

PREPARING FOR DIVORCE

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Divorce is a major life change for everyone in the family. Thus, as with any important decision, a person considering divorce should be as prepared and informed as possible when making this decision. This article will address several factors and issues which should be considered by a person contemplating divorce.

1. Be Sure: Once a decision is made to seek a divorce, it can rarely be retracted. A person contemplating divorce should be absolutely sure it is what s/he wants. Absent physical and/or substance abuse, couples may benefit from counseling, and may be able to work through their differences. Even when the decision to divorce is confirmed, counseling can assist the couple with issues relating to communication, as well as how to discuss the divorce with children.

2. Be Informed: Contested issues in divorce largely center around two areas: finances and children. In each area, gather as much information as possible before the divorce is started.

A. Finances: The divorcing client should obtain as much information about the family's finances as is possible. This includes copies of all bank and retirement account statements, particularly for the past three years, copies of tax returns for at least five years, copies of paystubs, 1099s and other payment advices for the past three years, as well as copies of the family's health insurance plan/benefit statements and any life insurance policies covering the life of any family member. Additionally, if one of the parties has a business, copies of the business tax returns are necessary. This information will also be required to be exchanged by the parties pursuant to Probate and Family Court Supplemental Rule 410.

Moreover, a client should develop a budget for what the family has actually spent over the past year on family expenses. Reviewing utility and credit card bills, as well as bank and credit card statements for the past year will assist in the client in developing a realistic budget. This budget will also serve as a guidepost for the client in discussing support obligations and post-divorce living arrangements.

Finally, the client should gather information relating to the parties' debts, including mortgage and home equity loans, car payments, credit card and other personal loans, as well as any business loans or tax liabilities. This information should include the date of the loan, monthly payment and pay-off amount, the name of the person(s) obligated on the loan, and what the loan was used for. The Court not only divides property, but also responsibility for marital debt.

All of this information, gathered and organized, will allow the client to review his/her own financial situation, as well as to assist the attorney in assessing the client's needs and issues in the case.

B. Children: Most good attorneys do not want the clients fighting over the children and the parenting plan, as the attorney knows that such a battle is expensive and can cause long term disruption between the child and the parents. The client should

be prepared to discuss in detail what the parenting plan has been prior to the parties separating—who stayed home with the children, who brought them to school and activities, if a child has special needs (including medical and educational) and how those needs are being met, what each parent’s paying job entails etc. If one parent has stayed home with the children, or if the parties have opted to send their children to a private school or overnight summer camp, the Court, absent serious concerns about safety or ability of the parent, will often continue the status quo if it is economically and physically feasible to do.

The client can also use this information to craft a parenting plan that will allow both parents an opportunity to have a meaningful relationship with the child. The client should also think about holidays and special celebrations, and how these events will be dealt with in the future. The client must also be prepared to be flexible, as children’s activities, habits and needs will change and evolve as they grow. It is important for the client to understand that, absent serious concerns about abuse or ability to care for the children, it is important to the child that s/he have a good relationship with both parents, and that both parents be respectful and tolerant of the other parent’s role in the child’s life.

3. Rank Your Priorities: What is most important to the client and why? Some issues a client may not have much of a say in—for instance whether both parents can talk to the teacher—but others may be within his/her control—i.e. always having the children for Mother’s Day. Other issues may be dependent upon the financial circumstances, such as whether a party can afford to continue to live in the marital home. Being clear on what the priorities are will allow the attorney to properly advise the client as to whether s/he can achieve his/her goals. Additionally, keeping the priorities in mind will help keep the client from being distracted by other minor issues. The more disagreements there are, the more expensive and time-consuming the divorce becomes. The client should be prepared to ask his/herself: “Is this issue truly important, or is it something that I can live with and/or deal with on my own in a constructive manner.”

4. Have a Support System: Divorce can be difficult. Parties going through a divorce should have some sort of support system/outlet to assist them as they go through this transition. Family and friends are helpful in many ways but are not always objective. They also are often not qualified to give legal or mental health advice, thus do not use them as a substitute for an attorney or mental health professional. Clergy, support groups, hobbies and physical activity are also beneficial to relieve stress and to help a divorcing person deal with the many emotions that are stirred up during the divorce process.

While divorce is difficult, it does not have to be devastating. The more prepared a person is going into the process, the smoother it can be. Understanding one’s family’s situation before the divorce will allow the client, together with the attorney to better plan for the client’s and the children’s future after the divorce.