

Swendson / Fey Law Ltd.
175 E. Wisconsin Avenue. / P. O. Box 123
Oconomowoc, WI 53066
Phone: 262-567-8454 Fax: 262-567-8576
attorneys@sml.net
swendsonfeylaw.com

Initial Divorce Letter

The following information and instructions apply generally to all dissolution of marriage (divorce) cases in Wisconsin. They are provided for your personal use during this case. Please read them carefully and save this letter for future reference.

We will inform you whenever it is necessary for you to be in this office (for conferences or to sign legal documents) or to appear in court. Please further understand that if at any time you find it necessary to discuss this case, we will make time available to do so on your request.

COMMENCEMENT OF ACTION TEMPORARY RELIEF AFTER THE COMMENCEMENT OF THE ACTION AND PRIOR TO TRIAL

The divorce usually begins with the service of four legal documents:

1. The **Summons**, the filing of which legally starts the case
2. The **Petition for Divorce**, which sets forth the legal and factual history of the marriage and the relief requested
3. The **Affidavit for Temporary Order**, which is the basis for obtaining a court order setting forth the terms and conditions during the pendency of the case while awaiting trial (the order may include temporary provisions for the following relief: maintenance for either party; support for the minor children; removal of a spouse from the home; determination of who shall have temporary custody of the minor children and physical placement periods; and determination of who shall make mortgage payments and meet other obligations while the action is pending)
4. The **Order to Show Cause for Temporary Order**, which contains the date of the hearing before the circuit court commissioner and the request for terms during the pendency of the action based on the affidavit for temporary order (the hearing is usually held within three weeks after the first papers are signed)

**REQUIREMENTS FOR MEDIATION AND EDUCATIONAL PROGRAM ON THE
EFFECTS OF DIVORCE ON CHILDREN
(READ CAREFULLY)**

If you and your spouse disagree regarding the legal custody and physical placement of your child or children, the court or circuit court commissioner will refer you to the director of family court counseling services for mediation of the contested issues. You will be required to attend an initial session with the mediator unless the court finds that attending the session will cause undue hardship or endanger the health and safety of either you or your spouse.

The initial session will be a screening and evaluation session to determine whether mediation is appropriate and whether you and your spouse wish to continue in mediation. If you, your spouse, and the mediator determine that continued mediation is appropriate, no court may hold a trial or a final hearing on legal custody or physical placement until after the mediation is completed or terminated.

If both you and your spouse want joint legal custody and either of you asks for a referral, the court or circuit court commissioner will refer the two of you for mediation or other appropriate counseling services for assistance in resolving problems relating to joint legal custody and/or physical placement.

In addition, the court will order you and your spouse to attend a program concerning the effects of divorce on children. The court will typically require attendance at this program in all cases where minor children are involved. This is an educational program that runs approximately four hours. Please attend the program upon receipt of the program information from the court.

RESPONSE AND COUNTERCLAIM

The respondent in the case may reply to the divorce petition with a document called the **Response**. This document will state the respondent's position as to each of the claims made in the petition. The respondent may also take this opportunity to initiate a claim in opposition to the petition, such as a custody claim. This document is called a **Counterclaim**.

**DEFAULT DOES NOT SHORTEN THE TIME FOR TRIAL.
A STIPULATION OR WRITTEN AGREEMENT BETWEEN
THE PARTIES MAY SHORTEN THE TIME FOR TRIAL.**

If there is no response to the petition, the case is legally considered a **default** action. For all practical purposes, however, in the absence of an agreement between the parties and attorneys, it continues to be a contested case.

This office's practice is to respond to all petitions. If an agreement is negotiated as to all disputed matters, a final court hearing date can currently be obtained within approximately 30 days; however, no case can be concluded (with rare exceptions) until: (1) 120 days have passed after the commencement of the action and (2) a financial disclosure statement has been filed with the court. Financial disclosure statements are to be exchanged within 90 days after the commencement of the action.

If no agreement is negotiated between the attorneys and the parties, then the matter is considered a contest. The court will schedule a pretrial hearing to narrow the issues, at which time the court will probably schedule the case for trial. Such an unsettled divorce action generally does not get scheduled for a pretrial hearing for at least four to five months or more after the initial papers are served.

CLIENT PREPARATION FOR COURT HEARINGS

You will be acquainted with and prepared for any hearing or trial at this office in advance.

ENFORCEMENT

If either party fails to abide by any court order--for example, failing to make payments as ordered--on application by the other party that party may be held "in contempt" by the court and punished accordingly.

GENERAL INSTRUCTIONS

1. Follow all court orders exactly.
2. If you have custody of your children and your spouse has physical placement rights, have the children dressed and ready for your spouse at the arranged times.
3. If you have shared physical placement rights, pick up your children and return them at the time agreed upon.
4. Do not alienate the children from your spouse. This is a most trying time for the

children. Do not discuss your marital problems with them. They should not feel a necessity to “side” with either parent. Children should love both parents. Anything that you can do to make shared placement more pleasant is for their benefit. Do not use the occasion for conflict.

5. Do not interfere in any way with your spouse’s parental rights. Interference by one parent with the other’s parental rights may be considered a Class I or F felony. A Class F felony is punishable by a fine of not more than \$25,000 and/or imprisonment for not more than 12 years and six months. A Class I felony is punishable by a fine of not more than \$10,000 and/or imprisonment for not more than three years and six months.
6. Make debt payments as ordered.
7. If you are making support payments, pay promptly and as ordered. If it is impossible for you to do so, notify us immediately. If you are required to make your payments through the Wisconsin Support Collections Trust Fund, do not make payments directly to your spouse.
8. If a change in circumstances occurs (such as a layoff, a substantial reduction in pay, an accident, an emergency, or unexpected medical or dental problems), please contact us immediately, as we must be aware of such changes to serve you best.
9. If there is a change in the source of your income (for example, you start receiving AFDC, Social Security, or disability income), please notify us immediately, as it may affect your case.
10. If you have custody of the children, do not present obstacles to shared physical placement because your spouse is not making payments.
11. If you are making payments, do not withhold or delay them because you are having problems with shared physical placement.
12. Do not argue with your spouse about any important problems. These matters should be brought to us.
13. Discuss your divorce problems with your attorney only, not with others, although they may inquire. Although friends and relatives may have good intentions, their advice may be inaccurate even when based on their personal experiences.

Circumstances in their cases may have been far different from those in your case or the laws may have changed since their divorces. It is like using another's eyeglasses--they rarely fit properly.

14. Inform us promptly of changes in phone numbers, addresses, or employment status.
15. If you believe that there is a chance for reconciliation or if you agree to try to reconcile, contact us immediately so that we can have the court suspend the action, which can be done for 90 days. If the reconciliation is successful, we should be contacted so that the case can be dismissed. If the reconciliation attempt is not successful, we should be advised immediately that you intend to proceed with the case.

We recognize that you are a party to a family action and are therefore under some emotional stress and strain. Whenever possible we will attempt to reduce and minimize your emotional strain. We will keep you informed of important developments affecting your case, and we likewise expect you to keep us informed of important matters. Please feel at liberty to contact me at this office concerning any matters or questions you have affecting this case. **Though this information is only a general outline, please save it and read it often to avoid misunderstandings.**