

DIVORCE

GUIDE



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Divorce has
its problems.
Your Family Lawyer
should not be
one of them.



Putting you Back in Control of Your Life

At Gilligan Law Corporation, we understand that divorce is a stressful experience. Our personal compassion and professional skill will help you make it through this challenging time. We provide you with the clarity, focus and direction you need to ease the impact of divorce on you and your children, while keeping fees affordable. We help you regain control of your life so that you can move forward.

Protecting Your Children and Connecting You to Qualified Support

During this stressful time, there are aspects of your life beyond legal services that may need support and attention, including those involving your children's best long-term interests, child care, your finances, career, housing and your overall mental health. As appropriate and necessary, we can refer you to our caring, qualified and dedicated network of professionals for help with parenting and child care issues, grief counselling, anger management, financial and career planning, and more.

Mediation & Collaborative Divorce

We also have the ability to pursue mediation and collaborative divorce with you to keep you and your family out of Court and avoid the litigation process. These options can help keep your costs down, expedite a settlement, minimize stress and maintain dignity in your family after the divorce. However, if such an alternative resolution is not what you desire, we will aggressively litigate your matter in court to defend your interests.



John J. Gilligan, Principal & Managing Partner

With 29 years of experience, John J. Gilligan is a widely respected leader in the family law field. John is a Board Certified Family Law Specialist, and has served as Judge Pro-Tem in the Superior Court for 24 years. He is also certified to serve as a Superior Court Mediator, qualified for service as Court-Appointed Minor's Counsel, and has served on various Bar Associations. With a relentless focus on advancing knowledge in the family law field, John has lectured extensively and authored many published articles.



MichaelAnne Cahill, Associate

As your "shield and your sword" during this challenging phase in your life, you can depend on experienced family lawyer MichaelAnne Cahill to treat you with compassion, fairness, honesty, integrity and respect. Ms. Cahill has earned a reputation for integrity and ethics among judges, opposing counsel, and other divorce professionals.

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The Divorce Process

A basic guide to the legal process behind ending your marriage.

By Jeffrey Cottrill

No two divorces are exactly alike. Every marital breakup has unique legal, financial, and/or parenting issues that require their own resolution strategies. But every divorce undergoes the same general journey from initiation to closure. Whether you and your spouse make this journey cheaper and faster is up to you, but the destination is always the same: from shared to separate lives.

Here's a basic primer of how the divorce process works in the United States and Canada. Bear in mind, however, that I'm not a legal professional. You'll want to speak to a family lawyer to find out how the options vary in your state or province, as well as how your own situation affects the process.

Temporary orders and filing the divorce papers

One of the first things you and your spouse have to do after you separate is to get a "temporary order" or agreement. This is extremely important, because it could set the precedent for your final divorce settlement. A temporary order/agreement establishes quick decisions about the children, property, bank accounts, and other issues that may

be important between the separation and the final outcome. For example, if one spouse moves out of the home and the other has no income, how will the latter feed the kids and pay the bills? For more information about temporary orders, visit www.divorcemag.com/articles/Financial_Planning/getting_prepared_temp_orders.html.

You should hire a divorce lawyer and/or mediator, and financial advisor, as soon as possible. You'll set your temporary order/agreement in a brief, relatively informal hearing before a judge — so prepare a complete list of what you want to request in advance. Among items you can request: temporary custody and visitation arrangements; a restraining order so your spouse won't contact you; child or spousal support; and/or who gets the car and house.

Next, you or your spouse files a petition, application, or complaint for divorce with your local family court. The person who files, or plaintiff, serves a Summons upon the other spouse stating that they want a divorce and what they are seeking in terms of property, child custody, support, etc. The other spouse, or defendant, must answer the Summons and, if they wish, can make their own claim.

Check DivorceMagazine.com for information on the grounds for divorce in your state or province. Most states and all Canadian provinces, however, don't require fault as a prerequisite — so you don't have to justify filing by accusing your spouse of wrongdoing.

Collecting information and discovery

Once you've hired your divorce lawyer, you must gather all relevant information for your lawyer's perusal:

- Full names, addresses, phone numbers, and Social Security or Social Insurance numbers of you, your spouse, and your children;
- The date of marriage, date of cohabitation, county or region where the wedding occurred, the wife's maiden name, and any information about prior marriages of either spouse (including the names and prior names of ex-spouses);
- A copy of your premarital agreement (or other domestic contract) and information about any prior legal proceedings, separations, or marital counseling during the marriage;
- All available financial data, including: income-tax returns from the past several years; a recent pay slip; the

major assets and liabilities of both you and your spouse; budget worksheets; insurance policies; credit-card statements; wills; and any credit or mortgage applications.

Unless you create a separation agreement, your lawyer will use this as a starting point for the discovery process. The lawyer gets as much specific information about the marriage as possible, to work out the financial and children's issues fairly. Most of discovery involves financial matters, for which your lawyer needs specific, accurate details. From the value of items you bought during the marriage to stocks, pensions, and revenue from a business, you and your professionals (e.g. lawyers, mediators, financial planners, accountants, appraisers, etc.) have to retrieve documentation of every dollar value — including that of premarital assets. For articles on preparing for a deposition and separation agreement, visit www.divorcemag.com/articles/Divorce_Settlement_Preparation.

Contested vs. uncontested divorce

There are two general types of divorce. If you and your spouse can't agree on the divorce terms — or if one of you doesn't want the divorce — it's a contested divorce, and a judge will

decide the outcome if you can't come to agreement on your own. In an uncontested divorce, both of you agree on how to divide your assets and debts, who gets custody and pays child support, and whether one spouse needs to pay spousal support to the other. Obviously, an uncontested divorce will be faster and simpler. But even a divorce that starts with major disagreements can be worked out if you choose to make it that way, and the majority of cases do settle.

If you're in the United States, ask your lawyer if you're eligible for a "summary" divorce. This is a simpler and faster divorce process which involves less paperwork, fewer court appearances, and less time in negotiation. However, this will only work if your marriage was relatively short and if you have no children, little property, and no intention to seek spousal support. In Canada, the closest would be an uncontested divorce or a joint application.

Motions

If you need to readjust certain arrangements during the divorce process — such as custody, visitation, or support — you can initiate this by filing a motion with the court. Next, a short hearing takes place in which the

lawyers representing you and your spouse present their cases before the judge. In most cases, only the lawyers are permitted to speak; however, if you are going the Do-It-Yourself route in your divorce (a path that's only recommended for very simple divorce cases), you will be able to represent yourself in this hearing. Once the judge makes a decision on the matter, the regular process continues as before.

Litigation or negotiation?

If your divorce is contested, you and your spouse must decide how to resolve your divorce. Will you fight it out through adversarial litigation, or can you set aside personal feelings long enough to negotiate outside of court? If you want to avoid the "divorce from hell", Alternative Dispute Resolution (ADR) methods, such as arbitration, mediation, and Collaborative Divorce, have become popular means of settling divorce in a cooperative environment with reduced stress and expense. Some states have made mediation compulsory in the divorce process.

Talk to your lawyer (and your spouse) about the different options. For more information on divorce mediation, go to www.divorcemag.com/articles/Mediation; for information on Collaborative Divorce, please go to www.divorcemag.com/articles/Collaborative_Law.

Trial

If you and your spouse just can't agree, then your case goes to trial. Divorce trials can take many months or even years, and they're never pleasant.

Generally, you and your spouse each tell your respective side of the story before the judge (and the public). You take the stand, and your own lawyer asks you questions that prompt you to explain your side — and then your spouse's lawyer has the option of cross-examining you or challenging the validity of your perspective. The same goes for both sides' witnesses (both personal and professional): each of you duking it out through conflicting



Will you fight it out through adversarial litigation, or can you set aside your personal feelings long enough to negotiate? Alternative Dispute Resolution methods have become popular means of settling divorce.

testimony and attempts to make your respective case look more believable. Finally, the judge — a stranger who only knows you through what he or she has seen in court — weighs all the evidence and makes all the final decisions.

The issues

Money and property:

Who gets what? What items and accounts legitimately belong to you? Who should keep the marital home? Who gets which car? How about the cottage? The family business? The pets?

Many states classify property owned by the spouses as “marital” or “separate” — the latter meaning that the property belonged to one spouse before marriage or was a gift to one spouse. The goal of property division is “equitable distribution” — meaning an even division of assets and debts. If you negotiate asset division with your spouse directly, be clear about which items are high priorities to you and which ones you would be willing to let go.

The more financially complicated your divorce, the longer this will take, and you’ll likely need an accountant, a business valuator, a Certified Divorce Financial Analyst, a Financial Divorce Specialist, or a financial planner to make sense of all the assets involved. For more helpful articles, go to www.divorcemag.com/articles/Financial_Planning.

Child and spousal support:

Often referred to as “alimony” or “maintenance”, spousal support is a

monthly amount of money that a financially advantaged divorcee can be ordered (or agree) to pay their ex-spouse, to help maintain a lifestyle to which the latter has become accustomed. Ask your lawyer whether you’re eligible for spousal support — and if so, don’t be afraid to take it. The purpose of spousal support is not to punish your ex but to maintain your lifestyle.

Child support is what a non-custodial parent regularly pays to the custodial parent in order to support the children from the marriage. This way, both parents can financially contribute to bringing up the children, even if one isn’t present on a regular basis. For more helpful articles, go to www.divorcemag.com/articles/Child_Support.

Child custody and visitation:

One of the most important decisions is where and with whom the children will live. Is joint custody in their best interests, or should they live with one parent full-time with regular visits with the other? Unless your spouse is abusive, both of you should work together to create an agreement in which you both get a fair share in raising your children. Custody battles in court are usually full of character slurs and accusations that are emotionally traumatic for you — and more so for the children. For more helpful articles, go to www.divorcemag.com/articles/Child_Custody.

The waiting period

There is usually a set minimum waiting period between the divorce petition and the final decree. Even if your

process is very quick, the waiting period must elapse before the judge officially grants the divorce. Lengths vary between states, but the average waiting period is about six months.

