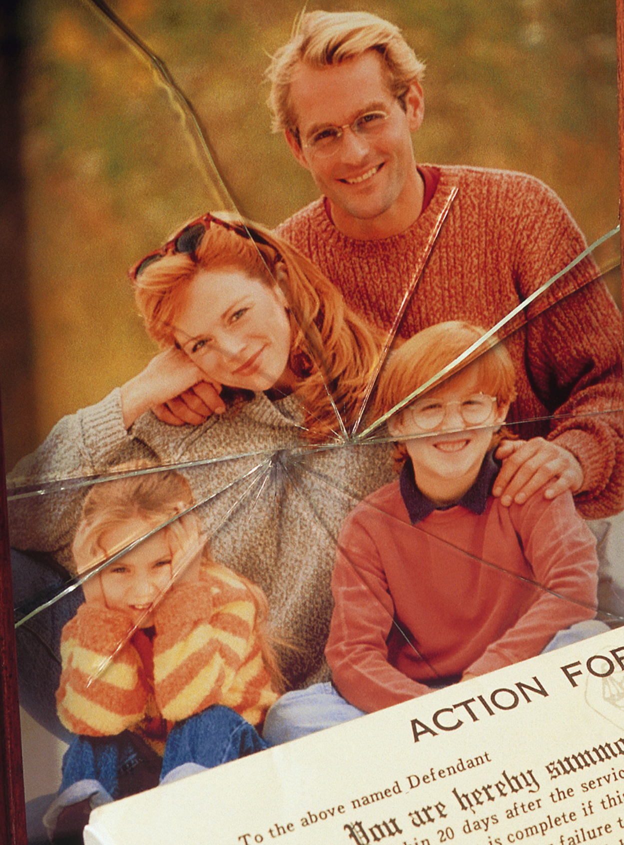
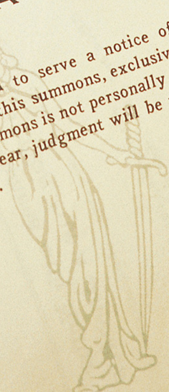
A Practical Guide to California

FAMILY LAW

A Book Written In Laymen's Terms To Assist The Non-Lawyer
In Navigating Through The Most Difficult Time Of Your Life





by **Paul A. Eads, Esq.**

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Speakeasy Publishing
73-03 Bell Blvd, #10
Oakland Gardens, NY 11364
www.speakeasypublishinginc.com

Ordering Information:

Quantity sales. Special discounts are available on quantity purchases by corporations, associations, and others. For details, contact the publisher at the address above.

Orders by U.S. trade bookstores and wholesalers. Please contact Speakeasy Publishing: Tel: (888) 991-2766 or visit www.speakeasypublishinginc.com.

Printed in the United States of America.

Published in 2018.

ISBN: 978-1-946481-18-4

FOREWORD

"You can't understand someone until you have walked a mile in their shoes."

Author, Unknown

I have written this book to assist the general public in understanding the intricacies of the California Family Court system from someone who is both an attorney and as a father who successfully navigated this system. Family Law can be overwhelming to the layperson and it is my hope that this book will ease this process from hiring an attorney to the conclusion of your case. I not only share my personal experience of going through a divorce with children with my clients, but I also share my strategies in resolving conflict with the other parent and successful parenting plans and orders that further minimize the potential for conflict.

DEDICATION

I dedicate this book in the memory of my mother, Alice Claudia Eads who passed away on March 31, 2017. My mother was instrumental in my pursuits of a higher education and was also my editor in chief in the development of my website and prior work. She will be sorely missed, but never forgotten.

I also dedicate this book to my wife, Cindy who both encouraged and supported me from the beginning to open my own practice and to start the business that is now known as Law Offices of Paul A. Eads A.P.C.

ACKNOWLEDGEMENTS

I would like to show my warm thanks to my family who supported me at every bit and without whom it was impossible to accomplish the end task. I would also like to thank my dear friend, Jana Arrieta who both edited and provided her critique of this book.

DISCLAIMER

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TESTIMONIALS

"Mr. Eads assisted me with my child custody case. I was very happy with his services since he is very professional and knowledgeable. His composed and assertive demeanor was very helpful when going to court. I was a wreck--as we all are when put in this situation--but Mr. Eads makes this frustrating situation easier to deal with. I always stuck to a female attorney, thinking they would be more aggressive in family court. My wonderful female attorney who helped me in my initial divorce retired last year, just as I was served with a change of custody case. I was stressed out thinking I would never find anyone like her. I was wrong. He is not misleading by making false promises. He tells you the truth and throws in some really good advice from his own previous personal experiences. I like that I am able to communicate with him via email, and his response is almost immediate. I am happy I found him, and I recommend him to anyone in need of a family attorney."

- Silvia

****

"The moment he picked up my phone call he was very helpful and informative. He answered all of my questions, gave me options and was very polite, which made feel better, because I've called many other offices and was spoken to very rudely. Definitely a BIG help."

- Youdiski Z.

****

“If you think you can do it yourself...Don't take a chance! Trust it’s not easy, even with the self-help center at the courthouse. It makes a big difference stepping in front of a judge with your forms properly and professional completed, along with a firm and confident attorney. After being served with child custody papers from a Riverside court, it was hard to find an attorney who would take my case, being that it should have been filed in LA County and needed to be transferred. Mr. Eads took my case without hesitation. My court date was less than a month away, and I was rather nervous. Mr. Eads helped me with my declaration, filing, and made a court appearance with me. I was always able to reach Mr. Eads or his secretary, and my emails and calls were returned promptly. It was definitely a no-hassle experience. Thank you!”

- Shannon R.

****

“I've been searching for a family law attorney and have gotten the run around by so many nearby businesses. No one could give me any helpful information about my situation. Mr. Eads was so helpful during my free phone consultation. His knowledge and experience in family law radiates through his conversations, and he made me feel comfortable about what I would be expecting over the next few weeks in court. I never once felt like he was just trying to get my money, unlike other law offices I've called. He's already shown me his willingness to stay late or accommodate with my busy schedule to get documents over to him. I have less than one week to prepare myself, and I'm really glad I found Mr. Eads. I know he'll be able to help me to the best of his ability.”

- Therisa H.

****

“Thanks, Mr. Eads, for all of your assistance and your great rates. I had previously filed for divorce several years ago, but I attempted to reconcile my marriage. However, when things did not work out, I knew I needed an aggressive attorney since my husband’s golfing buddy was an attorney, and he promised me that I would get a raw deal if I requested any support. I was told that I would have to move out of the house. I found Mr. Eads online, and I immediately set up an appointment. Mr. Eads was very generous with his time and answered all of my questions (even those that I thought of after the consultation was over). I decided to hire Mr. Eads based on his experience and the fact that his practice is limited to family law. The previous attorney that I met with appeared to be a jack of all trades. However, after speaking with Mr. Eads, I realized how important it is to hire someone who keeps up to date with the various changes in the law. Mr. Eads went to bat for me, and in my opinion, he hit a home run; my husband’s golfing buddy had no idea what he was doing, and my husband ended up paying a large share of my attorney’s fees as a result.”

- Veronica S.

****

“When I was served with divorce papers, I found Mr. Eads. I was clueless as to what I was getting into, but Mr. Eads helped me sort through it and gave me A-1 representation in court. He eased all fears and I came out with a more-than-fair settlement (some of which I didn't even know was owed to me by my ex!). You're in excellent hands when Mr. Paul Eads is in your corner!!!”

- Peggy P.

****

“Paul is good at what he does, and that is simply family law. He doesn't do anything else, and if you are looking for a good divorce lawyer, that is key. He is even-keeled and acts like he has been there before, and in fact he has. If you read his bio, he has also had to endure a divorce. I feel that sets him apart and that is why I chose him, and I didn't regret it. Paul's rates are reasonable and he does most of the work himself, which is a good thing. He doesn't have an impressive high-rise office or a lot of overhead. Paul is fair and honest, and I'm glad I chose him to represent me. I would recommend Paul to anyone who is facing a divorce.”

- Thomas A.

****

“My ex left me in the house without even the basic necessities to provide for our children. Mr. Eads assured me that he would get me much needed spousal and child support so that I could maintain our home, pending the conclusion of our divorce. Mr. Eads was very patient with me and was able to resolve my case in a short period of time. His cost-saving techniques helped me save money over some of the other quotes I was receiving.”

- Heather C.

****

“I highly recommend Mr. Eads. He is a bit pricey, but well worth it. He helped us in a messy custody battle, and needless to say, we got exactly what we paid for -- full custody. Paul is on point, on top of all legal issues and holds his clients' needs as his priority. Highly recommended.”

- Lorraine F.

****

"Mr. Eads was my second attorney. To be honest, I was previously duped into hiring an attorney who sent me a letter in the mail. The letter sounded official and the price was right for my budget. I thought I was divorced, but when I applied for a marriage license after I met someone else, I found out that the paperwork had been rejected, and I was still legally married! Mr. Eads was very quick to resolve my matter and fixed all of the mistakes made by the prior attorney. Mr. Eads, I am forever grateful for your top-notch service."

- Jenna P.

****

"I hired Mr. Eads after my prior attorney sat on my case since 2008, when I filed for divorce. The prior attorney kept continuing my court date and bleeding me dry financially, while my wife seemed to get everything she wanted in court. After I hired Mr. Eads, he brought my case to an end within four months. I was able to get full custody of my daughter and my ex received supervised visitation. Mr. Eads also terminated my obligation to pay child support to my ex. If you want an excellent attorney with great rates, call Mr. Eads."

- Roberto V.

****

"Paul and his team of professionals are the best team to rely on; they are patient, focused and fair. I highly recommend him and his team for any divorce and/or custody case. Very reliable."

- Mo S.

****

"I am honored to write this review for Mr. Eads. He helped reunite me with my daughter after my ex abducted her and moved to Arizona. I was devastated when I came home from work to find that my ex had left with all of our daughter's belongings. I called the police, and they told me I needed to hire an attorney. I came across Mr. Eads' website, and I was impressed with his bio. I contacted him immediately, and within days we were in court requesting that the DA's abduction unit assist me in the return of my daughter. Not only did Mr. Eads get my daughter returned to me, but I am also able to have full physical custody. My ex has summer and holiday visitation. Mr. Eads is truly my hero. Thanks, Mr. Eads!"

- Paul W.

****

"I am a business owner and when I got divorced, I was terrified that I would lose my business. My business was also heavily leveraged against, and I did not have enough capital to sustain the business and pay my wife spousal support. My ex had an attorney who was very intimidating and kept pressuring me to liquidate the business so that I could pay his attorney's fees. I was referred to Mr. Eads by a friend. Mr. Eads was able to help structure a settlement that allowed me to keep my business while sharing the business debts with my ex. I was also able to shorten my spousal support obligation. I really appreciate Mr. Eads' professionalism and guidance during these difficult times."

- J. A.

****

"Before I hired Mr. Eads, I had been to several consultations with other attorneys. During these consultations, I felt like I was just another client. I did not feel any connection or assurance from the attorneys, aside from their wanting to collect their retainer. When I did my research on Mr. Eads, I found out that he had been through the process himself, so he had firsthand experience of what I was going through. He was very sympathetic to my cause and was very reassuring when I needed his assistance. I was very pleased with the outcome of my case (I shared custody with my wife) and felt that I was treated fairly by the court. Two thumbs up for Mr. Eads."

- Albert N.

