



JUDICIAL TRAINING & EDUCATION UPDATE



(Read Time – 10 minutes)

STIPULATED DIVORCE SETTLEMENT AGREEMENTS: HOW TO FINALIZE THE AGREEMENT ON-THE-RECORD

QUESTION: What 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: Failure to ask divorcing parties the questions listed on page four (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 clearly 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

Best Practice: *Before approving the agreement, build the record that will protect it.*

QUESTION: Is a Judge Required to Make a Record of a Final Divorce Settlement?

ANSWER: Not always—but even when a no-hearing option is available, an on-the-record hearing is often the wiser course in cases raising concerns about voluntariness, fairness, disclosure, custody, comprehension, or significant assets. **For example:**

When a hearing is NOT required:

Minnesota law does not require a hearing in every case. Under M.S. 518.13, subd. 5, the court may approve a stipulated dissolution and enter judgment without hearing when:

- **No minor children** are involved, and the parties submit a written stipulation resolving all issues;
- **Minor children are involved**, but:
 - The parties have executed a signed and acknowledged stipulation, and

- Both parties are represented by counsel

However, even in these situations, the court must still **independently review the agreement**, and **shall set a hearing** if:

- The agreement does not appear to be in the **best interests of the child**, or
- The agreement appears **unfair or contrary to justice**

Implication for All Other Cases – When a Hearing Should be Held:

Even when a no-hearing option is available, an on-the-record hearing may be the wiser course in cases involving voluntariness, fairness, disclosure, custody, comprehension, or significant assets.

A hearing and a corresponding on-the-record inquiry substantially reduces the risk of later attack under M.S. 518.145, subd. 2.

BEST PRACTICE FOR JUDGES AND ATTORNEYS

Minnesota law permits the court to approve a stipulated dissolution without a hearing when the statutory requirements are met, particularly where both parties are represented and have executed a written stipulation. However, in contested or emotionally charged cases, proceeding without making a record significantly increases the risk of later challenges under M.S. 518.145, subd. 2, based on claims of coercion, misunderstanding, or lack of full disclosure.

Accordingly, judges should ensure—and attorneys should request—a brief but thorough on-the-record inquiry in any case involving contested issues, significant assets, custody disputes, or other circumstances raising concerns about fairness, voluntariness, or disclosure. A clear record confirming the parties' understanding, voluntariness, and full financial disclosure remains the most effective way to protect the finality and enforceability of the judgment. [Shirk v. Shirk, 561 N.W.2d 519 \(Minn. 1997\)](#); [Clark v. Clark, 642 N.W.2d 459 \(Minn. App. 2002\)](#); [Santillan v. Martine, 560 N.W.2d 749 \(Minn. App. 1997\)](#)

If you would not be comfortable defending the agreement against a motion to reopen six months from now, make the record today.

CAUTION: Even when a hearing is held, the on-the-record questioning may not be good enough to protect against all or most of the claims (see top of page 2) commonly raised in support of a motion to reopen under M.S. 518.145, subd. 2. An ounce of prevention at this stage will substantially strengthen the judgment against later challenges (except for cases involving fraud, misrepresentation or a deception on the court), saving you and the parties a great deal of time, expense and peace of mind.

The following questions are designed to assist the court in creating a clear and complete record before accepting the parties' agreement.

ON-THE-RECORD DISSOLUTION SETTLEMENT QUESTIONS

Place Parties Under Oath: Best Practice is to place both parties under oath before conducting the on-the-record inquiry. While not expressly required by statute, sworn testimony strengthens the record. Rule 603 (Minn. R. Evid.).

ASK EACH PARTY INDIVIDUALLY OR JOINTLY

A. Capacity / Ability to Proceed

1. Is there any reason why you may not be competent to enter into an agreement 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. Are you able to understand and participate today?

B. Understanding of the Agreement

5. Were you present as the agreement was read into the record by the attorneys?
6. Did you hear all the terms of the agreement? Did you understand them?
7. 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?

C. Attorney Consultation and Advice

8. Have you had a chance to discuss the case thoroughly with your attorney? Do you believe that your attorney 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 your attorney has advised you fully about the ramifications of the agreement? Are you satisfied that your attorney has represented your interests fully?

