

Wisconsin Divorce Procedures

You have come to the point where divorce is a realistic possibility.

You may or may not be ready to talk to an attorney about proceeding with a divorce or legal separation, but you really want to know what the Wisconsin divorce process entails.

This brochure will walk you through the divorce process in Wisconsin.

Beginning the Process

First, you will meet with an attorney. That initial client conference will take about one hour. At that conference you will discuss all the issues in your life from the standard details of your address and place of marriage, to the issues of what are your assets and debts. The lawyer will need to know everything about your marriage, assets and debts, children, work history, finances, and dynamic in your marriage.

Summons and Petition for Divorce

If you decide you want to proceed with the divorce, the Summons and Petition for Divorce must be drafted and filed with the Court. The Summons and Petition are the initial court documents asking for a divorce or legal separation. Along with your Summons and Petition, will be a Confidential Petition Addendum. The Confidential Petition Addendum contains your social security number and those of your spouse and children. This document is kept by the court in a sealed file so it is not accessible by the general public. If you are the person filing the Summons and Petition, you are called the Petitioner. Your spouse is the Respondent. If your spouse has already filed for divorce, you are the Respondent and will need to answer the Summons and Petition within 20 days ("Responding to a Summons and Petition," below). There is no legal significance in Wisconsin as to whether you are the Petitioner or Respondent in a divorce. Wisconsin is a "no-fault" divorce state. You do not have to have any specific reason for wanting a divorce, nor does fault make any difference to the court in granting a divorce.

Filing and Serving the Summons and Petition

After the initial Summons and Petition and Confidential Petition Addendum are prepared, they are sent to the Clerk of Court's office for filing. They are then returned to your attorney's office to be served on your spouse. Serving your spouse can be done by mailing a copy to them and having them sign an Acknowledgement that they received the documents. Service can also be completed by a process server who physically hands the documents to your spouse. You cannot hand the documents to your spouse for service. Once your spouse is served the Summons and Petition for Divorce, there is a 120 day waiting period before your divorce can be finalized. While obtaining a divorce takes a minimum of 120 days, divorce cases generally take much longer.

Responding to the Summons and Petition

After your spouse is served with the paperwork, they have 20 days to respond to the Summons and Petition. Similarly, if you have been served with a Summons and Petition for Divorce, you must respond within 20 days of receiving the documents. If you are

served with Divorce papers, you will want to talk to a lawyer as soon as possible to decide how to respond.

Temporary Hearing

After the documents have been served and the Response has been filed, a Temporary Hearing will be held. A Temporary Hearing is held with the Family Court Commissioner who decides the immediate issues of your case while the divorce is pending. These issues include placement and custody of your children, child support and maintenance, who will live in the marital residence, who will have temporary use and possession of marital property, and the payment of bills. Again, the Family Court Commissioner only makes a Temporary Order and that Order has no permanent effect on the final divorce hearing. At the Temporary Hearing, if you and your spouse have children and do not agree as to custody and placement of your children, you will be ordered to attend Mediation.

Mediation and Guardian ad Litem

In Mediation, you and your spouse will attempt to work out placement and custody arrangements of your children. If Mediation is not successful, a Guardian ad Litem will be appointed. A Guardian ad Litem is an attorney who represents the best interests of your children. He or she will conduct an investigation of you, your spouse, your children, teachers, doctors and anyone else you may designate as a reference regarding your children. The Guardian ad Litem's investigation may take several months. After a complete and thorough investigation, the Guardian ad Litem will submit a recommendation for custody and placement. The Guardian ad Litem's recommendation is just that – a recommendation. Many times, this recommendation is a starting point for a negotiation between you and your spouse regarding placement and custody. However, if you and your spouse do not reach an agreement, the Guardian ad Litem will submit their recommendation to the Court. They will advocate on behalf of your children's best interests that their recommendation should be the Order of the Court. The judge is not required to follow that recommendation at the trial, but the Guardian ad Litem's recommendation is very persuasive to the judge.

Miscellaneous Hearings

Court hearings throughout your pending divorce action may be necessary. If one spouse is not following the Temporary Order or violating other rules, a contempt hearing may be necessary. If the temporary order needs to be changed a supplemental temporary hearing may be required. Hearings are time consuming and expensive, but sometimes they are necessary.

Discovery

The Discovery process also takes place while your divorce is pending. Discovery methods are used to obtain information from each side regarding their finances, education, income and property. The Discovery process includes exchanging Interrogatories, Depositions, Requests for Production of Documents, appraisals and other research regarding your financial information. Interrogatories are a set of questions you and/or your spouse must answer in writing regarding a variety of areas. Depositions are questions you and/or your spouse must answer verbally, under oath, in front of a court reporter. A vocational evaluation, custody evaluation and/or other professional evaluations may also be used throughout the discovery process.

After the discovery process is complete, each side will attempt to work towards an agreement at a settlement conference or mediation. Negotiation and mediation requires a lot of compromise from both parties. Generally if you can reach an agreement at mediation or a settlement conference, you are going to be happier because you have had a say in the outcome of your case.

