

“ANNUAL VOLUNTEER LAWYERS SEMINAR”

UNCONTESTED DIVORCE BASICS

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**Friday, October 18, 2013
1:30 – 2:30 PM
Battle House Hotel – Moonlight Ballroom**

UNCONTESTED DIVORCE BASICS

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Rule #1: You can only represent one party!

Clients frequently call me to inquire if they and their spouse can use the same attorney and will even tell me they have spoken with other attorneys who have told them they can represent them both.

See Rule of Professional Conduct 1.8:

(k) In no event shall a lawyer represent both parties in a divorce or domestic relations proceeding, or in matters involving custody of children, alimony, or child support, whether or not contested. In an uncontested proceeding of this nature a lawyer may have contact with the nonrepresented party and shall be deemed to have complied with this prohibition if the nonrepresented party knowingly executes a document that is filed in such proceeding acknowledging:

(1) that the lawyer does not and cannot appear to serve as the lawyer for the nonrepresented party;

(2) that the lawyer represents only the client and will use the lawyer's best efforts to protect the client's best interests;

(3) that the nonrepresented party has the right to employ counsel of the party's own choosing and has been advised that it may be in the party's best interest to do so; and

(4) that having been advised of the foregoing, the nonrepresented party has requested the lawyer to prepare an answer and waiver under which the cause may be submitted without notice and as may be appropriate.

Because you can only represent one party, I consider it best practice not to meet with the unrepresented party, lest they misunderstand your relationship. Send them the Agreement and other required forms via mail (or email/fax) with a cover letter instructing them who you are, what is enclosed, and how to sign. Require that they return any proposed changes in writing.

REQUIRED FORMS

NO CHILDREN:

- Agreement: signed by both parties & witnessed
- Answer & Waiver: signed by Defendant & witnessed
- Acknowledgment of Rights: signed by Defendant & witnessed
- Plaintiff's Testimony: signed by Plaintiff & Commissioner
- Witness Testimony: signed by Witness & Commissioner
- Commissioner's Certificate: signed by Commissioner (who must be a Notary)
- Judgment of Divorce – must match Agreement verbatim

ADDITIONAL FORMS WITH CHILDREN:

- CS-41s for Both Parties: signed & notarized
- CS-42
- CS-43: signed by both parties & attorney(s)
- Income Withholding Order (if obligor is employed)

REQUIRED PARAGRAPHS IN CASES WITH CHILDREN

CHILD SUPPORT

All child support payments paid pursuant to a Wage Withholding Order shall be paid through the **Alabama Child Support Payment Center, P.O. Box 244015, Montgomery, Alabama 36124-4015, (Phone: 1-877-774-9513)**. In the event either party has been assisted by the Department of Human Resources and/or Assistant Attorney General (State of Alabama attorney) then said payments are to be paid through **Alabama Child Support Payment Center, P.O. Box 244015, Montgomery, Alabama 36124-4015, (Phone: 1-877-774-9513)**. All other child support payments shall be made payable through the **Accounts Clerks Office, 205 Government Street, Mobile, Alabama 36644-2114** together with the necessary commissions due thereon, as required by law.

AND

Reference is made to a separate Income Withholding Order, the entry of which is required by the provisions of Section 30-3-61, Code of Alabama, 1975, and which is specifically incorporated herein as part of this Court Order in this cause. Said order shall be issued immediately.

(If the obligor is employed)

OR

The Court retains jurisdiction to enter an order pursuant to the Wage Withholding Act. (See Act No. 84-445, Regular Session, 1984).

(If the obligor is unemployed or self-employed)

RELOCATION ACT

That the order set out below regarding relocation requirements shall **NOT** apply to a change of principal residence of a child to a residence which is **60** miles or less from the residence of a non-relocating parent who is entitled to custody of or visitation with the child or if the change or proposed change results in the child residing nearer to the non-relocating parent than before the change or proposed change, unless such change in the principal residence of a child results in the child living in a different state:

Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this order, you must provide the following information to each other person who has custody or visitation rights under this decree as follows:

- (a) The intended new residence, including the specific street address, if known.
- (b) The mailing address, if not the same as the street address.
- (c) The telephone number or numbers at such residence, if known.
- (d) If applicable, the name, address and telephone number of the school to be attended by the child, if known.
- (e) The date of the intended change of principal residence of a child.
- (f) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.
- (g) A proposal for a revised schedule of custody of or visitation with a child, if any.
- (h) Unless you are a member of the Armed Forces of the United States of

America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.

You must give notice by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a 45-day notice, you must give such notice by certified mail not later than the 10th day after the date that you obtain such information.

Your failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

If you, as the non-relocating party, do not commence an action seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized.

HELPING CHILDREN COPE

The Plaintiff and the Defendant shall attend an educational seminar in order to help the parties communicate with each other for the benefit of the minor child. Each party shall get in touch with the Family Counseling Center at (251) 602-0909 to arrange to complete the "Helping Children Cope with Divorce" seminar. The parties shall complete same course within 60 days of the Judgment of Divorce. Family Counseling Center shall submit a certificate of completion of the sessions or a report of the status of same within 120 days. Each party shall bear his or her own costs of education.

