

Divorcing Yourself from the Domestic Relations Client

(with Forms)

Ronald W. Nelson

The chances are good that something will come up a few years after you thought you were finished with a domestic relations case. If you don't want to get dragged back into it, consider formally withdrawing when you have finished what you wanted to do.

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UNLIKE MANY OTHER types of civil litigation, domestic relations cases may not end with the filing of a "final" decree. As the case nears what appears to be its completion, the domestic relations attorney will make sure that various titled assets have been registered in the name of the party to whom the particular asset has been assigned, assure that domestic relations orders are prepared and sent to the administrator of any pension, profit sharing, or other retirement accounts for approval and transfer into separate accounts for each party to whom they are assigned, and make sure that any other documents pertaining to transfer of ownership of what used to be marital assets have been completed. With the completion of these acts, many domestic relations attorneys send their clients a standard letter which informs the client of additional steps the client should take to assure that other assets assigned to the client are titled properly in the client's name, that the other party's name has been removed from any open asset accounts, that any charge or credit accounts no longer name both parties as owners and liable parties, and that beneficiaries on life insurance, health insurance, and asset accounts are appropriately changed.

WHEN "FINAL" MEANS SOMETHING ELSE • When the case is closed and the client steps out of the attorney's office, it is very likely that some kind of further action will occur between the parties. A truism in domestic relations cases is that no matter how agreeable or disagreeable the parties may be at the time the "final" decree is entered, new issues may arise between the parties, and motions may be

filed regarding those issues after the case is finalized—especially in situations in which the parties had minor children of their relationship. It is also likely that legal action arising from those matters may not come about for months or years after entry of the final decree, and that, between the time of final billing and the filing of any new motion, the attorney will have lost contact with the client.

The courts of many states have based their rules of civil procedure on some form of the Federal Rules of Civil Procedure. Rule 5(b)(1) of those Rules provides that “Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.” As a result of this provision, an attorney continues to serve as an agent for service of pleadings and other documents in the case, even if a “final” decree has been entered, unless other court rules apply. Thus, if an attorney does not withdraw as the attorney of record for a party at the completion of a case, that attorney may be served with documents or pleadings in the case forever. Such a failure to obtain an order allowing withdrawal when the attorney has completed all actions necessary in a particular engagement may jeopardize the client’s interests if a post-decree motion is filed by the adverse party, or post-decree orders are served on the attorney with the assumption the attorney will forward those to the client. The attorney may be the only person served with that post-decree motion or order, or the adverse party may have no other way of contacting the client against whom the motion is filed. If the attorney has had no contact with the client for a number of months or years, there may be substantial risk that the client will not timely find out about the filing of the motion or order.

The fact that service can be made on an attorney who has not withdrawn as attorney of record also exposes the attorney to significant liability if a motion is filed and the attorney is unable to convince the court that the party filing the motion should be required to re-file the motion, or re-serve the motion on the party to assure actual notice of the new allegations.

Because of this exposure, it is recommended that with the final client instruction letter, the client also be informed that the attorney will withdraw as counsel of record, so that these protections are afforded. Although there are some occasions when it is better for an attorney to remain in the case even though the case is believed complete, the better policy is to withdraw from cases at completion unless some specific reason to remain can be identified.

[DATE]

CLIENT

CLIENT ADDRESS

CLIENT CITY

Personal and Confidential

Re: CASE HEADING

CASE FILE NUMBER

Our file

Dear CLIENT:

Enclosed please find a filed-stamped, certified copy of the Decree of Divorce in this matter which have been reviewed and approved by the District Court judge assigned to your case. These are important documents and should be kept with your birth certificate and other important papers. I have also provided an additional certified copy of the decree so that you can contact an attorney near you to have this Decree and Settlement Agreement filed in a court of record in the state in which you are now living. By filing this matter of record in the state in which you are now living under the Uniform Child Custody Jurisdiction Act, the courts of that state will be able to enforce the provisions of the parenting agreement as if it were an order of that state.

The filing of this Decree of Divorce finishes my involvement in your case. We have previously obtained the signed transfer of title from your former husband and have provided you with the original of that document. We have also previously forwarded to you the quitclaim deed that your former husband's attorney prepared and presented to us for your signature. I believe you have already signed that document and forwarded it to us but if you have not, please do that as soon as possible. I hope your experience with the legal system has been as painless as possible given the circumstances. I welcome any suggestions as to how our system and service can be improved.

You should be aware that although the decree (together with the settlement agreement) divides all the property between you and your former spouse, you should be careful to make sure that all your assets (such as pension, profit sharing plans and other retirement accounts, life insurance policies, and financial accounts) are in your name only and do not include your former spouse as either a named joint holder or beneficiary of that property. Further, you should be careful to make sure all credit cards or other debts no longer have both of you as liable parties. You should contact those creditors and assure yourself that the responsible party on the account has been changed as provided in the decree. This is especially important if there is an account either in your name only or in the names of you and your former spouse for which your former spouse has agreed to be responsible. If your name remains on those accounts, you may be responsible even though the court has divided the debts in the case of a default by your former spouse.

Because our involvement is now completed and we will be closing our file, you may receive a Notice of Withdrawal from this office requesting that we be allowed to withdraw as your counsel of record in this case. If you receive such a Notice, please do not be alarmed. Our office has a policy of withdrawing from cases of an ongoing nature (such as custody or