Overview of Steps

in a Typical Texas Divorce

DISCLAIMER: This outline is intended to be a helpful overview of the divorce process so that our clients can become familiar with the likely routes that their case may go through so they are more informed and less anxious. This is not intended to be legal advice about your specific case. Please use this as a tool to guide your questions to the attorney in our office during your meetings.

Beginning of the Divorce

Most divorces begin with one of the parties of the marriage seeking legal advice on how to end the marriage relationship.

Prep Work Prior to Initial Consultation

A. Meet with multiple attorneys

We highly recommend that you interview and meet with multiple family law attorneys before hiring your attorney. Although this seems like an expensive endeavor, we believe that the best results are reached when both the attorney and client are a good fit for each other and expectations based on the facts of the case.

B. Research the attorneys

You should do some research on each attorney. Find out things such as when the attorney was licensed, their qualifications, the organizations they are involved with, how long have they been doing family law, whether the attorney has any special skills or certifications, their familiarity with court and family law, and even their reputation in the legal community.

C. Online Reviews

Although not all client testimonials or reviews may be accurate, you should do some general research to see if the attorney has made a good impression on prior clients.

D. Get your general documents together as soon as possible.

We suggest that you get online and/or in touch with the appropriate entities to secure

a. the last three years of tax returns for you and your spouse; (If you don't have them, you should immediately order copies from the IRS. Look in our self-help center under the forms section for the IRS to request for copies;

b. the last three to five years of bank statements;

c. the last three years of credit card statements;

d. the last two years of mortgage statements;

e. Any deeds relating to real property involved in the divorce;

f. Business records, including formation and ownership documents and bank accounts;

g. Any car titles or appraisals on valuable property; and

h. Photo or video inventory of all valuable property.

Initial Consultation with Divorce Attorney

During that initial divorce consultation, the goal is for the client to leave with a fair understanding of the possible outcomes of the case based on the facts and the law.

In preparation for the **initial consultation** with a divorce attorney, we suggest that you do the following:

A. Bring a copy of any documents that have been filed or provided to you if your spouse is the party who filed for divorce first.

B. Write down your most important goals prior to the consultation.

C. Fill out required forms prior to your consultation.

D. Be able to explain or provide a general timeline of the major events during the marriage, including but not limited to the date of marriage, DOB of children, dates that major property was acquired, existence and general amounts of retirements, major life events.

E. Write down as many questions as you can think of or that cause you anxiety; and

F. Watch all of the videos we have available for you on our website (prior to your appointment). A substantial amount of time has been invested in these videos so that you can watch them both before our initial meeting so that you are not on "information overload" during the consultation and you can use them throughout the case as a refresher during the case. Both of these will make sure that your money is used in the most efficient ways.

Execution of Contract and Payment

A. The next step is to review and execute the attorney-client contract that outlines the financial agreement going forward and the deposit of the initial retainer deposit. Due to

the speed and expenses involved in family law, most divorces are governed by retainer agreements wherein the client deposits a certain sum of money to secure the services of an attorney. At that point, any future work or expenses incurred will be deducted from the retainer as the case progresses. Our office requires that the retainer deposit be replenished as needed so that there are always enough on deposit to cover the expected work; and

B. A copy of our attorney-client contract is available by clicking here.

Initial Steps After Engaging Our Firm

A. Drafting of Documentation for Client Review

After the initial consultation and execution of the retainer agreement and payment, we will typically schedule a time in the next few days to begin drafting the appropriate legal documents to effectuate what we discussed during our consultation.

Some of the possible documents that may be next are:

1. **Formal Response to Lawsuit**- In a typical divorce, if your spouse was the party who filed the initial divorce case, we will evaluate when a formal response is due and draft this document for the client's review and approval before filing.

2. **Counter-Petition for Divorce**- If your spouse is the party who filed the divorce first but you would like to have our firm put forward some of your desires/claims also, we would also file a Counter-Petition for Divorce. This document is basically asserting your legal claims to property, children, or other remedies.

3. **Original Petition for Divorce**- If you are the first party filing for divorce, we would draft a document called an Original Petition for Divorce setting out your legal claims and general requests. This document is usually served on the other party along with a citation (or legal obligation to respond in a certain amount of time).

   Some petitions may ask for everything in the world – including assets and custody arrangements that are extremely biased. Courts rarely give someone everything they ask for. Don't let the contents of a petition worry you because the terms will be changed, negotiated, and discussed many times in the coming months. Many attorneys routinely ask for everything, knowing they will only get what the parties agree to or what the judge decides on.

4. **Request for Temporary Orders Hearing**- If you are filing for a divorce and need to get before a court to have the court rule on living arrangements, spousal support, child custody, visitation, child support or other remedies, we may file a request for a temporary orders hearing and/or a request for "civil" restraining order to get before the court as quickly as possible. Sometimes this can happen in about two weeks.

