

WOLL & WOLL, P.C.

Divorce

The following material is intended to answer some of your questions about the legal aspects of divorce and other family law matters. It is not intended to answer specific questions about your particular case, since each case is different.

YOU AND YOUR ATTORNEYS

The breakup of a marriage is a difficult experience. As your attorneys, we try to relieve your anxiety by helping you solve your legal problems. We can also recommend literature on divorce, divorce stress management, and helping children cope with a divorce. If you need help with the emotional stress caused by divorce, we will be happy to give you a list of professionals who are training to help you deal with your feelings at this difficult time.

To properly represent you, we must have all the facts concerning your case. Information you withhold can affect the outcome of your case. Remember that an attorney may not disclose information given to him or her by a client without the client's permission.

We want to stress that we are here to advise and inform you and to assist you in decision making. However, you must make the final decisions regarding your case.

Our experience has shown that most divorce cases are settled when the parties reach an agreement, which is entered on the record as the order of the court. Never agree to something you do not understand or to something you feel you are forced to agree to. **Do not agree to anything without consulting your attorney.** After an agreement is placed on the record, it is extremely difficult to change it.

GROUND FOR DIVORCE

Michigan is known as a "no-fault" divorce state. However, the words "no fault" can be misleading. In Michigan, "no fault" simply means one party to the marriage can obtain a divorce regardless of whether one of the parties is at fault for the breakdown of the marriage. A judge may consider fault in deciding disputed alimony, property, support, visitation, or custody questions.

Michigan has one ground for divorce: there has been a breakdown of the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved. In court, some judges require simply an assertion that your marriage is over.

DIVORCE PROCEDURE

Timeline

1. A party must reside in Michigan for at least 180 days and in the county where the suit is started for at least 10 days prior to filing. There are some limited exceptions to the residency requirement.
2. Proofs may not be taken in a divorce case involving minor children until six months after the complaint is filed. For a case in which no minor children are involved, proofs may be taken 60 days after the complaint is filed.
3. A divorce must be completed within 12 months after the complaint is filed.

Documents

The initial filing of a divorce case may (but will not always) include these documents:

1. *Summons*. The summons notifies the other spouse that he or she has been sued and tells him or her where and when to answer and that a default may be entered if he or she does not file an answer.
2. *Complaint*. The complaint begins the divorce action. It states the facts of the case and the relief that the plaintiff wants (for example, custody of the minor children, child support and fair share of the property).
3. *Affidavit of service / return of service*. This document shows that the defendant has been served, that is, given the papers filed with the court.
4. *Statement to the Friend of the Court*. This statement tells the Friend of the Court facts about child or spousal support (it is unnecessary in cases in which the Friend of the Court is not involved).
5. *Verified Statement*. This statement lists the minor children's residences during the past five years and states that no custody action involving the children is pending (it is only needed when minor children are involved).
6. *Record of divorce*. This document is a statistical record required by the Michigan Department of Health.
7. *Injunctions*. An injunction orders a party not to do something, such as sell, dispose of, or hide assets as well as change the beneficiary on life insurance policies.
8. *Personal protection order*. This order is an injunction that orders the party not to assault or threaten violence to the spouse or children or that prohibits stalking.
9. *Ex parte orders*. *Ex-parte* orders are issued without prior notice to the defendant. The order must be served on the other party, who may then file objections to it.
10. *Affidavit for ex parte order*. This sworn statement affirms that the facts stated to obtain the *ex-parte* order are true.
11. *Circuit court filing fee*. Currently the filing fee for divorce with no children is \$150.00, and for divorce with children it is \$230.00.
12. *Notice of hearing, praecipe, motions, and filing fee*. These are required for any motion that requires a hearing. A motion is a request to the court for some type of relief. A *praecipe* asks that the matter be set for hearing, and the notice of hearing says where and when the hearing will be held.

Who's Who and What They Do

The plaintiff is the party who starts the lawsuit. The defendant is the person sued. The divorce is resolved by the circuit court. The Friend of the Court is an office of the circuit court that investigates and makes recommendations about spousal support, child support, child custody, and parenting rights, collects and distributes support payments, and may request the enforcement of court orders for support and visitation.

Contested and Uncontested Cases

After the complaint and summons are filed and served, the defendant has 21 days (28 if served by mail or out of state) to file an answer admitting or denying each paragraph in the complaint. The defendant may also file a counterclaim, to which the plaintiff must file and answer.

