

Divorce and Family Law Glossary

ACTION : A legal term for a lawsuit.

ADMONISH : Warning or reprimand given by a court official.

ADR : Alternative Dispute Resolution. Settlement techniques such as mediation or arbitration used to resolve a case without a trial.

AFFIDAVIT : A written statement of fact, sworn to be the truth, as you know it, witnessed by a notary public.

AGREEMENT : See Stipulation.

ALIMONY : See Maintenance.

ALLEGATION : Statement contained in a pleading or affidavit setting forth what the party intends to prove.

ANNULMENT : The legal ending of an invalid marriage. According to law, neither party was ever married, but all children born to the annulled marriage remain legitimate.

ANSWER : A formal written statement filed by the respondent in a divorce, separation, or annulment, served in response to the Petition for divorce. The statement admits or denies the allegations in the Petition and may also make claims against the other party. Sometimes called a Response.

APPEARANCE : The respondents formal method of telling the court that he or she submits to the courts jurisdiction. Appearance also can refer to a party's physical presence in court.

ARREARS or ARREARAGES : Support payments that are late or past due.

AUTHENTICATED COPIES : Copies that have been uniquely stamped by the Clerk in the Family Court Office at the time the Summons and Petition papers are filed. The Clerk keeps the original and stamps all of the copies. This stamp "authenticates" the copies.

CALENDAR CLERK : Family Court Clerk who schedules hearings for court officials.

CAPTION : The heading of a legal form. It lists information about the case. For example, it generally lists the parties of a case, the type of case, the type of court the case is in, and the case number.

CCAP : Wisconsin's statewide computer database that holds all court related information.

CHILD SUPPORT : Court-ordered payments made by one parent to the other for the support of a child. Payments are expressed as a percentage of income or as a fixed amount and are neither tax deductible to the payer nor reportable as income by the custodial parent. They must be paid to the Wisconsin Support Collection Trust Fund (WI SCTF).

CHILD SUPPORT GUIDELINES : A document explaining the percentage standard payments established by the Department of Workforce Development, which is provided by the Family Court Office free of charge to each petitioner requesting child support. This document must be provided by the petitioner with the Summons in cases that involve minor children when serving the Summons and Petition on the respondent.

COMMISSIONER : A court official who performs limited judicial and quasi-judicial functions under the direction and authority of the Chief Judge and Circuit Judges.

COMMUNITY PROPERTY : See Marital Property.

COMPLAINT : See Petition.

CONTEMPT OF COURT : The willful and intentional failure to comply with a court order, judgment, or decree, by a party to the action, which may be punishable by law.

CONTESTED DIVORCE : A divorce with at least one issue that the spouses cannot agree on.

COUNTER CLAIM : A request by the respondent for the Court to make orders in the case.

COURT ORDER : A written document issued by a court, which becomes effective only when signed by a judge or court commissioner.

CROSS EXAMINATION: The questioning of a witness by the opposing party during a trial or a deposition to test or develop the truth of that testimony.

CUSTODIAL PARENT: The parent with both Legal Custody and primary Physical Placement of the child(ren).

CUSTODY : See Legal Custody.

DEFAULT : An order or judgment granted by a court without hearing the other side because that side failed to submit papers within the time allowed or failed to appear at a hearing.

DEPOSITION : The testimony of a witness taken out of court, under oath, and in writing.

DIRECT EXAMINATION : The initial questioning in court of a witness by the party who called him or her to the stand.

DISCLOSURE : See Discovery.

DISCOVERY : Procedures to determine the nature, scope, and credibility of the opposing party's claim and his or her financial status. Discovery is a very important part of the divorce process that must be complied with.

DISSOLUTION OF MARRIAGE : See Divorce.

DIVORCE : Legal termination or end to a marriage. Does not include annulment.

EVIDENCE : Documents, testimony, or other demonstrative material offered to the court to prove or disprove allegations.

EX PARTE : Attempts (not allowable by law) to communicate with a court official, either verbally or in writing, without the knowledge or consent of the other party.

FAMILY SUPPORT : A financial order that includes child support and maintenance. The court ordered family support may be tax deductible/reportable and is subject to complex tax rules.

FILING : The act of giving original document(s) to a Family Court Clerk, who keeps the paper in the court file.

FILING FEE : A fee charged by a public official to accept a document for processing.

FINANCIAL DISCLOSURE STATEMENT : Forms that indicate to the court the income, expenses, assets, and debts of each party.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT : The formal legal document that serves as the final divorce papers. The document is prepared by the attorney for the petitioner, or by the petitioner if not represented by an attorney, and signed by the Judge.

