



Northwest Justice Project

# **Ending Your Marriage in Washington with Children: The Basics**

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# Ending Your Marriage in Washington with Children: The Basics

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## Introduction

The legal information in this publication is designed to help you learn about the laws that apply when you want to end your marriage in Washington (known as a “marital dissolution” or “dissolution of marriage”). It will give you an overview of the law and help you decide what type of case you need to file in court.<sup>1</sup> This publication is intended for persons who want to file a dissolution of marriage (petitioner) or persons who have been served with dissolution of marriage papers (respondent).

In addition to this publication, you may want to use one of our do-it-yourself packets that have forms and instructions for filing or responding to a Petition for Dissolution. You may also want to check with your County Court Clerk or Family Law Facilitator (if your county has a facilitator) to see if your county has the packet you want: local packets may be easier to use because they include required local forms and procedures. For a complete listing of our family law packets, visit our web site at [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org) or if you are a low-income individual, call the CLEAR hotline at 1-888-201-1014.

If at all possible, you should meet with an attorney who specializes in family law before you file anything in court. **If either you or your spouse has a lot of money or property, or you have been married a long time, or your spouse is going to disagree with any part of what you are requesting, you should talk with an attorney before using our do-it-yourself publications.** You may have rights, such as the right to a share of your spouse’s pension or other property, that you could lose if you do not present them properly in your dissolution case. **Even if you cannot afford to hire an attorney to file your case, you should talk at least once with an attorney to get advice about your situation.** If your income is very low and you do not live in King County, you may call CLEAR.

## Section 1: Should I File for a Divorce or a Separation?

### *What is a Marital Dissolution?*

A marital dissolution is another word for divorce – it is a court action that you may file to end your marriage. In Washington, we use the word *marital dissolution* instead of “divorce.” You may file a marital dissolution only if you are married. In most situations, if you are legally married according to the laws of the state or country in which you were married, your marriage will be recognized as legal in Washington.<sup>2</sup> Washington has “no fault” dissolution -- you do not need to prove that either

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<sup>1</sup> In this packet, you will see footnotes, like this one. These footnotes will tell you the law or court case that supports the statement that comes before the footnote. RCW stands for [Revised Code of Washington](#), which is the law of Washington State. Court cases have names, such as *In re Marriage of Parent*. You may use the footnotes to look up the law at your local law library, or to tell the court when you are trying to make a legal argument. Keep in mind that the references to the law are up to date as of the date this packet is published. The law sometimes changes before the packet can be updated.

<sup>2</sup> Washington does not recognize marriages by a person who already has another spouse who is living, by persons who are close relatives, or by persons who are of the same gender. [RCW 26.04.020](#).

spouse was “at fault” in order to get a divorce. Only one party needs to prove that there are *irreconcilable differences* (you can no longer get along with each other).

### ***What Relief May I Get in a Marital Dissolution?***

The main purpose of a marital dissolution is to legally end your marriage. In general, as part of a marital dissolution, the court may also divide your property and debts, award maintenance (also known as alimony) to one spouse, enter orders restricting one spouse’s contact with the other spouse or the children, change the name(s) of the parties, and, if you have children, enter a parenting plan and order child support for the children.<sup>3</sup>

However, there are some situations in which the court has the power to end your marriage, but cannot grant other relief that you might want. Whether the court will give you the relief that you want depends upon whether the court has *jurisdiction* over the responding spouse, and whether the court has jurisdiction over your children. If Washington does not have jurisdiction over your spouse, or it does not have jurisdiction over your children, you may still file a marital dissolution in Washington. However, there will be limits on what the court has the power to order in the dissolution, which are described below.

### ***How is a Marital Dissolution Different from a Legal Separation?***

In a legal separation, the court may grant all of the relief that is available in a marital dissolution but the court does not actually end the marriage (in other words, the couple is not divorced at the end). Sometimes persons will choose to file for a legal separation instead of a divorce because they do not want to end the marriage, but they want the other relief (such as a parenting plan, or property and debt division) that is available through a formal legal separation. This may be the case, for example, where a person’s religious beliefs discourage him from filing for dissolution. We do not have a publication that tells you how to file a petition for legal separation; however, the procedures are very similar and require use of the same forms. For more information on how to file a petition for legal separation, consult your local Family Law Facilitator (if your county has one) or court clerk.

There are a few important facts about legal separation that you should keep in mind if you are thinking about filing one:

- You do not need to file a petition for legal separation before filing for marital dissolution. If you want to make sure that you are not responsible for debts your spouse may create after one of you moves out of the house, you should file a marital dissolution and a motion for temporary orders.
- If you file a petition for legal separation, but your spouse files a counter-petition asking for a marital dissolution, the court will probably enter a marital dissolution. This is because only one spouse must show that there are *irreconcilable differences* between the spouses in order to get a dissolution.

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<sup>3</sup> [RCW 26.09.050\(1\)](#).

- If you file a legal separation, but you later change your mind and want a marital dissolution, you will need to file and serve a new petition for dissolution (unless your spouse has cross-petitioned for a dissolution).<sup>4</sup>
- If the court enters a legal separation decree, the legal separation can be easily changed to a marital dissolution. Keep in mind that, once the court enters a decree of legal separation, your spouse can turn it into a divorce without your consent. Any time after six months have passed after entry of the decree of legal separation, either spouse may file a motion with the court to change the decree of legal separation to a decree of dissolution. The court must grant the request.<sup>5</sup> All of the other parts of your legal separation orders (such as the parenting plan and order of child support) will not be affected and will stay in effect.

### ***May I Get an Annulment Instead of a Divorce?***

There is no legal action called an “annulment” in Washington.<sup>6</sup> There is a little-used action called a petition for a *declaration of invalidity*, which is like an annulment in that it declares that the marriage was void (could not legally exist) from the day it started. There are very limited circumstances in which you can have your marriage declared invalid. The court can declare a marriage invalid if it decides that the parties should never have been married because:

- 1) one or both parties were underage (under 17);
- 2) lack of required parental or court approval for persons under age 18;
- 3) one or both parties was already married when the marriage took place;
- 4) the parties are too closely related by blood;
- 5) one spouse *lacked capacity* to consent to the marriage (could not give consent), either because of mental incapacity or because of the influence of alcohol or drugs;
- 6) a party was induced to enter into the marriage by force or duress, or by fraud involving the essentials of marriage.

Even if the court finds one of the six factors, the court will declare the marriage valid unless the petitioner also proves that the parties have not “ratified” their marriage (showed that they wanted to continue the marriage) by voluntarily continuing to live together as husband and wife after turning 18, or after having the ability to consent, or after the force or duress stopped or the fraud was discovered.<sup>7</sup> In addition, only the spouse who was the victim of force or fraud may petition for a declaration of invalidity.<sup>8</sup>

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<sup>4</sup> *In re Marriage of Markowski*, 50 Wn. App. 633, 749 P.2d 754 (1988).

<sup>5</sup> [RCW 26.09.150](#).

<sup>6</sup> Some religions have a procedure for annulment of a marriage under that religion’s rules. However, a religious annulment does not legally annul or end your marriage.

<sup>7</sup> [RCW 26.09.040\(4\)](#).

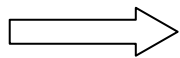
<sup>8</sup> *Saville v. Saville*, 44 Wn.2d 793, 271 P.2d 432 (1954).

☀ If you would like to file a petition for a declaration of invalidity, or you have been served with such a petition, you should talk with an attorney.

## Section 2: Where Should I File My Divorce?

### *May I File a Marital Dissolution in Washington?*

You may be surprised to learn that you and your spouse do not both have to live in Washington in order for you to be able to file for marital dissolution in Washington.



You may file a marital dissolution in Washington IF:

- You live in Washington; **OR**
- Your spouse lives in Washington; **OR**
- You are a member of the armed forces stationed in Washington; **OR**
- Your spouse is a member of the armed forces stationed in Washington

#### **AND**

your spouse will continue to be stationed in Washington for at least ninety (90) days following the date that you file and serve the marital dissolution.<sup>9</sup>

### *What If One Spouse Has Never Lived in Washington?*

In order for the Washington court to make certain types of orders, Washington must have *personal jurisdiction* over the responding spouse (the one who did not file the dissolution). Washington generally will have jurisdiction over the respondent if:

1. The respondent lives in Washington;
2. The respondent lived in Washington at some point during your marriage;
3. One of your children was conceived in Washington;<sup>10</sup>
4. You (the petitioner) have continued to live, or be stationed in the armed forces, in Washington.

If you are the responding spouse and you have never lived in Washington, Washington will not have personal jurisdiction over you unless you do something to give Washington jurisdiction over you. If Washington does not have personal jurisdiction over the responding spouse, the Washington

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<sup>9</sup> [RCW 26.09.030](#). Although the text of RCW 26.09.030 does not state that your spouse must be stationed in Washington for 90 days after the divorce is filed, if you live outside of Washington and you are filing a marital dissolution in Washington, your divorce may not be recognized by other states if you do not make sure that your spouse is a Washington resident or is stationed in Washington for at least 90 days after you file and serve your divorce. *Marriage of Ways*, 85 Wn.2d 693, 702-03, 538 P.2d 1225 (1975). If you do not live in Washington and you want to divorce your spouse who is in the military, it is best to talk to an attorney for advice.

<sup>10</sup> [RCW 4.28.185\(1\)](#).

court cannot order that spouse to pay maintenance or child support or any debts, or divide any property that is not physically in Washington.<sup>11</sup>

However, the petitioning spouse may still be able to obtain a divorce even if custody and property issues will not be heard because of lack of personal jurisdiction over the responding spouse. And, if Washington has jurisdiction over your children (see below), the court can enter a parenting plan even if Washington does not have personal jurisdiction over your spouse.<sup>12</sup>

☼ If you believe that Washington does not have jurisdiction over you, you must make that claim in writing to the court before you file anything else (such as a response) with the court in Washington. **If you do not challenge jurisdiction right away, you can waive (give up) your right to say that Washington does not have jurisdiction over you.**

You may agree to Washington having jurisdiction over you if you would like to do so.