Once the answer is filed, the case is contested. If the defendant does not file and answer, an order of default is entered. The matter then becomes an uncontested divorce case.

No divorce, whether contested or uncontested, is granted without a court hearing to determine the truth of the statements made in the complaint.

Temporary Orders

Temporary orders may be requested at any time after your case is started and before a judgment of divorce is entered. Child support, custody, and some injunctions are usually granted to the plaintiff without a hearing (*ex parte*). Other orders require a hearing.

The court may award temporary attorney fees to a party who can show need.

WHILE YOUR DIVORCE IS PENDING

Discovering Facts and Defining Issues

While awaiting the hearing in your case, we will be defining the issues and obtaining the facts through investigation and discovery. Types of discovery include depositions (questioning a witness under oath), requests to admit (asking the other party to agree that certain facts are true), and interrogatories (questions to a party that he or she is required to answer under oath). Appraisers, actuaries (if pensions are involved), accountants, or psychological professionals may be consulted (with the client's prior consent) by court order.

After discovery is completed, you and your attorney will discuss your goals and settlement strategies.

Settlement

The attorneys might call a meeting, with both parties present, and try to resolve as many issues as possible.

If a settlement is reached, the parties will sign a form containing all the provisions of the settlement. The parties may be required to approve the settlement in court, when it is placed on the record.

JUDGMENT

The judgment of divorce is the document that grants the divorce. It also deals with spousal support, custody, child support, parenting time, insurance, the property settlement, and other issues. You will have an opportunity to read the judgment and discuss it with your attorney before it is entered with the court.

SPOUSAL SUPPORT

Spousal support, also called alimony, is money paid to one's spouse for his or her support. The court considers the following factors in awarding spousal support:

1. The past relations and conduct of the parties (fault).
2. The length of marriage.
3. The ability of the parties to work and their respective income.
4. The source and amount of property awarded to the parties.
5. The ability of the parties to pay spousal support.
6. The present situation of the parties.
7. The needs of the parties.
8. The health of the parties.
9. The prior standard of living of the parties and whether either is responsible for the support of others.
10. The age and educational level of the person claiming spousal support.

A judgment of divorce must either award spousal support, expressly reserve the question, or state that neither party is entitled to spousal support.

Spousal support may be modified on a showing of a change in circumstances that warrants modification unless the parties specifically waive modifiability.

Spousal support is usually paid through the office of the Friend of the Court. The Friend of the Court may help resolve post-judgment disputes about spousal support.

HEALTH CARE INSURANCE

Health care insurance that is provided through your spouse's employment stops when the divorce is final. Ongoing coverage may be available under COBRA (a federal law that makes health care insurance portable) in some situations.

A federal law now provides for group health care coverage by employers for the children of employees who are not in the employee's custody. The coverage is obtained by means of qualified medical child support orders.

CHILD SUPPORT

Child support is based on the child's needs (within the life style of the parties) and the parents' ability to pay, determined by state guidelines.

If child support, medical expenses, etc., are not paid up to date when the judgment of divorce is entered, the judgment must state that the unpaid amounts remain due and payable after the entry of the judgment. Any rights and obligations imposed by a temporary order that are not restated in the judgment of divorce are canceled.

Income Withholding Order

Every order for child support paid through the Friend of the Court now provides for immediate automatic withholding of child support payments from the payer's income, whatever the source, unless the court orders otherwise or approves an agreement by the parties.

Modification and Enforcement

Child support may be modified if there is a change of circumstances. Support is usually ordered until the child reaches 18 years of age or graduates from high school (but not past the age of 19-1/2). Nonpayment of court-ordered support may lead to a contempt of court citation, and may result in a jail term.

Tax Deduction

The custodial parent is entitled to claim the minor children as dependents for all tax purposes. If the parents agree that the non-custodial parent shall have this allowance, the custodial parent must furnish a signed IRS Form 8332 each year to the non-custodial parent, to be filed with his or her federal income taxes.

Miscellaneous Issues

- Child support may include a contribution for childcare expenses when the child is under age 13 years.
- Uninsured health care expenses will usually be divided between the parties in proportion to each parent's income.

CHILD CUSTODY

This issue is the most emotional and difficult of most divorce cases. Custody may take many forms, including sole custody, joint custody, bird nest custody, etc. The basis for determining child custody is "the best interests of the child." The following factors are to be considered in deciding what is in the child's best interests:

- The love, affection, and other emotional ties existing between the parties involved and the child.
- The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.
- The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.
- The permanence, as a family unit, of the existing or proposed custodial home or homes.
- The moral fitness of the parties involved.
- The mental and physical health of the parties involved.
- The home, school, and community record of the child.
- The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.
- The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.
- Domestic violence, regardless of whether the violence was directed against or witnessed by the child.
- Any other factor considered by the court to be relevant to a particular child custody dispute.

