

ISLAND COUNTY COURT FACILITATOR

Darcy Mehlhaff

501 N Main Street

Coupeville, WA 98239

(360) 678-7981 * d.mehlhaff@co.island.wa.us

LEGAL SEPARATION WITH CHILDREN

(This outline includes both “contested” and “un-contested” instructions.)

“Ignorance of the law excuses no man: Not that all men know the law, but because ‘tis an excuse every man will plead, and no man can tell how to refute him.”

John Selden

English Antiquarian & Jurist

IMPORTANT: This checklist is not a substitute for legal advice. Before starting any legal action, it is always wise to consult an Attorney regarding your rights and responsibilities. Many Attorneys offer consultations. The Court Facilitator CANNOT give legal advice. ONLY AN ATTORNEY CAN GIVE LEGAL ADVICE.

AS A *Pro Se* LITIGANT YOU ARE REPRESENTING YOURSELF AND THEREFORE ARE RESPONSIBLE FOR ALL DOCUMENTS YOU FILE WITH THE COURT OR PRESENT TO THE JUDGE.

Please read all documents and instructions carefully. If you need assistance with understanding forms or procedures, the Court Facilitator may review forms you have prepared yourself, answer questions, or help you with procedures.

- For additional assistance, review the self-help packets on this subject at www.washingtonlawhelp.org.
- The Court Facilitator does not represent you and may also assist your spouse.
- Court Facilitator fees are paid directly to the Court Clerk **BEFORE** you see the Court Facilitator: **\$20 for ½ hour walk-in appointments** and **\$40 for scheduled hourly appointments**. You will be asked for your receipt at the appointment.
- **Walk-in appointments are Mondays 1 - 4 and Wednesdays 11 - 4.** Keep in mind these walk-in hours are periodically cancelled and notice of cancellation will appear in the foyer of the Juvenile and Family Court building.
- **Scheduled appointments are Tuesdays and Thursdays 10 - 4.** If needed, alternate days and times may be arranged.
- To schedule an appointment and/or ask questions, email: d.mehlhaff@co.island.wa.us

1. **Obtain and prepare the necessary forms.** You may purchase a packet of forms from the Island County Superior Court Clerks or you may download forms for free at the following websites:

www.courts.wa.gov/forms

(Standardized Washington State Forms)

www.islandcountywa.gov/SuperiorCourt

(Island County Local Court Rules and Forms)

(**Note:** Documents must comply with GR 14 (format for pleadings and other papers), be on one side only, double spaced and legibly hand-printed in blue or black ink or typed in at least 12 point type.)

2. **To file for *Legal Separation with Children*, the following forms must be completed:**

_____ Petition for Legal Separation	FL Divorce 203
_____ Summons: Notice about a Marriage (do not need if "Joinder" is signed)	FL Divorce 200
_____ Certificate of Dissolution	DOH 422-027
_____ Confidential Information Form	FL All Family 001
_____ Parenting Plan (Proposed)	FL All Family 140
_____ Child Support Worksheets (Proposed)	WSCSS Worksheets

The Court Facilitator can help you calculate child support or you can prepare a Child Support Worksheet using the Child Support Calculator found at: <https://fortress.wa.gov/dshs/dcs/SSGen/Home>

(**Note:** If your spouse completes the ***Agreement to Join Petition*** or ***Service Accepted***, or agrees to join the ***Petition*** by signing the agreement on the last page of the ***Petition***, service of the ***Petition*** and ***Summons*** is not necessary.)

3. **Make copies of all forms you have completed, except the *Confidential Information Form*.** The Superior Court Clerk's office will keep the original documents for your Court file; you will need a set of copies for yourself and another set to serve on the other party. It is important to keep a copy of these documents; you will need to refer to them when preparing final documents for your final Legal Separation Hearing.
4. **File the original documents with the Island County Superior Court Clerk in Coupeville** (101 NE Sixth Street). The Superior Court Clerk will inform you of the current fee amount; the filing fee must be paid to the Superior Court Clerk. The fee may be waived in some cases. The forms necessary for obtaining a fee waiver are available on the State website or at Island County Superior Court Administration.

(**Note:** If you obtain a fee waiver to file your legal separation documents, the Court Facilitator fees will also be waived.)

5. **At the time of filing, a *Court's Temporary Order* Re: SPR 94.04 is imposed which limits what the parties can do while their legal separation is pending and until the Court finalizes the legal separation.** Review the ***Order*** carefully. (**Note:** This is not a restraining order that prohibits the parties from contacting each other.)

