DIVORCE TRUTHS

A COMMON SENSE APPROACH

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The comments herein were formed from personal experience representing clients before various judges since l985. Always consult with an attorney for advice.

Disclaimer: This is not a do-it-yourself guide for legal advice, the law or self-representation. Every case is unique, and the law of the jurisdiction controls. Always consult an attorney for legal advice and representation.

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DIVORCE TRUTHS - A COMMON SENSE APPROACH

When I started practicing domestic law in 1985, I was surprised at what actually determined the outcome of a divorce trial. A good fact pattern, the best legal theory, and the most competent attorney did not always win in trial.

A case could be lost because of the arrogance of a client. A single statement that appeared false would destroy a client's credibility and taint his or her entire testimony. A spouse who testified as confident and reasonable in court would wipe away all the months of outrageous behavior displayed throughout the divorce. Likewise, a client who was emotional, bitter or resentful while testifying on the stand would incur the disapproval of the judge. No amount of good deeds displayed throughout the divorce would rescue them. Sometimes spouses that should have lost would win. Sometimes spouses that should have won would lose. What was happening?

There are seemingly small but profound occurrences which influence the judge's opinion of the parties and their testimony during their court appearances. Attorneys aren't magicians. The final decision always rests with the judge in contested cases. Oftentimes, it's basic – it's who and what the judge believes. Your body language, your choice of words, and your voice inflexion all comprise the total perception that influences the trier of fact. Perception is reality, at least in the courtroom. Verbal and non-verbal communication between the witness and the judge can contribute to who wins and who loses. Unfortunately, it occurs in a short period of time, even though the result of an unfavorable ruling can last a lifetime.

Like it or not, fair or unfair, that's the real world of having a third party determine the outcome of your life. What you believe to be the right

thing does not always happen. When you step into a courtroom, you are rolling the dice because there are so many factors that you can't control. Avoid a trial if at all possible.

It is my objective to make you aware of why certain things happen, and why other things do not. By being more aware of your participation, you should experience less frustration. You want to maximize your chance for a favorable ruling. You need to acknowledge your behaviors that signal problems. In approaching your divorce, you need to understand that what happens in the courtroom is as much psychology as law. Your attorney will furnish the law, but the psychology comes from human behavior under stress – lots of stress. You are trying to get what you want through other people and usually contrary to their wishes. You are trying to convince a judge that your argument is right and that your spouse is wrong. You and your attorney will be engaged in persuasion elevated to an art form.

This is not a legal thesis and does not contain statutory or case law. This is not an attempt to teach you law. This is about the practical application of the applicable law to the real world of negotiation and the courtroom. It's not how to trick or destroy your spouse. It's about how to get through your divorce, hopefully by getting most of what you want without investing all of your life's savings. It's taking small negotiations and building on larger issues to eliminate surprises later on. You need to be more objective about the process as you go through it. You need to recognize what you can control during your divorce and maximize it. For the issues or individuals you cannot control, you need to evaluate how realistic your approach is and make calculated decisions.

As you read through this, hopefully you will become better informed to navigate the difficult times in your divorce. You want to be as effective as

possible in shaping the outcome. It is a cruel irony that you must make some of the most difficult decisions of your life at a time when you are emotionally the least prepared to do so. Oftentimes, you may be your own worst enemy. Don't just pay your money, and blindly enter into your divorce. Divorce requires thought, planning, and direction. You will furnish some, while your attorney will furnish most. There are things that happen simply as a result of chance. You want to leave as little to chance as possible. A trial is a live presentation. The reality is that anytime there are others acting in concert with your effort, it affects the outcome. Like any presentation, the better prepared and credible everyone is, the more favorable the result. Don't be blinded by the pressure of the divorce. Think about what needs to happen and work with your attorney to make that happen. Don't "wake up" after it's all over and second guess everything.

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1. THE DECISION TO DIVORCE

TELLING YOUR SPOUSE

Few people decide to divorce without a considerable amount of soul searching. It is not unusual to spend many months or years before there is a comfort and confidence level to consult with an attorney. In fact, making the decision to divorce is the biggest of all your early decisions, but only the first of many yet to follow.

It may take your spouse months to adjust to the idea of an unwanted or unplanned divorce. The uncertainty to that spouse can be overwhelming. He or she may need time to comprehend this life-altering change. Acceptance of the decision is crucial for any expedited conclusion.

When clients first inquire about obtaining a divorce, I always ask if the spouse has been told. The most prevalent answer is "Yes, but they don't believe me because I have threatened to divorce them so many times before." Until your spouse is at the same emotional point you are, don't expect cooperation, and certainly don't expect any support. Unfortunately, they may never be at the same emotional point as you. Their behavior throughout the divorce will influence the speed of the process and the outcome. The stress of a divorce can make an irrational personality even more irrational. It can even make a rational personality at times act irrationally. Personalities don't change for the better in divorces.

BE RATIONAL

In the beginning, assuming you are in no physical or financial danger, there is nothing wrong with allowing your spouse time to adjust to the idea of divorce. It is not a sign of weakness to not rush to the courthouse. Would

you want a sheriff to be your first notice of a divorce filed against you? Most couples who have just grown apart still have enough respect to be fair with each other. As long as parties can cooperate, there is a minimum amount of court interference, as the court only decides when parties cannot agree. As long as your spouse will discuss the divorce rationally, keep the lines of communication open. You want to be able to control what happens as much as possible as early as you can. Why not start with the person who has as much to lose as you do in terms of stress, time, and money? Divorces can drag on for years with substantial attorney fees and expenses. Don't embrace the belief to spend every dime fighting rather than giving your spouse a nickel. In a protracted fight to the finish there are usually no winners, only frustration and considerable expense and no guarantee of the outcome.

STAY FOCUSED

You will become emotionally drained very quickly. Try to minimize the confrontation and keep the conversations focused on your goal – getting out with the best deal possible. At this point, it is smarter to discuss sensible generalizations. Try and stay away from constant fights that solve nothing and elevate the stress level. Let your attorney fill in the tedious details, as your attorney will prepare all agreements to protect you. It is not going to be easy. You know your spouse better than anyone. You need to pick the best time and place to explore the possibility of some common ground leading to even a partial resolution.

CAN WE GO TO COUNSELING?

Upon first hearing the word "divorce," many spouses want to go to counseling. Many beg to go to counseling. Even though you are committed

to a divorce, you should discuss with your attorney whether counseling sessions could help a reluctant spouse through the acceptance period. People need to understand why something is happening to them, especially something they perceive as bad. Counseling may be a means through which your spouse concedes there is going to be a divorce, and remaining friends is preferable to becoming enemies. If you have children, a character assault against your spouse will never be forgiven. Time spent in counseling may help your spouse through denial, anger, bargaining, depression and, hopefully, acceptance. This is a judgment call for you and your attorney.

YOU CAN ALWAYS BE NASTY LATER

The best opportunity to control the speed and character of how your divorce will proceed is in the beginning before lines are drawn in the sand and things are said that you can never take back. Even though you may not be comfortable talking to your spouse, it may save you months of litigation. Aside from the financial cost, there is the emotional cost. Your life is in limbo until your divorce is concluded. If you simply cannot stand to be in the same room with your spouse, tell your attorney and he or she will handle even the smallest negotiations. Just remember when you get your attorney's bill that minutes turn into hours.

CONFLICTING EMOTIONS

It is not unusual for conflicting emotions to raise your own doubts. Do I really want this? Some of your confusion may be about the process, or your inability to control it. You are on an emotional roller coaster and you aren't sure where it is going. You need as much information as possible about what is going to happen. The more involved you are in helping your attorney, the

more in control you will feel. The more in control you feel, the more powerful you will feel which should also reduce feelings of stress.

PSYCHOLOGICAL SUPPORT

If you can afford it or if your insurance covers counseling, it is a good idea for you to think about whether a counselor can help you. You don't want your emotions to cloud your judgment. Courts adopt the "rational person" approach. Regardless of your emotional stress, judges still expect everyone to be reasonable. They are not receptive to individuals who vent their frustrations through the court. Clients who repeatedly request multiple hearings over every issue do not fare well. Although judges hear hundreds of cases, they remember parties who require much of their time. This ultimately may affect your credibility, particularly if the judge doesn't view your side of the issue as you thought he or she would.

A counselor or psychologist can identify damaging emotions and help you understand your frustration. Be realistic: If your spouse was not a responsible party during all the years of your marriage, it's not realistic to expect him or her to be a responsible party during or after a divorce. You could not change your spouse during your marriage; a judge, your spouse's attorney, or your attorney will not change him or her in a few months. No matter how many demands you make, they may still fall upon the same deaf ears. Raw emotions are not a good influence on anyone's decisions.

2. I WANT TO REPRESENT MYSELF!

NOT A GOOD IDEA

In an uncontested divorce where all documents may be prepared by one spouse's attorney, there are those individuals who will not hire an attorney to review the documents prior to signing them. There is usually a provision in the agreement that states clearly that the spouse's attorney did not represent them, and that they have been advised to seek independent counsel of their own choice prior to signing. Once the agreement is signed and filed with the court, it is binding. It is more prudent for you to pay an hourly rate and have an attorney of your own choice review documents which you will have to abide by, or later risk contempt of court. Your spouse's attorney has no duty to represent any of your interests. Don't fall into the mistaken belief that they have spent any effort looking out for you. Hire your own attorney. This is a document which you have to live with.

