

Summary of Form Requirements Family Law Information Centre (Edmonton)

- ***Court mandated form (Summary of Child Support Guideline Calculation Sheet) is required in all cases involving children.***

Pursuant to **s.11(1)(b)** of the *Divorce Act*, the Court must “satisfy itself that reasonable arrangements have been made for the support of any children of the marriage, having regard to the applicable guidelines, and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made”. As such, it is a direction of the judiciary that the court mandated form be submitted in all cases involving children.

- ***Judgment incorporates another document by reference***

It is a practice of our Court to reject the application if the Divorce Judgment simply incorporates another document by reference (i.e. if the body of the divorce judgment simply states that the prior order or agreement shall continue).

- ***Severing of Corollary Relief Issues***

To sever corollary relief, **prior** leave of the Court either by desk consent order or contested application in Chambers is required. It must then be stated in the body of the Divorce Judgment that the corollary relief issues are severed (and are to be determined at a later date).

An order severing corollary relief will not likely be given unless you are able to show the Court that the Guideline amount of child support will continue to be paid under an existing order or agreement.

There are two distinct applications, each with different evidentiary requirements. First, you must apply for leave to sever. Second, you would apply for the divorce judgment. The court may have been satisfied that there was a procedural reason for leave to sever. However, when subsequently applying for the divorce judgment, the court must be provided with evidence to substantiate s. 11(1)(b) of the *Divorce Act* (that reasonable arrangements have been made for the support of the children, having regard to the *Guidelines*).

Pursuant to the direction of the judiciary:

- ◆ the preamble must contain names and birth dates of children;
- ◆ the preamble must contain the guideline incomes of the parties, unless the guideline incomes of the parties have been referred to in the order granting leave to sever corollary relief issues;
- ◆ the details of the ongoing order or agreement for support should be included in the preamble;
- ◆ for default or consent matters, paragraphs 13, 14 and 15 of the Affidavit of Applicant must be completed (see *Alberta Rules of Court*, Schedule A, Division 2, Family Law Forms, Form FL-23);
- ◆ for joint divorce matters, paragraphs 10, 11 and 12 of the Affidavit of Applicants (Joint) must be completed (see *Alberta Rules of Court*, Schedule A, Division 2: Family Law Forms, Form FL-24);
- ◆ the court form (Summary of Child Support Guideline Calculation sheet) is required;
- ◆ the mandatory annual Financial Disclosure Provision is required (see *Alberta Rules of Court* Schedule A, Division 2, Family Law Forms of Form FL-27).

- ***Reservation of Child Support***

In cases where there is an application for a reservation of child support, reasons should be provided as to why the reservation is being requested. Reason should appear in the Preamble (for consent orders) or should be included in the Affidavit of Applicant (for divorce applications).

The judge may not grant a divorce judgment which contains a reservation of child support unless sufficient reasons for the reservation are given. The fact that the parties have agreed to a reservation is not enough. Examples of sufficient reasons
July 21, 2015

may be that the payor parent is ill and unemployed, or that the equivalent of Guideline child support has been given by way of an unequal division of matrimonial property.

Pursuant to the direction of the judiciary:

- ◆ the preamble must contain Guideline incomes (even if unknown or zero) and names and birth dates of children;
- ◆ for default or consent matters, paragraphs 13, 14 and 15 of the Affidavit of Applicant must be completed (see *Alberta Rules of Court*, Schedule A, Division 2, Family Law Forms, Form FL-23);
- ◆ for joint divorce matters, paragraphs 10, 11 and 12 of the Affidavit of Applicants (Joint) must be completed (see *Alberta Rules of Court*, Schedule A, Division 2: Family Law Forms, Form FL-24);
- ◆ the court form (*Summary of Child Support Guideline Calculations* sheet) is required;
- ◆ the mandatory annual Financial Disclosure Provision is required(see *Alberta Rules of Court* Schedule A, Division 2, Family Law Forms of Form FL-27).

□ ***Departing from the Guidelines***

Note: If the award amount is different from the *Guidelines* due to special circumstances, such as shared custody, child over 18, undue hardship or income over \$150,000.00 then this is still following the *Guidelines*, and is not "agreeing to depart." In situations where child support is a different figure than the table amount due to special circumstances, the specific reason for that situation should be identified in the preamble.

The judge will not likely grant a divorce judgment which provides for child support at less than the Guideline amount unless sufficient reasons for the departure are given. The fact that the parties have agreed to a departure is not enough. Examples of sufficient reasons may be that the payor parent is ill and unemployed, or that the equivalent of guideline child support has been given by way of an unequal division of matrimonial property.

The parties must actually be agreeing to a different amount of child support; the total award amount must be different from the combined table amount and any s. 7 expenses calculated under the *Guidelines*.