(NOTE: In the event anyone who has been hereby ordered to attend this program does not live in Mobile or this vicinity, then they shall call the Family Counseling Center in order to find out where is the nearest place for them to attend this program, or similar program, in their residential area. In the event the Family Counseling Center advises there is no like program in the reasonable vicinity of the party, then with a letter or proof of same from the Family Counseling Center attached to a request to waive this requirement, this Court will consider suspending this requirement until a later date.)

JURISDICTION

The Court retain jurisdiction of this cause for the purpose of making such other or future orders or decrees as to the custody, support, and maintenance of the said minor child as the Court may deem proper and as changed conditions may require.

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
DOMESTIC RELATIONS DIVISION**

JANE DOE,	*	
Plaintiff,	*	
vs.	*	CASE NO: DR-2012-
JOHN DOE,	*	
Defendant.	*	

ACKNOWLEDGMENT OF RIGHTS

I, the undersigned Defendant in the above-styled Divorce Action, do hereby acknowledge that _____, an Attorney at Law in Mobile, Alabama, has explained to me the precautions dealing with uncontested divorces as stated by the Grievances Committee of the Alabama State Bar in its minutes of October, 1974, as follows:

**THAT, THE ATTORNEY CANNOT REPRESENT BOTH PARTIES;
THAT, THE ATTORNEY DOES NOT REPRESENT ME;
THAT, THE ATTORNEY REPRESENTS COMPLAINANT ONLY, AND WILL USE HER
BEST EFFORTS TO PROTECT THE COMPLAINANT'S BEST INTEREST;
THAT I HAVE THE RIGHT TO EMPLOY COUNSEL OF MY OWN CHOOSING AND
THAT IT WOULD BE IN MY BEST INTEREST TO DO SO.**

Having been advised of the above, I have requested the Attorney for the Plaintiff to prepare an Answer/Waiver hereby I submit to the jurisdiction of this Court; I waive all other notice; I deny the material allegations of the Complainant as to the grounds of divorce, and I agree that the case may be submitted to the Court on Affidavit or Deposition.

Witness

JOHN DOE, Defendant
DATE: _____

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
DOMESTIC RELATIONS DIVISION**

JANE DOE,	*	
Plaintiff,	*	
vs.	*	CASE NO: DR-2012-
JOHN DOE,	*	
Defendant.	*	

AGREEMENT

The parties hereto agree that SUZY PARALEGAL be appointed commissioner to take the testimony in this cause without the issuance of a commission.

The parties hereto waive all defects, if any, by virtue of the taking of testimony before the commissioner named herein prior to the filing of this cause.

This instrument is signed with the understanding that in the event a decree of divorce is rendered in this cause a fair and proper settlement between the parties would be as follows:

- 1. Include numbered paragraphs setting out all the terms of the divorce that the parties will agree to, such as who is getting custody/visitation with any children; what they are doing with their house; dividing up other assets and debts, etc.**

ATTEST:

WITNESS

JANE DOE, Plaintiff
DATE: _____

WITNESS

JOHN DOE, Defendant
DATE: _____

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
DOMESTIC RELATIONS DIVISION**

JANE DOE,
Plaintiff,

*

*

vs.

*

CASE NO: DR-2012-

JOHN DOE,
Defendant.

*

*

ANSWER AND WAIVER

Comes now the Defendant in the above-entitled cause and for answer to the complaint therein admits the allegations as to the ages, residences and marriage and denies each and every other allegation of said complaint and demands strict proof thereof.

I understand that the testimony in this cause will be taken in open Court or by deposition on oral examination and waive notice of the time of the taking of such testimony and agree that this cause may be submitted for a final judgment at any time. I waive all notices to which I may be entitled by law in this cause.

Witness

JOHN DOE, Defendant
DATE: _____

**IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA
DOMESTIC RELATIONS DIVISION**

JANE DOE,	*	
Plaintiff,	*	
vs.	*	CASE NO: DR-2012-
JOHN DOE,	*	
Defendant.	*	

CERTIFICATE

I, SUZY PARALEGAL, the Commissioner named by agreement of the parties, in the above referenced matter wherein JANE DOE is the Plaintiff, and JOHN DOE, is the Defendant, under and by virtue of the power conferred upon me by said agreement, as such commissioner caused JANE DOE and JIM SMITH, respectively, who were made known to me on the ____ day of _____ 2012 and as taken by oral deposition; that said witnesses were first duly sworn by me as stated and they testified in response thereto as is written; and the testimony was by me reduced to writing as given by said witnesses in narrative form, and as near might be identical language of said witness, after said testimony was reduced to writing.

I further certify that I am not of counsel or kin to any of the parties to the said cause, and am not in otherwise interested in the result thereof, and that the depositions are true and correct as given by the witnesses.

