



## **Dissolution Roadmap**

### Overview

Making the decision to end your marriage is always difficult. To compound matters, many people often find the dissolution process itself to be intimidating and frustrating. It is our intent at Berry Law Offices to make these trying times as painless for you as possible.

### How it begins

Minnesota is a no fault state which essentially means that as long as you want to get divorced, that desire in and of itself is typically enough for a judge to grant your divorce. To officially begin the process, you will need to serve a Summons and Petition upon your spouse. This initiates the action. In your Petition, you will need to indicate what it is you are seeking in terms of resolution. Specifically, your Petition will tell both the court and your spouse how you would like to divide your assets, your debts, custody and support requests. Keep in mind that you need to request everything that you want in your Petition. Generally speaking, you will not be able to make additional requests to the court at a later date if those requests were not in your original Petition. If you and your spouse share children together, you will need to bring the action in the county where the children reside. If there are no children, you may bring the action in a county where either party resides.

After completing the Petition, your spouse will need to be personally served with the Summons and the Petition. You, yourself, cannot personally serve your spouse. You may choose to have the Sheriff, a private process server or a friend or relative personally serve the Summons and Petition. Once your spouse has been served, they have thirty (30) days to respond with their Answer and Counter Petition. There is not much action during this thirty (30) day waiting period.

### Uncontested Divorce

If both parties agree in writing to all issues of the divorce, they can enter into a Marital Termination Agreement (“Agreement”). This is a document that outlines the agreement of the parties. Both parties will sign the Agreement and submit it to the judge for his or her signature. If you and your spouse have minor children together, you will need to attend a hearing and acknowledge your Agreement before the judge. If you do not have joint minor children there is no hearing required. Once the judge signs off on the Agreement the parties are divorced.

### Contested Divorce



If the parties disagree on any issues of the divorce, the dissolution will be considered to be a “contested divorce.” The parties will then have to proceed through the litigation process which could include a trial by a judge of District Court. The parties may also submit to mediation or an alternative thereto.

Mediation: is a form of alternative dispute resolution (ADR). Mediation is a tool used to help the parties reach an agreement. There is a third party (mediator) that helps the parties reach an agreement.

There are multiple phases of a contested divorce. You may have to file, or respond to, various motions, discovery, temporary hearings and possibly a trial. This process is often, at times long and tedious. The Courts have long standing calendars, which can cause the divorce process to take even more time.

Temporary Orders: In some instances there are heated issues which need to be immediately resolved during the process of a contested divorce. For example, if a couple cannot agree on where their children shall reside and/or on a parenting time schedule, you can schedule a temporary motion hearing. This means that a Motion for Temporary Relief and an accompanying Affidavit will have to be served upon your spouse at least fourteen (14) days before the motion hearing. Your spouse then has up to five (5) days before the motion hearing to respond to your requests. However, if your spouse is intends on raising any new issues not addressed in your original motion paperwork, they must do so at least ten (10) days prior to the hearing in order to give you the opportunity to prepare and potentially respond accordingly.. You will attend the hearing and present your case to the judge. The judge will issue an Order based upon the statutory authority. This order is known as the Temporary Order and will remain in place until a further order is issued. You can address all issues of the divorce during this hearing. You may also limit this to just a few of the major issues at hand.

Discovery: This is an important phase in a contest action, especially if you think your spouse is hiding assets. This is known as the investigative phase. You serve a series of questions and document requests to your spouse. Generally, the questions will seek information regarding asset ownership, finances, etc. Your spouse will have 30 days to respond to the information requested. If your spouse does not respond, you may bring a Motion before the judge to compel your spouse to respond to your discovery requests. If, after the hearing, your spouse still does not answer, the judge can hold your spouse in Contempt of Court. The judge could also require your spouse to pay your attorney’s fees for his/her non compliance.

Scheduling Conference: This is a hearing that takes place, just after the filing of the dissolution documents. This is an administrative hearing, usually held by the judge’s law clerk. This hearing sets out the timeline of the divorce. Typically



when both parties are represented by an attorney, the attorneys will submit to a Joint Informational Statement. The hearing will then be cancelled and the judge will use the Joint Informational Statement to compile the dates for the divorce timeline.

**Pre-Trial Hearing:** This hearing provides the judge with a snapshot of the issues in a given case. Specifically, the Pre-Trial Hearing provides the judge with an opportunity to better identify which issues will be contested in the event there is a trial. Both parties are required to attend. Each party will need to submit a Pre-Hearing Statement ten (10) days before the pre-trial. The Pre-Hearing Statement is a form that illustrates to the Court the issues of the underlying divorce.

**Trial:** This is a critical court appearance before the judge where the case will be decided. The trial may include witnesses, including friends and family, financial experts, and psychologists. Other types of evidence, including financial records, will also be presented. At the trial, each party presents their case to the judge. The judge will issue an Order based upon the statutory authority. This will become your divorce order.

**Judgment:** This is the final order of the judge. It is a legal statement of the judge's rulings on all issues in question during trial, such as custody, visitation, support and property division.

During this process the judge may also request the parties with joint minor children to submit to a custody evaluation. The court could request that a Guardian ad Litem be appointed as well.

**Custody Evaluation:** This is an evaluation performed by an independent third party. The custody evaluator ("Evaluator") will meet with all parties, individually, including the children, and make recommendations to the court. The Evaluator may review medical records, school records, talk with teachers, friends, family, etc., in order to arrive a recommendation as to what they believe is in the best interest of the child or children involved.

**Guardian ad Litem:** A Guardian ad Litem is an advocate specifically for the children. The Guardian ad Litem's sole concern is the minor child's best interests. The Guardian ad Litem does not function as the child's attorney nor do they provide direct services to the child. The Guardian ad Litem has three primary functions: to gather information for the court, make recommendations to the court and advocate for a speedy decision that takes into account the impact of delays and time on the child.