

**APPLYING THERAPEUTIC JURISPRUDENCE AND PREVENTIVE LAW
TO THE DIVORCE PROCESS: ENHANCING THE ATTORNEY-CLIENT
RELATIONSHIP AND THE FLORIDA PRACTICE AND PROCEDURE
FORM “MARITAL SETTLEMENT AGREEMENT FOR DISSOLUTION
OF MARRIAGE WITH DEPENDENT OR MINOR CHILD(REN)”**

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I. INTRODUCTION

The divorce court subjects families to a system founded on the premise that human behavior follows a rigid, logical pattern that the law can predict and manipulate.¹ Both the procedures and the actors bound to follow this system claim to take into account the deep-seated emotional issues that accompany this intensely stressful life event, but rarely do in actuality. The procedural forms are blatantly insensitive to the emotional magnitude of the event, and the attorneys that aid the client in completing the forms are forced to operate in a system concerned with one thing—winning.² The combination of these factors might explain why divorce is the second most stressful event that can occur in an individual’s life, behind the death of a spouse.³ Statistics indicate “close to half of all current marriages will end in divorce,”⁴ giving the United States “the highest divorce rate in the world.”⁵ Such numbers

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¹ See Janet Weinstein & Ricardo Weinstein, *“I Know Better Than That”*: *The Role of Emotions and the Brain in Family Law Disputes*, 7 J.L. & FAM. STUD. 351, 375 (2005) [*Emotions and the Brain in Family Law Disputes*] (“[F]amily law tends to posit rules for participants without reference to how people actually behave . . . that is, the system foresees peoples’ behaviors and sets up penalties and consequences when those undesired behaviors occur.”).

² *Id.*

³ Lisa Parkinson, *Mediating with High-Conflict Couples*, 38 FAM. & CONCILIATION CTS. REV. (SPECIAL ISSUE) 69, 70 (2000).

⁴ Jeremy A. Matz, Note, *We’re All Winners: Game Theory, the Adjusted Winner Procedure and Property Division at Divorce*, 66 BROOK. L. REV. 1339, 1339 (2001).

⁵ Thomas E. Schacht, *Prevention Strategies to Protect Professionals and Families Involved in High-Conflict Divorce*, 22 U. ARK. LITTLE ROCK L. REV. 565, 566 (2000).

are staggering when considering the long-term effects divorce has on family members, the legal system, and society as a whole.⁶

This article provides a brief history of divorce litigation, including its structure, procedures, and myths. It then examines the nature of the current mechanisms that contribute to the negative psychological, social, and financial problems resulting from divorce with a particular focus on the “best interest of the child” standard. The State of Florida, in its role as *parens patriae*, attempted to establish factors that promote the best interest of the child.⁷ However, the traditional practices and procedures employed by the legal system frequently fail to accomplish this purported goal.⁸

Consequently, the best interest of the child standard has been criticized for failing to delineate clear guidelines and procedures that actually promote the child’s best interest.⁹ Research conducted by Judith Wallerstein, Alan Booth, and Paul D’Amato justifies the examination of the best interest of the child standard, as applied to divorce litigation, stating “that some major divorce effects may not be felt for many years and may be transmitted intergenerationally.”¹⁰ Thus, enhancing the current system is important because it affects not only the litigants of the present, but also seeks to reduce the number of divorce cases in future generations.

In order to effectuate this end, this article provides an analysis of the traditional attorney-client relationship and the current Florida Plead-

⁶ See Weinstein & Weinstein, *supra* note 1, at 376 (discussing the effects of divorce on family law attorneys and judges).

⁷ See FLA. STAT. § 61.13(3)(a)-(t) (2008) (listing factors a court may consider when determining the best interests of the child in a child custody case); *see also* JOHN C. MAYOUE, *BALANCING COMPETING INTERESTS IN FAMILY LAW: HOW TO HANDLE ALTERNATIVE RELATIONSHIPS, THIRD-PARTY INTERESTS, INTERSPOUSAL TORTS, PRIVILEGE, AND PRIVACY ISSUES* 198 (2d ed. 2003).

⁸ See Schacht, *supra* note 5, at 566-67 (discussing the negative psychological impacts that divorce frequently has on children).

⁹ Janet Weinstein, *And Never the Twain Shall Meet: The Best Interests of Children and the Adversary System*, 52 U. MIAMI L. REV. 79, 108-09 (1997) (*citing* Annette R. Appell & Bruce A. Boyer, *Parental Rights vs. Best Interests of the Child: A False Dichotomy in the Context of Adoption*, 2 DUKE J. GENDER L. & POL’Y 63, 66 (1995)).

¹⁰ Margaret F. Brinig, *Empirical Work in Family Law*, 2002 U. ILL. L. REV. 1083, 1091 (2002).

ing and Practice Form titled “Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren).”¹¹ First, this article describes the negative psychological, social, and financial effects that may result from the traditional attorney-client relationship. It then proposes ways that an attorney may mitigate these effects by applying therapeutic jurisprudence and preventive law theory. Second, this article provides an analysis of the Florida Pleading and Practice Form titled “Marital Settlement Agreement for Dissolution of Marriage with Minor Child(ren).”¹² This article then proposes a revision to this form, along with the implementation of additional sections designed to streamline future conflict resolution. Finally, this article describes how the application of therapeutic jurisprudence and preventive law to these aspects of the divorce process results in a reduction of interparental conflict and, thus, elevates and maximizes the best interest of the child.

II. THE HISTORY OF DIVORCE LITIGATION

Divorce litigation underwent a multitude of changes commensurate with the ever-changing divorce scheme in the various jurisdictions of the United States. Traditionally, states viewed the family as a single unit with the male exerting total control over the household and its inhabitants.¹³ However, over the past fifty years family law evolved and now extends the same rights and benefits to each spouse, arguably making family law gender-neutral.¹⁴ The dispensation of the presumptions of paternal custody, maternal custody, and the tender years doctrine led to the creation of the best interest of the child standard.¹⁵ Fault is no longer a prerequisite for divorce as long as the couple agrees the marriage is irretrievably broken.¹⁶ However, as Vivian Hamilton notes

¹¹ FLA. FAM. L.R.P. Form 12.902(f)(1).

¹² *Id.*

¹³ Vivian Hamilton, *Principles of U.S. Family Law*, 75 *FORDHAM L. REV.* 31, 39 (2006).

¹⁴ *Id.*

¹⁵ *See Ex parte Devine*, 398 So. 2d 686, 695-97 (Ala. 1981) (holding the tender years presumption is unconstitutional and remanding to apply the best interest of the child standard); *Pusey v. Pusey*, 728 P.2d 117, 120 (Utah 1986) (rejecting application of any gender preference in favor of the best interest of the child standard); *Garska v. McCoy*, 278 S.E.2d 357, 362-63 (W. Va. 1981) (adopting a presumption in favor of the primary caretaker).

¹⁶ *See UNIF. MARRIAGE & DIVORCE ACT* § 302(a)(2), 9A U.L.A. 200 (1998).

when referring to the complications that still accompany no-fault divorce, “[d]ivorce is not automatic, nor is it always easy.”¹⁷

III. CURRENT DIVORCE LITIGATION

A. Structure

The current atmosphere of divorce litigation is extremely adversarial.¹⁸ Unfortunately, this approach aggravates the existing problems encountered by litigants and actors of the court, including lawyers, experts, and judges.¹⁹ This is due, in part, to the stringent procedural requirements and the winner-take-all attitude of litigants and their attorneys. In drawing an analogy between divorce litigation and other civil litigation, Jeremy Matz claims that each spouse has interests that are embodied in their legal positions, and these positions “will greatly dictate the length and cost of litigation.”²⁰ The cost of litigation, however, is not limited to mere monetary losses, but also includes damages incurred on a psychological level.²¹ The increase of these costs coincides with the length of litigation, the degree of competitiveness between the couple, and the manner in which the lawyers vie for the interests of their clients.²²

B. Myths

Implementation of effective measures to mitigate the costs of litigation cannot occur unless commonly held myths regarding divorce litigation are identified and dispelled. This is necessary because a commonly held myth “fuels norms, customs, and traditions.”²³ In the field of divorce litigation, these myths communicate what each spouse expects of the other and his or her attorney. These expectations include

¹⁷ Hamilton, *supra* note 13, at 41.

¹⁸ See Weinstein & Weinstein, *supra* note 1, at 375 (noting there are a number of reasons why “the adversary system tends to exacerbate, rather than serve, the problems of families dealing with custody and visitation issues”).

¹⁹ See *id.* at 377 (stating lawyers, experts, and judges get emotionally involved in the divorce, which exacerbates the conflict).

²⁰ Matz, *supra* note 4, at 1343.

²¹ *Id.* at 1347.

²² *Id.* at 1347-48.

²³ Joan R. Tarpley, *Blackwomen, Sexual Myth, and Jurisprudence*, 69 TEMP. L. REV. 1343, 1382 (1996).

the idea that each spouse will not act with generosity or good faith toward the other, that retribution must be sought by the spouse who feels wronged, and that, as Pauline Tesler and Peggy Thompson state, “[d]ivorce always means war”²⁴ These myths permeate the minds of divorcing spouses and cause them to act in an illogical, unpredictable way, resulting in heartache and financial hardship.²⁵ However, the spouses cannot be entirely blamed because their attorneys make the tactical decisions in the battle for custody, property, and peace of mind.

IV. TRADITIONAL DIVORCE ADVOCACY

The implementation of equitable distribution and community property laws led the traditional attorney to focus primarily on the economic aspect of the dissolution of marriage.²⁶ Once the attorney established a formal relationship with the client and determined that the client desired a divorce, the typical attorney requested a summary of the property that will be subject to division.²⁷ This can lead to a prolonged period of discovery that may probe into the most intimate aspects of the marital relationship.²⁸ Furthermore, the search for assets may become complicated and expensive, involving the employment of investigators who must perform numerous inquiries within several jurisdictions.²⁹ This is when the monetary and psychological costs begin to take their toll.

²⁴ PAULINE H. TESLER & PEGGY THOMPSON, *COLLABORATIVE DIVORCE: THE REVOLUTIONARY NEW WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES, AND MOVE ON WITH YOUR LIFE* 18 (2006).

²⁵ *Id.*

²⁶ STEVEN MITCHELL SACK, *THE COMPLETE LEGAL GUIDE TO MARRIAGE, DIVORCE, CUSTODY, AND LIVING TOGETHER* 168 (1987).

²⁷ *See id.* at 193-201 (outlining a system to determine each spouse’s entitlement under an equitable distribution scheme).

²⁸ *See* LARRY RICE, *THE COMPLETE GUIDE TO DIVORCE PRACTICE: FORMS AND PROCEDURES FOR THE LAWYER* 227-356 (3d ed. 2005) (providing examples of discovery requests and responses in divorce litigation).

²⁹ THOMAS F. BURRAGE & SANDRA MORGAN LITTLE, *DIVORCE AND DOMESTIC RELATIONS LITIGATION: FINANCIAL ADVISER’S GUIDE* 13 (2003).

