

EXHIBIT 5E—Separation AgreementCOMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

MIDDLESEX DIVISION

C.A. NO. 17D-9876-DV1

_____)	
SHEILA JONES,)	
Plaintiff)	
)	
v.)	SEPARATION AGREEMENT
)	
STANLEY JONES,)	
Defendant)	
)	
_____)	

This part is the heading, which identifies the case by Docket or Civil Action Number (C.A. No.), the parties' names, the court, and the county. The court is the Probate and Family Court, and the county is Middlesex.

This agreement is made between Sheila Jones of 1234 High Street, Melrose, Middlesex County, Massachusetts and Stanley Jones of 5678 Cedar Street, Woburn, Middlesex County, Massachusetts. The parties were married in Boston, Massachusetts on January 1, 1997. There are two children born of the marriage, namely Nancy Marie Jones, born on January 1, 1999 and Mary Louisa Jones born on January 1, 2001. The couple separated on or about January 1, 2007. They last lived together at 1234 High Street, Melrose, Middlesex County, Massachusetts. Mrs. Jones filed a Complaint for Divorce on June 1, 2017, alleging as grounds an irretrievable breakdown of the marriage.

This is the statement of the facts. It describes what the divorce is all about. It is not necessary, but it helps to be sure that everyone understands some of the basic facts to be the same. Later on, no one can say that Nancy was not a child of the marriage, or that the marriage actually took place in 1995.

The parties have both had the opportunity to consult with the separate and independent attorneys of their choice, although Mr. Jones has chosen to proceed unrepresented. The parties enter into this agreement freely and voluntarily, without any restraint or coercion. Each party makes this agreement in reliance on the representations of the other party with regard to his or her financial position. This agreement resolves all issues raised by the Complaint for Divorce, including custody and visitation of the minor children, division of liabilities and assets, support for the children and alimony.

This section is here to describe what the process was in negotiating the separation agreement and what issues are being resolved.

It is possible for one spouse to sue the other for personal injury. This may be important for victims of domestic violence. Some separation agreements say that all issues between the parties back until the beginning of time are settled in the divorce. This means that one spouse abused by the other gives up the right to sue for personal injury. That is not something a judge could order at trial and should not be given up without something of value in return. If you were a victim of domestic abuse, then you may wish to speak with a lawyer experienced in such cases to get some idea of the value of the case you would be waiving. Remember, strict time limits apply to personal injury cases. You may wish to speak to a lawyer sooner rather than later. To protect the rights of a victim, this agreement is more limited in its scope.

___ Sheila Jones

___ Stanley Jones

■ CHAPTER 5: DIVORCE

Each party hereby waives and releases any and all rights that he or she may now or hereafter acquire as spouse under the present or future laws of any jurisdiction to make a claim for a share of the estate of the other or to act as executor or administrator for the estate of the other. However, nothing in this paragraph is intended to or shall constitute a waiver of any rights or claims he or she may have against the other's estate to enforce this agreement or to enforce a judgment of another court of competent jurisdiction. Nor shall this paragraph constitute a waiver by either party of any testamentary provisions which the other may voluntarily make for him or her.

In general, one spouse automatically receives at least some of the estate of the other spouse when he or she dies. Once you get divorced, you give up your rights to receive a share of your spouse's estate. This paragraph acknowledges this fact. However, this paragraph says that if the deceased spouse owed the other some money, such as back child support, the surviving spouse could still sue for it. Again, this paragraph is not absolutely necessary, but it does explain what you both understand that the situation would be regarding the parties' estates. If a spouse dies prior to the passage of ninety days from the date the divorce was entered into the court's docketing system, then the divorce is dismissed. In many cases, this could mean that the other party retains his or her rights as a spouse.

From this date forward, the parties shall continue to live separate and apart from one another for the rest of their lives. Each shall be free from the interference, authority and control of the other as if they were unmarried.

This paragraph is found in some agreements and means only that once you are divorced, you live separately. Oddly enough, many lawyers will write out the same obvious things routinely because it is what they have always done. Many judges do not allow this language any longer, because it implies that a restraining order will issue.

Each party indemnifies the other from and against any losses incurred by the other as a result of a breach of this agreement, and from and against all attorney's fees costs and expenses incurred in enforcing the provisions of the within agreement, providing however, that it is within the power of the breaching party to perform.

This paragraph means that if one party fails to live up to the terms of the agreement, then she or he will have to pay any costs required to enforce it. This paragraph states that if you have to hire an attorney to enforce the agreement, the other side will have to pay the attorney fees and your other costs. If the other party cannot perform, he or she will not have to pay the costs.

