

# FAMILY LAW INFORMATION



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Few people are familiar with the divorce or dissolution process. These two words are interchangeable and mean the same thing: the end of the marital relationship. The following is a typical schedule of what will/should/might happen. Please feel free to ask about everything and anything you do not understand.

#### FILING THE COMPLAINT OR PETITION AND THE RESPONSE:

- a. Meet with the attorney to discuss your case and options.
- b. Decision, made by you, to retain the attorney and go forward.
  - (1) Complete information packet;
  - (2) The full amount of the retainer (per the retainer agreement);
  - (3) The signed retainer agreement for services;
  - (4) Deeds to property and all other financial documents;
  - (5) Income tax returns for the last three (3) years.
- c. The attorney and staff will prepare the complaint or petition or response and will complete the filing of any documents.
- d. Second Conference-Review and sign documents and discuss strategy with attorney.
- e. Your petition is then filed with the Clerk of Court or Court Administrator. Current filing fees are \$80 for North Dakota and \$400 for Minnesota. Your spouse receives copies of the papers by:
  - (1) Mail, if he/she is cooperative; or
  - (2) Process server if he/she is not cooperative (cost for process server is approximately \$25).
- f. Once the petition is filed and the parties receive copies, both sides can begin discovery, negotiate, settle, or seek temporary support and custody. This can be done in two ways:
  - (1) If your spouse is cooperative:
    - (a) Cooperative discovery and exchange of information follows between both spouses and their attorneys;
    - (b) Support and bills are paid by mutual agreement of the parties or by written stipulation prepared by an attorney.

- (2) If your spouse is uncooperative:
  - (a) A hearing is sought to remove your spouse from the home/require child support/order spousal maintenance or a division of income as needed;
  - (b) Formal discovery is sought:
    - A. Interrogatories: Written questions that are sent to spouse. Spouse has 30 days to complete and return them;
    - B. Deposition: You and your spouse must answer questions in person before a court reporter, usually in the attorney's office;
    - C. Subpoenas are prepared by your attorney, issued by the Court and served on your spouse, his/her employer, psychiatrist, psychologist, etc., requesting such documents as wages, business records, doctors records, etc.;
    - D. Physical or Mental Evaluation: You, your spouse and/or your children are ordered to be examined by a psychiatrist or psychologist.

NOTE: Everything we can do to the other side, they can do back.

#### Alternate Dispute Resolution (ADR):

- (1) Minnesota-Initial Case Management Conference (ICMC) and Early Neutral Evaluation (ENE): A team of Court sponsored and trained experts make recommendations to you and your attorney after a 2 to 4 hour meeting and you can decide whether to settle on those terms. The parties pay the neutral experts.
- (2) North Dakota-Mandatory Court sponsored mediation for cases involving minor children. Prepare for everything as if for trial-all financial information is exchanged. The North Dakota Supreme Court pays a mediator for up to 6 hours to try to reach resolution by agreement.

## **DEFAULT, SETTLEMENT AND TRIAL:**

The divorce or dissolution can be ended in three ways: a no contest dissolution called default; a settlement of all issues between the parties themselves with or without hearing; or by a Trial, where a Judge settles all unresolved issues.

### **a. SETTLEMENT WITH A HEARING:**

If an agreement between the parties has been reached, written and signed, a hearing date for the dissolution can be set if necessary. In many cases the hearing is waived.

#### **(1) HEARING:**

The petitioner/plaintiff attends the hearing. The hearing will be held before a Judge. After answering a few questions affirming your petition, you will be restored to the status of a single person. Your spouse may need to attend the hearing.

#### **(2) THE PITS:**

No Agreement can be reached. Then a decision must be made to:

- (a) Agree to your spouse's terms; or
- (b) Try one last time to compromise; or
- (c) Request the Court to set a hearing date for Trial.

### **b. TRIAL:**

The Trial process is the most expensive way to reach a divorce or dissolution. Both spouses submit their unresolved issues to the Court and the Court resolves them for the parties. The Trial process is divided in two stages:

#### **(1) PRE-TRIAL**

- (a) Both sides prepare for Trial. Final discovery is conducted and pre-Trial motions are filed.
- (b) Conference time with the attorney is scheduled as needed.
- (c) During this time you must complete a list of the names and addresses of witnesses and documents to be used at Trial.
- (d) By this time you must also have a proposal of what you believe is a fair way to resolve your differences for the Court.

(2) TRIAL:

A Trial takes place approximately six months to one year from the date of filing your petition, and lasts one to three days on the average.

The Judge will hear both sides and decree a compromise of what he/she believes is fair. It may or may not be final as of the hearing. Many Judges take matters under "advisement" and make their ruling at a later time. We are then notified of the decision by mail/e-mail.

(3) COURT RULING AND DISSOLUTION:

Once the Judge rules at a Trial, custody, support and property division will be determined and you and your spouse will be restored to the status of single persons upon the Judge's rendering of a decision.

(4) APPEALS:

- (a) You may ask for a new Trial by filing a Motion giving reasons (new evidence, etc.) within a few days of the Judge's signing the Decree.
- (b) You have a very short time after the signing of the final Decree to file an appeal. The party seeking the appeal must post a bond and provide transcripts of the Trial. There is no appeal from a Decree reached by settlement.