

New Jersey Divorce Law Guide: The Path Forward

**A Complementary Guide for Clients and
Prospective Clients**

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Introduction

Hello. If you're reading this e-book, then perhaps you or someone you know has family-law related issues. Perhaps you have questions regarding a divorce matter, a custody dispute, a

post-judgment issue, or the drafting of a premarital agreement. If so, then please read on to learn about family and divorce law in New Jersey.

I originally created this as a brief overview in 2012 and have now updated it as an ebook in 2017 to reflect important changes in the law over the last half-decade. Through years of family law practice I've learned that the better informed my clients are, the easier it is to assist them through their important legal issues.

The people that I wish to work with are the types of clients that will desire to be engaged in the process. Courts, attorneys, the law itself—these things can be intimidating at first. I hope this information helps make the process less so.

If you're meeting with an attorney or considering legal representation, then there is likely a serious legal issue in your life. You may be confused as to your rights and responsibilities. It's important that you take steps to understand your rights and the legal process. Part of my job as an attorney is to

educate my clients so that the laws and court processes are not so daunting. This general overview is a starting point in that education.

I believe that the better informed my clients are, the more efficient services I can provide to them and the capital spent in the process can best be utilized towards implementing strategies and techniques with the highest return on investment.

If you retain or have retained my firm, you will be able to reference this ebook throughout your case. Any time you can find your answer in the ebook rather than by calling my office, you may be saving yourself money. By better understanding your rights, you can ask more sophisticated questions of me. Of course, if you have any questions our firm is always available to you. I encourage my clients to contact me through their desired form of communication whenever they wish and do my best to quickly respond.

My years of experience has taught me that clients are understandably concerned at times about

the cost of reaching out to me via email or telephone. That is why I have recently instituted the **“Don’t be Afraid to Contact Your Lawyer”** campaign at my firm, whereby each of my family law clients are not billed for any communications (email, telephone, or in-person) between client and attorney cumulatively under 1 hour each month. Communication between lawyer and client is of utmost importance.

I also provide all my clients’ my personal cell phone number and encourage them to call me anytime a time-sensitive issue arises. Although I may have received sideways glances from family members when taking a work phone call during a holiday or at night, I believe it is imperative that clients feel comforted that their attorney will always strive to be communicative.

This ebook is meant as a supplement to the legal representation but in no way replaces the fact-specific components that make up each individual’s case. Accordingly, the general information provided herein does not constitute specific legal advice.

Feel free to read this at your leisure and don't hesitate to contact my office if you have any questions. Whether you decide to retain my firm or not, I wish you the best of luck with your legal matter.

Very truly yours,
s/Carl A. Taylor III, Esq.
Carl Taylor Law, LLC

Legal Disclaimers

Please note that this ebook does not create a legal obligation for you or our firm. This book does not create an attorney-client relationship. This book is for informational purposes only and provides general advice. It cannot and does not supplant actual legal advice.

Every case is different and this book is general in nature. Also, the laws and processes are always changing. You cannot rely on this book and should you rely on anything in this book, you do so at your own risk. We expressly waive any liability with regards to this book to the extent allowable by law.

This book provides general information of interest to our clients and prospective clients. It does not constitute legal advice. You should consult with legal counsel to determine how the Law may apply to your specific situation. Please also note that each county may have its own court procedures. This book only discusses New Jersey laws and procedures.

About Carl A. Taylor III, Esq.

Carl's practice emphasizes all facets of family law. In his family law practice, Carl can assist you in almost any type of issue including contested or uncontested divorces, child custody, child support, motions to enforce, domestic violence hearings, complex equitable distribution and appellate cases, and alimony claims.

Carl has been quoted in the New Jersey Law Journal on the issue of palimony law and has also been published multiple time in the New Jersey Law Journal and other publications addressing family law techniques and strategies and the development of New Jersey divorce and family law matters.

Carl graduated from Rutgers-Camden School of Law and earned his B.A. from Saint Joseph's University. He is admitted to practice law in New Jersey, Pennsylvania, and New Jersey's federal courts including both the Federal District Court and the 3rd Circuit Court of Appeals. Carl previously was an associate at a well-respected Somerset County family law firm and clerked for the Honorable

Anthony F. Picheca Jr., in the New Jersey Superior Court, Family Division, Somerset County. Carl serves as an Early Settlement Panelist for Somerset County divorce matters and has previously served as trustee of the Somerset County Bar Association and Somerset County Bar Foundation. Before opening Carl Taylor Law, LLC in his hometown of Flemington, Carl was a partner at Cooper, Cottell & Taylor, LLC in Somerville, New Jersey.

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The Basic Outline of a New Jersey Divorce

A contested New Jersey divorce can take months (or even years) to settle. A divorce may also take years to be finalized should the case proceed to trial. Appropriate aggressive techniques to expedite settlement favorable settlement negotiations will often be employed on your behalf to limit cost and maximize results. This section is going to briefly list the basic steps of a **Contested New Jersey Divorce**.

Remember, this list is by no means exhaustive. Please note that there are several Alternative Dispute Resolution processes available in New Jersey Divorce matters. These include mediation or collaborative law. Such methods may provide a framework for the least expensive and most efficient method of working towards a divorce but in certain cases aggressive representation will be required to protect the client's interests.

