

# Family Law

## NEWS

New Jersey Family Law News

October 2005

### A SUMMARY OF THE DIVORCE PROCESS IN NEW JERSEY, FROM THE FILING OF THE COMPLAINT FOR DIVORCE TO TRIAL

#### **Initiating a Divorce Action: Filing the Complaint**

Any legal action for divorce in New Jersey begins with the filing of a Complaint for Divorce. After the Complaint is served upon the other spouse and an Answer is filed, the matter is placed on the court calendar as a contested case. A period of discovery is then allowed.

#### **The Discovery Process**

In the period of discovery, both parties are required to exchange detailed financial disclosure forms which are called Case Information Statements. The Case Information Statement lists all assets, liabilities, income and expenses of the parties. Additional discovery can then be undertaken whereby Interrogatories are exchanged requiring the other party to answer, under oath, a more detailed list of questions. A Notice to Produce Documents can also be served on the other party requiring the spouse to submit documents such as tax returns, bank statements, credit card bills and other relevant documents.

Any party may also be required to sit for a deposition requiring him or her to answer oral questions in an informal setting. These answers are used as an additional discovery technique in order to acquire further information and/or to preserve sworn testimony in the event of trial.

The court will schedule

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a Case Management Conference in which the court will schedule the entire case in detail and set the dates by which all discovery must be completed. Provision will also be made for the submission of pension plan information, 401K accounts, annuities and any other retirement accounts. If real estate or businesses need to be evaluated, experts may

need to be hired in order to determine values and the manner in which these assets are to be distributed.

#### **Uncontested Divorce In New Jersey**

Any time an agreement is reached on all issues, the matter becomes uncontested and may be immediately scheduled for an uncontested hearing before the court. At that point, a Property Settlement Agreement will be prepared by the attorneys which will detail the entire understanding between the parties and spell out the exact terms of the settlement.

The agreement will include the manner in which child custody and timesharing of the children are to be divided, whether alimony (spousal support / maintenance) is to be paid and the duration of the alimony, the amount of the child support calculated and how all assets and liabilities are to be distributed. The agreement will also provide for child care expenses, whether life insurance is required, how medical costs

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will be paid, and the parties' respective responsibilities toward college education of the children.

### **Contested Divorce In New Jersey**

Should the matter continue on a contested basis, the court will schedule the case for an Early Settlement Panel in approximately six to seven months from the filing of the Complaint. Case profile forms must be submitted prior to the date of the Early Settlement Panel detailing each party's respective position with regard to all of the issues in the case.

The parties, with their divorce attorneys, are then required to proceed to non-binding arbitration with the Early Settlement Panel. At this proceeding the Case Profile forms are reviewed and the panel will hear the argument of counsel as well as the opinions of the litigants. After considering all of the oral and written submissions, the panel will confer between themselves and will make a recommendation in an effort to aid in the settlement of the case. The panel consists of two experienced matrimonial attorneys who volunteer to help the court in settling divorce cases. The vast majority of divorce cases are settled prior to trial and the Early Settlement Panel can be helpful in presenting an independent, disinterested, third party voice to the litigants as to a possible resolution of the various issues presented.

The Early Settlement Panel will usually not become involved in issues of child custody or timesharing. Should the parties be unable to resolve these issues between themselves, they may be required to attend court ordered custody/visitation mediation. This is a program provided by the county free of charge which attempts to resolve all such issues without the necessity of litigation.

### **Issues to be resolved: Child Custody**

The exact custody arrangement must be addressed in particular. Child custody arrangements vary from one case to another. Typically, the parties are awarded joint legal custody which requires mutual discussion and consultation with regard to any major or important decision that affects the welfare of the children. These decisions can be in the area of academics, medical care, religious upbringing, and the like. One party can then be designated the parent of primary physical or residential custody which means that the children will primarily reside with that parent. The other party is entitled to timesharing which has to be determined. Holidays and vacation time must also be resolved.

Some cases may allow for shared physical custody of the children. Difficult cases may require the hiring of an expert such as a psychologist to perform evaluations of the parties and, in appropriate cases,

with the children as well.

### **Pendente Lite Motions**

If, during the pendency of the litigation, one party needs support or other temporary relief, an application to the court, called a pendente lite motion, can be made at any time. Typically in such an application, one party asks for a temporary support order as well as the payment of certain household expenses. The court will attempt to maintain the status quo while the divorce case proceeds and insure that the parties' expenses are being paid and that the mortgage, utilities, insurance costs and car payments are not being neglected.

### **Issues to be resolved: Child Support**

Child support is determined and calculated based upon Child Support Guidelines that have been implemented by the State of New Jersey. Both parties' incomes must be analyzed in order to determine their gross incomes and their net allowable incomes for child support determination purposes. If alimony is to be paid to a spouse, the amount of alimony must be calculated first and inserted into the child support calculation equation. After determining both parties' respective incomes with an amount of alimony to be paid, appropriate child support calculations are determined.

