

MB&C MASON BLACK & CABALLERO PA MARITAL AND FAMILY LAW

Divorce Procedures

To assist you in understanding the procedures of a divorce, we are outlining what occurs in the "normal divorce". Everything in this letter will not happen to you, and there probably will be some things that will happen that are not in this letter. This is intended to give you an overview and to help you feel more comfortable.

The law requires that your attorneys protect your interests just like a fiduciary or a trustee. Everything you tell them is confidential, and only you can authorize the release of such information to a third person. To enable them to be effective as your legal representative, you must provide them with the information requested, and to advise them of "personal matters or activities" which might affect the outcome of your legal proceeding.

Each family's case is different. The answers to all your questions will not be found here, but we believe the following information and suggestions will assist you with many questions which ordinarily arise. It always helps your attorney if you can take the time and effort to reduce your concerns and questions to written form.



We recognize that as a party to a domestic case you are under some emotional stress and strain. We will attempt to reduce and minimize the emotional impact on you whenever possible. Since we do not have control over all the factors that make up a domestic case, and since human nature is unpredictable, your emotional stress and strain may increase before it begins to subside. Please know that our purpose is to act as your attorney, counsel, and as an understanding friend in the handling of your domestic case. However, at times the pressures may call for more than a friend, and you may benefit from counseling, or even medical assistance.

Reconciliation -- and the saving of the marriage -- is in the interest of both the family and society when it can be achieved. This should be given the most careful consideration by you at all stages of this proceeding. When a husband and wife cannot resolve conflicts that develop in their marriage, to seek professional help is a sign of wisdom, strength and maturity. For two individuals to adjust to the demands of a marriage relationship is never easy and uncomplicated.

Trained marriage and family counselors are available to assist couples or individuals who want help with marriage and other family problems.

Counseling is available for reasons other than saving your marriage. Other valuable benefits for seeking counseling are:

- 1. To understand your part in the marital discord so that it will not be repeated in your next marriage.
- 2. To better understand your children and to help them through the dissolution of your marriage.
- 3. To understand why you chose a spouse with whom you have become so unhappy.
- 4. To assist you and your spouse in resolving issues between you in the divorce.

If you are having family law problems, it is frequently advisable to prepare a will or revise an existing one. We will be glad to refer you to competent counsel if you do not already have one for this purpose.

It may be desirable, or even prudent, to change the names on existing bank accounts, open new ones, or obtain some restraint or "hold" on the old ones, limiting the use of credit cards, etc. Feel free to discuss this with us if we have not already done so. *You should immediately revoke any powers of attorney or health care surrogates to your spouse, and revise your Will if your spouse is currently named as the beneficiary.*

We suggest that you take steps to "secure" important papers (financial statements, deed of title, receipts, cancelled checks, contracts, tax returns) and place them in a location that only you control, or bring them to our office. We will provide you with a list of documents we will need initially. More may be requested as the case progresses.

Both parents have the legal right to see and visit their children, and this right is not conditioned upon the payment of support by either parent. Timesharing schedules will be required to be definite (for example, on certain days between certain hours) and when this is necessary it may be done by court order or agreement of the parties, but should be in writing. Usually, the parties are required to sign a Parenting Plan; see our resources on our website for a copy of such a plan.

Florida has "Shared Parental Responsibility" which was enacted by the legislature on July 1, 1982. The Act recites that "It is the public policy of this state to assure each minor child frequent and continuing contact with both parents after the parents have separated or dissolved their marriage, and to encourage parents to share the rights and responsibilities of child rearing."

The Legislature has mandated that all parents going through a divorce must attend a course to help parents focus on what is in the best interests of their children. This course must be completed prior to the first case management conference, normally within 60 days of filing for divorce.

We would ask that once you have completed this course, you send to us your **original** Certificate of Completion, which we will file with the Court.

