about your case

information about divorce for my clients

Remember:

- It is in your family's best interest to stay out of court
- Divorce is not automatic: you must "ask" the Court (in writing or by appearing) for a divorce date which is at least six months after the "Respondent" receives the Petition for Dissolution.
- Spousal support is usually taxable to the recipient and deductible from the payor's income if there is a written agreement or court order
- Child support is not taxable to either party, nor can either party deduct it
- You need a new will
- You probably should not hold property with your spouse in joint tenancy: ask me about this
- Ask me for a tax letter to your accountant every year about the deductibility of your fees

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Getting Started

The decision to pursue a dissolution of marriage is a serious one affecting everything in your life, particularly your children. That decision must be yours; it is not your attorney's to make. Before you take this step, I urge you to seek marriage counseling, and if this not possible, to seek the assistance of a mental health professional to help you with your decision and then with the process.

Sometimes, of course, that decision is out of your hands. As a practical matter, either spouse can unilaterally obtain a dissolution of marriage without the consent of the other. The grounds for divorce in almost all cases is going to be "irreconcilable differences", which is not difficult to establish.

The document that initiates the dissolution or legal separation procedure is called the Petition. It is filed with the court and becomes a matter of public record. Notice of the filing of the action is published in local newspapers.

The Petition is a request that the marriage be dissolved or that a legal separation be granted; the party making the request is called the Petitioner. The other party is the Respondent. There is no significance or advantage to being the Petitioner. The Petition simply gives certain required statistical information, may or may not contain a general list of the parties' property, and lists the "relief" that will be requested, including child custody, visitation, division of property and support.

What is the Best Approach ?

How you proceed will make all the difference in the world, both emotionally and financially. There are a number of alternatives; that choice will depend on your spouse as well.

Mediation

Mediation is an ideal way to resolve your case because it gives you the most control over your case and can be the most cost-effective; however, it is not for everyone, particularly folks who do not feel that they have the ability or the bargaining power to go head to head with their spouses, even with a neutral third party overseeing the process.

The mediator, a neutral professional (usually a family lawyer), meets with both parties, usually at the same time, to clearly define the issues in dispute, to facilitate communication and to help them create an agreement that addresses both parties' needs and concerns. The mediator does not make decisions for you.

What is a "Legal Separation"?

A formal action for legal separation is used rarely, usually for religious reasons or in cases where it is necessary to remain married in order to protect retirement and/or medical insurance rights. A legal separation permits you to file your income taxes as a single person. There are no residency requirements for a legal separation, so it is possible to begin an action as a legal separation without having met the residency requirements for dissolution. You can then amend the Petition to request a dissolution of marriage. The six month "waiting period" would still begin with the date the legal separation papers were served. This procedure is the same as a dissolution of marriage in all respects except that the marriage is not actually dissolved: that is, you will remain married. Nonetheless, we have found that most cases that begin as legal separations end as dissolutions.

The mediator focuses on helping participants reach their own agreements and does not represent either party. Therefore, mediation is not a substitute for independent legal advice. Some mediators draft the actual agreement and prepare the pleading(s). Each client usually has an independent advisory lawyer to help him or her to understand the law, make informed agreements, perhaps write up the final agreement and complete the divorce procedure. Outside resources (accountants, appraisers) used may be joint or individual.

Collaborative Law

Collaborative Law is the intentional creation of a settlement climate. In this process, each person is represented by counsel, but all disputes are resolved by informal settlement conference. Therefore, both parties and counsel are required to commit to resolving the case without resort or threat of resort to the courts. All discovery, if any, is informal; outside resources used are joint, mutually selected experts, and all other "rules" of litigation are tailored by the parties to meet their individual case.

Litigation/Adversarial Law

Sometimes the adversarial process cannot be avoided. Regardless of your good faith intent to mediate or collaborate, your spouse may not be so inclined. Or the issue may be just too difficult. There is hope, however, in that most "adversarial" divorces end up being collaborative endeavors anyway. Whether or not this will ultimately happen depends on you, your spouse, and often your spouse's attorney.

Because of my belief that the court system is a destructive process for both the parties and the attorneys, I no longer represent clients in Court. Therefore, if litigation cannot be avoided, I will refer you to competent and respected litigation counsel.

What is "Collaborative Practice?"

Collaborative Practice is a new way for a divorcing couple to work as a team with trained professionals to resolve disputes respectfully, without going to court. Each client has the support, protection and guidance of his or her own lawyer. The lawyers and the clients together comprise the **Collaborative Law** component of Collaborative Practice.

