



Divorce FAQs

What should I expect at the initial consultation with my attorney?

At Hollingsworth & Zivitz, PC, one of our primary concerns is to put you at ease from the moment you walk in the door. We understand that meeting with an attorney is generally not something that people look forward to. We recognize that when people come in to meet with us, they are often experiencing some of life's toughest challenges. Accordingly, we do what we can to make your experience at our firm as simple, casual and easy as possible. Our offices are designed to be unintimidating and welcoming. Our attorneys and staff alike were all handpicked not just for their legal talents, but also for their warm, friendly and laid back personalities. You will be immediately offered something to drink, and will take a seat in our very casual, comfortable lobby where you will take a few moments to fill out some very basic info about yourself. (If you are more comfortable sitting in a conference room alone, just ask our receptionist and she will accommodate you.) EVERYTHING THAT HAPPENS AT OUR OFFICE IS CONFIDENTIAL! As soon as your paperwork is completed, your attorney will come out to meet you, and the two of you will either go into the attorney's private office or one of our casual conference rooms to begin your consultation. Depending on how far along you are in process, you may just want to ask some general questions, and get some general advice. It is often a good idea to make a list of any questions that you have prior to your initial consultation. You don't want to forget to ask something. You might not even know what questions to ask. If that's the case, feel free to say to your attorney, "Just explain how this process works." As he/or she walks you through the process, there will likely be things that you will want to ask more specific questions about. This is your time with your attorney. You are paying for it...and you can ask whatever you want! Most importantly, do not be afraid to ask anything you want to know. There is no such thing as a stupid question. This is your life! It is important that you have all of the knowledge in order to move forward in a way that is most beneficial for you (and for your children, if applicable). We are not going to judge you based on your situation, we here only to help and to get you to the next best stage in your life.

Generally, consultations last between 1 to 1½ hours. But, if you need more time, unless we have another appointment waiting for us, we will stay as long as you need us to until all of your questions are answered. At the end of your consultation, you have two options: 1) you can retain our firm to represent you, in which case you would sign a fee agreement and pay your retainer fee; or 2) you can simply pay for your consultation (which is billed at the hourly rate of the attorney with whom you met). You are certainly under no obligation to retain us at that time. And, in fact, if you have questions or reservations about retaining us at that point, you should wait...think about it...perhaps meet with some other attorneys until you find the RIGHT attorney for you.

What do I need to bring in when I come to meet my attorney at the initial consultation?

First of all, it is not required that you bring anything with you to the consultation. Depending on how far along you are in process, you may just want to ask some general questions, and get some general advice. That is perfectly fine. If that's the case, please feel free to just come in and talk. Bring a list

of questions or concerns that you have so that you do not forget to ask. If you do not know what questions to ask, just tell your attorney to explain the process to you. As he/or she walks you through the process, there will likely be things about which you will want to ask more specific questions. If your spouse has already filed, you should bring a copy of the petition, along with any other documents you received along with the petition. If you have children and want to get an idea of what child support will be, it is helpful if you have the following information: gross income of both parties; amount of any child support paid or received for children born prior to the marriage; the cost of childcare (for the school year as well as summers); the cost of the children's portion of healthcare insurance (not the total cost, but the breakdown of what the children's portion is); the amount of overnights the children will spend with each party in any given year. Do not be overwhelmed by the initial consultation or about what you should say during it or bring to it. If you happen to have documents readily available, feel free to bring in any of the following documents that we will eventually need in order to finalize your divorce: (a) pay information for both parties (pay stubs, tax returns, financial statements), (b) recent tax returns, (c) if applicable, documentation of child-related expenses such as child care, healthcare, school tuition, etc., (d) documentation of your assets and liabilities (i.e. mortgage statements, appraisals, 401K and other retirement statements, credit card statements, bank records for any and all accounts for which either party has an interest, loan documents, etc); (e) full names, addresses and social security numbers for both parties and the children, if applicable; (f) any court orders requiring either party to pay child support for other children (not children of the marriage); (g) any business documents associated with a business that either party has interest in; (h) bankruptcy documents involving either party; (i) any and all documents involving inheritances received by either party; (j) and documents involving a trust for which either party or any child of the marriage is a beneficiary; (k) any other documents or records pertaining to any and all assets or debts of either party, regardless of how and when any such asset/debt was acquired, how it is titled, or how it will ultimately be divided. If you have any questions prior to your consultation, do not hesitate to contact our office for clarification.

