

DIVORCE LEGAL PROCESS

The following information is a general outline of the divorce process.

This is intended to answer your general questions and concerns. It does not, however, contain legal advice or answers for the issues in your personal case. You should consult with a lawyer to discuss options and legal ramifications.

THE ACTION

The divorce action is begun with the filing and service of the Summons and Petition for Divorce. If you are the Petitioner, your spouse will need to be served with these pleadings. This may be accomplished by (1) your spouse voluntarily receiving and signing for the papers, in which case he or she could make arrangements to do so at your lawyer's office or at the office of his or her lawyer, or (2) he or she may be served by a process server. It is also an option to file a Joint Petition for Divorce which both you and your spouse sign.

If you are the Respondent (you have been served with papers), then you will need to answer the Petition for Divorce. You or your lawyer may draft a document called the Response which will state your position as to each of the claims made in the Petition for Divorce. You may also take this opportunity to initiate your own claim for divorce, called a Counterclaim, in addition to the Response.

If it is necessary to have the court set the temporary terms and conditions the parties are to follow during the pendency of the action, then an Order to Show Cause for Temporary Order and an Affidavit for Temporary Order will be filed concurrently with the Summons and Petition, or shortly thereafter. The Order to Show Cause for Temporary Order contains the date of the hearing and the request for the terms to be set. This first hearing is heard by a Family Court Commissioner. It is usually held within three to six weeks of the filing of the Order to Show Cause.

The Temporary Order issued as a result of the first hearing may include provisions for the following relief: maintenance/spousal support for either party; support for the minor children; removal of a spouse from the home; custody of minor children and physical placement periods; determination of who shall make mortgage payments and meet other obligations while the action is pending; and non-depletion of assets.

If you or your spouse disagree with the Temporary Orders issued by the Family Court Commissioner, you may request a review within a limited period of time. The review would be heard by a judge who could then modify the Family Court Commissioner's orders.

Prior to the first hearing you will need a completed Financial Disclosure Statement, copies of your wage statements for the past eight weeks and federal and state tax returns for the past two years. Whether or not there is a first hearing in your case, the Financial Disclosure Statement must be filed with the court within 90 days of the start of the action.

Most counties require parents to attend a Parent Education Program to proceed with the case. In addition, if you have children and there is no agreement between you and your spouse as to their custody/placement, then you will be referred by the court to the director of Family Court Counseling Services for mediation of the contested issues. If mediation does not result in an

agreement, it will also be necessary to petition the court for the appointment of a Guardian ad Litem (a lawyer appointed to represent the interests of your children); a custody study may also be ordered. Most courts require that each party immediately forward a deposit to the Guardian ad Litem (GAL) and that the subsequent fees be split by the parties. The GAL will conduct an investigation and prepare a recommendation for the court as to what situation would be best for the children. The GAL may also request psychological evaluations.

If your spouse does not voluntarily disclose this information, you and your lawyer may use a formal discovery process. This would include the possibility of a deposition of your spouse or other witnesses, interrogatories (questions submitted in writing to be answered in writing, under oath), or a request for production of documents such as bank statements, cancelled checks, etc. Formal discovery is more time-consuming and costly than voluntary cooperation.

A Pretrial Hearing may be scheduled with the judge assigned to your case after 120 days have lapsed since the respondent was served with the Summons and Petition for Divorce. If all issues in your case have been settled, Financial Disclosure Statements have been filed with the court by both parties and a Marital Settlement Agreement has been signed by both parties, the Pretrial Hearing date may be used as a default date, *i.e.*, a final divorce hearing. If there are still issues in dispute, the Pretrial Hearing will consist of the lawyers meeting with the judge to apprise the judge of the status of the case, obtain necessary Orders for appraisals or other experts and to schedule a trial date. Your case will then be treated as a contested matter and proceed toward trial. If an agreement is reached and signed, a prompt final hearing date can generally be scheduled.

If either you or your spouse fail to abide by any court Order (for example, not making a mortgage payment as ordered or not allowing placement with the children to occur as ordered), the court may be asked to hold the offending spouse "in contempt" and to impose appropriate sanctions (punishment).

DO'S & DONT'S

A divorce is an unusually stressful and difficult time for all involved. Each spouse may at times be tempted to act in a less than rational or appropriate manner. Please read through the following list of common sense "do's and dont's" carefully and refer to it as often as necessary:

1. **DO** follow all court Orders exactly. Do not unilaterally disobey the Order simply on the basis you do not agree with it.
2. **DO NOT** alienate the children from their other parent. Children want to love both parents regardless of how the parents feel about each other.
3. **DO NOT** discuss your marital problems with the children. Remember, you are an adult with an adult's resources to handle stress; they are children, with only a child's capacity to

deal with conflict. Urging a child directly or indirectly to take on your negative feelings may have long-term negative consequences.

4. DO pick up the children and return them or have them ready for pick up at the time agreed upon when you and your spouse have physical placement rights. Be sure that any changes in court-ordered placement schedules occur by mutual agreement.

HANSEN & HILDEBRAND, S.C.

126 N. Jefferson Street

Suite 401

Milwaukee, WI 53202

414-273-2422
