# The Divorce Process

## What to Expect©

**By**

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It is impossible to cover what can happen in any given case so the following is an effort to explain in general terms the overall divorce process in Montgomery County, Maryland. Many people are nervous and upset when they first meet with a lawyer. Many subjects are covered during the initial interview and it is impossible to remember everything you were told about the process. It is my hope that with the following to refer to during the process, you will have a better understanding of what to expect as you go through the process of obtaining a divorce.

### General Expectations

You have concluded that a divorce is inevitable. What can you reasonably expect to have happen as a result of the divorce? Many individuals assume that their spouses will be punished in some manner by the court (the judge) for their behavior which led to the divorce. While this may have been what happened in the past, it is not what you should expect to have happen today. Most judges today treat divorces as if they were the break up of a business relationship. They tend to divide assets on a 50-50 basis for long term (over ten years) marriages. If the marriage lasted less than 2 or 3 years they try to put each party back in the financial position they were in when they entered the marriage.

Although the “circumstances that contributed to the estrangement of the parties,” commonly referred to as “fault,” remains one of the statutory factors the judge must consider in deciding property and alimony issues, fault simply does not have the impact on the outcome that it once did. Most judges have heard all the complaints a hundred times before- he cheated on me, she didn’t pay attention to me, etc. Judges generally feel both parties contributed to the break up and therefore they divide assets fairly equally and award alimony, if at all, based on need and ability to pay.

Another frequent expectation is that the party who wants the divorce should bear the cost and attorney fees involved in obtaining the divorce. While judges frequently award the economically dependant spouse attorney fees, they rarely, if ever, require full payment of all costs and attorney fees. Usually only a small portion of the attorney fees will be awarded to the economically dependant spouse if the case is litigated.

Many people expect that they will be able to remain in their homes, especially if the other party left the home. The court does not have the power to transfer title to property. This means the court cannot award the house to one of the parties. The only

exception to this rule is for retirement assets. The court can order a portion of retirement assets be transferred from one party to the other by way of a Qualified Domestic Relations Order (QDRO). If the marital home is titled in both parties names, the court can only order the house to be sold and the proceeds divided by title. As most people own their homes as tenants by the entireties, this means the proceeds will be divided on a 50-50 basis. This applies to all property that is jointly titled such as cars, boats, bank accounts, investment accounts, stock, bonds, and household furnishings. Although there is no "title" for furniture and other household items, things purchased for the family's use are deemed to be jointly titled. Unless the parties jointly agree to divide furniture, cars, and other property, the court must order them sold and the proceeds divided equally. The court does have the power to make one monetary award to adjust the equities if the court finds that the division according to title would be inequitable.

With regard to custody of children, when both parents are clearly fit parents (i.e. anyone who is not a drug addict, criminal, or child abuser) judges today frequently try to equalize the parents time with the children. I do not mean to suggest Judges frequently grant 50-50 joint physical custody, but the days of one parent seeing the children every other weekend are over. Most access schedules today are closer to a 40-60 spilt of the children's time. Rather than doing what is truly in the children's best interests, judges tend to address the parents competing desire to spend time with their children. Temporary agreements as to support and access can play an important part in the final outcome and may be adopted by the court in the final order. Judges give significant weight to an agreement between the parties as to access schedules. Custody and access and child support are issues that are always modifiable by the court regardless of language used in a settlement agreement provided there is a material change in circumstance.

Litigation is expensive and divorce cases are no exception. The more issues that are litigated, the higher the attorney fees will be. Most attorneys estimate a minimum of 3 hours preparation time for each hour spent in a hearing. You will be charged for any waiting time at court. Results can never be guaranteed and rarely does a litigant feel that they got what they were entitled to when the decision was left to a judge. There is no compensation for the years of pain or misery that many individuals go through before the decision to divorce is reached. What seems fair to you is not necessarily what a judge deems to be fair.

In summary, the court room is not the ideal place to resolve the complex financial and emotional issues that arise when a couple divorces. Mediation is an alternative that you may want to consider. You need a lawyer even when you and your spouse attend mediation. An attorney will advice you on your rights, the possible outcomes if a judge were to resolve certain issues, tax consequences of various settlement options, and can help you develop a bottom line before you enter into the mediation. An attorney should always review the draft agreement prepared by a mediator as mediators tend not to cross all the t's and dot the i's which may be necessary to keep you out of court in the future. Even if you cannot resolve all of the issues in mediation, a partial resolution of your disputes will save you significant attorney fees and costs.

