

WOODRUFF & FORTNER

ATTORNEYS AT LAW

1023-B WEST MARKET STREET · POST OFFICE BOX 708 · SMITHFIELD, NORTH CAROLINA 27577

Things to Expect

General

1. We will communicate with you via email and telephone. Please check your email and voicemails at least once per day. When you call or email us, we do our best to get responses to you as soon as possible, recognizing that we often must respond to the most urgent items first, then move to items which are less urgent.

2. You will receive copies of the following documents by mail (and/or by email if you indicate it is more convenient):

- Any documents filed with the court in your case, by any party;
- All documentation we are provided in relation to your case – including documentation we receive in response to discovery requests to opposing parties, in response to subpoenas we have issued to third parties, and in response to formal or informal requests we have made for our own office’s use.
- All correspondence we send or receive in connection with your case, including letters to/from opposing counsel and to third parties.
- Your monthly billing statements from us.

Court (Johnston County)

1. Regular domestic court sessions in Johnston County are held every **Monday**. Matters that take 2 hours or less can be heard on Mondays. However, an ever-crowded docket means that many times cases set for a Monday will be continued. If there is space on the calendar, the case may be continued to the following Tuesday, Wednesday, or Thursday, but often it will be continued to a subsequent Monday.

2. We will try to give as much notice to you as possible when Dionne is planning to set a hearing and attempt to coordinate with your schedule, within reason. However, opposing parties can set a matter on for hearing with only five days notice in most matters, and the matter can only be continued for good cause (i.e. emergency situations, extremely important obligations which cannot be re-scheduled, etc). *Therefore, while your case is ongoing, be generally prepared that we may notify you to appear in court and that you will have to make arrangements to appear.*

3. When you have to appear in court: plan to arrive at 9:00 AM. Domestic court is generally heard in Courtroom 6, but is subject to move (you can ask the info desk person in the main lobby to be sure). On Mondays, Dionne will probably be seated

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in “calendar call,” which is when the judge sets the schedule of cases for that Monday. This will take anywhere from 15 minutes up to an hour. After calendar call, Dionne will meet with you (and all her other clients with cases that day) briefly to discuss the hearing of your case. The issue may then be heard that day or other arrangements will be made.

What is a “red” or “blue” calendar?

Johnston County keeps two calendars for trials of issues that are expected to take 4+ hours (red calendar) or a full day or more (blue calendar). Most issues, if they go to trial, will require obtaining a date on one of these calendars to hear. Hearings concerning a request for a temporary order can usually be heard on Mondays.

General Timeline of a Case (Litigation)

1. Every litigation case – including child support, child custody, Equitable Distribution, alimony, divorce – begins with a summons & complaint.
2. The opposing party has 30 days to Answer the complaint and/or raise their own claims; the moving party then has 30 days to respond to the allegations raised in the Answer/Counterclaim.
3. Both sides may issue discovery requests (see below) to gather evidence from the other side; we will request evidence from you to help your case, too.
4. There may be hearings to decide temporary resolutions of issues.
5. Your case may have to go to a form of mediation before proceeding to trial.
6. A trial date must be requested by motion with the court and obtained via Order of the court.
7. Settlement proposals may be drafted and exchanged on any of the issues in your case during any point of this process.
8. If any required mediation and/or settlement attempts fail, your case will go to trial.

Equitable Distribution

- ~~1. After filing for ED, you will need to file an inventory of the assets belonging to the marriage and to your and your spouse separately. You will also need to provide documentation of these assets which is mandated by the court.~~
- ~~2. The opposing party will file a responsive inventory & their own required documentation.~~
- ~~3. A “pre-trial Order” will be drafted comparing the two inventories and clarifying what the actual controversies are in the case.~~

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~~4. All ED cases must go to mediation. This will involve both parties and their attorneys as well as a mediator (usually another attorney) who will attempt to negotiate an amicable settlement of the ED issue, and any other claims in the case, if possible.~~

~~5. If mediation fails, the case will be set for trial.~~

Child Custody

~~1. All child custody actions, including modifications of a current Order, must go to mediation through the Court's own Child Custody Mediation Office. This will involve your attendance at a two-hour orientation session and then the actual mediation, which will be scheduled at the conclusion of your orientation session. Dates and times of the orientation sessions are set by the Mediation Office.~~

~~2. Hearings for most child custody issues require 10 days' notice.~~

Child Support

~~1. In general, we will need to have you complete a Financial Affidavit which lists information about your gross and net income, as well as particular expenses you incur for the minor children in the case. You may also need to account for your monthly expenses. You will also need to provide documentation substantiating what you list on the Financial Affidavit. This is required by the Court.~~