The list below assumes that mediation or other alternative dispute resolution is not something you

wish to pursue. (or perhaps cannot pursue because of domestic violence or other issues that may render mediation impractical or impossible).

Again, mediation and other alternative dispute resolutions should always be considered at the outset of a case attempted but may not always be feasible or provide the best opportunity for achieving best results in your case.

Basic Contested Divorce Steps

Step 1: Determining whether a Divorce is the right decision for you. Have you tried to reconcile? Have you tried marriage counseling? Our office can provide you with the names of local marriage counselors or other therapists.

Step 2: Choosing an Attorney. (Or alternatively, choosing to represent yourself).

Step 3: Pleadings and Case Information Statement. (Complaint for divorce/Answer/Counterclaim/etc).

Step 4: Case Management Conferences (CMC'S)
(agreeing to discovery dates, possibly going before the Judge).

Step 5: Beginning Negotiations (It's never too early to start negotiating. Negotiations should continue throughout the process until the case is resolved or a trial is completed.

Step 6: Discovery.

Step 7: Continuing Negotiations/Drafting MSA Proposal.

Step 8: Early Settlement Panel ("ESP").

Step 9: Court Ordered Economic Mediation.

Step 10: All-Day "Intensive" Settlement Conference ("ISC").

Step 11: (Hopefully) Finalizing a Divorce Settlement–Marital Settlement Agreement. If not, then: The Trial and the Judge's Opinion. (Note: Trials are rare in New Jersey Divorces, with approximately 1-2% of all cases going to trial. Again, please note a case can be settled at basically anytime. The steps above represent the progression assuming you have not settled).

After reading the 11 steps outlined above, you may be thinking to yourself: I don't know what half of it means! What is an Early Settlement Panel? Well, don't worry: I'm going to explain each step below. But first, let's review the process for an uncontested divorce and some of the major issues involved a typical divorce case.

The Uncontested Divorce

Most people do not wish to be involved in long, expensive, and drawn-out litigation if there is an amicable path forward. To that end, an uncontested divorce may make more sense for the clients than protracted divorce litigation.

Of course, negotiating a settlement will not always be easy, but the goal of both parties should generally be to be open to favorable settlement terms. At the same time, cases settle favorably based upon leverage and thus even when the goal is to quickly settle a case it may be appropriate to consider aggressive discovery techniques, motion

practice, and other actions to create additional leverage for such a favorable settlement.

New Jersey Uncontested Divorce Hearings

A New Jersey uncontested divorce hearing will be scheduled when the parties reach a Settlement and advise the Court of their settlement and a readiness to finalize their divorce. The actual uncontested divorce hearing is, perhaps somewhat ironically, actually one of the least complex parts of the entire divorce process.

The Plaintiff and his or her attorney (if the Plaintiff has counsel), will attend the uncontested hearing. The Defendant/counsel will often choose to attend as well, although this is not required provided the Defendant did not file a counterclaim.

The parties will then be asked certain questions by their counsel, to establish a “cause of action” and that the settlement agreement is valid and willingly entered into. The “cause of action” is the divorce grounds, such as irreconcilable differences or

extreme cruelty. New Jersey is a “no fault” divorce state meaning a divorce will proceed as long as one of married partners wishes to pursue same.

The Judge may then follow up with a few additional questions, although the Judge will not make a determination as to whether the Agreement itself is fair and equitable.

Mediation

One particularly effective method for working towards an uncontested divorce is attending mediation. Both parties will likely retain their own counsel to assist them and will then choose a mutually acceptable mediator (generally splitting the cost for same).

The parties (generally with assistance from their attorneys) will then attempt to reach an understanding (A Memorandum of Understanding or “MOU” may be drafted at this time). Thereafter, one of their attorneys will draft a form of settlement agreement.

Mediation generally offers an expedited and less expensive method of finalizing a divorce. Mediation is generally disfavored in cases with a history of domestic violence or when one party will not be able to hold their own during the mediation process either with or without the presence of counsel.

Uncontested Divorce Hearing in New Jersey: After the Hearing

After the divorce hearing, the parties will be given gold-sealed copies of their Judgment of Divorce. It is important to keep this copy and the Marital Settlement Agreement (“MSA,” sometimes also referred to as a Property Settlement Agreement or “PSA”) in a safe place, should future issues arise. It is also important to remember that there will often be certain unresolved issues or other post-divorce loose-ends/business to take care of. Your attorney should offer guidance regarding these issues. One thing to consider is immediately changing your will, so that your ex-spouse will be removed as a beneficiary.

Uncontested Divorce Hearing in New Jersey: Conclusion

The uncontested divorce hearing is a day of closure. It will likely be a bitter-sweet day for both parties. It's both the end of something and also a new beginning. Your attorney should notify you of what to expect the day of the hearing, review the uncontested divorce questions with you in advance (so you are prepared for the day of the hearing), and later advise you of how to tie up post-divorce loose ends and determine whether you wish for continued representation relating to such issues as dividing marital assets or implementing other clauses contained within the Agreement.

