

HOW DECISIONS ARE MADE IN THE DIVORCE:

AGREEMENT VERSUS CONTESTED COURT DECISION

Your Role in the Decision Making Process:

Can you and your Spouse work out a Divorce Agreement or will you leave the Decisions to the Judge?

- You and your spouse know more about your children, your finances and your property than a judge ever will. Therefore, you are in a much better position to find fair and practical solutions to all the issues in your divorce. If you leave it to the judge to decide, you give up one of the most important powers of your life, the power to control your own future.
- A divorce may end a marriage, but it does not end your responsibility to parent your children. Our laws and the court encourage parents to work together to reach agreements on how they are going to parent the children during and after the divorce.

Why should you try to make an Agreement?

- The parents are in the best position to know what would be best for them and their children;
- Most people would rather make their own major life decisions;
- A trial can be destructive to children as well as to parents;
- Solutions reached by the parents and not imposed by judges are more likely to be followed, and will help parents to work together to reach agreements on issues which will come up after the divorce is final.

Ways to go about reaching an Agreement

Do it yourself:

- If you decided to do this yourself, the court staff or the judiciary website provide sample forms that will include the various issues that need to be in your Agreement. Court staff is not trained in the law and cannot help you reach an agreement or advise you which course of action to take.
 - If it is easy for you and your spouse can talk to each other in a respectful and courteous manner and you can discuss the issues together, you may be able to create an agreement. Meeting in a public place may insure that both of you are at your best behavior.

Mediation:

If it is difficult for you and your spouse to talk to each other, and/ or if you would like to create detailed or complex agreements, you may need a neutral third party to help you. You can ask the court staff or your attorney about Mediation services.

Mediation is a process in which separated parents define their differences, explore their interests, evaluate possible solutions, and create written agreements.

- Mediation can occur before, during, and after a separation, dissolution of civil union, and/or divorce.
- The mediators are neutral. They do not decide who is right or wrong but help parties communicate in an informal and confidential setting.
- The mediation sessions are focused on the parties making agreements about division of property and debt, support of spouse and/or children, tax issues, arrangements for their children, parent-child contact schedules, etc. Mediation is a process for resolving disputes between people, where solutions are created by both parties with the help of a trained, neutral, third person. The mediator helps the parents to consider options and how to best protect the interests of the children.
- Parents who have made agreements in their divorce by using a mediator have reported greater satisfaction with the outcome than parents who have let the judges make the decision for them.

Ask the court staff for a list of qualified mediators in your community. When selecting a mediator, you may want to ask about the mediator's training and experience in advanced mediation skills, family dynamics and working with families in crisis.

The Vermont Family Court Mediation Project has qualified mediators available in most counties and those mediators offer a sliding fee to income eligible parents. You may want to visit their website at: www.vermontjudiciary.org/mediation or call 1-800-622-6359.

The Lawyer:

- If one of you has retained a lawyer for your divorce, and you have not reached an agreement by talking to each other or through a neutral, third party (mediator), you can work out an agreement through the lawyer. Remember that one lawyer cannot represent both parties, and the lawyer will be helping out the spouse who hired him/her.

The Case Manager Conference:

- The Case Manager can explain the court procedures to you and offer suggestions on community resources available in your county. The case manager can help you reach agreement on child support and property issues. A Case Manager Conference will be automatically be scheduled by the court if you have minor children.

AFTER YOU'VE REACHED AN AGREEMENT:

- Once you have reached an agreement on all, or some of the issues in your divorce, you need to put it in writing. The Court staff and the court web site have sample forms for you to use if you are doing this yourself, or if there is a Lawyer he/she can put the agreement in writing. The written agreement is called a "**Stipulation**". You can make agreements covering the period until the divorce is granted, called a "**Temporary Stipulation**", and for the period after the divorce is final, called a "**Final Stipulation**."

- Even if you cannot reach agreement on all issues, you can make partial agreements and ask the judge to decide the issues on which you've been unable to agree. You should put your agreements in writing and file them with the court before any court hearing, so that the judge or magistrate knows what you have agreed on and what issues are left to be decided.
- The Judge or Magistrate will review your agreements to insure that they make sense, are fair, and to make sure that they are in the best interests of the children if you have minor children.
- In order to insure that children are adequately supported, Vermont law requires that the Child Support Guidelines be used to determine the child support in every case, or if guidelines be changed, the reason for such a change. You will be scheduled for a **Case Manager's Conference** and you can use this for assistance in calculating the guidelines.

