

FREQUENTLY ASKED QUESTIONS:

Domestic Relations / Family Law:

Q: What is the difference between a divorce, dissolution and legal separation.

A: Not Much !! A legal separation is a legal proceeding where two parties separate and all of their assets, debts, and liabilities are split, however the parties remain married. Mostly this is done in instances of religious beliefs, or in order to maintain medial insurance. This proceeding is rare in that most end up being converted to divorce. In 50+ years combined practice of law Kirner and Boldt has completed approximately 3 legal separations.

Divorce and Dissolution are far more common. Both of these actions are essentially the same type of action. The only REAL difference is when you agree upon the terms of the termination of marriage. In dissolution the parties agree upon terms before hand, documents are prepared, and filed with the court. The court then schedules you for a final hearing with in 90 days. In Divorce, you do not agree upon the terms. You may agree on some terms but not all. In divorce you have two options, you can reach an agreement at any time along the way or you can have a trial and let the court decide what are fair and equitable terms.

Q: Can you represent both Husband and Wife in a dissolution.

A: No. We can only represent one of the parties in a dissolution. There would be a conflict of interest in representing two people on opposite ends of the same matter. One party can retain us, and our only goal will be to represent the best interests of that person. We will however prepare whatever agreement the represented party requests.

Q: Can you get a dissolution if you have kids.

A: Absolutely !

Q: What is the difference between shared parenting and sole custody.

A:

Q: I am a grandparent and I have been denied visitation, do I have rights ?

A: You sure do. Grandparents have rights to visit with the minor grandchildren. Come see us; we will file a motion.

Q: Will I have to pay / receive alimony ? (kna: Spousal Support)

A: It depends. "Alimony" is an archaic word, seldom used. Traditionally Alimony was paid by husbands to wives, due to the disparity in income between the two. Today, we refer to such payments as Spousal Support. Spousal support may be paid by either husband or wife. Now, will it have to be paid. In Cuyahoga County there is a general unwritten rule of thumb of 1 year of support for every 3 years of marriage. In Lorain County it is 1 year of support for every 5 years of marriage. If both parties make similar

income, then generally NO, you will not have to pay. If one party makes substantially more than the other, then likely there will be spousal support. Such factors that come into play in calculating support are earning ability of one of the parties, education level, history of employment, children being at home, quality of life, health, etc. The bottom line, it depends.

Q: How much will this cost me in legal fees?

A: It depends. We have files that only have a few documents in them, we have other files that fill several boxes. We charge hourly, so the amount of work will dictate the cost.

Q: Do I need an attorney or can I do this myself ?

A: You do not need an attorney. A wise man once told me, you do not need a surgeon in order to remove your appendix, you can do that by yourself as well. However, you lack education, the skill, precision, training and expertise to successfully navigate such an undertaking. Further, just like in removing your own appendix, if you falter, cleaning up the mess after the fact may be difficult if not impossible. We do not advise it.

Q: My spouse cheated on me / abused me / has a new lover / etc, what do I get for that ?

A: Unfortunately, not much of anything. Ohio does not much care about the REASON you are getting a divorce, it only cares that the assets are distributed equitably.

Q: What should I expect to loose / get out of this divorce ?

A: Basically, HALF. Each party is entitled to HALF of everything, except non-marital and pre-marital assets. That is half of the house, half of the pensions / 401K, half of the bank accounts, half of the furniture, you name it, it should be split in half, unless there is financial misconduct.

Now while that is simple to say, it is sometimes difficult to execute. For example, what value does a 6 year old couch have ? Any ? Or what about a diamond necklace ? What about if each party has a pension worth similar amounts. Each party can waive their interest in the others accounts.

Q: What is financial misconduct ?

A: Financial misconduct is present when one party to the marriage uses funds wastefully. Gambling is an excellent example. Even if Gambling cannot be proven, large or repetitive cash with draws may be sufficient to show that something "fishy" was or is going on with marital funds.

The Court may award more assets to the non-wasteful party to offset what the offending party has taken away from marital assets.

Q: What should I expect when getting divorced ?

