FOND DU LAC COUNTY FAMILY COURT HANDBOOK
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INTRODUCTION

The purpose of this booklet is to provide persons who are involved in the Family Court process with information concerning actions affecting the family in Fond du Lac County. This handbook is intended to comply with the provisions of Sec. 767.105 of the Wisconsin Statutes.

Parts I and II in the Handbook deal with the divorce process, including divorce procedure and the major issues involved in a divorce such as legal custody, physical placement, child support, maintenance and property division.

Part III of the handbook deals with post-judgment procedures, including modification and enforcement of child related issues.

The handbook is the product of the staff of the Family Court Commissioner's Office of Fond du Lac County. Members of the staff of Family Court Services of Fond du Lac County, the Fond du Lac County Child Support Agency and Fond du Lac County Circuit Court Judges have also contributed to its content. In addition, this Handbook is based upon information provided through the assistance and cooperation of the Racine County Family Court Commissioner's Office and the Waukesha County Family Court Commissioner's Office and the Waukesha County Family Court Self-Help Center.

This handbook is for informational purposes only, and should not be construed as legal advice. It must be kept in mind that this material may not apply for all situations and is not equivalent to personal legal advice and representation. If you have a specific legal question concerning your case, you should contact an attorney. You can also review Wisconsin Statutes Chapter 767, which contains the law on actions affecting the family. Copies of the Wisconsin Statutes may be purchased at the Family Court Commissioner's Office. All public libraries in the county also have reference copies of the Wisconsin Statutes.

Sally-Anne Danner
Family Court Commissioner
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(Revised 2/09)

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I. DIVORCE PROCEDURES

*****NOTE: This guide will refer to divorce rather than legal separation or annulment. Most information about custody, support and property is the same whether the action is for divorce, legal separation or annulment. If a judgment of divorce is granted, parties may not marry in this state or elsewhere until six months after the date the judgment is granted. If a judgment of legal separation is granted, a party must apply to the Court to convert the judgment from legal separation to divorce before he/she remarries. In addition, a Judgment of Legal Separation may be revoked at any time upon reconciliation. After one year, a Judgment of Legal Separation may be converted to a Judgment of Divorce by either Stipulation or agreement of both parties or by Motion of either party.

A. STARTING THE DIVORCE

Before the action for divorce can be started, you or your spouse must have lived in the State of Wisconsin for at least six (6) months, and must also have lived in Fond du Lac County for at least thirty (30) days. Once this residency requirement is met, then the divorce can be started. A legal separation or annulment may be started after a 30 day residency in Wisconsin and Fond du Lac County. A filing fee is required.

The divorce is commenced when the **Summons** and **Petition** signed by the person seeking the divorce are filed with the Clerk of Circuit Court, and served on the spouse. In divorce actions, the party seeking the divorce is the **Petitioner** and the other spouse is the **Respondent**. **Service** of the Summons and Petition occurs when someone, usually the sheriff's deputy or private process server, delivers the papers to the respondent spouse. **Service of the Summons must be done by someone other than the Petitioner.** If the papers cannot be served on the respondent personally, then the Court can permit the papers to be published in the newspaper. **Joint Petitions** for divorce may be signed by both parties if they both want the divorce. Service of a Summons is not necessary if there is a Joint Petition. A copy of the Summons and/or Petition must be provided to the Family Court Commissioner's Office.

In Wisconsin a divorce cannot be granted until at least one hundred twenty (120) days after the day the Summons was served on the other party or until the expiration of one hundred twenty (120) days after the filing of the Joint Petition. During this "cooling-off" period some decisions have to be made concerning issues such as child custody, child support, and use of the residence. Those issues are addressed at the first hearing, sometimes called the initial hearing or **Temporary Order Hearing**.

B. PREPARATION FOR THE FIRST HEARING

When an action for divorce, legal separation or annulment is started, both parties to the action must make a full disclosure of all assets owned by either party separately or by the parties together.

You may be asked to bring to your attorney's office and/or to the first hearing, the following information:

1) Wage statements for the previous eight (8) weeks;
2) Two (2) years income tax returns, including W-2s;
3) Life insurance policies;
4) Last bank statements for all accounts, including checking and savings accounts;
5) Copy of your records on IRA's, CD's, stock certificates, bonds, savings account pass books, and any other evidence of value of your assets;
6) If you own a home, bring in the last notice from your mortgage company showing balance due, copy of the deed, and last real estate tax statement;
7) Any pension information, including any pamphlets or information supplied by the employer;
8) Latest bills showing balance owed to each creditor;
9) Compute total gas and electric bills for the last twelve (12) months. If necessary, call gas and electric company and request what the payment would be on a budget plan;
10) Interest in any partnerships, limited liability company or corporation;
11) Future interests, whether vested or non-vested;
12) Any other financial interest or source.

As soon as possible, you should prepare a list of all your household furniture, equipment, appliances, tools, etc., stating a value based on what you think someone would pay for these items considering the fact that they are now used. Additionally, you may be asked to sign releases for information concerning pensions, 401(K) or profit sharing plans, cash value of insurance policies and bank accounts. Information gathering and organizing is probably the most essential part of the divorce process. While gathering all of the financial information may be tedious, the work that you do will make the entire process easier for you.

C. FIRST HEARING/TEMPORARY ORDER

1. Orders of the Court Commissioner

The first hearing in the divorce process is held in the Family Court Commissioner's Courtroom located on the 2nd floor of the City/County Building at 160 South Macy Street in Fond du Lac. At the hearing, the Family Court Commissioner will make temporary orders including orders regarding custody and placement of the children; payment of child support, family support or maintenance; payment of debt; and, use of the marital residence. The result is a written **Temporary Order** prepared by the Family Court Commissioner during the hearing. The parties and their attorneys each will receive a copy of the Temporary Order. This Order remains in effect until the judgment of divorce is granted or the case is dismissed.

The Temporary Order also restrains the parties from harassing each other and from interfering with each other's lives. The parties are ordered not to sell or dispose any property and

not to change medical or life insurance coverage during the divorce action. The order also directs the parties not to borrow money while the divorce is pending.

A **Scheduling or Pretrial Conference** may be scheduled by the Circuit Court Judge approximately 120 days after the divorce has been filed.

2. Parent Education Program

In all actions where children are involved, the parties will be ordered to attend a class entitled, "Living Apart, Parenting Together". This class is held once each month. The class addresses issues including: child development, family dynamics, how parental separation affects a child's development, and what parents can do to make raising a child in a separated situation less stressful for the child.

D. PERIOD OF TIME BETWEEN FIRST HEARING AND SCHEDULING CONFERENCE / PRETRIAL CONFERENCE

Between the first hearing and the scheduling conference, the parties begin to live separately under the terms and conditions of the Temporary Order. Child support, family support or maintenance may be paid, placement with the children is occurring and the parties are learning what it is like to lead separate lives. During this time, or any other time while the divorce is pending, the parties may choose to live together and try reconciling without dismissing the action. This is known as a 90-day suspension.

To enter into a **90-day suspension**, you must file a written document prepared by either party or your attorney. It must be signed by both parties and filed with the Court. Once the 90 days elapses, the parties must advise the Court in writing whether they are going to dismiss the divorce or proceed with the action. If the parties decide to proceed with the action, then the matter is placed on the Court's calendar for further proceedings as if the suspension never occurred. If one party wishes to stop the 90-day suspension, it can be stopped by notifying the Family Court Commissioner in writing at any time, and the action will proceed. Wisconsin law permits a suspension up to a period of ninety (90) days. A second suspension may be granted if parents are engaged in counseling.