While Collaborative lawyers are always a part of Collaboration, some models provide child specialists, financial specialists and divorce coaches as part of the clients' divorce team. In these models the clients have the option of starting their divorce with the professional with whom they feel most comfortable. Then the clients choose the other professionals they need. Therefore, the clients benefit throughout collaboration from the assistance and support of all of their chosen professionals.

Although Collaborative Practice comes in several models, it is distinguished from traditional litigation by its inviolable core elements. These elements are set out in a contractual commitment among the clients and their chosen collaborative professionals to:

- negotiating a mutually acceptable settlement without using court to decide any issues for the clients
- withdrawal of the professionals if either client goes to court
- engaging in open communication and information sharing, and
- creating shared solutions that take into account the highest priorities of both clients.

Tips For Successful Mediation/Collaboration

- Attack the problems and concerns at hand. Do not attack each other
- Avoid positions: instead, express yourself in terms of needs and interests and the outcomes you would like to realize.
- Work for what you believe is the most constructive and fairest agreement for both of you and for your family.
- During settlement meetings, remember the following:

  ❧ Do not interrupt when your spouse or his or her attorney is speaking. You will have a full and equal opportunity to speak on every issue presented for discussion.

  ❧ Do not use language that blames or finds fault with the other person. Use non-inflammatory words. Be respectful of others.

  ❧ Speak for yourself: make "I" statements. Use each other's first names and avoid "he" or "she".

  ❧ If you share a complaint, raise it as your concern and follow it up with a constructive suggestions as to how it might be resolved.

  ❧ If something is not working for you, please tell your attorney so your concern can be addressed.

  ❧ Listen carefully and try to understand what the other person is saying without being judgmental about the person or the message.

  ❧ Talk with your attorney about anything you do not understand. Your attorney can clarify issues for you.

- Be willing to commit the time required to meet regularly. Be prepared for each meeting.
- Be patient - delays in the process can happen, even when everyone is acting in good fatih.

What About Kids

Parents are forever. As you know, a divorce or separation decree cannot and does not end your responsibility as a parent. The best thing you can do for your children is to put their interests first, and to work out a parenting plan with your spouse without resort to litigation.

If you were to enter into custody litigation, California courts will not permit you to litigate a custody or visitation issue until you and the other parent have mediated that dispute in good faith. However, the court-sponsored mediators have very litle time to devote to your matter, and are usually overwhelmed. In many counties, they can make recommendations to your judge, even though they have never met your children and may have only met with you once. If the matter is not resolved, it could be referred to a private evaluator, who will present a detailed, usually painfully critical - of both of you - report to your judge.You will then be required to present your case to the judge, using acrimonious testimony about your children's other parent, which literally destroys your ability to coparent effectively in the future.

But you have another choice. You can work with trained professionals skilled in child development and communication skills who can help you to develop a parenting plan that reflects your children's ages and the personal dynamics of your family. These professionals are called divorce coaches, and are an integral piece of the Collaborative Practice model, as well as highly recommended in a mediation model. Your coaches may also recommend a child specialist, who will meet with your kids and be their "voice" at the table. These professionals will be available to assist you with your parenting issues long after I have signed off on your legal agreement.

Guidelines for Parents

- Allow time for you and your children to adjust to those changes that have been brought about by the divorce.
- Remember the best parts of your marriage. Share them with your children and use them constructively, whether or not you have custody.
- Assure your children that they are not to blame for the divorce and they are not being rejected or abandoned.
- Continuing anger or bitterness toward your former spouse can injure your children far more than the divorce or separation itself. The feelings you show are more important than the words you use.
- Refrain from voicing criticism of the other parent in front of your children.
- Do not force or encourage your children to take sides.
- Try not to upset a child's routine too abruptly.
- Don't let guilt about the ending of the marriage interfere with discipline; children need to know what's expected of them, and they feel more secure when limits are set.

I am also going to ask you to sign up for a session of Kids' Turn, the wonderful workshops available in the Bay Area for families undergoing separation and divorce in which you and your children will make meaningful connections with kids and parents going through the same things you are, while learning skills to cope with this difficult transition into a thriving post-divorce family.

