



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

*Admitted in MA & NH

WHAT TO EXPECT

BASIC STEPS IN A MASSACHUSETTS DIVORCE ACTION

These are the general rules and laws governing “Contested” Divorce in Massachusetts. 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 COMPLAINT – *the beginning of a divorce action*

- a. A divorce is started by the filing of a document called a Complaint. The most commonly used grounds for a divorce are irretrievable breakdown of the marriage (two types: 1A – both spouses file together and 1B – only one spouse files) and cruel and abusive treatment. However, there are additional grounds for divorce which may be applicable to your situation. You will be advised as to which grounds for divorce may be appropriate to yours. The grounds for divorce may have some bearing on the length of time it will take you to obtain a divorce.
- b. **Requirements Subsequent to Filing:**
 - i. Service: Once the Complaint is filed with the Court, the Court will return a Summons, which will be served on your spouse along with the Complaint to formally inform him/her of the action. There are a few ways in which service on your spouse can be made: (1) service can be made by constable (an officer entitled to make service of process within the Commonwealth of Massachusetts), (2) your spouse can come to our office to accept service or (3) we will forward the Complaint and Summons to opposing counsel and they will have your spouse accept service. Once service is accepted, the executed Summons is returned to the Court which initiates the scheduling of certain procedural hearings in the case by the Court.
 - ii. Automatic Restraining Order: In every divorce action, an automatic restraining order becomes effective against the plaintiff

upon the filing of a complaint, and against the defendant upon service of the summons and complaint or any other acceptance of service by the defendant. The precise terms of the automatic restraining order are laid out in detail in a document called the Summons which is served with the Complaint for Divorce. To paraphrase, the order prevents either party from selling, transferring, encumbering, concealing, assigning, removing or disposing of any property belonging to either party except as required for reasonable living, business or investment expenses in the ordinary and usual course, or to pay for reasonable attorney's fees connected to the divorce action; the order includes a restriction against incurring any further debts that would burden the other party's credit, and against directly or indirectly changing the beneficiary of any life insurance policy, pension plan, retirement plan or investment account, or causing the other party or the minor child(ren) to be removed from an existing insurance policy, including medical, dental, life, automobile, and disability insurance. The only exceptions to the automatic restraining order are by the written consent of the other party or by Order of the Court. The automatic restraining order terminates upon the entry of Judgment of Divorce or Judgment of Separate Support.

- iii. *Parent Education Course and Certificate*: Every divorce litigant with one or more children under the age of 18 is required to complete a Parent Education course and submit to the Court the certificate of completion, prior to the adjudication of divorce. We will e-mail you information regarding the course and locations where the course is offered. Please return the ***original*** certificate of completion to our office for filing with the Court. The Court requires that an original certificate of completion be filed before a divorce will be granted.
- iv. *Financial Statements*: Within 45 days of service of the Complaint and Summons and at ***each*** court appearance in a divorce proceeding and 4-way meeting, you must file an accurate, updated financial statement 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 statement 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 statement helps both the Court *and* your counsel to understand your financial situation. Because you sign the financial statement 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 the prior year's Form W-

2 (or the equivalent applicable tax form) to each financial statement filed with the Court.

2. 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, custody or visitation, 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, depending on the Court you go to, there is a meeting among the parties' attorneys and a probation officer/mediator to discuss resolution of the immediate issues. The parties may be involved as well. If an agreement is reached, there is often no need to see the Judge. Unresolved issues will be presented to the Judge for determination.

3. CASE MANAGEMENT CONFERENCE – *the Court's tool for facilitating a speedy but fair administration of the case (Middlesex County cases ONLY – not Essex County cases)*

a. **Court Appearance:** The Case Management Conference ("CMC") is an occasion for the parties and their counsel to discuss either prior to or in court the administrative management of the case, including such issues as a discovery deadline, pre-trial conference date and any other dates and deadlines which need to be set, and to report to the Court their wishes regarding the same. The CMC is intended as an occasion to identify and formulate the issues, structure the discovery process and lead to sensible guidelines in resolving issues.

b. **File Stipulation in Lieu of Court Appearance:** In lieu of attending and appearing at the in-court CMC, the parties' counsel may file with the Court a "Stipulation of Case Management Conference," which states the parties' mutually agreed-upon requests regarding issues of administrative management of the case. Because the CMC is merely an administrative tool, and because a court appearance is expensive, we work with opposing counsel to file a Stipulation in lieu of attending the CMC, whenever possible.

4. DISCOVERY – *the process of gathering information*

a. **Mandatory Production of Documents:** Within 45 days of service of the Complaint and summons, each party is required to provide to the other party documents listed under the Massachusetts Rules of Domestic Relations Procedure Supplemental Rule 410 ("Rule 410"). We will e-mail to you the list of documents required under Rule 410 at the outset of the case.

b. **Common Discovery Methods:** 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 410. 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.” For example, credit card statements are often requested.
- ii. Interrogatories: Each party is also allowed, as of right, to issue thirty (30) 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.

5. **FOUR-WAY MEETING and PRE-TRIAL MEMORANDUM**

- a. **Four-Way Meeting**: Prior to a Pre-Trial Conference, the parties **must** hold a four-way meeting among clients and their counsel in a good faith effort to resolve the issues. This meeting is required by the Court.
- b. **Pre-Trial Memorandum**: Prior to or at the Pre-Trial Conference (depending on each particular Judge’s preference), the parties must file with the Court a Pre-Trial Memorandum 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 Memorandum, we will need information from you regarding what we refer to as “the 21 factors” the Court will consider to divide assets (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 21 factors, including a list of questions for you to answer that addresses each of the 21 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, depending on the date of the four-way meeting.