If reconciliation occurs, the divorce action may be dismissed.

E. SCHEDULING CONFERENCE AND FINAL DISCLOSURE

The law requires that a divorce may not be final until 120 days have passed from the time the respondent in the action was served with the Summons and Petition, or 120 days from the filing of the Joint Petition. After the matter has been pending for about 120 days, a **Scheduling Conference** or **Pretrial Conference** takes place. The purpose of this scheduling conference is to determine if one or both of the parties wish to proceed with the divorce and if so, to determine what issues may be in dispute, discuss a settlement, and schedule further hearings as may be necessary in each case.

Before this scheduling conference, each party must submit a **Proposed Parenting Plan;** the deadline for the Proposed Parenting Plan is 60 days after the Court waives mediation or 60 days from when the mediator notifies the Court that no agreement was reached.

The parties must also submit an updated **Financial Disclosure Statement** to the Court. The Financial Disclosure Statement lists the assets, income, debts and monthly budgets of each party. All assets must be disclosed. If any asset has been sold or otherwise disposed of within one year prior to filing the divorce, such asset(s) must also be listed. Even if both parties have reached an agreement as to how the assets are to be divided, the value of the assets must be listed on the Financial Disclosure Statement. Wisconsin Law also requires you to attach current paystubs and W-2s to your Financial Disclosure Statement.

Of particular importance on the financial disclosure is the valuation of the real estate and pension/profit sharing rights of the respective parties as those assets may represent a substantial portion of the marital property. It is also important to state all the income of the parties accurately because this information is important if there is a future request to change child support or maintenance.

If the parties do not agree on all the issues, the matter will be set for trial before the Judge. The Judge assigned to hear the case may issue a Pretrial Order directing the parties and the attorneys to meet and attempt to settle the issues that can be settled as well as prepare a joint list of disputed issues and each party's position on the issues. Compliance with all scheduling orders and pretrial orders is expected under the law.

F. THE STIPULATION

Most divorces are settled by an agreement known as a **Stipulation** or **Marital Settlement Agreement**. The stipulation will contain the agreement of the parties on child custody, primary placement and periods of placement (formerly known as visitation), child support, division of property, payment of debts, maintenance, and any other matters relating to the divorce. If a divorce is settled by a stipulation, the matter can be heard in a very short time after agreement has been reached and the 120-day waiting period has passed. The divorce can be granted either by the Family Court Commissioner or Circuit Court Judge.

G. STIPULATED FINAL HEARING / DEFAULT DIVORCE

The parties may have their divorce completed by a stipulated **Final Hearing** conducted by the Family Court Commissioner. This hearing, often referred to as a **default hearing**, can be completed before the Family Court Commissioner if **all** of the issues are agreed upon by the parties.

The Marital Settlement Agreement must be in writing before the final hearing can be scheduled before the Family Court Commissioner. If the Family Court Commissioner does not approve an agreement between the parties on material issues or if the parties cannot agree on all issues, the matter must be heard by the Circuit Court Judge.

The following documents must be filed with the Clerk of Courts and a copy provided to the Family Court Commissioner prior to or at the stipulated final hearing:

a. Written marital settlement agreement (stipulation);
b. Updated financial disclosure statements;
c. DHSS original certificate of divorce or annulment;
d. Completed Findings of Fact, Conclusions of Law and Judgment of Divorce;
e. Completed Family Medical History Questionnaire (in sole custody cases only).
f. Certificate of Mailing with self-addressed stamped envelopes for each party.

H. TRIAL

If the parties cannot agree and resolve all the issues, a trial will be scheduled before the Judge. At the trial, the parties will submit the information the Court needs to decide the case.

On issues of property division presented to the Court, evidence may include: statements of income; appraisals of personal property and real estate; and valuations of any retirement benefits. Your pension and profit sharing must be valued and may be subject to division by the Court as an asset even though you may not receive the pension until you retire or leave the company. A Court may divide the proceeds of a pension or profit-sharing plan between the parties by use of a **Qualified Domestic Relations Order** (QDRO), which provides for a division of pension benefits at the time the pension is received or sooner depending on the terms of the pension or profit sharing plan.

The assets of the marriage are usually divided equally, although, a Court does have discretion to deviate from an equal division of property. Gifted or inherited property is generally not subject to division.

On child related issues including disagreements regarding custody and placement, the Court will decide this difficult matter after considering the recommendations of the Guardian ad Litem, Family Court Services, and any other witnesses.

I. DIVORCE JUDGMENT

When the final divorce hearing occurs, whether by stipulation or trial, the parties or their attorney will present to the Judge or the Family Court Commissioner a proposed **Findings of Fact, Conclusions of Law and Judgment of Divorce.** This document will include any stipulations or agreements made. It is important that you read the Findings of Fact, Conclusions of Law and Judgment of Divorce and understand your rights and responsibilities under the divorce judgment.

The divorce is final the day it is granted in Court by the Judge or by the Family Court Commissioner. However, you cannot remarry in Wisconsin or elsewhere until six months after the divorce is granted.

JUDGMENT OF LEGAL SEPARATION

If both parties wish to convert a Judgment of Legal Separation to one of divorce, they may submit a written request to the Court within one year of the granting of the legal separation to convert the judgment to divorce. After one year, either party may request the Court to convert the judgment of legal separation to divorce and the Court is required to convert the judgment. Generally speaking, if the Court is confronted with conflicting Petitions of divorce and legal separation, the Court will grant the divorce. In order to remarry in the State of Wisconsin a person must be divorced. If the judgment is for legal separation, one or both parties must seek to have it converted to divorce before they are free to remarry. After the judgment of legal separation is converted to divorce, you must still wait six months after the date of the conversion to remarry.

J. "PRO SE" DIVORCE

Some people choose to not to hire an attorney and instead, choose to represent themselves during the divorce process. "Pro se" means "by one's self". A person who is involved in litigation and has not hired an attorney is said to be appearing "pro se". If there are any disputes about child custody, support, maintenance or property division, most people find that it is best to have an attorney.

Even if both parties are in full agreement on all issues, and neither party chooses to retain an attorney, the basic divorce procedures still apply. A Joint Petition or a Summons and Petition must be filed with the Clerk of Court. A copy of the Joint Petition or Summons and Petition has to be served on the Family Court Commissioner and on the Child Support Agency if applicable.

Basic information about the procedure for obtaining a divorce is available from the office of the Family Court Commissioner. Obtaining the specific divorce forms to be used, and properly completing and filing the forms, is the responsibility of the parties. Self-Help services are available through the **Fond du Lac County Pro Se Legal Clinic**.

Before obtaining court dates for hearings before the Family Court Commissioner, parties are required to make an appointment with a representative at the Pro Se Legal Clinic to have their forms reviewed for completeness.

The Office of the Family Court Commissioner is not able to give legal advice to pro se litigants. Pro se litigants are held to the same standards as a lawyer and must follow the same procedures that a lawyer must follow.

II. MAJOR ISSUES IN DIVORCE

A. GROUNDS: DIVORCE, LEGAL SEPARATION

The grounds for granting a divorce are that the marriage is irretrievably broken and that there is no reasonable prospect of reconciliation. This no-fault concept eliminates the need for either party to make accusations against the other in order for the divorce to be granted. If the divorce is to be granted, one party must testify that the marriage is irretrievably broken.

