

OSB Professional Liability Fund presents

Avoiding Malpractice in Family Law

Wednesday, June 22, 2022
10:00 am – 11:00 am

MCLE ID 89854
1 General Credit

Speakers: **Sharnel Mesirow**
PLF Claims Attorney

Nate Holtey
Holtey Law



Professional
Liability Fund

CLE Materials

- [Speaker Bios](#)
- [PowerPoint Slides](#)
- [Presentation Resources](#)

Speaker Bios

Sharnel Mesirow

Sharnel Korala Mesirow has been employed as a Claims Attorney at the Professional Liability Fund for nearly 10 years. As a Claims Attorney she works to evaluate and respond to malpractice allegations raised by clients against Oregon attorneys engaged in every area of law. Claims attorneys also manage and strategize the defense of malpractice lawsuits initiated against Oregon attorneys.

Prior to coming to the PLF, Ms. Mesirow engaged in an active trial practice at Gevurtz Menashe LLC, a family law firm, for seven years. She also managed a solo practice for three years, handling a variety of practice areas, including estate litigation, estate planning, personal injury, family law and landlord tenant. Ms. Mesirow continues to participate in the family law section of the Oregon State Bar.

Ms. Mesirow currently serves on the Board of the Directors for the Oregon Women Lawyers Foundation and has been the past Board Chair for Faithful Friends and served on the Board of Friends of the Children.

Nate Holtey

Nate Holtey is the owner and managing partner at Holtey Law, a midsize firm in Portland specializing in family law. Nathan has been practicing law for over 20 years. He focuses his practice on family law and has handled every type of matter from 24-hour notice Restraining Order and Emergency Custody hearings to high asset divorces involving multiple businesses, spousal support, and complex property division.

Raised in Ashland, OR, Nathan attended Tufts University in Boston, MA, before coming back to Oregon and attending the University of Oregon School of Law. Nathan enjoys the practice of law and assisting clients with achieving excellent results. Nathan and his wife Raluca have twin boys, and he enjoys camping, reading, and spending time with his family and friends. Nathan is a pilot and enjoys flying a Cessna around the Pacific Northwest.

Avoiding Malpractice in Family Law



Professional Liability Fund

Presented by:
Sharnel Mesirow, Claims Attorney at OSB PLF
Nate Holtey, Holtey Law

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OSB PLF 2020 Annual Report

(Closed Claims 2016-2020)

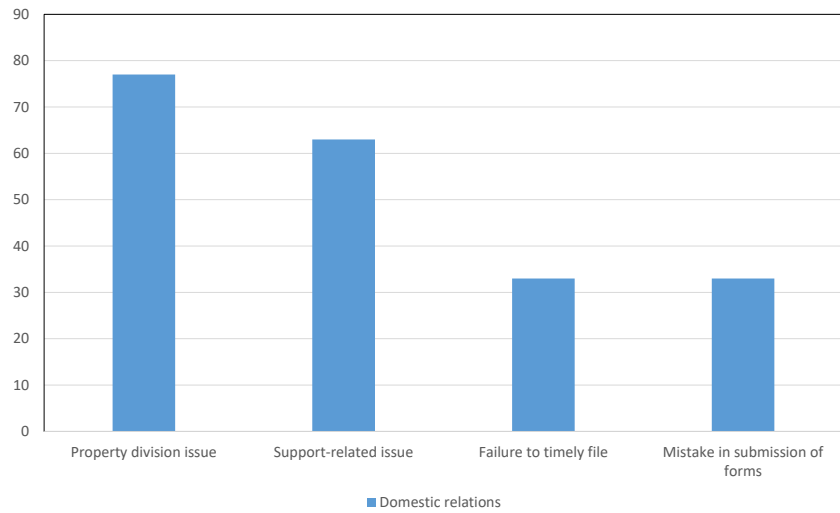
	2020	2019	2018	2017	2016
Total Closed Claims	816	901	814	777	851
FREQUENCY					
Personal Injury (Plaintiff)					
Number of Claims	127	136	117	155	161
Percent of Total Claims	16%	15%	14%	20%	19%
Cost Per Claim	\$25,266	\$22,789	\$20,629	\$16,598	\$23,970
Domestic Relations					
Number of Claims	137	150	174	123	141
Percent of Total Claims	17%	17%	21%	16%	17%
Cost Per Claim	\$18,651	\$6,924	\$8,761	\$13,650	\$17,407
Bankruptcy (Debtor)					
Number of Claims			105	88	108
Percent of Total Claims			13%	11%	13%
Cost Per Claim			\$20,004	\$14,569	\$18,977
Other Civil Litigation					
Number of Claims	117	164	119	63	
Percent of Total Claims	14%	18%	15%	8%	
Cost Per Claim	\$19,523	\$22,789	\$19,307	\$43,297	

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OSB PLF 2020 Annual Report

(Closed Claims 2016-2020)

Domestic relations



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ABA Trends

- Increase in claims arising out of settlement
- Poor litigation management
- Misuse of texts and emails for client communication

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- Last minute deals
- Trial judges forcing parties to settle
- Math errors
- Use “form” language for division of assets

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Poor Communication with Client

1. Lawyer and client don't hear each other
2. Lawyer fails to audio record settlement terms
3. Lawyer fails to write confirming letter
4. Lawyer leaves out an option for addressing missed issues

Alfieri v. Solomon (263 Or. App. 492 (2014))

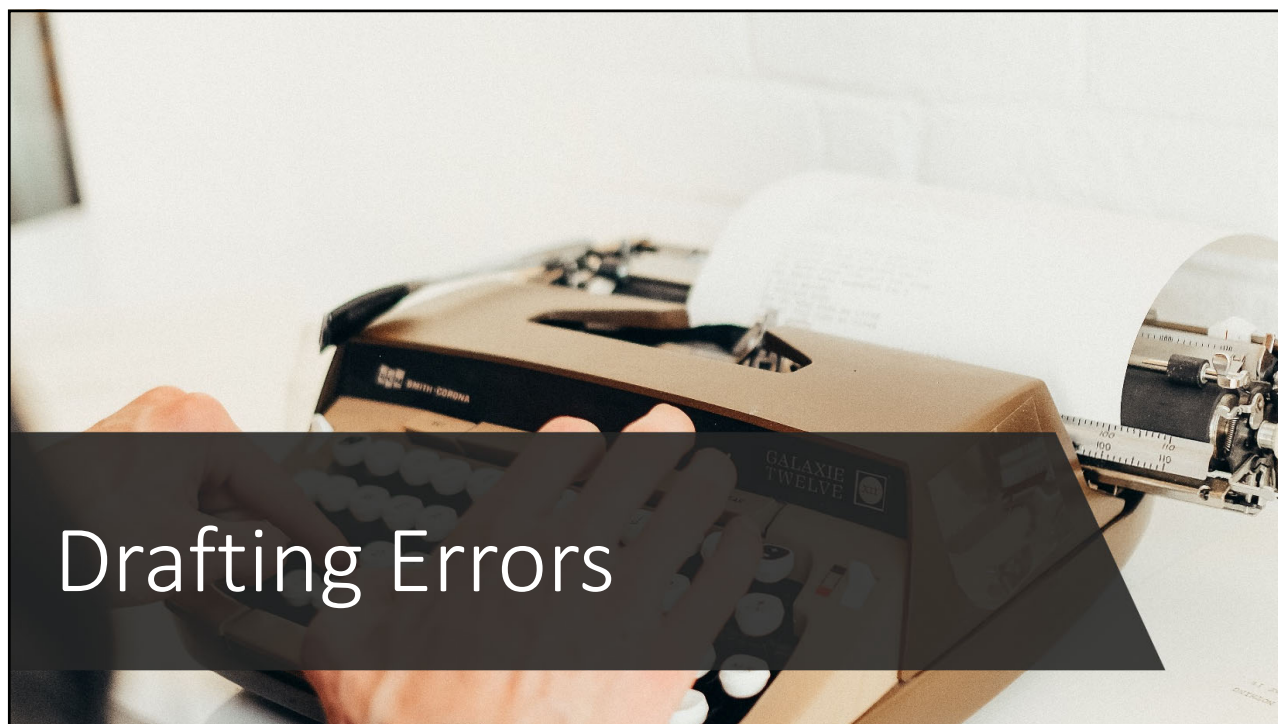
7



Failure to put settlement on record

- Misunderstandings
- Client attempts to back out
- Lawyer blamed for poor advice

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Division of Retirement

- Common mistakes
 - Defined benefit, defined contribution, military retirement, railroad, PERS
- Judgment omits “magic words”


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Business Assets

- Valuation methods
 - CMA vs. appraiser?
- Stock division
 - Minority shareholder?
 - Value in operating agreement?
- Closely held businesses

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Security for Equalizing Judgment

- Be sure security interest is sufficient for money award
 - Home equity?
 - Business stock?
 - Can it be discharged in bankruptcy?
- Hire an expert!