The Superior Court Clerk's office will give you a copy of the ***Order***. You must serve the other party with a copy of the ***Order***. The ***Order*** is binding on the Petitioner from the date of filing and Respondent from the date of service.

6. **Serve the other party with a copy of the documents you prepared and the *Court's Temporary Order*; do not include the *Confidential Information Form*.** Personal service must be completed by a person who is over the age of 18, a United States citizen, and not involved in the case.

(IMPORTANT: You may not complete the personal service; it must be by a third party.)

The person completing service must complete a:

_____ **Proof of Personal Service** **FL All Family 101**

Proof of Personal Service* is very important;** all documents being served must be noted along with the date, time, and location service is completed. Make a copy and file the original ***Proof of Personal Service at the Superior Court Clerk's office.

The Island County Sheriff's office may serve the documents for a fee if the other party resides in Island County. If the other party does not reside in Island County, contact the Sheriff's office, or a Process Server, in the county in which he/she lives.

Your spouse has **20 days** (if served in Washington) or **60 days** (if served outside Washington) to file a ***Response*** to your ***Petition***. If you need to serve by mail or publication, you must ask the Court for permission to do so and follow the instructions in the ***Order*** allowing this alternate type of service.

For more information regarding service, read ***"How to Serve the Opposing Party in your Family Law Case"*** (www.washingtonlawhelp.org).

7. **Both parties must prepare a:**

_____ **Financial Declaration** **FL All Family 131**

_____ **Sealed Financial Source Document** **FL All Family 011**

_____ **Verified Statement of Assets and Liabilities** **Local Court Form**

LOCAL COURT RULE SPR 94.04(d). *Financial Declarations and Verified Statement of Assets and Liabilities.* Within **30 days** after the filing of an answer or other responsive pleading in any of the actions specified in **SPR 94.04(a)**, each party shall serve the opposing party with (1) a ***Financial Declaration*** (FL All Family 131) and all attachments in all cases involving a request for child support, maintenance or attorney fees, and (2) a ***Verified Statement of Assets and Liabilities*** in the form set out in the Forms Appendix B. The ***Financial Declaration*** shall be filed with the Court. All parties have a duty to supplement the documents when additional information becomes available. Each party shall file with the Court a ***Declaration of Mailing*** attesting that the ***Financial Declaration*** and all attachments and the ***Verified Statements of Assets and Liabilities*** has been provided to the other party within the **30 day time limit**.

8. **Respondents:** If you are served with legal separation documents and do not agree, you must file a:

_____ **Response to Petition About a Marriage** **FL All Family 211**

The ***Response*** must be filed within **20 days** (if served within Washington) or **60 days** (if served outside of Washington). File your ***Response*** with the Superior Court Clerk's office and send a copy "**certified mail, return receipt requested**" to the Petitioner at the address indicated on the ***Summons***. You may also want to file and send your own ***Proposed Parenting Plan*** and ***Child Support Worksheets***.

9. **Default Orders:** If your spouse does not file a ***Response*** to your ***Petition*** within the allowed time, you may present a:

_____ **Motion for Default** **FL All Family 161**

_____ **Order on Motion for Default** **FL All Family 162**

You may present the ***Motion*** and ***Order for Default*** to the Judge on the Court's ***Ex Parte*** Calendar or on the ***Pro Se*** Dissolution Calendar when finalizing your legal separation. If the Judge signs an ***Order on Motion for Default*** then you can finalize your case without your spouse's participation or signature.

If obtaining a default, it is important to remember that all your final documents must match the documents originally filed and served to the Respondent.

(**Note:** Even if you obtain an ***Order on Motion for Default*** you still cannot finish your legal separation before **90 days** from the day after the date your spouse was served.)

10. **LOCAL COURT RULE SPR 94.04(e) Parenting Seminars.** This rule shall apply to all cases in which the Court is being asked to enter a ***Parenting Plan*** for minor children.

- (1) **Mandatory Attendance.** Unless waived as provided herein, within 30 days of filing an appearance, answer or other responsive pleading in an action involving a parenting plan for minor children, both parties shall register for a court-approved parent education seminar on the effects of family transitions on children, unless the parties have previously attended such a course within the last three (3) years. Each party shall attend the seminar within 60 days of registering.
- (2) **Certificate of Completion.** Upon completion of the seminar, each party shall file with the Court the seminar completion certificate provided by the sponsoring agency or provider. Additionally, a copy of the certificate of completion shall be provided to the Judge at presentation of final documents.