The divorce judgment

After all the issues have been decided (either by you and your spouse or by a judge), a court clerk reviews all the papers and sends them to the judge. When the judge signs a document that officially ends the marriage (a Divorce Judgment Order or a Divorce Decree), you are legally divorced — and free to remarry if you choose.

The divorce process is complicated, and this brief summary doesn’t touch on what an emotional rollercoaster ride a divorce is. It’s a wrenching experience that can cost a lot of money and upset your lifestyle in profound ways; it can also damage your children’s psychological growth if you and your spouse don’t consider their well being and act in a way that supports an amicable divorce. But once it’s done, you’re free to start over — so the sooner you get to the end, the better for all involved. Talk to the necessary divorce professionals (family lawyers, divorce mediators, Certified Divorce Financial Analysts, accountants, therapists, etc.) to find out how to make your divorce process as quick and painless as possible. ■

Jeffrey Cottrill is the former Managing Editor of Divorce Magazine.

For more articles, and a more in-depth explanation of each of the subjects covered in the divorce process, visit www.divorcemag.com/articles/Separation_Divorce_Process.

For helpful tips on how best to work with your divorce lawyer, visit www.divorcemag.com/articles/Divorce_Lawyers.



Choosing the Divorce Professionals You Need

Get the best possible advisors to help you during your divorce.

By Diana Shepherd, edited by Josh D. Simon

Divorce is a complex process that affects just about every aspect of your life: financial, emotional, physical and legal. Unless you've been married for only a short time and have no property, assets, or children, you'll probably need the advice of more than one divorce professional to help smooth the road ahead of you. You will need expert services from one, some, or all of the following professionals: lawyer, mediator, accountant, divorce financial specialist and therapist. While each of these professionals can help you through a challenging transition period, finding the right ones can be stressful.

Here's a guide to help you choose the best possible advisors to support you with your divorce. At the end of this article, you'll also find a list of useful questions to ask these professionals when you interview them.

Choosing a Lawyer

Choosing a lawyer may be the most important decision you'll make during your divorce. As in any profession, there are good lawyers and bad lawyers. It's up to you to do your homework and to ask the right questions to determine which group your lawyer belongs to (a list of questions to ask a potential lawyer is provided at the end of this article). Look for a lawyer who:

- Practices family law. A lawyer who specializes in taxation isn't going to be much help to you.
- Has experience. Make sure your lawyer has practiced family law for a while, and find out if they have written books or lectured/mentored other family lawyers.
- Is a skilled negotiator. If your case can be settled without a protracted

court battle, you'll probably save a great deal of time, stress, and money.

- Is firm. If you end up going to court, you don't want your lawyer to crumble at the first obstacle.
- Is reasonable. You want someone who'll advise you to settle if the offer is fair, and not have the case drag on to satisfy your lawyer's need to "win."
- Is not in conflict with your best interests. Don't share a lawyer with your spouse, or hire your spouse's best friend (even if this person is a friend of yours, too), business partner, or any member of your spouse's family to represent you — even if you're on good terms with them. Aside from the obvious conflict of interest, you'll likely create enemies and spark a family feud before your divorce settles.

Choosing a Mediator

With mediation, you, your spouse and a third-party mediator work together to negotiate how to live successful lives apart. Mediation can save time and money, and is usually less emotionally damaging than a full-blown court battle. Together, you and your spouse work out an agreement you can both live with from the same side of the mediation table, rather than opposing sides of the courtroom.

Mediation isn't an option in all divorce cases. However, when both parties are willing to look at the issues instead of the emotions that cloud the issues, mediation is worth a try. Statistics show that when a case is negotiated through a mediator, the parties tend to stay out of court in the future. Another benefit of a mediated settlement is that

you and your spouse will learn powerful new communication techniques, which is particularly important if you have children or share business interests.

Mediation doesn't normally eliminate the need for a lawyer, and your lawyer will have to approve any agreements made by you and your spouse before they become legally binding. However, the mediation process can speed up negotiations because you and your spouse communicate directly instead of through a "broken telephone" chain from your spouse, to your spouse's lawyer, to your lawyer, and then finally to you. Many family law practitioners are also trained mediators, and so finding a mediator may simply be a question of asking your lawyer about his or her qualifications.

Choosing an Accountant

A Certified Public Accountant (CPA) can handle many of the financial matters of your case. His or her responsibility is to calculate you and your spouse's net worth, and to produce figures that are agreeable to both you and the courts. There are a number of different accreditations given to accountants, and you'll find these designations after their name. Wading through the differences between someone who is a CFE (Certified Fraud Examiner) or a BCFE (Board Certified Forensic Examiner), or a member of the ASA (American Society of Appraisers), or a member of NACVA, (National Association of Certified Valuation Accreditation) may seem a daunting task, but by doing a little research, you'll come to understand what you need to know. If you think your spouse is hiding assets, a forensic accountant could be helpful. If you and/or your spouse own your own one or multiple businesses, a business valuator will be important to value company assets and also to value company goodwill.

You could ask to be introduced to an accountant through your lawyer. These two members of your divorce team may have to work in tandem from time to time, so it's beneficial to find someone with whom your lawyer is familiar. You

can also ask your personal accountant (if you have one) to suggest someone who has a matrimonial background, but be sure to check his/her prior experience.

Choosing a Divorce Financial Specialist

When your marriage has dissolved, and even during the divorce process itself, you may want to employ a financial expert who has been specially trained in issues that pertain to separation and divorce.

Certified Divorce Financial Analysts (CDFAs™) tend to be financial planners or accountants who have completed the Institute of Divorce Financial Analyst's training. Equipped with the specific training on handling divorce cases, a CDFAs can analyze settlements in the

separately), and everything else from the contents of a safety deposit box to the cars. And while you'll be dealing mainly with "big ticket items," if something is very important to you, make sure it's on your list. If a business is involved, brokerage statements or corporate minute books will also be required.

Basically, your accountant or divorce financial specialist needs to see any major paperwork that involves the transaction of money for both you and your spouse.

Choosing a Therapist

A therapist can help you deal with the various emotions that could get in the way of negotiating a divorce settlement. During your separation, you may experience grief, anger or depression. Also,

When you first meet the divorce professional you may hire, you should be prepared with some well thought-out questions.

context of your long-term financial situation and inform you of the ones that appear fair and equitable on the surface, but will not stand the test of time. A CDFAs can also reduce future uncertainty by forecasting the financial impact of alternative settlement proposals. For instance, a CDFAs can tell you what the financial consequences will be of keeping your home instead of selling it. A CDFAs can work with your lawyer and provide the financial data required to support your case.

Additionally, a CDFAs™ can help you with budgeting, or assist with tax, estate, or retirement planning. He or she will help you organize your financial future by proposing a personalized plan with a time horizon, and a solid investment strategy to help you move towards financial stability after your divorce.

You'll also need valuations or other paperwork detailing property owned by you and your spouse (together or

until you achieve an "emotional divorce," you won't truly be free to create a fulfilling new life. A qualified therapist can help you work through the issues that are holding you back and keeping you stuck in the past.

However, the process of finding the right therapist can be a frustrating one. Anyone can call him or herself a "therapist" regardless of background or training, so do your due diligence to find someone competent. A therapist with an "MD" after his/her name is a psychiatrist; one with a "Ph.D." is a psychologist. If you see the letters "MSW," it means this person has a master's degree in social work, while an "LCSW" is a Licensed Clinical Social Worker. If possible, choose a therapist who specializes in marriage and divorce.

Setting realistic limits and goals is an important part of the therapist's services. Good therapists are willing to listen, but they don't always have to agree with

you. A good therapist will encourage questions that indicate you're interested in your own recovery. As you glance around the therapist's office, try to imagine yourself coming here every week for several months.

Remember, it can take three to five sessions before you have a clear idea of whether this therapist is the right one for you. However, if after this period you don't feel right about the relationship, then trust your inner voice, thank the therapist for his/her time, and interview the next candidate.

Questions to Ask when Interviewing Divorce Professionals

When you first meet your the divorce professional you may hire, you should be prepared with some well thought-out questions. Here are some suggestions of what to ask:

- What is your training, experience, credentials and affiliations?
- How long have you been working in this field?
- Do you serve divorcing people exclusively? If not, what percentage of your work involves divorcing people?
- How much direct experience do you have dealing with cases like mine. This is an especially important question if there are aspects that make your divorce unique.
- What is your approach? Do you have any biases? We all have certain viewpoints, which cloud our judgment, and professionals are not exempt. If you have children, you should ask if this professional has any strong views about the role of mothers or fathers, or about the care of children.
- Will you keep our communications confidential? Can I call you between scheduled meetings? If so, do you charge for these calls?
- Do you require a retainer, and if so, what is it? Is this fee refundable? What is your hourly fee? What are your payment terms?
- Approximately how much will your services cost? The professional will only be able to provide an estimate based on the information you provide and your realistic estimation of how amicable you and you spouse are. If



you think your case is extremely simple, but your spouse's lawyer buries your lawyer in paperwork, you can expect your costs to increase.

- What do you think the outcome will be? Remember, you're looking for truthfulness here, not to be told a happy story.
- If your spouse has retained professionals of his or her own (and you know who they are), ask if they are familiar with any of them.
- How long will this process take? Again, the answer will be an approximation.
- What are my rights and obligations during this process?
- What are your hours? Do you work any evenings or weekends?
- How accessible is your office (close to parking, public transport; wheelchair accessible; etc.)? Is it located in a safe neighborhood?
- What happens next? Do I need to do anything? And when will I hear from you?

Questions Specifically for Your Prospective Lawyer:

- What percentage of your cases go to trial? You may want to choose a lawyer with a low percentage here: a good negotiator who can settle your case without a long, expensive court battle. A good trial lawyer may be necessary if every indication is that nothing could possibly be settled outside of a courtroom.
- Are you willing and able to go to court if this case can't be settled any other way?
- Who will be handling my case: you,

an associate, or a combination of senior and junior lawyers and paralegals?

- Should I consider mediation?