If residential care is an issue, the court may order a psychiatric examination of the parties or may order an investigation and report by a court investigator. Only if shared parental responsibility is detrimental to the children can the court award a parent sole parental responsibility. No minor child can be deposed or brought to a deposition, brought to court to appear as a witness or to attend a hearing or subpoenaed to appear at a hearing without prior order of the court based on good cause.

The court may order either or both parents to pay an amount necessary for the support, maintenance, and education of the minor children of the marriage. Florida has a set of child support guidelines that must be utilized in calculating an amount of child support. Child support is always modifiable upon a proper showing of a change in circumstance if the court feels that modification is fair. At the present time in Florida, child support terminates at age eighteen unless the child is physically or mentally dependent. It does not include a college education. However, the parties may agree to provide benefits after age eighteen. The court cannot order automatic cost of living increases in child support unless the parties agree to it.

It is frequently desirable to utilize the services of other experts at the earliest opportunity. We can assist you in the choice of an experienced accountant (C.P.A.), appraiser, private investigator, securities analyst, or banker, with whom we have had prior experience, and who we feel can be of direct assistance for your particular problems. **IT IS IMPORTANT TO RECOGNIZE THAT AN EXPERT, NO MATTER HOW QUALIFIED, MAY NOT SERVE YOU WELL IF HE/SHE IS UNFAMILIAR WITH THE LEGAL ASPECTS AND REQUIREMENTS OF YOUR TYPE OF FAMILY LAW PROBLEM.** It is a mistake to undertake the services of such experts on your own without prior discussion with your attorney.

Marital property is everything that a husband and wife have acquired together during their marriage to the date of separation or the date the petition is filed. In most cases that includes:

- 1. Money that you now have which either of you earned during the time you were living together as husband and wife.
- 2. Anything either of you bought with money during that period.

In Florida, the courts have the power to equitably divide marital property at the time your marriage is dissolved. This means the division of marital property is made without regard for whose name is on the title. Non-marital property is:

- 1. Anything you or your spouse owned before the marriage.
- 2. Anything you or your spouse earned or received after your separation (thus determination of this date is important, and may be disputed), or after the petition is filed.
- 3. Anything that you or your spouse received at any time as an individual gift or by inheritance.

A dissolution of marriage action is begun by preparation of a Summons and Petition for Dissolution of Marriage which will be signed by the petitioner. The party who files first is the petitioner. In addition, if there are minor children, a declaration regarding their residence for the past 5 years and custody status must be prepared and filed.

The Petition is then filed in the Circuit Court of your county of residence. (There are exceptions to this.) The court creates a file and returns the Summons to the attorneys. A copy of the Petition and Summons are then ready to be served on the other party (Respondent) by the sheriff, or in some cases, by other arrangements. The Respondent then has twenty days after service to respond to the Petition.



It may be necessary to obtain immediate relief on the filing of a dissolution proceeding. It may be necessary to obtain a restraining order at the time the Petition is filed without notice to your spouse to prevent either financial or physical harm. This restraining order would be valid only for a short time until a hearing can be held before the judge. If immediate temporary support or partial attorney's fees and costs are needed, then a temporary hearing is held. The judge makes the decision without a jury. The temporary hearing will probably last about fifteen to thirty minutes. The Order is temporary and may be changed by the Final Judgment, which will be entered at the conclusion of your case.

If child support, child custody, spousal support (alimony), or property issues exist, communications with your spouse's attorney by our office will occur. Discussions will take place in reference to settling the case. It is our practice and desire to attempt to obtain all the information which we may need on an informal basis. However, this frequently is inadequate. Under such circumstances, we must resort to the procedures provided by law in legal adversary proceedings. The Florida Family Law Rules require mandatory disclosure of certain documents. If the matter is complex or for other reasons early settlement seems unlikely, the parties may initiate further discovery. Discovery is a legal term for finding out about facts in the other party's possession, and learning the other party's contentions regarding the issues. The most frequently used discovery methods are:

