

# **FAMILY LAW SIMULATIONS**

**By**

**Jessica Dixon Weaver**  
*SMU Dedman School of Law*

**BRIDGE TO PRACTICE**

**WEST®**

A Thomson Reuters business

## CHAPTER TWO

---

# FAMILY DISSOLUTION

- I. Introduction
- II. Relevant Law
- III. Information Gathering
- IV. Legal Separation
- V. Dissolution of a Marriage
- VI. Temporary Orders
- VII. The Respondent's Answer

### I. Introduction

This chapter allows you to explore the main focus of family courts today -- the dissolution of families. In the past family dissolution could be presumed to mean divorce. However, in today's world many families are created without the institution of marriage. Research shows that approximately 32% of children are living with only an unmarried parent.<sup>1</sup> More couples are cohabitating and having children outside of marriage versus getting married before the birth of children. Some single people are making the conscious decision to have or adopt children alone. It is important to note the various ways that individuals come together and view themselves as family before examining the legal ways available for ending these relationships. This chapter covers voluntary dissolution of marital relationships, Chapter Five will cover the dissolution of the parent-child relationship, and Chapter Ten will cover the separation of cohabitating couples.

When it comes to marriage, most adults put more thought into their wedding celebration or cohabitation before their nuptials than they do details of what happens when the relationship does not work out. In most states, the dissolution of a marriage is referred to as a divorce, and the terms "dissolution" and "divorce" may be used interchangeably throughout this chapter and the book. When you consult with a potential client about being

---

<sup>1</sup> Gretchen Livingston, *The Changing Profile of Unmarried Parents*, The Pew Research Center, (April 2018).

his or her divorce attorney, there is a great deal of information you need to gather before you can decide how to handle the case:

- a) whether the case will be contested or non-contested;
- b) whether the divorce should be filed as a no-fault or fault divorce; and
- c) if there are other matters that you need to consider, such as child custody and support, protection against family violence, or temporary maintenance or alimony.

In many states, at least one party in a divorce does not have an attorney and will represent himself / herself as a pro se litigant. There are specific ethical issues that you will need to consider at the outset of a divorce case, and you will need to draw upon your knowledge of the Model Rules of Professional Conduct and the state disciplinary conduct rules. There may also be local rules that require some action on the part of your potential client in terms of counseling and mediation. It is wise for lawyers to introduce the concept of mediation and other forms of alternative dispute resolution available to clients so that they understand all of their legal options, as well as prepare them for the entirety of the divorce process.

In this chapter, you will conduct a mock interview of two different clients. You will also draft a formal separation agreement and a petition for dissolution. If you are placed on litigation teams, one team will be responsible for drafting a divorce petition, and another team will draft a general and specific answer to the petition. These exercises will also draw upon your knowledge of civil procedure and evidence.

**Learning Outcomes:** There are five (5) learning outcomes for Chapter Two.

- 1) Learn how to collect information from clients of various backgrounds about their desire to dissolve their marriage.
- 2) Learn how to identify relevant legal matters that need to be included within a marriage dissolution proceeding.
- 3) Learn the requirements for obtaining a marriage dissolution under various grounds.

4) Learn the difference between various waiting periods and separation requirements among the states.

5) Learn how to draft a separation agreement, a petition for marriage dissolution, and an answer to a petition for dissolution.

## II. Relevant Law

Every state has a family code. Some states adopted the Uniform Marriage and Divorce Act<sup>2</sup>, set forth as a standard set of laws governing marriage, divorce, property distribution, alimony, child support and custody. Other states look to the American Law Institute's Principles of the Law of Family Dissolution for guidance. Still others embrace common law marriage principles that do not require a formal marital union sanctioned by the state.<sup>3</sup> The relevant state laws for this chapter are from the family codes of New York and Texas. **Please note:** Prior to starting your assignment, double check the law in the assigned state to make sure that it is still the same as what is listed in the book.

If you have taken a basic course in family law, you are familiar with the jurisdictional issues that can arise when a couple or individual shops around for forums that allow for quick divorces. While complete coverage of jurisdictional family law matters is beyond the scope of this book, it is important to know what the domicile and venue requirements are in the state and county in which you are practicing. Forum choices can make quite a difference regarding the length of time a couple must be separated before filing for divorce, whether a couple can file using fault grounds, and how long a couple must reside in a state or county before access to the family courts.



**Research the Law:** For states within a tri-state region of the country, such as Maryland, Virginia, and Washington D.C. or New York, New Jersey, and Connecticut, what are the main differences between the divorce statutes with regard to venue/domicil and grounds for dissolution of the marriage?

---

<sup>2</sup> Arizona, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana and Washington have adopted it.

<sup>3</sup> Sixteen states recognize common law marriage, including Alabama, Colorado, Georgia District of Columbia, Idaho, Iowa, Kansas, Montana, New Hampshire, Ohio, Oklahoma, Pennsylvania South Carolina, Rhode Island, Texas, and Utah. Some of these states have limitations on when common law marriage is recognized and for what purpose.

