

MINIMIZING THE FINANCIAL AND EMOTIONAL PAIN OF DIVORCE

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A divorce proceeding can be emotionally and financially draining to the parties. The emotional components conjure up many feelings: rejection, failure, guilt, anger, loneliness and the loss of physical and financial security. The financial components encompass the division of assets and the allocation of income to satisfy alimony and child support obligation, and the expenditure of money for legal and expert fees. If either party is angry, unreasonable or vindictive, it will protract the process and increase the legal and expert fees.

The key to minimizing the pain of divorce is to *keep the emotional components in check and to focus on the financial aspects of your case*. Of course this is easier said than done, and requires self discipline; a strong support system of friends, family or mental health professionals; and the right lawyer who will keep you on track.

SELECTING THE RIGHT LAWYER:

Selecting the right lawyer can significantly impact the outcome of your case. Choose a lawyer who will be empathetic to your emotional needs, but who will at all times focus on the financial aspects of your case. It is not productive for the opposing clients and lawyers to engage in personal attacks upon each other. Such behavior often fuels the anger between the parties resulting in additional legal fees and a climate of mistrust. The right lawyer will keep you out of harm's way and will avoid unproductive skirmishes that distract you from an expeditious resolution of your case.

CRITERIA TO CONSIDER IN SELECTING A DIVORCE LAWYER:

In selecting a lawyer you should interview more than one lawyer and consider the following criteria:

- **Experience, knowledge and reputation of the divorce lawyer and the law firm**

Although clients may have difficulty making this assessment, there are independent sources that address a lawyer's expertise. These resources include Martindale-Hubbell, a national directory that rates lawyers (www.Martindale.com); the Academy of Matrimonial Lawyers, which only admits lawyers if they meet stringent standards (www.aaml.org); and the Best Lawyers in America, which has a listing for the "best" family lawyers in each State (www.bestlawyers.com). The reputation of the lawyer and his/her firm can also be ascertained by speaking to other lawyers and professionals.

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- **Rapport and Responsiveness**

You will spend many hours with your lawyer and should be guided by his/her advice. It is important to have trust and confidence in the lawyer you select. The lawyer should be part of the solution and not be the problem. You should know whether your lawyer will be accessible and responsive to your needs. Inquire as to the availability of other family lawyers and staff at the firm in the event your lawyer is unavailable or otherwise engaged. In selecting a lawyer, determine whether the lawyer has genuine concern for your well being and that of your children (if applicable), and confirm that he/she will zealously fight for your rights.

- **Mutuality of Goals**

It is important for you and your lawyer to have the same philosophy and strategic plan and set mutual goals. If you significantly disagree with the advice or approach offered by a prospective lawyer, do not retain this lawyer. Continue the interview process until you find the right lawyer to meet your needs.

- **Fee Arrangement**

The hourly rate and retainer fees of family lawyers vary depending on the experience and reputation of the lawyer and the complexity of the case. Although an experienced lawyer may charge a greater hourly rate or retainer than another, the difference may be insignificant because the experienced lawyer may obtain a better result in less time.

THE CLIENT'S ROLE:

- **Be Aware of Your Rights and How The System Works**

The client and lawyer must function as partners in order to achieve their mutual goals. If either falls short, the result may be devastating. Clients should understand their rights and how the system works. In order for the parties to reach an economic settlement or for a judge to decide your case, you should assist your lawyer in obtaining the following information: identification and valuation of all assets acquired as of the filing of the divorce complaint; the true and accurate income of the parties (as opposed to income reported in tax returns); the lifestyle of the parties during the marriage; their current budgetary needs and the parenting arrangement with the children. Often it is necessary for your lawyer to retain forensic experts on your behalf in order to obtain this information. Fundamental knowledge of the applicable law in your case and ongoing communication with your lawyer will enable you to make meaningful contributions and decisions. Insist on receiving copies of all correspondence and all papers filed with the Court in order to be informed of all developments in your case. All major decisions should be made with your knowledge and authority.

- **Discuss With Your Lawyer a Cost/Benefit Analysis Prior to Incurring Legal Fees**

A divorce case has the potential of spiraling out of control. When this occurs, the fees become excessive and can be disproportionate to the results obtained. To avoid this, both the client and lawyer must undertake a cost/benefit analysis of the legal services that will be incurred versus the results that can be reasonably obtained.