****

"My ex-boyfriend was very abusive. His attorney seemed to be very aggressive and was always filing ex parte (emergency) hearings for me to appear in court. Due to a cost issue, I attempted to handle matters myself. However, it seemed that I could not get my point across to the judge, who seemed to be familiar with my ex-boyfriend's attorney. I found Mr. Eads in the phonebook and I thought I would give him a call. Mr. Eads was able to get the restraining order that I was seeking and my ex-boyfriend ended up paying Mr. Eads' attorney's fees. I can now feel rest-assured that my daughter, and I will be safe. I am also happy that I do not have to deal with my ex's attorney anymore. Mr. Eads worked hard for me and I am confident he will do the same for you."

- K.Y.

****

“I owed over $60,000 in child support arrears, and the child support services department was garnishing my wages. I was barely able to make ends meet. Mr. Eads worked out a payment plan with me and reduced my arrears by $25,000. I had no idea what I was doing, and every time I went to child support services, I felt like a big wallet. Although I still have arrears, I will be able to pay it off quicker and with more money left over, thanks to the payment plan Mr. Eads was able to negotiate for me.

- John H.

****

“My previous attorney failed to show up for my court date and as a result, the matter was set for trial without any input from my side. I desperately sought out an attorney, but most of them wanted a huge retainer upfront. I found Mr. Eads and when I went in for a consultation, I found that his retainer was more than reasonable. I also liked the fact that he practices exclusively family law and seems very familiar with the local judicial officers. I felt very comfortable going into my trial with Mr. Eads in my corner, and the outcome was much more than I ever expected to receive. Mr. Eads was very thorough in my case evaluation and helped me get everything I was entitled to.”

- J.L.

****

“I found Mr. Eads online. I live in Wisconsin, but Mr. Eads was able to help me with a child custody case that my ex-girlfriend had filed in California. I was reluctant to hire an attorney without having the benefit of an in-person meeting. However, once I read Mr. Eads’ profile, I was assured that he had my best interest in mind and that he was committed to my case. Mr. Eads was able to get me substantial amounts of visitation time with my son, and I share the expense of plane tickets with my ex. I was really pleased with Mr. Eads’ professionalism and ability to complete all of the paperwork online. I was even able to appear at the hearing telephonically. Mr. Eads, you are a true master in your field, and I will always be available should any of your prospective clients want to contact me as a reference.”

- Peter K.

****

“I want to thank Paul for helping me with my two daughters. He helped me overcome a hurdle of hardly having my girls at all to having them 50/50. He represented me with my child custody case and my divorce case, and he was SO patient, even though I know it was a struggle! I was able to text and call him and he would reply rapidly. I appreciate all the time he spent with me and helping me with my babies. Thank you, Paul.”

- Jennifer C.

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About The Author

Paul Eads graduated *summa cum laude* from UCLA with a bachelor of arts in psychology. In 2005 he received the degree of juris doctor from Southwestern Law School. While attending UCLA, Paul received numerous awards, including membership in Psi Chi (the International Honor Society in Psychology) and the National Golden Key Honor Society.

During his time at UCLA Paul carried out extensive research on the divorce process and accompanying coping

methods used by the vast majority of Americans. His decision to study psychology stemmed from a desire to better understand and assist those experiencing the stressors associated with divorce.

After his admittance to Southwestern Law School, Paul emphasized family law in his studies and was an active member in the school's family law society. During his second year of school, Paul was invited to intern with the Honorable Roy L. Paul, a judge in the high-volume family law courts in downtown Los Angeles. During his two-year internship, Paul observed hundreds of family law proceedings, including many celebrity divorces.

As an assistant to the bench, he did extensive research on cutting-edge issues in family law. He also critiqued several custody evaluations and trial briefs, providing full reports to the court. Paul received extensive guidance from Judge Paul and was invited back for a second internship the following year.

Paul has volunteered his services for the Los Angeles S.T.A.R.S. program, which provides legal services and guidance to limited-income families who

cannot otherwise afford legal representation. Paul also interned at the Harriet Buhai Center for Family Law for a year. While there, he assisted in writing the manual "Assisting the Limited-Income Families in Family Law Matters," which is an annual publication to help new attorneys in the practice of family law.

Paul is a member of the Family Law Section of the California State Bar and the Los Angeles County Bar Association. Paul is also an AVVO rating of 10.0 (superb in field of Family Law) as well as the recipient of the American Institute of Family Law Attorneys Ten Best Attorneys for 2017-2018. In addition, Paul is Nationally Ranked Top Ten Under Age 40 in the Field of Family Law. Top rating for ethics and legal skill (AV Preeminent rating).

PERSONAL LIFE

In 1995 Paul married and eventually became the proud father of three sons. During his first year in law school, he was served with divorce papers; Paul used this experience to direct his path deeper into the study of family law. He completed law school in the top twenty percent of his class and passed the California State Bar

Examination all while being a single father and sharing equal custody with his former spouse.

In the beginning of his divorce, Paul dealt with many of the stressors that accompany the breakup of any family. When child care was unavailable, he would take his youngest son, Bryan, to law school with him. With his family living in two separate households for the first time, Paul learned anew how to relate to his sons. However, he was unsure of his rights regarding his sons, and he wanted to protect his relationship with them at all costs.

He recalls his search for an attorney to assist him; each seemed to tell him something different, and all were very confusing. He incurred extensive fees, having had only brief and seemingly hurried interactions with his attorney. In addition, he found it hard to relate to an attorney who was a happily married man with children! The culmination of these experiences further compelled him to study family law so that he might help guide others through similar struggles.

There are plenty of lawyers who have been observers to the process of divorce, but few who have

successfully navigated the system themselves. Paul, however, was able to maintain equal custody of his sons throughout their childhood years, and his relationship with them was able to prosper greatly as a result of this.

What follows is Paul's telling of his own story, from which he hopes others might identify and benefit.

AN ATTORNEY'S PERSONAL STORY OF DIVORCE & RECOVERY

I can still recall seeing the process server on the other side of the screen door, standing with his hands behind his back. It was then that it finally hit me: my wife was serious.

I had no idea what my rights were, so I began flipping through the phone book in search of an attorney. Like so many others, I concentrated on the attorneys who had full-page ads (most of which primarily consisted of the attorney's portrait). My telephone interviews seemed impersonal, and the more attorneys I called, the further confused I became regarding my legal rights.

My wife had already moved out of our three-bedroom townhouse, leaving just my sons and me. One

day my son turned to me and asked, “When is mom going to come home?” I didn't know what to say, so I just changed the subject. My sons had assumed that since I was still living in the townhouse, I must have been the one who made their mom leave.

About two weeks later, I was served with an “Order to Show Cause” (request for a hearing) requesting that I have my sons on alternate weekends only. *Wow!* I was stupefied. I had always been a very involved father, and I did not know if I could adapt to a schedule with such limited visitation.

As mandated by the state, my wife and I attended a pre-hearing appointment wherein we attempted to establish a joint parenting plan. I was optimistic that an agreement could be reached, but that proved impossible. As a result, we were required to go to court.

I arrived early on the day of court, my Bible in hand. As I sat in a long corridor waiting for my attorney to arrive, I remember feeling stressed out, my thoughts racing. *Would I lose my boys? Would I see them every other weekend?* It was then that I simply closed my eyes and surrendered it

all to the Lord; he knew what was best for my boys, even if that meant they should stay with their mom.

We waited in the courtroom while both attorneys went into the chambers with the commissioner. Once both attorneys came out, we all headed to the cafeteria to work out a visitation plan and divide our assets.

The first several months were really tough. It was chaotic, to say the least. Single parenthood was new to me, and I did not have any assistance; I was a one-man show. It wasn't uncommon for my sons to throw horrendous fits when my ex-wife dropped them off or when I picked them up. In response, she would volunteer to take them back with her, but I persevered and insisted on having my time with them.

As my children progressed through the school system, my eldest son wrote an essay that he wanted to go to college and become a lawyer like me. My middle son and I routinely spent time working on his homework and school projects.

My youngest son recently turned eighteen years old and graduated from high school. As a former celebrity

once said, "My sons truly are my heroes." Although my children are now adults, I continued to share custody with my ex-spouse. The relationships that I have with my sons continues to grow, and I am truly blessed because of it.

A few years post-divorce, I married my real sweetheart after we took the time to get to know each other well. Although I continued to struggle to co-parent with my ex-wife regarding our children's safety, welfare, and schooling, I had learned a lot of helpful parenting tools which I continue to share with my clients so that they may also learn to deal with their former spouse in a more constructive manner.

God Bless.

CHAPTER 1
FAMILY LAW CASES THAT ATTORNEY PAUL EADS HANDLES

The attorneys at The Law Office of Paul A. Eads, A.P.C. handle all aspects of family law including divorce, legal separations, paternity, restraining orders, modifications of existing orders, and domestic violence cases. By virtue of practicing family law exclusively, they are able to offer exceptional service as well as have extensive knowledge regarding the ever-changing field of family law. Furthermore, the attorneys at The Law Office of Paul Eads limit the number of cases that they take at

any one time in order to ensure the level of personal service that their clients expect.

Preparing For An Impending Divorce

A primary concern in dealing with an impending divorce or legal separation is being able to have access to funds to retain an attorney. Many people are under the misconception that there is no way for them to obtain these funds to hire an attorney, in part because of the automatic temporary restraining order ("ATROs").

ATROs are put in place to keep one spouse from selling or otherwise disposing of community assets in an attempt to either influence divorce proceedings or deny the other party their share of that asset. However, many people are unaware that there is an exception to the ATROs which allows either party access to community funds or to sell a community property asset to retain an attorney.

To elaborate, a party to a divorce is able to use his or her credit card (either a joint or individual account), community income or the money in a bank account in order to hire an attorney. A person also has the option of selling a community asset at a fair retail value and using the proceeds to retain an attorney.

In addition to hiring an attorney, a person should also open a safe deposit box to store important documents, such as credit card statements, copies of tax returns, copies of deeds, copies of trusts, and other items that may serve as important evidence as the case proceeds. These types of documents are often necessary when completing your disclosures or determining an equitable division of your property, so it is important that they remain safe and easily accessible.

When there are children involved in a divorce or legal separation, the attorneys at The Law Office of Paul Eads certainly encourage clients to keep a journal or calendar chronicling their time spent with their children. For example, if a parent takes care of his or her children on Monday, Tuesday, and Wednesday, then they should notate these times on a calendar or in a journal. Having such a record will be important down the road when child custody is at issue and the status quo must be demonstrated.

When preparing for a pending divorce or legal separation, parties should also change the passwords on any accounts that are solely in their name so as to prevent

their spouse from having access to their emails, bank accounts, credit cards and communications with their attorney. In fact, The Law Office of Paul Eads encourages clients to create a new email account (to which no one else has the password) solely for the purpose of communicating with their attorney.

Finally, it's always important to keep an inventory of the household items with an accompanying video, as well as a notebook of all bank statements, tax returns, utility bills, deeds and other important documents. This notebook can then be used in determining any reimbursement claims in the future or to create a budget that lists these expenses in the event that Spousal Support is being requested. For example, if one party is paying the utility bills after separation, then at some future point they should have their documents together to support their request for reimbursement of these expenditures.

Ways In Which Divorce Can Be Handled

There are four basic options in how an attorney can be used to handle your divorce or legal separation in California: Collaborative Divorce, Mediation, Coaching and Litigation. Collaborative Divorce is a process whereby

the parties utilize the services of several professionals including attorneys, psychologists and accountants to assist them in resolving the issues in their divorce or legal separation, rather than trying to resolve them in the egregious atmosphere of the courtroom. Key pre-requisites for the Collaborative Law process to work successfully are having an open-mind to unique resolutions to your case and willing participants. If any spouse is reluctant or unwilling, then this process may be fruitless.