A. *Psychological/Emotional Effects*

Lucy McGough provides an analysis of the “transformation of the American divorce process”³⁰ In particular, McGough analyzes the adversarial strategies used and finds that, in order to effectuate the greatest total sum of monetary gain, “[p]arents are often advised not to speak to the other parent, and to search, exaggerate, and distort their memories for damaging information that will build a winning legal case. False allegations and hostile affidavits increase anger in at least one parent and have enduring, psychologically damaging effects.”³¹ Thomas Schacht provides a beneficial analysis of the various risks these strategies entail.³² Though possibly advantageous from a legal standpoint, these tactics exacerbate the spouses’ stressful situation.³³

Intense hostility and/or bitter legal conflict accompany and prolong the divorcing process in up to one-third of cases. In these intensely conflicted cases, one or more parties conduct themselves in ways which are not merely aggravating, obnoxious, or mean, but rather which pose various palpable dangers—psychological, financial, legal, and even physical—to family members, professionals, and even uninvolved bystanders.³⁴

Of these family members, children have the greatest potential to suffer severe, long-term psychological damage.³⁵ The psychological impact a divorce will have on a child may last past adolescence and into

³⁰ Lucy S. McGough, *Protecting Children in Divorce: Lessons From Caroline Norton*, 57 ME. L. REV. 13, 18 (2005).

³¹ *Id.* at 19 (quoting Joan B. Kelly, *Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice*, 10 VA. J. SOC. POL’Y & L. 129, 131 (2002)).

³² See Schacht, *supra* note 5, at 567 (explaining parents involved in divorce are poor role models for children).

³³ See *id.* at 567-68 (explaining contested divorces bring out the worst behavior in the parties).

³⁴ *Id.*

³⁵ *Id.* at 567 (“Children of high-conflict divorce may lose a parental relationship entirely and may spend substantial periods of time without adult supervision, which increases the risk of delinquency, school failure, teenage pregnancy, violence, and substance use.”).

adulthood.³⁶ This can create a transgenerational effect where the child's negative perspective of marriage formed during adolescence pervades his or her adult life.³⁷ This misconception increases the probability that the grown child will be a part of a nonfunctional family.³⁸ Therefore, it is in society's best interest to mitigate the psychological damage now to reduce the number of divorces in the future.

However, the negative psychological impact of divorce is not limited solely to the child's mind. When a parent feels the parent-child relationship threatened by divorce, debilitating psychological stress may occur that affects every facet of the parent's life.³⁹ Bill Ezzell observes that the adversarial nature of divorce litigation amplifies this perceived threat because the "litigation works by pointing out the faults and weaknesses of the opposing party"⁴⁰ When the attorney's success depends largely on his or her exploitation of the other spouse's psychological state, the opposing counsel reciprocates that exploitation by using even more aggressive tactics.⁴¹ This unnecessarily adversarial relationship increases the probability that the litigants suffer even greater psychological harm.⁴²

The use of exploitive tactics is not limited to an isolated pair of opposing counsel. Attorneys often evaluate the ethical implications of their chosen strategies by comparing them to how other attorneys in the community operate.⁴³ If one attorney knows that the other attorney employs tactics designed to obtain a legal advantage at the cost of inflicting emotional distress on the other spouse, then he will, in turn,

³⁶ *Id.* at 567.

³⁷ *Id.*

³⁸ *See id.*

³⁹ Linda L. Berger, *Lies Between Mommy and Daddy: The Case for Recognizing Spousal Emotional Distress Claims Based on Domestic Deceit That Interferes with Parent-Child Relationships*, 33 LOY. L.A. L. REV. 449, 526 (2000).

⁴⁰ Bill Ezzell, Student Article, *Inside the Minds of America's Family Law Courts: The Psychology of Mediation Versus Litigation in Domestic Disputes*, 25 LAW & PSYCHOL. REV. 119, 124 (2001).

⁴¹ *See* LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* 10 (2001) (explaining lawyers who work together develop shared expectations).

⁴² *See* Schacht, *supra* note 5, at 567-68.

⁴³ *See* MATHER ET AL., *supra* note 41, at 10 (explaining community standards affect a lawyer's view of ethical conduct).

employ similar strategies.⁴⁴ This quid pro quo manner of litigation drives the wedge between the couple even deeper, causing great psychological harm to each spouse and any children unfortunate enough to witness the feud.⁴⁵ However, the employment of the traditional advocacy model causes repercussions that extend far beyond the scope of a single family.

B. Social Impact

The social consequences of divorce include widespread role modification, increased levels of depression, and difficulties obtaining employment.⁴⁶ Sam Margulies examined the various role modifications that occur during and after a divorce.⁴⁷ Margulies found that “[i]n [ninety] percent of divorces that involve children, it is the father who moves out of the home.”⁴⁸ Consequently, the intimate relationship the man once shared with his wife is now gone and, typically, the man experiences a degree of depression because he has no one else with whom to communicate his feelings.⁴⁹ The man then, prematurely, seeks another intimate relationship, usually replicating the same behavior that occurred during his past marital relationship, thus, setting himself up for a second divorce.⁵⁰ As a corollary, data shows that “[t]he average divorced male is remarried within two years following his divorce.”⁵¹

Women, however, are less successful in remarrying, mainly due to the social stigma attached to older women who have children from a

⁴⁴ See *id.* (explaining lawyers who work together develop shared expectations).

⁴⁵ See Schacht, *supra* note 5, at 567-68 (discussing the negative consequences of divorce on the spouses and children).

⁴⁶ See SAM MARGULIES, GETTING DIVORCED WITHOUT RUINING YOUR LIFE: A REASONED, PRACTICAL GUIDE TO THE LEGAL, EMOTIONAL, AND FINANCIAL INS AND OUTS OF NEGOTIATING A DIVORCE SETTLEMENT 65-68 (rev. 2001) (explaining the difficulties that divorcing parties encounter, including emotional difficulties, employment difficulties, and adjustment difficulties).

⁴⁷ See *id.* (explaining the dangers faced by men and women going through a divorce).

⁴⁸ *Id.* at 65.

⁴⁹ See *id.* at 66 (explaining men experience loneliness because they have no one to talk to about their feelings).

⁵⁰ *Id.*

⁵¹ *Id.*

past marriage.⁵² Women, nonetheless, have others they can rely on to supplement the lost intimacy resulting from divorce, namely other female friends and their own children.⁵³ Though they tend to experience less distress in this respect, they encounter more distress in regards to the acquisition of employment.⁵⁴ Mothers who once spent their time at home with the children find themselves forced to return to the workforce in order to provide for the household.⁵⁵

C. *Financial Impact*

During divorce litigation, the more affluent spouse may use his or her financial position as leverage against the other spouse.⁵⁶ Matz observed that “[d]isparities between the spouses’ abilities to bear the burden of the transaction costs create[] power imbalances; power imbalances create opportunities for the stronger party to coerce the weaker party.”⁵⁷ The more affluent party may demand more property than they are entitled, sole custody of the children, if desired, and any number of concessions that ordinarily would not be available to parties on an equal financial level.⁵⁸ In addition to the disparity in bargaining power the expenditure of money creates, that same money can no longer be put towards postdivorce expenses.⁵⁹ Regarding finances, research suggests the mother suffers more after the divorce, but both spouses suffer significantly due to the “loss of economies of scale.”⁶⁰ Instead of requiring one roof over their heads, they now require two.⁶¹

⁵² See *id.* at 67 (stating women have a more difficult time dating because of demographics and society’s disapproval of relationships between older women and younger men).

⁵³ *Id.* at 66.

⁵⁴ See *id.* at 67 (stating women who seek employment at the same time as the divorce have the most difficult time).

⁵⁵ See *id.* (explaining spending less time with children results in additional stress).

⁵⁶ Matz, *supra* note 4, at 1347.

⁵⁷ *Id.*

⁵⁸ See *id.* at 1348-49.

⁵⁹ McGough, *supra* note 30, at 20 (“[M]ost children of divorce experience dramatic declines in their economic circumstances . . .”).

⁶⁰ Brinig, *supra* note 10, at 1099-1100.

⁶¹ See MARGULIES, *supra* note 46, at 65 (noting most men move out of the marital home into a smaller dwelling).

The financial impact also significantly affects the children of the divorce. Kathryn Maxwell examined factors that have a negative impact on the mental well-being of children.⁶² She states:

[t]he financial decline associated with most divorces often forces the custodial parent to move the child out of the family home, away from friends and neighbors, and into a different school district. Frequently, the divorced mother must increase her working hours, and, consequently, the child spends more time in a daycare setting. Thus, economic decline not only takes a serious financial toll on the child, but also robs the child of the support network necessary to cope with the emotional fallout of the divorce.⁶³ Though the state gives leniency to the divorcing parties in determining a divorce settlement, the outcome, too often, contradicts the state's proclaimed goal of adjudicating in the best interest of the child.⁶⁴

D. Best Interest of the Child Rarely Paramount

As the previously mentioned data suggests, the state's objective of making decisions that are in the best interest of the child frequently conflict with the state's assumption that "parents will do what is in their children's best interests."⁶⁵ Concerning divorce litigation and settlement negotiations, McGough observed that the role of the legal system transformed from a "fact-finder of fault" to an "administrative overseer of the process of unwinding the family financial enterprise and approving [the] parenting arrangement."⁶⁶ When given this level of discretion during the divorce settlement process, parents and attorneys have the opportunity to manipulate the child, transforming him or her into a bartering chip.⁶⁷ A parent may inadvertently, or even deliberately, attempt

⁶² See generally Kathryn E. Maxwell, *Preventive Lawyering Strategies to Mitigate the Detrimental Effects of Clients' Divorces on Their Children*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION 161, 163-68 (Dennis P. Stolle et. al. eds., 2000) (discussing instability, interparental conflict, and absence of effective parenting).

⁶³ *Id.* at 164-65.

⁶⁴ See Schacht, *supra* note 5, at 567 (discussing the negative effects of divorce on children).

⁶⁵ Weinstein & Weinstein, *supra* note 1, at 378.

⁶⁶ McGough, *supra* note 30, at 19.

⁶⁷ See Weinstein & Weinstein, *supra* note 1, at 378.

to sway the child to his or her *side*, thus contributing to the growing level of distrust between the spouses.⁶⁸

It is simply not enough to encourage attorneys to conduct their practices in a manner that coincides with the best interest of each spouse's psychological, social, and financial state. In their examination of the "[c]ollegial [c]ontrol of [l]awyers' [d]ecisions," Lynn Mather, Craig McEwen, and Richard Maiman claim "continuing relationships among practitioners in a field such as divorce law will create groups of lawyers with mutual obligations that might constrain adversarial conduct and take precedence over some of the demands of the formally defined professional role."⁶⁹ Although these efforts at enhancing the divorce process are commendable, modifications are needed at the micro *and* macro levels.

V. TRADITIONAL FLORIDA PROCEDURE

Damages inflicted during the divorce process are seldom limited to those occurring solely within the courtroom.⁷⁰ The behavior of the spouses and their attorneys lie on a spectrum.⁷¹ At one extreme, which Matz characterizes as the *amicable divorce*, the court conducts a relatively smooth determination of custody, property, and possibly alimony.⁷² At the opposite extreme lies the high-conflict divorce, where the parties quarrel over every detail, taking a great financial and psychological toll on everyone involved.⁷³ Even in an amicable divorce, the parties must still deal with a government-issued form that attempts to reconcile and reduce the most intimate, yet potentially devastating, event of a person's life to mere ink and paper.⁷⁴ Implementing thera-

⁶⁸ See MARGULIES, *supra* note 46, at 67-68 (noting a woman living with the children after a divorce may lean on them and make them "her representatives to her husband"); Marsha Kline Pruett & Janet R. Johnston, *Therapeutic Mediation with High-Conflict Parent: Effective Models and Strategies*, in DIVORCE AND FAMILY MEDIATION 92, 94-95 (Jay Folberg et al., eds., 2004) ("[P]arents may cling to the child as a substitute for the ex-spouse or other lost person in their life . . .").

⁶⁹ MATHER ET AL., *supra* note 41, at 11.

⁷⁰ McGough, *supra* note 30, at 19.

⁷¹ See generally Matz, *supra* note 4, at 1347-48.

⁷² *Id.* at 1348.

