

ZIMMER FAMILY LAW, LLC

Getting a Divorce: A Step by Step Summary

The purpose of this summary is to inform you of the main stages of a typical divorce. This summary is intended to give a general overview of the significant events that typically occur or may be encountered in a case. It is not intended to be all inclusive or to deal with every situation that may arise. Every divorce is different.

1. Initial Consultation

After you contact us, one of our staff members will obtain some initial information about your situation and will ensure that we do not have a conflict in discussing your case. Assuming there is no conflict, we will schedule an initial meeting for you to discuss your case with one of our attorneys. The meeting, and all other communications between you and our office, are confidential and may not be disclosed without your consent.

We understand that the selection of a lawyer is a highly personal matter. We encourage you to ask any questions about the way in which we represent our clients or our qualifications. After we discuss with you the facts, law, and issues, in your case, we encourage you to carefully consider whether we are a good fit for your needs. We want to ensure that we are partners in resolving your case.

2. Retaining an Attorney

Before our firm represents you, we will ask that you sign a contract, which will set forth our responsibilities to you, and your responsibilities to us. We will also ask that you pay a retainer to the firm. We will use your retainer to pay costs associated with your divorce, and to pay for the time we spend on your case.

3. Initial Information Gathering and Decision Making.

Within a few weeks of our first meeting, you will be asked to fill out an information form to provide basic information (names, addresses, and other statistical information), which will be used later in the case to prepare letters, pleadings (documents that are filed with the court), agreements, and the like. It is important that the information you provide is accurate as to names, spellings, and dates.

Later, you may be asked to provide more detailed information and complete more forms, such as a Uniform Support Declaration, which summarizes your income and expenses, and an Asset and Liability List, which summarizes your and your

spouse's assets and debts. It is important that these documents be completed accurately, as they will be relied on by your attorney and the court.

We may also provide you with a list of documents that you will be required to gather. Opposing counsel may also request documents. If you receive such a request, we will discuss that as well.

Our goal is to have sufficient information and documentation to make major decisions as to how your case should be handled as soon as possible after your case is filed. This means, for instance, whether and when settlement proposals will be made, what relief will be sought, and what we hope to accomplish overall in our representation of you. These goals may change as we move forward and become more educated as to the facts and law that apply to your case.

Your involvement in the process is essential. Lawyers are sometimes referred to as "brick masons" -- we build the walls (the legal strategy and argument), but you supply the bricks (the facts).

4. Filing or Defending a Dissolution Proceeding.

Family law related matters are heard and determined in the Circuit Courts of the State of Oregon. There is a Family Law Department in some of the counties of our state, including Multnomah and Washington counties. If your case is filed in Washington County, you will be assigned to one judge, who will make every decision that has to be made by the court in your case. In Multnomah County, you may also be assigned to one judge in certain circumstances. In some other counties, such as Clackamas County, family law cases are heard by judges who also hear other civil and criminal cases.

The case must be initiated by a Summons and Petition for Dissolution of Marriage. The Summons is the document that gives your spouse notice that he or she will have 30 days in which to file responsive pleadings, such as a Response or Counterpetition. The Petition sets forth the factual and legal basis for your claims.

The Petition, once approved by you, is then filed in the Circuit Court clerk's office in the county where the action will be litigated. A filing fee, which is about \$300, is required. Upon filing, a docket number is assigned to your case and must be written on all pleadings and motions filed in the court thereafter.

Your spouse must then be personally served with the Summons and Petition. Service for our office is typically done by a private process server. In some cases, your spouse may sign a document called an Acknowledgement and Acceptance of Service, which is a substitute for personal service.

Once your spouse is served, he or she will have 30 days in which to file a Response or Counterpetition. The Response or Counterpetition sets forth the facts and

law upon which your spouse will rely in defending against our lawsuit. If your spouse's lawyer has already prepared the Petition and you have been served or accepted service, we will prepare a Response or Counterpetition. After you have approved the Response or Counterpetition, we will file it with the court. The filing fee, or "first appearance" fee as the court refers to it, is about \$300.