If the Petition requests a legal separation, the Judge will grant a legal separation if the parties testify the marital relationship is broken, unless the respondent files a pleading with the Court requesting a divorce. Then, generally a divorce will be granted.

If a judgment of legal separation is entered neither party may marry anyone else until at least six (6) months after the judgment is converted to a divorce.

B. CUSTODY OF CHILDREN

The Court will decide, either by your agreement or by a Judgment, which parent(s) should have legal custody of the children during and after the divorce. **Legal custody** of a child refers to the right to make **major decisions** concerning the child. "Major decisions" include, but are not limited to decisions regarding consent to marry, consent to enter the military service, consent to obtain a motor vehicle license, authorization for non-emergency health care, and choice of school and religion. Legal custody does not refer to routine daily decisions or to where the child lives. **Physical placement** is the condition under which the child is physically placed with a parent.

There is a presumption that **joint legal custody** is in the best interests of a child. If parties share joint legal custody, then both parents continue to make major decisions regarding the child(ren) together. Neither party's legal custody rights are superior to the other, unless specified by the Court. If a parent has **sole legal custody**, then that parent has the right and responsibility to make all of the major decisions regarding the child(ren), without having to consult with the other parent.

C. PHYSICAL PLACEMENT

Whenever a Court enters a custody order, it must allocate periods of physical placement between parents. Unlike "custody" which refers to making major decisions about the child, "physical placement" refers to where a child lives or spends time.

Both parents will have "periods of physical placement" or "physical placement" rights with the child. "Periods of physical placement" are defined as the time(s) which a parent has the right to have the child physically placed with that parent, and during the placement, the right and responsibility to make routine daily decisions regarding the child's care. These routine daily

decisions may not be inconsistent with any major decisions made by a parent with sole legal custody.

Parental access to the children is to be encouraged by both parents, and the Court will not stop a parent's physical placement rights unless it is shown at a Court hearing that a parent's periods of physical placement would endanger the child's physical, mental, or emotional health.

If parties are unable to agree on the placement issue, they will be referred to **mediation** to hopefully resolve that issue. In all cases where the parties cannot agree on legal custody and/or physical placement, the Circuit Court Judge or Family Court Commissioner will first refer the parties to mediation. If mediation is not successful, a Guardian ad Litem will be appointed and/or Family Court Services may conduct a placement or **custody study**. (See, Guardian ad Litem, page 17; Mediation/Study Process, page 14).

Children are the most important "asset" of any marriage. The Court will give the Guardian ad Litem and/or Family Court Services sufficient time to make final recommendations to the Court on this important issue. The Court will continue to review the status of the Guardian ad Litem and the evaluation periodically, and parties must be prepared to take time off of work to attend hearings. After the Guardian ad Litem and/or Family Court Services give their final recommendations to the Court, if the Court adopts the recommendations as the Order of the Court, either party may request an evidentiary hearing or trial before the Family Court Commissioner or Circuit Court Judge assigned to the case if the parties continue to disagree.

It is very important for parents to understand that the issues of placement and the issue of child support are always independent of one another. In other words, one parent may not deny the other parent periods of placement just because child support is not being paid. Similarly, a parent cannot refuse to pay child support if his or her access to the child is being interfered with or denied.

In determining issues of custody and placement of children, the Court considers the following factors:

a. The wishes of the child's parent or parents as shown by any Stipulation or agreement between the parties, any proposed Parenting Plan or any legal custody or physical placement proposal submitted to the Court at trial;

b. The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future; the overall relationship between the child and each parent.

c. The age of the child and the child's developmental and educational needs at different ages and the mental and physical health of the child and each parent.

d. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child;

e. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party;

f. Whether each party can support the other party's relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party;

g. The reports of appropriate professionals if admitted into evidence, including Family Court Services, the Guardian ad Litem, and any psychological reports.

In any action affecting the family in which legal custody or primary physical placement is contested, the parties must complete a **Parenting Plan**. This document is available at the Family Court Commissioner's Office. A Parenting Plan must also be completed by parties seeking shared placement of their child(ren). A party who fails to timely file a parenting plan waives their right to object to the other party's parenting plan. The parenting plan must provide information about all of the following questions:

a. What legal custody or physical placement the parent is seeking;

b. Where the parent lives currently and where the parent intends to live during the next 2 years;*

c. Where the parent works and the hours of employment;*

d. Who will provide any necessary child care when the parent cannot and who will pay for the child care;

e. Where the child will go to school;

f. What doctor or health care facility will provide medical care for the child;

g. How the child's medical expenses will be paid;

h. What the child's religious commitment will be, if any;

i. Who will make decisions about the child's education, medical care, choice of child care providers and extracurricular activities;

j. How the holidays will be divided;

k. What the child's summer schedule will be;

l. Whether and how the child will be able to contact the other parent when the child has physical placement with the parent providing the parenting plan;

m. How the parent proposes to resolve disagreements related to matters over which the Court orders joint decision making;

n. What child support, family support, maintenance or other income transfer there will be;

o. If there is evidence that either party engaged in interspousal battery or domestic abuse with respect to the other party, how the child will be transferred between the parties for the exercise of physical placement to ensure the safety of the child and the parties.

* NOTE: If there is evidence that the other parent engaged in domestic abuse, the parent providing the parenting plan is not required to disclose the specific residential or employment address, but only a general description of where he or she currently lives and intends to live during the next 2 years or a general description of where he or she works.

D. MOVING CHILD(REN) INSIDE OR OUTSIDE THE STATE

Pursuant to Section 767.481 of the Wisconsin Statutes, any parent with legal custody and physical placement rights shall provide the other parent with physical placement rights, with 60 days written notice of his or her intent to:

a. establish legal residence outside the State of Wisconsin;
b. remove the child from the State for a period of more than 90 consecutive days; and
c. establish his or her residence <u>within the State</u> at a distance of 150 miles or more from the other parent.

The notice must be sent by certified mail. A copy of the notice must be provided to the Court. The notice must specify the parent's proposed action, including the specific date and location of the move, or the specific beginning and ending dates and the location of the removal, and that the other parent may object to the move within 15 days of receiving the notice.

Within 15 days after receipt of the notice, the other parent may object, in writing, to the proposed move or removal. The objection must be sent to the parent wishing to move, and a copy must be filed with the Court. **If one parent files a notice of objection to a move or removal of the child(ren), the parent proposing the move is prohibited from moving the child(ren) until a final order is entered by the Court on the issue of the proposed move.** The parent proposing the move, upon receipt of a notice of objection to the move, may request the Court to enter a temporary order permitting the move to occur.

Upon receipt of the objection, the Court or Family Court Commissioner will promptly refer the parents for mediation and may appoint a Guardian ad Litem to represent the interests of the child.

If mediation is not successful, a parent may file a Motion for modification of legal custody or physical placement of the child(ren). If a Motion is filed with the Court, the Court may change the

legal custody or physical placement of the child(ren) and/or prohibit the move or removal of the child(ren). The Court will consider those factors it is required to consider in determining if there should be a modification of custody or placement. (See, Modification of Custody/Placement, page 33). There is a presumption that the current orders of custody and placement shall continue; however, that presumption may be overcome by a showing that the move or removal is unreasonable and not in the best interests of the minor child(ren).

Another provision under Wisconsin law is a notice requirement for removals of 14 days or more. Unless the parents agree otherwise, the parent with legal custody and physical placement rights is required to notify the other parent before removing the child from his or her primary residence for a period of not less than 14 days.

