

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[Max Rodden](#) is a North Carolina Bar Board Certified Family Law Specialist and has been practicing family law since 1991. He represents clients in all aspects of family law, and has extensive trial experience at all levels of North Carolina courts including district, superior, special proceedings, juvenile, small claims, administrative proceedings, the Court of Appeals and the Supreme Court.

## Why Do Divorce Cases Take So Long? PART ONE

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I often warn clients at the outset of their [divorce](#) case that the process will likely take longer and be more expensive than they anticipate. In my 28 years of practice, I've never heard of a client expressing dissatisfaction because their case was moving *too* fast. On the contrary, clients want the process to be over, and they are understandably confused at the amount of time it takes, especially if the case goes to court. This article is part one of a two-part series shedding light on some of the realities that contribute to the lengthy process of divorce. Part One focuses on the pre-court/mediation phase of the process. Part Two describes the court phase.

### PART ONE – PRE-COURT/MEDIATION PHASE

**Information Gathering:** One major contributing factor to the duration of a case is the process of information gathering. Clients have lived through the situation that got them to the point of a marital separation. The facts and disputes are second nature to them. Attorneys seek to know all those circumstances so they can understand the opposing party's perspective on those circumstances in order to determine the legally relevant information. This process can take multiple meetings with a client and, especially if court proceedings are necessary, usually involves scheduling and conducting interviews with witnesses and preparing them for court. Client meetings and interviews with witnesses take time because the demands of busy schedules of clients, witnesses, and attorneys or staff must be accommodated.

Attorneys must typically obtain documents relevant to the case. The volume of relevant documents differs from couple to couple depending on the individual factors in dispute, such as the size of assets and debts in question, types of assets in question, duration of the marriage, and sources of each party's income. Clients have busy lives to lead, so they need sufficient time to assemble documents. Even if opposing parties are willing to produce documents voluntarily, they often have reasons not to assign much priority in obtaining and furnishing them.

**Review and Analysis:** Attorneys have on their list of action items the review of certain documents or making a request for documents and information from the opposing

party, and due to time constraints beyond their control, sometimes those action items take longer than expected to complete. Conducting a rigorous review and analysis of documents takes large segments of time. Opposing counsel can also cause delays, and attorneys must use discretion in determining the process for addressing these delays. Attorneys acknowledge the time commitments of opposing counsel, but occasions arise when zealous representation mandates measures that serve to impose deadlines. Clients tend to understand the reality that their attorneys and opposing counsel are responsible for multiple cases, not just their own.

**Discovery:** In the absence of voluntary production of documents and information from opposing parties, attorneys resort to the formal process of gathering documents and information, which is called Discovery. Multiple rules govern the procedure, timing, and scope of information and documents that parties can obtain from each other in the context of litigation. The discovery rules typically give the responding party from whom documents and information are requested thirty days to produce the documents or object to their production. Time extensions, which are nearly always automatically granted by the court, can extend the time at least another thirty days. Objections to the production of certain documents and information cause even further delay. If the parties cannot resolve the disputes arising from the objections, then the court conducts a hearing to address them. Depending on the volume of cases in the county where the case is pending, the court might not be able to hold the hearing for several weeks or even a few months. At the conclusion of such a hearing, the court often mandates that some or all of the requested documents or information are to be produced but will still allow additional time for them to be submitted.

**Subpoenas:** In most cases, document requests involve third persons, business entities, or governmental entities that are not parties to the case. For example, the case might require the need for bank records regarding income or assets, school records regarding attendance and grades, or employer records for compensation and benefits information. To obtain these documents, attorneys prepare and issue subpoenas to these third parties entities. Subpoena recipients sometimes object to some or all of the materials being requested. As with requests for information from opposing parties in the discovery process, if the disputes arising from subpoena objections cannot be resolved, then court hearings have to be scheduled and conducted, which can add additional delay.

**Deposition:** The circumstances of some cases dictate that parties or third persons should answer questions in person with the questions and answers transcribed. This process is called a deposition and is part of the discovery process. Determining whether a deposition is appropriate in a case is beyond the scope of this article, but scheduling them can cause a delay due to the need to accommodate the schedules of all involved.

This article gives a broad overview of the process through which a divorce case often goes. The steps of any particular case will vary, but in every case, the essential process of gathering documents and information about the case impacts the duration and factors beyond the control of the attorney play a major contributor to the time it takes. Movies and television omit the laborious process that occurs before the dramatic trial of a case, but in the real world, the process before the trial has to happen, and it does not happen fast.

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