



STEPS IN A
LAWSUIT

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If you have not been able to negotiate a settlement with your spouse or if negotiation is not possible, we may recommend starting a lawsuit.

The timing of a lawsuit is difficult to predict. It depends on many things, including actions your spouse takes, court schedules, and decisions you make. A lawsuit can take up to two years or longer to settle or go to Trial.

However, most lawsuits go through the same basic steps, although not always in the same order. Some lawsuits skip some steps and some steps are repeated many times over.

The steps listed here are the main steps that occur in a lawsuit. They will give you a general idea of what to expect.

GATHERING THE FACTS

With your help, we gather all the available facts concerning the claim, including interviewing and taking statements from witnesses. We sometimes hire experts to help us so this step can be expensive as you have to pay fees for those experts.

Starting the Lawsuit

We begin the lawsuit by preparing the necessary court documents and filing them in court. This means the court date stamps all copies of the documents, keeping one copy for their official record (which information is available to the public). We then deliver filed copies to your spouse personally or his or her lawyer if she or he has one. These steps also involve expenses such as court filing fees and serving fees.

Interim Applications

After we start a lawsuit, but before trial, we or your spouse's lawyers sometimes need to ask the court to decide certain things such as support or possession of the matrimonial home. Going to court to ask for such an order is described as bringing an interim application. For example, we might ask the Court to order interim child and spousal support to be paid until all the issues can be finally resolved.

Referral to Mediation

At any point in this process we may suggest you and your spouse attempt mediation to resolve some or all of the outstanding issues. Mediation is a way for you and your spouse to discuss the issues together with the assistance of a neutral mediator in a face to face meeting moderated by the mediator. The mediator then helps you clarify the issues and negotiate so as to reach a mutually acceptable agreement.

Custody/Access Assessments

When separating parents have tried and failed to reach an agreement on the care of their children, they may choose to proceed to court. In some cases, the Justice/Judge may order a psychological assessment of the parents and the children. An assessment is a process where a psychologist spends time with you, your spouse and your children in order to write a report which will help the Justice/Judge make a decision that is in the best interests of the children. The assessment helps determine the best possible plan for the care of the children. The assessor will usually also meet with you and your spouse and spend some time with each of you with the children present. The assessor will often want to interview family, teachers, daycare workers, etc. The assessor writes a report and submits it to the court. The assessor will give copies of the report to each of your lawyers. At this point, you may choose to resolve the matter by agreement using the report as a guideline. If the case goes to Trial, either party may submit the report to the court as evidence. While this report is an important part of all of the evidence that the court will consider in a trial, it is not decisive. The final decision rests with the Justice/Judge who will hear from each of you and each of your witnesses.

Questioning

After gathering the facts, either we or your spouse's lawyer arrange Questioning. At Questioning we question your spouse under oath about the issues. We also ask your spouse to show us what relevant documents he or she has, and to tell us about all relevant documents he or she has ever owned or had access to. In return, your spouse's lawyer also questions you about these issues. We give your spouse's lawyer copies of the documents we have that relate to the lawsuit, and you describe all relevant documents you once had or had access to.

Review of the Law

Once we have all the facts and an understanding of the circumstances, we review the law. We then give you our legal opinion as to the likely outcome of a trial should you proceed. We also provide you with our recommendations as to how you should proceed – to a trial or make a renewed effort to settle the issues.

Negotiation and Settlement

When it is appropriate and after discussions with you, we may talk with your spouse's lawyer to see if they will settle the issues. A settlement is an agreement between the parties to a lawsuit which sets out how they will resolve the claim. If the claim is settled, it does not go to trial. Settlement discussions can be held at any stage of the process.

Preparation for Trial

We prepare the case for Trial, including getting all the necessary documents together, arranging for witnesses to attend and preparing any legal opinions.

Pre-Trials

Before a case goes to trial the court will require at least one pre-trial hearing before a Justice/Judge to determine if any of the issues can be settled and whether the case is fully ready for trial. You will not be required to attend with your lawyer at this hearing. The pre-trial conference generally takes about thirty minutes.

Trial

We act for you at the trial and present your case to the Justice/Judge. Your spouse's lawyer also has the opportunity to present his or her case. Witnesses, including expert witnesses, may be called to support both parties' positions. Once the Justice/Judge has heard all of the evidence he or she will come to a decision. This could take days or weeks after the trial. Once we have the Justice/Judge's decision we prepare the Court Order (Judgment) for the Justice/Judge to sign, or approve how the lawyers writes up the Judgment, to make sure that it is correct.

Completing the Claim

We do all the work necessary to complete the claim. This includes delivery any money to you from a settlement or judgment, after we have deducted our fees and expenses. However, it does not include starting new steps as enforcing or appealing a court judgment. To enforce a judgment means to start proceedings to force your spouse to actually pay what he or she has been ordered to pay. To appeal a judgment means to start work to get a higher Court to change the original Court's judgment. to present

QUESTIONS?

We look forward to supporting you. If you have any questions, connect with our team directly by phone at (587) 393-8070 or by email at info@jonesdivorcelaw.com.