

OVERVIEW OF FAMILY LAW PROCEDURE

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SCOPE OF FAMILY LAW

**(1) Divorce; (2) Paternity; (3) Post-Decree
Motions; (4) Third-Party Custody; (5)
Grandparent Rights; (6) Domestic Abuse;
and (7) Harassment**

DIVORCE

- **80% of Family Court Cases**
- **50% Settle Before Filing**
- **50% Filed with Court**

DIVORCE

- **Subject Matter Jurisdiction:**
 - 518.07, Sub. 1
- **Personal Jurisdiction**
 - Allegraza, 53 N.W.2d 133 (Minn. 1952)
- **Venue:**
 - 518.09

DIVORCE

- **Parties: Petitioner and Respondent**
- **Service of Petition:**
 - Rule 4 of Rules of Civil Procedure
- **No-Fault State**
 - 518.06, Subd. 1

DIVORCE

Five Main Issues: (1) Custody; (2) Child Support; (3) Property Division; (4) Spousal Maintenance; and (5) Attorney Fees

CUSTODY

- **Best Interest of the Child Standard**
 - 518.17, Subd. 1

PARENTING TIME

- **25% Minimum Rebuttable Presumption**
 - 518.175, Subd. 1(g)

CHILD SUPPORT

- **Minnesota Child Support Guidelines**
 - **518A.01 et seq.**

PROPERTY DIVISION

- **Equitable Split of Assets and Debts**
 - 518.58, Subd. 1

SPOUSAL MAINTENANCE

- **Need v. Ability to Pay**

- **518.552**

ATTORNEY'S FEES

- **Need-Based**

- 518.14

- **Conduct-Based**

- 518.14

DIVORCE STEP #1: ICMC

- **Informal Hearing**
- **Discuss Procedural Options**
- **Informal Discovery**

DIVORCE STEP #2: ENE

- **Vast Majority Opt In**
- **Social Early Neutral Evaluation**
 - Rule 114 of General Rules of Practice
- **Financial Early Neutral Evaluation**
 - Rule 114 of General Rules of Practice

SETTLEMENT

- **Drafting of Judgment and Decree**
- **Administrative Review**
 - 518.13, Subd. 5
- **Default Hearing**

DIVORCE STEP #3: TEMPORARY RELIEF

- **Formal Motion**
 - 518.131
 - Rule 303 of General Rules of Practice
- **Informal Motion**
- **Non-Appealable Order**
 - Rule 103.03 of Rules of Appellate Procedure

EMERGENCY MOTIONS

- **Ex Parte v. Notice**
 - Rule 303.04 (e) of General Rules of Practice
- **Affidavit Contents**
 - Rule 303.04 (c) of General Rules of Practice
- **Hearing Required**
 - Rule 303.04 (f) of General Rules of Practice

DIVORCE STEP #4: FORMAL DISCOVERY

- **Interrogatories**
 - Rule 33 of Rules of Civil Procedure
- **Request for Production of Documents**
 - Rule 34 of Rules of Civil Procedure
- **Depositions**
 - Rule 30 of Rules of Civil Procedure

DIVORCE STEP #5: EXPERTS

- **Custody Evaluations**
 - 518.167
- **Appraisals**
- **Vocational Assessments**
 - Rule 35 of Rules of Civil Procedure

DIVORCE STEP #6: PRE-TRIAL CONFERENCE

- **Settlement Discussions**
- **Trial Date**
- **Trial Submission Deadlines**

DIVORCE STEP #7: MSC

- **Moderated Settlement Conference**
- **“Late” Neutral Evaluation**
- **Court Available**
- **Agreement on Record**

DIVORCE STEP #8: TRIAL

- **To the Court**
- **Exhibit Coordination / Stipulation**
- **Time Management**

DIVORCE STEP #9: THE DECISION

- **Proposed Findings Submitted**
- **Advisement Period 90 Days**
 - **546.27**
- **Entry of Judgment and Decree**

DIVORCE STEP #10: POST-TRIAL MOTIONS

- **Motion for Amended Findings**
 - Rule 52 of Rules of Civil Procedure
- **Motion for New Trial**
 - Rule 59 of Rules of Civil Procedure
- **Request Motion for Reconsideration**
 - Rule 115.11

DIVORCE STEP #11: APPEAL

- **As of Right**
- **Final Orders Only**
 - Rule 103.03 of Rules of Appellate Procedure
- **“Mandatory” Mediation**
 - Rule 133.01 of Rules of Appellate Procedure

PATERNITY

Three Main Issues: (1) Adjudication of Parentage; (2) Custody; (3) Child Support

ADJUDICATION OF PARENTAGE

- **Recognition of Parentage**
 - 257.75, Subd. 1
- **Genetic Testing**
 - 257.62, Subd. 1

POST-DECREE MOTIONS

- **Modify Custody**
- **Modify Parenting Time**
- **Modify Child Support or Maintenance**
- **Property Division Final**
- **Move Out of State**

CUSTODY MODIFICATION

**Must Show: (1) Change in Circumstance;
(2) Best Interest; (3) Endangerment or
Integration; and (4) Benefit Exceeds
Burden on Child: 518.18(d)**

PARENTING TIME MODIFICATION

- **45%-55%: Best Interest Standard**
 - 518.175, Subd. 5
- **Greater Than 55%:
Endangerment/Interference Standard**
 - 518.175, Subd. 5

CHILD SUPPORT MODIFICATION

- **Substantial Change in Circumstance**
 - 518A.39, Subd. 2 (b)

MAINTENANCE MODIFICATION

- **Substantial Change in Circumstance**
 - 518A.39, Subd. 2 (a)

REQUEST TO RELOCATE OUT OF STATE

- **Best Interest Factors**
 - 518.175, Subd. 3

THIRD-PARTY CUSTODY

- **Standing Required (Clear & Convincing)**
 - **De Facto Custodian: 257C.01, Subd. 2**
 - **Interested Third Party: 257C.03, Subd. 7**
- **Best Interest (Preponderance)**
 - **257C.04, Subd. 1**

GRANDPARENT VISITATION

- **Standing Required**
 - 257C.08
- **Best Interest Standard (Preponderance)**
- **No Interference in Parent/Child Relationship (Clear & Convincing)**

ORDERS FOR PROTECTION

- **Domestic Abuse Act**
 - 518B.01, et seq.
- **Familial Relationship**
- **Assault or Threat of Assault**

ORDERS FOR PROTECTION

- **Ex Parte Petition**
- **Scheduling of Hearing**
- **Order Without Findings**
- **“Sword v. Shield” Litigants**

HARASSMENT

- **Crime**

- 609.749

- **Civil Action for Restraining Order**

- 609.748

HARASSMENT RESTRAINING ORDER

- **Statutory Definition of Harassment**
- **Ex Parte Petition**
- **Scheduling of Hearing**
- **Order Without Findings**
- **One Step v. Two Step Process Counties**

QUESTIONS?

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