

Making a decision to divorce is difficult and emotionally charged. Once the decision is made, the task of taking the next step, and actually making the divorce a reality, is challenging. Many people do not know how the process works, or have misinformation about how the process works from stories told by a friend of a friend of a friend.

This article will summarize the key information to know about the divorce process in Michigan. This is not a substitute for a consultation with an attorney. You should talk with an attorney who practices family law in your county, but one of the first questions you should consider asking is whether the attorney is supportive of considering mediation as early in the process as possible. Early Mediation can be key to saving money, time, and stress and to allowing the process to proceed with dignity and understanding.

Some basic facts about divorce in Michigan:

- Michigan is a “no fault” divorce state. This means that there is no need to prove that the other party is at fault in order to get a divorce. Either party can obtain a divorce by swearing that the following is true: “There has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.”
- To get a divorce in Michigan, you or your spouse must have lived in the state for a minimum of six months prior to filing the case for divorce. In addition, one of you must have lived in the county where the case is being filed for at least ten days prior to the filing.
- There is a wait of a minimum of 60 days between when the divorce case is filed and when it can be finalized. In cases where there are children, the rule is to wait a minimum of six months from the date the case is filed, but judges can consider finalizing the case after the 60 days but before the six months if certain requirements are met.
- In general, judges in Michigan have been asked by the Supreme Court to assure that most cases where children are involved are finalized within one year of filing, and that most cases where there are no children are finalized within nine months of filing. Courts therefore usually establish schedules designed to accomplish that goal, and can dismiss cases that do not keep to the schedules.
- Of all of the cases for divorce that are filed, all but one or two percent are finalized as a result of the parties being able to agree on a settlement of all issues. For those one or two percent that are not resolved by agreement, the decision is made either by a judge following trial, or by an attorney serving as arbitrator at the request of the parties.
- This statistic is extremely important. At the beginning of a case, people often have very different ideas of what a fair settlement is. These ideas may be fueled by their anger or bitterness about the breakdown of the marriage, or they may be based on lack of knowledge of their legal rights, or the other party’s legal rights. Based on these statistics, it is highly likely that

the parties will eventually be able to reach some type of agreement. It is at the beginning of the case, however, that they can both take the time to talk with attorneys, and to educate themselves about what their legal rights are and what those of their spouse are. With this knowledge, they can proceed, often with the help of a trained mediator, to address the areas where they disagree and often to come up with creative solutions that neither would think of on their own.

- Even though 98-99% of cases are eventually settled by agreement of the parties, avoiding the high costs of trial, there are still often significant costs incurred along the way. Parties who disagree about how bills are to be paid, what temporary arrangements are to be made about the children, etc. can spend significant time and money filing motions which ask the Judge to make decisions about these issues.

- One of the important processes that takes place during a divorce is called “discovery”. In this process, information that is relevant to being able to finalize the case is exchanged between the parties. In some cases, this is a very simple proposition, but in some cases it can be more complicated. This includes when a small business is owned, when one or more pieces of real estate are owned, clarifying pension and retirement information, etc. In general, each party is entitled to “discover” information that is relevant to finalization of their cases. This is an area that can be very costly, and mediation can be very helpful in deciding what will be provided, how valuations can be done, and other strategies.

- For divorces where there are children involved, the important decisions that the parties need to make include:
 - Legal custody: who will make decisions regarding education, medical care, religion, and similar matters regarding the children.
 - Parenting time: what time will the children spend with each parent
 - Child support: which parent, if either, will pay support to the other and what amount will be paid. Generally, support is calculated according to a Formula based on the income of both parties and the amount of time spent with each parent. The Support Formula has changed effective October 1, 2008 and parties need to make sure they are using the current formula.

- For all divorces, the important decisions regarding property that the parties will need to make include:
 - What are all of the assets and liabilities that the parties have accumulated during their marriage? What is the value of each? Should all of these be considered as marital property to be divided?
 - Are there other assets or liabilities that either party had before the marriage that should be considered as marital property? If so, what is the value of each?
 - How will the assets and liabilities be divided between the parties?
 - For many, in this difficult real estate market, the question of selling the marital home, the prospect of that taking a long time, and the possibility of the bank establishing a deficit on the property that eventually will need to be paid, must also be addressed.
 - Retirement savings and pension accounts need to be addressed in particular detail to assure that the parties understand the rules of their accounts

- The question of other possible support issues, such as payment of spousal support by one party to the other, or payment of other expenses such as life insurance or health insurance, will also need to be resolved. This is a broad area, and particularly one that lends itself well to discussion of creative solutions in mediation.

- Once the specific terms of the divorce have been agreed upon, the parties can create a binding agreement reflecting the terms. This can be a “Mediation Agreement” (usually prepared by a mediator following completion of mediation, or some other written agreement. It is always best to have an attorney review any written agreement prior to finalizing to assure that the language used reflects the actual agreements that were made, and to minimize any opportunities for ambiguous terms.

- It is very important to note that while parties can make binding agreements concerning property that will most often be enforced by the Court, agreements concerning the children must be approved by the Court. Generally, the Court is likely to approve of agreements reached between parents, but the Court always reserves the right to make changes to agreements based on the best interests of the child, and other factors.

- A Judgment of Divorce needs to be prepared and other documents, including a Uniform Support Order for child support, spousal support, or both. There is specific language that must be included in Judgments of Divorce, and it is best to consult with an attorney to make sure that the Judgment is properly prepared. If a binding agreement has been previously made, it must be incorporated exactly into the Judgment.

- If the parties are not able to reach an agreement, then they have two options. They can agree to designate an attorney as decision maker in Arbitration, or they can hold a trial and have a Judge make the decision.

- Arbitration is a form of alternative dispute resolution. An attorney stands in the role of Judge. The attorney must have been in practice for at least five years, and will generally be an individual who has significant experience with family law matters.

- Some of the benefits of Arbitration are:

- Evidence can be presented in a more private setting than an open courtroom

- Rules of how evidence is presented and what kinds of evidence will be permitted can be set by an Arbitrator and may be likely to be more relaxed

- Hearings may be held at times more convenient than those available at Court, including evenings.

- The Arbitrator’s schedule may be more flexible than that of the Court, allowing for consecutive days for hearings to be scheduled or at least more condensed schedules, where the large number of cases managed by the Court may limit access to the Judge.

- Some of the drawbacks of Arbitration are:

- You will have to pay for the time of the Arbitrator where you do not pay for the time of the Judge at Court (the cost of the Arbitrator may be offset in a couple of ways – you will be paying your attorney to represent you either in Court or at Arbitration – you may end up paying your

attorney for time spent waiting for other matters to conclude at Court , or you may end up having to pay your attorney for more time spent preparing for Court, than the generally less formal proceedings of Arbitration)

- Your rights to appeal the decision of the Arbitrator are very limited

- Parties entering into Arbitration must acknowledge a specific list of factors related to Arbitration: <http://legislature.mi.gov/doc.aspx?mcl-600-5072>

- No matter how the Judgment is finalized, the person who originally filed the Divorce Complaint will need to appear once in Court to place the “proofs” on the record. Generally, this is to confirm that the information contained in the Complaint is correct, including that the jurisdiction requirement (amount of time living in Michigan and the County where filed) has been met.