

## GLOSSARY

Over the years thousands of clients have spent millions of dollars asking lawyers to explain “legalese”. The following are definitions of words that you will run into time and time again. While we must say, in typical lawyer fashion, that these are only guidelines to legal terms and are no substitute for spending hundreds of dollars to hear the individual explanations; any one with a little bit of common sense can save themselves a lot of money by using the alphabet. The next time you hear a word or see it in a court document take a minute to look it up and empower yourself by learning a little bit of a new language. If you don't think knowing a few words can make a difference...try needing a restroom in Bulgaria.

It is no accident that we start off with a major concern .....

**ABUSE:** For purposes of orders of protection, abuse is defined as *any* type of abuse, verbal or physical, including but not limited to harassment, hitting, intimidation or interference with personal freedom; this does *not* include reasonable discipline of children by a parent. What is important to remember is that you don't have to be punched in the mouth or have your arm broken to be abused. Once someone hurts you just raising a fist can create terror. In Illinois the following are the definitions found in the Domestic Violence Act-

### *“5/112A-3. Definitions*

*§ 112A-3. Definitions. For the purposes of this Article, the following terms shall have the following meanings:*

*(1) "Abuse" means physical abuse, harassment, intimidation of a dependent, interference with personal liberty or willful deprivation but does not include reasonable direction of a minor child by a parent or person in loco parentis.*

*(2) "Domestic violence" means abuse as described in paragraph (1).*

*(3) "Family or household members" include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, and persons with disabilities and their personal assistants. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship.*

*(4) "Harassment" means knowing conduct which is not necessary to accomplish a purpose which is reasonable under the circumstances; would cause a reasonable person emotional distress; and does cause emotional distress to the petitioner. Unless the presumption is rebutted by a preponderance of the evidence,*

*the following types of conduct shall be presumed to cause emotional distress:*

*(i) creating a disturbance at petitioner's place of employment or school;*  
*(ii) repeatedly telephoning petitioner's place of employment, home or residence;*

*(iii) repeatedly following petitioner about in a public place or places;*

*(iv) repeatedly keeping petitioner under surveillance by remaining present outside his or her home, school, place of employment, vehicle or other place occupied by petitioner or by peering in petitioner's windows;*

*(v) improperly concealing a minor child from petitioner, repeatedly threatening to improperly remove a minor child of petitioner's from the jurisdiction or from the physical care of petitioner, repeatedly threatening to conceal a minor child from petitioner, or making a single such threat following an actual or attempted improper removal or concealment, unless respondent was fleeing from an incident or pattern of domestic violence; or*

*(vi) threatening physical force, confinement or restraint on one or more occasions.*

*(5) "Interference with personal liberty" means committing or threatening physical abuse, harassment, intimidation or willful deprivation so as to compel another to engage in conduct from which she or he has a right to abstain or to refrain from conduct in which she or he has a right to engage.*

*(6) "Intimidation of a dependent" means subjecting a person who is dependent because of age, health or disability to participation in or the witnessing of: physical force against another or physical confinement or restraint of another which constitutes physical abuse as defined in this Article, regardless of whether the abused person is a family or household member.*

*(7) "Order of protection" means an emergency order, interim order or plenary order, granted pursuant to this Article, which includes any or all of the remedies authorized by Section 112A-14 of this Code.*

*(8) "Petitioner" may mean not only any named petitioner for the order of protection and any named victim of abuse on whose behalf the petition is brought, but also any other person protected by this Article.*

*(9) "Physical abuse" includes sexual abuse and means any of the following:*

*(i) knowing or reckless use of physical force, confinement or restraint;*  
*(ii) knowing, repeated and unnecessary sleep deprivation; or*  
*(iii) knowing or reckless conduct which creates an immediate risk of physical harm.*

*(10) "Willful deprivation" means wilfully denying a person who because of age, health or disability requires medication, medical care, shelter, accessible shelter or services, food, therapeutic device, or other physical assistance, and*

*thereby exposing that person to the risk of physical, mental or emotional harm, except with regard to medical care and treatment when such dependent person has expressed the intent to forgo such medical care or treatment. This paragraph does not create any new affirmative duty to provide support to dependent persons.*

You don't need it! Your kids don't have to see or experience it! There is help - see us and even if you don't hire us we will steer you to places where you can get help for free. We mean it. If you are nutty enough to be reading this while there is violence or abuse going on (THIS IS SORT OF A WEIRD SENTENCE --- MAYBE WE OUGHT TO THINK ABOUT EDITING THIS A LITTLE)- call the police - call the police - and be clear that you want to press charges and want an ORDER OF PROTECTION....NOW! You must let them help you and get help yourself.