### ***What if I Cannot Find My Spouse?***

If you are not able to locate your spouse, you may still be able to file a marital dissolution and serve your spouse by *publication*. If you serve your spouse by publication, you may ask the court to end your marriage, divide any property and debts that are located in Washington, and (if Washington has jurisdiction over your children) enter a parenting plan. You should think carefully before relying on service by publication, however. First, if you serve your spouse by publication, you must follow the rules for service very carefully – if you do not, your court orders could be set aside years later. Second, service by publication does not give the court personal jurisdiction over your spouse unless you can prove that your spouse is hiding either inside or outside Washington in order to avoid being served or to avoid paying debts.<sup>13</sup> If the court does not have personal jurisdiction over your spouse, you will not be able to ask the court to set child support, order maintenance, or enter restraining orders.

### ***What if My Spouse is a Native American who lives on an Indian Reservation?***

If your spouse is a Native American who is living on reservation land (even if it is not your spouse's tribe of origin), you may be required to file your dissolution in tribal court.<sup>14</sup> You should consult an attorney who has expertise in Indian law to find out where you should file.

### ***What Should I Do if I Have Been Served with a Dissolution and I Don't Think My Case Should be in Washington?***

If you think that the Washington court should not have jurisdiction over you, over the children, over the property, and/or over the marriage, you must argue about jurisdiction BEFORE you file anything else in the case. You should see an attorney for advice if you can. If you cannot afford one, you must be very careful not to do anything that could give Washington jurisdiction over

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<sup>11</sup> *Marriage of Peck*, 82 Wn. App. 809, 920 P.2d 236 (1996); *Vanderbilt v. Vanderbilt*, 354 U.S. 416, 1 L.Ed.2d 1456, 77 S. Ct. 1360 (1957).

<sup>12</sup> [RCW 26.27.061](#).

<sup>13</sup> *In re Marriage of Powell*, 84 Wn. App. 432, 436 (1996).

<sup>14</sup> 25 USCA §1322; [RCW 37.12.010](#).

you, such as filing a response, signing agreed orders, or asking the court to grant relief to you (other than dismissing the case).

If you do not tell the court that you do not think Washington has personal jurisdiction over you right at the beginning, you are likely to lose your chance to object.<sup>15</sup> Although you may object to jurisdiction over your children at any time, it is best to do it early in the case.<sup>16</sup>

If possible, you should write to the court before you have a hearing and tell the court why you believe that Washington does not have jurisdiction over you. You may also file a motion to dismiss for lack of jurisdiction. For more information on filing a motion to dismiss for lack of jurisdiction, talk with an attorney or see your Family Law Facilitator.

If you already have a hearing scheduled, and you cannot write to the court before the hearing, go to the hearing in person (or you may be able to participate in the hearing by telephone by calling the court and arranging it in advance). Tell the judge why you think there is no jurisdiction over your case. If the judge decides in your favor, then the case should be dismissed to the extent that the Washington court has no jurisdiction over the case. If the judge does not rule in your favor, then you will need to be prepared to respond to the marital dissolution in Washington.

☀ If you are going to a hearing to tell the judge that you do not think Washington has jurisdiction, you should still prepare a response to the motion or petition *before* the hearing. Do not file the response, but bring it with you to the hearing. If the judge decides that Washington has jurisdiction, you should then ask the judge to read your response.

### ***In Which County Should My Dissolution be Filed?***

You may file a petition for dissolution of marriage in the county where you live, or in the county where the respondent lives.<sup>17</sup> If the case is filed in the county where one spouse lives, and the other spouse wants to move the case to the county where she lives, the court may (but is not required to) change venue.<sup>18</sup> See the publication entitled “Filing a Motion for Change of Venue in a Dissolution of Marriage (Divorce) at our website [www.washingtonlawhelp.org](http://www.washingtonlawhelp.org). You should also consult the county Family Law Facilitator or court clerk to see if a local publication is available or consult a private attorney (low-income persons who live outside King County may call CLEAR at 1-888-201-1014).

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<sup>15</sup> [Civil Rule \(CR\) 12\(b\), \(g\), \(h\)](#); *Sherrer v. Sherrer*, 334 U.S. 343, 92 L. Ed. 1429, 68 S. Ct. 1087 (1948).

<sup>16</sup> [CR 12\(h\)\(3\)](#). Whether Washington has jurisdiction over your children (also called subject matter jurisdiction) is determined by the UCCJEA, [RCW 26.27](#) et. Seq.

<sup>17</sup> [RCW 26.09.010\(2\)](#).

<sup>18</sup> [RCW 4.12.030](#).

☀ **A Note on Filing in a County Where Neither Spouse Lives:** Some private services that prepare marital dissolution papers for a fee advise people to file their dissolution in a county in which neither person lives. One county in which dissolutions are commonly filed by non-residents is Lincoln County. However, you should think very carefully before filing in a county where neither you nor your spouse lives. If one spouse files a dissolution in a county where neither spouse lives, the responding spouse has the legal right to move the case to the proper county and the court should grant a change of venue – thus, it can just mean more paperwork and responding to motions for you.<sup>19</sup> Further, there are practical problems with filing in a county where you do not live. If you need to make a motion in your case, or you end up having a trial, or you need to get copies of your court papers later, you may have difficulty doing this if you have filed in a county that is far from where you live. If you want to modify the final court order at a later time, it will be much more difficult. Finally, if your spouse does not file a response to your petition, you may have difficulty getting a default order against your spouse – and if you do get a default order, you may be ordered to pay your spouse’s attorney’s fees and costs if your spouse asks the court to vacate (cancel) the order later.<sup>20</sup> **We recommend that you file your dissolution in the county where you live, or the county where your spouse lives. If you cannot afford the dissolution filing fee in your county, you may make a motion to the court to ask that the fee be waived.**

### *What if the Children Have Not Always Lived in Washington?*

Before you file for dissolution in Washington, you should find out whether Washington has jurisdiction over your children. If Washington does not have jurisdiction over your children, you may not ask for a parenting plan or custody order in Washington.<sup>21</sup> You may need to file a divorce in another state.

- **If your children have always lived in Washington and no other state has entered a custody order regarding your children, then Washington has jurisdiction over your children.** You may skip to Section 3.
- **If your children have not always lived in Washington,** you should make sure that Washington has jurisdiction over them before you file a dissolution petition if you want to have custody issues resolved in Washington. The following are some basic guidelines that may help you decide if Washington has jurisdiction over your children. However, jurisdiction is complicated: **if you have questions about whether Washington has jurisdiction over your children, you should talk with an attorney.**

<sup>19</sup> *Schroeder v. Schroeder*, 74 Wn.2d 853, 447 P.2d 604 (1968).

<sup>20</sup> [Civil Rule \(CR\) 55\(a\)\(4\)](#) states: A default **shall not** be entered if it clearly appears to the court from the papers on file that the action was brought in an improper county. *See also* CR 55(c)(2).

<sup>21</sup> The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), [RCW 26.27](#) et seq., and the Parental Kidnapping Prevention Act (PKPA), 28 U.S.C. §1738A, determine whether Washington has jurisdiction over your children.

**1. If you already have a court order about custody of the children,** and one of the parties to that case or the children still live in the state that entered the court order, that state will continue to have jurisdiction over the children and you will need to file a custody action there (this is called *continuing jurisdiction*).<sup>22</sup> If another state has *continuing jurisdiction* over your children, you may still file a dissolution in Washington, but Washington will not be able to grant you a parenting plan or custody order. If Washington has continuing jurisdiction over your children, you may get a parenting plan in Washington.

**2. If no court has ever entered an order about custody of your children, Washington has jurisdiction over your children if:**

- a. Your children have lived in Washington with a parent or a person acting as a parent for at least six consecutive months (six months in a row) before your marital dissolution is filed – Washington is your child’s *home state*;

OR

- b. Your child is less than six months old and has lived in Washington with a parent or a person acting as a parent since birth at the time your marital dissolution is filed – Washington is your child’s *home state*.

OR

- c. Washington was your child’s *home state* (either a. or b. were true) within six months before your marital dissolution is filed and one parent or person acting as a parent has continued to live in Washington since the child left the state.

**3. If Washington does not have *continuing jurisdiction* (under 1. above) or *home state jurisdiction* (2. above) over your children, you may still be able to obtain a parenting plan or custody order in Washington. However, you will either need to show that there is an emergency (see paragraph 4 below), or that no other state is the children’s *home state* (meets the requirements of 2.a., 2.b., or 2.c. above).<sup>23</sup>**

If another state is your children’s home state, or was your children’s home state within the last six months, then Washington probably will not have jurisdiction over your children until they have lived in Washington for six consecutive months.

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<sup>22</sup> [RCW 26.27.211](#).

<sup>23</sup> [RCW 26.27.201](#); [RCW 26.27.021](#).

☀ You cannot give Washington jurisdiction to decide custody of your children by agreement.<sup>24</sup> If Washington does not have jurisdiction over your children under the UCCJEA, then you will need to file a court case asking for custody in the state that has jurisdiction over the children or you will need to ask the other state to decline and allow Washington to take jurisdiction. If you want to ask another state to decline jurisdiction, you should talk with an attorney.

**4. Emergency jurisdiction:** In certain limited cases in which an emergency exists that requires a court to enter orders to protect your children from abuse, Washington may be able to take *emergency jurisdiction* over the children.<sup>25</sup> However, emergency jurisdiction usually is temporary, and Washington's orders typically will last only until someone files a legal case in the state that is the children's home state, or the home state declines. Your children must actually be in the state of Washington at the time you file your petition for Washington to take emergency jurisdiction.

☀ If Washington takes emergency jurisdiction over your children and you want custody of your children to be decided by the children's home state, you must act as quickly as possible to file a custody action in the children's home state and have the Washington court communicate with the other state. If you wait too long, and Washington becomes the children's home state, the other state can lose jurisdiction to Washington.<sup>26</sup>

Again, jurisdiction is very complicated. If you have any questions about whether Washington has jurisdiction over your children, you should talk with an attorney as soon as possible; if you are low-income and live outside King County, you may call CLEAR at 1-888-201-1014.