Is it OK if I want to bring a friend or relative with me when I schedule my initial consultation? What if my friend/relative is going to pay my fees?

It is understandable to be nervous about meeting with your attorney and discussing a divorce. While it is fine for a friend or relative to accompany you to the attorney's office, your friend or relative should remain in the waiting area while you meet with your attorney. This is true even if your friend/relative is paying your attorney's fees. Communications between an attorney and client are privileged and thus protected from disclosure. This allows you to fully share information with your attorney. This privilege is lost, however, if the communications take place while a third party—in this example, your friend or relative—is present.

What are the grounds for divorce in Indiana?

Indiana is a "no fault" state, which means that parties do not have to allege fault (adultery, etc) on the part of the other. The party filing merely has to state, under oath, that the marriage is irretrievably broken and that the Wife is not pregnant.

How long do I have to live in Indiana to get a divorce?

Either the petitioner or the respondent must have resided in Indiana for at least six months immediately preceding the initiation of the divorce action. Unless the parties agree to a preferred county in which the divorce will be filed, one of the parties must live in the county for 3 months immediately preceding the initiation of the divorce preceding.

What are the steps that need to be taken to get a divorce?

In Indiana, you or your spouse must live in the state for at least six months prior to filing the action for divorce. You can represent yourself (pro se), although that is not encouraged, and is often discouraged by the court. The better decision is to hire an experienced Indiana attorney to represent your interests in the divorce (see "How to Choose the Right Family Law Attorney for You" for more information). Regardless of whether or not you hire an attorney, to initiate the action, a petition for dissolution of marriage must be filed with the clerk of court in the county of your (or your spouse's)

residence. It is also possible for you and your spouse to agree to the county in which your divorce action will be filed. The person who files the petition is referred to in Indiana as the Petitioner; the other person is the Respondent. The petition must then be delivered to the Respondent, which may occur by a variety of ways. Then, from the date the petition for dissolution is filed, there is a mandatory, minimum 60-day "waiting period" before your divorce can be finalized. From the date of filing the petition until the divorce is final, it is possible to have a temporary order (by agreement or an order as rendered by a judge after a hearing) which outlines specific orders concerning preliminary issues including temporary possession of the marital residence and responsibility for monthly expenses, in addition to child-related issues such as custody, parenting time and child support. The preliminary order is not required, but often necessary to determine how the parties will function until the divorce is final. After 60 days, the divorce can be final. In order to finalize the divorce, the parties must either agree on all of the issues or go to a hearing in which the judge hears evidence and renders an order.

Does it matter who files first? Are there any benefits to being the one that files first?

There are numerous reasons, from a strategic standpoint, that it may be beneficial to you to file immediately just as there are reasons it makes sense to wait. Strategy aside, however, it does not matter who files first. There is no preferential treatment giving to the petitioner vs. the respondent. The petition is generally required to pay the court's filing fee (these fees vary from county to county, with most filing fees being in the range of \$150-\$175). But under certain circumstances, it is possible that the petitioner's filing fee can be waived or reimbursed by the other party.

How long will the divorce take?

In Indiana, you must wait a minimum of 60 days from the date of filing the petition for dissolution until the date your divorce can be finalized. Most cases, however, require more than 60 days to be completed. The parties need to agree on issues of property and debt division as well as child custody and support. The longer it takes the parties to reach an agreement, the longer the divorce will take. If the parties cannot reach an agreement, then the court will have to conduct a trial and make the decisions for the parties. How long it will take to obtain a trial date depends on how busy the court's docket is (most courts are very busy). The court almost always needs to take time after the trial to review the testimony and other evidence in order to reach a decision. This period can be as short as a few days but it can also take weeks or months as well.

What is the difference between a divorce and a legal separation?

From a very basic perspective, all of the same issues (including, but not limited to, custody, child support, parenting time, spousal maintenance, responsibility for financial obligations, and sometimes even property distribution) that can be handled in a divorce can be addressed in a legal separation. Just as in a divorce, a petition is filed. In a petition for a legal separation, the filing spouse states that the conditions or circumstances of the marriage make it currently intolerable for both parties to live together, but that the marriage should be maintained. This is very different from a petition for dissolution of marriage, in which the filing spouse must state that the marriage is "irretrievably broken." But the MAIN difference between a divorce and a legal separation is that a legal separation is only good for ONE YEAR. After the year expires, spouses return to their status as legally married persons. Frequently, during the one-year legal separation, spouses either reconcile or convert the action to a divorce.