**ABUSE OF DISCRETION:** An unreasonable, unfair and arbitrary action taken by a trial judge which would just his decision being overturned on appeal. See "appeal." In divorce Court a judge can get away with a lot. Don't count on a higher court. It may be part of the system being overcrowded or our society having other places to spend its money but judges in Illinois have very little supervision. Since our judges at all levels are elected in a organizational setup that rewards political pull and not necessarily legal ability...well...enough said. What this term means is that a trial judge's decision will not be overruled unless no reasonable person could have reached that conclusion. Basically what you get in the Daly Center trial court is what you are stuck with.

**ADULTERY:** Sexual relations by a married person with someone other than his or her spouse. This is one of the grounds for dissolution. Adultery is actually a crime in Illinois, although the State rarely if ever prosecutes people for it. Until of course you do it. The legal criminal definition is:

"CHAPTER 720. CRIMINAL OFFENSES  
CRIMINAL CODE  
ACT 5. CRIMINAL CODE OF 1961  
TITLE III. SPECIFIC OFFENSES  
PART B. OFFENSES DIRECTED AGAINST THE PERSON  
ARTICLE 11. SEX OFFENSES

*5/11-7. Adultery*

*§ 11-7. Adultery. (a) Any person who has sexual intercourse with another not his spouse commits adultery, if the behavior is open and notorious, and*

*(1) The person is married and the other person involved in such intercourse is not his spouse; or*

*(2) The person is not married and knows that the other person involved in such intercourse is married.*

*A person shall be exempt from prosecution under this Section if his liability is based solely on evidence he has given in order to comply with the requirements of*

*Section 4-1.7 of "The Illinois Public Aid Code", approved April 11, 1967, as amended.*

*(b) Sentence."*

*Adultery is a Class A misdemeanor."*

*So both of you can get in trouble....but probably not with the law.*

Most of the time we tell clients that there are three or four things to carefully consider before you do "the deed."

First - the moral and religious implications....and we are not going to touch that with a ten foot pole, condom or any other kind of protection or qualification. But those questions are there and very real.

Second - the effect that your conduct will have on the children and/or other love ones - not to mention your spouse. Most judges frown on newly separated parties having romantic or sexual relations with other people. It is not unusual for a judge to enter a court order forbidding divorcing couples from having unrelated members of the opposite sex being around the kids. Kids are confused and sometimes very upset with the new "friend". Careful!

Third - the effect on your case. While the law says that martial misconduct will not be considered in dividing property, there is always the risk that it might tip the scales that little bit. What we have observed is that - funny as it may seem - judges often let "stepping out" affect their economic decisions but not custody. You play you pay but not the kids. There is no mystery...that man or woman making decisions has the same type of prejudices, stereotypes and misconceptions that anyone might have.

Finally - there is the perception of the other side that they have got something "on him or her". Doesn't matter if they really do. If they think they have something to hit you with they may stay in the fight longer than they really should. People do it because they have been hurt or because they resent the change in the status quo or because it is Tuesday. Anything that extends the litigation or raises the level of tension effects you and those you love.

So does that mean that you have to be celibate and lonely for the year or two it can take if you have a knock down drag out fight? Well, while we would really like all of our clients to be Mother Theresa; there has to be a compromise between that kind of saintliness and Imelda Marcos. Sometimes adult company, the escape, excitement and release of sex is very tempting. Over powering - the only way to keep your sanity....just think and be cool. Try to do what you would tell your kids to do. And if you can't do that do what you do quietly and in consideration for all of the tremendous and powerful feelings that a divorce can stir up. Be very aware that during a divorce you are at a very high risk of physical harm.

**AFFIDAVIT:** A written statement signed under oath by a person who swears that she or he has personal knowledge of what the affidavit says and that what is written is true. It is important to remember that in Illinois affidavits are usually used to tell the court what a witness will say when the witness gets to court. You can't sign a written statement and get out of going to court.

