

NEW JERSEY DIVORCE – A LEGAL ROADMAP

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INTRODUCTION

The topic of divorce law in the State of New Jersey is a very complex matter. I plan to provide you with a very informal and brief overview of both the process of divorce and the substantive law applicable to the issues raised within the divorce context. You will have nothing more than a broad idea as to the topic of divorce after reading this document. To fully explain all matters to you in a way that you could understand, it would take weeks or even months of education. Therefore, if you are contemplating filing a divorce action, it is absolutely critical that you contact an attorney experienced in divorce matters.

I will discuss both the procedural and substantive aspects of divorce. When I talk about the procedural aspects, I essentially mean the scheduling of the process. Substantive aspects mean the legal standards applicable to each of the issues raised in the case.

THE PROCEDURAL ASPECTS OF DIVORCE

Before beginning our discussion on the procedural aspects of divorce, it is important to recognize that the ultimate objective in any divorce case is reaching a fair and reasonable resolution of all disputes pending between the parties. The resolution is memorialized in a written form called a **Judgment** or **Property Settlement Agreement**. It is essentially a written contract between the parties defining all of their rights and obligations after they are divorced. If either party fails to comply with the Judgment or Property Settlement Agreement, the offended party may hire an attorney to go to Court to seek an enforcement or performance of same.

It is important to remember that you are free to settle your differences with your spouse at any time, even before the filing of a lawsuit for divorce. Please keep this in mind whenever you consider pursuing a divorce action. It is also possible to break off from the Court proceedings at any time and settle your case. Therefore, when reviewing the following pages, remember that you are free to stop litigation at any time and settle your case through negotiation and compromise. Not only will the court system and the attorneys appreciate this fact, but you will probably save yourself a tremendous amount of time, aggravation and money. During your negotiation process, a competent attorney will protect you accordingly.

The first thing that you must do, if you are unable to reach a settlement on your own, is to file a lawsuit for divorce. It is usually several pages long and is filed by the attorneys with the Clerk of the Court. There is a filing fee paid to the Clerk of the Court when filing the **Complaint for Divorce**.

After filing the Complaint for Divorce, the Court then returns the Complaint to your attorney. Thereafter, your attorney is free to mail a copy of the lawsuit to your spouse; however, the preferred method of delivering and notifying your spouse of divorce is through the use of the Sheriffs Department or a private service for a myriad of legal reasons. Given the volume of lawsuits in any county, it may take several weeks for the suit to be served upon your spouse. Of course, if your spouse has retained an attorney, the attorney may accept service of the lawsuit for divorce.

Once the lawsuit has been served upon your spouse, he or she has thirty-five days to file an **Answer**. This period of time can be extended by consent of the parties or the Court. Let's assume that your spouse files an Answer to the lawsuit. The case is now considered joined like two hands coming together. In effect, both teams are now on the playing field. Once the matter is joined, the following general rules apply. From the date of filing the Answer until a trial, you must generally wait approximately one year in most New Jersey Court systems, and perhaps longer. The vast majority of cases tend to settle long before the matter ever proceeds to trial.

After the **Answer** is filed, we then move through the **process of discovery**. The process of discovery involves the exchange of certain written questions, the exchange of documents, and the holding of depositions, if necessary, so that the attorneys may learn about the case. Your attorney is much like a doctor without an x-ray when

you first come to his or her office. Before a doctor can operate, they must have the x-rays and lab reports for their review. In a legal setting, the process of discovery permits the attorneys to gather as much information as possible about the case before making a recommendation to you. If necessary, as part of the process of discovery, real estate will be appraised, the bank will issue the appropriate documents requested by the attorneys, pensions will be valued, and other important assets will be identified and accessed.

For discovery purposes, it is important that you gather and provide your attorney with all of the documents that he or she requests of you. Examples of some of the documents requested by your attorney are Social Security statements, credit card statements, checkbook registers, cancelled checks, credit/loan applications, and your resume or curriculum vitae, if any.

It is also important to go through the process of discovery for the following reason. While you should remain optimistic that you will be able to settle your case, you should always proceed with caution and accept the fact that a trial or motion application may be necessary. As such, you must be aware of the fact that the **Rules of Evidence** apply to every proceeding in the case. As such, discovery assumes an even more important status. In effect, once a party provides you with answers to your discovery demands, and swears to the authenticity of the same, they cannot change their answers at a later time. This not only helps you better prepare your case, but it creates an opportunity to question your adversary's credibility or truthfulness at a later time.

The process of discovery will generally take several months. The Court requires that all litigants memorialize their proposed schedule of discovery within a Court order known as a **Case Management Order (CMO)**. This is a scheduling order that will define the exchange of discovery materials. The Case Management Order is prepared and filed a few weeks after the Answer is filed.

