THE 5 STEPS TO DIVORCE

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In Texas, every divorce case will go through the same five basic steps:

1. Filing the Case
2. Temporary Orders
3. Discovery Process
4. Mediation Process
5. Trial

In this eBook, we'll go over what to expect during each step of the Texas divorce process.

Step 1: Filing for Divorce

There's no doubt that filing for divorce - or learning that a spouse has filed - can be a challenging and anxiety-inducing time. Unfortunately, most free resources on the topic are vague or unhelpful. We hope to change that; understanding the basics of the filing process can alleviate a great deal of stress.

Does it Matter Who Files First?

A common first question we receive from our clients is, *"does it matter who files first?"* Filing first will not affect a party's ability to request certain relief, or fundamentally impact how a divorce will be granted. However, strategically speaking, it may make sense to file first since the party that files will get to present evidence first at court.

This may give the party filing first a strategic advantage in court, particularly if a divorce is expected to culminate in a contested jury trial. Of course, if you are seeking extraordinary

relief, you must file immediately so you can seek protection from the court.

Because of this, time is often an essential element of the lawsuit. A party seeking a divorce should consult an attorney immediately and locate a law firm that can move quickly.

What is Filed?

A divorce is a lawsuit, plain and simple. Like a personal injury or a breach of contract suit, a divorce starts with an Original Petition. This pleading is most commonly called an Original Petition for Divorce (the word "original" is used because pleadings are frequently updated, and subsequent filings may be called the "Second Amended Petition, etc).

What is Contained in the Original Filing?

In most lawsuits, facts are contained in the Original Petition. For example, a breach of contract suit will typically have a section entitled "statement of facts" within the petition that outlines the lawsuit's underlying facts. These sections contain the pertinent facts that led up to the lawsuit.

In general, the sections include:

1. Statement of Discovery Level (Level 2 for divorce cases unless modified – this has to do with the rules of discovery and deadlines);
2. Names of the parties of the suit;
3. A statement that a party meets the domicile requirements for divorce (90 days in the county; 6 months in the state);
4. Service (how the other side is to receive the paperwork);
5. A statement of whether or not a protective order is in effect; the attorney.
6. The date of marriage and separation;
7. Grounds for divorce;
8. Names and ages of the children of the marriage and the requested relief for the children;
9. A request that the court divide the property and confirm community property;
10. A request for attorney's fees (this is a standard request – don't be alarmed if you see it in the petition!);
11. A prayer for relief; and
12. Signature of the attorney

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A divorce petition may also contain a request for temporary orders regarding children or property issues, such as what will happen with the house or children until the divorce is finalized. We'll dive into Temporary Orders in the next step.

Step 2: Temporary Orders

What are Temporary Orders? Simply put, Temporary Orders are orders that the Court will sign and to which it will hold parties accountable until the divorce is finalized. When the parties receive their final divorce decree, any temporary orders will be subsumed by rulings in the final decree.

However, until that point, Temporary Orders help the Court ensure that order, civility, and the safety of all parties is maintained while the case undergoes litigation.

When it comes to your home and your children, the Court could decide early on in a case any or all of the following:

- Where the children should live (and with which parent) until the divorce is final;
    - Which party should live in the home while the case is pending;
    - Which fees and costs associated with the home such as the mortgage, utilities, property taxes, etc. should be paid by each spouse while the case is pending;
- If any party is entitled to receive temporary spousal maintenance to help pay for any of the costs associated with the home;
- Which party is responsible for the utilities and upkeep of the home while the case is pending;
- If a party should be allowed to take any furnishings and/or pets from the home and if so which ones; and

- If the home will be ordered to be placed on the market in preparation for its sale (the house may or may not sell before the divorce is final)
    - If the house is sold before the divorce is final, how will the proceeds be allocated between the parties.
    - If the house should be refinanced (and when).

Temporary Injunctions, Standing Orders and Restraining Order

When filed, most divorces will have additional orders attached to them (or served alongside with them), a Temporary Restraining Order or a Standing Order. Most of the time, a Temporary Restraining Order is not as frightening as it sounds. The Texas Family Code allows a court to enter a "standard" temporary injunction to preserve property without the need for any verified pleading.

Simply put, these are orders that set in place basic rules to preserve property while the case is pending. These Temporary Injunctions will be served along with the divorce petition and will remain in effect until the court enters temporary orders.

Many counties have a "Standing Order" attached to their divorce petitions, rather than requiring a stand-alone Temporary Injunction or Temporary Restraining Order. This "Standing Order" is typically attached to all divorce and custody lawsuits, goes into effect upon filing, and remains in effect during the case (unless modified by the court).