If litigation is inevitable, however, then you will begin the steps toward a contested divorce, which I've outlined below. But first, let's review some of the major divorce issues. (Continued in Section II of Ebook)...

Child Support Law in New Jersey

Child support in New Jersey is an obligation that runs from parent to child rather than from parent to parent. When viewed through this prism, **Child Support Law in New Jersey** becomes more easily understood.

Determining Child Support in New Jersey

In most instances, the child support amount will be determined by the **New Jersey Child Support Guidelines**. These guidelines take the form of a complicated equation. Some of the factors taken into consideration by the New Jersey Child Support Guidelines include:

- Both parties' income from all sources, (both earned and unearned, including alimony).
- The amount of overnight parenting time exercised by each parent.
- The children's ages.
- The number of children.
- Health Care and Child Care costs.

- Support Paid for children from another relationship.

As the New Jersey Child Support Guidelines are an algorithm, most disputes involve the methodology or actual data input. For instance, a party may argue that their ex-spouse earns a substantial but unreported sum of money from tips, which would affect that spouses' income and expected taxes—and therefore the amount of child support due.

Child Support Law in New Jersey: Please Keep in Mind...

In the past, I have had some clients misunderstand the nature of each party's child support obligation.

For instance, many parents of alternate residence believe that they are paying for all of the children's support. In most instances, however, this simply is not so.

A parent of primary residence may not have a probation account, but they are still paying for all of the children's expenses not covered by the child support payments. In fact, except in very rare instances, **neither party has a 100% obligation to support their children.** It is a shared obligation. Likewise, many parents of primary residence expect the child support to cover all of the children's expenses. Again, the goal is shared expenses for the children.

Deviation from the Child Support Guidelines

There are some instances where child support guidelines will not be used, or the final support obligation will deviate from the child support amount. Two such instances are:

- Child Support Guidelines are generally not used when an adult child resides away from home during college.
- Child Support Guidelines are generally not used when the net income of the parties' (from all

sources) exceeds **\$187,200** (max imputation naturally calculated under guidelines in NJ). In this instance, a deviation from the New Jersey Child Support Guidelines may be necessary.

Modification of Child Support in New Jersey

When a child support account is established through Family Support Services/Probation, there will often be periodic increases in support (cost of living adjustments, i.e. COLA). Likewise, the parties may agree to revisit child support at certain set intervals such as every three (3) years.

Child support may also be modified, however, at any time—should there be a change in circumstances. Some common examples of what may be considered a change in circumstances include:

- Modification of custody or parenting time.
- Changes in the incomes of the parties (positive or negative).

- Job loss, serious illness, and/or disability.
- Emancipation of one or more children.

Termination of Child Support in New Jersey

Until recently New Jersey did not assume the emancipation of a child or the termination of child support upon a child's eighteenth birthday. In fact, appellate cases even stated that a child could even be "unemancipated." However, legislation codified and enacted in February 2017 now creates a presumption of emancipation and termination of child support once a child reaches nineteen (19) years of age.

It is then incumbent upon the parent receiving support (obligee/parent of primary residence) to petition the Court to demonstrate that emancipation is not appropriate due for reasons that would include disability, the continued pursuit of high school or post-secondary education or for other good cause.

At that point in time good cause for staying emancipation would be considered a shift in the burden back to the obligor (parent paying support).

This new statute also states that emancipation must occur no later than when a child reaches 23 years of age.

The basic legal threshold for emancipation in New Jersey is commonly referred to as when a child has moved beyond the “sphere and influence” of his or her parents. It is rare for a Court to find that a student attending college full-time, directly after high school, has moved beyond the “sphere and influence” of his or her parents and that is not likely to change even with the burden-shifting provisions enacted under recent legislative measures.

Conclusion

New Jersey is a state that tends to favor the parent of primary residence and the children. Emancipation cannot be assumed just because a child reached the age of 18. Even if a child resides away at school, some (likely modified) obligation will remain on the part of the parent of alternate residence. Unlike bordering state Pennsylvania, divorced parents in New Jersey are generally

required to each contribute to children's post-secondary education costs (sometimes including up to professional/graduate degrees).

Custody Law in New Jersey

Custody disputes can be both expensive and emotionally draining. In 1992, the Appellate Division Court even hinted at the judiciary feeling somewhat uncomfortable with deciding custody disputes.

Specifically, in **Tahan v. Duquette, 259 N.J. Super 328, 336 (App. Div. 1992)**, the Court wrote the following regularly cited opinion:

We urge the parties to understand that courts in any jurisdiction are poor places to resolve such fundamental relational problems as child custody. Rules of law and procedural strictures are no substitute for personal choices in so intensely personal an issue. Parents who have divorced are frequently unable to communicate constructively on

issues of importance; so they look to the legal system to resolve their problems. But no stranger in a judicial robe, however able and well motivated he or she may be, is equipped to make a decision as valid as the parents working together might make.

But, be that as it may, there are few if any elements of a divorce that are more important than protecting the best interests of the party's children. Likewise, there are few issues that will become as contentious as a custody dispute.