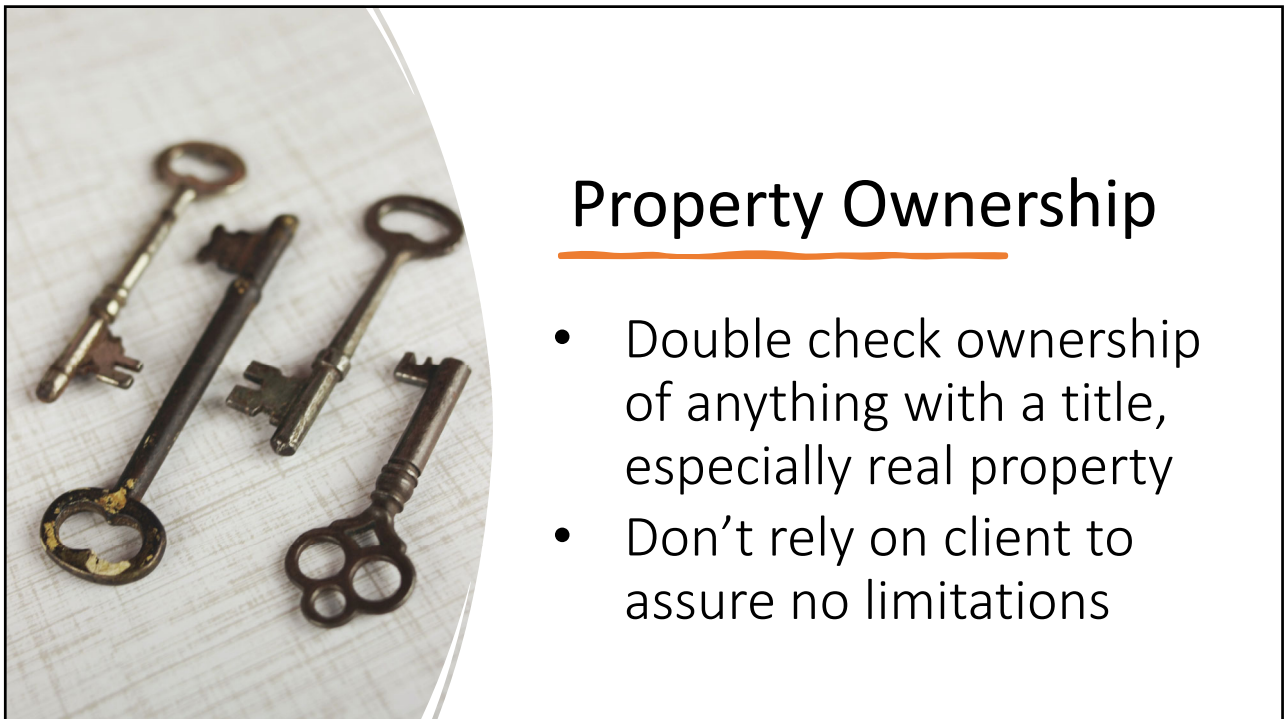
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Malpractice Trap

Failure to get a satisfaction when payments are made to opposing party or on their behalf

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Property Ownership

- Double check ownership of anything with a title, especially real property
- Don't rely on client to assure no limitations


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Spousal Support

- Be specific
 - Amount
 - Modifiability
 - Detailed findings
 - Termination
- Foreseeable events that would NOT constitute a substantial change?

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Life Insurance

- Specify who will mail judgment to appropriate carrier
- Should be included in closing letter

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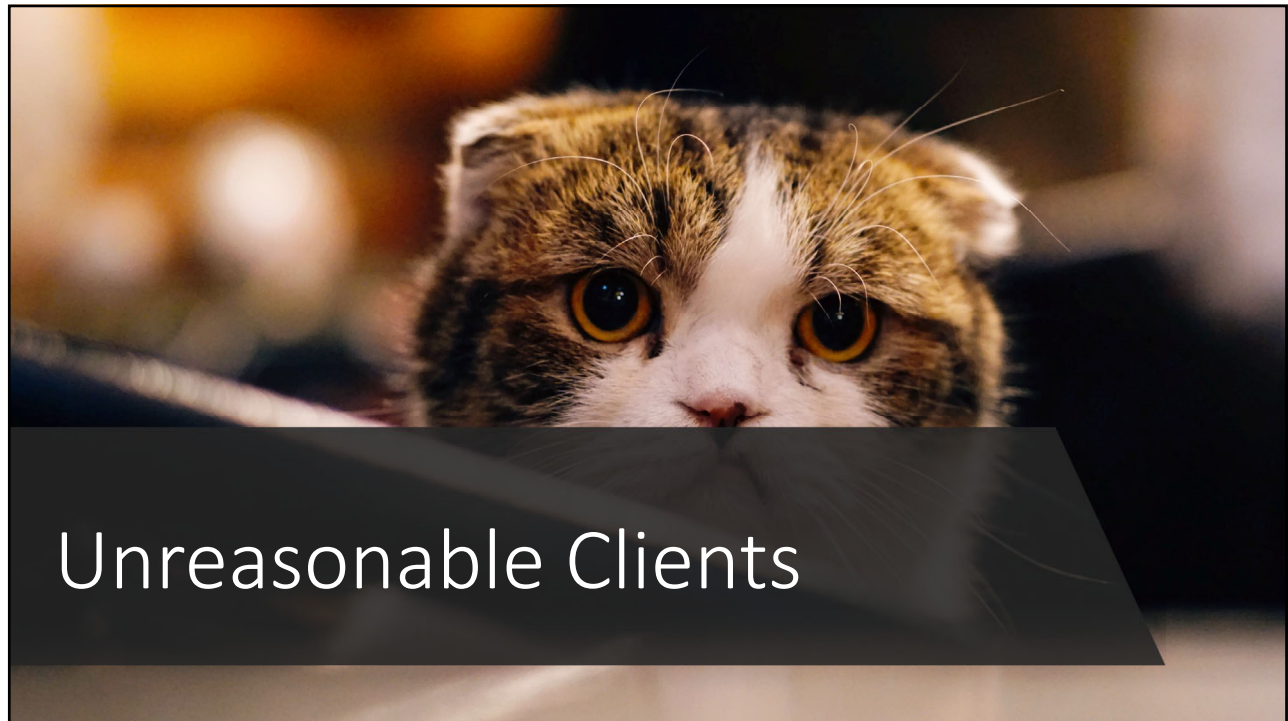


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- Ultimate protection for the attorney if malpractice suit brought
- Be specific regarding appeal rights and deadlines
- Detail settlement terms
- Address the “I told you so” issues
- Address the transfer of property titles
- Specify you will withdraw



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Unreasonable Clients

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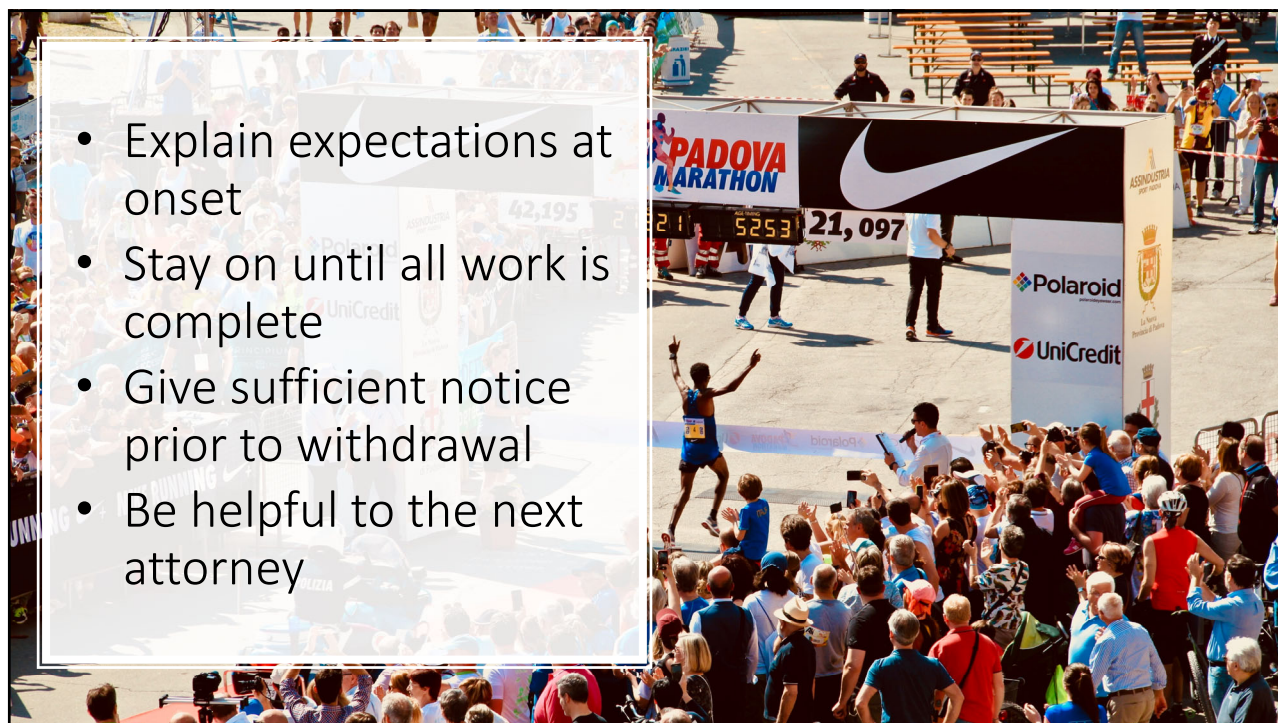
- Red flags
 - Multiple attorneys
 - No personal responsibility for marriage failure
 - Blames others for problems
 - Doesn't want to follow your advice
- Document the file (see *Rowlett v. Fagan*, 358 Or 639 (2016))



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How the PLF Can Help

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Confidentiality

- Communications with the PLF are completely confidential
 - ORS 9.080 (authorizing PLF)
 - ORS 9.460(3) (attorney-client privilege)
 - ORS 192.410 (public records)
- Not the same with OSB because PLF is your insurer and interests are adverse to claimant



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Subpoena

- Help you to navigate what is confidential
- PLF provides defense attorney to appear with you at deposition

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Malpractice

Covered

- Claimant must prove the following:
 - Attorney was negligent in some material way;
 - Claimant sustained economic damages as a result; and
 - Claimant must prove amount of alleged damages, and but for attorney's negligence those damages would not have occurred.

