

DIVORCE WITH (OUT) DIGNITY

A Divorce Lawyer's View

By Mark Cord

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PREFACE

The title Divorce With(out) Dignity reflects your choice. Divorce with dignity does not have to be an oxymoron like jumbo shrimp, airline food, military intelligence, postal service — a contradiction in terms, words having opposite meaning and effect. Divorce with dignity is possible . . . and infrequent.

Divorce with dignity occurs more often in marriages of convenience where there is a clear ulterior motive for the marriage — US citizenship, conceiving a child. These divorcing couples stay fairly calm when there has been no love, no genuine concern, no strong emotional attachment. Similarly, couples who arrive at the decision to divorce at the same time manage to fare better than others — not much consolation if you have just been conveniently thrown out of your home or conveniently replaced by a younger wo(man); and no consolation whatsoever if your mate of 10 years wants out of your marriage right now, but you don't, and you can't agree on the kids, the house, the pension, alimony, child support or even who gets the family dog.

Under these circumstances how can you maintain the high dignified road? How can you tell if you are? More frighteningly, why would you want to? The answer to the last question is simple: you save money and, more importantly, you don't lose your mind. After all, how important is money if you end up unhappy, angry, crazy, institutionalized, in jail or even dead?

Assuming you want to maintain your dignity throughout perhaps the most harrowing emotional experience thus far in your life, then read on. The table of contents and chapter headings of this book describe the most common fears and concerns of clients who have gone before you. Ultimately, how clients deal with these fears and concerns makes the difference between lingering sorrow and ultimate happiness, between financial ruin and a fresh start with money in the bank.

Law professors teach through a simple technique — they tell stories. It's called the case book method of instruction. The stories they tell contain legal principles. Remember the stories, remember the law. The same technique is used in the short stories that follow. Facts and names have been altered where necessary to protect the guilty.

As you read, realize you have a conscience and self-controllable choice. Let your common sense, not your primal instincts, lead you to the dignified way. The result will minimize the financial and emotional costs of your divorce.

CHAPTER ONE

YOU ARE NOT ALONE

In only one generation the institution of marriage has dramatically changed. More than 3 1/2 million men, women and children of all ages in the United States each year share an experience more traumatic for many than the death of an immediate family member — divorce.

More divorces are granted by courts on given days than marriage licenses issued. The failure rate of first marriages is around 50%; for second marriages it is now 60%. Arizona has one of the highest divorce rates in the nation. In short, there is a statistical probability that we all will divorce.

If you are still unconvinced that divorce is epidemic, glance down your block, around our apartment complexes, at our little league and soccer games and at your friends and relatives. Still, marriage remains popular particularly now that we are marrying more often during our life- times than our parents and grandparents.

The purpose of this book is not to pass judgment on this dramatic change, but rather to point

out that almost everyone survives — some admittedly more stable, happier and generally better off than others. And that's the side you want to be on after the dust and your divorce, hopefully, settle.

By remaining in contact with many of my former clients I have noticed this: There is a direct relationship between the quality of their divorce and the quality of their life following their divorce. In other words, clients who conduct their divorce with dignity, as this book attempts to demonstrate, are ultimately happier and more at peace with themselves — a worthwhile goal for everyone.

CHAPTER TWO

“NO FAULT” DIVORCE — THE MYTHS

Why are Americans divorcing at this alarming rate? Studies show lack of communication heads the list although alcohol and other drug abuse have become major contributing factors. Financial problems, excessive control, loss of affection or respect, immaturity, unfaithfulness, nagging (yes nagging), sexual problems, physical abuse, unreasonable jealousy, moving away from family, domineering, disagreement over child rearing, gambling, obsessive shopping, and lack of mutual social life take their toll as well. The major cause for second marriages failing is, you guessed it, stepchildren.

But most studies have ignored the real reason for most divorces. Simply put — too many couples had no business marrying in the first place. And now they look to the secondary reasons like poor communication, immaturity and alcohol in an attempt to rationalize their current marital dilemma. Wealthy Peter, age 60, marries poor and shapely Dolores, age 25, and wonders why things aren't working out after five years of marriage. Hmmm? Or Don and Donna marry right out of high school,

had never seriously dated anyone else and infidelity or sexual indifference is their stated reason for their divorce after 20 years of marriage. Other couples have married young with a child on the way without any other common interest. “We’ve grown apart, we don’t communicate” they rationalize. Other clients have candidly admitted that physical attraction was the main reason for their marriage. Ten years later nothing supports their marital existence. Of course there are exceptions.

These many and varied reasons for divorce, however, no longer represent legal grounds for divorce in most states, and that has created some confusion.

“My spouse won’t give me a divorce.”

Before 1970 all states required proof of a spouse’s fault or guilt before a divorce would be granted. Examples included adultery, mental cruelty, desertion, non-support, habitual intemperance, alcoholism and imprisonment. Even the application of cosmetics to entice marriage was grounds for divorce in the early Virginia Colony. When I started practicing law, one spouse was required to testify in a public courtroom that he or she “hit me, constantly

yelled at me, was a drunk, or cheated on me” and give details before a divorce could be granted.

In the late 60's California began to question the wisdom of this “fault” system of divorce and adopted the first “no fault” divorce law. Other states quickly followed, including Arizona in 1973. Proponents of the change argued: who can say, much less prove, who really is at fault in the breakup of a marriage? Rarely is only one spouse fully to blame. More often both parties have contributed their fair share to fueling the divorce fires. Isn't it more destructive to require couples and their children to live unhappily ever after in a fault system of divorce? Is it really necessary? Is there any advantage to society for requiring divorcing couples to air their dirty linen in a public courtroom?

In most states today a divorcing couple's marriage becomes “irretrievably broken” as in Arizona or they have “irreconcilable differences”. Plaintiffs are “Petitioners”; Defendants “Respondents” to remove that stigma. Reasons are mostly irrelevant other than one spouse simply does not want to be married anymore. And if so, their marriage will be dissolved (a current legal euphemism for divorce).

Clearly “marriage vow” is fast becoming another oxymoron. “Till death do us part” has essentially been replaced by the lesser conviction of “Till I don't want to be married to you anymore.” Like it or not, if you live in a true “no fault” divorce state like Arizona, it is not your spouse's divorce to give. It is yours (or theirs) for the taking.

Arizona does allow a sixty day “cooling off” period before a divorce will be granted, starting from the date dissolution papers are served. An additional 60 days can be gained by filing a petition for conciliation, which requires mandatory and free marriage counseling for both parties at county expense. But if there is only false hope of reconciliation and a happy marriage, ask yourself, why delay the inevitable and a new life for even another two months?

“I want one of those ‘no fault — no hassle’ divorces.”

“No fault” divorce is not always synonymous with “no hassle” divorce. For although you may no longer have to prove that Harry spent the weekend with his secretary in Malibu to divorce the SOB (or Martha drinks two quarts of Jack Daniels a day), the

problems of child custody, child support, visitation, spousal maintenance, who gets the house and debts, how much is the pension and business worth, who gets the pots and pans, and who pays the lawyers, still remain.

“Arizona recognizes common law marriage, doesn't it?”

No. Spousal maintenance, for example, is not available to spouses of these long term relationships, and the rules for dividing property and debts are completely different and less predictable than community property laws. Fortunately, children of these unions are entitled to the same child support benefits as their counterparts.

CHAPTER THREE

WHEN SHOULD I DIVORCE?

This chapter does not attempt to answer the question “Should I divorce?” That decision is strictly personal, not legal, and one which only you can answer. Clients who have divorced with dignity tend to answer it, along with the question When, in three stages.

First, they have taken their own private inventory of the positives and negatives of their marriage. They seem to be able to rise above themselves, overseeing their own personal turmoil. From that height they are able to make a sane and objective judgment. Only then are they able to decide whether the source of their dissatisfaction is merely an isolated, temporary and/or acceptable situation, or requires proceeding to the second stage. Every client seems to have their own tolerance level or fuse length during this stage.

My psychologist/psychiatrist friends tell me that an isolated act of marital infidelity, for example, is generally a poor reason to end a marriage, especially of long duration where children are involved. We're all still members of the animal

kingdom, the argument goes. We act on impulse. We make mistakes. What happened to forgiveness? Is the turmoil of throwing away the financial and emotional security of the entire family really worth it? But there are limits.

Frank gave Debbie three venereal diseases during their six year marriage. Debbie filed for divorce twice. Each time Frank would beg forgiveness, appeal to her sense of motherhood and family, promise religious conversion and she would reconcile with him. Everyone has a different threshold for pain.

Murial came home unexpectedly from work one Wednesday afternoon and caught Fred in their bedroom “having sex with the family dog”, she told me. After regaining my breath I could only muster “What kind of dog was it?” Without skipping a beat, she answered “a male German Schnauzer!” I advised her to change the locks and call the police. Two weeks later she called to tell me Fred had broken into the house and had stolen the dog. A month later she called to instruct me to dismiss her divorce case because she and Fred had reconciled.

It all sounded like a very dirty joke until I called a psychologist colleague, who was unsurprised. “I’m treating two patients for that type

of thing — bestiality — right now”, she told me. Fortunately, most clients' stories fall between the forty yard lines of the extremes, which makes their decision even more difficult. The moral, I believe, is that the sooner you are able to take your own detached marriage inventory, the faster you can get on with your life, married or not.

Married to each other for forty-five years, Gladys and Bill both agreed they should have divorced thirty years ago. “What a waste”, he told me. “I have never been happier than the past year of our separation”, he said. His friends all agreed — at his funeral six months later. Bill was 82.

If you find the significant negatives outweigh the positives of your marriage, don't panic. It does not automatically mean you're destined for divorce. It only means you move to the second stage — marital counseling. If money is a factor, don't panic either. The Maricopa County Conciliation Court provides counseling free of charge. Churches provide free services as well. Other marital counseling services have sliding fee scales based on income. Some insurance policies cover a portion of the fees. In only five or six sessions, providing your spouse attends, you should either (1) see significant change (2) change counselors or (3) proceed to the final step.

Stage 3 — make and keep an appointment with a lawyer, preferably an experienced one. In one, no more than two meetings, a lawyer can analyze the legal issues of child custody, support, alimony, division of assets, and debts and costs. Within reasonable ranges a lawyer can advise you on what to expect financially and discharge any irrational threats by your spouse like “You'll never see the kids again”, “We'll have to sell the house”, or “You have no chance of getting one dime from me.” (See Chapter Eleven on “Dirty Tricks”)

Armed with all the necessary information you need (and with the continuing assistance of professional counseling, if necessary) you can now make a well-informed, intelligent decision away from all the chaos. If your decision is to divorce, then the only decision remaining is when?

There is never a good time to divorce. The ideal time has been referred to in the Preface — when you both want it at the same time. But most couples don't have that luxury. I hear these rationalizations: “I want to wait to get the kids in college”, “relatives are coming”, “I want to see my Christmas present first”, “I want to wait until the kids are back in school”, “I want to wait until the kids are out of school”, or, “until we sell the house, pay off debts, until I finish school. . . .”

I'm not saying these are all bad reasons for waiting except this one: "I want my husband (or wife) to file first." In most states like Arizona the filing party presents their case first at trial if issues are contested, and they also go last in the rebuttal phase of their case. In close calls I want to be on the side of the first and last impressions with the judge. I also want to remove the "sting" of facts that may hurt my client's case — during our side of the case — and avoid the dramatic effect of allowing opposing counsel to bring it up first. Which trial scenario favors Mrs. Brown in a child custody contest?

Husband's Attorney: Mrs. Brown, isn't it true that you attempted suicide six months ago?

Mrs. Brown: Yes

Husband's Attorney: And how did you attempt your suicide?

Mrs. Brown: I took an overdose of sleeping pills.

Husband's Attorney: You weren't looking out for your children's best interests when you tried to poison yourself to death were you Mrs. Brown?

Mrs. Brown: I guess not?

Husband's Attorney: You guess not! But now you expect the court to believe you will always look out for their best interests and better than their father?

Or:

Mother's Attorney: Mrs. Brown, six months ago you made a mistake, didn't you?

Mrs. Brown: I sure did.

Mother's Attorney: Would you tell the court your state of mind before you made that mistake?

Mrs. Brown: I was seriously depressed and didn't know it until I started seeing my counselor right afterwards. My husband was cheating on me and telling me how awful I looked, and how stupid I was, and I just saw no other way out.

Mother's Attorney: What mistake did you make Mrs. Brown?

Mrs. Brown: I took an overdose of sleeping pills.

Mother's Attorney: Would you ever do that again?

Mrs. Brown: Never

Mother's Attorney: Why not?

Mrs. Brown: Because through counseling I have been able to understand that my husband's problems are bigger than mine. He thinks he's perfect and makes no mistakes. He feeds his ego by putting me and our kids down all the time. Now that I'm away from him I'm myself again.

Even a better reason may exist for filing first if you have determined that divorce is the only reasonable alternative — you wrestle control over your life away from your controlling spouse, who may prefer the status quo over your pain, sacrifice and unhappiness. I still am amazed though, and must always ask why, when I hear: “I should get a divorce but I'm going to let him/her file first.”

So when should you divorce? Follow the three steps of a marriage inventory, marriage counseling, and legal advice. You'll know.

CHAPTER FOUR

LEGAL SEPARATION v. DIVORCE

Clients considering divorce frequently ask for an explanation of the differences between legal separation and divorce. This chapter focuses on the principal advantages of and reasons for legal separation.

Legal separation implies physical separation for most couples. It also means financial separation — where the child custody and financial issues are agreed upon by the separating couple in legal written form. (The financial and custody issues are the same in both legal separation and divorce cases.) If this agreement cannot be reached, a trial becomes necessary just as in divorce. When the court intervenes one or both spouses usually decide to divorce. They reason that there is no point in attempting to reconcile their marital difficulties if their financial differences cannot be reconciled.

Too many couples physically separate without the benefit of a written, binding agreement relating to their children and finances. Sometimes this “non-legal” separation works well. The couple maintains a cooperative spirit and positive attitude.

Their relationship may even be strengthened by their marital sabbatical, and they may later reunite.

In other cases this “non-legal” separation has been used as a ploy for husbands (and to a lesser extent wives) to sell, hide or acquire hidden assets in order to gain a greater financial advantage when the decision is later made to divorce. You should consider these aspects of “non-legal” separation (physical separation only) in your decision whether or not to separate or divorce. Knowing the potential greedy side of “non-legal” separation, I am extremely cautious of separating for any lengthy period — say sixty days — without the benefit of a legally binding agreement.

Other couples choose to separate financially with a written separation agreement but then do not physically separate or they reconcile. The legal questions many times ignored at that point are: What effect will their written agreement have if they later divorce? Is it cancelled by their failure to physically separate? What happens to property acquired and debts incurred after the date of their written agreement? These are questions which can only be answered by your attorney before you sign your property settlement or separation agreement.

A final group of couples choose the traditional legal separation approach — separating physically and financially. Clients in this category have expressed four major reasons for their choice over divorce.

1. Moral, family and religious considerations. “This would be the first divorce in our family.” “We can't do this to the children.” Or, “Our church will not permit our divorce.” These are three of the reasons I most often hear why clients in this category opt for legal separation. These clients, men and women alike, are sincere and their attitude is entirely understandable.