New Jersey Child Custody: Best Interest's of the Children Standard

The analysis of most child custody disputes in New Jersey starts and ends with a simple but hard to define standard: "The Best Interests of the Child." The best interests of the parties' children standard may involve some of the following arguments:

- Where will the child receive the best education?
- Where will the child be safest?

- Which party can provide the “better” living conditions?
- Which party is more nurturing?
- Where will the child have the best chance to excel?
- New Jersey child custody decisions should be made with the “best interests of the parties’ children” in mind. But let’s backtrack for just a second. By now you may be wondering how custody itself is defined in New Jersey.

Types of Custody

Under New Jersey Law, there are two basic types of child custody:

- 1) Legal Custody; and
- 2) Physical Custody.

New Jersey law favors joint “legal custody”, whereas joint “physical custody” is generally a more contested issue. In recent years joint physical custody has grown and some judges now start with the baseline of 50%-50% shared joint and legal

custody and entertain arguments regarding why same should not be utilized.

Legal custody includes the right to make important decisions regarding the child, such as important decisions involving health, religion and education.

As its name implies, physical custody assigns which parent will physically reside with the child the majority of the time. Physical custody addresses the day-to-day care of the children.

Often times even a non-custodial party will be granted a significant amount of parenting time. The amount of overnight parenting time also plays a role in determining child support awards.

Gender and Custody

New Jersey has largely become gender blind when determining custody (except perhaps when a child is very young). That said, for a variety of reasons, women are still statistically more likely to

be granted physical custody of the children. It should be noted, however, that the number of fathers being granted primary physical custody of their children appears to be increasing. As noted above joint-custody is increasingly being expected and awarded absent good cause to rule otherwise.

Modification of New Jersey Child Custody Decisions

New Jersey Child Custody Decisions are Always Subject to Review and Modification, in the best interests of the child (if a change in circumstances is first demonstrated).

Often times, custody decisions are consented to by the parties as part of the divorce or as a separate Custody Agreement in conjunction with their divorce proceedings. Until a child is an adult, however, custody issues may persist and/or be revisited upon either party's request.

Litigation of Child Custody Issues in New Jersey

If the parties cannot resolve their custody issues, then the matter will likely have to be litigated. As part of the child support litigation, there will likely be outside experts called in to assist the Court in determining which living arrangements are in the best interest of the parties' children. Issues of parental fitness will play a larger role than the preference of the child, particularly if the child is younger.

As the quote above about the “stranger in the black robe” demonstrates, the Court will likely push parties' toward mediation. New Jersey Child Custody cases are highly fact sensitive. As such, the effective and aggressive use of all appropriate discovery techniques will be considered in contested or potentially contested custody disputes.

[Parenting Time Law in New Jersey](#)

Parenting time—formerly referred to as visitation—addresses the specifics of a custody order or agreement.

The parties' lawyers will do their best to broker a deal or fight for the parenting time sought by their clients. Likewise, judges will make a call if they have to. But in my opinion, the parties themselves are best equipped to work out a reasonable parenting time arrangement on a day-to-day and hour-to-hour basis. After all, it will be the parties who, along with their children, will be implementing the parenting time arrangement into the fabric of their daily lives.

Accordingly, the parties should recognize and work together to protect the best interests of their children. Ideally, they will push aside their own differences and work towards a fair resolution of the parenting time issue. As stated above, New Jersey Parenting Time Law itself is grounded in the belief that: no “stranger in a black robe” will be better

equipped to resolve intimate family matters than the parties themselves.

New Jersey Parenting Time Law: Basic Concepts

Custody will determine which party is the parent of primary residence (physical custody) and which party is the parent of alternate residence. Absent good cause otherwise, New Jersey law generally favors liberal parenting time with the parent of alternate residence, so that the children will maintain a post-divorce relationship with both parents. Exceptions to this general rule do exist, such as when parenting time would not be in the best interests of the children.

One such instance is when the parent of primary residence has a history of abuse or domestic violence. Even then, however, the Courts generally favor restrictions on parenting time (such as requiring that parenting time be supervised) to denying either party parenting time altogether.

One of the seminal New Jersey parenting time cases is McCown v. McCown, 277 N.J.Super. 213, 218

(App. Div. 1994). The McCown Court stated that children have a right to a loving relationship with both parents.

The parent of primary residence generally has a responsibility to foster and develop the relationship between the parent of primary residence and their children. The parent of primary residence may therefore be sanctioned if he or she attempts to alienate the children from their other parent. Such sanctions can include up to the loss of primary custody.

Parenting time rights are generally only guaranteed to the actual parents or guardians. Outside parties generally have no legal right to parenting time, even when those outside parties are non-guardian grandparents. Parenting time is not contingent upon the payment of child support.

Parenting Time Agreements

In New Jersey, parenting time arrangements may be determined by the Agreement of the parties or by the Court. Either way, the disposition of this issue must be made in the best interests of the parties' children.

Most Courts and family law attorneys alike will look to a traditional parenting time arrangement to provide a basic framework for parenting time. Negotiations will then focus on modifying the Agreement to reflect the wishes of the parties. The parent of alternate residence is generally given alternate weekends for overnights, along with an evening or two each week. Fights over specific holidays can oftentimes hold-up an otherwise done deal.

