

# Q&A: Understanding divorce from start to finish



**Q: My spouse and I want to get a divorce, does it matter who files first?**

There is no hypothetical race to the court house in order to be the first spouse to file in a divorce proceeding. The filing party is referred to as the “Petitioner” and the responding party is referred to as the “Respondent.”

In a divorce proceeding, both parties start the case on equal footing, and there is no advantage to being the filing party or the responding party. However, if you have concerns that your spouse is beginning to accumulate new debts, which would be marital, or is beginning to open new bank accounts and moving money, or changing the beneficiaries to life insurance policies, then filing for divorce will put in place the Automatic Temporary Injunction (the “ATI”).

The ATI prevents a spouse from damaging tangible property, withdrawing funds from retirement or joint checking or savings accounts, or modifying or canceling any insurance policies, among other things. The ATI is reciprocal such that both spouses are enjoined from violating it.

**Q: What kinds of issues can I expect to discuss with an attorney in a divorce proceeding?**

There are five main issues in a divorce proceeding that are almost always present: child custody, child visitation, child

support, support alimony, and property division.

- **Custody** can be awarded to the parents as either joint or sole custodians, or a hybrid, where the parties are awarded joint custody with one parent being the final decision maker. Custody does not necessarily mean that a child is in one parent's care, custody is the decision-making authority of each parent. Joint custodial parents must work together to make decisions regarding important life decisions for the minor children, such as religion, schooling, and health and medical decisions, to name a few. A sole custodial parent may make these decisions unilaterally.
- **Child visitation** is the schedule that will dictate when the parents will exercise their custodial time with the minor children.
- **Child support** is ordered in every case involving minor children. Base child support is based upon the parties' gross monthly income, the number of overnight visits awarded to each parent and can be calculated using the Oklahoma Child Support calculator.
- **Support alimony** is not as simple as child support because there is no calculator, however, support alimony is based upon one party's need and the other party's ability to pay and each parties' respective monthly income and monthly budget is a consideration for payment of support.
- As for **property division**, almost all assets and debts accumulated during the marriage are marital, unless there is a valid, enforceable prenuptial agreement in place. All assets and debts deemed to be marital are subject to equitable division.

#### **Q: What are all of the steps in a divorce?**

First, a Petition for Dissolution of Marriage is filed, and often times it is accompanied by an Application for Temporary Orders. Once the Respondent has been served via certified mail

or via process server, the Respondent has 20 days to file a response.

A hearing on the Petitioner's Application for Temporary Orders may be set at the time of filing, however, counsel for the parties may work together to come up with an Agreed Temporary Order and then the parties may strike a hearing on temporary orders.

Once the temporary orders are in place, each side will conduct discovery, which includes Interrogatories, Requests for Production of Documents, Requests for Admission, and occasionally depositions of the parties or parties' experts. Discovery allows for each side to have a clear idea of where each party stands regarding all issues mentioned above.

Once discovery is completed, the parties may either works toward a settlement or attend mediation, where the parties may end up with a Decree of Dissolution of Marriage, an Agreement Incident to Dissolution of Marriage, and a Joint Custody Plan.

If mediation is unsuccessful, then the parties may proceed to trial for a resolution on the all of the issues or any of the issues not resolved at mediation.

*Molly E. Tipton's legal practice is focused on domestic and family law, including divorce, legal separation, prenuptial agreements, support alimony, child custody, visitation, child support issues, guardianships, and paternity, for clients ranging from high-net worth individuals to simple uncontested divorces.*

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