Questions Specifically for Your Prospective Accountant, Financial Advisor, Mediator, and Therapist:

- How many times have you been to court? These professionals may be testifying on your behalf, so you want someone who has experience in the courtroom. If possible, find out how these cases turned out.
- Have you worked with many lawyers? Ask for a few references, and call them.

Indeed, the path of divorce is typically a challenging one on many levels. The decisions you make now will affect your long-term future, and that of your children. By using the guidance and questions above to choose the right professionals, you'll not only make your divorce easier, less expensive, and less stressful — you'll also empower yourself to successfully start your new life after divorce. ■

Diana Shepherd is the former Editorial Director of Divorce Magazine. Josh D. Simon is a writer for Divorce Magazine.

For more articles on working with your divorce lawyer, visit www.divorcemag.com/articles/Divorce_Lawyers.

Stress-Busting Tips

Divorce is one of the most stressful life events you can experience, but there are some valuable ways — both physical and mental — you can reduce your anxiety levels.

By Diana Shepherd

COUNT TO TEN. Find a quiet, comfortable place to sit — perhaps a park bench during your lunch break, or a favorite chair at home. Don't lie down unless you're certain you won't fall asleep. Start to take slow, deep breaths. Think "one inhale" as you breathe in, and "one exhale" as you breathe out; you'll count the next breath as "two inhale, two exhale," up to "ten inhale, ten exhale." Then start again from "one inhale." If you lose your place, start again from "one inhale." The counting helps to focus and quiet your mind, shutting out intrusive, stressful thoughts. Continue counting your deep breaths for 10 minutes once or twice a day.

LAUGH IT OFF. From a tiny giggle to a side-splitting guffaw, laughter can help to reduce stress. Research has found that laughter initiates the release of beta-endorphins — the same "feel-good" natural relaxants that are released during exercise. Endorphins also block cortisol, a hormone that can affect your blood pressure, immune system, and weight. Rent a comedy video or go see a funny movie; read a book that has you in stitches; subscribe to your local comedy TV station; and hang out with people who make you laugh. Or pick up a copy of *Health, Healing, and the Amuse System: Humor as Survival Training* by humor-research pioneer Dr. Paul McGhee at www.laughterremedy.com.

JUST WALK AWAY. Any exercise, even a leisurely 20-minute stroll, has

the ability to reduce stress. Make your walk extra-relaxing by listening to a soothing audiotape and/or by taking your walk in pleasant surroundings. Keep your eyes open, though: you don't want to walk into traffic or other pedestrians!

WRITE IT OUT.

You've probably heard about the power of journaling: writing down your thoughts, feelings, and experiences on a daily basis can help to unburden both your mind and body. So for the next couple of weeks, try to spend at least 20 minutes a day writing in a journal. Jot down the details of a stressful day or an encounter with your ex. You're not looking for prizes for style or grammar here: the point is to get as much into your journal and off your chest as quickly as possible. You can keep your journal(s) for future reference — so you can see how far you've come — or you can burn them as part of a "letting go" ritual.

TUNE IT OUT. Slow music has been shown to ease anxiety as well as lower blood pressure and heart rate. Try something from the Solitudes collection; some of their titles feature only nature sounds (waterfalls, babbling brooks, gentle surf breaking on the seashore), and others combine nature

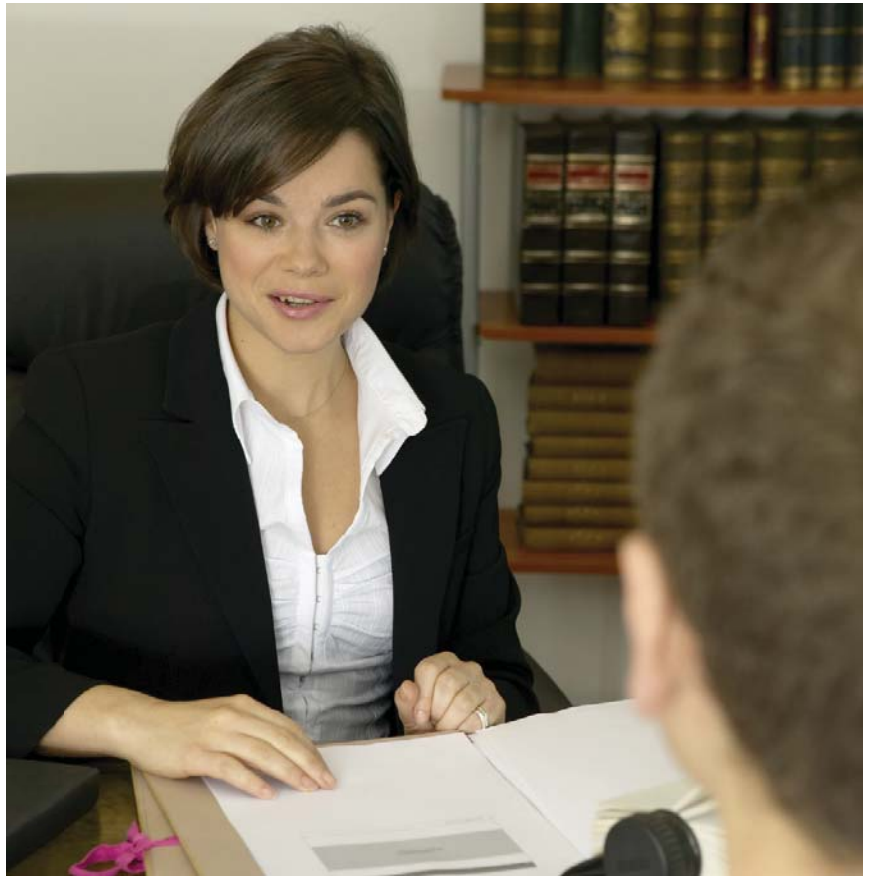


sounds with music. Check out the "Relaxation" section under "Discography" at www.solitudes.com.

PRACTICE YOGA. Hatha Yoga can help you release built-up tension and stress, strengthening the body while calming the mind. Once you've learned the poses (preferably from a qualified instructor), all you need is a quiet, comfortable place and about 20-40 minutes each day to breathe and stretch your stress away. "People who practice yoga and meditation report they have more self-confidence, sleep better and eat better and that their stress and anxiety levels are greatly reduced," says Helen Goldstein, director of The Yoga Studio in Toronto. "And 20 minutes of meditation has the positive effects of two-to-three hours of sleep." ■

Diana Shepherd is the former Editor of Divorce Magazine.

How to Work with Your Divorce Lawyer



Tips for keeping your legal fees down and getting the best possible outcome.

By Diana Shepherd, with notes from Josh D. Simon

You and your lawyer will become partners, for better or for worse, during and perhaps for years after the divorce process. How well your partnership works can have an enormous effect on your divorce and how much you'll have to spend in legal fees. Here are some tips on how to work with your divorce lawyer.

What Your Lawyer Needs to Know

Once you've chosen a lawyer, you'll need to provide information. When your lawyer requests information, respond as quickly, completely, and concisely as you can; don't write a 24-page document when all that was required was a "yes" or "no." The following checklist will give you an idea of what you may need to disclose:

- Why are you seeking a divorce?
- What caused your breakup? If you're secretly hoping for reconciliation, then you and your lawyer are working towards different goals.
- Personal data about you, your spouse, and your children (if any). Write down your names; your home and work addresses and telephone numbers; your ages and places of birth; your Social Security or Social Insurance Numbers; your states of health, both mental and physical; your Green Card(s) and immigration papers (if applicable).
- Facts about your marriage. When and where did you get married? Did you sign a prenuptial agreement? If so, bring a copy. Have either of you been married before? Will there be issues involving your children, such as custody or access?
- Financial information. What assets and debts did each of you bring into the marriage? What are your incomes and what are your expenses, jointly and individually? What are the names and addresses of your employers? How much money do both of you have invested: in the bank, the stock market, etc.? Has either of you invested in insurance or a pension plan? What property do you own? Was the property purchased before or after the marriage? Do you have a mortgage? Prior to seeing your lawyer, create a budget detailing how much you spend every month on items such as housing, food, clothing, personal grooming, gifts, vacations, etc. If you have children, make sure you include their expenses.
- Legal documents. Bring copies of prior or pending lawsuits, bankruptcy suits, judgments, and garnishments. Your divorce goals. Be very specific about your goals in terms of realizing your future; make sure your short-term goals for property,

other assets, custody, visitation, and support are consistent with that future.

What Your Lawyer Expects from You

Your lawyer hopes you'll be calm, businesslike, and well prepared. Ideal clients can control their emotions, are organized, willing to work together with the lawyer, and listen to their lawyer's advice.

Your lawyer will expect to be paid on time and in full. If your financial situation is bad, your lawyer may be able to create some kind of payment plan. If you're broke because your ex cleaned out the bank account, your lawyer can file motions asking the court to grant temporary orders for child or spousal support, custody, payment of your

If you don't abide by these tips, your lawyer may want to quit your case. This may also happen if you don't communicate properly, if you continually don't follow the lawyer's advice, or if you don't pay your legal bills. But if you're cooperative and reasonable, it's more likely that your lawyer will trust you and work hard on your behalf.

However, your lawyer may keep representing you even if you inadvertently annoy him or her — if only because you're still paying him or her to work for you. Or maybe your lawyer is just too polite. If you detect impatience or weariness in your lawyer's tone or body language, consider whether you're burdening him or her with too many complaints about your spouse, or whether you're wasting time by asking a lot of obvious questions or by venting your frustrations. It's also

from each other. Ask for a written agreement that details the terms of your lawyer-client relationship. If he or she won't provide one, find another lawyer.

After learning about your case, your lawyer should create a strategy. Be aware that this plan may change along the way, depending on what your ex and his or her lawyer does.

Your lawyer should clearly explain all your options, and offer advice regarding the best paths to follow, but respect your wishes if you strongly disagree with a suggested course of action. If you find yourself in constant disagreement with your lawyer, either you've chosen the wrong person or you're being unreasonable. Consider your motivations and actions to see if you're refusing your lawyer's advice for purely emotional reasons.