Marital Settlement Agreement

If the settlement process is successful, then a Marital Settlement Agreement is prepared by one of the attorneys. A Marital Settlement Agreement covers the issues in your case and reflects the agreements reached. After the Marital Settlement Agreement is signed by everyone, it is presented to the Court for the judge's review at a final or default divorce hearing. If the judge agrees that the Marital Settlement Agreement is fair and reasonable and in the children's best interest, it will be approved and made part of the Findings of Fact, Conclusions of Law and Judgment of Divorce.

Trial

If a settlement is not reached, then the case will proceed to a contested trial. There is no jury in a divorce trial, but rather a trial to the judge. Witnesses can be called and subpoenas can be issued to require people to appear in court. Both you and your spouse will testify at a trial. If you have children and have not reached an agreement regarding custody and placement, the Guardian ad Litem will present their recommendation. At the end of the trial, the judge will make a decision and enter the Findings of Fact, Conclusions of Law and Judgment of Divorce resolving all issues in your case.

Appeal

If you are not satisfied with the judge's decision, you can request reconsideration or appeal the decision within specified time limits.

Definitions:

It is essential that each party understands the many legal terms used throughout a divorce.

Petitioner: The party that files the initial divorce documents

Respondent: The person that responds to the Petition for Divorce

Child Support: Financial support paid by one party to the other for the support of the children. It is generally a percentage of the paying party's gross income:

One child:	17%
Two children:	25%
Three children:	29%
Four children:	31%

These are general guidelines however there are some variations for higher and lower income payers. Plus, if each parent has more than 25% of the overnights, a more in depth mathematical calculation is used to determine child support.

Maintenance: Formerly known as alimony. Spousal support paid from one spouse to the other. It is calculated after child support payments are deducted from gross income.

Legal Custody: Decision making power for the children. Joint legal custody means both parents jointly make major decisions. Sole legal custody means only one parent makes those decisions. The court can also grant sole legal custody to each parent on specific issues.

Physical Placement: Where the child lives. There may be shared placement, equal placement, or primary placement.

Guardian ad Litem: An attorney appointed to represent the best interest of the child(ren).

Family Court Commissioner: The judge who makes temporary orders in your case or will rule on issues that are not contested in your case.

Marital Settlement Agreement: A document signed by all parties outlining all final agreements reached.

Findings of Fact, Conclusions of Law, Judgment of Divorce: Final divorce judgment/Divorce Decree

FAQ

Q: Does it matter who files for divorce in Wisconsin?

A: No. There is no legal significance in Wisconsin as to whether you are the Petitioner or Respondent in a divorce. Wisconsin is a no-fault divorce state.

Q: Can I move out of state with my child(ren)? I live close to the border.

A: This is a very common question that we face due to being a border region. Generally, the rule is that if one parent wishes to move out of the state or more than 150 miles away with the children, they must seek permission from the other parent. Due to the proximity of the Minnesota border, this is frequently dealt with. However, you may have to request permission from the court to move even to Minnesota.

Q: Do I have to have a reason to obtain a divorce?

A: No. Wisconsin is a no-fault divorce state. The only requirement that must be met is that you must be able to testify at the final hearing that the marriage is irretrievably broken.

Q: Will my spouse have to pay for my attorney's fees?

A: That depends. Generally, each party is responsible for their own attorney fees. However, courts have awarded attorneys fees if one party is found to be in contempt of court orders. A party can be found in contempt of court if they disobey court orders without justification. This requires an additional court hearing. There are other unusual circumstances when attorney fees are awarded, but generally each party should be prepared to pay their own attorney fees.

Q: Am I allowed to get remarried after my divorce?

A: You must wait a minimum of six months after your Wisconsin divorce is finalized to marry anywhere in the country. If you do not wait those six months, your new marriage is void.

Q: Will I lose my retirement account if I get divorced?

A: Wisconsin is a marital property state. That means that the courts presume all the property you own and all the debts you owe at the time the divorce action is filed, are jointly owned by you and your spouse. This includes retirement accounts. Retirement accounts are generally divided at the time of the final divorce and can be divided without facing tax consequences or penalties.

Retirement funds earned prior to the marriage may be excluded from the division. The specifics of your situation should be discussed in detail with your lawyer.

Q: I received an inheritance. How can I protect those funds?

A: Wisconsin is a marital property state and the courts start with the presumption that all property should be divided equally. However, inheritances are not always presumed to be marital property. If you have kept the inheritance separate, the inherited property/funds could be considered separate property. The specifics of your situation should be discussed in detail with your lawyer.

Q: Do courts favor moms or dads when awarding custody?

A: No. Wisconsin statutes direct courts to presume that legal custody should be joint, meaning both parents should make decisions for their children together. Wisconsin statutes also direct that courts are to presume that each parent should spend the maximum amount of time with the children. There is no presumption that mom or dad is more fit to have custody of the children.