MCLA 722.23, MSA 25.312(3)

If custody is disputed, the parents must be told about joint custody.

Child custody orders may be modified if there is a change in circumstances sufficient to justify a change in custody.

PARENTING TIME

The non-custodial parent is almost always granted parenting time. The judgment may order general parenting time, leaving it to the parents to decide the dates, or it may provide specific hours and dates. If long distances must be traveled for parenting time, arrangements can be made to share the cost. Child support is usually reduced by 50 percent when the child spends six or more consecutive days with the non-custodial parent.

Judgments of divorce provide that the minor child may not be permanently removed from the jurisdiction of the court without the court's approval. To move the child from Michigan, or to move more than 100 miles from the child's current residence, the custodial parent must petition the court for an order to change the child's domicile.

Parenting time orders may be modified on a showing of a change in circumstances.

The law also allows parenting time that has been wrongfully denied to be made up. A custodial parent who wrongfully refuses to allow parenting time may be held in contempt of court and be fined or sentenced to jail. Failure to pay child support is not an acceptable reason to deny parenting time.

PROPERTY

The parties usually arrive at a settlement of their property rights. If the parties do not reach a settlement, the court will decide the matter after a trial.

You must be absolutely sure that you understand and accept the settlement as written or placed on the record in open court, because property settlements are not modifiable, except in cases of fraud, clerical error, mistake, or gross unfairness in the initial trial. If your property includes retirement or pension plans, your attorney can explain your rights under the qualified domestic relations order (QDRO) procedures.

In determining property issues, the court will usually consider the following:

1. The length of the marriage
2. Contributions of the parties to the marital estate
3. The age of the parties
4. The health of the parties
5. Others the parties are supporting
6. Necessities and circumstances of the parties
7. Earning abilities of the parties
8. Past relations and conduct of the parties (fault)
9. General principles of equity

Generally, property of the marriage is divided fifty-fifty.

Property settlements in judgments may be enforced by execution, garnishment, show cause proceedings, etc. Your attorney can explain these procedures.

ATTORNEY FEES

Attorney fees are governed by the Michigan Rules of Professional Conduct for attorneys. A lawyer may not enter into an agreement for, charge, or collect a contingent fee (a fee based on a percentage of the monetary award the client is awarded) in a divorce case.

Your attorney will quote an hourly rate. You will be charged at the quoted rate for consultations, correspondence (including e-mails), phone calls, office and research work, court time, filing and hearings. Attorneys, paralegals, and legal secretaries will work on your case. Your primary attorney will oversee all work done on your case.

You are responsible for court costs, filing fees, fees for service of pleadings, appraisals, expert witness fees, etc. Your attorney will sometimes pay such expenses and seek reimbursement from you.

If your spouse is ordered to contribute to your attorney fees, you will be given credit for the amount your spouse pays.

Please note: It is impossible to speculate about the total fee for your divorce case.

AFTER THE DIVORCE

After the divorce case is concluded, you might need an attorney for the enforcement of support, visitation, or property provisions.

CONCLUSION

Some divorce cases end in a reconciliation of the parties. If there is a chance to save your marriage, we will be pleased to help you do so, including recommending a marriage counselor. If you believe the marriage is over, we will do our utmost to obtain a judgment of divorce that is satisfactory to you.

This document should not be considered the last word on the subject of divorce. It is provided to give you an overview of divorce law and procedures. Please note that law is constantly changing. Separation and divorce impose tough tasks on all family members, including the children. Remember, children feel as though they are the powerless losers, deprived of the full-time proper guidance of their two parents. Therefore, it is important to place your children's interests above all else during the divorce process as well as after.

Although there might be some bitterness between you and your spouse, it should not be inflicted on your children. In every child's mind there should be an image of two loving parents. To foster this image, you should remember that parenting time is time for the parent and the children to be with each other, to enjoy each other, to maintain positive relationships.