Not Covered

- PLF does not investigate or provide defense for ethics or accounting issues
- PLF does not provide legal advice as to what types of claims a person may or may not have against their attorney
- Coverage plan excludes claims for reimbursement of attorney fees paid

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Coverage

- \$300,000 indemnity
- \$75,000 claims expense
- Claims can be considered “same or related”
- Excess Plan most comprehensive



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THANK YOU

Questions?

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Materials

Program materials are available at

www.osbplf.org >

Services > CLEs &

Resources > CLEs

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Resources



Professional
Liability Fund

<https://www.osbplf.org> > Services

- Forms ■ Books ■ CLEs ■ *InPractice* blog
 - *InBrief* Newsletter ■ Practice Management Assistance Program (PMAP)
- Oregon Attorney Assistance Program (OAAP)

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Family Law Forms

**Go to <https://www.osbplf.org/services/resources/#forms> > Family Law, to download all forms, some available in Word format.

1. Avoiding common mistakes when doing QDROs
(https://assets.osbplf.org/forms/practice_forms/Avoiding%20Common%20Mistakes%20When%20Doing%20QDROs.pdf)
2. Checklist for final letter at close of dissolution
(https://assets.osbplf.org/forms/practice_forms/Checklist%20For%20Final%20Letter%20at%20Close%20of%20Dissolution.pdf)
3. Client's initial information packet (<https://www.osbplf.org/services/resources/#forms> > Family Law)
4. Confidential divorce questionnaire (<https://www.osbplf.org/services/resources/#forms> > Family Law)
5. Confidential records index (<https://www.osbplf.org/services/resources/#forms> > Family Law)
6. Discovery production index (<https://www.osbplf.org/services/resources/#forms> > Family Law)
7. Dissolution checklist (<https://www.osbplf.org/services/resources/#forms> > Family Law)
8. Dissolution file intake and docket sheet (<https://www.osbplf.org/services/resources/#forms> > Family Law)
9. Documents we need from you
(https://assets.osbplf.org/forms/practice_forms/Documents%20We%20Need%20From%20You.pdf)
10. Drafting dissolution judgments checklist
(https://assets.osbplf.org/forms/practice_forms/Drafting%20Dissolution%20Judgments%20Checklist.pdf)
11. Possible monthly expenses
(https://assets.osbplf.org/forms/practice_forms/Possible%20Monthly%20Expenses.pdf)
12. Post judgment letter and attachments (<https://www.osbplf.org/services/resources/#forms> > Family Law)
13. Proposed statement of assets and liabilities (UTCR 8.010(3))
(<https://www.osbplf.org/services/resources/#forms> > Family Law)
14. Authorization to release info (<https://www.osbplf.org/services/resources/#forms> > Family Law)
15. OSB family law CLEs, publications, and section memberships
(https://assets.osbplf.org/forms/practice_forms/OSB%20Family%20Law%20CLEs%20Publications%20and%20Section%20Membership.pdf)
16. Pleading index (<https://www.osbplf.org/services/resources/#forms> > Family Law)
17. Trial exhibit index (<https://www.osbplf.org/services/resources/#forms> > Family Law)
18. Witness index (<https://www.osbplf.org/services/resources/#forms> > Family Law)

DISSOLUTION CHECKLIST

This checklist is not all-inclusive. It is a worksheet and aid. The user should use additional forms as needed and conduct their own appropriate legal research and factual investigation.

ACTION	DEADLINE	COMPLETED
Prior to Interview <input type="checkbox"/> Conflict of interest check <input type="checkbox"/> Gather contact information (minimum of email address or phone number)	<hr/> <hr/>	<hr/> <hr/>
During Initial Interview <input type="checkbox"/> Gather information to assess scope of the representation and spot issues to determine the proper proceeding <input type="checkbox"/> Explain the fee agreement and retainer process <input type="checkbox"/> Advise the client what is required for hiring the attorney <input type="checkbox"/> Provide client with attorney contact information such as business card with phone number and email address, provide contact information for assistant <input type="checkbox"/> Confer with or refer client to other professionals and attorneys are needed (e.g. bankruptcy, estate planning, tax, etc.)	<hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/>
Following Initial Interview <input type="checkbox"/> Provide Attorney fee agreement <input type="checkbox"/> Collect retainer for fees and costs (if applicable) <input type="checkbox"/> Provide client with required documents they need to complete: Vital Statistics Form, Uniform Support Declaration, and gather DOBs and SSNs for children <input type="checkbox"/> Send engagement/ non-engagement letter <input type="checkbox"/> Instructions to client <ul style="list-style-type: none"> <input type="checkbox"/> Pictures/diagrams <input type="checkbox"/> Witnesses <input type="checkbox"/> Diary/calendar <input type="checkbox"/> Asset and liability list (UTCR 8.010(3)) <input type="checkbox"/> Importance of full disclosure of all assets and liabilities <input type="checkbox"/> Mutual Asset Restraining Order explanation <input type="checkbox"/> Inquire of client or search database for other pending legal proceedings including contempt, child support, restraining order, etc.	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
Initial Preparation of Pleadings <input type="checkbox"/> Establish calendar/tickler for all deadlines <input type="checkbox"/> Parties – e.g., spouses, third parties, companies, trust, joint property owners, adult child attending school <input type="checkbox"/> Venue <input type="checkbox"/> Jurisdiction (personal, subject matter, UCCJEA if applicable) <input type="checkbox"/> Set spam and junk email filters of Internet Service Provider and email program to allow e-notices from court <input type="checkbox"/> Create agent or rule in email program to duplicate and forward e-notices to appropriate staff. (Some electronic case filing systems only generate e-notices to the attorney-of-record. Staff email addresses or firm addresses (e.g., docketing@doelawfirm.com) may not be permitted) <input type="checkbox"/> File petition or response and additional required documents <input type="checkbox"/> Discovery notice (determine whether applicable) <input type="checkbox"/> COBRA notice (ORS 107.092) <input type="checkbox"/> Vital statistics form <input type="checkbox"/> Confidential information forms	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

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ACTION	DEADLINE	COMPLETED
<ul style="list-style-type: none"> <input type="checkbox"/> Business <input type="checkbox"/> Pension and retirement plans <input type="checkbox"/> Jewelry <input type="checkbox"/> Personal property <input type="checkbox"/> Stock and stock options <input type="checkbox"/> Other _____ <input type="checkbox"/> Research legal issues <input type="checkbox"/> Evaluate remedies <input type="checkbox"/> Forum (trial/mediation/arbitration) 	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p>Investigation</p> <ul style="list-style-type: none"> <input type="checkbox"/> Parties - e.g., spouses, third parties, companies, trust, joint property owners, adult child attending school <input type="checkbox"/> Assets (client to prepare list) <input type="checkbox"/> Appraisals <input type="checkbox"/> Income: paystubs, W-2's, past tax returns, undocumented income <input type="checkbox"/> Retirement plans <input type="checkbox"/> Liabilities <input type="checkbox"/> Medical records <input type="checkbox"/> Bank records <input type="checkbox"/> Forensic accountant <input type="checkbox"/> School records (e.g., attendance, grades) <input type="checkbox"/> Communications between the parties 	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p>Pre-Trial Discovery</p> <ul style="list-style-type: none"> <input type="checkbox"/> Mandatory discovery (ORS 107.089) <input type="checkbox"/> Request for production served on other party <input type="checkbox"/> Request for production served by other party <input type="checkbox"/> Request for admissions <input type="checkbox"/> Witness screening/interviews <input type="checkbox"/> Depositions <input type="checkbox"/> Subpoena to third parties <input type="checkbox"/> Motions to compel production <input type="checkbox"/> Other discovery <input type="checkbox"/> Protective orders 	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p>Trial Preparation</p> <ul style="list-style-type: none"> <input type="checkbox"/> Calendar trial date and pre-trial deadlines <input type="checkbox"/> Mandatory mediation completed <input type="checkbox"/> Co-Parent Education court completed <input type="checkbox"/> Request updated discovery from opposing party <input type="checkbox"/> Have client provide updated discovery <input type="checkbox"/> Review Petition/counterclaims for proper relief, amend if needed <input type="checkbox"/> Notify client of trial date <input type="checkbox"/> Schedule pretrial preparation appointment with client <input type="checkbox"/> Notify and subpoena witnesses <input type="checkbox"/> Prepare exhibits and exhibit list <input type="checkbox"/> Retain experts and notify of trial date <input type="checkbox"/> Motion for Remote Appearance of Party or witnesses <input type="checkbox"/> Trial memorandum <input type="checkbox"/> Exchange Personal Property Division Spreadsheet 	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