Can I have my marriage annulled?

Annulments are available only in very limited circumstances in Indiana. Specifically, a marriage is VOID in Indiana if a party is incapable of contracting the marriage as a result of age or mental incompetency. A marriage is VOIDABLE if it was "brought about through fraud" on the part of one of the parties to the marriage. People often suggest that they were married under fraudulent terms, however, "fraud" is a very difficult thing to prove.

How long do I have to wait before my divorce can be final?

From the date the petition for dissolution is filed, there is a mandatory, minimum 60-day "waiting period" before your divorce can be finalized. This is not to suggest that all (or even many) divorces are finalized in 60 days...but 60 days from the date of filing is the earliest. Some divorces take a much longer time to finalize. The duration of any given divorce depends on the complexity of the case and the ability of the parties to communicate, negotiate and reach a settlement.

Can I get a divorce if my spouse doesn't want the divorce?

You can get the divorce whether or not your spouse wants to be divorced. Keep in mind, however, that if your spouse truly does not want the divorce, the divorce may not be able to happen as quickly as you would like.

How do I serve the divorce complaint on my spouse?

Service refers to the form of delivery of a legal document (in this case, the petition for dissolution of marriage). There are various ways you can serve the summons and complaint. A party may be served (1) by the sheriff or a personal process server, (2) by certified mail, or (3) by a waiver of service.

I do not want this divorce. Can I stop the divorce?

The simple answer is "no." All that is required in Indiana is proof that the marriage has suffered an irretrievable breakdown, and if one spouse testifies the marriage is irretrievably broken, that will be sufficient. (There are other grounds in the divorce statute, but they are rarely, if ever, used.)

Should I move out of the house?

Moving out of the house will not diminish any rights that you have to the equity in the home, and it technically should not cause you to lose the opportunity to move back into the home at some future time. That being said, it is important to consult your attorney about the specifics of your case, including case strategies and your ultimate goals, as it is generally not advisable to create a temporary situation that is contrary to your ultimate goals. Courts tend to favor custody orders that require the least amount of transition for the children. Accordingly, judges often favor keeping the children in the residence they are accustomed to living in. Therefore, if you believe it is in the children's best interests to be in your primary physical custody (a.k.a. living primarily with you and visiting the other parent), it's probably best to not move out of the house unless suitable arrangements for the children can be made in your new home, and you take the children with you when you leave. Certainly, if you and/or the children are in danger, your safety must come first!

Can I change the locks on the house before (or after) the divorce is filed?

In some cases, it is possible. However, UNDER NO CIRCUMSTANCES should you do that before consulting your attorney! The court has the authority to grant one party temporary and exclusive use and occupancy of the marital residence, but it is generally wise to wait until the court has done so before changing the locks. If a party has moved out already, then it may be acceptable to change the locks, but courtesy dictates that your spouse be informed of this decision—if he or she needs to retrieve something from the marital residence, he or she can then communicate with you to agree upon a mutually convenient date and time.

Can/Should I buy a house before my divorce is final?

If a restraining order on assets is filed in your divorce, then you cannot buy or sell a house, without the written consent of the other spouse or an order of the court. If a restraining order is not part of the dissolution proceeding, it is generally best to avoid major financial decisions such as purchasing a home. That being said, your attorney may be able to help you plan for this purchase and make arrangements to that it does not affect the divorce proceedings. But be sure to consult your attorney prior to making any large purchase which is outside of your normal course of life/business so as to not negatively affect your pending divorce.

Can/Should I use my credit cards during my divorce?

If it is possible not to use credit cards while your divorce is pending, then you should not use them. Getting rid of and avoiding additional credit card debt can be one of the wisest moves you can make during your divorce that will put you in a better financial position after your divorce is final. However, it is often not possible to avoid use of credit cards. If it is necessary to use credit cards, consult your attorney as to which card is best and what kinds of purchases are generally considered acceptable in the event that you have to justify your spending to a judge (or to your spouse during negotiations of asset and debt allocation).

Can I consume alcohol (e.g. drink socially with friends) during my divorce?