## NEW YORK

### **Relevant Law:** N.Y. DOM. REL. LAW §§ 170, 200, 202, 203, 210 (McKinney).

#### N.Y. DOM. REL. LAW § 170                      Action for divorce

An action for divorce may be maintained by a husband or wife to procure a judgment divorcing the parties and dissolving the marriage on any of the following grounds:

(1) The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well-being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

(2) The abandonment of the plaintiff by the defendant for a period of one or more years.

(3) The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

(4) The commission of an act of adultery, provided that adultery for the purposes of articles ten, eleven, and eleven-A of this chapter, is hereby defined as the commission of an act of sexual intercourse, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.

(5) The husband and wife have lived apart pursuant to a decree or judgment of separation for a period of one or more years after the granting of such decree or judgment, and satisfactory proof has been submitted by the plaintiff that he or she has substantially performed all the terms and conditions of such decree or judgment.

(6) The husband and wife have lived separate and apart pursuant to a written agreement of separation, subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded, for a period of one or more years after the execution of such agreement and satisfactory proof has been submitted by the plaintiff that he or she has substantially performed all the terms and conditions of such agreement. Such agreement shall be filed in the office of the clerk of the county wherein either party resides. In lieu of filing such agreement, either party to such agreement may file a memorandum of such agreement, which memorandum shall be similarly subscribed and acknowledged or proved as was the agreement of separation and shall contain the following information: (a) the names and addresses of each of the parties, (b) the date of marriage of the parties, (c) the date of the agreement of separation and (d) the date of this subscription and acknowledgment or proof of such agreement of separation.

(7) The relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath. No judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce.

#### N.Y. DOM. REL. LAW § 200                      Action for separation

An action may be maintained by a husband or wife against the other party to the marriage to procure a judgment separating the parties from bed and board, forever, or for a limited time, for any of the following causes:

1. The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well-being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant.

2. The abandonment of the plaintiff by the defendant.

3. The neglect or refusal of the defendant-spouse to provide for the support of the plaintiff-spouse where the defendant-spouse is chargeable with such support under the provisions of section thirty-two of this chapter or of section four hundred twelve of the family court act.

4. The commission of an act of adultery by the defendant; except where such offense is committed by the procurement or with the connivance of the plaintiff or where there is voluntary cohabitation of the parties with the knowledge of the offense or where action was not commenced within five years after the discovery by the plaintiff of the offense charged or where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce, provided that adultery for the purposes of this subdivision is hereby defined as the commission of an act of sexual intercourse, oral sexual conduct or anal sexual conduct, voluntarily performed by the defendant, with a person other than the plaintiff after the marriage of plaintiff and defendant. Oral sexual conduct and anal sexual conduct include, but are not limited to, sexual conduct as defined in subdivision two of section 130.00 and subdivision three of section 130.20 of the penal law.

5. The confinement of the defendant in prison for a period of three or more consecutive years after the marriage of plaintiff and defendant.

N.Y. DOM. REL. LAW § 202                      Defense of justification

The defendant in an action for separation from bed and board may set up, in justification, the misconduct of the plaintiff; and if that defense is established to the satisfaction of the court, the defendant is entitled to judgment.

N.Y. DOM. REL. LAW § 203                      Judgment for separation revocable

Upon the joint application of the parties, accompanied with satisfactory evidence of their reconciliation, a judgment for a separation, forever, or for a limited period, rendered as prescribed in this article, may be revoked at any time by the court which rendered it, subject to such regulations and restrictions as the court thinks fit to impose.

N.Y. DOM. REL. LAW § 210                      Limitations on actions for divorce and separation

No action for divorce or separation may be maintained on a ground which arose more than five years before the date of the commencement of that action for divorce or separation except where:

(a) In an action for divorce, the grounds therefor are one of those specified in subdivision (2), (4), (5) or (6) of section one hundred seventy of this chapter, or

(b) In an action for separation, the grounds therefor are one of those specified in subdivision 2 or 4 of section two hundred of this chapter.

## TEXAS

**Relevant Law:** TEX. FAM. CODE §§ 6.001, 6.003, 6.008, 6.301, 6.401, 6.402, 6.405, 6.406, 6.501, 6.502, 6.503, 6.505

### TEX. FAM. CODE §6.001      Insupportability

On the petition of either party to a marriage, the court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation.

### TEX. FAM. CODE §6.003      Adultery

The court may grant a divorce in favor of one spouse if the other spouse has committed adultery.

### TEX. FAM. CODE §6.008      Defenses

- (a) The defenses to a suit for divorce of recrimination and adultery are abolished.
- (b) Condonation is a defense to a suit for divorce only if the court finds that there is a reasonable expectation of reconciliation.

### TEX. FAM. CODE §6.301      General Residency Rule for Divorce Suit

A suit for divorce may not be maintained in this state unless at the time the suit is filed either the petitioner or the respondent has been:

- (1) a domiciliary of this state for the preceding six-month period; and
- (2) a resident of the county in which the suit is filed for the preceding 90-day period.