The Collaborative Law process has the potential to save time and money, and the meetings are typically held in conference rooms rather than courtrooms. In addition, information and document exchanges are free, open, informal, and honest, and as such do not involve otherwise expensive formal discovery requests or subpoenas. This process also allows the parties significant leeway in deciding how to handle and ultimately resolve post-settlement disputes.

In a Collaborative Divorce, each party hires their own attorney who will assist them in negotiating a settlement. In addition to attorneys there are commonly one of more mental health professionals to address any non-legal issues (grief of dealing with divorce, etc.), child

custody specialists (to provide appropriate parenting plans) and even accountants (to direct the parties through the financial impacts of any property divisions and to limit their tax liabilities) are involved in this process.

After discussing the issues as a group, both parties meet privately with their respective attorneys in order to discuss the various proposals, while keeping in mind the reality that each party will have to make compromises. In this regard, each party should discuss with their attorney the limits of compromise that are consistent with their ultimate goals prior to the initial meeting.

The second option is Mediation, which is similar to Collaborative Divorce, but without the third-party neutrals. The process of Mediation involves one attorney, not to provide legal advice, but to serve as a third-party neutral who will assist the parties with the drafting of their agreement. This attorney will also help them write a judgment to submit to the court. The attorney does not represent either party in the process and if Mediation is not successful, the mediator cannot represent either party in the conclusion of their case. This option has the same advantages of Collaborative Law, but also requires the

same level of open-mindedness and willingness to compromise on behalf of the participants.

The third option is the Coaching approach, which usually involves hiring an attorney to work behind the scenes and provide input to the party as the case progresses. The attorney may both review and draft documents as well as being accessible as an advisor to answer any questions, but is not officially the attorney on record for either party. This process can be cost-effective and less adversarial, as neither side is aware that the other is using an attorney. However, the attorney can step in if needed.

The fourth option is Litigation, which is adversarial in nature and typically more expensive than the aforementioned options. It is usually reserved for parties who are unreasonable or hung up on many principles. However, Litigation is usually a quicker process than Mediation.

Advantages And Disadvantages Of Filing First For Divorce

The person who files first is the Petitioner, and the person who files second is the Respondent. By filing first, the Petitioner has the advantage of being able to select the county in which the case will be held. Another advantage

of being the Petitioner is the opportunity to present the opening statement and evidence before the Respondent. The Petitioner is also allowed to make the closing statement before the Respondent. In other words, they are able to have the last word in terms of the argument to the court. When a judge hears a piece of information twice, they are more likely to pay attention to it.

Being the Respondent, however, is not without its own advantages. Since the Respondent must hear the Petitioner's position first, they will know what the Petitioner is looking to obtain, and they may be better equipped to respond. For example, if the Respondent only wants every other weekend to visit with the children, but the Petitioner states in his/her Petition that she wants the Respondent to have the 1st, 3rd & 5th weekends, the Respondent can respond with a request and thus have more time with the children then he/she may have thought the other party was agreeable to.

CHAPTER 2
THE DIVORCE & PATERNITY PROCESS IN CALIFORNIA

Whether you file for divorce or legal separation, the process is identical. As such, the words "divorce" and "legal separation" may be used interchangeably. Divorce in California is a three-step process. I have provided a diagram at the end of this chapter to further simplify these steps. The first step is filing the Petition for Divorce, which will commence the case. The Petitioner sets forth in the Petition their proposed distribution of the parties'

property, debts, payment of support, attorney's fees and their proposal for a parenting plan (if they have children). This Petition is then personally served on the Respondent. Upon receipt of the Petition, the Respondent has thirty days to file and serve a Response setting forth their proposal on the above issues. If the Respondent fails to file a Response within the thirty days, the Petitioner can then submit a default judgment incorporating their proposed distribution of assets/debts, support and custody as they had set forth in their initial Petition. If the Respondent does timely file a response, then the divorce process moves on to the second step, which is the completion and service of the Preliminary Declaration of Disclosure (hereinafter referred to as "PDODs").

To complete the PDODs, each party sets forth their income, expenses, assets and liabilities in the requisite Declaration of Disclosure, Income & Expense Declaration and Schedule of Assets forms. The PDODs are then exchanged with the other spouse and the proof of service is then filed with the Court. The purpose of the PDODs is to allow the parties to determine an appropriate division of these assets and liabilities as well as support once

everything is disclosed. If either spouse fails to disclose all of their assets/debts or income, the Court can impose sanctions against that spouse or even award the omitted asset to the other spouse. California is a community property state, which means that, with limited exceptions, all assets that are acquired during the marriage are presumed to be community property. Similarly, all debts incurred during the marriage, with limited exceptions, are presumptively community debts. Although the spouses are free to enter into any agreement that they want, in the absence of an agreement, all community property and debts will be equally divided between the parties. To the extent that there is insufficient property to effectuate an equal division, the spouse that receives the greater valued asset will owe the other spouse an equalization payment (cash payment) to offset the difference in property received by the other spouse. For example, if the spouses own only two cars and one of these cars is worth more (e.g. $5,000) than the other car (e.g. $3,000), the spouse who received the greater valued vehicle will owe the other spouse one-half of the difference in value of these two vehicles ($5,000-$3,000=$2,000/2= $1,000) to effectuate an equal division.

The third and final step in the divorce process is the preparation and submission of a Judgment for Divorce which sets forth the division of property, liabilities, the parties' parenting plan, child/spousal support and attorney's fees. This Judgment is then submitted to the Court for approval and signature of the judicial officer. Once the Judgment is signed by the Court, the Judgment is then mailed to the parties or counsel with a date stamp setting forth the date the marriage is terminated. The spouses cannot re-marry until they receive the signed Judgment terminating the marriage. If a Legal Separation was filed instead, the Judgment will be the same as the Dissolution Judgment, but the spouses will remain married.

From beginning to end, the earliest that someone can be divorced in California is six months and one day from the date that the Petition was served on the Respondent. Of course, some cases are more complicated or involve unreasonable spouses, which can lengthen the divorce process. In addition, during this process, either party may file a Request for Orders (hereinafter "RFO"). By filing an RFO, a court date to obtain temporary orders

from the Court with regards to custody, support, attorney's fees or exclusive use of the family residence and other such requests. The RFO hearings are typically set within four to six weeks from when they are filed with the Court. These RFOs are then served on the other party who then has a chance to file a Response to the RFO, setting forth their position on the various issues. These temporary orders last until they are incorporated into a Judgment (made final) or they are modified by one party filing another RFO to change the temporary orders.

Finally, in the event of an emergency such as domestic violence or to otherwise protect the children or the parties, either party may file an Ex Parte RFO. The purpose of an Ex Parte RFO is to protect the parties or their children from the imminent threat of physical harm or to address other safety concerns. Unlike the regular RFOs, Ex Parte RFOs are heard and decided by the Court within twenty-four hours of being filed.

Other hearings that can take place between the initial Petition and the submission of a Judgment are reserved for the parties who are unable to reach an agreement on their own or through their attorneys. These hearings include

Request for Trial Setting/Case Management Conferences, Mandatory Settlement Conferences and Trials. Either party may file a Request for Trial Setting. The parties are given a date by the Court to appear and advise the Court of what the issues are for the Court to decide and what their time estimate is to resolve those issues. Depending on the specific resources available to the Court in which the case is being handled, the parties may be required to meet with a Daily Settlement Officer at the initial Trial Setting Conference. A Daily Settlement Officer is an experienced attorney who volunteers with the Court to act as a 3rd party neutral to assist the parties in reaching a settlement or narrow the issues for future hearings. At the conclusion of the Trial Setting Conference, the Court can order the parties to attend future hearings such as a Mandatory Settlement Conference or a Trial. A Mandatory Settlement Conference involves the exchange of written briefs setting forth each side's position and the reasoning for their position as well as the exchange of exhibits. Like the Trial Setting Conference, the parties can meet with each other and a 3rd party neutral to discuss their issues. However, unlike the Trial Setting Conference, the attorneys can also meet with the Court who

can provide direction to the parties/counsel as to possible outcomes if the matter went to trial. If no settlement is reached, the parties proceed to trial which again involves the exchanging of written briefs and exhibits. However, unlike the Mandatory Settlement Conference, the purpose of the trial is to present evidence on the various issues for the Court to make a final determination on these issues.

People can enter a Judgment via an agreement for an uncontested divorce or as the result of litigation. The Judgment is submitted to the Court, which typically turns the Judgment around within two or three months. To be divorced means to be restored the status of a single person. However, it is important to understand that even if a Judgment has been submitted to the court, the parties are not actually divorced; they are not free to marry someone else until they actually receive a copy of the Judgment from the Court.

The paternity process is very similar to the divorce process with regards to both the timing and the filing of a Petition and response as set forth in Step 1. The only difference is in the name of the form. In a paternity action, one party files a Petition to Establish a Parental

Relationship and the other party files a Response to Establish a Parental Relationship within thirty days of being served. The Respondent's default may also be taken if a response is not timely filed and a Judgment for paternity may be submitted. There is no Step 2 as there is not property acquired if the parties are not married. The third step is the submission of a Judgment. Also, during a paternity action, either side may file an RFO, Request for Trial Setting and have an actual Trial in their case if any matter has not been resolved.

STEP 1. Start Your Case

The Petitioner (person who files 1st for divorce or legal separation forms with the court) fills out and files with the court at least a Petition—Marriage and a Summons and, if there are children of the relationship, a Declaration Under UCCJEA. The court will stamp and return copies of the filed forms to the Petitioner.

STEP 2. Serve the Forms

Someone 18 or older-not the Petitioner-serves the spouse (called the Respondent) with all the forms from Step 1 plus a blank Response—Marriage and files with the court a proof of service form, such as Proof of Service of Summons, telling when and how the Respondent was served.

The respondent has 30 days to file and serve a Response. So the Petitioner must wait 30 days before starting Step 4.

STEP 2A
Either party may file a Request for Orders for Temporary Orders relating to Child Custody, Support, Spousal Support, Payment of Debt and Attorney's Fees. Court dates are typically set 4-6 weeks out.

No response and NO written agreement:

Petitioner waits 30 days after Step 2 is complete and prepares a proposed Judgment, together with all other needed forms.

No Response BUT written agreement: Petitioner attached the signed and notarized agreement to the proposed Judgment, together with all other related forms.

Response and written agreement: Either party files Appearance, Stipulations, and Waivers and the proposed Judgment with written agreement attached and other related forms.

Response and NO written agreement: Parties must go to trial to have a judge resolve the issues. Either party can file Request for Trial Setting to request either a Mandatory Settlement Conference of Trial dates to dissolve the marriage and conclude the case.

The 60- day time frame for serving the disclosures may be changed … court order.

The Petitioner and Respondent each file a Declaration Regarding Service with the court stating that the disclosures were served. If the Respondent does not serve disclosures, the Petitioner can still finish the case without them.

Respondent does not file a Response (called "Default")

Respondent files a Response

STEP 4. Finish the Divorce or Legal Separation Case in One of Four Ways

CHAPTER 3
MISCONCEPTIONS THAT PEOPLE HAVE ABOUT DIVORCE CASES

There are several misconceptions that people have expressed over the years regarding family law. One of the common misconceptions is the belief that all attorneys can competently assist them with their family law case. There are many firms that advertise that they provide legal services for a variety of fields of law (family law, personal injury law, immigration law, and employment law etc.). The Law Office of Paul Eads always cautions against hiring these firms for their family law case. The practice of family

law is constantly changing (new forms are being generated, new judges are being appointed and statutes and cases are changing/being decided weekly). These changes can have a direct impact on your case.

