

Basic Guide to Divorce/Legal Separation

Winnebago County



Table of Contents

1. Basic Steps for Getting a Divorce or Legal Separation
2. Important Court Related Offices and Services
3. Legal Issues to Consider
4. County Checklist

<https://myforms.wicourts.gov>

10 Basic Steps for Getting a Divorce or Legal Separation

Even though each county may do things a little differently, or call various hearings by different names, there is a basic structure to how a divorce or legal separation will proceed in Wisconsin.

1. **Decide How You Will File.** You need to decide if you and your spouse will be signing the Petition together (filing jointly) or if only one of you will be completing the forms to start the action (filing alone).
2. **Decide If You Need a Temporary Hearing.** You may request a temporary hearing before the Family Court Commissioner by completing an Order to Show Cause and Affidavit for Temporary Order if you and your spouse cannot agree on any of the following issues:
 - Child Custody
 - Child Placement
 - Child Support
 - Use of the family residence
 - Use of automobiles or other personal property
 - Payment of bills
 - Payment of maintenance or spousal support
3. **File the Action.** The summons and petition (or joint petition) for divorce or legal separation and confidential petition addendum must be filed and a fee paid to the Clerk of Circuit Court. (Note: There is a mandatory 120-day waiting period before the court can hear the final hearing.)
4. **Deliver (or serve) copies of the documents to those who must receive them.** In order for the court to hear the case, your spouse must be provided with copies of the summons, petition, confidential petition addendum, and proposed parenting plan and proof of that service must be filed with the Clerk of Circuit Court.
5. **Obtain a Temporary Order (if needed).**

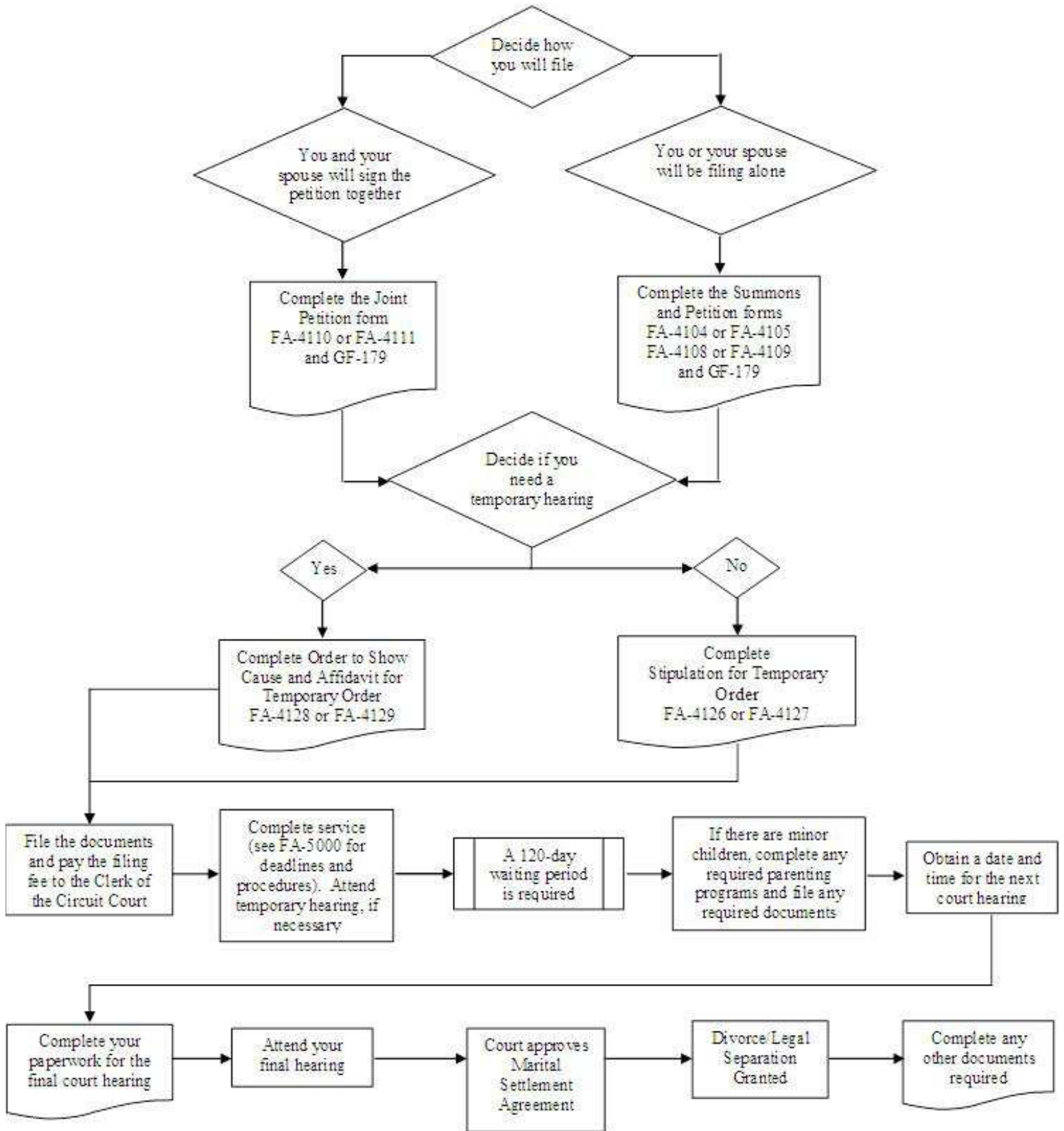
If you completed the Order To Show Cause and Affidavit for Temporary Order you must attend the Temporary Hearing you requested to have a temporary order issued.