GROUND FOR DIVORCE : Acceptable reason to file for divorce. In Wisconsin, the only ground for divorce is that at least one of the spouses believes that the marriage is irretrievably broken, and there is no chance for reconciliation.

GUARDIAN AD LITEM (GAL) : The guardian ad litem is a lawyer appointed by the court to represent the best interest of a child or ward. A guardian ad litem may be appointed in a divorce, custody or placement dispute, or in cases that raise a question as to the paternity of a child. The guardian ad litem charges an hourly fee that is paid by the parties.

HEARING : Any proceeding before the court for the purpose of resolving disputed issues through presentation of testimony, offers of proof, and argument.

HOLD HARMLESS : A situation in which one spouse assumes liability for a debt or other obligation and promises to protect the other spouse from any loss or expense in connection with it.

INCOME ASSIGNMENT NOTICE : A notice, based on a court order, sent to the employer of a payor, requiring the employer to deduct money directly from the wages of the payer and send the money to the Wisconsin Support Collections Trust Fund (WISCTF.)

INDIVIDUAL PROPERTY : Property acquired by gift or inheritance before marriage or during marriage. Does not include gifts between spouses or income from individual property.

INJUNCTION : A court order, which forbids someone from doing a particular act that is likely to cause injury or property loss to another party. Also referred to as a Restraining Order.

JOINT LEGAL CUSTODY : The condition under which both parties share legal custody of children, and the rights of neither party are superior, except under agreement by the parties or an order or judgment of the court.

JOINT PROPERTY : Property held in the name of more than one person.

JUDGMENT : The decision of a judicial court official.

JURISDICTION : The circuit court's authority to hear a divorce case. A court has jurisdiction when the petitioner or respondent has lived in the State of Wisconsin for at least 6 months and in the county where the action was filed for at least 30 days prior to filing the case. Jurisdiction can be a very complicated issue.

KIDS System (Kids Information Data System) : Wisconsin's statewide database for all child, spousal, or family support related records.

LEGAL CUSTODY : Legal custody means that the parent with custody has rights and responsibilities to make major decisions concerning the child. Major decisions include, but are not limited to: decisions regarding consent to marry, enter military service, obtain a license to operate a motor vehicle, authorize non-emergency health care, and choose school and religion. Legal custody can be joint or sole.

LEGAL SEPARATION : A court judgment or written agreement directing or authorizing spouses to live separate and apart. A decree of separation does not dissolve the marriage or allow the parties to remarry, but may resolve financial claims.

LITIGANT : A party to a lawsuit. In family cases, a litigant is referred to as either the petitioner or the respondent.

LOCAL COURT RULES : The rules that apply to the circuit court of the county where the divorce action is filed. These rules are available from the clerk or at the court's website.

MAINTENANCE : Limited or indefinite support payment for a spouse. These payments are tax deductible to the payer and reportable as income by the payee if they are made in connection with a divorce or separation and meet the tax rules. Maintenance is also referred to as spousal support and was formerly referred to as Alimony.

MARITAL PROPERTY : All property that is acquired from the time a marriage begins until the judgment of divorce is granted.

MARITAL SETTLEMENT AGREEMENT : A written document, or oral presentation to the judge in open court, that states the parties' agreement on issues.

MEDIATION : A cooperative process involving you, your spouse, and a mediator to define and resolve disagreements. A form of ADR (Alternative Dispute Resolution).

MEDIATOR : A neutral third person with special skills and training to assist parties in resolving disputes.

MIXED PROPERTY : Property that has marital and non-marital (individual) components. Mixed property is treated as marital property unless the non-marital component can be traced.

MOTION : A document used to request the court to make a ruling or order in a case in a party's favor. The court will determine at a hearing whether or not the motion or request will be granted.

NON-MARITAL PROPERTY : Property that belongs to only one spouse because of gift or inheritance. See WI Stats. 767.255(2).

NOTARY PUBLIC : A public officer whose most common function is to certify the signature of an individual.

NOTICE OF HEARING : A document that is served on the opposing lawyer or spouse listing the date and place of a hearing and the motion or motions that will be heard by the court.

ORDER TO SHOW CAUSE : A document used to ask the court to make an order in a case for the other person to come to court and show reasons why what is asked for should not be granted by the court.

ORIGINAL : The set of documents that is actually signed. All of the others are copies of the original.

PARTY : A person in a divorce action whose rights or interests will be affected by the divorce. Also referred to as a Litigant.

PAYEE : Person who receives money in the form of child support, maintenance, or family support.