### **Section 3: How Long Will a Divorce Take?**

You must wait at least 90 days after you filed the petition for marital dissolution and you have served it on your spouse before you may enter final orders.<sup>27</sup> However, marital dissolutions often take longer than 90 days. If your spouse responds and does not agree with everything in your petition, the amount of time that will pass until your case is finished will depend on your county and how complicated your case is. In some counties, such as King County, the court will give you the date for your trial at the beginning of the case. In most other counties, you will need to file a request that the court set a trial date after the other parent has filed a response. If you have children, and there are claims of domestic violence, child abuse, alcoholism or drug addiction or other things that could be dangerous to the children, or you have complicated property issues, your case could take much longer. You should expect that a marital dissolution will take four to eighteen months to complete.

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<sup>24</sup> *Campbell v. Campbell*, 180 Ind. App. 351, 388 N.E.2d 607 (1979).

<sup>25</sup> [RCW 26.27.231\(1\)](#).

<sup>26</sup> [RCW 26.27.231\(2\)](#).

<sup>27</sup> [RCW 26.09.030](#).

## Section 4: I Was Served with Divorce Papers. What Should I Do?

Read ALL of the documents you receive very carefully.

### 1. Find out What County Your Case is In.

Look at the papers you received. The papers should say “Superior Court of the State of Washington, County of \_\_\_\_\_” at the top. Make sure your case was filed in the right county. See Section 2 above.

### 2. Find Out Whether You have been Served with a Motion for Temporary Orders or Ex Parte Restraining Order/Order to Show Cause

Look carefully at the title of your papers (in the upper right section of the first page, under the case number).

- If the papers you got include forms called a *Summons*, and a *Petition for Dissolution of Marriage*, then you have a marital dissolution case. You will need our packet called *Responding to a Petition for Dissolution of Marriage*.
- If the papers you got include a *Notice for Hearing* or *Note for Calendar Motion* (or any other paper indicating that a court date has been scheduled) and a *Motion and Declaration for Temporary Orders*, then you have a Motion for Temporary Orders. You may receive both a Petition for Dissolution and a Motion for Temporary Orders. If you received a Motion for Temporary Orders, you will need our packet called *Responding to a Motion for Temporary or Emergency Orders*.
- If the papers you got include an *Ex Parte Restraining Order/Order to Show Cause*, then you have a Motion for an Ex Parte Restraining Order/Order to Show Cause. You may receive both a Petition for Dissolution and a Motion for an Ex Parte Restraining Order/Order to Show Cause. You will need our packet called *Responding to a Motion for Temporary or Emergency Orders*.

☀ An Ex Parte Restraining Order/Order to Show Cause is a court order which the other party got without providing notice to you. You must be careful to obey the Ex Parte Restraining Order until your court hearing.<sup>28</sup> At your hearing, the court will decide whether the ex parte restraining order will remain in effect.

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<sup>28</sup> You may file a Motion to Quash the Ex Parte Restraining Order before the hearing. In many cases, it will be difficult to do this without an attorney. You may want to respond to the Motion for an Ex Parte Restraining Order/Order to Show Cause and wait for your scheduled hearing to let the court decide whether the restraints in the order should stay in effect. If you want to file a motion to quash, talk with an attorney.

### **3. *Remember that It is Important to Respond on Time!***

When you are served with legal papers, it is very important to take steps right away to figure out how to respond. In many cases, if you do not respond on time, the other party will automatically win what they are requesting. **For a motion, you may have as few as four business days after you receive the papers to file your response.** It may take time to locate legal resources, and to read through this packet. Please keep in mind that you should do this as soon as possible after you receive the papers. If you cannot respond in time, you will need to file a *Notice of Appearance* and ask for a *continuance* (explained below).

### **4. *Talk with an Attorney***

**Even if you cannot afford to hire an attorney to file your case, you should talk at least once with an attorney to get advice about your situation.** If your income is very low, and you do not live in King County, you may call CLEAR at 1-888-201-1014. If you live in King County, you may call the King County Bar Association for referrals to low or no-cost legal advice clinics for family law cases.

### **5. *Get the Do-it-Yourself Packets That You Need***

See Section 9 below.

## **Section 5: What If I Need A Court Order Sooner Than 90 Days?**

In many cases, you may want the court to enter orders before you get your final dissolution decree and other orders. You may want to request *temporary orders* – court orders that are entered very quickly and last until trial or the end of your dissolution case.

For example, you might want to ask for temporary orders if you want the court to enter a parenting plan before trial that says which parent the children will live with and how much time they will spend with the other parent. For another example, you might also want to get a court order before trial that will make it clear that you are not responsible for debts that your spouse creates, or that would prevent your spouse from cleaning out the bank accounts or selling things. You may do this through a *Motion for Temporary Orders* or, in emergency situations, through a *Motion for an Ex Parte Restraining Order/Order to Show Cause*.

### ***What is a Temporary Order?***

A temporary order is a court order that gives you certain rights and/or protections before your dissolution is finished. You may request a temporary order at any time between when you file your Summons and Petition for Dissolution and the day your divorce is final. To get a temporary order, you must file a Motion for Temporary Orders and give your spouse notice and a chance to respond to your motion. You will have a hearing within about a week to three weeks at which the judge will decide whether to grant what you asked for in your motion. The amount of notice you must give your spouse before a hearing varies from county to county. You should consult with the court clerk or Family Law Facilitator for information about your county's notice requirements.

### ***Do I Need a Temporary Order?***

To decide if you need a temporary order, think about the following things:

- Are you happy with the way things are going right now without the temporary order? Do you need to ask the court for help to order your spouse to do something (or to stop doing something)?
- You may ask the court to order many types of things in a temporary order, including:
  - A parenting plan that says how much time the children will spend with each parent until the divorce is finished; [Until you have a court order, each parent has an equal right to custody of the children. A parenting plan can also give you scheduled visitation with the children if you are being denied visitation. In determining a temporary parenting plan, the court should consider the relative strength, nature, and stability of the child's relationship with each parent and which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending in addition to the factor used to determine the provisions of a permanent parenting plan.<sup>29</sup> (See Section 7 below.)]
  - Restraining orders that order one spouse not to harass or come near the other one;
  - Restraining orders that order a parent not to take the children out of state;
  - Restraining orders that order your spouse not to give away or sell property, or take out loans in both your names, or take your name off insurance policies;
  - Orders for temporary child support, maintenance (spousal support), attorney's fees, or use of your property, such as the house or car;
  - Order that one spouse can live in the house and the other cannot;
  - Appointment of a guardian ad litem (GAL) or parenting evaluator to do an investigation and make recommendations to the court about which parent the children should live with and whether a parent poses a risk to the children.

### ***Do I Need an Emergency Order?***

If there is an emergency, you may need protection from the courts right away. An *Ex Parte Restraining Order/Order to Show Cause* takes effect right away, and is often entered without any prior notice to your spouse. (Your spouse will later have a chance to have a hearing at which the judge will decide whether the order will continue). You may need an emergency order if you cannot wait a week to three weeks for a hearing to get help from the court. This happens, for example, when your spouse is harassing or harming you, has harmed the children or is a danger to them, has threatened to take the children, or is taking large amounts of money out of your accounts or is selling or hiding property. If you file a Motion for an Ex Parte Restraining Order, you do not need to file a Motion for Temporary Orders since the same types of orders are available.

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<sup>29</sup> [RCW 26.09.197](#).

### ***What if I Want to Change my Temporary Order?***

Unlike a final Decree of Dissolution, a Temporary Order may be changed at any time before your divorce is final.<sup>30</sup> To change a temporary order, you will need to file another Motion for Temporary Orders.

### ***What if Your Spouse Has Hurt You or the Children?***

If you are afraid that your spouse may injure or threaten you or your children, the court can issue special orders to help protect you and your children from harm. If you have been a victim of domestic violence,<sup>31</sup> or have been threatened with injury, you should consider asking the court to award you a Domestic Violence Protection Order. Often it is a good idea to do this before you file for divorce, but you may request a Protection Order after you file a marital dissolution. You may also ask that a permanent protection order be entered as part of the final orders in the divorce.

A Domestic Violence Protection Order can:

- Give care of children to one parent;
- Set up a schedule of time children will have with your spouse (or stop your spouse from seeing the children);
- Keep a person out of the family home and away from your home, work or school;
- Order a person not to threaten, assault, harass or stalk another; and
- Order a person to attend treatment for domestic violence and/or alcohol/drug treatment.

For more information about getting a Protection Order, contact your court's protection order advocates, your local domestic violence program, or call the 24-hour statewide domestic violence hotline at 1-800-562-6025.

### ***What is a Guardian ad Litem and a Parenting Evaluator?***

One of the many things you may ask the court for in a Motion for Temporary Orders is to appoint someone to make a recommendation to the court about parenting arrangements. We are including some information about GALs and parenting evaluators in this packet, but for more detailed information you should get our separate packets, *How to Request a GAL in Custody Cases* and *Working with GALs and Parenting Evaluators: 20 Tips for Parents in Family Law Cases*.

Generally, a GAL or parenting evaluator is appointed to make recommendations about what parenting plan would be in the best interests of your child. A GAL is not appointed to just tell the court what your child wants but, rather, to investigate the parenting history and abilities of all the

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<sup>30</sup> [RCW 26.09.060\(10\)\(b\)](#).

<sup>31</sup> Domestic violence refers to acts of violence or threats of harm by one spouse toward the other spouse or their children. [RCW 26.50.010\(1\)](#). If you or your children have been injured or threatened with bodily injury by your spouse, you may be a victim of domestic violence.

parties, the situation of the child, and then to make a recommendation to the court about what type of custody and visitation would be in the children's best interests. The main difference between a parenting evaluator and a GAL is that a GAL is a party to the case (who must get notice of all court hearings) and a parenting evaluator is not.

In some counties, the GAL or parenting evaluator will be a privately employed person who charges by the hour for his or her time. The parties usually share the fees for a GAL. If you cannot afford to pay for a private GAL, you may be able to ask the court if your county has a volunteer family law GAL program called Court Appointed Special Advocates (or a CASA) who can be appointed for free. Or, your county may have a Family Court Services office which employs social workers to act as parenting evaluators in family law cases on a sliding scale or low fee.