### TEX. FAM. CODE §6.401      Caption

- (a) Pleadings in a suit for divorce or annulment shall be styled “In the Matter of the Marriage of \_\_\_\_\_ and \_\_\_\_\_.”
- (b) Pleadings in a suit to declare a marriage void shall be styled “A Suit to Declare Void the Marriage of \_\_\_\_\_ and \_\_\_\_\_.”

### TEX. FAM. CODE §6.402      Pleadings

- (a) A petition in a suit for dissolution of a marriage is sufficient without the necessity of specifying the underlying evidentiary facts if the petition alleges the grounds relied on substantially in the language of the statute.
- (b) Allegations of grounds for relief, matters of defense, or fact relied on for a temporary order that are stated in short and plain terms are not subject to special exceptions because of form or sufficiency.

(c) The court shall strike an allegation of evidentiary fact from the pleadings on the motion of a party or on the court's own motion.

#### TEX. FAM. CODE §6.405 Protective Orders & Related Orders

(a) The petition in a suit for dissolution of a marriage must state whether, in regard to a party of the suit or a child of a party to the suit:

(1) there is in effect:

(A) a protective order under Title 4;

(B) a protective order under Chapter 7A, Code of Criminal Procedure; or

(C) an order for emergency protection under Article 17.292, Code of Criminal Procedure;

or

(2) an application for an order described by Subdivision (1) is pending;

(b) The petitioner shall attach to the petition a copy of each order described by Subsection (a)(1) in which a party to the suit or the child of a party to the suit was the applicant or victim of the conduct alleged in the application or order and the other party was the respondent or defendant of an action regarding the conduct alleged in the application or order without regard to the date of the order. If a copy of the order is not available at the time of filing, the petition must state that a copy of the order will be filed with the court before any hearing.

#### TEX. FAM. CODE §6.406 Mandatory Joinder of Suit Affecting Parent-Child Relationship

(a) The petition in a suit for dissolution of a marriage shall state whether there are children born or adopted of the marriage who are under 18 years of age or who are otherwise entitled to support as provided by Chapter 154.

(b) If the parties are parents of a child, as defined by Section 101.003, and the child is not under the continuing jurisdiction of another court as provided by Chapter 155, the suit for dissolution of a marriage must include a suit affecting the parent-child relationship under Title 5.

#### TEX. FAM. CODE §6.501 Temporary Restraining Order

(a) After the filing of a suit for dissolution of a marriage, on the motion of a party or on the court's own motion, the court may grant a temporary restraining order without notice to the adverse party for the preservation of the property and for the protection of the parties as necessary, including an order prohibiting one or both parties from:

(1) intentionally communicating in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, with the other party by use of vulgar, profane, obscene, or indecent language or in a coarse or offensive manner, with intent to annoy or alarm the other party;

(2) threatening the other party in person or in any other manner, including by telephone or another electronic voice transmission, video chat, in writing, or electronic messaging, to take unlawful action against any person, intending by this action to annoy or alarm the other party;

(3) placing a telephone call, anonymously, at an unreasonable hour, in an offensive and repetitious manner, or without a legitimate purpose of communication with the intent to annoy or alarm the other party;

(4) intentionally, knowingly, or recklessly causing bodily injury to the other party or to a child of either party;

(5) threatening the other party or a child of either party with imminent bodily injury;

(6) intentionally, knowingly, or recklessly destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of the parties or either party with intent to obstruct the



authority of the court to order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage;

(7) intentionally falsifying a writing or record, including an electronic record, relating to the property of either party;

(8) intentionally misrepresenting or refusing to disclose to the other party or to the court, on proper request, the existence, amount, or location of any tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

(9) intentionally or knowingly damaging or destroying the tangible or intellectual property of the parties or either party, including electronically stored or recorded information;

(10) intentionally or knowingly tampering with the tangible or intellectual property of the parties or either party, including electronically stored or recorded information, and causing pecuniary loss or substantial inconvenience to the other party;

(11) except as specifically authorized by the court:

(A) selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of the parties or either party, regardless of whether the property is:

(i) personal property, real property, or intellectual property; or

(ii) separate or community property;

(B) incurring any debt, other than legal expenses in connection with the suit for dissolution of marriage;

(C) withdrawing money from any checking or savings account in a financial institution for any purpose;

(D) spending any money in either party's possession or subject to either party's control for any purpose;

(E) withdrawing or borrowing money in any manner for any purpose from a retirement, profit sharing, pension, death, or other employee benefit plan, employee savings plan, individual retirement account, or Keogh account of either party; or

(F) withdrawing or borrowing in any manner all or any part of the cash surrender value of a life insurance policy on the life of either party or a child of the parties;

(12) entering any safe deposit box in the name of or subject to the control of the parties or either party, whether individually or jointly with others;

(13) changing or in any manner altering the beneficiary designation on any life insurance policy on the life of either party or a child of the parties;

(14) canceling, altering, failing to renew or pay premiums on, or in any manner affecting the level of coverage that existed at the time the suit was filed of, any life, casualty, automobile, or health insurance policy insuring the parties' property or persons, including a child of the parties;

