

# The New Jersey Divorce Process - Part I

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New Jersey is a state where, upon divorce, all issues as to the parties must be resolved. It is unlike some other states, which will grant the parties a divorce but will then continue to litigate support and equitable distribution. New Jersey will not bifurcate the granting of a divorce from resolving all the support and asset division issues of the parties. So, while it may take longer in NJ to get divorced than in other states, when you are divorced, your issues are resolved.

## **How does the process start?**

Your divorce can start in one of two ways - someone can file a complaint for divorce or you can attempt to negotiate a marital settlement agreement before filing for divorce. Either way, in order to get the final divorce decree in your hand, someone must file a complaint for divorce.

## **What is a complaint?**

A complaint is the knock on the door of the courthouse asking the courts to intervene in your life and assist you in resolving the dispute which, in this case, is the divorce. Other times, you could file a complaint for personal injuries because of a car accident or you could file a complaint to have a court rule on how to distribute the assets from an estate.

The divorce itself, has many facets, such as, how will custody of the children be shared, who will pay child support and alimony, how much will be paid and how will the assets and debts be divided.

However, before you can begin to address any of the above, someone must start the process by filing a complaint for divorce.

The first decision a judge must make on your behalf is whether or not the litigant has proven facts which would satisfy the statutory bases for granting a divorce. These facts must be alleged in the complaint-you have to tell the court why you want to get divorced.

**What grounds can you allege?** There are several.

- **Irreconcilable Differences:** The most frequently used is irreconcilable differences which means that for more than 6 months it has been unreasonable for you to live with your spouse.
- **Extreme Cruelty:** The next most frequently used is extreme cruelty which is defined as what facts make it unreasonable for one to remain married to the other. This unreasonable state of affairs must have lasted for at least three months prior to filing the complaint. The unreasonable standard is a “subjective standard” not an “objective standard” in that only you have to feel that what your spouse has done is unreasonable. You do not have to convince a judge that your spouse’s behavior is unreasonable. And by the way, there are no jury trials for divorce in NJ as they might be in other states.
- **Adultery:** With regard to filing for divorce in New Jersey, in order to file citing adultery, one must only prove the other spouse’s inclination and opportunity to be involved with another person. It is unnecessary to prove the actual act of unfaithfulness. Gone are the days of needing a private investigator to wait in the bushes taking pictures of the unfaithful spouse!
- **Desertion:** Desertion can be used when one spouse has left when the other wanted him or her to stay, and they have been separated from more than 12 months. Many litigants are afraid if they leave the house they will be charged with desertion and lose their home. That will not happen. Grounds for divorce rarely affect how assets are allocated unless the allegations go to the demise of the marriage. For example, a person who is charged with extreme cruelty as a result of gambling away the parties’ assets, may result in a claim of disproportionate equitable distribution to the non-gambling spouse to make him or her whole financially.
- **Sexual Desertion:** One can charge the other with sexual desertion where one party has refused to engage in sexual relations and the parties have not engaged in sexual relations for more than a year.
- **Other Grounds:** Other less frequently used grounds are habitual drunkenness, habitual drug addiction, incarceration for a crime, institutionalization for a mental illness, deviant sexual conduct and living separate and apart for more than 18 months.

If a spouse has suffered physical or emotional injuries at the hands of the other spouse, such personal injury claims must be included in the complaint for divorce. Of course, if one is asserting a personal injury claim against the other spouse, one must have proof such an injury exists. This would include medical or psychological records to substantiate the injury and witnesses who may have seen such an injury occur.

## What happens after the complaint has been filed?

Once a complaint has been sent to the county clerk to docket (or give it a case number), then it is served on the other spouse either by a process server or through an attorney. Your spouse then has the opportunity to answer and file a counterclaim which is his or her complaint against you.

Early Settlement Panel (ESP): Five or six months after the complaint has been filed, you will be called in by the court to appear at an Early Settlement Panel where two volunteer attorneys will make recommendations as to how they see your case settling or what they think the result might be if you were to take the matter to trial. This is the court's first intervention in the divorce process in hopes of you settling your case.

Approximately 28,000+ divorce complaints are filed very year and only about 450 are tried. This means cases settle but it also means that your attorney must be preparing your case to go to trial at the same time you might be engaging in settlement negotiations in case you are one of the 450 whose case must be tried.

Economic Mediation: If your case does not settle at or shortly after the ESP date, then you will be ordered to attend mandatory economic mediation (with your attorneys) with an attorney mediator who will try to help you settle your case.

Intensive Settlement Conference: If you do not settle your case at economic mediation, then you will be called into court for a full day intensive settlement conference where a judge will work with your attorneys and you to help you settle your case.

Trial: If you do not settle your case at that time, then you will be given a trial date and decisions will then be in the hands of a judge.