Holidays are generally alternated between both parents based upon even and odd years. For instance, if the Father had the children for

Thanksgiving in odd years, then the Mother would have the children for Thanksgiving in even years.

The parties can enter into an Agreement for parenting time/custody as part of the Marital Settlement Agreement or as an independent Consent Order prior to the ultimate disposition of the case. This Agreement would then be embodied or incorporated into the Marital Settlement Agreement.

Modifying Parenting Time Agreements

Either party may, at essentially any time, move for a modification of the present parenting time arrangement. If the parties cannot agree upon a post-judgment modification, then the party seeking the modification will often file a Motion. The party filing the post-judgment Motion must first establish a change in circumstances. Then, he or she must also demonstrate that the modification would be in the best interests of the parties' children.

Conclusion

Parenting time issues can be one of the most contentious parts of the divorce. Luckily, in many instances the parties can work together to create an amicable resolution of the parenting time issue.

The 11 Step Divorce Litigation Process

Step 1: Is Divorce Really the Answer?

Some prospective clients walk into my office and are 100% certain their marriage is over. These prospective clients are ready to start the process of divorce.

Others prospective clients are uncertain whether they are ready for divorce or not. What they really desire is to be provided with an overview of their rights and obligations should they choose to divorce. Finally, there are those prospective clients who do not desire a divorce but their partner does.

Emotionally divorce may be the toughest for people in this position. It's important to acknowledge just how wrapped up in emotion family law and divorce can be for both party's to a divorce. You might need to seek counseling. You may wish to try marriage counseling. As I indicated above, please

reach out to me and I'll provide you with referral to local marriage counselors and/or therapists.

The Baseline Question: Is Divorce Really the Answer?

Some rocky marriages truly are salvageable. As I am neither a psychologist nor a marriage therapist, it's not for me to say whether a prospective client's marriage is worth attempting to save or not. That is a most personal decision. But I often do recommend that parties (absent extenuating circumstances such as abuse) attempt marriage counseling prior to initiating a divorce. If nothing else, this process may assist the parties understand each other and the reasons why divorce may be necessary.

Conclusion

Before you commence a divorce proceeding, you should take some time to be sure that the chance of saving the marriage is slim or zero. Once you have settled that question, you can then begin with the divorce process full-steam ahead, and with

a clear conscious as to your decisions and objectives.

In summation, before one starts the New Jersey divorce process, he or she should ask: is divorce really the answer? If so, then they should move on to the Second Step: choosing an attorney.

Step 2: Choosing an Attorney

Once you have determined that a divorce is inevitable, the next step is finding an attorney.

Although some people represent themselves “pro se”, many individuals in New Jersey retain a divorce attorney to help them through the divorce process and to help protect their rights.

When choosing an attorney, there are some basic considerations such as: is the attorney licensed to practice in New Jersey? Does the attorney’s practice emphasize family law? And is the attorney local? Price is another important consideration that may limit the options available to potential clients. There is somewhat of a wide range of hourly rates and retainer amounts.

Some of the ways that clients find attorneys are through referrals, through the local bar associations, and through the internet.

Once these basic considerations have been met, the next step is to determine the right attorney. Personality plays a key role in divorce cases, and a good rapport between client and attorney may be crucial to maximizing results and limiting exposure.

The attorney-client relationship will likely last months or even years from the first initial consultation until the ultimate divorce, so personality will be more important than one might think. I sometimes joke that I have probably been divorced more than one-hundred times (on behalf of my clients). Despite the law largely remaining the same, each one has been defined not just by specific facts but by the personality of the party's and the attorneys involved in the case.

Finally, competence and experience are always important when choosing any professional. Most

people today prefer attorneys that work predominantly in the area of divorce work, or that limit their practice to only a few key areas of law. Effective representation includes teaching and advising you about the law and divorce procedure, coordinating with you to design and implement effective litigation strategy, and outlining appropriate objective that maximize your leverage and limit exposure.

A good attorney should be honest about what objectives are likely achievable and discuss both “best case” and “worst case” scenarios. After an initial consultation both attorney and client should understand their expectations for the case, their respective responsibilities and rights, and whether or not they are interested in working together. Now, let’s move on to pleadings and the Case Information Statement

Step 3: Pleadings and the Case Information Statement

Although this has not always been the case, today, **New Jersey Divorce pleadings** are fairly straightforward. The point of divorce pleadings isn't to prove your whole case, but rather to lay out all of the relevant causes of action. Absent claims of marital tort, extreme cruelty or the like, pleadings will be general in nature compared to most other types of litigation. New Jersey divorce pleadings are not required to be "technical." All that is required is that basic facts be set forth demonstrating the underlying claims.

Pleadings must also indicate the type(s) of relief requested. Under the relevant court rules, alternative forms of relief may be requested within the pleadings.

Perhaps the most important concept to remember regarding pleadings is this—New Jersey Court Rules understand that you're at the very beginning of the litigation process. Therefore, the

rules are generally lenient provided that a factual basis for the relief requested is provided. But it's also important to remember to plead every cause of action from the underlying claim. If not, you could later be barred by "*res judicata*." Remember that all pleadings—and particularly Complaints—are important, and should be taken seriously.

