

What Happens in a Divorce Case?

A divorce case is commenced by delivering a Summons and Complaint on the other spouse. This is also referred to as service of process. Process can be served by a sheriff or process server. Alternatively, the other party can sign what is called an admission of service. The matter in which process should be served is somewhat dependent upon how you believe your spouse will react to the commencement of the divorce case. You should talk to your attorney about this issue.

All that is required to get a divorce in North Dakota is a finding of “irreconcilable differences” that have arisen between the parties and that have destroyed the legitimate objects of the marriage, making it impossible for the marriage relationship to continue. There is no requirement that fault be found on the part of either party, such as adultery, abuse, etc. Essentially, if one spouse wants a divorce, he or she can get it simply by requesting it.

The party who is served with divorce papers must serve an answer to the Complaint within 20 days after being served. When the answer is served, the opposing party will typically make a counterclaim for divorce also, and set forth to the court what he or she wants the court to do with respect to the matters under consideration in the divorce. For example, if the party commencing the divorce asks for parenting responsibility of the parties’ children, child support, spousal support, or other form of relief, the other party may serve a counterclaim and ask for the same, or similar, relief.

The parties can at any time settle some or all of the matters under consideration in the divorce. Matters that are settled are reduced to a written stipulation to be filed with the

court. Thus, at any stage of the proceedings, settlement discussions may take place. You should discuss early on with your attorney what your wishes and desires are with respect to possible settlement, so that the topic of settlement can be addressed with opposing counsel.

If there is an immediate need for temporary relief, such as exclusion of the other party from the marital home, division of responsibility for payment of the parties' bills, temporary parenting responsibility and parenting time of the parties' minor children, temporary child support or spousal support, division of the parties' automobiles and other personal property, etc., they can be taken care of through a motion for interim (temporary) order. As part of the motion for interim order, you will be required to fill out the financial statement and affidavit that is included with the packet of materials being given to you by your attorney. You will also be required to fill out an additional affidavit, setting forth the relief you seek and the reasons why you are seeking that relief. Your attorney will assist you in explaining what needs to go into your affidavit. Other people having knowledge of the matters under consideration, such as parenting responsibility, can also file affidavits. After the affidavits have been filed, there will be a temporary hearing before a judicial referee or district court judge. A temporary hearing is somewhat like a "mini trial" in which the referee or district court judge reads the affidavits, cross examination of those submitting affidavits is taken, and the referee or district court judge makes an order that will govern the parties during the pendency of the divorce proceedings.

After the action is commenced, the parties are free to pursue what is called "discovery." Discovery essentially means a mutual exchange of information pertinent to the

proceedings. Discovery can be informal, where the attorneys meet and exchange relevant information, or it can be through formal legal proceedings. Formal discovery is conducted through interrogatories (which are essentially written questions asking for various information) requests for production of documents, and requests for admissions (which require you to admit or deny various statements) or, on some occasions, depositions. Depositions involve a formal proceeding where the opposing counsel asks questions of the party under oath. The testimony is taken down by a court reporter and is transcribed into a written transcript.

Depending upon the issues in your case, there may or may not be experts appointed. For example, in a parenting responsibility case, a guardian ad litem may be appointed at the request of one or both of the parties. A guardian ad litem is a person who, through his or her training, is qualified to conduct an investigation regarding the factors that determine the issue of parenting responsibility and to make recommendations to the court with respect to the parenting responsibility issue. Another instance in which experts may become involved is with respect to business valuation related to property distribution issues. For example, if there is a closely held business owned by one or both of the parties, each side may choose to employ the services of an expert accountant to value the business.

If a settlement is not reached, the case ultimately will go to trial. A divorce trial is tried to district court judge, with no jury present. Each party would present evidence in the form of oral testimony, and each party can also admit exhibits into evidence. At the end of the trial, the judge will sometimes make his or her decision immediately. More often, the

attorneys for each side are provided a brief period of time to submit, in writing, their respective clients' positions, and the judge will make a ruling sometime thereafter.

After the court enters its judgment, if either side is dissatisfied with the result, he or she may file an appeal to the North Dakota Supreme Court. Even then, the Supreme Court may decide to send the case back to the district court for a second trial.

If you have any questions at all concerning the nature of the proceedings, you should address those questions directly with your attorney.