(15) opening or diverting mail or e-mail or any other electronic communication addressed to the other party;

(16) signing or endorsing the other party's name on any negotiable instrument, check, or draft, including a tax refund, insurance payment, and dividend, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party;

(17) taking any action to terminate or limit credit or charge credit cards in the name of the other party;

(18) discontinuing or reducing the withholding for federal income taxes from either party's wages or salary;

(19) destroying, disposing of, or altering any financial records of the parties, including a canceled check, deposit slip, and other records from a financial institution, a record of credit purchases or cash advances, a tax return, and a financial statement;

- (20) destroying, disposing of, or altering any e-mail, text message, video message, or chat message or other electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;
  - (21) modifying, changing, or altering the native format or metadata of any electronic data or electronically stored information relevant to the subject matter of the suit for dissolution of marriage, regardless of whether the information is stored on a hard drive, in a removable storage device, in cloud storage, or in another electronic storage medium;
  - (22) deleting any data or content from any social network profile used or created by either party or a child of the parties;
  - (23) using any password or personal identification number to gain access to the other party's e-mail account, bank account, social media account, or any other electronic account;
  - (24) terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or any other contractual service, including security, pest control, landscaping, or yard maintenance at the residence of either party, or in any manner attempting to withdraw any deposit paid in connection with any of those services;
  - (25) excluding the other party from the use and enjoyment of a specifically identified residence of the other party; or
  - (26) entering, operating, or exercising control over a motor vehicle in the possession of the other party.
- (b) A temporary restraining order under this subchapter may not include a provision:
- (1) the subject of which is a requirement, appointment, award, or other order listed in [Section 64.104, Civil Practice and Remedies Code](#) ; or
  - (2) that:
    - (A) excludes a spouse from occupancy of the residence where that spouse is living except as provided in a protective order made in accordance with Title 4; 1
    - (B) prohibits a party from spending funds for reasonable and necessary living expenses; or
    - (C) prohibits a party from engaging in acts reasonable and necessary to conduct that party's usual business and occupation.

TEX. FAM. CODE §6.502      Temporary Injunction & Other Temporary Orders

- (a) While a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable and including an order directed to one or both parties:
- (1) requiring a sworn inventory and appraisal of the real and personal property owned or claimed by the parties and specifying the form, manner, and substance of the inventory and appraisal and list of debts and liabilities;
  - (2) requiring payments to be made for the support of either spouse;
  - (3) requiring the production of books, papers, documents, and tangible things by a party;
  - (4) ordering payment of reasonable attorney's fees and expenses;
  - (5) appointing a receiver for the preservation and protection of the property of the parties;
  - (6) awarding one spouse exclusive occupancy of the residence during the pendency of the case;
  - (7) prohibiting the parties, or either party, from spending funds beyond an amount the court determines to be for reasonable and necessary living expenses;

- (8) awarding one spouse exclusive control of a party's usual business or occupation; or
- (9) prohibiting an act described by [Section 6.501\(a\)](#).
- (b) Not later than the 30th day after the date a receiver is appointed under Subsection (a)(5), the receiver shall give notice of the appointment to each lienholder of any property under the receiver's control.
- (c) Not later than the seventh day after the date a receiver is appointed under Subsection (a)(5), the court shall issue written findings of fact and conclusions of law in support of the receiver's appointment. If the court dispenses with the issuance of a bond between the spouses as provided by [Section 6.503\(b\)](#) in connection with the receiver's appointment, the court shall include in the court's findings an explanation of the reasons the court dispensed with the issuance of a bond.

#### TEX. FAM. CODE §6.503      Affidavit, Verified Pleading, & Bond Not Required

- (a) A temporary restraining order or temporary injunction under this subchapter:
  - (1) may be granted without an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held; and
  - (2) need not:
    - (A) define the injury or state why it is irreparable;
    - (B) state why the order was granted without notice; or
    - (C) include an order setting the suit for trial on the merits with respect to the ultimate relief sought.
- (b) In a suit for dissolution of a marriage, the court may dispense with the issuance of a bond between the spouses in connection with temporary orders for the protection of the parties and their property.

#### TEX. FAM. CODE §6.505      Counseling

- (a) While a divorce suit is pending, the court may direct the parties to counsel with a person named by the court.
- (b) The person named by the court to counsel the parties shall submit a written report to the court and to the parties before the final hearing. In the report, the counselor shall give only an opinion as to whether there exists a reasonable expectation of reconciliation of the parties and, if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling.
- (c) A copy of the report shall be furnished to each party.
- (d) If the court believes that there is a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to a person named by the court for further counseling for a period fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court considers desirable. In ordering counseling, the court shall consider the circumstances of the parties, including the needs of the parties' family and the availability of counseling services. At the expiration of the period specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in a divorce suit generally.
- (e) If the court orders counseling under this section and the parties to the marriage are the parents of a child under 18 years of age born or adopted during the marriage, the counseling shall include counseling on issues that confront children who are the subject of a suit affecting the parent-child relationship.