HEADED TO COURT

If your divorce is contested and you are headed to court, you must give careful consideration as to whether you should hire legal counsel. Although you are legally within your rights to represent yourself in your divorce and/or custody action, think about what you stand to lose. Honestly ask yourself whether it is a smart idea. Better yet, ask yourself if you can possibly prevail. If your spouse has an attorney, evaluate your disadvantages.

Listed below are only a few of the basic issues that may arise during the course of your divorce litigation. There are many, many more on which an

attorney could educate you. These contribute to the judge's rulings. Are these issues you will be able to master?

TIMELY RESPONSES

There are legal deadlines that the law affixes for responding. There are adverse consequences if you fail to do so. How much time and access to a law library do you have to figure this out?

EVIDENCE

Do you know the Rules of Evidence, and what you need to prove your allegations? Do you know how to get your evidence admitted once you get to court? Do you know how to obtain the evidence before you get to court? Attorneys don't just walk into court and pick up their file. They have spent countless hours preparing for each case.

A COURT OF LAW

The rules don't change just because you aren't an attorney. Do you know what the law is on the issues in your case? That's not as basic as it sounds. Those are the parameters for your trial which everyone but you will be working within.

WITNESSES

Do you know how to compel your witnesses to court? Do you have to pay them? Do you know what hearsay is, or how to avoid asking questions that call for hearsay and elicit inadmissible responses? What, if anything, do you have to disclose to opposing counsel prior to trial? Do you have a list of your witnesses?

QUESTIONING WITNESSES

Do you know what questions to ask of your witnesses to prove your case? Do you know whether or not they know the answer? Do you know what to do if your witness becomes hostile, turns against you, or doesn't tell the truth?

QUESTIONING YOUR SPOUSE

Do you know which questions to ask your spouse? Do you know what objections to make if his or her testimony is improper?

YOUR TESTIMONY

When it is your turn to testify, how well can you represent your case? Can you establish any credibility with the judge? Do you know what questions would be improper for your spouse's attorney to ask you?

OPENING/CLOSING STATEMENTS

Do you know what is proper to say in an opening and/or closing statement?

EVALUATE YOUR COMPETITION

You are competing with an attorney who may have studied and practiced law for many years. You are competing because you are asking to be treated as an attorney. You get no special consideration in the outcome because of your unfamiliarity with the legal system and the law.

Depending on how little you know and how much opposing counsel knows, they can successfully object to everything you say. They may effectively keep the majority of your evidence from being admitted.

WHO DO THE FACTORS FAVOR?

Chances are your spouse's attorney has been before this judge many times if he or she practices exclusively in domestic litigation. Even if this attorney is the nicest person in the world, he is being paid by your spouse to win because in court there are only winners and losers. Their client is sitting right there next to them. A vengeful spouse expects their attorney to respond in kind.

At a minimum, the opposing attorney knows the law extensively, knows what he or she is doing, knows evidence, knows procedure, knows how to question witnesses, is comfortable in the courtroom setting, doesn't freeze up, and doesn't neglect the important issues or questions.

Realistically evaluate your probability for even marginal success. Lawyers know the law. You don't. Enough said.

THE JUDGE ISN'T YOUR ATTORNEY

The judge is there to evaluate the evidence that is placed before him and to make rulings on that evidence. There are judges who may cut you a break, but what if you get one who doesn't? The judge has to make sure that he is not perceived as acting as your legal advisor and helping you in a manner that may be perceived as prejudicial to your spouse.

EMOTIONAL PRESSURE AND STRESS

Courtrooms are stressful for the parties. Trials are intimidating. Having an attorney beside you can minimize these facts. You will feel more protected because you are.

You spouse's attorney may try to make you appear incompetent. He may manipulate your testimony to the point that you appear to be untruthful.

Can you maintain your control? When the attorney hammers questions at you, will your stress level increase to the point where your testimony may become confusing?

Opposing counsel knows your weaknesses from having talked to your spouse. He knows if you have a bad temper and how to exploit it. If you are financially irresponsible, he will go after that. Your weaknesses are fair game. Opposing counsel has a plan and knows how to execute it.

YOU DON'T JUST OPEN YOUR MOUTH AND TALK

Because you do not have an attorney, you don't have the benefit of being prepared for the difficult questions which will confront you. The opposing attorney is going to control your testimony with her questions. That is cross-examination at its best, or worst in your case. You could leave court without ever accurately presenting your side. That's your job as your own attorney, but you don't know how to do it.

YOU ARE NOT HAPPY WITH THE RULING – IS THIS A SURPRISE?

Unfortunately, many clients contact me for advice AFTER their hearings/trials. They now admit it was a huge mistake not to have an attorney. Sorry, you don't always get to do it over. Going back and trying to resurrect events after a trial is difficult and expensive with no guarantee of success.

HIRE AN ATTORNEY!

Now, while you still have options, be honest with yourself and acknowledge what you have to lose. How vulnerable are you to go it alone? If you have nothing to lose but your pride, that's good because you cannot

realistically expect a favorable result. You are gambling with your future in an arena in which you have no specialized education, no perfected skills, no training, and no experience. It is simply unrealistic to believe you will do as good a job as an attorney, regardless of how right you think your cause to be.

CONSIDER A LEGAL CONSULTATION PRIOR TO COURT

At a minimum, hire an attorney for a consultation so that you can gain some insight into what to expect and how to minimize your exposure. An attorney will be able to critique your situation and make recommendations, but this is not a substitute for having legal representation. The courtroom is not law school.

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3. IT'S TIME TO HIRE AN ATTORNEY

Most people avoid being sued or suing anyone their entire life, but now you need an attorney. You don't need just any attorney. You need an experienced divorce attorney. A divorce can affect your future for many years. An attorney with experience can help you anticipate and minimize problems. You should hire an attorney whose experience matches the complexity of your case. Where do you start?

INITIAL CONSULTATION

Hopefully, someone can refer you to a DIVORCE attorney. The best choice would be to hire an attorney who has been referred to you. If you do not know anyone who can give you a positive referral, you may have no other option but to look through the pages of your local phone book. Just start calling. After the first call, it will be easier. I personally believe your attorney should come from the locale where the divorce is going to be filed. You can obtain a lot of information about the attorney before you meet with him or her.

QUESTIONS TO ASK:

1. What percent of their law practice is devoted to domestic/family law matters? *The answer you are looking for is 100%.*
2. How long have they have been practicing law? *The longer, the better.*
3. Do they handle contested divorces? *Many attorneys do not, especially if you will be fighting over children.*

4. Do they practice in the county/municipality where the divorce will be filed? *I believe this is important because of familiarity with the local judges. They can tell you how the judge has ruled in similar situations, although individual facts will control the outcome.*
5. What is their charge for an initial limited time consultation? *Some attorneys may waive their initial consultation fee if you retain them. Otherwise, it will be a stated hourly amount.*
6. What is their usual retainer and hourly rate? *Most attorneys charge a specified amount of money to begin a case. The time is charged against an hourly amount. The larger the firm and the more lavish the office, usually the larger the retainer. Look for experience. You should, however, expect a larger retainer if you have a lot of assets or a complex case.*
7. Do they charge a flat fee for an uncontested divorce? *Uncontested divorces are easier to predict as to the time required to complete. If your divorce goes smoothly, you can save time and money.*
8. Do they charge for your phone calls? *Some attorneys don't charge for short phone calls. If you are the kind of person who expects to spend a lot of time talking with your attorney each day, you can expect to pay for it. I, personally, don't charge for short phone calls because I don't want to discourage clients from giving me important information.*

The attorney or receptionist you speak with may ask if your divorce is going to be uncontested or contested. There are still a few attorneys with whom you can actually speak. I screen my own calls to obtain the necessary information and determine whether this is a client I can

help. That way, I don't waste your time or mine. It is often the reality that once a divorce petition is filed, the dimension changes.

MEET THE PROSPECTIVE ATTORNEY IN PERSON

Meet with as many attorneys as you need until you find someone you believe is right for you, and whose retainer you feel is reasonable for the work ahead. This is your chance to gain insight into more than just the answers to your questions. Just because you don't know the law doesn't mean you can't evaluate the effectiveness of a lawyer. If they lack basic people skills, all the legal expertise in the world will be lost if they are not able to communicate.

COMMUNICATION SKILLS

A lawyer's effectiveness depends on communication skills and the ability to influence others. Lawyers must be skilled negotiators. They will be interacting with your spouse's attorney, your witnesses, your friends, your family, court personnel, and the judge. Your attorney is crucial in getting you what you want, not just in property or assets, but pushing your case through a crowded system. Everything you need to happen in your divorce has to come by and through someone else. Your attorney is your representative in dealing with these individuals.

What did the attorney say in her interview? Was the attorney confident in her answers or evasive? Did you believe her? Confidence affects credibility. You are about to enter an arena where credibility is everything. Remember – swear to tell the truth and nothing but. If you didn't believe what the attorney was saying, do you think anyone else will?

The attorney may not know all the answers because the judge is the one who decides the ultimate outcome.

DID YOU UNDERSTAND THE ATTORNEY?