**AFFIDAVIT OF INCOME AND EXPENSES:** A statement required in Cook County to be submitted by parties in a divorce case listing financial information. This is usually the first discovery method used. An affidavit of income and expenses is also known as a "13.3 affidavit" or "financial statement." It is a short hand method of telling the court the financial facts. While it does not normally have to be accurate to the penny - you should fill it out honestly and practically.

**AGREEMENT:** A coming together of the minds of the parties to settle differences on a point or points. Also, a document or instrument memorializing that coming together of the minds. The important thing to realize here is that if you and your spouse do *not* have an agreement on an issue or issues, your only choice to get resolution on that issue or issues is to have a judge make a decision. Nobody can *make* or *force* you or your spouse to agree. An agreement is normally written down and approved by the court so that it becomes a court order. Until a judge signs it and the clerk stamps it may not be totally binding.

**ALIMONY:** Payment of support from one spouse to another, either after the divorce or during the time the divorce is pending; now more commonly referred to as "maintenance." See maintenance.

**ANNULMENT:** This is actually a technical legal term, and it is often misused and misunderstood. An annulment is *not* the same as a divorce. Rather, it is what the judge grants when he or she decides there never was a valid marriage in the first place. A judge will find that a marriage should be annulled in the following situations: one or both parties lacked capacity to enter into the marriage at the time of the ceremony because of being under the influence of alcohol or drugs; one of the parties was forced into the marriage; one of the parties was induced by fraud to enter into the marriage; one of the parties lacks the physical ability to have sexual relations, and the other party did not know this fact at the time he or she entered the marriage; one or both parties were underage at the time they married and did not have the approval of parents or guardian; one or both parties were still married to someone else at the time they entered the marriage; the parties are too closely related (e.g., first cousins); or the parties are the same sex. You normally must ask for an annulment within 90 days of being married or finding out about the reason you are entitled to get an annulment.

**ANSWER:** A document filed by one party admitting or denying what the other party said. This is similar to a response to a motion or other petition. "Answer" is basically just the word we use to

describe a response to the initial petition for dissolution and sometimes other responses to other documents filed by the other side. Usually you go paragraph by paragraph and either admit what the other party said; deny it; or state that you don't have sufficient information to admit or deny what the other party said.

**APPEAL:** Essentially, this is an opportunity for a party who loses at trial to have some of the trial judge's mistakes corrected and to have the trial judge's decision overturned. An appellate court is not exactly like a trial court. In the appellate court in Illinois, there is not one judge but a panel of three judges who make the decision. Furthermore, in the appellate court, there are no witnesses or testimony. Instead, the lawyer for each party is allowed to submit a brief (a written argument pointing out where why and how the trial judge goofed) and usually, to make an oral argument to explain why, from a legal standpoint, the judge was either wrong in what he did (if you were on the losing side) or was right in what he did (if you were on the winning side). To have a trial judge overturned in the appellate court, you have to show that she or he either interpreted the law incorrectly or abused her or his discretion in making a ruling, or that the findings (findings are what the judge determines are the facts upon which a decision is based) were against the manifest weight of the evidence. See "abuse of discretion," and "Supreme Court."

**APPEARANCE:** A document filed by the respondent in a case which lets the court know that he or she is going to be taking part in the proceedings and defending against the allegations in the initial petition. If you have a lawyer, he will file an appearance in his name on your behalf. If you don't file an appearance within thirty days of being served the first papers (usually a summons and petition) you could be defaulted.

**ASSET:** Anything of value, whether it be tangible or intangible, such as cash, cars, houses or patents.

**ASSIGNMENT TO TRIAL:** If your case is assigned to a team of judges, the preliminary judge for that team will set a date in advance for your trial to commence. On that appointed day, the lawyers for both parties will go to the judge, and the judge will then tell you which of the trial judges on the team will be hearing your case. Unfortunately, the preliminary doesn't *always* have a trial judge available for your case on the day you are set for assignment to trial, and your lawyer won't be told this until everybody gets to court that day. This is just one of the flaws in the system, and there isn't much that can be done. However, rest assured that the majority of the time, there is a judge available on the day you are assigned to trial.

**ATTORNEY FOR THE CHILDREN:** An attorney appointed by the court to act on behalf of minor children in a domestic relations case. An attorney for the children is just like a attorney for

anyone else in court and is obligated to do what the child wants her or him to do. A **GUARDIAN AD LITEM** on the other hand uses his or her judgment to do what is best for the child - considering the child's wishes but not necessarily bound by them. Usually lawyers are appointed as both attorney for the children and guardian ad litem (GAL). This serves a very useful purpose since many times an attorney/GAL can express the child's wishes to the court and actually keep the child from personally going into court. See "In Camera Interview" and "Children Testifying".