2. Health insurance coverage. Divorce may cause the termination of group health insurance coverage upon a non-employee spouse. Federal legislation (COBRA 1985) provides some relief, requiring larger employers to make coverage available but only for a limited period of time, and it is more expensive. It is possible for the spouse left without insurance to obtain new coverage elsewhere, but a serious problem arises if the non-employee spouse has a “pre-existing” health condition requiring expensive future medical treatment. New insurance is normally not available for any pre-existing medical condition.

Spouses who have cancer or kidney disease, requiring expensive medical treatment, may find themselves without insurance upon divorce with no chance of obtaining new coverage. For this very reason couples favor legal separation over divorce.

3. Divorce is too final. The idea of the finality of divorce is terribly frightening for other clients. They realize that something must be done to solve their marital difficulties but are not ready for divorce. These clients are usually involved in longer term marriages and reason that “a step at a time” philosophy is a better approach — legal separation being the first step. After that step has been tried and tested (and with the passage of time) these clients feel they will be less emotional and better prepared to decide whether or not to divorce.

4. The “attention getter”. One spouse may be content with the marriage relationship as it is. The complaints of their partner over child rearing, finances, or abuse of alcohol are continually dismissed by the contented spouse as insignificant.

In these cases clients do not necessarily want to divorce, yet they are totally dissatisfied with their situation. Legal separation in these circumstances is used as the “attention getter”, or “the shot over the

bow of the ship”. It brings home the severity and the threat of the dispute to their marriage.

In cases involving clients' complaints over their mates' irresponsible spending habits (both men and women), I have frequently heard the comment, “I intend to know first where I stand financially through legal separation. I want some financial control for a change. Once I have that security, maybe then we can work at reconciliation.” Or “If (s)he stops his/her drinking then we can work at getting back together.” This strategy is sometimes successful, sometimes not. At least it may force the other spouse to take a long hard look at the problems that are destroying their marriage. It shows that the spouse seeking the legal separation is willing to go to extreme measures in communicating the message, “If the problem is not corrected, I don't want to be married to you any longer.”

There are some drawbacks to legal separation. Additional legal costs will occur if you later decide to divorce. Ask your attorney about the additional expenses involved. Legal separation also requires the consent of your spouse in Arizona to be effective. Generally speaking, arrangements concerning finances and the children will not have to be renegotiated if one or both of you later decide to divorce.

The other disadvantage to consider is whether your situation is so intolerable that a legal separation only postpones the inevitability of divorce. It may be unrealistic to hope that legal separation is the key to a happier marriage. With false hope you are wasting too much time and expense that could be put to more productive use by getting the divorce over with and behind you.

CHAPTER FIVE

“WINNING” IN DIVORCE

The title of this chapter may be misleading. From no standpoint, financial or otherwise, does anyone “win” in divorce. The cold fact is there is only a limited amount of property (and debts) to be divided. There is only so much income that can be used for living expenses for you, your children and your spouse. Property and income cannot be magically created in divorce. In many middle-income, and even upper-income households, husbands and wives are barely able to maintain one household together, let alone two. I have witnessed couples having monthly incomes exceeding \$40,000 per month missing house payments, ruining their credit and filing bankruptcy.

Often the divorce process becomes more of a contest of minimizing the losses, as when a home is in foreclosure or the parties are heavily in debt, rather than maximizing any gains. If you set out to win financially in a divorce, you are doomed to disappointment.

Divorce for many couples also represents a serious defeat in itself. For them their marriage,

which was thought to be made in heaven, has become an emotional hell on earth. In the contested cases where couples have the “winning” philosophy to divorce, the process can be likened to two boxers flailing away at each other through the twelfth round, bruised and swollen, weakened, nauseous, barely standing but still trying to get in the last lick. To what end?

If you and your spouse cannot agree on a settlement of your financial affairs and custody of your children, a judge will ultimately reach an agreement for you, after a trial. Often the judge's sense of fairness using legal standards will not correspond to your own. The only winners in cases where you or your spouse have the traditional “winning” philosophy are your lawyers whose fees will increase substantially — the more unreasonable either you or your spouse becomes, the greater the fees. Some examples may help to illustrate the possible consequences of the “winning” philosophy towards divorce.

Mr. Allen operated and owned a successful jewelry store. His wife had had enough of his carousing and inattention. She filed for divorce. “I've lost in the marriage,” she said, “but I'm going to win in the divorce.” Despite my warnings, she persisted. In the course of her divorce the jewelry

store required a loan to purchase merchandise and a new advertising campaign. For the business loan to be made, the bank required both Mr. and Mrs. Allen to sign. "I have signed the last loan agreement I'm going to", she informed me, "I'm not going to help him be successful anymore." As a result the loan application was denied. Her husband consequently became uncooperative to the point where settlement could not be reached and business declined. When the case went to trial six months later, and since the loan was not obtained, the business had to be sold at a substantial loss. Mrs. Allen shared one-half of the loss with her husband when the judge divided all the property on a fifty-fifty basis. She had won at denying her husband success but it had cost her several thousands of dollars she could have later used to create a few business successes of her own.

Mr. and Mrs. Barry also typify the negative effect of the "winning" attitude in divorce. Mrs. Barry owned a small messenger service business. Her automobile, which was necessary for her deliveries, needed replacement during the divorce. When her husband was asked to divide their savings account at an early stage in their divorce so that she could buy a car, he said no. Several months later at trial Mr. Barry found that Mrs. Barry had lost many of her larger accounts because of her transportation problems. To Mr. Barry's chagrin, the court decided

he should pay a larger amount of monthly spousal maintenance (alimony) to his wife since her income was now substantially less than her living expenses.

Spending sprees are great ways to increase your lawyer's income and make you ultimately poorer. Mrs. Carson suddenly left her husband of six months. The couple had acquired very little property during their short marriage, but Mrs. Carson had a credit card tucked away in her purse. Within the next twenty days of charging she amassed \$9,500 in clothing and merchandise before the card was seized. Mr. Carson would have gladly paid his wife \$9,500 for her support during a period of reconciliation, until he received his next credit card statement. He was furious. The case became impossible to settle. The couple's credit was ruined when Mr. Carson refused to pay the bill (Mrs. Carson could not) and Mrs. Carson found herself at trial with both an unforgiving husband and judge. She came within an eyelash of spending 30 days in the county jail for violating an injunction (automatic in all cases) prohibiting those expenditures.

It is not uncommon to see divorcing couples refuse to communicate, much less cooperate, in paying even small debts or the house payment and later finding themselves with the house in foreclosure and a destroyed credit rating but they both have

managed to maintain several thousand dollars in their separate bank accounts.

I have seen many clearly employable women refuse — or at least drag their feet — in looking for a job. Their thinking is that if they are unemployed at the time of trial, the judge will order more support for them. At the same time it is clear that their husband does not have sufficient income to pay for the children's expenses and the other expenses of running two households, let alone his wife's entire expenses. Sure, the judge may order that her husband pay her more alimony, but she could still be that much more independent and better off financially if she had her own source of income. I have found judges more inclined to award support to women who demonstrate they are willing to work but need additional help from their husband to bring their standard of living closer to the lifestyle to which they had grown accustomed during their marriage.

On the other side, I have witnessed husbands who have postponed raises, deferred commissions, and passed up job promotions and overtime work in an attempt to disguise their true income. Those husbands were mistaken in thinking judges and their wives' attorneys would miss those facts at trial when considering the amount they could afford to pay towards child and spousal support payments.

Doesn't it make sense that the “winning” philosophy or “getting even” philosophy in divorce be discarded for both parties' financial and emotional health? I realize that you may have grown to detest your spouse's conduct and attitude, and cooperation is the furthest thing from your mind. Reconsider. Can you afford the luxury of not cooperating?

The philosophy which has made the most sense to me is that of attempting to preserve some spirit of financial cooperation — recognizing that although the marriage relationship is lost, the business nature of your relationship must continue through the divorce. You both win with that philosophy. At the very least, you don't lose.

“Winning” needs to be redefined in the divorce context. A true win, I believe, is a final settlement agreement that is fair to you, your spouse and your children.

CHAPTER SIX

“LOSING” IN DIVORCE

Just as some clients persist in the “winning” attitude, others adopt the “losing” attitude, captured by the statement “Let him/her have it all. I just want out.”

The perceived benefits of the “losing” attitude are that there is no fight over property and the divorce process is shortened substantially — couples who settle their financial differences divorce faster (by several months) than those who do not. It is not uncommon for a year or more to pass before contested cases go to trial, and that does not include the additional two years or so for an unlikely appeal.

This “Let him/her have it all” attitude creates a dilemma for your lawyer as well. Your lawyer's job is to protect your interests. With a “losing” attitude your lawyer's function becomes almost unnecessary, except for emphasizing the danger of your strategy in the long run.

I have spent countless hours urging clients that their losing state of mind only gives momentary relief. The price is too high in the long run. Property

that could have been received from a more positive approach can come in real handy if financial setbacks occur in the future, the children need braces, a college education, or the car breaks down. Some property or even a modest amount of cash can take the initial financial pressure off and give a real boost to a new start. Months and even years after the divorce, I have met with those same clients who invariably stated that if they had only held out for their fair share, how much easier it would have been. In an extreme case Mrs. Prather settled for a million dollars in property leaving her husband with the remaining \$7 million. Five years later they were both broke. The extra \$3 million would have at least bought her another fifteen years of luxury without working. But she had no benefit of that hindsight at the time of settlement.

Mrs. Dougherty decided it wasn't worth it to appraise her husband's stock options in a computer chip business and gave them to her husband rather than going to trial. Three years later they were worth \$13 million.

In other cases the situation is so intolerable and life threatening — as in the case of a violent or emotionally disturbed husband — that to get out of the marriage with your children and the clothes on your back is enough. One client was beaten and

tossed out of her home in her front yard by her husband, literally without any clothes on her back or anywhere else. If you fall within this category, you need the police and family crisis counseling before you need a lawyer.

Husbands and wives who desperately want to reconcile with their spouses represent another common example of this “losing” attitude. For these individuals I feel a tremendous sense of compassion. Yet as their attorney, I must advise against their method of thinking. Here is one scenario: Mrs. Douglas becomes involved with another man and tells her husband their marriage is over. She files for a divorce, leaving Mr. Douglas heartbroken. In a desperate attempt to reconcile Mr. Douglas reasons that he does not want to upset his wife further by objecting to her one-sided and unfair proposal for a property settlement, extravagant alimony, and child support demands. He stands a better chance of winning her back by giving in — so he thinks.

One year later he finds himself keeping company with cockroaches in some cheap apartment he can barely afford, while his wife gallivants with her live-in boyfriend (in the family home which is now hers) on most of her ex-husband's salary. Mr. Douglas now cannot make up his mind between Mexico and an overdose of sleeping pills.

It happens more times than you might imagine to both men and women in divorce. I have spent as many hours counseling men from giving away “the farm” and their future income as I have advising women to discard the “he can have it all” attitude.

Sometimes lawyers are brought in too late. Mr. Ellis is a good example. He and his wife were in their thirties, had two school-age children, and a home which was their major possession. Suspecting an affair, Mrs. Ellis confronted her husband. Mr. Ellis confessed, thinking Mrs. Ellis would get over it. He was wrong. She filed for divorce.

In a moment of what he described as “guilt and panic”, and before he saw an attorney, he deeded their home over to her. Who knows, maybe no one could have convinced him otherwise in advance. But, when he finally regained his senses, we were faced with the difficult task of convincing the judge to give him his half of the property back. His hasty decision nearly cost him \$75,000. It may be argued he deserved to lose the house; that there is no reason for the judge to give half of it back to Mr. Ellis. But, if you have read Chapter Two on “no-fault” divorce, you will recall that “fault” or adultery is no longer relevant or a fact which the judge can consider.

Some other clients have been in such a hurry to remarry that they settle for substantially less than half. “What’s the rush?” I invariably ask without any satisfactory answer.

If you are going to take and maintain a “losing” attitude, you do not need a lawyer. Save your money; you’ll need it later. In your search for a divorce with dignity the ideal approach lies somewhere between the “losing” and “winning” attitudes. Be realistic. Your attitude towards settlement must remain separate and apart from your feelings towards your spouse.

It is also risky to conclude that a fifty-fifty split of your debts and assets is a fair settlement of your case. Your situation may be slightly different or unique in ways which only an attorney can recognize. For example, in Arizona real estate placed in joint tenancy by a couple during their marriage is generally considered a gift of one-half to the other spouse regardless of how much each contributed from funds they inherited or acquired prior to their marriage. But the same rule does not apply to jointly held personal property like automobiles. And an entirely different rule applies to joint bank accounts.

One disgruntled husband told me he found out the hard way the definition of community

property. “The judge gave her the property,” he said “and told me to get out of the community.”

Rules or laws exist for property division, debt payment, child support, and spousal maintenance. Finding out what those rules are before racing to the courthouse, leaving town or signing that deed or indentured servant agreement is the dignified course to take. Otherwise, how much dignity is there in being both unhappy and broke?

CHAPTER SEVEN

LET'S GET ORGANIZED

How organized are you when it comes to financial matters? Are your financial papers filed carefully away in alphabetical order? Do you even know where they are? When was the last time you balanced your checkbook, made out a budget or kept track of your living expenses?

If you run a business or the business end of your household, you know that organization can save a lot of time and frustration. Even so, there are organized, not so organized, and totally disorganized people.

When it comes to your divorce, organization is critical. This chapter illustrates the serious nature organization plays in divorce. It provides aids in making it easier for you to become organized. And, it will allow you and your attorney the ability to more effectively evaluate your financial position. It can also save you money because if you do not organize your financial affairs, your attorney will have to. And at the cost per hour of legal fees these days, the alternative of not doing it yourself is expensive.

Many clients tend to rush into the decision to divorce and then they try to figure out how they will survive financially. I am not saying this method is wrong (it may be necessary in cases of immediate physical danger). But consider an alternative step. After all, is it better to divorce from a still tolerable marriage where the bills are being paid or constantly worrying how the rent will be paid or selling your blood or the rest of you to make ends meet?

If that seems to be an exaggeration, it is not. Enough women clients have resorted to prostitution, or disguised subtle forms of it, to illustrate the seriousness of a hasty decision to divorce.

Mrs. Fonner was an attractive thirty-three year old who sought advice two years after her divorce on whether she would be entitled to an increase in child support for her two young children. A childhood illness prevented her from attending high school. Her marriage had grown stale, she had met another man, and gave her husband most of their property in the divorce settlement. She had asked for no alimony and only a small amount of child support. Her new relationship fell apart six months after her divorce. She sat in my office with no formal education, no money and two small children. To make ends meet, she had become a highly paid prostitute, but was having a hard time coping with the pressures of her

profession. She had been recently hospitalized from injuries received from a violent patron. She worried about her children finding out as they grew older and more inquisitive.

She was stuck. A court proceeding to raise child support would bring up the subject of her source of income for the past year. No doubt her ex-husband would want custody of their children if he found out. Mrs. Fonner left my office without a solution. She knew she had been hasty in her original decision to divorce her husband. She told me if she had to do it over again, she would have at least obtained her high school diploma and some job experience before filing for divorce — all 20-20 hindsight. As far as I know she is still conducting business in the local bars.