D. Child-Related Provisions

9. **Custody/Parenting Time:** Do you believe that the agreement is in the child's best interests?
- Domestic Abuse Presumption (if applicable): Confirm awareness of any statutory presumptions affecting custody decisions. M.S. 518.17, subd. 1(b)(9).
10. **Child Support / Tax Issues:** If deviating or allocating tax benefits:
- Do you understand the terms regarding the allocation of dependency exemptions and related child tax benefits? M.S. 518A.38.
 - Deviation (if applicable): Do you understand what the guideline child support amount would be and that you are agreeing to a different amount?

E. Financial Disclosure and Assumption of Risk

11. Have you made full disclosure of your income, assets and debts to your spouse and his/her attorney? Do you believe your spouse has made full disclosure of those items to you and your attorney? Do you understand that some assets or values may change or be uncertain, and you are accepting that risk as part of this agreement?

F. Spousal Maintenance (Alimony)

12. See page 6 for special questions regarding Spousal Maintenance.

G. Questions, Fairness, and Consent

13. Do you have any questions about the agreement, either of me or of your attorney?
14. 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?
15. Do you wish me to accept the agreement and make it part of an order dissolving this marriage?

H. Voluntariness / No Coercion

16. Has any person made any threats or promises compelling you to enter into this agreement?

I. Finality and Enforceability

17. Do you understand that once I approve the agreement, it is binding on both of you, and that it is very unlikely you will be allowed to change your mind in the future?
18. Do you understand that this agreement, once approved, will be incorporated into the judgment and decree and may be enforced as a court order?
19. Do you understand that you will not be divorced until the final papers are submitted by the lawyers and the judgment and decree is entered by the court, which may take several days to several weeks after submission.

J. Counsel Follow-Up

20. Counsel, do you wish to inquire of your clients?

K. Drafting and Submission of Final Papers

21. Circulation of Findings; Who will draft and by when?

SPOUSAL MAINTENANCE: ON-THE-RECORD QUESTIONS**A. Understanding of the Right**

1. *Do you understand what spousal maintenance (alimony) is and that you may have a right to request it from the court?*
2. *Have you discussed your right to spousal maintenance with your attorney?*

B. Financial Disclosure / Informed Decision

3. *Do you believe you have enough information about your spouse's income, assets, and financial circumstances to make an informed decision about spousal maintenance?*
4. *Do you believe there has been full and accurate disclosure of all relevant financial information?*

C. Understanding the Terms of THIS Agreement

5. *Do you understand the specific terms of your agreement regarding spousal maintenance—whether it is waived, reserved, or set at a specific amount and duration?*

D. Waiver of Maintenance (If Applicable)

6. *If you are waiving spousal maintenance, do you understand that you are giving up any claim to maintenance now and in the future?*
7. *Do you understand that this waiver is permanent and that you will not be able to return to court later to request maintenance, even if your circumstances change?*

E. Reservation of Maintenance (If Applicable)

8. *If maintenance is reserved, do you understand that the court is not deciding the issue today, but that you may request maintenance in the future if your circumstances justify it?*
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F. Karon Waiver (If Applicable – CRITICAL) [Karon v. Karon, 435 N.W.2d 501 \(Minn. 1989\)](#)

9. *Do you understand that, under your agreement, spousal maintenance cannot be modified in the future?*
10. *Do you understand that, by this agreement, the court is giving up jurisdiction to modify spousal maintenance, even if there is a substantial change in circumstances such as job loss, illness, or disability?*

Limited Karon Waiver: The parties may, by stipulation, agree to a narrower limitation on future modification of spousal maintenance. For example, the stipulation may restrict modification of amount, duration, or modification under certain defined circumstances. Any such limitation is effective only if the requirements of M.S. 518.552, subd. 5 are satisfied.

G. Fairness and Voluntariness

11. *Do you believe this agreement regarding spousal maintenance is fair and equitable?*
12. *Are you entering into this agreement freely and voluntarily, without any threats or promises outside the agreement?*
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H. Final Confirmation

13. *Understanding everything we've discussed, do you still want me to approve your agreement regarding spousal maintenance?*

Finality is built on the record you make today—not the motion you defend tomorrow

This Training Update is also available on the [Minnesota Judicial Training and Education Website](#). If you find this update helpful, please consider forwarding it to colleagues who would benefit from timely insights on Criminal and Family Law, Rules of Evidence, and Trial Advocacy.

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