**ATTORNEYS' FEES:** Fees paid to your lawyer as compensation for his representation of you in your case. Usually, these fees are paid by the person who incurs them. However, sometimes it is possible to get the other party to pay or to at least contribute. This does not happen often, and it is not something that should be counted on.

**BEST INTERESTS OF CHILDREN:** This is the standard the courts use in making determinations as to custody of children. Also, it is the standard used for determining whether to allow the removal of a child out of state. The important thing to note here is that the standard is the best interest of the *child*, not the best interests of the *parent* or *parents*. The factors a court will consider in determining the best interests of the child(ren) include: the wishes of the child as to his custodian; the interaction and relationship of the child with his parent or parents, siblings and other people who may significantly affect the child's best interests; the child's adjustment to his home, school and community; the mental and physical health of all individuals involved; the physical violence or threat of physical violence by the child's potential custodian, whether directed against the child or against another person; and the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child.

**BIGAMY:** The condition or state of being married to more than one person at the same time. This is one of the less commonly used grounds for divorce.

**CHILD SUPPORT:** Money for the support of minor children paid by a non-residential parent to the parent with whom the children reside, either after the divorce or during the time the divorce is pending.

**CHILDREN TESTIFYING IN COURT:** See "In Camera"

**CLERK:** An assistant to the judge who takes care of the judge's administrative functions. The judge's clerk calls out the names of the cases in court and is in charge of stamping and keeping copies of all orders or judgments entered by the judge. You will often see the judge's clerk seated next to the judge's bench in court.

**COHABITATION:** Living with someone of the opposite sex. Usually, we use this term when talking about someone who is divorced and who has since begun living with someone of the opposite sex.

**COLLEGE EXPENSES:** Expenses paid for a child's post-high school education. These are not necessarily limited to expenses incurred for attendance at a four-year college. See "post-high school educational expenses."

**COMMINGLED PROPERTY:** Property that is either marital or non-marital which has been mixed with property of the other type so that it is now characterized as the other type of property. See "marital property" and "nonmarital property."

**COMMON LAW MARRIAGE:** These no longer exist in Illinois, unless they were contracted before June July 1, 1905 (if this applies to you, you might want to think about just staying married at that point and writing a book about how to keep a marriage going!). Basically, this was a marriage that was created by an agreement to marry followed by cohabitation and the assumption of marital duties and obligations. These are now invalid in many states.

**COMPROMISE:** A give-and-take. An agreement whereby you give up something and your spouse gives up something and yet you both end up with something you want, or at least something you can live with.

**CONJUGAL COHABITATION:** The state or condition of living together and having sexual relations.

**CONTEMPT:** There are actually a few different classifications of contempt. However, when we talk about "contempt" in domestic relations cases, the important thing to know is that when you or your spouse fail to obey an order of the court and cannot provide a reason for doing so, you will be found "in contempt" and most likely put in jail until you comply.

**CONTESTED DIVORCE:** A divorce in which there are any issues that cannot be settled by agreement.

**CONTINUANCE:** Putting the case over to another date. This is done frequently for various



reasons, and continuances are one of the things that aggravate and frustrate clients the most. Continuances are also one of the least understood things about our court system. While sometimes lawyers abuse the system and get continuance after continuance, with nothing getting done, for the most part lawyers will try to limit continuances and ask for them only when it is necessary. Furthermore, while it might seem at times that all that is happening with your case is that it is getting continued, keep in mind that the justice system needs time to work, and things don't happen overnight. Rest assured that most of the judges in this division do not like granting continuances unnecessarily, and we've yet to have a case that has gone on forever!

**CONTRIBUTION HEARING:** A hearing on the issue of one party's contribution for the attorney's fees and costs of the other.

**COSTS:** Generally, any expense connected to your case that is not part of your attorneys' fees. This would include things like filing fees and fees for expert witnesses. It might also include things like photocopying, mailings, or fees for special process servers.

**CROSS-EXAMINATION:** When an attorney for one side during a hearing or trial asks questions of a witness called by the other side. The purpose is to let the opposing attorney show inconsistencies, half truths or the implausible nature of the testimony.

**CUSTODIAL PARENT:** The parent with whom the children live normally and who is mainly responsible for their upbringing.

