

## Overview of the Steps Involved in Most Divorces

The following overview outlines the steps in a typical divorce. Keep in mind that every case is different and yours might take a very different path.

### 1. Initiating a Divorce

- A Petition for Divorce is filed with the court. The spouse that files it is called the petitioner.
- The other spouse, the respondent, is then served with these papers.

*Note: The date that the respondent receives the Petition for Dissolution is also called the Date of Service and marks the 6-month "Waiting Period" or "Cooling off Period". Final Judgment cannot be entered per California Law until this period is satisfied. See [Self Help Divorce Tips – Getting Divorce Started](#) for more details on this process.*

### 2. Response to Petition

- The respondent has 30 days to file the response papers with the court from the date they are served with the petition for dissolution. The respondent must mail or serve the petitioner.

### 3. Discovery and Investigation

- Both parties must complete the following Judicial Council Forms within 60 days from the date the petition was filed with the court. Collectively, these forms are referred to as Preliminary Declarations of Disclosure (PDD).
  - *FL-142* – Schedule of Assets and Debts
  - *FL-150* – Income and Expense Declaration
  - *FL-140* – Declaration of Disclosure
  - *FL-141* – Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration
- To obtain additional information, if needed, counsel for each side may serve various types of Discovery including requests to respond under oath to written questions (Interrogatories), Demands for Production of Documents, and Requests for Admissions.
- Subpoenas may also be issued to banks, businesses, and so forth to obtain key documents.
- Depositions – Either side has the right to take depositions. These are more expensive and often not conducted in smaller cases. A deposition is a legal proceeding usually conducted in an attorney's office, where the attorney verbally asks a party or a witness questions. This testimony is recorded on paper by a certified court reporter.
- Retention of Experts – Experts may need to be retained regarding various issues. They can be expensive, so often extensive efforts are made to settle the case before they are retained. In some instances, experts can be an indispensable tool for getting a case settled or adequately prepared for trial. Such experts may include:

- Appraisals: A professional appraiser may have to be retained to conduct an appraisal of real or personal property, such as a house, an antique, a piece of furniture or art.
  - Often parties will agree to share the cost of the appraisals.
- Business Valuation: If there is a business at issue an expert may have to be retained to conduct a business valuation.
- Forensic Tracing: A qualified accountant may need to be retained to trace the source of income to determine whether property that was acquired is community, separate (i.e., belongs to one party alone), or some combination of the two.
- Actuary: An actuary may need to be retained to calculate the community interest in retirement accounts.

#### 4. Review Discovery/Settlement

- Attorneys analyze all of the information collected in the case.
- Based on this analysis a plan is discussed with the client on how to proceed.
- When appropriate a settlement proposal is usually submitted to the opposing party for review. This may be to resolve temporary issues pending trial, such as for temporary spousal and/or child support, and/or to resolve the entire case.
- If your case settles quickly, congratulations! You just saved a great deal of time, money, uncertainty and stress. Your spouse will also be easier to deal with in the future. However, even after you reach a settlement, the parties must still complete the following tasks:
  - Prepare a final settlement agreement to be filed as a Stipulated Judgment with the court along with other required forms related to the judgment.
  - File a Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration (*FL-141*) (This should have already been filed when the PDD were done).
  - In addition, both parties must make sure their *FL-150* and *FL-140* are complete and don't need to be updated. Then certain documents must be filed with the court to confirm that the parties have provided each other with current financial disclosures.
- Wait for the court to sign off on your judgment package.
  - After all parties and their counsel sign the Stipulated Judgment (your settlement agreement), it will sit in the judge's to-do pile for some time until the judge has the time to review it, confirm that the Stipulated Judgment has all the required language and appropriately executed forms, and has time to sign off on it. If the Stipulated Judgment was filed less than 6 months since the date of the Petition for Dissolution was originally served on the respondent, the court will not sign off on the Stipulated Judgment until after the 6 month cooling off period has expired. Sometimes the court will simply indicate a future date at which time the dissolution will be final. If that period has already expired, you simply must wait until the judge has the time to get around to it. It can be as short as a week, but typically takes a month or so because the judges are too few in number.