Mr. Garrett represents the male side of the same coin. He had been married for twelve years, had two children, was a successful but not wealthy building contractor. He had met another woman and had fallen in love. Pressured into a speedy divorce by his girlfriend, he settled with his wife, against my advice, for an amount clearly leaving him financially strapped. When his new relationship failed, his ex-wife would not take him back, and he was three months behind in his support payments.

The point I am attempting to make is don't jump into divorce too fast. Keep your mind open until you, your counselor and your lawyer have properly evaluated where you are. It is conceivable that your spouse may be so intolerable to live with that you have to get out now. But at least stop and intelligently consider the alternatives.

Assuming you are approaching the decision to divorce with an open mind, consider these four suggestions on organization before you meet with your lawyer:

(1) Locate as many of your relevant financial papers as possible. If you are worried your spouse will become suspicious if they are missing, photocopy them and return the originals. Don't feel guilty. You are simply protecting your interests just as your spouse would. Ten categories of useful financial papers are:

1. Real estate deeds
2. Other title documents, such as:
 - (a) Car titles
 - (b) Bonds
 - (c) Stock certificates

- (d) Statements for savings and investment accounts
 - (e) Life insurance policies
 - (f) Pension and profit sharing documents
3. Financial statements and credit applications
 4. All monthly bank statements for the past year
 5. Credit card statements for the past year
 6. Any suspicious cancelled checks and credit card charges for the past year
 7. Both of your wage statements for the past year
 8. Federal Income Tax Returns for the past three years
 9. Real estate mortgages, deeds of trust, and contracts for sale
 10. Loan agreements and promissory notes

(2) Make a list of all your property and estimate what you think each item is presently worth. You do not have to list knives and forks, but it helps to be more than less specific.

Any items of value not listed in your final divorce papers are up for grabs. Your lawyer cannot read your mind. If you do not supply him or her with the information, the risk is increased it will be missed.

Take your time preparing this list. Other items may come to mind when you have had a chance to reflect. You can use the following as a general guide:

<u>Item</u>	<u>Value</u>
• Residence	
• Lots	
• Rental property	
• Vacation home/timeshare	
• Mobile home	
• Travel trailer	

<u>Item</u>	<u>Value</u>
• Household furnishings (itemize by room on separate sheet)	
• Tools, yard equipment, horse tack (itemize on separate sheet)	
• Automobiles (make and year)	
• Motorcycles	
• Ski mobiles or Jet Skis	
• Boats, trailers and gear	
• Cameras and equipment	
• Guns	
• Checking accounts	
• Savings accounts	
• Credit union savings	
• Investment accounts	
• Retirement plans	
• Profit sharing plans	

<u>Item</u>	<u>Value</u>
• Severance benefits	
• Stocks and options	
• Bonds	
• Life insurance	
• Annuities	
• Trusts	
• Partnerships	
• All businesses	
• Pets and livestock	
• Jewelry (unusual value)	
• Personal effects (unusual value)	
• Collections	
• Antiques	
• Other	

(3) List your debts, if you can, in similar fashion, including debts against your home (known as liens, mortgages, deeds of trust or contracts for sale); credit cards; personal loans from banks and loan companies; loans from family and friends; credit union loans; and salary advances.

If there is even the slightest possibility you or your spouse may owe money to someone or some company list it! You could organize your list of debts like this:

Company/ Person Owed	Purpose	Date of Debt	Balance	Payment

If you are unsure about any of these categories, have made a reasonable effort to look for the answers, and still cannot find them, place a question mark in the

space. If you can make an educated guess, put that in with a question mark beside it.

Remember, every item that has a question mark will require your lawyer to obtain the information and could cost you more money in attorney's fees. So, if a call to a creditor is required to find out the information, do it. You are saving yourself money in the process.

(4) Make out your own monthly budget and a hypothetical one for your spouse. Don't forget the children's expenses as well. You will probably be surprised at how much it costs to live these days, especially with two households.

The following detailed sample may be of benefit. Use the average 4.3 weeks in each month, if you think in terms of weekly payments.

Husband		Wife
	<u>Housing</u>	
	House payment(s)	
	Rent	
	Repair and maintenance	
	Housekeeper	
	Yardman	
	Pool service and chemicals	

Husband		Wife
	Weed and insect control	
	Pool loan payment	
	Home improvement loan	
	Association dues	
	Other:	
	Subtotal	

	<u>Utilities</u>	
	Electricity	
	Gas	
	Water	
	Sewage	
	Trash removal	
	Telephone	
	Security	
	Cable TV and internet	
	Other:	
	Subtotal	

Husband		Wife
	<u>Food</u>	
	Groceries (food/grocery store items)	
	School lunches	
	Lunches at work	
	Special diet requirements	
	Other:	
	Subtotal	

	<u>Clothing</u>	
	Wife	
	Husband	
	Children	
	Subtotal	

	<u>Health Care</u>	
	Doctor	
	Doctor – children	
	Dentist	
	Dentist – children	

Husband		Wife
	Optical	
	Optical – children	
	Orthodontia	
	Prescriptions	
	Prescriptions – children	
	Health insurance	
	Health insurance – children	
	Other:	
	Subtotal	

	<u>Transportation</u>	
	Car payment(s)	
	Car insurance	
	Gas and oil	
	Repairs and maintenance	
	Bus fares	
	Taxis	
	Parking	
	Other:	
	Subtotal	

Husband		Wife
	<u>Miscellaneous</u>	
	Barber/beauty shop	
	Newspapers	
	Magazines	
	Recreation	
	Entertainment	
	Club dues	
	School tuition	
	Books and fees	
	Gifts	
	Child support payments	
	Spousal maintenance Payments	
	Church	
	Vacations	
	Donations	
	Savings	
	Other:	
	Subtotal	

	TOTAL EXPENSES	
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Now that you have been traumatized by what it will cost the two of you to live separately, add to these totals your monthly debt payments from the previous list. And don't duplicate. For example, if you have included the mortgage payment and the automobile payment on your expense sheet, don't add it in again when you add your debt payments.

In business parlance, the combination of your monthly living expenses and debt payments is called your “nut”. That is what you have to “crack” (pay for) each month to stay even and keep a good credit rating.

The next question then is do you and your spouse have the funds available to crack both “nuts”? The answer can be gained from the following schedule, presented to determine your spendable or usable income. Remember, don't duplicate expenses or deductions. If you have already listed the items, don't deduct it again here. Health insurance, for example, might be deducted by your employer directly from your salary, so don't consider it again in your expense list.

Husband		Wife
	<u>Total Income from All Sources</u>	
	Rents	
	Pension or retirement	
	Interest and dividends	
	Social Security	
	Disability – unemployment	
	Sources other than wages	
	Wages (gross)	
	Total Monthly Income	

	<u>Deductions</u>	
	Federal taxes	
	State taxes	
	Local taxes	
	Social Security	
	Medicare	
	Union dues	
	Pension/profit sharing	
	Health insurance	
	Other:	
	Total Monthly Deductions	

	NET SPENDABLE INCOME (Total Monthly Income Minus Total Monthly Deductions)	
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If you have followed this so far — congratulations. You are definitely on the road to organization and you have saved yourself considerable aggravation in the future, not including the potential savings in attorney's fees. You have also put the necessary information into perspective to allow a speedy evaluation of your case.

If the total Net Spendable Incomes for you and your spouse do not meet both of your “nuts” (living expenses and monthly debt payments) something has to give. It may be your standard of living or credit rating. It may mean getting a higher paying job, working longer hours, getting a part-time job, getting a job, selling your home, selling other property or maybe even filing bankruptcy. Don't panic! You now know what has to be done.

This chapter on organization, although tedious, is an absolutely necessary component of a divorce

with dignity. Too many divorcing couples fail to consider the financial ramifications of their divorce. Had those financial ramifications been properly considered, the adjustment period could have been made so much easier. There is enough tension involved in a divorce without the added anxiety of collection agents calling you day and night or the sheriff knocking at your door to evict you from your home.

CHAPTER EIGHT

LAWYERS

“Lawyers now outnumber people”, the lawyer joke goes. Not quite, although one in about 300 Americans are lawyers and 40,000 more graduate from law schools nationwide every year. So you are not going to have any trouble finding one. The objective of a divorce with dignity is finding the right one for you. We come in all sexes now, all colors, ages and sizes. When I went to law school only three women or 1% were in my freshman class of 300. Now the ratio is about 50%.

Unless you are completely broke and qualify for legal aid or have a short marriage with no kids, assets or debts and use a divorce kit, you need a lawyer. This chapter provides an insider's view into choosing a lawyer. The next chapter deals with paying them.

“I didn't think I needed a damn lawyer”, John told me recently. “I gave her the house, our savings, and everything else. I thought my pension and life insurance cash values were mine because my wife's name wasn't on any of that.” John didn't like the news he was about to hear. His former wife had filed a

petition to divide those assets as well — five years after their divorce. In Arizona, community property not described in the final papers, is subject to being divided 50-50 later on.

“Lawyers are too expensive”, said Mary. “After all, we just have the kids, a house, and some debts. I don't want to remarry anyway. He won't neglect his children.” Despite my warnings, she didn't hire a lawyer and John took care of his family — for eight months. That's when John found a girlfriend, stopped paying family support, quit his job and vanished.

Mary tried to sell their house but found the sale required her husband's signature. Creditors started calling her on new credit card charges her husband had accumulated before leaving. Her wages had been garnished. She now faced investigation fees to find her lost husband, bankruptcy lawyer fees and divorce lawyer fees, let alone the emotional cost of her financial chaos and confusion. Yet, too many divorcing couples simply do nothing after separation. They don't realize, for example, that in Arizona all property acquired during marriage is presumed to be 50-50 community property through the date of formal service of divorce papers upon their spouses.

A rancher's wife I represented found that although she had been separated from her husband for 10 years, she was still entitled to half the equity in his new ranch. Pension plan rights continue to grow and so do new debts. Examples abound. Clients have literally given away small fortunes to save a few thousand dollars on lawyers. Ironically, divorce lawyers make a substantial income mopping up after the divorce from previously unrepresented couples.

Sixty percent of divorcing couples in Maricopa County do it themselves without lawyers. Many of these same couples had no hesitation in spending 5, 10, \$15,000 for their wedding, rehearsal dinner, rings, and honeymoon, or \$10,000 to their realtor, but for some reason paying a lawyer substantially less to handle and settle the more complicated issues outlined in Chapter Ten is unacceptable. I think it has something to do with paying for pain — not unlike a trip to the dentist office.

Hiring a lawyer, assuming you really can afford one, is like buying divorce insurance. First, it gives you the peace of mind of knowing you are legally divorced. Just because a judge signs your divorce decree does not mean the divorce is legal. Simple mistakes, like not satisfying Arizona's 90 day residency requirements before filing, improperly serving your spouse with divorce papers or ignoring

other time requirements jeopardize the validity of divorce decrees. A judge is not required to grade and correct your papers. The law holds you to the same standard of exactness and legal knowledge of a lawyer whether you are represented or not.

Later surprises are minimized as in John and Mary's case. Most lawyers carry large malpractice policies, like doctors, to insure that our job is done right, and that you don't lose money as a result of our neglect. You never get paid back from your own neglect.

Finally, through a lawyer you distance yourself from the emotional chaos by breaking off contact with an irrational and uncooperative spouse. The time for all the yelling and screaming is over. Let your lawyer earn his or her fee by taking over your battle. You can then focus on the tasks you can control like your job, raising your children, and getting on with your life. As added incentive I warn clients that every fight they have with their spouse after filing for divorce will cost them a thousand dollars. Why? By the time an arguing couple meets with their respective lawyers over the problem, the lawyers telephone and write each other and talk again with their clients, about a thousand dollars in attorney's fees have been burned. Most fights are simply not worth it. Pick only the battles that are worth winning and let your lawyer

handle the sensitive issues. One retainer is enough. The second retainer signifies the fight is on.

Your future lawyer can be found in a number of ways, including those who advertise. But be careful. The quality of their ad does not necessarily reflect the quality of the lawyer behind the ad. Lawyers who advertise, the argument goes, advertise because they cannot attract enough clients through their own track record or referrals from former clients and associates — a better way to choose your lawyer than through ads. Ask your friends, family members, business associates, accountant and/or marriage counselor. Chances are, if they have had a good experience with a divorce lawyer, you will too. Better yet, ask another lawyer you trust, who does not practice divorce law and therefore has no financial interest in your decision. Lawyers know the reputations of other lawyers or can make a few calls to find out. It's a service most lawyers will provide free of charge, for a change.

CHAPTER NINE

RETAINERS, FEES AND COSTS

A lawyer dies and goes to heaven. St. Peter checks his reservation list.

“Stop” St. Peter orders.

“Why?” asks the lawyer.

“According to our records of your billable hours,” St. Peter replies, “you are not scheduled to arrive for another six years!”

Since time is a lawyer's inventory, the total hours he or she spends on your case should determine your bill. Make sure that's clear. There is no need for vague statements in fee agreements like fees may be increased if the results achieved are “favorable.” Consider another lawyer from one who insists on such a provision. You need to know specifically how you are going to be charged.

This chapter is placed here because the subject of attorney's fees should be discussed before your case gets underway — not after. The problem is that

lawyers can be vague about it and clients do not know to ask these questions:

1. What will you charge me for our first conference? Ask the lawyer's secretary when you set up the initial appointment. Most lawyers charge a reduced fee for this conference. Find out what it is and be prepared to pay it before you leave the lawyer's office.

2. If your divorce is uncontested, what will be the total charges in your case? Except in rare instances, there is no reason why your attorney cannot answer this question specifically at the conclusion of your first conference.

3. What retainer will be required, if any? The legal profession has developed a custom of charging a “retainer” or an “advance deposit” to provide for the payment of your fees. The amount varies depending upon the law firm, the lawyer, and the individual circumstances of your case. It may represent the total cost of your divorce or just a portion of it. Ask.

4. Will the retainer or a portion be returned if you change your mind about the divorce? In other words, is it refundable? The quickest way to find out is to ask. Remember that you pay your lawyer making you the boss, so why be shy? These are questions that

directly affect your checkbook balance. If your lawyer becomes defensive, perhaps it is time to find another lawyer.

5. What is his or her hourly rate? There is no uniform hourly rate charged by lawyers. The rate may vary depending upon where you live, the experience of your lawyer, and the complexity of your case. In most circumstances your lawyer's hourly rate determines your ultimate fee. Incidentally, the most expensive lawyers are not necessarily the best. You are a consumer in a free market. You can shop around.

6. How much does your lawyer charge for phone calls and other items of work? It is inaccurate to believe that clients are only charged when their attorney appears in court or meets directly with them. Lawyers also charge for research, document preparation and review, court room preparation, investigation, and phone calls, whether it is to or from you or on your behalf.

Usually there is a minimum charge for phone calls. Find out what it is. Knowing the minimum charge will allow you to evaluate whether or not the phone call is necessary. Rather than asking your lawyer three separate legal questions in three separate phone calls, consider collecting the questions and asking all three in one call.