An attorney who exclusively practices family law is going to be familiar with how the latest developments will impact a client's case. For example, in 2009 a case by the name of Marriage of Altar was decided. This case stood for the premise that if a person receives reoccurring gifts from a 3rd party, these gifts could be treated as income in determining a person's support obligation. Obviously, if either the client or the other party was receiving such gifts and their attorney did not know this was the law, their client would be receiving substantially less child support (if the gifts were not included). I mention this case as a sample of similar cases that are being decided every two to three weeks that may directly affect your case.

If an attorney mischaracterizes an asset because they are unfamiliar with family law, it is possible that their client might not get what they are fully entitled to. For reasons like this, we cannot stress enough the importance

of hiring an experienced family law attorney who limits their practice to family law. This would be analogous to going to a Chinese restaurant and ordering a burrito as opposed to going to a Mexican restaurant (that serves solely Mexican food) for that same burrito.

Another common misconception that we frequently hear is the belief that paralegals or document preparation services are cheaper than attorneys and equally as helpful. These people can be seen handing out business cards in front of courthouses every day. The problem is that paralegals or legal document preparers are unlicensed, uninsured, and do not meet the educational requirements to act as an attorney.

In the absence of malpractice insurance, clients have no legal or economic recourse in the event that a paralegal or document preparation service makes a detrimental error in their case. Some of these services state that they have access to attorneys, but they never disclose the names of those attorneys. In addition, it is not uncommon for these services to actually charge more than an attorney would, perhaps because the client that they are soliciting does not know what the normal charge is for an attorney. It's better

to do your due diligence and hire an experienced family law attorney for your family law needs and have the accountability in the event that your case is mishandled.

A third misconception that attorneys at The Law Office of Paul Eads are often faced with has to do with common law marriages in California. More specifically, some people believe that if two people live with one another for a certain length of time, then they become legally married. This is not true.

However, if the parties move from another state that recognizes common-law marriages (currently Colorado, Rhode Island, and Washington, D.C.) to California, then California will honor the common law marriage, and they'll have certain property rights as a result. People whose relationship has been solely based in California do not acquire any community property and do not have any marital rights in terms of insurance or benefits just based on living together. It doesn't matter if they have lived together in California for three years or thirty years; unless they came from a state that recognizes common law marriage, they are not legally married in California. However, two people who have lived and made purchases together for a certain

period of time in California may have some property rights under a Marvin claim. The Law Office of Paul Eads can assist people in these matters as well.

The final (and perhaps the most common) misconception that the attorneys at The Law Office of Paul Eads deal with is the belief that once someone files a Petition for Divorce and does nothing else, then they will be divorced in six months. People often tell the attorneys at The Law Office of Paul Eads that they filed for divorce back in 2002 and never heard back from the Court. Until someone receives a Judgment for a divorce, they are not divorced. If no action is taken in their divorce case in three years, then the Court has the discretion to dismiss the case. After five years, it's mandatory that the Court dismiss the case if no Judgment has been submitted. Simply filing a Petition for Divorce will not terminate a marriage; there are additional steps that must be taken.

CHAPTER 4
PROTECTING ASSETS IN A DIVORCE SCENARIO

When a spouse files for divorce, they must comply with the Automatic Temporary Restraining Orders (hereinafter "ATROs") that are set forth in the initial summons. Generally speaking, a spouse cannot sell or transfer assets that are acquired during the marriage to someone else. The ATROs serve as a means to preserve assets so that a fair and proper distribution of assets can be achieved by the Court. Failure to comply with the ATROs can result in the imposition

of substantial penalties and sanctions. The Petitioner is bound by the ATROs when he/she files for divorce and the Respondent is bound by the ATROs when he/she is served with the summons and petition.

Of utmost importance for people who have or will be going through a divorce or are contemplating a divorce is to take an inventory of all their assets and debts. An inventory would include things such as cars, credit cards, retirement accounts, property deeds, taxes and trusts. A copy of this inventory and related documents should be kept in a safe deposit box or at a friend's residence.

It is also important to open a separate bank account when the spouses separate so that they can deposit their post-separation earnings into this account and avoid the commingling of community and separate property. Some parties even transfer half of the funds from their joint account or community account into this new account (as one-half of the funds in the community account belong to each spouse).

In addition to opening a separate account, I encourage clients to make a video recording of their

residence and its contents. Having a video, which serves as evidence of the items in the residence, is very helpful in the event that items begin to disappear, such as gold coins, furniture or artwork.

Finally, items that are irreplaceable, such as scrapbooks, family videos and family photo albums, should also be secured and perhaps even copies made as these items cannot be replaced. I also suggest clients obtain a credit report when they separate to ensure that all accounts are accounted for along with the latest balances for these accounts. It is never too early to start preserving your assets if a divorce or separation is inevitable.

CHAPTER 5
SEPARATION OF ASSETS AND DEBTS

There are three basic types of property in family law cases. Namely, community property, separate property and quasi-community property. A determining factor of whether property is characterized as community or separate is when the property was acquired. On January 1, 2017, a new law came into effect: Family Code 70. This law defines the date of separation. As a general rule, all property acquired during the marriage and all debts incurred during the marriage is presumptively community property/obligations. Property acquired either prior to the marriage or after the date of

separation is defined as separate property and thus does not need to be shared with the other spouse. For example, if you purchase a car during the marriage with your earnings, this car is a community property asset. However, if you purchased this car with funds from a bank account that you had prior to the marriage, this car would be considered separate property.

Property maintains its characterization throughout the marriage, absent a written agreement of the parties. For example, if one spouse has a house that is considered separate property (acquired before marriage) that is generating monthly rental income. This income, although acquired during the marriage, is still considered the separate property income of the spouse who owns the home. A married person may, without the consent of the other person, convey this separate property to anyone else. Spouses are free to dispose of their separate property as they see fit as opposed to community property which requires, with limited exceptions, the express consent of the other spouse to sell or otherwise dispose of an asset.

There is also quasi-community property, which is property that is acquired by a married person or a couple in

a non-community property state. By virtue of the fact that it is acquired in a non-community property state, it is not immediately deemed community property. However, in California, if a married couple subsequently relocates to a community property state and either divorces or one spouse dies, then the Court treats quasi-community property as community property. Finally, quasi-community property may also be acquired in cases where the marriage is subsequently deemed invalid (such as bigamy or other procedural defects). In these cases, the innocent spouse (unaware that their spouse is still married to someone else) may have property rights for the quasi-community property that was acquired during the relationship.

Factors That Can Impact The Division Of Assets And Debts

Several factors can impact the division of assets and debts in a divorce. Like child custody, the parties involved have broad discretion to divide both their assets and liabilities. To the extent there is a disparity in property received, this can be rectified by an equalization payment. In other words, once all of the property is divided, one

spouse could give the other spouse money to compensate the other spouse for any differences in property received.

There are many types of property that can be divided. The two main types of property are personal property and real property. When dealing with personal property, unless there is sentimental value in the property, The Law Office of Paul Eads advises people against fighting over furniture and furnishings; in most cases, the cost of litigation would quickly exceed the value of these types of assets. For example, The Law Office of Paul Eads handled a case wherein the issue was that the husband wanted the twenty-inch TV, as well as some other items (polo shirts, etc.) that really had no value. It was strongly encouraged for the client to give the husband these items, because the attorney time to litigate ownership of these items far exceeded their value.

If both parties want the same item, then the Court can conduct a silent auction whereby each spouse writes down the value of the disputed item. These values are then shared and the spouse with the highest bid receives that item at that value, and is then responsible to pay their spouse half of the value of the winning bid.

When dealing with real property, the property can be either sold and the proceeds equally divided or either spouse could have the property appraised and attempt to buy out the other's spouse's share of the equity. The selection of a realtor or appraiser is typically handled by one spouse, providing two to three names to the other spouse for their selection. Once the realtor is selected and the house is sold, the proceeds, less any closing costs and other fees will be split between the spouses. In the event of a buyout, once an appraiser is agreed upon, the property is appraised and the spouse intending to buy out the other spouse's interest will pay the other spouse their share of the equity from the proceeds of the refinance. If both spouses desire to buy the other spouse out of their interest in the property, the Court will look at the totality of the circumstances, including the parties' finances, in deciding which spouse will buy out the other spouse's interest. If neither spouse is able to do so, the Court will order the property sold.

A final option regarding real property is called a deferred sale. This is usually an option where the parties have older children finishing their schooling which would otherwise be interrupted by a change of residence. In a

deferred sale, the spouse that remains in the residence is typically responsible for the mortgage and upkeep of the house, pending the eventual sale. Again, the general purpose behind a deferred sale is to allow the children to finish the remainder of their schooling without having to transfer schools. If a spouse requests a deferred sale for younger children, this request will most often be denied.

Division of Pensions and Retirement Plans

Pensions and retirement plans are divided in the same way as assets and debts. The state of California follows the time rule, which considers the amount of time that the owner of a retirement account worked for the employer during the marriage divided by the total length of employment. The retirement plans are notified of the dissolution case and are provided the requisite documents outlining the time period for which division is being sought. Once the plans are notified, the parties can agree to use a single attorney to prepare a qualified domestic relations order. There are also attorneys that specialize in the preparation of qualified domestic relations orders and can perform this service for a lower cost and may also

submit the proposed division of the plan to the retirement account for an ultimate division.

It is strongly suggested that the parties do not wait too long after their case has been finalized to divide their retirement accounts. A recent appellate case was recently decided and stood for the principal that, if a plan subsequently decreased in value or the plan otherwise became insolvent that the recipient spouse could end up with nothing. If a plan is to be divided, the parties should not wait to so do; it should be divided immediately. If the other party won't sign the qualified domestic relations order or disappears, then the Court can sign the qualified domestic relations order in their place.

CHAPTER 6
CONSEQUENCES OF CONVERTING SEPARATE PROPERTY INTO COMMUNITY PROPERTY

The Law Office of Paul Eads always encourages clients, to the extent possible, to keep their property separate when they marry. This applies to both real property as well as other assets of substantial value. With real property, most people make the emotional decision to add a new spouse to the title of their home that they acquired prior to marriage. Prior to making such a

decision, it's important to understand that by adding a new spouse on the title of real property, they are creating a community property interest in that property. As such, the equity (appreciation of property and mortgage principal reduction) that accrues from the date of transfer would be split between the parties in the event of divorce or separation. However, the original owner would be entitled to receive reimbursement of the equity he or she had in the home from the date of acquisition to the date that the new spouse is added to the title.

If someone seeks to add his or her new spouse to a title, it's imperative to first consult with an experienced family law attorney. It is also advisable to have the home appraised prior to transfer, as well as to retain a mortgage statement encompassing the month that the home is transferred. In the unfortunate event that the marriage ends in divorce, having an appraisal and mortgage records will prove useful in determining the original owner's claim.

Another issue involving real property in dissolution cases arises when the property stays in one spouse's name, but community funds are used to pay the

existing mortgage. These community funds for payment of the mortgage come in the way of earnings of either spouse. Over time, the accumulation of these payments can be substantial.

In cases such as these, a calculation (referred to as a "Moore-Marsden calculation") is utilized in order to determine which part of the equity is community property and which part is separate property. The community is entitled to reimbursement of the principal payments plus the appreciation of these payments, but there is no right of reimbursement for payment of mortgage interest or property taxes.

In calculating the respective interests, there are two values that need to be determined. The first value is percentage of ownership of the community by the amount of principal reduction on a piece of real estate during the marriage. The second value is the amount of appreciation of that property since the parties married or otherwise added to title.

Here is an example of this: a husband purchased a home prior to marriage for $38,300. He made a down

payment in the amount of $8,300, and obtained a loan for the remaining balance of $30,000. At the time of marriage, the husband had reduced the principal amount due on the mortgage by $7,000. During the marriage, additional payments were made on the house, and the principal amount of the loan was reduced by an additional $9,200. When the husband and wife separated, the husband further reduced the principal by an additional $655.