5. **Letter to Opposing Counsel**- If your case would benefit from a simple letter to your spouse's attorney, this is something else that would be considered at this stage.

6. **Subpoenas**- If you are requesting a hearing or there is already a temporary orders hearing set, it is possible that we may need to subpoena witnesses to attend this hearing.

7. **Proposed Support Decision**- If you case involves child support or spousal support, the Courts will require both parties to complete a budget form (called a Proposed Support Decision) that outlines your income and expenses. We will need your assistance in completing this document in preparation for the temporary orders hearing.

8. **Proposed Disposition of Issues**- The Court also requests that the parties provide an outline (brief in form) that describes the issues that the Court needs to address and their requested relief on each issue. The Court uses this document to see where the parties agree and what issues the Court needs to decide.

B. Meeting in Preparation for Temporary Orders Hearing

If your case is scheduled to have a temporary orders hearing, our office will schedule a time for you to come in and get a briefing on what to expect, go over the testimony and evidence that we will likely encounter or present, and put final touches on the preparation for this hearing.

Serving Papers on Your Spouse

Service is required for the petition for divorce, the answer, and any other paperwork filed with the court. Service is accomplished by "serving" or in other words – delivering a copy of your paperwork to the other party through an official means, usually a private process server.

Temporary Orders Hearing

A. Overall explanation of the temporary orders hearing.

This is a very important hearing and will likely set the tone for the remainder of the case. This is a trial. You DO need to attend. You DO need to prepare and treat this very seriously. At this hearing, the court will set a status quo by establishing who lives where, who pays what, who see who when, and what each person's rights and duties are.

Below are the typical steps involved in the temporary orders hearing process.

1. Show up to the Courthouse at least 30 minutes early so you are not anxious and have the ability to find the courtroom and meet with your attorney.
2. Read the courtroom decorum rules. Wear business casual clothing, no string tops, no shorts, no gum, no drinks (some courts have water available), no coffee, nothing that makes noise, cell phones should be turned off, and no hats.

3. Once in the courtroom, we will wait for the judge to call the docket (list) of contested cases. The court will ask the attorneys to indicate how much time they expect the entire hearing will take. The judge will not that down on their docket sheet and the court will usually take the shorter, agreed, or uncontested matters first and then the court will usually indicate what order the remaining cases will be handled. In some situations, the court will notify some of the parties that they are not likely to get reached and the case will get rescheduled.

4. If the case is not called or reached right away, the parties will usually use this time to negotiate and see if they can reach an agreement to resolve the case or minimize the contested issues for the court to decide.

5. Once the case is reached, the parties and their counsel will approach their respective tables before the Court. The party that filed the initial pleading or movant at the current hearing will usually get to act first.

    a. Opening statement and presentation of pre-trial documents- The moving party will make a brief statement to the court and provide their pre-trial documents (Proposed Budget and Disposition of Issues described above) that helps the court understand who is in front of them, what the issues are likely to be, and their spin on what ruling they should get. After that, the other party will make an opening statement as well.

    b. After the opening statement, the moving party will usually call their first witness. They can choose anyone they want, even the opposing party. They will ask that witness questions, introduce other documents or evidence for the court to consider, and then the other attorney will get the opportunity to cross examine that same witness. Then the moving party will call their next witness and this cycle will continue.

    c. Sometimes a party will ask that the judge speak with a child involved in the case and t heir are special rules in the family code about this procedure.

    d. At the conclusion of the evidence, sometimes the court will allow the attorneys to make a closing statement. Again, the moving party will present theirs first and then the other attorney will present their closing statement.

    e. Once all of the evidence has been presented, most judges will rule immediately from the bench, but in some situations, they will let the parties know their ruling in writing at a later date.

Motion to Enter Temporary Orders Hearing

After a temporary orders hearing, whatever agreements or rulings were made must be put into a complete written order. This document is usually drafted by the movant. Once drafted, the document is submitted to the other attorney to make sure that the written order

matches what they believe happened. In some situations, the attorneys are unable to agree to the language/form of the order and a motion to have the court enter the proposed order is required. At this hearing, the attorneys argue about what the order should say, the judge rules, and then the order gets signed.

Discovery Process (Information Gathering)

One of the most time consuming and expensive portions of the divorce process is gathering information and preparing for mediation and/or trial. Without adequate preparation, providing accurate legal opinions on the best course of action is more challenging.

The main discovery related documents/tools are those set forth below:

A. **Inventory & Appraisement**- This is a sworn document prepared by a party that lists each community asset and liability and the separate property assets and liabilities. The earlier in the case that this document can be created and supported with documents, the sooner the case is ready for mediation and trial.