You may want to ask the court to appoint a GAL or parenting evaluator if there has been any physical or sexual abuse of you or the children, if one of the parents is seriously mentally ill, or if one of the parents has an alcohol or drug addiction. The court may also decide to appoint a GAL or parenting evaluator in your case even if you do not ask for one.

## **Section 6: How Does The Court Decide Who Gets The House (And Other Property) And Who Pays The Debts?**

In a dissolution, each spouse must tell the court about all of his or her property and debts – separate and community. The court must divide all of the spouses' property and debts in the Decree of Dissolution. Washington is a *community property* state. Generally, in Washington, all property that either spouse gets during the marriage is community property and belongs to both spouses.<sup>32</sup> If property, such as a house, other real estate or a car, is purchased during the marriage, the property is probably community property even if only one spouse is on the title.<sup>33</sup> Each spouse's earnings, any pension benefits accrued, and any 401(k) contributions made during the marriage are community property.

*Separate property* (which belongs to only one spouse) generally is property that the spouse got before the marriage, or which was given to that person by inheritance or gift (whether before or during the marriage), or which the spouse got after separation.<sup>34</sup> (However, if you lived together in a stable relationship before your marriage, the property and earnings that you had during the time that you lived together may also be considered community property).<sup>35</sup>

Generally, all debts created by either spouse during the marriage are community debts, which both spouses are equally responsible for paying. Separate debts are those that are made before the marriage or after the date of separation.

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<sup>32</sup> [RCW 26.16.030](#); *Yesler v. Hochstetter*, 4 Wn. 349, 30 P. 398 (1892).

<sup>33</sup> *Huling v. Vaux*, 18 Wn. App. 222, 566 P.2d 1271 (1977).

<sup>34</sup> *Jacobs v. Hoitt*, 119 Wn. 283, 205 P. 414 (1922); *Walker v. Fowler*, 155 Wn. 631, 285 P. 649 (1930); RCW 26.16.140.

<sup>35</sup> *See, In re Marriage of Lindsey*, 101 Wn.2d 299, 678 P.2d 328 (1984); *In re Marriage of DeHollander*, 53 Wn. App. 695, 770 P.2d 638 (1989), *but see, In re Marriage of Pennington*, 142 Wn.2d 592, 14 P.3d 764 (2000) (court determined that facts did not support a finding that a meretricious relationship existed). The court may also consider contributions you both made toward your spouse's separate property while you were living together as community contributions. *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 855 P.2d 1210 (1993).

The law about division of community and separate property in marital dissolutions can be very complicated. It is not possible to provide all of the information you might want about property and debts in this information packet. This section will attempt to give general answers to frequently asked questions about property and debts; however, you should consult an attorney about your specific case.

### ***When We Divorce, Will the Court Divide all of our Property and Debts 50/50?***

The court is not required to award one spouse's separate property to that spouse, or to divide the community property 50/50.<sup>36</sup> **The court can make any division of property and debts that is *just and equitable***, after considering:

- The nature and extent<sup>37</sup> of the community property;
- The nature and extent of the separate property;
- The duration of the marriage; and
- The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse with whom the children reside the majority of the time.<sup>38</sup>

### ***How Does the Court Decide What is a Just and Equitable Division of Property and Debts?***

How much property the court awards to each spouse, and who is ordered to pay what debts, will depend on a number of factors. If you have children, the main factor the court will consider will be which parent the children will live with the majority of the time because the court will want to provide for the children. In addition to ordering payment of child support, the court is likely to order that the parent with whom the children will be living should continue to live in the family home if that is financially possible. The court may award more property and fewer debts to the primary residential parent, particularly if the other parent is not going to be able to pay much child support for some reason.

A second factor the court will consider (which will be the main factor if you do not have children) is in what type of financial condition the division of property and debts will leave each spouse after divorce.<sup>39</sup> The court generally will not want to leave one spouse extremely wealthy and the other poor.<sup>40</sup> The court will consider issues such as each party's age, health, education, and prospects for employment. Thus, for example, in a long-term marriage in which one spouse has not worked much outside the home, the court is more likely to award that spouse more of the community

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<sup>36</sup> See, for example, *In re Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462, review denied, 122 Wn.2d 1021, 863 P.2d 1353 (1993).

<sup>37</sup> The nature of the property means what type of property it is (real estate, cars, household items, etc). The extent means how much property there is or how much it is worth.

<sup>38</sup> [RCW 26.09.080](#).

<sup>39</sup> See, e.g., *In re Marriage of Mathews*, 70 Wn. App. 116, 853 P.2d 462, review denied, 122 Wn.2d 1021, 863 P.2d 1353 (1993).

<sup>40</sup> However, if the marriage is very short (less than five years), and there are no children, the court may decide to return the parties to the financial condition they had before the marriage, even if that means that one spouse ends up much better off.

property (or long-term maintenance) to make sure that spouse does not end up much poorer than the other spouse.<sup>41</sup> Or, if one spouse is disabled and will not be able to work, the court may award the disabled spouse more of the community property.<sup>42</sup> Likewise, the court may consider which spouse will be able to afford to pay the debts after dissolution when deciding who must pay them.<sup>43</sup>

In most cases, the court will award each spouse his or her separate property and order each spouse to pay his or her separate debts. The court will award one spouse's separate property or separate debts to the other spouse only in very unusual circumstances.<sup>44</sup>

### ***What if I have a Prenuptial Contract or Community Property Agreement?***

Some people sign a written agreement before they marry that states how the parties' property and debts will be divided if they should divorce. This is often known as a prenuptial or antenuptial agreement. Other people sign an agreement during the marriage regarding their property, which states which property is community and what is separate. This is known as a Community Property Agreement. These are sometimes completed as part of an estate plan. Still others may sign an agreement after they separate that divides property and debts – an agreement known as a Property Settlement Agreement or Separation Contract. If you believe that you have any type of written agreement regarding your property and debts, you should get a copy of it and have an attorney review it. This type of contract or agreement may (but does not always) determine how the court will divide property and debts in your particular case.

### ***I Bought our Car and Most Other Property with My Income, so Shouldn't the Court Award the Car and other Property to Me?***

Not necessarily. If your car and other property was purchased with money earned during the marriage, it is community property. Each spouse's income during the marriage is community property, so anything that you buy with either spouse's income belongs to both of you. It does not matter whose paycheck was used.<sup>45</sup> The court will divide the car and other property according to what the court decides is just and equitable overall.

### ***My Spouse Owned our House before our Marriage, but We Both Paid the Mortgage. Shouldn't I get Part of the House?***

Maybe. The court may award you an interest in the house (sometimes called an equitable lien), depending upon a number of factors. Because your spouse bought the house before your marriage, the house is your spouse's separate property. Therefore, the house remains separate, even after you marry (unless the house is given as a gift to the community, such as could happen if it is refinanced in both spouse's names). You may be entitled to an interest in the increase in any value due to improvements (such as a remodel or new deck) to the house, plus the community payments toward the mortgage. However, your community interest would be reduced by the reasonable rental value of the house because you had the benefit of living there during the marriage. Thus, in some cases,

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<sup>41</sup> See, e.g., *In re Marriage of Donovan*, 25 Wn. App. 691, 696-97, 612 P.2d 387 (1980).

<sup>42</sup> See, e.g., *Oestreich v. Oestreich*, 2 Wn.2d 72, 97 P.2d 655 (1939); *Shay v. Shay*, 33 Wn.2d 408, 205 P.2d 901 (1949).

<sup>43</sup> See *In re Marriage of Steadman*, 63 Wn. App. 523, 821 P.2d 59 (1991).

<sup>44</sup> *Matter of Marriage of Olivares*, 69 Wn. App. 324, 848 P.2d 1281, review denied, 122 Wn.2d 1009, 863 P.2d 72 (1993).

<sup>45</sup> See, *In re Marriage of DeHollander*, 53 Wn. App. 695, 770 P.2d 638 (1989).

the court could rule that you have no community interest in the house because your community contributions were offset by the value you got from living there.<sup>46</sup> This issue is complicated -- you should consult an attorney about your specific case.

***I Think We Need to Sell Our House, But My Spouse Disagrees. Can the Court Order us to Sell the House?***

Yes, the court has the power to order that your house should be sold even if one spouse objects.<sup>47</sup> The court is most likely to do this if a sale of the home is necessary to enable the court to divide the property equitably or if the parties are behind on payments.

***Is it True that I Have No Right to My Husband's Pension because He Earned it?***

Not necessarily. Retirement or pension benefits, including 401(k) plans that are earned during the marriage, are community property in which both spouses have a legal interest. If a pension was earned both before and during the marriage, the portion of the pension earned during the marriage (and the increase in value of that portion) is community property.<sup>48</sup> Some disability benefits that substitute for pension benefits may also be community property in which both spouses have an interest.<sup>49</sup> **If you believe that your spouse has a pension (including a military pension), 401(k), IRA, or other retirement or disability plan, you should talk with an attorney about what rights you may have to the pension.** You may be able to get an order entered, called a Qualified Domestic Relations Order (QDRO), under which your spouse's pension plan will pay benefits directly to you after your spouse retires. The Pension Rights Center publishes a very good book called *Your Pension Rights at Divorce: What Women Need to Know*, which you may want to buy. You can find out more at their website, <http://www.pensionrights.org/pages/publications.html> or you may call them at (202) 296-3776.

***My Spouse Had an Affair that Caused our Divorce. Since the Divorce is My Spouse's Fault, Shouldn't the Court Give Me More of the Property?***

No. Because Washington has "no fault" divorce, the court may not consider which spouse "caused" the dissolution when deciding how to divide the property. However, the court may consider the conduct of the other spouse if that spouse wasted assets from the marriage without the other spouse's consent, or if that spouse tried to hide assets from the court.<sup>50</sup>

***Since I'm Not Working Right Now, Will the Court Order my Spouse to Pay Me Alimony?***

Maybe. Maintenance, or alimony, is a payment that one spouse makes to the other to provide financial support. Maintenance is not automatically awarded to either spouse. The court looks at several factors in deciding whether a spouse should get maintenance, including:

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<sup>46</sup> See, e.g., *Marriage of Miracle*, 101 Wn.2d 137, 675 P.2d 1229 (1984), declined to extend by *In re Marriage of Marshall*, 86 Wn. App. 878, 940 P.2d 283 (1997) (the court would not extend an equitable lien on the separate property interest of either party).

