

## **GLOSSARY OF COMMON DIVORCE PLEADINGS AND TERMS**

### **Initial Stages**

A divorce case is initiated by the filing of a Summons and Complaint. The summons is a form issued by the court clerk which serves as notice to the other party that a case has been filed. The complaint is a document drafted by the Plaintiff's attorney which states the factual basis for the divorce; that is, it identifies the parties, states that they were married and that the marriage has broken down, and identifies children, property and debts. The complaint also asks the court to grant specific relief, such as a judgment of divorce, child custody, child support, and a property distribution. It may also request spousal support injunctions, and a change of the wife's name. It must be signed by Plaintiff, the person who starts the case. The documents must be personally served on the other spouse, the Defendant.

When the Complaint is filed, additional temporary assistance may be requested from the court if an emergency exists. This relief, granted in the form of and Order issued by the judge, can include orders for Temporary Support of Minor Children, Temporary Possession and Referral to the Friend of the Court. Injunctions order one or both of the spouses to refrain from interfering with the liberty of the other, or from disposing of property and canceling insurance. If these orders are granted by the judge before the other spouse is served with the Summons and Complaint, they are called Ex Parte Orders.

The Defendant spouse may respond to the Complaint by filing an Answer, addressing each of the points raised in the Complaint. S/he may object to the Ex Parte Orders and ask for a hearing. If no objection is filed, Ex Parte Orders become Temporary Orders, in effect until the final order or Judgment, unless changed before then by another Temporary Order.

### **Mid Stage**

Soon after an Answer is filed, the court may set a date for a Pre-Trial Conference, and a Settlement Conference. The Pre-Trial Conference will establish dates by which all parts of the case must be completed. It also provides an opportunity for attorneys and the judge or the judicial attorney to discuss and narrow the issues. The court can order mediation, a FOC referee hearing or other interventions to help settle the case shortly after this conference. Prior to the Pre-Trial Conference, it will be necessary for each of the spouses to prepare a Verified Statement. This is presented to the court.

In addition, both spouses must exchange financial documents. This process of acquiring information is known as Discovery. Discovery may be accomplished informally through attorneys sharing information, or in a formal manner, through written questions called Interrogatories, which can be submitted for the spouses to answer under oath. Depositions are another method of obtaining information under oath, with the deposed person being required to answer questions, in person, in the presence of a court reporter who makes a transcript of the questions and answers.

During this stage, it may be necessary for one or both spouses to seek assistance from the court on matters such as custody and support, temporary spousal support, attorney fees, property disposition and the like. In order to have a hearing before the judge, the party seeking relief must file a Motion in which he or she states the issues for which relief is requested. At motion hearings, attorneys do most of the speaking. Parties should be present but are unlikely to have to offer testimony. Testimony occurs at evidentiary hearings and trials.

### **Settlement Agreement and Judgment**

If a case is settled by the parties without a trial, they may choose a hearing date before the assigned judge and have a written Judgment signed by the judge. This ends the case. This Judgment will refer to all of the terms the parties have agreed on as to property disposition, child support and custody, parenting time and the like, which is contained in the Settlement Agreement.

If the parties are unable to come to agreement, their case will be tried before the assigned judge. At the conclusion of the trial, the judge will issue an opinion, which is then reduced to a written Judgment by the attorneys for the parties.

### **Dispute Resolution Methods:**

Dispute resolution is an umbrella term that covers a wide spectrum of methods for settling conflict. Common to almost all these methods is the participation of a disinterested third party, often called the third party neutral. The following are among the most common dispute resolution methods.

**Negotiation:**

The parties to a dispute engage in back and forth discussions designed to reach agreement. Generally the attorneys conduct the negotiations.

**Mediation:**

A third party, skilled in identifying areas of agreement and disagreement, assists disputants in discussing their differences and reaching a mutually satisfactory settlement. Generally the husband and wife work directly with the mediator without the attorneys present. They confer frequently with their attorneys

**Arbitration:**

A third party hears all sides of a dispute, reviews the evidence, and issues a decision that is meant to settle the dispute. Arbitration is private judging, and parties usually agree to it in advance through contract. Attorneys are present for the hearing.