Did the prospective attorney answer your questions in a manner you understood? Don't hire an attorney who cannot explain things to you, because he probably cannot explain things to anyone else. His primary job, aside from knowing the law, is his ability to persuade. You need someone who can give straightforward answers and assessments even though individual facts and circumstances will affect the result. You need to hear probability of what to expect. Your attorney should give you an evaluation of what he believes will happen, what factors will influence the outcome, and how he thinks you can influence a favorable result. At this point, however, it's important to remember that he has a very limited amount of information on your facts.

DID THE ATTORNEY really LISTEN TO YOU?

You want someone who will listen to you. Logic tells you if she didn't listen to you during a thirty-minute interview, she will not listen over the next several months that it may take to conclude your divorce. An attorney can never know as much about your case and the facts as you do. The main way your attorney will learn them is from listening to you and your witnesses.

DIVORCE CAN BE A LENGTHY PROCEEDING

As a practical matter, do you want to interact with this attorney in what may be a lengthy divorce? You don't want to feel you can't talk to

your attorney, or that she doesn't have the time for you. When you call her on the phone, are you going to dread the communication, or do you think she will be open, receptive and willing to help? She needs to do whatever they can to assist in resolving small problems before they become major problems. You still have a life to live during your divorce. You still have to interact with your spouse, and you still have to pay bills. Things will continuously arise that you did not anticipate that requires legal attention. Your lawyer doesn't need to become your best friend, but you don't need the additional stress of yet another awkward relationship.

SCORCHED EARTH ATTACK

Some clients seek an attorney whose approach is to "take no prisoners." Every minor issue is treated as a major battle that is never finalized. You will spend more than time and money. You will spend all your emotional energy. You should ask yourself if you have the energy necessary to sustain this. It will be impossible not to become engulfed by it, and it will become increasingly more and more difficult to control. Every major attack you launch will be followed by an equally harsh counter-attack. Every demand letter sent by your attorney will receive a return demand letter upping the ante. A competent attorney can accomplish the same goals with less damage and less cost. The only person that your attorney needs to persuade once your case is presented before the court is the judge.

Whether your attorney yells at your spouse or opposing counsel is not indicative of his ultimate effectiveness before the court. It does not matter if your attorney is "cordial" to the opposing attorney. Judges do not like for attorneys to battle among themselves. One of the worst things a judge can hear is one attorney complaining about the other attorney. A judge usually

encourages the attorneys to cooperate in an effort to resolve your issues. Do not interpret this to mean that your attorney is betraying you, or supporting your spouse. Just as in everything else, in listening you learn more than in talking.

Most attorneys will select the appropriate time to expose the theory of your case to the opposing attorney. In short, your attorney will elect the timing of the battles. Some aspects will be reserved until he is before the judge. He will not want to give your spouse the knowledge and the time to dilute an important aspect of your case. Neither you nor your attorney should educate your spouse or opposing attorney in advance of court, especially when it may be to your detriment. You would be amazed at how little some opposing attorneys know about their case and how much they will learn from you. Your attorney will develop a strategy in disclosing facts to have the most impact and will selectively control the release of information. If you want to leave destruction in your path, make sure the attorney you select is willing to wage this type of assault. It should go without saying that you should expect substantial legal fees for this privilege. I am not a proponent of the scorched earth attack.

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4. CONTESTED OR UNCONTESTED

THE COST OF LEGAL REPRESENTATION

Uncontested means no contest. It's just over. No fight. No controversy. No dispute. The judge doesn't decide anything. You and your spouse and/or attorneys negotiate the outcome of the issues. Less stress, less time, less money. You can move on with your life.

Just agreeing to get the divorce itself isn't enough. You both have to agree on how the assets, debts, house, furniture, and everything else are to be divided. Who gets what? Who pays what? Have you decided custody, visitation and support? Your attorney will consider all issues. An experienced attorney knows how to avoid future problems in the drafting of the documents. The cost of legal representation will depend upon the size of your marital estate. Asset-rich couples require more time and document preparation than low-asset couples, even though both are uncontested. You are paying for your attorney's time.

Oftentimes, even in an uncontested divorce, it may be difficult to predict the length of time it will take to complete the process. The time your attorney spends sorting out assets, drafting documents, and exchanging agreements contribute to the cost of an uncontested divorce. Even after a divorce is finalized, preparation of documents to transfer property or retirement accounts may be required.

However, if your divorce is uncontested and you do not have many assets and you have complete knowledge of your finances, you may be charged a flat amount. In an uncontested divorce you are in control of the outcome. There are no surprises. The main obstacle is that it requires the cooperation of your spouse. This may be an impossible obstacle.

UNCONTESTED ON SOME ISSUES, CONTESTED ON OTHERS

Oftentimes the line between contested and uncontested blurs. Some couples can agree on some issues but not all. One spouse may be willing to allow the other to keep the house, but wants more equity out of the house than the other is willing to give. Spouses may agree on custody but not the amount of child support. One party may want alimony, but her spouse may not be willing to voluntarily pay it.

Where disputed issues remain, the unresolved questions will be submitted to the judge for determination. Even though most of the issues are resolved, a lot of preparation is required by your attorney to present remaining issues in a trial.

HAVE WE RESOLVED EVERYTHING?

You should make a comprehensive list of all your assets and debts. If you have any doubts as to whether there are more, tell your attorney. If you are sure you have listed everything, then your attorney can prepare a proposed distribution and submit it to your spouse or opposing counsel for a response.

KNOWLEDGE OF MARITAL FINANCES - DON'T WAKE UP BROKE

An uncontested divorce requires full knowledge of marital finances. If you have not been the spouse who has managed the finances, you are at a disadvantage. Your attorney can compel your spouse to produce all necessary financial records. Documents may also be obtained directly from the institutions, although institutions outside the jurisdiction or authority of the court present unique problems.

If there are still unanswered or undisclosed financial questions that you cannot obtain, your attorney can take your spouse's deposition. This is a formal proceeding under oath recorded and typed by a court reporter. Your attorney will ask your spouse questions to assist in identifying accounts, amounts, retirement benefits, and anything else relevant prior to making final decisions. In deciding whether to spend the extra money to obtain this information through deposition, your attorney will balance the benefit to you. Depositions are unusual in uncontested divorces. This may be considered if there are large assets yet undetermined that you cannot obtain knowledge of any other way. Even though you may not know the specifics of accounts, you are probably aware of their existence. Don't put your head in the sand. If you don't know about your finances, tell your attorney. You need to know about all assets. If you want to walk away with nothing, that's your decision, but you need to know what you are leaving behind.

Your attorney will include a provision in your agreement that specifies that it is based on full financial disclosure. Agreements may be set aside later if assets are not disclosed, or if a party deliberately withholds information or gives false information. At a minimum, your attorney may request your spouse to produce sworn financial affidavits of assets and liabilities.

DOES MY SPOUSE NEED AN ATTORNEY?

An attorney cannot represent both parties. Your spouse should obtain his own attorney to review documents and advise him of his rights. If your marital estate has little or no assets or debts, your spouse may waive that right in writing. It is not unusual for a spouse to sign an agreement prepared by your attorney without benefit of counsel. If your marital estate

is complex, usually your spouse will hire an attorney who may have input into the agreement. That, however, is the choice of your spouse and not yours. Don't try to talk him out of it. If problems arise later, he may contend your influence deceived him.

THE UNCONTESTED HEARING

Some courts may require the party/plaintiff who files the divorce to attend a hearing to formally dissolve the marriage, although some courts may allow your attorney to present documents to finalize the divorce without requiring your attendance. Some spouses feel they must attend the final hearing, even if it is not necessary. If your spouse requests to do so, they may.

If you are required by the judge to attend court to end your marriage, this is only a formality where your attorney will ask you questions under oath. Procedures in individual jurisdictions vary. The judge may have additional questions, although they usually don't. Your attorney will advise you of the required procedure. The Final Decree of Divorce document may be prepared by court personnel but is usually done by your attorney. The judge will sign it. It will incorporate the agreement that you and your spouse previously agreed to. You and your spouse will be ordered to abide by its terms. The wife may restore her maiden name or a prior married name. The process is complete. You are now free to start your single life.

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5. MEDIATION: AN ALTERNATIVE

Mediation is a relatively new process in the court system. Ask your attorney about mediation or locate a certified mediator in the State of Georgia. If your local court system doesn't offer mediation services, there are private mediators you can hire. Mediation is a worthwhile option.

All of life is persuasion. Informally, you have been mediating all your life. As a child you persuaded your parents. As an adult, you persuaded your spouse, children, and friends. As an employee, you have persuaded your employer or coworkers.

Mediation is a formal meeting where a licensed mediator functions as an impartial neutral. A neutral does not favor either side of the dispute. Their role is to act as the voice of reason. They listen to both sides and guide the parties towards compromises. Mediation involves mutual compromise and mutual concessions.

THERE ARE GUIDELINES

A mediator will read you guidelines to further explain the process and ask that you also read them and sign them as your pledge to negotiate in good faith. At the end of this chapter, I have included the guidelines I use in mediations.