ISLAND COUNTY DOES NOT ACCEPT ONLINE PARENTING SEMINAR CERTIFICATES

- (3) **Fees.** Each party attending a seminar shall pay a fee charged by the approved provider and authorized by the Court.
- (4) **Seminar Providers.** The court shall establish standards for parenting seminars and shall approve seminar providers. A list of approved parenting seminars shall be available from the Court Administrator, Juvenile Court Administrator, or County Clerk. If a parenting seminar is not included on the list then the Court, upon proper motion, may allow other seminar providers to fulfill this requirement on a case-by-case basis. Online parenting seminars and out-of-county seminar providers require prior Court approval, unless they are on the approved list.

IMPORTANT!

- The Parenting Seminar *“Helping Children through Divorce”* is the only class available on Whidbey Island that satisfies this requirement.
- There is only one seminar per month so you must plan accordingly.
- Sign up for the seminar by calling (360) 279-9222.
- Permission to attend another Parenting Seminar must be obtained from the Court by presenting a **Motion** and **Order** to the Judge at an *Ex Parte* Hearing **BEFORE** you attend your final Hearing.
- **YOU MUST ATTEND AN “IN-PERSON” SEMINAR; ISLAND COUNTY DOES NOT ACCEPT CERTIFICATES FROM ONLINE PARENTING SEMINARS.**

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- (5) **Waiver and Special Consideration.**

- (A) **Opposing Parties.** In no case shall opposing parties be required to attend a seminar together.
- (B) **Domestic Violence or Abuse.** Upon a showing of domestic violence or abuse which would not require mutual decision-making pursuant to RCW 26.09.191, or if the Court determines that attendance at a seminar is not in the children’s best interest pursuant to Ch. 26.12 RCW, the Court shall either waive the requirement or completion of the seminar or allow participation in an alternative parenting seminar if available.
- (C) **Proposed Parenting Plan required.** Within 14 days of completing the parenting seminar as described above, each parent shall provide the other parent with a Proposed Parenting Plan, if they have not already done so.
- (D) **Willful Refusal. WILLFUL REFUSAL TO PARTICIPATE IN A PARENTING SEMINAR OR WILLFULL DELAY IN COMPLETING A COURT-ORDERED PARENTING SEMINAR MAY RESULT IN A FINDING OF CONTEMPT AND IMPOSITION OF SANCTIONS.** (See Order to Show Cause Re: Parenting Class in the Forms Appendix H.)

11. **LOCAL COURT RULE SPR 94.04(i) Parenting Plans and Child Support Orders Submitted by Pro Se Parties – Review.** Any action in which the residential care or child support of a minor child or children is at issue and in which none of the parties are represented by counsel, the Parenting Plan and Child Support documents shall first be reviewed, approved and initialed by the Court Facilitator in the county in which the action is pending, or if there is no Court Facilitator, by the Juvenile Court Administrator. A Proposed Parenting Plan does not need to be initialed and approved before filing, but any Parenting Plan submitted for Court approval must be so initialed and approved before the Court will consider it.

Bring the following to final review of Parenting Plan and/or Child Support:

_____ **6 months** of pay information or **2 years** of income tax information (W-2s)

_____ Verification of amount paid each month for the children’s health insurance.

_____ Verification of Child Care expenses, if any.

_____ Proposed Parenting Plan **AND** Final Parenting Plan

_____ Parenting Seminar Certificates

12. **Schedule your AGREED final Legal Separation Hearing after meeting with the Court Facilitator.**

- Call the Superior Court Clerk's Office **(360) 679-7359** and ask to be put on the ***Pro Se Dissolution Calendar***. *Pro Se* family law matters are heard on Wednesday at 8:30 a.m.
- When you call you must give the Clerk the date that your 90 days are up so they can schedule you for the first available Court date after your 90 days. Start counting your 90 days the day after your spouse was served or joined the ***Petition for Legal Separation***.
- **Both parties must fill out and file a:**

Supplemental Confidential Information Form

Local Court Form

Each party must provide the required information on all people (including themselves) over the age of 11 living in their household. Submit the original form to the Superior Court Clerk and provide a copy to Island County Superior Court Administration at least 10 days before the date of your Legal Separation Hearing or Trial. **You must have completed this step before your legal separation will be finalized.**