The court forms (*Summary of Child Support Guideline Calculation Sheet*) are still required and must contain the actual Guideline amounts, not the agreed upon amount. The departure should be indicated only in the bottom section of the court form ("Departing From Guidelines").

If the parties are agreeing to a different amount of child support than the amount determined under the *Guidelines*, pursuant to the direction of the judiciary:

- ◆ the preamble of the order must indicate that the parties are agreeing to depart from the *Federal Child Support Guidelines*; and provide the reasons for the deviation, whether in the preamble or in the Affidavit of Applicant.
- ◆ the preamble must contain Guideline incomes and names and birth dates of children;
- ◆ for default or consent matters, paragraphs 13, 14 and 15 of the Affidavit of Applicant must be completed (see *Alberta Rules of Court*, Schedule A, Division 2, Family Law Forms, Form FL-23);
- ◆ for joint divorce matters, paragraphs 10, 11 and 12 of the Affidavit of Applicants (Joint) must be completed (see *Alberta Rules of Court*, Schedule A, Division 2: Family Law Forms, Form FL-24);
- ◆ the court form (*Summary of Child Support Guideline Calculation* sheet) is required – complete as indicated above.
- ◆ the mandatory MEP clause, **recalculation clause** and annual Financial Disclosure Provision are required (see *Alberta Rules of Court* Schedule A, Division 2, Family Law Forms of Form FL-27).

RETURN SHEET

November 2017

YOUR ENCLOSED DOCUMENTATION IS BEING RETURNED FOR THE FOLLOWING: - PLEASE CORRECT AND RESUBMIT WITH THIS FORM

<p style="text-align: center;">GENERAL</p> <ul style="list-style-type: none"> <input type="checkbox"/> White Out is not permitted on any court document <input type="checkbox"/> Pursuant to <i>Rule 13.13(2)</i>, information on the document should be set out in full as it pertains to each action number. <input type="checkbox"/> Style of Cause doesn't match commencing document or action number is incorrect/missing. <input type="checkbox"/> there is no name, address and contact information of the party or lawyer of record who prepared the document. <input type="checkbox"/> Original document is missing. Pursuant to <i>Rule 13.13(6)</i> when a document is filed, the court clerk must retain the original of the document/original signature. <input type="checkbox"/> Does not comply with Practice Note 10 – Requires Authority to Access Family Law File <input type="checkbox"/> Double sided documents not permitted <input type="checkbox"/> One Substantial Matter per Chambers Application 	<p style="text-align: center;">ORDERS/JUDGMENT</p> <ul style="list-style-type: none"> <input type="checkbox"/> As per Notice to Profession #6, all Orders involving child support, signed or not, must have the appropriate (Summary of Child Support Guidelines) calculations completed and submitted to Chambers before the Order will be filed. This includes orders granted under Provincial Legislation. <input type="checkbox"/> As per Notice to Profession 2015-02, all Orders involving child support must include one of two standard clauses stating Child Support Recalculation may or may not recalculate. <input type="checkbox"/> Pursuant to <i>Rule 9.5(2)</i> A judgment or order is not to be entered more than 3 months after it is pronounced except with the Court's permission, which may only be obtained on application with notice served on each of the other parties. <input type="checkbox"/> Pursuant to <i>Rule 3.60(2)</i>, the defendant cannot file a Default Judgment on a Counterclaim without leave of the court with notice to the Plaintiff. <input type="checkbox"/> Missing MEP Clause, Exchange of Financial Information Clause and/or Recalculation Clause
<p style="text-align: center;">PRACTICE NOTE #2</p> <ul style="list-style-type: none"> <input type="checkbox"/> Commissioner's Information is missing on jurat and/or Exhibits <input type="checkbox"/> Changes are not authenticated by Commissioner <input type="checkbox"/> Affidavit exceeds allowable pages (5) <input type="checkbox"/> Exhibits exceeds allowable pages (40) <input type="checkbox"/> Table of Contents (index sheet) is missing <input type="checkbox"/> Exhibits are not commissioned <input type="checkbox"/> Exhibit pages are not numbered <input type="checkbox"/> Exhibits are not tabbed <input type="checkbox"/> Previously Filed Materials as Exhibits 	<p style="text-align: center;">OLD FORMS</p> <ul style="list-style-type: none"> <input type="checkbox"/> This document has been returned as it is in the old format. The new Rules of Court along with the new prescribed forms came into effect November 1, 2010. A grace period of two months was provided by the Chief Justice and the Associate Chief Justice which ran out December 31, 2010. All documents filed after January 1, 2011 must be in the new format as prescribed in the Rules of Court.
<p style="text-align: center;">APPLICATIONS</p> <ul style="list-style-type: none"> <input type="checkbox"/> Your Application must be by way of Family Law Act Claim <input type="checkbox"/> Child Support Application requires Sworn Disclosure Statement pursuant to the Notice to Profession of April 15, 2016. <input type="checkbox"/> Our records indicate that your client has not completed the "PARENTING AFTER SEPARATION COURSE". We are unable to file your application until the certificate or an exemption is filed. <input type="checkbox"/> Application must be filed with an Affidavit in support of the Application <input type="checkbox"/> Your Application is missing the "Certificate of Lawyer" <input type="checkbox"/> Pursuant to <i>Rule 12.41(7)</i> the returnable date in the Notice to Disclose Application does not allow for 30 days to comply. notice 	<p style="text-align: center;">TRIALS</p> <p>Pursuant to <i>Rule 8.4(2)</i>, Form 37 is missing the following information:</p> <ul style="list-style-type: none"> <input type="checkbox"/> The number of witnesses <input type="checkbox"/> Length of trial <input type="checkbox"/> Copy of all pleadings (commencement doc./defences/ cc claim/amendments) <input type="checkbox"/> Names of any Justice(s) who may have a potential conflict <input type="checkbox"/> Signature of party is missing <p style="text-align: center;">OTHER</p> <p>Clerk: _____ 780.643.1137 Date: _____</p>