THE PARTICIPANTS

The parties who participate in the mediation are you and your attorney, the mediator, and your spouse and his/her attorney. If neither of you have an attorney, it will be just the two parties and the mediator. Each spouse is given the opportunity to present an opening statement of the issues

and what they hope to achieve. If represented, some clients prefer their attorneys to give it. If you chose to give the opening statement, you should be clear and concise about the issues to be resolved. Don't ramble or spend time talking about extraneous information that doesn't bear upon the resolution or might inflame your spouse. You will confuse the mediator, increase the costs of the mediation, and accomplish nothing. Listen to your spouse when it's her turn to speak. You will learn what your spouse believes the important issues to be. If you aren't the spouse who wanted the divorce, you will most likely learn the real reason for the divorce.

DOCUMENT THE ASSETS AND LIABILITIES

You should bring to the mediation all documents that substantiate or clarify your issues. This includes financial information on income, debts, assets, retirement, and property. Documents eliminate questions and serve as proof. Without adequate proof, the mediation may have to be reset. Prior to the mediation, your attorney will have obtained relevant documents from your spouse, or will have sent a formal request for your spouse to bring the documents your attorney needs to the mediation. To help the mediator understand the financial position of the parties, both spouses are usually requested to bring a financial affidavit of income and expenses, debts, and assets.

NECESSARY DOCUMENTS

- Financial affidavits listing income, assets, debts, and expenses.
- Current income information of payroll, bonus, commission or incentive program participation.
- Tax returns.

- Savings/checking account statements.
- Outstanding bills.
- Financial statements or loan applications or outstanding loans.
- Outstanding student loans.
- Values of any vehicles.
- Values of real property and balances on any mortgage(s) at the time of the marriage and at the present time.
- Values at the time of the marriage and at the present time of any stocks, bonds, certificates of deposit, IRA's, 40l(k)'s and other assets and documents which substantiate whether large withdrawals or loans against them have been made.
- Evidence of any stock option program participation and date acquired and/or exercised.
- List of personal property obtained prior to the marriage.
- Values of pension, retirement information at the time of the marriage and at the present time. Any survivor spouse benefits.
- Medical insurance information.
- Cash value in any life insurance policies and when policy was obtained.
- Any special needs of children or parties.
- Credit card account information.
- Frequent flyer miles.
- Country club memberships.
- Season tickets to sporting or entertainment events.
- Appraisals of any valuable collectibles or memorabilia.
- Jewelry and art appraisals.

- List of any known conveyances of real property or money during the marriage.
- Any outstanding tax issues or returns.
- Any real property or money held by a party or third party which was accumulated during the marriage.

THE MOST IMPORTANT DOCUMENT

The documents that substantiate or clarify the issues in controversy should be brought to the mediation. If you do not have an attorney representing you, think about which documents are important. Don't just bring a single document without the supporting documents that clarify what happened in the relevant transaction. If you suspect any fraudulent transfers or hidden assets, bring any substantiation you can obtain.

CONSIDER:

- Try to compromise.
- Keep the discussions focused.
- Be prepared to negotiate offers.
- Have a fallback position.
- Have a bottom line.
- Don't argue with your spouse, mediator, or opposing attorney.
- Inform the mediator in caucus of your non-negotiable issues.
- Inform the mediator in caucus of any suspicions of fraudulent transfers or hidden assets.
- Be reasonable.
- Make sure your attorney is committed to a complete resolution if at all possible.

CAUCUS

Usually, the issues that are not disputed are discussed first with all parties in the room. When the communication breaks down, either by argument or ability to gather facts, it's a good idea if the parties are placed in separate rooms. The mediator will go back and forth and convey offers. This is known as a "caucus." For emotional individuals or parties with extreme animosity or an inability to speak openly before his or her spouse, it will minimize the discomfort level. You can specify the matters you want the mediator to keep confidential from your spouse.

NO LEGAL ADVICE

THE MEDIATOR DOES NOT GIVE LEGAL ADVICE. In fact, all mediators are not attorneys. Their role is to assist parties in arriving at a mutual compromise. Your attorney must give you any legal opinion of any proposed agreement. The agreement may be better or worse than your attorney believes you may receive before the judge. An experienced attorney will know how your judge has ruled on similar issues in other divorces they have handled. There are also considerations of time and expense if your divorce continues to trial. You should discuss with an attorney what you stand to gain or lose if you go to court, the cost to do so, and the probability of being successful.

THE GOAL

The goal of mediation is to end the dispute without the uncertainty that comes from having a judge determine the outcome. You may not be completely satisfied with the final agreement but if you believe it is fair and

everything is on the table, you should consider accepting it. Ask your attorney for an opinion.

WHEN TO MEDIATE?

In the life of a dispute, there are times when mediation can be successful and times when it will be a waste of time. Acceptance of the end is important. Obviously, if there is open hostility fueled by continuous court appearances, the level of animosity will be so intense that neither party will concede a single issue. In most successful mediations, parties are asked to try and overcome damaging emotions. Some can and some can't.

When a divorce has just been filed, parties are still maintaining a defensive position. In a divorce that has been filed for a long period of time and a lot of money has already been spent, there is more flexibility as exhaustion sets in and finances become strained.

KEEP AN OPEN MIND

The best approach is to keep an open mind. Don't be afraid to ask lots of questions and explore all offers. An all or none approach is not successful in mediation or in a courtroom. While the mediator is not there to favor either side, he will present your position on issues to your spouse as strongly as you and your attorney request. Your spouse may have suggestions that you have not considered.

THE SELECTION OF A MEDIATOR

The main factor for a successful mediation is the skill and experience of the mediator in getting the parties to cooperate. Agreements govern future conduct. The ability to interact with different personalities is crucial. The

mediator needs to recognize the barriers that personalities and emotions present and navigate around them. An effective mediator requires strong people skills. A mediator needs the basic savvy that only comes from experience. He or she should match the sophistication of the participants. You want the most qualified help you can find in both your mediator and your attorney.

Unfortunately, I have encountered mediators who have no skills in negotiations. They basically go through the list of assets and debts asking both sides what they want to do until they hit a stalemate. This can be a complete waste of your time.

NON-ATTORNEY or ATTORNEY MEDIATOR?

Should your mediator be an attorney? If you ask a non-attorney mediator, they will say absolutely not. If you ask an attorney mediator, they will say absolutely.

LAWYER MEDIATORS

I believe mediators should be family law attorneys and yes, I am biased. As in all professions, the arena where the individual culls her craft shapes her skills. Request a family law attorney who is also a mediator and you will benefit from that lawyer's negotiation experience in dealing with parties and other attorneys.

If a mediator does not give legal advice, why should she be an attorney? Because the majority of all legal cases settle prior to trial, and an attorney has spent her legal career negotiating and settling cases. This is exactly what happens in mediation. The attorney has gained experience in hundreds, even thousands of cases in which she has strengthened her

negotiation skills. The negotiation power is greater because her knowledge of the issues that are being negotiated is greater. She has firsthand knowledge, especially if she is a trial lawyer. She has more training and experience to make sure both sides are treated fairly. She analyzes complex concepts and ideas in the context of your facts. All these factors are an asset in mediating your case and working with individuals under the same type of stress you are.

What similar experience has a non-attorney mediator had, either in practice or education, to qualify her to mediate something as important to your life as your divorce? Don’t let a non-attorney mediator tell you what she thinks the judge in your case will do. She can have no factual basis for this opinion, as she has never been in a contested trial.

WHO SELECTS THE MEDIATOR?

If you arrange for a private mediation, usually your attorney may select the mediator after discussion with opposing counsel. If you are using a mediator through a court system, you will arbitrarily be assigned a mediator. Depending on the complexity of your divorce, it might be more beneficial to forego utilizing the court system and pay to hire a private mediator who is more experienced and specialized. If your spouse is not willing to share in the cost of the mediator, have your attorney request that you be allowed to select the mediator if you are paying the entire cost. Sometimes a private, non-sponsored court mediator is a better choice in a complex case, particularly if you consider the cost of continued litigation. Some court programs have mediators who are not attorneys. Always ask for clarification of the mediator’s experience. Some court systems allow more flexibility in the choice of mediators.

PARTIAL RESOLUTION

Sometimes in mediation the parties and attorneys reach a partial agreement even if they can't resolve everything. I always request that the mediator prepare a partial written agreement on the areas of agreement at the end of each session. Otherwise, bad memory, false recollections, or a change of position may lose the ground you have gained. To go back and renegotiate the same issues later makes either the first or second mediation a waste of time and money.

ADDITIONAL SESSIONS

You may have more than one session with the mediator. Unless things are running smoothly and you are making progress, you should limit the mediation to three hours. Your attorney will evaluate whether another session would be beneficial. Sometimes parties have failed to bring necessary documents that are critical to the resolution of some of the issues. A second scheduled session allows time to obtain them. Sometimes the parties are too mentally exhausted to conclude everything in one session. As an attorney, when I review mediated agreements, I have found mediators who had four or five sessions on complex property distribution issues.

WHY MEDIATE?

Divorce alters lives. Any time you go into a courtroom, you give control to a judge. You are risking an unfavorable outcome. Consider the effects of an adverse ruling. This uncertainty is the reason to mediate. In mediation you can negotiate creative solutions. Judges cannot know all the intricacies of your married life that would enable them to evaluate the

permanent effects their decision bears upon your future. Just as every case is unique, in mediation you can agree upon a unique solution.