## 5. Request for Order Pending Trial

- If some or all issues can't be settled you can go to court to ask for temporary orders pending the final trial or resolution of your case for such issues as:
  - Child support
  - Custody and visitation
  - Spousal support
  - Attorney's fees
  - Pre-trial sale of home
  - Pre-trial division of community property
  - Other issues

*Note: If minor children are involved, a mandatory mediation date will be issued prior to any hearing regarding child custody so the mediator can work with parents on custody and visitation issues.*

- If either party brings a Request for Order before the court prior to trial to obtain court orders to resolve issues about custody or visitation, the judge can issue orders after considering evidence from both sides. In addition, the court can also set further hearings to allow for any of the following items to help the court make its decision:
  - Family Code Section 730 Evaluation
    - A psychologist is appointed by the court to interview the parties, the children and witnesses to make child custody recommendations to the court.
    - One or both parties will be ordered to pay the cost of the evaluation. The total expert fees for this are typically in the \$5,000 - \$15,000 range.
  - An Emergency Child Custody Investigation (CCI)
    - This is a streamlined child custody evaluation regarding very specific issues. It is usually conducted by trained counselors on staff with the court. A CCI is ordered where time is of the essence such as when there are grave concerns about children's safety.
  - The Appointment of Minors' Counsel
    - A separate attorney is appointed by the court to represent the children and to speak on their behalf.

*Note: If any of these are ordered it can delay the divorce process anywhere from one to four months or more.*

## 6. Request Trial Date

- An At Issue Memorandum (FL-0031) is filed with the court to request a trial date.

*Note: Both parties must have filed their FL-141 forms in order for the court to accept the At-Issue Memo.*

- Attend Trial Setting Conference and Mandatory Settlement Conference.

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- After an At Issue Memorandum is filed the court will usually set both a Trial Setting Conference (TSC) to schedule a trial date and a Mandatory Settlement Conference (MSC). Some require the MSC to happen before they will give you a TSC.
- At times both hearings are set on the same date.

*Note: Prior to going to any court hearing, your attorney will advise you of possible outcomes, expenses, and alternative actions. This is so you can make an informed decision on how to proceed.*

## 7. Mandatory Settlement Conference

- A Brief
  - Your attorney will prepare a brief and/or any other documentation that your judge may require that explains your position in the case regarding disputed issues.
- All parties must update their financial disclosures.
  - See “File a Declaration Regarding Service of Declaration of Disclosure and Income and Expense Declaration” above.
- All parties will go to court for a Mandatory Settlement Conference (MSC). This proceeding usually takes place in a very informal manner in the court hallways or court cafeteria.

## 8. Trial Preparation

- Often a great deal of time and money can be spent at this stage. This presents an incentive to both sides to settle the case prior reaching this point.
- Any final investigation and discovery will be completed. Some of these tasks may be more expensive items that were being delayed in hopes the case could be settled.
- Any deposition transcripts will be summarized and indexed for trial.
- All trial exhibits will be prepared and organized. This may include key financial documents or “demonstrative” exhibits like charts, graphs, and time lines of events.
- Trial Brief: A written brief providing a road map of the evidence and legal arguments will usually be prepared and submitted to the judge.
- The attorney will prepare outlines of his or her direct and cross examination of the parties, witnesses, and expert witnesses (if any).
- Practice Session(s): The attorney will meet with you and the witnesses to run through the questions so everyone is more comfortable with what to expect in court.

## 9. Trial

- You and your divorce attorney, along with any experts and witnesses, will attend trial with the opposing side and his/her counsel, experts and witnesses. In Family Law Court:
  - There is no jury, just a judge to decide your case.
  - Witnesses (when not testifying), and sometimes the public, can be excluded from the courtroom.
  - Both counsel have the opportunity to present an opening statement which is a roadmap to the case.

- Petitioner’s counsel goes first. Petitioner’s counsel presents his/her client’s Case in Chief calling witnesses to the stand in whatever order petitioner’s counsel chooses. After each witness testifies, respondent’s counsel may cross-examine each witness. Then petitioner’s counsel may re-direct the witness, respondent’s counsel may re-cross and so on until the attorneys are done with that particular witness.
- After the petitioner is done presenting his/her Case in Chief the respondent gets to put on his/her Case in Chief in the same method as outlined above.
- At the end, petitioner’s and respondent’s counsel will each have the opportunity to make a “closing argument” to the court summarizing the evidence and legal arguments.
- The court will then make final orders at that time or “take the matter under submission” to review the court transcript and exhibits and make a ruling on another date.
- Consider a Private Judge
  - Due to the lack of funding for California Courts there are not enough judges. The court may not have the time to hear your matter for many months or all at once. For example, even if your trial is expected to take three full days the court may only have time to hear your matter in two to four-hour segments, over a period of weeks or months. It can be stressful, frustrating, and waste time and money to continually prepare for court, show up, wait around for your matter to be called, put your case on for a few hours, only to have to come back days or weeks or months later to do this process again and again.
  - It is usually faster, and often less expensive, for both sides to agree to pay for a private judge to hear cases that are expected to take more than a day to litigate depending upon the regular judge’s availability. Private judges often run about \$400 to \$800 per hour with each side typically paying half.