Witness my hand this the _____ day of _____ 2012.

SUZY PARALEGAL,
COMMISSIONER

CHILD-SUPPORT-OBLIGATION
INCOME STATEMENT/AFFIDAVIT

Case Number

IN THE _____ COURT OF _____ COUNTY, ALABAMA
(Circuit or District) (Name of County)

Plaintiff _____ v. Defendant _____

AFFIDAVIT

I, _____, being duly sworn upon my oath, state as follows :
(Name of Affiant)

1. I am the Plaintiff Defendant Other (please specify): _____ in the above matter.
My Social Security number is: _____

2. I am currently employed. My employer's name and address are:

not currently employed.

My last employer's name and address are: _____

Last position title: _____

Average monthly salary in the last year of employment: \$ _____

3. My monthly gross income includes:

(For example of income that must be included, see back of this form. If income varies by month, enter the estimated average monthly gross income.)

Employment income	\$ _____
Self-employment income	\$ _____
Other employment-related income	\$ _____
Other non-employment-related income	\$ _____
Total	\$ _____

4. I incur the following amount monthly for work-related child-care: \$ _____
(if none, write "None")

5. The child(ren) of the parties is/are
 not covered by health insurance from me and/or my employer.
 covered by health insurance, and I pay the following amount monthly for the insurance coverage. \$ _____
(if none, write "None")

6. I pay the following total amount for child support alimony in [a] prior case(s) as follows:
[List case number(s) and county(ies) and state(s) here]:

_____ \$ _____
(if none, write "None")

I understand that I will be required to maintain all income documentation used in preparing this Income Statement/Affidavit (including my most recent income-tax return) and that such documentation shall be made available as directed by the court. I also understand that any intentional falsification of the information presented in this Income Statement/Affidavit may subject me to the penalties of perjury.

Affiant

Sworn to and subscribed before me this _____
day of _____, _____

Notary/Clerk

EXAMPLES OF INCOME THAT MUST BE INCLUDED IN YOUR GROSS MONTHLY INCOME

1. Employment Income – shall include, but not be limited to, salary, wages, bonuses, commissions, severance pay, worker's compensation, pension income, unemployment insurance, disability insurance, and Social Security benefits.
2. Self-Employment Income – shall include, but not be limited to, income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation. "Gross income" means gross receipts minus ordinary and necessary expenses required to produce this income.
3. Other Employment-Related Income – shall include, but not be limited to, the average monthly value of any expense reimbursements or in-kind payments received in the course of employment that are significant and reduce personal living expenses, such as a furnished automobile, a clothing allowance, and a housing allowance.
4. Other Non-Employment-Related Income – shall include, but not be limited to, dividends, interest, annuities, capital gains, gifts, prizes, and pre-existing periodic alimony.

RULE 32, ALABAMA RULES OF JUDICIAL ADMINISTRATION, PROVIDES THE FOLLOWING DEFINITIONS:

Income. For purposes of the guidelines specified in this Rule, "income" means the actual gross income of a parent, if the parent is employed to full capacity, or if the parent is unemployed or underemployed, then it means the actual gross income the parent has the ability to earn.

Gross Income.

"Gross income" includes income from any source, and includes, but is not limited to, income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment-insurance benefits, disability-insurance benefits, gifts, prizes, and preexisting periodic alimony.

"Gross income" does not include child support received for other children or benefits received from means-tested public-assistance programs, including, but not limited to, Temporary Assistance for Needy Families, Supplemental Security Income, food stamps, and general assistance.

Self-employment Income.

For income from self-employment, rent, royalties, proprietorship of business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, as allowed by the Internal Revenue Service, with the exceptions noted in Rule 32 (B)(3)(b).

Under those exceptions, "ordinary and necessary expenses" does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income for purposes of calculating child support.

Other Income. Expense reimbursements or in-kind payments received by a parent in the course of employment of self-employment or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

**CHILD-SUPPORT GUIDELINES
NOTICE OF COMPLIANCE**

Case Number

Form CS-43 Rev. 1/09

IN THE _____ COURT OF _____ COUNTY, ALABAMA
(Circuit or District) (Name of County)

Plaintiff v. _____
Defendant

- Based upon the income and expenditures supplied by parties in Form CS-41, "Child-Support Obligation Income Statement/Affidavit," the child-support guidelines, as set out in Rule 32, Alabama Rules of Judicial Administration, have been followed and applied.

- The child-support guidelines, as set out in Rule 32, Alabama Rules of Judicial Administration, have not been followed and applied because of the following reasons:

Date: _____

Date: _____

Signature of Plaintiff

Signature of Defendant

Signature of Plaintiff's Attorney

Signature of Defendant's Attorney

Address of Plaintiff or Plaintiff's Attorney

Address of Defendant or Defendant's Attorney

Telephone No. of Plaintiff or Plaintiff's Attorney

Telephone No. of Defendant or Defendant's Attorney