Understanding Child Support

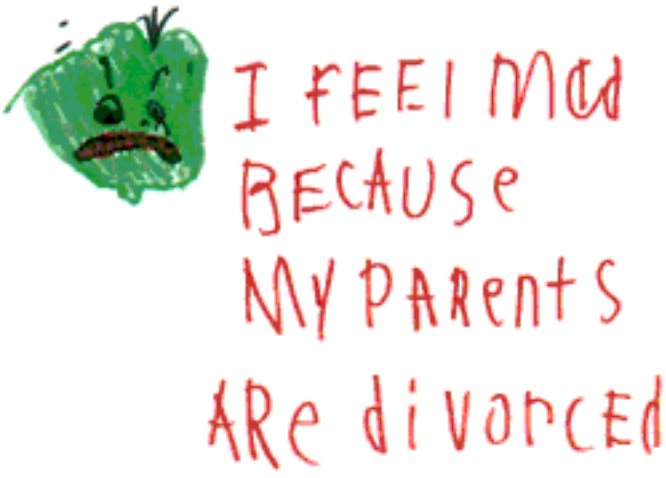
The amount of money one parent pays to the other for child support is determined by a formula known as "guideline support". In mediation and collaborative law, you can use the guidelines as your benchmark or create your own support arrangement based on your unique needs. However, it is important to understand how the guidelines work.

The guideline calculations assume that each parent provides support for the child when the child is in his or her household, and that child support represents the higher earner - or lower timeshare parent's contribution to the shortfall in the other parent's home, and not the entire amount of money it take to support a child. In an article for the Family Law News for the State Bar Family Law section, George Norton describes the formula as follows.

> *The California mandatory child support guideline (Family Code section 4055) is based on an "income shares" approach. Each parent in a dissolution is assessed a contribution for the children's support proportionate to this or her income. The amount assessed is affected by the amount of the parties' combined total incomes, and by the custody and visitation timeshares. As income rises, the percentage of total income assessed declines. As timeshares approach 50 percent, the formula assesses a higher percentage of the parents" incomes, on the theory that it is more expensive to have two significant households for children...The total amount assessed for the children is then divided between the parties for the benefit of the children in proportion to the time each parent spends with the children and is responsible for their care. It is this ultimate division that results in the monthly transfer of money between the two parents' households by way of a court order for child support. (Vol. 23, No. 1, pp 1-2)*

Understanding Spousal Support

Spousal support is the "grayest" of all areas of family law, is inextricably tied into prevailing societal expectations and the side of the bed your judge got up on the morning of your support hearing, and for that reason is seldom litigated. Your right to be supported or your obligation to support your spouse is supposed to depend on both of your needs, your abilities to pay, the marital standard of living you enjoyed during your marriage, the length of your marriage, your respective ages and states of health, and any other factor a court chooses to consider. However, it often depends on a judge's personal take on the changing norms of society (for example: even though many of the current statutory support policies are aimed at protecting spouses who in the 50's and 60's gave up their careers to raise children, many judges , relying on current trends, expect both men and women to aspire to their highest career goals), or simply the judge's subjective take on your motivations. For this reason, you are far better off negotiating an arrangement with your spouse that honors both of your needs and goals as best it can.



Property Considerations

TYPICAL PROPERTY DIVISION ISSUES

The Residence

There are many questions you may have about the family residence: Who will stay there while you negotiate your settlement? Who will pay the mortgage? Will the person who stays there pay rent to the community? Will we sell it or will one of us buy the other person's equity? What is it worth? These are all things you will negotiate. One of the complications is measuring a separate property interest in joint real property and a community interest in separate real property. Generally, if you buy a property during the marriage in both of your names, any separate property monies you contributed to a) the purchase, b) the paydown of the mortgage principle, (but not interest, property taxes or insurance) or c) to improvements will be **reimbursed** to you from the community, without interest. However, if the property was brought into the marriage by one spouse and has always been in that spouse's name, the community has a **percentage** interest in the property proportionate to its contributions to improvements and payments on mortgage principle (but not interest, property taxes or insurance). If one of you is going to buy the other person's equity, the law does not allow you to deduct costs of sale or potential capital gains from the equity. However, if fairness dictates some consideration for these things, this also can be negotiated between you.

The Business or Professional Practice

This is usually the most challenging issue because of the various theories about whether or not you value goodwill, when and if you attach any value at all to an ongoing professional practice or business, and measuring a potential separate property interest. The general "rules" are: a business begun during the marriage is entirely community. A business begun before the marriage and carrying on throughout the marriage has community and separate components. There are several ways to apportion the separate interest, depending on how much weight you ascribe to the spouse's personal contributions to the marital appreciation and how much weight you ascribe to the marketplace (the idea that the initial investment of separate property has appreciated pretty much on its own, without much effort on the part of the owner spouse.) If it turns out that your business needs to be valued, we will need expert professional help with this.