⁷³ *Id.*

⁷⁴ See generally FLA. FAM. L.R.P. Form 12.902(f)(1) (2008).

peutic jurisprudence and preventive law theory can modify the divorce process to promote the psychological well-being of those involved instead of focusing solely on the bottom line.

VI. THERAPEUTIC JURISPRUDENCE AND PREVENTIVE LAW

The employment of therapeutic jurisprudence, in tandem with preventive law techniques, may assist in effecting these much-needed changes. Dennis Stolle, David Wexler, Bruce Winick and Edward Dauer define therapeutic jurisprudence as “an interdisciplinary approach to law that builds on the basic insight that law is a social force that has inevitable (if unintended) consequences for the mental health and psychological functioning of those it affects.”⁷⁵ Therapeutic jurisprudence seeks to enhance the experience that the average litigant undergoes through identification, examination, and eventual reduction of the possible negative psychological impact of the law.⁷⁶ Gary Paquin and Linda Harvey assert that the application of therapeutic jurisprudence expanded, applying to “virtually all areas of the law.”⁷⁷ However, therapeutic jurisprudence requires a framework to provide it with a method of application.⁷⁸

Preventive law can provide this framework.⁷⁹ Stolle, Wexler, Winick and Dauer claim “[p]reventive law provides a frame work in which the practicing lawyer may conduct professional activities in a manner that both minimizes his or her clients’ potential legal liability and enhances their legal opportunities.”⁸⁰ When these two concepts operate in concert, they provide two things. First, therapeutic jurispru-

⁷⁵ Dennis P. Stolle et al., *Integrating Preventative Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION, *supra* note 62, at 5, 7.

⁷⁶ Gary Paquin & Linda Harvey, *Therapeutic Jurisprudence, Transformative Mediation and Narrative Mediation: A Natural Connection*, 3 FLA. COASTAL L.J. 167, 167 (2002).

⁷⁷ *Id.* at 169.

⁷⁸ See Stolle et al., *supra* note 75, at 9 (“Through a synthesis of preventive law and therapeutic jurisprudence, preventive law can ‘provide a framework for the practice of therapeutic jurisprudence.’”).

⁷⁹ *Id.* at 6.

⁸⁰ *Id.*

dence legitimizes preventive law by providing it with an altruistic motivation.⁸¹ Second, preventive law, in turn, provides therapeutic jurisprudence a framework in which to operate.⁸² Together, these two concepts can significantly enhance the divorce process by identifying the legal issues that later lead to psychological issues, called *psycholegal soft spots*.⁸³ This article addresses the psycholegal soft spots found in the attorney-client relationship and suggests ways in which an attorney, well-versed in therapeutic jurisprudence and preventive law, may seek to enhance his or her clients' legal experience.⁸⁴ Then, this article addresses the psycholegal soft spots contained in Florida Pleading and Practice Form Section 44:12:902(f)(1), titled "Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren)" and proposes solutions concerning how to reconcile these psychological issues in a way that still comports with the law.⁸⁵ Finally, this article analyzes how the modifications in both the attorney-client relationship and the form reduce interparental conflict and, therefore, elevate and maximize the best interest of the child.⁸⁶

VII. THE THERAPEUTIC JURISPRUDENCE AND PREVENTIVE LAW⁸⁷ ATTORNEY-CLIENT RELATIONSHIP

An attorney's selection of clients significantly affects that attorney's ethics, practice, and daily routines.⁸⁸ An attorney who wishes to employ therapeutic and preventive techniques should be prepared to screen clients whom the attorney feels will not benefit from such an approach.⁸⁹ Maxwell claims that after the attorney-client relationship is established, the attorney should inform the client of the potential detrimental effects the divorce may have on the child.⁹⁰ Then, the attorney and client should create a plan⁹¹ that employs preventive and therapeutic

⁸¹ *See id.* at 9.

⁸² *Id.*

⁸³ *Id.* at 35.

⁸⁴ *See* discussion *infra* Part VII.A-B.1.

⁸⁵ *See* discussion *infra* Parts VII.B.2-3, VIII.

⁸⁶ *See infra* text accompanying notes 184-89.

⁸⁷ *See* Stolle et al., *supra* note 75.

⁸⁸ MATHER ET AL., *supra* note 41, at 7.

⁸⁹ *See* Maxwell, *supra* note 62, at 178-79.

⁹⁰ *Id.* at 179.

⁹¹ *See id.*; *infra* discussion Part VII.A. and text accompanying note 102.

tic theory in order to reduce the negative effects of the divorce on the child.⁹² The attorney should convey to the client that, although the attorney will represent him or her zealously, there will be an emphasis on the previously mentioned psycholegal soft spots.⁹³ Stolle, Wexler, Winick and Dauer admit that “[t]herapeutic jurisprudence has been accused of being paternalistic”⁹⁴ Consequently, it would best serve the future interests of both the client and the attorney if the attorney gave the client a brief, but poignant, survey of both therapeutic jurisprudence and preventive law.

Due to the relatively controversial nature of the subject, and in order for the court and the client not to perceive the attorney as a troublemaker, the attorney who adopts therapeutic jurisprudence and preventive law techniques must speak directly to both his clients and the court about special therapeutic jurisprudence considerations.⁹⁵ The danger of the attorney sounding like a troublemaker when asking for special considerations may be very real and not readily apparent to most attorneys.⁹⁶ These special considerations, though altruistic, may necessitate the presence of additional professionals, such as psychologists or psychiatrists.

However, in her 2000 article, Janet Johnston recognizes the potentially negative impact the involvement of a mental health professional may have, observing that:

therapists, who see only one of the parties to the divorce conflict, can encourage uncompromising stands, reify distorted views of the other parent, write recommendations, and even testify on behalf of their adult client with

⁹² See Maxwell, *supra* note 62, at 179-80.

⁹³ See *supra* text accompanying note 83.

⁹⁴ Stolle et al., *supra* note 75, at 8.

⁹⁵ Jim Chen, *Law as a Species of Language Acquisition*, 73 WASH. U. L.Q. 1263, 1269 (1995) (“The good lawyer speaks both the language of the law and the language of the people.”).

⁹⁶ See Weinstein, *supra* note 6, at 118 (“The attorneys who practice regularly in the system may hesitate to make ‘waves’ by creating conflict or asking for special consideration in a particular case.”).

little or no understanding of the child's needs, the other parent's position, or the couple and family dynamics.⁹⁷

Unfortunately, studies show that attorneys are incredibly inept in regards to their knowledge of psychology and psychological testing.⁹⁸ Accordingly, the attorney should explain to the client that the attorney will strive to reconcile psychological issues with the client, but, if necessary, they can summon a mental health expert. The attorney should inform the expert about the therapeutic nature of the attorney-client relationship in order to apprise the expert of the client's goals.⁹⁹

A. Identification and Recognition of Structural Obstacles and Commonly Held Myths

Employing therapeutic and preventive methods can help to overcome the various structural obstacles and commonly held myths associated with the divorce process.

1. Winner-Take-All Attitude

As mentioned above, the structure of the divorce process often evinces a *winner-take-all* attitude in regards to the attorneys and the clients involved.¹⁰⁰ Using the therapeutic approach, an attorney should inform his or her client of this stigma and insist that their attorney-client relationship not adhere to the same ethos. The attorney may then explain the various psychological repercussions that typically result from this methodology. The attorney may use anecdotes, statistical data, or simply offer his or her opinion to convey this information. The attorney must communicate to the client that, although they may obtain a more favorable monetary outcome, it will inevitably occur at the expense of either or both parties' psychological well-being.

⁹⁷ Janet R. Johnston, *Building Multidisciplinary Professional Partnerships with the Court on Behalf of High-conflict Divorcing Families and Their Children: Who Needs What Kind of Help?*, 22 U. ARK. LITTLE ROCK L. REV. 453, 461 (2000).

⁹⁸ See MARC J. ACKERMAN, *CLINICIAN'S GUIDE TO CHILD CUSTODY EVALUATIONS* 92 (2d ed. 2001).

⁹⁹ See *id.* at 87 (discussing the role of a psychologist in child custody evaluations).

¹⁰⁰ See discussion *supra* Part III.A.

2. Dispelling Myths

The attorney should then address the common myths regarding the divorce process.¹⁰¹ Identifying and recognizing each myth serves several purposes. First, it exposes these myths to the client so he is aware of their stereotypical nature. The client may need to address specific myths that he feels exist within his or her current divorce process. Once the lawyer addresses the client's specific concerns, the lawyer may then take measures to dispel these myths. The myths that each spouse will not act with generosity or good faith toward the other, that "[d]ivorce always means war," and that the spouse who feels wronged must seek retribution, may be dispelled through various means.¹⁰²

The attorney may offer anecdotes of experiences where these myths were broken down and overcome. The anecdote can demonstrate that the parties benefited from this event. The attorney may also direct the client towards literature showing that amicable divorces frequently occur. The attorney may expose the client to statistics suggesting a mere fraction of divorces actually go on to trial. Once the client learns American society is fraught with erroneous perceptions of the divorce process, the client will realize that he is not doomed from the beginning. By impressing upon the client that these myths are the exception, not the norm, the attorney encourages the client to assume an unbiased perspective of the process.

B. Enhancing the Client's Psychological, Social, and Financial Condition Through Therapeutic Jurisprudence and Preventive Techniques

After dispelling the common myths and structural obstacles associated with traditional divorce advocacy, the attorney should address the immediate legal issues that may later lead to psychological issues, called *psycholegal soft spots*.¹⁰³

¹⁰¹ See discussion *supra* Part III.B.

¹⁰² TESLER & THOMPSON, *supra* note 24, at 18.

¹⁰³ See *supra* text accompanying notes 75-83.

1. Enhancing Psychological Well-Being Through Zealous Representation

The client may have concerns that the attorney is not providing zealous representation. Thus, the attorney should establish that it is not necessarily monetary gain that the client desires, but, as Wexler states, “appl[ication of] existing law in a manner likely to promote psychological well-being.”¹⁰⁴ After establishing this common ground between the attorney and the client, the attorney should then direct the client’s attention toward the various strategies and tactics that the attorney may employ during the divorce process.¹⁰⁵

The attorney should identify the aforementioned traditional strategies and educate the client about how these strategies often inflict great emotional harm on the family.¹⁰⁶ Implementing therapeutic and preventive law strategies in place of the traditional approaches can serve two important goals. First, when working in concert, therapeutic and preventive strategies take into account the psychological well-being of the client and his or her family.¹⁰⁷ Second, the strategies also enable the attorney to provide zealous representation in a way that maximizes the client’s psychological well-being during and, more importantly, after the cessation of the attorney-client relationship.¹⁰⁸

2. Planning for the Social Impact

The attorney should also identify and address issues regarding the social impact the divorce will have on the family.¹⁰⁹ For example, if the attorney explains to the father-client that most males experience a degree of depression because of the loss of intimacy,¹¹⁰ the attorney and client can create solutions to this problem. The attorney may suggest

¹⁰⁴ David B. Wexler, *Practicing Therapeutic Jurisprudence: Psycholegal Soft Spots and Strategies*, in PRACTICING THERAPEUTIC JURISPRUDENCE: LAW AS A HELPING PROFESSION, *supra* note 62, at 45, 46.

¹⁰⁵ See *id.* (“[T]he lawyer must adopt the framework of a preventive law practitioner, where careful planning and client counseling are essential elements of the endeavor.”).

¹⁰⁶ See discussion *supra* Part IV.A.

¹⁰⁷ See Stolle et al, *supra* note 75, at 9.

¹⁰⁸ *Id.*

¹⁰⁹ See discussion *supra* Part IV.B. (discussing the social impact of divorce).