A: Divorce is a long drawn out process, much of it is a waste of time. The first step is to

file for divorce. Documents will be prepared and filed with the court. There is a filing fee of approximately \$200 filed with the court at this time. The next step is service. The Law requires your spouse be properly served with divorce papers. This process will take place via certified mail and then ordinary mail if that fails. Generally this takes around 30 days or more. The Court will then schedule a pretrial. In some instances the Court will set a hearing for temporary support (if requested). As any court proceeding there are two avenues, the first is to reach an agreement, the other is to have a full hearing. In most instances of divorce the parties will sit in the hall and not actively participate until the FINAL TRIAL. The court's goal is to settle the matter with out a trial and they will attempt to broker an agreement. If the parties are agreeable they can attend a mediation to attempt to resolve this matter. Several pretrials will take place all with a goal of reducing the disputed issues. If the parties cannot reach an agreement a trial will be scheduled and eventually held. Trials are costly and timely. **IT IS ALWAYS BETTER TO SETTLE !!** By example, a few years ago we had a divorce trial that went forward for 5 days, costing **each side**, approximately \$7,000.00, and was not yet resolved. At the end of those 5 days the two individuals got together and reached an agreement rather than the Court drafting one. The parties reasonably determined that they just wasted \$14,000.00 of funds that could have been spent on their kids instead.

Q: What is mediation or ADR ?

A: ADR stands for Alternative Dispute Resolution. Trial is an adversarial approach to resolution. ADR is a approach to be a kinder, gentler more collaborative approach to resolution. Mediation is one type of alternative dispute resolution. Mediation is when the parties (generally no attorneys present) meet with a neutral party, the mediator, to discuss the issues and to hopefully reach a resolution. The mediator will tell the parties what is reasonable and will again try to broker an agreement

Q: Can I get support while the divorce is pending ?

A: SURE ! A motion can be filed for temporary support (spousal and child). The technical legal term is Pendente Lite but is often referred to as a TA Order (Temporary alimony) or temporary orders. A court can order support depending on the circumstances, of income of the parties, who is caring for the children, who is residing in the marital home, etc. The court can award a dollar amount to be paid or require a party to continue to pay for the mortgage, utilities, insurance etc.

This order will terminate at the time of the final hearing and what ever final agreed upon or Court ordered support will go into effect.

Q: How do I determine the value of my pension ?

A: Kirner and Boldt works with a company by the name of QDRO Consultants and for a cost, they can determine what the present value of any pension.

Q: What happens to my pension upon a Divorce ?

A: Unless there are some other cash or assets that can be sacrificed to

balance out your spouses interest in said pension, then they would be entitled to half of the interest during the period of coveture (duration of marriage). Anything earned before the marriage would be solely yours, and anything earned after the marriage is solely yours. A document called a QDRO or DOPO would need to be drafted to divide said interests.

Q: What is a QDRO / DOPO ?

A: A QDRO is a Qualified Domestic Relations Order and a DOPO is a Division of property Order. They are IDENTICAL, however a QDRO is used for private plans, and DOPO's are used for state plans, like teachers and firefighters pensions.

Q: What happens if my ex- spouse dies before the QDRO is put in place ?

A: You may be out of luck and loose everything that you may be entitled. A QDRO should be put in place IMMEDIATELY. Of more concern, if a ex-spouse dies who is a participant under a state plan (firefighter, teacher, etc) If they were to pass away EVEN IF the DOPO is in place, you will loose all benefits. It is imperative that a life insurance plan be put in place for the duration to protect the value of the benefits for which you would be entitled.

Q: Can my child support payments ever be changed ?

A: ABSOLUTELY !! The Court requires a change in circumstance to take place. That change in circumstances needs to amount to a 10% deviation in the final support number. So if you are receiving \$1,000.00 a month for 4 children and one or both of the parties incomes goes up or down making the calculation go up or down by \$100.00 then one party is entitled to a modification.

The Child Support Enforcement Agency will generally independently review and modify support approximately every 3 years, or they can do the same at your request.

You can file for a modification at any time. If there is no change in circumstances you will not be granted a deviation but if you believe something has changes you can simply make the request.

