

# South Carolina Family Court Process

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*Helping Individuals  
Cross Thresholds  
to New Lives*

Family law is unique to each state. Therefore, potential clients need to consult with an experienced family law attorney who is licensed to practice in the state where their case will take place. This article is specifically tailored to the potential South Carolina family law litigant.

While every family is unique, with its own special areas of agreement and dispute, the processes involved in the resolution of family matters are often subdivided into identifiable categories within the Family Courts of South Carolina. This summary will examine the main stages of traditional Family Court cases. It is not intended to deal with every situation that may arise in matrimonial disputes, but rather, it is intended to give a general overview of the significant events that are often anticipated in a Family Court case. It will also discuss the manner in which this office approaches this sensitive area of negotiation and litigation.

When meeting with a potential client, an early question I pose is whether the client believes a possibility of reconciliation exists. Before I will initiate a suit, I seriously discuss and consider this question with the potential client. Only those clients who believe with a degree of certainty that their marital relationship will end should proceed in a divorce action. Divorce cases are devastating to the family, emotionally draining to all of the family members, and financially expensive.

As a professional, I see a divorce as a matter of last resort. I often find clients are shocked by the many issues that are part of a divorce such as: child custody, visitation, decision making rights, relocation, child support, alimony, property and debt division, tax matters, attorney fees, etc. My goal, therefore, is to examine whether other steps are available heal the relationship before an attempt to dissolve the marriage is initiated.

South Carolina has five grounds for divorce, four of which are fault grounds: adultery, desertion, physical cruelty, and habitual drunkenness or addiction to narcotic drugs. The fifth ground is a no-fault ground, and it requires separation for a period of one year. In order to secure a divorce, the party who files must prove at least one of these grounds with legal evidence (for example: testimony, photographs, letters, hospital or physician records, reports from private investigators, etc.).

Unlike many states, there is not a provision in our laws for a "legal separation." In South Carolina, a couple is either married or not married. There is no other legal relationship. However, there is a step, which may be taken in the court-- "An action for Separate Maintenance and Support," which resembles a legal separation. Generally, the same procedures outlined below will occur in a Separate Maintenance and Support action. While, there are no clearly established grounds or reasons for a Separate Maintenance Order, one must generally show some cause why the marriage should be dissolved.



If circumstances are such that it is necessary to file suit, family law related matters are heard and determined in the Family Court of the State of South Carolina. Under the umbrella of "family law related matters" are divorce, actions for separate maintenance and support, child custody determination and modification, paternity identification, and actions related to alimony and support. We have Family Courts in each of our state's 46 counties, and those counties are grouped together in Judicial Circuits.

In some states, a judge might hear many types of cases such as murders and contract disputes in addition to family law matters. In our State, we have the benefit of Family Court Judges who only perform Family Court work. This focus on matrimonial and domestic relations matters means that our judiciary is educated and experienced in the laws and the equities related to family matters, and they hear Family Court cases by choice rather than imposition.

A case must be initiated by filing a Summons and a Complaint with the court. The Summons is the document that gives the other spouse notice that he or she will have 30 days to respond (by filing a document in the Court) to the allegations made in the document called a Complaint. The Complaint sets forth the factual and legal basis for seeking a divorce. I usually ask my clients to verify these claims under oath.

The Summons and Complaint, once approved by my client, are then filed in the Clerk of Courts Office in the County where the action takes place. The Court requires a \$150.00 filing fee and upon filing, a Docket Number is assigned to the case. This number must be written on all pleadings and motions filed in the Court thereafter.

Next in the process is serving the other spouse (opposing party) with the Summons and Complaint. One spouse cannot simply hand a copy of the Summons and Complaint to the other spouse. Instead, these documents must be delivered by an independent third person. A private process server or a sheriff typically completes the act of Service on the other party.