6. **PRE-TRIAL CONFERENCE – *the parties’ opportunity to present to the Court the remaining unresolved issues in the case***

- a. The Pre-Trial Conference (“PTC”) is a court appearance in which the parties present to the Court their respective positions and rationale on the remaining unresolved issues, which leads to a Court order that controls the next steps in the action. At the PTC, the Court may give advice/speak on the unresolved issues, which may help to encourage settlement prior to trial.

7. CONCILIATION, SETTLEMENT OR TRIAL – *resolution of the case*

- a. **Conciliation:** The Court may order the parties to engage in conciliation prior to trial. Court-ordered conciliations through the Essex and Middlesex Bar Associations cost \$50.00 per party (\$100.00 total) paid to the Bar Associations. If the parties make their own arrangements to conciliate their case, there will likely be a fee paid to the conciliator. The attorney chosen as conciliator will be an expert in divorce law and will have no personal interest in the outcome of the case. The conciliator meets with the parties and their counsel, attempts to help the parties resolve the issues and files a conciliation report with the Court. Typically, conciliations run for two or more hours, but can be shorter or longer. If the case does not settle through conciliation, it will continue towards trial.
- b. **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 Separation Agreement (“Agreement”), and present the Agreement to the Court for approval at an uncontested hearing. The Court has discretion to approve or reject the Agreement. If the Court approves the Agreement, the Court will make standard inquiry of the parties at the uncontested hearing to verify that they have understood the parties’ financial statuses and agreed to the terms of the Agreement, and if satisfied, the Court will make the Agreement binding upon the parties. If the Court rejects the Agreement, the parties may choose to modify it according to the Court’s rationale or go to trial.
- c. **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 Judgment that addresses the resolution of each issue before the Court, and this Judgment will be binding upon the parties.
- d. **90-Day Waiting Period:** The Judgment of Divorce, whether issued pursuant to an Agreement or a trial, becomes final/absolute 90 days after entry of the Judgment Nisi. This 90-day waiting period, called the “Nisi” period, serves the purpose of giving either party time to object to any part of the Judgment or to allow the parties to reconcile.
- e. **Special Waiting Period for § 1A Divorces:** Most divorces are filed under M.G.L. § 1B (Contested – one party files). If you file for divorce under M.G.L. § 1A (Uncontested - where the parties agree about the issues from the beginning and file a Separation Agreement together with the Complaint for

Divorce), the Court allows thirty (30) days to pass between its initial approval of the Separation Agreement and its entry of the Judgment of Divorce Nisi. At any time during that thirty (30) day waiting period, the Separation Agreement may be modified by agreement of the parties and with the approval of the Court, or by the Court upon petition of one of the parties, after a showing of a substantial change of circumstances. In that case, the Agreement, as modified continues as an order of the Court. After entry of Judgment of Divorce Nisi, the standard 90-day “Nisi” waiting period applies to give either party time to object to any part of the Judgment. Ninety (90) days after entry of the Judgment of Divorce Nisi, the divorce becomes final/absolute, for a total waiting period of one hundred and twenty (120) days.

8. MODIFICATION – *the Potential for modification of the Judgment down the road, pursuant to M.G.L. 208 § 28*

a. Modification of Alimony:

- i. *Modification Hearing*: If, after a Judgment for alimony or child support becomes final, either party files an action for a modification of the same, the Court may hear such action.
- ii. *Modification of Alimony that “Survives”*: If the parties have an Agreement in which the portion addressing alimony is intended to be a final and complete resolution of alimony, and the alimony portion of the Agreement “survives” the Judgment of divorce as a contract having independent legal significance, the Court **will not** modify the Judgment which “incorporated” the Agreement, **absent a showing of countervailing equities**. This is a very high barrier to overcome.
- iii. *Modification of Alimony that “Merges”*: If the alimony portion of the Agreement is “merged” with the divorce Judgment and does not “survive” as an independent contract, the Court **may** modify the Judgment upon a showing of a material change of circumstances (for pre Alimony Reform Act of 2011 cases – except as to duration which will be governed by the new law) or as pursuant to the Alimony Reform Act of 2011 (for divorces which occurred/occur after the passage of the Act).

b. **Modification of Child Support**: Orders for child support may be modified upon a showing of a material change in circumstances and that a modification is necessary in the best interests of the child. If, because of income increases/decreases, the Child Support Guidelines would call for an increased/decreased order, a modification can be filed. Unlike with respect to alimony, the Court may modify the child support portion of an Agreement even if that portion “survives” as an independent contract. The parties cannot bargain away the rights of the child in Massachusetts.

c. **Additional Modification Period for § 1A Divorces**: Most divorces are filed under M.G.L. § 1B. As noted above, if you file for divorce under M.G.L. §

1A (where the parties agree about the issues from the beginning and file a Separation Agreement together with a Joint Petition for Divorce), the Court allows thirty (30) days to pass between its initial approval of the Separation Agreement and its entry of the Judgment of Divorce Nisi. At any time during that thirty (30) day waiting period, the Separation Agreement may be modified by agreement of the parties and with the approval of the Court, or by the Court upon petition of one of the parties, after a showing of a substantial change of circumstances. In that case, the Agreement, as modified continues as an order of the Court. After entry of Judgment of Divorce Nisi, the standard 90-day "Nisi" waiting period applies to give either party time to object to any part of the Judgment. Ninety (90) days after entry of the Judgment of Divorce Nisi, the divorce becomes final/absolute, for a total waiting period of one hundred and twenty (120) days.