- If you obtained an ***Order on Motion for Default***, or if you and your spouse have reached an agreement, complete and bring all documents listed below with you to your Legal Separation Hearing. If you are finishing your legal separation by default, make sure all your final orders are filled out exactly the same as the documents your spouse was served with in the beginning.
- **IMPORTANT:** When completing your ***Findings and Conclusions about a Marriage*** and ***Final Legal Separation Order*** keep in mind:

In the beginning of the legal separation process you filed a ***Petition for Legal Separation***, this Petition contained a proposal for how you believed the property and debts should be when the legal separation is final. Review your Petition when completing the ***Findings and Conclusions about a Marriage*** and the ***Final Legal Separation Order***.

In the end of the divorce process it is important to note the difference between the ***Findings and Conclusions about a Marriage*** and the ***Final Legal Separation Order***.

- ✓ Using your Petition as a guide, complete your ***Findings and Conclusions about a Marriage***. Place listed property and debts into the assigned categories of community property/debts and separate property/debts. This will bring the property and debts together as they were while you were married.

- ✓ Next, complete the ***Final Legal Separation Order***. All the property and debt that was just put into the categories of community property and separate property must now be divided as belonging to or needing to be paid by either Petitioner or Respondent. In this aspect, the ***Final Legal Separation Order*** resembles the ***Petition for Legal Separation***.
- ✓ It is important to make sure these documents are completely filled out in the way you both agree, never default to “as the court decides” or “as agreed”. Legal Separations heard on the ***Pro Se Dissolution Calendar*** must have every document listed in #13 agreed to and signed before they are presented to the Judge.

13. Bring all your prepared, signed Orders to the AGREED final Legal Separation Hearing.

<u> </u>	Parenting Plan (Final)	FL All Family 140
<u> </u>	Residential Time Summary Report	FL Divorce 243
<u> </u>	Child Support Worksheets	WSCSS Worksheets
<u> </u>	Child Support Order	FL All Family 130
<u> </u>	Findings and Conclusions about a Marriage	FL Divorce 231
<u> </u>	Final Legal Separation Order	FL Divorce 241

14. If parties are not in agreement, the following must occur:

LOCAL COURT RULE SPR 94.04(f) Mandatory Mediation.

- (1) **Requirement for Mandatory Mediation.** In all cases specified in SPR 94.04(a) with unresolved issues, both parties shall in good faith engage in mediation with a Court Approved Mediator in an effort to resolve the case, unless waived as set forth herein. **Mediation shall be completed at least 60 days prior to the scheduled trial date.**
- (2) **Waiver of Mandatory Mediation.** Mediation shall not be required in the following cases:
 - (A) **Good Cause.** For good cause shown upon ***Motion*** and approval by the Court; or
 - (B) **Restraining or Protection Order.** Where a domestic violence restraining order or protection order (excluding *ex parte* orders) involving the parties has been entered by a Court at any time within the previous 12 months.

- (C) **No Contact Order.** Where a domestic violence no contact order exists pursuant to RCW 10.99;
- (D) **Domestic Abuse.** Where the Court upon **Motion** finds that domestic abuse has occurred between the parties and that such abuse would interfere with arm's-length mediation.
- (E) **Order to Require Mediation.** Notwithstanding the foregoing, either party may by **Motion** seek a Court Order requiring mandatory mediation in a case where it would not be required if the moving party believes that the parties would be able to mediate their dispute at arm's length under the particular case circumstances.
- (3) **Settlement Conference after Mandatory Mediation.** If, after mediation in good faith or where mediation is not required, there remain unresolved issues in any case specified by SPR 94.04(a), the parties may participate in a settlement conference, pursuant to LCR 16(d).
- (4) **Effect on Court Proceedings.** Mediation does not stay or otherwise affect the rights and duties of the parties established by Statute, Court Rule, or Court Order. The Court may enter Temporary Orders and the parties may conduct discovery prior to or during the mediation process.
- (5) **Cost of Mediation.** Mediators shall be paid by the parties in accordance with the agreement of the parties, or in the absence of agreement, as determined in mediation.
- (6) **Responsibility for Compliance.** The parties shall be responsible for arranging for and completing all mediation requirements established under this rule.
- (7) **Failure to Comply with Mandatory Mediation. WILLFUL REFUSAL TO PARTICIPATE IN MEDIATION OR WILLFUL DELAY IN COMPLETING MEDIATION MAY RESULT IN A FINDING OF CONTEMPT AND IMPOSITION OF SANCTIONS.**
- (8) **Approval of Mediators.** Mediators performing mediation services pursuant to this rule must fulfill certain minimum qualifications established by the Court. The Court Administrator shall maintain a list of such minimum qualifications for distribution to the public. In order to fulfill the mediation requirements of this rule, the parties must use the services of a Court Approved Mediator. The Court Administrator shall maintain a list of approved mediators, either persons or agencies, for distribution to the public. The list shall contain the following information: each mediator's name, organization, if any address and telephone number, and fee schedule.