DISSOLUTION CHECKLIST

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ACTION	DEADLINE	COMPLETED
<input type="checkbox"/> Cost bond <input type="checkbox"/> Consider supersedeas bond <input type="checkbox"/> Motions for stay <input type="checkbox"/> Temporary orders pending appeal <input type="checkbox"/> Cross-appeal <input type="checkbox"/> Transcript <input type="checkbox"/> Filing of brief <input type="checkbox"/> Filing of response brief <input type="checkbox"/> Filing of reply brief <input type="checkbox"/> Docket oral argument	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>
<p>Closing</p> <input type="checkbox"/> Send closing letter to client (as soon as possible after judge signs judgment) <ul style="list-style-type: none"> <input type="checkbox"/> Enclose copy of judgment and property settlement agreement <input type="checkbox"/> Advise client of date judgment becomes final and significance of that date <input type="checkbox"/> Suggest that a new estate plan be made <input type="checkbox"/> Remind client to remove ex-spouse as beneficiary of any asset (life insurance, pension, IRA, 401K plan) <input type="checkbox"/> Remind client to negotiate any remaining documents to effect change of title(s) <input type="checkbox"/> Refer client to DCS website for enforcement and collection <input type="checkbox"/> Advise client to seek legal advice regarding modification of judgment or questions about enforcement <input type="checkbox"/> Explain how support payments not made are reduced to judgment and procedure for renewing them <input type="checkbox"/> Remind client of deadlines in judgment including any lump sum judgments or judgment on sale of real property at some future date <input type="checkbox"/> Advise if you are recording deed(s) in another county (and do it) <input type="checkbox"/> Explain effect of sending a certified copy of judgment to life insurance company if spouse is to maintain policy for benefit of client or minor child(ren) (ORS 107.820(6)) and set out whose responsibility it is to send the certified copy <input type="checkbox"/> Advise client of right to continue group health insurance coverage and/or conversion under ORS 743.610 <input type="checkbox"/> Advise client on co-habitation or prenuptial agreements <input type="checkbox"/> Obtain written permission from client to destroy file after a certain date <input type="checkbox"/> Have a closing conference with client to return original documents and review remaining fees <input type="checkbox"/> Define the scope of your post-judgment involvement in the case and the meaning of your withdrawal as attorney of record 	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>	<hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/> <hr/>

DISSOLUTION CHECKLIST

IMPORTANT NOTICES

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DRAFTING DISSOLUTION JUDGMENTS CHECKLIST

GENERAL PROVISIONS FOR JUDGMENTS

- When saving drafts, save each new draft separately as opposed to saving over an earlier draft so you can track your changes and revisions. E.g. Judgment v. 7, or Judgment with client's revisions, etc. (when tendering the document electronically to opposing party or counsel name the document appropriately such as "draft to opposing party" "proposed final judgment" etc so as not to reveal confidential information or the revision process.)
- Caption the document consistent with ORCP 67: General Judgment, Limited Judgment, etc, and state such other information as may be relevant including whether the judgment is by default or stipulation, what it pertains to, and whether a money award is included: E.g. General Judgment of Dissolution of Marriage (Stipulated) and Money Award.
- Do NOT include confidential information that is required to be segregated, such as dates of birth and social security numbers. This does not preclude you from including information as may be appropriate including year of birth, last four digits of account numbers, last four of social security numbers or last four of driver license numbers OR from referencing that the information is "Provided as required by UTCR 2.100".
- Recite jurisdictional facts in the findings including the facts necessary for personal jurisdiction and subject matter jurisdiction.
- Comply with UTCR 2.010(12) Leave sufficient room for the judgment to be dated electronically and signed electronically by the judge (1.5 inches of blank space from the last line of text before the signature line for the judge.) Do not date the judge's signature line. The judge's signature must appear on a page with at least two lines of text appearing before the signature line. (To avoid a "floating" judge's signature on an otherwise blank page which would allow it to be attached to anything.)
- Be mindful of what signatures are required. A stipulated order will require the signature of parties or their counsel unless consented to in open court on the record. If the settlement has been placed on the record the parties' signatures are not necessary. (If a case settles last minute, best practice is to place the settlement on the record unless a judgment has been submitted to the court prior to the date of trial or hearing.)
- In preparing judgments allot sufficient time to circulate to your client for CAREFUL review prior to tendering the proposed judgment to opposing counsel/party. Best practice is to have your client approve the judgment in writing via an email of consent, initialing a paper draft, or other written assent.
- In drafting the judgment review the initiating and responsive pleadings to see that all issues raised are addressed and disposed of.
- If you are not seasoned or are not working from a reliable template, review the statute at issue in your matter such as ORS 109.119 (third party custody), or ORS 107.105 (provisions of dissolution judgments) for findings and requirements. The proper statute to refer to is often cited in initiating pleadings. Also, refer to forms provided by the Department of Justice and Courts. Although these documents are often intended for pro se parties, they provide useful reference tools.

DRAFTING DISSOLUTION JUDGMENTS CHECKLIST

- Even where attorney fees and costs are not awarded, specify such in lieu of simply omitting the issue. “Neither party shall be responsible for the attorney fees or costs of the other” Or “No attorney fees or costs are awarded herein.”
- Use nomenclature you are LESS likely to accidentally invert. For example, Petitioner and Respondent are easily (and often) interchanged. Consider using Mother/Father, Husband/Wife, last names (if different) or other such designation for a party. When doing so simply state the designation in the findings or intro: “Petitioner, Jane Doe, hereafter referred to as “Mother” or “Wife”.
- If the court has issued a written decision letter, consider whether to attach and incorporate the decision letter. Doing so is standard practice when it is available. However, if the decision letter contains detailed personal information that your client may prefer not to attach to a document that will be provided to the child(ren)’s school, care providers, doctor, etc. assess whether attachment is necessary or sufficiently valuable.
- In order to avoid objections, draft findings and rulings as closely to the verbiage rendered by the court as possible. Best practices include requesting and listening to the court audio to prepare the judgment if the ruling is complex or there is other good cause.
- If you need clarity on an issue ruled on by the judge, you may confer with opposing counsel to attempt to resolve an ambiguity by agreement, review the court record, or seek clarification from the judge by writing to the court.
- Include a UTCR 5.100 Certificate of Readiness that is properly completed when submitting any proposed judgment to the court.
- Include a certificate of service that is properly completed when submitting a proposed judgment to the court, unless service is not required because a party is in default.
- Double check that all of your exhibits are accurately labeled, numbered, referenced and (actually attached!) to your judgment when you serve the document on the opposing party or counsel and when you file it with the court.

DISSOLUTION JUDGMENTS

- In a stipulated judgment include that each party has had the opportunity to confer with counsel, has done their own due diligence, that the parties acknowledge the ORS 107.089 discovery obligations and are satisfied with the information they have reviewed, that the award (whether or not equal) is just and equitable.
- Recite in the findings the relevant and pertinent facts of the matter, most especially those disputed facts resolved by the court, paying particular care to those that may be at issue in an appeal or subsequent modification proceeding.
- Include in the order that marriage is dissolved and the effect that has on estate planning, beneficiary designations, transfer on death deeds and power of attorney designations.
- Specify the award of assets and debts per the parties’ agreement or the order of the court. Follow the terms with specificity and clarity.

DRAFTING DISSOLUTION JUDGMENTS CHECKLIST

- Include an award of retirement benefits and accounts to the parties, even if each party is only keeping his or her account. Review barbooks or confer with a QDRO attorney for the appropriate verbiage for an award of retirement benefits. A QDRO is not going to be required for all types of accounts and should not be treated as a default. PERS forms and provisions are readily available online for example. <https://www.oregon.gov/pers/MEM/Pages/Divorce-Forms.aspx>.
- Be sure to give a party the opportunity to have a prior legal name restored to said party if so desired.
- When the award includes a transfer of title you wish to be self-executing per the judgment, follow the formalities and include the information necessary to perfect that process such as a paragraph specifying that if title is not transferred then the judgment shall be self-executing, notarized signatures of parties and the legal description of real property (if at issue), make, model, year and VIN for vehicles, etc.
- Be mindful of who is required to sign the judgment and whether the signatures of parties need to be notarized. Notarization is beneficial for recording in property records but can cause delay and be a barrier to signing for some parties. Likewise, approval as to form by opposing counsel is a best practice, but not required for submission to the court.
- Make sure you include a money award as appropriate for any equalizing award or monetary award and that the money award complies with ORS 18.042.

(See below for terms related to custody, parenting time and support).