¹¹⁰ See MARGULIES, *supra* note 46, at 66.

literature that enlightens and aids the father. The attorney may also suggest the father reinvigorate diminished relationships with other family members or friends. In some cities, there are even divorced dad groups that hold weekly meetings.¹¹¹ Most importantly, the attorney should educate the father regarding the high remarrying rate divorced males encounter.¹¹² Preventing a hasty second marriage may be the single most important preventive measure the attorney and client can take.¹¹³

Divorced mothers encounter a different variety of postdivorce problems.¹¹⁴ Issues such as employment and childcare may inflict significant emotional distress on the mother.¹¹⁵ Therefore, it is important that the attorney and mother-client identify and address these potential problems early in the representation. Typically, the mother must return to or increase her participation in the workforce.¹¹⁶ The attorney should explain this to the client and then help her create a plan that addresses these concerns. The attorney should help the client acquire interviewing, resume building, and networking skills that aid her in obtaining gainful employment. The attorney should also address the mother's concern that she will probably spend less time with the children because of employment. The mother may institute daily family time where the children and the mother engage in a meaningful activity or discussion. However, inherent in these problems is the new financial situation resulting from divorce.

3. Planning for Common Financial Problems

Regardless of gender, each attorney should inform their client of the common financial problems accompanying divorce.¹¹⁷ During the divorce, the level of conflict typically determines the amount of money

¹¹¹ See, e.g., Dads in Distress, Blue Mountain Dads in Distress, <http://bluemntsדים.spaces.live.com/> (last visited Mar. 9, 2009) (discussing a support group for divorced dads in Australia).

¹¹² See MARGULIES, *supra* note 46, at 66.

¹¹³ See *id.* (noting a divorced man remarrying within two years after his divorce is "too soon for him and too soon for the children").

¹¹⁴ See *supra* text accompanying notes 52-55.

¹¹⁵ See MARGULIES, *supra* note 46, at 67.

¹¹⁶ See *id.*

¹¹⁷ See discussion *supra* Part IV.C (discussing the financial impact of divorce).

spent.¹¹⁸ As therapeutic jurisprudence and preventive law operate to decrease the level of conflict, as a corollary, litigation expenses should also decrease. The attorney should inform the client that engaging in a long, expensive divorce will have a divisive effect on the family.¹¹⁹ Getting each spouse to agree to adhere to the therapeutic and preventive law ethos should help to reduce or eliminate litigation costs. However, financial problems usually persist beyond completion of the divorce settlement.

Issues such as the decrease in the standard of living due to loss of property, loss of economy of scale, and diminished earning capacity affect both spouses.¹²⁰ The predivorce situation largely dictates the postdivorce financial problems; therefore, planning for every contingency should be the focus of attorney-client financial conversations. The attorney should suggest that each spouse start creating differing budget plans to account for the various results that the divorce may create. If the spouse knows there are several basic financial outcomes that result from the divorce, then he may predict what money needs to go where when the time comes. Simply having a plan for each situation helps to alleviate some of the stress accompanying the new living arrangement. The attorney may suggest various solutions that the client may utilize, including employing a financial advisor, creating a trust for the children, and educating the client regarding the advantages and disadvantages of bankruptcy.

The use of therapeutic jurisprudence and preventive law methods in the attorney-client relationship enhance the divorce process for the entire family. However, changes can be made to the Florida Practice and Procedure Form that provide the framework for this process. The following section addresses issues in the Florida Practice and Procedure Form titled “Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren)” and proposes simple changes that may enhance the psychological well-being of the family as a whole.

¹¹⁸ Matz, *supra* note 4, at 1347-48.

¹¹⁹ See *id.* (discussing the financial and emotional costs of a high-conflict divorce).

¹²⁰ See MARGULIES, *supra* note 46, at 65-68.

**VIII. FLORIDA PRACTICE AND PROCEDURE FORM: “MARITAL
SETTLEMENT AGREEMENT FOR DISSOLUTION
OF MARRIAGE WITH DEPENDENT
OR MINOR CHILD(REN)”**

The organization and content of the Florida Practice and Procedure Form titled “Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren)” does not reflect the State of Florida’s objective of supporting decisions made in the best interest of the child.¹²¹

A. Order of Form

The order in which the state requests the spouses deal with the financial and custodial aspects of the divorce is clearly counterintuitive to the best interest of the child. Section I, titled “Marital Assets and Liabilities,” consists of five pages dedicated to this topic.¹²² Section II, titled “Spousal Support (Alimony),” constitutes one-third of a page.¹²³ Finally, Sections III and IV are entitled “Child Custody, Parental Responsibility, and Visitation” and “Child Support,” respectively.¹²⁴ These sections occupy a mere three and one-half pages, thus, failing to provide an appropriate amount of space to detail issues pertaining to the child.¹²⁵ A child would likely feel insulted if he knew the minimal representation his or her future is entitled to in the layout of the form.

When spouses determine property division and alimony issues at the commencement of the settlement agreement, the form places more emphasis on the monetary aspect of the dissolution instead of the well-being of the child. Of course, spouses are not categorically bound by the order of the sections when addressing different aspects of the divorce process. The spouses *may* address the custody and child support issues first, *but* the order of the sections in the form encourages a focus on finances. However, the layout of the form is not the only element

¹²¹ See generally FLA. FAM. L.R.P. Form 12.902(f)(1).

¹²² *Id.* § I.

¹²³ *Id.* § II.

¹²⁴ *Id.* §§ III-IV.

¹²⁵ See *id.*

that contributes to the complications arising from it; the selection of language creates obstacles as well.

B. *Language of Form*

Thomas Eisele states “[t]he language of the law is, in a word, *extra-ordinary*.”¹²⁶ However, the language of the law does not comport with the language of the common person, or the experiences he or she encounters throughout life.¹²⁷ The selection of certain abstruse words and phrases is done purposefully.¹²⁸ However, specific legalistic language must exist in the text, lest the text cease to be legally binding. The language of Florida Pleading and Practice Form Section 44:12:902(f)(1) evidences this practice.¹²⁹

An example of legal vocabulary that must be included in the form is *irreconcilable differences*.¹³⁰ The statutory language of the Uniform Marriage and Divorce Act states this condition is an essential prerequisite to the dissolution of marriage.¹³¹ However, in the Florida Marital Settlement Agreement, that text is followed by “(no chance of staying together),” which undeniably imposes an aura of hopelessness.¹³² Though the parenthetical qualification is probably included for clarification of the phrase *irreconcilable differences*, one could speculate that something a little less pessimistic would be more appropriate, given the family’s dire situation. Though this is probably the most glaring example of the insensitive language used, other examples exist throughout the form.¹³³

Directly following the aforementioned phrase is the language “to settle *once and for all* what we owe to each other and what we can

¹²⁶ Thomas D. Eisele, *The Legal Imagination and Language: A Philosophical Criticism*, 47 U. COLO. L. REV. 363, 370 (1976).

¹²⁷ *See id.* at 371-72.

¹²⁸ *See id.* at 367-68 (discussing the nature of the language of the law and its “complexities and ambiguities”).

¹²⁹ *See generally* FLA. FAM. L.R.P. Form 12.902(f)(1).

¹³⁰ *Id.* ¶ 2.

¹³¹ UNIF. MARRIAGE & DIVORCE ACT § 302(a)(2), 9A U.L.A. 200 (1998).

¹³² *See* FLA. FAM. L.R.P. Form 12.902(f)(1) ¶ 2.

¹³³ *See generally id.*

expect to receive from each other.”¹³⁴ Anyone who has ever been involved in a divorce knows that the matter is not settled once and for all. As applied to the immediate division of assets and liabilities, this phrase is, for the most part, accurate. Formal property division occurs only once. However, the phrase once and for all should be understood to apply only to the immediate, formal division of property. Other types of transactions that may occur in the future should not be foreclosed upon at the onset.

Unforeseeable situations arise, requiring financial flexibility on the part of each parent. The primary residential parent is bound to incur costs that sometimes exceed what child support payments cover. A child may be hospitalized, require legal representation, or need additional funds for school, none of which the parties may stipulate to in the divorce decree. Similarly, the secondary residential parent may inevitably have to pay costs that should be paid by the primary residential parent. The extent and nature of these costs vary according to what the spouses agreed upon in the divorce decree.

Especially when children are involved, it is paramount to both the parents and children’s psychological and financial well-being that the spouses maintain a cordial relationship.¹³⁵ Spouses will probably interact on a parental level for the rest of their lives, or at least until the children reach the age of majority. Thus, parents should be encouraged to be financially flexible when the child’s needs are at issue.

The remainder of the form includes language suggesting a mere banking transaction is taking place.¹³⁶ An entire life together is carved up into columns and rows designed to provide the most concise, albeit apathetic, description of the property accumulated during the relationship.¹³⁷ The only perceivable concession the writers of the form make is abstaining from requiring the spouses to dig up their respective bank account numbers (done, arguably, for security purposes).¹³⁸ Significant

¹³⁴ *Id.* ¶ 2 (emphasis added).

¹³⁵ See Schacht, *supra* note 5, at 567 (discussing the negative effects of a high-conflict divorce on a child).

¹³⁶ See generally FLA. FAM. L.R.P. Form 12.902(f)(1) § I (discussing marital assets and liabilities solely from an economic standpoint).

¹³⁷ See *id.*

¹³⁸ See *id.* § I(A)(1) (“You do not need to list account numbers.”).

changes regarding the current Dissolution of Marriage form are desirable considering the severe, protracted impact they have on those involved—especially the children.

C. Modified Order of Form and Therapeutic and Preventive Law Additions

As mentioned above, the order of Florida Family Law Rules of Procedure & Form Section 12.902(f)(1) evinces some discordance with the best interest of the child standard. The legislature should reorganize this form so parents settle issues pertaining to the child first. Then, the Parenting and Visitation sections should be elaborated upon to provide more detail. Next, an Active Parenting Plan should be added by the legislature to provide the parents guidance regarding their parental duties. As a result of the form's reorganization, the section addressing Assets and Liabilities would be placed in Section II, after the parents decide the issues concerning the child. Finally, the legislature should approve a new section, titled Conflict Resolution, should be added. This section would describe how parents agree to resolve future conflicts.

1. Reorganize Sections

The form should begin with “Section I: Child(ren)’s Psychological and Financial Welfare.”¹³⁹ This section appears first in the modified form, the title is more descriptive, and it conveys the true weight of the spouses’ decisions, given the gravity of the situation. This section is further subdivided into Sub-Sections A, B, C, D, and E, entitled “Child Custody,” “Parental Responsibility,” “Visitation,” “Active Parenting Plan,” and “Child Support,” respectively.¹⁴⁰ In the current form, the three sections relating to the upbringing of the child (“Child Custody,” “Parental Responsibility,” and “Visitation”) all run together.¹⁴¹ The sections are not clearly distinguishable from one another. This lack of explicit organization further contributes to the notion that the order of

¹³⁹ See Modified Marital Settlement Agreement for Dissolution of Marriage with Dependent or Minor Child(ren) [hereinafter Author’s Suggested Form] *infra* app. A § 1.

¹⁴⁰ See Author’s Suggested Form *infra* app. A.

¹⁴¹ See FLA. FAM. L.R.P. Form 12.902(f)(1) § III.

the form does not reflect the purportedly paramount concern—the best interest of the child.

