



WEBSTER & GARINO

INDIANA LAW FIRM

DIVORCE IN INDIANA

A GUIDE FOR THOSE SEEKING INFORMATION ON THE
DIVORCE PROCESS IN INDIANA.

WHAT YOU NEED TO KNOW

“Divorce isn’t the child’s fault. Don’t say anything unkind about your ex to the child, because you’re really just hurting the child.”

— Valerie Bertinelli

The most frequently asked question is “**what is the process for a divorce?**” And while the answer is always: “it varies”, depending on the case there are some parts of the process that are consistent. No matter what type of situation you may find yourself in.

In this e-book, we hope to provide you a roadmap for what a “typical” divorce might look like in Indiana. So, before you decide that next step, make sure you are informed.

There are **three phases** in the divorce process:

- **The beginning** Filing the petition
- **The middle** Discovery phase
- **The end** Mediation or final hearing



FILING THE PETITION

Now that you have decided to divorce, the next step is filing a petition for dissolution with the appropriate Court. This begins the dissolution or divorce process. Your attorney will gather the information needed for filing the petition, determine which Court has jurisdiction over your divorce and determine what to ask for in your petition. Once the petition is filed it must be properly served on the non-filing party or spouse. There are numerous ways to perfect service on the non-filing party, some examples include personal service or certified mail. Once the non-filing party has been served, you can begin to move the case forward. You will decide with your attorney whether to ask the Court to schedule a preliminary or provisional hearing in your case at the time you draft and file the petition with the Court.

If you have asked the Court to schedule a preliminary or provisional hearing, it will usually get scheduled within a few weeks of the date of filing and will most often be a hearing of an hour or less.

Preliminary or provisional issues might include things like:

- Who is going to stay living in your home or marital residence?
- Who is going to pay what expenses/bills of your marriage during the divorce?
- If you have children, what is the parenting time schedule going to look like?
- Decisions as to how the marital assets and liabilities are going to be handled during the process of divorce.

If you and your attorney determine that a provisional or preliminary hearing is not necessary, then your attorney will likely work on a provisional agreement between you and your spouse and/or your spouse's attorney to determine the preliminary or provisional issues as noted above.

DISCOVERY PHASE

Indiana requires a **sixty (60) day “cooling off” period** before any Court in Indiana will grant a divorce or dissolution. That means that no matter if you come into our office on day one and tell us you and your spouse have figured out every issue of your divorce and want it filed today, the Court will not grant or order your divorce for a minimum of sixty (60) days from the date your petition is filed.

So, we often refer to that sixty (60) day time frame as the discovery phase. Sometimes clients come to us and know every detail about the financial status of their marriage. They feel confident that they know how much money they have and how much money they owe, where the assets are located and how to gain access to them. Other times, they have no idea. Perhaps you haven't been the spouse that handles the financial aspects of your marriage and legitimately do not know whether your marital assets are large or small, this discovery phase levels the field and provides the time for both parties to determine what the issues of the divorce are really going to be.

Discovery is sometimes done “informally” where the attorneys and clients will agree to freely exchange information to move the divorce process along quicker. This type of informal exchange is typically done in cases where both parties feel that they have a good handle on what assets and liabilities exist. Therefore, more formal ways of verifying information may not be necessary. On the other hand, when one party was the primary handler of finances it may be necessary for more formal requests. Most generally formal discovery happens by way of Requests for Production of Documents and Request for Interrogatories (which is the legal way to say, answer these questions). There are other discovery methods that can be used as well, such as third-party request for production of documents. Your attorney will discuss with you which option(s) make sense in your case and will take into account a variety of factors to help make those determination.



In cases where the divorcing parties have minor children, the discovery phase will also include requesting and exchanging information about the children. Requested items will include:

- Pay information
- Parenting time schedule requests
- Whether there is a history of domestic violence
- DCS involvement in the household
- Legal custody requests
- Specific topics of concern as it relates directly to the best interest of the child(ren)



MEDIATION OR FINAL HEARING

Once the discovery phase is completed, it is time to begin to formulate a plan to finalize the divorce. A divorce or dissolution in Indiana can end in numerous ways, which can include an agreement reached by the parties (and their attorneys) on their own, a mediated agreement (see below) or a Court order as a result of a final hearing.

AGREEING ON YOUR OWN

If you and your attorney are able to negotiate, either directly with your spouse or with his/her attorney, an agreement between you and your spouse then your attorney can draft up the agreement in the proper form, provide it to your spouse/his/her attorney for review and further negotiation. Once an agreement has been reached, and you each sign the agreement, it gets filed with the Court along with some other proper legal documents. As long as the Court agrees, the Judge will sign your agreement as its Order and your divorce is finalized or completed.

MEDIATION

If you and your spouse are not able to come to an agreement on your own, some Indiana counties' courts require you to attend mediation. Mediation is an alternative dispute resolution mechanism that is designed to help the parties come to their own agreement.