**CUSTODY:** There are two types of custody. See "joint custody" and "sole custody."

**DECREE:** A judgment or order entered by the court. More commonly, you will hear the terms "judgment" or "order," but occasionally you will here someone talk about a "divorce decree."

**DEMEANOR:** The way you present yourself on the stand during a hearing or at trial. Demeanor can be very important, especially in a divorce case. Because the judges in divorce cases have so much discretion, it is very common for them to take a person's demeanor into consideration when making their decisions, especially about issues like child custody.

**DEPARTMENT OF SUPPORTIVE SERVICES:** An agency in Cook county that

sometimes is ordered by the judge to conduct an investigation into the custodial arrangements for the child(ren).

**DEFAULT:** A default means that a person has failed to do something that they should have done - such as filing appropriate court documents or appearing for court. If a default is entered the court may award any reasonable relief (enter any court orders, etc.) That the party who is not in default has requested. This could include granting a divorce or garnishing wages; even changing custody.

**DEPOSITION:** A depositions are a discovery method in which questions are asked orally by the lawyers in front of a court reporter (but can be done on tape or video tape) while the deponent (the person who is being asked the questions) is under oath. Depositions can be taken of either party or of some other person who might have information relevant to the case. Basically, almost *any* kind of question can be asked in a deposition -if it can lead to something that can be used in Court. They can then be used in Court to show that a person has contradicted themselves. Mostly depositions are used to gather information. It is important to remember that when you are giving a deposition only the other side gets to use what you say. Normally when you give a deposition it doesn't really help your case but it can hurt.

**DIRECT EXAMINATION:** When an attorney for one side asks questions of a witness that he or she calls to the stand to give testimony during a hearing or trial.

**DISCOVERY:** Any method used to obtain information relevant to the case. Discovery includes such methods as interrogatories, depositions, requests for production of documents, and even mental or physical examinations. This is a very important right. The goal of modern courts is to make sure everyone is aware of all the facts and t eliminate surprises. Sometimes if a person does not comply with reasonable discovery requests they can be sanctioned. If you do not disclose facts or witnesses in discovery you can be stopped from bringing them up or into court.

**DISMISSAL FOR WANT OF PROSECUTION:** When a petitioning party fails to show up for a court appearance, either in person or through his or her attorney, the judge has the power to dismiss the case, thereby denying the relief that party is requesting. Usually, if a case is dismissed for want of prosecution, it can be reinstated for a 30 day period, but an additional fee will have to be paid. Dismissal for want of prosecution is often abbreviated "DWP."

**DISSIPATION:** The use of marital funds or property for non-marital purposes at a time when the marriage is irretrievably broken down. An example of this would be one spouse spending a lot of marital funds on gifts for a boyfriend or girlfriend while still married. Or knowing the marriage was on the rocks, taking money out of the bank and blowing it. When the marriage is breaking down and one spouse uses an asset he or she has to account for what they did with specificity. Statements

"I spent it on living expenses" are not good enough. If you can't account for it, it is charged to your share of the marital assets. So grabbing all of the money and giving it to your brother or selling a car to a friend for next to nothing is only going to make money for the lawyers; although sometimes it costs more to chase and prove the dissipation than it is worth.

**DISSOLUTION OF MARRIAGE:** An "expensive" term for "divorce."

**DIVORCE:** The ending of a valid marriage. This should be distinguished from an "annulment" in which the court declares that because of some particular problem, the marriage was never valid to begin with.

**DIVORCE BY PUBLICATION:** This is a method of obtaining a divorce when you cannot locate your spouse to serve them with any papers. Because due process requires that your spouse be given notice of any proceedings against them, notice can be placed in a newspaper (we usually use the Chicago Daily Law Bulletin) for a number of consecutive weeks. If no appearance is filed within thirty days after publication you can proceed with your divorce by having the judge enter an order of default. However, it is important to note that because the court doesn't have jurisdiction over the absent spouse in a divorce by publication, the court cannot decide certain issues such as maintenance; division of property, child support. If the absent spouse later appears, the court will then have jurisdiction over that spouse and can then adjudicate the remaining issues. A divorce by publication ends the marriage and that is all it normally does. See "jurisdiction."