If you and your spouse reach an agreement, you can complete and file a Stipulation for Temporary Order.

If you and your spouse don't believe it is necessary to have a formal temporary order, you may ignore this step at this time. If the situation changes before the final hearing, either spouse may seek a temporary order.
6. **If there are minor children, complete any required parenting programs and file any required Parenting Plans.** Some counties may require the parents to complete programs concerning the effects of divorce on children as a condition to obtaining a divorce.
7. **Obtain a date and time for the next hearing.** In some counties the court automatically schedules the next hearing. In other counties you may have to contact the court to schedule the next hearing. This next hearing, depending on the county, may be the final hearing.
8. **Complete your paperwork for the final hearing:**
 - a. Marital Settlement Agreement (if you and your spouse can agree on everything) or a Proposed Marital Settlement (if you don't agree).
 - b. Financial Disclosure Statements
 - c. Findings of Fact, Conclusions of Law, and Judgment of Divorce
 - d. Vital Statistics Form (from the Clerk of Circuit Court office).
9. **Attend your final hearing.** Arrive early, be prepared, bring your paperwork, and be polite.
10. **Complete any other documents required after the final hearing.** Sign car titles and real estate deeds, complete documents to divide pension plans (QDRO), change beneficiaries on life insurance policies, revise your will, and other matters when appropriate.

BASIC STEPS FOR GETTING A DIVORCE/LEGAL SEPARATION

This flow chart gives a general outline of divorce proceedings in Wisconsin. The procedures in every county are a little bit different. Please refer to the procedural checklist section of this guide.



Important Court Related Offices

Family Court Division

Physical Address:

Family Court Division Room 220
415 Jackson Street
Oshkosh, WI 54901

Mailing Address:

PO Box 2808
Oshkosh, WI 54903-2808

Phone: 920-236-4791

Contact: Family Court Office

Directions: The Family Court Division of the Clerk of Courts office is located on the 2nd floor of the courthouse, room 220

Family Court Commissioner's Office

Family Court Commissioner: Mark R. Fremgen

Physical Address:

Room 220
415 Jackson Street
Oshkosh, WI 54901

Mailing Address:

PO Box 2808
Oshkosh, WI 54903-2808

Phone: 920-236-4791

Contact: Mark R. Fremgen

Directions: The Family Court Commissioner's office is located on the 2nd floor of the courthouse, room 220

Child Support Division

Physical Address:

Room 140
415 Jackson Street
Oshkosh, WI 54901

Mailing Address:

PO Box 2808
Oshkosh, WI 54903-2808

Phone: 920-236-4780

Directions: The Child Support Agency is located on the 1st floor of the courthouse, room 140.

Important Court Related Offices

Court Self-Help Center/Services

Self-Help services are not available in Winnebago County, however it is recommended that you have a friend or relative review your forms for completeness.

