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THE DIVORCE PROCEDURE

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Jurisdiction

The Superior Court of New Jersey has jurisdiction over all causes of divorce, when either person is a resident of New Jersey at the time the action is started. There is a twelve-month residency requirement. Furthermore, the jurisdiction of the court over the defendant is fully established when the defendant files an acknowledgment of service of process, enters an appearance, or files an answer to the complaint.

The Complaint Back

The filing of a divorce complaint starts the divorce case. A complaint for divorce is filed in the county in which the plaintiff lived when the cause of action arose, or if the plaintiff was not then living in New Jersey, the county in which the defendant was living when the cause of action arose. If neither party was living in New Jersey when the cause of action arose, then the complaint shall be filed in the county where plaintiff presently resides, or in the county where the defendant is living if the plaintiff no longer lives in the State.

The requirements regarding the contents of the complaint are described in the New Jersey Court Rules, Rule. 5:4-2, and require a statement as to the essential facts which form the basis for the petition for divorce (see above listed causes of action), the addresses of the parties, and in cases involving a child, the address, date of birth, and information as to where and with whom the child resides.

In a divorce action where adultery or deviant sexual conduct is alleged, the pleading must also name the adulterer, or the correspondent. The complaint shall state the name of the person as the correspondent with whom such conduct was committed, if known, and if not known, shall state available information tending to describe the said person, including details of the time, place and circumstances under which acts or series of acts were committed.

Filing Fee

A filing fee is required at the time of filing of the complaint for divorce with the court. If there are children, then the parties also have to pay a fee to attend a parenting education seminar.

Answer, Answer and Counterclaim or Appearance

An answer is the defendant's written response to the plaintiff's complaint in the divorce case. In conjunction with the defendant's answer, the defendant may file counterclaims against the plaintiff. A defendant is required to file the answer and/or counterclaim(s) within thirty-five days of receiving the divorce Complaint. Alternatively, the defendant may file an appearance governed by R. 5:4-3(a) with the court, where the defendant is not disputing the claims in the complaint.

Answer to Counterclaim

If the defendant files a counterclaim, the plaintiff is permitted 20 days in which to file any responsive pleading.

Case Information Statement (CIS)

The Case Information Statements also known as a CIS is the most critical document in a divorce case. Rule 5:5-2 requires both parties to file and serve CIS's in all contested family actions where there is any issue as to custody, support, alimony or equitable distribution.

The primary purpose of the CIS is to identify all assets and liabilities (whether subject to division or not) of the party, like the income picture, shelter, transportation and personal expenses of that party. Each party must file their respective CIS within 20 days after the filing of the answer or appearance.

The parties tax returns, their last three pay stubs, their pension statements, and their mutual funds, and stock statements should also be attached as exhibits to the CIS. The more comprehensive the CIS is prepared, the easier it will be for the ESP Panel and the court to assist the parties to settle the case.

Court Management of a Divorce Case

Once each party has filed his or her CIS, cases are separated into one of four categories for purposes of case management: priority, complex, expedited, or standard. Alternatively, the parties may agree upon a designated track.

Case Management Conferences

Within thirty days after the filing of the last pleading, the court will schedule a case management conference which may be held via a telephone conference. The purpose of the case management conference is to address discovery timeliness, and ultimately to determine a trial date if necessary to be determined based upon the case's assigned track. In Middlesex County, the parties and the lawyers are required to appear in person at the case management conference. If the case is not that complicated, many times the case can be settled at the case management conference, with the assistance of the judge. This can

save the family thousands of dollars in legal fees. However, most other counties besides Middlesex County, handle the case management conferences via a telephone conference.

Discovery

The discovery part of a divorce case is in many cases the most important part of the divorce. The purpose of discovery is to enable the parties to ascertain what assets each party has, and what constitutes the marital estate.

New Jersey Court Rule 5:5-1 allows for discovery including interrogatories, depositions, production of documents, requests for admissions, and copies of documents. The time lines for conducting discovery are held at the Case Management Conference.

Discovery can really make a divorce very expensive. It is time consuming, and it can really create a lot of billable hours. If at all possible, the parties should try to reach a reasonable agreement, to avoid all of the expense of conducting discovery. However, this is easier said than done.

Request to Enter a Divorce by Default

If the defendant fails to file an answer or an appearance in a divorce case, then the divorce is defaulted. This means that the person has “blown” his chance to respond or contest the divorce.

A request for a default against such a party is governed by R. 4:43. This rule requires the party requesting entry by default to make a formal written request for the entry of the default, supported by the attorney's affidavit. The affidavit shall explain the manner of service of the complaint upon the defendant, the date of service, and that all time periods in which the defendant may file a pleading have expired. The request to enter a default must be filed together within six months of the actual default. The notice to request a default must also be served on the defaulting spouse.

Please keep in mind, that if there is a default, this does not mean that the case is over. If a spouse is seeking equitable distribution, alimony, child support or any other relief, then a process known as “filing a request for equitable distribution,” must be filed.

When equitable distribution, alimony, child support or any other relief is sought by the plaintiff, a notice of application for equitable distribution pursuant to R. 5:5-2 is required to be filed before the entry of default. This notice must be filed and served upon defendant twenty days prior to the hearing date and must include the following:

1. Notice of the trial date
2. Statement of the value of each asset
3. The amount of each debt sought to be distributed
4. A proposal for distribution
5. A statement whether plaintiff is seeking alimony and/or child support and, if so, the amount
6. A statement of any other relief sought

As a result, the moving party must still attend court in order to obtain a divorce by entry of a default. The spouse must also bring a certificate of nonmilitary service verifying that

her soon to be ex-spouse is not in the military. The courts do not want spouses to be divorcing their ex-spouse while they are in the military overseas, and if they are in combat somewhere.