CUSTODY AND PARENTING TIME JUDGMENTS

- Recite the names and ages of the parties' children, including year of birth if desired.
- Recite the UCCJEA jurisdiction and jurisdictional facts in the findings.
- If a party has requested equal parenting time in the proceeding and that request is denied, you must include a WRITTEN FINDING as to why equal parenting time is not in the child(ren)'s best interest or endangers the safety of the parties. ORS 107.102(5).
- Recite in the findings that the custody and parenting time ordered therein are in the child(ren)'s best interest.
- Address how the children are insured for medical at the time of entry of judgment, and who shall be required to insure the children going forward. If the children are on public health insurance, address the responsibility to keep the children insured if they remain eligible. If insurance is required to be provided through employment, use the appropriate language defining whether the insurance is available at a reasonable rate.
- Required notices: ORS 107.159 Notice Regarding Relocation, ORS 107.106 Notice to Parents; Optional notices: ORS 107.154 authority of other parent when one parent awarded custody, 107.164 Parental duty to provide information to each other,

DRAFTING DISSOLUTION JUDGMENTS CHECKLIST

children if for child?) and how long the obligation continues (typically “so long as the obligation to pay spousal/ child support exists”).

- All orders and judgments providing for support of a child must include the appropriate statutory notices: ORS 25.384 Notice of Income Withholding; ORS 107.106 Notice to Parents; ORS 25.020 Notice About Periodic Review and Modification of Child Support Orders; and ORS 107.159 Notice Regarding Relocation.
- If parties have agreed to an arrangement for payment of support other than wage withholding, this other arrangement must be clearly identified in the order or judgment. Use language required by ORS 25.396. Be mindful that waiver of child support or waiver of DCS collection is revocable.
- Make sure that the dissolution judgment, the money award within the dissolution judgment, the support computation worksheet and the wage withholding order accurately and consistently state the support amount.
- Make sure the money award complies with ORS 18.042.

MODIFICATION JUDGMENTS

- Recite the UCCJEA jurisdictional facts in the findings.
- Include a finding of fact as to whether the burden of proof (substantial change in circumstances) has been established and any supporting findings of fact from the court's ruling.
- Recite the prior relevant judgments (with specificity sufficient to identify them) and include to what extent they are superseded by the terms of the modification. (For example, perhaps the award of child support is modified, but the previous terms regarding health insurance, unreimbursed expenses, and life insurance are not.)
- Comply with all relevant requirements and recommendations depending on the issues addressed in the modification, such as spousal support factors, child support factors, attaching child support calculation, etc.

POSTJUDGMENT MATTERS

- If you are continuing to assist the client with post-judgment matters such as the preparation/ exchange of documents such as titles or deeds, with the sale of real property or transfer of personal property, be sure to calendar any deadlines provided in the judgment and communicate with the client about same.
- Advise party on modification of spousal or child support, including jurisdictional issues, and availability of administrative modification
- Confer with client regarding whether the judgment should be registered in a foreign jurisdiction, such that if the appropriate requirements for UIFSA are met, it is possible for the party in that jurisdiction to have the dissolution judgment modified/enforced in that jurisdiction for support matters.

DRAFTING DISSOLUTION JUDGMENTS CHECKLIST

- If client is receiving child support, provide a link to the Division of Child Support page for requesting assistance including administrative review and enforcement services. The client can easily apply online. <https://www.doj.state.or.us/child-support/>.
- Send copy of judgment to DCS and District Attorney if either party is a recipient of public benefits.
- Trial court administrator and DCS do not add in judicial interest on arrearage (judgment) amounts. Advise client to have an accountant figure the interest and inform the appropriate agency so that judgment amount includes the interest.
- Advise client to seek appropriate advice regarding any tax consequences from a licensed tax attorney or qualified accountant. Refer the client to appropriate official IRS guides and publications such as that found here: <https://www.irs.gov/publications/p504>.
- Even if the parties have agreed to allocate the federal dependent tax exemption or credit, advise the client that the Internal Revenue Code controls the federal dependent tax exemptions, credit or deductions proper forms need to be completed and tendered to avoid issues or delays on processing of taxes.
- Advise client about expiration of judgment remedies and motions to extend time and remedies.
- Advise client to seek legal advice regarding modification or enforcement of judgments at any time that there is a concern including, but not limited to, changes in parenting time, changes in income or finances, decreased ability to pay, missed payments, etc.
- If you represent the obligee, provide or advise your client to provide a certified copy of the judgment to the life insurance company of the obligor if life insurance is required.

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CHECKLIST FOR FINAL LETTER AT CLOSE OF DISSOLUTION

When sending the final letter to the client at the end of a dissolution of marriage, be sure to set out the following information:

- Enclose a complete copy of the dissolution judgment, with all exhibits.
- Inform the client the date that the divorce became final and the significance of that date.
- If there are children, provide a brief explanation of the client's responsibilities as either a joint or sole legal custodian.
- Explain the importance of reviewing and following the parenting plan.
- Explain that sole legal custody may be changed upon a showing of a substantial, unanticipated change of circumstances. Explain that a parenting plan can be modified as is in the best interests of a child. If the case involved high conflict, provide specific advice for record keeping regarding (1) communications between the parents about parenting plan issues; (2) adherence to the parenting plan; (3) if the parenting plan requires the custodial parent to provide notice about major custodial decisions and the non-custodial parent the right to comment, records of notice and comments.
- Explain how child support is to be paid. Explain the necessity of keeping records of all support payments until all support is paid. Explain the necessity of regularly obtaining satisfactions to file with the court.
- Explain the procedures for seeking assistance from the District Attorney in collection of support payments if that becomes necessary.
- Explain how and child support can be modified. Explain that there is process for seeking a modification with the Department of Justice.
- Summarize the nature, amount, and duration of spousal support.
- If client is receiving taxable spousal support in a modification of support case that is under prior tax law, advise of the need to pay quarterly tax estimates.
- Advise client about modification of support, including changes in income, cohabitation, remarriage, and retirement.
- Explain how support payments not made are reduced to judgment and the procedure for renewing them at the end of 25 years for child support and 10 years for spousal support.
- Summarize the process for allocating the children's uninsured health care expenses.
- Explain the life insurance provisions of the judgment. Provide a deadline for the client to confirm whether he or she wants you to follow up on sending letters of instructions and certified copies of the judgment to the applicable life insurance company.
- Summarize any pertinent parts of the non-retirement property division provisions.
- If real property is to be sold, explain the process and the allocation of the sale proceeds. Explain each party's obligations as to that property until it is sold.
- Advise client to close joint checking and/or savings accounts and obtain separate accounts unless the Judgment of Dissolution requires otherwise.

CHECKLIST FOR FINAL LETTER AT CLOSE OF DISSOLUTION

- Advise client to deliver or obtain personal property, household furnishings in accordance with the time periods contained in the judgment.
- Summarize the allocation of retirement accounts. If a DRO is needed, explain who will be drafting that document and the allocation of its costs. Make sure that the client knows that he or she will have to timely provide information and all, part, or none of the retainer. Explain to the client that this process can take substantial time to complete.
- Remind the client to transfer ownership of savings accounts, certificates of deposit, treasury bills, Individual Retirement Accounts, money market accounts, stocks, and bonds in accordance with the Judgment of Dissolution.
- Remind the client to sign off on titles and obtain sole titles as appropriate.
- Remind the client to delete insurance coverage for automobiles, boats, and other insured assets awarded to former spouse and confirm coverage on such property awarded to client.
- Explain and summarize provisions in the judgment that address stock options and restricted stock units.
- Advise client to surrender or destroy charge cards, close accounts, change billing address, advise creditors of non-liability for former spouse's future debts, furnish statements for accounts to be paid by former spouse, and obtain statements for accounts that are client's responsibility (unless the judgment requires otherwise).
- Remind the client to change beneficiaries on life insurance, pensions, IRA, 401(k) plans and other retirement accounts and other accounts and assets consistent with the terms of the judgment.

If one party is receiving real property and both parties are contractually obligated to pay the mortgage, explain the requirement, if any, to refinance the underlying loan. Explain what will happen if the mortgage is not refinanced.

- Explain any lump sum money awards and payment terms.
- Indicate who is responsible for preparing and recording any deeds to transfer real property and do it.
- Advise client of right to continue group health insurance coverage and/or conversion under ORS 743.610.
- Explain that either spouse may set aside a dissolution judgment if an asset is missed through mistake or fraud. Re-explain the importance of failing to disclose assets or liabilities.
- Ask the client whether he or she wants financial documents obtained in the proceeding to be returned or shredded. State that the remainder of the file will be destroyed in 10 years.
- Explain bankruptcy issues, if any, especially when there is a money judgment involved.
- Review the tax issues arising from the case, if any.

CHECKLIST FOR FINAL LETTER AT CLOSE OF DISSOLUTION

- Advise client to change his or her name on Social Security card, driver's license, credit cards, insurance policies, utilities, if appropriate, and the need for obtaining a certified copy of the judgment for Social Security and DMV.
- Advise client to file Internal Revenue Service Form 8822 with the IRS informing them of the client's change of address, restoration of maiden name, and changed marital status, as applicable.
- Inform client that he or she will need a new estate plan unless there is specific estate planning that survives the divorce.
- OPTION: Have a closing conference with the client; this is the opportunity to return documents, photographs, original papers, review remaining fees, and any remaining tasks, such as monitoring the division of retirement accounts.
- Send letters of thanks to witnesses and others who helped with the case (to create goodwill and to possibly generate new clients).
- File a Notice of Termination when your follow up tasks are complete (retirement account division; life insurance issues).