THE CUSTODIAL PARENT'S RESPONSIBILITIES

Custodial parents should prepare children positively for the continued relationship with the other parent by themselves speaking respectfully of the other parent and encouraging the children to have and express their positive feelings for that parent. Making it clear to the children that your separation and divorce does not mean that the children have to take sides or stifle their love for the other parent--even if that parent has hurt you personally--will go a long way toward allowing the children the freedom to get on with the usual tasks of growing up, secure in their parents' love. If children hear and see cooperation between their parents, at least as it concerns them, they will relax about this separation being their fault.

Children should be ready to go at the designated time, dressed appropriately for the weather and have with them the necessary clothing changes, equipment, books, etc. It is good training in responsibility to have children assist with the packing of their things.

Events that will disrupt a visit should be communicated to the other parent as soon as you are aware of them. Remember that the other parent might be just as able to take the child to the Scout meeting or dance recital. Avoid scheduling activities for the children at times they customarily spend with the other parent unless he or she specifically consents. Do not discuss with the children enticing opportunities that conflict with scheduled parenting time unless the other parent first consents to a change.

THE NON-CUSTODIAL PARENT'S RESPONSIBILITIES

Having other people present during parenting time can dilute the parent-child experience, and it might appear to the children that you do not have the time or interest in them to give them your undivided attention during parenting time.

Visits to grandparents are almost certainly okay but should not become the norm for all visits and should not be an excuse for you to disappear. Furthermore, if your parents are displeased with the divorce and angry with your ex-spouse, it is your responsibility to request that they keep their views to themselves in the presence of the children.

You might be concerned about what to do with or where to take your children during your parenting time, particularly if they are very young. Planned amusements can add to the pleasure of a visit but most important of all is your involvement with the children. Avoid boredom (yours and the children's) by finding out what interests the children have and giving of yourself. This might be getting down on the floor with

stacking toys, reading the same story repeatedly to a toddler, making up stories or a batch of cookies, supervising homework or working on a science fair project together, teaching a child to ride a bike, throw a ball, or program a computer, gardening, or playing chess. Material things and holiday-type outings cannot compare with the steady influence such “real life” parenting provides. This divorce provides you with an opportunity to establish your own traditions for bedtimes, Saturday mornings, holidays, etc.

This is not to say that an occasional special trip, outing, or present is inappropriate. Rather, you should avoid having a feverish round of tiring activity or plying a child with expensive gifts each time your exercise parenting time. This can be interpreted by the children or your former spouse as a shallow and counterproductive effort to purchase the children's affection or sympathy.

The following suggestions below can improve your chances of having your contacts with your children be helpful to you and to them:

- Do not use parenting time as an opportunity to grill the children about the other parent's activities or visitors. Make it gently clear that you respect the other parent's privacy and expect the children to respect yours, that what is going on between Mom and Dad is “grown-up” business that need not further affect the children. In the children's eyes, the parents might seem to hate one another, and if a child does something to please one parent, he or she might fear that the other parent might reject him or her. He or she might feel that he or she has already lost one parent and does not want to lose another. These intense feelings of discomfort take time and diligence to dispel once present. Your best remedy is to project mutual respect for each other and to make the visit as pleasant as possible.
- Do not discuss with the children what you believe to be the other parent's shortcomings or faults.
- If the children ask questions about why you and the other parent broke up, give a succinct answer appropriate to the children's ages. Your answer should not try to prove the other parent was to blame, nor should you bare your soul to the children if you have hurt their other parent. Let them know that you are not going to be able to get back together, but assure them that you will carry on as their parents.
- Do not visit at unreasonable hours.
- Arrive and remain sober for parenting time. If you cannot face an overnight or weekend without drinking, seek treatment and forgo longer visits until you feel you can control your dependency.
- Do not fail to notify the other parent as soon as possible if you are unable to keep your parenting time. It is unfair to keep the children waiting. It is terribly disappointing to children to be ready and not be picked up at all. If this happens repeatedly, they begin to protect their feelings by locking you out of their hearts. In addition, the other parent might have planned her or his time around the time the children were to be with you.
- Do not make extravagant promises to the children that will be difficult to keep or that you know you cannot or will not keep.
- If one parent has plans for the children that conflict with the parenting time, you have the right to say no. Still, if the plans are in the best interests of the children and not posed too frequently, be adults and work out the problem together.
- Always work for the emotional well-being, health, happiness, and safety of the children.
- The children might feel sad or mad or withdrawn at the start of or following parenting time. Again, both parents should make every effort to discuss openly the children's anxieties about separating from each of you in turn and what to do about them.
- Both parents should strive to agree on general discipline standards and on specific discipline issues so that one parent is not undermining the reasonable efforts of the other.