Your use of alcohol would become an issue in your divorce only if it causes problems for your children or somehow jeopardizes marital assets. Use of alcohol is frequently an issue in contested child custody cases. Accordingly, it is always the best practice is to avoid the consumption of alcohol whenever in the presence of your children.

When can I begin dating?

As a general rule, there is not a problem with having dinner or going to a movie with someone other than your spouse. Further, a court cannot prevent you from dating. However, it is important to keep in mind that what is legally permissible and what is in the best interests of your children are not always the same. If your children are not adjusting well to the idea of your dating someone, it is possible for the court to order you not have your significant other around your children. It is absolutely not encouraged to have your significant other sleep over while the children are with you. It is often confusing to your children, causes unnecessary problems between you and your soon-to-be former spouse, and is frowned upon by the Judge. Regardless of the Court's orders, though, it is important to be mindful of how your children are affected by your dating.

When should I introduce my children to my significant other?

Introducing your significant other to your children can be very sensitive and should be carefully planned. First and foremost, it is strongly encouraged that you do not introduce your children to a person you are dating until you believe that your romantic relationship will be long-term. Among other things, children can be very confused about the relationship. It is not uncommon for children to become attached quickly. Then, if your relationship ends, children are disappointed, hurt, and even more confused. If at all possible, it is strongly encouraged to wait until your divorce is final before your children meet your significant other, if, for no other reason, to avoid legal complications and unnecessary challenges with your soon-to-be ex-spouse during your divorce.

Can/Should I file a joint tax return with my spouse?

This is a decision that is always best made after consulting with a qualified CPA. If you do not have a CPA that you are familiar with or if you wish to find a new CPA, we are happy to provide you with a list of resources of reputable CPAs near you. There is one requirement for filing "joint" tax returns, and that is that you are married on December 31st of the tax year in question. In other words, if your divorce is final before the end of the year, you are not eligible to file "joint" tax returns. Assuming that you meet the qualification, it can be generally stated that, in most cases, filing a joint tax return results in a lower overall tax obligation, which benefits both parties; and filing a separate tax return while married usually results in a higher overall tax obligation. But again, without knowing your specific circumstances, it is impossible to advise you on this issue, as there are all sorts of issues that may arise which would render it more beneficial to you to file "married filing separate" even if you meet the requirement of being married on December 31st of the tax year in question. Again, consulting a qualified CPA is strongly encouraged. If you are expecting a refund on a joint tax return, be sure to reach an agreement with your spouse (and reduce it to writing and file it with the court) as to how the refund will be distributed or used.

Can I change my name at the time of divorce?

Yes. Indiana allows a spouse, in conjunction with a divorce, to take a name other than your current spouse's last name.

How is a divorce finalized?

In order to finalize the divorce, the parties must either agree on all of the issues, in which case your attorney will prepare the final settlement agreement (along with other documents), or go to a hearing in which the judge hears evidence and renders an order.

Do I have to go to court to finalize my divorce?

You do not have to go to court if you and your spouse can agree on all issues, including division of property, custody and all child-related issues, if applicable, etc. If you agree on all issues, your attorney will prepare a final settlement agreement that is filed with the court. After a judge approved the agreement, you are officially divorced. If you cannot agree on settlement of all of the issues, you will have to go to court to present your case to the judge, who will render an order sometime after the hearing, in order to finalized your divorce.

What should I wear to court?

If you end up having to go to court, even for an uncontested final hearing, you should dress as if you are going to a job interview: a suit or coat and tie for men is always appropriate; a suit or other conservative dress for women is also appropriate. Business casual is also appropriate in most cases. Casual clothes including, shorts, t-shirts, sandals are not appropriate. Further, it is not appropriate to wear clothing with holes, and women should not wear low cut or exceptionally tight clothes. In most cases, it is generally not a good idea to wear your most expensive, or most flashy clothes/accessories. Be yourself; look neat, tidy and clean; but error on the side of looking plain vs. flashy. Understand that the judge only has a small amount of time to hear your case. A judge is a "regular person" just like you. And, a judge, just like any other person, has a first impression.