<sup>47</sup> *In re Marriage of Foley*, 84 Wn. App. 839, 930 P.2d 929 (1997).

<sup>48</sup> See, e.g., *In re Marriage of Killmer*, 73 Wn. App. 373, 870 P.2d 978, review denied, 124 Wn.2d 1022, 881 P.2d 253 (1994).

<sup>49</sup> See, e.g., *Matter of Marriage of Leland*, 69 Wn.App. 57, 847 P.2d 518, review denied, 121 Wn.2d 1033, 856 P.2d 383 (1993).

<sup>50</sup> See, e.g., *In re Marriage of Nicholson*, 17 Wn. App. 110, 561 P.2d 1116 (1977); but see, *In re Marriage of Williams*, 84 Wn. App. 263, 927 P.2d 679, review denied, 131 Wn.2d 1025, 937 P.2d 1102 (1996) (court held that wife's gambling debts, which were offset by her extra earnings, did not constitute wasting of marital assets).

- length of the marriage;
- financial situation of both spouses given the division of property and debts, and the other spouse's ability to pay maintenance;
- time it will take for the spouse asking for maintenance to get education or training;
- standard of living during the marriage; and
- age and health of the spouse asking for maintenance.<sup>51</sup>

If you have been unemployed for a long time (such as may be the case if you stayed home to care for the children), the court may be more likely to award you maintenance than if you have been laid off temporarily. On the other hand, even if the spouse seeking maintenance is capable of working (or is working to support him or herself), the court may still award maintenance to that spouse if awarding maintenance will help that spouse enjoy the standard of living that was usual during the marriage. The court uses maintenance “not just as a means of providing bare necessities, but rather a flexible tool by which the parties’ standard of living may be equalized for an appropriate period of time.”<sup>52</sup> Long term or permanent maintenance is more likely to be ordered after long marriages and if one spouse is disabled and/or stayed home to care for the children while the other worked and is therefore less likely to be able to get a well-paying job.<sup>53</sup> Unless the Decree of Dissolution states otherwise, maintenance payments end when the person receiving the payments remarries or dies.<sup>54</sup> Again, whether or not maintenance will be awarded in your case is a complicated issue. If you have questions, you should talk with an attorney if possible.

### ***Important Information About Marital Debts***

**You may end up paying a debt even if your spouse was ordered to pay it.** As part of the final Decree of Dissolution, the court will order one or both spouses to pay any debts that the parties owe. This includes your mortgage, any car loans, credit card debts, utility bills, back taxes, etc. Even if the court orders your spouse to pay a particular debt, the creditor (person to whom the debt is owed) may still come after you to collect any community debts. You will not be able to stop the creditor from collecting from you by telling that person that your spouse is supposed to pay. If your spouse fails to pay the debt and you end up paying it, you will need to sue your spouse in court to force your spouse to pay you back. If you think that this might be a problem, you should make sure that you check the “hold harmless” provision in the Decree of Dissolution form (paragraph 3.6, second box). Then, if you must sue your spouse to force him or her to reimburse you for debts you paid, your spouse will be required to pay your attorney’s fees and costs as well.

**Your spouse may try to avoid paying marital debts by filing for bankruptcy.** If your spouse files for bankruptcy after your Decree of Dissolution is entered, the bankruptcy court may relieve your spouse of paying for those debts. If your spouse files for bankruptcy, you should get notice

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<sup>51</sup> [RCW 26.09.090\(1\)](#).

<sup>52</sup> *In re Marriage of Washburn*, 101 Wn.2d 168, 178, 677 P.2d 152 (1984).

<sup>53</sup> *See, e.g., In re Marriage of Morrow*, 53 Wn. App. 579, 770 P.2d 197 (1989).

<sup>54</sup> [RCW 26.09.170](#).

of it. You should immediately talk with an attorney who is familiar with bankruptcy law about your rights. You may need to participate in the bankruptcy case in order to protect yourself.

## **Section 7: Who will Get Custody of our Children?**

As part of your marital dissolution, the court will decide which parent the children will live with the majority of the time (or whether they will live with each parent half of the time), how much time the children will spend with the other parent, who will make decisions about the children's schooling, medical care and other issues, and how the parents will resolve disagreements about the children in the future. The court will do this in a court order called a *Parenting Plan*. In Washington, the courts generally prefer not to use the words *custody* and *visitation* when talking about how much time each parent spends with a child, but will talk about the *residential schedule* and *decision-making authority* for the children. The way in which the court makes decisions about your temporary and permanent parenting plan is complicated. This packet will try to give you an overview of the law, but you should talk with an attorney about your specific case if at all possible.

### ***Who Needs a Parenting Plan?***

If you and the other parent have one or more children together who are less than eighteen years old, you must fill out a parenting plan. If you were served with a petition and a parenting plan by the other parent and disagree with what the other parent is asking for, you need to file your own parenting plan so the court knows what you want. The court may enter a temporary parenting plan (that will cover the period while the dissolution is pending) and will enter a permanent parenting plan when your dissolution is finished.

### ***How Does the Parenting Plan Affect my Rights to See My Children?***

After a judge or court commissioner signs a parenting plan, it is a court order and both parents are required to follow it. If you don't follow the parenting plan, you could be found in contempt of court or even prosecuted for custodial interference unless you have a good excuse. A good excuse for not following an order would be if following it would cause serious harm to you or the child. And even in that situation, you cannot simply refuse to follow the court order; you must return to court to ask for a change in the order. Therefore, if you do not want to follow part of a parenting plan that has been ordered by the court, you should get the permission of the other parent in writing or you should contact an attorney. You should file an action to modify the parenting plan as soon as you can so that a new and more appropriate schedule is approved by the court. If you believe your child may be in danger, one option is to contact Child Protective Services, State of Washington Department of Social and Health Services (CPS).

### ***How Will the Court Decide Who the Children Should Live With?***

Under Washington law, there are several factors that the court must consider when deciding who your children should live with.

#### **Reasons that one parent's time with the children may be restricted**

The court must first consider whether there is a reason under RCW 26.09.191 that one parent's residential time with the children should be limited, or whether that parent should be prevented from having any contact with the children. In most cases, the court **must** limit a parent's residential time

with a child (and cannot order joint decision-making or alternative dispute resolution) if that parent, or a person who lives with that parent, has engaged in any of the following conduct:

1. Willful abandonment of the children that continues for a long time, or the parent substantially refuses to perform parenting functions (care for the children); OR
2. Physical, sexual or a pattern of emotional abuse of any child (whether it is your children or someone else's); OR
3. A history of acts of domestic violence<sup>55</sup> or an assault or sexual assault that causes serious bodily harm or the fear of such harm; OR
4. Has been convicted as an adult of one of a number of sex crimes, including rape of a child, child molestation, sexual misconduct with a minor, incest, or sexual exploitation of children, or has been found to be a sexual predator.<sup>56</sup>

In cases involving allegations of physical, sexual or emotional abuse or allegations of a history of domestic violence under (2) and (3) above, “both parties shall be screened to determine the appropriateness of a comprehensive assessment regarding the impact of the limiting factor on the child and the parties.”<sup>57</sup>

The court may choose to limit a parent's residential time (and order that there will be no joint decision-making or alternative dispute resolution) if the court finds any of the following:

- The parent neglected or substantially failed to provide care for the children; OR
- The parent has a long-term emotional or physical problem that interferes with his/her ability to parent the children; OR
- The parent has a long-term drug, alcohol or other substance abuse problem that interferes with the parent's ability to parent the children; OR
- There is no emotional bond between the parent and the child or that bond is seriously damaged; OR
- That parent has engaged in the abusive use of conflict which has created a danger of serious damage to the child's psychological development; OR
- The parent has denied the other parent contact with the child for a long time without a good reason; OR

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<sup>55</sup> Domestic violence is defined in [RCW 26.50.010\(1\)](#).

<sup>56</sup> [RCW 26.09.191](#).

<sup>57</sup> [RCW 26.09.021\(4\)](#).

- The court finds another reason that unrestricted contact with the parent would be bad for the child.<sup>58</sup>

### How will the court limit a parent’s residential time if the court finds a limiting factor under RCW 26.09.191?

If the court decides that a limiting factor applies to one or both parents, there are a variety of different restrictions the court may order. In most cases, the court will not allow the children to live the majority of the time with a parent to whom a limiting factor applies. In very serious cases, in which the court decides that no other limits will protect the child from harm, the court must order that the parent to whom the limiting factor applies may not have any contact with the child.<sup>59</sup> In particular, there are very specific and detailed rules that the court must follow if a parent or a person who lives with a parent has been convicted of a sex crime against children, or has been found to have molested or otherwise harmed children in a civil case such as a dependency (CPS case). There are only very limited cases in which that parent may again have unsupervised contact with his/her child or children. If you or the other parent in your case have been convicted of such a crime, you should talk with an attorney and read RCW 26.09.191 very carefully. This packet will not address all of the specific restrictions that apply to parents convicted of sex crimes or sexual abuse.

In the parenting plan, the court may order any restriction that would be “reasonably calculated to protect the child from the physical, sexual or emotional abuse or harm that could result if the child has contact with the parent requesting residential time.”<sup>60</sup> The restrictions may also be “reasonably calculated to provide for the safety of the parent who may be at risk of physical, sexual, or emotional abuse or harm that could result if the parent has contact with the parent requesting residential time.”<sup>61</sup> Some of the most common restrictions include requiring that parent to:

- See the children only when supervised by a professional supervisor or neutral third party;
- Complete domestic violence or substance abuse treatment;
- Submit to random drug or alcohol tests (often urinalysis or UAs);
- Complete a parenting class;
- Participate in mental health counseling or take any physician-prescribed medication for his/her mental health condition;
- Complete a sexual deviancy evaluation;
- Stop interfering with the other parent’s contact with the children;
- Stop creating conflict or getting into disputes with the other parent without a good reason.