Even a good divorce lawyer will sometimes have bad news for you: that your spouse won't budge on an important issue; that you'll have to give him or her money or other assets; or simply that your expectations are unrealistic, illegal, or not financially feasible. Expect to feel frustrated or disappointed from time to time as your divorce progresses, but don't take it out on your lawyer! He or she can't always pull a great solution out of his or her metaphorical hat.

You should expect your lawyer to return phone calls reasonably promptly (24 hours is reasonable if he or she isn't on vacation), and to consult you before taking any major actions.

Finally, if you want to ensure that your divorce agreement reflects your goals — and doesn't cost you an arm and a leg — then stay involved with the process, and answer your lawyer's requests promptly and honestly. ■

Diana Shepherd is the former Editorial Director of Divorce Magazine. Josh D. Simon is a writer for Divorce Magazine.

The optimal relationship with your divorce lawyer is a two-way partnership.

lawyer's fees, etc. And if you suspect your divorce might get nasty, ask your lawyer about filing orders to protect you and/or your kids — financially and physically.

To get the best service from your lawyer, it's essential to be a good client. Here's how to gain your lawyer's respect:

- Don't call your lawyer outside of work hours unless it's an emergency.
- Don't burden your lawyer with your emotional issues; hire a therapist for that.
- Always tell your lawyer the truth, even when it's unpleasant or unflattering to you.
- Be realistic. Don't expect your lawyer to behave like the heroic lawyers on TV or in John Grisham novels.
- Don't blame your lawyer for the system or expect him or her to change it.

possible that you did something to hurt your case strategy, such as mentioning something to your spouse (or your spouse's lawyer) that should have been kept secret. Perhaps your last check to the lawyer bounced, or maybe you were rude or unprofessional to one of the firm's paralegals or secretaries.

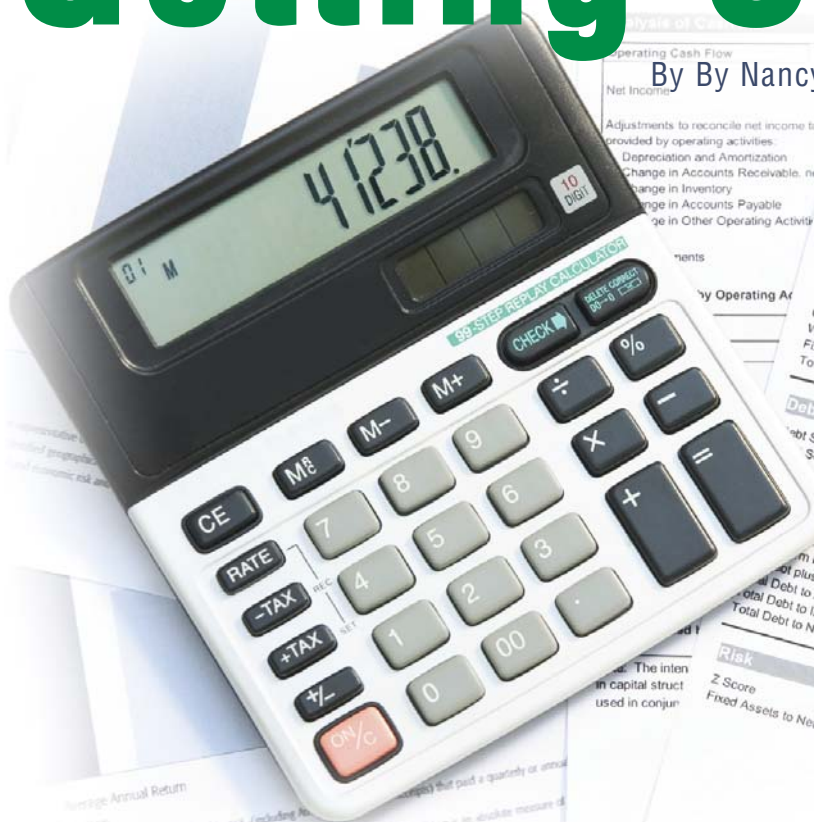
If you think you may have annoyed or angered your lawyer, ask if this is the case. If you have done something wrong, apologize for it; if there has been a misunderstanding, clear it up immediately. It's important that you and your lawyer maintain a strong, trusting relationship in order for you to get the best possible representation — and to achieve the best possible outcome.

What You Should Expect from Your Lawyer

From the day you hire your lawyer, you both should have a clear understanding of what you need and expect

Getting Settled

By Nancy Kurn, CPA, JD, LLM, MBA, CDFA™



What you need to know before creating a settlement agreement.

You've sat down with your spouse and hammered out what you think is a pretty great settlement: you get to keep all of the property you really wanted, and your ex gets stuck with all of the debt. But whether or not that agreement will hold up in court depends on a number of factors, including how it is worded, whether or not there was full financial disclosure by both parties, and possibly whether both parties had independent legal counsel.

That being said, you should make every effort to negotiate your settlement agreement rather than fight over every item in court. Such agreements have several benefits over a judge's ruling, including: they take less time; they reduce the financial and emotional costs; and the parties are more likely to abide by the terms of the agreement.

If you're able to put aside your emotions and focus on the issues at hand, your chances of negotiating a settlement are extremely high. A courtroom is simply not the right venue to express your

feelings of anger or loss, so find a counselor or a support group to help you work through your emotions so you can be as clear-headed and as practical as possible during negotiations with your spouse. Some couples will be able to settle all issues; others will be able to settle some issues and have to litigate the rest.

This article will cover property issues only; your settlement agreement will need to thoroughly address spousal or child support as well as custody and visitation issues. As always, you should consult with your lawyer and/or mediator to make certain your best interests, and those of your family, are protected.

Your settlement agreement should be very comprehensive — particularly with regard to how the property is divided. Once you sign an agreement regarding property division, it cannot be changed unless both of you agree to the changes or unless there is some legal basis, such as fraud, for setting aside the agreement. It's up to you to make sure that your lawyer doesn't leave any assets out of

your settlement agreement (unless it's something that you're going to litigate in court).

You don't necessarily have to list every single personal possession in your settlement agreement, but you should list personal items that are important to you. You should also list financial assets, including retirement assets and real estate.

Your agreement should state who gets each asset or how the asset or the proceeds from its sale will be divided. Let's take a look at the most common categories.

Financial Assets

Financial assets include cash, savings accounts, checking accounts, Certificates of Deposit, money-market accounts, stocks, bonds, Real Estate Investment Trusts (REIT), mutual funds, and savings bonds. These assets may be more important to the non-working or lower-income-earning spouse. He or she may need to use these

assets to cover some of his or her living expenses.

Retirement Assets

Not all assets have the same tax consequences; retirement assets are generally before-tax assets. This means that in order to access the money, you have to pay income tax on any distributions you receive. In some cases, you may also have to pay a penalty on the distribution in addition to any income tax that you pay. For example: Mary suggested to Gus, “You keep your retirement assets, valued at \$100,000, and I’ll take the money-market account, valued at \$100,000.” Gus agreed because it was an equal division of the assets. However, when Gus retires in 2009, he will pay tax on the distributions. So if Gus paid tax at a rate of 25%, then he would end up with only \$75,000 versus the \$100,000 that Mary received.

In the U.S., there are many different types of retirement assets, including defined benefit plans, defined contribution plans, IRAs, and Roth IRAs. It is important that you determine how defined benefit plans, such as pensions, will be divided between you and your spouse. This is generally spelled out as a percentage of the retirement benefit at the time of the divorce. It is also imperative for the agreement to state if the employee’s spouse will be entitled to survivor’s benefits if the employee dies. It is important to make sure that the non-employee in fact qualifies for survivor benefits; otherwise, he or she may be better off with another asset.

take the percentage that is awarded and roll it over to an IRA or perhaps maintain it as a separate account in the same plan. The agreement should specify the percentage that you and your spouse will receive.

IRAs or Roth IRAs are also easily divisible. Remember that distributions from Roth IRAs will generally not be taxed, while distributions from IRAs will generally be taxed. As a result, \$10,000 from a Roth IRA is probably a better asset than \$10,000 from an IRA.

In Canada, there are two basic types of pension plans: “Defined Contribution Plans” and “Defined Benefit Plans”. The first type defines who is to make the contributions to fund the plan, how much they are to contribute, and when they are to make the contributions. The second will also specify who is to make what contributions, how much they are to contribute, and when. However, a defined benefit pension plan will also have a formula for determining the amount of annual pension that the member has earned. It is the projection of these future pension payments (which are not at all related to the amount of contributions that have been made) that must be valued.

Depending on the type of plan and which province you live in, a portion of the pension (usually the portion accumulated during your marriage) may be subject to division like any other family asset. If one or both spouses have Registered Retirement Savings Plans (RRSPs), the portion accumulated

for each person. Not all pension plans permit division of the pensions. In any case, it is still important to have the pension valued properly: dividing one pension into two is not a way to avoid the cost of a valuation (or to avoid arguing over which value is the right value for the pension).

Federal government pensions qualify for division under the Pension Benefits Division Act (PBDA). This Act provides that the member may transfer a portion of the value of the pension to a retirement vehicle for the spouse. This is known as the Maximum Transferable Amount (MTA).

The Canada Pension Plan (CPP) recognizes that married persons, common-law couples, and same-sex partners share in the building of their assets and entitlements, including their CPP credits. When a relationship ends, CPP credits built up by the individuals during the time they lived together can be combined and then divided equally between them by means of “credit splitting”. As a result, the person with fewer credits — that would normally be the lower income earner — receives some credits earned by the other — normally the higher income earner — so that they both have the same number of credits accumulated during the marriage or other relationship.

You should be aware that there is more than one way to value a pension; if the amounts are significant, you should consider having an expert valuation done.

Employee Benefits

In addition to retirement plans, many employers provide other fringe benefits and incentives to their employees. These benefits include year-end bonuses, accrued vacation time, accrued sick time, health insurance, life insurance, disability insurance, expense accounts, stock options, and more unusual benefits such as Phantom Stock, Stock Appreciation Rights, and Restricted Stock.

