

Divorce Procedures In Erie County

How is a divorce started?

A divorce is started with the filing of a Summons by the plaintiff against the defendant in the Erie County Clerk's Office.

What happens next?

Unless there is a court order permitting other service, the Summons must be personally served on the defendant. Service must be made by a person over the age of 18 who is not a party to the action on a day other than a Sunday. Sometimes, service will not be necessary if the defendant is willing to sign an affidavit admitting that he or she has been served and is agreeing to the terms of the divorce.

What happens once the defendant is served?

The defendant must make a decision as to whether or not to contest the divorce. If the defendant does not contest the divorce, then all of the next steps will be taken by the plaintiff or the plaintiff's lawyer rather than the defendant. If the divorce is contested, different steps are necessary.

In an uncontested divorce, 40 days after the defendant has been served (or sooner if the defendant has signed an affidavit agreeing to the divorce), a packet of papers, including various documents, is submitted to the Erie County Clerk's Office and then the Chief Clerk. The papers are reviewed by the clerk to make sure that all necessary documents have been presented. The packet is then given to a court attorney, known as a "referee". If all of the papers are in order, the referee will sign a paper called "Referee's Report" and pass the case onto a judge. If the judge is in agreement, he or she will sign a judgment of divorce. Your lawyer will pick up the papers from the Chief Clerk's Office once they are signed, and file the originals in the Erie County Clerk's Office. You and your spouse will then be provided with certified copies of the judgment of divorce, which is the document that you will need to prove that you are divorced, regain your maiden name if desired, and remarry.

What if my spouse contests the divorce?

If your spouse contests the divorce, your case will be heard in person in court rather than submitted to the court on papers. In Erie County, cases are first referred to the "Expedited Matrimonial Part" on the 5th Floor, 25 Delaware Avenue, Buffalo, New York. Most cases are resolved within six months at the Expedited Matrimonial Part. If your case is not resolved, it will be assigned to a judge who is handling contested cases which do not appear ready to settle. If your case cannot be settled, a trial will be held on whatever issues are still in dispute.