<https://www.islandcountywa.gov/superiorcourt/pages/mandatorymediation.aspx>

- (9) **Selection of Mediator, Right of Mediator to Decline.** The parties may either agree to a mediator from the Court Approved list or the mediator will be determined by use of a strike list. A mediator has the right to decline to serve in a particular case. If a mediator declines to serve, the parties shall select a different mediator, using the same selection process by which the preceding mediator was selected.
- (10) **Authority of Mediator.** The mediator has the authority to determine the time, place, manner, and duration of mediation. In appropriate cases, the mediator shall have the authority to terminate the mediation prior to completion.
- (11) **Attendance at Mediation.** The parties shall personally attend all mediation sessions, unless the mediator permits telephonic or other attendance. The mediator shall have the authority to require other persons to attend.
- (12) **Declaration of Completion of Mediation.** Within seven (7) days of completion of mediation, a declaration that mediation has been completed shall be filed with the Court by the mediator. The mediator shall advise counsel and the parties of the results of mediation in writing. The mediator shall advise the Court only whether an agreement has been reached on some or all of the issues.
- (13) **Confidentiality.** [See RCW5.60.070] The work product of the mediator and all communications during the mediation shall be privileged and confidential and not subject to compulsory disclosure. The mediator shall not appear to testify in any court proceedings.
- (14) **Effective Date.** This rule shall apply to all cases described herein filed after January 1, 1997.

15. **If Mediation does not resolve your contested issues and if you cannot come to an agreement on your own, fill out and file a *Note for Trial Setting (Local Court Form)*.** The *Note for Trial Setting* is your request to have a Trial Date assigned to your case.

- On the line that says “date requested for trial assignment” pick a Monday that is at least two weeks away. You will not have to appear in Court on that Monday, it is just the date that the Court Administration will be reviewing your file and assigning you a ***Readiness Hearing*** and ***Trial Date***.
- If there are dates that you will not be available for trial, fill out and file a ***Notice of Conflict Dates*** (Local Court Form) when you file your ***Note of Trial Setting***. You must serve the other party with a copy of the ***Note for Trial Setting*** and any ***Notice of Conflict Dates***.
- The Court will send you and the other party notice of your ***Readiness Hearing*** and your ***Trial Date***.
- If you are not represented by an attorney, you must meet with the Court Facilitator to review your final Orders PRIOR to Trial. Arrange an appointment at least 30 days before your Trial.

- You must confirm your trial with Court Administration by not later than 12 noon two (2) days prior to the Trial or it will be stricken. Call **(360) 679-7361** to confirm.

16. **Courtesy (Working) Copies.** Approximately one (1) week before your Trial date, it is requested that you provide the Judge with a “courtesy copy” of the documents you will be presenting at Trial.

LCR 5 SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

(e)(3) Courtesy Copies for Judges. Courtesy copies of pleading and other papers shall be provided to the Court Administrator’s office for the Judge assigned to the case at the same time as such pleadings and other papers are required to be served on the opposing party. Such courtesy copies shall have the words “Judge’s Courtesy Copy” in the upper right hand corner of the first page, the Judge’s name, and the date and time of the Hearing. Courtesy copies are discarded after ten (10) days from the assigned Hearing date. It is the responsibility of the parties or counsel to provide new courtesy copies to the Judge thereafter as provided herein.

17. **There are specific requirements and procedures related to trial preparation.** It is strongly suggested that you purchase a copy of Island County’s Local Court Rules at the Court Administrator’s Office, or download a copy from the Island County Superior Court website. Be sure you are familiar with the rules related to trials and that you follow the required procedures. This outline does not cover trial preparation. You may want to seek legal advice from an attorney.

18. **Go to your trial with all the completed documents listed in #13 above.**

Island County Superior Court Ex-Parte Calendar

Monday at 9:30 a.m.

Tuesdays through Fridays at 1 p.m.