In this example, the community has an interest of 24% ($38,300 divided by $9,200). If the value of the house at deed of separation is $100,000, then the community will be entitled to $24,000 and the husband will receive $76,000. It's imperative to always consult with an attorney when either changing title to property or paying for separate real property with community funds.

What Happens If I Co-Mingle Separate Property Funds With Community Property Funds?

In addition to real property, people can also inadvertently convert their separate property funds to community property funds. To maintain the characterization of separate property, property must be kept separate both as to title, form and payment of any encumbrances. If a spouse

mixes their separate property funds with community funds, or if one person is added to the title of an account, then there will likely be future issues in dividing the property at the time of divorce. For example, depositing funds from a separate property account (bank account, IRA etc.) will pose issues at time of division as the party who added their separate funds bears the burden of proving that they were separate. This is normally achieved by tracing the funds/property back to the source and showing that these funds were not otherwise spent. The passage of additional time or the length of time that the funds spent in the account make tracing that much harder. Again, if you intend to keep property separate, please keep these scenarios in mind when doing so.

Gifts given during the marriage can also become problematic at the time of divorce. The operative question is the intent of the donor/giver of the gift. That is, did the giver of the gift of the gift intend to give it to a particular recipient or the couple? For example, if the parents of one spouse gave the newly married couple a check for $20,000 to acquire a new house, the Court would look at the intent of the donor when they have such a gift. It's important to maintain proof/documentation that the gift was intended to

be separate, because the person who gifted the item may not be around at the time of divorce.

A famous example of this involved a Lone Ranger mask that was given to a client by his father, who had since passed away. When the marriage ended and the husband filed for divorce, the wife indicated that the gift was not given to the husband as his separate property, but rather given to both of them as community property. When there are disagreements of this nature, the burden of proof is on the party who claims that a particular piece of property is separate. If that person does not have proof that the property is indeed separate, then the Court will make the presumption that the property is community. In the example above, the husband had kept the birthday card given to him by his father along with the mask. The fact that the mask was given on his birthday coupled with the endearing card from his father regarding the mask was sufficient to award this asset to the husband. However, had either or both of these facts been absent, the husband's case may have turned out differently.

CHAPTER 7
SEPARATING MYSELF FROM MY SPOUSE'S DEBTS BEFORE DIVORCE

As the assets accumulated during the marriage are presumed to be community property, all debts that are incurred during the marriage are similarly presumed to be community obligations to the extent that the liability incurred actually benefited the community. For example, if a husband uses a community credit card to buy flowers or a nice ring for his new girlfriend, that certainly is not a community obligation, but had that same credit card been

used to buy groceries for the family, this debt would be deemed a community obligation.

All liabilities incurred either prior to marriage or after separation are the responsibility of each party. For example, if the spouses have a joint American Express credit card with a balance of $7,000 (for expenses incurred during the marriage), then they are each responsible for half of that debt ($3,500 each) when they separate. However, if one spouse continues to use this card after separation, then there would be a question as to who is responsible for these post-separation charges. Problems of this nature can be avoided by either obtaining a new credit card and not using the joint account or otherwise removing yourself as an authorized user on the account.

It is also important to keep track of credit card and other consumer debt statements that encompass the date of separation. By doing so, a spouse may be able to show that charges incurred after the date of separation are the other spouse's obligation. It is a common occurrence for a spouse to charge their attorney's fees to a joint credit card prior to filing for divorce. The other spouse would not be responsible for these fees, but this could only be determined by having the

statement to show that the other spouse solely incurred this charge and that it did not benefit the community.

An equal division of debts is usually achieved in a divorce, but there are certain exceptions. One exception includes student loans. With limited exceptions, a student loan debt is the separate property obligation of the party that acquired the loan. As with property, it's important to maintain the documentation for these debts, as there are certain pitfalls when it comes to dividing property.

How Do The Courts Handle Division Of Debt In A Divorce?

If one spouse has all of the debts (credit cards, loans or otherwise) solely in their name, then it is possible to hold the other spouse liable for their share of the debt by either 1) ordering a payment to equalize the debt; 2) offsetting the debts against another asset; or 3) having all debts paid off with the sale of an asset or real property.

Another issue is the servicing of consumer debt while the divorce is pending. For example, if there is a car loan, sometimes one spouse will stop making the monthly payment. Obviously, the non-payment of this loan can

have detrimental effects on a spouse's credit rating. Rather than let your credit rating be decimated it may be possible, for the payer of support to offset the payment of this debt against their support obligation. For example, if the parties own a house which is occupied solely by the wife and they are going through a divorce and an order is made that the husband is required to pay spousal support, the husband may be able to discharge his spousal support obligation by paying the mortgage and thus saving his credit in the process.

Chapter 8
Who Pays Spousal Support Or Alimony In A Divorce?

When determining the proper amount of spousal support, the Court considers the disparity in incomes between the parties. The greater the disparity in incomes, the greater the potential is for an order for spousal support. Likewise, the smaller the disparity, the less likely it is that spousal support will be ordered. California is a no-fault state, so spousal support is not ordered or denied based on the bad actions of one

spouse; it is based solely on the incomes and respective needs and ability to pay of the parties.

Furthermore, spousal support is not determined by a spouse's gender. That is, spousal support can be paid and received by either a husband or a wife. If the wife is the higher earner in the relationship, the husband can request spousal support be paid by his wife.

In addition, spousal support can also be ordered in both domestic partnerships as well as same-sex marriage. That is, if the parties are registered domestic partners, either partner can petition the Court for a spousal support order. Similarly, with the recent ruling that permits same-sex marriages, either spouse may also petition the Court for spousal support irrespective of their role in the relationship if there is a sufficient disparity in respective incomes and ability to pay support.

Finally, spousal support is typically not available for people who are not legally married, unless one party can establish themselves as a putative spouse. For example, if one spouse is still married to someone else and marries someone else (unbeknownst to the second spouse), this second spouse may qualify for spousal support.

A spouse does not need to file for a divorce in order to obtain spousal support. Instead, they can file for legal separation or for custody and support.

CHAPTER 9
IS ALIMONY OR SPOUSAL SUPPORT ALWAYS AWARDED IN A DIVORCE?

When Does Alimony Or Spousal Support Begin?

Spousal support in California is broken up into two different categories. The first is *pendente lite spousal support*, which is temporary support. Once a Petition is filed for legal separation or dissolution has been filed with the Court, then either spouse can file a Request for Orders, requesting that the Court order temporary

support or *pendente lite* support pending the conclusion of the case (entry of Judgment for divorce or separation).

The spousal support obligation does not commence until either party files for divorce or separation. As such, it is important for a person to file a Request for Order for spousal support concurrent with the filing of the initial divorce or separation petition, rather than wait until the need for spousal support is more pressing. It typically takes approximately four to six weeks from the filing of a Request for Orders for Spousal Support to actually receive a court date. In addition, sometimes the spouse ordered to pay support may be reluctant to do so, which would necessitate the submission of a wage assignment sent to the employer to withhold the support obligation. This additional requirement tacks on an additional ten to fifteen days for the employer to start withholding.

How Is The Amount Of Alimony Or Spousal Support Determined?

In order to determine the amount of *pendente lite* spousal support to order, the courts use the DissoMaster or X-Spouse program, which calculate support based on the county in which the parties live in (some counties use

Dissomaster and others use X-Spouse). The results of these two programs may differ by a few dollars at most. The Request for Orders is accompanied by the Income and Expense Declaration which sets forth the party's need for spousal support and the other spouse's ability to pay spousal support. If a spouse's expenses are being paid through loans or credit cards or they are currently living with family, they can set forth their proposed needs (how much it would cost to obtain their own residence and pay for the necessities of life). If there is the requisite showing of a need for spousal support and the other spouse has the ability to pay spousal support, then the Court will make such an order. *Pendente lite* spousal support is generally higher than the permanent support order. As such, it may be quite beneficial for the support obligor to conclude their case as fast as reasonably possible to reduce their ongoing support obligation.

A long-term support order or permanent support order is different from *pendent lite* spousal support as the Court cannot rely on the aforementioned support calculators. Instead, the Court relies on the Family Code Section 4320 factors, which are considered at the time of trial.

Family Code Section 4320 consists of thirteen such factors, including the earning capacity of the parties, the marketable skills of the parties, the age and health of the parties, the history of earnings, how long it might reasonably take for a spouse to obtain education or training in order to achieve self-sufficiency, whether or not a party's earning capacity is impaired by unemployment or the need to care for minor children, and any past incidences of domestic violence (the Court typically does not award spousal support to perpetrators of domestic violence).

Other factors include any formal agreements of the parties that one spouse will tend to domestic duties, while other spouse works. In addition, the Court also considers whether one spouse has helped the other spouse in obtaining an education, training or a career position. The Court also looks at the Marital Standard of Living that the parties enjoyed during their marriage (parties' lifestyles, ability to vacation, amass savings, etc.). Finally, the Court will also consider the relative assets and obligations of the parties. For example, if one spouse has a house and cars and the other does not, this may result in a higher support order then if both parties had approximately the same assets.

As a final catch-all, the Court looks at any other factors that might be just and equitable when making a permanent order for spousal support.

When Can The Amount Of Spousal Support Be Modified?

The typical duration of spousal support is until the death of either party, re-marriage of the recipient, or further order of the Court. If either spouse dies, the spousal support would terminate. However, the Court may order the payer of support to obtain a life insurance policy and name the recipient of support as the beneficiary. In that case, the beneficiary would receive the policy proceeds upon the death of that spouse.

If the recipient gets re-married, the spousal support would end. However, if the payer of support gets married, the spousal support order would remain unchanged. Either party can request a modification of support based on a substantial change in circumstance. A change in circumstance typically involves a loss of income by the spouse paying support, or an increase in income by the recipient of support.

The Court can issue a Gavron warning to the recipient of spousal support. A Gavron warning is a warning given by the Court that if the recipient fails to become self-supporting after a reasonable period of time, then the Court may impute income on that spouse and thus reduce the spousal support they receive. Temporary orders are always modifiable from the date the order is made until the time of trial. If something happens during this time (such as the loss of a job), then the Court can modify spousal support based on these events.

What Recourse Do I Have If My Spouse Fails To Pay Spousal Support?

As a general rule, it's always advisable to obtain the earning withholding order for support, which is then served on the spouse's employer. The attorneys at The Law Office of Paul Eads frequently have these in their bags to submit to the Court when the Court makes an order for any type of support.

The advantage of this is that it bypasses the spouse, and the support comes directly from the spouse's employer. That is, if the spouse plays games about mailing the support payment (sending it late, claiming it got "lost

in the mail," etc.) an earning withholding order will have the employer deduct the support obligation directly from that spouse's paycheck and it will be received consistently whenever that spouse is paid. Earning withholding orders are not viable for the self-employed as typically the self-employed spouse processes his own payroll and can still cause delays with providing support.

If real property is involved, the spouse dependent on support may record an Abstract of Judgment against the property, which will be recorded in the county where the real property is located. If that spouse attempts to sell or refinance the property, the back support must be paid prior to the house selling or the refinance being approved.

Sometimes the Court will require one spouse to obtain a life insurance policy and name the ex-spouse as a beneficiary on that policy. In the event of the unfortunate demise of that spouse, the supported spouse will receive the proceeds from that policy.

Another remedy to obtain unpaid support is to find an attorney who will work on a commission to collect the unpaid support. The attorney will seek repayment of both

support and the requisite legal interest on the unpaid support. The attorney could levy the spouse's bank account, invade a retirement account, or even force the sale of property in order to satisfy the Court's obligation.

