

# Pro Bono Attorney Training

## Family Law: Divorce 101

Updated 2/9/2021



# Topics

- Common Issues
- Jurisdiction
- Divorce Process
- Divorce Judgments
- Division of Property
- Spousal Support
- Separate Maintenance
- Annulment
- Resources & Questions

# Common Issues

- No fault
- Statutory grounds only:
  - Breakdown of the marriage relationship;
  - No reasonable likelihood that the marriage can be preserved
- Issues can include custody, property division, spousal support
- Exclusive use of the marital home
- Differences with Legal Aid clientele

# Jurisdiction

- Either party must reside in:
  - Michigan for 180 days, and
  - The county for 10 days,
  - Immediately before the complaint was filed
- This is subject matter jurisdiction and cannot be waived. *Stamadianos v Stamadianos*, 425 Mich 1 (1986)

MCL 552.9

# Divorce Process

- Filing
  - Fees
    - Divorce without children - \$175
    - Divorce with children - \$255
    - Fee waiver
      - Public benefits
      - Low income (under 125%)
  - Timing when there is domestic violence
    - Safety plan
    - Ex parte order?
    - Housing protection (MCL 554.601b)
- Previous cases
  - Need to know, as case will be assigned to same judge
  - If children, cases regarding custody or child support

# Divorce Process

## ➤ Pretrial Motions

### ➤ For temporary relief

- Exclusive use of the marital home
- Temporary orders for custody, parenting time and child support
- Temporary spousal support

### ➤ Determination of Nonpaternity

- If a party believes the husband is not the father of a child born during the marriage
- If the wife is currently pregnant and the husband is not the father
  - Generally required to wait for birth for hearing on paternity of newborn

# Divorce Process

## ➤ Pretrial disclosures

### ➤ Domestic Relations Verified Financial Information Form (CC 320)

- Both parties must complete form within 28 days after an answer is filed
- File proof of service with the court, but not the form
- A victim of domestic violence can omit any information that might lead to the location of where the victim lives or works
- Parties can agree in writing to waive filing the form
- Parties have a duty to supplement answers
- Information is confidential
- Does not preclude other discovery

MCR 3.206

# Divorce Process

- Resolving your case:
  - Settlement/agreement
  - Mediation (MCR 3.216)
  - Trial
- Dismissal
  - Can be done by plaintiff on own prior to the filing of an answer
  - After an answer has been filed, can only be done by:
    - Stipulation
    - Motion
  - Court can dismiss the case on it's own if no progress is being made

# Final Hearing

- Final Pro Con hearing required (pro confesso)
  - Tuesdays & Thursdays – 1:30 pm
  - Wednesdays – 9:00 am
  - Testimony must be taken on:
    - Grounds for divorce
    - Division of property
    - Custody and parenting time
  - Testimony must be taken at least:
    - 60 days after filing (no minor children)
    - 6 months after filing, unless hardship or compelling necessity for earlier judgment (minor children)
- Generally heard by a Referee in Kent County
- Judgment is effective once signed by Judge
  - 21 or more days from the pro con hearing
  - The waiting period can be waived by agreement between the parties

# Divorce Judgment

- Judgment of Divorce
  - Custody, parenting time, & child support
    - Always modifiable
    - Uniform Child Support Order (USCO)
      - Child support calculations
    - Child tax credits (who gets them?)
  - Division of property
    - Almost never modifiable unless fraud, duress or coercion
  - Spousal support
    - Always modifiable unless parties agree to nonmodifiable
  - Other provisions
    - Statutory requirements
    - Optional: restore the parties birth names, prior surnames or another surname

# Division of Property

- Step One: Identify it
  - Marital v. separate
  - Includes: pensions, personal property, real property, debts, business interests
- Step Two: Value it
- Step Three: Divide it

# Division of Property

- Property subject to division includes:
  - Marital property
    - Accumulated as a result of one or both parties' contributions or efforts during the marriage
    - Does not include gifts or inherited property
    - Does not include passive appreciation of premarital property

# Division of Property

- Separate property is:
  - Property owned before the marriage
  - Property acquired by gift or inheritance
  - Generally awarded to the party who owns it
- unless...
  - The other spouse contributed to acquisition, improvement or accumulation of property; or
  - Award out of marital assets is insufficient for the other spouse's support

MCL 552.401; 552.23

# Division of Property

- An “equitable distribution” considering the following factors:
  - duration of marriage
  - contribution of parties to marital estate
  - age of the parties
  - life status of the parties
  - necessities and circumstances
  - earning abilities
  - past relations and conduct (i.e., fault)
  - general principles of equity

Sparks v Sparks, 440 Mich 141 (1992)

# Spousal Support

- What is it?
  - Support and maintenance of a former spouse who cannot support him or herself
  - Must be modifiable (unless the parties agree otherwise) MCL 552.28
  - Types:
    - Rehabilitative
    - Permanent
- When is it ordered?
  - The longer the marriage
  - The older the recipient
  - The less able the recipient is to support him or herself due to lack of education or experience

# Spousal Support

- The court must consider these factors:
  - Length of marriage
  - Ability of parties to work
  - Source of and amount of property awarded
  - Age
  - Ability to pay alimony
  - Present situation
  - Needs
  - Health of parties
  - Prior standard of living and whether either is responsible for the support of others
  - Past relations and conduct
  - General principles of equity

MCL 552.23; Sparks

# Separate Maintenance

- Grounds – same as divorce
  - If defendant files counterclaim for divorce a divorce judgment will be entered
- Judgment
  - Parties remain married
  - Property is divided, spousal support may be ordered, and custody determined

# Annulment

- Must meet one of the statutory grounds:
  - Certain degrees of consanguinity (blood relationship) or affinity (relation with spouse's blood relative)
  - Incapable of contracting (incompetent)
  - Already married
  - Force or fraud, and no subsequent cohabitation
    - Concealed inability to have kids;
    - "green card marriage"
  - Married under the age of consent, and no cohabitation after reaching legal age
    - In MI it's 18, or 16 with parental consent

# Annulment

- The case proceeds the same as a divorce
- There is no residency requirement for jurisdiction
- The marriage is void or voidable; as though it never happened
- Any children born are legitimate and court may address custody, support
- Spousal support is not available

## Other Things to Consider

- Is anyone in the military?
  - Servicemembers Civil Relief Act
    - Active duty cannot be defaulted
- Insurance coverage
  - Health insurance may automatically end
- Debts
  - Might be split in the divorce, but that doesn't necessarily reduce liability
  - Creditors are not bound by debt division
- QDROs
  - Qualified Domestic Relations Order
  - Required for pensions to be split
- Titles/Deeds
  - Judgment can divide property, but there are usually additional steps to complete process (S.O.S., Register of Deeds, etc.)

# Resources & Questions

- LAWWM Pro Bono Portal - [Resources for Pro Bono Volunteers - Legal Aid \(lawestmi.org\)](https://lawestmi.org)
  - Password: probono
  - Forms
  - Sample Pleadings
  - Presentations
  - Etc.
- FOC - [Friend of the Court - Kent County, Michigan \(accesskent.com\)](https://accesskent.com)
- 17<sup>th</sup> Circuit Motion Calendar - [Online Services - Kent County, Michigan \(accesskent.com\)](https://accesskent.com)
- SCAO Forms - [Forms - Domestic Relations \(michigan.gov\)](https://michigan.gov)
- LAWWM Contact – Noah Joseph (616-608-8056 or [njoseph@lawestmi.org](mailto:njoseph@lawestmi.org))