Suppose there is extraordinary relief requested beyond what is already contained in a Temporary Injunction, Temporary Restraining Order, or an accompanying Standing Order. In this case, the requesting party must file an affidavit along with the pleading, outlining the need for extraordinary relief. If the judge grants the extraordinary relief, there will be a separate stand-alone Temporary Restraining Order specially tailored to your case.

NOTE: If you have been served with any Temporary Restraining Order, you must consult an attorney immediately.

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Step 3: Discovery

Discovery is a process involving the exchange of documents, information, and other potential evidence between parties to a lawsuit. In Texas, we have open discovery, which means both sides are expected to turn over all of their evidence well before trial. If both parties have access to all relevant information, that increases the likelihood that they will reach a reasonable settlement before trial. This also eliminates dramatic, movie-like moments in which one party finds a revelatory piece of evidence at the last minute that may completely change the outcome of a case. However, discovery is still vitally important to every case. In our experience, the side that is better prepared and organized during discovery usually ends up better off in the end, whether in settlement negotiations or at trial.

There are three main types of discovery that you are likely to see in your case:

1. **Request for Disclosure** - This is the most common form of discovery, and it is governed by Rule 194 of the Texas Rules of Civil Procedure. These questions are provided in the Texas Rules of Civil Procedure, and your attorney will handle most of your responses. However, there are a few questions for which your input is critical, such as listing witnesses and facts about your side of the case.
2. **Request for Production** - This is a request to produce documents. Most law offices have a pre-planned set of requests covering a vast range of topics that may or may not apply in your specific case. You may feel overwhelmed when you read these requests, but they are not as daunting as they appear. Your lawyer should work with you to narrow down these requests to the topics relevant to your case and make these requests easy for you to understand. Your lawyer should also be organized and help you keep track of which documents have been produced and which documents need to be produced.

3. **Interrogatories** - These are questions asking you to provide specific answers about your case. Some of these questions may or may not apply to your case. Your attorney will answer many of these questions, but there are topics and questions you will need to answer yourself. Keep in mind that you are only expected to provide general answers to questions, not detailed lists of every possible answer.

What is "Discoverable"?

Be prepared for a full and invasive exam of everything relevant to your married life. **There are plenty of things that could be relevant, including:**

- Your bank statements
- Phone records
- Text messages
- Journals
- Title to your vehicles
- Copies of checks
- Social network accounts
- Receipts for some of the individual purchases could be relevant to litigation

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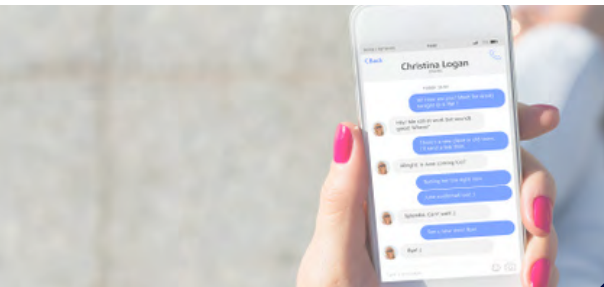

What is relevant will depend on the issues at hand and the accusations made by both parties.

There is nothing off-limits, except maybe a few private medical details (and most of those are fair game). **The other party may be entitled to get details and documentation regarding your:**

- Finances (tax returns, debts, business records, credit reports, bank statements, etc.);
- Communication (emails, text messages, IM messages, phone records, social media accounts (i.e., Facebook posts, etc.);
- Your Medical History (mental treatment & issues, substance abuse issues, anything that may impact custody of a child;
- Sexual Behavior (sexual preferences, unusual practices, affairs, paramour(s));
- Parenting Skills (anyone's parenting skills that will be in physical possession or have access to a child; and even
- Relationships (your family, friends, co-workers, neighbors, employers, etc.).

Unfortunately, many parties encounter stressful demands during discovery. **Consider the following examples:**

- Your grandmother may get deposed, and the other lawyer may ask her some embarrassing or personal questions about you.
- Your work emails may be subpoenaed.
- Your next-door neighbor may be forced to testify about you in court.
- Your doctor may be forced to testify about your treatment for depression.

People do get away with lying and hiding things in Court, even following discovery. Thankfully, a good lawyer with a sufficient budget can minimize this possibility. Importantly, if you are caught lying/hiding things during Discovery, the consequences will be severe. You must be honest from the start to avoid negative consequences.

What to do if You're Served With Discovery Requests

When the other side serves you with discovery requests, responses will be due within 30 days. Your lawyer should notify you promptly when they receive discovery requests for your case. To allow counsel time to adequately review your responses, format your answers, and revise your responses, you must stay in contact during the discovery process.

What is a Deposition?

Depositions are another form of discovery, but they are not as common as the first three types mentioned. Depositions tend to occur in more contested cases where there is a significant dispute over property issues or conservatorship of children.

A deposition is where a party to the lawsuit or some other witness in the lawsuit provides sworn testimony similar to what may happen in Court.