The final remedy available is a Contempt of Court. This cause of action is criminal in nature. The spouse who is not making payments may be exposed to both jail time and monetary sanctions (attorney's fees) for his/her failure to timely pay support. This action is brought in family court.

Is Spousal Support A Permanent Obligation?

There has been a recent shift in the law that is resulting in spousal support not being viewed as a permanent obligation. Contrary to popular belief, the recent shift in public policy is for both parties to become self-sufficient with the passage of time. However, there is not a specific period of time within which the Court may start reducing support.

If one spouse does nothing to enhance themselves by means of education or employment, then over time the

Court can consider this inaction as a basis to modify spousal support.

Alternatively, the Court may order the recipient spouse to do a job search, which entails the spouse looking for work and keeping a record of the places to which they apply. The spouse would then be required to provide that information to their former spouse on a weekly, monthly, or quarterly basis. That way, the paying spouse can use that information to determine whether or not the recipient spouse has met their obligation to becoming gainfully employed and may use the information provided to file a subsequent modification of the support order.

Another possible outcome is a step-down order. With this type of order, the Court could make an order that, that after a specified period of time, the spousal support would automatically step down. For example, if an order is $800 per month made on January 1, 2017, the Court could order that amount be reduced to $600 per month on January 1, 2020 and then to $00 per month on January 1, 2024.

Finally, the parties can agree to terminate the Court's jurisdiction to award spousal support to either side. This termination acts as a block such that neither party, no matter what life events may happen (loss of job, injury etc.), can petition the Court for spousal support.

How Does Adultery Affect Alimony Or Spousal Support?

California has been a no-fault state since 1971, which means that one spouse's martial indiscretions cannot be considered in making an order for or against support. People can be unfaithful, file for divorce from each other, and still petition the Court for spousal support. Infidelity is not a factor in considering to make an order for spousal support and is irrelevant to the proceedings.

There is, however, a statutory presumption of need for spousal support. If one spouse is living with someone else -- either romantically or platonically -- then there is a presumption that the support spouse has a reduced need for support. The Court may also modify or terminate support based on this changed in circumstance.

This proof of cohabitation can be provided to the Court by hiring a private investigator or otherwise obtaining this evidence (photos, videos etc.), because sometimes people are not forthcoming about their living situations. The basis for this request is a decreased need for support as part of the recipient spouse's expenses are being satisfied by someone else.

CHAPTER 10
DOES INITIATING DIVORCE IMPACT CHILD CUSTODY OR SUPPORT MATTERS?

The Court has jurisdiction (authority) to make child custody orders if the parties are married and either spouse files for divorce, legal separation, or custody. In addition, the Court also has jurisdiction to make child custody orders when the parties are not married, but have children together. These later types of cases are called paternity actions. Prior to filing for custody with the Court, each

parent is in equal standing with regards to custody of their children. That is, absent a Court order setting forth a specific parenting plan, either parent has the right to custody of their child. In the event that the other parent contacts law enforcement to obtain or regain custody, they will likely be told by law enforcement to consult with an attorney rather than the responding officer taking action to remove the child from either parent's custody. As a result of these equal rights, it is imperative to consult with an experienced attorney immediately and file the appropriate paperwork with the Court to establish an enforceable parenting plan. When a parent does file for custody with the Court, the Court looks to the current status quo (what informal parenting schedule the parties are currently exercising) when making a custody order. For example, if a dad has the children Wednesday through Friday and every other weekend, then the Court would likely adopt this parenting plan when making the initial custody order. The Court may deviate from the status quo if there is a showing that the status quo is not best for the children. The general premise behind adopting the status quo is that it is apparently working and there is no apparent need to

deviate from such a schedule at the initial hearing when it has proven to work thus far.

The overriding consideration in making custody orders is the best interest of the child with the understanding that frequent and continuing contact with both parents is the best. That is, it is not what is best for either parent, but rather the parenting schedule that is best for the child's day-to-day needs (school, activities, etc.).

CHAPTER 11
TYPES OF CUSTODY IN CALIFORNIA

In California, there are two types of custody. The first type of custody is Legal Custody. Legal Custody refers to the decision-making authority that the parents have with regards to decisions involving the choice of school the child attends, the doctor, dentist and therapist the child sees and other decisions including, but not limited to, obtaining a passport, driver's license, etc. Legal Custody can awarded jointly to both parents or may be awarded solely to one parent. If Legal Custody is

awarded to both parents, the parents are required to discuss the Legal Custody decision together and neither parent may act unilaterally without the other parent's consent. In the event that the parents are unable to reach an agreement, either parent may file a Request for Orders to ask the Court for assistance in resolving the issue. Sole Legal Custody, on the other hand, allows one parent acting alone to make all of the decisions although the parent is required to notify the other parent of their decision. Legal Custody is typically awarded jointly to both parents absent a showing by either parent that such an order would not be in the child's best interest. Sole Legal Custody is typically reserved for cases involving domestic violence or where one party is routinely unavailable or one parent maintains extreme views (no blood transfusions, etc.). A hybrid third option is Joint Legal Custody, but one parent has the tie-breaking authority. That is, the parties must discuss the Legal Custody decision prior to making any decisions. However, if they ultimately are unable to agree, then one parent's decision controls. For example, if the parties cannot agree about the school that their children will attend and the

husband has tie-breaking authority, then the husband would ultimately have the right to choose the school.

The other type of custody in California family law cases is Physical Custody. Physical Custody refers to the parenting time that the parent spends with the child. There are two general types of Physical Custody in California. The first is Primary or Sole Physical Custody, which means that one parent has the majority of the parenting time subject to the other parent's right to visit with the child. The other type of Physical Custody is Joint Physical Custody, which means that both parents have substantial periods of time with their child (roughly equal parenting time). The designation of sole or primary custody and joint custody is important in the event that either party decides to move away. It is generally easier for one parent to move away from the other parent if they have sole or primary custody rather than joint Physical Custody.

Can The Court Reject A Custody Plan Even If Both Parents Are In Agreement?

The courts can reject a custody plan even if both parents are in agreement. The overriding concern of the court, as set forth in Family Code 3011, is the best interest

of the children. In particular, the courts are concerned with the health, safety, and welfare of the children, as well as the need for them to have frequent and continued contact with both parents.

If the parents agree on an order for custody and visitation, but that agreement would put the children at risk (as might be the case when domestic violence issues are involved), then the Court can override the parent's proposed plan. In these situations, the courts will order a custody agreement that they feel is more in the child's best interest.

It's very uncommon for the Court to do this, but if facts are revealed to the Court that indicate health, safety, or welfare concerns, then the Court can override the parties' agreement.

What Sort Of Visitation Agreements Can Be Arranged?

The Court has broad discretion in fashioning a parenting plan for the parties if they are unable to reach an agreement. Prior to attend a hearing for child custody or visitation, the parents must first attend mediation/conciliation court. At this meeting, both

parents meet either individually or together with a marriage family therapist in order to come up with a parenting plan. No other issues are discussed at the meeting (child support, property issues or marital problems); rather, the sole topic is developing a parenting plan that is best for the child.

Depending on the county in which the parents live, mediation/conciliation court can be confidential or not. If the parties reside in a confidential county, whatever transpires in mediation is confidential and all the Court will know is whether both parties attend mediation and if they reached an agreement. Nothing that transpires in mediation is reportable by either party or the therapist to the Court. If the parties reach an agreement, the agreement is typed up and signed by both parents. The parties then have ten days to reflect on the agreement and object to it if they want to. If they do nothing, in ten days the agreement will become the order of the Court. If the parties live in a reporting county, then anything that transpires during the meeting can be reported to the Court by the therapist if deemed relevant. The therapist records both parties' concerns and their respective proposals. If they reach a full or partial

agreement, this agreement is provided to the Court and typically the parties (two to three days prior to the court date). If the parties do not reach an agreement, then a report is generated with the therapist's recommendation for a parenting plan. At the hearing, the parents can either adopt the recommendation of the therapist or they can argue their respective positions with the Court.

Parenting plans are created depending on the age of the children and the parent's availability. Some common parenting plans involve a combination of weekend time and a mid-week dinner. With regards to the weekend time, this can be every other weekend or 1st, 3rd and 5th weekends of the month. The benefit of the latter weekend schedule is that it is easier to keep track of this schedule with the passage of time. That is, no matter how much time has passed, the 1st, 3rd & 5th weekend will remain the same. Every other weekend, on the other hand, can quite difficult to keep track of after the passage of several years (imagine showing several years on a calendar to a police officer to explain to them that this is your weekend). In addition, weekends can commence on Fridays and end either on Sundays or Mondays. Mid-week visits can be from after school until

prior to bedtime. There are also many examples of equally shared/joint parenting plans. The most common of these plans is called a 5-2,2-5 whereby the parents have alternate extended weekends from Friday to Monday as well as one parent having the children Monday through Wednesday, and the other parent having the children Wednesday through Friday. The *least* favored shared parenting plan is 2-2-3. This parenting plan has the same alternate weekend, but the Monday through Friday schedule is alternated weekly. That is, one parent has Monday through Wednesday in week one and Wednesday to Friday in week two. These plans often create confusion for the child and are "headaches" for any child care providers. Instead of the child knowing that every Monday and Tuesday their mother will picking them up, they will have to keep track of what week it is. Finally, many child care facilities may work with parents who have consistent days for which child care is provided, but they are so not so agreeable if a parent needs childcare Monday and Tuesday of one week and then Wednesday and Thursday of the following week.

If one parent lives out of state, then the child is typically shared with one parent having the majority of the

school time, and the out-of-state parent having a majority of the holidays (spring break, summer vacation, Thanksgiving and Christmas).

Rules Associated With Relocation Of A Parent After Divorce/ Separation

The rules associated with the relocation of a parent after a divorce or separation depend on where the parents are in the case process. Prior to filing the petition, either parent is free to move wherever they desire. The question becomes whether or not they can take the child with them.

Upon filing the Petition for Divorce or a paternity petition, the automatic temporary restraining orders (ATROs) go into place, and the parties cannot change the child's residence from the State of California. This is a protective measure to prevent either parent from moving out of state without the other parent's consent. If either parent moves out of state prior in violation of these ATROs, the Court can compel the child to be returned to the State of California.

During or after the proceedings, moving away typically requires an evidentiary hearing. At the time of the hearing, the Court looks at various factors, including but not limited to, whether or not the other parent will be allowed access to the parent who is staying behind, the child's preference, and the reasons for the move. In assessing these factors, the Court typically orders an evaluation to be performed of both parents and the children to assist the Court in making the ultimate decision of whether the children should move with one parent or remain behind with the other parent.

When Can A Child Custody/Visitation Order Be Modified?

Modifying a final order for child custody or visitation depends on the characterization of the order the parent seeks to modify. If the prior order is a temporary order (pre-judgment) or a stipulated judgment, then the order is modifiable by a showing that the proposed new order is in the best interest of the children relative to the current order. This is an easy standard to meet by showing the benefits to the children of the proposed plan (closer to school, easier on parents with changes in employment

hours, etc.). However, if the prior order is the result of a Judgment by trial or a Judgment that contains specific language denoting that the custodial plan is intended to be a permanent order, then the parent seeking to modify the prior order must show a substantial change in circumstance that requires a modification of the prior order. Failure to meet this strict standard will result in the denial of the request to modify the prior custody order and may even expose the parent requesting the modification to the imposition of sanctions for bringing the motion to modify without meeting this requirement.

If the custody or visitation order came from dependency court because of alleged child abuse or neglect, then the orders are deemed final orders and would require a substantial change in circumstance in order to be modified.

CHAPTER 12
CAN A CHILD DECIDE WHICH PARENT TO LIVE WITH?