Some of these benefits may be included in your list of assets; other benefits may be included as income, and some may not be included at all.

Make every effort to negotiate your settlement agreement rather than fight over every item in court.

Defined contribution plans include 401(k) plans, profit-sharing plans, simple IRAs, and other types of contributory plans. Generally, these can be divided today, and the non-employee spouse can

during marriage will also be subject to division.

Some people will want to divide the pension into two separate pensions: one

Determining if a benefit should be treated as a marital asset, income, or nothing at all can be very subjective. Different jurisdictions and judges may view the benefits differently. As a rule of thumb, if the benefit is guaranteed, then it should be included as an asset or as income. A year-end bonus could arguably be an asset, an income item, or nothing at all if it is not guaranteed. For example: Barbara and Jeremy were married for 15 years. Jeremy, the employee-spouse, received a bonus every year. Barbara could certainly make a reasonable argument that it is an asset or income for purposes of calculating child support and alimony. Vested stock options would also be an asset; with the changes in the market, they may not have any value, while unvested stock options, on the other hand, may not be an asset.

Personal Property

List your personal possessions, particularly those that are important to you,

and note how they are going to be divided. This would include big-ticket items, such as cars, boats, and motor homes, as well as items such as jewelry, furniture, photos, and personal papers.

Keep the value of these assets in perspective — and recognize when it’s time to give up the fight. We’ve all heard of those cases where parties spend thousands of dollars fighting over an asset that’s worth less than \$100.

Each spouse should keep copies of joint tax returns. We recommend that you keep at least the past five years; in addition, you will need records to calculate the cost basis for any assets that you keep.

Real Estate

Real estate includes your marital home and any other homes, vacation properties, timeshares, and rental properties — commercial and residential —

as well as any business property. The properties should be listed, and the settlement agreement should address how they are going to be divided.

If the property is going to be sold, the following issues need to be addressed:

- Who is going to pay the expenses until the property is sold?
- How will the proceeds be divided?
- If one spouse pays the expenses, will he or she be reimbursed, from the proceeds, before they are divided?

Debts

Generally, the person who takes the property will be expected to pay the mortgage or debt related to the property. Does this mean that the other spouse has no financial obligation for a joint debt? Absolutely not. Unless the spouse who takes the property refinances the mortgage, both spouses will still be obligated to pay the debt. The divorce decree cannot terminate your financial obligation to your creditor. For example, Bob and Amy are dividing their assets as shown in “Table One”.

After the divorce, Bob would be liable for the car payment and Amy would be liable for the mortgage. If either failed to make these payments, the other spouse would still be liable. But if Amy or Bob refinance after the divorce, the other spouse will no longer be liable for the debt.

Requiring the other spouse to refinance after the divorce is something that should be put in the settlement agreement. They could, for instance, allow a certain time period to refinance. If they do not refinance or do not qualify to refinance, then the asset could be sold and the loan could be paid off with the proceeds from the sale.

If only one spouse is obligated on the debt during the marriage, then the other spouse cannot be held liable. This occurs most frequently with credit-card debt. However, if you have a credit card that is a joint debt, then just like the mortgage, if one spouse is responsible for paying the joint credit-card debt pursuant to the terms of the settlement agreement,

TABLE ONE:	Equity	Value	Bob	Amy
Cash and Checking		\$13,000	\$13,000	
Mutual Funds		\$17,000	\$17,000	
Amy’s Car		\$ 5,000		\$ 5,000
Bob’s Car	\$25,000			
Debt on Bob’s Car	(\$10,000)			
Car Equity		\$15,000	\$15,000	
Home	\$200,000			
Mortgage	(\$160,000)			
Home Equity		\$40,000		\$40,000
Total Value		\$90,000	\$45,000	\$45,000

TABLE TWO:	Value	Mike	Julie
Home (Equity)	\$ 40,000		\$ 40,000
Cash and Checking	\$ 3,000		\$ 3,000
Mutual Funds	\$ 7,000		\$ 7,000
Mike’s Business	\$150,000	\$150,000	
Total Value	\$200,000	\$150,000	\$ 50,000
Property Settlement Note		(\$50,000)	\$ 50,000
Revised Total		\$100,000	\$100,000

this does not mean that the other spouse is no longer responsible for the debt. Unfortunately, both spouses will remain liable to the creditor. If one spouse refuses to pay, then the other spouse will have to pay off the debt. If you can afford it, paying off credit-card debt with liquid assets is the best way to deal with unsecured debt.

Closely Held Business

A closely held business can be in the form of a sole proprietorship, corporation, general or limited partnership, or limited liability company. Before one spouse agrees to take a business interest, he or she has to make sure there are no restrictions on owning the interest. There could be legal or contractual restrictions on which spouse could own the business interest.

If the business, for instance, is a professional corporation, as defined by state or provincial law, then one spouse may be legally restricted from maintaining an ownership interest. For instance, if Joe is a physician and Barb is an accountant, in many states or provinces, only Joe could own his medical practice and only Barb could own her accountancy practice. Another restriction may exist if there is a liquor license or taxicab medallion that is only transferable with government approval.

A “buy-sell” agreement is an example of a contractual restriction that may preclude a transfer to a spouse. If the “non-owner” spouse is awarded the business interest in the divorce, then the spouse may be forced to sell the business interest at a substantial discount. For example: Joe owns 25% of a business that has a total value of \$100,000; his share is valued at \$25,000. If the buy-sell agreement requires Barb to sell her interest at 50% of the value, and if she were awarded the stock in the divorce, she would be required to sell her interest for \$12,500.

Property Settlement Note

A property settlement note is generally used to equalize the assets. For instance, Mike and Julie have the following assets (shown in “Table Two” on the previous page).

To equalize the division of assets, Mike should pay Julie an additional \$50,000. This can be structured as a note payable to Julie in the amount of \$50,000 at an agreed-upon interest rate. If Mike and Julie agree that the note would be payable over five years at a 5% interest rate, then the annual principal and interest payments would be \$11,549.

A property settlement note has some significant drawbacks, however, including:

If the agreement isn’t followed, it becomes another issue to fight over.

- What happens if Mike doesn’t pay?
- Should Mike pay interest on the note? If the note is unsecured, it would probably be discharged in bankruptcy.
 - What happens if Mike dies or becomes disabled before the note is paid in full?

Life Insurance

Some life-insurance policies have cash value. This means that the owner could borrow money from the policy or trade the promise to pay a future sum at death for the current cash value, less any costs or charges.

Other policies, such as term insurance, have no cash value. Term insurance may still be valuable, though, particularly if the insured person is now uninsurable.

The settlement agreement should address who will own the existing life insurance policies. Naming an ex-spouse or child as the irrevocable beneficiary of a group policy is minimally effective, since the designation can be changed unilaterally by the employee when the carrier changes, or indeed at any other time. If the non-insured spouse is supposed to be the beneficiary, then the best way to protect his or her interest is to have the non-insured spouse own the policy. Using the above example, if Mike owns a policy and is the insured, and they agree that Julie should be the beneficiary, then he should transfer ownership of the policy to Julie. She should verify that she is the beneficiary of the policy. They can structure it so that he pays her the premiums as alimony. That way, she can be sure that the

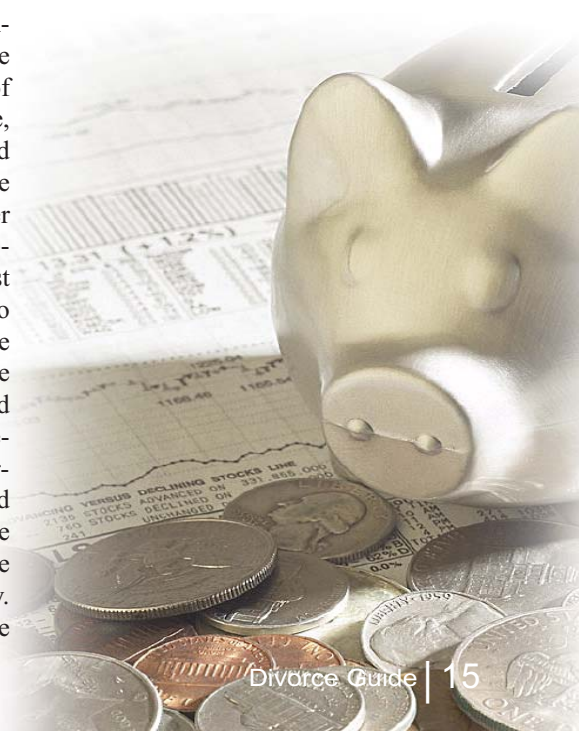
payments are made and that she remains the beneficiary. Otherwise, she is at risk if he lets the policy lapse or changes the beneficiary.

Other Assets

Some other assets to address in the settlement agreement include: Frequent Flyer Miles, lottery winnings or other prize winnings, club dues and annual membership fees, inheritance and gifts, and trusts naming one spouse as a current beneficiary.

Keep in mind the assets listed here are not by any means exhaustive; you and your spouse may have assets in addition to those listed in this article. They can make a huge difference in your post-divorce life, so take the time to list them carefully and discuss them fully before you settle things, once and for all.

Nancy Kurn is the Director of Educational Services for the Institute for Divorce Financial Analysts (IDFA) — the premier national organization dedicated to the certification, education, and promotion of the use of financial professionals in the divorce arena. For more information about how a Certified Divorce Financial Analyst (CDFA) can help with the financial aspects of your divorce, call (800) 875-1760, or visit www.InstituteDFA.com.





Managing ANGER

By Jane Nahirny

Anger is a very familiar emotion for all of us, and in healthy relationships, it can be an overwhelmingly positive force in our lives. Healthy anger can tell us if there's something wrong, painful, or threatening that we need to take care of. It helps us protect ourselves and to know when people are crossing our boundaries.