However, a Judge is not present at a deposition, and it takes place in an office rather than in Court. Depositions are recorded by a stenographer (Court reporter) and sometimes also a videographer. The attorney for the party who requests the deposition is the one who is in charge of the deposition and will mainly ask the questions. The other attorneys may ask questions at the deposition, but it is not always necessary. Again, all questions and answers will be recorded in real-time during the deposition. A deposition can be short (30 minutes to an hour) or last all day.

A party may take an oral deposition by telephone or other remote electronic means if the party gives reasonable prior written notice of intent to do so, but it is generally done in person.

Several weeks after the deposition, the person who gave the deposition will have an opportunity to review the transcript for accuracy and notate proposed edits to the transcript. This is most common if there is an error in the transcript regarding testimony given at the time.

If you are the person providing the deposition, you will need to spend considerable time preparing for the deposition with your lawyer, which may include a practice deposition. If you are not the person providing the deposition, you will still be able to attend the deposition if you want to.

If depositions are requested or needed in your case, your lawyer will have more in-depth discussions with you about the timing, topics, and witnesses for those depositions.

Step 4: Mediation

What is Mediation?

Mediation, quite simply, is a negotiation between you and the other side of the case. The goal is to come up with a settlement agreed to by both parties. Each District Court requires mediation. Some Courts will even require you to attend mediation twice during a case—once before a Temporary Orders hearing and once again before the final trial.

Mediation is conducted by a mediator, a neutral third party chosen by the parties or the court to facilitate settlement discussions. The mediator is often a family law practitioner or a retired judge.

The mediation process entails the parties and their respective lawyers meeting either virtually, in person at the mediator's office, or one of the attorney's offices. The parties are usually in separate rooms with their attorneys. The mediator goes back and forth to each parties' room, bringing offers from the opposing side and attempting to help with the settlement of the case. A "joint session," where parties meet in the same room, is rare as many mediators do not use this tactic.

The entire mediation process is confidential. The parties cannot repeat in court what was offered in mediation. And finally, the mediator does not repeat what was said in one party's room to the other party; except for instances of child abuse or elder abuse, when offers are being exchanged, or when granted permission by the offering party.

How Do You Prepare for Mediation?

Meet With Your Lawyer

First and foremost, a client and the lawyer should meet before the day of the mediation. It is surprising how often lawyers do not meet with their clients until the day of the mediation. Not meeting with your lawyer right before mediation for prep will naturally result in a more unsatisfactory outcome, and a reduced ability to make informed decisions.

Draft a Mediation Memo

A well-prepared lawyer will meet with the client and prepare a mediation memo for the mediator in advance. In this memorandum, the lawyer gives the mediator background information about the family, the parties, the children, and pertinent information about the case. The memo should also point out the client's goals in mediation.

Prepare the First Offer

It is always a good idea to come to mediation with a first offer ready. It is illogical to wait until the day of mediation when the parties are paying for both sides' attorneys and the mediator to come up with a first offer. The lawyer should take the opportunity to come up with a comprehensive first offer during the mediation preparation meeting. This also helps make sure minor, but important, details are not left out in a rush.

Discuss Non-negotiables

Every client has non-negotiables. For example, a 50-50 possession schedule may be a non-negotiable for a client. Not paying spousal maintenance (or receiving spousal support) may be another non-negotiable. Each client is unique. If there are issues that are non-negotiable for the client, they should be brought up before the mediation, so the lawyer knows how to approach those issues strategically.

Talk About the Logistics of Mediation

Before mediation, the client should know all the logistics of mediation, so the client is not surprised by anything unexpected. **The logistics of mediation include the following:**

- Start time;
- Name and address of the mediator;
- If the mediation is virtual, the login and passcode information;
- Cost of the mediation; and
- Expected length of mediation (whether half-day or full-day).

Discuss Next Steps If the Case Does Not Settle

Every client should walk into the mediation, hoping to settle but knowing what to expect if the case does not settle. This is only logical. How can you decide if a settlement makes sense if you do not know what happens if you don't accept it? Before the mediation, the lawyer and client should discuss the next steps if the case does not settle.

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This discussion should include the following:

- What additional work is needed on the case (e.g., depositions, appraisals, additional discovery, and trial preparation);
- What a realistic outcome at trial will be;
- How long the process may take; and
- What the expected costs will be.

What Happens If You Settle in Mediation?

If the case settles in mediation, the parties will sign a mediated settlement agreement (MSA). As long as the correct statutory language is included in the MSA, the agreement is binding and irrevocable. In other words, "buyer's remorse" is not allowed.

Once the MSA is signed, either party is entitled to judgment on the MSA. The case will be complete once the appropriate orders and closing documents have been drafted, signed by all necessary parties, filed with the proper court, and approved by the judge.