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**Issues to be resolved:  
Alimony or Spousal Support**

One of the more highly contested issues in any divorce proceeding is how much alimony should be paid to the financially dependent spouse, if any, and, if so, how long it should be paid. There is no table or set formulation used when determining the appropriate level of alimony such as exists for the calculation of Child Support. Rather, alimony is the result of many different factors to be considered by the court. The factors that can be considered in determining the amount of alimony to be paid are listed in the appropriate statute found at N.J.S.A. 2A:34-23(b). Those factors are enumerated below:

1. The actual need and ability of the parties to pay
2. The duration of the marriage
3. The age, physical and emotional health of the parties
4. Standard of living established during the marriage
5. The earning capacities, education levels, vocational skills, and employability of the parties
6. The length of absence from the job market of the party seeking maintenance
7. The parental responsibilities for the children
8. The time and expense necessary to require sufficient education or training
9. The history of financial or non-financial contributions to the marriage by each party
10. The equitable distribution

of property ordered and payouts on equitable distribution out of current income  
11. Any other factors which the court may deem relevant.

Alimony can be classified as permanent alimony, term or limited duration alimony, which is alimony payable for a certain amount of time. Alimony can also be rehabilitative alimony to allow the supported spouse ample time to get back on his or her feet financially, or reimbursement alimony which can be awarded where one spouse made monetary contributions with the expectation that both parties of the marriage would derive an increased income and material benefit.

**Issues to be resolved:  
Division of Marital Property**

State statutes now provide for the "equitable" distribution of the marital property of the marriage at the time of the final divorce between the parties. "Marital Property" is defined as all jointly owned property and all other property, other than separate property, acquired by either or both of the parties during the marriage and up to the time of the final separation of the parties. "Separate Property" is (1) property owned by one party at the time of the marriage or (2) inherited property or (3) gifts to one party from a third person and maintained as separate property. Where "Marital Property" and "Separate Property" are mixed together or where

"Separate Property" is increased through the active efforts of either party during the marriage, then such property may be classified as "Part Marital" and "Part Separate" property.

In making its equitable distribution awards the courts are not only authorized to make monetary awards to one of the parties, but may also divide or order sold or transfer jointly owned marital property to one of the parties. In making equitable distribution awards, the court is not required to divide the marital property on an equal basis but rather, in deciding what an equitable division of marital property should be, will consider various factors listed in the Equitable Distribution Statute, including the relative monetary and non-monetary contributions of each of the parties to the well being of the family.

**The Divorce Trial**

If the case is still not settled after it proceeds to the Early Settlement Panel, the court can schedule settlement conference dates and ultimately a trial date. If the matter does proceed to trial, the parties and any witnesses will testify in open court and present the case in a formal manner to the Judge along with all evidential documentation. The court will then make the determination with regard to all issues presented.



## *Law Offices of Donald D. Vanarelli*

The Law Firm of Donald D. Vanarelli, with offices in Westfield, NJ, provides a broad range of legal services in the areas of family law, elder law and estate planning. Whether you need a divorce attorney or a domestic violence lawyer; whether you seek a child support modification or you are embroiled in a custody dispute, we are prepared to work hard for you. We are committed to pursuing the best legal strategy and achieving optimal results for our divorce clients by combining energy and resolve with competence and judgment. Success may be achieved in the courtroom through litigation, or through alternative strategies such as mediation or settlement; however, our focus remains on the economic implications of each action and practical results achieved. Together we establish goals and develop legal strategies for the most effective and efficient use of resources.

### **We have received the highest rating available for legal ability and ethical standards**

The Law Firm has received an "AV" rating from the Martindale-Hubbell rating system, an independent service which has rated attorneys nationwide for more than a century. An "AV" rating is the highest rating available to lawyers. An "AV" rating signifies that the lawyer is recognized by his peers as having achieved very high to preeminent legal ability and very high ethical conduct relevant to the discharge of professional responsibilities. Only about 20% of all lawyers who have been rated have achieved an "AV" rating.

### **Approved Mediator under the New Jersey Court Rules**

Mr. Vanarelli is approved under the New Jersey Court Rules as a Mediator in family and divorce matters. Mediation is a process of dispute resolution by an impartial third party who attempts to assist and encourage contesting parties in a dispute towards a mutually acceptable agreement. Mediated agreements are binding on the parties and enforceable in Court.

### **★ Fall 2005 Family Law Seminar Dates and Locations ★**

#### **Topic: Overview of Divorce Law in New Jersey**

<u>DATE</u>	<u>TIME</u>	<u>LOCATION</u>
November 17	7 p.m.	Law Firm, Westfield, NJ
November 19	10:30 a.m.	Law Firm, Westfield, NJ
December 13	7 p.m.	Law Firm, Westfield, NJ

***Advance Registration Required, by calling: 908-232-7400, or by email: [dvanarelli@dvanarelli.com](mailto:dvanarelli@dvanarelli.com)***

### **★ Free Divorce Mediation Consultation ★**

***Call 908-232-7400 to schedule your free divorce mediation consultation.***

During your free consultation, I'll help you and your spouse learn more about the process and benefits of divorce mediation. I'll answer all of your questions so you can decide if divorce mediation and my services are right for you.

## **Family Law NEWS**

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