B. **Written Discovery-** There are many forms of written discovery but the general purpose is to get an outline of the other party's position on key issues, identification of trouble areas, identification of witnesses and legal theories, and to be prepared for trial.

    a. **Request for Disclosures**- These are requests for the legal theories and identification of witnesses and experts that will be relied upon by the other side at trial.

    b. **Request for Production of Documents**- These are requests for the other side to provide copies of relevant documents to the issues involved in the case. These could range from financial documents to text messages and photographs and recordings.

    c. **Request for Admissions-** This is a request to the other party that is designed to narrow t he disputed facts in the case. Once a fact has been admitted, we can stop spending a lot of resources trying to prove that fact in preparation for trial.

    d. **Interrogatories-** These are questions posed to the other side to identify and respond to key questions or concepts on issues in the case.

C. **Subpoenas**- Once a lawsuit has been filed, both parties have the power to subpoena (within reason) relevant documents from third parties and even witnesses to testify.

D. **Depositions**- Another useful discovery tool is the ability to get sworn statements from parties or witnesses outside of court in a formal process called depositions. In this situation, the witnesses is compelled to go to an office and be questioned. The deposing attorney will get to ask questions of the witness first and when they are done, the other attorney can ask questions of the witnesses as well. Although this can be an expensive form of discovery, in our opinion, it is by far the most effective and efficient and most

helpful. Please watch the videos on our website regarding depositions. A deposition is a proceeding that is conducted outside of the courthouse. There is no judge present. Normally there are two clients, two attorneys, and a court reporter. A deposition is an opportunity to ask a witness questions and hear the answers before a judge will hear them. That way an attorney can know what the answers are to certain questions long before trial. Another use of a deposition is to "lock in" someone's version of the truth. If a person answers one way at a deposition and then answers a different way at a hearing – the deposition can be used to show the change in the story.

Depositions are expensive. Not only is there an hourly rate for the court reporter but there is also a significant fee for the transcript.

Motions to Compel Discovery

Another common situation is for one party to refuse documents, answer interrogatories, request for admissions, appear for a deposition or respond to a subpoena. In those situations, a party is forced to prepare a motion outlining the request made, the response or objection received, and set a court hearing for the court to determine which party is correct and make appropriate orders.

Informal Settlement Efforts

One of the most effective way of resolving a case and saving attorney's fees is to engage in informal settlement efforts by providing settlement offers and supporting documentation as early in the case as possible. We have found that the biggest road block to settlements is the feeling that you do not have all of the information required to make the best decision. This is why we suggest getting the sworn inventory and supporting documentation in the hands of the other attorney is the best method.

Mediation

If the informal efforts to settle the case were not productive, the courts will usually require that the parties attend mediation. Mediation is where both parties and their attorneys meet with a mediator (with each party and their attorney in a separate room usually) and they attempt to work out an agreement on all contested issues.

Most mediators are fellow family law attorneys or former family law judges who have a good understanding of likely outcomes and are helpful in coming up with creative ways to resolve conflicts.

The important thing to note is the mediator has no authority to force a settlement. Any agreement must come from you or your spouse. And all offers made in mediation are confidential so you can come up with creative settlement ideas without worrying that it will be used against you in Court if you did not settle. In our experience, 85% of cases that go to mediation will resolve most, if not all, of the contested issues. If you do not come to an agreement, nothing said during mediation counts. If you do come to an agreement, that agreement is written up and signed by both parties.

The next step is for one of the attorneys to draft the full written order that should reflect what the agreement was.

Motion to Enter and/or Prove Up Divorce

Once the proposed order has been prepared, it is exchanged between the attorneys to make sure everyone agrees to the final product. If there is a dispute about what the order should say, a motion to enter the order may be filed to set the case for a hearing on the disputed wording.

Regardless, when there is a divorce, one of the parties must attend a short hearing called a prove up hearing. This is a brief hearing to request the court's blessing and signature on the divorce decree. A sample of the questions we would cover at that hearing are available on our website.

Final Trial if Case Has Not Settled

The final hearing is attended by both parties. We must also bring any evidence and witnesses to support our requests. Remember, the court will not consider evidence or witnesses that the other side did not receive advance notice of if discovery was submitted/requested.

The judge will listen to both sides. Much like the description of the temporary orders hearing (above), the petitioner calls each witness and directly examines them. This consists of a series of questions. The other party, the respondent, gets to cross-examine each witness after the petitioner's questions. When the petitioner is done the respondent gets to go through the same process.

When the respondent is done the parties give closing statements. The judge will consider all facts and evidence presented at the hearing. The judge may also consider the demeanor of the witnesses. Put simply, demeanor consists of facial expressions and mannerisms that may suggest honesty or dishonesty. Also, the judge may consider anything that has a direct impact on the issues at hand.

The judge will give a decision regarding property division, alimony, child support, custody, and visitation. The judge will then request one of the parties prepare a proposed order. This order must be sent to and approved by the opposing party. One ground for non-approval would be if the proposed order does not match what the judge decided. If approved, the judge will sign the order and it will be entered in the court records.