### III. Information Gathering

As stated in Chapter One, most family law attorneys use forms as a way to collect initial information from their clients help with family law matters. For a client seeking separation or divorce, the form should be a more in-depth, multi-page document that requests the client to list specific information such as jurisdictional information, information about the parent-child relationship, employment history, any history of family violence, and all financial information, including debt, retirement funds, and where and how assets are held.

#### **Drafting Assignment #3: Interview of Client Gabriella Smith**

Based on the New York Family Code, draft interview questions for your first interview with Gabriella. Focus on the reasons Gabriella wants to divorce and be prepared to explain to her what the law in New York requires before a petition for marriage dissolution can be filed.

#### *Case Scenario #2: Marriage Dissolution without Children*

Gabriella (30) and Sean (32) Smith live in New York and got married right after college at age 22 and 24, respectively. They both have high-powered jobs and decided at the beginning of their marriage not to have children in order to advance their careers and travel. Gabriella just made partner at her prestigious law firm, and Sean is a Vice-President at a large brokerage firm. Gabriella has changed her mind about having children and would like to slow down her pace at work to have at least two children. Sean does not want to compromise his jetsetter lifestyle by having children. He and Gabriella are at a crossroads because Gabriella recognizes that her biological clock is ticking, and if she wants to have children, she needs to find someone else with whom to have them before she reaches a certain age. She has just placed a down payment from her annual bonus on a townhome in New Jersey in anticipation of the divorce. She has come to your family law practice in order to start divorce proceedings.

#### Client Information

The client information sheet for a client wishing to separate or divorce should include a Relationship Timeline and a Client's Day in the Life List. The relationship timeline document created for the attorney should

highlight significant dates in the client's relationship with the opposing party, and serves as a guideline for a deposition or direct examination, if the matter proceeds to trial. The Client's Day in the Life List portrays a typical day that she and the opposing party share from the time they wake up to the time they go to bed. It usually indicates the level of care and time each party puts into the home, the work day, each other, and the care of family members (if there are children or elderly relatives involved in the matter).

### **Client File for Gabriella Smith**

#### *Relationship Timeline for Gabriella Smith*

10/5/YR-10	Met Sean at an undergrad party when I was a sophomore. He was a junior.
12/25/YR-10	Started dating Sean exclusively.
5/18/YR-09	Sean graduated from undergrad and moved to New York; began working for large brokerage firm. Long distance relationship.
08/23/YR-09	Broke up with Sean over affair he had with a sorority sister.
1/10/YR-08	Got back together with Sean.
2/14/YR-08	Sean proposed - we got engaged. Sean worked remotely and lived with me.
5/20/YR-08	I graduated from undergrad and I moved to New York and lived with Sean.
8/17/YR-08	I began law school in New York.
12/30/YR-08	We got married.
7/3/YR-07	I got pregnant unintentionally.

- 9/15/YR-07 I had a miscarriage. I went to counseling by myself.
- 1/7/YR-06 Sean got promoted to Vice-President. He started to travel a lot and was gone 2 weeks out of every month.
- 3/28/YR-06 We had a big fight about Sean's work traveling schedule, and his extra weekend trips to Vegas with his fraternity brothers.
- 2/5/YR-05 Sean's grandmother died. He went through a small depression.
- 5/21/YR-05 I graduated from law school.
- 8/29/YR-05 I finished taking the bar and Sean and I went on a 2<sup>nd</sup> honeymoon. We had a huge fight about his friendship with a female work colleague.
- 9/6/YR-05 Began working at large law firm; bought my first new car.
- 12/30/YR-05 Sean tells me he's jealous of two of the men in my law associate class because they communicate with me via text outside of work.
- 6/1/YR-04 I find pictures of Sean's female work colleague on his phone. She has on sexy bathing suits, and in one photo, she is topless. I confront him, and we have a huge argument.
- 7/15/YR-04 Sean refuses to go to counseling to discuss his infidelity, which he never admits.
- 5/31/YR-03 I have an affair with one of the junior partners at my firm. He is married and just had a baby.
- 7/11/YR-03 Sean and I discuss when we want to have children. He tells me he wants to wait until we get to our thirties to start thinking about children. Says we are too young and should save up our money and travel first.

- 10/30/YR-03 I end the affair with the junior partner. I move to a different law firm.
- 12/15/YR-03 Sean surprises me with a two-week vacation to Europe.
- 10/1/YR-02 Sean gets promoted to President. He gets a big bonus and spends most of it on a 1-month trip to China. He gets an offer to take a short-term position with his firm in Beijing.
- 12/5/YR-02 I found out Sean took the short-term position for one year without telling me. I was mad because he did not take into consideration my work schedule when he said yes.
- 5/10/YR-02 I get promoted to junior partner at my firm. Did not see Sean for six months.
- 12/15/YR-02 Sean moves back to New York permanently. Things are tense between us.
- 2/14/YR-01 Second Valentine's day we do not spend together. We have a big argument over the phone. He is in California supposedly visiting his college friend and his family.
- 6/13/YR-01 I notice Sean leaving the room to text and pick up calls. He stays at work later and sometimes comes home at 2 am during the week. His secretary sent me a birthday gift addressed to "Nikki." We have a big argument. He claims that she got him mixed up with another colleague, and Nikki is his colleague's girlfriend.
- 9/8/YR-01 I make partner at my law firm. Sean takes me out for a celebration with my friends and our family. Most of the toasts involved being happy that Sean and I have both accomplished our professional goals so now we can move on to having children.
- 9/9/YR-00 Sean and I have a blow-out argument, and he moved out to stay at a hotel. He said he does not want to have kids right now.