Q: How much does a divorce cost?

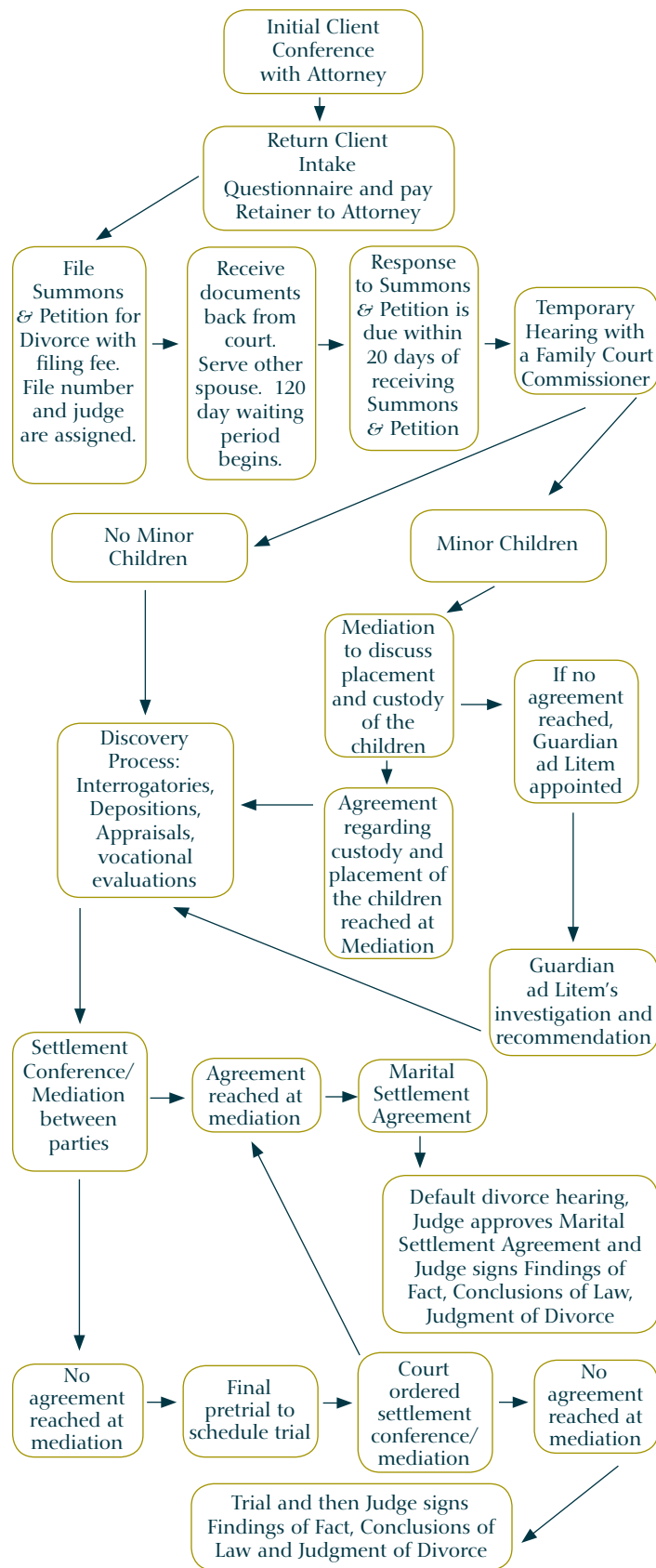
A: A lawyer will charge an advanced fee to begin your divorce case. The actual amount of the advanced fee in your case will depend on the complexity of the issues in your case. The fee will be held in a trust account and billed against on a monthly basis at the attorney's hourly rate. Some divorces will not cost any more than that initial fee, and you will have the balance refunded. Other divorces will cost more than the initial advanced fee and you may be required to submit another advanced fee or pay your bill in full monthly. Filing fees, service fees, expert witness fees, appraisal and other document or professional fees may also come up and must be paid throughout your case.

Q: I just moved, should I file for divorce in Wisconsin or Minnesota?

A: In Wisconsin either you or your spouse must be a resident of the County in which you want to file for 30 days and a resident of the State of Wisconsin for six months before you file. If both of those criteria apply to you, you can file for divorce in Wisconsin. In Minnesota, you have to be a resident of the County in which you want to file for 180 days (six months). Eckberg Lammers has experienced attorneys licensed in both Wisconsin and Minnesota to assist you with your divorce in either state.

Divorce is a very stressful time for everyone involved. It is essential that you understand that divorce is a process that takes time to get through and get past. Divorces are very complex from financial and emotional perspectives. It is important that you hire an attorney that you are comfortable working with and are completely honest with. It is also important to remember that if you are reasonable throughout this process, you will most likely be happier with the final resolution.

The attorneys at Eckberg Lammers are here to answer any questions you may have regarding a divorce, legal separation or other family matters. We are also here to work with you throughout the divorce process to achieve the results that are in your best interest, and if you have children, in theirs as well.



Notes



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