Pension Plans, IRAs, 401(k)s

We call these assets "deferred" compensation because they haven't been taxed yet. They are worth less, dollar for dollar, than funds that have been taxed - for example, money in the bank. Therefore, you should always try to offset these assets against each other and not against liquid or other after-tax assets. There are two main types of plans: Defined Benefit (where the monthly amount that you going to receive when you retire is defined) and Defined Contribution (where your statement reflects the funds on deposit on your behalf). Be aware that there are certain governmental plans (for example, STRS) that appear to be Defined Contribution plans when in actuality, the statement you receive only reflects your own contributions. Because of the contributions that will be made by the governmental entity, the plan is actually worth 2-6 times more than the balance showing on the statement. You should always have a plan like this valued unless you are going to divide it equally. You can generally divide an IRA by asking your bank to transfer funds; the other types of plans will require a special court order, known as a "QDRO". A word of caution: never ask for a check to be written directly to the other spouse from any of these types of accounts- be sure that you have the bank transfer funds from your account directly to the other person's account.

Stock Options

Many people mistakenly believe that if stock options they've been granted through their employment haven't vested, they are separate property. Or that stock options granted during the marriage are entirely community property. Actually, only stock options that are granted after the date of separation and vest after the date of separation are entirely separate, and only those granted during the marriage and vesting during the marriage are entirely community. There are separate and community components to options granted prior to the date of marriage and vesting during the marriage, and to options granted during the marriage and vesting after the date of separation. There are three commonly used methods of apportioning stock options: the "time rule" (usually favoring the community), "seqeuential vesting" (usually favoring separate property) and a blend of the two methods. I will probably ask a forensic accountant or other financial professional to apportion this asset, based on the method you choose.

COMMUNITY PROPERTY OVERVIEW

("Sam" and "Chris" are example spouses)

1. Any property owned by one person ("Sam") as of the date of the marriage is presumptively Sam's separate property. For so long as it is kept separate and in Sam's name, it remains Sam's separate property and Chris will not have any interest in it upon divorce.

2. Any property received by one person ("Chris") after the date of marriage as a gift, whether from "Sam" or from any other person, and any property Chris inherits is Chris' separate property and for so long as it is kept separate and in Chris' name, it remains Chris' separate property and Sam will not have any interest in it upon divorce.

3. After the date of marriage, the income, dividends, rent and appreciation of one person ("Sam's") separate property remains Sam's. However, there are some California cases that have held that when the increase of value, profits, or extraordinary income results specifically from the efforts of a spouse after marriage, a portion of the increase in value, profits, or income can be apportioned to the community.

4. While the underlying business owned by one spouse ("Chris") before marriage remains separate, all increase in value and profits (in excess of a reasonable salary to Chris) that are attributable to Chris' efforts are community property. Chris' salary from that business is community property.

5. Family Code §2640 provides that in the event of a dissolution of marriage, contributions from one person's (Chris') separate property to the acquisition of jointly held property will be reimbursed to Chris without interest or adjustment for change in value.

6. All income earned by either spouse during the marriage is community property, owned ½ by each spouse.

Property Considerations

APPROACHES TO DIVISION OF TANGIBLE PERSONAL PROPERTY

Thanks to Barbara DiFranza, JD

The division and disposition of household furniture, tools, silver, etc., can most economically and satisfactorily be resolved by the parties themselves. While keeping their attorneys informed, spouses/partners may work together on characterizing, evaluating and/or dividing their tangible personal possessions.

Characterization

Community property

If an item was purchased or acquired during the marriage or purchased with funds acquired from earnings during the marriage, it is community property unless it belongs in the category of separate or children's property (see below).

Children's property

According to Family Code Section 7502, the child's property belongs to the child. Therefore, unless there is a Van Gogh painting hanging in one of your children's rooms, it would be best to concede that the children' furniture is owned by them and should be excluded from the personal property division.

Separate property

If an item was purchased with funds that a party had before marriage, or with funds that were a gift to a party or if an item of property was given to a party during the marriage, it is separate property. This includes gifts from one party to the other during the marriage. If there is any doubt, check with your attorney.