E. MEDIATION/STUDY PROCESS

WHAT IS MEDIATION?

Mediation is a service offered by Family Court Services which assists parents who have issues surrounding their minor children resolve those issues without going to Court. Mediation is an effort by the parties to reach a mutually acceptable solution through a communicative process structured and aided by an objective third party, the mediator. The mediator meets with the parties to assess the situation, discuss alternatives and develop an agreement (parenting plan) that is in the best interest of the child(ren).

Mediation is defined by statute as a confidential and cooperative process involving the parties and a mediator who will help the parties define and resolve their own disagreements by applying communication and dispute resolution skills. The best interests of the children are of paramount consideration.

WHEN IS MEDIATION INVOLVED?

You may be referred to Family Court Services by the Circuit Court or the Family Court Commissioner in these instances:

1) Whenever there is a disputed Court action, of an existing Court order affecting legal custody and/or physical placement of a child, or

2) Whenever parents involved in an ongoing Court action indicate to the Court or the Family Court Commissioner's office that they wish to have joint legal and physical custody, but need some assistance in coming to an agreeable arrangement, or

3) Whenever a parent objects to the Court to the moving of a child within or out of the State pursuant to Wis. Stat. Sec. 767.481, or

4) When parents indicate to the Family Court Commissioner that they both wish to make some changes in their legal custody or physical placement arrangement but need some assistance in coming to an agreement, or

5) Whenever the Family Court Commissioner is notified by a parent of child that there is a problem relative to the periods of physical placement

WHY MEDIATION?

While the Court system is very adept at making decisions, the Courtroom may be a poor place for either party to fully express their concerns. Frequently matters are decided, but problems and needs remain. In the emotionally charged atmosphere around divorce and separation, it is often difficult, if not impossible, for two sides to effectively communicate and respond to those issues where some interests are shared and others opposed. The fact that mediation is the preferable method to resolve most disputes stands on these facts: Most people are capable of problem solving, and most people want to participate in making those major decisions which will affect their lives and the lives of the other members of their family, without relinquishing that responsibility to the Court. Mediation offers people a way to do this, to resolve their conflict by finding the solution most suited to their needs, without interference by the Court.

Mediation has other advantages. While mediation requires a certain amount of honest effort, the emotional and financial demands of litigation can be far more costly to all concerned. Unfortunately, the Court's decision may be only one step along the way in what will be an ongoing dispute, depleting financial resources and further alienating the parties and the child(ren).

ARE THERE ANY EXCEPTIONS?

In most situations described above, one screening/evaluation is required by law. Family Court Services might determine that it is inappropriate to attempt mediation based upon presented evidence that there has been child or spousal abuse, that either party is impaired by alcohol or drug abuse, or that either party's health or safety would be endangered by attending the mediation session.

WHO IS INVOLVED IN MEDIATION?

Usually only the parties are involved in mediation. The attorneys for the parties and the attorney for the child (Guardian ad Litem) are generally not involved.

WHAT ISSUES ARE DISCUSSED IN MEDIATION?

The mediator is only permitted to discuss the issues of custody and physical placement of children during the mediation process.

The issues of property division, maintenance, and child support will only be discussed if they **directly** relate to the issues of custody and legal placement **and** both parties agree in writing to

consider one or more of those issues in mediation.

WHAT IF MEDIATION DOESN'T WORK?

If at any point it is found to be inappropriate to continue mediation, the mediator will inform the Court and the parties, and mediation is terminated. The mediator has the authority to suspend or terminate the mediation if he or she determines that a party will not cooperate or mediation is not appropriate.

WHAT HAPPENS THEN?

In those situations where mediation has been voluntarily sought and mediation fails, the parties will be informed that mediation will not continue. Then, if either party wishes to pursue the matter, it becomes his/her responsibility to take the matter to Court by a motion filed with the family Court.

If one party has filed a motion for change of custody, and mediation has not been successful, the Court will order that deposits be paid and that a Guardian ad Litem be appointed.

CAN MEDIATION BE RE-ENTERED?

If both parties agree to try the mediation process once the Guardian ad Litem investigation is under way, they may return to mediation at any time.

CONFIDENTIALITY?

All statements made to the mediator are confidential by law. The mediator will not be permitted to testify in Court at any time in any proceeding involving the parties. The parties may waive this confidentiality, but both parties' consent is necessary before the waiver can be accepted by the Court.

One other exception is that Family Court Services must report child abuse and neglect to the proper authorities.

WHAT DOES MEDIATION COST?

The parties will be required to attend an initial joint mediation session at no charge. The first 15 minutes of the initial session will be devoted to filling out a questionnaire for the mediator to review prior to the commencement of mediation. The initial mediation session will include a brief introduction explaining mediation, whereupon Family Court Services will immediately proceed with mediation. If the parties are able to resolve all their issues in one session, no charge and no further mediation sessions will be necessary. If additional mediation sessions or assistance is needed, each party will be required to pay a $100.00 fee.

F. GUARDIAN AD LITEM

The **Guardian ad Litem** is an attorney appointed by the Court to represent the best interests of your child. The Court expects the Guardian ad Litem to recommend what he or she believes is in the best interests of the child. This does not mean that the Guardian ad Litem merely states what the child says he or she wants. To make this important recommendation, the Guardian ad Litem will need to gather information from all the parties, including the children, and from other outside sources such as family, friends, schools, counselors and doctors. The investigation centers on the child to determine his or her unique needs and preferences. The Guardian ad Litem will work independently from the attorneys representing the parents or other parties and the family Court counselor.

The Guardian ad Litem's investigation will almost always include an interview with the parents or the person caring for the child. The parents are required to cooperate. Typically, each parent will be interviewed separately. Most cases will also require a conversation between the child and the Guardian ad Litem in private, out of the hearing of the parents or other adults in the child's life. The Guardian ad Litem may choose to visit with the child at the office, home or any other setting in which the child feels comfortable and confident. The goal is to develop a sense of trust between the child and the Guardian ad Litem, and this may require more than one visit with the child.

When determining what is in the best interest of the child, the Court and the Guardian ad Litem can not prefer one parent over the other on the basis of sex or race. The Guardian ad Litem considers the same factors used by the Judge or Family Court Commissioner in determining the best interest of the child for custody and physical placement:

a. The wishes of the child's parent or parents, as shown by any Stipulation or agreement between the parties, any proposed Parenting Plan or any legal custody or physical placement proposal submitted to the Court at trial.

b. The amount and quality of time that each parent has spent with the child in the past, any necessary changes to the parents' custodial roles and any reasonable life-style changes that a parent proposes to make to be able to spend time with the child in the future; the overall relationship between the child and each parent.

c. The age of the child and the child's developmental and educational needs at different ages, as well as the mental and physical health of the child and each parent.

d. The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child.

e. The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party.

f. Whether each party can support the other party's relationship with the child including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child's continuing relationship with the other party.

g. The reports of appropriate professionals if admitted into evidence, including Family Court Services, the Guardian ad Litem and psychological evaluations.

h. The child's adjustment to home, school, religion and community.

h. Whether there is evidence that a party engaged in abuse of the child or inter-spousal battery or domestic abuse.

j. Whether either party has or had a problem with alcohol or drug abuse.

k. Other relevant factors the Court considers important.

After all the relevant information is gathered, the Guardian ad Litem will make a recommendation to the Court and the parties as to what he or she believes will be in the best interests of the child regarding the issues in dispute. If a trial is necessary, the Guardian ad Litem will appear for the child, questioning witnesses and introducing evidence on behalf of the child. Helping restore stability, security and harmony in the child's life is an important goal of the Guardian ad Litem.