You can work with the CESA to seek a change or you can file a motion with the court. It is ALWAYS better to file a motion with the Court. Once a motion is filed with the court, the clock starts ticking on a modification. If the matter is not heard for 6 months, the start date of said modification will be back dated the date of filing. This is generally not the case if you go through the agency.

Q: What is the Child Support Enforcement Agency (CSEA)?

A: CESA is a governmental body that monitors, collects, distributes, and enforces child support and spousal support payments.

Q: Can my spousal support payments ever be changed ?

A: Maybe. The Courts need to specifically reserve the right to modify or terminate support. If there is no language in your divorce decree that SPECIFICALLY reserves the right to modify or terminate support then the order will remain as is.

Q: My spouse works under the table, what do I do ?

A: The Court will generally only look at tax returns and pay stubs in calculating support. If an individual is working under the table, it would need to be proven. The difficult part is that an employer or customer would never testify to breaking the law and not paying taxes, so proving this is often difficult. Hiring a private investigator is always an option !!

Q: I have children and there is a dispute, what court will I be in ?

A: If you are married, you will be in domestic relations Court. If you are unmarried you will be in Juvenile Court.

Q: How much child support will I get or have to pay?

A: It depends. Whether you get sole custody or you are the residential parent under the shared parenting plan, you are entitled to child support. Child support is statutory, meaning it is set by law. There is a very specific formula to calculate support. The main factors controlling the amount of support are the parties incomes, over time worked, bonuses, daycare and health care costs. The amount of support must be calculated specifically for each person.

CUSTODY:

Q: Who gets custody of our children ?

A: It depends. Ohio wants to know what is in the best interest of the minor child.

Q: paternity ?

Q: Who gets custody of our pets ?

A: While you may both love your pets dearly, in Ohio pets are only "property". Pets are seen as no different then a microwave oven or a couch. It may boil down to a flip of the coin to see who gets the pets.

Post Decree Matters:

Q: What does "post decree" mean ?

A: A divorce decree is the final document filed with the court upon completion of your divorce and/or dissolution or juvenile court orders. This decree is an order of Court, that both parties must comply with fully. A "post decree" matter is some type of filing that takes place AFTER the divorce is finalized. This can be a Motion to Show Cause, Motion to Modify Support, Motion to Modify Custody, and others.

Q: My spouse is not paying support, what do I do ?

A: The Child Support Enforcement Agency should do something about it, like ceasing a tax refund, or suspending any licenses, including professional and drivers. That may not be enough. You should file a motion to show cause. You MAY be entitled to attorney fees and further punishment may result in jail

Q: My spouse is denying visitation, can I refuse to pay child support.

A: Two wrongs do not make a right. Support and custody/visitation have ABSOLUTELY NOTHING to do with one another. You have to do what you agreed to do and what is now a court order, as does your spouse. You should file a show cause motion. You MAY be entitled to attorney fees and further punishment may result in jail

Personal Injury Matters:

Q: I was injured, do I have a case ?

A: There are 3 important issues to answer that question:

- 1) Liability
- 2) Injury
- 3) Collectability

Liability requires that someone else be at fault for your injury. This is a legal determination not a personal determination. For example if you are in the grocery store and someone spilled a bottle of wine on the floor, you slip and fall on the same. Is the grocery store liable ? Probably not. There is a theory in the law called "open and obvious" and the basic principal is that you should have been paying attention to where you were walking. On the other hand, if you were rear ended by someone, the liability is generally clear and obvious.

Injury to your person is required. It does not matter if you are a driver or a passenger in a vehicle, if you are injured, you may have a case.

Collectability is possibly the most important factor. An individual once came into our office and he had been shot in the face. Not only is this a personal injury but an assault, which is intentional, which may open other avenues of recovery. The difficult part here is that while liability and injury may be crystal clear, the individual who shot him was currently in jail and a member of a gang. Gang members are not generally productive members of society having homes, cars and jobs that can be pursued to collect funds from.

If liability is clear (and it rarely is), you have sustained an injury, and the other party is collectable, then we will look at your case and determine the value of said case. Factors

determining the value of a case are the type of injury, whether it was negligent (accidental) or intentional. Whether liability is clear or questionable. The type of injury sustained, whether it be superficial or significant, fully healed or permanent.