Evaluation

To place values on items the parties have identified as community property:

- The parties may hire their own appraisers
- The parties may hire a joint appraiser
- One or both parties may bear the cost
- The parties may act as appraisers of their own property, keeping in mind the law on this subject: The fair market value is what a willing buyer would pay a willing seller for the item (in its used condition, not to replace it new), neither of them being under any undue pressure ("garage sale" price)
- In the case of the joint appraiser, the parties may agree to be bound ahead of time to the appraised value of the items
- The parties may also agree, before the appraiser arrives, to be bound to the disposition of particular items. For example, they may agree that each party will retain the items they currently possess.

Note that the personal property appraise will generally appraise all the property in the residence, leaving it for the parties to sort out separate from community, etc. It is best to accomplish any appraisal before moving items from the residence as the cost of the appraisal increases for each additional location.

Disposition

1. "Two Pile" System

The parties may divide **all** the property, junk included, into two piles of equal value, perhaps saving the cost of the appraiser. They can also divide just the **desirable** property into two piles of equal value and then resort to other methods for disposing of the unwanted items.

The parties may decide that one of them (flip a coin?) will divide the property into the two piles and other party may have first choice between the piles. Think carefully before choosing this method.

2. Alternate Choice System

Each of the items can be numbered and the parties can make alternate choices between the items until such time as all items have been chosen. Make sure you both have the same understanding of what an "item" is – do you want to group the bedroom set together as one item or treat each piece separately? Make these decisions before you start. If you object is an equal division, this method will not work out unless the items have already been evaluated. That is, once on-half of the total value has been reached, the remainder would belong to the other party. This system can be made self-executing by have a pre-made list of priorities. These could be exchanged as signed and dated between the parties, saving you from having third party present to record each choice as it is made.

This system is dangerous unless fair values have been agreed to or unless an appraiser will be called upon after the fact. That is, one party could come out with a disproportionate share of the community tangible property without being charged for it. But remember that "fair" is a personal thing. Items have monetary and also personal value – so the person with less than half of the community value of the personal property may be thrilled that she or she ended up with a treasured photo or painting. This then would be an "unequal" but "fair" division.

3. Sale or Auction

Occasionally, the matter is so frustrating that the parties propose that the entire lot be put yup for sale. This creates further problems: Where?.. when?...by whom?,.etc. Therefore, we recommend that the parties auction all remaining items. The spouses/partners can submit sealed bids on each disputed item or on all the disputed items as a lot with same to go to the highest bidder.

4. Arbitration

A third party such as the personal property appraiser could arbitrate the matter, perhaps distributing as well as evaluating the property.

5. Donation

A deadlock may be bypassed by agreement to jointly donate an item to a charity such as Goodwill, or to one of the children.

6. The Wedding Gift Agreement

Theoretically, each wedding gift given to the couple is owned ½ by each as his or her separate property. Although the law would call for an equal division r wedding gifts, the parties may agree that each keeps those items given by his/her family and friends.

7. Family Photographs and Slides:

These should be divided according to preference. Those photographs desired by both parties may be duplicated at the expense of both parties.

8. Undesirable Stuff, a.k.a. Junk:

Items that neither party wants can be disposed of in several ways: garage sale (split the proceeds) donation to a worth cause (split the tax credit) or by dividing them equally (according to value).

Conclusion

Before you begin, carefully plot out the method you will use so that there will be no misunderstandings. If extraordinary values are involved, check wit your attorney to insure that you are protected in this process. If you are able to complete the process without substantial attorney time, you will have saved yourself substantial fees and freed your attorney to work on more demanding and complex issues on your behalf

Discovery

Under the Family Law Act, the court is required to divide community assets and community liabilities substantially equally between the parties, unless the parties have entered into a property settlement agreement which sets forth a different arrangement.

One of our tasks is going to be to identify and place a value on all community assets and liabilities. If this information is not readily available, or if for some reason the accuracy of the information is suspect, the law permits various methods of investigation which are commonly called "discovery". Discovery is also available with respect to each party's needs and income, separate property assets and custody and visitation issues.

It is important to decide the extent of your need for discovery. Obviously, the safest practice in all cases would be to do the maximum discovery permitted by law. In your case, however, you may feel that the time and expense of full or partial discovery are not warranted.

The legislature has determined that while discovery is the right of every party to an action, it is the policy of this state to discourage the adversarial nature of marital dissolutions. Accordingly, Family Code §2100 was passed, which is intended to reduce the need for discovery by fostering full disclosure and cooperative exchange of documents and information.

Accordingly, the law requires a full and accurate disclosure of all property and debts under oath (penalty of perjury). This includes all earnings, investment opportunities, business interests, etc., regardless of whether they are considered community or separate property.