Workshops or Other Assistance:

Provider: Free Legal Assistance Clinic

Contact: For dates and locations call Clerk of Court Office

Phone: (920) 236-4848

Fee: None

Forms are available at:

Location: Free Legal Assistance Clinic (see above)

Cost of Divorce Form Packets: None

Americans With Disabilities Act

If you need accommodations for a disability contact:
Melissa M. Konrad
920-236-4848

Notary Public Services

Location: Clerk of Courts, Room 419

Fee: After 3 notary signatures, \$0.50 per signature

Directions: 4th floor of the courthouse, room 419

Copy Services

A copy machine is available in the Courthouse. It is located in the courthouse lobby, 1st floor, Northeast hallway. 415 Jackson Street, Oshkosh, WI and copies cost \$0.25 per page.

The Clerk's office will not be able to make copies for you.

Process Service

Sheriff's Department

Name/Agency/Unit: Sheriff's Department Process Service

Address: 4311 Jackson Street
Oshkosh, WI 54901

Phone: 920-236-7303

Fee: The sheriff will bill after the service

Information Available: Online, through the Sheriff's Department, This information is available at the website address of <http://www.co.winnebago.wi.us/sheriff/civil-process>

Other Professional Process Services Available Locally

There are private process servers in Winnebago County. The Clerk's office can provide information about these private process servers.

Legal Issues to Consider

Self-Representation (Pro Se)

Pro Se means to represent yourself in court without an attorney. There are significant risks and responsibilities to doing so. You should explore the risks and determine if you can fulfill the responsibilities required. Your case may be too complex to handle on your own. Sometimes when people represent themselves, they have to hire an attorney to "fix" their mistakes. It may cost more to hire an attorney to "fix" the mistake than it would to have hired the attorney to handle it from the beginning.

Court staff **cannot** give legal advice to you. Court staff can provide general information about court rules, procedures, practices, and terms.

Jurisdiction: Where should you file?

Divorces and legal separations are filed in the county you currently reside, not where you were married.

To file for divorce in Winnebago County, at least one of the parties must:

- Be a **resident of the State of Wisconsin** for at least the **6 months** immediately before the date the action is filed, and
- Be a **resident of Winnebago County** for at least the **30 days** immediately before the date the action is filed.

To file for legal separation in Winnebago County, at least one of the parties must:

- Be a **resident of the State of Wisconsin** for at least the **30 days** immediately before the date the action is filed, and
- Be a **resident of Winnebago County** for at least the **30 days** immediately before the date the action is filed.

Divorce, Legal Separation, or Annulment?

Divorce

Divorce **ends** a marriage. The court rules on such issues as the division of property, maintenance (spousal support), and if necessary, arrangements for child support, legal custody, and physical placement. There is a 120-day waiting period to get divorced. Once the divorce is granted, the parties cannot remarry anywhere in the world for at least six months.

Spouses do not have to give reasons for wanting a divorce. Wisconsin is a "no fault" divorce state, which means neither spouse must prove that the other has done anything wrong, and only one spouse must testify under oath that he or she believes that the marriage is irretrievably broken. A marriage is irretrievably broken when there is no chance for reconciliation.

Legal Separation

Legal separation **does not end** a marriage. The court rules on the same issues as for divorce. The forms, instructions, procedural information, and waiting period (120 days) for obtaining a legal separation are also the same as those for divorce. Spouses are free to reconcile at any time. Spouses cannot marry another person while they are legally separated. If the spouses agree, they may convert the legal separation to a divorce at any time. If they do not agree, either spouse may convert the legal separation into a divorce by filing a motion to do so after one year from the date the legal separation was granted. The parties may not remarry anywhere in the world for at least six months from the day the legal separation is converted to a divorce.

Spouses do have to give a reason why they are requesting a legal separation and not a divorce. Both of the spouses will have to give testimony under oath that the marital relationship is broken.

Annulment

An annulment is a court procedure that declares that a marriage never existed. However, a court may annul a marriage only under limited circumstances. A short term marriage IS NOT a legal reason for annulment. See Wisconsin Statute 767.313 for the acceptable reasons to request an annulment. The forms, instructions, and procedural information provided by the Wisconsin Court System **are not** designed to be used to request an annulment. You should seek legal assistance if you feel you qualify and would like to file an annulment.

