

What Should I Expect as I Start a Divorce?

There are some fairly standardized process steps that can be expected in a contested Bexar County, Texas divorce case. Keep in mind that each case is a little different from all others. It is not unusual for cases to veer off course and attorneys will sometimes try different tactics in different cases. In general, here are some common steps that follow the initial attorney-client meeting.

Bexar County Presiding Court System

Bexar County has a unique court system, different than any other County in the State. We have a presiding court system. Every hearing is set in front of the Presiding Court, Room 109, Bexar County Courthouse. The only exception is a motion to enter an order reflecting the ruling of a particular judge. The presiding system provides immediate access to the Court subject to notice requirements. The Presiding Judge changes as the district court judges rotate numerically through presiding court each month.

On the date of your hearing, the Presiding Judge puts each case in order based on the attorney's time announcement at docket call. Then, the Presiding Judge assigns each case to the district court judge that has been dedicated to assisting presiding for that week.

The attorney cannot predict which judge will be assigned the case/hearing.

Litigation Process

1. Original Petition for Divorce and Temporary Restraining Order ("TRO") and Order Setting Hearing for Temporary Orders

The attorney will prepare and file a petition for divorce. Sometimes there is a restraining order with the petition. The Petition and TRO must be personally served on the other spouse. The TRO has standard language from the family code and only maintains the status quo of the children of the marriage and the marital property. If the TRO requests "extraordinary relief", then an affidavit needs to be attached to the Petition and the client needs to appear at the ex-parte hearing for the TRO.

2. Temporary Order Hearing

When a Temporary Order ("TO") hearing is scheduled, the issues often include: exclusive use of the residence and vehicles, temporary spousal maintenance, payment of debts, child support, possession and access of the children, and anything else that might be unique to your case. At the docket call, many times the issues can be resolved by negotiation so either attorney can announce conferring instead of a time announcement to give the parties and their attorneys time to narrow the issues that need to be litigated. Typically, this the most important hearing in your case. If it will be contested as to custody or property, gifts, or informal marriage, please make sure you discuss with me what evidence you have and which witnesses need to be subpoenaed for the hearing. This hearing is just like what you would see on television and needs to be well orchestrated and thorough.

3. During the Pendency of the Matter

The parties will operate under Temporary Orders until they are modified or until a Final Trial on the Merits. **Modifications** can be done by agreement, but it is more common to go back to court for additional temporary orders. There can also be motions for enforcement of the TO's if one party believes the other has violated the orders. In contentious cases, there are often multiple hearings before there is a final hearing.

Discovery takes place. Discovery is the stage of the process where information is requested and provided by both sides. Very broad and comprehensive requests are usually sent out. Depositions can be taken of the parties and witnesses. Sometimes there are objections to the requests or complaints about the information furnished or not furnished. There can be multiple hearings on those disputes. The gathering, review, and organization of the information is very time consuming in most cases.

Experts are appointed or hired at times. The experts may be used to value real estate, a business, or another asset. Other experts may do psychological evaluations or custody investigations. Drug testing or paternity testing can also be ordered. Sometimes the court will appoint one neutral expert (with each party paying half the cost), and sometimes each party will hire his or her own competing expert.

Negotiations occur. In most cases, the parties negotiate. There is usually some effort for negotiations between attorneys, but most often cases get settled in mediation. **Mediation** is required before a case can go to a jury trial. A mediation is not required before a non-jury trial.

4. Final Trial on the Merits

Most trials are non-jury. In order to have a jury trial, a request needs to be filed at least 30 days prior to any non-jury trial setting.

5. Final Order

Final orders are prepared after a trial or an agreement is reached. The final orders include a decree of divorce and sometimes an agreement incident to divorce ("AID"). In addition, there may be qualified domestic relations orders ("QDROs") if there are retirement benefits to divide. There can be a substantial number of deeds and other documents as well to implement the terms of the decree.