Regardless of the process you have chosen (mediation, collaboration, litigation), each party must fill out and exchange Income and Expense Declarations and Schedules of Assets and Debts signed under oath, which satisfies the minimum discovery requirement. You have been given worksheets to fill out which will give you a head start.

In the litigation scenario, more complicated discovery may consist of formal requests for documents, depositions taken of the other party or of someone else who has important information, or interrogatories sent to the other party.

Depositions consist of questions asked orally and answered under oath in the presence of a Court Reporter. These are usually done to determine what someone's testimony will be concerning pertinent facts, or, more important, to find out what kind of witness that person will be.

Interrogatories are also questions answered under oath, except that the questions are asked and the answers are provided in writing, signed under oath. Further discovery may include hiring appraisers to evaluate property, investigators to locate property, accountants to examine books and records (including such things as bank accounts, stock, and business records), and other special consultants as the facts of your case may require.

You have a right to pursue each of these means of discovery, although in collaborative law and mediation, interrogatories are rare and depositions unheard of except, perhaps, of third parties. Obviously, however, discovery takes time and costs

One of our tasks is going to be to identify and place a value on all community assets and liabilities.

My Declaration of Commitment to Clients

- To treat you with respect and courtesy
- To handle your legal matter competently and diligently, in accordance with the highest standards of the profession
- To exercise independent professional judgment on your behalf
- To charge you a reasonable fee and to explain in advance how that fee will be computed and billed
- To return your telephone calls promptly
- To keep you informed and provide you with copies of important papers
- To respect your decisions on the objectives to be pursued in your case, as permitted by law and the Rules of Professional Conduct, including whether or not to settle your case.
- To preserve the client confidences learned during our lawyer-client relationship.
- To work with other participants in the legal system to make it more accessible and responsive.
- To exhibit the highest degree of ethical conduct in accordance with the Rules of Professional Conduct and the State Bar Act

money. The degree to which discovery is necessary in any given case will depend in part on the complexity and size of the community property estate and, further, will depend on whether or not you have sufficient accurate knowledge of the estate so that this knowledge may be relied on in place of discovery. The time and expense of discovery are sometimes justified by the new information that is learned. In other cases, the new information may just confirm what was already known or believed.

If, after the divorce is finished, you find that your spouse did not fully disclose, Family Code section 2120, et. seq., gives you the right to "set aside" your Judgment (which incorporates your agreement) for up to one year, if there are indications of fraud. This motion is based on failure to disclose and should be made "within one year of the date on which the complaining party either did discover, or should have discovered, the perjury."

There are, of course, exceptions included in this statute, and you should consult an attorney as soon as you feel that perjury or failure to fully reveal property has occurred.

What About Fees?

It is impossible for me to estimate what it will cost to complete your case. Family law matters by their very nature have a way of becoming more complex than they first appear. Further, the cost of the case often depends on how cooperative your spouse and his or her attorney choose to be The most important consideration in setting legal fees is the attorney's time involved. More complex matters require more time and attention. Your cooperation and the cooperation of your spouse in supplying necessary information can be most helpful in controlling the amount of time required to resolve your family law matter.

Who Pays Your Fees?

It is important for you to remember that you, the client, are primarily responsible for my fee. However, if you resort to litigation, you are entitled to ask a court to make an order that your spouse or community assets will pay all or part of your fees. I find that even in Collablorative Law and mediation, it is important for my clients to be aware of what a court is likely to do about fees.

Courts have great latitude in awarding attorneys' fees, taking into consideration the assets, liabilities and earnings of each party. Traditionally, the higher earner was ordered to pay the lower earner's attorney's fees and court costs. This point of view has changed considerably in the past few years with the introduction of higher child support and other variables, and it is my experience that courts often charge all or part of attorneys' fees to the community if there are sufficient assets to pay them, or order each party to pay his or her own fees. However, individual judges have complete discretion and their awards are not predictable. The amount initially ordered by a court is "on account" of attorneys' fees and often represents only a part of the actual fees incurred. Amounts actually received pursuant to the Court's order will be credited to your account. Remember that, regardless of what the court awards, the client remains responsible for the full fee charged, less what is actually paid by your spouse or the community.

