

Divorce

The process of becoming divorced is well documented and appears easy when reviewed on paper. For those couples that are able to proceed through the divorce process with little to no litigation, it is not very difficult and can be completed in as little as 90 days from start to finish. In fact, depending on where you live, you may not even need to appear in Court to obtain a divorce. However, there are very few couples that are able to put aside their differences to the point where they can achieve the foregoing.

A more common divorce experience is that a couple, either together or as an individual, decides to seek a divorce. A divorce petition is filed with the court that starts the legal process. The Divorce Petition is a document that gives the Court some basic information about you, your spouse, your children and why you want a divorce. The entire process typically takes between one to two years for you to become divorced. Certainly, it can take less time if you come to an agreement with your spouse.

Either before or after the divorce case is commenced, a certain amount of investigation should be undertaken so that the court or your attorney has a full understanding of the facts of your unique case. This investigation can be as simple as you telling your story to the court or your attorney. Or, it can include significant investigation into personal actions, past electronic communications, financial status, the welfare of the children, and who should have primary or sole responsibility to raise the children, to name just a few areas of potential interest.

One of the early questions that must be answered in the divorce process is whether you are going to file your divorce as an uncontested or no-fault divorce or as a fault based divorce. If you elect a no-fault divorce then the Court will not consider any fault issues. Further, the Court will divide the marital assets and debts as equitably as possible.

If you decide to file a fault based divorce, the cost of divorce and the length of time it takes to resolve the case typically increase over a no-fault divorce. Further, if you are able to prove that, 1) you have fault grounds for your divorce, and 2) the fault was the reason why the marriage ended, the Court is free to divide the marital assets and liabilities in such a way as the Court feels compensates the innocent spouse and, in effect, "punishes" the offending spouse.

Once the grounds for the divorce have been decided, the divorce petition must be drafted and served upon the other spouse so that the other spouse is informed that you want a divorce and what is the basis for the divorce. Service can occur by having the petition delivered to your spouse by the sheriff or by having your spouse pick up the petition at the sheriff's office.

Your spouse will have a certain amount of time to contact the Court after being served with the divorce petition. If the spouse fails to contact the Court and tell them they want to participate in the divorce process, the Court will likely grant your request for a divorce. If, on the other hand, your spouse does contact the Court and tells it that he or she would like to participate in the divorce process, then the divorce process will continue.

The process will continue through the investigation phase known as Discovery. The discovery phase includes sending and receiving written questions (interrogatories) between each spouse that must be answered under oath. The each spouse and potential witnesses are questioned under oath by the attorneys who represent you and your spouse. A stenographer at what is

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known as a Deposition record the answers. It is not uncommon to be several depositions depending upon how many people have to be questioned.

Typically, at some point during the discovery phase of the divorce process the Court will hold what is known as the Temporary Hearing. This hearing is where the Court will decide how long you will continue to live in the marital home, who will have temporary custody of the children and will make orders which deal with financial issues such as temporary child support and temporary alimony. These decisions will continue to be in effect until the final order in the case is issued by the Court unless there is an earlier order that changes the temporary order.

Many divorce cases ultimately settle when the couple comes to an agreement that is approved by the Court. The attorneys in the case try to come to agreements that the couple will agree with. In an effort to help people come to an agreement that will resolve their divorce, the Court schedules a meeting with a Court appointed mediator. While you are not required to settle your case unless you fully agree to do so, you are required to participate in the mediation process. The mediator tries to get the couple to look at whatever differences they have in a new light and bring the case to a close by their mutual agreement. The mediators do not try to force an agreement. You are always free to settle your case or take your case to trial.

Further, many Courts are requiring couples that have children to participate in a short course (a few hours) that attempts to educate you as to the impact the divorce process has or may have on your children. Further, the courses seek to make you more mindful of what you say and do when the children are present. If the Court requires your attendance at this course, you will be notified by the Court to attend.

Divorces end in one of several ways. The first way is to have a full trial before a judge and the judge will issue a decision over the unresolved issues. The second way to end a divorce is for you and your spouse to agree on the terms that will end the divorce. This agreement is submitted to the Court and in most cases, the Court will approve the agreement. The other way the divorce process ends is by you dismissing your divorce case. If you do this you will remain married and your case is over.

If your case goes to trial, the divorce trial can take a few hours or can take several days. It will require you to present evidence to the judge that supports your case. This can be done through your testimony and the testimony of your spouse, through documentary evidence, and through third party witnesses. Once the evidence is presented and the trial is over, it will typically take a few weeks for the Court to issue its written decision. This will be a Permanent Order in your divorce case. Typically, your divorce will be final thirty days after the Court issues the Permanent Order.

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