For example, if your former spouse is fired and has no income to pay child support, then, at least for a while, it might not be in his or her "power to perform." It is possible that no costs would be assessed. The payment of costs is generally under the judge's discretion, and not all judges will order costs. Therefore, it is important not to rely on this provision too much.

The failure of either party to insist in any instance upon the strict performance of any provision of this agreement shall not be construed as a waiver of such provision and same shall nonetheless continue in full force and effect.

Even if you and your spouse generally do not follow the agreement, you are still bound by its terms and not by your new ways of dealing with each other. Each of you can decide later to enforce the agreement strictly.

This agreement shall be construed and governed according to the laws of the Commonwealth of Massachusetts.

You and your former spouse may move to other states, but the terms of your agreement will still be viewed through the laws of Massachusetts. Please refer to Chapter 16, Modifications, as well.

This agreement will become operative at the time a Probate and Family Court finds it fair and reasonable and shall MERGE with the judgment of divorce.

___ Sheila Jones

___ Stanley Jones

There is a significant choice here between using the term “merger” or “survival.” When an agreement “merges” with the judgment of divorce, then you or your spouse can ask that any of the terms be modified upon a “significant change in circumstances.” You can enforce it only by going to the Probate and Family Court and filing a contempt action. Your spouse can claim that he or she is not able to live up to the terms of the agreement and the judge may not order him or her to comply with the agreement. On the other hand, it is sometimes a good idea for you to have that defense available to you.

When an agreement “survives” the judgment of divorce, it is a separate contract that binds you just the way any other contract does, such as a contract to pay your credit card bill or to buy a house. It can be enforced by going to the Probate and Family Court or the Superior Court. The defense of inability to perform is not available with this type of agreement. A surviving agreement cannot be modified easily. See Chapter 16 for more information on modifying the agreement.

Issues relating to your children, such as support and custody, cannot survive.

Theoretically, if you sign a surviving agreement that becomes operative right away, you could be bound by it immediately. However, later you are going to take it to a judge to have it made part of the court’s decision. The judge reads it and decides if it is fair and reasonable. If it is not, then the judge will not approve it. You do not want to be bound to an agreement that the judge does not find fair. For that reason, the sample agreement does not take effect until the judge makes the finding of fairness.

Custody of Mary

Sheila Jones shall have sole physical custody of the minor child of the marriage, named above. The parties shall share legal custody.

Chapter 9 describes more fully the meaning of custody arrangements. What you may wish to consider is whether you want to include some provision that will describe more fully what you both mean by joint legal custody.

The example above may not be suitable language for a case where the noncustodial parent is not involved in the child’s life or may be difficult to locate.

If you are a survivor of domestic violence, you may not wish to share legal custody. In some cases, it may be inevitable unless you go to trial and even then, you may have to appeal the judge’s decision. It is especially important that you tailor the language to reflect your safety concerns and the well-being of your children. For example:

Mr. Jones shall have no right of access to any records containing information concerning Mary, including medical, school, counseling, personnel or any information or data held by another person or agency concerning her.

It may be that you and your spouse have a history of not being able to agree on subjects related to the children. One spouse may be often unavailable to assist with decisions. Sometimes the following provision can assist you.

The parties shall have shared legal custody and shall make every effort to resolve significant issues relating to the children by agreement. If they are unable to agree, then Mrs. Jones shall make the final decision. Mr. Jones shall be informed of such decision in a timely fashion and he may bring the matter before the Probate and Family Court.

___ Sheila Jones

___ Stanley Jones

Support and Maintenance

Child support is discussed in Chapter 8. Described below is at what time the child support obligation will end. The end of this obligation is defined as the time when the child becomes emancipated. The statute sets forth this definition, which could be changed according to the parties' wishes. For example, you might wish to balance payment of college costs against payment of child support for the child who is living in a dorm or apartment at school.

Mr. Jones will be obligated to pay child support by wage assignment in the amount of \$100 per week, according to the Guidelines of the Massachusetts Probate and Family Court. He will pay such child support until the emancipation of the minor children, which for each child will be on the occurrence of the first of the following events:

1. The marriage of a child;
2. The death of a child;
3. The enlistment of a child in the military, on the date actual service in the military commences;
4. The attainment of the age of 18, providing the provisions of paragraphs 5 and 6, below, do not apply;
5. The attainment of the age 21, providing that the child resides primarily with the custodial parent and is principally dependent upon the custodial parent and the provisions of paragraph 6, below, do not apply;
6. The attainment of the age of 23, providing that the child is engaged in education or training programs, except for summer employment.

A child shall be considered to reside primarily with the custodial parent notwithstanding any temporary residence at an educational, medical, camping or other facility. If a child is disabled at the time when she or he would otherwise be emancipated, the issue may be raised before the Probate and Family Court to establish further order of appropriate child support.