Because the children are the beneficiaries of the child support, the court must protect their interests. Therefore, in cases involving child support, agreements need to be structured under our support laws. (See pamphlet #7, Child Support, or go to www.ocs.state.vt.us for guideline tables.)

Once there is an Agreement:

- Once you have filed your written agreement with the court, the judge or magistrate will review it, and if approved, sign the agreement into an order of the court. The purpose of court orders is to insure that the agreements are followed. Court orders must be followed, and Orders can only be modified by the Judge or Magistrate.

If you cannot reach Agreement:

- At the beginning of the case, or anytime when there are still issues in dispute, the court generally issues what is called an "Interim Domestic Order", which sets forth terms appropriate for a Temporary Order in almost every case. It prohibits either party from taking custody of the children or taking possession of property, bank accounts and other financial assets, and requires that insurance remain in place. This order can be tailored to specifically address issues in your case, and will remain in place until modified by the court.

When a Court Hearing is Necessary to Resolve Issues:

The Role of the Judges in Family Court:

- In each Family Court there is one presiding (chief) judge, two assistant judges and one magistrate.
- The presiding judge is trained in the law, appointed by the Governor, and decides factual and legal issues in the divorce.
- The assistant judges are lay people, elected by the voters in each county, and decide factual disputes together with the presiding judge. In some counties they review and approve uncontested final divorces;
- The magistrate is trained in the law, appointed by the Governor, and decides factual and legal issues involving child support and spousal maintenance issues;
- Even if you cannot make agreements on all issues, and you have a hearing scheduled before the judges or magistrate, the dispute may get resolved without a contested hearing. A contested hearing is where the witnesses are sworn in, and the judge makes the decision based on the evidence. More often than not, the judge will

first listen to what the dispute is about and give you some guidance in how to resolve it.

- If you need the judges to resolve the issues in your divorce, the divorce will take longer to be finalized.

Preparation for Court Hearings:

- The court expects the parties and/or their lawyers to meet in advance of the hearings to exchange financial information and attempt to reach agreements on all issues. There may be documents to be filled out and/or exchanged between the parties. The court may issue a "Discovery Schedule Order", outlining the dates by which you must get information to the other party and to the Court. The preparation and discussions regarding resolutions must take place before the time set for hearing, so that you are prepared to present your case during the time set aside for the hearing.

The Temporary Hearing:

- In general, the court will hold a hearing regarding what will happen while the divorce action is pending, when the spouses cannot come to an agreement on issues such as where the children shall live, who shall have use of the home, cars or other property, who will pay family bills, or whether spousal maintenance (alimony) should be paid by one spouse to the other. If you have a dispute over use of various personal items of property, make a list of the disputed property before coming to court. The court will not immediately schedule a Temporary Hearing unless there is an emergency. If you are not able to reach agreement, the Interim Domestic Order issued at the beginning of your case will remain in effect until it is modified by the court. The time it takes to have a hearing will vary by county.

Initial Child Support Order:

- After the divorce complaint is filed, a **Case Manager's Conference** will be scheduled. The Case manager can assist you in reaching agreements and in determining the child support based upon the guidelines. Make sure you read the notice of the conference, as it has information about the forms that you need to have filled out **BEFORE** the conference, including the Affidavit of Income and Assets (Form 813) as well information about what else you need to bring with you. If you can reach agreement at the conference, the court can issue an Order without need for a hearing.
- Child support cannot be ordered until there is an agreement or court order for parental rights and responsibilities and parent child contact (custody and visitation). Therefore it is important that you start to discuss the parenting issues as soon as possible. If you have an agreement, you can ask the court for a form so that you can put your agreement in writing before the hearing. If you cannot agree on parenting, you might be able to work this out at the case manager's conference, or with a mediator. If you are still unable to agree, contact the Family Court staff so that time can be scheduled before the judge to help you resolve the dispute.
- If you cannot reach agreement on child support at the Case Manager's conference, the matter will be set for a hearing before the Magistrate. Issues involving child support will be heard by the Magistrate. (See pamphlet #7, [Child Support](#))

The Final Divorce Hearing:

- If you have minor children, there is a waiting period of six months from the time the divorce is filed until the court can set a final hearing. If you have agreed on all the issues, and have sent a written Final Agreement to the court, an uncontested final hearing will be held in your divorce. If you cannot resolve all issues to reach a final agreement, you will need to have a contested final hearing. Ask the court staff how long you will have to wait for a contested hearing to be set, since this varies based on how much time your hearing will take. The more issues that you can resolve by agreement, the sooner you are likely to get a final hearing date.

**You can obtain helpful information, as well as court forms at:
www.VermontJudiciary.org.**