PAYER : Person who pays money in the form of child support, maintenance, or family support.

PETITION : The document that states the statistical facts about the parties and marriage and states the grounds for divorce. It also states what the petitioner is asking the court to do.

PETITIONER : The party who presents a "petition" to a court. In a divorce, the petitioner is the one who files the divorce.

PHYSICAL PLACEMENT : The period of time when the children are living with one person or another who has the responsibility to make, during that placement, routine daily decisions regarding the care of the child or children. Physical placement schedules vary depending upon the needs of the children and the availability of the parents to meet those needs.

PLEADINGS : Formal, written statement of parties, expressing claims or defenses. Examples of pleadings include petitions, responses/counterclaims.

PRE-TRIAL CONFERENCE : A hearing before the court that is scheduled after 120 days have passed since the service of the Summons. If all issues are agreed upon and a Marital Settlement Agreement has been signed, the divorce may be granted at the Pre-Trial Conference.

PRESUMPTION : The assumption that the husband of a marriage is the father of a child conceived or born during a marriage.

PRO SE : Literally, this means "for yourself" in Latin. To appear in court without an attorney. Also referred to as a Self-Represented Litigant.

PRODUCTION OF DOCUMENTS : See Discovery.

PROOF OF SERVICE : The document stating when/where service was done. Proof of Service is completed by the person serving the other party and then filing the proof of service with the clerk.

PUBLIC ASSISTANCE : Generally known as Welfare or W-2. It includes Title 19, food stamps, Badger Care, subsidized childcare, and cash benefits.

PUBLICATION : Serving the other party by advertisement in a newspaper. This method can only be used if personal service cannot be made. See Service.

RELIEF : Something a party to a divorce proceeding asks the court to do: for example, dissolve the marriage, award support, enforce a prior court order or decree, divide property, or stop certain behavior.

REPLY : The legal document filed to respond to the allegations of a counterclaim.

RESPONDENT : The person who is responding to a divorce action.

RESPONSE : The response is the answer filed by a respondent to the petition.

RESTRAINING ORDER : See Injunction.

RULES OF EVIDENCE : The rules that govern the presentation and admissibility of oral and documentary evidence at court hearings or depositions.

SECTION 767 OF THE WI STATUTES : Contains the laws related to divorce and other actions that affect the family.

SELF-REPRESENTED LITIGANT : A person who chooses to proceed with a court action without an attorney. See Pro Se.

SERVE THE OTHER PARTY : See Service.

SERVICE : To give papers to the opposing party. How you give the papers is defined by statute. If service is not accomplished properly, the court will not hear or decide your case.

SETTLEMENT: The agreed resolution of disputed issues.

SOLE LEGAL CUSTODY : The condition under which one party has legal custody. See Legal Custody & Joint Legal Custody.

SPOUSAL SUPPORT : See Maintenance

STIPULATED DIVORCE : A divorce that has a stipulation or agreement regarding terms of the final judgment. Stipulated divorces are less complicated, less costly, and scheduled more quickly than contested divorces.

STIPULATION : A formal written agreement between parties about any issue in temporary orders or final judgments. Stipulations can also be used to change orders or judgments if both parties agree to the change.

SUBPOENA : A document authorized by the court requiring a witness to appear and give testimony at a hearing, trial, or deposition.

SUBPOENA DUCES TECUM : A type of subpoena that requests a party to produce documents in their possession or control that are relevant to the issues of the case.

SUMMONS : The document used to begin a divorce case. It is filed along with the Petition. Both documents must be personally served on the respondent. If the parties file a joint petition, the summons is not required. See Service.

TEMPORARY ORDER : An order, usually made by the Family Court Commissioner, which sets the rules the spouses must follow while the case is pending. The temporary order will usually cover custody, placement, support, maintenance and payment on debts, mortgage, furniture, vehicles, and insurance.

TEMPORARY RESTRAINING ORDER (TRO) : An order of the court prohibiting a party from doing something such as threatening, harassing, or physically abusing the other spouse or the children, selling personal property, withdrawing money from accounts, or denying access to a motor vehicle.

TESTIMONY : Statements under oath by a witness in court or during a deposition.

TRANSCRIPT : A typewritten record of testimony taken by a court reporter during a deposition or court proceeding.

TRIAL : A formal court hearing to decide disputed issues raised by the parties.

UNCONTESTED DIVORCE : A divorce with all issues settled.

WI SCTF - SUPPORT COLLECTION TRUST FUND : The State of Wisconsin central payment processing agency for all child, spousal, or family support checks