7. If your case becomes contested, what will your attorney's fees be? It may be impossible for your lawyer to give a precise answer. Your total attorney's fees depend upon the amount of time your lawyer spends on your case, which will depend upon the reasonableness of your spouse (and you), the reasonableness and cooperation of your spouse's attorney, the property and debts involved, whether child custody is an issue, your help in gathering financial information, and whether your case is appealed. You are entitled, however, to receive an itemized statement of time and charges from your lawyer on a periodic basis so that you know where you stand at the various stages of your divorce.

It is not worth spending five hundred dollars in attorney's fees arguing over a T.V. or rocking chair. Smaller issues like division of household contents are more easily resolved when both parties realize the cost of attorney's fees in continuing to argue. Flip a coin or be creative in resolving small financial controversies. It's not worth the fight. One judge did just that when a couple could not agree on dividing their household contents. He ordered a room by room inventory and a flip of a coin. The winner picked first; the loser received the next two picks (in case of an unusually valuable first pick) and then they alternated.

8. Will your spouse be required to pay all or a portion of your attorney's fees? The answer to this question depends largely upon your total financial circumstances and the cooperation of your spouse. Count on being ultimately responsible for the payment of your attorney's fees.

9. Will your lawyer accept payments? A payment plan may make it easier for you to provide for paying lawyer's fees out of your monthly budget. But no matter how well intended those arrangements might be, the lawyer's bill seems to be placed last on the bill paying list every month. For this reason most lawyers require a retainer and payment in full at the conclusion of your case.

10. Can my lawyer charge a contingency fee in my divorce? No, it's unethical. The reason is simple. If a lawyer's fee is based upon the amount of property that he or she “wins” for a client, the temptation exists for the lawyer to discourage reconciliation.

11. What are the “costs” of the suit? You will be charged for both attorney's fees and costs. Costs do not end up in your attorney's pocket. They are administrative costs which must be paid if your lawyer is to represent you effectively. Arrangements have to

be made through your attorney for the payment of these charges. A partial listing:

Filing fee — paid directly to the court for administrative expenses. Generally, this is the only significant cost you will pay if your case is uncontested.

Service of process fees — paid directly to the process server or sheriff for serving court documents and subpoenas upon your spouse or witnesses in your case.

Witness fees — paid to lay witnesses who are subpoenaed to testify on your behalf.

Expert witness fees — paid to your doctor, for example, to describe your medical condition, or to other experts like accountants and appraisers.

Deposition costs — paid to court reporters to take and/or transcribe your spouse or other witnesses' pre-trial testimony. This is a method of discovering information and avoiding any surprises at trial. Court reporters charge for their attendance and for each page transcribed.

Travel costs, researcher's and paralegal fees, fax, messenger fees and recording fees — discuss these and any other costs with your attorney at the initial conference.

The final words on attorney's fees and costs are to “get it in writing”, to read your attorney's fees agreement carefully before signing, and don't hesitate to ask questions. Any later disputes can be resolved without charge through the Fee Arbitration Committee established by the State Bar.

CHAPTER TEN

A CHECKLIST

Many clients do not understand how many complicated issues are actually involved in their divorce. To ignore these issues may mean yet another costly court battle after the divorce is over.

I cringe when I hear clients say “I want a divorce, but keep it simple.” That is a very naive statement coming from a client who has been married for several years, has minor children, considerable indebtedness, property that has to be divided or sold and child support and spousal maintenance payments to be made.

The following list of considerations deserves your and your attorney's attention during the early stages of your divorce or legal separation. If an agreement with your spouse can be reached on all of the areas contained in this list, your attorney's fees will be kept to a minimum and there will be less likelihood of coming back into court after the divorce is over to tie up loose ends. I have opted to keep the list in outline form only, eliminating any discussion in the specific areas. That task has been left for you to discuss with your own lawyer.

1. Divorce, legal separation, reconciliation?
2. Child custody and parenting time.
 - A. Sole custody
 - B. Joint custody
 - C. Regular parenting time schedule, summer vacations, holidays and birthdays
 - D. Grandparents' visitation
 - E. Step-parent visitation
 - F. Transportation costs for long-distance visitation
 - G. Relocation
 - H. Resolution of future disputes
3. Child support
 - A. Monthly amount
 - B. Dates of payment

- C. Child care
- D. Health care insurance
- E. Life insurance
- F. Payment of deductible portion of health insurance
- G. College education
- H. Special provisions for emotionally and physically handicapped children
- I. Special education requirements
- J. Who gets the income tax deductions and credits

4. Spousal maintenance

- A. Monthly amount
- B. How long
- C. Dates of payment
- D. Provision for future increases or decreases

- E. Reasons for termination — death, remarriage, cohabitation
- F. Health insurance
- G. Life insurance

5. Division of property

- A. Household furnishings
- B. Tools and yard equipment
- C. Personal effects and jewelry
- D. Family home
- E. Other real estate
- F. Automobiles
- G. Boats
- H. Motor homes, camping trailers and equipment
- I. Sporting equipment
- J. Stocks and bonds

- K. Trusts
- L. Annuities
- M. Pension, profit sharing and other deferred compensation plans
- N. Social security payments
- O. Disability benefits
- P. Personal injury claims
- Q. Cash value of life insurance policies
- R. Livestock and pets
- S. Debts owed to you and your spouse
- T. Checking and savings accounts, certificates of deposit, credit union accounts, money market accounts, income tax refunds
- U. Business partnerships and other business ventures
- V. Musical instruments

- W. China, crystal and silverware
- X. Other investments
- Y. Royalty payments and commissions earned but not received
- Z. Collections (coin, stamp, book, gun, etc.)

6. Payment of debts

- A. Dividing credit card and other debts
- B. Cancelling credit cards and lines of credit
- C. Payment of income taxes, deficiencies, and penalties
- D. Protection if one spouse does not pay the debts they agree to pay

7. Other income tax considerations

- A. Joint or separate filings
- B. Spousal maintenance deductions

- C. Sale of family residence and other property
- D. Who reports income, and pays taxes during year of divorce and in case of audits

8. Attorney's fees and costs

Some of the items on this list may not apply to you. Your lawyer may determine others apply. At the very least, this check list can be used as a guide in your settlement negotiations.

CHAPTER ELEVEN

DIRTY TRICKS

My nominations for the TOP TWENTY DIRTY TRICKS AWARDS in divorce follow. Dirty tricks are tactics used by feuding husbands and wives jockeying for the upper-hand in divorce. They are irrational, frightening, and designed to intimidate and confuse you. Most significantly, they are “UNDIGNIFIED”. Be on the lookout. They can be dangerous to your emotional, physical and financial health. If you are aware of them in advance, you can deal with them, maybe even turn them around and use them to your own advantage.

Pay no attention to the way I have ranked these “tricks”. If your mate is using one (or more) against you, it is Number One on your list. One more caution: this list is by no means, exhaustive. It is as large as the imagination of the dirty trickster.

1. “I’m going to get the best lawyer in town and take you to the cleaners!” This statement presumes your spouse has not retained an attorney yet. So get to the best lawyer first and do it now. We have already dealt with choosing that lawyer in an earlier chapter. You do not have to go through with the

divorce, but with your spouse making statements like that, it is time for you to seek advice. Conferring with an attorney precludes that attorney from representing your spouse. Knowing this in advance, one wife consulted with six different divorce lawyers to keep them from representing her husband.

Actually, there is no “best” lawyer in town, only many very good ones, and it is preferable that both you and your spouse have experienced counsel. With experienced divorce lawyers there exists a greater chance that your case will be evaluated more realistically and settled without the ordeal of a contested trial. Inexperienced attorneys generally have less “client control” — the ability and confidence to settle clients down, tell it like it is, and not necessarily what clients want to hear. Acquiring this ability comes from years of dealing with clients and judges in the courtroom. With that experience, lawyers are better able to predict the outcome of your case if it goes to trial.

The mutual benefit realized by both you and your spouse with good lawyers is a shortened, less expensive, and less emotional divorce. So if your spouse threatens you with retaining the best lawyer in town, get there first through the referral methods described in chapter 8 and tell your spouse to get a good one too.

2. “I’ll change.” Mr. Norman was inattentive, came home late every night, spent little time with the children, enjoyed his six-nightly bourbons and soda, and was highly critical of Mrs. Norman. She received his undivided attention when she served him with divorce papers. But afterwards she phoned to instruct me to drop the divorce immediately. I attempted to persuade her not to be so hasty but rather let the divorce pend or “ride” without completely dismissing it. That way it could be more easily and less expensively revived if her reconciliation did not work out. She insisted it be dropped completely. Her husband said he would change, she said confidently, and had begged her not to go through with it.

For the next month Mr. Norman came home right after work, bought Mrs. Norman flowers, took her to dinner and the movies, stopped drinking and demonstrated new interest in their children. By the end of the month, however, the second honeymoon ended as quickly as it had begun. The old routines surfaced and it took Mrs. Norman another six months to regain the stamina to set up another appointment with me for refiling. After two more of Mr. Norman's promises of “I’ll change”, two more attempts at reconciliation, and two years later, the divorce decree was finally entered — an incredible waste of time, money and energy.

Old habits and routines are hard to break. It is the rare case when a husband and wife alone can break those negative habits and routines without a strong mutual willingness to succeed and professional help. If your mate begs forgiveness, promises to change, and you believe there is a chance, temporarily suspend the divorce and get professional marriage counseling.

3. “I’ll kill myself.” This is one of the most chilling of all tricks. Most of the time it is a bluff — most of the time. Yet, too many suicides have occurred in my years of practice for me to be a total non-believer.

My secretary interrupted me one morning in the middle of a conference. A detective was on the phone. He urgently needed to speak with me. His voice was matter-of-fact. A woman's body had been located in the desert — a victim of an apparent suicide. The only identification found was my business card in her pocket, and he wanted me to come down and identify her body. Mrs. Osman had been in my office with the divorce papers her husband had served upon her. At her funeral her husband told me she had threatened suicide after receiving the papers, but he thought it was only an idle threat. The suicide note read, “You finally won. I give up.” Two small children survived.

So what do you do? No helpful statistics are available. A few clients could not stand the risk of their spouse carrying out this threat so they have made the best of their situation by remaining together. Mrs. Peabody contracted multiple sclerosis and was confined to a wheelchair. Mr. Peabody filed for divorce after twenty-two years of marriage. Mrs. Peabody threatened to kill herself. Motivated by compassion, Mr. Peabody withdrew his divorce papers.

Other clients have taken the position that it is a bluff, and it proves to be just that after the initial shock of the divorce dies down. Others feel that it is a matter of survival. In other words, it will eventually kill them if they decide to stay in the marriage. They often express the attitude, "it's either him/her or me."

4. "I'll kill you if you divorce me." You don't have to be a divorce lawyer to realize this also may not be an idle threat. Newspaper stories of husbands shooting wives and vice versa are constant reminders.

One particular client confided to me that her only means of survival during her divorce was a pistol she kept in her purse with her at all times. She had made it clear to her husband that because of his threats to kill her earlier during their divorce, she was taking him at his word and was prepared for the worst. She

warned him if she even saw him in her general vicinity, she would start firing away. He was so frightened he asked that she be frisked before their trial started (before installation of courtroom metal detectors). When I asked her if she was concerned with violating the law against carrying a concealed weapon or worse, she replied that jail was better than dead.

Other women, who have believed the “I’ll kill you” threat, have chosen to stay married. Others leave with their children or alone and never come back. Others have died without warning. Other women who can afford it hire bodyguards, or live in subdivisions or apartments with a guard gate.

Women can be careless in their reaction to such a threat. They may choose to live alone after separation, go out alone at night, or walk to their cars alone after work. They may flaunt a new boyfriend in their husband's face, dress provocatively when they know they are going to see their husband, then reject his advances. All of these actions are dangerous.

Be wise and careful. If you press for the divorce after an “I’ll kill you” threat, do not let him or her find you alone. Live with friends or relatives, lock your doors, including your car doors, carry mace, install a security system, buy a big dog, get a court

order of protection. If you choose to date, be discreet. Above all, avoid contact with your spouse.

5. “I’ll kill us both.” Mrs. Quick was a battered wife who had filed for divorce. Mr. Quick came to their residence late one night with a gun. He awakened Mrs. Quick and their six year old son. He put the gun to Mrs. Quick’s head and told her that if she divorced him he would kill her, their son and himself.

His son has been terrified of his father ever since. Mrs. Quick decided that even death was better than living with the awful fear that she and her son lived with on a daily basis. She told her husband to shoot — at least he would be in jail and she would be free. It worked for her but don’t count on it in your situation.

The conclusion to be reached from these life-threatening situations is this — sane people do not make death threats. You are dealing with an emotionally disturbed individual in these cases and should be extremely cautious in designing your plan for safety. Get professional advice from both a lawyer and psychologist/psychiatrist immediately.

6. “I’ll go to Mexico before I’ll pay you a dime.” Mexico seems to be a popular place of escape

these days for divorcing husbands. The quarrel goes something like this: “Sam, I want a divorce and I need some money for me and the children to get by on.” Sam: “Well, Lisa, if you think I’m going to pay you a dime if you divorce me, you are going to have to find me first, because I’m headed for Mexico.” After you have reminded your husband not to drink the water, ask him if he has really thought through his threat and what it means to him, and above all, the children. Is he willing to sacrifice his career? He is going to have to learn Spanish, experience poverty, and give up any further contact with the children. If he still wants to go, let him. You cannot stop him, anyway. P.S., it is a bluff.

7. “I’ll go to jail before I’ll pay you a dime.”

This threat is similar to the “I’ll go to Mexico” threat. You may ask how husbands are able to pay anything if they are in jail. Some judges and jailers have devised an ingenious plan to combat this trick. Courts do have the power to jail husbands if they do not obey the court's support order. The novel approach is called the “hotel plan” under which husbands are ordered to jail on weekends, for example, or at night and released during the day so they can work. During the time they spend in jail they can ponder the question whether paying spousal and child support is better than jail.

8. “I’ll just take the children and you’ll never see us again.” Here is where wives can match their husbands equally in the dirty tricks department. Mothers, unless you are independently wealthy, the children and you need your husband's financial support. Your children also need their father's emotional support. Making this kind of threat is totally irrational, quickly arouses the fighting spirit in fathers, and can easily backfire into a child custody contest. If your wife or husband makes this threat, take it seriously and get to your lawyer immediately.

9. Blackmail. “Divorce me and I’ll tell your parents you take drugs, have had an affair or an abortion.” “Divorce me and I’ll tell the IRS you are cheating on your income taxes”, or “I’ll tell your boss you are having an affair with your secretary.” These are just a few examples of silly acts of desperation which may also backfire and make reconciliation impossible.

Why make the divorce any worse than it actually is? Threats like this create a scene for an expensive, emotion-packed contest in which everyone loses. In one case, an attorney had purchased a small amount of recreational drugs for his wife for her birthday. During their divorce, his wife actually threatened to turn him in to the Bar Association if he did not go along with her proposal of settlement. If

she had carried out her threat, his license to practice law would have been jeopardized as well as his source of income and her major source of support for their children and herself.

Another husband did go to jail for income tax evasion when his wife and ex-secretary/girlfriend teamed up against him at his tax fraud trial.

