

HOW DECISIONS ARE MADE IN THE DIVORCE:

THE ROLE OF THE SPOUSES, MEDIATORS AND JUDGES IN CASES WITH NO MINOR CHILDREN.

Your Role in the Decision Making Process:

Can you and your Spouse work out a Divorce Agreement or are you going to give the Power to make Decisions to the Judge?

- You and your spouse know more about 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.

Why should you try to make an Agreement?

- The spouses are in the best position to know what would be best for them.
- Most people would rather make their own major life decisions
- A trial can be destructive to people because it tends to bring out their worst;
- Solutions reached by the spouses and not imposed by judges are more likely to be followed.

Ways to go about reaching an Agreement:

Do it yourself:

- If you decided to do this yourself, the court staff can provide sample forms that will include the various issues that need to be in the Agreement. Court staff is not trained in the law and cannot 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.

Mediation:

- If it is difficult for you and your spouse to talk to each other and you need a third party to help you, ask the court staff or your attorney about Mediation services in your community. Mediation is a process for resolving disputes between people, in which solutions are created by both parties with the help of a trained, neutral, third person. The mediator helps the spouses to consider options and creative solutions. Spouses have reported greater satisfaction with the outcome than the spouses who let the judges make the decisions 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 in mediation skills and family dynamics and working with families in crisis.
- **The Vermont Family Court Mediation Program** has qualified mediators available in your county and offers subsidies to low-income litigants. You may want to visit their website, which is available by link at: www.vermontjudiciary/mediation.org

The Lawyer

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

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 has sample forms for you to use if you are doing this yourself, or, if there is a lawyer involved, the lawyer can put the agreement in writing. The written agreement is called a "**Stipulation**". You can make agreements covering the period until the divorce is completed, which is called a Temporary Stipulation, and for the period after the divorce is final, which is called a Final Stipulation.
- Even if you cannot make agreements on all issues, you can make partial agreements and ask the judge to decide the issues on which you have been unable to agree. This will reduce the time you need for a contested hearing before the judge and may reduce the amount of time you will have to wait to have your hearing scheduled.
- The judge will review your agreements to insure that they make sense and are not unfair.

Once there is an Agreement:

If you have 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. The agreements are enforceable through the powers of the court, including contempt. Court orders must be followed.

If there is no agreement:

- 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 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. This 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 people in each county, and decide factual disputes together with the presiding judge. In some counties they may hear uncontested final hearings.
- The magistrate is trained in the law, appointed by the Governor, and decides factual and legal issues involving child support, and spousal maintenance.
- 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 attorneys 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 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:

- 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.

The Final Divorce Hearing:

- There is normally a waiting period of six months from the beginning of the divorce until the court can hold a final hearing. If you have lived "separate and apart" for at least six months prior to filing, and have completed a stipulation for final divorce that equitably divides up your property, YOUR DIVORCE MAY BE SCHEDULED IMMEDIATELY, again depending on the court schedule and the availability of court time.

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