DIVORCE RETURN SHEET

WITH CHILDREN

YOUR ENCLOSED DOCUMENTATION IS BEING RETURNED FOR THE FOLLOWING
PLEASE CORRECT AND **RESUBMIT WITH THIS FORM**

GENERAL	DIVORCE JUDGMENT
<ul style="list-style-type: none"><input type="checkbox"/> White Out is not permitted on any court document<input type="checkbox"/> Incorrect Divorce Forms<input type="checkbox"/> Pursuant to <i>Rule 13.13(2)</i>, information on the document should be set out in full as it pertains to each action number.<input type="checkbox"/> Style of Cause doesn't match commencing document or action number is incorrect/missing.<input type="checkbox"/> there is no name, address and contact information of the party or lawyer of record who prepared the document.<input type="checkbox"/> Original document is missing. Pursuant to <i>Rule 13.13(6)</i> when a document is filed, the court clerk must retain the original of the document/original signature.<input type="checkbox"/> Affidavit of Service not filed or Statement of Claim not properly served<input type="checkbox"/> Note in Default – not 20 clear days<input type="checkbox"/> Demand of Notice/Statement of Defence filed	<ul style="list-style-type: none"><input type="checkbox"/> Names/Date/Place of Marriage does not match the Marriage Certificate<input type="checkbox"/> Note in Default, Statement of Defence and/or Counterclaim has been filed – Defendant is required to consent to Divorce Judgment or leave of the court is required to proceed.<input type="checkbox"/> Affidavit of Execution is required for unrepresented parties.<input type="checkbox"/> Date and Location of marriage must appear in dissolution
AFFIDAVIT OF APPLICANT	CHILDREN REQUIREMENTS
<ul style="list-style-type: none"><input type="checkbox"/> Certificate of Marriage is not attached (Married in Canada) or incorrect document<input type="checkbox"/> Outside of Canada – not sworn in Solemn Form<input type="checkbox"/> Names/Date/Place of Marriage on Marriage Certificate does not match the Statement of Claim<input type="checkbox"/> Not Separated for one year<input type="checkbox"/> If Adultery/Cruelty, missing Affidavit<input type="checkbox"/> Date of Separation does not match the Statement of Claim<input type="checkbox"/> Commissioner's Information is missing on jurat and/or Exhibits<input type="checkbox"/> Changes are not authenticated by Commissioner<input type="checkbox"/> Jurat/Exhibits not dated or incorrectly dated<input type="checkbox"/> Children not addressed in affidavit<input type="checkbox"/> Exhibits are not commissioned<input type="checkbox"/> Supplemental Affidavit is required	<ul style="list-style-type: none"><input type="checkbox"/> Children's Names/Birthdate does not match Statement of Claim, Affidavit or Divorce Judgment<input type="checkbox"/> Income of parties do not match Affidavit of Applicant, Divorce Judgment, Summary of Child Support Guidelines<input type="checkbox"/> Parenting After Separation Certificate not filed<input type="checkbox"/> Severing or Reservation– requires reason /income/names in preamble in Judgment<input type="checkbox"/> Missing MEP Clause, Exchange of Financial Information Clause and/or Recalculation Clause<input type="checkbox"/> Missing Summary of Child Support Guidelines or incorrect<input type="checkbox"/> Alberta does not take jurisdiction with respect to children residing outside of Canada<input type="checkbox"/> When Noted in Default – relief in Divorce Judgment does not reflect the relief requested in Statement of Claim.
	Clerk: _____ 780.643.1137 Date: _____