The mediator is a neutral third party (almost always another attorney) who assists you (and your attorneys) in developing an agreement on the unresolved issues in your divorce. Mediation sometimes occurs at the mediator's office, or it can occur at one of the attorneys' offices involved in the case and sometimes at another third-party location depending on the circumstances of the case. Mediation usually lasts somewhere between half a day or over several days based on the specific circumstances. During mediation, you and your spouse will often be separated into different rooms with your respective attorney, and the mediator will travel between your rooms discussing with each party possible resolutions to the outstanding matters in your case. A registered domestic relations mediator goes through a minimum of forty (40) hours of additional training to become registered and can often assist parties in resolving, even high conflict divorces.

FINAL COURT HEARING

Try as we might, sometimes we are not able to agree, either informally on our own, through a mediator or otherwise. In those situations, the Court must make those decisions for us. In a final hearing the parties, through testimony, exhibits, sometimes expert witnesses, and other witnesses, present their case to the Judge for a decision. The Judge will listen to the evidence presented and apply Indiana divorce law to the facts to decide all issues of the divorce, the distribution of assets and liabilities, the child related issues, including, parenting time, custody, child support, payment for college and any other issues needing to be addressed to finalize the dissolution of marriage. Final hearings can last anywhere from a few hours to a few days. Those cases where the parties own businesses or have large marital estates may take more time to allow the Judge to hear all of the evidence he/she needs to make an appropriate final decision. Likewise, in cases where there are significant child related allegations or issues, it may take more time to call the witnesses and obtain the testimony necessary to allow the Judge to make a decision.



FREQUENTLY ASKED QUESTIONS

Through any three of the above-mentioned avenues, a divorce can be initiated and finalized. Do you still have more questions?

- **How much will my divorce cost in Indiana?** The complexity and level of disagreement in your divorce will determine the cost. In our experience **we have seen divorces range in cost from \$2,500 to multiple times that**. An experienced family lawyer will be able to provide you a better estimate of total cost after an initial consultation with you.
- **How long will it be before I am divorced?** The minimum amount of time is 60 days from the date you file. In our experience **most divorces last between 3 to 9 months**.
- **If I am a woman, can I change my last name back to my maiden name during the divorce?** Yes, be sure to tell your attorney you would like to do this since it is not automatic and must be written into any agreement or requested at a Court hearing.
- **Will I get alimony if my spouse makes a lot more money than I do?** No, not in Indiana. **Indiana does not provide alimony**.
- **My spouse was not faithful during our marriage how does that affect the divorce?** Indiana is a “no-fault” divorce state. **Indiana does not assign blame to any party to why you are getting divorced**. Therefore, unless the actions your spouse took affect children (if any), or in some way have negatively affected your marital assets, why you are getting divorced will not come up in front of the Judge.
- **What if my spouse filed for divorce, but I do not want to get divorced?** Indiana law will not require a person to remain married if they do not want to be. **If one party files and follows through with the divorce, you will get divorced whether you want it or not**.

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- **How much money will I get in my divorce?** Indiana law presumes that a 50/50 split of the marital assets and liabilities is fair and reasonable. **There are numerous factors to be taken into account to determine what is included in the martial estate**, what the value of those assets are and whether arguments can be made that one party or the other should get more or less of them. An experienced Indiana Family lawyer will be able to discuss these factors with you to determine whether arguing for more of your marital estate is in your best interest.
 - **How does the Court determine when each party gets parenting time?** Indiana law looks to the “best interests of the child” to determine what sort of parenting time it will order. Factors will include, what the parents want, how old the child is, what the child wants (if the child is over a certain age), who has primarily taken care of the children prior to the divorce and others. Indiana has developed the Indiana Parenting Time Guidelines, which can be found here <https://www.in.gov/judiciary/rules/parenting/index.html>. A review of the guidelines can help you see how the Courts views parenting time.
 - **Who will get custody of my children?** There are two types of custody in Indiana- legal custody and physical custody. Legal custody is who makes life decisions for your child, like what religion they are going to follow, whether they need medical care and where they are going to go to school. Physical custody is where the children are physically located (this is otherwise known as your parenting time schedule). **Courts will often order the parents to have joint legal custody of the children**, presuming that both parents should be involved in the major life decisions for the children. Courts most generally order some sharing of physical custody as well, but these are all fact specific based on each individual case.
 - **Do I have to hire an attorney to get divorced?** The answer is no you do not. Indiana Courts have online forms available that you can fill out and file on your own to help you work through your divorce. As family lawyers working in this area every day, though, **we will tell you that some of the most difficult cases we see are those in which parties have “divorced themselves” without counsel or attorneys and then subsequently come to us for help**. As time passes, a decision you agreed to or the Court ordered may no longer make any sense in your current circumstances. The unfortunate part is that the law requires a “significant change in circumstances” to modify such things as child custody, for example, and nothing significant may have changed in the eyes of the Court. We advise, particularly in cases where children are involved, to hire an attorney if possible.
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"It's difficult, something coming to an end. What shouldn't be difficult is your transition into a new beginning."

At Webster and Garino, we have a CAP amount charged for divorce services. If your case goes above the cap amount, you won't be charged for the additional work. That's how we're here for our clients when they need us most.



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