

CLIENT MANUAL



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INTRODUCTION

This client manual has nine parts. The first six sections contain information for you about various matters. The last three sections pertain to information and documents which we need from you. A brief outline of each section follows:

1. GENERAL INFORMATION:
General information about domestic cases. Not all of the information contained in this section may pertain to your case.

2. CHILD CUSTODY:
Information about child custody claims.

3. CHILD SUPPORT:
Information about Child Support claims.

4. EQUITABLE DISTRIBUTION:
Information concerning claims for a division of property and debts (i.e., equitable distribution or “ED”) and a sample ED Affidavit.

5. POSTSEPARATION SUPPORT (“PSS”) AND ALIMONY:
Information about claims for spousal support, including a Schedule of Events for cases which involve litigation.

6. DIVORCE:
Information about obtaining a judgment of absolute divorce.

7. CLIENT QUESTIONNAIRE:
A questionnaire to be completed by you and returned to us as soon as possible.

8. AFFIDAVIT OF FINANCIAL STANDING:
A sample affidavit which is used in all child and spousal support cases.

9. DOCUMENTS:
A list of documents which you should provide to us.

Throughout this document we use the term “your spouse.” It refers to your husband or wife, even if you are now divorced. In child support and custody cases where you are not married, the term refers to the person who is the other parent of the child who is subject of the claim.

SECTION I

GENERAL INFORMATION

The information in this Client Manual is not legal advice.

The information in this client manual is not legal advice. We provide this manual to our clients to supplement the information and advice that we give you at consultations and in telephone conferences. It is not a comprehensive explanation of the substantive law. It does not review all of the issues and procedures that may apply in your case. It is essentially a summary of the issues and procedures typically involved with separation a divorce. If you have questions regarding the specifics of your case, you should ask your attorney.

I. **Potential Claims:** When spouses separate, there are a number of potential claims, the most common of which are:

1. Custody and Visitation of children;
2. Child Support;
3. Post separation Support and Alimony;
4. Equitable Distribution (property settlement); and
5. Divorce.

II. **Methods of Resolving Claims:** In order to obtain a divorce, one spouse must file a lawsuit for divorce after the parties have been separated for one year. The other claims listed above can be resolved by utilizing the following methods:

1. **Separation Agreement:** A Separation Agreement is a written contract between spouses who have reached an agreement which resolves one or more of the following issues: custody and visitation, child support, post separation support and alimony, and Equitable Distribution (ED). A Separation Agreement is not filed with the court. A Separation Agreement can be signed without filing a lawsuit or it can be signed at any stage in the litigation process.

There are advantages and disadvantages to resolving your claims by Separation Agreement depending on the specifics of your case. Your attorney will explain your options and advise you accordingly.

2. **Litigation:** Litigation is the process whereby a court determines the issues. Litigation begins when one party (the Plaintiff) files a lawsuit (Complaint) against the other (the Defendant). The Complaint must be served on the Defendant. The Defendant files an Answer responding to the allegations in the Complaint. The parties may engage in Discovery (which may include take depositions of parties or witnesses, requesting the production of documents, asking Interrogatories – questions requiring

written answers). Then the parties appear in court for a hearing or trial. Following the hearing or trial, the Court will enter an Order or Judgment detailing the judge's decision.

In domestic cases, most claims are heard by a judge, not a jury. In Wake County, when a domestic case is filed, one judge is assigned to hear all of the issues. The parties appear in front of the same judge each time they go to court.

In domestic cases, most issues have a separate track in the court system, which means separate requirements of the parties and separate hearings for each issue. The tracks will be discussed more fully in the individual issue sections herein.

3. Alternate Dispute Resolution: Alternate Dispute Resolution (ADR) is a term which includes the following:

A. Voluntary Mediation. Mediation is a process in which the parties (usually with their attorneys) meet with a neutral third party who attempts to facilitate a negotiated settlement. The parties may try mediation prior to or after filing a lawsuit. If the parties are successful at mediation, they can sign a document which memorializes their agreement and no further action is required. There is a cost associated with voluntary mediation in that the parties divide the cost of the mediator, who charges an hourly rate for the mediation.