Once a spouse is served, he or she has 30 days in which to respond to the complaint. This response is called an Answer or Answer and Counterclaim. The filing of an Answer and Counterclaim means that the opposing party is also asking for relief from the Family Court. The Counterclaim sets forth the opposing party's version of the facts and law to defend against our lawsuit and may also ask for other relief from the Court. If that is the case, my client will then have 30 days to reply to the Answer and Counterclaim in a document called a Reply. This Reply sets forth my client's factual and legal arguments as they apply to the Answer and Counterclaim.

The facts in a divorce document (Complaint, Answer, Reply and the like) must be as accurate as possible. Occasionally facts in a pleading will state "upon information and belief" which simply means that those facts were discovered from another source, but are believed to be true. If purposefully incorrect or untruthful statements are included in

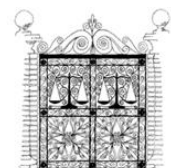


a pleading, the court will not look favorably upon the party who is making misrepresentations. Serious cases could result in perjury charges.

Once a divorce Complaint is filed with the Clerk of the Family Court, no final divorce can be granted in less than a period of three months. The exception to this general period is when a divorce is filed after the parties have been separated for more than one year and have reached an agreement. Then, the parties do not have to wait three months after filing to obtain a divorce.

In addition to the Summons, Complaint, Answer and Counterclaim and Reply, we may file other Motions such as:

- a. Motion to Dismiss: A Motion to Dismiss is generally addressed to a Complaint, Answer, Counterclaim or Reply. It challenges the legal sufficiency of those pleadings. In other words, even if the facts set forth in the particular pleadings are true, a Motion to Dismiss generally contends that the relief requested cannot be granted for one legal reason or another.
- b. Motion to Make More Definite and Certain: When allegations are made against a client, such as physical cruelty or adultery, I may file a Motion to Make More Definite and Certain to determine with specificity which acts of misconduct a complaining spouse has. With regard to physical cruelty, I may ask for specifics as to the date, time and place of the alleged incident, and the injuries sustained. The ultimate purpose of a Motion to Make More Definite and Certain is to prepare defenses to specific acts of misconduct and to limit our opposition to specific acts of misconduct at the time of trial.
- c. A Temporary Hearing, known as a "pendente lite" hearing: This hearing is usually held shortly after the Complaint is served. At this brief hearing, (15 to 30 minutes), the Judge may set forth the "ground rules" under which the parties and their children will operate, until a divorce is granted or a final order issued. At this time the Judge will determine how matters such as support, temporary child custody, use of property and payment of debts will be handled until a final divorce action or settlement of the case. As a general rule, clients do not participate and no verbal testimony is allowed at the temporary hearing. The Judge makes his decision based on the written documents (affidavits and Financial Declarations) filed with the Court. Many times, parties are very dissatisfied with temporary hearings. It is important for parties to remember that the temporary hearing is designed to avoid any gross prejudice to either party until a Judge can hear the entire matter. For instance, the Judge may award more support, or less support at a final hearing than at the temporary hearing. A Judge is not bound by the temporary order in making a final decision.



- d. Motion for Discovery: In the Family Court, discovery (Depositions, Interrogatories, Production Requests, etc.) is not allowed as a matter of right. A Motion must be made to engage in discovery. Discovery is the process of gathering information from the opposing party, either directly or through a deposition. A deposition is not an affidavit or court hearing. In a deposition, attorneys will ask questions of the opposing party or witnesses under oath with a court reporter recording every word spoken. Such testimony is taken before trial so that a party can be prepared for what his or her spouse or other witnesses will say at trial. This also creates an opportunity to anticipate issues and to prepare a defense against claims. It is designed to eliminate or reduce the element of surprise or ambush. Despite the discovery techniques mentioned above, my most important source of information is my client. My instruction to my clients is to keep eyes and ears open to find or hear any information that might be helpful to the case—information related to issues of property, debt, children --- and provide this info to us. I need that cooperation in every respect because my actions and advice are based upon the information I receive. An adage of our practice is that "(A)n attorney is as good as the information given [to her] by the client."