You should never, however, be lulled into a false security that your spouse is working towards the same goal that you are. This is a divorce. It may be difficult to determine your spouse's motive, but that doesn't mean she doesn't have one. Consider any history of manipulation.

MEDIATION EDUCATES YOU ON YOUR SPOUSE'S CLAIMS

You will learn your spouse's version of the facts during your mediation. You will discover the information (later known as evidence) he will put forth to support his position. It is an opportunity to know what you must disprove. Are his allegations credible? If you didn't know the truth, would you believe your spouse? If you would, perhaps a judge would too. Learn everything you can about his assertions. If your spouse does not think you are a good parent, find out why. Your attorney will have his own strategy at mediation. Some attorneys ask the mediator to honor the confidentiality of the caucus, believing it is better to have the opposing side underestimate your case, rather than prepare to match it. Your attorney will know how much to reveal and when.

How did your attorney handle the mediation? Were you satisfied with the questions and the manner in which he put forth your concerns? Will you be satisfied with this same type of representation if you have to go to court? These are hard questions but you need to answer them.

MEDIATION BEFORE LITIGATION

Some couples dislike the idea of hiring attorneys in the early stages of their divorce discussions. They think it increases hostility and distrust. They

prefer to meet with a mediator to see what issues they can resolve, prior to engaging an attorney later. Some simply do not want to have attorneys dictate terms, or spend thousands of dollars to end up enemies.

With or without an attorney, the procedure is the same. The mediator will motivate both parties to work together as joint problem solvers. Some couples have less tension and are more willing to openly discuss alternatives when attorneys aren't making judgments. The parties focus their attention on the areas of disagreement more in the light of resolution, rather than as adversaries. They prefer to treat each other with respect, rather than resentment. They are more willing to address strong negative emotions and try to control them before they adversely influence their agreements.

Mediation is also very effective when parties have children. Children give a strong point of focus. Parties can appreciate the necessary and important roles of both parents. They have more freedom to shape the future of children and parental involvement with less residual hatred.

If your attorney is not present, you reserve the opportunity to have her review your agreement. The purpose is to make sure you are not acting contrary to your legal interests. You should also be absolutely certain that you have all the financial information prior to making a final decision.

SAMPLE MEDIATION GUIDELINES

Mediation is creative problem solving. In a divorce, you are selling everything you own to each other or to a third party. It's a life change, but it's also a division of assets and debts.

In mediation you have the opportunity to take the time to create an agreement unique to your situation. The judge may not be able to do this. Here you know the final outcome when you leave.

No one can change what happened in the past. We can only deal with the present and the future. Usually, one or both of you have strong emotions over disagreements that have occurred during your marriage. Today, you will work hard not to let these emotions influence your ability to reach decisions.

You should know a courtroom is not the place to vent your feelings. A courtroom is impersonal. You will not get satisfaction for your emotional demands.

Mediation gives you a little bit of reality orientation. Are your proposals fair? How strong are your spouse's allegations? Strong facts need to be addressed. There may be limits imposed by your unique circumstances, regardless of what you believe your needs to be. The purpose is to have a fair agreement. Everyone knows what is fair. It's just whether one's emotions will allow one to acknowledge it, not whether you believe your spouse deserves what's fair.

Both of you will have the opportunity to respond to everything and to bring up what you believe is relevant. It's also important to remember that for the mediation to be successful, both of you need to participate. Your spouse needs to understand your concerns. If you think he or she isn't getting the message, tell it in another way.

I will not make any decisions for you. That's your job. I will assist in making sure you both understand the facts and issues, and have the opportunity to voice your concerns. If you want to know why your spouse is

so insistent about an issue, we will ask. This is an opportunity for you to learn what he or she considers as problems so you can deal with them.

Any agreement reached is voluntary. You only give up your right to go to court if you want to or if your attorney thinks you would do better with the judge. For mediation to be successful there must be open and honest communication. When you are in the courtroom, the first thing that happens is you swear to tell the truth. And while you are not under oath here, we expect nothing less. Both parties need to give complete disclosure of all relevant matters. If a party withholds important information or gives false information, the agreement may be set aside, and you may be back in court. If you want to, you may stop the mediation at any time.

Information given in mediation is confidential. I will not disclose any information learned from one side to the other side without express permission. I will meet in private with one side. This is to gain information. This is known as a caucus. There is no significance you should give it. Sometimes it might take longer than it should, depending on the extent of the participation of the party. Remember, if you do not want me to reveal information learned to the other party, I will not reveal it. This allows you to speak openly without pressure.

There is an exception. The exception would be if I learned of a crime, imminent threats of bodily injury or abuse, or such other matters as to which the law imposes upon me a duty to report.

We may meet in caucus. This may happen when:

a) You didn't want to respond to something the other side says while they are present, especially if you know it is going to be an emotional issue.

b) You know something I need to know but you aren't ready to inform the other side.

c) You feel uncomfortable with the other party present.
d) You feel a strong emotional need to tell me something that you think changes or explains something material that was said that was incorrect.
e) I want to gain additional information to clarify an issue.
f) I want to make sure there is not an unbalance of bargaining.
g) I want to make sure the parties have considered all the consequences.

By signing these guidelines, you agree not to call me to testify as a witness to court, or otherwise seek information developed in the course of the mediation. I will not testify voluntarily for either party. I will not provide legal or financial advice. It is not my role to function as an attorney. Again, my singular role is to assist you in reaching a fair agreement. These are some of the rules for mediation.

Your signature on these guidelines is your pledge to work in good faith towards a resolution of your issues. I may explore painful realities, but they will not be as painful here as they would be in an open court. Again, this is not to embarrass anyone, but to get it on the table, deal with it, and, hopefully, resolve it.

Once you reach an agreement, it will be prepared, either today or over the next few days depending on the length and content of the agreement. You will each sign it and be bound by it. If there are no attorneys present, you both have an additional time of ten days to have an attorney review it before it is binding. If there are attorneys present, you will be bound by your signature today. There are other provisions which your attorneys will add

once they formalize the main agreement, but the basic terms are those defined here today.

Also, if you don't have an attorney, you will have to obtain the services of an attorney to complete the legal process, unless you do it yourself. That is not part of the mediation.

Also, and this is the hardest part for some people, you are going to have to leave past fault and blame behind. Mediation looks to your futures. There is a tendency to think about the past, sometimes obsessively. This is an opportunity to create an agreement that minimizes future contact and controversy, and avoid going back to court.

Your agreement here today to mediate evidences a willingness to accept something less than a total award of everything you are seeking. The purpose of mediation is to bring movement in the direction of a solution. Regardless of what you believe, you have shared goals and shared problems.

Don't interrupt the other side when he or she is talking. This is just being courteous. You will have your turn to correct anything that is said. Just because I listen or repeat something your spouse has said does not mean I believe it or I don't believe it. I am assisting in the transfer of communication. Obviously, my purpose is to assure that everyone has enough information and understanding to make an informed decision.

My purpose is never to intimidate you or put pressure on you. If you are not comfortable with something, tell me. You don't want to Monday morning quarterback your mediation agreement. You don't want to wake up tomorrow and blame yourself or everyone else in this room for its terms.

You control the end result. You can't do that in the courtroom. Attorneys are paid to win. They are aggressive by nature. They seek to maximize a verdict for their client. Your attorneys may never be able to

successfully neutralize the lasting effects of the aggressiveness of a bitter trial. They are paid not to make concessions. Consider the lasting effects of the fallout from your spouse if your attorney wins EVERYTHING you seek in court.

Mediation is cooperation. It establishes a common ground. It tries to create gains for both of you. You are both moving forward to a new life. Mediation is an understanding that your current attitude and behavior may have to make way for change. You are asked to be less demanding and more understanding. The very nature of conflict is destructive. You are looking for acceptable ways out of your conflict to a meaningful resolution that both parties can live with.

(*End of guidelines*)

MY PERSONAL PREFERENCE IS FOR MEDIATION

I have been going to court since l984. It always takes more time than it should. Divorces can drag on for years – literally. This can result in large sums being spent in attorney's fees, and you don't always get what you want. Clients become upset over the length and cost of litigation. I have had contested custody cases that lasted so long the children actually grew up before the case ended.

I believe in mediation. I enjoy mediating. It is an excellent opportunity to lessen the stress, the cost, and the disruption to your life. It is important for the parties to emotionally "buy into" the process. This can depend in large part on the ability of the mediator. The parties need to be involved in seeking their own resolutions. Once they have this type of commitment, the process takes on a more essential role towards resolution.

6. THE CONTESTED DIVORCE

Many things happen on the road to the courthouse. The longer a divorce goes on, the more it appears to take on a life of its own. Depending on the behavior of the parties, your entire family will be consumed by it. Although friends and relatives will proclaim they will not take sides, it is only a matter of time before they do. Even though they have advice for you on every issue, they will be reluctant to come to court and testify on your behalf. They will give you a lot of advice, but little support. No one likes to be physically involved in someone else's divorce.

You should be prepared that your spouse will do things you never thought he or she would do. Worse yet, you will be surprised at how adept they are at doing it.