B. Court Ordered Mediation. Mediation is mandatory in custody cases in all counties with a custody mediation program. Lawyers cannot attend. Typically, the parties first attend an orientation program and then at least one session with just the parties and the mediator. If the parties resolve the custody and visitation issues, the mediator will draft a Parenting Agreement for the parties and attorneys to review before signing. Once it is signed, the Parenting Agreement becomes an Order of the Court. There is no cost associated with court ordered custody mediation.

C. Court Ordered ED or Other Family Financial Case Mediation. In some counties, some form of ADR is also required in Equitable Distribution cases. Mediation is usually the method chosen. This mediation is similar to the voluntary mediation referenced in subparagraph A above.

D. Arbitration. Like mediation, the parties may agree to arbitrate their case without filing a lawsuit or they may choose to arbitrate after a lawsuit has been filed. Arbitration is a process whereby the parties do not negotiate a settlement. They present their cases as they would in a trial and the arbitrator makes a decision. The parties can elect to have a non-binding arbitration where the decision of the arbitrator is more in the nature of an advisory opinion. If the arbitration is binding, it is a final decision.

4. Collaborative Law: Collaborative law is a process whereby the parties and their attorneys commit to resolving the case without litigation. The parties voluntarily exchange financial information and negotiate a Separation Agreement. Usually, the parties and their attorneys negotiate in face to face meetings. Collaborative law is a recent

development in family law, and the process is still being fine-tuned. It may or may not be a reasonable alternative in your case. Discuss it with your attorney if you are interested in exploring this option.

III. **Length of Time it Takes to Resolve Claim:** When people reach an agreement resolving their case, it generally does not take very long to prepare a Separation Agreement. The most time consuming parts of the Agreement process are gathering the financial records (bank statements, retirement statements, credit card statements) and negotiating the terms of the Agreement. The sooner you get the documents to the attorney, the sooner the Agreement can be negotiated and prepared.

Voluntary mediation can be similarly expedient. It is incumbent upon you to provide your attorney with as much financial information as possible in advance of the mediation. One of the biggest obstacles to successful mediations is incomplete financial information from the parties.

Arbitration is usually more time consuming than mediation because your attorney actually has to prepare your case as if going to trial.

Litigation is typically the slowest course of action. It will usually take six months to one year to get all the issues resolved. That timeline can be shortened or lengthened depending on numerous variables including the issues involved, the assigned Judges' calendar, and the complexity of the issues.

IV. **Concluding Your Case:** If you resolve your case by agreement prior to litigation, you and your spouse will sign a Separation Agreement. This is a private contract, signed only by you and your spouse, and not filed with the court.

If you resolve your case by agreement during the litigation process, generally you and your spouse will sign a Consent Order or Consent Judgment which is signed by the Judge and filed with the court.

If the Court determines an issue, the Judge will sign an order or Judgment (depending on the nature of the claim), and it will be filed with the court.

V. **Modifying the Agreement or Order in the Future:** Whether or not the terms of an Agreement or Order may be modified depends on the issue.

The following resolutions are final and **cannot** be modified unless the parties agree:

- A. Agreements resolving alimony, post separation support, and/or ED;
- B. Court orders/ judgments resolving ED.

The following resolutions are not final and can be modified if the Court finds that there has been a material or substantial change in circumstances and that the modification requested is warranted:

- A. Court orders resolving child custody and/or visitation;
- B. Court orders resolving child support; and
- C. Court orders resolving post separation support or alimony.

If you and your spouse resolve custody and/or child support by Agreement, the Court may still make an independent determination of these issues thereafter. The relationship between Agreements on custody and/or child support and later court orders is complicated and should be discussed with your attorney.

VI. **Your Responsibilities to Us:**

1. **Personal Information.** Notify us of any changes in address, telephone numbers, or employment immediately.

2. **Financial Information.** Completion of your Questionnaire, Financial Affidavit and Equitable Distribution Affidavit and gathering the supporting documents is time consuming and burdensome. **We cannot do it for you.** As a general rule, your affidavits must be completed and the supporting documentation provided to us prior to the filing of a Complaint. **The timely filing of these Affidavits is critical.** If your affidavit is not filed in a timely manner, you may be sanctioned by the Court. You are responsible for the accuracy of the figures on your affidavits. You need to be careful and deliberate with your numbers. You may be cross-examined on how you came up with your numbers. If the Judge believes you were haphazard or have intentionally inflated your numbers, it may affect your credibility with the Court.