You must check in with the Superior Court Clerk’s Office at least 45 minutes before the court time.

Island County Pro Se Dissolution Calendar

Wednesdays at 8:30 a.m.

You must check in with the Superior Court Clerk’s Office no later than 8:15 a.m.

HELPFUL WEBSITES:

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| www.islandcountywa.gov/SuperiorCourt | (general information, local forms and rules) |
| www.nwjustice.org | (general information and links to other resources) |
| www.washingtonlawhelp.org | (general information and sample forms) |
| www.courts.wa.gov | (forms and other information) |
| www.dshs.wa.gov/doc | (information on child support & calculator) |

HELPFUL PHONE NUMBERS:

Island County Superior Court Clerk's Office	(360) 679-7359
Island County Superior Court Administration	(360) 679-7361
CLEAR Referral Line for Volunteer Lawyer Program	(888) 201-1014

IMPORTANT: This checklist is not a substitute for legal advice. Before starting any legal action, it is always wise to consult an Attorney regarding your rights and responsibilities. Many Attorneys offer consultations. The Court Facilitator CANNOT give legal advice. ONLY AN ATTORNEY CAN GIVE LEGAL ADVICE.

COURTHOUSE FACILITATOR INFORMATION

Make the most of your time with the facilitator:

Your time is valuable, so make the most of your visit with the court facilitator. If you have already purchased a “do it yourself” kit, read the instructions carefully and make a note of the questions you have. Use pencil to complete the first draft of your paperwork, or make a copy that you can use as a rough draft. **Complete your documents as much as possible. That way the facilitator will be able to review documents with you to see if they are filled out properly. Try to answer the facilitator’s questions clearly and briefly. Take notes during your visit with the facilitator.**

For information about the services the facilitator may provide, read “How Courthouse Facilitators Can Help.” **The court facilitator cannot give you legal advice or predict what the court will do in your case.** Only an attorney in private practice or in a volunteer legal services program can advise you about your rights and responsibilities, and which course of action is best for you.

If you need the facilitator to compute child support for you, bring financial information with you. This includes pay stubs for you (and for your child’s other parent, if available), health insurance premium amounts, child care payment amounts, and special expenses (school sports fees, dance or music lessons, automobile insurance costs for your teen driver, etc.). If you need help modifying an existing order, be sure to bring a copy of the order with you (the original child support, parenting plan, or custody decree).

Please try to arrange child care for young children. Courthouses do not offer child care services. **DO NOT** bring a child who is the subject of the case being discussed with you to the appointment. **CHILDREN SHOULD NOT HEAR DISCUSSIONS OF THE CASE IN WHICH THEY ARE INVOLVED.**

How court facilitators can help:

Court facilitators can provide information about procedures and assist you with legal forms (sometimes referred to as “pleadings”) in your family law case if you are not represented by an attorney. If a party in a legal proceeding does not have an attorney, that person is referred to as “self-represented” or acting “*pro se*.” **THE FACILITATOR IS NOT YOUR LAWYER AND CANNOT GIVE YOU LEGAL ADVICE.** If you are acting *pro se* in your case, it is often a good idea to consult with a lawyer about what is best for you in your situation.

The facilitator can help you with your family law case under Title 26 RCW. Types of cases in Title 26 include dissolution of marriage (divorce), dissolution of domestic partnerships, child support parentage (paternity), non-parental custody, and modification of parenting plans, child support, and maintenance.

GR 27 is the court rule that defines the basic services facilitators may provide to self-represented parties. Services provided by the court facilitator may vary from county to county.

Generally, court facilitators may provide some or all of these services:

- referral to legal, social service, and alternate dispute resolution resources;
- assistance in calculating child support based on financial information provided by the *pro se* party;
- process interpreter requests;
- assistance in selection as well as distribution of approved forms and instructions;
- assistance in completing approved forms;
- explanation of legal terms;
- information on basic court procedures including requirements for service, filing, scheduling hearings and complying with local procedures;
- review of completed forms to determine whether forms have been completely filled out but not as to substantive content;
- previewing *pro se* pleadings prior to Hearings to determine whether the procedural requirements have been complied with; and
- attendance at *pro se* Hearings to assist the Court with *pro se* matters.

DIVIDING PROPERTY AND DEBTS

Washington Law Help (November 2018)

A. What is community property?

You must tell the court about **all** your property and debts. Washington is a ***community property*** State. Generally, all property (house, other real estate, car) either spouse gets during the marriage is ***community property***. It belongs to both spouses, even if only one is on the title. Each spouse's earnings during the marriage is ***community property***.