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POST JUDGMENT LETTER AND ATTACHMENTS

***[Not all provisions will apply.
Conform to specifics of case, including language regarding child and spousal support.
Use the attachments that follow this letter if applicable.]***

DATE

[Client Name]
[Address]
[Address]

Dear [Client]:

The General Judgment (Dissolution of Marriage) was signed by Judge [Judge's Name] on [date]. It became final as soon as the judge signed it. That means you are now single and all of the judgment provisions are now operative.

A copy of the judgment is enclosed. I have requested a court-certified copy of the judgment from the court and will send it to you upon receipt. The signed copy I have attached to this letter will work for most purposes (e.g., re-issuing title on a vehicle), but you may in the future encounter a situation in which a court-certified copy is necessary. You can discard all the other court documents, papers, and letters mailed to you during your case. The judgment replaces and makes unimportant all other documents. Keep it (and the court-certified copy you will receive shortly) with your other important papers such as your insurance policies, car titles, etc. You may need to refer to it sometime in the future.

Deed

The original bargain and sale deed transferring ownership in the property to you has been sent to the county for recording in the deed records. The original will be returned to you by the county once it has finished with the recording process. Recording the deed will also update the property tax record.

DMV - USE IF CLIENT'S VEHICLE IS INDEBTED

The original DMV power of attorney that [Party] signed for your vehicle is also enclosed. It should be taken to the DMV along with the title to your vehicle so that a new title can be issued in your name only. At this point your lender holds the title and will not release it until the debt is paid in full, at which point it will send you the title and sign off on the lien it now has. It is this title that you will take to the DMV along with the power of attorney. It is important that you keep the power of attorney in a safe place because it may be some time before you will be using it. You should take the newly released title to the DMV to update the title once the creditor releases its lien even though that process costs money because it can become a real problem if you lose the title that the creditor signed.

ALT. DMV - USE IF NO DMV POWER OF ATTORNEY PREPARED

I understand you and [Party] are handling the issue of signing vehicle titles so that new titles can be issued as may be appropriate. If you have any problem obtaining [Party's] signature, you can use the judgment to have new titles issued. That is why we included VINs for each of the vehicles in the judgment. You can take a court-certified copy of the judgment to the DMV along with any titles that should be re-issued in your name alone.

Child Support - Client Receives Directly

[Party's] first child support payment of \$[amount] is due [date]. You and [Party] elected to have the child support paid directly to your bank account rather than through the Department of Justice (DOJ). You should provide [Party] with plenty of deposit slips to eliminate any reason for delay in (his/her) making payments.

As we have discussed, there are benefits to having payments made through the DOJ, including:

1. There is always a record of the payments.
2. You can go online and print a record of payments as proof to any third person that they are, in fact, current. By statute, the DOJ's records are *prima facie* proof of payment.
3. The district attorney, who enforces judgments for the DOJ, will recalculate child support every three years if you ask.
4. You and [Party] will not need to correspond by check.
5. [Party] cannot unilaterally deduct money from your support just because (he/she) thinks that it is fair to do so because [he/she] paid for something [he/she] thinks you should have paid.

Either party can ask that the DOJ involve itself at any point in time in the process. That means you can continue with the direct payment procedure already established but can ask the DOJ to step in should problems occur in the future.

Child Support through DOJ - Client Receives

[Party's] first child support payment of \$[amount] is due [date]. The Child Support Division of the Department of Justice (DOJ) will be collecting support on your behalf and sending it to you. Attached / Enclosed is an Application for Child Support Services that you must complete and submit to the Child Support Program by mailing it to:

Child Support Program
4600 25th Avenue NE, Suite 180
Salem, OR 93701

You can also see other methods for submission here: <https://www.doj.state.or.us/child-support/services/enroll-for-child-support-services/>

Help the DOJ do its job by providing any information it requests. The law requires you to tell the DOJ your new address within 10 days after you have one because failure to keep the DOJ advised of your current address will cause delays in receiving support payments. It may take a month or two for the DOJ to actually get the collection account established.

The Oregon Child Support Program will assess a federally mandated \$25 annual fee against your child support account. The fee amount will be deducted from the child support payments you receive from [Party].

The district attorney is there to help you. In fact, the district attorney is required to recalculate your support every three years. All you need to do is ask. Most people are entitled to a support increase. Keep this in mind as you approach the third anniversary of the entry of the judgment.

Everyone assumes all support payments will be made on time, but some people simply cannot (or will not) voluntarily pay support. Contact the local district attorney's office if the support payments are not being made. They will probably already be working on it, but it's good to make sure.

Sometimes clients go years without receiving support. Do not give up. The district attorney is required by law to help you collect the past due support. There are two things the district attorney will not do for you. The first is to collect interest. Your support order is a judgment. All judgments accrue interest at 9% per year. This interest can add up to a lot of money if support goes unpaid for a long time. Second, your support judgment may expire in 35 years from the date of this judgment. Child support judgments cannot be renewed. You may decide to wait and not vigorously pursue collection efforts on a child support judgment for a number of years for various reasons, but make sure that you do collect it before it expires on its 35th anniversary.

Child Support - Client Pays

Your first child support payment of \$[amount] is due [date]. The Division of Child Support of the Department of Justice (DOJ) has been asked to set up a permanent account on your behalf to collect and distribute support. You will not be given credit for a child support payment unless it is paid through the DOJ. You have the burden of proving that a payment was made so make sure to use a check. Keep those canceled checks for future reference.

The DOJ will assign you a specific DOJ number. That number is important and should always be written on any check or correspondence that you send to the DOJ.

The DOJ may automatically make arrangements with your employer to have your child support payments withheld from your paycheck. This wage withholding is not a "garnishment" and does not imply that you are not responsible enough to make the payments yourself. It is simply the way that Oregon law requires child support payments to be made in most cases. The law specifically prohibits your employer from taking any type of action against you because of the wage assignment. Let me know if you have any problem with your employer in this regard.

There are a few exceptions to the rules requiring support payments to be made through a wage assignment. You should contact the DOJ directly to discuss specifically what would need to be done to prevent the wage assignment. Generally, preventing the wage assignment will require either payment two months in advance or the consent of both parties.

A wage assignment will take several months to put in place. You should mail all your support payments directly to the DOJ until you are instructed otherwise. Its address is:

Department of Justice
Division of Child Support
P.O. Box 14506
Salem, OR 97309

Make sure to:

1. Make your checks payable to the "Department of Justice."
2. Always put the DOJ number (once assigned) on the memo line of your check and any correspondence you send the DOJ. Use the circuit court

case number until the DOJ number is assigned. Also write "child support" on the memo line.

3. Let the DOJ know of any change in your home and business address within 10 days after the change.

USE IF CLIENT PAYS FIRST TO SPOUSE, THEN TO DOJ

The DOJ will send you a packet of information when they first establish your account. Among that information is a request form that asks for proof as to your "arrearage." When you receive that information, send a copy of your canceled checks or receipts showing your first payments directly to [Party] and the DOJ will correct its records to indicate that no arrearage exists.

You will want to contact the DOJ every year or so and ask for a computer printout of your payment history. By doing this you can be sure your payments are being properly credited. You can also check your account information online at https://justice.oregon.gov/caseinformation/payment_history.aspx

The district attorney is required to modify support for either party if a change occurs. Be sure and make use of their services to reduce your support if there should ever be a significant change in your income.

Spousal Support - Client Pays

Your first spousal support payment of \$ [amount] is also due [date].

Spousal Support - Client Receives

[Party's] first spousal support payment in the amount of \$ [amount] is also due [date] and will be paid through the DOJ.

Uninsured Medical

OPPOSING PARTY PAYS FOR ORDINARY MEDICAL COSTS - THEN BOTH PAY HALF

[Party] is required to pay [Name(s) of children] ordinary unreimbursed medical costs such as co-pays for doctor's well visits, non-prescription medication, and other everyday expenses. You are required to pay half of any reasonably incurred extraordinary medical expenses, such as the uninsured cost associated with treatment of a specific illness or injury (including co-pays), orthodontic expenses, or chronic medical conditions such as asthma or diabetes. Make sure that any bills you send or receive truly reflect the uninsured portion of the bill, not the entire bill itself and that it does not represent a cost toward an ordinary unreimbursed medical expense (e.g., a co-pay for a yearly checkup). [Party] has [number of days] days from the date the insurance company finishes its billing process in order to make the claim to you. [His/her] failure to make the claim within that period means that you do not have to pay it. Exercise that right very carefully as you do not want to get cited for contempt.