**The court process**:

A Complaint for Divorce has been filed and served on the opposing party. Now what happens? The first thing that needs to be done is for the opposing party to file an Answer to the Complaint and possibly a Counter-Complaint for Divorce. Why a Counter Complaint? To ask for the relief that party may need because certain forms of relief are not granted unless they are specifically requested. If either party is seeking alimony or child support, financial statements must also be filed with the complaint or answer.

Next the court will send you and your attorney (if their appearance is entered in the case by the time the notice is prepared) a notice of a "Scheduling Conference" date when you and your attorney will be required to attend. The "scheduling conference" is a conference between you and your attorney and your spouse and their attorney and a domestic relations master at which you schedule events to take place in your case. The reason you need to appear at the conference is that you will be bound by the dates chosen and may not be able to get the dates changed in the future. Scheduling conferences take place in a court room in the Domestic Relations office on the second floor of the Montgomery County Circuit Court. Many cases are set at the same time and each case is called in order. There can be as many as 15 to 25 other people in the courtroom. Frequently you will need to wait for your case to be called. Each case takes approximately 5 to 10 minutes to schedule the relevant events in the case. One client likened the scheduling conference experience to a "cattle call."

If your case involves custody of your children, the court will require you and your spouse to attend a 6 hour parenting course sponsored by the court and held on 2 nights for 3 hours each. The course is free. You and your spouse choose from available dates. You do not need to attend on the same dates as your spouse. The Master will ask whether it would be appropriate for you and your spouse to attend mediation to try to resolve the issues of custody and visitation amicably. If your case involves abuse, you are not considered appropriate candidates for mediation. If you are candidates for mediation, the Master will schedule 2 sessions for you and your spouse to attend mediation with a court appointed mediator. Mediation is conducted by a psychologist or lawyer who is trained in mediation. Mediation is a process in which a neutral person (the mediator) discusses the issues of custody (physical and legal) and visitation or access with you and your spouse in an effort to help you and your spouse reach a settlement. Sometimes you can resolve some of the issues but not all of them. If you and your spouse reach an agreement or a partial agreement, the mediator drafts an agreement which becomes effective only after you and your spouse review it and have your attorneys review it and you and your spouse sign it. Your attorneys do not attend this mediation with you.

Your spouse or your attorney on your behalf may ask the court to schedule a hearing called a "Pendente Lite" or "PL" hearing if there are issues such as alimony, child support, visitation, counsel and expert witness fees, etc. that need to be heard on an expedited basis. The master will schedule a hearing during the next available time taking into consideration everyone's schedule and after determining how much time is

needed for the PL hearing. If a PL hearing is requested, the Master may send you and your attorney and your spouse and their attorney to a facilitator/mediator if the court has one available immediately following the scheduling conference. It is helpful to bring current financial information such as recent tax returns, pay stubs and your financial statement to the scheduling conference if there will be a request for a PL hearing.

Next, the Master will schedule ADR (Alternative Dispute Resolution) for you and your attorney and your spouse and their attorney to meet with a mediator appointed by the court to discuss financial issues such as property division, alimony, child support, etc. The attorneys will actually schedule the date with the mediator at some time following the conference to take place before the pre-trial date.

The Master will then schedule a pre-trial date and a trial date for a custody hearing if custody is an issue. If the trial on the merits for the divorce and for resolution of financial issues will take more than one day, you will not pick a trial date at the scheduling conference. If your case will take more than 1 day to try, then the trial date will be selected on the day of the pre-trial. The Master will also select a day for a settlement conference with a domestic relations master for the parties and their attorneys to discuss settlement. At the settlement conference, only the attorneys meet with the Master and the parties usually wait outside the master's chambers. The parties are required to attend to be available to enter into an agreement. If a settlement is reached it is read onto the court record and becomes a binding agreement and a court order. More than one settlement conference may be scheduled - one for custody issues and one for divorce and property issues.

At the conclusion of the scheduling conferences all parties and their attorneys will each be given a copy of the court orders setting forth the agreed upon dates for the above events. It is the court policy not to continue the dates after they are selected unless there is an emergency. Changing attorneys is not considered an emergency.