For example, before responding to a settlement proposal made by your spouse, compare this proposal against the likely outcome that will result from a trial and the concomitant cost of legal and expert fees as well as the emotional burdens of participating in a trial.

- **Be Cooperative and Responsive**

As a client, you need to produce all relevant documents that support your case or controvert the allegations of your spouse. You should also provide accurate, credible and consistent statements which can be provided to the Court or spouse's lawyer under oath. This can take the form of sworn written statements or oral testimony given before or during a trial. Although your participation can be time consuming and burdensome, it is essential in obtaining a favorable outcome.

A divorce case is paper intensive and may be very demanding on you and your attorney. Procrastination, inattentiveness and apathy by a client can have a devastating impact on the outcome of the case. There are many documents, correspondence and Court papers that you may have to review, comment upon or produce. There are Court imposed time limits that must be met. You can prejudice your case if you fail to comply in a timely manner with court rules or to furnish important documents that may rebut false allegations asserted by the opposing party.

DON'T USE YOUR CHILDREN AS LEVERAGE TO OBTAIN A BETTER SETTLEMENT

It is contrary to the best interests of children and repugnant to a judge to litigate custody and timesharing rights for the purpose of negotiating a better economic settlement. Similarly, children should not be informed of the details of the divorce or be alienated from the other parent. This behavior may cause harm to the children and polarize the parties even further.

- **The Client and Lawyers Should Be Prepared**

Preparation by the lawyer and client, working as a team to achieve a common goal, may expedite the resolution of the case. Preparation enables the adverse party, the Court, mediator or arbitrator, as the case may be, to appreciate the strength of your case and the futility of perpetuating the litigation.

- **Be Reasonable in Your Expectations**

The Divorce Court is not the right forum for a litigant to extract a pound of flesh or to feel vindicated. The Court will strive to be fair to both parties. Heed the advice of your lawyer and be reasonable in your expectations. Otherwise, the legal fees may be excessive and disproportionate to the results obtained.

- **Don't Sabotage Your Case**

It is critically important that you interact with your spouse in a manner that will be conducive to a resolution of your case. Venting your anger and rage on your spouse can be catastrophic to the outcome of your divorce. If you ignore Court orders or provoke, embarrass or threaten your spouse, it may jeopardize your case and all the effort you and your attorney put forth.

UTILIZE ALTERNATIVE DISPUTE RESOLUTION IF YOUR CASE CANNOT BE SETTLED:

There are various interventions that are available to litigants in lieu of a court proceeding. The following alternatives are available:

- **Mediation** – the role of a mediator is to assist the parties in reaching a settlement. The mediation can take place before or after the commencement of a divorce proceeding. The mediator's job is not to render a decision, but to facilitate a resolution. Mediation is not recommended if one party to the divorce is dominant and will pressure the other party into a settlement or if there is a history of domestic violence. It is also inappropriate if one party believes there are hidden assets or unreported income. In that case, mediation should only take place after the lawyer has ascertained the true income and identified and valued the assets of each party. The cost of the mediator is paid by the parties. If mediation is ordered by the Court, the first two hours are free of charge.

- **Arbitration** – The parties can pay for a lawyer or a former judge to decide all or some of the issues in dispute after hearing testimony and reviewing evidence. This is similar to a trial before a judge except that it is somewhat less formal as it does not take place in a courtroom, is scheduled at times that are convenient to the parties and counsel, and the parties to the divorce pay the arbitrator's fee. Arbitration is often appropriate when there are allegations of unreported income or other inappropriate conduct that the parties prefer not to bring before a Court since the arbitrator, unlike a judge, has no obligation to report wrongdoing to the Federal or State authorities.

- **Blue Ribbon Panel** – The parties can agree on one or more individuals to provide a non-binding opinion as to the likely outcome of the case. Typically it is a panel of two experienced lawyers or a lawyer and an accountant. The parties are responsible for the panelists'

fees. This process may prompt a party with unrealistic expectations to become more realistic about the outcome of their case.

These alternative routes to resolving disputes may be used to settle some or all of the outstanding issues in a divorce, thereby shortening or eliminating the financial and emotional burden of taking your case to what could be a protracted and costly trial.

CONCLUSION

To minimize the pain of divorce, select the right attorney, be an active and responsive participant in the process and, most importantly, control your emotions in order to make reasonable and rational decisions that will enable you to end your divorce with dignity.