2. Redraft Parental Responsibility Section

An appropriate restructuring of the form would also require an elaboration of the current sections to address a broader range of possible areas of conflict. Concerning “Parental Responsibility,” the current form requests little information pertaining to how the parents plan to raise their child.¹⁴² The modified form requests detailed information concerning topics such as education,¹⁴³ discipline,¹⁴⁴ and religious upbringing.¹⁴⁵ Agreement on these matters is desirable because it provides a basis for decision making when consultation with the other parent is not practical or possible. The ability to perform independent decision making in a way that comports with the wishes of both parents promotes consistency and stability in the child’s daily life. For example, young Billy will not come home to mom screaming about how dad does not care when he stays up late or snacks before dinner.

3. Redraft Visitation Section

The modified form also expands the “Visitation” section.¹⁴⁶ The current form minimally describes the ways in which the parents exchange the children, “how parents will handle situations when one parent is unable to meet the schedule,” and “how parents will communicate regarding arrangements or *any other issues* relating to the child(ren).”¹⁴⁷

¹⁴² See *id.*

¹⁴³ See Author’s Suggested Form *infra* app. A § I(B)(1) (noting the importance of a child’s education and thus establishing agreement terms including the name of the child’s school, after-school care, and extracurricular activities in which the child may participate).

¹⁴⁴ See Author’s Suggested Form *infra* app. A § I(B)(3) (“Consistency and communication are important in disciplinary measures so that one parent does not appear favorable over the other due to differences in discipline methods.”).

¹⁴⁵ See Author’s Suggested Form *infra* app. A § I(B)(4) (“We wish to establish the following terms regarding the religious upbringing of our child(ren). . . . If the parents disagree on religious doctrines, will each parent honor the other’s wishes during visits?”).

¹⁴⁶ See Author’s Suggested Form *infra* app. A § I(C).

¹⁴⁷ FLA. FAM. L.R.P. Form 12.902(f)(1) § III(4) (emphasis added).

The current form neglects to address “any other issues,” and thus, permits increased potential for conflict. The modified form includes more detailed sections regarding these topics¹⁴⁸ as well as additional sections addressing matters such as summer visitation for school-age children,¹⁴⁹ whether the parents permit visitation with other relatives¹⁵⁰ and when and where parents permit vacations.¹⁵¹

For example, the current form does not address how the parents and children should treat a missed visit or how each parent should communicate this information to the child.¹⁵² A parent may harbor animus and convey to the child that the other parent “may not care enough” to make the appointment. This instills an erroneous feeling of loss and abandonment in the child and is certainly not in his or her best interest.¹⁵³ In addition, the current form does not establish a “reconciliatory communication” between the child and parent to provide each with an opportunity to express their thoughts and emotions concerning the missed visit.¹⁵⁴ This situation may lead to Parental Alienation Syndrome.¹⁵⁵ This occurs when “one parent creates an extreme atmosphere of mistrust by making continued derogatory comments about the other parent, while holding themselves out as the good parent.”¹⁵⁶ The minor task of including a section providing agreed upon procedures could greatly reduce future conflicts within the family.

¹⁴⁸ See Author’s Suggested Form *infra* app. A § I(C)(6) (establishing agreement terms to determine what to do “when one parent is unable to meet the schedule,” including the “[f]orm and length of time to give fair notice” and any “[r]econciliatory communication with [the] child(ren)”).

¹⁴⁹ See Author’s Suggested Form *infra* app. A § I(C)(4).

¹⁵⁰ See Author’s Suggested Form *infra* app. A § I(C)(8).

¹⁵¹ See Author’s Suggested Form *infra* app. A § I(C)(11) (establishing agreement terms as to whether vacations will be permitted, and if so, what length of notice will be required, if trips abroad will be allowed, and whether an “itinerary with addresses and phone numbers will be provided”).

¹⁵² See FLA. FAM. L.R.P. Form 12.902(f)(1) § III.

¹⁵³ JOHN HARTSON & BRENDA PAYNE, CREATING EFFECTIVE PARENTING PLANS: A DEVELOPMENTAL APPROACH FOR LAWYERS AND DIVORCE PROFESSIONALS 109-10 (2006) (discussing the negative effects on children when a divorced parents makes negative comments regarding the other parent).

¹⁵⁴ See Author’s Suggested Form *infra* app. A § I(C)(6)(b).

¹⁵⁵ See HARTSON & PAYNE, *supra* note 153, at 110.

¹⁵⁶ *Id.*

4. Add Active Parenting Plan

The inclusion of the additional section entitled “Active Parenting Plan” conveys to the parents (and attorneys), that the agreement pertains not to some finite event, but an ongoing one where the parents emphasize a focus on the life of the child.¹⁵⁷ The plan includes detailed sections that address the child’s important contacts in his or her life¹⁵⁸ as well as the child’s routine.¹⁵⁹ Maintaining and promoting the child’s preexisting healthy relationships is vital to providing the child with a stable, familiar atmosphere.¹⁶⁰ In order to maximize stability, the parents should also strive to maintain the child’s predivorce routine. This way, the parents do not expose the child to a drastically new situation all at once. The parents can then make gradual changes to ease the child into his or her new life. Together, these two components will minimize the child’s likely psychological trauma stemming from the new living situation. The parents may take all of this into consideration when dividing the assets and liabilities.

5. Move Assets and Liabilities Section

Appropriately, “Section II,” entitled “Marital Assets and Liabilities,” would be placed *after* the section pertaining to the child.¹⁶¹ This way, the parents may consider “Child Custody,” “Parental Responsibility,” “Visitation,” “Active Parenting Plan,” and “Child Support” when determining the distribution of marital assets. If the mother receives custody of the child, perhaps the parents will agree to distribute an addi-

¹⁵⁷ See Author’s Suggested Form *infra* app. A § I(D) (“As parents, we understand that the best interests of our child(ren) are paramount. . . . We also understand that parenthood requires flexibility, patience, and understanding. We know that issues, unforeseen in this agreement, will arise and that we must resolve them in a prompt, civil way.”).

¹⁵⁸ See Author’s Suggested Form *infra* app. A § I(D)(1) (“The child(ren) develop/s healthy relationships in addition to that of the mother and father and it is important to preserve these relationships.”).

¹⁵⁹ See Author’s Suggested Form *infra* app. A § I(D)(2) (“We understand that maintaining the child(ren)’s daily routine is important in order to promote stability. . . . [W]e have identified the child(ren)’s current routine/s. We each will strive to maintain this routine to the extent the new circumstances will allow.”).

¹⁶⁰ See Maxwell, *supra* note 62, at 164-65 (noting a stable support network is “necessary [for a child] to cope with the emotional fallout of the divorce”).

¹⁶¹ See Author’s Suggested Form *infra* app. A § II.

tional portion of the property to her as well. However, if the mother receives the marital home and the court designates her as the primary residential parent, perhaps the parents would agree to keep more of the items valued by the child at the father's house as an added incentive for the child to keep visits. Accordingly, "Spousal Support" would be moved to "Section III."¹⁶²

6. Add Conflict Resolution Section

An important issue that the current form fails to address is how the parents will resolve future conflicts. Therefore, "Section IV" would be a new addition entitled "Conflict Resolution."¹⁶³ Here, the form would give the parents the opportunity to describe, in detail, how they will resolve future conflicts. John Hartson and Brenda Payne found that "[h]igh conflict between parents after divorce puts children at risk for behavior problems, aggression, and depression . . . [and that] the level and intensity of parental conflict is the best predictor of adjustment to divorce."¹⁶⁴ Thus, the form must stress *within the language of the section* that how and when these conflicts are resolved may have an enormous impact on the emotional and psychological state of the child.¹⁶⁵ The parents should then review the agreement and, where needed, a licensed therapist specializing in conflict resolution may modify the agreement.¹⁶⁶ Then, the agreement will still be subject to professional analysis, but will retain the salient aspect of permitting the parents to be highly involved in their divorce agreement. However, the sequential order of the form is not the only aspect that could benefit from the application of therapeutic jurisprudence and preventive law theory.

¹⁶² See Author's Suggested Form *infra* app. A § III.

¹⁶³ See Author's Suggested Form *infra* app. A § IV.

¹⁶⁴ HARTSON & PAYNE, *supra* note 153, at 107.

¹⁶⁵ See Author's Suggested Form *infra* app. A § IV ("[W]e understand that it is in the best interest of the family, especially the child(ren), that these conflicts be resolved quickly and with the least amount of interparental conflict possible. We also understand that when and where these conflict take place can have an adverse effect on the children. . . . We agree that the exercise of any of these methods will occur outside of the presence of the child(ren).").

¹⁶⁶ See Author's Suggested Form *infra* app. A § IV(D) (requiring certification by a licensed therapist in certain situations).

D. *Modified Language of Form*

As noted above, the language of the law often perplexes the non-lawyer.¹⁶⁷ Clients are, typically, uneducated regarding the intricacies of divorce law; therefore, it may be safe to assume that they will often be confused, frustrated, or even offended by the language of the form.¹⁶⁸ However, there are particular phrases that must be included in the text, or the text will fail to be legally binding.¹⁶⁹ In many instances, the client may not understand why the language is included and erroneously assume it was something the other spouse declared. It would be beneficial to include an explanatory clause, describing why particular language must be included in the form. This relatively simple preventive measure helps to reduce the overall potential for conflict, thereby creating an environment that promotes discussion and compromise, as opposed to hostility and animus.

The most glaring example of this language is the phrase *irreconcilable differences*.¹⁷⁰ A statute dictates this phrase's inclusion, but there is nothing prohibiting an explanatory phrase that conveys to the client why this language is included.¹⁷¹ Adding, in parentheses, that the language is statutorily required would clarify the reason for its inclusion and prevent potential conflict.¹⁷² However, adding explanatory phrases is not the only modification required to make the form more psychologically conscious.

Some language should be removed completely. For example, the qualification “(no chance of staying together),” though clarifying the phrase *irreconcilable differences*, is brash and without forethought.¹⁷³ The phrase is an unnecessary implication of hopelessness concerning the relationship and simply should not be included. There is always a chance of the situation changing when dealing with a matter such as

¹⁶⁷ See Eisele, *supra* note 126, at 370 (explaining the “(alien) character of the legal language”).

¹⁶⁸ *Id.* at 371.

¹⁶⁹ See, e.g., FLA. FAM. L.R.P. Form 12.902(f)(1) ¶ 2 (*irreconcilable differences*).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² See Author's Suggested Form *infra* app. A ¶ 2 (“(statutorily required language”).

¹⁷³ See FLA. FAM. L.R.P. Form 12.902(f)(1) ¶ 2.

divorce and to blatantly state there is no chance of getting back together seems counterproductive.

Also, the phrase “to settle once and for all what we owe to each other and what we can expect to receive from each other,”¹⁷⁴ states a premise that is simply not true and should also be removed, or at least qualified. Over the course of the child’s life, many things, monetary or otherwise, may be required from the other parent.¹⁷⁵ To absolutely establish at the onset what one may expect from the other, before either the parents or child actually live in a situation that results from the divorce, is crass and irresponsible. Many situations parents do not contemplate during the divorce process may arise, requiring one parent to aid the other for the benefit of the children.

If the settlement agreement rules out the possibility of one spouse helping the other, it would be extremely easy for one parent to refer to the divorce agreement and state, “I don’t owe you anything.” The form should be modified to read: “[I]n addition to this settlement agreement, we, the parents, intend to aid each other and the child(ren) financially and emotionally when unforeseen events have a detrimental effect on the best interest of the child(ren).”¹⁷⁶ Not only would this language communicate to both spouses the reality of the situation, but it would, at the very least, establish the common goal of acting in the best interest of the child.

Many alterations may be made to the form that preserve legally binding language, yet these alterations convey the deep emotional and psychological nature of the decision to get divorced. The remainder of the form, as it exists, treats the family as a mere collection of items and bodies.¹⁷⁷ The automobile is not simply a vehicle for conveyance, but a family car that carried the clan on family vacations.¹⁷⁸ Real estate is not

¹⁷⁴ *Id.* ¶ 2.

