

DIVORCE LAW GUIDE FROM A TO Z
JANUARY 21, 2014
NATIONAL BUSINESS INSTITUTE
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I. Filing for Divorce and Pretrial Motions

(9:45 AM – 10:30 AM)

A. Preparing and Filing Petition for Dissolution of Marriage

* Thinking About Strategy: When to File and What to Include
in Your Petition

* At the initial client interview you should be discussing whether to file a "vanilla petition" or to allege all of the necessary claims and "nitty gritty" facts in your client's petition. The initial petition sets the tone for the litigation and this should have been discussed with the client as a part of the strategy. You must also determine whether the petition will be verified and whether to include the UCCJEA affidavit within the petition.

B. Responding to Petitions for Dissolution of Marriage: Motions, Counter-Petition and Affirmative Defenses

- * Common Pretrial Motions
1. Always, always, always include a plea for attorneys' fees, suit monies and costs based upon §§ 61.16, 57.105, Fla. Stat. (2013) or *Rosen v. Rosen* in every pleading or it is waived;
 2. Motions for Temporary Support and Attorney's Fees;
 3. Motions for Temporary Parenting Plan and Timesharing Schedule;

4. Motions for Exclusive Use and Possession of Marital Residence;

5. Ex Parte Motions to Compel Discovery; and

6. Motions for Contempt.

C. Handling Domestic Violence Issues/Ex Parte, Temporary and Restraining Orders

1. § 741.30, Fla. Stat. (2013) – Domestic Violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

2. Standard: “Reasonable cause to believe that they are in imminent danger of becoming a victim of any domestic violence.” § 741.30(1)(a), Fla. Stat. (2013).

3. Takes priority over any existing order under Chapter 61. § 741.30(1)(c), Fla. Stat. (2013).

4. § 741.28, Fla. Stat. (2013) – Definition of Domestic Violence

a. “Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death to one family or household member by another family or household member.” § 741.28(2), Fla. Stat. (2013).

b. Includes “spouses, persons related by blood or marriage, persons who are presently residing together as if a family and persons who

are parents of a child in common regardless of whether or not they have been married.”
§ 741.28(3), Fla. Stat. (2013).

5. Filing the Initial Petition for Injunction for Protection Against Domestic Violence

a. Must be verified. § 741.30(3)(c), Fla. Stat. (2013).

b. No filing fee can be charged. § 741.30(2)(a), Fla. Stat. (2013).

c. Court will consider the following factors in determining whether there is “reasonable cause to believe the petitioner is in imminent danger”:

i. History between petitioner and respondent;

ii. Whether respondent has attempted to harm the petitioner or the petitioner’s family;

iii. Whether respondent has threatened harm to the petitioner’s child;

iv. Whether respondent has intentionally harmed a family pet;

v. Whether respondent has used or threatened to use weapons against the petitioner;

vi. Whether the respondent has physically restrained the petitioner from leaving the home or calling law enforcement;

vii. Whether the respondent has a criminal history involving violence or the threat of violence;

viii. Whether a previous order of protection has been filed;

ix. Whether the respondent has destroyed personal property; and

x. Whether the respondent has engaged in additional behavior that leads the petitioner to have reasonable cause to believe that he or she is in imminent danger of becoming a victim of domestic violence. § 741.30(6)(b)(1)-(10), Fla. Stat. (2013).

6. Temporary Ex-Parte Injunction Pending a Full and Final Hearing

a. Ex-Parte Hearing

i. Standard: Whether an immediate and present danger of domestic violence exists. § 741.30(5)(a), Fla. Stat. (2013).

ii. No evidence considered except the verified pleadings or affidavits, unless the respondent appears. § 741.30(5)(b), Fla. Stat. (2013).

iii. If only reason for denial is no immediate and present danger and the matter will be scheduled for a full final hearing.

b. Issuance of Temporary Ex-Parte Injunction

i. If granted, shall be effective for no more than 15 days, unless good cause shown. The final hearing must take place within that 15-day period.

ii. Note: If a temporary parenting plan with a timesharing schedule is in place, this may award the petitioner 100% of the timesharing. § 741.30(5)(a)(3), Fla. Stat. (2013).

c. Contents of Ex-Parte Injunction: On its face, the ex-parte injunction must include:

i. That the injunction is valid and enforceable in all countries in the State of Florida;

ii. That law enforcement may use its arrest powers to enforce the terms of the injunction;

iii. That the court had jurisdiction over the parties and the requirements of due process were given;

iv. The date respondent was served with a temporary final order.

7. § 784.046 - Other Types of Injunctions for Protection Against Domestic Violence, Fla. Stat. (2013).

a. Repeat Violence

i. “Two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of filing the petition.”

ii. Available for petitioners who may not necessarily be a in domestic relationship with the respondent, or who are “secondary” to the initial relationship.

b. Dating Violence

i. “Between individuals who have or have had a continuing significant relationship of a romantic or intimate relationship.”

ii. Requirements:

A. Relationship must have existed within the past 6 months;

B. Nature of the relationship must be characterized by the expectation of affection or sexual involvement; and

C. Frequency and type of interaction between the parties must have occurred over time on a continuous basis.

c. Sexual Violence

i. “One incident of sexual battery.”

ii. Available for individuals who may not have been in a domestic or dating relationship with the perpetrator.

iii. Must have reported incident to law enforcement agency.

8. Miscellaneous Domestic Violence Issues

a. Client’s in Family Law Cases That Make Allegations of Criminal Conduct

i. Advise clients as to the potential consequences of such allegations, and that in certain circumstances, mandatory reporting by certain individuals is required.

ii. Unfounded allegations, depending on their severity, may be punishable with criminal charges and disastrously affect their family law case.

iii. Consider the expense of having to defend these allegations, which may inevitably reduce marital assets, that could later be equitably distributed.

iv. If children are involved, consider the possibility and effects of having DCF or the police involved, and exposing the children to those systems.

b. VAWA – Immigration Considerations

c. Getting help from Case Managers: Case managers, often like many of the court staff, run the courtroom. It is to your advantage to get to know the case managers because they will assist you to schedule hearings, obtain responses from the judge, advise you whether the respondent has been served by the sheriff and assist you to obtain the entry of orders. Treat case managers, along with all other members of the courtroom staff, with respect and dignity as they can control your courtroom experience and are some of the most influential people you will come across in the courtroom.

d. Attorney's Fees in Domestic Violence Matters: There is no basis for an award of Attorney's Fees in Domestic Violence Litigation.