



Contested Divorce in Arkansas

When parties to a divorce do not agree on issues of custody, division of property or visitation rights, the divorce case is considered a contested divorce in Arkansas. These issues can be brought up before a court to make a determination on the rights of parties.

The contested divorce case typically has the following phases or steps:

1. Filing of the Complaint for Divorce
2. Issuance of Summons by the Circuit Clerk
3. Service of Process by Certified Mail, Sheriff, Constable, Private Process Server
4. Filing of Answer
5. Default Judgment If No Answer is Filed
6. Discovery Phase
7. Mediation (if Required by Court or Agreement of Parties)
8. Trial
9. Judgment
10. Appeal

Filing of Complaint for Divorce

The initial step in the contested divorce process is the filing of complaint for divorce. The client and divorce or family law attorney will discuss the contested issues and the facts of the case during the initial divorce consultation or follow up meeting. Based on the facts and issues in the divorce case, a complaint for divorce is drafted with the client's interest.

If one party to the divorce or the other spouse is wasting marital income or incurring marital debt, or unable to agree on the visitation by the other spouse of the child or children of the marriage, then a temporary restraining order may be requested from the court. Further, it may be necessary to request of temporary hearing from the court to address all the temporary issues including but not limited to: child custody, visitation, child support, and spousal support, possession of the marital home and marital property and marital debts of the parties.

Issuance of Summons by the Circuit Clerk

After the complaint for divorce is filed and the filing fee paid, the Circuit Clerk of the circuit court where the complaint is filed, issues a summons for the newly filed divorce lawsuit. This summons is a notice provision of

the lawsuit itself and the rights of the opposing party to seek counsel and to file an Answer within 30 days of the party being served with the Summons and Complaint.

Service of Process

Once the Summons is issued by the clerk, the Summons must then be served by anyone of the following:

- Certified Mail
- Sheriff
- Constable
- Private Process Server
- Publication (if the Defendant can't be located)

Depending on the server, the fees for service of process varies. As a general rule, service by Private Process Server is a lot quicker since these processors are not pre-disposed to other duties or time. The down side is that service through this method is also usually priced more than service through Sheriff or Constable.

Filing of the Answer

The party being served has 20 days from the date of service file an Answer and or Counterclaim in the divorce case.

Default Judgment

If the party or spouse served with citation of the divorce lawsuit does not file an Answer within the time allotted, then a Default Judgment may be sought against that spouse or party to the lawsuit.

Discovery

The discovery phase occurs as soon as an Answer is filed with the court. Discovery is the phase where parties are allowed to seek information, disclosures and documents relating to issues relevant to the lawsuit. Discovery can be accomplished in the following ways:

- Requests for Interrogatories
- Requests for Admissions
- Requests for Production of Documents
- Depositions of Witnesses
- Written Depositions
- Child Custody Evaluations
- Expert Witnesses (if necessary depending on issues of a particular case)
- Other Discovery

Depending on the complexity of the lawsuit, the Schmidt Law Firm has used any combination of the above techniques to assist in getting the best possible outcome for our clients.

Mediation

Sometimes, parties to a divorce case may enter into a formal or informal mediation to iron out issues in the case and attempt to settle the whole case or partial issues in the case. Most Arkansas circuit court judges encourage mediation, and will typically order mediation if requested by either party. Further, some Arkansas circuit court judges are ordering parties into mediation before any trial setting is granted or set with the court's docket.

During mediation, the parties can either be represented by counsel or represent themselves pro se. An independent third party mediator typically oversees the mediation discussions. Parties are allowed to make opening statements. Thereafter, the parties will typically go into separate caucuses to discuss terms of settlement or offers of settlement or stay in the same room to try and work through the issues of the divorce. If the parties agree on terms, then the Mediator draws a Mediated Settlement Agreement for the parties signature. This agreement can then form the basis of the final judgment or agreed final decree of divorce.

Trial

When parties can't reach a fair settlement on their own and/or mediation fails, then the parties will present their case to a circuit judge at trial. The circuit judge will determine factual issues in the case and make a decision on all the issues of the divorce presented to the court. The judge will make his orders of the court, which will be reduced to a divorce decree filed with the Circuit Clerk. The entire trial process is very laborious and can be taxing on the parties.

Appeal

Upon the issuance of the court of the Final Decree of Divorce, the losing party has 30 days to file an appeal with the higher court of appeals, and submit legal briefs on points of error that the party deems appealable. The appellate court will then review the appeal for the various points of error raised and then make a determination to either deny the appeal or reverse and/or remand the case.

Contact the Schmidt Law Firm and speak to one of our divorce and family law attorneys about your individual divorce or family law case.

Disclaimer

Please note that the above information is not intended to serve as legal advice. Further, contacting us and sending information to us via our website does not create an attorney-client relationship. Please do not send any confidential information to us until such time as an attorney-client relationship has been established with our law firm. Should you desire to discuss your case with one of our attorneys, please contact us.