***Res Judicata* and the Entire Controversy Doctrine**

"*Res Judicata*" is one issue to consider when filing a pleading. *Res Judicata* is essentially the legal systems way of stating the following concept: "You must now bring every cause of action that stems from the underlying claim with your present pleadings, or you may be barred from retrying or seeking relief for the same issues at a later court appearance."

In a way, this concept is similar (although only in theory) to the more common term criminal law term of "double jeopardy." Accordingly if you wish to bring a marital tort along with your divorce, for instance,

it's important to bring that claim along with your original divorce pleadings.

Three Major Types of Pleadings in a New Jersey Divorce

- The Complaint (And Summons)
- The Answer/Counter-Claim
- The Answer to the Answer/Counterclaim

There are filing fees required by the Court in connection with the filing of a Complaint or an Answer to a Complaint. There are also specific time requirements. For instance, some manner of Answer or Appearance is required within 35 days of the date the Defendant receives the summons/complaint.

Otherwise, the Court may commence the Default Judgment process against the Defendant. The pleadings also set forth the cause of action. Some of the more popular divorce “causes of action” include irreconcilable differences, adultery, and extreme cruelty, amongst others, with irreconcilable

differences being utilized a vast majority of the time as New Jersey is a “no-fault” state.

New Jersey Divorce Pleadings formally initiate the divorce litigation process. It is important that all of the valid court rules are followed, so that the case begins properly.

Case Information Statement (CIS)

Case Information Statements are often referred to as the “Most Important” financial document in a New Jersey Family Law. This document is where each party will list assets, liabilities, personal information, and living expenses. If the case ever comes back in post-judgment matters, it will be (along with the Agreement) the most important document for purposes of proving changed circumstances.

By Court Rule, a “Case Information Statement” must be filed within twenty (20) days after the filing of an answer/counterclaim. After you retain our firm, we will provide you with specific Case

Information Instructions and walk you through the Case Information process.

The purpose of the Case Information Statement is to notify the opposing counsel of your finances and other documentation, so that both parties are aware of where they stand. Both parties are required to fill out and file an accurate Case Information Statement as part of every contested New Jersey Divorce.

Now, let's move on to Step 4 of the contested divorce process: Case Management Conferences.

Step 4: Case Management Conferences (CMC's)

Shortly after the pleadings have been finalized, the case will likely be assigned its first Case Management Conference. The major purpose of the Case Management Conference is to create deadlines for discovery and other court processes. In most counties, if the parties can agree upon a Case Management Order, they will not be required to attend the first Case Management Conference.

Now let's move on to Step 5: Starting the Negotiation Process.

Step 5: Beginning Negotiations

My personal philosophy is that it is often beneficial to bring light to the contested issues that must be resolved. Even in the most complex or most highly contested divorces there are often many issues where the parties agree. The basic issues that need to be resolved in the average New Jersey Divorce Include (but are not limited to):

- Equitable Distribution (the distribution of marital property including retirement accounts, debts, businesses, and the marital home or other “real” property);
- Alimony;
- Child Support;
- Custody;
- College Costs/Private School Costs for Children;
- Insurance Issues;
- Counsel Fees;

- Parenting Time.

Of course, it's often important to go through a formal discovery process. Let's next turn to step 6 to learn a little more about discovery in a divorce action.

Step 6: Discovery

Discovery is the process of seeking and providing information. It may require providing years of bank statements, income tax returns, credit card statements, retirement account information, and much more. Discovery is time-consuming and expensive, and sometimes can be limited. It's also a subject that is so involved that it is largely beyond the scope of this pamphlet. That said, discovery is quite important—particularly if you suspect the other party is hiding assets or engaging in other suspicious behavior.

In some cases discovery may be minimal and in others it may require retaining expensive experts

such as business evaluators, forensic accountants, and employability or custody experts.

Some of the basic discovery methods include interrogatories, admissions, requests for production of documents, authorizations, subpoenas, and in some instances, the taking of depositions, which can be a very effective process for gaining leverage and eliciting admissions from the opposing party. Let's now move on to step seven: continuing negotiations and the drafting of a Marital Settlement Proposal.

Step 7: Continuing Negotiations and the Marital Settlement Agreement

Sometimes, the divorce process can become so bogged down in minutia and emotional baggage, that the final destination becomes obscured. The final destination is (almost always) a formal divorce. But divorce attorneys understand that it's much more than that. A divorce—if properly resolved—should also provide a sense of closure.

There will always be a few loose ends, but an effective divorce agreement must attempt to crystallize the parties' intent and provide a roadmap for how to handle future issues. This is the role of **New Jersey Marital Settlement Agreements** (a/k/a Divorce Agreements/Property Settlement Agreements).