Minimum Charges

Based on a Harvard Law Review study, there are acknowledged minimum charges for tasks. The study shows that the minimum charge for a telephone call should be .2 of an hour, based on the transactional costs of dropping whatever we are doing to tend to your matter, procuring the file, making notes, and returning the file. You will not be charged for a telephone call inquiring into your bill or setting up an appointment if that is all that takes place during the call. The study shows that a minimum charge for a letter should be .4 of an hour, although it is not my practice to bill that much for a one-page letter unless we have edited it many times together. The minimum charge for a pleading should be 1 hour per page, although again, I am ordinarily more efficient than this. These parameters, though, are offered to give you an idea of what is considered reasonable, and to help you with your review of the bills you receive from me.

Your cooperation and the cooperation of your spouse in supplying necessary information can be most helpful in controlling the amount of time required to resolve your family law matter.

What Do We Do With Your Files?

Because we send you copies of all pleadings filed by either you or your spouse and send you copies of all correspondence, you will have your own complete file regarding your case. Additionally, all pleadings filed in your matter are available from the clerk's office at the Superior Court. I therefore may not keep my own copy of your file for more than five years. Accordingly, you should keep your copy in a safe place.

Costs

In addition to the fees for services, you are responsible for costs incurred in handling your case. These typically include fees for court filing. Depending on the nature of the assets involved and the cooperation of your spouse, additional costs may be incurred such as real estate and personal property appraisals, accountant's fees, deposition fees, etc. My intention is to keep these types of costs to a minimum, but you and I may decide that they are necessary to protect you.

Keeping Your Fees Down

Divorce often comes at a time when a family is going through a financial as well as an emotional crisis. Sometimes the emotional crisis can exacerbate the financial one by increasing the amount of attorney's fees and costs expended.

For example, a spouse who is vindictive or just plain upset may refuse to negotiate in good faith and may act in such a way as to provoke numerous meetings and/or confrontations, or may otherwise delay the proceedings. This is obviously beyond your attorney's control, and a common concern of many clients. When this happens, most clients would prefer not to be dragged into what they consider to be harassment. However, you and your counsel may be required to respond. As a result your fees and costs may be higher, even though it is not your fault or the fault of your attorney. For the most part you can only document the actions taken by your spouse or his/her attorney and request reimbursement for the fees and costs incurred unnecessarily. To some extent, however, you can reduce your fees in ways described below:

Telephone Calls

Keep the high cost of telephone calls in mind. A good practice is to keep a written list of questions/problems for my attention, to deal with these together in one organized telephone call and to try to limit your telephone conversation with meto your list.

If the matter requires attorney attention and/or intervention, please do not ask my assistant or the receptionist for legal advice, but ask them to get a message to me at the earliest possible opportunity. It is the policy of this office to return telephone calls as soon as possible. You need to be aware, however, that often my attempts fail because of busy lines or the fact that you are no longer there when I return the call.

e-mails

It is common to be doing a lot of our communication by e-mail. Since I can be much more available through e mail, you can expect a response within 24 hours. The minimum charge for an e mail is .1 of an hour, since I am spending a significant part of the day communicating with clients and professionals this way. I do not bill for e mails simply setting meeting times.

A "retainer" is usually charged at the beginning of a case. This is a payment in advance to be applied to attorneys' fees as they are actually incurred. The retainer is not the total fee, nor even an estimate of what the total fee will be. I cannot guarantee that the fees will not exceed the retainer. In the event that the fees exceed the initial retainer, I may ask you to replenish the retainer, guarantee monthly payments with a credit card, or simply agree to bill you during the progress of your case.

Remain Focused

Remember that my services are primarily legal. Certainly, unless I understand the underlying nature of your interaction with your spouse, I cannot represent you effectively. Recognizing that a dissolution is one of the most stressful times in a person's life, it is in your best legal interest that you are coping. Unless you are thinking clearly, you may be inclined to make some decisions to settle or not to settle the case which will ultimately be extremely costly to you. For that reason, I will spend some time with you exploring your interaction with your spouse, advising therapy and other assistance, especially in the early stages of your separation. I will most likely ask you to contact and develop a relationship with a Divorce coach in order to help you communicate effectively with your spouse and to be more present at the negotiating table.Having these types of issues dealt with in this manner is highly cost effective, as their fees tend to be quite a bit lower than an attorney's hourly rate.

In any case, you need to be aware that at some point, my listening to your experience will fail to generate a return worth the added costs that will appear on your monthly statement.

Participate in Your Case

Participate as effectively as you can in your own case. Do as much legwork for me as you can. You should obtain as much of the information and as many of the documents related to your case as possible, consistent with its proper and expeditious handling.

Organize and file the papers involved in your case, and bring them to all conferences and hearings unless otherwise directed. This way, you and I will be on the same "wavelength" when settlement negotiations are attempted in that both of us will have a full set of papers.