Other Issues To Consider

Legal Custody

Legal custody refers to the major decision-making authority for a minor child, including but not limited to decisions regarding consent to marry, enter military service, obtain a driver's license, authorization for non-emergency healthcare and choice of school and religion. Wisconsin law presumes that it is in the best interest of the minor child that the parents be granted joint legal custody. Joint legal custody means that **neither** parent's legal custody rights are superior, except as ordered by the court or agreed to by the parents. A court may find that awarding joint legal custody would be harmful to the minor child and order sole legal custody to one parent.

Physical Placement (visitation)

Physical placement refers to the right to have a minor child physically placed with a parent. It gives that parent the right and responsibility to make, during that placement, routine daily decisions regarding the child's care. One parent may be awarded physical placement with the other parent having periods of physical placement (visitation), or the parents may be awarded shared physical placement.

Mediation

It is recommended that the parents come to an agreement as to the legal custody and physical placement of their children. If they cannot, and a dispute arises, the court will order that the parents attend a mediation session. If the parents are still unable to come to an agreement, the court may make other orders, including the appointment of an attorney to represent the interests of a minor child (Guardian ad Litem), and the completion of a Proposed Parenting Plan. In making a final decision on legal custody or physical placement, the court will consider all factors related to the best interest of the child, including those listed in WI Statute 767.41, which is available at the following website: <http://www.legis.state.wi.us/Statutes/Stat0767.pdf>

Personal Safety Issues

If your case involves minor children, and you have serious reason to believe that your health, safety, or liberty or that of a minor child would be jeopardized by the disclosure of certain identifying information both in paper and electronic records, you may request that identifying information be sealed from the public or the other party until a hearing is held. Once you have completed the forms (GF-177 and GF-178), the court will schedule a hearing. At that hearing you will have to convince the judge that it is in the interest of justice for the information to continue to be sealed.

Child Support

The court shall order either or both parents to pay child support for a child who is:

- Under the age of 18, or
- Age 18, but less than 19 and pursuing an accredited course of instruction leading to a high school diploma or its equivalent.

Payments for **child support** are generally intended to include basic support costs including food, shelter, clothing, transportation, personal care, and incidental recreational costs. Under a shared placement circumstance, parents may also be required to pay **variable costs** (reasonable expenses above basic support costs) in addition to child support, including child care, tuition, a child's special needs, or other activities that involve substantial cost.

Child support is calculated based upon the percentage standard guidelines established by the State of Wisconsin Department of Children and Families (DCF) Chapter 150. **Not every family situation is the same, so the approach that applies to a specific situation may be somewhat different from the guidelines.** The court may order an alternative that is greater or less than the guidelines if the use of the guidelines is unfair to one of the parents or children based on the circumstances, including but not limited to shared-placement, split-placement, low-income, high-income, or serial-family payer circumstances. The percentage standard guidelines are based on the payer's "gross" (pre-tax) income or earning capacity and the number of children in the payee's care. The guideline percentage amounts are:

- 17% for one child
- 25% for two children
- 29% for three children
- 31% for four children
- 34% for five children

For more specific information about how to calculate child support, parents may refer to DCF Chapter 150 Calculator which is available at the following website: http://dcf.wisconsin.gov/bcs/guidelines_tools.htm

Maintenance (Spousal Support)

A spouse seeking support from the other spouse may request maintenance in the divorce or legal separation. The court may order maintenance for a limited or indefinite length of time. When considering whether to award maintenance, the court will look at all of the circumstances of the parties, including but not limited to, the factors listed in WI Statute 767.56. This statute is available at the following website: <http://www.legis.state.wi.us/Statutes/Stat0767.pdf>

Family Support

Family support is a combination of child support and maintenance in a single order.

NOTE: There may be tax consequences for child support, maintenance, and/or family support payments.