**DIVORCE DECREE:** These days, more commonly called "Judgment for Dissolution of Marriage." This is a document signed and entered by the judge which recites all the details of your divorce including a recitation of the grounds for the divorce, how property is to be divided, how much maintenance if any is to be paid by which party, and who is to have custody of children and how much support is to be paid for them.

**DOMESTIC RELATIONS:** The area of law that deals with families and the relationships between family members. This also includes relations between parents and children in situations where the parents were not married.

**DOMESTIC RELATIONS DIVISION:** The division in the Cook County court system which handles cases involving family matters, including divorces, separations, and parentage cases.

**DOMESTIC VIOLENCE:** From a legal standpoint, any type of abuse inflicted upon one family or household member by another. Family and household members include husbands, wives, children, stepchildren, people who live together or who used to live together, people who have or who allegedly have a child together, and people who have or have had a dating relationship. See also "abuse."

**DUE PROCESS:** This is really what slows things up in the court system. Basically, due process includes all the formal steps that the Constitution and statues of the United States and Illinois say parties have to go through when they are involved in a court case, such as notice and proper service. Many of these might seem trivial and even irrelevant in the broad when looked at in the context of your particular case, but in reality, it is due process with all its attention to minute detail that makes our court system the most fair and just anywhere.

**DWP:** Abbreviation for "dismissal for want of prosecution."

**EMERGENCY:** Something that arises without prior notice that can't be anticipated beforehand that necessitates immediate action by the court. See "emergency motion."

**EMERGENCY INTERVENTION:** A method of attempting to resolve issues on an emergency basis. The judge will send parties to an immediate intervention session with a social services professional on an emergency basis when the judge needs a recommendation in a hurry to help him or her resolve a matter. This is usually used in child custody disputes where there is some allegation of endangerment to the child(ren). Unlike mediation, what is said in an intervention session is not privileged and therefore can be repeated in front of the judge. The person conducting the intervention (the "intervener") makes a recommendation to the court which is usually followed. Interventions make for a quick result but are risky since your lawyer is not allowed to participate in the process except when the intervener comes back to court. The quality of the interveners in Cook County is normally quite good. Most being social workers or lawyers with a great deal of experience. Most interventions take only two or three hours. Since it is only a one time process there is always a great deal of risk that a quick outcome may be the wrong outcome. Sometimes it is a risk that you must take.

**EMERGENCY MOTION:** A motion brought on an emergency basis without notice or with less than the normally required notice given to the other party. For a motion to be heard on an emergency basis, you have to be able to show the judge that there is a good reason why the motion needs to be heard right away and why it should take precedence over other matters. Basically, this means you have to show that something has come up which you could not have known about

beforehand and which needs the court's attention right away. If the judge decides that no emergency exists, he will not hear the motion at that time and will require the party bringing the motion to set it on the regular motion call to be heard at a later time.

**ERISA:** Commonly used abbreviation for Employee Retirement Income Security Act. This most often comes into play in a divorce case when there are pension or other retirement benefits that need to be divided up. See "Qualified Domestic Relations Order" and "QDRO."

**EXCLUSIVE POSSESSION:** When one party during a divorce case is allowed to stay in the marital home while the other is prevented from doing so. This is really only allowed when the presence of one of the parties threatens the mental, emotional, or physical well-being of the other party or of the children.

**EXPERT:** Anybody who is called as a witness to offer testimony regarding a particular, specialized topic. The most common types of experts in divorce cases include appraisers of houses and psychologists or social workers when custody of children is at issue.

#### **EXTRAORDINARY MEDICAL EXPENSES:**

**FEE PETITION:** A petition brought by an attorney, normally after his involvement with the main case has ended, to get payment for his fees. Quite often in a fee petition, the attorney will make a request that his fees be paid by the other side. However, this is not always the case, and even if your lawyer requests that the court order the other side to pay his fees, there is no guarantee that the court will grant that request. Therefore, the attorney's own client will still be liable for paying his or her own fees.

**FINANCIAL STATEMENT:** Also called a "13.3 affidavit." This is a form used in Cook County and is often the first real step in the discovery process. These forms require a party to provide information about their financial situation. There are actually two different forms used, and they are sometimes referred to as "13.3(a)" and "13.3(b)" to differentiate. These two forms are actually quite similar in many respects. Your lawyer or his paralegal will provide you with the right one for you to fill out.

**FINDINGS:** A judge's decisions as to matters of fact that are in dispute. For example, if the value of a home is in dispute, with one spouse claiming it is worth \$150,000 and the other claiming it is

only worth \$100,000, then the judge will make a finding as to what he thinks the real value is based on the testimony and evidence presented to him.