CLIENT PAYS FOR ORDINARY MEDICAL COSTS - THEN BOTH PAY HALF

You are required to pay [Name(s) of children] ordinary unreimbursed medical costs such as co-pays for doctor's well visits, non-prescription medication, and other everyday expenses. [Party] is required to pay half of any reasonably incurred extraordinary medical expenses, such as the uninsured cost associated with treatment of a specific illness or injury (including co-pays), orthodontic expenses, or chronic medical conditions such as asthma or diabetes. You have [number of days] days from the date the insurance company finishes its billing process in order to make the claim to [Party]. Your failure to make the claim within that period will mean that

[Party] does not have to pay it. I have enclosed an extra copy of the uninsured expense reimbursement claim form that was attached to your judgment.

Even if the other parent fails or refuses to pay uninsured health care costs as required by the judgment, it is usually not cost-effective to cite (him/her) for contempt, depending on the amount of expenses incurred. Often it is better to keep a running total of the amount due on a spreadsheet and send it each time you send the form requesting reimbursement. There may come a time when you will be glad you maintained the spreadsheet with the supporting documents. **OPTIONAL** I have included an example spreadsheet to illustrate what I mean.

CLIENT PAYS ALL - CASH MEDICAL SUPPORT RECEIVED

The judgment requires that you pay all of [Name(s) of children] uninsured medical-type expenses in recognition of your receipt of cash medical support. Review the language in paragraph ___ on page ___ of the judgment if you have any questions about this provision.

Life Insurance

SPOUSE TO MAINTAIN CURRENT POLICY

[Party] is required to maintain [his/her] [Name of Life Insurance Carrier] life insurance policy as set forth in paragraph ___ on page ___ of the judgment naming [Beneficiary] as primary beneficiary / beneficiaries. A copy of a letter which was this date sent to [Party's] life insurance company is attached / enclosed. You should check every year to make sure [he/she] is maintaining life insurance as required by the judgment. Carefully reread this section of the judgment as it is your responsibility to be sure [Party] obeys this provision.

CLIENT TO MAINTAIN CURRENT POLICY

The judgment requires you to maintain your [Name of Life Insurance Carrier] life insurance policy naming [Name(s) of Children] as beneficiaries. It is [Party's] responsibility to notify your life insurance company of this obligation and ask the insurer to change its records to guarantee this. Let me know if you have any questions or concerns regarding this provision.

BOTH PARTIES TO MAINTAIN CURRENT POLICIES

Paragraph ___ on page ___ requires both you and [Party] to maintain specific policies of insurance naming the children as primary beneficiaries (or each other as trustees). A copy of a letter which was this date sent to [Party's] insurance company advising of the requirement is attached / enclosed. It is [Party's] responsibility to notify your insurance company. Carefully reread these provisions of the judgment if you have any questions about the maintenance of life insurance.

ONE PARTY NEEDS TO PURCHASE INSURANCE

[Party] is required to purchase a \$[amount] life insurance policy naming [Name(s) of children] as primary beneficiaries. [He/she] has [number of days] days from the date the judgment was entered (until [date]) to do so. Unless you instruct me otherwise, I will prepare a Supplemental Judgment addressing the life insurance information once I receive the appropriate documentation. A copy of that supplemental judgment will then be sent to the insurance company once it is signed. That process assures that [Party] will not be able to cancel the policy in the future without you knowing about it.

You should then check every year to make sure [Party] is maintaining the life insurance policy as required by the judgment. Carefully reread paragraph ___ on page ___ of the judgment if you have any questions or concerns. It is your responsibility to be sure [Party] obeys this provision.

BOTH PARTIES NEED TO PURCHASE

Paragraph ____ on page ____ requires both you and [Party] to purchase a \$[amount] life insurance policy naming each other as primary beneficiary. You have [number of days] days from the date the judgment was entered (until [date]) to do so. I will then prepare a Supplemental Judgment addressing the life insurance information once I receive the appropriate documentation. A copy of that judgment will then be sent to the insurance company. That process assures that [Party] will not be able to cancel the policy in the future without you knowing about it. I suggest you start the process of obtaining your own insurance now so there is no delay, and to prevent a possible contempt citation against you if you fail to do so.

Checklist

Attached / Enclosed is a checklist of details you will want to take care of now that you are divorced. If you want my help with any of these, please let me know. I assume you will follow through with completing these tasks unless you advise me to the contrary in writing.

Change of Name

Your divorce judgment legally changed your name. It is important you contact various agencies to advise of the change in your name. I suggest you immediately get in touch with the following agencies. Some will make the change in your name relying on the copy of the judgment you receive with this letter, but others will require a court certified copy.

1. The Department of Motor Vehicles (DMV). You will need to apply in person at a DMV office and must submit a completed Driver License/ID Card Application (Form 735-173), together with a copy of the final divorce judgment as proof of your legal name change and present proof of your legal presence in the United States, identity and date of birth (a certified copy of a U.S. Government-issued birth certificate or a valid U.S. passport will suffice).
2. The Social Security Administration (SSA) for instructions on how to get a new social security card. This process is usually as simple as filing a Form SS-5. A copy is attached / enclosed for your convenience. You will need to submit to the SSA, together with that form, a copy of the final divorce judgment as proof of your legal name change together with an identity document. The identity document must show your former name, as well as other identifying information (physical description) or a recent photograph. SSA will accept an expired document as evidence of your old name. The most typical identity documents include an old driver license or passport. An expired social security card showing your [maiden/former] name will not suffice because it does not bear a recent photograph or a physical description. My suggestion is that you get your new driver's license first, taking that in to the SSA. A temporary new license will not work. You need the actual new license.
3. Your payroll or human resources department at work.
4. Your bank, credit card companies, and other financial institutions.
5. Your gym membership, utility companies, cell phone provider, magazine subscriptions, internet providers, etc.
6. Your various health, homeowners' and vehicle insurance agents.

7. Filing the tax notice described below should suffice to advise the IRS of your name change.

IRS Information

Internal Revenue Code provisions require each taxpayer to notify the IRS if there is a change in the taxpayer's address, marital status or if the taxpayer has changed his or her name. Many clients never provide that information to the IRS until their next year's return is filed. That can be an expensive mistake. Keep in mind that you have been filing a joint tax return for the last couple of years. How are you going to know if the IRS sends a deficiency notice to your old address or to [Party]? Avoid this risk by filing IRS form 8822. A copy is enclosed for your convenience.

Beneficiaries/Need for New Last Will and Testament

A divorce has the same effect as if your spouse had predeceased you under your current will. You should review your current will; then, if appropriate, execute a new will to reflect the circumstances that exist now that your divorce is final.

While the entry of a dissolution judgment may automatically eliminate [Party] from your will by law presuming that [Party] predeceased you for purposes of deciding how your property is to be distributed in accordance with that will, the entry of a judgment *does not automatically* delete a former spouse as a beneficiary of assets such as retirement plans, IRAs, life insurance policies (whether privately purchased or provided as a fringe benefit of your employment), 401(k) plans, tax-deferred compensation plans, annuities and the like. You should promptly name a new beneficiary on your various bank and retirement accounts. If you don't, [Party] will receive the asset upon your death.

Division of IRA

You were awarded a portion of [Party's] [Name of IRA] IRA. You should contact the company immediately and provide it with a copy of the judgment so it can begin the process of rolling your portion of the account into an IRA in your own name. Let me know if you have any questions or problems with this process.

Pension

You were awarded a portion of [Party's] retirement plan. A copy of a letter sent to [Name of QDRO Attorney] this date asking that [he/she] prepare the appropriate documentation to divide the plan is enclosed. I anticipate you will hear more directly from [Name of QDRO Attorney]. It is important that you tell the plan within 30 days of any change of your address. This is to protect your rights. The pension company needs to be able to find you at any time to provide notice of any change in the plan or to let you know that a claim for benefits has been made. Your failure to keep the pension company advised of your address could jeopardize your right to receive pension benefits.

PERS

You were awarded fifty percent (50%) of [Party's] PERS account as of [date]. A copy of a letter sent to PERS this date to advise of the division of the account is attached / enclosed for your records. It is important you keep PERS advised of any change in your address so it can find you at any time to provide notice of any change or to let you know that a claim for benefits has been made. Your failure to keep PERS advised of your address could jeopardize your right to receive benefits.

Social Security Benefits

It may seem premature to talk about social security, but you should know that the social security system makes a variety of benefits available to retired workers and their families, even ex-spouses. Under 42 U.S.C. Section 402(b) and (c), a divorced spouse can claim social security benefits equal to 50% of the worker's retirement benefit based on the ex-spouse's earnings if:

1. The divorced spouse is age 62 or older.
2. The marriage lasted at least ten years. 42 U.S.C. Section 416(d).
3. The divorced spouse claiming the benefit is not married to someone else.
4. The divorced spouse is not entitled to a benefit based on his or her own earnings record that exceeds the divorced spouse's benefit. This means you get to choose the higher of your amount or [Party]'s.

There may also be benefits available should [Party] die. Check with the Social Security Administration should that occur.

Payment of Debts

The judgment requires that each of you pay certain debts. A creditor may call to demand you make payment on a debt your now-ex-spouse was ordered to pay. Creditors tend to go after the responsible individual from whom it is easiest to collect, and the creditor doesn't care that a judge ordered your ex-spouse to pay that debt. At that point, you may have to pay a debt [Party] was ordered to pay, then seek reimbursement from (him/her). Call me if this happens to you.