One of the most frequently asked questions received has been "At what age can a child decide which parent they want to live with?" The simple answer is "Never." That is, the child cannot say one day that they want to live with one parent over the other. However, depending on the age of the child, the Court can consider a child's preference as to what custodial plan would be best for them.

California Family Code 3042 sets forth the provisions for how old children need to be to express their preference and the means for which this preference can be obtained. Family Code 3042 states that:

> "If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the Court shall consider, and give due weight to the wishes of the child in making an order granting or modifying custody or visitation. If the child is 14 years of age or older, and wishes to address the Court regarding custody and visitation, the child must be permitted to do so, unless the Court determines that doing so is not in the child's best interests. In that case, the Court shall state its reasons for that finding on the record. Nothing in this section shall be interpreted to prevent a child who is less than 14 years of age from addressing the Court regarding custody or visitation, if the Court determines that is appropriate pursuant to the child's best interests."

No specific age is specified as when as to how old a child needs to be to express an intelligent preference. However, the Court frequently gauges a child's ability to "form an intelligent preference" by looking at the totality of the circumstances that the child currently is in. If the child is doing well in school both academically as well as with their peers and is able to articulate their preference, in child-appropriate terms, as to why they want the particular parenting plan they are requesting, the Court can give due weight to that consideration. Again, the Court is not bound by a child's preference and may both consider and disregard a child's preference if the proposed schedule is not in the child's best interest. For example, if the child states that they want to live primarily with one parent because they get to stay up late, not brush their teeth and play video games whenever they want, the Court will not give any weight to the child's preference as these reasons are clearly not in the child's best interest. Finally, if a younger child provides an "adult type" answer ("I want to live with my dad because the school in his district has a higher API score than the school near mom's house.") the Court will also disregard this preference. It is not uncommon for one parent to attempt to

stack the deck in their favor by trying to coach their younger child into expressing the parent's preference rather than the child's. This normally takes the form of a statement in a declaration that "my son/daughter says he wants to live with me." In these instances, the parent who engages in such conduct can be reprimanded by the Court, the child's preference disregarded and possibly an award of custody given to the other parent.

When a child turns fourteen years old, the child's preference is handled differently than a younger child. That is, a child age fourteen or older who wants to address the Court, shall be permitted to do so. If the same statement above was made in the parent's declaration, the Court would not be able to disregard the statement as can if made by a younger child. However, this does *not* mean that the parent brings the child to their court hearing and the judge will ask the child about their preference. Rather, a child's preference may be obtained in any of the following fashions: 1) the Court may order the parties to return to court on another date with the child. The courtroom would be cleared and the Court can elicit the child's preference by asking the child questions based on the judge's knowledge of the case.

Sometimes the parties are able to submit questions for the Court to ask their child prior to the hearing and the Court may or may not ask the question depending on whether it is appropriate or not. 2) The Court can appoint an attorney for the child. This appointment can be paid for by the state or paid for by the parties. The Court-appointed attorney can meet with the child and report the child's preference to the Court. 3) The Court may also order the child to be interviewed by a member of family court services. This typically involves an MFT or social worker who meets with the child and provides their report back to the Court. Again, as with younger children, the overriding concern is the best interest of the child and developing a plan consistent with the health, safety and welfare of the child.

What Factors Does The Court Consider When Deciding Custody Issues?

As mentioned previously, the Court routinely looks at the status quo of how the parents have been sharing custody prior to the hearing. The status quo is typically conveyed to the Court by attaching a printout of a calendar setting forth the dates and times that both parents have had custody of the child.

Overall, the Court wants to maximize the time that the children have with both parents, based on where the parents live, their work schedule, and other considerations. Since the Court has wide discretion in making custodial plans, it's imperative that a client's attorney knows the judge who will be hearing their case and what types of information is important to that particular judicial officer. For example, for a period of eight years, there was a judge in a Los Angeles Courtroom that was a staunch advocate of equally shared custodial plans (alternate weeks or the 5-2,2-5 plans previously discussed). To appear in that courtroom requesting anything else was an exercise in futility. However, if the client's case was assigned to that courtroom and they did not want an equally shared parenting plan, the attorney could, if a proper motion is made, have the case transferred somewhere else.

What Can Someone Do To Improve Their Chances Of Being Awarded Custody?

There are some things that a parent can do to improve their chances of being awarded custody. For one, the parties can agree on a particular parenting plan either in mediation or at the court hearing. The last thing either party wants to do, unless the circumstances dictate it, is to

turn control of their final custody agreement over to a man or a woman in a black robe, who doesn't know anything other than what is on the parties' paperwork. This may result in an outcome that neither party likes.

If the parties are not able to reach an agreement, then the Court will make the ultimate decision regarding custody. With that being said, the second means of obtaining custody is to hire an experienced family law attorney who routinely handles cases in the court that your case is assigned to and who knows the judge who is hearing the case. By doing so, the parent can obtain and present evidence to the judge based on the judge's particular preferences. The judge, although a third party neutral, has preexisting relationship with the attorney that may be a further consideration in the ultimate custody decision.

As indicated earlier, keeping a journal is always the most important step in regards to documenting the status quo. If one parent does not want to share custody, then the other parent should certainly document these exchanges by text or email. That is, ask the other parent to spend time with the child via email/text and document the response. Similarly, if one parent expresses an

interest in sharing time or visiting the kids, then they should document that exchange. By keeping such a journal, the parent can limit or prevent the other parent from making false claims about one parent's desire (or lack thereof) to spend time with their children.

What Resources Are Available To The Court In Fashioning A Parenting Plan?

The Court has many resources available to fashion a parenting plan for the parents of a child besides hearing from the parties in court. The Court can appoint an attorney to represent the child. This attorney is usually referred to as a minor's counsel. One benefit of using minor's counsel is that, once appointed, there is usually a faster turnaround time for the next hearing rather than other resources discussed next. Sometimes minor's counsel is a more cost-effective option as well as the Court could cover the cost entirely or order a payment plan for ongoing legal fees.

The potential downside of using minor's counsel is that, like judicial officers, the minor's counsel is a product of their income and various biases. In selecting a minor's counsel, it's important to choose one whose views are in

line with those of the children's needs based on the circumstances and facts of the case. For example, if a particular minor's counsel has the view that children do not need privacy and can all sleep in the same bed, you certainly would not want to select this minor's counsel if this is your particular issue. Again, it is imperative to find an experienced attorney who is familiar with the minor's counsels frequently used in the courtroom to which your case is assigned.

In addition to minor's counsel, the Court may also order a limited evaluation to be performed by family court services. These types of evaluations can last for one or two days depending on the complexity of the case. The advantage of using such limited evaluations is that they are relatively inexpensive compared with some of the other resources available to the Court. Costs can range from $500 for a one day evaluation and $1,000 for a two-day evaluation. Another possible advantage is that the limited evaluation can substantially reduce the attorney time necessary in the case as the investigative skills of the evaluator are typically sufficient to obtain most of the requisite information necessary for the Ccourt to make a decision on custody. The disadvantages are that these

limited evaluations are sometimes hard to come by, and the parents may have to wait a significant period of time to wait for the next open evaluation. The waiting time is typically longer for two-day evaluations. A second disadvantage is that the case may be assigned to an evaluator who may have particular biases and views that are contrary to the particular issues involved in your case. A final disadvantage is that these evaluations take place in the courthouse rather than the parent's respective homes. Obviously, children will react differently in the uninviting atmosphere of the courthouse as opposed to the natural environment of the home.

A final resource used by the courts is a full psychological evaluation. The advantages of these full evaluations is that they are thorough and are done in the parties' homes and in the private office of the therapist as opposed to the courthouse. Either parent may request a full evaluation, but these evaluations frequently come at a hefty price (starting at $6,000 and up, depending on the number of children involved, where the parents are located, and the level of complexity of the case). The report typically consists of each parent taking a battery of

parenting assessments and skill-based tests to determine their parenting style, nature of their relationship with the other parent, etc. This assessment is typically followed by one to two home visits where the children are observed in their natural habitat. The children's doctors, teachers and other collaterals are contacted and the information obtained is included in their report. The final report consists of the findings of the evaluator as well as the recommendation for a custodial plan and other orders. In the end, a paper report is generated and provided to the parents (or their attorneys, if they have one) and the Court. The report is then reviewed and the parties can either agree to all or part of the recommendation which is then put into a written agreement. Any remaining issues that are not resolved by an agreement will be subsequently addressed with the Court. Either parent may compel the attendance of the evaluator to come to court so that questions may asked with regards to their findings. Alternatively, either parent may hire another evaluator (at their own expense) in an attempt to rebut the first evaluation.

As with minor's counsel, it is important to hire an experienced attorney who is familiar with the potential evaluators who will be conducting the full evaluation. Depending on the county, there is a limited pool of court-approved evaluators to select from as they must meet certain criteria. These evaluators, despite being appointed by the Court, are also a product of their prejudices, likes and dislikes, and only an experienced attorney who has this knowledge can assist in selecting the best evaluator for a particular set of facts.

In summary, utilization of minor's counsel, consideration of limited evaluations, and full evaluations or a combination of any of these may be used by the Court in finding a schedule that is in the best interest of the children.

CHAPTER 13
HOW IS CHILD SUPPORT CALCULATED IN CALIFORNIA FAMILY LAW CASES?

How Does a Parent Initiate a Child Support Order In California?

Parents have two options to obtain child support in California. The first option is for either parent to file a Request for Orders at their local family court. This request is filed either after or in conjunction with a dissolution of marriage, legal separation, paternity action or for the

custody and support of a child. A filing fee is paid and a court date is provided typically four to six weeks from the date of filing. Any support orders made are retroactive to the date of filing. At the hearing, a child support order is made and must be enforced.

The second option in obtaining a child support order is to open a case with the Child Support Services Department (a government entity), hereinafter "CSSD". Once a case is opened with CSSD, CSSD will then request financial information from the other parent. When the information is provided, a proposed support Judgment is created and sent to the other parent. If the proposed Judgment for support is agreeable, no further action is required. If the proposed Judgment is not acceptable, the parent contesting the order can request a hearing for a judicial officer to make an order for support. The advantage of using CSSD is that they have access to most income information of the parents based on the quarterly reporting to the IRS of incomes. In addition, there are no filing fees and, once an order is obtained, they will enforce the order at no cost. CSSD also has unique resources such as bank levies, tax refund intercept and loss of driver's license or other licenses if the obligor of

support does not pay his obligation. However, these advantages come with one gig disadvantage which is speed. Due to the sheer volume of cases CSSD handles, they can be very slow in obtaining an initial order for support. The average turnaround time from initial contact to receiving support can often take between four to six months. Another drawback is that CSSD exclusively handles child support cases.

The best strategy for obtaining support and then enforcing the support order is a hybrid approach. That is, you can obtain a support order by filing your Request for Orders in the local family court. Once you obtain that order, you can forward a copy of the order to CSSD for free enforcement.

How Is The Amount Of Child Support Determined?

Child support is determined through the DissoMaster or Xspouse computer programs. The actual child support formula is as follows:

> CS = K[HN - (H%)(TN)].
>
> CS is the child support amount.
> K is the amount of both parents' incomes that can be allocated to child support.

HN is the high earner's net monthly disposable income.
H% is the approximate percentage of time the child will be in the physical custody of the high earner.
TN is the total net monthly disposable income of both parents

Although there are many minor factors that go into calculating child support, the primary factor is the parties' respective incomes and the amount of time they spend with the child. The above formula is for one child only. For each additional child, a multiplier is included to reflect the higher needs of additional children. Rather than make the calculation using the above formula, you may find many free support calculators online that can give an idea of what a support order might be. In addition, most attorney consultations will also involve a calculation of child support.