Wife's day in the Life List (before he moved out)

5:30 am Wake up; Sean still in bed.  
6:00 am Go exercise @ gym  
7:00 am Grab breakfast & coffee w/ best friend Kamryn  
8:00 am Arrive at work  
11:30 am Lunch with co-workers or girlfriends  
1:00 pm Return to work  
6:00 pm Networking (2-3 days each week)  
7:00 pm Leave work  
7:30 pm Meet Sean for dinner (or not)  
10:00 pm Wine @ home with or without Sean  
10:30 pm Check email and social media  
11:00 pm Go to sleep

Client Financial Information

Employer: Coles & Donahue Law Firm

Position: Partner

Income: \$750,000

Additional Compensation: \$200,000

Bank Accounts & Balances:

Checking: \$150,000



Savings: \$350,000

Assets: Townhome in New Jersey (MV=\$2.5 M; Equity=\$50K)

Loans: Mortgage = \$7700 / month

Law School Loans = \$2500/ month

Car payment = \$1700/month

Credit Card Debts: AAdvantage Citibank Visa = \$10,000

American Express = \$5000

JP Morgan Chase = \$7500

Monthly Expenses: \$30,000 total per month, including above loans, credit card payments, current apartment rent (\$5500/month), half of all utilities, gym membership (\$350/month), personal trainer, club fees, monthly parking, money paid to parents (\$2000 / month), charitable giving (\$2000/month), chef service, vacations, car maintenance, dry cleaning, feminine maintenance (facials, hair, nails, massages, waxing)

**Simulation Exercise #1:** Using the questions you have drafted, interview your client, Gabriella Smith.

**IV. Legal Separation – This section is omitted for purposed of this presentation.**

## V. Dissolution of a Marriage

When a person decides to pursue dissolution of a marriage, there are many unexpected considerations that they typically only learn about once they start looking for an attorney or googling the steps to divorce in their state. Jurisdiction and venue issues, waiting periods, counseling for couples with children, and alternative dispute resolution are matters that potential clients learn about once they begin exploring the road to divorce. Depending on the financial status of the spouses, some of these issues can be hurdles that prevent or delay the pursuit of marital dissolution.

### a. Choice of Law

As mentioned earlier in this chapter in Section II, Relevant Law, choice of law for a filing a divorce can make a great deal of difference. A client may be able to secure a divorce much quicker in one state for a variety of reasons. Besides the grounds upon which a spouse can petition for a divorce and how soon it can be filed, state law also governs the terms upon which spouses can divide property and obtain custody or access of their children. Choice of law can also make a big difference with regard to the option for and obtainment of alimony. Child support laws are very similar across the states, but there may be differences as to how courts interpret when modifications to the original child support order can be made.



**Research the Law:** What happens if both spouses file for divorce in two different places? What type of pleading can be filed to resolve the matter?

### b. Waiting periods

The term “waiting period” has different meanings. It can be the period of time required for the plaintiff to have domicile or residence in a state for a certain amount of time as a prerequisite to filing for divorce.<sup>4</sup> Another meaning for a “waiting period” is a “cooling off” duration of time so that a couple does not rush to divorce, but rather has some time for reconsideration. It can be the amount of time that must pass before a divorce can be filed or before it can be finalized. For example, the California Family

---

<sup>4</sup> 24 Am. Jur. 2d Divorce and Separation §176 (2019)

Code provides that no judgment of marriage dissolution is final until six months have expired from the date of service of the petition or the date the respondent makes an appearance (whichever occurs first). A few states also have waiting periods after a divorce is finalized before a person can remarry. This period ranges from thirty days to six months.

Many states have mandatory waiting periods before a no-fault divorce can be filed or granted by a court. Twenty-nine states do not have statutory requirements for waiting periods prior to filing for a no-fault divorce. Other states require a range of time from sixty days to two years. During this waiting period, couples may continue to live together, especially if there are not enough separate funds for the one spouse to maintain a household on his or her own. Because of the variety among states, choice of law can make a big difference in how quickly a couple can divorce, as well as how quickly they can remarry.