- 1. Admissions: When you or your spouse is required to admit or deny specific written statements. These require immediate attention because, under the law, if a response is not received within thirty days, the statements are deemed admitted, and the fact issue resolved accordingly;
- 2. Interrogatories: When you or your spouse submits a list of detailed written questions which you are required to answer (under oath) to the best of your ability. These also have a time limit. Failure to properly respond within the time required subjects you to possible fine, or even a dismissal of your case;

- 3. Depositions: This is the most common discovery method. In its simplest form, a discovery deposition is when counsel asks you or a witness questions under oath, before trial, and at which time most of the objections available at trial do not apply. The basic rule is that the questions asked need only address themselves to information that is relevant to the case or to discovering further relevant facts;
- 4. Production of Documents: This is a written request to the opposing party for a specific list of documents to be produced at a specific date and time, usually thirty days from the request.
- 5. Mandatory Disclosure: This is a mandatory list of documents which must be exchanged between the parties within either 45 days of the date of the service of the petition for divorce or upon filing a notice for or responding to temporary relief.

Some people feel that for an attorney to be a "fighter" they must be (1) uncooperative with opposing counsel in such matters as disclosing information, disclosing documents, and arranging for convenient dates for meetings, depositions, etc.; and, (2) never consider or counsel compromise or negotiate with the opposing counsel. This notion is sadly misguided. All that is accomplished by being uncooperative with opposing counsel is that the attorney's fees greatly increase because all legal steps have to be done the hard way by preparation of special documents, appearances in court, etc. The information and documents in the long run will have to be disclosed under the law, and thus no useful purpose is served by an uncooperative attitude.

With regard to settlement negotiations, it is in some cases possible to predict with reasonable certainty what a court is likely to rule regarding various issues. In some cases, opposing attorneys may not quite see eye-to-eye with one another, but will ordinarily be able, after negotiations, to reach a compromise which can be recommended to their respective clients and which would be in the range of what a court would probably hold. Settlement offers will be discussed in full with you before they are presented to the other side. All offers from the other side will be discussed with you for your decisions.

If an agreement or compromise is reached, only the petitioning party and their attorney will go to court. The actual court appearance will consume only five minutes on the witness stand. Testimony will be introduced indicating that irreconcilable differences exist causing an irretrievable breakdown of the marriage, and that counseling would be of no benefit to the marriage. A witness or a witness' affidavit is required who can testify that you have been a resident of Florida for six months prior to the filing of the Petition. The judge will then grant a Judgment of Dissolution of Marriage and sign a judgment which has been prepared by the attorney which incorporates the agreement entered.

Even though both parties may desire a dissolution of the marriage, if an agreement on all issues has not been reached, the matter is considered a contested case, and a trial is necessary. Trial preparation conferences with the attorneys will take place prior to the date set for trial. At the trial, which is before a judge without a jury, witnesses may be called and records subpoenaed to substantiate positions of the parties as to support, custody, property or other issues. Testimony will be introduced to show that the marriage has broken down and counseling is not of benefit. This testimony will take but a few minutes. However, the balance of the testimony as to matters

in dispute can take thirty minutes or several weeks, depending completely on the nature of the case.

The judge will either render his/her decision immediately or he/she may take the matter under submission and inform the attorneys by mail within a few days, or occasionally, several weeks or months later. He/she will order one of the attorneys to prepare the Judgment of Dissolution of Marriage for approval by the other attorney, and will then sign and cause the judgment to be entered.

The lapse of time between the filing of a response or answer to the Petition for Dissolution and the date of trial depends on the congestion of the court's calendar and the time your case is expected to take. The time varies from court to court and time to time, but six months to 12 months is typical.