3. **Honesty and Full Disclosure of Pertinent Facts.** We need to know all the facts, good or bad. You do not want your lawyer to hear something for the first time in court as s/he will not be prepared to address the information. If you are not truthful with us, we will not continue to represent you.

4. **Payment of Fees and Expenses.** You have executed our Agreement for Legal Services. You are aware that we cannot continue to represent you if you do not pay our fees and expenses in a timely manner.

SECTION II
CHILD CUSTODY

Child custody claims which are not resolved by agreement or mediation are decided by a Judge. The standard for determining custody is “the best interest of the child.”

There are no guidelines for a Judge to use in deciding child custody cases. However, the following is a list (in no particular order) of factors which might be relevant in a child custody case.

(a) ***The role of each parent thus far in taking care of the child.*** Has either parent been the primary caretaker of the child? This involves a historical look at which parent has provided for the physical care of the child (i.e., changing diapers, feeding the baby, reading books to the child, taking the child for a stroll or to the park, teaching the child skills, taking the child to the doctor or dentist, taking the child to school, meeting with teachers and other personnel, etc.).

(b) ***The mental and physical conditions of each parent.*** Does either parent have a problem which interferes with his or her parental functioning? Does either parent abuse alcohol or drugs? Does either parent have any psychological problems?

(c) ***Each parent’s care-taking capacities and abilities.***

(d) ***Whether each parent has abused or neglected the child or the other parent.***

(e) ***The relationship between the child and each parent.***

(f) ***Which parent is most likely to encourage a relationship between the child and the other parent?***

(g) ***What does the child have to say about the situation?*** Children do not get to choose who has custody of them. However, children of a suitable age and discretion have the right to express their feelings to the Judge.

(h) ***Each parent’s relationship with other adults, including whether either parent has an intimate relationship with another adult.***

(i) ***The time each parent has for the child and the environment which each parent can create for the child.***

Generally, custody means that the child will reside primarily with one parent and that parent will make major decisions which affect the child (what school the child will attend, the religious upbringing of the child, what doctors the child should use, etc.)

Visitation refers to the time the child spends with the other parent. There are no laws or guidelines with regard to visitation schedule. In practice, one of the most frequent schedules is alternating weekends, with some additional time during the afternoon and evening of a weekday, a portion of major holidays, and several weeks during the summer. You may want a specific schedule or you may want a more flexible schedule.

If a lawsuit is filed, the parties are required to attend custody mediation in an effort to reach a resolution without going to trial. Custody mediation involves the parties and a neutral third party appointed by the court as the mediator. Attorneys cannot participate in custody mediation. If the parties reach an agreement in custody mediation, the mediator reduces the terms to writing. This is called a Parenting Agreement. Prior to signing the Parenting Agreement, the parties and their attorneys will have an opportunity to review the agreement. After the Agreement is signed, it is adopted by the Court and is enforceable by the Court if there are any problems.

While mediations can be very effective in reaching a resolution, some cases are not resolved in mediation. If your case is not resolved in mediation, you will have a custody trial. Nothing that occurs or is said in mediation will be admissible in trial.

If your case goes to trial, your attorney will discuss with you what evidence needs to be presented and what witnesses may testify.

SECTION III
CHILD SUPPORT

Child support generally is resolved by an application of the North Carolina Child Support Guidelines. However, it is possible to request a deviation from the Child Support Guidelines. Presently, the guidelines are applicable to cases where the combined household income is less than \$240,000.00 per year.

In most cases, child support is calculated based upon the following:

1. The gross monthly income of each parent;
2. The monthly cost of work-related child care; and
3. The monthly cost of health insurance benefits for the children. Health insurance benefits include vision and dental insurance.

The court may consider extraordinary expenses which are defined in the Guidelines as including (1) uninsured medical expenses in excess of \$100.00 (2) medical expenses for costs that are reasonable necessary for orthodontia, dental treatments, asthma treatments, physical therapy and any insured chronic health problem; (3) expensed for attending any special or private elementary or secondary school to meet particular educational needs of a child; or (4) transportation expenses for the child to travel between parent's homes.