Q: How much is this matter going to cost me ?

A: Most personal injuries are taken on a contingency basis, meaning that if we collect zero for you, we get paid zero, however if we collect \$1,000 or \$100,000 we would take a percent of said recovery. The percent may vary depending upon the case and when it was resolved. If a trial has begun the percent will be higher, if we are able to settle without filing a lawsuit, the percent will be lower. In general, the starting percent will likely be around 1/3.

While we may take no fees during the pendency of the case, there may be fees that need to be paid. In order to present a complete claim to an insurance company medical records, bills, and doctors reports will likely need to be presented. The doctors and hospitals will not do this for free. We are unable to advance these costs. These fees will vary depending on what is needed.

Driving under the influence (DWI) / operating a vehicle intoxicated (OVI):

Q: Will I spend time in jail ?

A: There are many factors that determine this answer. For every OVI client that walks in the door 6 questions are asked:

1. What was your BAC (blood alcohol content) ? Note: .08 is beyond the legal limit, and above .17 is what is referred to as high tier) High tier and refusal to take the breathalyzer both automatically double you penalties.
2. Did you have insurance ? Note: While not necessarily relevant to your time in jail, if you did not have insurance at the time of the incident the state, not the Court, will automatically suspend your drivers license .
3. Was there an accident / was anyone injured ? Note: some Judges may view an accident as an escalating factor when sentencing you.
4. Were you cooperative ? Note: Most judges give the police great deference, should you have been mouthy, disrespectful to the officer, you may have picked up another charge and the Judge may use this as an escalating factor in sentencing
5. What is your traffic and criminal history ? Note: if you are say 50 years old and this is your first OVI, and you have no other prior criminal or traffic history, you can likely expect the mandatory minimum sentence. However, if you are a 19 year old and you have no job and this is your 3rd OVI, and you have other drug, and theft charges, and maybe some domestic violence thrown in the mix, well, I would certainly not expect you to be home for dinner that night.
6. What is your expectation ? There are mandatory minimums and required sentences that the judges cannot deviate from under any circumstance. Such

standards have been set by the legislature. Our goal is to minimize the entire sentence. Below are the expectation for each occurrence.

Q: This is my 3rd OVI in six years, what should I expect ?

A: See Chart above.

Q: When can I get driving privileges ?

A: see chart above.

Q: What are driving privileges ?

A: I many cases the court will grant occupations driving privileges to individuals who are charged with an OVI. You should expect privileges to and from and in the course of employment, day care if you have children, school, medical, church, and some courts will give you free time in one day for a few hours to complete necessities (banking, grocery, etc. MAKE SURE you do not deviate for any reason from these privileges. If you go to work and run out for lunch you are outside of your driving privileges and you could receive a probation violation.

General Criminal:

Q: What is probation ?

A: Probation is a time period that you are required to comply with certain terms set forth by the court and your probation officer, be it attend AA meetings, or possibly a Domestic Violence or anger management program. Should you fail to complete or comply with said terms your probation officer may “violate” you.

Q: What is a probation violation ?

A: A probation violation(PV) is when you fail to comply with the terms of your probation. A PV will be set in front of the Judge and you can admit to the violation OR you can schedule a full hearing to determine if you are in violation or not.

Q: What's happens if I am found guilty of a probation violation ?

A: Generally upon sentence a Judge will sentence you to a longer period of time and suspend a good portion of your sentence. Something like: 30 days in jail, 27 days suspended. If you violate probation the remaining 27 days of jail may be imposed by the judge. There are Judges out there that specifically tell you at sentencing that if you are back on a probation violation you will AUTOMATICALLY receive the balance of your sentence.

Q: I can't afford an attorney, what do I do ?

A: If you face jail time and cannot afford one, the Constitution has a provision in it that requires that you be provided an attorney at no cost to you. In some courts, these are regular attorneys who may charge a paying client \$200 - \$400 a hour, depending. In other instance there may be a full time public defender and this is that persons only job.

As you can imagine public defenders have large case loads, and you may not receive the personal attention that you would should you retain Kirner and Boldt. LPA. While I have great respect for all public defenders, old adage, you get what you pay for may be relevant.