Payment of the Guardian ad Litem's fees will be made by either or both of the parents. It is important that the parties understand their responsibility to pay the Guardian ad Litem fees. Unless the Court orders otherwise, each party is responsible for one-half of the total cost of the Guardian ad Litem. Upon receipt of a notice of appointment of a Guardian ad Litem, each party is required to **pre-pay** a deposit of $1,000.00 - $2,000.00 towards the Guardian ad Litem fees. This amount may be paid in monthly installments. In the event that one party does not pay the required deposit, and in order to begin the custody study process, the other party pays all or part of the entire deposit due, that party is responsible for seeking reimbursement from the non-paying party for part or all of the deposits paid. If the final fee assessed in the case is less than the amount deposited, the difference is refunded by the Clerk of Court of Fond du Lac County.

If a Guardian ad Litem is appointed, children between the ages of 5 and 12 will also be required to attend the class "Children In the Middle" to help them cope with the conflict.

G. CUSTODY STUDY

Upon completion of the guardian ad litem investigation and recommendation, the guardian ad litem, either party, or the Court may file a Motion requesting that a **Custody Study** be ordered and the Family Court Commissioner may order a custody study to be coordinated through Family Court Services. A custody study may be ordered only if there are ongoing custody or placement disputes following the Guardian ad Litem investigation and recommendation and/or if

matters of special concern exist requiring additional investigation.

Instances where a custody study may be appropriate, include situations involving child abuse or neglect, domestic abuse, drug/alcohol concerns and emotional or mental health concerns.

Upon receipt of the Order for Custody Study, Family Court Services will schedule an initial appointment with the guardian ad litem and/or parties to commence the study. Family Court Services and the Guardian ad Litem will coordinate efforts and share tasks and information while investigating and assessing the best interests of the child(ren). Such coordination will include joint interviews of parties, children, references, school officials, and other sources or witnesses. Family Court Services will schedule only as many appointments as deemed necessary based upon the circumstances of each case.

In addition, upon a showing of necessity, the custody study may include a psychological evaluation and/or opinions of other experts. This psychological evaluation is done by a state licensed psychologist who ordinarily conducts psychological testing of the persons evaluated to determine their intellectual functioning as well as their emotional or psychological health, i.e. does the person have any personality disorder, addictions, neurosis, or psychosis, etc. The evaluation also includes an extensive interview with the person evaluated. The evaluation may include an appraisal of the respective strengths and weaknesses of the parties as parents as well as a recommendation regarding custody and placement issues. Theses recommendations can be considered by the Guardian ad Litem and Family Court Services in making a recommendation and can be considered by the Court in making its decision. This evaluation may also be useful to the parties in reaching a stipulation or agreement on contested issues relating to custody and physical placement. The cost of the psychological evaluation is several hundred dollars per person evaluated. The cost is normally shared by the parties as an expense of the evaluation process.

The cost for the custody study is an expense the parties must bear in addition to their own attorney's fees, Guardian ad Litem fees and mediation fees. The initial fee for a custody study is $600.00 and $30.00 per hour thereafter. Psychological evaluations are $900.00 per person evaluated. Pre-payment of a deposit in the amount of $2,000.00 - $3,000.00 per person is required for a custody study. Additional fees may be required depending on the amount of time required by the Guardian ad Litem and are billed at $70.00 per hour.

Custody and physical placement disputes may be lengthy and bitter and can be very costly, not only in terms of money, but in terms of its adverse affect on the emotional well-being of the children and the parents. Even if one parent is awarded custody in a divorce, the other parent will receive physical placement rights which can be extensive. No one wins a custody battle. Both parties and especially the children lose in a custody dispute. A thoughtfully stipulated arrangement determined by the parties themselves, rather than the Court, after considering the needs of the children and the parents, often results in a more successful relationship between parents and child(ren) after the divorce.

H. GUIDELINES TO ASSIST BOTH PARENTS IN DEALING WITH

THEIR CHILDREN

TO: Father and Mother,

When parents separate, neither becomes less of a parent unless they choose to do so. The parties divorce one another and not the children. Admittedly, each parenting role may become more difficult but if the motivating factor is the children's best interests, you each have a greater chance to continue to be effective parents.

Children love both parents, divorced or not. They also continue to learn from or imitate behaviors of both parents. Your behavior at this time will affect your children's growth as well as your relationship with them in later years. You may find it difficult, at times, to deal with your children as a single parent. If you apply the following guidelines you will find the matter made easier.

a. BOTH PARENTS SHOULD:

1) Continue to teach their children to respect the other parent and continue to allow them to love both parents.

2) Protect the children from displays of anger, hurt, mistrust and all other bitterness toward the other parent. This includes interrogation of the children regarding the activities of your spouse as well as demeaning your spouse in front of the children.

3) Communicate with each other regarding visitation / periods of physical placement and the children in general. Do not arrange visitation through the children. Not only does this imply lack of respect for your spouse, but depending on your children to arrange such plans places unnecessary responsibilities on them and will cause many problems.

4) Treat the children normally by not making promises of lavish gifts, exciting outings, etc., to outdo the other parent.

5) If plans between parents conflict, decide which activity is most beneficial to your children, allowing them to attend that activity. This is not a win-lose situation as far as you or your spouse is concerned.

6) Never encourage your children to take sides between parents. Many children blame themselves for the divorce and forcing

them to decide between parents will only reinforce this misguided notion.

b. A PARENT WITH PERIODS OF PHYSICAL PLACEMENT IS RESPONSIBLE FOR:

1) Seeing the children frequently and consistently. Avoid making your children feel unwanted or rejected by making last minute cancellations or by not seeing them on a regular basis. Notify your spouse in advance if you cannot see the children to avoid disappointing them.

2) Being on time to receive or deliver the children. This will not only benefit the other parent, but the children as well who will be excited to see you, ready and waiting.

3) Spending time with the children. Your children are individuals. Give each child individual time during these periods.

4) Following through with any promises made.

5) Being with the children at reasonable, mutually agreed upon times.

6) Abstaining from the use of alcohol before or during times with the children.

c. THE PARENT WITH WHOM THE CHILDREN LIVE IS RESPONSIBLE FOR:

1) Preparing the children for time with the other parent, both physically and mentally. Don't deprive them of the anticipation. Let them know they are not hurting your feelings by enjoying these times. Have them ready on time to accommodate the other parent and the children.

2) Making the children available for periods of physical placement when possible, instead of continually making excuses, or trying to bribe them with more exciting activities.

3) Keeping the other parent informed as to the health, schooling and special events involving the children.

4) Informing the other parent as soon as possible should the children be unable to visit due to illness, unexpected events, etc.

While everyone understands that in these situations a third party or a new "significant other" may become involved, remember that your children need time to adjust to the separation. They may, in time, become accustomed to a third party, but the situation cannot be forced. At no time should your children be coerced into accepting a third party as a replacement for mother or father.

Always consider what would most benefit your children. However, you are the adults. Do not allow the children to play upon the guilt or anger you may carry. They may be capable of using these circumstances to their own advantage. Only you, communicating with your former spouse and not jumping to conclusions, can avert this situation.

Remember this can be a painful and disruptive period for everyone involved. You may very well have difficulty adjusting to your new situation. Most people do. You cannot help your children adapt if you have not. There are any number of mental health professionals in our area who can assist you. Generally all medical insurance policies provide for counseling services and many agencies charge on the basis of ability to pay. Family Court Services is available to refer you to these persons, as well as to assist with any other problems or questions you have.