The Judge will generally require the parents to share uninsured medical and dental expenses in the same proportions as their respective incomes.

If the Guidelines are not applicable or if the Judge deviates from the Guidelines, the court determines child support based on the reasonable needs of the child, taking into account the accustomed standards of living of the family and the reasonable needs of each parent, and their respective abilities to contribute to the needs of the child, taking into consideration their own needs for support. This is a very unscientific process, and results often vary from case to case.

Child support is payable until the child is 18. If the child has not graduated from high school when he or she reaches age 18, then the obligation continues until the child graduates from high school or stops attending school on a regular basis, whichever first occurs.

Guidelines do not require parents to contribute toward the cost of private school education, unless the child has some special educational needs which cannot be met in a public school system.

The court cannot order a parent to contribute to a child's college education. When

parents are negotiating an agreement for child support, they may address these costs.

The tax laws provide that the custodial parent is entitled to the dependency exemption of the child in connection with income tax returns unless the custodial parent waives such right. Our state courts have the discretion to require a custodial parent to give up the dependency exemption and to award it to the other parent.

Section 7 of this Manual contains an Affidavit of Financial Standing. Please read the instructions carefully.

SECTION IV

EQUITABLE DISTRIBUTION

The distribution of marital and divisible property and debts is referred to as Equitable Distribution (hereinafter referred to as “ED”). You and your spouse are free to settle this claim on any terms which are acceptable to both of you. If you cannot agree and your case proceeds to trial, the Judge will resolve the claims in four steps, as follows:

1. **Identification:** The Judge will identify all assets and debts as of your date of separation (i.e., the date you and your spouse stopped living together under one roof) and will determine what property has accrued from the date of separation through the date of trial.

2. **Classification:** The Judge will classify each item of property as marital property, separate property, or divisible property. The Judge will classify debts as marital debts, separate debts, or divisible debts. These are legal terms which will be explained to you by your attorney. The Judge can only distribute marital property, divisible property, marital debts, and divisible debts. The Judge has no power to distribute separate property and/or separate debts.

3. **Valuation:** The third step is to determine the net value of the assets and determine the amount of the debts. Net value is fair market value of the asset less the amount of any debts which are liens upon it. Fair market value is the price which a willing buyer would pay to a willing seller under circumstances where they are acting voluntarily and not as the result of any pressures. Fair market value is not replacement cost. In some cases the value is obvious, such as the balance of funds on deposit in a bank account. In other cases, value is not clear, and it may be necessary to obtain an appraisal of the value by a qualified appraiser. Appraisals are often needed to determine the value of real estate, furniture and household goods, jewelry, closely held businesses, and vested benefits under pension plans.

4. **Distribution:** The fourth step is the actual distribution of assets and debts. There is a presumption that an equitable distribution is a division of assets and debts in two shares of approximately equal net value (this does not mean that each asset is divided in half; it means only that the total of the assets distributed to one party is approximately equal to the total value of the assets distributed to the other party). However, the Court may distribute the property in an unequal fashion and give one party more than half of the total net value of the assets. There are thirteen statutory factors which the Court may consider in deciding whether the property division will be equal or unequal. You and your attorney will discuss which, if any, of those factors is applicable in your case.

Marital misconduct by a spouse (such as adultery or abandonment) is not considered in the settlement of property rights, unless the misconduct causes marital property to decrease in value.

Attached is an ED Affidavit, which must be completed on your behalf if your case is in litigation. Prior to beginning the ED Affidavit, it is important to be as accurate as possible and provide all supporting documentation that is requested. Failure to do so may cause some or all of your ED affidavit to be inadmissible in court. You should immediately begin to gather the information and documents necessary to complete the document. Our staff will be available to assist you with this process.

After you have asserted a claim for ED, the following will take place:

1. Your ED Affidavit will be filed with the court.
2. There will be an Initial Pretrial ED hearing. You will not be required to attend this hearing.
3. There will be alternate dispute resolution in an attempt to resolve your ED claim without a trial. You must attend this meeting.
4. If your case is not resolved at alternative dispute resolution, there will be an ED trial. You must attend the trial.

In Section 8 are a number of documents which will be helpful in completing the ED Affidavit. Note that the instructions to the ED Affidavit require each party to provide documents to the opposing party. Failure to do so may compromise your position later.

