

Divorce & Legal Separation

A California Divorce is a court process that permanently severs a marital relationship and restores the parties to unmarried persons. No grounds or fault need be proved or alleged other than a simple statement that the parties have irreconcilable, irremediable differences. A Legal Separation permanently divides the property and debt of the parties and provides for support, custody and visitation orders and Judgments, but leaves the marital status intact.

The process for a Divorce and a Legal Separation is nearly identical, the costs and attorney's fees are nearly identical. Divorce has a minimum residency requirement and a minimum waiting period to obtain a Judgment. Legal Separation does not. When the parties physically separate, they are not legally separated, which requires a court proceeding and a Judgment of Legal Separation. However, as of the date the parties physically separate, the law provides that the income and debts of a party are no longer community. Thus, if a party continues to make credit card charges after physical separation, in most cases those charges will not assigned to the other party in a Divorce or Legal Separation case. However, if a party is considered a borrower by the credit card company, he/she will have responsibility to the credit card company, regardless of how the family law court may characterize the debt.

A typical Divorce process involves the filing of a Petition in Superior Court, the issuance of a Court Summons. Like any other law suit, after being legally served, the responding party has 30 days to file a written Response in Court, or his/her rights might be lost. In cases where early court decisions are required, either party may file a written request for temporary orders from the Court. The written request must also be served on the opposing side who will have an opportunity to file and serve responsive papers before the hearing.

Failure to completely and clearly itemize your requests in your written declaration and papers before the hearing may result in the court denying your right to discuss those requests at the time of the hearing. It is not a matter of just getting yourself a court date and being able to speak to the Judge. There are deadlines and procedures that must be followed by each party. Not having an attorney is not an excuse for failing to meet a deadline or following rules of procedure. Ms. Callahan is responsible for knowing all the deadlines and procedural rules and helps ease the worry you may have regarding the procedure. She is also responsible for knowing all of the law that may impact your rights, and advising you of the law so that you may make informed decisions about your case.

Hearings for early or temporary court orders are usually very short, about 10 minutes for each side, and are typically used to create orders regarding support, temporary custody and visitation, possession or control of property, among other things. After the Summons and Petition are filed, each party is required to participate in the full exchange of financial information by completing certain mandatory court forms with copies of pay stubs, bank statements, pension plan statements, credit card statements and the like attached. Most of the time monthly income and expenses such as rent, utilities and food must also be itemized on a court form. The exchange of this information is required even if the parties are in complete agreement regarding all issues and neither is seeking support from the other. The law requires the exchange of this information before the parties may enter a written settlement agreement or go to trial.

Once the financial information is exchanged, the parties are free to negotiate a settlement on all issues and the settlement may be submitted to the Court by mail for approval.

If a settlement can't be reached, a party must apply for a court trial. Without a court trial or an agreement of the parties, the marriage stays in tact for months, even years. The court will not set the case for trial unless someone asks for it. Prior to trial there are often one or more pre-trial court appearances required so the court can narrow the issues that might be heard and insure that all parties are prepared to proceed. After trial, written orders must be prepared to confirm the court's decision. Due to budget cut backs, no court reporter or recording of the proceedings are provided by the court and person wanting a recording or reporter must make advance arrangements and pay for the reporter.