Once a divorce is filed, an emotional roller coaster overcomes most rational behavior. Some spouses use a divorce as a catharsis to vent frustrations for the entire length of the marriage. It is going to be a long divorce when the client begins with: "It all started 25 years ago." The sad fact is for some clients, it did start 25 years ago and their emotional turmoil will appear endless.

You are suing your spouse for a divorce or they are suing you. Sounds serious?

WHY WOULD MY SPOUSE NOT AGREE?

It is hard to understand why people would want to be married to someone who does not want to be married to them. But, consider:

-There are spouses who do not care about their happiness or yours.

-Their life has become intertwined with yours and they are emotionally and financially dependent on you.

-Their future expectations, needs and desires are not realistic.

-Once the reality hits that their life is going to change forever and it may not be for the best, uncontrollable panic sets in.

If reluctant spouses would just agree to the divorce and negotiate the final terms to a conclusion, it would be over. But this way, they didn't get their fight. Your punishment was cut short.

The most common reasons I have found for refusal to bargain are:

-Control what happens because they always have.

-Punish you for wanting a divorce, and teach you a lesson that only they understand.

-Gain an economic advantage in the divorce.

-Manipulate custody and/or child support and/or visitation.

- Make it so difficult or costly that you will give up.

-Force you to give them everything.

-Revenge for what they allege are years of mistreatment.

-Gain time to adjust to the idea, and hope you will change your mind.

-There are reasons you may never know.

HERE COMES THE SHERIFF

In most jurisdictions, the local law enforcement official serves the divorce petition upon the defendant. There is always great concern over the embarrassment of having a sheriff come to a place of employment or home to serve the "lawsuit." For some people, this is as bad as the divorce itself. If your spouse is the one filing for the divorce and your attorney knows it is

going to be filed, your attorney may request the petition be sent to his office. However, a sheriff may show up at your door. Try not to be alarmed by this. The sheriff is only doing a job.

There are clients who request that the spouse be served at work to embarrass him or her in front of co-workers. It's these small things that enlighten you as to what type of divorce you are in for.

WHO SHOULD FILE FIRST FOR THE DIVORCE?

You should discuss with your attorney the advantages of filing first. I prefer to be the plaintiff because you are the first to give your testimony in court. If you ever sit in a courtroom and listen to a trial, you will hear how different the representations of each party are. I prefer to have the first opportunity to persuade. The defendant presents his or her case at the conclusion of the plaintiff's case. If your spouse is the plaintiff and has testified well and given a good impression, you may be playing catch up. Other attorneys prefer to know what they are up against before they start their presentation of evidence. This is a choice that your attorney should make.

COUNTERSUE FOR DIVORCE

If you definitely want a divorce but your spouse is the one who has filed the complaint for the divorce, you should consider filing a counterclaim for divorce. If you don't counterclaim and your spouse dismisses the divorce, you may be out of court. If you still want a divorce, you have to start the process over from the beginning. This will be a disadvantage if the divorce was going well for you.

BE AWARE OF FALSE CLAIMS OF VIOLENCE

In highly contested cases, it is not unusual for spouses to immediately apply for Temporary Protective Orders and falsely allege acts of violence. It is relatively easy to do initially in most jurisdictions, and your spouse usually does not need an attorney to file one. While some Temporary Protective Orders are valid and necessary for the protection of parties (or children), others are used to gain an advantage. In some jurisdictions the divorce action is assigned to the same judge who heard the TPO. Although they are separate petitions, you can be sure the judge who will preside over the divorce will learn of the TPO at the first opportunity. If a TPO is filed against you, have your attorney defend it for you. Many frivolous applications for TPO's can be successfully dismissed.

TPO's are also used to remove a spouse from the marital house, or to obtain temporary custody or support. Some spouses may intentionally provoke his or her spouse, so they can go to court and testify as to their fear for their safety. Don't be caught by this trap. If your spouse's behavior becomes extreme, talk to your attorney about whether you should leave the residence and what measures you should follow to prevent additional problems if you do leave. Hopefully, your divorce will not deteriorate to this level.

CHILDREN'S SELECTION OF CUSTODIAL PARENT

Most states allow children, upon attaining a certain age, to make an election as to the parent with whom they want to live. If your children are old enough under the law of your jurisdiction to make this election, ask your attorney to file these affidavits/elections early in the case before the

opposing side realizes they should have filed them. There are parents who chose not to bring their children into the divorce, only to discover that their spouse filed the affidavits. Divorce can bring out the worst in parents.

Your attorney will not take children to court without first notifying the judge and determining the judge's protocol. Your attorney will not just show up in court with your children present, and neither should you.

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7. YOUR SPOUSE'S ATTORNEY

There are many important players in your divorce. One who can greatly expedite or delay the process is your spouse's attorney. He can be the best thing that could ever happen to your case or the worst. Sooner or later, you will hear from your spouse that he or she no longer chooses to discuss the divorce with you, and "their attorney will contact your attorney." The cost of your divorce has just gone up.

As you have learned from interviewing prospective attorneys, there are many different styles of "lawyering." The attorney your spouse hires will have his own manner of handling matters. Some attorneys respond quickly. Others take their time or never respond. Some attorneys try to control their client's irrational behavior while others wait and deal with the results. All of this affects your case and there is little your attorney can do about it. At some point, everything will be filtered, interpreted and presented through the attorneys. Your spouse and opposing counsel can stalemate the proceedings. You should also realize that your spouse may or may not follow the advice of his or her own attorney. Although clients pay for legal advice, they don't always take it.

UNREALISTIC EXPECTATIONS

There are attorneys who tell their clients exactly what the client wants to hear. There are attorneys that will admit their client's demands are unrealistic, but that they cannot relent until the judge forces them to do so. There are some clients who believe their attorney isn't "fighting for them" if

the attorney negotiates any issue. Attorneys who support unreasonable demands add to the length and frustration of the divorce. I have encountered excellent opposing attorneys who were fired by their client when they tried to negotiate a resolution.

OUT-OF-CONTROL SPOUSES

There are clients who demand excessive hearings instead of trying to work out minor differences. There are clients who do not follow temporary orders, do not pay child support when due, do not adhere to a visitation schedule, refuse to pay bills in a timely manner, or do anything else to accommodate their spouse or the process. When this occurs, the attorney can no longer control their client. When the only way your attorney can control the behavior of your spouse is through hearings, your case has slowed to a crawl. Plus there is the additional disadvantage that the Judge will tire of hearing from you before the main issues of the divorce are ever presented. Again, this will be a judgment call and your attorney will balance the benefit.

DISCOVERY – a very brief introduction

Both spouses are entitled to request information and documents from the other. There are attorneys who demand documents that go back to the beginning of your marriage or past any logical period of time. They file exhaustive requests which cause you to spend many hours searching and copying. Some are necessary, others aren't. Most attorneys will not even entertain settlement offers until they believe they have all documents necessary to protect their client and themselves.

As in everything else, there is a fine line between necessity and abuse. In clear abuse instances, your attorney may object. Most times, if the request is not too unreasonable, it's better to spend the time and supply the documents in your possession as early on as possible so as not to hold up any possible negotiations. The purpose is always to try and get to a successful expedited end. You really do have other things to spend your time and money on.

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8. ASSISTING YOUR ATTORNEY

Your attorney will never know as much about your case as you do. Just because you are not a lawyer, doesn't mean that you can't provide valuable assistance throughout your divorce. Although your attorney can obtain information through legal means, there are ways that you can help and save time, and that equates to saving money.

HISTORY OF YOUR MARRIAGE

What type of behavior will your spouse reveal during your divorce? Will it be an emotional battle to the end over every issue? What issues will be repeatedly thrown in your face? Educate your attorney. Write a history of your marriage. In doing so, you will recreate behaviors as well as facts which are helpful to you and your attorney.

COPY RECORDS

The best time to obtain copies of checks, statements, phone records and important financial documents is before you are in the middle of a hotly contested divorce. The most incriminating records have a way of disappearing, some never to appear again. Copy every record of importance you can locate. Take the time to read them and organize them.

CELL PHONE RECORDS

Before your spouse conveniently misplaces or destroys them, make copies of his or her cell phone records. Older records may be difficult to obtain from the cell phone carrier. These records are vital in alerting you as

to whether your spouse has been involved with a third party. You never know what information you will find once you start looking.

COURTHOUSE RECORDS

If you have a very strong suspicion your spouse has been romantically involved with a third party and you know that person's name and county of residence, check the local courthouse records. This individual may have filed their own divorce if the relationship with your spouse is serious. Divorces are a matter of public record and the Internet makes searching courthouse records easy. It may be a fishing expedition, but at this point, you are looking for information.

You may need to research the local real estate records, particularly if you are not on the deed to your real property. You may locate second or third mortgages that you didn't know about. Your attorney can file a document in the real estate department to restrict any transfer of property during a divorce.

DIVORCE DIARY

Keep a diary for the explicit purpose of your divorce. Tell your attorney you are doing it for information to use in the divorce so that it can be protected from discovery from your spouse. Names, addresses, phone numbers, dates and situations are easily confused over the period of the divorce. Testifying accurately establishes credibility and prevents your spouse from manipulating the facts. It also can identify patterns of behavior.

Sometimes it is the small things that become significant. A diary will also stimulate your memory of past similar acts or behaviors of your spouse

over the course of the marriage that may be more relevant in retrospect. Habits are usually repetitive.