SECTION VI

DIVORCE

The term divorce refers to the process of obtaining a judgment of absolute divorce which legally dissolves and terminates the marriage. A claim for a divorce is separate from, and does not include, claims for custody and support of children, post separation support and alimony, and equitable distribution of property and debts.

In North Carolina it is **not** necessary for support and property claims to be resolved before a divorce can be granted. Claims for post separation support and alimony, and equitable distribution of property must be asserted before the divorce is granted; if such claims are not asserted, they are lost.

In North Carolina there is customarily only ONE ground for divorce; that is, the separation of the parties for more than one year. You cannot file the complaint until a year and a day following the date of separation. One of the parties must have been a resident of North Carolina continuously for the six months prior to the filing of the complaint.

Presently, the procedure for obtaining a divorce for you is:

- A. We prepare and file a complaint after you have signed a verification. The verification serves as a signed statement that you have read the complaint; and that all the allegations are true to the best of your knowledge. This must be at least on year and one day following the date of separation.
- B. The Complaint is filed with the Clerk of Court, and the Clerk issues a Civil Summons.
- C. Your spouse is served. This action is customarily accomplished by his or her agreement to sign an acceptance of service. If not, service is made by certified mail or by the sheriff. If your spouse's whereabouts is unknown, there is a special procedure for service of publication.
- D. At least thirty-one (31) days after service has been accomplished we will file a Motion for Summary Judgment. That motion allows the divorce to be handled by a judge without a trial. Copies of the motion, together with the notice setting the case on the calendar for a particular week, are served on the opposing party or his or her counsel by mail.
- E. During the week the case is set for hearing, the judge examines the file, and if the paperwork is in order, signs the judgment.

F. Sometime during the following week we receive the filed judgment and will send copies to you and your former spouse.

Sometimes there are problems we cannot foresee. For example, the court file may be misplaced. The judge may be sick, or other circumstances may arise which prevent the judgment from being entered when schedule. **It is essential you not make any plans predicted upon entry of the divorce judgment until after you have that judgment in hand.** For example, committing to a marriage ceremony a few days after you believe the judgment will be entered will cause serious problems if the judgment is not signed and filed when we thought it would be done.

SECTION VII

CLIENT QUESTIONNAIRE

Complete the Questionnaire and return it to your attorney as soon as possible.

DATE: _____ REFERRED BY: _____

CLIENT

NAME: _____
First Middle Last

MAILING ADDRESS: _____

PHYSICAL ADDRESS, IF DIFFERENT: _____

TELEPHONE NUMBER: _____ (home) _____ (work)
_____ (cellular) _____ (pager)

PREFERRED TELEPHONE NO: _____ FAX NO: _____

E-MAIL ADDRESS: _____

DATE OF BIRTH: _____ SOCIAL SECURITY NO: _____

OPPOSING PARTY

NAME: _____
First Middle Last

ADDRESS: _____

TELEPHONE NUMBER: _____

DATE OF BIRTH: _____ SOCIAL SECURITY NO: _____

IS OPPOSING PARTY REPRESENTED? ___ IF YES, BY WHOM: _____

MARRIAGE AND SEPARATION

1. Date of Marriage: _____ Place of Marriage: _____
2. Number of marriages: Client: _____ Spouse: _____
3. Are you currently living with spouse: Yes _____ No _____. If No, then:
 - a. Who left the marital residence? _____
 - b. Date of Separation: _____
4. Have you or your spouse made any written agreements about your separation? _____
If yes, provide us with a copy.
5. Have you and your spouse made any verbal agreements about your separation? _____
If yes, what are the terms? _____

6. Is there any pending litigation between you and your spouse? Yes _____ No _____
If yes, then:
 - a. What County and State: _____
 - b. Docket Number of the Case: _____
 - c. Have any hearings or trials been scheduled? Yes _____ No _____ If yes:
 - (i) What Date: _____
 - (ii) What claims or issues are to be heard: _____
 - d. Provide us with copies of all pleadings and orders.

