



THE DIVORCE PROCESS

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Below is an outline of the New Jersey Court proceedings one might find themselves involved in during divorce litigation. Each of these “steps” provides some insight, but certainly not a complete picture, into what the Court might ask the parties to engage in to finalize their divorce. As there are many moving parts such as filing deadlines, or parenting time and custody interests, which need to be protected, and that there are a multitude of avenues a particular family might take to finally become divorced, the guidance of a skilled, experienced divorce attorney is crucial.

1. **File a Complaint for Divorce.** It all begins with your Complaint. This document, once filed with the Court, provides the effective date for equitably distributing a couple’s marital property. It is also the date on which monies earned by a party become their own and are no longer part of the “marital pot.” This document should include your demands for judgment by the Court. Those demands might include, dissolving your marriage, establishing child custody, establishing child support, equitably distributing marital property and counsel fees.
 - a. Parties who find themselves victims of domestic violence throughout their marriage may file what in New Jersey is known as a “Tevis Claim.” This cause of action, requests a jury trial and finding that one spouse intentionally inflicted emotional and/or physical abuse upon the other and that they have suffered some amount of damages from same.
2. **Serve the Other Party.** If you have filed your Complaint for Divorce, and have received a “FM” docket number back from the Court, you will then need to personally serve the other party. You, however, cannot be the one to complete the service, and will likely need to hire either your county’s Sherriff’s Department or a Personal Service Company, such as Guaranteed Subpoena, to effectuate service. You will thereafter need to file your affidavit of service with the court.
3. **File an Answer and Counterclaim for Divorce.** If you have received a copy of your spouse’s Complaint for Divorce, you have 35 days from the date you receive that Complaint to file an Answer and potentially a Counterclaim for Divorce. Your Answer will “Admit” or “Deny” the allegations contained in the Complaint for Divorce. You need not provide extensive reasons in the Answer for your admissions or denials. It is prudent to file within your Answer a Counterclaim for Divorce in order to protect your own rights. Should the other party for one reason or another fail to meet either the Court’s required timelines or obligations, their Complaint may be dismissed. If you have not filed for your own Counterclaim for Divorce, you will essentially return to square one and will have to file your own Complaint for Divorce if you intend to proceed with the divorce and seek your own.
4. **Request to Enter Default.** If an Answer is not filed within 35 days of filing a Complaint for Divorce, the party having personally served the other shall request the Court to enter Default against the other. Should this request be granted, it would be the filing party’s obligation to serve a “Notice of Equitable Distribution” upon the other explaining the reasonable resolution of your case. The Court will thereafter schedule your matter for a Default Hearing, and likely enter a Judgment of Divorce on that Date.

5. **After an Answer is Filed.** Once both parties are active participants in a case, the Court will schedule a Parent Education class if children are involved, which is mandatory. The Court will also schedule a Case Management Conference. At that conference, either your attorneys or the parties together will determine a discovery schedule, which includes the exchange of financial information, via interrogatories, depositions and exchange of records.
6. **Discovery.** During the period between when the Complaint has been filed and when your divorce will be concluded, you and your spouse will exchange information about your incomes, assets, expenses, debts and each of your respective claims to those finances.
 - a. **File your Case Information Statement.** A Case Information Statement is the second most important document filed in your divorce. This outlines the “marital lifestyle” and guides the Court’s analysis on issues of equitable distribution, alimony and child support. Parties are directed to attach their last three (3) paystubs; most recently filed tax returns and W-2s.
7. **Motions and Orders to Show Cause.** If issues arise during the pendency of your divorce proceedings, it may be in your best interest to file a motion seeking temporary relief from the Court. Those issues which may be relevant for a motion are interim support for a dependent spouse, parenting time arrangements or restricting one party from diminishing, selling or otherwise spending a marital asset. An Order to Show Cause is filed on an emergent basis, seeking to remedy an immediate and irreparable harm. These cases will be heard the very same day it is filed. Because the Court is hearing those motions on an expedited and emergent basis, the requested relief must be one that the judge could not evaluate during a regular motion cycle, and the harm purported is one that if the judge did not take immediate action, could not later be remedied. By way of example, matters relating to finances do not typically meet this burden of proof, although there are always exceptions to the norm.
8. **Appearance for Custody and Parenting Time Mediation.** Mediation is a confidential process which permits the parties to resolve all of the issues related to custody and parenting time at the Court’s expense. The parties will meet with a mediator who will help them develop a plan regarding the children involved in the litigation. Should the parties not reach a resolution at mediation, it may be that an expert should be retained to provide a professional recommendation for custody and parenting time.
9. **Appearance at the Early Settlement Panel.** At the conclusion of the discovery period, you will be scheduled to appear before the Early Settlement Panel. This panel will consist of two to three experienced family law attorney who will make settlement proposals as to the financial aspects of your case. Parties can accept in whole or in part the recommendations made by the panelists. Should the parties not however resolve the entirety of their case at this stage, they will be directed to Post-ESP, Economic Mediation.
10. **Appearance for Post-ESP, Economic Mediation.** The Court system utilizes a system wherein the parties contact and utilize the services of another attorney, who is a trained

economic-mediator and on the roster of qualified attorneys maintained by the Court. That attorney provides two hours of free mediation services and is thereafter paid by the parties to further assist in resolving the remaining financial disputes. If parties are unable to resolve their case at mediation, or subsequent mediation sessions, the Court will schedule the matter for trial.

11. **Appearance for Trial.** If all other settlement options fail, or the parties have been able to resolve some but not all parts of their case, the parties will be required to appear for Trial. Trial requires the presentation of proofs, and evidence in accordance with the Rules of Evidence. Parties will be required to give testimony and present all relevant facts and circumstances for a judge to make a final determination on all of the issues raised in your Complaint for Divorce or Counterclaim for Divorce. A judge may require the submission of trial briefs detailing the law at issue and remaining matters for the court's determination. A judge may also require the submission of summation briefs outlining the testimony provided at trial along with the reasons why a certain fact or issue of law has been proven.
12. **Final Judgment of Divorce.** Whether it be by settlement or by trial, at the conclusion of your case, a Judge will enter a Final Judgment of Divorce. This document is the actual order which divorces the parties. It may incorporate prior Orders by reference or is may incorporate the parties' final settlement agreement. Upon its entry, parties may be required to obtain a certified or sealed copy of the order to provide to administrative agencies for purposes of changing one's name at the DMV or providing a certified copy of a retirement plan administrator to receive a rollover portion of a spouse's retirement account.

There is nothing more personal than divorcing one's spouse and this outline is not intended to be the final say on how your own individual divorce experience might proceed. Instead, this outline is intended to assist you and provide insight into the divorce process, and the attorneys at Shane and White are available and ready to provide additional explanation and guidance particular to your own situation.

FOR A CONSULTATION CONTACT

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