**FOCUS ON CHILDREN:** This is a program that parents involved in a child custody dispute will be required to attend. The judge will send you to this program which is given at one of the courthouses and which deals with the effects of divorce on children. You need not necessarily attend with the other parent, but you will need to complete the program.

**FORENSIC INSTITUTE:** An institute of Cook County that will provide psychological evaluations in child custody or visitation cases when such examinations are ordered by the judge. See "604(b)."

**FORNICATION:** Unlawful sexual intercourse between unmarried persons. This is actually a crime in Illinois, but it is rarely if ever enforced.

**GROUND:** A basis for the granting of a divorce. That is, before a court will grant you a divorce, you have to show that at least one of the grounds listed in the statute exists. Actually, grounds is in a sense an out-dated concept, and disputes over grounds are relatively rare. However, proof of at least one of the grounds is still required by law. In Illinois, the grounds for divorce include: impotence by the husband; bigamy; adultery; desertion for a period of one year or more; habitual drunkenness for a period of at least two years; drug addiction for at least two years; attempt on your life by poison or other means showing malice; extreme and repeated mental cruelty; conviction of a felony or other infamous crime; infection of sexually transmitted disease; and irreconcilable differences, which is also known as a "no-fault" divorce.

**GUARDIAN AD LITEM:** Similar to an attorney for the child. Basically, this is an attorney appointed by the court to look after the interests of the child.

**ILLINOIS MARRIAGE AND DISSOLUTION OF MARRIAGE ACT:** The statutes (laws) which govern most of what goes on in a divorce case, including child custody, child support, maintenance and division of property. For those of you who really want to get into the legal aspects of what goes on in a divorce, the location for this Act is 750 ILCS 5/101 and can be found in any library in the Illinois Compiled Statutes or Smith Hurd Statutes.

**IN CAMERA INTERVIEW:** An interview between the judge and a child or children whose custody is in dispute. These are actually not very common. When they are used, typically the only people present in the interview are the judge, a court reporter, the child, and usually the lawyers for both sides. Either party, the attorney and/or GAL, or the judge can request an in camera interview. While it is normally any parties right to call the children as witnesses to testify at trial - most judges

and lawyers frown on doing it. The reasoning is that a child is hurt no matter what he or she says because children put in that position often feel that they are choosing sides even if they are not really doing so.

**INJUNCTIVE RELIEF:** Generally, any relief requested which is not for money or custody of children. Probably the most common form of injunctive relief requested in a divorce case is an order prohibiting one spouse from squandering, hiding, or selling assets of the marriage.

**INTERIM FEES:** These are fees that you might be able to get from your spouse to allow you to pay legal expenses while the case is going on. A judge can order money to be paid over to one spouse by another if there is a significant difference in the amount each has available for taking part in the case. NOTE: This is *not* a final award. Often times, a judge will take the interim fee award into consideration when making his final distribution of property at the end of the case.

**INTERROGATORIES:** These are *written* questions prepared by one party for the other party to answer in writing. This is another common discovery method, and you might also hear it referred to as a "213" (this is because the court rule governing these is rule #213).

**INTERVENTION:** A method of resolving disputes where a social services professional interviews the parties as well as their child(ren) to help make a recommendation to the judge as to custody and/or visitation. Unlike with mediation, what is said in intervention is not privileged and therefore can be repeated in front of the judge.

**IRRECONCILABLE DIFFERENCES:** This is one of the two main grounds for divorce used in Illinois (the other being "mental cruelty"). A divorce relying on this ground is commonly referred to as a "no-fault" divorce. Irreconcilable differences means that you and your spouse have been living separate and apart for at least two years (or six months if you both agree to waive the two-year period in writing), the marriage is broken down beyond hopes of repair, any attempts you have made to fix the marriage have failed and any further attempts would be fruitless. See also "living separate and apart."

**JOINT CUSTODY:** This is one of the two types of custody. Contrary to popular belief, "joint custody" does *not* mean that the child spends an equal amount of time with each parent. What joint custody means is that both parents have a say in *major* decisions affecting the child. "Major" decisions would include things like education, religious upbringing, and health care issues. "Major" decisions would *not* include little things like whether the child wears Nikes or Reeboks. When parents have joint custody, there is an agreement, often called a "joint parenting agreement" entered

by the judge. This is an agreement which provides, among other things, that in the event of a dispute between the parents as to a major issue affecting the child, the parents will go to mediation to try to work out the problem before getting a court involved. See also "mediation," "custody," and "sole custody."