¹⁷⁵ See McGough, *supra* note 30, at 19-20 (explaining the expectations for parents to continue to provide emotional and financial support following a divorce).

¹⁷⁶ See, e.g., Author’s Suggested Form *infra* app. A ¶ 3 (internal quotation marks omitted).

¹⁷⁷ See generally FLA. FAM. L.R.P. Form 12.902(f)(1) (for example, the form lists belongings and uses generic terms such as “Wife” and “Husband”).

¹⁷⁸ See Author’s Suggested Form *infra* app. A § II(A)(1) (recommending changing the existing language to “family car”).

an abstract structure on a plot of land, but the family home, where children and parents lived their lives, developing sentimental attachments.¹⁷⁹ Though reducing emotionally-charged titles such as *family home* and *family car* to *real estate* and *automobile* may serve a legal purpose, the language does not reflect the fact that these items and places are central to the lives of the family, especially the children.

IX. TRULY MAKING THE BEST INTEREST OF THE CHILD PARAMOUNT

Utilizing the modified form and adhering to the therapeutic jurisprudence and preventive law concepts during the attorney-client relationship truly makes the best interest of the child paramount.

A. *The Modified Form Focuses on the Best Interest of the Child*

The modified form promotes the best interest of the child by focusing the parents and attorneys' attention on the child.¹⁸⁰ The form effectuates this end through four different ways: rearrangement of the sections so issues dealing with the child are decided first;¹⁸¹ use of language that is conducive to the resolution of these issues;¹⁸² inclusion of additional sections that provide greater detail so fewer misunderstandings occur;¹⁸³ and finally, addition of an overall framework for the future of the relationship.¹⁸⁴

The simple inclusion of issues regarding the child in the first section conveys to the parent that the issues surrounding the child are

¹⁷⁹ See Author's Suggested Form *infra* app. A (recommending changing the existing language to "family home").

¹⁸⁰ See generally Author's Suggested Form *infra* app. A (Utilizing formatting which places the terms relating to the children before the property division terms).

¹⁸¹ See Author's Suggested Form *infra* app. A § I.

¹⁸² See generally Author's Suggested Form *infra* app. A (using clear language instead of legalese, other than when required by statute).

¹⁸³ See, e.g., Author's Suggested Form *infra* app. A § I(C)(6) (discussing in detail the manner in which parents will approach problems with the visitation schedule, which will help the parties anticipate problems).

¹⁸⁴ See, e.g., Author's Suggested Form *infra* app. A ¶ 3 (focusing on the fact that it is a continuing relationship and there might be issues that arise that were not contemplated).

the most important. This rearrangement encourages parties to address those issues first, before the parties expend time and energy on others. In addition, the parties decide these issues before the division of assets and liabilities and spousal support, so the animus that often develops during the division of property does not burden the decision-making process.¹⁸⁵ Therefore, parties may put forth their best efforts, uninhibited by spite or ill will, and create a plan that truly holds the child's interests above all others.

The use of language conducive to the resolution of these issues may prevent psychological distress in both parties. Parties may then address issues affecting the child, free of angst or misconceptions. Consequently, the reduction in distress promotes an atmosphere where each parent may selflessly debate what will be in the best interest of the child.¹⁸⁶

The modified form contains more detail regarding issues concerning the child, so parents are able to set forth, from the onset, how they will handle certain situations. When a situation arises, such as a disciplinary event or visitation discrepancy, the parents will have a more elaborate guide by which to model their reaction.¹⁸⁷ It is important that parents maintain consistency in their behavior in order to bring about stability in the child's life;¹⁸⁸ this modified form assists in that endeavor.

One might argue that enumerating such a great number of issues from the beginning is only going to provide *more* points of conflict in the future. However, establishing these issues at the beginning will, at the very least, give the situation surrounding the issues a degree of predictability. Furthermore, if parents are unwilling to abide by the terms set out in the settlement agreement, they can utilize or rely on their

¹⁸⁵ See Parkinson, *supra* note 3, at 70-71 (discussing the emotions that arise during divorce).

¹⁸⁶ See *id.* at 70 (discussing the importance of shifting the focus from blame and anger to mutual goals and concerns).

¹⁸⁷ See Author's Suggested Form *infra* app. A § I(B)(3), (C).

¹⁸⁸ See Maxwell, *supra* note 62, at 165-66.

active parenting plan and conflict resolution agreement¹⁸⁹ to resolve differences. The terms of the agreement are generated by the parents, and studies show that when a client is involved in creating the terms set by the divorce decree, he or she is more likely to abide by them.¹⁹⁰

Thus, the modified settlement agreement creates an overall framework for the functioning of the family. As time progresses and situations change, the parties may modify the plan to reflect these changes. But the total product is a stable, structured environment that enables the child to live a healthy, well-adjusted life. However, establishing a foundation on which the settlement agreement can function requires the employment of a therapeutic and preventive law attorney-client relationship.

B. The Therapeutic Jurisprudence and Preventive Law Attorney-Client Relationship: Creating an Environment that Promotes the Best Interest of the Child

A therapeutic jurisprudence and preventive law attorney-client relationship can do several things to promote the best interest of the child. First, it may reduce the amount of immediate conflict that typically accompanies the divorce process,¹⁹¹ creating a foundation for future interactions. Second, it may abate the divorce's social impact on the family, resulting in a more stable environment for the child.¹⁹² Third, it may decrease the financial strain on the family and, hence, result in greater financial resources available to the child.¹⁹³

The reduction in immediate conflict during the divorce process translates to a corresponding decrease in the psychological harm suf-

¹⁸⁹ See, e.g., Author's Suggested Form *infra* app. A § I(B)(1) ("In the future, if we wish to change any term/s, we will resort to the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution.").

¹⁹⁰ See Maxwell, *supra* note 62, at 171.

¹⁹¹ See Schacht, *supra* note 5, at 569 (describing the behaviors that result from divorce conflict).

¹⁹² See Paquin & Harvey, *supra* note 76, at 167 (describing how therapeutic justice results in a positive impact on the people involved).

¹⁹³ See McGough, *supra* note 30, at 20 (describing the decline in economic circumstances that children suffer as a result of divorce).

ferred by the child.¹⁹⁴ This is desirable because possessing a healthy mind is certainly in the best interest of the child. In addition, if the parents do not subject the child to a lengthy, high-conflict divorce, he is less likely to place a negative connotation on marriage.¹⁹⁵ Therefore, the probability of a transgenerational effect decreases and, thus, the child is less likely to experience divorce as an adult.¹⁹⁶

In regards to setting a precedent for future interactions, successful execution of the marital settlement agreement depends largely on the level of conflict and hostility experienced during the process.¹⁹⁷ It would be extremely difficult for parents who experience a high-conflict divorce to be civil towards one another afterwards.¹⁹⁸ Accordingly, the therapeutic and preventive attorney-client relationship sets the stage for future interactions between the parents.¹⁹⁹ It does this by allowing them to exit the divorce with the attitude that each of them will work together for the best interest of the child.²⁰⁰ If each parent completes the divorce process free of animus towards the other, they are able to debate issues without the bias that a bitter divorce creates.²⁰¹

The therapeutic and preventive law approach to the attorney-client relationship also lessens the negative social effects of the divorce.²⁰²

¹⁹⁴ See generally Schacht, *supra* note 5, at 567 (describing some of the psychological problems children of high-conflict divorce may suffer).

¹⁹⁵ See *id.* (noting children of high-conflict divorce suffer problems that “may persist into adulthood, setting the stage for a transgenerational repetition of family dysfunction”).

¹⁹⁶ See *id.*

¹⁹⁷ See *id.* at 568-69 (describing how the levels of conflict can affect cooperation, prolong the divorce, and create bitter legal conflict).

¹⁹⁸ See *id.* at 567-68 (explaining in high conflict divorces, parties are hostile, aggravating, obnoxious, and potentially dangerous).

¹⁹⁹ Schacht, *supra* note 5, at 579 (explaining how prevention “seeks to reduce the frequency, intensity, or duration of conflict through early identification and prompt intervention”).

²⁰⁰ Cf. Parkinson, *supra* note 3, at 70 (describing how cooperation in one area leads to cooperation in other areas).

²⁰¹ See Ezzell, *supra* note 40, at 129 (explaining how couples who successfully go through mediation have less stress, a reduced need for future litigation, and avoid a “continuous adversarial posture”).

²⁰² See *id.* (resulting in “higher rates of compliance with the agreement” and “adjustment for all involved”).

Naturally, the father does not encounter a heightened level of depression and the mother is able to cope with the stress of finding employment. As a result, each parent enjoys a greater degree of mental stability, which in turn, provides a more stable environment for the upbringing of the child.²⁰³ This greater mental stability enables each parent to interact with one another civilly, without unnecessary conflict.

This new approach also preserves financial resources,²⁰⁴ resulting in a similar or increased standard of living for the child.²⁰⁵ Consequently, the child is not forced to move out of the marital home, away from family and friends. An increase in finances also provides the parents with peace of mind, which translates to less stress around the household, arguably decreasing the number of stressors in the child's life.²⁰⁶

Several valid arguments exist regarding the use of a therapeutic jurisprudence and preventive law attorney-client relationship in place of a traditional attorney-client relationship. Therapeutic jurisprudence and preventive law theory require that an attorney select like-minded clients.²⁰⁷ This process will surely result in the rejection of a significant number of potential clients, thus reducing the amount of revenue the attorney receives. However, an attorney that successfully guides a family through a divorce will inevitably receive referrals for his or her services. Since there are currently few therapeutic jurisprudence and preventive law divorce attorneys,²⁰⁸ there would be a high demand for their special brand of services.

²⁰³ *Id.* at 128-29 (“[T]he single biggest predictor of a child’s post-divorce adjustment is the absence of parental conflict . . .”).

²⁰⁴ See Parkinson, *supra* note 3, at 71 (explaining how the length of the divorce can affect the financial resources that are available to the couple).

²⁰⁵ McGough, *supra* note 30, at 20 (“[M]ost children of divorce experience dramatic declines in their economic circumstances . . .”).

²⁰⁶ *Id.*

²⁰⁷ See Maxwell, *supra* note 62, at 178-79; see also Leslie Larkin Cooney, *Heart and Soul: A New Rhythm for Clinical Externships*, 17 ST. THOMAS L. REV. 407, 409 (2005) (describing the methods by which an attorney should select a client using principles of therapeutic jurisprudence).

²⁰⁸ See Stolle et al., *supra* note 75, at 9 (citing Dennis P. Stolle, *Professional Responsibility in Elder Law: A Synthesis of Preventive Law and Therapeutic Jurisprudence*, 14 BEHAV. SCI. & L. 459 (1996)) (noting a synthesis of preventive law and therapeutic jurisprudence is a new idea and was not attempted until 1996).

Screening is required because therapeutic and preventive law methods typically will not work with high-conflict divorces. However, traditional methods and forms do not work with high-conflict divorces *either*.²⁰⁹ If there is a possibility that exposure to the therapeutic jurisprudence attorney-client relationship and form will lead high-conflict couples to reconsider their priorities and choose a path more conducive to the wellbeing of the family, then I believe that there is potential for success.

Another criticism of the therapeutic jurisprudence and preventive law attorney-client relationship is that, since its techniques reduce the level of conflict between the spouses, there is a corresponding reduction in the amount of time the attorney may bill.²¹⁰ However, the attorney may supplement this decrease in time spent litigating by time the attorney spends counseling the client regarding the psychological, financial, and social aspects of the divorce.²¹¹ The attorney may put the time and money saved by not engaging in a lengthy, expensive divorce toward planning for the divorce's impact on the family.