Both parties to a divorce are subject to a property "restraining order," which generally prohibits each party from (1) canceling or altering most kinds of insurance; (2) changing beneficiaries or covered parties on most kinds of insurance; (3) transferring, encumbering, hiding, or disposing of property in which either party has an interest, except to pay ordinary expenses and attorney fees; and (4) making extraordinary expenditures without the agreement of both parties. Either party may request a hearing to modify or revoke the restraining order.

In addition to the Summons, Petition, Response, and Counterpetition, other Motions may be filed from time to time. Examples are as follows:

(a) Motion for Temporary Relief: A Motion for Temporary Relief may ask the court to have a hearing date to resolve some temporary matters while the case is pending, such as temporary spousal support, temporary child support, temporary parenting time, and exclusive use of the marital residence, among others. This type of motion will be discussed in greater detail later in this summary.

(b) Motion for a Custody and Parenting Time Evaluation: Sometimes, when parties have serious disputes about legal custody and parenting time, either party may move the court for an order appointing a qualified professional to evaluate the family and make recommendations regarding legal custody and parenting time. The evaluation process usually involves interviews with the parties, contact with the children, psychological testing, and the gathering of other information. Evaluations can be daunting. We will work with you to prepare for an evaluation, so that you can be the best possible advocate for your children's best interests. It is common to have a custody and parenting time evaluation if you and your spouse are unable to reach an agreement on custody and parenting time.

(c) Motion for Appointment of Attorney for Minor Children: In actions involving seriously contested custody matters, an attorney may be appointed for minor children. As minors, children cannot make legal decisions themselves. During the case, the children's attorney makes decisions for the children, may testify on behalf of the children, and may ask questions of you, your spouse and the witnesses, in and outside of the courtroom. The children's attorney may also make recommendations on issues such as custody, visitation and child support. The children's attorney role is very important and can be determinative of the outcome of your custody case.

(d) Motion to Dismiss: A Motion to Dismiss is generally addressed to a Petition or Response and Counterpetition. It challenges the legal sufficiency of those pleadings. In other words, even if the facts set forth in the particular pleadings are true, a Motion to Dismiss generally contends that the relief requested cannot be granted for one legal reason or another.

(e) Motion to Make More Definite and Certain: We sometimes file a Motion to Make More Definite and Certain in order to determine specifically what form of relief the petitioner seeks. For example, if the Petition asks for spousal support without specifying the type, we may file a Motion to Make More Definite and Certain to ask which form of support is sought - transitional, maintenance, or compensatory. The ultimate purpose of a Motion to Make More Definite and Certain is to enable us to better prepare our case.

There are other motions we may file on your behalf, such as a motion for contempt and a motion to compel production of documents. Those and other motions will be discussed in more detail later in this summary.

5. Engagement of Experts.

In many instances, it is practically impossible to settle or litigate a dissolution case without the assistance of experts. If your case warrants the engagement of an expert, we will generally advise you to do so.

When financial issues are at stake, we generally advise that you hire a financial expert with experience in the dissolution setting. Experts are generally used in dissolution cases to value businesses and professional practices, to ascertain and determine incomes and cash flows, to trace property and investments, to give tax advice, and to otherwise assist with the financial aspects of the case.

Where there is a dispute as to property values, we generally advise that real estate appraisers and personal property appraisers be hired to appraise the real estate and personal property that will be at issue in the case. Again, we prefer to hire appraisers who have experience in court and whose opinion is respected by other attorneys and by judges. The case law governing family law matters requires that competent evidence be presented to the court. In the absence of adequate proof from you, the judge is at liberty to accept the values put forth by your adversary, which most likely will not be to your benefit.

