



: ANOKA COUNTY JUDICIAL TRAINING UPDATE :



‘Rule 15’ Type Questions To Finalize Divorce Proceedings

QUESTION: WHAT ADDITIONAL INQUIRIES SHOULD THE COURT MAKE, WHEN DIVORCING PARTIES APPEAR IN COURT TO PUT THEIR FINAL AGREEMENT ON THE RECORD, TO PROTECT AGAINST EITHER PARTY SUBSEQUENTLY ASKING TO REOPEN THE CASE?

ANSWER: THINK OF THIS AS THE ‘DIVORCE EQUIVALENT’ OF THE RULE 15 PETITION IN A CRIMINAL CASE. FAILURE TO ASK DIVORCING PARTIES THE QUESTIONS LISTED ON PAGE TWO (OR SOME VARIATION) SUBSTANTIALLY INCREASES THE RISK THAT ONE OF THE PARTIES MAY TRY TO REOPEN THE CASE BY MAKING CLAIMS SUCH AS:

1. I Was Feeling Intimidated, Depressed Or Wasn’t Thinking Clear That Day.
2. I Was Under The Influence Of Alcohol Or Drugs Or I Didn’t Take My Medication
3. I Didn’t Have Time To Talk With My Attorney or Was Otherwise Rushed
4. My Attorney Was Incompetent and/or Never Explained The Agreement To Me
5. I Didn’t Understand The Agreement
6. No One Gave Me A Chance To Ask Questions
7. I Never Had a Chance To Read The MTA or Proposed J & D
8. There Were Promises Made To Me Not In The Agreement
9. I Was Threatened and/or Coerced Into Making The Agreement



Note: Most attorneys do not make a good enough record to protect against all or most of the above concerns. An ounce of prevention at this stage will largely guarantee finality (except for cases actually involving fraud, misrepresentation or a deception on the court), saving you and the parties a great deal of time, expense and peace of mind.

Caution: Once parties have reached a final agreement, some attorneys will submit the MTA and J & D asking the court to approve the agreement and sign the order without hearing, depriving the court of the ability to make a full record. Although granting such a request may be appropriate in limited circumstances, when doing so you proceed at your own risk, especially if the proceedings have been contentious.

PAGE TWO CONTAINS A LIST OF SUGGESTED QUESTIONS THE PRESIDING JUDGE SHOULD ASK BOTH PARTIES PRIOR TO FINAL ACCEPTANCE OF THE AGREEMENT:

DISSOLUTION SETTLEMENT QUESTIONS/INSTRUCTIONS

1. Is there any reason why you may not be competent to enter into an agreement here today?
2. Are you currently under the care of any doctor or therapist for any reason? Are you taking any medications?
3. Are you today under the influence of any drug or alcohol?
4. Were you present as the agreement was read into the record by the attorneys?
5. Did you hear all of the terms of the agreement? Did you understand them?
6. Do you understand the consequences of this agreement? In other words, do you understand specifically what you are getting and what you are giving up?
7. Have you had a chance to discuss the case thoroughly with your attorney? Do you believe that he/she is fully advised as to all the important facts relating to your case? Have you been able to discuss the terms of the settlement agreement with your attorney? Are you satisfied that he/she has advised you fully about the ramifications of the agreement? Are you satisfied that he/she has represented your interests fully?
8. Do you have any questions about the agreement, either of me or of your attorney?
9. Do you believe that the agreement is a fair and equitable resolution of the issues between the two of you? Do you agree to be bound by it?
10. Do you wish me to accept the agreement and make it part of an order dissolving this marriage?
11. Has any person made any threats or promises compelling you to enter into this agreement?
12. Do you understand that once I approve the agreement, it is binding on both of you, and that it is very unlikely that you would be allowed to change your mind in the future?
13. Do you understand that you will not be divorced until the final papers are submitted by the lawyers and signed by me, and that that process may take a few days to several weeks?
14. Have you made full disclosure of your income, assets and debts to your spouse and his/her attorney? Do you believe that your spouse has made full disclosure of those items to you and your attorney?
15. If maintenance is waived, ask parties if they understand the permanent nature of the waiver.
16. Do you have any questions you would like me or your attorney to answer before we proceed?
17. Counsel, do you wish to inquire of your client?
18. Circulation of Findings, Who will draft and by when? Lawyers set the schedule.
19. Findings to have a signature line for each attorney, no signature line for the clients.