**The discovery process:**

Discovery is the term used for the exchange of information and documents between the parties. Parties are required to exchange information regarding their incomes, assets, liabilities, life insurance, medical insurance, potential witnesses, and medical information if it relates to an issue in the case such as employability or expenses.

Discovery takes several forms. 1) Interrogatories are written questions which the other side is required to answer under the penalties of perjury within 30 days of receiving the questions. 2) Document requests require the other person to produce the original or copies of documents such as bank statements, tax returns, bills, school records, etc. Most clients are appalled at the extent to which their personal records can be required to be produced to their spouses. Many times as many as five years or more of records will need to be produced. Once your receive a document request, you must save all documents requested even if your prior practice was to throw away certain

types of documents such as monthly utility bills. Parties can also be required to produce personal diaries. Unless you keep a diary at your attorney or therapist's request, a diary is discoverable and you may want to stop keeping one until the litigation is over. 3) A deposition is where the attorney for a party asks the other party or a witness questions which must be answered under oath. A court reporter makes a written record of everything that is said by all parties and their attorneys at the deposition. Under certain circumstances a deposition can be read at a hearing or trial. A party's deposition can always be read at any hearing or trial. 4) Requests for Admissions are statements that the other party is asked to either admit or deny. Admissions can be used as evidence in hearings or trial. 5) Requests to inspect property allow a party or expert to examine real or personal property and are usually done for valuation purposes.

After discovery is complete the parties will attend ADR (alternative dispute resolution or mediation with counsel present) and if the case is not settled, then they have another chance to resolve it at the pre-trial/settlement conference. If the parties reach an agreement at ADR, their agreement must be reduced to writing or placed on the record.

Motions or requests for the court to issue orders on disputed matters can be made at any time before the final trial and sometimes after the decision is issued. Any time a party wants the judge to issue an order they must present the issue to the court by way of a written motion. The court can, but does not have to grant a hearing on the motion but both sides are given an opportunity to argue in writing their side of the issue.

**Hearings and Trial**:

Hearings and the final trial (trial on the merits) are held before a master or a judge. The parties present evidence by way of testimony and documents. Each party has the right to call witnesses. Witnesses must appear in court or by deposition- they cannot send in a letter or do an affidavit. The attorneys have the right to cross examine each others clients and witnesses. The court may call its own witnesses such as court investigators when custody is in issue and a court investigator has been appointed by the court. The master or judge determines what questions can be asked of witnesses and which documents or other evidence can be presented. After the master or judge has heard each sides evidence they will make a ruling. Sometimes the ruling is given at the conclusion of the case but frequently the decision is taken "under advisement" and is issued at a later date in writing or orally with the parties and counsel present at a designated time.

A trial day usually begins at 9:30 a.m. and ends at 4:30 p.m. The court usually breaks for lunch between 12:30 and 1:30. Frequently a judge may have a matter that was set at 8:30 or 9:00 a.m. and they are not finished by 9:30. This means you wait until the court finishes their other matter and is ready for you. Sometimes the judge wants to discuss the issues with the attorneys before the trial starts. The judge wants to know if there is any chance of settlement or what issues the parties intend to go forward

on. Sometimes judges have meetings at 4:00 or earlier and the trial day ends when the judge says it ends. The judge will also take periodic breaks- at least one or two each morning and afternoon. The breaks can last from 5 minutes to 20 minutes. Sometimes judges get emergency or other calls during the day that require additional breaks. This means that at best a trial day consists of 6 hours. With breaks, late starts and early finishes, the trial day can be as short as 3 to 4 hours. As the time is equally divided between the parties and includes opening and closing statements, objections during testimony, and cross examination of the other parties' witnesses, a trial day at best (6 hours) means each side has 3 hours total. With a short opening (10 minutes) and closing (20 minutes), this leaves about 1 ½ hours for direct testimony of witnesses and 1 hour for cross examination. I estimate that a party's testimony usually takes about one hour or more depending on the issues. It is best to ask for more time than you think you will need when setting a hearing or trial as things come up during the process that are unanticipated but need to be addressed. You are not required to use all of the time, but it is up to the judge's discretion whether to give you more time than you asked for. Judge's do not like to give more time as they have other matters scheduled and another judge must cover for them. Many judges and masters will not grant additional time even if the trial day is shortened due to their schedule. Unless your case involves only basic property issues, it will take more than one day of trial. Custody trials usually require a minimum of 2 to 3 days.

Please save this article and reread it periodically as you go through the divorce process.