#### c. Therapy for couples and children

Many courts require couples who have children of the marriage to attend to couples counseling and to obtain a certain amount of therapy for their child(ren), depending on the age(s). Typically, these courts have the resources within the local county to provide referrals to a number of mental health professionals who can offer this type of therapy to couples and children at low cost or on a sliding fee scale. In some states like Texas, in order for a couple to obtain a no-fault divorce, there must be no reasonable opportunity for reconciliation. Many judges can institute local rules that must be complied with by parties assigned to their court, and often there is a consensus among family court judges in certain counties to endorse family services that serve to advance the best interests of children. The use of mental health professionals for family members during the divorce process has been shown to be very effective for establishing a peaceful transition for divorcing couples and their children

#### d. Mandatory Mediation

Most family courts jurisdictions require mediation before a case is set for trial. Even if mediation cannot resolve all of the disputes within the marital dissolution process, it can help to resolve some of them so that the final trial is similar to an evidentiary hearing on a particular legal issue. Mediation is usually more successful for clients if you introduce the concept

and the purpose of it at the early stages of the case. It is even more successful if you as the attorney begin preparing for it and strategize with it in mind as you are working through the case.

The court can appoint a mediator or give the parties the option of selecting a mediator of their own. Mediation must be conducted in good faith by both parties, and the manner in which you explain mediation can affect how your client visualizes the experience and the actual outcome of the process. Chapter Nine will cover mediation in more detail, and you will mediate one of the case scenarios as a simulated exercise.

## **Simulation Exercise #2**

Before you can dissolve a marriage, you will need to interview your client about what exactly his or her objectives are for the marital dissolution. You should have learned in Section III of this chapter how important it is to ask the right questions during the interview in order to draft a separation agreement for your client. The same practice can be applied to drafting a petition for divorce. Please read the following case scenario. Review the interview notes in the form of questions and answers recorded by your firm's paralegal. Determine whether the interview adequately addresses the reason(s) Adrienne wants to divorce, her children's needs, and her own needs after the divorce.

*Case Scenario #3:*

*Divorce with Children*

Brandon Scott is married to Adrienne, and they have been married for eight years. Adrienne is African-American and Brandon is Caucasian. They have two biological children, Joshua (6) and Ava (3). They have recently discussed separation because Brandon has been having an affair for the last two years with Lauren, who is Caucasian. Lauren is single and now pregnant, presumably with Brandon's child. This is the last straw for Adrienne, and she has come to you to discuss next steps for proceeding with the separation and divorce. Brandon is a systems administrator for a small start-up company. Adrienne is a pediatric nurse. They live in Dallas, Texas.

## **Client File for Adrienne Scott**

### **Interview Notes for Client Adrienne - Seeking Divorce**

Q: Can you describe the first four years of your marriage.

A: The first four years of the marriage were okay. We got married in YR-08. Brandon was twenty-eight, and I was twenty-seven when we got married. We knew each other for four years before we got married. His parents were initially not supportive of the marriage because of my race. We had two pretty good years before our son was born, but Brandon did see or speak to his parents that much. We traveled together and spent time with my family and our friends from college. Both of us had good jobs that we liked. When I got pregnant with Joshua, we were both excited about having our first child together. Brandon was elated to have a son. His parents even came around to accepting me as his wife because Joshua was their first grandchild. I had a healthy pregnancy and problem-free delivery. The first two years with Joshua were an adjustment – like with any other couple who has a child. We got very little sleep, but we were happy. We purchased our first house when Joshua was one-year-old. We did not have a lot of debt except for student loans from college and one car note for Brandon's car. Our families were supportive of us, and they helped out with Joshua whenever they could. Both of our parents live in the city. I took off some time from work after Joshua was born, but I went back to work after three months of unpaid maternity leave.

Q: How have the last four years compared to the first four years?

A: The last three years have been awful. The year that I was pregnant with Ava was difficult. I was constantly sick and lost time on my job. Our finances were affected because I had to take family medical leave because my doctor put me on bedrest. Both of our parents have been encouraging me to quit my job and stay home with the kids, but I don't want to be totally dependent on Brandon for money.

Q: Earlier in our consultation, you stated the reason you want to divorce your husband is because of his affair with a woman named Lauren. Can you tell me how you came to know about this affair?

A: I read some emails between Brandon and Lauren, and the emails made it clear that they were hooking up and spending time together.

Q: How do you know that they were having sex?

A: Some of the emails referred to things they did together, some of those things were sexual in nature. Things like “I like what you did with your tongue last night,” and “well, that was not as good as what you did with your [bleep].” I made copies of the emails.

Q: Do you know how long the affair has been going on?

A: At least two years.

Q: How do you know this?

A: When I searched his computer and checked our phone records, I saw that this one number, which I think is her cell phone number, dates back to YR-04.

Q: Has your husband admitted to this affair?

A: He denied the affair at first. Recently, he just says he is done with the issue – he does not deny it anymore. He just deflects when I ask him questions about her. One of our mutual friends told me Lauren was pregnant, so I definitely suspected that it might be his child.

Q: How did you find out for sure that Lauren was pregnant?

A: Lauren called me and told me she was pregnant with Brandon’s son.

Q: What does Brandon say about the pregnancy?

A: He says that the baby could not possibly be his child.

Q: Did you continue to have sex with Brandon after you found out about Lauren?

A: Yes – initially when he denied it, I thought he was telling the truth. After she called and told me she was pregnant, I have not slept with him. That was about four weeks ago.