Personalize this next part for the specific case

CLIENT AWARDED HOUSE - NO NEED TO REFINANCE

You were awarded [Party's] interest in the family residence. You are required to continue making the regular monthly mortgage payments as you have done in the past. You are not required to immediately pay off or refinance the mortgage debt due _____. [Party's] name comes off the title to the property but (his/her) name stays on the debt and the bank can look to [him/her] for payment should you fail to pay the debt each month as the judgment requires. Your judgment specifically recites: [conform this section as needed]

3.2 Wife's Debts. *Wife shall pay according to the creditor's repayment terms, defend, indemnify and hold Husband harmless from any debt in her name alone not otherwise specifically described herein and:*

3.2.1 *The debt due Bank of America Mortgage on loan ending 2565, that is secured by an interest in the real property described in paragraph 2.2.2 herein.*

and . . .

3.4 Failure to Pay A Debt. *This judgment requires each party to pay certain debts however each party is aware that **the court's order cannot modify the repayment agreement between the parties and their creditors.** The court's order can only impact the obligation to pay as between the parties themselves. [Emphasis added.]*

OPPOSING PARTY AWARDED HOUSE - NO NEED TO REFINANCE

Sometimes the party awarded the family residence is required to refinance the mortgage debt so as to remove the other party from the loan. This *did not happen in your case*. Your name comes

off the title but it remains on the debt. [Party] will not be required to refinance the mortgage associated with the real property awarded to [him/her] in this dissolution judgment; [he/she] may pay the mortgage monthly, over time. The judgment specifically recites: [conform this section as needed]

3.2 Wife's Debts. *Wife shall pay according to the creditor's repayment terms, defend, indemnify and hold Husband harmless from any debt in her name alone not otherwise specifically described herein and:*

3.2.1 *The debt due Bank of America Mortgage on loan ending 2565, that is secured by an interest in the real property described in paragraph 2.2.2 herein.*

and . . .

3.4 Failure to Pay A Debt. *This judgment requires each party to pay certain debts however each party is aware that **the court's order cannot modify the repayment agreement between the parties and their creditors.** The court's order can only impact the obligation to pay as between the parties themselves.*

Credit Report

I advised you to obtain a credit report on yourself when this case began. It would be wise now for you to get a new report to make sure that the joint credit cards were actually canceled and that nothing happened to your credit while this case was pending. Contact Equifax by phone at 1-800-685-1111 or online at <https://www.equifax.com> to order a current credit report. It is a very inexpensive way of ensuring that none of your credit cards have been overlooked, that all joint credit accounts have actually been closed as required by the judgment, and that no charges have been placed on an account without your knowledge. Let me know if you see any problems with that report.

House Sale Language Used

As you know, my office does not provide tax advice. You should discuss tax considerations with your accountant. **OPTIONAL LANGUAGE** Such a discussion is appropriate in your case because of the impending sale of your home. The tax code states that your portion of the sale proceeds will be received tax free without having to reinvest the proceeds in another residence if the property has been your primary residence for the required number of years and the sale proceeds are less than a certain dollar amount. Other rules apply if these requirements have not been met. Check with your accountant for the specific tax code requirements.

Change Passwords

I suggested when the divorce began that it was important that you change the password on any account that may be password-protected. This includes Internet accounts (email or otherwise), a bank account, cell phone account, etc. You probably still don't want [Party] checking your accounts or reading your emails; so it is time again to change your passwords, in case [Party] somehow discovered one or more of your new passwords during the divorce. Don't be too obvious when picking a new password, and don't use the typical reminder questions such as your dog's name, mother's maiden name, etc. because [Party] knows the answers to those questions and can use those answers to get your new password.

OPTIONAL LANGUAGE

I cannot emphasize enough how important it is that you change the password on any account that may be password-protected. This includes Internet accounts (email or otherwise), a bank account, cell phone account, etc. You do not want [Party] checking your accounts or reading your email. Do not be too obvious when picking a new password, and do not use the typical reminder questions such as your dog's name, mother's maiden name, etc. [Party] knows the answers to those questions and can use those answers to figure out your new password.

Return of Original documents

You may have provided me with original tax returns or other important documents during the divorce. You will be contacted when your materials are ready to be picked up.

Right to appeal - contested cases only

You do have the right to appeal the judge's decision. An appeal must be filed within 30 days after the General Judgment is entered in the court record (in this case, by [date]), so please let me know at once if that is your wish. Specific steps must be taken to perfect an appeal. The decision to appeal should be thoroughly discussed before proceeding. For these reasons, this decision cannot be put off until the last minute. I will do nothing to file an appeal unless you personally make arrangements with me to do so.

Modifying the judgment later

Clients sometimes ask about modifying (changing) the terms of a General Judgment. The court does have the power to modify the judgment, but that power is limited to changing custody and visitation, child support or spousal support. Modification will be granted only if a party proves there has been an unanticipated, substantial change in circumstances, or if more than three years have passed since the date of the last child support award. I will be happy to discuss the specific criteria for modification should you consider it at some time in the future.

OPTIONAL IF NO CHILD/SPOUSAL SUPPORT ORDERED

Clients sometimes ask about modifying (changing) the terms of a General Judgment. The court only has that power relating to custody, child support, and spousal support, none of which were ordered in your case. Therefore, the court has no power to modify any provision of your judgment unless the court determines that there was fraud, a hidden asset, or something else of that nature.

The Judgment

CLIENT OWES THE MONEY

You are aware that [Party] was granted a judgment against you for \$[amount]. It is important that [Party] signs a satisfaction of the money award once you have paid it so that the public records reflect the judgment has been paid in full. This is a formal legal document that you may want me to prepare on your behalf. An unsatisfied money award judgment automatically becomes a lien against any land you may own and it appears on your credit report.

THE MONEY IS OWED TO CLIENT

You are aware that a judgment was entered in your favor for \$[amount]. By law, a judgment such as this accrues interest at nine percent per year. Interest paid to you on a judgment *is* considered as income that should be reported on your tax return. Never sign a document satisfying this judgment unless you have received all the interest you are entitled to.

Money judgments are fairly easy to collect if there are funds or other property from which to collect. An unsatisfied judgment is a lien against any land in the county where the judgment is recorded. Let me know if you want the judgment recorded in any county other than the county where the divorce occurred. Under Oregon law, a property division judgment continues to be enforceable for ten years and can be renewed, extending the time. Child support judgments are enforceable for 35 years and cannot be renewed. Renew the judgment *before* the ten year period expires to ensure that you can continue to collect the judgment.

The first step would be to write and ask [Party] to pay you voluntarily. Talk to me about what to do if voluntary payment is not likely to happen.

Disclaimer

I have sent you a lot of paperwork while this case was pending. That was partly to keep you advised as to the status of the case, but also so that you would have an opportunity to review everything to assist in making sure errors were not made. You were a part of the "team" in this case and had an active role. One of those roles was to act as proofreader. I say that because occasionally an error is made in typing a legal description, an account number is incorrect, an asset is inadvertently left out, etc. You have assumed the responsibility as the ultimate reviewer of all documents to assure their accuracy. I have relied on you throughout this proceeding to act in that capacity and to have advised me if any errors occurred.

Withdrawal

I will close your file in the next week unless I hear from you that you wish me to stay on as your attorney **OPTIONAL LANGUAGE** until the life insurance is dealt with. I will also file with the court a notice that terminates our official "attorney-client" relationship when I do withdraw. ***This does not mean that I will no longer be your attorney -- I will be happy to assist you at any time in the future.*** It is simply an official step that must be taken with the court to prevent [Party] from serving papers on me that might be binding on you. My withdrawal will require [him/her] to serve you directly with papers, after which you are welcome to contact me for assistance. [Optional: You will not be charged for preparation of the notice I file with the court.]

Outstanding Account

As you know, you owe \$[amount] to my firm for services as of [date]. Our [month] billing statements will be mailed soon, and an updated figure will be reflected on your billing. I look forward to hearing from you so we can discuss your plan for payment of this account.

Lien

As you know, you owe \$[amount] to my firm for services as of [date]. Our [month] billing statements will be mailed soon, and an updated figure will be reflected on your billing. Pursuant to the terms of our attorney-client fee agreement, I will proceed to file a notice of attorney lien against your property on [date] if your account is not paid in full prior to that date. Please do not take offense at this action; it is a step I normally take to secure payment of my outstanding fees. You are not charged for my filing the lien. I will, of course, release the lien once your account has been paid in full. Please do not hesitate to contact me if you have any questions about this procedure.

As always, please contact me if you have any questions about this or any other matter.

INSERT SIGNATURE BLOCK

****** Add/remove enclosures as necessary******

Attachments / Enclosures - Judgment

- Bill of Sale [No sample provided]
- Letter to DOJ [No sample provided]
- DOJ Application
- Uninsured Reimbursement Form
- Sample Uninsured Expense spreadsheet
- Checklist
- SSA Form SS-5
- DMV Form 735-173
- IRS Form 8822
- Letter to life insurance company [No sample provided]
- Letter to [QDRO attorney] [No sample provided]
- Letter to PERS [No sample provided]

IMPORTANT NOTICES

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