~~2. In general, child support is calculated according to guidelines set by state law, which takes into account the parties' custody arrangement, incomes, insurance expenses, and whether a party has other children in their household or any pre-existing child support payments to other individuals not party to the case. A parent's new spouse's income is generally not included in the calculations.~~

PSS/Alimony

~~1. In general, we will need to have you complete a Financial Affidavit which lists information about your gross and net income, and you must also account for your monthly expenses. You will also need to provide documentation substantiating what you list on the Financial Affidavit. This is required by the Court.~~

Pleadings/Affidavits/Responses

1. You will need to review and sign every pleading, affidavit, and response to discovery made in your case, which generally will require you to come by the office to have your signature notarized. *While your case is ongoing, please be*

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generally prepared for us to ask you to 1) review drafts of documents, and 2) come by the office to sign the same.

Discovery

Both sides of a case have the equal right to request information/evidence from the other side, subject to a few limiting rules. This process is known as “discovery.” In general, most discovery requests must be honored, although just because discovery is requested and received, there are numerous preserved objections as to whether that discovery is admissible in court.

All discovery requests have a statutory 30-day deadline to answer after they are served; sometimes we can extend this deadline to be 60 days. We will work with you to finalize your answers; however, please recognize that:

- we cannot refuse the discovery requests just because they:
 - are offensive/insulting;
 - require the gathering of documentation which will be time-consuming;
 - are requesting information which the other side already knows;
 - inquire after evidence that you feel to be private, if it is not privileged and it is relevant to the case.

-not completing the discovery request on time can result in sanctions being ordered by the court, including the awarding of attorneys’ fees incurred by the other side to get the necessary evidence.

Discovery requests typically take the following forms:

-Requests for Production of Documents – in which you will have to gather things like bank statements, legal documents, tax returns, etc. Sometimes we can attempt to obtain documentation for you, but it is often easier, and certainly always less expensive, for you to obtain as much documentation as you can on your own.

-Interrogatories – in which you will need to answer questions in writing truthfully under oath;

-Requests for Admissions – in which you are asked to “affirm” or “deny” the truth of specific statements that are at issue in the case;

-Depositions – in which you are asked questions in person, under oath to tell the truth, by the opposing attorney and cross-examined by your own attorney. The deposition is usually memorialized in a transcript dictated by a court reporter or occasionally recorded and/or videotaped.

Therefore, while your case is ongoing, please be generally prepared to receive and respond to discovery requests in any of the forms above.

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How long is this going to take??

1. Nothing in litigation happens as quickly as anyone would want. As noted variously above, the law grants time to all parties in a case that is meant to be sufficient for them to adequately defend their interests. Here are a few things that clients may feel are dragging their case out:

Statutory time to:

- Serve a summons.....up to 60 days;
- Answer a complaint.....30 days; can be extended to 60
- Respond to discovery requests.....30 days; can be extended to 60
- Notice a child support or child custody hearing.....10 days + 3 day mailbox rule if mailed + next available Monday on court calendar
- Notice any other type of hearing.....5 days + 3 day mailbox rule if mailed + next available Monday on court calendar
- Hold child custody mediation.....next available session after the notice for child custody matters described above; orientations are held 1-2 times per month
- File an Inventory in an ED claim.....90 days
- File a responsive Inventory in an ED claim.....30 days

Other non-statutory factors:

- In Johnston County, the trial calendars are “backed up” with enough cases that there is an almost six month delay from the time a trial date is requested.
- It is normal, for better or for worse, for attorneys to take multiple days to respond to emails or phone calls requesting their feedback or approval on things like settlement negotiations, finalizing Orders, informal requests, etc. Extremely urgent matters will be given priority, of course.

You can expect your case to take several months to more than a year unless 1) the issues are relatively simple and 2) both parties are relatively willing to compromise in pursuit of a settlement.

Please rest assured that:

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1. We will never fail to communicate with you about any developments in your case;
2. We will never allow your case to be harmed through the passage of time;
3. It is normal for you not to hear anything new about your case for several days, even a few weeks, as it is normal for nothing new to happen in your case for several days or even a few weeks.
4. We would be glad to schedule reminders for us to email you once a week, even just to say there has been no activity or change in your case.

Are we winning the case?