Your Divorce Petition proposes how the court should divide the property and debts. The court in the Final Divorce Order decides who gets what.

Separate property belongs to only one spouse. Generally, it is property you got before the marriage, through inheritance or as a gift (before **or** during the marriage), or after separation.

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- ❖ If you lived together before your marriage, property and earnings you had while living together might also be ***community property***. Talk to a lawyer.
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Generally, **all** debts either spouse incurred during the marriage are **community debts**. Both spouses are equally responsible for them. You incur *separate debts* **before** the marriage **or after** separation.

The law about division of property in divorces can be complicated. Talk to a lawyer.

B. Will the court divide everything 50/50?

It depends. **The court can make any division that is just and equitable**, after considering:

- The nature/extent of the community property.
- The nature/extent of the separate property.
- How long the marriage lasted.
- Each spouse's economic circumstances at the time the property division will become effective.
- Whether the spouse with custody should get the family home.

C. What is "just and equitable division" of property and debts?

It will depend. If you have children, the court looks at who gets custody. The court will probably let the parent with custody keep living in the family home, if possible. The court may award that parent more property and fewer debts, especially if the other spouse cannot pay much child support.

The court will also consider (especially if there are no children) what condition property/debt division will leave you each in post-divorce. It generally does not want one spouse very wealthy and the other poor.

It will consider your

- Age.
- Health.
- Education.
- Work prospects.

Example 1: You had a long marriage. You have not worked much outside the home. The court may award you more community property (or long-term maintenance) so you do not end up poorer than your spouse is.

Example 2: You are disabled. You cannot work. The court may award you more community property.

Example 3: The court can consider which spouse will be able to afford to pay the debts when deciding who must pay them.

In most cases, the court will award each spouse their separate property and order each to pay their separate debts. It rarely awards one spouse's separate property/debts to the other.

D. I have a Prenuptial Contract, Domestic Partnership Agreement, or Community Property Agreement. What will happen?

You may have signed a written agreement before marrying stating how you would divide your property/debts if you divorced. We often call this a **Prenuptial Agreement**.

You may have signed an agreement during the marriage stating which of your property is community and separate. We call this a **Community Property Agreement**. Couples sometimes do these as part of an estate plan.

You might have signed an agreement **after** separation dividing property/debts. We call this a **Property Settlement Agreement** or **Separation Contract**.

If you think you have any written agreement about your property/debts, have a lawyer look at it. This **might** determine how the court will divide property/debts in your case.

E. I bought our car and most other property with my income. Should the court award me those things?

It depends. Property you bought with money earned during the marriage is community property. Your income during the marriage is community property. Anything you buy with your income belongs to you both. The judge will divide the car and other property according to what they decide is just.

F. My spouse owned our house before our marriage. We both paid the mortgage. Should I get part of the house?

Maybe. The court might award you an interest in the house. We sometimes call this an equitable lien.

The house is your spouse's separate property. They bought it before your marriage. It remains separate property after you marry UNLESS your spouse gives it as a gift to the community. This could happen if, for example you refinance it in both names.

You may be entitled to an interest in the house's value from improvements you made to the house (such as remodel or new deck) during the marriage, plus the community payments on the mortgage. The court would subtract the house's reasonable rental value from your community interest because you benefited from living there during the marriage. It could rule you have no community interest in the house because of the value you got from living there.

❖ This issue is complicated. Talk to a lawyer.

G. What should we do with our home?

Look at

- The home's value.
- What you still owe on it.
- Your post-divorce incomes.

Example: Can just one of you pay the mortgage? If not, awarding one of you the property may lead to foreclosure and damage your credit. It might be safer to sell the property.

Do not create a post-divorce situation where title is in one name, the debt in another.

Example: The divorce court awards you title to the home. No one takes action to make this official. Your spouse's name stays on the mortgage. Your spouse falls behind on payments. It will then be very hard to get the lender to give you modification with your spouse's name still on the mortgage. **To avoid problems, you must refinance the property in one spouse's name at/near the time of divorce.**

❖ These are important, often complex, considerations. Talk to an experienced lawyer.

H. I think we should sell our house. My spouse disagrees. Can the court order us to sell it?

Yes, even if one spouse objects. The court will most likely do this if one of these is true:

- You must sell it to divide the property fairly.
- You are behind on payments.