When serious issues of child custody or parenting time are raised, we generally recommend that an experienced clinical psychologist be hired to evaluate the family and to assist in making the child custody and visitation decisions. We also recommend using clinical psychologists, mediators, and sometimes parenting time coordinators, to work through custody and parenting time problems, which may defuse the contested nature of those issues. The court may also order such an evaluation.

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6. Temporary Relief Hearing.

Sometimes it is necessary at the beginning of the case to ask the court to make orders for temporary relief during the pendency of the case. Such relief may include, among other things, temporary spousal or child support, temporary exclusive use of the family home, temporary custody of minor children and temporary parenting plan, payment of monthly bills, and payment of attorney fees, and "suit money," to assist you in retaining experts to help with your case.

In most counties, a hearing for temporary relief may be ordered on the motion of a party. If at all possible, it is generally best to attempt to resolve these temporary issues without a hearing. Each county is a different, but generally a court date will be scheduled approximately 45-60 days after the filing of a motion to temporary relief. In addition, a Uniform Support Declaration must be filed with any motion for temporary relief involving support.

7. Parenting Class.

Under Oregon law, if you have minor children, both parents are required to attend a parenting class before the divorce can be finalized. Sometimes it is helpful for both parents to attend the class at the same time, as the class provides good information about how to get through the divorce process with as little negative impact on the children as possible. You should complete the parenting class early. Failure to complete the class promptly may result in the divorce being delayed.

8. Discovery.

The exchange of information in a divorce, including documents that are related to income, assets (such as inheritances, real property, and business interests), and liabilities (such as credit card debt) is called "discovery." The purpose of discovery is to find out the nature and extent of the assets and liabilities in your case to help determine how the property should be divided. Through discovery, key points and elements of your spouse's case can be uncovered which will help you and the court reach a fair and equitable result in your divorce.

Discovery is generally necessary whether the case is settled or litigated. In order to properly settle the case, we must have a general awareness of the facts involved in your case, particularly the financial facts. If the case is to be litigated, discovery is necessary in order to properly prepare and present the case at a final hearing. Dissolution cases are not necessarily won by who is right but, rather, are often times won by the party who is better prepared.

It is important to comply with discovery requests to the best of your ability in a timely and accurate manner. Many discovery responses are admissible as evidence at hearings in your case. Also, under Oregon law, if a party fails to disclose a significant

asset that existed at the time of the divorce, the divorce case may be reopened. Therefore, the discovery process should be taken very seriously.

Formal discovery under the Oregon Rules of Civil Procedure (ORCP) generally consists of the following:

(a) Depositions on Oral Examination: Depositions on oral examination are typically taken at one of the attorney's offices in the presence of a court reporter and while the deponent is under oath. You and your spouse have the right to be present. We prefer you to be present. The attorneys will ask questions at the deposition and the witness will give answers under oath. Depositions may be taken of you, your spouse, and any other parties involved in the case. Depositions are usually expensive because both parties are represented by attorneys, and the court reporter will take down and transcribe all of what is said. Court reporters generally charge by the page, plus an appearance fee. It is not unusual for a deposition to run more than a hundred pages.

(b) Production Requests: Production requests enable us to require the production of documents and other tangible things that are pertinent to your case. This would typically involve tax returns, appraisals, financial statements, bank records, retirement and investment account statements, medical records, and other such documents. It may also include requests for documents related to gifts or inheritances.

(c) Subpoenas: Sometimes we issue subpoenas to banks or other financial institutions to gain access to records that are relevant to the case, but that are not easily available to either party.

(d) Motion to Compel: If your spouse does not produce documents we request that are in his or her possession or control, the ORCPs allow us to seek a court order requiring your spouse to produce the documents.

(e) Requests to Admit: The ORCPs allow for us to present statements of fact and law to your opponent, and request that they either admit or deny those statements. If admitted, that eliminates the need for further proof on that issue.