Additional factors that are considered in calculating child support are the parties' respective filing status (single, head of household, married filing jointly, or married filing separately). If one parent files

head of household, they receive a greater tax savings than a parent filing single and thus have additional resources for which they pay support if they are the support obligor. If they are the recipient of support, then they will have a lesser need for support as this greater tax savings translates into more net spendable income as opposed to filing single.

The number of dependent exemptions also comes into play, which refers to each person's ability to claim a child. Depending on the number of children there are, they can award the exemption to either party, and that party can claim that child on their taxes. The greater number of exemptions there are, the greater the tax savings will be. As with the filing status, this translates into either a greater ability to pay support if the exemptions are given to the higher earner or a lesser need for support if given to the low earner.

Although a parent's income is considered in calculating child support, if they remarry, their new spouse's income is generally not considered. That is, the new spouse's income is not added to the parent's income in

determining child support. Rather, the new spouse's income is only considered in terms of the person's tax liability.

To elaborate, if one parent marries someone else and there are two incomes as opposed to one, then that additional income will typically place the parties in a higher tax bracket. Therefore, they would have less ability to pay support. A new spouse's income may push the couple into a higher tax bracket, which would affect their ability to pay or receive support.

There are also entries for health insurance. If the obligor paying support is providing health insurance for their child, then their net spendable income would be decreased and their ability to pay support reduced as well. The inverse would be true if the recipient of child support was paying for health insurance. Other entries include property taxes and mortgage interest. As these items affect the net spendable income of the parties, they also affect support similar to the dependent exemptions as it reduces the parties' tax liability and frees up money to either pay (obligor has these expenses) support or reduces need for support (recipient of support has these expenses).

Other considerations in determining support are child-care expenses, which are typically shared between the parties. In addition, if there are recurring medical expenses (monthly inhaler or prescription medications, etc.) the Court will order these expenses to be equally shared as well. The child support add-ons typically involve both childcare and medical expenses. These are some of the overall considerations in making a guideline order for support.

The above factors are all mandatory entries in either the X-Spouse or the Dissomaster. However, there are other discretionary factors that also may be considered in calculating child support. The first of these factors is called a hardship deduction. If either party has recently had another child from another relationship, then that party may be entitled to a hardship deduction. A hardship deduction would either decrease their ability to pay support (obligor has a child) or increase their need for support (recipient of support has a child). The purpose of the hardship deduction is to account for the additional expense of either party having children from another relationship to have their needs met as well. In this way,

the Court is trying to allocate support among all of the children (the ones of the relationship as well as later born children). A final discretionary factor in calculating child is travel-related expenses. These do not include the cost of gas to pick up or drop off the children from their visits with the other parent. Rather, this cost is associated with airline fares necessary when either party relocates to another state. The Court may average the cost of these flights and use this average to reduce the relocating parent's child support obligation.

Does Anyone Have To Pay Child Support If The Parents Share Equal Custody?

One of the biggest misconceptions encountered is the belief that if parents have fifty-fifty custody, then support will not be ordered. This is not true. If one parent has a larger income than the other parent, then that disparity in income will likely result in a child support order. Again, the critical factors in determining support are the incomes of the parties and the custody arrangements for the children.

CHAPTER 14

QUALITIES TO LOOK FOR IN A FAMILY LAW ATTORNEY

Finding an experienced family law attorney early in your case is one of the most important things you can do. The most important quality in a family law attorney is someone who limits his or her practice to just family law. Hiring an attorney who does not limit their practice to family law can result in potentially spending tens of thousands of dollars in costs, with no result.

For example, a previous case involved a community debt, but neither party believed it was a community debt. This resulted in thousands of dollars being spent into taking the matter to trial. Ultimately, the debt was treated as a community debt and was equally divided. Unfortunately, an additional $7,000 was added to this debt in attorneys' fees to resolve such a simple issue.

Another quality necessary in a family law attorney is to find an attorney who is familiar with the local court to which your case is assigned. Judges are influenced by their experiences and by their understanding of the law. It's important to know how the particular judge or commissioner will rule/lean on a particular issue. This is why The Law Office of Paul Eads limits the cases that they take to geographical areas that they frequent.

Lastly, it is very important for a client to know who exactly is going to be representing them in court. Sometimes a person hires a big law firm based on the reputation of Attorney "X", only to find on the day of the hearing that they have Attorney Y, who might be Attorney X's new associate attorney who just graduated from law school and has very limited experience. Parties should know what

attorney will be making all of the court appearances with them before they retain that attorney/firm. They should know that their case is not going to be assigned or delegated to a new attorney or paralegal.

Meeting an attorney for the first time can create a lot of anxiety for clients, and attorneys don't want to add to that by meeting them for the first time in the courthouse. When a person hires The Law Office of Paul Eads, they will be dealing with Paul Eads directly. He takes his clients through the entire process from the filing of the initial Petition to the entry of Judgment.

The final quality that is important for a great attorney is good communication. In law school, Paul Eads learned that the most frequent complaint to the California State Bar about attorneys is the attorney's failure to return client's calls. If there is a lack of good communication between a client and their attorney, then unnecessary anxiety is produced. This certainly does not help an already difficult situation.

The attorneys at The Law Office of Paul Eads communicate through email and phone calls, and they always make themselves accessible to their clients.

Perils Associated With Not Retaining An Experienced Family Law Attorney

The primary danger of failing to retain an experienced family law attorney is the risk of miscalculated assets or debts. If parties don't know that something is a community property asset with a value of $100,000, then they will have been cheated out of $50,000, because a community asset should be equally divided.

Cheaper is ***not*** better! If a client finds an attorney who charges a low rate but also practices immigration, personal injury, and criminal law, then they have to consider whether or not that attorney will be able to ensure that they are receiving everything from the divorce to which they are entitled. This requires the attorney to be familiar with all of the relevant laws. In addition, attorneys typically charge an hourly rate based on the amount of experience that they have in that field. An attorney that charges a lower rate may not have the same experience and may end up costing more either because they spend more time researching an issue or in assets/time with children as they are not well versed in family law.

How Do Attorneys Typically Charge In Family Law Cases?

Most attorneys charge a retainer that is collected in advance of performing any services in the case. Retainers commonly range between $2,000 and $10,000 depending on the complexity of the case and the amount of services required. These retainer funds are placed into an Attorney-Client Trust Account and must be kept separate until they are earned.

Attorneys in family law cases bill at an hourly rate, and they'll charge in increments of either one-tenth of an hour (six minutes), or two-tenths of an hour (12 minutes). When searching for an attorney, it is important to consider how they are charging for their services. Since attorneys charge for their time, it is imperative to be mindful of how frequently you contact the attorney and why you are contacting the attorney. For example, you should not contact your attorney to vent the emotional problems you are having with your spouse, etc. This will needlessly rack up your bill with funds that may be better spent in counseling. However, you should always contact your attorney if there are domestic violence issues.

Most attorneys have a paralegal, secretary and other support staff to perform services under the supervision of the attorney. These support staff will bill at a lower hourly rate than the attorney. Again, cheaper is not always better. Sometimes an attorney will charge a low initial retainer, which might be appealing, but the final bill could be substantially higher as the case progresses. If the attorney is not paid, they may withdraw from the case which would result in possibly hiring another attorney to assist the client who would have to do extra work to review the file (a second time) to prepare for future proceedings.

It is also important to be cognizant of attorneys who charge a flat-rate for their services. The big disadvantage of hiring a flat-rate attorney is that, if the case becomes more complicated, or substantially more time is required to work on the case, then the attorney may not devote the time necessary to the case as they are no longer getting paid (or not as much as they thought they would have been paid at the inception of the case). Clients want someone who is going to be advocating for them and doing all of the work necessary to prepare the case for trial. Clients don't want someone who is just

skimming the file the morning of the hearing because they've received a flat-rate as opposed to a full retainer.

What Options Do I Have If I Cannot Afford An Attorney?

If one side cannot afford an attorney, then there are alternative means of securing attorney's fees. One such way is through a family law attorney real property lien, whereby the attorney puts a lien on a piece of real property, and they're paid from the proceeds of the sale of that property.

The other option is to petition the Court for attorney's fees by the filing of a Request for Orders. As previously discussed, either side can also use their credit card or sell an asset in order to secure funds for an attorney.

In California, contingency fee arrangements are not allowed, meaning that clients cannot hire an attorney based on a thirty-three percent fee or some other contingency fee arrangement. The courts do not like that, because they believe it is promotive of divorce. As a result, clients are only able to enter into fee agreements, as indicated earlier.

Can I Request That the Other Party Pay My Attorney's Fees?

Family Code 23 states that in a dissolution action or a legal separation action, either side can request attorney's fees from the other side. This would be done by way of the party filing a Request for Orders with the Court, and should be done early in a case. The Court makes the decision based on the incomes and needs of the parties, as well as a party's availability to pay the other person's fees. The Court will need to ensure that both parties are adequately represented throughout the case.

The Court might make a Request for Orders hearing for a certain amount of fees, and then make an additional award of fees at the time of trial or at the time of a subsequent hearing. The specific decision made by the Court will depend on the issues involved in the case.

Fees can also be based on someone's lack of cooperation in terms of what is called an "extension." To elaborate, if someone is misbehaving, not cooperating, or not providing the appropriate documentation, then the Court can make an order for attorney's fees as a sanction under Family Code 271.

In summary, the Court has two options for ordering one party to pay the other's attorney's fees. The first option is to determine an inability to pay under Family Code 2030, and the second is to order attorney's fees as a sanction under Family Code 271.

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NOTES

A PRACTICAL GUIDE TO CALIFORNIA FAMILY LAW

A Book Written In Laymen's Terms To Assist The Non-Lawyer In Navigating Through The Most Difficult Time Of Your Life

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"Mr. Eads was my second attorney. To be honest, I was previously duped into hiring an attorney who sent me a letter in the mail. The letter was official sounding and the price was right for my budget. I thought I was divorced, but when I applied for a marriage license after I met someone else, I found out the paperwork was rejected and I was still legally married! Mr. Eads was very quick to resolve my matter and fixed all of the mistakes made by the prior attorney. Mr. Eads, I am forever grateful for your top-notch service."

- Jenna P.

"My ex left me in the house without even the basic necessities to provide for our children. Mr. Eads assured me that he would get me much needed spousal and child support so that I could maintain our home pending the conclusion of our divorce. Mr. Eads was very patient with me and was able to resolve my case in a short period of time. His cost saving techniques helped me save money over some of the other quotes I was receiving."

- Heather C.

Paul A. Eads, Esq.

Paul Eads graduated *summa cum laude* from UCLA with a bachelor of arts in psychology. In 2005 he received the degree of juris doctor from Southwestern Law School. While attending UCLA, Paul received numerous awards, including membership in Psi Chi (the International Honor Society in Psychology) and the National Golden Key Honor Society.

During his time at UCLA Paul carried out extensive research on the divorce process and accompanying coping methods used by the vast majority of Americans. His decision to study psychology stemmed from a desire to better understand and assist those experiencing the stressors associated with divorce.

After his admittance to Southwestern Law School, Paul emphasized family law in his studies and was an active member in the school's family law society. During his second year of school, Paul was invited to intern with the Honorable Roy L. Paul, a judge in the high-volume family law courts in downtown Los Angeles. During his two-year internship, Paul observed hundreds of family law proceedings, including many celebrity divorces.

As an assistant to the bench, he did extensive research on cutting-edge issues in family law. He also critiqued several custody evaluations and trial briefs, providing full reports to the court. Paul received extensive guidance from Judge Paul and was invited back for a second internship the following year.

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