

Definitions

Affidavit

An affidavit is a sworn statement. The person must swear to the information and sign the document in front of a notary public. Affidavits should only contain information the person knows to be true from firsthand experience. They should not contain opinions or conclusions.

Ex Parte

Ex Parte is a Latin phrase meaning “from only one of the parties”. An Ex Parte communication takes place when a commissioner gets information about a case from only one side. Court commissioners act as neutral decision makers. If one side talks or writes to a commissioner without the other knowing, it creates a problem. To avoid this problem, commissioners won’t speak about the merits of a case with one party unless the other is there. If a letter is sent to the commissioner, it must also be sent to the other party. The commissioner or his staff may speak with a party about the procedure involved in a case; for example, how to schedule a hearing. Procedural questions are not considered ex parte communications, because talking about procedure does not give one side an advantage over the other.

Guardian ad Litem

A guardian ad litem is an attorney appointed by the court to represent the best interests of minor children as to paternity, legal custody, and physical placement. The Guardian ad litem conducts an investigation and reports back to the Court with a recommendation.

A Guardian ad litem is required to be appointed in certain circumstances and will generally be appointed when requested by a party. The deposit is \$350 per person plus \$50 per month until the guardian ad litem has been discharged and the final billing has been determined. Guardian ad litem final billing will be submitted at the rate of \$85 per hour.

The fees of the guardian ad litem are normally paid in advance by the parties. If either or both of the parties are financially unable to pay these fees, they may ask the court to waive the fees or to establish a payment plan. While each party normally pays half of the total fees due, the court can assign either party to pay most or all of these fees.

Legal Custody

Legal custody refers to the right to make major decisions for a child. There are two types of legal custody: joint custody and sole custody. When parties have joint custody, both parties must work together to make major decisions regarding the child. When a party has sole custody, that person alone makes the major decisions regarding the child. Wisconsin law presumes that joint legal custody is in the best interest of the child unless the court finds that awarding legal custody to a parent would be harmful to the child. The person with physical placement makes the day to day decisions regarding the child.

Maintenance

“Maintenance”, which is called alimony in many other states, is a payment from one spouse to the other to allow them to live in a manner similar to that enjoyed during the marriage. Factors the court considers include the length of the marriage, the age and physical and emotional health of the parties, the division of property, the educational levels of the parties at the time of marriage and at the time the divorce is filed, the earning capacity of the party seeking maintenance, the feasibility that the party seeking maintenance can become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage, the tax consequences to each party, any agreement made by the parties before or during the marriage, the contribution by one party to the education, training or increased earning power of the other, and any other factors the court determines to be relevant.

Major Decisions

“Major decisions” includes, but is not limited to, decisions regarding consent to marry, consent to enter military service, consent to obtain a motor vehicle operator’s license, authorization for non-emergency health care and choice of school and religion. The parties to an action can agree, or the Court may order, that other decisions are also “major decisions”

Mediation

Mediation is a process in which both sides of a dispute meet with a neutral third person (the “mediator”) who attempts to help them reach an agreement. The mediator may help the parties identify the problems that are creating the disagreement, and may show them options to resolve the disagreement. The mediator may provide guidance into the likely decision of a court hearing the dispute. The mediator does not have the authority to make decisions for the parties or to order a particular resolution.

Motion

A motion is a formal request to the court asking that some action be taken. For example, a motion to modify child support asks that the court hear and decide whether child support should be modified.

Order to Show Cause

An order to show cause is a document, issued by the court, ordering a person to show a reason why something shouldn’t happen. For example, an order to show cause on child support may order that the person appear, often with documents, and show the court why child support shouldn’t be modified. An order to show cause is only issued after a party or attorney requests it. It requires that the party file an affidavit stating reasons why the order should enter. If the court finds that there aren’t good reasons under the facts or law to enter the order, the order will not be entered and no hearing will be set.

Physical Placement

Physical placement refers to where a child lives or spends time.

There are several types of placement. One parent may have primary physical placement, meaning that the child spends most of his or her time with that parent. The other parent would then have periods of physical placement, meaning that although the parent has the child for a period of time, the child will return “home” to the other parent at the end of that time. Parents can also have equal shared physical

placement, where each of the parents has the child for approximately the same amount of time. If there is more than one child, the parents may have split physical placement, meaning that some of the children are with one parent and some are with the other.

Stipulated

Agreed upon. A stipulated divorce hearing is held if both parties agree on a settlement of all issues in the case.