CHILD'S BILL OF RIGHTS

1. To be told that my mother and father still love me and will never divorce me.

2. To be told that the divorce is not my fault, and not to be told about the adult problems that caused it.

3. To be considered as a human being, and not as another piece of property to be fought for, bargained over or threatened.

4. To have decisions about me based on what is in my best interest, not on past wrongs, hurt feelings or my parents' needs.

5. To be allowed to love both my father and my mother without being forced to choose or feel guilty.

6. To know both my father and my mother through regular and frequent involvement in my life.

7. To have the financial support of both my father and my mother.

8. To be spared having to listen to bad, hurtful comments about either of my parents which have no useful purpose.

9. To be a child, and not to be asked to tell a lie or act as a spy or messenger.

10. To be allowed to have affection for the other people who may come into my life without being forced to choose or feel guilty.

I. MAINTENANCE; FAMILY SUPPORT

The Court and Family Court Commissioner may require a spouse to make payments designated as maintenance or family support to the other spouse while the divorce is pending or at the time of the final divorce hearing. Maintenance and family support are different from child support. **Maintenance**, which used to be called alimony, is a series of payments made by one spouse for the support of the other spouse. Maintenance payments may be ordered separately from, or in addition to, child support. **Family support** is a payment generally made at regular intervals (weekly, bi-weekly, monthly) which combines maintenance and child support.

The designation of payments as maintenance is important because payments under maintenance orders are generally tax deductible to the person making the payments. On the other hand, the person who receives maintenance payments is required to report the amount as taxable income and may have to pay income taxes on these amounts. In contrast, child support payments are not tax deductible by the person who makes the payment, nor are they taxable income to the person who receives them.

A party who decides to give up (or waive) any right he or she may have to maintenance in the divorce judgment will not be allowed under any circumstances to later seek maintenance from his or her former spouse.

If the parties to a divorce cannot agree as to whether maintenance should be paid or as to the amount or length of time maintenance payments should be made, the Court will decide these issues. The Court will consider the following factors in determining maintenance issues:

1) The length of the marriage.

2) The age, physical and emotional health of the parties.

3) The division of the parties' property in the divorce.

4) The educational level of each party at the time of the marriage and at the time the divorce is started.

5) The present and future earning capacity of the party requesting maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to obtain education or training to enable the party to find appropriate employment.

6) The likelihood that the party requesting maintenance can become self-supporting at a standard of living similar to that enjoyed during the marriage, and if so, the length of time necessary to achieve this goal.

7) The tax consequences to each party.

8) Any mutual agreement made by the parties before or during the marriage, according to the terms of which one party has made financial or service contributions to the other with the expectation of reciprocation or other compensation in the future, where such repayment has not been made, or any mutual agreement made by the parties before or during the marriage concerning any arrangement for the financial support of the parties.

9) The contribution by one party to the education, training or increased earning ability of the other.

10) Other relevant factors the Court considers important in the individual case.

After considering these factors, the Court may order an amount of maintenance to be paid for a limited period of time or for an indefinite period of time. Indefinite maintenance may be revised, terminated or extended by the Court based upon a substantial change in the financial circumstances of one or the other party after the final divorce hearing. The party seeking a revision, termination or extension of maintenance must petition the Court in writing, with notice to the other party, for a hearing on the issue.

Limited maintenance may be revised, terminated or extended based upon a substantial change in circumstances, but will automatically terminate at the end of the term specified in the Court's order unless the person receiving maintenance petitions the Court in writing with notice to the other party for an extension of maintenance prior to the expiration of the original order.

If there is no specific agreement of the parties to the contrary, the Court will terminate maintenance payments on the remarriage of the person receiving the payments upon the application of the person making the payments and upon proof of such remarriage.

FAMILY SUPPORT

Family support is child support and maintenance combined. Under limited circumstances, family support may provide tax advantages. Before family support is ordered, it is very important that both parties and attorneys clearly understand the rights and responsibilities each has in reporting payments of family support and deducting family support on their income taxes.

J. CHILD SUPPORT

Child support in Wisconsin is based upon the percentage of income standard. The percentage of income standard states that the Court or Court commissioner shall order child support in the following amounts:

17% of the paying parent's gross income for one child
25% of the paying parent's gross income for two children
29% of the paying parent's gross income for three children
31% of the paying parent's gross income for four children
34% of the paying parent's gross income for five children or more

As of August 31, 2001, child support must be expressed as a set dollar amount, based upon the appropriate percentage. In addition, effective January 1, 2004, Wisconsin's child support rules were modified. The basic presumptive percentages above did not change, but changes in calculating support for parents in special circumstances, such as shared placement, low-income, and high-income occurred.

If a party requests it, the Court may change the amount of support under the percentage standard if the Court finds that the use of the percentage is unfair to the child or to any of the parties based upon the following factors:

1. The financial resources of both parties and the child;

2. Maintenance received by either party;

3. The needs of each party to support himself or herself on a level equal to at least the federal poverty level;

4. The obligation either party has, if any, to support another person;

5. If the parties were married, the standard of living the child would have enjoyed had the parents not divorced;

6. The desirability that the custodial parent live at home as a full-time parent;

7. Cost of day-care or value of services of the custodial parent;

8. The award of substantial periods of placement to both parents;

9. Extraordinary travel expenses incurred in exercising placement with the child(ren);

10. The child's physical, mental, emotional health care needs including the costs of insurance and any uninsured health care of the child;

11. The child's educational needs;

12. The tax consequences to each party;

13. The best interest of the child;

14. The earning capacity of each parent, based on education, training and work experience and the availability of work in or near the parent's community;

15. Any other factors the Court considers relevant.

If the Court determines that using the percentage of income standard is unfair, the Court must state the following in writing or on the record:

a. the amount of support that would be required by using the percentage standard; and,

b. the amount by which the Court's order deviates from that amount, its reasons for finding that the use of the percentage standard is unfair to the child or to the party;

c. the reasons for the amount of the modification and the basis of the modification.

K. SUPPORT PAYMENTS THROUGH THE WISCONSIN SUPPORT COLLECTIONS TRUST FUND

Wisconsin law requires that all payments for child support, family support and maintenance be paid by income withholding. All payments of child support, family support and maintenance payments are to be paid to the **Wisconsin Support Collections Trust Fund**. The address for the Wisconsin Support Collections Trust Fund is:

Wisconsin Support Collections Trust Fund
P.O. Box 74200
Milwaukee, WI 53274-0200

If you are ordered to pay support, it is your responsibility to make the required payments to the Wisconsin Support Collections Trust Fund until the money is withheld from your earnings or other source of income. The payer should <u>always</u> include the case number and the name of the payer on any check or money order to ensure proper credit for the payment.

A payer should never pay the support directly to the payee because those payments may be considered gifts. Although under certain limited circumstances, the law does provide for the granting of credit for support payments made directly to the payee, a hearing may be required before the Family Court Commissioner or the Circuit Court Judge to decide if the payer should be given credit for direct payments.

Simple interest accrues at the rate of 1.0% per month on any amount in arrears that is equal to or greater than the amount of child support due in one month.

Each year the payer must pay a receiving and disbursement fee to the Wisconsin Support Collections Trust Fund. As of January 1, 2008, the annual receipt and disbursement fee is **$65.00 per year**. This fee must be paid at the time of and in addition to the first payment of support due each year.