Oftentimes clients are not familiar with the legal process and can feel anxious or intimidated by activities undertaken by opposing counsel, believing that they are gaining an advantage or “the upper hand” by doing rather normal things, like alleging fault in a defense against an alimony claim, asking for bank statements in discovery, asking personal questions in interrogatories, failing to reply to emails in a timely fashion, etc. Sometimes clients will fear we are not “keeping up” with the other side if they are issuing more motions, discovery requests, subpoenas, etc., than we are at any particular point in the case. Oftentimes this is due to the burden being on them to obtain the information or obtain relief from the court.

We will always do what is necessary to represent your best interests, without wasting your money or your time.

Fees

The following are common fees charged by the Court which are passed to our clients:

- New lawsuit complaint: \$150.00
- Complaint for divorce: \$225.00
- Motion that is set for hearing: \$20.00

Other common fees:

- Charges to serve process: Sheriffs charge \$30.00 in NC. Private process servers can be \$75 - \$150.
- Charges to release documentation: third parties (doctors’ offices, banks, etc) often charge fees to provide documentation in response to subpoenas or other requests. The party issuing the request or subpoena is responsible for this cost. These charges are passed to the client. We make an effort to anticipate these charges, but often they are submitted along with the records so released. *Anticipate that if we*

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subpoena documents or request them on your behalf, that you will be charged a fee by the provider. For banking records, a common charge is between \$50 - \$100.

Can I get the opposing party to pay for my attorney's fees?

Unfortunately, the grounds for obtaining a court order directing the opposing party to pay your attorney's fees are determined by statute – and the law's grounds are narrower than people often think. For example, the grounds for getting attorney's fees in child custody actions require that a party have "insufficient means" to pay the costs of the suit him or herself, and in the eyes of the law, a person often needs to have a literal, unavoidable inability to pay more than a fraction of their attorney's fees to be found to have "insufficient means."

In child support cases, in addition to this burden, the law requires that the opposing party have "failed to pay support which is adequate" prior to the party filing for child support. This is perhaps more arguable, but oftentimes opposing parties have been paying child support in some form, and it will therefore be even more difficult to get an award of attorney's fees.

Many people think they will be able to get attorney's fees paid by their spouse for the following reasons which are not relevant to the determination:

1. My spouse left the marriage;
2. My spouse/the other parent filed the lawsuit and I am required to defend it (it wasn't my choice);
3. The opposing party committed marital misconduct or otherwise committed misdeeds;
4. The opposing party issued discovery in good faith, or sought mediation or settlement conferences that did not resolve the case, etc.
5. The opposing party filed the lawsuit but ultimately agreed to a settlement.

The law does not recognize any of these reasons when determining whether or not to award attorney's fees.

What is Legal Advice? What can the Paralegal Answer?

The law provides protections to the public by prohibiting anyone who is not a licensed attorney from giving legal advice to the public. This includes professionals who may be titled “paralegal,” “legal assistant,” etc. A paralegal or legal assistant is a person who does substantive legal work under the direct supervision of an attorney; however, such a person may not engage in the practice of law, which clearly includes:

1. Accepting cases;
2. Representing clients in court or negotiating settlements on behalf of clients;
3. Giving legal advice;
4. Producing legal documents without an attorney’s supervision, review, and approval.

The practical implications of these laws usually impact our clients in a few ways:

1. Suppose your bank told you that you need a Free Trader Agreement or a Quitclaim Deed by tomorrow’s closing. You call your attorney but she is out of the office. Even though the documents are relatively simple, and the paralegal knows how to prepare them, she may not draft the documents and submit them to you to execute without the attorney’s review. Even though this may negatively impact your closing, there is nothing the paralegal can do to help you until the attorney is able to review and advise.

2. Clients routinely call with questions about their case and about the law; paralegals may answer questions about the case and about the law, as long as they are not giving legal advice. An answer to a question will often be considered legal advice if it offers an opinion or an explanation which requires judgment, analysis, or evaluation. Answers to questions purely of fact – definitions, rules, procedures – are not legal advice. So, some examples of questions paralegals may answer include:

- Do the signatures on a Separation Agreement need to be notarized?
- How much notice do we have to give for a custody hearing?
- Can I file for alimony after my divorce is entered?
- How long must my spouse and I be separated before I may file for divorce?
- Does my spouse need to be served by sheriff?

Some examples of questions paralegals may NOT answer, and which are questions requiring legal advice, include:

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- Should we memorialize our settlement in a contract or a court Order?
- When should we set a hearing for custody?
- How long and in what amount can I expect my spouse to pay alimony?
- What is the effect of my affair on my alimony case?
- Would it “look bad” to enroll my children in a different school?
- What are the chances of successfully getting 50/50 custody?