The most important document within the discovery process is known as a **Case Information Statement (CIS)**. This is a financial disclosure statement that each party must fill out and file within a certain amount of time of filing his or her initial lawsuit papers. The litigant must swear to the authenticity of all of their information provided in the Case Information Statement. The Case Information Statement is a comprehensive financial disclosure statement that is most useful when attempting to litigate or settle your case. You disclose all assets and liabilities, all monthly debts, your income and other relevant information pertaining to your existence as husband and wife. Your attorney will help you with the preparation of this document and will review it in its entirety. For many litigants it is difficult emotionally to gather and sift through all of this material. Don't be hesitant to look to your attorney and his or her paralegal and legal assistants to help you through the entire process.

Let's assume that the process of discovery is completed, all issues between the parties and the values of all assets have been revealed, and all debts have been reviewed. Let's suppose that despite discovery, the parties are still unable to settle their case. Have no fear. As part of the Case Management Order that your attorney has previously filed with the Court, the Court has established a date to attend a non-binding arbitration hearing known as a **Matrimonial Early Settlement Panel (MESP)**. The Panel consists of two neutral attorneys who possess expertise in the area of matrimonial law. They volunteer their time in an attempt to help you settle your case. Approximately one week before your MESP date, your attorney will submit a memorandum to the panelists which outlines the important issues of the case. Your attorney will also submit your Case Information Statement to the Panel. On the date of your MESP, you will come to the courthouse and wait in the hallway. Your attorney will enter the Panel room with your spouse's attorney. The Panelists will then entertain the arguments and discussions of the attorneys and make a recommendation as to a fair settlement of the case. Many cases settle on the date of the MESP. Frequently, the parties with the guidance of their attorneys slightly adjust the Panel's recommendation so that the case will settle. Given the fact that you are present in the courthouse, if you are able to reach an agreement after a bit of adjustment, you can actually be divorced on that date.

Let's assume that you have gone through discovery, attended the MESP, and are still unable to settle the case. Again, there is no reason to give up all hope. Your attorney can request another Panel hearing. Furthermore, one of the Judges will be happy to sponsor a **Settlement Conference** in an attempt to assist you in resolving the case.

Now let's assume that you have been unable to settle the case after meeting with the Judge and going through

Panels. You must then wait for a trial date. Again, in most counties we are waiting approximately one year for a trial in a case. Most people are willing to make concessions as part of their settlement when they realize how long they have to wait. Additionally, much greater expense is involved with attorney's fees and other professional's fees when you wait for a trial and actually conduct the same. But again, the decision is ultimately yours. There are cases where it's necessary to go to trial due to all of the particular circumstances and, thankfully, we all have that ability through our American system of law.

If, pending the lawsuit, any issues must be brought to the attention of the Court for more immediate relief, you are free to do this by way of a Motion hearing. At any time after filing the lawsuit, you may file a **Notice of Motion** with the Clerk of the Court seeking immediate Court attention to any important issue. Therefore, even though you may not go to trial or settle your case for a year or even more, you are free to have a Judge review certain issues such as child custody and support.

SUBSTANTIVE LAW

Having now reviewed the overall procedure and scheduling involved with divorce cases, I would now like to discuss the law applicable to the issues raised within a divorce case.

CUSTODY

Custody is the most difficult of all issues in a divorce case. The two concepts of custody important for your consideration are "legal custody" and "physical custody."

Physical custody means the right to have a child with you on a day-to-day basis. Generally speaking, one of the parents will receive physical custody. The second kind of custody is known as **legal custody**, which is the right to have a say in the larger life decisions of the children. Generally speaking, both parties have a right to be involved in major medical or educational decisions and both parties may receive copies of the report cards and attend parent/teacher conferences. There are cases, however, where a parent may lose that right.

Again, in a typical case, the parties remain in joint "legal custody" with one of the parents receiving "physical custody." Generally speaking, a parent will not be able to enjoy either legal custody or physical custody if they have engaged in abusive conduct towards the child, if a substance abuse issue exists, or some other important matter directly impacting upon the best interests of the child. Your lawyer should have the experience and knowledge to be able to explain that in depth.

Where the parties are unable to agree as to custody, most counties require the parties to attend the **Custody & Visitation Mediation Program**. At the beginning of the case, the parties will either agree as to a temporary arrangement for custody or a Motion application can be brought before the Court for an initial and temporary determination. Pending a final agreement or trial in the matter, the issue of custody will then be referred to the Custody & Visitation Mediation Program. If the parties can reach an acceptable agreement through mediation, that issue is then settled. If they are not able to reach an agreement through mediation, the parties can then retain the appropriate forensic professionals to perform an evaluation and make recommendations to the parties and the Court. Ultimately, if the matter cannot be resolved through mediation or through a careful consideration of expert recommendation, the issue must proceed to trial.

PARENTING TIME

Generally speaking, **Parenting Time** (also known as **Visitation**) is reasonable and fluid unless the party seeking parenting time has been abusive or neglectful. It is recommended that the parties enter into a very specific program of parenting time for the security of the children. This would generally include alternating weekend parenting time, phone or physical contact during the week and specific arrangements for holidays. For example, one party would enjoy Thanksgiving one year with the children and the other spouse would enjoy it the next. Your attorney will be able to help with the specificities of your parenting schedule.