EDUCATION

CLIENT:

1. Did you complete high school? Yes _____ No _____
If no, highest grade level completed: _____
2. Did you attend college? Yes _____ No _____
If yes, name of College or University: _____
Number of years attended: _____ Year Graduated: _____ Degree: _____
3. Did you have post- graduate education? Yes _____ No _____
If yes, name of College or University: _____
Number of years attended: _____ Year Graduated: _____ Degree: _____

YOUR SPOUSE:

1. Did your spouse complete high school? Yes _____ No _____
If no, highest grade level completed: _____
2. Did your spouse attend college? Yes _____ No _____
If yes, name of College or University: _____
Number of years attended: _____ Year Graduated: _____ Degree: _____
3. Did your spouse obtain a post- graduate education? Yes _____ No _____
If yes, name of College or University: _____
Number of years attended: _____ Year Graduated: _____ Degree: _____

EMPLOYMENT HISTORY

CLIENT:

1. Current Employment:

- a. Name of Employer: _____
- b. Address of Employer: _____
- c. Date Employment began: _____
- d. Current position/ title: _____
- e. Amount of annual income: _____

2. Previous Employment:

- a. Name of Employer: _____
 - b. Address of Employer: _____
 - c. Date Employment began: _____
 - d. Amount of annual income: _____
 - e. Date Employment ended: _____
 - f. Reason: _____
- _____

YOUR SPOUSE:

1. Current Employment:

- a. Name of Employer: _____
- b. Address of Employer: _____
- c. Date Employment began: _____
- d. Current position/ title: _____
- e. Amount of annual income: _____

2. Previous Employment:

- a. Name of Employer: _____
 - b. Address of Employer: _____
 - c. Date Employment began: _____
 - d. Amount of annual income: _____
 - e. Date Employment ended: _____
 - f. Reason: _____
- _____

CURRENT INCOME

List your and your spouse's *average monthly gross* income from the following sources for the past twelve months:

<u>Income Source</u>	<u>Client</u>	<u>Spouse</u>
1. Salary or Wages		
2. Commissions		
3. Bonuses		
4. Dividends		
5. Pension/Retirement		
6. Interest		
7. Trust Income		
8. Social Security Benefits		
9. Workers Compensation Benefits		
10. Disability Pay		
11. Rent		
12. Income from business (partnerships, LLC's, etc.)		
13. Other		

1. How frequently do you and your spouse receive income (i.e., weekly, bi-weekly, bi-monthly, etc)?

a. Client: _____

b. Spouse: _____

2. Do you or your spouse have any deferred compensation arrangements or incentive plans? Yes: _____ No: _____ If yes, please explain: _____

SECTION IX

DOCUMENTS

PROVIDE THE FOLLOWING DOCUMENTS TO YOUR ATTORNEY AS SOON AS POSSIBLE:

1. **FEDERAL AND STATE INCOME TAX RETURNS-** FOR THE PAST THREE YEARS (INCLUDES W-2 STATEMENTS, K-1 SCHEDULES, AND 1099 FORMS FOR YOU AND YOUR SPOUSE). _____
2. **PERSONAL FINANCIAL STATEMENTS (OR OTHER LISTS OF ASSETS AND DEBTS)-** FOR THE PAST THREE YEARS. _____
3. **REAL ESTATE**
 - a. Deeds; _____
 - b. Notes; _____
 - c. Deeds of Trust; _____
 - d. Amortization schedules; _____
 - e. Last years statement form the mortgage company, showing the balance due on the loan and the amount of interest paid for the year; _____
 - f. Payoff statement for each mortgage (including equity lines of credit); _____
 - g. Documents reflecting the tax value; and _____
 - h. Appraisals. _____
4. **MOTOR VEHICLES**
 - a. Titles and registration cards; _____
 - b. Lease contracts; _____
 - c. Payment coupons for loan; and _____
 - d. Payoff statement. _____
5. **FURNITURE AND HOUSEHOLD GOODS**
 - a. Inventory; _____
 - b. Videotape of household goods; and _____
 - c. Appraisals. _____
6. **BANK ACCOUNTS-** (for the past twelve months for all accounts):
 - a. Bank statements; _____
 - b. Canceled checks (if available); and _____
 - c. Check registers (including computer records). _____
7. **BROKERAGE ACCOUNTS AND OTHER INVESTMENT ACCOUNTS-** Statements for the past twelve months. _____