Finally, a family law judge may be reluctant to advocate these proposals.²¹² Family law judges used the traditional method for a long time and change frightens people. However, when pressed with the fact that the United States continues to have the highest divorce rate in the world, a judge may be more open to new ideas.²¹³ If that argument is unpersuasive, one should illustrate how the current system fails to recognize and remedy the great psychological, social, and financial trauma that divorce inflicts on the family.²¹⁴ Finally, it should be impressed

²⁰⁹ See Schacht, *supra* note 5, at 568 (describing the problems with high-conflict divorces).

²¹⁰ Cf. Ezzell, *supra* note 40, at 130-31 (discussing the benefits of mediation in reducing costs to clients and a reduction in courts' dockets).

²¹¹ Paquin & Harvey, *supra* note 76, at 169 (discussing the idea of attorneys counseling their clients about the emotional consequences of legal actions).

²¹² See Ezzell, *supra* note 40, at 136-37 ("[I]t is not apparent whether the nation's family law judges are entirely supportive.").

²¹³ Schacht, *supra* note 5, at 566.

²¹⁴ *Id.* at 567 (noting there is no such thing as a good divorce, and often divorce brings out the worst in spouses).

upon the judge that the only unbiased representative the child has is the state.²¹⁵

X. CONCLUSION

The combination of the revised form with the therapeutic and preventive law attorney-client relationship reduces overall interparental conflict. The therapeutic and preventive law attorney-client relationship reduces conflict during²¹⁶ the divorce and the revised form reduces conflict afterwards.²¹⁷ Reducing interparental conflict is in the best interest of the child because it is one of the top three reasons children suffer psychologically from divorce.²¹⁸

The high divorce rate and the state's goal of entering divorce decrees that are in the best interest of the child necessitate modification of the current divorce process. The goal of this modification should be to make the process and the participants acting within it more sensitive to the emotional aspects of divorce. This new approach will encourage attorneys to place less emphasis on winning and more emphasis on acting in a way that promotes the best interests of the family, especially the child. The divorce documents families encounter should be written in a manner that takes into account the emotional aspect of this life event. Divorce should no longer be the second most stressful event that may occur in an individual's life.²¹⁹

²¹⁵ See *id.* at 568 (“Divorcing parents [sometimes] may transform a child into a relationship weapon . . .”).

²¹⁶ *Id.* at 566.

²¹⁷ See generally Author's Suggested Form *infra* app. A (intending the entire form to reduce conflict and reach an agreement).

²¹⁸ Maxwell, *supra* note 62, at 163-66.

²¹⁹ Parkinson, *supra* note 3, at 70.

APPENDIX A

MODIFIED MARITAL SETTLEMENT AGREEMENT FOR DISSOLUTION OF MARRIAGE WITH DEPENDENT OR MINOR CHILD(REN)

IN THE CIRCUIT COURT OF THE _____ JUDICIAL CIRCUIT,
IN AND FOR _____ COUNTY, FLORIDA

Case No.: _____
Division: _____

_____,
Petitioner,

and

_____,
Respondent.

MODIFIED MARITAL SETTLEMENT AGREEMENT FOR DISSOLUTION OF MARRIAGE WITH DEPENDENT OR MINOR CHILD(REN)

We, {Husband's full legal name} _____,
and {Wife's full legal name} _____,
being sworn, certify that the following statements are true:

1. We were married to each other on {date} _____.
2. Because of irreconcilable differences (statutorily required language), we have made this agreement to settle at this point how our assets and liabilities will be divided. Each of us states that nothing has been held back, that we have honestly included everything we could think of in listing our assets (everything we own and that is owed to us) and our debts (everything we owe), and that we believe the other has been open and honest in writing this agreement.
3. However, we understand that parenthood is an ongoing commitment, and that, in addition to this settlement agreement, we, the parents, intend to aid each other and the child(ren) financially and emotionally when unforeseen events have a detrimental effect on the "best interest of the child(ren)."
4. We have both filed a Family Law Financial Affidavit, Florida Family Law Rules of Procedure Form 12.902(b) or (c). Because we have voluntarily made full and fair disclosure to each other of all our assets and debts, we waive any further disclosure under rule 12.285, Florida Family Law Rules of Procedure.
5. Each of us agrees to execute and exchange any papers that might be needed to complete this agreement, including deeds, title certificates, etc.

SECTION I. CHILD(REN)’S PSYCHOLOGICAL AND FINANCIAL WELFARE

A. Child Custody. (If you have **not** reached an agreement on any of these issues, write “n/a” on the lines provided. The Court reserves the right to modify any agreement(s) concerning the minor child(ren).)

1. **The parties’ minor child(ren) are:**

Name

Birth date

2. () MOTHER () FATHER () BOTH (joint) will have legal custody of the minor child(ren).

3. **The primary residential parent** will be () FATHER () MOTHER and the other parent will be the secondary residential parent **OR** the primary residential parent will be () undesignated () rotating.

4. What will the child(ren)’s last name be? _____

B. Parental Responsibility. We understand that parenting is an on-going process that entails a significant amount of conflict and disagreement in any situation. However, we are willing to agree to the following foundational terms in order to minimize the amount of conflict we may encounter during the remainder of our relationship with each other and with our child(ren). These terms may be modified in the future in accordance with the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution. (Please write “n/a” in any section that does not apply or you do not wish to agree upon at the time.)

1. **Education.** We understand that a child’s education is very important. We understand that a child’s level of education is going to greatly affect his or her standard of living as they reach adulthood. For these reasons, we wish to establish the following terms. In the future, if we wish to change any term/s, we will resort to the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution.

- a. Name of School _____
- b. Location _____
- c. Type of School (Public/Private/Religious) _____
- d. Cost
 - i. Tuition _____
 - ii. Books _____
 - iii. Misc. (field trips, art fees, etc.) _____
- e. Transportation _____

- i. To School _____
- ii. From School/After School Care _____
- iii. Visitation Specific _____

f. After-School Care

- i. Location _____
- ii. Cost _____
- iii. Transportation _____

g. Extracurricular Activities

- i. Type _____
- ii. Cost _____
- iii. Transportation _____

h. Disciplinary Issues

- i. Parent-to-Parent Communication _____
- ii. Parent—Teacher Conference _____
- iii. Detention, Probation, Suspension, Expulsion _____

- i. Other Primary Education Issues _____
- _____
- _____
- _____
- _____

j. Post-Secondary Education

- i. Selection of
 - 1. In/Out-of State _____
 - 2. Type _____
 - 3. Deference to Child(ren)’s Wishes _____
 - 4. Who will help fill out Applications _____
 - 5. Who will aid in Campus Visits _____

ii. Costs

- 1. Tuition _____
- 2. Books _____
- 3. Boarding/Rent _____
- 4. Utilities _____
- 5. Loans _____

- i. Application Process _____
- ii. Co-signor for loan/s _____

6. Transportation _____

iii. Other Post-Secondary Education Issues _____

2. Sex Education. We understand that it is important to educate our child(ren) in issues regarding sex, sexual reproduction, and intimate relationships. Hence, we wish to establish the following terms. In the future, if we wish to change any term/s, we will resort to the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution.

a. What will be the method by which the parents convey information pertaining to sex? _____

i. Will each parent be present? _____

ii. At what age do the parents feel it is appropriate to begin sexual education? _____

b. Will the parents permit the child(ren) to attend school-related sexual education classes? _____

c. Other issues regarding sexual education _____

3. Discipline. We understand that conflicts will arise regarding how each parent should discipline the child(ren). Consistency and communication are important in disciplinary measures so one parent does not appear favorable over the other due to differences in discipline methods. Hence, we wish to establish the following terms. In the future, if we wish to change any term/s, we will resort to the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution.

a. Methods/Techniques _____

b. In what circumstances will the parent Consult with the Other Parent? _____

c. In order to Maintain Consistency, when a significant disciplinary measure must be taken, the disciplining-parent will contact the other parent and explain

the circumstances and what the disciplining-parent’s response was. This will occur in the following manner _____

d. Other Discipline-related Issues _____

4. **Religious upbringing** (if applicable). We wish to establish the following terms regarding the religious upbringing of our child(ren). In the future, if we wish to change any term/s, we will resort to the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution.

a. Religion _____

b. Service Attendance _____

i. During other parent’s visitation _____

ii. Transportation _____

c. If the parents disagree on religious doctrines, will each parent honor the other’s wishes during visits (Religious Holiday Observance, Religious Practices, Service Attendance)? _____

5. **Automobile.** We understand that our child(ren) may need his or her own method of transportation. We also understand that this entails significant additional responsibilities. For this reason, we wish to establish the following terms. In the future, if we wish to change any term/s, we will resort to the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution.

a. Cost _____

b. Insurance _____

c. Registration Fees _____

d. Repairs _____

e. Gas _____

C. Visitation. We understand that it is important for the child(ren) to have access to visitation with both parents on a regular basis. We also understand that decreased visitation with the parent who is not the “primary residential parent” can lead to feelings of abandonment in the child(ren). Hence, we wish to establish the following

terms. In the future, if we wish to change any term/s, we will resort to the Active Parenting Plan, and should that fail, our agreed upon method of Conflict Resolution.

1. **General Visitation Schedule.** The parent who is not the primary residential parent shall have visitation with the child(ren) according to the following schedule (include times and days).

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

2. Other Schedule-related Issues. _____

3. **School Year Visitation Schedule** (if applicable). The parent who is not the primary residential parent shall have visitation with the child(ren) according to the following schedule (include times and days). _____

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

4. **Summer Visitation Schedule** (if applicable). The parent who is not the primary residential parent shall have visitation with the child(ren) according to the following schedule (include times and days). _____

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

5. How will parents communicate regarding arrangements or any other issues regarding child(ren)'s visitation? _____

6. How will parents handle situations when one parent is unable to meet the schedule?

a. Form and length of time to give fair notice _____

b. Reconciliatory communication with child(ren) _____

7. How will child(ren) be exchanged? _____

a. Time _____

b. Location _____

c. Will a third party be involved? _____

8. Will visitation with other relatives be permitted? _____

a. Names _____

b. Locations _____

c. Dates _____

9. Where will holidays be spent? _____

10. Will the child(ren) be permitted to visit or stay the night at friends' houses? _____

11. Will vacations be permitted? _____

a. Length of notice required before leaving _____

b. Will trips out of the country be allowed? _____

c. Will an itinerary with addresses and phone numbers be provided? _____

D. Active Parenting Plan. As parents, we understand that the best interests of our child(ren) are paramount. We also understand that parenthood requires flexibility, patience, and understanding. We know that issues, unforeseen in this agreement, will arise and that we must resolve them in a prompt, civil way. For these reasons, we have developed an "Active Parenting Plan." The plan will help us to prevent the opportunity for conflict to arise, to help us to accommodate one another as circumstances change, and to evaluate and modify our current parenting techniques. Should resources permit, we will have a licensed family therapist perform an initial evaluation as well as ongoing periodical evaluations of our "Active Parenting Plan."

1. Child(ren)'s List of Important Contacts. We understand that the quality of the child(ren)'s post-divorce life is going to depend on how similar it is to the pre-divorce life. The child(ren) develop/s healthy relationships in addition to that of the mother and father and it is important to preserve these relationships. Hence, we have created this list, with the aid of the child(ren) (age permitting), to help identify and preserve these relationships after the divorce.