What Happens If You Do Not Settle in Mediation?

If you do not settle in mediation, the case proceeds forward. Often, this means that the case will be set for a trial in front of a judge or jury. Additional work may be necessary before the case goes to trial. This does not mean that the case must be tried. Parties who do not settle in mediation often will still settle at a later date, before the trial.

Conclusion

Mediation is a necessary and often fruitful step in most family law cases. The process can result in the parties avoiding additional litigation and compromising on a settlement that resolves the case once and for all. However, if a client is unprepared for mediation, the results can be disastrous. Preparation is vital to promote a good result.

Step 5: Final Trial

Hearing the word "trial" may sound scary. You may wonder if it will be like anything you've seen on television or movies. Will lawyers yell at the witness while waving their hands in the air for dramatic effect? Will there automatically be a jury that stares in shock and awe as we present your case? We want to be sure that you understand the process and understand what is based in reality, and what has been sensationalized.

The day of trial is when the many hours of trial preparation, discovery responses, hearings in your case, depositions, and casework pay off. The trial should not be viewed as a scary day, but rather a day when everything comes together. It is the day that you and your lawyer get to paint a full picture of the case (and the parties) to the Court. Specifically, your lawyer will get to show the Court who you are and why you should win the case (or why the other party shouldn't).

What to Wear

On the day of the trial, please dress appropriately in business formal attire. As a rule of thumb, you want to dress as if you are heading into a prestigious job interview. If you have to wonder whether your attire is appropriate, the chances are that the attire is not.

The Courtroom

When you arrive in the courtroom on your day of trial, you will wait in the gallery with the other parties and cases that have a trial on the same day. Usually, the gallery will be pretty full of people.

When the Judge announces your case (we call this docket call), your attorney will stand for you and announce ready for trial and the time estimate for your case. For example, this estimate could be 3-4 hours or 1-2 days, and each case is different.

After docket call, your attorney will let you know where your case is in line. Depending on the caseload and whether you are preferentially set, the Judge may start your trial that day, or reassign it for another time in the next couple of weeks. Note: A preferentially set hearing is one with a "reserved" place on the Court's docket.

A trial may also start on one day and end on another day a couple of weeks later. Each Judge will manage his/her docket to account for the caseload.

When you start the trial, please sit at the counsel table with your attorney. You may jot down notes on a notepad to communicate with us, but it is crucial not to say things aloud so the Judge or the other lawyers can hear it. This will be considered improper testimony, and the Judge may punish a party for this behavior.

The Actual Trial Hearing

When the trial starts, the attorneys usually have brief opening statements to the Judge outlining the issues and arguments in the case.
After the opening statements, the Judge will start witness testimony.

The Petitioner (the one who files the case) calls his/her witnesses first and presents the evidence first. Usually, witnesses that are non-parties go first so the witnesses can continue with their workday. Judges will accommodate witnesses out of turn to save time and money. For example, a testifying doctor that charges a high hourly rate for his testimony may be allowed to testify first so that he/she can be released after such testimony.

During witness examination, if the witness is your witness, your attorney goes first in questioning. Your attorney is only allowed to ask "who," "what," "when," "where," "why," questions in an open-ended format. The Judge may allow leading questions, but it depends on the circumstances.

If the witness is the opposing party's witness, your attorney "cross-examines" the witness and goes second in questioning. This means your attorney can ask leading questions instead of the open-ended questioning mentioned above.

Learn more about this step on our Knowledge Base

The Use of Evidence

The attorneys, in a case, will usually pre-admit exhibits for trial. If there are no pre-admitted exhibits, we may ask the witness (or you) specific questions that allow the document to come into evidence. These evidentiary questions can be leading and will have "yes" answers. **An example of this type of evidentiary question is:**

- Text message exchange between the parties:
  - Q: Do you recognize Exhibit P-1 (text message)?
  - A: Yes.
  - Q: Is Exhibit P-1 and a true and accurate text message between you and your husband on or around December 13, 2019?
  - A: Yes.
  - Q: Are your texts on the right-hand side and your husband's responses on the left-hand side?
  - A: Yes.

Once the witness testimony concludes, the attorneys will present brief closing arguments to the Judge, outlining/re-capping the evidence in the case and supporting their position.

Conclusion of Trial

The Judge may rule after closing arguments but may also take the case under advisement, which means he/she will decide the case on his/her own time. This advice may take a few hours, a few days, or sometimes weeks. Once the attorneys receive the ruling, one of the attorneys will prepare the final order according to the Judge's ruling. If you want to appeal a decision by the Judge, just let us know.

Next Steps

Now that you understand the 5 Steps to Divorce, you are prepared for what to expect throughout the case process and from an experienced family attorney.

You can find more information about the processes within each step to divorce on our **Knowledge Base**.

Contact Our Team

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