

Title 10 – Family Code

Chapter 3. Annulment and Divorce

Sec. 303. Divorce.

(a) **Grounds.** A divorce shall be granted where the Court finds that

(1) Irreconcilable differences have caused the irreparable breakdown of the marriage or

(2) The parties have mutually and voluntarily lived separate and apart without cohabitation for a period of at least six (6) months immediately preceding the filing of the petition. Divorces shall be granted without regard to the fault of the parties.

(b) **Petition.** One (1) or both parties may file a petition with the Court, sworn before a notary public or other official designated to verify signatures. The petition shall state the grounds for divorce and the facts and circumstances substantiating those grounds.

(c) **Summons.** When the clerk of the court issues a summons pursuant to this section, the clerk shall issue and include with the summons a temporary restraining order:

(1) Restraining both parties from transferring, encumbering, concealing or in any way disposing of any property, real or personal, whether jointly or separately held, without either the consent of the other party or an order of the Court, except in the usual course of business or for the necessities of life. The restraining order must require each party to notify the other party of any proposed extraordinary expenditures at least 5 business days before incurring the expenditures and to account to the Court for all extraordinary expenditures made after service of the summons. However, the restraining order may not preclude either party from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

(2) Restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing in this

subsection adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

(d) **Service of process.** The respondent in a divorce proceeding shall be served with a copy of petition as provided under 8 CCOJ 102.

(e) **Response.** The non-petitioning spouse may file a response to the petition within twenty (20) days of receipt of the petition. Such response may state the background facts and circumstances which show that there are no valid grounds for divorce, or may seek a division of property or custody of children different from any proposed by the petition.

(f) Hearing.

(1) In all divorce cases, the Court shall order and hold a hearing, unless the parties have stipulated to all matters and issues pending in which case the Court shall have the discretion to enter a decree without a hearing if the Court is convinced the stipulation is fair and equitable. If the matter is decided without a hearing, the Court shall have one party testify on the record as to the terms of the divorce. The hearing shall be held within six (6) months after the date the petition is filed. Where the custody of children is at issue in the case, the Court may order a home study by an appropriate social worker or other professional, to be completed and submitted to the Court prior to the hearing. The purpose of the home study shall be to assist the Court in determining the custody issue.

(2) At the hearing, both spouses shall have an opportunity to testify, cross-examine the other spouse and any witnesses, call and question other witnesses, and present documentary evidence. Each spouse may retain counsel or otherwise be represented in the proceeding. The hearing shall be closed to the public unless both spouses agree otherwise.

(g) **Filing fees.** A fee of seventy-five dollars (\$75.00) shall be paid at the time any action for divorce under this Code is filed, provided, that upon a showing satisfactory to the Court that the petitioner is indigent, the Court shall waive all or

so much of the filing fee as may be appropriate in the circumstances, keeping in mind that no person shall be barred from the Court because of lack of funds for filing.

(AMENDED PER RESOLUTION NOL 609-2008-04; DATED 4/28/2008)