CHILD SUPPORT

Child support is based upon a method of analysis contained in the New Jersey Court Rules. Essentially, child support in the State of New Jersey is based upon an income-shared concept. Each party is responsible to contribute a portion of their take-home income to the well-being of the children. Your attorney will be able to provide child support guideline worksheets and guidance through the process and a determination as to the amount of child support that is due by one or both of the parties.

If either party experiences a change of circumstance such as a change of employment or a serious health condition that prevents them from gainful employment, the child support may be adjusted. Also, the matter of child support must be reviewed if any of the children begin to attend college.

MEDICAL INSURANCE

The party who has **medical insurance** will generally be required to maintain the same until the children are emancipated. Nonreimbursed medical expenses are paid for based upon a standard described in the Child Support Guidelines.

LIFE INSURANCE

Each party should be required to maintain some form of **life insurance**. If your spouse dies, you still need money to support the kids.

TAX ISSUES

There are many important **tax issues** that may result from the dissolution of a marriage. First, the parties must decide whether to remain married through the balance of a particular calendar year for purposes of filing one last joint return. If they choose to file separately, they must reach agreements as to how to share tax benefits incidental to home ownership, the right to claim children for tax-related purposes, as well as any carry-forward capital gains/losses, deductions or other tax considerations from prior years.

Another tax consideration is the parties may not have filed all returns during the marriage and this important issue must be addressed. There are dozens of other potential tax issues which must be discussed as part of any comprehensive analysis of a matrimonial estate.

ALIMONY

In the State of New Jersey, **Alimony** is determined based upon a series of statutory factors. This includes the length of your marriage, your health condition, your earning ability, your spouse's earning ability, your spouse's ability to pay, your needs, the distribution of your assets and liabilities, the lifestyle established during the marriage and other important factors.

Unfortunately, there is no mathematical formula for an award of alimony. Some jurisdictions are employing a guideline approach similar to that utilized by New Jersey with regard to child support. This methodology suggests that twenty-five percent of the differential in income between husband and wife represents a presumptive starting point with regard to any alimony discussion. New Jersey does not employ such a philosophy.

Any discussion of alimony is highly fact-specific. It is impossible to offer any generalizations concerning the same. There are also different types of alimony available, including permanent, limited duration, rehabilitative and redistributive.

EQUITABLE DISTRIBUTION

The last substantive topic that I would like to discuss would be the matter of the distribution of assets and liabilities. The rule of law utilized in the State of New Jersey to distribute your assets and liabilities is described as **Equitable Distribution**. The Court will distribute assets and liabilities according to what is fair and equitable in a case. Generally speaking, assets are divided in half. This includes any equity maintained in the home, pensions accrued during the marriage, bank accounts, stocks, other investments, vehicles, etc. However, depending upon the facts of each case, the distribution can be slightly different. Again, without knowing the particulars of a case, it is impossible to tell someone how the assets will be distributed. However, rest assured that you will be entitled to a large portion of everything that you and your spouse own.

With regard to debts, again, these will be divided according to what is fair in your particular case. For example, if there is \$10,000.00 of credit card debts, and your spouse was the primary wage-earner during the marriage, it is very likely that a Court will make your spouse pay a larger amount of that debt. However, any specific analysis depends on the particular facts of your case. Rest assured that a fair distribution of all of your bills will occur.

ATTORNEY'S FEES

Generally speaking, litigants in the State of New Jersey pay their own **attorney's fees** and costs of suit. There are exceptions such as the pursuit of foreclosure actions in matrimonial cases. In matrimonial actions, a dependent spouse may receive an award of attorney's fees from the breadwinner. Much of this depends on the peculiarities of the case. For example, if one spouse earns the money and the other stayed at home to raise a family and during the course of the litigation the stay-at-home parent behaves in a fair and good faith manner, it is likely that the Court will award you some portion of attorney's fees at the conclusion of your case. The Court may also require the working spouse to provide retainer monies to the nonworking spouse so that the nonworking spouse will have the means to retain an attorney during the divorce.

CONCLUSION

Thank you for your interest in the process of divorce. I hope that this informational booklet has proven useful. Again, this informational booklet is not meant as a substitute for competent legal counsel. Please take my advice and see an experienced divorce and family law attorney before taking any action related to the resolution of your marital estate. Good luck.

About the author: **Christopher Musulin has been a divorce attorney as well as a divorce mediator for over 26 years. He has been a regular MESP Panelist since 1991 for the County of Burlington, NJ, and a Blue Ribbon Panelist for County of Burlington, NJ, and is a Fellow of the American Academy of Matrimonial Lawyers. He would be delighted to consult with you on any matter related to Divorce, Family Law and Divorce Mediation. Chris Musulin's website is: www.sjerseylawyer.com or burlingtoncountyd divorce.com, his office number is: 609.267.0070, and you may email him at contact@sjerseylawyer.com.**