**JOINT PARENTING AGREEMENT:** An agreement which is entered by a judge when an award of joint custody is made. This agreement addresses all issues of the joint parenting arrangement including visitation, residential custody and mediation in the event of a dispute regarding major decisions affecting the child.

**JOINT SIMPLIFIED DIVORCE:** A very simple divorce proceeding available only in very limited circumstances. Very few people would actually qualify for this type of divorce because of its strict requirements. This process allows for the parties to fill out some forms and to go in front of the judge on an expedited basis to get their divorce entered. However, this is only available when all of the following requirements are met: neither party is dependent on the other for support or each party is willing to waive their right to support; irreconcilable differences have led to the irretrievable breakdown of the marriage and the parties have been separated for at least six months and future attempts at reconciliation would be impracticable and not in the best interests of the family; no children were born of the marriage, no children were adopted and the wife is not pregnant; the parties have been married five years or less; neither party has any interest in any real estate; the total value of any property is less than \$5,000; and the combined gross income of the parties is less than \$25,000.

**JUDGMENT FOR DISSOLUTION:** Sometimes (although no longer as frequently) referred to as a "divorce decree." This is actually a document which is entered by the judge which in effect grants your divorce and contains all the details of your divorce including the grounds, the way property is to be divided, who if anybody is to pay maintenance and how much, who gets custody of the kids and how much is to be paid in child support. Normally, this document is prepared by the attorney for one of the parties, and the attorney for the other party looks it over to make sure that it says what it's supposed to say. It's not uncommon for multiple drafts of a judgment for dissolution to be made until the parties have one that they are both satisfied with.

**JURISDICTION:** Basically, this is the court's power over a party and the ability to enforce orders as to a party. Actually, for a court to enter and enforce an order as to a particular party, two different types of jurisdiction must be had. First, the court must have jurisdiction over the subject matter of the case. This is not a frequently encountered problem in domestic relations cases. The second type of jurisdiction is jurisdiction over the person. Problems with this type of jurisdiction sometimes do arise in domestic relations cases. To illustrate the problem, let's say you have a court here in Cook County and a man who lives up in Alaska. We couldn't possibly allow just any court sitting here in



Cook County start entering orders relating to some guy who lives thousands of miles away! That is, unless that guy has some special connection to Illinois. Let's say the guy moves here. Once a person comes to live here in this State, he obviously develops a connection with this State. There are other ways to get jurisdiction over someone who lives out of state if the right kind of connection is found. Sometimes it takes a little creative work on the part of an attorney to make that connection.

**LEGAL SEPARATION:** A separation where a judge actually enters a formal order, somewhat like a judgment for dissolution, which lays out all the terms for the separation. In Illinois, there is no requirement that two married people get a legal separation in order to live apart from each other. Often times, going through a legal separation just leads to additional costs and procedures since many of the steps have to be repeated to get a divorce. There may however, be benefits to getting a legal separation in some particular circumstances. Your lawyer can explain to you whether or not a legal separation is something that might be appropriate in your particular case.

**LEVELING THE PLAYING FIELD:** This is the relatively new law which provides for interim fees. The idea behind this law was that often times in a divorce case one party has significantly greater access to funds for participating in the case than the other party. By providing for interim fees, this law enables both parties to take part on a more or less equal footing. See also "interim fees."

**LIVING SEPARATE AND APART:** This is a requirement for using the grounds of irreconcilable differences (the "no-fault" divorce). This doesn't necessarily mean that you and your spouse live in separate households. What it does mean is that you have stopped living as husband and wife, or to be more succinct, you have ceased have marital or sexual relations. See also "irreconcilable differences."

**MAINTENANCE:** This used to be called "alimony." Maintenance is money paid by one spouse for the support of the other, either after the divorce is granted or sometimes even during the time the divorce case is pending. See also "temporary maintenance."

**MARITAL PROPERTY:** This is property that in effect belongs to both parties and which the court can divide up in the divorce. Marital property basically includes all the property acquired during the marriage with certain exceptions. See "non-marital" property.

**MARITAL RESIDENCE:** This is the home that you and your spouse lived in during the marriage.