But for couples who are going through separation or divorce, anger is often anything but healthy. In her informative book *The Good Divorce*, Dr. Constance Ahrons defines divorce-related anger as “an extreme rage, vindictiveness, and over-powering bitterness that is felt when a love relationship is ending. It is a special kind of anger that usually hasn't been experienced before.”

When anger is coupled with divorce, it's often used as a misguided means of hanging onto a failed marriage. After all, for many people, a bad relationship is better than no relationship at all. Divorce anger allows people to punish their ex as often as possible, all the while maintaining an ongoing (bitter) relationship with him/her. It's a situation that leaves both partners in divorce limbo, a perilous situation that obstructs growth and self-awareness. If you wish to move forward, you'll need to learn to handle your anger.

Some people hold onto their anger so tightly — stoking the fires on a daily basis — that their rage takes over their whole lives, coloring and informing all their thoughts and actions. They weigh every action to see how much emotional

Divorce-related anger can literally make you crazy, causing you to say and do things you'd never dream of if you were thinking clearly. Even though it's a normal part of the healing process, anger can become a destructive force in your life.

or physical harm it will inflict on their ex-spouse (even simply being a nuisance will do “in a pinch”) without seeing the injuries they may be inflicting on innocent victims. Using children as human shields in the divorce battle is a common way to fan the flames of divorce anger. Many scenarios are possible, all of which are damaging and punitive to the children: the custodial parent withholds visitation from the non-custodial parent; the non-custodial parent refuses to pay child support; the custodial parent “forgets” to pick the children up; or the non-custodial parent is hours late in bringing them back. “We forget what's best for the children because we are so intent on getting that other person,” writes Ahrons. But “getting back through the kids is hitting below the belt.”

Divorce anger is also often expressed through the legal process itself. Here, it's very important to remember that your lawyer is your advocate, not your therapist or your best friend. Expressing anger to your ex-spouse through the legal process invariably leads to prolonged, emotional proceedings that

will ultimately leave you and the family resources drained dry.

Using the court as a venue to vent your anger is a bad idea for a couple of key reasons: it's the wrong venue, and it's very expensive (financially and emotionally). Unfortunately, the legal divorce process itself tends to add fuel to the fires of anger. Dividing property (some of which has great sentimental value) and trying to prove your case for custody and/or support can be very emotionally charged because these issues underline what is being lost or changed because of your divorce. Some degree of upset is inevitable, but driving yourself alongside your ex into bankruptcy is truly cutting off your nose to spite your face.

So how can you cope with this new and intense anger? The key lies in understanding its roots and in finding constructive ways to express the hurt, disappointment, and loss that both you and your former spouse are feeling now as you proceed through separation and divorce.

Here's some advice about coping with your own and your ex-spouse's divorce-related anger.

If You're Angry:

Write it out. Work through your anger by keeping a journal or by writing letters you don't mail. By doing so, you can release your anger without engaging another person. Also, it is possible that you maybe angry with yourself.

Shout it out. Roll up the windows in your car, or put your head in a pillow and scream.

Talk it out. It's important when you're angry to develop your own personal support system. Instead of directing your anger at your ex-spouse, talk to a good friend (or two), or find a therapist who specializes in anger management.

Get some professional help. Anger can suppress other emotions, both positive and negative. Talking to a professional can help you begin to feel those emotions you've been suppressing and move past the anger. You could also benefit from a support or anger-

When someone pushes one of your buttons, your response is going to be way out of proportion to the offense.

management group, where you can share your story and help yourself and others move to a position of growth and development.

Take responsibility for your part of the marriage break-up. "It's a rare couple in which both partners were exactly equal in the breaking of the marriage, but it's an even rarer couple in which one partner was solely at fault," writes Constance Ahrons in *The Good Divorce*.

Do some personal growth work. Anger is a great motivator toward action and can propel you to take steps in your life to change situations.

Learn what "pushes your buttons". Try to understand your anger — and what triggers it — before you express it. Don't be afraid to say that you need some time to think about your response.

Protect your children. Never make them part of your conflict with your former partner by withholding visitation or support or poisoning their minds against your ex. "For the sake of the children, if for no other reason, learn constructive methods of expressing anger," Ahrons says.

Keep conflicts at a moderate level. Your ex will often match your level of intensity. And be sure to choose your battles carefully. Expressing every little irritation and disagreement provokes resentment. Think about the most important issues and let go of the small stuff.

Use "I-messages" when expressing anger. Say: "I feel disappointed when you don't call," not: "You stupid idiot, you're always late!"

Give yourself time to recover from the loss of your marriage. On average, experts say that the healing process takes at least two years, and often longer. "It's important to realize how sad you are,"

says Ahrons. "This won't necessarily make you more vulnerable to your ex-spouse; your successful handling of your emotions puts you in a more powerful position."

Forgive, let go, move on. Anger can become a comfort, a constant in our lives, but as long as you continue to nurse your anger against your ex, you will never have a happy, fulfilled, post-divorce life. Own your responsibility for the break-up, and realize that you have the power to make the choice to forgive and move on, or stay angry and remain stuck. It doesn't matter what your ex does; you can still choose forgiveness.

If Your Ex Is Angry:

Listen to and validate your ex-spouse's comments. By really listening to his or her concerns, you may learn where the anger is coming from and identify what you can do to help. It also really helps to defuse the situation by saying something like, "I understand why you're angry with me."

Don't be afraid to take a "time-out". Walk away from an anger attack if you can't handle it. You can try saying,

"I'm not going to talk to you until you calm down." Put limits on what you'll take and how you'll be treated.

Get some assertiveness training to boost your self-esteem. "Anger is like a fire that must be burned up into the ashes of forgiveness," writes Ahrons. "If we are passive, it is like throwing more logs onto the fire."

Try not to take your ex-spouse's comments too personally. Remember that anger is a projection of one's own inner feelings and one's own world. Accept the fact that this person is angry because they're going through turmoil.

Stay calm. It can really help de-escalate the other person's anger. Relaxation techniques, such as deep breathing, can be effective when you're listening to someone who's really angry.

Learn to recognize your own hot buttons. When someone pushes one of your buttons, your response is going to be way out of proportion to the offense.

Try to feel a little compassion — no matter how hard that may be. Your ex may be feeling fearful and threatened, so try to hear what's underneath the anger; quite often, it's fear, pain, or shame. Showing empathy or compassion for your ex can go a long way to defusing his or her anger.

Be honest with yourself. Recognize that when someone is angry with you, there may be something in what they're saying. If your ex is yelling at you, you can choose to think he/she's a jerk and start yelling back, or you can "dig for the gold" in what he/she's saying. Keep the gold; discard the dirt and rocks.

Value your safety above all else. If your former partner's divorce anger seems to be headed in a dangerous direction, put some boundaries in place and communicate through a third party. Threats should always be taken seriously: remove yourself from the situation and refuse face-to-face contact if you sense any danger at all. ■

Jane Nahirny is the former Editorial Director of Divorce Magazine.



The Art of Negotiation

How to reach an agreement that's both acceptable and affordable.

By Marjorie L. Engel and Diana D. Gould

There's a common pattern to all negotiations: a cycle of initial contact, planning (research, goals, strategies, and tactics), and one or more negotiating sessions that lead to a signed agreement, complete with provisions to ensure its implementation.

There are two basic components to any divorce negotiation: what is affordable and what is personally acceptable. The objective is to find a reasonable and legally acceptable balance between them.

Your first experience in negotiating starts with your own lawyer. The two of you must work together until you achieve a meeting of the minds so that what you want can be spelled out in the first draft of the separation agreement. When you're ready for the first negotiating session with your spouse and the other lawyer, how will you approach it?

Thinking logically

When women use accepted business logic in preparing for a divorce, they may be perceived as ruthless, calculating, and manipulative. When men use accepted business logic in preparing for a divorce, they are usually perceived as being practical, logical, and direct. Regardless of clichés and biases, the reality is that organized and rational thinking is a must for both men and women if

spouses are going to create a mutually satisfactory separation agreement in our family court system.

Be concrete in your ideas and remain open to reason. Ask questions until you're satisfied about your spouse's basis for reasoning. Be prepared to answer questions that clarify the integrity of your position. Be as tough as you want where a problem needs resolution, but be soft on the people involved.

If you haven't already done so, you need to analyze and formulate your objectives in order to actively participate in your own future. You must gather together the facts about what you have, what you want now, and what you wish to accomplish by the time you've changed the marriage vow "I do" to the divorce disclaimer "I don't anymore."

The sooner you learn to put yourself into your spouse's shoes and ask, "What would I do if I were you?", the sooner you'll be ready to arrive at a mutually acceptable separation agreement.

Entering negotiations

Bargaining for the future welfare of yourself and your family is no picnic. Here's a collection of tips offered by some divorcing couples that will walk you through the process. They refer to

both the personal and the practical sides of negotiating.

- Request that negotiations be held where the atmosphere is quiet and professional.
- Be prompt in attendance.
- Dress the way that will make you feel the most comfortable for the setting of the meeting.
- Make sure you have a written agenda from your lawyer.
- Be prepared to take notes and check off each item as it is completed.
- Be sure to have copies of whatever documents you have been asked to bring.
- Sit tall and use direct eye contact as much as you can. Body language "speaks loudly".
- Speak in your normal tone of voice. (You're not on stage, even though you may feel like it.)
- Listen quietly and patiently to what is being said.
- Make sure that you have equal opportunity to voice your opinions or disagreement.
- Try to stay in the first person when you speak. (Present all of your feelings, facts, and observations in the "I" mode, for example, "I think we ought to..." and "I defend this issue on the basis that...")
- Try not to be defensive about your ideas and be open to advice — even constructive criticism.

- Refuse to discuss business and personal matters in the same conversation.
- Don't succumb to pressure for an immediate response. (Request a minute to think, or a "time-out", to discuss the matter with your lawyer.)
- Never be forced into a decision — even if it's one that your lawyer approves. (If you aren't sure, table the issue so that you have time to review your material and to think.)
- When you need to release the tension/frustration/irritation that builds up during negotiating sessions, take a couple of deep breaths from the diaphragm and let them out slowly.