Don't write anything negative about yourself.

OBTAIN "FRIENDLY" DOCUMENTS

Any document you can obtain yourself will save your attorney time. These may include medical records for you or your children, school records, report cards, photographs, pictures, real estate records, and employment records. An attorney is charging you for his time. Any relevant document you chase down is time that your attorney isn't charging you for.

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9. WITNESSES

You know more information about your marriage and the behavior of your spouse than anyone. However, do not underestimate the testimony of strong witnesses. They will help the judge understand why judgment should be in your favor.

Witnesses can be fact witnesses who testify to facts, or expert witnesses that can testify to facts and give their opinions. Expert witnesses also can assist the court in complex issues.

After your attorney interviews all potential witnesses, they will tell you the witnesses they believe will strengthen your case. This will depend on which issue the witness needs to support.

If you have a complex financial matter, an accountant or financial planner may be considered. If you have a custody battle, teachers and child psychologists should be considered. Your attorney will select the order of presentation of your witnesses for maximum effect. Live witnesses are more effective witnesses than having your attorney or someone who works for your attorney "read" the answers to questions from earlier recorded depositions. In some instances, however, a deposition may be the only available means of getting testimony into evidence from some professionals.

LAY WITNESSES

A lay witness is a witness that is not an expert. They testify to facts they know firsthand. Whenever possible, usually mature witnesses make very credible witnesses. They also are not intimidated by the proceeding. Consider: neighbors, friends, teachers, and coaches.

TALK WITH YOUR OWN PROSPECTIVE WITNESSES

Few people volunteer to testify in a divorce. Your attorney can compel them to testify with a subpoena, but it is usually better for your case if your lay witnesses want to help without being forced to. Talk to them before your attorney does. As their friend or relative, you have a better chance of persuading them to testify than your attorney does. Also, you don't want your attorney charging you for several hours talking with potential witnesses who aren't going to be either helpful or cooperative. Find out if they do in fact have solid first hand knowledge of information or facts. If they have knowledge pertinent to a major issue but refuse to testify, your attorney may have no choice but to subpoena their appearance in court. The bad news, of course, is that they may claim no knowledge once they are placed on the stand to testify, if they sincerely do not want to be involved.

Some voluntary witnesses may request a subpoena so that they may submit it to their employer to come to court. Also, your attorney will try and advise your witnesses as to the time of the day they will testify, so they don't have to remain at court all day. Unfortunately, the attorney may not be able to estimate this, and it may require your witnesses to spend a lot of time waiting outside the courtroom.

GUARDIAN AD LITEM

If custody is in issue, you should discuss with your attorney the possibility of requesting a guardian ad litem. This individual (usually an attorney) represents only your children. A favorable recommendation from a guardian ad litem will greatly increase your chances of having custody of your children.

You and your attorney should strive to make the guardian's job easier. Make sure the witnesses you want interviewed are accessible to the guardian. Make sure documents that you want the guardian to consider are sent to them. When the guardian requests a meeting at your home to interview you and your children, you need to be flexible to their schedule. Ask your attorney to find out if there is anything that you should do to assist the guardian in gathering information. Aside from the positive feedback of cooperation, you minimize the time the guardian has to spend on your case and the cost for their services because you may be responsible for at least a portion of their fees.

CHILD PSYCHOLOGISTS

In major custody battles some clients ask whether they can afford a child psychologist. The real question is whether you can afford not to hire one. If you are fighting for your children, you don't just want to tip the scales of justice; you want to turn them upside down.

A child psychologist is a very valuable resource, and depending on their courtroom skills, can be very persuasive. They can greatly assist the court.

If your attorney is experienced in custody matters, he or she can recommend child psychologists. It is preferable to retain those psychologists who have testified many times before the same judge.

Psychologists are very valuable witnesses although they are very expensive. They usually require their fees in advance of trial. They usually require many hours of pre-trial assessments on which they base their testimony. Your attorney will not take an expert to trial unless the expert supports your case.

Don't confuse a psychologist who will testify for you with a psychologist appointed by the court who conducts a custody evaluation of all the parties and the children. This requires the consent of both parties or an order from the court. Your attorney can petition the court for this.

PRIVATE INVESTIGATOR

In deciding whether to hire a private investigator, you need to evaluate the possible value of the information he may obtain. People get careless. The longer a spouse engages in inappropriate activity, the more confident and bold their behavior becomes.

If you have a spouse in a long-term marriage who has never worked but can prove adultery, that would have an effect on alimony that may be sought. The cost of an investigator may be small compared to what you might save if adultery is proven.

However, if you are only fishing for information, you should restrict the time and money that you spend on the investigator. Sometimes clients just want to know what their spouse is really doing, and are willing to pay for that knowledge. <u>Don't follow your spouse yourself. You may be subjecting yourself to a harassment or stalking claim.</u>

SPOUSE'S ALLEGED LOVER

Although they rarely admit anything on the stand, there is a strong psychological effect on a spouse when their alleged lover is subpoenaed to court. This is a tactical consideration for your attorney. It obviously puts tremendous pressure on your spouse but sometimes that is enough.

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10. YOUR TESTIMONY

Don't just swear to tell the truth, do it. Cases are won or lost based upon credibility. Don't shade the truth. Judges are looking at everything to form their opinion. If they think you have shaded the truth, they may not look any further.

QUESTIONS YOU WILL BE ASKED BY YOUR ATTORNEY

Your case will be presented through the questions your attorney will ask you while you are on the stand, under oath. This creates your side of the divorce that forms a part of the basis for the judge's decision. Tell your attorney that you want to know in advance what questions you are going to be asked. At least that way, you will know 50% of what is going to be asked of you. Ask what the judge is looking for in the way of information in your answer. This is not having your attorney tell you the answers. Rather, it is relying on their experience to elicit the relevant facts from hundreds of facts. You don't want to spend your time testifying about facts that make little or no difference to the outcome. You should concentrate on the facts that are the strongest and make the best impression. Your attorney will sift through and present the strongest evidence. This will be done in an organized, coherent manner that is easy for the judge to follow. You are, in essence, telling the story of your marriage. If it had a happy ending, you wouldn't be getting a divorce.

SHORT ANSWERS

Short answers are preferable on complicated matters.

FIRST AND LAST QUESTION

The first and last question you are asked should be significant. This is the first thing that the judge hears to set the stage, and the last thing he hears at the conclusion of your testimony. Often the last question will appeal to an emotional issue to make the judge aware of the devastating impact of an adverse ruling.

BE INFORMED AND ORGANIZED IN YOUR TESTIMONY

An experienced attorney knows what the judge is looking for. This is the reason he will prepare you for your direct examination in advance. Your attorney cannot ask you leading questions. Leading questions are those that suggest the answers. This creates the appearance the attorney is testifying. You could easily become confused in an emotional trial and not realize what your attorney was asking if you aren't familiar with his questions.

MINOR HEARINGS

Don't accept it if your attorney tells you not to worry about a hearing; that it's a minor hearing and not that important. There is no such thing as an insignificant hearing. There may be several hearings in your case, but they are all important. Your attorney should strive to win all your hearings and should prepare you in advance for all hearings.

If there are weaknesses in your case, your attorney should question you about it before the other side does. This allows you the opportunity to explain it in a favorable light before you have to defend it.

THE MANNER OF YOUR TESTIMONY

Consider the following:

-A very calm wife testifies that she is terrified of her husband.

-A witness repeatedly changes her answers.

-A husband argues with the opposing attorney and is evasive in his answers.

-A wife testifies in a bitter, hateful tone.

What's going on in these situations? The manner of the testimony has become stronger than the testimony itself. The behavior of the party overshadows his or her credibility. A judge doesn't have to believe a witness, as the judge evaluates the testimony with all of his senses in the search for the truth.

CREDIBLE TESTIMONY

If you are nervous about it, you should practice testifying in front of a mirror until you sound confident in what you want to say. The strongest testimony is testimony that is honest. Even if there are things that you would just as soon not admit, if they are true, you must admit them. You can always explain them. Credibility is the strongest of all testimony.

CONTROL YOUR EMOTIONS

You need to learn sooner rather than later that courts do not deal with emotions. They want the facts, and they want them presented briefly and to the point. If you display excessive emotions, your testimony may be considered irrational. This is not cruel or insensitive. Divorce is an emotional process for you, but for a busy judge, your case is one of many.

The areas that are emotionally difficult for you to testify about should be addressed many times before you take the stand so that the sting is removed. No one expects you to be callous, but if the content of what you are trying to establish is distorted by your emotions, you are defeating yourself. You want to assist yourself as much as you can in every aspect of your testimony. It can be very effective if your testimony is passionate, but not emotionally fragmented. You want to persuade the judge to see the issue. If you are too emotional, his focus will be transferred to your emotions only. There is a fine line distinction but this is a very important presentation. You have talked with your attorney about what you want to say, and you have thought about the most effective way to say it. If the judge believes you, he has already started forming the basis for some of his decisions.

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11. WHAT TO EXPECT ON YOUR CROSS-EXAMINATION

At the conclusion of the direct examination by your attorney (where you have testified to your side of your case), opposing counsel has the right to ask you questions about your testimony.