Property Division

Wisconsin presumes that all property, other than property that a party receives as a gift or through inheritance, will be divided equally (after considering all debts). To achieve an equal division of property, the judge may award property to one party and a cash payment to the other party. The judge may divide property unequally after considering the factors described in WI Statute 767.61, which is available at the following website: <http://www.legis.state.wi.us/Statutes/Stat0767.pdf>

If the spouses agree on how to divide all their property, they must provide a description of which spouse will receive which property. This also applies to the property that may have already been divided. **If the spouses have already divided the property, or it is only in one spouse's name, they must still tell the court which spouse will get what property and the value of that property.**

Debts and Obligations

The spouses must disclose all debts, regardless of who they believe will be responsible for them. The judge will determine which spouse is responsible to pay the debts and other obligations after considering any agreements between the parties. Even if the judge orders one spouse to pay certain debts after divorce/legal separation, creditors are not bound by the court order established in Family Court and may seek payment from the other party if the party ordered to make the payments doesn't pay or files for bankruptcy. If this occurs, the party may request relief from the Family Court, but only if a specific order was established for payment of the debt or obligation.

Procedural Checklist

1. **Decide How You Will File**

Alone: Complete a

- **Summons** form
- **Petition** form
- **Confidential Petition Addendum** form

Jointly: Complete a

- **Joint Petition** form
- **Confidential Petition Addendum** form

2. **Decide If You Need a Temporary Hearing**

If Yes, complete the following form(s):

- **Order to Show Cause and Affidavit for Temporary Order**

These form(s) provide a place for the court to assign a Temporary Hearing date. The parties are given a date for this hearing at the time of filing.

This date is provided by Family Court Commissioner.

Go to #3

If NO, skip to #3

3. **File the Action**

A. Self-Help Services are not available in Winnebago County, however it is recommended that you have a friend or a relative review your forms for completeness.

B. Make 4 copies each of the following:

- **Summons**
- **Petition**
- **Confidential Petition Addendum**
- **Order to Show Cause and Affidavit for Temporary Order**

or

- **Joint Petition**
- **Confidential Petition Addendum**
- **Order to Show Cause and Affidavit for Temporary Order**

C. Take the original and the 4 copies to the Clerk of Courts office.

- In all counties except Milwaukee, the Clerk will collect the \$184.50 filing fee (if there are no minor children or there is not a request for maintenance) or the \$194.50 filing fee (if there are minor children or there is a request for maintenance).

In Milwaukee County, the Clerk will collect the \$188.00 filing fee (if there are no minor children or there is not a request for maintenance) or the \$198.00 filing fee (if there are minor children or there is a request for maintenance).

If you cannot afford the fees, and consider yourself indigent (low income), you may obtain a **Petition for Waiver of Court Costs and Fees** at the family court office, on-line, or at the Legal Assistance Clinic. Once completed and notarized the party takes the waiver form to the Family Court Commissioner's office. The Family Court Commissioner's office will review the form when available. Once reviewed, the form will be returned for filing to you.

- The clerk will return the necessary copies to you for distribution as follows:
 - **Original for the court**
 - **1 copy for each party**
 - **1 copy for Child Support Agency**
 - **1 copy to be returned after service**

4. **Deliver (or serve) copies of the documents to those who must receive them**

(See the **Service Packet** for Additional Information)

- A. We will deliver a copy to the Family Court Commissioner's Office.
- B. If you receive public assistance, the Clerk of Court Office will deliver a copy to the Child Support Agency.
- C. Have your spouse served with the following documents (if not filing jointly):
 - **Summons**
 - **Petition (including the Confidential Petition Addendum)**
- D. Obtain a completed and signed **Affidavit of Service** form (proof of service) from the individual who served your spouse or an **Admission of Service** form (proof of service) signed by your spouse.
- E. File Proof of Service with the Family Court division, Room 220.

5. **Obtain a Temporary Order (if needed)**

If you completed the Order To Show Cause and Affidavit for Temporary Order you must attend the Temporary Hearing you requested to have a temporary order issued.

If you and your spouse reach an agreement, you can complete and file a written stipulation (agreement) for a temporary order.

If you and your spouse don't believe it is necessary to have a formal temporary order, you may ignore this step at this time. If the situation changes before the final hearing, either spouse may seek a temporary order.

By Temporary Hearing

1. Prepare and take the following items to court on the Temporary Hearing date:

- **Wage statements**
- **Completed financial disclosure forms**
- **Income tax returns**
- **List of disputed items**

Directions to FCC Hearing Room: 2nd floor of the courthouse Room 220

2. The Family Court Commissioner completes the order during the hearing on a standard order form. This order will remain in effect until the divorce or legal separation is final, or otherwise modified by the court.