The Final Judgment of Dissolution of Marriage will be filed in the clerk's office immediately after the judge signs it and a copy will be mailed to you by the judge. It is then final. You can remarry at any time after it is filed. Either party may file an appeal of the final judgment if they are not satisfied with it. The notice of appeal must be filed within thirty days of the final judgment or rehearing. An appeal usually takes from six months to one year for a decision. No additional testimony or evidence is presented for an appeal. Only the evidence from trial, which is written up and filed along with other papers and briefs on both sides, is used. A brief is the legal argument explaining the facts and the law to the judge.

After the Final Judgment is entered, often deeds and other documents must be signed and recorded and property transferred. This sometimes takes several weeks after the Final Judgment has been entered. However, a Final Judgment is a valid and binding court order. You are truly "divorced" after one is rendered.

In some cases, a party can request that the Court order the other party to pay their attorney's fees. An award of attorney's fees is authorized by statute and is a matter within the discretion of the judge. That discretion is to be exercised in consideration of the disparate economic needs and abilities existing between the spouses. Typically, the attorney's fees hearing is held at a point in time after the trial for evidentiary reasons. Expert witnesses will be required at an attorney's fees hearing.

The court may restore a former name of the wife in the Final Judgment if requested. This relief is not sought unless you or your spouse specifically request it, which is usually done within the original Petition filed with the Court.

If spousal support is not granted or reserved at the time of the final hearing and included in the Final Judgment, it is forever waived. Alimony can be either lump sum (sometimes paid in installments), permanent or rehabilitative. The parties may agree, or the court may order, that the court retain jurisdiction of the issue of spousal support either indefinitely or for a limited number of years.

Spousal support can be either modifiable or non-modifiable. Modifiable support may be raised, lowered, or terminated upon proper application at some future date if the court believes that circumstances have changed so as to justify such modification. The parties may also agree by settlement negotiations to either non-modifiable or modifiable support, depending entirely upon their agreement and the various factors which motivated the parties in reaching the agreement.

Sometimes the other party fails to pay the spousal or child support he has been ordered to pay. If this continues, legal action will be required to force the other party to comply with the orders of the court. A slight delay in the making of these payments is to be expected from time to time, but if the delay lengthens and becomes a habit, then this additional legal action should be considered and taken. It is at this time that either "contempt" proceedings or a motion to establish and collect an arrearage are appropriate.

Later, after a Final Judgment has been rendered, either of the parties may file a request for modification of the support or child custody provisions, provided that there has been a change of circumstances (i.e., more or less needs and/or income, etc.). A modification request may be months or years after the dissolution.

Should the other party be guilty of threatening you, harassing you or the children, or attempting to harm or injure you, and feel that outside assistance is required or advisable to handle the matter, seek such assistance (police or sheriff) immediately. Inform your attorney of this and keep them advised if this unwarranted conduct on the part of the other party should continue. It is both desirable, as well as in your interest, that you not engage in reciprocal type conduct.

The court has jurisdiction to enter a restraining order to restrain (1) either or both parties from annoying, molesting or harassing the other; (2) from disposing of, transferring, encumbering, or concealing any of the marital property, except in the ordinary course of business or for the necessities of life; or (3) evict either party from the family dwelling or from the dwelling of the other upon a showing that physical or emotional harm would otherwise result.

Perhaps the most effective means of avoiding violence is by avoiding situations which might set off the other party's violent temper. In such case, each party should avoid seeing or talking to their spouse. It is important to know that no case is settled until the exact nature of these fundamental issues has been resolved:

- 1. Whether the marriage is irretrievably broken, or whether counseling would assist you and your spouse in resolving the marital difficulties which have brought you to our office.
- 2. What is in the best interest of your children regarding shared parenting.
- 3. The equitable distribution of assets and the payment of financial responsibilities.
- 4. The payment of alimony or child support after the marriage is dissolved.
- 5. Whether one spouse will pay the other spouse's attorney's fees.

The length of time to finalize your divorce is determined by the number of these issues in dispute and their complexity. A divorce action with no complex issues and mutual agreement between the parties may be finalized in six to eight weeks. A complex case is often litigated for six to twelve months, sometimes longer.