Be Ready to Settle

Think positively toward the settlement of the case. Spouses tend to have differing recall regarding acquisition of assets and numerous other matters. As a result of these many disputes of fact, and of still other disputes as to what the law is in these areas, I cannot give you percentages of probability of outcomes, nor can I guarantee any single result in the case.

You have more control over that outcome if you enter into negotiations with your spouse. Further, a judge may dispose of a case in such a way as to enrich the Internal Revenue Service rather than the parties. It is almost always best to settle the case if you can obtain a reasonably fair result. Therefore, as soon as we have enough reliable information regarding the issues of your case, I will look at attempting to negotiate a settlement.

Where There's a Will...

Pursuant to California law, all of your community property would go to your spouse upon death, unless you have a Will that provides to the contrary. For this reason, and many more, I suggest that a new Will be drafted for you. I can suggest the name of an attorney for this purpose if you would like. However, please understand that all property held in joint tenancy will go to the survivor and therefore, if your spouse holds property with you in joint tenancy and you die, it will go to your spouse, regardless of whether or not you have a Will specifically disinheriting your spouse. For that reason, please discuss with me the possibility of changing the title of any property you may hold in joint tenancy.

Closing Your Case

Once your Judgment is entered, you will need to attend to the following details if you have not done so already:

Transfer of Ownership: You and your spouse should sign the pink slip for the other's vehicle(s), removing each name from the registration records of the other's automobile. You should also contact your automobile insurance agent and inform him or her which spouse is to receive and continue to drive which vehicle.

To the extent property was confirmed to your spouse and your name is on the deed, you should execute an Interspousal Transfer Deed to your spouse and in any case must make sure that your name is removed from all county records, taxing authorities, and mortgages/loans. To the extent property was confirmed to you and your spouse's name is on the deed, we need to make sure that your spouse has executed the necessary Interspousal Transfer Deeds to you, and we need to make sure these have been filed and recorded.

If you have not already done so, you should either remove your spouse's name from all bank accounts, IRAs, etc., awarded to you, or, in the alternative, open new accounts in your name alone. You should also either remove your spouse's name from any credit card accounts awarded to you, or open new accounts. Be sure that your name does not remain on any credit card accounts for which your spouse is responsible, if possible.

Notice to IRS: It is particularly important that you keep the IRS and other taxing authorities apprized of your current address so that all notices come to you directly. This is so in that your tax returns are linked to the first social security number listed on the return. If any deficiency notice or like assessment is mailed to your spouse, and s/he does not provide you with a copy, you could be looking at significant liability down the road when the IRS finally finds you.

Important Support Issues: If you are receiving spousal support, remember that it is includible in your income for tax purposes (you must pay tax on it) and you must plan your budget accordingly; if you are paying it, remember that you can deduct it. Child support is not includible and not deductible.

401(k)s, Pension Plans, etc. If any retirement assets are to be divided, it is important to complete the drafting of the required order (QDRO) before your attorneys leave the case.

It is critical that you ensure that your spouse is not listed as beneficiary as to any of your retirement funds, no matter what type of funds they are. Federal law will pre-empt state law in these matters, and will not care if you have a judgment confirming the account to you - the plan will be forced to pay out to . your spouse.

Insurance Unless ordered to do otherwise by the terms of the judgment, you should contact your insurance agent and remove your spouse's name as beneficiary on any policies. Likewise, unless ordered otherwise by the terms of the judgment or QDRO, you should instruct your employer to remove your spouse's name as partial owner or beneficiary of any employee benefits.

Social Security If you were married for more than ten years, you have the right to Social Security benefits that are based on your former spouse's income; likewise, your former spouse has the right to Social Security benefits that are based on your income. These derivative benefits do not affect (i.e., do not decrease) the other person's benefits, and may be higher than your own benefits. Therefore, you should check into this by requesting the proper form from the Social Security administration, and you should elect the benefits that are the highest for you. (If you remarry, this option is not available. If you divorce that subsequent spouse, the option becomes available again!)

Taxes Some of your attorney's fees may be tax deductible. If you would like a letter from me to that effect, you will need to remind me sometime before the next April 15 rolls around.

In Sum...

This memo briefly outlines the procedures and some of the policies behind the legal framework of the dissolution of marriage or legal separation cases. It is not intended to cover all details of all cases, each of which is different. I am happy to answer any questions you may have in the future concerning the details of your case and look forward to working with you toward an amicable resolution of your matter.

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