

GENERAL OVERVIEW OF THE DIVORCE PROCESS

You have decided, or your spouse has decided, to end your marriage. Your friends, relatives and co-workers all have advice on what you should do, what to expect and who to consult. What should you do next?

The purpose of this article to give you a general overview of the process, and assumes there are no emergency matters to be handled (e.g., domestic violence, snatching of a child, etc.). Please make use of the links to other articles to gain a greater understanding of specific topics, including that on choosing an attorney, and do I need one.

Everyone calls it a divorce, but it is officially called a dissolution of marriage. The process begins by filing a Petition For Dissolution of Marriage. This can be done by one party, or by both together (called a Co-Petition For Dissolution of Marriage). If one person files, then the other must either be served with a Summons and the Petition, or sign a waiver of service. If a person is served with papers, he/she has 20 days to file a Response. The Response can be done individually or with the help of a lawyer. The Response advises the Court that one is taking part in the legal process. The failure to file a Response can result in the Court entering orders against a party without that person's input. No Response is necessary when there is a Co-Petition filed, since both spouses have asked for the divorce.

Once that initial stage is passed, two things happen quickly. One is that each spouse is required to make certain mandatory financial disclosures (known as Rule 16.2 disclosures). The other is that the court will set an Initial Status Conference, at which the parties and lawyers, if any, must appear. This is a relatively informal meeting with the Court to determine what needs to be done to get the case ready for settlement or trial. If needed, the court will order expert witnesses appointed, schedule a hearing for temporary orders (on such matters as child support, maintenance, parenting time), and schedule a final trial date in the event a settlement is not reached prior to that time. The vast majority of cases are, however, settled without a trial.

Next is a period of discovery, in which each party may be required to make additional disclosures of documents and information. If custody (now known as allocation of parental responsibilities) is disputed, the court may appoint a Child and Family Investigator (CFI) or Parental Responsibilities Evaluator (PRE) to look into the situation and make a recommendation to the parties and court.

Before the court will allow you to have a final orders hearing, you will have to engage in mediation. The time to mediate is once you are satisfied that they you have the information necessary to make informed decisions about how to resolve matters. However, independent of the mediation process, you and your spouse may negotiate directly with each other, and your attorneys should be exploring settlement as well.

If your case is settled, the attorneys will draft a Separation Agreement describing the terms of your agreement. If it is not settled, then there will be a trial. At trial the court will focus on how to fairly divide property and debts, whether and for how long maintenance is needed by a spouse and whether the other spouse can afford to pay it, and on the best interests of the children. The court will not be interested in marital misconduct, and does not pass judgment on you as a person. Rather, the court will resolve disputes concerning any outstanding issues. Trial is an expensive option, and is rarely in a client's best interest. However, sometimes it can not be avoided.

The court, and the legal authority under which it must operate, does not generally take much notice of matters of emotion. However, the reality is that divorce is an emotionally difficult process in which all that you value (children, self esteem, assets, income) is up in the air. Expect that you will, at different times, feel sad, angry, helpless, hopeful and frustrated. We know because most of us have been there. We recognize this in our clients, and do our best to help. It may help you to try to remember that your divorce is not your life. While it is likely to overpower everything else at times, remember that these feelings will pass eventually. The divorce will necessarily involve both legal and emotional elements. Our job is to help you navigate the legal issues, even as we are aware of the emotional component of the divorce.

We look forward to meeting with you and helping you through this difficult time.