IF YOU ARE TO RECEIVE SUPPORT

Wisconsin law requires that all payments of support or maintenance be made through the Wisconsin Support Collections Trust Fund (WSCTF). Upon receipt of the payment the WSCTF will issue a separate check made payable to you. Wisconsin law requires WSCTF to disburse child support within 15 days of receiving it, however, the turn-around time is generally much faster. You must make sure WSCTF and the Fond du Lac County Child Support Agency has your current address at all times so the payments will promptly be forwarded to you. ** As of October 1, 2008, parents receiving $500 or more in support will begin paying a yearly $25 fee on each of their court cases.

If you have questions regarding your child support payments, you can call the KIDS Information Line, an automated voice response system by dialing 1-800-991-5530 or on the internet at www.myaccount.chase.com. You must have your KIDS personal identification number (PIN number) handy, or your Social Security Number and Date of Birth. If you need further information regarding your case, you may call the Fond du Lac County Child Support Agency at (920) 929-3057, or direct correspondence to 160 South Macy Street, Fond du Lac, WI 54935. Written inquiries should include your case number and the name of the payer on all correspondence. Child Support information from the Bureau of Child Support is available in the internet at **childsupport.wisconsin.gov**. Most public libraries have internet access.

L. INCOME ASSIGNMENTS

Each order for child support, maintenance, or family support constitutes an assignment of income. The **income assignment** is accomplished by an order of withholding which will be sent to the payer's employer, or other source of income, by the Fond du Lac County Child Support Agency if either parent has submitted an application for child support services or if the parent with primary placement has received public assistance through the Department of Social Services. Generally, the frequency of the required payment corresponds with the obligor's pay period.

Once the support payment is withheld from the paycheck of the payer, the employer will send it to the Wisconsin Support Collections Trust Fund. The employer is entitled to retain up to $3 for this service each time. This fee is in addition to the amount of the support.

An employer is prohibited by law from disciplining an employee because of the existence of an income assignment.

Whenever support is ordered, both parties are required to notify the Fond du Lac County

Child Support Agency of any change of address within 10 business days of such change. In addition, the person ordered to pay the support is under a continuing order to notify the Child Support Agency and the payee, within 10 business days, of any change of employer and of any substantial change in the amount of his or her income, including receipt of bonus compensation.

Notification of any substantial change in the amount of the payer's income will not result in a change of the amount of support to be paid unless a revision of the order is sought by filing an appropriate Motion pursuant to Wis. Stat. 767.59 or 767.553.

Wisconsin law provides that if support is delinquent or is not paid on time, the Court may increase withholding by up to 50% of the current order to satisfy the delinquency. The payer has (10) ten days from receiving notice that the income withholding will be increased to request a hearing before the Family Court Commissioner to challenge the increase.

M. TAX EXEMPTION

Federal tax law provides that the parent with primary physical placement of a child may claim that child as an exemption on his or her income tax return, unless otherwise specified by a Court order. Given the present value of an exemption and the child credit, allocation of the tax exemption often enters into settlement negotiations. The exemption may be more valuable to one parent than the other after considering: the income of the parties; the ability of a party to claim head of household status; qualification for the earned income credit; and, other factors/benefits provided by tax law.

Under Wisconsin law, the Court is required to make a decision on tax exemptions if the parties have not decided between themselves which parent should take the exemption. The Court shall make the decision in accordance with state and federal law, and must also take into account whether the medical insurance plan of either parent requires that the parent with medical coverage is awarded the exemption by the order of support.

If, as a non-custodial parent, you are granted an exemption, either by the Court or by stipulation, you will need to attach Form 8332 (available at the IRS), signed by the custodial parent, to your tax return. For further information, you should consult the IRS or an attorney.

N. PROPERTY DIVISION

Under Wisconsin law, the Court must attempt to divide all property equally between the parties at the time of the judgment of divorce. The only exception is property that was inherited or gifted to one party. Gifted or inherited property remains the property of the party who received the gift or inheritance and is generally not subject to division.

Property owned before the marriage of the parties **is** subject to division unless the parties have entered a prenuptial or postnuptial agreement identifying the property as that which was owned

by the parties before the marriage and not subject to division.

The Court will also consider the following factors when dividing the property:

1) The length of the marriage.

2) The property brought to the marriage by either party.

3) Whether one party has substantial assets (received by gift or inheritance) that are not subject to division.

4) Economic contribution each party made to the marriage including economic value of child care and homemaking.

5) The age, physical and emotional health of the parties.

6) Contributions by one party to the education, training or increased earning power of the other party.

7) Earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

8) The desirability of awarding the family home or the right to live therein for a reasonable period to the party having physical placement for the greater period of time.

9) The amount and duration of an order under s.767.56, Wis. Stats., granting maintenance payments to either party, any order for periodic family support payments under s.767.531, Wis. Stats., and whether the property division is in lieu of such payments.

10) Other economic circumstances of each party, including pension benefits, vested or non-vested, and future interests.

11) The tax consequences to each party.

12) Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the Court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The Court

shall presume any such agreement to be equitable as to both parties.

13) Such other factors as the Court may determine to be relevant.

III. POSTJUDGMENT PROCEDURES AND ISSUES

A. MODIFIABLE ISSUES, IN GENERAL

After a judgment is entered, the Court can always modify or change the provisions of the judgment concerning the child related issues of custody, placement and child support. On custody and placement issues, children are no longer subject to the jurisdiction of the Court when the children reach the age of 18. Child support may be modified until the child is 18 years of age or graduates high school, but in no instance past age 19.

Maintenance can only be modified if it is awarded or held open in the original judgment. If maintenance is waived or denied in the original judgment, it cannot be granted at a later time. If limited maintenance is awarded, the motion to modify or extend the maintenance must be filed prior to the end of the term of maintenance.

Property division is also final as of the date of the divorce and may not be modified at any time after the judgment of divorce is entered. The only exception is if the judgment of divorce is reopened. A judgment of divorce cannot be reopened except under circumstances of fraud or neglect.

B. MODIFICATION OF CHILD SUPPORT

Orders relating to child support may later be changed or modified upon request of either party, either by written agreement of the parties or upon the filing of the appropriate motion and a Court hearing.

An order for support may provide for an annual adjustment in the amount to be paid based upon a change in the payer's income if the amount of support is expressed as a fixed sum. An adjustment may not be made more than once in a year. No adjustment is effective until the order is signed by the Court or Court commissioner.

If the underlying order does not provide for an annual adjustment, then the Court will not change a child support order unless the party requesting such a change presents proof of a substantial change in circumstances. The burden of proving that a change is necessary rests with the party seeking to alter the existing judgment.

If the parties and/or their attorney can reach an agreement to modify the amount of child support, the written agreement can be made part of a Stipulation and Order to be filed with the Court which states the terms of the agreement. If the parties reach an agreement, the Stipulation and Order

must first be presented to the Fond du Lac County Child Support Agency for approval and then approved by the Family Court Commissioner. An agreement to modify the child support without an Order is not enforceable and is of no effect. The Order must accompany any agreement.

If the parties and/or their attorney cannot reach a signed, written agreement to modify the support out of Court, the party requesting a change must file a Motion or Order to Show Cause with the Court. A filing fee is required and must be paid before the Motion or Order to Show Cause is filed. If the party requesting the change is receiving public assistance or has low income, the filing fee may be waived. The documents necessary for waiver of the filing fee are available from the Clerk of Court's office. You may retain an attorney to represent you in such an action. If you do so, the attorney will prepare and file the appropriate documents for you. If you are unable to afford an attorney, you may represent yourself and appear "pro se", i.e. by one's self.

