

Divorce Procedure From Filing To Conclusion

When clients hire us they often ask "how long will my case take?" A few months later they wonder "when will this be over?" We offer this chronology of a divorce case to help you understand what events can cause a case to take longer (sometimes several years) and what you can do to help speed the conclusion of your case and so that you know what is the procedure for filing for divorce in Illinois.

The shortest case our law firm has ever handled lasted all of four days – filed on Monday, divorced on Friday. The longest lasting case we've ever been involved with lasted over six years and wasn't ever really concluded – the couple continued to squabble in court long after the divorce was concluded.

Most cases wrap up within six months to a year. Your case may have some complexities that will cause it to take a longer period – and those issues may be able to be short circuited or aggressively dealt with in negotiations to minimize the delay. Outside factors may cause one party to want to delay a case (waiting for a pension to vest, or for an anticipated change in employment, for example).

Timing: There is a good time to get divorced... and a bad time to get divorced. Time your case for a good time, if you can. The best way to do this is to consult with an attorney and coordinate the commencement of your case with the events you can best use to your advantage in settlement negotiations. Anticipated changes in employment, your kids getting ready to move off to college, the expected completion of an education degree, even a medical check-up can all be major factors in determining the time to start your case. By paying attention to this simple consideration you and your attorney can "deal yourself a good hand" – and that will make a world of difference later on in settlement negotiations.

Initial Filing: Your case is started when your attorney files the "Petition." Some cases can be started by filing a "Praecipe," but this is not the usual method and a Petition still must be filed within a relatively short time. Once your case is filed, you **don't** have to tell your spouse and the sheriff doesn't HAVE to serve papers immediately. You can instruct your attorney to wait until you say so before notifying your spouse. This period of silence cannot last forever, but it may be beneficial in some cases to get the case on file and then let things sit quiet for awhile. Again, talk with your attorney to determine the best way to proceed in your situation.

The "Dear John" Letter: Unless your case involves violence or must be urgently presented to the court for some pressing financial or other reason, your attorney will probably notify your spouse by letter that a divorce case has been started. You, of course, have the right to have the papers delivered by a sheriff's deputy or a private "process server" but this is rarely done – the scenes in the movies of bikini-clad investigators serving divorce papers on hapless, pool-side, husbands is a thing of fantasy.

The "Dear John" letter is usually cordial and businesslike in tone – it merely says that you've hired an attorney, a case has been filed (and includes a copy of the papers) and that a negotiated settlement would be the best course for everyone. The letter suggests that your spouse consult an attorney and, in any event, respond to the letter by contacting your attorney.

The law requires that, before anything can happen in court (except emergency matters and Orders of Protection) you must be able to prove – that's "**PROVE**" – that your spouse knows that the divorce case is going on and his or her property and other rights may be impacted. There are only two ways to prove this: 1) your spouse must file some papers in the case with the court's clerk, or 2) a "process server" (usually a sheriff's deputy) must serve the papers. Sending the papers by certified mail isn't good enough. A receipt from Federal Express isn't good enough. Having a friend drop the papers off for you isn't good enough. Even if you personally hand the papers to your spouse – that isn't good enough. The only proof that will satisfy the court is either 1) papers filed in the case by your spouse or 2) having evidence that the papers were properly delivered by an approved process server.

Service of Process and The 30-, 60-, or 90- Day Delay: If you have to have papers served on your spouse, figure it will take a week or two. Once the papers are delivered, the clock starts ticking and your spouse has only 30 days to file papers with the court. A court date will be set up so that you and your attorney – and your spouse and his or her attorney– can talk with the judge about how long you think the case will take. Sometimes at this first

court-date, your spouse will show up without an attorney and explain to the judge that more time is needed to hire a lawyer. Judges hate to force anyone who wants a lawyer to go forward in court without representation and, so, the case will almost certainly be continued for another thirty days. This may happen a few times and your case may be stalled by your spouse's inability (refusal or procrastination) to hire a lawyer. There's little you can do to prevent the delay – if the judge is willing to let the case lag, then the case is going to lag.

Finding the Right Judge: Believe it or not, a good lawyer can help get your case in front of a judge who may be good for you and not-so-good for your spouse. This can usually be done up until the time when the judge starts to hear important matters in the case. Some attorneys will try to lock in a judge by starting a case with an *Ex Parte* Emergency Order of Protection. In an *ex parte* matter, only one side shows up to present the issues – the other party doesn't even know that the complaining spouse has gone to court until it is all over. Some unscrupulous lawyers will use this strategy to start a case by tarring the absent spouse and, later, argue that the case must remain before the same judge – the one before whom the tarring took place – because "the judge has already heard important matters in the case." One Illinois case,¹ however, says that an *ex parte* presentation of important facts and issues at the start of a case is not enough to bind the case to the judge. If your spouse's lawyer tries to tar you before the judge by presenting an *Ex Parte* Emergency Order of Protection, call our office to get your case in front of a new judge. Be sure that your case ends up in front of the judge that you want – not the one your spouse wants.