Q: Have you and your husband ever had marriage counseling?

A: No.

Q: If the court orders you and Brandon to go to counseling before you can proceed with the divorce, are you willing to make a good-faith effort to try and reconcile with him?

A: That would be really difficult for me at this point. I don't trust him at all! Unless he admits what he has done, marriage counseling would be pointless. If that baby is his, I don't see that our marriage could make it. I won't be able to really know if he is the father for another six months when the baby is born.

Q: Did you ask Brandon to do DNA testing once the child is born?

A: Yes, but he said no, it was not necessary. He won't do genetic testing unless a court orders him to do it.

Q: Have you told him that you wanted a divorce?

A: Yes, he knows that I want to end the marriage.

Q: Did you all talk about child custody and child support?

A: He said that he did not want to split up our children. He does not want to live separately. He said he wanted joint custody and was not interested in paying child support. He knows that having joint legal and physical custody means that he would not have to pay child support. Plus, if that child is his, he will have another child to take care of and will likely have to pay her child support.

Q: Who does most of the caretaking of the children?

A: Me, of course. I mean, he picks them up from daycare and school, but I do the lion share of cooking, cleaning, grocery shopping, lunch packing, clothes shopping, teacher-parent conferences, etc.

Q: Do either of your children have any special needs?

A: Yes. Ava was just diagnosed with autism, and we are awaiting further test results to determine where she is on the spectrum in order to determine if I need reduce my work schedule to stay home with her to help her before she enters elementary school. Joshua and Ava are otherwise both healthy and happy kids.

Q: You have the option of filing for a divorce in two different ways – it can either be a no fault or fault divorce. The no-fault divorce essentially means the marriage is ending, but it's no one's fault that it is coming to an end. The fault divorce puts the blame of the marriage ending squarely on one person. Do you want to file a no fault or fault-based divorce?

A: Fault. It is his fault! I did not have an affair -- he ruined our marriage by knocking up this Lauren girl!

Q: All right. If the court finds that it was his fault, you may have some advantage as far as the property division.

A: Will the court just force us to sell the house and divide up the debt?

Q: It depends. Do you think you need any temporary alimony to get on your feet after the divorce?

A: Maybe, I need some time to save up enough money to get my own place for me and the kids. I have some savings in a separate account that he does not know about, and another credit card that I got just in case I decided to leave him over this whole affair. I have about \$1500 in savings.

Q: Well, it is not likely that the court will grant you alimony because you have not been married for ten years. You work full-time at a good job, so it will be difficult for you to meet the standard required in Texas. However, depending on the test results for your daughter Ava's autism, you may be able to get temporary alimony if you have to stop working to stay at home with her for a couple of years.



A: Okay, well I just want what is fair.

Q: Do either of you have any other assets or debts other than what you have already mentioned (the student loans, and the one car note)?

A: We both have two credit cards each – I am not sure what the total balances are on all of them. My balances are \$3000 on a Citibank Visa and \$1000 on a Macy's card. He has a Chase Mastercard and an American Express. There is no telling what the balances are by now. He stopped showing me those statements years ago.

Q: What are each of your incomes?

A: I make \$75,000 a year, and he makes \$110,000. We both have retirement accounts. I am not sure about the balances, but his is probably \$30-50,000 higher than mine. He may have some stock options with the new company, but it hasn't gone public yet, so I am not sure how much they are worth right now.

Q: Okay – I may have to follow up on all of the property assets and debt particulars later. Is there any reason that you would want or need a temporary restraining order?

A: Yes. I am afraid he is going to try to move some money around and hide it from me. He has two saving accounts that I am sure have a good deal of money in them. I don't want him to try and take my money either. I would like to freeze everything as it is, and I also want to stop Lauren from calling our home or my phone.



**Research the Law:** What does the law in Texas require before a divorce petition can be filed?

**Drafting Assignment #5:** Draft a petition for divorce for the client (wife) in the Case Scenario #3. What are the grounds for divorce that your client wants to pursue? Do you need to follow up with a second interview with the client prior to finalizing the petition or have you gathered enough information from the initial interview?

**VI. Temporary Orders -- This section is omitted for purposes of this presentation.**

## VII. The Respondent's Answer

The range of respondent's answers vary, but the most common answer is a General Answer and Denial, which is usually a two-page pleading. Even if both parties agree, a general denial is necessary so that there will not be a default judgment. In some cases, spouses do not care about a default judgment because they agree with everything the petitioner is requesting. Filing no paperwork is cheaper and less of a hassle for the agreeable spouse.

On the other hand, if the petition for divorce is for cause and/or there are matters in dispute, the respondent's answer may need to include affirmative defenses, specific denials, special exceptions, and/or verified pleas. There may also be other responsive pleadings or motions that need to be filed to address jurisdiction or venue disputes.



**Research the Law:** What is an example of a specified denial in an Answer to a Petition for Divorce? What is a verified plea, and under what circumstances would you advise a client to make such a plea?

**Drafting Assignment #6:** Draft the Respondent's Answer to the Petition for Divorce for the respondent (husband) in the Case Scenario #3.