

Basic Questions About Divorce

How is a divorce started? A divorce is commenced (started) when one party (or his/her attorney files a Summons with Notice (or Summons & verified complaint) with Notice of Automatic Orders and Notice of Continuing Health Care Coverage is filed in the County Clerk's Office. In order to start an action, a filing fee of \$210.00 has to be paid to the County Clerk. The Summons with Notice (or summons & verified complaint is then served on the other party).

How does someone get served? Anyone over the age of 18, except one of the people named in the summons, can serve the divorce papers. Typically, the papers are handed to the person to be served. There are other ways to serve someone; but, it's a little more complicated and requires a knowledgeable process server.

What is the Notice of Automatic Orders? This notice advises both parties (husband and wife) that there are temporary orders in effect. It sets forth what you can and cannot do with assets, insurance, etc. while the action is pending. The purpose is to keep one spouse from hiding or using up the marital assets.

When is this Notice effective? It is effective on the Plaintiff from the minute the Summons is filed with the County Clerk's office; it is effective on the Defendant the minute he/she is served

My spouse and I haven't lived together for one or more years, are we legally separated? NO.

In order to be "legally separated" both parties would have had to sign a separation agreement and have that agreement filed in the County Clerk's office or a court would have to issue a Judgment of Separation.

Even if we've been to Family Court and have custody and child support orders in place? Just because you have Family Court Orders and haven't lived together, you are not "legally separated".

Basic Terms in Divorce

Plaintiff- the person who filed for divorce

Defendant- the person who is being sued for divorce

Party(ies)- the plaintiff and defendant in the action

Attorney for the child (ren) - an attorney appointed by the court to represent the parties' children; his/her fee is paid for by the parties (except in limited circumstances)

Stay or Temporary Restraining Order- an order issued by a Judge advising one or both of the parties to NOT do something; a party violating such an order can be found (by a judge) to be in contempt- contempt is punishable by jail, fine or both.

Law Secretary/Law Clerk - an attorney that works for the Court system and assists the judge

Legal Separation - you and your spouse have signed a written Separation Agreement, which was properly signed and notarized and filed in the Clerk's Office

Marital Property/Marital Debts - any and all property, income, debts, etc. received during the marriage with certain exceptions*.

Some examples of marital property include, but are not limited to: - wages, income, pensions, benefits, stocks, real estate, furniture, jewelry.

Separate Property/Separate Debt - those items of property, debts, etc. that you had *before* you married your spouse, so long as you have maintained them separately from marital assets.

For example, if you have a bank account with \$10,000 in it and you had that account prior to marriage and you never deposited marital funds (which include your paycheck during marriage) into that account, then it is separate property.

The party claiming that an asset is "separate property" has the burden to prove that it is, in fact, separate property.

Valuation Date- the date up to which assets are valued, in most cases this is the same as the commencement date; also known as "cut-off" date

Discovery - Exchange of financial information between the parties and their attorneys

**inheritances, personal injury settlements, gifts from someone other than your spouse are not considered marital property- - so long as these monies have not been put into an account that contains marital funds or has not been placed into a joint account*

Court Conferences

Preliminary Conference -a conference held in the Judge's chambers between the attorneys and the Judge and/or his law secretary

What happens at the preliminary conference? The attorneys will complete "a Preliminary Conference Order", which provides a time line for the exchange of financial documents between the parties' and their attorneys, appraisals of real property, valuations of pension plans, etc., and the appointment of an attorney for the children.

The purpose of the Order is to make sure that the parties' and their attorneys are providing each other with the information necessary to proceed with the divorce. The Court will also schedule another court date for a "status conference".

Status Conference ... a conference at which the attorneys advise the Court whether or not discovery is proceeding as planned and if there are any problems that have arisen. The court usually schedules several status conferences in connection with a divorce action.

Do I have to go to Court for the Status Conference? YES. **You are always required to attend all scheduled Court dates**, unless the attorneys and the Judge have agreed to waive your appearance.

What if I'm sick or there is an emergency? If you get sick or have some other emergency which prohibits you from appearing in Court, you must notify me ASAP and I will let the court and the other attorney know. You may need to provide a doctor's note.

Adjournments- It is common for scheduled Court dates to be adjourned for a number of reasons; and, usually these adjournments happen at the last minute.

How will I know if my case is adjourned? Typically, I will contact you and let you know if your case has been adjourned. **You must** confirm your court appearance with me around 4pm on the day before you are scheduled to appear in court. (For Monday Court dates, please contact me 3pm on Friday)

SUBPOENAS—the other party can send a subpoena to any third party that MAY have information about you, your spouse, your business dealings, your employment, your education, your children and the like. Banks, lenders, business partners, educational facilities, stock brokers, teachers, churches, etc. can all be issued subpoenas for any records they may have regarding you. I can do the same. There is very little I can do to stop this so be prepared to deal with the frustration you may experience. If there is a legitimate reason to try and stop the subpoena, which there rarely is, I can file a motion to do so. Unless the information is privileged in some fashion, the third party will have to disclose the information requested.

DEPOSITIONS—the other party can issue a notice of deposition to any third party witness. This means that a third party can be required to give testimony under oath usually in one of our offices. The purpose of depositions is to find out information and to find out ahead of time what a person may testify to in court. You and your spouse could each be deposed for the same reason. I can issue notices of depositions as Ill. A fact witness is entitled to a fee of \$25 to appear and professionals (doctors, psychiatrists, etc) are entitled to have their time paid for to appear (by the party that deposes them). A court reporter must be present and is paid to attend as Ill. The attorneys are paid to attend as Ill. Depositions are costly.