10. Pictures. This is another form of blackmail and widespread enough to deserve separate recognition.

During the happier moments in a couple's marriage it is not extraordinary for a husband to take pictures of his wife in the nude. Videos have gained popularity as well. This innocent act of fun can turn into a real source of anxiety for wives when husbands start showing them to friends during the divorce or threaten to use them as a lever for obtaining a better settlement.

I have been involved in meetings specifically set up among husbands and wives and attorneys for the exchange of x-rated pictures, videos and negatives. Still, there is no way you can be assured duplicates have not been made.

The “so what” attitude seems to be the most healthy. One wife told me that if her husband wanted to be that way she would not be embarrassed or intimidated. In fact, she seemed to have an air of pride about her pictures. Because of his attitude she swore he would never see her that way again. The pictures were returned.

11. Rat-holing. This is also commonly known as “mattress stuffing”. You have heard about it, and perhaps have even thought about doing it. It means hiding money from your spouse — in the attic, buried in the back yard, in a Swiss bank account, in a safety deposit box, depositing it in joint bank accounts with relatives or friends. One couple raced to Geneva, Switzerland to recover \$250,000 in cash they had deposited in a safety deposit box there. Her plane arrived in the morning, his in the afternoon of the same day. Other clients have tried to justify it as a means of survival. For nearly three years one client took thirty dollars per week from her grocery money and hid it in the attic — \$5,000.

Self-employed spouses, who have cash-type businesses like beauty salons, used car lots, restaurants and other cash and carry businesses have the greater opportunity for rat-holing than salaried spouses.

Judges have little patience with rat-holers. It's fraud. If discovered after your divorce, it subjects your entire divorce to retrial or renegotiations of the terms of your settlement. It also may constitute contempt of court or perjury. One husband thought he could get away with depositing a \$30,000 sales commission in his father's account. A mysterious anonymous telephone call to his wife resulted in a contempt citation, \$15,000 fine and a six month sentence. More often some "paper trail" is left by a rat-holing spouse. Karma takes care of the rest.

12. Destroying property. Husbands and wives have burned their houses down, broken windows, wrecked their cars, cut up their mate's clothing — the list is endless.

In one case I saw the remains of a Fender Guitar broken in two pieces over an amplifier by a husband in a fit of anger. Fist holes through plaster walls are commonplace. In another instance a twenty-five thousand dollar chandelier was hanging in the hallway. Three swaths had been neatly cut through it with a golf club swung in a fit of divorce rage. A rocking chair sat in the middle of a broken twelve foot glass dining room table.

Judges are unimpressed with gambling and cocaine habits. One husband lost \$100,000 in one

year betting on — of all things — cock fights. Waste or destroy community assets and be prepared to pay.

One couple became embroiled in an argument in a Las Vegas hotel room. In her fury Mrs. Rogers pulled off her five karat diamond ring and threw it at her blind-drunk husband. She left on the next plane for home; he passed out. When he returned home the next day, he had no recollection of the incident. The ring was uninsured and never found.

13. Title transfers. A few clients have erroneously believed that the act of signing over property to a relative or friend magically cuts off their spouse's interest in the particular piece of property being transferred.

For example, a young man told me he and his wife did not have any property from their marriage. He had signed over his car to his brother and transferred their ten thousand dollar savings account into a joint tenancy account with his mother. His conclusion was that because of these transactions his wife's claim to the property had been cut off. Sorry. In divorce cases judges and lawyers closely scrutinize these types of transfers. Explanations are required to justify the conduct and it is very difficult to come up with a rational explanation other than pure greed. If the case is tried, you will be asked questions like how

much your brother paid for the car, was the price fair, what was your motive, or where is the money now? In all states perjury, if proven, can mean a long stay in the state penitentiary.

The judge may order you to retrieve the item or buy it back. At the very least you will be required to reimburse your spouse for any loss. Morality aside, it is simply not worth it.

14. “Divorce me and I’ll fight you for custody.” The fear of losing your child, even if unfounded and groundless, is a strong force. Remember, your spouse’s fight for custody does not mean that he or she will automatically receive custody.

These threats can also work in reverse. Statements like these can be brought out in trial to demonstrate that the spouse making the threat does not have the best interests of the children in mind. Have your lawyer, not your spouse, evaluate your chance of winning custody.

15. “My lawyer says...” Pay no attention to what your spouse says his or her attorney advises about the strengths of your case. A strong possibility exists that it is not true or has been misstated. It makes far more sense to listen to your own lawyer’s advice instead.

A variation of this trick is the statement, “My lawyer says your lawyer doesn’t know what (s)he is talking about.” This, too, is probably a fabrication. The purpose of making such a statement is to undermine the confidence you have placed in your lawyer. If you should question that confidence, consider seeking a second opinion, not from your spouse, but another lawyer.

16. Spending sprees. Assume that all major purchases made during and three years prior to divorce are going to be investigated by your spouse and your spouse's lawyer. Was that recent purchase of a mink coat, golf club membership, new car, or trip to London alone really a necessary and normal expense. Was that credit card purchase necessary? You may find that without a legitimate excuse for these charges, the judge may order you to pay them back.

17. Planned custody and divorce. Husbands or wives may sense their divorce is imminent. They may also conclude they have not been a model parent or that they have been making too much money — another oxymoron. Remarkably, with or without advice from an attorney, a renewed interest in the children is displayed. Fathers will actually come home at night and play with their children, read to them, take them on business trips and buy them gifts, without having shown any prior interest. Mothers, who are

prone to staying out late at night or maybe all night, start coming home early. A husband may make an unexpected career move that suddenly reduces his income or starts postponing income or accumulating debts.

If only poor excuses are offered for these changes in behavior patterns or you suspect an ulterior motive, consider trips to a marriage counselor and a lawyer.

18. Getting your way. A former client of mine filed for divorce three years in a row against her husband about the same time each year. After two or three weeks she would stop the divorce. By the third year my curiosity was aroused and I had to ask her why. I discovered she was a great fan of Engelbert Humperdinck who had been appearing in Las Vegas each time she had filed. She wanted to see him with a girlfriend and not take her husband on the trip. Her husband would object and she would file for divorce. After returning home each time they would reconcile and she would drop the divorce.

The consequence of this trick is, not only is it a very expensive way of getting your way, it may also backfire. Often times the spouse who originally files for divorce wrongly believes they alone control the ultimate decision to divorce. In other words, they

mistakenly believe they can take it back at any time until the divorce becomes final. After a few weeks or months of freedom the filing spouse has a change of heart and tries to reconcile, but too late. The spouse who originally did not want to divorce says no and takes the initiative in finishing the divorce.

19. Salting the wound. One spouse unexpectedly files for divorce and then moves in with a new boyfriend or girlfriend. Or a husband will file and immediately bring his girlfriend with him when he picks up the children for visitation. A wife who has filed for divorce may greet her husband in a negligee when he comes over to pick up the children. She may have an open affair with a boyfriend and even become pregnant.

One broker-husband gave up his seat on a major exchange so that his wife could return to her home state to be closer to her family. When their house sold he flew to join her and was served with her divorce papers at the airport. At trial she actually testified she was entitled to alimony according to the standard established before her move, even though her husband's income had decreased dramatically.

One of the best (or worst) “salt” tricks I have ever seen came from a wife during a divorce who sent her husband a picture of her and her boyfriend on a

camping trip, both nude except for their hiking boots. If you engage in these sorts of tricks, expect a hotly contested legal battle. Reason tends to fly out the window and the injured spouse wants their day in court, worth it or not.

20. Gaslighting. The term comes from the title of an old movie. “Gaslighting” is an attempt by one spouse to drive the other spouse crazy — actually crazy. Husbands and wives are equally guilty whether the tactic is conscious or unconscious.

Mrs. Jones' emotions were frayed and she wanted out of her marriage. Mr. Jones did not and was painfully grieved by the thought of divorce. He was also very jealous at the thought of his young wife dating and sleeping with other men. He told her no other man would ever have her. When his wife refused to reconcile, he formulated a sinister plan to drive her crazy.

At first he would enter her home and move personal objects of hers from place to place in an effort to make her believe she was becoming forgetful. Then, knowing she was afraid of living alone at their home, he and two of his friends would wake her up at night by walking on her roof and tapping on her windows and doors. Next they donned grotesque

masks and peered at her when she came to the window.

He went one step further. When his wife was a small child she lived in the slums and was awakened one night to find a rat snarling at her on her pillow. It left a lasting impression and continued to give her nightmares, even into her adult married years. She had confided the childhood incident to her husband during their better days.

Mrs. Jones sunbathed regularly on a chaise lounge by their pool — the stage for Mr. Jones' final trick. He had found and killed a large sewer rat, stapled its eyelids back, and then pegged the dead rat's mouth open as if it were snarling.

His wife sunbathed by the pool the next day, first laying on her back. After awhile she turned onto her stomach. As she peered through the rungs of the lounge chair she saw the snarling rat six inches from her face. That trick institutionalized her.

These are my choices for the top twenty dirty tricks awards. Why are these couples (who come from all religious backgrounds, races and economic strata) driving each other crazy, killing each other, driving each other to drink or to suicide, destroying property, playing mind games and generally throwing out as

much hate and hurt as possible? Had I not heard the stories firsthand and witnessed the effects with my own eyes, I would have dismissed these stories as rare exceptions. Instead, the exceptions are more the rule, and my list is far from complete.

CHAPTER TWELVE

JOINT CUSTODY AND CHILD SUPPORT

Social scientists agree that the American family can no longer be counted on for socializing our children — teaching them right from wrong, values, manners and essential living skills. Day care centers, schools and juvenile courts are assuming the burden as if by default. Our prisons are bulging with violent criminals, uncared for as children, now equally uncaring of our society. High drama and all true.

Divorce with dignity will help spare your children from permanent psychological damage. Its formula is simple: children of divorce need to know it's not their fault and that they are loved — by their parents' words and actions. Both parents. The problem I see most is both parents thinking they are being good parents when they are actually being awful parents. Dad shows up for visitation consistently late, drunk, not at all, or with his third girlfriend of the month. Mom is too busy meeting new men or coping with her divorce problems to help with homework, getting ready for bed, and breakfast.

And then there are abnormal parents. Mrs. Adams insisted on sole custody of her young child.

Mr. Adams objected. (Tragically, their older daughter had died in a camping accident by falling off a cliff late at night while the rest of her family slept.) Mrs. Adams was awarded sole custody after a trial. The private investigator hired by Mr. Adams had conducted the normal searches for criminal convictions and had interviewed acquaintances of Mrs. Adams without any discoveries.

Months after the trial Mr. Adams conducted his own investigation — in the home state and county of Mrs. Adams before their marriage. He found she had been married before, and had one child from that marriage. He found her ex-husband, who told a familiar tragic story — their child had died late at night during his camping trip with Mrs. Adams.

In another case Mr. Brown charged Mrs. Brown with sexual abuse of their ten year old son. Mr. Brown's psychologist testified the child exhibited patterns of a sexually abused child. “But, by which parent?” Mrs. Brown's lawyer asked. The psychologist could not answer either way. Before the trial ended the parents had accused each other (and produced evidence) of murder, armed robbery, drug trafficking, kidnapping, income tax fraud, assault and battery, assault with a deadly weapon, spousal rape and disturbing the peace. Mr. Brown, a former state

prosecutor, is currently serving a long sentence in a state penitentiary.

Witches never deny the Devil, I learned from somewhere in my earlier education. Just like true Christians never deny Christ. Several years ago I cross-examined a witch. She testified on behalf of Mr. Crawford that, as the child's daily baby sitter, she had witnessed Mrs. Crawford's repeated verbal and physical abuse of her child. "She was a screaming fool who slapped, beat and terrorized the poor child", the baby sitter testified.

But the baby sitter did not know I knew through a private investigator that she was a witch and not just an ordinary witch, but the head of a local coven, and a member of the board of directors of an international society of witches, headquartered in England. I had helped her to the witness stand from her wheelchair during both days of her testimony.

Mother's Lawyer: "Ms. Baby Sitter you testified under oath yesterday that my client is a raving maniac?"

Baby Sitter: "Well, those are your words counselor but essentially, yes, she is a raving maniac."

Mother's Lawyer: “Yesterday you took an oath and swore to tell the truth to a Superior Being, didn't you Ms. Baby Sitter?”

Baby Sitter: “Yes, I did.”

Father's Lawyer: “Objection! This is highly improper cross-examination and totally irrelevant.”

The Court: “The Court is inclined to agree.”

Mother's Lawyer: “If I could have four more questions to show the connection, your Honor?”

The Court: “You may have two.”

Mother's Lawyer: “Ms. Baby Sitter, was that Superior Being God as we know him? Or was it Lucifer, Satan . . . the Devil?”

Sparks shot from the babysitter's eyes as I stared directly at her. Her face became grotesque as she lurched forward, shouting obscenities at me. I moved quickly aside as she jumped up and ran from the courtroom, leaving her wheelchair behind.

Yes, these are extreme examples. Parent's shortcomings in custody disputes usually are more subtle. The two I see most:

(1) There is no consistency in visitation schedules, leaving children wondering when they will see their parent next. Children are also trying to adjust in divorce. They don't need to be kept waiting at the door. They need both parent's attention more than ever.

(2) They don't need to hear how bad their mother or father is from their father or mother. Does this common sense rule need any explanation? “We're just kids”, wrote one ten year old girl to her parents. “This is your divorce, not ours. Please keep us out of it.”

How confusing was it for adolescent boys to hear their father bragging of his extra-marital affair to them. They, of course, told their mother who immediately filed for divorce. When I left the case Dad had threatened the lives of his two young sons for telling on him.

For more dignified parents, joint custody may be a critical part of the answer to divorce proofing your children. It means that both parents have agreed to sharing the major decisions affecting their children's

lives like religious training, schooling and health care. They also agree to submit any future disputes to a psychological counselor or mediator before filing suit.

Joint custody does not necessarily mean fifty-fifty time sharing though. One parent is normally designated the primary residential parent.

In one case both parents were able to live equidistant from the children's schools and each week their children alternated between residences. In another case, the parties agreed that their two children would have possession of the family home. The parents alternated monthly visitations. But these true 50-50 arrangements are rare.

Joint custody works best when both parents demonstrate a good faith ability to cooperate in raising their children and both have had a significant parental role. I ask dads how many diapers they changed, who cooks breakfast, who bathes the children, how active has he been in their lives. Without cooperation you may only be delaying a later child custody confrontation.

I have found that joint custody increases the value of stock of undeserving parents. When later battles arise like relocation from the state or one parent later seeks sole custody because the joint custody

agreement has not worked out, the chances of sole custody success diminish greatly since both parents have agreed they are both equally fit from the start. One mother with joint custody was having a difficult time after the divorce in proving her ex-husband was sexually molesting their boy and girl, until the three adult children of the father's first marriage all came forward with their stories of sexual molestation by him.

The real test to consider, if you have doubts about joint custody, is what arrangement is in the best interest of your children? If you and your spouse cannot answer that question together, there is still an inexpensive way to find out. The Maricopa County Conciliation Court provides free mediation services in child custody cases. If unsuccessful, the court can appoint an independent child psychologist to make recommendations after testing, interviews and document reviews. So there are some stopgap measures for settlement before falling into the abyss of an expensive child custody fight.

