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## Informal Divorce

Many technical expressions are used in everyday life with different meanings, with the result that colloquial words often arise out of specific terms. Such a linguistic process has been reversed in the case of "informal divorce." Having emerged as an outcome of informal marriage, informal divorce has now become a legally recognized form of marriage dissolution.

### History

The origins of informal marriages date back to Roman law, as it officially recognized the so-called *usus* marriage (marriage as a consequence of the common intention of the spouses to consider each other as such). Although the Council of Trent (in 1563) and the English Marriage Act of 1753 required a church wedding ceremony to validate the marriage, in order to protect children and to limit inheritance disputes among the various concubines and natural children, informal marriages survive today under the name of common-law marriages.

Common-law marriages are recognized in some Australian and U.S. states and in a few Canadian provinces, where a couple can be acknowledged as legally married even without a license or a ceremony. A mutual agreement between the spouses to enter into a marriage relationship excluding all others, characterized by cohabitation, respect and faithfulness, is deemed sufficient. In 1877, the U.S. Supreme Court declared in its ruling in *Meis-*

*ter v. Moore* (96 U.S. 76) that "marriage is a thing of common right," thus validating the practice of common-law marriage within states that did not require wedding solemnization by law.

The simplicity of entering the marriage is set aside at the time the relationship ends, since the couple must file for divorce before a regular state court: thus, informal marriage requires a formal divorce. This led to the idea of providing spouses with an easy procedure, applicable to both formal and informal marriages, the so-called informal divorce, a new institution still in its trial stage in two U.S. counties.

### Pilot Project

On July 13, 2010, the Michigan Supreme Court authorized the 29th Judicial Circuit Court to implement a pilot project named the Family Division Informal Docket for Low Conflict Domestic Relations Cases. The project aims at developing an informal docket for cases of divorce involving children, available only to low-income couples intending to appear in court without the assistance of an attorney. The project is applicable only in Michigan's Gratiot and Clinton Counties and is directed to test the effectiveness of informal divorce. The project started on September 1, 2010, with a planned test run of three years or as long as the Michigan Supreme Court deems necessary.

During the test period, the circuit court must collect data and information, to be forwarded to both the State Court Administrative Office and the selected evaluator for the project. The appointed circuit court, the State Court Administrative Office, and the evaluator have the task of improving the effectiveness of the project by setting out new operational rules as necessary, with specific regard to time and cost savings as well as protection of the weak. Divorcing couples do not have to pay any professional costs, as they are able to sit and discuss matters before the judge without the assistance of an attorney. The absence of professionals is supposed to simplify the overall procedure and make it move more quickly by avoiding delays caused by technicalities. A positive outcome is anticipated for both the participants and the central government.

Informal divorce is available only for couples who cannot afford a lawyer and do not have

contested issues: no disputed division of property to be decided or criminal allegations pending between the spouses. For the test-run time, the court will create a pool of cases, selected from cases pending before the court. The selected parties are not obliged to join the project and may express their preference for the standard divorce procedure.

The procedure commences only after the service of the complaint, the reply to the complaint, and the summons have taken effect. These documents may be compiled autonomously by the subjects involved. The court then refers parties to the Friend of the Court Office (FCO) for a settlement conference, during which recommended orders for custody, parenting time, and child support are drafted. The FCO must also ascertain that the couple is suitable for joining the project and, if this is the case, obtain the written consent of both parties to be included in the project.

Within 30 days after the FCO receives the parties' consent to be involved in the project, the initial hearing before the family division judge is scheduled. The parties may discuss their objections to the recommended orders issued by the FCO, provided that the objections themselves have been previously notified in written form to the other party, to the judge's clerk and office, and to the FCO. If there are no objections to be examined, the family division judge discusses with the parties the unresolved issues. The hearings may take the form of a conference; that is, both parties and the witnesses have to swear in, the hearings are recorded, and the parties are allowed to present evidence as well as to direct questions to each other and to the witnesses (with the necessary prior consent of the judge). The judge may also help the parties to assess all of the fundamental issues, introducing and structuring the discussion. The final decision is binding and takes immediate effect.

### Other Alternatives to Formal Divorce

Informal divorce aims at reducing costs and the time frame for the settlement of disputes between ex-spouses. It has been conceived as an alternative to the widespread use of long-term separations, which appear to be more financially convenient (due to the absence of attorneys and the continuation of medical and tax benefits) as well as less technical and contentious.

Mediation and an informal settlement agreement instead require technical knowledge but differ from each other in that the former is applicable in any case concerning family matters (including paternity cases and custody orders between unmarried parents), whereas the informal settlement agreement concerns only the dissolution of the marriage.

While *pro se* divorce is available without the assistance of an attorney, it differs considerably from the informal divorce. The latter requires the formal acceptance of the simplified procedure by both parties, whereas *pro se* divorce can be chosen by only one party, discussing his or her own case in person, while the opponent is assisted by an attorney.

In conclusion, the many alternatives to divorce that have recently arisen point to a general need for simplification and for reduction of technicalities, in order to satisfy the demand to cut costs following the global economic crisis that began in 2008. Furthermore, taking into consideration the trauma suffered by spouses deciding to end their marriage, it is evident that the legal procedure necessary to settle all relevant disagreements should be facilitated, so as to avoid further harm to the parties.

Isabella Ferrari

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**See Also:** Collaborative Divorce; Common-Law Marriage; Michigan; *Pro Se* Divorce; Simplified Divorce.

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