



Patricia S. Fernandez\*  
Nicole K. Socci  
Miguel A. Nieves\*

\*also admitted in NH

## WHAT TO EXPECT

### **BASIC STEPS IN A NEW HAMPSHIRE DIVORCE ACTION**

*These are the general rules and laws governing “Contested” Divorce in New Hampshire. Your case is unique. Depending on how much or how little you agree with your partner in terms of the division of your assets, the parenting of your children, or support and alimony, your case may require more or fewer steps than those listed below. As always, ask questions if you don’t understand what is going on. We are here to assist you at every step.*

#### **1. FILING THE PETITION – *the beginning of a divorce action***

a. All domestic relations actions begin with the filing of a petition. A petition may be filed by one of the parties or may be jointly filed by both parties. A divorce can be granted on the basis of irreconcilable differences causing the irremediable breakdown of the marriage or on fault grounds. With regard to fault grounds, there are several grounds for divorce which may be applicable to your situation. The innocent party may be awarded a divorce if the Court finds that the fault ground was the cause of the breakdown of the marriage. You will be advised as to which grounds for divorce may be appropriate to your situation.

#### **b. Requirements Subsequent to Filing:**

i. Automatic Restraining Order: In every divorce action, an automatic restraining order becomes effective against the petitioner upon the filing of a petition, and against the respondent upon service of the petition or any other acceptance of service by the respondent. The precise terms of the automatic restraining order are laid out in detail in a document titled “Important Notice to Parties” which is sent by the Family Court. To paraphrase, the order prevents either party from selling, transferring, encumbering, hypothecating, concealing, or in any manner whatsoever disposing of any property, real or personal, belonging to either or both parties except: 1) by written agreement of both parties; 2) for reasonable

and necessary living expenses; and 3) in the ordinary and usual course of business. The automatic restraining order is vacated upon the entry of the Final Decree for Divorce.

- ii. *Child Impact Seminar:* In any action involving married or unmarried parents of minor children, the parties shall attend the child impact seminar as soon as possible after the commencement of the action but no later than forty-five (45) days after service of the petition upon the respondent. Parties shall not be required to attend the same seminar if there is a domestic violence order in effect. Upon a party's failure to complete the seminar according to this rule, the Court may take appropriate action including, but not limited to, actions for contempt.
- iii. *Financial Affidavits:* At **each** court appearance in a divorce proceeding, you must file an accurate, updated financial affidavit that accounts for **all** of your income, assets and liabilities. At the outset of the case, we will e-mail to you a financial statement worksheet which will assist us in creating a financial affidavit for you and will also send you information and the link to the software necessary to send and receive secure emails from our office. We use this software so that you can send and receive documents with personal identifying information (social security number, full account numbers, etc.) in a secure fashion. The financial affidavit helps both the Court *and* your counsel to understand your financial situation. Because you sign the financial affidavit under the pains and penalties of perjury, it is important to be as forthcoming, accurate and thorough as possible on your financial statement. You must also attach your most recent paystub to each financial affidavit filed with the Court.

**c. Notice of Legal Action:**

A. Joint Petitions. Because joint petitions are signed and filed by both parties, no further notice or service is required.

B. Individual Petitions. Upon receipt of an individual petition, the court will attach to the petition a Notice to and an appearance form.

(1) The court then forwards a notice to the respondent by mail, indicating that the petition has been filed and that the respondent or the respondent's attorney may accept service of the petition at the court within ten (10) days. A respondent's attorney, who has filed an appearance, may request and accept service by mail provided the attorney files a receipt of service signed by the respondent within five (5) business days of the attorney's receipt of the petition.

(2) If neither the respondent nor the attorney for the respondent accepts service of the petition as set forth above, the petition shall be forwarded to the petitioner for service on the

respondent either by certified mail, restricted delivery, signed by the addressee only, or by sheriff; or, if the respondent is out of state, by an officer authorized to make service in the state where the respondent lives. In all instances, the petitioner files the return receipt or the return of sheriff/officer service as proof of service.

(3) If the above methods of service are neither feasible nor successful, the Court, upon motion of the petitioner, will consider alternate methods of service.

## **2. FIRST APPEARANCE- *matters involving children***

- a. A First Appearance will be held within 30 days after service has been accomplished in divorces and legal separations in which there are minor children. At First Appearance, a judge will give information about the court process and mediation. Before the parties leave First Appearance, the court will schedule mediation or the next court event.
- b. Attendance by both parents is required, and is expected at the same First Appearance, unless good cause exists to allow separate attendance. If a protective order pertaining to the parents is in effect, each parent shall attend a separate First Appearance. Attorneys do not attend the First Appearance.

## **3. CASE MANAGER CONFERENCE – *conference with case manager***

- a. **Court Appearance:** In any case in which there is at least one self-represented party, the court may schedule a case manager conference. The case manager will explain court documents that will be required depending on the type of action. If the parties are in agreement, the case manager may assist the parties in putting their agreement into writing on court forms.

## **4. TEMPORARY ORDERS – *potential initial court appearance***

- a. If a party needs immediate relief until the resolution of the case, such as temporary support for him/herself and/or any children, health insurance, parenting plan, or for a party to vacate the marital home, that party, through counsel, may file a Motion for Temporary Orders and present the supporting arguments at a hearing before the Court. Generally, attorneys and a discuss resolution of the immediate issues either before the hearing or on the day of the hearing. If an agreement is reached, there is no need to see the Judge. Unresolved issues, however, will need be presented to the Judge for determination.