I. Do I have any right to my spouse's pension?

It depends:

- Retirement/pension benefits, including 401(k) plans, earned during the marriage are community property. **Both** spouses have a legal interest in them.
- Pensions earned before and during the marriage: the portion earned during the marriage (and the increased value of that portion) is community property.
- Disability benefits substituting for pension benefits might be community property.

If you believe that your spouse has a pension (including a military pension), 401(k), IRA, or other retirement or disability plan, talk with a lawyer about your rights. You may be able to get a Qualified Domestic Relations Order (QDRO) ordering your spouse's pension plan to pay you benefits directly after your spouse retires.

The Pension Rights Center publishes *Your Pension Rights at Divorce: What Women Need to Know*. Find out more at <http://www.pensionrights.org/publications/book/your-pension-rights-divorce-what-women-need-know> or call them at (202) 296-3776.

J. My spouse had an affair. I filed for divorce. Should the court give me more of the property?

No. Washington has "no-fault" divorce. The court cannot consider which spouse "caused" the divorce when dividing property. The court **may** consider if your spouse wasted marital assets without your consent OR tried to hide assets from the court.

K. I am not working. Can I get alimony?

Maybe. Maintenance (alimony) is a payment one spouse makes to the other for financial support. The court does not always award maintenance. It must look at things such as:

- How long you have been married.
- Both your financial situations, given the division of property/debts and your spouse's ability to pay maintenance.
- Time it will take for you to get education/training.
- Standard of living during the marriage.
- Your age/health.

If you have been unemployed a long time (**example:** you stayed home to care for the children), you are more likely to get maintenance if you have been laid off temporarily. On the other hand, you can get maintenance even if you are working, if the court decides you should enjoy the same standard of living you had during the marriage. You are more likely to get maintenance if both of these are true:

- You were married many years.
- You are disabled and/or stayed home to care for the children while your spouse worked. You are less likely to get a good job now.

Maintenance payments generally end when you remarry/die. The Final Divorce Order may say otherwise.

L. The divorce court ordered my spouse to pay our community debts. She did not. What can I do?

You must pay the debt and sue your spouse to pay you back. Even if the court orders your spouse to pay a debt, the creditor (person owed) may still come after you to collect. You cannot stop the creditor by telling the creditor the debt is your ex's responsibility.

If you think this might happen, check the "hold harmless" box in the Final Divorce Order form. It is the second box in section 12. Then, if you must sue your ex- to force them to pay you back for the debts you paid, they must also pay your attorney's fees and costs.

M. Can my ex get out of paying community debts through bankruptcy?

Maybe. If your spouse files for bankruptcy, you should get notice of it. Talk immediately with a lawyer who knows bankruptcy law. You may need to take part in the bankruptcy case to protect yourself.

**ISLAND COUNTY SUPERIOR COURT
CONDUCT AND DRESS CODE
LCR 77(b)(1)(A)**

THE FOLLOWING CONDUCT AND DRESS CODE SHALL APPLY WHEN COURT IS IN SESSION:

1. No firearms, or other weapons, including knives, shall be allowed in the courtroom.
2. No food or drinks, except water, shall be allowed in the courtroom.
3. All persons shall turnoff all cell phones, pagers, and other electronic devices when in the courtroom.
4. No audio or video recording of any kind shall be allowed in the courtroom, except by official court personnel.
5. All persons in the courtroom shall be attired in a manner appropriate to the dignity and decorum of the courtroom setting. As minimum standards, the following rules shall apply:
 - Men shall wear shirts, trousers and shoes.
 - Women shall wear shoes and either dresses, skirts and tops, or pants and tops.
 - Shorts, halter-tops, tank tops, hats, caps, torn clothing, shirts or other clothing with obscene or profane pictures or messages, and “flip-flop” footwear, shall not be worn.
 - Male attorneys shall wear coats, slacks and ties.
 - Women attorneys shall wear professionally appropriate attire.
6. All persons in the courtroom shall in their speech and actions conduct themselves in a manner appropriate to the dignity and decorum of the courtroom setting. As minimum standards, the following rules apply:
 - Spectators and persons not then actively engaged in court proceedings shall be quiet; any speech which does occur shall be as unobtrusive as possible.
 - All persons shall refrain from any gestures and from conduct or behavior, which manifest disrespect for the court, counsel, litigants, witnesses, court staff, law enforcement personnel or other persons.
 - Children shall be closely controlled by adults inside and outside the courtrooms.