The bargaining table

Everything is negotiable, and anything can be used as a tool for negotiations. Go to the bargaining table prepared for promises to be exchanged and deals to be closed.

It's not a matter of simply putting a value on everything when you are work-

When you reach a stalemate, the lawyers should be able to provide information about how a similar situation has been previously handled within the judicial community where your case is being processed.

The bargaining table is only used to resolve previously undecided issues. As you reach agreement on each issue, consider that topic closed. Agreements never come together if you keep rehashing what was supposedly already settled (in fact, they're more likely to fall apart). Every agreement must adapt to new circumstances or information, but too many new issues late in the game cast doubt on the good faith of what was previously settled.

Avoiding a free-for-all

Divorce negotiations can be traumatic. In addition to the business at hand, it's very easy to get trapped into old emotional patterns when your spouse begins to act in predictable ways. Either one of you can become overly defensive or hostile.

lawyers to summarize the situation. If new issues come to light through an emotional outburst, they will require discussion and verification. Then a decision can be made about how this new information will affect the developing agreement.

When to be reasonable

Not all divorces are adversarial. Not all agreements are structured from long and bitter disagreements over who gets what. Just because you're getting a divorce doesn't mean you can't continue to work together.

Be open to brainstorming. If you're at an impasse or seem to be totally deadlocked, you can always flip a coin. Seriously, the very idea that you have only a 50-50 chance of "winning" usually revives the interest in negotiating. If the other side won't negotiate, don't attack his or her position — look behind it to try to determine the motivation for the refusal to negotiate.

Six deadly obstacles to negotiation

The deadly sins can never be seen or imagined more clearly than in the process of divorce. When any of the negative patterns of a marriage are brought to the negotiating table, the battle will be long and difficult.

- Greed will make any reasonable financial negotiation impossible.
- Anger will waste time and energy.
- Lust will fire up old memories that might get in the way.
- Jealousy will get you nowhere — it's not your relationship anymore.
- Pride causes stalemates.
- Fear is perhaps the greatest sin of all.

Fear can be the worst enemy of good negotiation: fear of rejection and loss of position, property, or place in the community. There are also the fears of loneliness and of having to start all over again; of personal and financial hardship; and of not being able to handle all that is ahead. The more dependent you have been upon your spouse —

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The sooner you learn to put yourself into your spouse's shoes and ask "What would I do if I were you?", the sooner you'll be ready to arrive at a mutually acceptable separation agreement.

ing out what you want or what you're willing to give in a separation agreement. The bargaining process requires setting three different basic values:

- The least you would be willing to give or give up.
- The most you would be willing to give or give up.
- The bottom line you would be willing to agree upon.

Divorcing couples tend to think in terms of things they want (assets) and frequently forget about what they don't want (liabilities). Remember: ownership of items such as debts, a bad piece of property, and lawyer's fees must also be negotiated.

How do you respond to threats or defuse anger? What happens if the meeting starts to get ugly?

When you and your lawyer discussed your divorce files, especially the profiles and information on extenuating circumstances, you anticipated the danger points and prepared suitable ways of coping. However, when both spouses are wound up, something totally innocuous can trigger an outrageous response. How can it be dealt with right then and there?

First of all, there should be a time-out to cool down the emotions before returning to the facts. Then allow your

Parenting Pitfalls

Here are some of the most common warning signs that you need help before your children become casualties of your divorce.

By Elissa P. Benedek, M.D. and Catherine F. Brown, M.Ed.



The process of separation and divorce sets up an almost impossible situation for parents. At the same time that they need time out for themselves — to deal with the emotions and stress accompanying the loss of their marriage and to decide a new course of action — their children have the greatest need for reliability and assurances of love. Absorbed in their own problems, parents may become less affectionate with their children or fail to discipline them consistently. The more parents pull back to regroup after a divorce, however, the more fiercely children show their need for attention. When both parents and children have lost their emotional equilibrium, they exacerbate each other's problems.

The keys to breaking this cycle are for parents to:

- take control of their lives
- create a nurturing, predictable environment for the children
- learn to deal with the children authoritatively

- be aware of some of the problems that divorced parents commonly encounter (as described later in this article).

Common Problems

When a husband and wife first separate and divorce, they experience the gamut of emotions from sadness, anxiety, guilt, shame, and shock to elation over believing that all their problems are now solved. The spouse who didn't want the divorce may feel worthless and unlovable; the spouse who wanted the divorce may have second thoughts. There is no one order for these emotions; each may come and go again and again.

It's vitally important that parents overcome these reactions and, for the children's well-being, learn how to handle the stresses brought about by the divorce. The children's adjustment is directly linked to the adjustment of the parents.

Adult Regression

Children sometimes behave in ways typical of an earlier stage in their development in reaction to their parents' separation and divorce. In the same way, a keenly unwanted or brutal divorce has the potential for throwing an adult back into an earlier stage of development or leading to behavior that is unusual for that person. Some adults may go so far as to become helpless, depending on others — including their children — to take care of them.

Role Reversal

After a divorce, some parents experience a specific type of regression in which they become too dependent on one or more of their children. In essence, a role reversal takes place in which the children become the parents' caretakers, confidants, and counselors. These parents are most often troubled, depressed, and lonely; they are unwilling or unable to take responsibility for themselves. Sometimes, they are alcoholics or drug-addicted. The result is a form of mental bondage and skewed development in the child and a faulty sense of reality in the adult. In its most destructive (but thankfully rare) variant, some adults go so far as to commit incest, using the child as a replacement for the lost marital partner. More commonly, they have the child sleep with them to alleviate their loneliness.

The temptation to become too dependent on your children is always there if you don't have another adult to whom you can turn when you need advice or just someone to talk to. Although there's nothing wrong with soliciting your children's opinions in matters that concern them (in fact, doing so helps build their

sense of responsibility and family commitment), avoid relying on them for advice that affects only you or that should be offered only by adults. For example, it's all right to ask your children to help pick out the family's new car, but you should not ask them whether you should date someone you just met at work.

Overburdened vs. Idle

For many harried, overworked single parents, it's sometimes all too easy to fall into a routine in which they depend on an older child to care for younger siblings, or assign chores that require an unrealistic degree of responsibility.

Although it's not unreasonable for single parents to expect their children to carry some of the weight of household duties, such responsibilities should be assigned with certain limits:

- The chores should be appropriate to the child's age.
- Generally, children under the age of ten should not be left unsupervised.
- Older children should not be given total responsibility for the care of younger brothers and sisters. They are siblings – not substitute parents.
- Chores should not interfere with schoolwork or sleep, or preclude time with friends. Schoolwork is a child's most important job, and an active social life is a necessary ingredient of healthy development.

Instead of overburdening their children, some parents go too far towards the other end of the responsibility scale. To assuage their guilt over the divorce, these parents exclude the children from household tasks and try to do everything themselves. Or they may use such faulty reasoning as "I had to do too many chores when I was a kid. I don't want to put my kid through that." Such selfless intentions

are unrealistic from the parent's point of view and do a disservice to the child. Being assigned and expected to carry out age-appropriate tasks creates a sense of accomplishment and self-discipline in children. It's a training ground for handling increasingly more difficult demands that will be placed on them by school, other institutions to which they belong, and eventually, paying jobs.

Studies have shown that children with divorced parents reap unanticipated benefits from assuming a greater amount of responsibility at a young age. Many of these children report that they have a greater sense of strength, independence, and capability as a result of their experiences in a post-divorce family. They are clearly proud of themselves and of their ability to assist their parents at a time when the family's future was seriously jeopardized. Children whose parents are divorced — like all children — need to feel needed; thus, parents should not try to protect their children from the vagaries of everyday life. The danger comes when the children are robbed of their childhoods, forced to grow up far before they're ready. They can never recapture those years.

Isolation vs. Activity

In the immediate aftermath of divorce, many people follow one of two patterns: they either isolate themselves from others or pursue an overly- hectic social life.

People who choose isolation may do so for many reasons: they may not be able to afford a babysitter, or they may feel guilty about leaving their children with a sitter after being away from them at work all day. Although their motivations are different, both types of parents may come to resent their children.

Some parents, however, use their work and/or their children as a handy excuse for avoiding interaction with others. They may still be sad and upset about the divorce — unable to put it behind them and take the first few shaky steps to reestablish their lives. They show no interest in dating, and may deny having sexual feelings.

Some people, overwhelmed by depression, may feel unable to make the effort to meet new people or take on new challenges. Such behavior often fosters over-dependence on the children, since they become the parent's only focus in life. What will become of such a parent when the children break away and establish their own lives? In its worst form, isolation may lead to severe depression and other psychological problems.

At the other end of the social spectrum are those parents who are any place but home. With a full schedule of night classes, church activities, outings with friends or dates, these parents leave their children with a round of babysitters and relatives (including the children's other parent). Some may go so far as to replace the former spouse with a serious new love interest before they are emotionally ready, or they frenetically engage in indiscriminate dating and sexual relationships. Sometimes, such parents are (subconsciously or not) trying to blot out the fact that they even have children, who are reminders of their failed marriage or a responsibility they wish they didn't have.

Obviously, the children suffer greatly by missing out on the consistent parenting and love they need, particularly in the first few months after their parents' divorce. Children's distress is compounded by the antics of an out-of-control parent and, not surprisingly, they often come to mirror that behavior back to the parent.

Moving On

In the first months to a year after separation and divorce, your life can be in a state of upheaval. When the dust finally

The temptation to become too dependent on your children is always there if you don't have another adult to whom you can turn when you need advice.

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The Mediation Alternative

Mediation can be a viable alternative to standard divorce litigation. Here's what you need to know.

By Brad Marcoux

While death and taxes may be the only guarantees in life, acrimony and financial woe almost always accompany an adversarial divorce. It isn't surprising, really: after all, the legal system by its very nature pits people against each other, seeming to offer the possibility of only one "winner" and little opportunity for compromise. The search for a way to make the process of divorce less painful has led many to mediation — also known as "assisted negotiation" and it is a form of alternative dispute resolution.