Prior to filing the Motion or Order to Show Cause, you must bring the Motion or Order to Show Cause to the Family Court Commissioner, who will give you a Court date. Once the request to change child support has been filed, it is the responsibility of the party requesting the change to have a copy of the documents properly served on the other party. You may contact the sheriff's department in the county where the other party resides or a private process server in that area to serve the Motion or Order to Show Cause.

On the hearing date, you will be appearing before a Family Court Commissioner who has been authorized by the Circuit Court Judges to hear and make final decisions on child support and maintenance issues. Both parties should bring as much income information as possible to the hearing including their most recent eight weeks pay stubs, most recent income tax returns, and business records, and if applicable, evidence of work search efforts.

After reviewing the information submitted by the parties, the Family Court Commissioner will announce a decision. The party requesting the change will be responsible for preparing an Order for the Commissioner to sign. The Order states the Commissioner's decision. The Order is a necessary step in the process of modifying any previous Order on the Court's records, so it must not be overlooked.

If a party disagrees with the Commissioner's decision, either party may appeal the decision to the Circuit Court Judge. This is referred to as a **de novo hearing**. You will need to file new paperwork specifically requesting a de novo hearing with the Court in order to do this. This must be done within 15 days of the hearing.

C. MODIFICATION OF MAINTENANCE

In any application for modification of a maintenance award, the Court is required to again consider all of the statutory factors it considered in the original award of maintenance. Once a

maintenance order has been entered, it may be extended indefinitely by the Court if the motion is filed timely, and if the requesting party can show the Court that there has been a substantial change in circumstances. This may occur even though the original order may have provided that maintenance would end on a specific date or after a specific period of time. Any request for extension of maintenance must be filed and served upon the other party prior to the expiration of the maintenance order.

Maintenance cannot be retroactively increased or decreased.

The remarriage of the recipient/obligee of maintenance or death of either party will result in termination of the maintenance obligation if the payer files a motion to terminate the maintenance based upon the remarriage or death of the recipient.

D. MODIFICATION OF CUSTODY/PLACEMENT

There are two different standards of proof required to substantially modify a custody judgment or physical placement order. Generally it is more difficult to modify a custody order within the first two years after the initial order. After two years, it is less difficult to modify an order of custody or physical placement.

Within two years, it must be shown that the current legal custody or placement arrangement is physically or emotionally harmful to the child, and that modification of legal custody and/or physical placement is necessary.

After two years, it must be shown that the modification of legal custody or physical placement is in the best interest of the child, and that there is a substantial change in circumstances since the date of the last order. Even after two years, it is presumed that the current legal custody and physical placement arrangement is in the best interest of the child.

A change in economic or marital status is an insufficient basis to change an existing legal custody or physical placement arrangement.

The above standards for modification are the same regardless of whether the parents have sole legal custody or joint legal custody.

If parties have substantially equal periods of physical placement, the Court may change the arrangement at any time upon motion of a party if the Court finds that circumstances make it impractical for the parties to continue to have substantially equal placement and that the change is in the best interests of the child(ren). In addition, the Court may change placement at any time if it finds that a parent has repeatedly and unreasonably failed to exercise periods of physical placement granted under an order allocating specific times for placement.

Modification of legal custody or physical placement motions are referred to mediation. If mediation is not appropriate or successful, the Court will appoint a Guardian ad Litem and order a

custody or physical placement study.

E. ENFORCEMENT OF CHILD SUPPORT PAYMENTS

If the person who has been ordered to make child support, family support or maintenance payments fails to do so, then the person who is entitled to receive the payments can do the following:

1) Contact his or her attorney to bring appropriate action in the Court to enforce the order,
including contempt. Contempt of Court is when one intentionally violates the Court's order. If a person is found in contempt, the Circuit Court Judge has the power to order sanctions or penalties for failing to pay child support. Those penalties may include jail time.

2) Contact the Fond du Lac Child Support Agency located at 160 South Macy Street, Fond du Lac, WI 54935. The Fond du Lac County Child Support Agency is the local child support enforcement authority designated to implement and administer child support and establish paternity. The Child Support Agency serves the public interest, not you individually, by enforcing child support obligations. It does not represent you, but rather the State of Wisconsin. The Child Support Agency can only assist with actions to enforce child support obligations, and does not become involved in actions to enforce other provisions of a Judgment.

   If public assistance benefits are or have been provided to you or to your children or dependents, services will be provided without an application. However, you may want to notify the Agency of your current situation or circumstances. If public assistance benefits have never been provided, you must file a completed Application for Services with the Child Support Agency. To discontinue services, you must notify the agency in writing.

   Services that may be provided include location of the absent parent, enforcement and modification of a current order for child support, enforcement of an order to provide health insurance, and tax-intercept. Most services will be provided without any fee. However, fees may be charged for some services. You will be notified if a fee is necessary. The Child Support Agency determines which services will be provided. For further information, contact the Child Support Agency.

3) Failure to pay child support under certain circumstances is a <u>crime</u>. The Fond du Lac County Child Support Agency may refer cases to the District Attorney's for criminal prosecution.

4) Another method of child support enforcement is the Tax Intercept Program. Under

this program, when eligibility thresholds are met, a child support payer's federal and/or state income tax refunds can be applied to back child arrears.

Any order entered by the Court for child support, maintenance or family support constitutes an assignment of income in an amount sufficient to meet the payments required of the payer under the order, including any arrearage that may be due.

For more information about these enforcement techniques and others, you may contact the Fond du Lac County Child Support Agency for assistance.

F. ENFORCEMENT OF CUSTODY AND PHYSICAL PLACEMENT RIGHTS

Any parent with custody or physical placement rights who believes that those rights are being interfered with may request mediation. Upon application with Family Court Services, the Family Court Commissioner will refer the party or parties to mediation. If Family Court Services believes mediation is appropriate, then the mediation process will proceed until settlement, or until mediation terminates. If an agreement is reached in mediation, the parties must reduce the specific terms of the agreement in writing to be approved by and filed with the Court.

If mediation is deemed inappropriate or is terminated, a parent who has been awarded periods of physical placement with a child may file an Order to Show Cause or Motion to Enforce Physical Placement Rights and/or an Order to Show Cause for Contempt if: 1) the parent has had one or more periods of physical placement denied or substantially interfered with by the other parent, or, 2) the parent has incurred a financial loss or expenses as a result of the other parent's intentional failure to exercise one or more periods of physical placement under an order allocating specific times for the exercise of periods of physical placement.

If you choose to proceed without the services of an attorney, "pro se" forms are available for purchase at the Family Court Commissioner's office or you can access forms and brief instructions (at no charge) at www.wicourts.gov.

Personal service of the Petition or Order to Show Cause is required. Service must be accomplished by someone other than the person bringing the Petition or Order to Show Cause.

If, after a hearing, the Court finds that a parent did intentionally and unreasonably interfere with placement, a Court will enter Orders which may include giving the parent make-up time, granting an injunction to ensure strict compliance with the placement schedule, and requiring the

payment of the moving party's costs and attorney fees depending upon the facts and circumstances of the case.

Periods of physical placement with a child may not be denied by the parent with primary placement of the child, for failure of the other parent to pay child support or meet any other financial obligation. Similarly, violation of physical placement rights by the parent with primary placement does not constitute a reason for failure to meet child support or other financial obligations.