## **5. DISCOVERY - *the process of gathering information***

- a. **Mandatory Production of Documents:** Within 45 days of service of the petition for divorce, each party is required to provide to the other party documents listed under the New Hampshire Family Division Rules of the Court (Rule 1.25A). We will e-mail to you the list of documents required under Rule 1.25A at the outset of the case.
- b. **Common Discovery:** Depending on the particular facts of each case, parties may wish to acquire documents and information in addition to what is required to be exchanged pursuant to Rule 1.25A. We generally do this through:
  - i. *Request for Production of Documents:* Each party is allowed to issue formal requests that the other party produce unprivileged documents, via a “Request for Production of Documents.”
  - ii. *Interrogatories:* Each party is also allowed, as of right, to issue fifty (50) questions called “Interrogatories” to the other party, which require written responses under oath.

The party receiving a “Request for Production of Documents” or “Interrogatories” must respond respectively with a “Response to Request for Production of Documents,” which includes all documents requested, or “Answers to Interrogatories,” which includes accurate answers to each interrogatory. Answers to Interrogatories are signed under the pains and penalties of perjury. The timeline for a response to each is thirty (30) days.

- c. **Additional Discovery:** Depending on the particular facts of each case, parties may wish to engage in further discovery using various other tools such as stipulations, depositions, subpoenas, appraisals, business valuations, physical or mental examinations and requests for admission.
- d. **Failure to Make Discovery:** The Court may penalize a party’s failure to make discovery by issuing sanctions, including attorney’s fees.

## 6. MEDIATION

A. In divorce actions and legal separation actions in which there are minor children, and in parenting petition cases, parties will be ordered to participate in mediation unless the Court finds that mediation would not be appropriate due to domestic violence issues.

B. Participation in mediation can also be ordered in divorces and legal separations without minor children. In general, we will agree to attend mediation unless it is clear that participating in mediation would be unproductive.

## 7. PRE-TRIAL CONFERENCE

- a. **Pre-Trial:** A pretrial conference will be held prior to the final hearing to identify contested issues, identify witnesses, mark exhibits, exchange documents, and complete any other matters the Court deems appropriate, including setting further conference and/or hearing dates. At the pretrial conference, the parties shall file and exchange pretrial statements, current financial affidavits, and proposed decrees; and if there are minor children, child support worksheets, uniform support orders, and agreed upon and proposed parenting plans.
- b. **Pre-Trial Statement:** Prior to or at the Pre-Trial Conference the parties must file with the Court a Pre-Trial Statement that presents to the Court the status of, and the parties' respective opinions on, the remaining substantive and administrative issues. To properly draft the Pre-Trial Statement, we will need information from you as indicated in a document what we refer to as "the NH factors." These factors are what we consider essential factors that a Court will consider in a divorce proceeding (for example, educational background of the parties, health of the parties, conduct during the marriage, etc.). Prior to the Pre-Trial Conference, you will receive by e-mail further information about the NH factors, including a list of questions for you to answer that addresses each of the factors. It is important that we receive your answers to these questions **at least** one week in advance of the Pre-Trial Conference and perhaps even earlier.

## 8. SETTLEMENT OR TRIAL – *resolution of the case*

- a. **Settlement:** The parties, through counsel, may settle at any stage of litigation. To settle, both parties must agree on a resolution of the issues, put their agreement in writing in the form of a Final Decree ("Decree"), and present the Decree to the Court for approval. A decree of divorce may be issued without conducting a final hearing, and without the presence of the parties, if all required documents have been filed, both parties have waived, in writing, their attendance at the final hearing, and the Court is satisfied with the clarity of the documents submitted. The Court has discretion to approve or reject the Decree.
- b. **Trial:** Trial is an expensive but sometimes necessary method to achieve a resolution of the issues. Upon request, the Court issues trial dates that comport with the Court's calendar, which means the trial process itself may take anywhere from one day to months, or even longer, depending on the facts and circumstances of each case and the availability of the Court, the parties and counsel. At trial, each party's counsel presents to the Court the facts in his or her client's favor, through examining witnesses, presenting exhibits and making opening and closing arguments to the Court. Ultimately, the Court will issue a Final Decree that addresses the resolution of each issue before the Court, and this Decree will be binding upon the parties.
- c. **Effective Date:** Decrees in uncontested cases where the parties have filed an agreement shall become final on the date signed by the judge, unless otherwise specified by the Court. In contested cases or upon the default of

either party, where no post-decree motion has been filed, the decree will not become final until the thirty-first (31st) day from the date of the Clerk's notice of decision. If a timely appeal is filed, the decree will not become final until the expiration of the appeal period pursuant to Supreme Court Rule 7. If a timely post-decree motion is filed, and there is no appeal taken, the decree becomes final thirty (30) days from the Court's action on the post-decree motion.

9. **MODIFICATION – *the Potential for modification of the Judgment down the road***

- a. **Modification of Alimony:** Alimony may be modified upon a change of circumstances so long as said circumstances were not reasonably foreseeable at the time of the order. The change in circumstance must render the original order improper and unfair. In addition, if alimony is ordered for a definite period of time, it may be renewed upon petition if said petition is filed within 5 years of the termination date.
- b. **Modification of Child Support:** Orders for child support may be modified at any time upon a substantial change in circumstances that makes the original order unfair to one or both of the parties. However, every three years a custodial parent may apply for a modification without need to show substantial change in circumstances.
- c. **Modification of Property Division:** Orders for property division can be modified only upon a showing of fraud, undue influence, deceit or misrepresentation.