You should work with an attorney who has a familiarity with all of the judges in your circuit. Many judges are known for their predispositions to certain types of cases. Some judges favor men, some favor women, some are less tolerant of bad behavior. Choosing the right judge can be a critical part in setting your case up for a quick and favorable settlement. Call our office to work with a lawyer with the background, resources, and ability to help you through this important consideration.

Temporary Relief: While your case is going on, the bills still have to get paid, the kids have to be taken care of, and all the other day-to-day things that make up your life still happen. The attorneys usually try to work out an agreement to make sure everything gets taken care of without resorting to court. In some cases, however, issues of a "temporary" nature end up being resolved by the court because the newly-separated couple is either living beyond their means or the fact of a separation has imposed new financial and other burdens that their resources simply cannot accommodate. Eventually, some thing has to give and the parties usually end up before the judge for a temporary resolution

Discovery: Divorce cases, like every other type of lawsuit in the American system of justice, allows for a period of time in which both sides get to try to learn about the other side's case. This is called the "discovery phase" and it can take quite awhile. You may think that discovery in a divorce case is a useless waste of time. Think again. We encounter cases every day where a spouse has been hiding money for years, secretly stealing money out of a joint account, or siphoning off business profits to help their settlement position. These schemes take time to set up – sometimes several years – and they take time to uncover and sort out.

The duration of the discovery period is established by rules in each circuit. In Cook County, for example, discovery is supposed to be completed within 18 months of the start of the case. In most contested cases, however, that deadline comes and goes without any fanfare. Judges routinely grant extensions during discovery.

Depositions: Depositions are formal, sit-down, question-and-answer sessions. The person answering the questions is sworn under oath. False answers are punishable by the court. Your attorney can depose just about anybody connected to your case: your spouse, his or her employer, lover, relatives, bankers, bartenders, etc. A court reporter is present at the deposition and records everything that is said. The court reporter's fees can be several hundred or even thousands of dollars depending on the length and complexity of the deposition – so be prepared.

Subpoenas: Subpoenas are formal written demands your attorney may send out to anyone connected with your case. Subpoenas are most commonly sent to banks, accountants, and credit card companies to obtain copies of financial documents. Subpoenas may, however, also be sent to hotels for registration records, employers for attendance records, and even to lovers for copies of love letters, gift receipts, etc.

Requests for Documents: A "Request for Documents" is a device used by attorneys to obtain documents and records from the other side. It may only be used between the parties – not on anyone else regardless of their connection with your case.

Status Calls: Throughout your case, the judge will want to know how things are going – whether settlement talks are progressing and, if trial is likely, where things stand on the completion of discovery. Early in the case the court will want to make sure that the bills are getting paid and the kids are doing alright in school, and that all things considered, the family situation isn't breaking down too badly.

To stay on top of a case, the judge requires the attorneys to regularly update the court. This is done at a "status call." Typically, only one attorney shows up in court (they talk before hand and agree which one of them will go to court) and talks with the judge for no more than five minutes just to give an update. Every time your case is before the judge it will probably be scheduled for another "status date" – usually one month in the future. The court likes to force the attorneys to come back and continually advise them on the status of a case so that things don't fall through the cracks.

Pre-Trial Conferences: The judge will schedule a "pre-trial conference," or a "case management conference." The lawyers (and sometimes the parties) have to show up in court to meet with the judge.

The judge may use the opportunity to knock some heads in the hopes of helping jump start stalled settlement talks. The judge may advise an attorney whose client is demanding too much that, "if the case went to trial and I heard the evidence that you've explained to me today, your client would fare far worse than the settlement that is currently being offered. I hope you'll try to talk some sense into your client or you may lose a lot more than you can possibly gain by going to trial."

Settlement: If your lawyer has done his job, you'll probably have better than 50% of the bargaining leverage in settlement discussions. Remember, you're probably better off negotiating a settlement where you have 100% certainty of what you're getting and giving up. At a trial, you have no leverage with the judge and, at best, your attorney can give you odds on the probability of success of your claims. If you can find a reasonable settlement that will help you avoid trial, consider it closely with your attorney.

Trial: This is the part you'd like to try to avoid. In law school we attorneys learn about "The Wal-Mart Theory" of how juries work. When a client demands that a case go to trial, we suggest they swing by the local Wal-Mart on their way home and go to the area of the store where they sell undergarments. "Look around," the advice goes, "and consider the first twelve people you see—for those are the people who very likely will make up your jury – and ask yourself if you think you can convince each and every one of those twelve people that you're right and the other side is wrong. If you have any doubts at all, you should settle the case and not go to trial."

In divorce court we don't have juries anymore – we only have bench trials where a judge makes the final determination. Still, judges are human, they have their own prejudices and leanings, they make mistakes, and they have good days and bad days.

Your divorce is probably the biggest financial event in your life and you may never again in your life experience the emotional and psychological stress it brings. Try to avoid leaving anything up to chance. Work with your attorney and consider the benefit of a guaranteed settlement that may not have everything you want, but comes close, and balance that against betting everything on a calculated roll of the dice.

Now that you know what is the procedure for foiling for divorce in Illinois many of the other articles in our library may be of additional use to you and your personal situation. The more knowledge you have, the better prepared for an eventuality you will be.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.