When important events occur, clients must write them down. By keeping a close record of expenses, my staff and I can analyze and seek to maintain the standard of living a client has enjoyed during marriage. In addition, drafting a chronology of all the important dates and events in a marriage is helpful to me and often cathartic for the client. One client reflected upon her divorce, stating:

"While I was still in disbelief about the unraveling of my marriage, I was able to put down dates and events and think about points where the marriage started to fall apart. I also started to process that the marriage was really not so great and I had been living in denial. I really wanted to believe things were better than they really were and that my husband was a better man than he really was. When things started to get really emotional for me, I often went back to my notes to get the dates straight in my mind. I think this is a great exercise and one that proves valuable, especially for the longer marriages."

Between the time the divorce or separate maintenance action begin and a final hearing takes place, I compile as much information about the parties as possible. This includes financial and personal information. While many of the items and facts uncovered may never be used in Court, it is helpful for me to know both the details and the broader issues so I can properly advise about likely Court decisions.

I like to approach the case by making the client a part of the "team." Thus, every effort is made to keep the client abreast of his or her case providing copies of all letters, pleadings, and documents. Clients are also encouraged to make a file to keep all of these



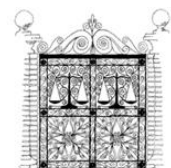
papers. At my firm, we provide each client with a notebook that contains sections for them to organize everything pertaining to their case from filed court documents to helpful articles and other support information. Clients with questions are expected to call, write or e-mail or make an appointment to see me.

In addition, I expect clients to provide all financial documents such as: tax returns, cancelled checks, bank, credit union, brokerage or savings account and loan statements, and the like, for my review. A client may wish to make notes to assist me in representation, but I will caution a client to separate these notes from any diary so the opposing attorney or spouse cannot obtain them from in the discovery process. Thus, any notes prepared for me should be marked as ***"Information Provided at My Attorney's Request."***

The relationship between an attorney and her client is personal and confidential. With some few and rare exceptions, anything stated between us is privileged. The result of this special confidentiality is that no one can require me to reveal information without your consent. As professionals, neither I, nor any member of my staff, will reveal information a client tells us, unless it is necessary to properly prepare, present or settle the case, or is ***otherwise required by law***. (There are extreme situations where information must be revealed---for example, if a client tells me they are going to murder their spouse or harm their child, this information will not remain confidential because by law I must report such intentions to the appropriate authorities.)

In many instances, it is almost impossible to settle or litigate a family law case without expert assistance. If it appears necessary to engage an expert, I generally advise the client to do so. Any fees or costs involving experts are strictly between the client and the expert. My firm does not participate in settling or collecting fees for experts. **Also, a client must know that information told to experts is not privileged. Thus, nothing must be discussed with or written to the expert that a client does not want the spouse to hear because a spouse has the right to obtain this information from the opposing expert.**

When financial issues are an issue, the client is advised to hire a Certified Public Accountant with expertise in settling family law cases. Accountants are generally used in the family law area to value businesses, retirements, and professional practices. They also help determine incomes and cash flows, trace property and investments, give tax advice, and assist with the financial aspects of the case. When a dispute over the value of property or personal items occurs, I generally advise a client to retain a real estate or



personal property appraiser. My office has worked with and has the names of numerous respected experts, and the client and I will discuss the qualifications, fees, and range of professionals so that the choice is an educated one.

When serious issues of child custody or visitation are contested, I generally recommend an experienced clinical psychologist to evaluate the family and assist in making custody and visitation decisions. I also recommend using a clinical psychologist to work through custody and visitation problems to reduce the contested nature of those issues. Every client is reminded that the divorce is between the parents, not the children, and that the children should not be brought into any discussions other than those necessary to explain separation and their scheduled time with each parent.

Where infidelity is suspected, I recommend hiring a licensed and respected private investigator to follow the spouse to document the adultery. I prefer to use a professional detective rather than have a client, or worse, a client's friend, conducting surveillance. Surveillance is dangerous, and the proof secured may or may not be admissible, or useful in Court. Also, a bungled amateur surveillance may make it more difficult for a private investigator to secure necessary proof. Proof of adultery can be critical, as in most instances; competent evidence of adultery may support or bar alimony.