9. **Motions and Contempt Hearings.**

Once the case is instituted in the Circuit Court, there will typically be motions as have been discussed above. Motions for show cause for contempt or motions to compel discovery are also typical. Contempt matters generally involve enforcement of prior court-approved agreements or orders, such as an order for payment of temporary child or spousal support. Circuit Court judgments and orders should be treated very seriously. The penalties involved in failure to comply can be substantial. As previously

noted, motions to compel discovery are brought when information has been requested but not provided, or when a party refuses to cooperate with attempts to gain information.

10. Substantive Law.

In Oregon, the practice of Family Law is governed by a large body of case law (decided by the Oregon Court of Appeals and the Oregon Supreme Court), statutes (created by our Legislature), and Court Rules (promulgated by our Supreme Court).

The law governing domestic relations is an ever-changing body of law. We attempt to keep ourselves apprised of these changes as they are made. We subscribe to many periodicals and services to enable us to do so.

11. Length of Case.

Typically, dissolution cases may take six to 12 months to complete, with some exceptions. Oregon law requires that once a case is filed with the court, it will remain on the active trial roster for nine months. After that time, it is dismissed, but may sometimes be reinstated for good cause.

The time it takes to complete your case will depend on several factors, many of which are not within our control or your control. It will depend in large part upon the issues that you and your spouse choose to contest. The more issues, and the greater complexity, the longer the case will take to complete.

We encourage you to attempt to reach agreement on as many issues as possible. The process of fully litigating each issue can be very lengthy and expensive and should be reserved for only those issues about which there are significant disagreements.

12. Settlement and Mediation.

As attorneys in the matrimonial field, our first efforts are always directed to determine if a possibility of reconciliation exists. Only when you are satisfied that no such possibility exists, do we attempt to move forward. Dissolution cases always impact families. They are emotionally draining and expensive. A dissolution should be obtained only as a matter of last resort. Only clients who are certain that their marital relationship is over should proceed with a dissolution action.

When you are certain that no possibility of reconciliation exists, only then do we move forward. (Bear in mind, however, that you and your spouse do not have to both agree to a divorce. The divorce will proceed even if only one of you wants it.) The disputes that you have with your spouse will either be concluded by a written agreement or by the court making the decisions for you and your spouse regarding, among other things, child custody, child visitation, child support, spousal support, property and debt division, tax matters, and attorney fees.

Under Oregon law, marital differences can be resolved by a written Marital Settlement Agreement or a Stipulated General Judgment of Dissolution of Marriage. In order for such an agreement to be valid, it must be signed by both parties, each of whom should be represented by separate counsel, entered into after full financial disclosure, freely and voluntarily without duress, coercion, and overreaching. Parties can also agree to settle their disputes “on the record,” before a judge. If the judge approves the agreement, we would then prepare a judgment that conforms to the agreement, which would then be presented to the judge for signature.

If you and your spouse are not able to resolve issues, we generally recommend mediation as an efficient and fair way to resolve those issues without litigation. Mediators are impartial persons, who specialize in helping parties reach an agreement and resolve all or some issues of their case. Mediators cannot force people to reach a settlement, or impose terms of settlement. In mediation, you will have a degree of control over the outcome that you will not have in court.

Under Oregon law, you may also obtain a legal separation. Although we rarely advise clients to take this option, it is sometimes appropriate when a dissolution would not be acceptable, either for religious or cultural reasons, or when you wish to maintain married status for insurance purposes.

In order to have a settlement, there must be an open exchange of financial information so that both parties are sufficiently aware of all income, debts, and assets involved in the case. It is usually very helpful to have a Certified Public Accountant assist in that financial disclosure, and with the analysis of the information provided and of the offers and counter-offers that are typically made.

Settlement is preferred over litigated results as a settlement is generally less expensive to achieve from a fee and cost standpoint, and also provides certainty. As it has been said, you and your spouse may resolve your differences with the surgical precision of a scalpel, but a judge will use a meat cleaver.