### If none of the RCW 26.09.191 Limiting Factors applies, how will the court decide who the children will live with?

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<sup>58</sup> [RCW 26.09.191\(3\)](#)

<sup>59</sup> [RCW 26.09.191\(m\)\(i\)](#).

<sup>60</sup> [RCW 26.09.191\(m\)](#).

<sup>61</sup> [RCW 26.09.191\(m\)\(i\)](#).

If none of the limiting factors applies, [RCW 26.09.187](#) requires the court to consider a number of specific factors to decide on the residential schedule. The court's goal is to "encourage each parent to maintain a loving, stable and nurturing relationship with the child, consistent with each child's developmental level and the family's social and economic circumstances."<sup>62</sup> The most important factor that the court must consider is "the relative strength, nature and stability of the child's relationship with each parent."<sup>63</sup> The court will also consider:

- Agreements of the parents, if they were entered knowingly and voluntarily;
- Each parent's past and future potential for parenting the children, including whether a parent has taken greater responsibility for performing parenting functions relating to the daily needs of the child;
- The emotional needs and developmental level of each child;
- The child's relationship with brothers and sisters and other adults important to the child, as well as the child's involvement with school, the child's activities & community;
- The parents' wishes;
- The child's wishes if the child is mature enough to give his/her opinion (the court will usually not consider the child's wishes until the child is a teenager);
- Each parent's work schedule.<sup>64</sup>

The residential provisions may contain any reasonable terms or conditions that facilitate the orderly and meaningful exercise of residential time by a parent, including but not limited to requirements of reasonable notice when residential time will not occur.<sup>65</sup>

Note that the court should give little weight to factors such as which parent earns more money or is going to remarry. Also, the court should not draw any presumptions from the temporary parenting plan when determining the provisions of a permanent parenting plan.<sup>66</sup>

In Section 11, we have provided you with Yakima County Superior Court's suggested residential guidelines, in order to give you one idea of the amount of residential time the children should spend with each parent. These guidelines were designed for families in which there has been no abuse of the children or domestic violence. If you believe that your spouse may present a danger to the children or you, you should consider a different type of schedule. Talk with an attorney for advice on what to ask for in your parenting plan.

### I Want to Have Equal Time with the Children, will the Court Order This?

The court may enter a parenting plan that gives each parent substantially equal residential time with the children. However, the court may not enter a parenting plan that requires a child to go

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<sup>62</sup> [RCW 26.09.187\(3\)\(a\)](#).

<sup>63</sup> [RCW 26.09.187\(3\)\(a\)\(i\)](#).

<sup>64</sup> [RCW 26.09.187\(3\)\(a\)](#).

<sup>65</sup> [RCW 26.09.187\(3\)\(c\)](#).

<sup>66</sup> [RCW 26.09.191\(5\)](#).

back and forth between his/her parents' households for "brief and substantially equal periods of time" unless the provision is in the best interests of the child. In determining whether such an arrangement is in the best interests of the child, the court may consider the parties' geographic proximity to the extent necessary to ensure the ability to share performance of the parenting functions.<sup>67</sup>

### ***How Will the Court Decide Who Should Make Important Decisions about the Children?***

In the parenting plan, the court will also decide which parent will make important decisions about the child. Either parent will be permitted to make emergency decisions about the child or may make day-to-day decisions (such as what the child will eat or who will baby sit the child) when the child is in that parent's residential care.<sup>68</sup> For non-emergency decisions, such as where the child will go to school, what doctors or other health care providers the child will see, when the child receives medical care, and what religious institution the child attends (if any), the court may allow one or both parents to make these decisions. The court must order that only one parent can make these non-emergency decisions if there is a limiting factor under RCW 26.09.191 against the other parent that requires that no joint decision-making can be ordered, or if both parents say that they do not want joint decision-making. The court may order sole decision-making to one parent if that parent disagrees with joint decision-making because (1) one of the limiting factors under RCW 26.09.191 applies to the other parent; (2) the other parent does not have a history of participating in the decision-making about the children; (3) the parents do not have a demonstrated ability and desire to cooperate with each other in decision-making; or (4) the parents do not live close enough to each other to make joint decisions in a timely way.<sup>69</sup>

Note that, in most cases, the court should treat decisions about the children's religious upbringing differently from decisions about school and medical care. Unless the court decides that the children may be harmed by being exposed to a parent's religious views, the court should allow each parent to provide the child with the religious instruction the parent chooses while the children are in that parent's residential care.<sup>70</sup> This would not be "joint" decision-making but would be each parent making decisions on that parent's residential time and not interfering with the other parent's decisions.

### ***What is Alternative Dispute Resolution and What Does it Have to Do with the Parenting Plan?***

The parenting plan includes provisions that govern how you and the other parent will resolve disagreements about the parenting plan in the future. Alternative Dispute Resolution (ADR) refers to ways of solving disputes instead of going to court. For disagreements over parenting plans, you and the other parent may choose options other than going to court, such as counseling, mediation, or arbitration. If a limiting factor under RCW 26.09.191 applies to one parent, if the parents will not be able to participate in dispute resolution equally, or if one of the parents cannot afford alternative dispute resolution, the court should not order alternative dispute resolution but

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<sup>67</sup> [RCW 26.09.187\(3\)\(b\)](#).

<sup>68</sup> [RCW 26.09.184\(4\)\(a\) & \(b\)](#).

<sup>69</sup> [RCW 26.09.187\(2\)](#).

<sup>70</sup> See *In re Marriage of Jensen-Branch*, 78 Wn. App. 482, 899 P.2d 803(1995).

should just require the parents to return to court if they have disagreements about the parenting plan in the future.<sup>71</sup>

Some people find that ADR can be helpful. If you choose counseling, you will typically meet with a mental health professional who will use counseling techniques to help you and the other parent solve your disagreement. If you choose mediation, you will meet with a mediator, who is a neutral third party who may be a lawyer, retired judge or court commissioner, or a mental health professional. The mediator will try to encourage you to come to an agreement. If you choose an arbitrator, you will meet with a neutral third party (often a lawyer, retired judge or court commissioner) who may try to help you reach agreement, but who will make a decision that you both must follow if you cannot reach agreement. If arbitration is ordered in your parenting plan, you will still have the right to file a motion with the court to ask for a review of the arbitrator's decision if you do not agree with it. You will need to pay a counselor, mediator or arbitrator in most cases, and the fees can be very expensive. However, ADR can also help you avoid the stress, expense and unpredictability of going to court.

For more information about deciding whether mediation might be right for you, you may read our publication called *Mediation*, which is available on our website.

#### ***What if I Want to Move to a Different State with the Children?***

In 2000, the Washington State Legislature passed a new law about when and how one parent may move a child's residence when the parents don't live together and there is a parenting plan or other custody/visitation order in place. This made major changes to the law dealing with relocation and parenting plans. All parenting plans must now have language about what will happen if one of the parents wants to move (relocate). That language is part of the parenting plan form and CANNOT be changed or taken out, even if the other parent agrees. The new requirements include having to give the other parent notice before a move, giving the parent who is not moving a chance to object to the move, and being able to ask the court to change a parenting plan, including which parent the children will live with based on a parent's relocation. You will find the new law in the Revised Code of Washington (RCW) 26.09.405 through 26.09.560. Also, you may want to read our publication called *Moving with Children: Washington's New Relocation Law*.

#### ***What if the Wife is Pregnant – May we Still Get a Divorce?***

If the wife is pregnant and you want to end your marriage, you may file a Petition for Dissolution. However, you must tell the court that the wife is pregnant, but the court cannot use the wife's pregnancy as the sole basis for delaying entry of a decree of dissolution.<sup>72</sup>

**Any child that is born during your marriage or within 300 days after your Decree of Dissolution is entered, will be legally presumed to be the child of the husband even if it is not actually the husband's biological child.**<sup>73</sup> If there is a question about the paternity of the unborn child, the question should be resolved before the Decree of Dissolution is entered. One option is to file a motion to request genetic testing in your dissolution case to determine the

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<sup>71</sup> [RCW 26.09.187\(1\)](#).

<sup>72</sup> [RCW 26.09.030\(e\)](#).

<sup>73</sup> [RCW 26.26.116\(1\)](#).

paternity of the child. Either parent may file this type of motion. If you request genetic testing, the court may require that a Guardian ad Litem (GAL) be appointed for the unborn child for the purpose of investigating and deciding whether it is in the child's best interests for genetic testing to be done. Another option is for one spouse to contact the Division of Child Support. DCS can refer you to the family support section of the Prosecuting Attorney's office, which may file a parentage action in court to determine paternity of the child. Washington law imposes strict time limits in which a presumed or acknowledged father may deny or challenge paternity. You should talk with an attorney to discuss what you should do.

## **Section 8: Will my Spouse Have to Pay Child Support?**

### ***What is Child Support?***

Child Support is money paid by a parent to a party taking care of the children (usually, the other parent) to help support the children. The parent usually must pay child support monthly. The amount is based on the Washington State Support Schedule, and is set by taking into consideration the children's needs and both parents' incomes.

A parent has a legal duty to help support his or her children. Thus, in most cases in which parents divorce, the parent with whom the children do not live most of the time will be required to pay child support to the other parent. Even if the parents each have 50% of the time with the children, one parent may be required to pay support to the other if there is a big difference in the amount of income each parent earns.

A person may also have a legal duty to help support his or her stepchildren until a divorce from the child's parent is final or until there is an order relieving the stepparent of this obligation.<sup>74</sup>

### ***How is the Child Support Amount Established?***

Child support is calculated based upon the income of both parents and the number and ages of the children, using the Washington State Child Support Schedule. It is a good idea to read through the Schedule so that you can understand all of the factors that the court will take into account when setting support.

The Schedule works somewhat like an income tax table – the court figures out each parent's income, adds it together, and finds the amount of support on the Schedule that applies to the number and ages of children that you have. Washington started using this schedule to try to ensure that children get enough support to meet their needs, and that parents who make similar amounts of money across the state pay or receive similar amounts of support.