I strongly encourage a client **not** to discuss the case in any respect with a spouse, friend, family member or another person. It can be an unsettling surprise to appear in Court and find a sympathetic person to whom the client has "opened up" called as a witness for the opposing party. There is no privilege between parent and child or brother and sister. I also caution a client to be careful never to admit misconduct to anyone other than me and to **never** discuss the specifics of the pending lawsuit with the spouse. A client can be assured that anything told to a spouse or his/her friends will be repeated to that spouse's attorney.

Of course, I will not discourage a client from discussing reconciliation with a spouse, but I urge clients to be wary of revealing any incriminating information to a spouse until they are certain that he/she is sincere about reconciling. If there are problems with the children that can be resolved between the client and their spouse, I will encourage my client to participate in the effort.

Each person going through this process should remember that being separated from a spouse is not a license to date or to engage in any behavior that the person would not do while living with the spouse. My advice is to avoid potential romantic encounters and



limit social visibility while the case is pending. Although conduct may be totally innocent, a good opposing lawyer can present it otherwise. Additionally, when children are involved, the introduction of a new romantic interest into their sphere may create uncertainty, anger, resentment or fear of replacement.

Under South Carolina law, marital differences, with the exception of the actual divorce, can be resolved by written settlement agreements. Settlement is preferred over litigation, because it is generally less expensive, provides certainty and is the culmination of compromises reached between the parties. I strongly encourage clients to seek reasonable agreement with his or her spouse and to consider mediation. Fully litigating each issue is lengthy and expensive, and parties should reserve litigation only for those situations where there is little room for compromise.

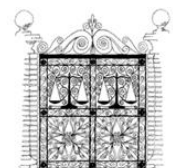
For an agreement to be truly valid, both parties must provide full financial disclosure, enter the agreement freely and voluntarily without duress, coercion, and/or overreaching. Then, the Agreement must be approved by a written Order of the Court after a hearing. Both parties must sign the agreement and the parties' signatures must be witnessed.

If only one party has an attorney, that attorney cannot give the other party legal advice. Every divorce, regardless of how friendly, is inherently adversarial. **Thus, one lawyer cannot represent both parties in drafting an agreement or handling the divorce.** (This statement does not apply in instances when a lawyer acts as an independent mediator and assists two people in reaching a mediated agreement without representing either.)

Typically, cases take six to eighteen months to complete. The length of the case depends on many factors, many of which are not within individual control. Instead, the duration of a case depends in large part upon the number and the complexity of contested issues. The more issues, and the greater the complexity, the more extreme the demand, and the longer the case will take to complete.

## **In Conclusion**

In South Carolina, the practice of Family Law is governed by a large body of law made up of case law, statutes, and Court Rules. The law governing domestic relations is ever changing. I stay current by subscribing to periodicals and services and by attending continuing legal education courses.



I am very involved in the South Carolina Bar Family Law Section. I served as its former Chair and have currently returned as a representative. My involvement allows me to remain in close touch with lawyers across the state to keep apprised of new developments as well as new legislation affecting family law cases. I have also served as Co-Vice-Chair of the American Bar Association's Family Law Section's Law Management Committee. I lecture frequently to South Carolina lawyers and judges as well as family law attorneys in other states, not only to teach others, but also to ensure that I understand the broad range of issues from many perspectives. I have also written a number of articles for attorneys and lay people about a variety of family law issues, including child support, health insurance, visitation and divorce. Based upon my own life experiences and experience as an attorney, I know each case is unique with its own nuances and peculiarities. In keeping up with the law and new developments, I hope to give my client appropriate advice so the client can make an educated and wise decision about the future.

While my job as a professional is to facilitate marital dissolutions, I strongly respect and believe in the sanctity of marriage. Unfortunately, many marriages will not endure. Thus, once I agree to represent a client, I will zealously represent that client, and I will make the client's need for a secure future my first priority.