For better or worse, most parties to a divorce will continue to maintain some sort of relationship with their former spouse. They will likely be bound together by shared children, friends, or other issues. A divorce is the ultimate goal, but what are the "rules" post-divorce? There will always be applicable law, but **the Marital Settlement Agreement will in many ways become the law of the divorce.**

I often compare the divorce agreement to the rules found in a board-game in that they provide an overarching structure that each party can rely upon. For instance, what if following the divorce you and your ex-spouse debate which of you will spend Thanksgiving with the children? The Marital

Settlement Agreement will generally incorporate language addressing this issue. It will say something to the effect of: “Husband shall have parenting time with the children each Thanksgiving from 8:00 a.m., until 3:00 p.m., and the Wife shall have parenting time with the children each Thanksgiving after 3:00 p.m., or “Wife shall have Thanksgiving parenting time in odd years and the Husband in even years.”

A Marital Settlement Agreement that does not provide such guidance may lead to the need for further court intervention. I’ve had a few clients argue that this level of detail is not necessary, because the parties will “work it out between themselves.” That might be the case for some parties, but it doesn’t leave a fallback position should relationships sour. Such terms may be relaxed between the parties like the rules to a board game may be relaxed, but should matters turn contested the framework will be important for providing a path forward towards resolution absent additional court intervention.

The Marital Settlement Agreement encapsulates the disposition of issues in the divorce. It should address the items described above, including but not limited to matters of child support and equitable distribution of assets and alimony or the waiver of alimony (and much more). Although review of alimony and equitable distribution law is somewhat beyond the scope of this packet, such issues can also be extremely complex.

Employability issues, salary, whether someone is a W-2 wage earner or a business owner (or both), whether assets are marital or exempt as gifted, inherited or premarital, and many other complex issues involving potential tax ramifications, pension distribution/QDRO's, stock options and the like may all be considered within a Marital Settlement Agreement.

It is important that all relevant issues be agreed, within reason, prior to entry of the divorce and executed in a formal written agreement. In sum no Agreement can include a contingency for every issue, but it's important to cover every

conceivable important issue as part of the divorce resolution.

Conclusion

New Jersey Marital Settlement Agreements are probably the most important document overall in the divorce process. They, along with the Case Information Statement, will be used as evidence should the need for future court appearances be required (example – to modify child support).

It's important that the Marital Settlement Agreement is detail oriented and that your attorney has crafted the terms to incorporate the full Agreement, and to also insure that the Agreement is fair. It's not unusual for Agreements to be modified/ negotiated ten or more times prior to the parties executing the Agreement prior to the entry of an uncontested divorce. In my opinion, it's better to have these arguments worked out now rather than get divorced only to return to Court to address something the Agreement does not cover.

Now it's time to move on to Step 8 of the contested divorce process: the Early Settlement Panel.

Step Eight: Early Settlement Panels (ESP'S)

If you pursue New Jersey Divorce litigation long enough, you will eventually be required to attend an Early Settlement Panel. This can be a confusing development for parties to a divorce who will each likely have many questions such as: what is an **early settlement panel**? Or: who makes up this panel, and what is its function?

Luckily, a New Jersey Early Settlement Panel is not as complicated as it may first appear to be.

New Jersey Early Settlement Panels: What Are They?

Essentially, a New Jersey Early Settlement Panel is a court-ordered form of **non-binding arbitration**. It is a required hearing under Court Rule 5:5-5. On the day of the early settlement panel,

both parties and their attorneys will be scheduled to attend Court and have an audience with the Early Settlement panelists.

There, the panel members will usually meet first with the attorneys, and later with the parties. It should be noted, however, that procedures vary greatly amongst counties regarding Early Settlement Panel Hearings. Prior to the Early Settlement Panel day, for instance, most but not all counties/panelists will require some form of legal memorandum and/or legal documentation from each of the parties.

An Early Settlement Panel often takes the following format: the panelists ask the attorneys to review the major outstanding issues. The basic goal of every panel is to endorse or effectuate settlement. This is one of many ways the court system helps control its docket and attempt to reduce the amount of pending divorces within the County.

Parties' counsel will generally appear before the panel without clients and will each lay out their arguments. Thereafter, the parties will generally be brought in, and the panelists will give their opinions as to how they the panelists believe the Judge would decide the outstanding issues.

The underlying goal is that parties who have been advancing unsupportable positions will, upon learning that their positions are not likely to prevail, be more willing to drop those positions and enter into a fair settlement.

Since the decision is non-binding, the panelists cannot force the parties to be bound by their decision or to otherwise settle.

New Jersey Early Settlement Panels: Who Are The Panelists?

The panelists are generally two (2) experienced in-county family law attorneys. They are volunteering their time. I have volunteered my time to serve as an ESP panelist for Somerset County.

Conclusion

Early Settlement Panels are important. Although Early Settlement Panels do not create a binding disposition of a case, they do shape the tenor of future negotiations. And the ESP hearing just might lead to a settlement.

Now, let's move on to step nine: Court Ordered Economic Mediation.

Step 9: Court-Ordered Economic Mediation

If you didn't settle the case at the Early Settlement Panel or shortly thereafter, then in most counties, you will be assigned to mandatory economic mediation. The Court will provide a list of mediators (generally attorneys with mediation experience). Both parties and their attorneys will then be required to meet with the mediators to attempt to try and resolve the financial issues between the parties.