Unlike traditional divorce proceedings, mediation takes the approach that individuals who were once able to organize their lives together can also arrange to live them apart. It's a different way of viewing divorce, and one with many advantages. But there are a few concerns that need to be addressed before you can be sure that mediation is for you.

What is it?

Mediation is a negotiated agreement between divorcing spouses on the issues of children, finances, and property. The key word here is "agreement" — you and your future ex create an agreement that both of you can live with. The mediator is simply there to keep you on track, assure negotiations are fair, and

make suggestions when roadblocks are encountered.

The focus for both parties is on controlling their own divorce, not on giving control to a judge. Unlike in litigation (in which the lawyers speak on behalf of their clients), in mediation, mediators act as advisors while the spouses speak for themselves based on their own individual needs and priorities.

The stages

While mediators handle each case differently depending upon their personal style and their training (an attorney-mediator might handle things very differently than a therapist-mediator) there are generally a few common stages. An initial meeting with you and your spouse is arranged to assess the dynamic between both of you, explain what you can expect, and discuss costs. Some mediators may also have you fill out a questionnaire or come in individually, based on what kind of relationship you currently have with your spouse and the mediator's personal preferences.

Once this initial stage is complete, you'll set meeting times (usually weekly, but you can arrange any schedule that suits you), ground rules (no degrading or insulting language), and goals (usually

regarding support, asset division, and visitation).

Next, information-gathering begins: your mediator will need documentation for property, assets, and debts, as well as tax returns, bank and pension statements, and any other paperwork relating to your marriage and finances. Based on the initial assessments and this documentation, a decision is made as to whether financial, legal, or emotional experts need to be consulted, and the actual process begins.

While individual cases vary, most cases can be resolved in a couple of months.

The big plus

This short duration highlights one of the most appealing aspects of the process: although mediators generally charge between \$150 and \$450 per hour — about the same as a lawyer — the speed can make it tens of thousands of dollars cheaper than fighting it out in court.

There are other advantages as well: since you're the one who is crafting your own agreement, you can arrange for all of your concerns to be addressed to your satisfaction before the process ends.

Because of this, you're more likely to be happy with the final result, and be more willing to follow through with your commitments than if your settlement had been decreed by a court. No one likes being told what to do, after all. And you can arrange visitation and support that's beneficial to your kids — a massive plus, considering how harmful a disputed divorce can be for children. And there aren't any worries about your agreement not being legally binding, as the final agreement is drafted by the mediator into a "memorandum of understanding" that is then hammered into legalese by your lawyers.

The perfect process?

Saving time, money, and perhaps your dignity are all wonderful; these potential advantages may make mediation seem like the perfect way to end your imperfect relationship. But, as with anything else, there are complexities that you should be aware of before you dive in headlong.

One of the biggest bricks to be hurled at mediation is that of power imbalances. It's felt by some that if one person in the relationship has dominated the other in the past, the weaker party is put at an impossible disadvantage when trying to represent themselves. It's a valid worry, especially if you feel that you're the weaker party — and even more so if there is or has been abuse in the past. But it's also a problem that a good mediator should be able to correct. Power imbalances — from resource possession to intimidation or even outright physical abuse — does not have to rule out mediation as an option. Training for mediators in recognizing and dealing with power imbalances is the key.

Questions to ask

In your initial interview with the mediator, they will be looking for specific signs that your case is appropriate for dispute resolution. You should take advantage of this initial consultation to assure yourself that the mediator has all of the qualities necessary to bring your marriage to a fair and balanced end. Here are some of the essential questions you should ask:

Unlike in litigation, in mediation, lawyers act as advisors while the spouses speak for themselves based on their own individual needs and priorities.

- What is your training and experience? Most organizations require mediators to complete at least 30 hours of training (and, in some cases, extra hours of schooling in domestic violence awareness), several hours of negotiation, and several cases. You should be looking for someone who has done at least ten divorce dispute resolutions. Ask if they have experience with cases like yours (especially if you have some unique circumstances to negotiate) and what training they've had.
- What organizations are you affiliated with? You can follow up with phone calls to find out some information about those organizations.
- What is your approach? You should get as much information about the process as the mediator gets from you about your case. Some mediators hold individual meetings, while others use questionnaires or other methods of screening. Ask questions and be sure you're clear and comfortable with everything you're told.
- Do you have any biases? It's a blunt question, but a valid one: everyone has viewpoints that skew their perspective. Ask them how they feel about the role of mothers or fathers or about the care of children.
- Should our children be involved in the mediation process? If so, how?
- Should new partners be involved in the process? If so, how?
- What is the cost?
- How much time do you feel the process will take?
- Should other experts be involved?
- What role will my lawyer play in the process?

When used by a skilled and sensitive mediator, techniques such as shuttle mediation (where the parties are separated and the mediator "shuttles" messages between them) and precautions such as

separate arrival and departure times can often effectively deal with the fear of psychological or physical violence. More general fears of a gender advantage can usually be balanced out by a trained individual mediator.

Subtle power

The mediator has a vested interest not in taking sides but in keeping the process balanced and fair. Because a mediator's business can rely heavily on word-of-mouth, crafting an unbalanced settlement would likely cost them both business and reputation. And there's also an incorrect assumption made here: that the mediation process will be less empowering to an individual than a legal battle.

Those who voice concerns about power imbalances, however, tend to worry less about cases where the problem has been identified than a scenario where a mediator is oblivious to it. While each mediator's methods of searching for both subtle and overt power imbalances may be different, a good mediator will take the time to inquire about potential imbalances and formulate a plan to compensate for them.

There are cases in which mediation is inappropriate, of course. Most mediators agree that if there is active and continuing violence, or a fear of violence, mediation is inappropriate — but all stress that each case must be individually assessed, and broad generalizations cannot be applied.

Legal fears

Even though the final agreement is subject to lawyers' approval, there is still a danger of your ex-partner not making a full disclosure of assets. But such concerns are rare, and, since mediation can

be abandoned in favor of a trial at any time, any apparent dishonesty can be dealt with in the old-fashioned manner. Besides, as with domestic violence cases, if you don't trust your ex in the first place, you're unlikely to seek a negotiated settlement.

Final thoughts

Mediation offers many significant advantages to the traditional divorce process. It can save time and money, and allow two people who have decided they no longer wish to share all of their lives to negotiate how they will cooperate, and how they will work out the details of living apart. Although there are some concerns — the lack of government regulation and the possibility of an unrecognized power imbalance leading to an unfair agreement — generally speaking, mediation can let you and your soon-to-be-ex make arrangements that you can live with today and in the future. If nothing else, alternative dispute resolution is an alternative worth investigating. ■

Brad Marcoux is a former Editorial Assistant for Divorce Magazine.

For more articles on divorce mediation, visit www.divorcemag.com/articles/Mediation.

PITFALLS / CONTINUED FROM PAGE 29

begins to settle, however, there is the business of building a new life.

Your first task in this reconstruction is to put your failed marriage behind you and deal with any residual feelings of grief, anger, or guilt. In addition, you need to realize that your role as spouse is separate from your role as parent. Although your marriage has ended, your parenting relationship goes on.

That the children come to terms with the divorce has important consequences — not just in the period following the divorce but in their adult years as well. Children with divorced parents sometimes rush into relationships for which they are ill-prepared in an effort to prove they are lovable and to fight their fear of rejection. If they see that you can

recover from such a devastating trauma, such reactions in their adult lives may be avoided.

Attaining an inner peace about your divorce partly depends on the quality of the relationship you and your ex-spouse are able to build as co-parents. If seeing or thinking about your ex-spouse is emotionally charged for you, you may need to monitor your attitudes and behavior towards your ex in front of your children. Remember, although the two of you were unable to continue your marital relationship, this has nothing to do with the right or ability of each of you to be a good parent to your children. ■

This article has been edited and excerpted from How to Help Your Child Overcome Your Divorce by Elissa P. Benedek, M.D. and Catherine F. Brown, M.Ed. Dr. Benedek is leading child psychiatrist and forensic expert. www.newmarketpress.com/title.asp?id=531

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NEGOTIATION / CONTINUED FROM PAGE 27

financially, personally, or emotionally — the deeper the roots of fear. The fear of negotiating with a spouse who is more powerful, more prestigious, or more “important” than you creates problems, particularly if the spouse is well-connected or has a prominent family.

Under these circumstances, sitting down at a bargaining table seems like risky business. When there are significant emotional or practical inequities, you must do whatever you can to change the expected patterns of your position. Use all available resources: books, counseling, and so forth. If you can avoid succumbing to predictable old ways and if you have a lawyer who isn't easily impressed or intimidated, you'll be able to balance the pressures against you by using strategies that are different from those expected from you.

Whatever the obstacles, the basic rule is to understand what options exist for both of you. Insist upon realistic objectives. Focus on the problems, not the

person. Try to find a different approach to the same problem; reframing a seemingly insoluble problem may solve it.

It's not necessarily all the things you know that will help you during negotiations; it's what you can think of at the right moment to back your issues and arguments. This is where your files of prepared information can be invaluable.

Recognizing coercive tactics

What's fair and what's unfair in divorce? What does it mean to step over the bounds of common decency? What kind of tactics are allowable? What one spouse considers good strategy might be seen as deceptive to the other, depending upon the motives of negotiation.

An early step in predicting what your negotiations will be like is to try to recognize the tactics being used. If your divorce is adversarial, you're likely to face tactics designed to wear you down such as:

- Deliberate deceptions
- Misrepresentation of facts
- Less-than-full disclosure
- Psychological warfare
- Stressful situations
- Personal attacks
- Silent treatment
- Withholding money or children
- Playing on spouse's sense of guilt
- Body language
- Black-hat/white-hat designations
- Threats
- Dependency and helplessness
- Positional pressures
- Refusal to negotiate
- Unreasonable demands
- Escalating demands
- Calculating delays. ■

This article has been edited and excerpted from The Divorce Decisions Workbook: A Planning and Action Guide by Marjorie L. Engel and Diana D. Gould. Designed to help individuals prepare in advance for every phase of the divorce process.

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