Other tips regarding your appearance in court include the following: Follow your attorney's lead, but be sure to stand when the judge enters and exits the room. Do not chew gum; do not lean on anything in the courtroom; speak only when asked a question by an attorney or the judge; and, address the judge as "your honor." Use "yes" or "no" instead of more casual expressions. Also, if you have a cell phone with you (some courthouses do not permit them at all), make sure it is turned off before you go into the courtroom—and double check that it's off before the trial begins. The bottom line is that when appearing in court, you want to look your very best and be on your best behavior. Showing any disrespect for the court is a quick way to create an unhappy judge.

What is COBRA and how can it help if I am separated or divorced?

"COBRA" is an acronym, defined by federal statute, which extends additional medical insurance protection to the dependents of an employed-insured spouse who is separated. Under COBRA certain beneficiaries of health insurance policies who would otherwise lose group coverage upon divorce or separation have the right to continued health care coverage for a limited period of time. The COBRA rules are found in Section 162(k) of the Internal Revenue Code and in Sections 601-608 of the Employee Retirement Income Security Act of 1974, 29 USC Sections 1161-1168. COBRA currently ensures that many spouses and children can continue to be covered by an employed spouse's group health plan for three years following "legal separation or divorce". COBRA provides very strict notice requirements. Parties must comply with these requirements; and you should also check the company notice requirements.

Can I request a new judge?

In Indiana, each party is permitted to request a change of judge one time, but this request must be made very close to the beginning of the case. Usually, by the time you become uncomfortable with a particular judge, or believe that the judge may favor your spouse, it is too late to make the request. In cases where the decree of dissolution of marriage has been entered, each side can request a

change of judge when a new motion or request is filed (such as a child support modification request). You should speak with your attorney about the specific facts of your case for more information on this issue.

Can I hire a private detective to follow my spouse?

Because Indiana is a no-fault divorce state, having your spouse followed or investigated may not achieve any worthwhile goals. On the other hand, if you believe your spouse is hiding assets, an investigator may be one way to prove it. That being said, attorneys can usually uncover such behavior by examining financial records. The other time with hiring a PI might make sense is during a contentious custody battle (i.e. most often used to prove that a party engages in dangerous or illegal activities which could be detrimental to the children). Keep in mind that hiring a private investigator can be seen (and usually is) as an attack on the other party. This can make it difficult to reach an agreement, which results in a longer and more expensive divorce. It is important to remember that investigating the other party will more likely than not create a great deal of friction, which can hinder your ability to work together to raise your children in the future.

What happens if I ignore the divorce filing that my spouse filed against me or fail to appear in court for a hearing?

If you fail to appear in the case (either by appearing at a hearing or by filing a formal appearance with the clerk of the court), your spouse can ask the court to enter preliminary orders, and even the final decree of dissolution against you by default. In such an event, your spouse can request a specific division of property and debts, custody and child support arrangements, etc. Your spouse merely has to testify that he or she believes the proposal is fair to both sides, and if you are not there to disagree, the court will be inclined to approve the proposal.

Can I represent myself in a divorce?

Although it is discouraged (especially by most courts), it is POSSIBLE to represent yourself in a divorce. A person who chooses to represent himself/herself is called "pro se." It is understandable that you want to save money, and there are all sorts of websites on the Internet that offer "free forms." But BE CAREFUL! These online forms (even the reputable ones on our state bar association's website) are often not updated with the most recent applicable laws, they are confusing, and generally come without much, if any, explanation. The form is not what is important...understanding your rights is imperative. Clients frequently hire us after their pro se divorce is final, and because they did not receive sound legal advice, they encounter post-decree problems. Often, modifications are more expensive than the divorce would have been had you hired an attorney to assist you in the first place. Don't fall into the trap of getting a free or nearly free divorce. Like many things in life, you often get what you pay for! Additionally, judges generally discourage pro se litigants. It is not uncommon for a judge to hold a pro se litigant to the same standards as would apply to an experienced attorney.

Can one lawyer represent me and my spouse?...What if we agree on everything?

The short answer is "no." Attorneys have ethical obligations to represent the interests of their clients. In a divorce setting, the two parties have inherently opposing interests, and an attorney cannot represent both of those interests. However, that being said, some divorces are filed with only one attorney involved, and that attorney represents only one of the parties. The attorney will advise the other party to seek independent legal counsel, and any settlement agreement is likely to contain an acknowledgement that the unrepresented party has not relied upon the other party's attorney for legal advice, and that he or she understands that he or she can have the agreement reviewed by an independent attorney.