It is important to know that the court's main concern in setting child support is to make sure that your children have enough money to meet their needs.<sup>75</sup> Support is meant to pay not only for clothes and food, but to give the children a place to live (rent/mortgage and utilities) and assure they have adequate daycare and medical care. If the parents do not have enough money to meet the children's needs, the court also takes into account parents' ability to pay. Both parents may also be required to share costs for uninsured health care, day care, school tuition and long distance visitation expenses; how much each parent pays will be determined in proportion to

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<sup>74</sup> [RCW 26.16.205](#); *Stahl v. DSHS*, 43 Wn. App. 401, 717 P.2d 320, *review denied*, 106 Wn.2d 1009 (1986).

<sup>75</sup> *In re Marriage of Mattson*, 95 Wn. App. 592, 599-600, 976 P.2d 157 (1999).

their incomes and by considering the number of children living with them. The court may also award the federal income tax exemptions that each party is entitled to claim.<sup>76</sup>

For more detailed information about child support, see our publication called *Understanding the Washington State Child Support Schedule and How Child Support is Set in Washington*.

## Section 9: Our Do-it-Yourself Family Law Packets

### *Are There Alternatives to Filing a Marital Dissolution Using the Do-it-Yourself Publications?*

Yes. There are at least three alternatives:

- A. You may hire an attorney to represent you.** If you can afford to hire an attorney, it is best to consult one about your particular case and consider hiring the attorney to file the marital dissolution for you. If you cannot afford an attorney, you may contact your local legal services office to see if an attorney can represent you or give you advice to help you represent yourself. Some legal services offices and county bar and pro bono programs represent individuals in marital dissolutions; however, they usually are able to directly represent very few of the many people who apply for help. If you are low income and do not live in King County, you may call CLEAR for a referral at 1-888-201-1014. If you are low income and live in King County, call the King County Bar Association at (206) 623-2551 and ask for a referral for low-income representation in family law.
- B. You may take a “Self-Help” class.** In some counties, such as King County, there are “self-help” classes that teach you how to file your own marital dissolution. A class may be more expensive than this packet, but may provide you with more help filling out the forms and with local court procedures. If you can go to a class, we recommend that you do so. To find out whether your county has a self-help class, contact your local Family Law Facilitator if there is one in your county.
- C. Where available, you may use the local Family Law Facilitator’s Do-It-Yourself packets.** In some counties, there are Family Law Facilitators who can help you file your own dissolution action in court. The facilitators are not attorneys and are not permitted to give you legal advice; however, they often have do-it-yourself packets that are designed for that county.

### *What Packets Do I Need for a Dissolution of Marriage?*

The Northwest Justice Project publishes several different do-it-yourself packets, which will give you instructions and forms for completing a marital dissolution. The following list should help you decide which packets you will need. You will need more than one packet to complete an entire marital dissolution case, but we recommend that you get only the packets you need at the time that you need them.

- Filing for a Dissolution of Marriage (Divorce)** – You may use this packet to file (start) a marital dissolution (divorce) case. If you have children, you will also need the *Parenting Plans and Child Support* packet.

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<sup>76</sup> [RCW 26.19.100](#).

- ❑ **Filing In Forma Pauperis (IFP)** – You may use this packet if you want to file a marital dissolution but you cannot afford to pay the filing fee (usually \$200-250). This packet may help you ask the court to waive (forgive) the fee.
- ❑ **Service by Certified Mail or Publication** – You may use this packet if you are filing a dissolution of marriage and you have tried to serve any other party in person, but could not do so. This packet may help you ask the court for permission to serve the other party by certified mail or publication.
- ❑ **Serving Papers the State** – If you are filing a marital dissolution, or you are filing a motion asking for an order of child support, and any of the children receive welfare benefits such as TANF, food stamps, or medical benefits, you must serve a copy of your legal papers on the State of Washington (care of the prosecuting attorney’s office). You may use this packet to help you serve the State.
- ❑ **Responding to a Petition for Dissolution** – You may use this packet to respond to a dissolution of marriage (divorce) case if your spouse has already filed one. If you have children, you will also need the *Parenting Plans and Child Support* packet.
- ❑ **Parenting Plans and Child Support for Dissolution Cases and Modifications of Dissolution Cases** – You may use this packet if you have children with your spouse. With this packet, you may ask the court to enter a parenting plan (a court order that includes a schedule for how much time the children spend with each parent) and an order of child support.
- ❑ **Filing a Motion for Temporary Orders for Dissolution Cases and Custody/Parenting Plan Modifications of Dissolution Cases** – You may use this packet to ask the court to enter an order that will cover the time period between the date you file for divorce and the date your divorce is final.
- ❑ **Filing a Motion for Emergency Orders for Dissolution Cases and Custody/Parenting Plan Modifications of Dissolution Cases** – You may use this packet to ask the court to enter an order that will take effect immediately and can cover the time period between the date you file for divorce and the date your divorce is final. You should use this packet if you need an emergency order.
- ❑ **Responding to a Motion for Temporary or Emergency Orders** – You may use this packet if the other party has filed a Motion for Temporary Orders or a Motion for an Ex Parte Restraining Order/Order to Show Cause.
- ❑ **How to Write a Declaration** – This packet will help you and your witnesses to write the most effective and persuasive statements in support of your motion.
- ❑ **Preparing for a Hearing or Trial** – This publication will assist you in organizing your evidence and preparing your oral argument to present to the court in your hearing or trial.
- ❑ **Getting Witnesses or Documents by Subpoena** – You may use this packet if you need to make sure important witnesses or documents are at trial.
- ❑ **Finishing Your Dissolution of Marriage by Default** – You may use this packet when you are ready to finish your dissolution and one party hasn’t responded.

- ❑ **Finishing Your Dissolution of Marriage with Children by Agreement** - This packet will help you fill out and file the forms and papers that you need to complete a dissolution (divorce) action when you and your spouse have an agreement (or settlement) and children are involved.
- ❑ **Dismissing Your Dissolution** – You may use this packet if you decide that you do not want to end your marriage after all.
- ❑ **Other:** Local Do-it-Yourself packets: In some counties, you may need other forms or packets during your divorce case that are required by local court rules. For example, King County requires you to file other forms, such as a Confirmation of Issues form, while your divorce is going on. Consult your court clerk’s office or Family Law Facilitator (if your county has one) to find out if your county requires more information. The Northwest Women’s Law Center (206-621-7691 or <http://www.nwwlc.org>) has a do-it-yourself packet about following the case management schedule for divorces filed in King County, and also has informational publications on other divorce issues, such as *Community Debt* and *Mediation*.

***I Have More Questions about the Law, Where Do I Get More Information?***

We have other publications and packets on our website, <http://www.washingtonlawhelp.org> and links to help you do legal research, which may help you if you want more information about marital dissolution. If you need more information, or do not have access to the internet, you may want to visit your local law library (usually located in your county’s Superior Court building). The library staff may be able to help you find the resources you need.

**Section 10: Words You May Need to Know**

**Affidavit** - A statement made under oath and notarized by a Notary Public. Affidavits are no longer required in Washington; instead the courts use Declarations (see below).

**Appearance** - letting the court and all other parties know where you can be contacted and your desire to participate in your case. You can “appear” in person at a Court hearing or in writing by filling out a Notice of Appearance or Response.

**Attorney of Record** - An attorney who has filed either a Notice of Appearance or any court papers in the case, and who has not later filed a court paper called Notice of Intent to Withdraw.

**Bailiff** - The person in charge of courtroom procedure and security. The bailiff may sometimes be the same person as the clerk.

**Beneficiary** - A person who receives benefits or advantages (for example, money from an insurance policy).

**Calendar** - The court's schedule of cases to be heard, also called a Docket.

**Caption** - The heading of each legal document that contains the name of the court, the names of the parties, the case number, and the name of the document itself.

**Certified Copy** - A copy of a document from the court file made by the court clerk that has an official stamp on it. Usually there is a fee for a certified copy.

**Clerk of the Court** - An officer of the court who handles clerical matters like keeping records, entering judgments and providing certified copies.

**Commissioner** (Court Commissioner) - This person is similar to a judge but only makes decisions relating to a particular subject matter. Many counties have family law commissioners who hear and decide only family law cases (dissolutions, etc.).

**Conformed Copy** - A copy of any court document that has been filed. It must be stamped with the date filed. If the document is an order, it must have the name of the judge/court commissioner who signed it either written or stamped on it.

**Community Property** - The property you and your spouse acquired during your marriage. (See Separate Property) This includes wages, pensions and other benefits from employment during your marriage.

**Continuance** - Postponing your court hearing to a later date.

**Court** - The judicial branch of government that has the purpose of applying the laws to disputes brought before it. When this packet refers to "the court," that means you will be talking to the judge or commissioner who represents the court.

**Declaration** - A written statement made to the court that the signer declares or certifies under penalty of perjury is true.

**Decree** - The final court order in your dissolution.

**Default** - The failure to respond to court papers within the required time.

**Default Order** - An order that can be obtained if the responding person does not respond within the required time.

**Dissolution** - The legal word for divorce.

**Ex Parte** - Going before the court without notifying the other party.

**Filing** - Giving court papers to the court clerk to place in the official case file.

**Hearing** - Going before a judge or court commissioner in person to request a court order.

**In Forma Pauperis** - A Latin term which means you may file your papers in court without paying the filing fee if you are poor.

**In Re the Marriage Of:** - The heading of all your court papers. It tells the court that the type of your court action relates to your marriage.

**Irretrievably Broken** - The basis for getting a divorce. It means that you cannot successfully continue your marriage; that your marriage has broken down.

**Jurisdiction** - The court's authority to make decisions regarding certain people and issues. If a court does not have jurisdiction it cannot make orders.

**Joinder** - Both spouses ask the court together to dissolve their marriage, divide the property and make arrangements for the children.

**Maintenance/Spousal Support** - A fixed amount of money paid from one spouse to another for support, sometimes called "alimony".

**Motion** - A request made to the court for an order.

**Motion Docket** - The court's schedule of motions to be heard.

**Note/Notice of Hearing** - A written request to the clerk to schedule your case for a hearing.

**Notice of Appearance** - A paper filed with the court showing that a party wants to participate in the case and where to send papers filed in the future.