Under the New Jersey Court Rules, the mediator's first two (2) hours are volunteered and thus not billed. After that, if the parties wish to continue mediation, the mediator will bill at his or her regular rate.

Economic mediation is another attempt by the Court system to dispose of your case without using a great deal of judicial resources. The next step in the process, the Intensive Settlement Conference is also the product of that necessity.

Step 10: Intensive Settlement Conference

So, here we are, at the precipice of trial. This is the last attempt to settle before intensive trial preparations begin. This is the family law participant's last stand before trial.

The intensive settlement is basically a "lock-in." The parties and their attorneys are required to come to Court and stay there all day. They may generally leave when they settle the case or the Court closes at 4:30PM. If an Agreement is not reached, then the

assumption is trial, although an Agreement can be worked out at any time, including during a trial. By the time you're at an intensive settlement conference, you should be very close to settling the case. If not, then it's on to the eleventh and final step of the process: the Trial.

Step 11: The Trial

Again, the New Jersey Divorce Trial is too large a topic to address in this pamphlet. But I do want to relay a few basic pieces of information.

For one, the trial likely won't be continuous. What that means is that you might be called in March 3 for half a day, then have your trial continue on March 18th for a full day, and then pick up again sometime in May. Finally, once a trial has concluded it may take months for the judge to write his or her opinion. In short, it's generally a slow and costly process. That's why the vast majority of New Jersey Divorces settle prior to trial.

Philosophically, it's important to prepare as though every case will go to trial even though statistically the vast majority of cases settle prior thereto. This allows you to gain leverage and negotiate from a position of strength. By preparing for trial, you will ironically often be better able to settle the case.

The Trial: Conclusion

Every case is fact-sensitive, so you should review all of the available grounds for divorce with your attorney to ensure you select the proper grounds for YOUR case.

CONCLUSION

I hope you found this packet helpful and that you now possess a greater understanding of the New Jersey Divorce Process. If you have already retained my services then I look forward to working with you or continuing to work with you. If you are considering

my services and would like to schedule an initial consultation, please contact me at [908-237-3096](tel:908-237-3096) or email me at carl@cartaylorlaw.com. I maintain an active blog and provide additional information about family law and Carl Taylor Law, LLC at www.cartaylorlaw.com. [Click to Visit Carl Taylor Law - The Website](#)

Appendix: Grounds for Divorce in New Jersey

Grounds for Divorce in New Jersey #1: Irreconcilable Differences

By far the most popular grounds for divorce in New Jersey—despite the fact that it was only recently recognized by the state—irreconcilable differences is essentially an expedited form of “No Fault” Divorce.

The major statutory requirement is that “irreconcilable differences” have occurred, causing the breakdown of the marriage, that there is no prospect of reconciliation, and that these irreconcilable differences have been ongoing for at least **six** months.

Only one party need seek a divorce as in New Jersey there is no requirement of agreement to a divorce. In other words, your spouse cannot deny your filing a divorce complaint in New Jersey. Of

course, they can tie up the divorce process by forcing a trial.

Grounds for Divorce in New Jersey #2: No Fault Divorce

Although irreconcilable differences complaints are essentially used as a form of no fault divorce, New Jersey does offer a purer form of “No Fault Divorce”. The statute for No Fault Divorce in New Jersey requires **eighteen (18)** or more consecutive months of a husband and wife living separate and apart, “in different habitations”, and with no reasonable prospect for reconciliation. As the requirements of a no fault divorce are difficult to obtain; today this form of divorce is rarely utilized in New Jersey divorce courts and same has been supplanted in most or all instances by the irreconcilable differences cause of action.

Grounds for Divorce in New Jersey #3: Extreme Mental or Physical Cruelty

The remaining grounds for divorce are more “fault-based.” A claim of extreme mental or physical

cruelty requires proof of “any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the Plaintiff to continue to cohabit with the Defendant.”

Grounds for Divorce in New Jersey #4: Adultery

Clients often ask about using adultery as a grounds for divorce. The problem is then establishing the adultery through circumstantial or other evidence. Moreover, the suspected “partner” in the alleged infidelity must then be named in the Complaint—and served as a co-respondent to the divorce. Using adultery as a grounds for divorce in New Jersey is often so time-consuming and financially draining as to not be worth the effort.

Furthermore, the benefits of an adultery claim are, in most cases, minimal or wholly non-existent. The Court rules do not “punish” an adulterer in terms of alimony or equitable distribution. At best, it may show a lack of fitness as a parent under certain fact

patterns. This is a “no-fault state,” meaning that the person who is more to blame for the breakdown of the marriage will not (generally) be punished in any way during the divorce process.

Grounds for Divorce in New Jersey #5: Remaining Grounds for Divorce - Rarely Used

Other New Jersey grounds for divorce are available, although in practice they are exceedingly rare. Some examples of these “other” New Jersey grounds for divorce include:

- Desertion
- Deviant Sexual Behavior
- Imprisonment
- Institutionalization
- Habitual Drunkenness or Drug Habituation
- And more.

One Final Note: One need not be constrained to just one divorce count when filing a Complaint for Divorce in New Jersey.