

General Description of Divorce Process

Separation and divorce can be among the most emotionally upsetting experiences in life. Often the associated legal battle aggravates what is already a bad situation from both emotional and financial standpoints. It is our goal to minimize to the extent possible both these negative impacts. This is some general information on the legal process. **It is not intended to be legal advice**, but an attempt to generally acquaint you with the divorce process.

Initial interview

It is important for you to discuss with the attorney all material facts about your domestic case. Your attorney needs to know all potential negative information to enable him or her to deal with it at the appropriate time. For example, if you anticipate that your spouse will accuse you of drinking too much, your attorney needs to know the details of your history of alcohol use. It is also helpful to get a good picture of your financial situation from the start. Three years of income tax returns and a listing of all your assets (including estimated values) and debts is a good start. The initial interview usually takes about two hours.

Financial matters

If we agree that we can represent you and you agree to hire us, we will provide you with a written fee agreement. We will request a retainer fee, the amount of which will be determined by the anticipated complexity of the case. We will send bills at least monthly and require payment within ten days. You may put some or all of these charges on a credit card. If we are not paid within ten days, we may withdraw as your counsel.

Communicating with the attorney's office

We rely heavily on paralegals to assist in handling these cases. They act under the supervision of the attorney(s). Although the paralegal cannot give legal advice, the paralegal can answer many questions, such as questions about scheduling matters, document production and preparation of affidavits and financial declarations. Often phone calls to or appointments with the paralegal assigned to your case will be the best and most economical way to address such issues. However, if legal advice is needed, the attorney working on your case needs to be consulted either in an appointment or by telephone or email.

Typical Issues

The most common issues that occur in domestic relations matters include grounds for divorce, custody and visitation, child support, alimony, equitable distribution or division of marital property and liability for attorney's fees and other costs of litigation. In South Carolina we have four fault grounds for divorce: adultery, physical cruelty, habitual intoxication and desertion for a period of one year. We also have the "no fault" ground of one-year continuous separation. During the one year of separation it is possible to reach a final agreement resolving all of the financial and custody issues and have that agreement court-approved. In such a case the only remaining issue will be the divorce itself. Either party may then ask for a divorce after the year separation has been completed.

When custody of children is contested, the court decides that issue by determining what is in "the best interest of the children." Traditionally one parent or the other would have custody and the non-custodial parent would have visitation rights. Over the past several decades a variety of joint custody arrangements have been approved by the courts where both parents desire to share custody. In some cases (what I call "pure joint custody" cases) neither

parent has the final decision-making authority concerning decisions regarding the children. These arrangements generally work only where the parents live in relatively close proximity and have the ability to continue to cooperate regarding the children. Another type of joint custody arrangement involves one spouse being designated "primary" custodial parent and the other "secondary" custodial parent. The primary custodial parent has the decision-making authority concerning important children's issues, such as religious, educational or medical matters. The secondary custodial parent has the right to input into those decisions. Joint custody agreements generally imply that both parents will have considerable time with the children, whereas the traditional sole custody arrangement generally has the non-custodial parent having visitation rights on alternating weekends and alternating holidays. Custody and visitation agreements vary widely, however, depending on the schedules of the parents and the children.

Child support is determined in South Carolina by the Child Support Guidelines in cases where the parents' gross annual incomes total no more than \$180,000. The court may depart from the Guidelines only if there is a specific reason for doing so. For incomes greater than \$180,000 per year child support is determined on a "case by case" basis depending on the needs of the child and the parent's ability to pay. As a practical matter, however, many of these cases involving higher incomes are resolved by extrapolating from the Guidelines.

Alimony is often the most difficult issue to resolve because the rules involving alimony are not as clear. The only clear rule involving alimony is this: an adulterous spouse is barred from receiving alimony. If, however, alimony is an issue in the case, it is in the court's discretion whether to award it, and if so, the amount. This gives the court wide latitude in determining the alimony award. If awarded, the amount of alimony is designed to support a dependent spouse in the lifestyle to which she has become accustomed (although alimony is not supposed to be a disincentive to work). Although I use the word "she," men, in theory, can also receive alimony. However, it is I believe, rare at this point. The law requires the court to consider a number of factors in arriving at its decision, such as age, health, earning capacity, property and fault. Generally, if awarded, alimony will be "permanent periodic alimony," which is alimony paid monthly until the death of either party, the remarriage (or cohabitation) of the supported spouse or until some other change of circumstance occurs that causes the alimony to be reduced or terminated. In cases where it can be demonstrated that the supported spouse will be self-supporting after a specific period of time, the court may award rehabilitative alimony, which will terminate at a specific time in the future. This most frequently occurs where the supported spouse plans to complete an education and re-enter the work force with a degree.

Equitable distribution, or division of property, occurs in most cases. Only marital property is divided. In general marital property is any property acquired during the marriage, other than by a gift or inheritance from a third party. The court is required to take into account a number of factors in making its decision to divide property. These factors include, among other things, material contributions made by the respective parties, any non-material contributions, the incomes of the parties, their age and health and fault. Also the existence and value of non-marital property is taken into consideration.

In many cases the court may order one party to pay some or all of the other party's attorney's fees and costs. Among the issues the court will consider are the respective ability of the parties' to pay, the complexity of the case, the result of the case and whether one party has been unreasonable in refusing to settle the case out of court.

Progress of Case

Often cases can be settled at an early stage – even before any court action is filed - either through discussions between the parties or between their attorneys. If this is not feasible a court action may be filed in the county where the parties last lived together as husband and wife. This involves the filing of a complaint, setting forth basic facts and asking the court for specific things. These papers are delivered to ("served on") the other party, who is required to answer within 30 days. Frequently, however, extensions of time will be requested and granted. Typically this will be a 30 day extension.

In many cases the plaintiff will request a temporary hearing in order to have the court issue a temporary order. The temporary order is usually designed to maintain the *status quo* and set the ground rules of the parties' rights and obligations while the case is pending. Depending on the court docket, a temporary hearing can occur within a couple of weeks to more than a month after the date of filing. These hearings are usually very brief and generally do not involve testimony from witnesses. Instead the parties submit affidavits and financial declarations. The court will hear argument from the attorneys and either rule in the courtroom on the spot or notify the attorneys of the decision some time after the hearing. The temporary order issued by the court typically remains in effect until a final agreement is negotiated or a final order is issued.

After the temporary hearing, the parties exchange information, either through voluntary and informal procedures or in the formal context of "discovery." If the court has authorized formal discovery, the attorneys may send formal requests for documents and interrogatories or take depositions.

When the case is deemed ready for trial either party may request a final hearing. After receiving such a request, the court will generally schedule a pre-trial conference to determine the issues that must be tried and to determine a schedule for the final hearing. At the final hearing the court hears live testimony from witnesses and receives various documents as exhibits. After the hearing the court typically will take the matter under advisement and issue a written order once a decision is made. Frequently one or both of the attorneys will be asked by the judge to submit proposed orders.

After the court issues a final order, that order supplants the temporary order and will be the final order resolving all issues unless there is an appeal of the order. In that case the South Carolina Court of Appeals will decide the case after receiving a record of the proceedings in the lower court, reviewing legal briefs submitted by the parties and possibly hearing oral arguments. The appellate process can take quite some time.

File Retention

At the end of the representation, you have the option of obtaining your file. If you decide not to obtain your file, we will retain your file for one year. At that time your file will be destroyed. Copies of documents filed at the courthouse can be obtained from the clerk of court.

Principal steps in the divorce process