**Order** - A court document signed by a judge or commissioner that requires someone to do or not to do something.

**Order to Show Cause** - A court order requiring a person to appear in person at a time set by the court for a hearing.

**Petition** - A formal written request for a dissolution of marriage (divorce).

**Petitioner** - The spouse who files the dissolution case

**Pro Se** - Acting without the aid of an attorney; representing yourself.

**Process** - Written notification to appear in court (see Summons and Order to Show Cause).

**Protection Order** - a special court order to protect a spouse from domestic violence

**Restraining Order** - A court order to prevent a spouse from doing some act that may harm the other spouse.

**Residential Schedule** - The part of the Parenting Plan that states when the children will be with each parent.

**Response** - A formal written answer to a petition filed with the court by the respondent.

**Respondent** - The spouse against whom the dissolution case is filed.

**Ruling** - A decision made by the court.

**Separate Property** - Property owned before marriage or obtained during a marriage as a result of a gift or inheritance made specifically to one spouse but not the other.

**Service** - Giving court papers to the other party by having them hand-delivered, sending it by certified mail or publishing in a newspaper.

**Summons** - A written notice that a dissolution case has been started with time limits for a response.

**Temporary Order** - An order entered after a case is filed and before it is finished which is only in effect while the case is going on.

**UCCJEA Declaration** - A declaration required by the Uniform Child Custody Jurisdiction and Enforcement Act which you must include in the petition. This tells the court where the children of the marriage have lived and some other information about them.

**Venue** - The county where the case should be filed, usually the county where you live.

## **Section 11: Yakima County Superior Court Suggested Residential Schedule Guidelines**

When parents live away from each other because they are divorced, separated, or never lived together, it is important to set a schedule of time for the children to spend with each parent.

These guidelines are intended to give an idea of what is best for a child at each stage of development given somewhat ideal circumstances. *These guidelines are appropriate in cases in which the parents get along well and there are no reasons why either parent's access to the children should be limited. Parents will have to change the suggested guidelines if they live far away from each other, where there has been domestic violence or another limiting factor which makes visits with one parent restricted, or where the parents are not able to cooperate with one another to the point that their relationship interferes with the residential schedule.*

Children are influenced by each parent they spend time with. It is essential that parents and stepparents support an ongoing relationship with the other parent. Both parents should help the child know that it is normal and healthy to feel good about both parents and to enjoy time with each.

These guidelines were developed by child development experts and were adopted by the Yakima Superior Court. They are arranged by the normal developmental stages of children. Children are all different, though, and some children may fit into an older or younger stage depending on their individual personalities and abilities. Design the parenting plan to fit the stage you believe your children to be in despite the age bracket in the guidelines.

### ***INFANTS (Birth to 18 Months)***

#### Birth to 6 Months

RECOMMENDATION: two hours, at least twice per week

For the baby it is essential to have consistent physical care and sensitive, cooperative interaction between the infant and caregiver. The pattern of access should not interrupt the ability of the parents to provide smooth child care routines. Visitation should happen often enough to help the infant and parent bond. Daily contact of a few hours in the primary residence of the infant is the ideal situation, with both parents sharing in feeding, bathing, changing, and otherwise caring for the infant as well as playing with the infant.

It is best if both parents are committed to the infant developing a good relationship with both parents. While cooperation is important at any age, it is the most important factor in designing a plan for infants. When parents can't restrain themselves from fighting or arguing in front of the infant, visitation should be somewhere besides the residential home. Special family circumstances may require that visitation be in a protected setting or the office of a mental health professional.

During this stage of infancy, frequent and predictable contact with the infant is best. Unless circumstances allow several contacts each week, time with the infant away from the residential parent should be limited to one or two hours at a time.

#### 6 to 18 Months

RECOMMENDATION: Two hours, twice per week and four hours, once per week

The major issue at this age is the forming of secure attachments. The most important features of care giving are stability and responsiveness. Young children can quickly lose feelings of attachment to people they do not see often. Like with younger infants, the more frequent and stable the visitation is, the longer each visit can be. If visits are less than once or twice a week, visits should not be more than three hours at a time. Children this age need routine contact with

familiar people. Overnights away from the primary caregiver should be discouraged unless the instability for the child is outweighed by other factors.

### ***TODDLERS (18 Months to 3 Years)***

RECOMMENDATION: two hours, twice per week and eight hours, once per week. Alternate holidays at eight hours each day for Easter, July 4th, Thanksgiving, Christmas Eve, and Christmas Day. Overnights not generally recommended.

Toddlers develop a sense of separateness from the parents and learn to master their limits. Toddlers should have adequate freedom to explore and permission to resist the parent on unimportant issues, but must be required to obey in areas of safety, self-control, and social interaction.

While frequency and consistency are still important, children of this age can handle a schedule of access that provides less frequent contact. An 18 month old who visits with a parent only on weekends can handle an additional half-day or less during the week. For older toddlers, when the nonresidential parent has been a regular and significant caretaker, an overnight per week is possible once the toddler is used to the other parent's home. Weekend long access is still not recommended.

### ***PRESCHOOLERS (3 to 5 Years)***

RECOMMENDATION: Two hours, twice per week and alternating weekends from Saturday at 9:00 a.m. until Sunday at 6:00 p.m. Alternate Easter, July 4th, and Thanksgiving for an overnight visit each holiday. Alternate Christmas Eve plus the two days before and Christmas Day plus the two days after. Add visits of two non-consecutive (not in a row) one-week periods.

Preschool children are developing sex role identification and peer relationships as well as learning to manage their impulses. Parents need to model clear roles and values and to use effective parenting skills.

The level of conflict between parents appears to be more important than the schedule of contact for preschool children. Almost as important is the predictability of the contact. Frequent contact also is preferred. Weekly access of one overnight for younger preschoolers and full weekends for older preschoolers throughout the year is recommended. More frequent contact is even better, assuming a low level of conflict between the parents. A few week-long contacts for holidays and summer vacation can be handled well by the preschooler who is familiar with the parent. If circumstances make visits longer than a week at a time necessary, the parents should consult with a professional to help the children handle the lengthier time period.

### ***EARLY ELEMENTARY (5 to 9 Years)***

RECOMMENDATION: Every other weekend from Friday at 6:00 p.m. until Sunday at 6:00 p.m. If Friday is a school holiday, the weekend begins Thursday at 6:00 p.m. If Monday is a school holiday, the weekend ends Monday at 6:00 p.m. Add one weekday from 5:30 p.m. until 7:30 p.m., once per week. Alternate Thanksgiving for 4 days, the first half of Christmas vacation one year, and the second half of Christmas vacation the next year. Alternate spring vacation. During the summer, visit of 30 days, unless the parents agree to a shorter or longer period, or the Court finds a different period would be better. During the summer, the primary residential parent should have one weekend visit (exceptions can be made for long trips, etc. with the

nonresidential parent, such as the nonresidential parent taking the child on a week-long vacation during the year).

For children this age, the primary influence of the parent is now shared with teachers, peers, and often community contacts. Schedules of access need to take into account various organized activities in which children can be involved.

The recommended schedule is a minimum of two weekends per month, and assuming the parents get along reasonably well, more frequent access including midweek contacts. At 7 to 8 years of age, children are most satisfied when they have contact with the nonresidential parent several times a week. Extended time with the other parent is possible at this age because of the child's developed sense of time. Up to six weeks may be appropriate, but not necessarily to be taken all at one time. When staying for long periods with the nonresidential parent, contact with the residential parent, by phone and visits, should be arranged.

### ***LATE ELEMENTARY (9 to 12 Years)***

RECOMMENDATION: Same as 5 to 9 Years

The schedule for this age group can be much the same as for ages five to nine. However, children of this age generally need to be involved in the decisions affecting them. Also, by ages 11 to 12, their friends and school activities have increased importance which may lead children to want less contact with both parents and a more flexible schedule.

### ***ADOLESCENTS (12 to 18 Years)***

RECOMMENDATION: Same as 5 to 9 Years, with the children having increasing say in a flexible or different schedule.

#### 12 to 15 Years

The younger adolescent needs more support and guidance from parents than does the older one. The recommended schedule is much the same as for ages nine to twelve, recognizing that the younger adolescent needs to be able to opt out of occasional visits or vary from the schedule for time with peers or school activities.

#### 15 to 16 Years and older

The older adolescent and the nonresidential parent should set the schedule together. The schedule should take into account that teenagers do not need contact of long duration with either parent, but need to know they can count on both parents. At least brief contact on a weekly or every other week basis is strongly recommended for the teenager and the nonresidential parent.

There is no legally designated age at which children have the right to decide with whom they live or whether or not they will have time with the other parent. In practice, the adolescent's need for independence should be balanced against his or her sometimes unfelt need for at least minimal contact with both parents. To some teenagers, spending a full weekend with one parent may be seen as being grounded, especially if that parent's location or desire to spend time with the adolescent interferes with the adolescent's social schedule with peers.

### ***OTHER CONSIDERATIONS***

#### Holidays

In addition to the suggested routine schedules, the parents need to provide for specific holiday visits, which should be structured according to the family's traditions. Religious or other holidays with significance to the family should be defined and stated in the holidays or special occasion portions of the parenting plan. Sharing of time should be the main consideration. For example, major holidays such as Thanksgiving and Christmas can be alternated. Some parents prefer to establish a tradition of Christmas Eve in one home and Christmas Day in the other. Minor holidays that usually make a three-day weekend can be included with a weekend visit. School vacations can be divided between the parents in ways consistent with the children's needs. It is especially important to be flexible with the other parent when special occasions which are important to that parent come up during time the child is scheduled to be with you. For instance, if the mother's big family reunion is scheduled during the father's weekend, the parents could agree to switch weekends that month so the children could go to the reunion.

#### Distance

These recommendations may not work because the parents live far away from each other. When that happens, the parent will have to meet the children's needs for a relationship with both parents with an individualized visitation schedule. If a pre-school child is mature enough to separate from the residential parent, extended time with the other parent may be appropriate. When the child reaches school age, the parent can consider the child spending major portion of school vacations with the nonresidential parent.

#### Fathers' Day and Mothers' Day

Regardless of the schedule suggested here, the mother should have residential time of at least 4 hours on Mothers' Day, and the father should have residential time of at least 4 hours on Fathers' Day.

Modified with permission from the Yakima Superior Court Guidelines Updated 3/96