If you suspect a child custody contest, talk to your lawyer about recording your conversations with your spouse and keeping a diary of undesirable behaviors, past and future, of your spouse. They can become valuable tools if the child custody dispute continues.

Determining child support has been made more predictable with the introduction of federally mandated child support guidelines. These 30 page guidelines are available free of charge at the Court Clerk's office and at many law firms. In general, monthly gross incomes of both parents are added together to determine a basic child support amount. The cost of child care is added to this figure along with medical insurance and any other special needs. Parents then share the totaled figure, along with uncovered medical expenses, in proportion to their gross monthly incomes subject to a credit for visitation time by the non-residential parent. Additional adjustments are allowed for unusual circumstances, teenage children, out-of-state travel expenses, and income tax exemptions and credits.

The paying spouse pays through a required, automatic payroll deduction unless self-employed. Payments must be made through a clearinghouse, otherwise they may be considered gifts and no credit given.

It is futile for fathers to argue that their payments are not going directly to purchase food and clothing for their children and therefore should be reduced. Children still require indirect payments like housing, utilities and transportation. The child support

guidelines already consider these indirect expenses as well as the children's former standard of living.

I advise fathers, who still cannot accept the amount of their child support payment, to consider the “Nanny Factor”. What would it cost him, if his wife were completely out of the picture, to hire a nanny who could give his children the same time, care, love and attention as their mother?

Thoroughly discuss joint custody and child support arrangements with your lawyer at your first meeting. In most cases, if you know your spouse's income, you will be able to know the child support figure you can expect to pay or to receive before you leave.

CHAPTER THIRTEEN

ALIMONY

The term “alimony” has trickled into the English language from a Latin word meaning “to nourish”. It is also known in today's legal jargon as support, payment, recovery, allowance or lump-sum award. Arizona calls it spousal maintenance.

No doubt you have heard the expression, “I want my spouse to support me in the style to which I have grown accustomed.” I hear it often — from both women and men, many of whom misbelieve that a marriage license automatically equals alimony and an early pension.

Statistics and studies on the subject of spousal maintenance, and the different circumstances under which it is granted, are in short supply. Each state has adopted different laws. In Arizona there are few hard and fast rules, despite specific statutes and case law on the subject, since the trial judge has been given considerable discretion to decide the issue by the two Appellate Court Divisions and the Supreme Court of Arizona. There has also been little consistency among the trial judges. Thus, lawyers find themselves in

constant quandaries predicting trial judges' awards of spousal maintenance in individual cases.

Some lawyers argue that spousal maintenance should be based on 25% of a husband's gross or net income, some believe child support should be deducted first from a husband's income before any spousal maintenance percentage applies. Others argue one-half if the marriage is long term, others believe length of payments should equal one-third the length of the marriage. But no lawyer really knows what a judge will do after trial.

Mrs. Royce has been married to Dr. Royce for 30 years. Their children are now grown. She has no assets of her own and a high school education. Dr. Royce will pay Mrs. Royce spousal maintenance, but how much and for how long? What happens when Dr. Royce retires?

The predictability factor becomes even more subtle as new facts are layered in like the health and wealth of both parties, a shorter marriage, a younger and childless couple, their standard of living, and on and on. In lieu of a litany of actual cases, I have opted for the simpler approach of reproducing the actual Arizona spousal maintenance statutes themselves. Study them. They may control your future. Review

them before you talk to your lawyer and get a head start on that discussion.

A.R.S. § 25-319. Maintenance; computation factors

A. In a proceeding for dissolution of marriage or legal separation, . . . the court may grant a maintenance order for either spouse for any of the following reasons if it finds that the spouse seeking maintenance:

1. Lacks sufficient property, including property apportioned to the spouse, to provide for that spouse's reasonable needs.

2. Is unable to be self-sufficient through appropriate employment or is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home or lacks earning ability in the labor market adequate to be self-sufficient.

3. Contributed to the educational opportunities of the other spouse.

4. Had a marriage of long duration and is of an age that may preclude the possibility of

gaining employment adequate to be self-sufficient.

B. The maintenance order shall be in an amount and for a period of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors, including:

1. The standard of living established during the marriage.

2. The duration of the marriage.

3. The age, employment history, earning ability and physical and emotional condition of the spouse seeking maintenance.

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance.

5. The comparative financial resources of the spouses, including their comparative earning abilities in the labor market.

6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse.

7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the benefit of the other spouse.

8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children.

9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently.

10. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

11. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

12. The cost for the spouse who is seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought is able to convert family health insurance to employee health insurance after the marriage is dissolved.

13. All actual damages and judgments from conduct that results in criminal conviction of either spouse in which the other spouse or child was the victim.

C. If both parties agree, the maintenance order and a decree of dissolution of marriage or of legal separation may state that its maintenance terms shall not be modified.

D. Except as provided in subsection C of this section or § 25-317, subsection G, the court shall maintain continuing jurisdiction over the issue of maintenance for the period of time maintenance is awarded.

* * *

A.R.S. § 25-327. Modification and termination of provisions for maintenance, support and property disposition

A. . . . (T)he provisions of any decree respecting maintenance or support may be modified or terminated only on a showing of changed circumstances that are substantial and continuing except as to any amount that may have accrued as an arrearage before the date of notice of the motion or order to show cause to modify or terminate. The addition of health insurance coverage as defined in § 25-531 or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance. . . .

B. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated on the death of either party or the remarriage of the party receiving maintenance.

* * *

If you are still confused, here are the rules I go by:

1. It depends on the judge so “know thy judge”.
2. The statutory factors quoted above must be met and presented at trial in the most positive and persuasive way.
3. Never expect to receive what you deserve.
4. Unless you are super-rich, “style” will be reduced by the economic reality that two households must now be maintained on the same income(s).

CHAPTER FOURTEEN

MEDIATION

Some lawyers I know explode over the word mediation. It is territorial to them, a battle over professional turf, and mediators have pushed the boundaries back significantly since I started practicing. It all started with court ordered mediation of child custody and visitation disputes, which took a large chunk of expensive litigation from lawyers.

Mediation works like this: Upon request of either father or mother, by their agreement, or on the court's own initiative, any child custody, visitation or financial dispute can be taken out of the divorce lawsuit and handed over to a public or private mediator — public means free. The mediator may or may not be a lawyer. With the aid of the mediator, the parties then attempt to reach an agreement through various counseling techniques. I hear the technique of Win-Win a lot and will defer explanation of it to my mediation colleagues.

To its everlasting credit, child custody and visitation mediation has settled many more cases than lawyers did before mediation arrived, has lessened costs of child custody, eased stress on families of

divorce and provided a vehicle for resolving future disputes after the divorce is over.

But mediation does not always work. That is when the matter is referred back to the lawyers, and a judge determines child custody after an expensive trial — \$25,000 in attorney's fees for each side is not uncommon in hotly contested child custody battles. I have seen total attorney's fees exceed a quarter of a million dollars in one case alone. Middle class America simply cannot afford to fight over child custody.

These same lawyers really boil over when mediators involve themselves in mediating and settling property and other financial issues. They charge that non-lawyer mediators are practicing law without a license, and are ill-equipped and uneducated in divorce law. Still, you can't blame the public for attempting to save money nor mediators for trying to make a living. But you can certainly see the dangers in agreeing to a financial settlement, having lifelong implications, which has been either negotiated or mediated by a non-lawyer without legal advice. It is absolutely foolhardy to enter mediation without prior and continuing legal advice from an experienced divorce lawyer. Most professional mediators know this and encourage outside legal counsel by both parties.

A growing number of lawyers are claiming there is no reliable empirical evidence that mediation of financial issues without independent lawyers is less expensive. Cooperative divorcing couples, they argue, can settle their case quickly anyway with their own legal counsel at less expense and greater assurance that the legal t's have been crossed.

Despite this overlapping of two different professions in domestic relations matters, there is a way to take advantage of both. I always encourage clients to mediate child custody and visitation disputes. It is worth the effort even if it fails. When clients become locked up over financial issues with their spouse, like spousal maintenance, I have also encouraged mediation of those specific issues as well before going to trial. But I make sure that my client knows the ranges of expectation if a judge ultimately has to decide the issue before my client sits down with or without me at the mediation table. It is simply cheaper to hire a mediator in attempting to settle disputed issues than paying two lawyers. Successful mediation of any issue, however, requires the willingness of both parties to mediate in good faith, and to set aside emotional interference.

Bad faith mediation is a trap. Some spouses use it to test the waters of settlement and to see what the other spouse's bottom line is before lawyers are

involved at all. One husband secretly retained counsel, encouraged his wife to mediate without counsel, “softened her up” as she explained to me later, learned her weaknesses and bottom line for settlement, then halted mediation and started the legal battle, knowing her vulnerabilities in advance. That example alone clarifies the necessity for legal advice before and during mediation, and mediators must understand.

Another technique in its infancy, particularly for the wealthy, is called collaborative divorce. Within it the parties agree to agree. They still hire lawyers, therapist(s), independent appraisers, other experts if required, and collaborative “coaches”. Their lawyers agree to remove themselves if their clients ultimately disagree and new lawyers are substituted to try the case, if necessary.

There is enough professional turf for collaborators, mediators and lawyers if we work in cooperation as this chapter suggests. Clients, children, the public at large and all of our professions Win-Win. Beware though of the mediator who advises against obtaining independent legal counsel. And beware of the lawyer who summarily opposes mediation.

CHAPTER FIFTEEN

GOING CRAZY

Socrates said that love is a mild form of insanity. Clients tell me divorce can be worse. Everyone experiences a feeling of being a little crazy during, or even after divorce, no matter how secure and stable they once were. You and your spouse may be dealing with feelings and insecurities you have never experienced before. They can topple the most balanced of those we know. How these feelings are dealt with is the key to a divorce with dignity. I see the disastrous effects of depression and anger more often than any other emotions in divorce.

Clients, who have experienced both a death of a loved one and a divorce, say the experiences are similar with one exception. In divorce an ex-spouse is still very much out there among the living. If children are involved, or you live in the same community, future contact is inevitable, if not a necessity. Support checks must be written and received once or twice a month. Old feelings may be triggered each time you see her handwriting or face, or hear his voice over the phone. Other clients have reported a double dose of depression when a girl or boyfriend is involved and that relationship fails as well.

Expect mild depression. With a little time, expect it to pass. It just will. Mildly depressed clients have tackled the problem themselves by staying busy and by creating new activities to counteract it like working harder, working, finding new hobbies, reading, exercising, becoming active in church and civic activities, making new friends — doing something other than dwelling under the dark cloud of divorce. Your time table for recovery will be advanced with this daily prescription offered by one client:

Something to do,
Someone to love,
Something to look forward to.

What I call severe depression is not to be expected, but too often occurs and represents an entirely different matter. Watch out for its danger signals:

1. Overwhelming sadness and apathy.
2. Feelings of helplessness or guilt.
3. Thoughts of death or suicide.
4. Sleeping difficulties.

5. Restlessness and irritability.
6. Changes in eating habits.
7. Physical pains like headaches, nausea, dizziness or fatigue.
8. Difficulty making decisions, lack of memory, concentration lapses or fatigue.
9. Avoiding contact with other people.

If you experience these symptoms, talk to your closest friend or relative and your lawyer. It is critical that your lawyer knows you are being treated or considering treatment for depression or any other emotional or physical problem. Mental health directly relates to the legal issues of child custody and spousal maintenance.

Through psychological or psychiatric treatment the severely depressed can also expect help and recovery. If medication is recommended, take it and stay on it until your doctor advises otherwise. If you are afraid to get help, remember this is survival. Truly crazy people generally don't know they need help and don't seek it out. You don't have to live with depression, nor do you have to die from it either.

Even Mrs. Dillon recovered. She attempted suicide four times during the year I represented her. Twice she slashed her wrists and required reconstructive hand surgery — the second time she tore out the sutures of her original wounds. Her neighbors then found her slumped behind the steering wheel of her car, engine running, garage door closed. When she awoke in intensive care after three days from an overdose of sleeping pills, her first words were “Goddammit, I thought I was going to wake up dead!” Her hospital and psychiatric bills exceeded \$200,000. Yes, even she recovered with a combination of treatment, medication and the passage of time.

Alcohol and depression are deadly bedfellows. Another client became severely depressed and suicidal when his wife announced her decision to divorce him. Prozac and Lithium saved his life in its darkest moments. But his behavior was growing more erratic and inappropriate, particularly when he came to my office. At his next appointment with his psychologist, I went with him. He had told me, but not his therapist, that his drinking had increased lately. We were both shocked to learn from his psychologist that Prozac doubles the effects of alcohol. “You mean I was really having forty drinks a day!” he shouted in surprise. He is feeling much better today.

The new boyfriend of another client called me at home late one night in a panic. My depressed client was drunk, had a gun, and had locked herself in the bathroom. “Call the police”, I advised and I heard him relay the information to my client through the bathroom door. She burst through the door, grabbed the phone, and shouted at me “I thought you were my lawyer. Lawyers don't call the cops on their clients!” I got fired, she recovered.

Yet another client called me at home late at night. He was clearly drunk — another oxymoron. He had been playing an exciting game called Russian Roulette. “You think you're such a good lawyer, talk me out of killing myself”, he slurred. I told him he would surely go to hell, it would ruin his children's lives and I considered it the most selfish thing he could possibly do. He sobered up and recovered.

For spouses, depressed or not, bent on physically venting their anger upon their mate . . . don't. Nothing, I repeat, nothing good or dignified has ever been gained from it. At best these husbands and wives make fools of themselves and foreclose all possibility of reconciliation. At worst they end up injured, injuring someone else, broke, jailed or dead.

Laws have finally been enacted recognizing that spouses hurt and bleed just as much as other

people. Serious threats and assaults, batteries, harassment, and spousal rape will land the offending spouse in jail or prison today, when twenty years ago those same crimes between spouses were ignored altogether. More about that in the next chapter on violence. The anger I am referring to here is more subtle. It's loud and mentally abusive but non-violent and sets the stage for inevitable and expensive courtroom confrontations. At all costs, it is to be avoided because of its devastating effects on settlement and, particularly, on children.

It takes two to make an argument and if your mate in your divorce chooses to become the loud, verbally abusive, angry type, withdraw from the argument. It's time to let your lawyers take you out of that chaos and earn their retainer. Pass the argument and worry over to them. That is exactly what lawyers are paid to do. And in a calm voice, tell your angry spouse that is precisely what you are going to do even though it may cost thousands of dollars. You may recall in an earlier chapter that arguments cost at least a thousand dollars each in legal fees. I've found that approach cools down enraged spouses faster than any other. You have now given them a financial incentive not to argue.

Too many clients set themselves up for an expensive legal fight by living together after the

divorce is filed, encouraging confrontation by openly dating immediately after the breakup, or involving their children in their private dispute. “I don’t understand why I have to continue to pay lawyers and why my wife won’t settle”, said Mr. Taylor, who had moved directly and openly out of the family residence into his girlfriend’s apartment. What was he thinking would happen? Five years later he still doesn’t understand why his ex-wife and teenage children are still angry at him, or why he is still paying lawyers over visitation and support skirmishes.