The parties agree to co-operate in application for financial assistance in higher education costs. Each party will contribute to the children's educational expenses according to his or her ability to do so. If no agreement can be made between the parties, this issue can be brought forward for resolution by the Probate and Family Court.

It is important to make sure there is some statement about the parties' obligation for payment of college costs. Especially if your children are older and you think they will go to college, be sure to include this.

When both children are emancipated, Mrs. Jones may bring forward the issue of alimony to be resolved by the Probate and Family Court, applying the factors set forth in G.L. c. 208, § 34.

In most cases involving parties with moderate incomes, it is very unlikely that one parent will be ordered to pay both child support and alimony. With this statement, you keep the possibility of paying alimony open after the child support is ended. Otherwise, you will have to show a substantial change in circumstances. The other side may be understandably very reluctant to include this provision. It is an area for negotiation.

Health and Life Insurance

Mr. Jones shall provide health insurance for the children and Ms. Jones through his employment when possible. The parties shall share equally the necessary uninsured medical, counseling, dental and orthodontic expenses for the parties' unemancipated children. Mr. Jones shall maintain life insurance through his employment, if available, for the benefit of the children of the marriage until they are emancipated. Such insurance shall be payable to Ms. Jones as custodian of the funds.

___ Sheila Jones

___ Stanley Jones

Sometimes one party wants the insurance money to go to a trust and to have another person serve as trustee. This is a cumbersome arrangement that requires that an actual trust document be drafted. It may limit the custodial parent's ability to spend the money on meeting the children's daily needs. In instances where there is a significant sum of money at stake, it may make sense to consider a trust.

Liabilities and Assets

The parties have divided the personal property in a temporary order entered on August 14, 2007. All tangible personal property in the possession of Mr. Jones is his sole and separate property and all tangible personal property in the possession of Ms. Jones is her sole and separate property. The parties have relied upon the information they have supplied each other in the division of assets.

Sometimes there will be a list of assets to be divided in the future. Identify such property as specifically as possible and be clear about the date and the manner of transfer. For example:

On January 1, 2008, at noon, Mr. Jones will remove from the marital home the following items:

Grandfather clock left to him by his mother,
Stainless steel pots received as a wedding gift, and
Bedroom set, including double bed, bureau, armoire and two night stands which were in the master bedroom at the time of separation.

OR

The amount of Mr. Jones' pension through the Gizmo Corporation which accrued during the marriage, from the date of the wedding up to this day, will be divided equally between the parties. Counsel for Mr. Jones will draft a Qualified Domestic Relations Order to effectuate this division, which will not be unreasonably delayed.

Division of pensions and certain other financial assets require special expertise. Be sure that these transfers actually take place. It would be very awkward for Mrs. Jones to discover fifteen years from now that Mr. Jones is collecting his pension and nothing was done to protect her rights.

Mr. Jones will be responsible for the MasterCard bill and Mrs. Jones will be responsible for the Visa bill.

This is another area for negotiation. It is important to be realistic about payment of debt. If you cannot afford to make the payments, do not make an agreement to do so. A provision such as this one could preclude you from eliminating your obligations through bankruptcy. If Mrs. Jones files for bankruptcy, including joint debts she agreed to pay, then the company holding the debt will try to get it paid by Mr. Jones. Presumably, Mr. Jones bargained away something in order to obtain Mrs. Jones' agreement to assume responsibility for the debt.

The parties agree that they will not hereafter make any purchases or contracts or incur any expenses in the name or upon the credit of the other. Each will indemnify and save each other harmless from any and all liability, loss or expense, including reasonable attorney's fees arising from such purchase or contract made by him or her after the date this judgment is entered. The parties warrant and represent that they will not hereafter use the other's name for the purposes of having credit extended to him or her. Both parties will bear the costs of their own attorneys for this action.

This means that you cannot use your spouse's credit, such as using a credit card in your spouse's name. If you do, then he or she can sue you and make you pay for attorney fees.

____ Sheila Jones

____ Stanley Jones

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals.

Sheila Jones

Stanley Jones

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

Date:

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared Sheila Jones, proved to me through satisfactory evidence of identification which was/were

_____, to be the person who signed the preceding document in my presence, and who, being duly sworn, made oath that the foregoing Agreement was her free act and deed.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

Date:

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared Stanley Jones, proved to me through satisfactory evidence of identification which was/were

_____, to be the person who signed the preceding document in my presence, and who, being duly sworn, made oath that the foregoing Agreement was his free act and deed.

Notary Public
My Commission Expires:

Notaries should check to make sure you are who you say you are. It would be very unhelpful if your spouse could have someone else sign your name to a separation agreement. It is also a good idea to initial or sign every page and every change that was scratched out or written in. That way, there is no confusion about which version was the final one and exactly what you agreed to.