

FACTS ABOUT DIVORCE ACTIONS

This sheet is *not* intended to take the place of an attorney. It is designed to be used together with the advice provided to you by the attorneys in our office. Its purpose is to provide you with general information regarding certain procedural questions that are frequently asked in divorce cases involving litigation in Court.

1. Beginning the Divorce Process:

A divorce is started in Court by the filing of a document called a **Complaint**. The attorneys in our office will spend some time with you discussing what grounds for divorce will be listed on the Complaint. The most commonly used grounds for divorce are irretrievable breakdown of the marriage (either contested or uncontested) and cruel and abusive treatment. However, there are additional grounds for divorce that may be applicable to your situation. You will be advised as to which grounds for divorce may be appropriate to yours. The grounds for divorce may have some bearing on the length of time it will take you to obtain a divorce.

After the Complaint for Divorce has been filed, the Court will issue a **Summons**. The Summons and a copy of the Complaint must be delivered to your spouse in some manner. This may be arranged by the attorneys, delivered by a process server, or your spouse may voluntarily agree to “accept service.” You will have an opportunity to discuss how best to have the Summons and Complaint served upon your spouse.

If your spouse files a Complaint first, we will prepare and file an **Answer** to it and may file a **Counterclaim** also asking for a divorce.

2. Pretrial motions:

A **Motion** is simply a request, usually in writing, to the Court. The purpose of filing a Motion is to obtain relief from the Court with regard to a particular problem. These are some examples of Motions that may be made prior to a final hearing on your case:

- Motion for Temporary Support;
- Motion for Temporary Custody;
- Motion for Attorney Fees; and
- Motion for Temporary Restraining Order.

The above list merely provides examples of Motions that may be filed in your case. They may not be necessary in your case, and various others may be appropriate.

As a general rule, the client must be present in Court for the hearing of any pretrial motions having to do with custody or financial matters.

An Order entered by the Court on a pretrial motion is a **Temporary Order**, which will usually remain in effect until there is a final hearing on your case.

3. Discovery:

The **Discovery** process is the term used to describe the formal ways in which the attorneys attempt to discover all the facts that will be important or relevant to your case prior to the trial or final hearing. This will probably involve both financial and non-financial information. This part of the

case is very important because it will provide the office with the information necessary to enable us to recommend to you a fair settlement or resolution, or to present a complete case to the Court if it is necessary to proceed with a trial.

The length of time for discovery may vary according to various factors, which will include

- the complexity of the issues involved;
- the difficulty in obtaining the requested information;
- the obstinacy of your spouse;
- other commitments your attorney might have; and
- the need to obtain outside expert advice with regard to certain aspects of the case, for example, real estate appraisals or the determination of value of a business by an accountant.

Almost every client wants to know how long this part of the case will take. While we will try to provide a reasonable estimate, keep in mind that it is impossible for an attorney to predict exactly how long the process may take. You will probably do yourself a disservice if you pressure for artificial deadlines in order to get the case over with. Quite often, haste interferes with our ability to obtain full discovery of all the facts necessary to obtain the best results for you.

Also, there are certain built-in time periods that may prevent your attorney from moving as quickly as you may like. For example, if we request that your spouse produce documents for review, your spouse will have at least thirty (30) days within which to comply. This time period is set by the Massachusetts Rules of Domestic Relations Procedure. Similarly, by statute, a contested no-fault divorce complaint must be on file at the Court for six (6) months before a trial can be scheduled. Also, after the divorce hearing, there are mandatory waiting (“nisi”) periods before a divorce is final. Rules and statutes such as these are not within our control to affect.

4. Probate Court Financial Statements:

Before the Court will enter any financial order or grant a divorce, the parties are required to complete a **Financial Statement** on a form distributed by the Probate and Family Court. *This is the single most important document in a divorce case.* This form is designed to provide the Court with information about each party’s income, needs, assets and liabilities.

The Probate Court Financial Statement must be signed by each party personally, and it is signed *under the pains and penalties of perjury*. Therefore, it is extremely important that this form be completed thoroughly and accurately. You may be cross-examined on this document in Court or at a deposition.

It will be necessary for you to review your own records in order to complete the form accurately. These records will include your canceled checks or check registers, income tax returns, bills and so on. Our office will help you to complete this form, and will instruct you as to how to obtain the necessary information.

The important thing to remember is to be complete and accurate, and to make no assumptions regarding the ownership of assets or responsibility for payment of debts between yourself and your spouse.

5. How Does a Court Reach a Decision in a Divorce Case?

In the event that the attorneys are able to negotiate a settlement, it will be reduced to a written

Separation Agreement. This agreement will be submitted to the Court for review and approval. In deciding whether to approve the agreement, the Court will review the Financial Statements to determine whether the agreement is **fair** and **reasonable**. If the Court determines that the agreement is fair and reasonable, it will incorporate the agreement into its Judgment of Divorce.

In the event that a negotiated settlement cannot be reached, the case will be marked for trial. In that event, the Court will listen to the evidence presented by both parties and, at the conclusion of the evidence, the Court will make its own judgment concerning child custody, support, visitation, alimony, equitable division of assets and all other matters on which the parties could not agree. In making a judgment, the Court is required to look at specific factors that are set forth in our statutes. The Court will also look to previous cases in order to obtain guidance as to how best to interpret the statutes. Even with these guideposts, each case largely turns on its own facts.

Either party may appeal the judge's decision. However, bear in mind that it is very difficult to win an appeal in a divorce case. This is because each judge has great leeway and discretion in deciding what would be a fair and reasonable result. Each judge is different, just as the facts of each case are different. For this reason, it is impossible for us to predict the exact result you will obtain. We may, however, try to "guesstimate" the possible outcomes in order to help you decide whether it would be better for you to settle the case or go to trial.

6. Attorney Fees:

At the beginning of the case, you will receive a written document (retainer agreement) that will set forth in detail our hourly rates and other information regarding how you will be billed. You will be requested to give us a **retainer**, which is a sum of money paid at the beginning of the case, against which hourly charges will be applied. If you have any questions about how you will be billed or how much you can expect to pay in attorney fees and costs, you should discuss them with us at the beginning of the case, *before* signing the agreement.

Although we may request, where appropriate, that your spouse pay your legal fees either during or at the end of the case, you remain ultimately responsible for payment of the attorney fees. These fees are an important aspect of your case that you must take into account.

You should read over the retainer agreement carefully, since this document sets forth in detail the specifics of the understanding you have reached with us regarding legal fees and costs. This is a *binding contract*. If you have any questions about the retainer agreement, consult with an attorney prior to signing the agreement.

7. Telephone Calls:

Because the attorney handling your case may be in Court or otherwise occupied when you telephone, it will not always be possible for him or her to take your call at the moment you call. If your call relates to an emergency matter, be sure to let our office staff know. Otherwise, you can expect to hear from the responsible attorney as soon as he or she is available. Each attorney and secretary has voice mail in our telephone system, so messages of any length can be left either during or outside of office hours.

8. Conclusion

This information is intended only to be an introductory guideline, because each case is different, and presents different issues and problems. If you have further questions, be sure to discuss them with us. We have your best interests at heart and truly want to help you to understand how your case will be handled.

This client information sheet was provided courtesy of Perocchi Family Law Group, LLP.