DISCOVERY—this is the “formal” name for exchanging information through subpoenas, written questions (interrogatories) and request for documents. Discovery has its own set of rules and deadlines which I will inform you about during the process.

ADULTERY: Do not become romantically involved with someone other than your spouse if you are still legally married (even if you are separated). Believe it or not, adultery is still a crime under the NYS Penal Law.

ATTORNEY’S FEES—in a child custody case, you could spend the price of a car in attorney’s fees. Most contested custody cases run upwards of 10-20 thousand in fees paid out over the course of the case. This usually includes attorney’s fees, fees for a court appointed attorney to represent your child/children, psychological fees and expert witness fees. In a complicated equitable division case, the cost can be significant and sometimes more than a custody case depending on how much property there is to value and the difficulty of valuing assets. Even a very small business can run \$2,500-\$5,000 to value if there is a dispute as to the value. A small equitable division case (which means there is a home, retirement, credit card debt, and other property or debts to divide) can run \$5,000-6,000 in attorney’s fees over the life of the case. The most expensive part of the case is going to be trial preparation and attendance costs. That is why a trial retainer (an "up front" payment) is required in all contested cases. You will see this in your fee agreement and I reiterate here that a trial retainer is required for continued representation.

Settlement or Trial

Very few divorces actually go to trial; most parties settle their issues and enter into what is called a Settlement Agreement or Stipulation of Settlement. However, as your attorney, I must proceed with your divorce as if it is going to trial in order to protect your interests. This means that the attorneys are obligated to perform certain tasks that you may feel are unnecessary; and, costs both you and spouse money.

The reality is that if we are unable to reach some sort of agreement (or even have any discussions with your spouse and his/her attorney) before we go to court, then we must proceed as if the case is going to trial. This doesn't mean that you won't ultimately settle the matter - - most cases settle before trial and some will even settle during a trial.

Settlement

What is a Settlement Agreement or Stipulation of Settlement? An agreement between the parties which resolves all issues in your divorce, such as: custody, visitation, child support, maintenance, medical insurance, medical expenses, distribution of assets, payment of debts, and more. Both parties are required to sign such agreements and have their signatures notarized.

What happens if we sign an agreement? The Court will give the attorneys a date to submit the documents necessary to get your divorce. There are approximately 20 forms that need to be submitted in connection with a divorce. Once the documents are submitted to the Court, the court clerk will review them and they will ultimately be given to the judge to sign.

Am I divorced after we sign the agreement? NO; however, you are entitled to live as if you were single, but you are not able to re-marry until you receive the signed divorce papers from the judge.

How long does it take to get the divorce papers from the Court? From the time the divorce packet is submitted to the Court, it takes approximately 3 - 6 months for the attorney to receive the signed Judgment of Divorce. Sometimes, the documents are filed with the County Clerk and are not forwarded to the attorney. In such situations, the attorney has to obtain copies from the County Clerk's Office for a fee.

Trial

NOTHING HAPPENS QUICKLY Generally, contested cases take months and even years to move through the court system. A complicated custody or equitable division case can take one, sometimes two years to complete.

The courts are always full and there are several steps that have to be taken before a trial will be set, such as: appointment of an attorney for the child(ren), discovery, interrogatories, depositions, pre-trial hearings and motions.

It takes a long time to move a contested case through the court system and this will likely be your number one frustration. I will do all I can to move the case forward, but you will still be frustrated with the time it takes to finish a case. Please prepare yourself ahead of time and please do not take this frustration out on me or my staff. I will do everything I can to move the case along.

What is a Trial? Trials are similar to what you see on television; however, there is no jury in matrimonial trials*. The Plaintiff presents her case first, then the Defendant presents his case, then the attorneys give their summations to the Judge. Not all trials continue day to day. Sometimes you can have 2 days of trial and your next date can be 3 weeks or 3 months away.

What do I have to do get my witnesses to trial?

If your witness is willing to come voluntarily, then we make arrangements with him/her prior to the start of trial. They will either be asked to be in Court on a certain date or we may be able to keep them on telephone stand-by so they don't waste time waiting to testify.

If your witness is not going to come in voluntarily, then we have to serve a subpoena on him/her. The subpoena is served along with a check for the witness (as per NYS law) and also includes mileage fees. It is served by a process server.

What if I have a lot of evidence? The rules of evidence are very specific and detailed. Any documents or other written evidence must be the original document or a certified copy. Business records will require someone from the company to testify with regard to the records. If you have records that need to be submitted, you must tell me asap so that I can subpoena those records in time for trial.

I have character letters from friends, co-workers, neighbors, etc. Unfortunately, such letters cannot be put into evidence. If someone wants to be a character witness for you, they will need to come into court and testify on your behalf. I will need to meet with him/her ahead of time to determine if he/she will make a good witness for you and find out exactly how they will respond to questions about you.

Does the Judge give us his decision when the trial is over? Rarely. Most Judges will reserve decision and send a written decision in the mail. **If** the Judge gives a decision in Court, the parties will have to purchase the transcript from the Court Reporter in order for the attorneys to file the required documents