2. **Child(ren)'s Routine.** We understand that maintaining the child(ren)'s daily routine is important in order to promote continued stability. For this reason, we have identified the child(ren)'s current routine/s. We each will strive to maintain this routine to the extent the new circumstances will allow. _____

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday

3. As parents, we understand that, due to no fault of our own, circumstances surrounding each of our living situations may change. These changes include areas such as: the child(ren)'s schedule (school, work, or play), the child's emotional, physical, and financial needs, and the father or mother's emotional, physical, and financial needs. Other changes that might occur include: relocation, job changes, shift changes, the child(ren)'s wish and/or family reconfigurations such as remarriage. As no form can predict when and how these changes might occur, we each agree to make a "good faith" effort towards accommodating the other parent when these issues may arise. Furthermore, we understand that this act of "good faith" is not done merely for the sake of the other parent, but for the best interest of the child(ren). For these reasons, we wish establish a procedure for which these changes in circumstance may be identified and addressed. We further agree that if no solution can be reached between us, we will resort to our stated method of Conflict Resolution established below. _____

4. In addition to the preceding clause, we also wish to establish a weekly parent-to-parent communication that will occur in the absence of the child(ren). Within this communication, we will discuss issues affecting the child(ren) such as: education, sex education, discipline, religious upbringing, automobile/s, and visitation. It is important that this communication occur directly between the parents in order to avoid putting the child(ren) in the hazardous position of messenger. This communication may occur in various forms (by telephone, email, face-to-face meeting, etc.) but should occur regularly. _____

- a. Time _____
- b. Day _____
- c. Form of Communication _____

E. Child Support.

1. () Mother () Father will pay child support, under Florida’s child support guidelines, section 61.30, Florida Statutes, to the primary residential or sole parent named above. Child Support Guidelines Worksheet, Florida Family Law Rule of Procedure Form 12.902(e), is completed and attached. This parent shall be obligated to pay support in the amount of \$ _____, every () week () other week () month, beginning {date} _____ and continuing until modified by court order, the youngest child turns 18, becomes emancipated, marries, dies otherwise becomes self-supporting or, if after the age of 18, until {date} _____. If the child support amount above deviates from the guidelines by 5% or more, explain the reason(s) here: _____

2. **Child Support Arrearage.** There currently is a child support arrearage of \$ _____ for retroactive child support and/or \$ _____ for previously ordered unpaid child support. The total of \$ _____ in child support arrearage shall be repaid at the rate of \$ _____ every () week () other week () month, beginning {date} _____, until paid in full including statutory interest, unless otherwise agreed to in “D. Active Parenting Plan.”

3. **Health Insurance.** () Father () Mother will maintain health insurance coverage for the parties’ minor child(ren). The party providing coverage will provide insurance cards to the other party showing coverage. **OR** () Health insurance is not reasonably available at this time. Any uninsured/unreimbursed medical costs for the minor child(ren) shall be assessed as follows:

- _____ a. Shared equally by both parents.
- _____ b. Prorated according to the child support guideline percentages.
- _____ c. Other {explain}: _____

SECTION II. MARITAL ASSETS & LIABILITIES

A. Division of Assets. We divide our assets (everything we own and that is owed to us) as follows: Any personal item(s) not listed below is the property of the party currently in possession of the item(s).

1. Wife shall receive as her own and Husband shall have no further rights or responsibilities regarding these assets (except pursuant to **Sections I & II** of this agreement):

ASSETS: DESCRIPTION OF ITEM(S) WIFE SHALL RECEIVE (To avoid confusion at a later date, describe each item as clearly as possible. You do need to list account numbers. Where applicable, include whether the name on any title/deed/account described below is Wife's, Husband's, or both.)	Current Fair Market Value
<input type="checkbox"/> Cash (on hand)	
<input type="checkbox"/> Cash (in banks/credit unions)	
<input type="checkbox"/>	
<input type="checkbox"/> Stocks/Bonds	
<input type="checkbox"/>	
<input type="checkbox"/> Notes (money owed to you in writing)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Money owed to you (not evidenced by a note)	
<input type="checkbox"/>	
<input type="checkbox"/>	
<input type="checkbox"/> Family Home	
<input type="checkbox"/>	
<input type="checkbox"/> Other Home	
<input type="checkbox"/>	
<input type="checkbox"/> Real Estate	
<input type="checkbox"/>	
<input type="checkbox"/> Business interests	
<input type="checkbox"/>	
<input type="checkbox"/> Automobiles:	
<input type="checkbox"/> Family Car	
<input type="checkbox"/> Husband's Primary Automobile	
<input type="checkbox"/> Wife's Primary Automobile	
<input type="checkbox"/> Other Automobile	
<input type="checkbox"/>	
<input type="checkbox"/> Boats	
<input type="checkbox"/> Other vehicles	
<input type="checkbox"/>	
<input type="checkbox"/> Retirement plans (Profit Sharing, Pension, IRA, 401(k)s, etc.)	
<input type="checkbox"/>	

□	
□ Furniture and Furnishings in home	
ASSETS: DESCRIPTION OF ITEM(S) WIFE SHALL RECEIVE (To avoid confusion at a later date, describe each item as clearly as possible. You do need to list account numbers. Where applicable, include whether the name on any title/deed/account described below is Wife's, Husband's, or both.)	Current Fair Market Value
□	
□ Furniture and Furnishings elsewhere	
□	
□ Collectibles	
□	
□ Jewelry	
□	
□ Life Insurance (cash surrender value)	
□	
□ Sporting and entertainment (T.V., stereo, etc.) equipment	
□	
□	
□ Other assets	
□	
□	
Total Assets to Wife	\$ _____

2. Husband shall receive as his own and Wife shall have no further rights or responsibilities regarding these assets (except pursuant to **Sections I & II** of this agreement):

ASSETS: DESCRIPTION OF ITEM(S) HUSBAND SHALL RECEIVE (To avoid confusion at a later date, describe each item as clearly as possible. You do need to list account numbers. Where applicable, include whether the name on any title/deed/account described below is Wife's, Husband's, or both.)	Current Fair Market Value
□ Cash (on hand)	
□ Cash (in banks/credit unions)	
□	
□ Stocks/Bonds	
□	
□ Notes (money owed to you in writing)	
□	
□	
□ Money owed to you (not evidenced by a note)	
□	
□	
□ Family Home	

-
- Other Home
-
- Real Estate
-
- Business interests
-

**ASSETS: DESCRIPTION OF ITEM(S)
HUSBAND SHALL RECEIVE**

(To avoid confusion at a later date, describe each item as clearly as possible. You do need to list account numbers.

Where applicable, include whether the name on any title/deed/account described below is Wife's, Husband's, or both.)

**Current Fair
Market Value**

- Automobiles:
 - Family Car
 - Husband's Primary Automobile
 - Wife's Primary Automobile
 - Other Automobile
-
- Boats
- Other vehicles
-
- Retirement plans (Profit Sharing, Pension, IRA, 401(k)s, etc.)
-
-
- Furniture and Furnishings in home
-
- Furniture and Furnishings elsewhere
-
- Collectibles
-
- Jewelry
-
- Life Insurance (cash surrender value)
-
- Sporting and entertainment (T.V., stereo, etc.) equipment
-
-
- Other assets
-
-

Total Assets to Husband

\$

B. Division of Liabilities/Debt. We divide our liabilities (everything we owe) as follows:

1. Wife shall pay as her own the following and will not at any time ask Husband to pay these debts/bills (except pursuant to **Sections I & II** of this agreement):

LIABILITIES: DESCRIPTION OF DEBT(S) TO BE PAID BY WIFE (To avoid confusion at a later date, describe each item as clearly as possible. You do not need to list account numbers. Where applicable, include whether the name on any mortgage, note, or account described below is Wife's, Husband's, or both.)	Monthly Payment	Current Amount Owed
<input type="checkbox"/> Mortgages on Family Home <input type="checkbox"/> <input type="checkbox"/>	\$	\$
LIABILITIES: DESCRIPTION OF DEBT(S) TO BE PAID BY WIFE (To avoid confusion at a later date, describe each item as clearly as possible. You do not need to list account numbers. Where applicable, include whether the name on any mortgage, note, or account described below is Wife's, Husband's, or both.)	Monthly Payment	Current Amount Owed
<input type="checkbox"/> Mortgages on Other Home <input type="checkbox"/> <input type="checkbox"/> Mortgages on any other real estate <input type="checkbox"/> <input type="checkbox"/> Credit/Charge Card <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Automobile loan <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Bank/credit union loans <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Money you owe (not evidenced by a note) <input type="checkbox"/> <input type="checkbox"/> Judgments <input type="checkbox"/> <input type="checkbox"/> Other <input type="checkbox"/>	\$	\$
Total Debts to Be Paid by Wife	\$	\$

2. Husband shall pay as his own the following and will not at any time ask Wife to pay these debts/bills (except pursuant to Sections I & II of this agreement):

LIABILITIES: DESCRIPTION OF DEBT(S) TO BE PAID BY HUSBAND (To avoid confusion at a later date, describe each item as clearly as possible. You do not need to list account numbers. Where applicable, include whether the name on any mortgage, note, or account described below is Wife’s, Husband’s, or both.)	Monthly Payment	Current Amount Owed
<input type="checkbox"/> Mortgages on Family Home <input type="checkbox"/> <input type="checkbox"/> Mortgages on Other Home <input type="checkbox"/> <input type="checkbox"/> Mortgages on any other real estate	\$ \$	\$ \$
<input type="checkbox"/> Charge/Credit Card Accounts <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	\$ \$	\$ \$
LIABILITIES: DESCRIPTION OF DEBT(S) TO BE PAID BY HUSBAND (To avoid confusion at a later date, describe each item as clearly as possible. You do not need to list account numbers. Where applicable, include whether the name on any mortgage, note, or account described below is Wife’s, Husband’s, or both.)	Monthly Payment	Current Amount Owed
<input type="checkbox"/> Automobile loan <input type="checkbox"/> <input type="checkbox"/> Bank/credit union loans <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Money you owe (not evidenced by a note) <input type="checkbox"/> <input type="checkbox"/> Judgments <input type="checkbox"/> <input type="checkbox"/> Other		

□ Total Debts to Be Paid by Husband	\$ _____	\$ _____
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C. Contingent Assets and Liabilities (listed in Section III of our Family Law Financial Affidavits) will be divided as follows: _____

SECTION III. SPOUSAL SUPPORT (ALIMONY) (If you have not agreed on this matter, write "n/a" on the lines provided.)

[√ one only]

- _____ 1. **Each of us forever gives up any right to spousal support (alimony) that we may have** (except pursuant to **Sections I & II** of this agreement).
- _____ 2. () HUSBAND () WIFE agrees to pay spousal support (alimony) in the amount of \$ _____ every () week () other week () month, beginning {date} _____ and continuing until {date or event} _____

Explain type of alimony (temporary, permanent, rehabilitative, and/or lump sum) and any other specifics: _____

[√ if applies] () Life insurance in the amount of \$ _____ to secure the above support, will be provided by the obligor.

SECTION IV. CONFLICT RESOLUTION.

As parents, we understand that conflicts will arise in the future regarding agreements that may or may not be contained in this document. Furthermore, we understand that it is in the best interest of the family, especially the child(ren), that these conflicts be resolved quickly and with the least amount of interparental conflict possible. We also understand that when and where these conflict take place can have an adverse effect on the children. For these reasons, we have established the following hierarchy of conflict resolution methods. We agree that the exercise of any of these methods will occur outside of the presence of the child(ren).

A. PRIMARY CONFLICT RESOLUTION. This level of conflict resolution entails methods that can be carried out quickly and between the parents. Issues that require a relatively quick decision should be addressed on this level. If the issue is one that has been addressed in this document, the agreement reached in this document should determine the outcome. However, if the issue is one that is not addressed in