Mr. and Mrs. Young were married seven years and had two children, five and seven. Mrs. Young willingly assumed the role of homemaker and child-raiser while Mr. Young managed a hotel. During our first meeting, Mrs. Young related an incredible event prompting her decision to divorce. Mr. Young had been rising early in the morning for the past several weeks. He explained that an increase in business required him to be on the job as early as possible. Following a month of this, Mrs. Young’s feminine intuition engaged. After Mr. Young left the house one morning Mrs. Young woke the children, put them in the car and followed Mr. Young. Rather than driving to work he took a detour, pulled in front of an apartment complex and then entered one of the apartments. Mrs. Young waited ten minutes, got out of the car with her children in tow, and walked into the

unlocked apartment. With her children in both arms she rushed through the bedroom door to confront her shocked, unclothed husband and his friend. “Just look at your father!” she exclaimed to her children and left. She expressed no remorse and justified her action by saying she was angry and he deserved it. As a result of this and many more similar experiences, I never fail to ask the question, “Is a third party involved?” If the answer is yes, and the other spouse knows about it, the chances of going to trial are increased at least ten-fold.

Anger creates two more significant problems in the legal context of divorce. Angry clients are not good listeners, rational thinkers, and advice takers. Sometimes clients are so upset and angry they do not hear the advice given or do not act as if they heard it.

The second problem involves carrying anger into the courtroom. Anger begets anger and judges are human too. The quickest way I know to ruin a good case is to become angry in the courtroom — whether it is on the witness stand or sitting next to your lawyer. Judges simply do not put up with angry people. I have seen husbands and wives excluded from the courtroom during their trial, threatened with jail sentences, taken to jail and losing issues that should have been won because of their angry outbursts. The reason is clear — judges are engaged in a fact-finding process. Emotional tirades contribute nothing, frustrate them,

and make them angry too. Some angry spouses forget where they are. Court is not home where anger may have once worked. I tell angry clients going to trial to act like they are in church. Express anger in court and lose. Let the other side get angry because then you know you are winning. Divorce lawyers' most common denominator is that we deal with a lot of angry people every week. Few of us have escaped death threats from angry spouses.

For those interested in a top ten do's and don'ts list to combat craziness, here is my contribution:

Do's

1. Exercise and get some sleep.
2. Keep busy, read and develop new interests.
3. Keep a daily diary of significant events, i.e., write.
4. Tell and show your children you love them.
5. Get counseling.

6. Talk about subjects other than your divorce.
7. Keep in contact with your friends and family.
8. Appreciate the good things that have happened in your life.
9. Learn from your divorce.
10. Move on.

Don'ts

1. Don't live with your spouse after you have filed for divorce.
2. Don't get “caught in the act” by your spouse or discuss your dating activities with your spouse.
3. Don't discuss your divorce with your mutual friends.
4. Don't listen to legal advice from your non-lawyer friends.

5. Don't tell your children how bad their mom or dad is.
6. Don't think of all the good times with your spouse.
7. Don't lose your sense of humor.
8. Don't drink excessively.
9. Don't become violent.
10. Don't ignore your responsibilities.

CHAPTER SIXTEEN

VIOLENCE IN DIVORCE

One Monday morning I walked into my office to discover my secretary in tears. The headline of the newspaper in front of her read, “LOCAL WOMAN MURDERED — HUSBAND JAILED.”

Three weeks before, I had prepared and filed the papers for Mrs. Underwood's divorce. She was happy at my first meeting with her, having finally made the decision to divorce her husband of fifteen years. The couple was in their mid-thirties, had two children, a boy ten and girl eight. Mr. Underwood had quit several jobs in the past two years, reasoning that the employment was beneath him. The couple was heavily in debt, and Mrs. Underwood and her parents were providing the sole means of support to the family. Mr. Underwood had recently enrolled in business school, explaining that he wanted to go into business for himself, but had no idea where the money would come from to finance his education, let alone the money needed to support his wife and children while he attended classes for two years.

He had become increasingly demanding and possessive, insisting that Mrs. Underwood account for

every moment of her time away from home. His dream of becoming a successful businessman made no sense to her. His approach to financing his career with her income and loans from her parents infuriated her. The final straw came when he purchased a German Luger for \$400 to add to his collection of German World War II paraphernalia.

Three days before her death we had been in court to determine temporary support for the children and Mrs. Underwood until the final trial date — some six months later. At the hearing Mr. Underwood arrogantly testified he should not be required to pay his wife and children anything, after all it was his wife who wanted the divorce, he was a student not earning any money, and she and her parents had provided most of the financial support anyway. Why should it be different now? The judge did not see it Mr. Underwood's way, strongly suggested he get a job immediately and ordered him to pay temporary family support on the basis of what he had earned at his last job. Mr. Underwood was beside himself with anger. Outside the courtroom he confronted his wife. He began yelling at her, crying and begging her to take him back, all during the same conversation. She told me afterward that, although he had exhibited a bad temper in the past, he had never been violent towards her before and she felt she could handle him.

The police reconstructed this account of what happened on the night Mrs. Underwood was murdered. Mr. Underwood had been drinking before he drove up to his former residence where his wife and children slept. He knocked at the door. Mrs. Underwood unwisely let him in. They argued and Mr. Underwood became loud and abusive. Mr. Underwood's rage, fueled by alcohol, turned into violence. He beat his wife, raped her, choked her to death, and then covered her with a sheet. He then returned to his car, grabbed his new German Luger from the glove compartment and emptied the magazine into his wife's dead body. The couple's ten year old son witnessed the entire event through an outside window and called the police to report his dad had just killed his mom.

At Mr. Underwood's trial, testifying in his own defense, he told the jury that his wife had filed for divorce before she was slain. He said the divorce was unexpected and he had difficulty in getting his wife to talk with him about it. "I was desperate; I wanted to talk to her", he said. They were discussing the divorce that evening, he testified, when his wife suddenly came towards him and started clawing at him. It was then that he grabbed her by the throat, strangled her, covered her body with a sheet and shot her. He was found guilty of second degree murder and sentenced to twenty years in prison.

That is how crazy divorces can become. Most veteran divorce lawyers have their own “death” stories to relate. There is no point in recounting others. Just be aware that the stories are real, and affect all age, economic and social groups. Add alcohol or drugs upon all of the rest of the emotions going on during divorce and the odds of violence happening increase one thousand fold. It makes no difference that there have not been prior acts of violence. As in Mrs. Underwood's case, there is no way to predict in advance what will push someone over the edge. Yes, wives do and have killed or beaten their husbands. I've been involved in those cases too, but women are much more often the victims. Three husband clients have been bonked over their heads by frying pans during heated kitchen arguments with their wives.

In another case of brutality and insanity a sister and brother in their early thirties brought their fifty-year-old mother in to see me about her divorce. I noticed their mother was limping badly and had to be supported by her children as she walked into my office. She had just been released from the hospital from injuries she received from her alcoholic husband. He had stabbed her with a butcher knife during a fight in their home three months earlier. She had stumbled and fallen out of the kitchen door into the driveway behind his pick-up truck. He then climbed into his pick-up and backed over his wife. To add to the

insanity, this husband and wife reconciled after this episode and as far as I know are still living together.

Hell has a special place reserved for a man who beats his wife. Volunteering as legal counsel for a local shelter for battered wives and children convinced me of this. Bruised faces, missing teeth, broken limbs, acid burns to the face and kicks to pregnant wombs no longer surprised the counselors there. Gunshot and knife wounds still created a stir though. The true statistics on how many wives are injured by their husbands each year are unknown. All I know is that I have seen too much of it in divorce cases to let it pass as aberrational.

There are also too many instances where wives contribute to their own abuse. Policemen have told me that upon being called to scenes of family disturbances, they themselves have been turned on by battered wives during their attempts to restrain battering husbands. Battered wives tend to go back for more, over and over again, giving their husbands renewed licenses to beat them again. Sometimes, knowing that their husbands are drunk and upset, these women will provoke an argument or try to “reason” with their intoxicated husbands. When was the last time you ever reasoned with a drunk? By this time in the argument both may be drinking.

Many wives mistakenly believe that just because they have a restraining or protective order against their husbands, it alone will keep their husband away from them and protect them from being beaten or killed. Forget it. If he is drunk or crazy, he does not care about a piece of paper. Other women with more highly developed survival instincts move in with friends or family, carry mace or guns or seek refuge behind guarded areas.

At two in the morning I received a phone call from a woman client who was terrified. Screaming through the phone she told me her husband had a gun and was beating the door down. In those few precious remaining moments, rather than calling 911, she chose to call me!

Other battered women, after the divorce has been filed, will decide that it is okay to talk alone with their husband or have him stay overnight. This kind of thinking is sheer madness within the context of a potentially violent divorce.

More battered women are saying “enough is enough” by prosecuting their husbands. State criminal systems are finally recognizing wife battering for the crime it actually is — an assault, a battery or even attempted murder. Should not justice be based upon the crime and not who is the victim?

Still, for every battered wife who desires to prosecute her husband to the fullest extent possible, there are others who have set the prosecution in motion and then backed out. Look at it from the policeman and prosecutor's side who see the violence, honestly want to help, devote hours upon hours to investigate the crime, locate, interview and subpoena witnesses, set the matter for trial, impanel the jury, take up the judge's time, and then their key witness — the battered wife — forgives her husband and refuses to testify. That one battered wife has just wasted thousands, and I mean thousands, of tax dollars. For this very reason many states have found it necessary to enact laws which make it a crime — obstruction of justice — for battered women to file charges and then later refuse to prosecute.

If you are a battered wife, and desire some relief, there is help. It comes in the form of a growing network of battered wives and abused children's shelters or “retreats” throughout the country. They provide refuge and needed counseling for wives and children in emergency situations. They are seriously understaffed and underfinanced. Despite these obstacles they are providing a tremendous service to the community. These groups are also lobbying and achieving success in many states by putting teeth into the criminal laws relating to domestic violence. Local “Hotline” services will put you immediately in touch

with these programs. When you think about it, Jackie Gleason's "To the moon, Alice" routine is really not that funny anymore.

The fear of violence can be almost as terrifying as the act of violence itself. Stalking is the most notable example in divorce, and it comes in all disguises from tapped telephone lines and private investigators to the "no one else can ever have you" threat. Insecurity, obsession and jealousy are the common threads of stalkers in the cases that have come to my attention.

After her separation Mrs. Abbot discovered her tires slashed, engine clogged with sugar and her clothing cut to shreds. On two Friday nights in succession fire trucks were called to Mr. Robert's home for no reason after his wife was prohibited from returning to his residence by court order. The next weekend he discovered a butcher knife protruding through his pillow into his waterbed.

One husband recorded thirty-two threatening phone calls from his wife during one evening. Another husband followed his wife to my office and was caught attempting to listen to our conversation through a side door. Yet another estranged and violent husband hid in the trunk of his wife's car while she travelled to her psychologist's office. Her psychologist

witnessed him climbing out of the trunk and called the police. Another client, whose life had been threatened by her former husband, bought a new house across town to avoid running into him. Imagine her terror in recognizing his car in a driveway down her street. He had purchased his new home, not coincidentally, six doors down from hers.

The knowledge to be gained from these examples of violence and stalkings should be self-evident. Sane individuals do not physically abuse or stalk their mates. Mentally ill individuals do, and they can not be dealt with alone. The incentive to seek help through your lawyer, community service agency, mental health agency or local law enforcement is this — unless stopped the insanity is contagious and threatens the mental and physical health of the entire family.

CHAPTER SEVENTEEN

HERE COMES THE JUDGE

Clients shudder at the thought of “going to trial”. It means you and your spouse cannot agree on one or more of the following issues: (1) property division; (2) debt division; (3) child support; (4) child custody; (5) visitation; (6) alimony or spousal maintenance; and (7) payment of attorney's fees and costs; — the seven basic issues of divorce. In “fault” divorce states the issue of who did what to whom in the marriage (marital misconduct) may also be a point of contention. Stated another way, if you and your spouse cannot agree, the judge will agree for you after hearing both sides at your trial.

A primary goal of the divorce with dignity philosophy is not going to trial, if reasonably possible, but not at all costs. In a majority of cases, going to trial becomes necessary because one or both of the contestants have an unrealistic, purely emotional view towards settlement. In the remaining cases a real legal or factual question may exist which the parties and their attorneys, although all remain reasonable, cannot resolve and need the court's assistance to settle the matter. An example might be where all matters are settled except whether the wife should be allowed to

stay in the family home with the children. So your trial could be limited to the judge deciding one, not all, issues.

Three major advantages in settling your case and not going to trial are (1) it costs less in attorney's fees and costs (the more issues you can settle early on in your case, the less costly it will be also), (2) the divorce process is shortened by several months, and (3) hard feelings are spared since trials tend to generate longer-lasting ill will between couples. From the philosophical standpoint of this book, we are attempting to minimize these financial and emotional costs of divorce. We are also attempting to shorten the emotional recovery time — to get the divorce behind you as quickly as possible. The hostility generated from a couple's failure to settle their case without court intervention affects their children as well. They too want an end to the conflict between their mother and father.

If you have done and compromised all you reasonably can in an attempt to settle your case with your spouse and those efforts have failed, your only alternative is to let the judge decide. Before you make this final decision to go to trial, examine the economics of that decision with your lawyer. Is the additional expense in attorney's fees worth it? It makes no sense for you and your spouse to spend

\$3,000 in attorney's fees arguing over a rocking chair or grandfather clock. Compromise is clearly in order.

Speak frankly with your attorney on the subject of his or her future charges before making the decision to go to trial. Elicit your attorney's evaluation of the prospects of what you have to look forward to if a judge must intervene. Although the divorce process is not absolute science, good experienced divorce attorneys will be able to give you a “worst and best we can expect” analysis.

Plug that evaluation into your own decision-making process. Weigh the emotional costs of your decision to go to trial as well as the long range implication of giving in to your spouse's unreasonable settlement demands. Recall the warnings in Chapter Five and Six on the winning and losing attitudes.

In weighing these emotional factors do not expect your lawyer to be of significant help. Your attorney's part in this divorce scenario is to stress the legal and financial aspects. Only you and possibly your psychologist/psychiatrist can properly evaluate the emotional factors.

One woman I represented was fully aware that her husband's position on dividing up their million dollar estate was clearly weighted in his favor. Yet,

she felt the emotional peace she and their children would have by letting him have his way this one final time was well worth the extra one hundred thousand dollars he would receive. To her, four hundred thousand dollars plus support was enough to get by on. You may not enjoy such a luxury in making your decision; still, the emotional factor cannot be ignored.

After evaluating all the legal, financial and emotional considerations of going to trial, you may conclude that you cannot in good faith give in any more to your spouse's unreasonable demands for settlement. Don't panic. Solving the dilemma is precisely why there are divorce judges.

If you have made the decision to go to trial, carry it out. A show of force at this point by going to trial may even bring your unreasonable spouse to a more realistic settlement position. It's expensive for them too. Countless times I hear clients predict that their mate would not have the emotional constitution or “guts” to go to trial. They are shocked into a more realistic view of their case when their spouse calls their bluff by terminating settlement negotiations and taking the “see you in court” approach.

