

DCBA FAMILY LAW SECTION UPDATE ON DOMESTIC RELATIONS PROCEDURES REGARDING PROVE-UP BY AFFIDAVITS

As noted in our update of June 26, 2020, the Domestic Relation Division continues to offer the option of conducting prove-ups by affidavits as allowed under the Eighteenth Judicial Circuit Court Administrative Order 20-10 (attached). Pursuant to the Administrative Order, there is an option to finalize the divorce case by Affidavit, which will be entered at the court's discretion.

To conduct a prove-up by affidavit, the parties and counsel must submit to the court for approval the following: Judgment for Dissolution of Marriage, Marital Settlement Agreement and Allocation Judgment (if applicable). Said documents must be submitted via email for the court's review and approval. In submitting the documents, make sure that all mandatory clauses are included in the allocation judgments (i.e. mediation clause) and that all Marital Settlement Agreements include language about statutory calculation of maintenance and child support and if there is a deviation, the reason for any deviation from statutory support. Any disproportionate division of assets or liabilities should also be explained within the Marital Settlement Agreement.

Each party must sign the Affidavit and the Affidavit must contain:

- a. Agreement that the court has both personal and subject matter jurisdiction.
- b. Stipulation as to grounds and description of grounds.
- c. Review of the Agreement in its entirety by the parties.
- d. Number of children born to or adopted by the parties, emancipation of those children or lack of same, and the parties present conditions as to pregnancy.
- e. An understanding of the terms of the Agreement, an intent to be bound by the terms of the Agreement by the parties, and that no one was coerced to sign same.
- f. Entry into the Agreement freely and voluntarily by the parties.
- g. A belief that the Agreement is a fair and equitable division of the marital estate.
- h. Waiver of appearance at a prove up by the parties.
- i. Waiver of a transcript from a prove up by the parties.
- j. If either side is a self-represented litigant, it should indicate their acknowledgment that they are not represented by opposing counsel and that they have had/waived the opportunity to confer with outside counsel prior to signing the Agreement.
- k. The parties desire that the Court approve their Agreement(s), incorporate it/them into the Judgment and enter the Final Judgment of Dissolution.
- l. The Agreement must comment as to resumption of the other names by the parties.
- m. The parties waive cross examination of the other party.
- n. The parties waive physical presence in Court for these proceeding as well as notice.
- o. Proof of completion of parenting class where applicable by both parties.

*A sample Affidavit is attached – this is **only a sample**.*

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
DUPAGE COUNTY, ILLINOIS

IN RE: THE MARRIAGE OF:)
)
PETITIONER'S NAME,)
 Petitioner,)
)
 and) CASE NO: 2020 D _____
)
RESPONDENT'S NAME,)
 Respondent.)

***AFFIDAVIT IN SUPPORT OF PROVE-UP
AS REQUIRED BY ADMINISTRATIVE ORDER 20-10 OF
THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL CIRCUIT***

The **Petitioner, INSERT NAME OR Respondent, INSERT NAME**, being first duly sworn on oath, hereby depose and state as follows:

1. I have personal knowledge of the facts stated herein.
2. I agree that the Court has personal jurisdiction over the parties and subject matter jurisdiction over these proceedings.
3. Irreconcilable difficulties and differences have arisen between **SPOUSE'S NAME** and I, which caused an irretrievable breakdown of the marriage. Past attempts at reconciliation have failed. Future attempts at reconciliation would not be practical, nor in the best interests of our family. We have lived separate and apart within the meaning of the Illinois Marriage and Dissolution of Marriage Act for a period of more than six (6) months.
4. No children were born or adopted by us during our marriage. **OR** One child **OR** **[Insert Number of Children]** Children were born to us during the course of our marriage: namely, CHILD[REN]'S INITIALS, born in YEAR OF BIRTH, presently CHILD'S AGE years old. No other children were born or adopted by SPOUSE'S NAME and me.
5. I am not currently pregnant. **OR** To my knowledge, **SPOUSE'S NAME** is not currently pregnant.
6. I have reviewed these Agreements in their entirety.
7. I understand the terms and conditions of these Agreements and I intend to be bound by them.

8. No one forced or coerced me into signing these Agreements.
9. I have entered into these Agreements freely and voluntarily.
10. I am not under the influence of any drugs or alcohol, or mental condition, that would impair my ability to understand these terms and execute these documents.
11. I believe that this Agreement is a fair and equitable division of the marital estate.
12. I have made a full and fair disclosure of all known assets and liabilities of myself and the marriage.
13. I hereby waive my physical appearance at a prove up of this matter.
14. I hereby waive a transcript from a prove up of this matter.
15. I hereby waive my right to cross-examine the other party to this proceeding.
16. I understand that this matter will proceed to Judgment without a full hearing and that no transcript shall be made of this prove-up proceeding.
17. I hereby waive physical presence in Court as well as notice of this proceeding.
18. I have completed the required parenting education class on INSERT DATE.
19. I hereby request the resumption of my former name of INSERT MAIDEN NAME.
20. I desire that the Court approve the Marital Settlement Agreement and incorporate it into the Judgment and enter the Final Judgment of Dissolution of Marriage.
21. I hereby request that the Court approve the Agreed Parenting Plan, i.e. Parenting Allocation Judgment, finding it to be in same to the best interest of the minor child, and incorporate it into the Judgment for Dissolution of Marriage.

PARTY'S NAME

CERTIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certify the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief, and as to such matters, the undersigned certify as aforesaid that they each verily believe the same to be true.

PARTY'S NAME

FIRM INFO ON BOTTOM