13. Status, Pretrial and Final Hearings.

Depending on the county in which your case is filed, the court may schedule a status conference or pretrial hearing. The purpose of the status conference or pretrial hearing is to make sure that the case is ready for trial and that all reasonable efforts have been exhausted to settle the issues that are otherwise to be determined by the court. A status conference is more informal than a pretrial hearing and may even be conducted by telephone.

Some final hearings last only two to three hours. Others last three or more days. Typically, a fully contested dissolution case will take one to three days of trial time to complete on the merits. When the issue of custody is also contested, the duration of trial is generally lengthened by one or more days.

Once the court's decision has been rendered, one or both of the lawyers will be requested to draft a judgment for the judge's signature. The judgment will set forth the court's findings and rulings on the issues.

14. Appeals.

Within 30 days of the court issuing its final judgment in the matter, you have the right to appeal. The appeal is initially made to the Oregon Court of Appeals. The appeal process involves securing transcripts of all of the proceedings in the Circuit Court and copies of the exhibits and having all of the pertinent portions of the lower Court records presented to the appellate court. That becomes the Record on Appeal. You cannot present new evidence on appeal, the Oregon Court of Appeals may only consider the record established at the time of trial.

Once the Record on Appeal is completed, the spouse who appeals must present a written Opening Brief. The opposing spouse then has the opportunity to present what is called an Answering Brief, to which the appealing spouse has the right to enter a Reply Brief. These Briefs set forth your legal position on the facts and law as they apply to your case.

After the Record on Appeal and Briefs have been completed, the appellate court will then typically set the case for oral argument. In the Court of Appeals, oral argument takes place before a three judge panel.

The appellate court then issues its decision, which it may do by published or unpublished opinion. Typically, the opinion will affirm, reverse, or reverse in part and affirm in part. A party may then petition for Supreme Court review of the Court of Appeals decision. Supreme Court review is at the discretion of that court and very few cases are taken.

If the case is affirmed on appeal, then the trial court judgment will become the final judgment in this case and will be implemented.

If the trial court judgment is reversed or modified, the appellate court can direct specifically how the judgment is to be modified, or it may remand the case to the trial court for further proceedings consistent with the appellate court's opinion.

Appeals are generally considered expensive for many reasons. You must order and pay for transcripts of the lower court proceedings, which must then be assembled and duplicated in order to become the Record on Appeal. The briefs involved in appeal are labor intensive and take many lawyer hours to complete. Appeals should be taken only when you are truly aggrieved by the lower court's decision and the economics of the situation justifying the cost. In addition, in Oregon it may take a year or more for a decision on appeal to be made.

15. **Clean Up and Implementation.**

When your case has been settled by agreement or litigated to a conclusion within the court, we then may work with you in an attempt to bring closure to the case by writing letters detailing who is to do what and making sure that appropriate deeds have been completed and recorded, Qualified Domestic Relations Orders (which are required to divide certain kinds of retirement accounts) are appropriately transmitted dividing retirement plans, and important papers are returned to the client.

16. **Enforcement.**

After the case is completed, there may come a time when your spouse does not do what has been agreed or ordered. If that is the case and you ask us to do so, we generally will request compliance on your behalf. We will then bring an appropriate contempt action in the Circuit Court, as discussed above.

17. **Modification.**

In certain instances, the Circuit Court can modify prior agreements and judgments that involve spousal support, child support and related issues, custody, and parenting time. Generally speaking, other matters relating to the dissolution, such as property division, are not subject to modification.

It is our advice to do what you want to do the first time around. It is much easier to get the job done in the first instance, rather than to come back later and to change a prior agreement or judgment. The burdens are much greater after the fact.

18. **Attorney Fees and Costs.**

After we have some general idea of what you would like us to do on your behalf, we will discuss the issues of fees and costs. You and the attorney who will be primarily responsible for your case will sign a written fee agreement. The fee agreement will generally provide for a retainer, against which we will bill at our prevailing hourly rates, plus costs, as detailed in the attorney client agreement.