By Stipulation

1. Complete the **Stipulation for Temporary Order**.
2. Both you and your spouse, and the Child Support Agency if you are receiving public assistance, must approve and sign the form.
3. Self-Help Services are not available in Winnebago County, however it is recommended that you have a friend or relative review your forms for completeness.
4. Make 3 copies.
5. Send or deliver the original and 3 copies of the following documents to the Family Court Commissioner:
 - **Stipulation for Temporary Order**
 - **If you would like your copies returned, please provide self addressed stamped envelopes.**
6. Once filed, a Court Official will review the Stipulation. The Clerk of Circuit Court will mail a copy back to you .

6. **If There Are Minor Children, Complete Any Required Parenting Programs And File Any Required Parenting Plans**

At the time of filing or when you obtained a court date, you may have been notified that there is a requirement to attend a parenting education class or complete a Proposed Parenting Plan. If so, make sure you have done what is required. If you are unsure about this requirement, ask the Clerk of Court or Family Court Commissioner in your county.

7. **Obtain a Date and Time for the Next Hearing**

(if not already automatically assigned)

A. If your divorce is

- Stipulated: To receive a Default Divorce Hearing which may be your final court date, you are not required to do anything.
-
- Contested: To receive a Status Conference which may be your final court date, you are not required to do anything.

B. The date will then be assigned by the clerk at time of filing and you are notified at the time the Summons and Petition are filed.

C. Complete the **Order to Appear** form if necessary with the date of your hearing

- Make 2 copies.
- Go to the presiding court official to obtain a court official's signature.
- Serve the **Order to Appear** or other court notice on your spouse and the Child Support Agency by separate service.
- Take Proof of service with you to your next hearing.

8. **Complete Your Paperwork for the Final Hearing**

A. If you haven't already, you must **complete** the following documents prior to your final hearing:

- **Completed / updated financial disclosure statements**
- **Marital Settlement Agreement**
- **Certificate of Divorce**
- **Self addressed stamped envelope for each party, size 5x7**

B. If not filed already, the following documents need to be **filed** in the FCC Office, room 220 of the courthouse no later than 10 days before the final hearing:

- **Completed / updated financial disclosure statements**
- **Marital Settlement Agreement**

C. **Bring** the following original documents and the correct number of copies with you to the final hearing:

- **Completed / updated financial disclosure statements (2 copies)**
- **Findings of Fact, Conclusions of Law & Judgment (3 copies)**
- **Certificate of Divorce (1 copy)**
- **Self addressed stamped envelope for each party, size 5x7 (1 copy)**

9. **Attend Your Final Hearing**

- A. Go to the assigned courtroom at least 15 minutes before your court time and let the bailiff or court clerk know for which case you are appearing (you may want to go even earlier to observe another hearing). Be prepared with all your copies and documents and be polite to the court official, your spouse, or any other person that is in the courtroom.
- B. When your case is called, go to the front of the room and sit where directed by the court or the bailiff. Bring any papers and documents with you that are related to the hearing.
- C. Be prepared to testify under oath and answer questions that may be asked of you by the Court or your spouse. If you wish to offer written evidence or documents to the court, give the original to the court and a copy to your spouse.

10. **Complete Any Other Documents Required After Your Final Hearing**

If a divorce is granted, a form called the Certificate of Divorce/Vital Statistics must be completed. The form for your divorce is completed before the hearing by one of the parties prior to coming to court. If you still need to complete it you may get it at the FCC office, room 220 of the courthouse.

If you did not receive copies of the Findings of Fact, Conclusions of Law and Judgment and attached Marital Settlement Agreement forms immediately following your final hearing, you will receive a copy of them from the court with the Judge's conformed signature 3 - 4 business days.

These documents serve as your final divorce papers and you must keep them for your records as proof of the divorce.

If you agreed to exchange certain types of property you may be required to follow up with different government offices and businesses with certain paperwork. For example, you may need to sign car titles and real estate deeds, complete documents to divide pension plans (QDRO), change beneficiaries on life insurance policies, revise your will, and other matters when appropriate.