When clients relate their fears of going to trial I find that their imagination has conjured up the Perry Mason trial drama — the courtroom is overflowing

with spectators and press; a jury of twelve is sitting in the jury box; behind the bench a few feet away sits a stern, white-haired judge; Hamilton Berger is pounding the counsel's table while cross-examining the "guilty" defendant during a trial that lasts several days. That is not the way it is at all. More than 95% of the cases I have handled (and probably the same is true for most lawyers) are settled without having to go through the ordeal of a trial. Jury trials in divorce cases are extremely rare. The people seated in the courtroom during the divorce trial usually consist of the judge (who may be female); the court reporter; the judge's secretary or bailiff; the husband and wife; their attorneys; maybe one or two family members there for emotional support; and any witnesses who may be testifying. As serious as this moment is in your life, the public is not interested unless you have celebrity status.

Once a divorce trial is underway (possibly a year or so after the divorce has been filed and after a few continuances because of the crowded schedules) most trials take less than one day to complete. After all, there is only so much that can be said, or that the judge will listen to, when you are dealing with two wage earners, a house, two cars, household furnishings, checking and savings accounts, and the MasterCard, Visa and department store debts. The longer trials usually involve such things as child

custody, self-employed spouses who may attempt to disguise or understate their income, the very wealthy, controversies over property values and the physical condition of the spouse seeking alimony.

“I’m afraid of being embarrassed by my spouse’s lawyer.” I have heard this comment frequently from clients. Relax. You are not an accused criminal taking the witness stand. You are in court simply to state the facts supporting your position so that the judge can decide the seven or less issues in your divorce. I advise clients, while preparing them to testify, that if they were lying or trying to hide something, only then would they have something to be nervous about.

It also might help to know that there is never any excuse for your spouse’s attorney showing you a lack of courtesy while you are testifying unless you choose to lie. Judges may then take up the cross-examination. Lawyers may even hurt their client’s case by addressing unnecessary and insulting comments and questions to the opposing spouse.

The learning key is: tell the truth and remain calm. If your spouse or your spouse’s attorney choose to be impolite or angry towards you in trial, so what? It can work to your advantage — the judge and your

attorney are listening and will not allow it to get out of hand.

It is interesting to watch the emotions fly as husbands and wives testify against each other. The question might be asked at trial — “Would you state your name please?” — and the spouse testifying will let loose with a tyrannical rage on every sin and transgression their mate has ever committed. Most questions require a simple “yes” or “no” answer or at least a very brief reply. “Are you willing to pay your spouse alimony?” for example. Your answer need not be a fifteen minute diatribe on every subject from the ERA and Gloria Steinem to the Puritan Work Ethic. Just answer the question. If it calls for a simple “yes” or “no”, answer it that way. You are not on the witness stand to argue your case; that is your lawyer's function. Otherwise, you are wasting the judge's time, not playing by the rules, and probably giving out additional information that will hurt rather than help your case.

Husbands, wives and other witnesses also have a bad habit of not listening carefully to the question, and answering it before it is understood. If you answer a question at trial it is assumed that you have understood it completely. If you do not understand the question, ask the examiner to repeat it. This can be significant when a question is asked with a lot of

hidden negatives. For example, “Isn't it a fact that you can't earn enough money to support yourself?” Would your answer be yes or no to that question? Have it repeated or rephrased until you do understand it — then answer it.

Some husbands and wives also do not like to wait their turn in the courtroom. I guess they are so used to one or both shouting the other down during an argument at home they forget where they are. I am absolutely amazed during trials when spouses jump up shouting, “That's a lie” after their spouse has just answered a question from the witness stand. Now how impressive would those kinds of dramatics be to you if you were the judge? Be patient. Your turn to testify will come. Judges do not play by the old rules of the marriage for resolving disputes; judges play by their own set of rules and insist spouses play by them too.

Awfulization, hypervigilism and half-truths are threats to a divorce with dignity and damage your credibility or believability in court, turn you into easy prey for your spouse's lawyer and interfere with the relationship you have with your own lawyer. Awfulization is the noun, awfulize the verb. People awfulize when they believe their situation is worse than it really is — it's awful. They perceive their glass to be not just half empty as with mere pessimists, but

totally dry. “I can't pay my wife ten million dollars”, said one client who was worth a liquid forty million. “It'll break me.” He was awfulizing.

“I've done nothing with my life”, said the model parent of two well-adjusted children, a college graduate and civic leader. She was awfulizing.

“I can't afford to pay \$2,000 per month in family support. I'm only making \$10,000 a month.” He was awfulizing.

“This offer is unfair. It means I'm going to have to chop my \$7,000 monthly clothing budget in half.” Ain't it just awful.

No one sympathizes with an awfulizer including judges. It's pathetic, insupportable reasoning, and strangles settlement negotiations.

Hypervigilism is an exaggerated, overstated and insupportable version of the truth. It has the same effect as awfulization on credibility. “My husband makes \$300,000 a year.” Husband's business grosses \$300,000. After reasonable expenses it nets, and he actually makes \$100,000 a year.

“My wife never gets out of bed before ten a.m.” testified the husband in a child custody trial.

“What time is it now?” asked his wife's attorney. “Nine thirty a.m.” replied the discredited husband. His wife was sitting in the courtroom. “Never” and “always” allow for no exceptions.

Half-truths affect your veracity as well. “Since I got kicked out of the house, I've never been back”, Husband testified at trial on his alleged violation of a protective order. “Anyone that says anything different is lying.” The prosecutor then called his wife's witness Mary, who was visiting the home at the time. Mary as in Sister Mary, a nun who testified she saw Husband climbing over the back wall. “Well, I wasn't in the house,” recanted Husband.

“The farm shouldn't be sold”, testified the husband, “because my Grandpa Smith was buried there forty years ago.”

His wife's attorney circled then pounced with the full truth: “But I thought Grandpa Smith's body was washed down the holler during a flash flood and his remains were never found!”

Divorce judges are an interesting breed. They tend to make four enemies in every case — the parties are never satisfied whatever the decision is, and both lawyers think no matter how good the decision, they still should have won more. Divorce judges do not

pronounce happy winners. Their biggest challenge is minimizing the financial losses created by the divorce case before them.

Normally judges are the more experienced members of the Bar who are serving in that capacity at considerable financial sacrifice. Most judges could be making three times their salary in private practice. Too frequently after rendering tough no-win decisions in divorce cases, they are cursed, threatened and even shot. With rare exception, they are true public servants in every sense of the word.

Show lack of respect for the judge in the courtroom and see what happens. I have watched in awe as contestants and other lawyers are summarily escorted to jail for going too far. One young embarrassed lawyer was sternly warned to “get off his buttocks” by a judge, who became irritated at the lawyer for not standing in respect when addressing the court. Another lawyer was simply told to “shut up” by the judge when the lawyer became too enthusiastic with his objections.

In one trial a brother of a contestant, who was testifying, became irritated at one of the judge's rulings during the trial and swore at the judge under his breath. The judge overheard his comment and sentenced him to three days in jail on the spot. A

deputy sheriff took the bewildered man away in handcuffs.

Judges' powers are awesome — they literally have the power of life and death. Think twice before giving a judge “a piece of your mind” at trial or telling him or her how you feel about a decision and the divorce system. The judge's function is to follow the rules, to interpret and to carry out the law, not to change it. The task of changing laws has been left to our legislators.

Remember, the judge did not know you and your spouse from Hansel and Gretel when you came into the courtroom. The final decision from the judge in your divorce through the adversary process is about as objective as you can get in this world. If you disagree with the court's decision, you have an alternative — appeal. Respect for the power and position a judge has over your case is one more aspect of divorce with dignity.

CHAPTER EIGHTEEN

THE DIVORCE IS OVER

. . . . but the battle rages on

“I thought when I got my divorce all the problems with my ex would stop. Sometimes I think they have just begun.” This chapter focuses on recognizing and avoiding those mine fields. Recall that the chances of returning to the courthouse are lessened considerably if you have followed the previous steps to a divorce with dignity — there is a relationship between the quality of your divorce and the potential for later conflicts. Legislative changes have also been enacted since I started practicing which allow most post-divorce disputes to be resolved more quickly and at considerably less expense.

1. Non-payment of support or late support payments. Your divorce decree orders your husband or wife to pay child support and maybe alimony in a specific amount on the 1st and 15th days of each month. When these payments are not made or fall behind, your only recourse is to file another lawsuit to enforce timely payments. The process has been made simpler and less expensive by expedited enforcement hearings. Lawyers are not necessarily required. The

Clerk of Maricopa County Superior Court provides the forms and instructions without charge. Even contempt of court and jail time are available sanctions if your ex-spouse has no reasonable excuse for not paying. Usually the court will give non-paying spouses time to pay back payments if a good excuse is proven.

If your spouse is a wage earner, his or her wages are now automatically assigned to you in the divorce decree to insure that child support is paid directly from salaries like any other deductions. Alimony payments can be structured in the same way.

The Attorney General's office is also charged with the business of enforcing support orders without charge. Although bureaucratic and understaffed, it may be the better choice over hiring a lawyer or doing it yourself.

Late payments can be frustrating as well. Your house payment or rent may fall due on the first of the month. The check from your former spouse, which is also due on the first of the month, may be two weeks late, assignment or not, making you perpetually behind or paying late charges. Anticipate the timing of these payments in the language of your divorce decree or property settlement agreement so that the problem can be avoided altogether. Otherwise you may find

yourself back in court or readjusting your budget to avoid another hassle.

2. Visitation or parenting time. Every other weekend, one night during the week, shared or alternated holidays, vacations and birthdays, and extended summer visitation is the norm for the visitation or secondary custodial parent (in joint custody arrangements). When visiting parents are habitually late, arrive drunk or expose their children to an unsafe environment (like smoking in the car with an asthmatic child) or are denied visitation, must lawyers be retained? No. These types of disputes can be mediated through another expedited enforcement process. Forms and instructions are available through the Maricopa County Superior Court Clerk's office.

3. More support. There may be a need to alter support arrangements after the divorce. Perhaps one spouse loses their job or receives a substantial increase in income warranting more support. If there is a substantial change in your or your spouse's economic circumstances, visit your lawyer for a re-evaluation of your monthly payments. Forms for an expedited and do-it-yourself process are also available at the Clerk's office.

4. Sale of residence or other property. Your final decree provides that your residence or some other

piece of property shall be sold. If you cannot agree with your former spouse on the eventual selling price, other terms of sale, and division of the proceeds, you may meet back in court. One client returned to court five times after the divorce to sell his house. The first time he accused his wife of an unkept house and yard which made the sale of the house impossible. The second time she was accused of not maintaining the interior of the house in saleable condition. They returned to court next to determine whether or not her ex-husband could buy the house from her. They returned the fourth time for the judge to pick which of three offers to accept, and the fifth time to eject the wife when she refused to leave. The expense of not cooperating and letting emotions rule is ludicrous.

5. Change of custody. A mother may be awarded custody of the children in the divorce. Later the children want to change the parent they live with or maybe the non-custodial parent has changed his or her mind about custody. Grounds for the change, like drug abuse or serious child neglect, may exist; maybe not. If you sense a child custody change by your former spouse, consult with your lawyer immediately. There are still many creative ways to stave off another courtroom battle.

6. Relocation. America's work force is more mobile from state to state than ever. In one case a

businessman-father had moved to seven different states with his company in thirteen years. Joint custody arrangements complicate matters — one parent must sacrifice meaningful time with their child or children if relocation is to occur. Relocation generally means considerable financial sacrifice by the other if the decision is to stay.

One step-father had to choose between a \$50,000 increase in salary in the new state over his 10 year old step-daughter, who was jointly shared by her two equally fit parents. Imagine mother's bigger dilemma — choosing between staying with her husband or staying with her child. Mother's psychotherapist counseled that a husband must be the first choice since that commitment is lifelong. An independent court-appointed child psychologist recommended, quite creatively and with the child's input, that the child should stay with her father for her sixth grade, then with mother and step-father in the new state until high school, at which time the child will be old enough to choose. After three days in trial and \$40,000 in attorney's fees the judge agreed — nearly the price of the child's college education.

7. Kidnapping. Federal legislation has made “parental kidnapping” across state lines a federal offense. Many states have similar criminal statutes. A simple visit to your local prosecutor or district

attorney's office and filing a complaint may be your quickest and cheapest alternative. One mother, who took up residence in a distant state with her child without notifying her joint custodial ex-husband, found herself escorted back by Federal marshals in hand-cuffs. She was sentenced to six months in jail and the father was awarded sole custody of her child.

As these seven prime examples illustrate, divorce with dignity does not end with the granting of a divorce decree but continues throughout your separate lives.

CHAPTER NINETEEN

THE SYSTEM — Lives on Hold

1. Divorce takes too long.
2. It's too expensive.

These are the two most often heard criticisms of the divorce legal system in the United States. But it may surprise you to find that for 90% of the couples who remain reasonable and calm, and are then able to arrive at a fair settlement, the system works exceptionally well. It is efficient, the process moves quickly, and the expense is minimized. On the other hand, for the remaining 10% of the cases where one or both spouses choose the unreasonable and undignified road, it is then the legal system of divorce falters but still does not fail — resolution is ultimately achieved a year or so later. In 5% or less of that 10%, where the case is appealed, expect another two year delay. One couple's case lasted five years when their case was retried after the appeal and a second appeal was taken. Mercifully, an appeal does not affect the validity of divorce, which is granted following the first trial. Only the financial and custody issues are subject to appeal.

Predictably, from the ranks of those 10% unsettled cases comes the most vocal criticism and the most ignorant of all — “Let's kill all the lawyers” from Shakespeare's King Henry II. In the context of the play, the threat, if carried out, was designed to create utter chaos and anarchy from which only the most powerful survived. Lawyers and the system level the playing field for those who do not control the purse strings, the less articulate or forceful and the victims of controlling or violent spouses. Justice in this arena is not cheap — enter the “four A's” — accountants, actuaries, appraisers and attorneys all with clocks ticking at hourly rates for both sides. In child custody cases add psychologist or psychiatrists' fees. Sometimes the fees for experts alone exceed attorney's fees.

Pure emotion will lead you headlong into divorce war. Before you charge with all your forces, ask yourself: Is it worth it, financially and emotionally? Are the extra months and even years of your life on hold really worth it? It's your decision, not your lawyer's, not your psychotherapist's.

Clients tend to forget at this point that they are a part of a lawsuit now and have engaged a system that resolves enormous disputes between giant corporations. And the same basic legal procedures

apply whether your dispute is over \$10,000 or \$10,000,000. Little wonder why it is so expensive.

There is no cheap and quick fix in contested divorce cases. And it is undignified to blame the only system powerful enough to control the behavior of feuding couples in divorce. Rather than taking responsibility for their own poor judgments and mistakes in the marriage, some spouses blame the system instead. Expecting the system to correct those mistakes is expecting too much. It can only determine the damage and settle the differences.

If you have chosen the dignified path but your spouse has not, use your lawyer and the system to their most efficient advantage by applying the principles and techniques of prior chapters. If both you and your spouse choose dignity, the system will reward you both with a brief introduction and an inexpensive farewell.