This is cross-examination. The purpose of cross-examination is to support your spouse's version of the facts and/or to discredit your testimony. This may be accomplished many ways, including trying to establish bias, incapacity or lack of knowledge, lack of opportunity to observe facts, and prior inconsistent statements. This is not exhaustive.

WHERE ARE MY WEAKNESSES?

Ask your attorney if she has experience with the opposing counsel and to further educate you on what to expect. As stated previously, attorneys will attack weaknesses. Your attorney should prepare you for what they consider the biggest areas the cross-examination will center on. If there are skeletons in your closet, the opposing side will bring them out.

QUESTIONS FAVORABLE TO SPOUSE

If you have testified to something that is favorable to your spouse, you may be asked a question about this first. This will emphasize the positive testimony about your spouse.

ANY QUESTIONABLE TESTIMONY

Then opposing counsel will try to prove everything else you said is untrue or questionable, or that you really didn't have the opportunity to observe the facts to make the conclusion.

DON'T VOLUNTEER INFORMATION

Your attorney has told you not to volunteer any information, and to answer only the questions you are asked. It is not your job to assist your spouse's attorney in giving them additional information they will use against you at the first opportunity. Attorneys are masters at manipulation. Don't let the opposing attorney put words in your mouth.

Cross-examination is usually permitted about any subject relevant and material to the issues. As a practical matter, the questions the opposing attorney asks are usually in response to the answers you have given during your direct examination.

CROSS-EXAMINATION IS CONDUCTED BY ASKING LEADING QUESTIONS

Most attorneys are forceful in their cross-examinations. Some of this is because their client expects it. Some of it is for harassment to upset you so you lose your confidence. Initially, some attorneys appear friendly. Don't be lulled into believing that opposing counsel is there for any reason other than representing your spouse.

YES OR NO

The opposing attorney will also attempt to tell your spouse's side of the divorce by the way in which he asks you questions.

Textbook cross examination is the opposing attorney's chance to ask you questions by stating his theories to you in the form of questions. Therefore, his cross-examination questions are framed as assertions. They are not really questions for which an answer is sought. Opposing counsel doesn't want an answer - at least not your answer. They are usually short statements because long ones give you an opportunity to argue an answer. By asking leading questions, you cannot come up with your own answer because you are given the answer they want to hear. This is done by asking questions which require only yes or no answers. Do not be surprised if you are not asked your opinion or interpretation or evaluation on anything.

Cross-examination also capitalizes on the stress of the trial. The attorney is looking for any biased testimony. Any animosity or motive that you might have for not telling the truth or lack of supporting information is fair game. Any inconsistency is exposed, regardless of how minor.

FADING MEMORY

Memory fades with time and the longer it is between the event and the time of the trial, the more you can expect this fact to be brought to the court's attention. This obviously would suggest other possibilities less favorable to you, and more favorable to your spouse.

SAMPLE CROSS-EXAMINATION QUESTIONS

Leading questions demand a controlled answer.

-You would agree that your husband is a good father?

-You can't say that for sure because you weren't there?

-That was almost a year ago, and you surely aren't telling this court that you remember every detail?

-You left out that your spouse paid for all activities of the children?

-You didn't tell the judge your spouse bought you that car?

-You didn't list your part-time income of $12,000?

Good attorneys will string together negative statements to paint a biased picture against you.

Cross-examination uses closed-ended questions.

(It's red, isn't it?) Rather than open-ended (What color is the rose?).

Cross-examination questions may center on positive traits of your spouse.

-Your husband takes the children to soccer every weekend?

-In fact, your spouse takes the children to all sports activities?

-Your spouse works two jobs to help maintain the family's lifestyle?

Questions may center on negative traits about you.

-You were out so late with friends last weekend that you didn't feed the children dinner?

-You sent the kids to bed early so you could be alone with your new male (or female) friend?

-You don't help the children with their homework?

Questions may fill in information that is favorable to your spouse that you have omitted from your testimony.

-You testified you never had access to any money, yet you keep the checkbook?

-You testified your spouse charged a lot of debt, but he isn't an authorized account user on the credit cards?

-You testified you can never leave the house, yet your husband leaves a brand new car at home and you have a set of keys?

There are countless ways your spouse's attorney will try to accomplish his goals. It's a little game carefully controlled to make you look bad. The more the opposing attorney knows about the case, the more questions he will ask. The more experienced he is, the better his questions will be.

OBJECTIONS BY YOUR ATTORNEY

Answer every question unless your attorney objects. Don't immediately jump into an answer. Give your attorney a few seconds to allow him time to object, if he chooses.

Below are examples of some objections that your attorney can make. This list is not exhaustive. It will give you an idea of what's happening when you hear your attorney rise to his feet and say the following:

I object your honor. That question is--

Incompetent; irrelevant; immaterial; leading and suggestive; calls for a conclusion; asked and answered; misquotes a witness; calls for speculation; argumentative; assuming facts not in evidence; lacks a proper foundation; lacks first-hand knowledge; is a compound question; not the best evidence; beyond the scope; complex question; unintelligible; calls for opinion by an expert; no proper foundation; calls for privileged communication; cumulative; self-serving; hearsay.

As a practical matter, some judges may become annoyed if there are too many objections because it interferes with the flow of the case. As indicated previously, there is a constant unspoken pressure to keep the case

moving. An experienced attorney will not make every objection available to him, but will only object to those questions he believes are damaging to your case. This experience is part of what you are paying for.

WAIT FOR THE JUDGE TO RULE ON YOUR ATTORNEY'S OBJECTIONS

Once your attorney makes an objection, wait until the judge rules on the objection before answering. The judge will instruct you on whether or not to answer. You may not have to give an answer.

ALL IS NOT LOST

After cross-examination is concluded, your attorney has the opportunity to conduct a redirect examination. She can ask you additional questions and clear up any discrepancies. She can have you offer any explanations she believes are relevant. This is an opportunity for you to explain a damaging answer, if needed.

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12. THE JUDGE

The most important person in your trial is the judge -- first, last and always. *Never* underestimate the power or personality of the judge. This is the individual who can award you custody of your children, or award custody to your spouse. The judge will dispose of your assets. She will determine what happens to your debts and who gets your house. She has the power to send parties to jail if they fail to comply with a court order. This kind of authority demands respect at all times. Never lose sight of this fact every time you are in her presence.

BE RESPECTFUL

It goes without saying that you should respect the judge. If the judge asks you any questions, you should address the judge as "Your Honor." Unless you are in the witness stand, it is customary to stand when addressing the judge.

DON'T INTERRUPT

You should not talk when the judge is talking.

DIRECT YOUR ANSWERS TO THE JUDGE

You should direct your answers to the judge even though it is your attorney or your spouse's attorney asking the questions. The judge is the individual who needs to hear the answer.

BE COURTEOUS

Show courtesy to the judge at all times. Otherwise, it may be interpreted as showing disrespect for the court.

DON'T ARGUE

You should never argue with the judge!

DON'T MAKE COMMENTS OR SOUNDS WHILE YOUR SPOUSE IS TESTIFYING

This may elicit a strong reprimand from the judge.

PERSONAL APPEARANCE

A trial is not the time or the place to exhibit extreme individuality. Speech and dress codes are strictly in effect. Good or bad, everyone makes assumptions about people based on how they dress and how they look. Judges are no different. You should be clean and your clothes should be – as your mother would say, your Sunday best. Dress conservatively. Proper attire shows respect for the power of the court. Ask your attorney what is appropriate.

YOU WANT THE JUDGE TO LIKE YOU

Simply put, you want the judge to like you. You want him to believe you. You want him to believe you are the person he can feel comfortable making a decision for. The judge is there to make a decision and wants to make the right decision.

WHAT IS MY JUDGE LIKE? GO FIND OUT FOR YOURSELF!

The best advice I give clients facing a trial is to sit in on someone else's divorce trial that is conducted by the same judge that will hear their case. Your attorney can tell you where and when these hearings are being held. This helps you in many ways.

First, it dispels the fear of the courtroom and helps with the logistics of the courtroom. You find out where the courthouse is, where you will park, what floor the courtroom is on, where the bathrooms are, the snack room, and how the courtroom itself looks. You'll also find out how long it will take you to get there and get parked and get to the courtroom. You are able to observe the dynamics of the courtroom without having the apprehension of being in a trial. It makes your appearance less intimidating once you learn the mechanics of how it looks, where you sit, and where your attorney sits. Knowledge of this kind will put you more at ease when your trial begins.

Once you feel at ease being in the courtroom, you can concentrate on what is actually going on. Critically critique the judge who will determine the outcome of your case. You can observe the innuendoes of the judge. How long did he let a witness speak? What type of questions (if any) did he ask the witnesses? Did he make his decision quickly? If the witness was emotional, how did the judge respond? What was it about the judge that you liked or disliked? Did he really slam one of the parties for his or her behavior during the divorce?

ATTEND AS MANY HEARINGS AS TIME PERMITS

It is important for you to experience this first hand. You will be more relaxed and less traumatized once you get to court. You will be a better

witness. If time permits, try to attend several hearings until you have gained some insight as to the nature of the judge.

DID YOU UNDERSTAND THE FACTS OF THE CASE?

Remember that judges have hundreds of cases in which they have to listen to countless details. Too much detail can cause confusion and distort their focus away from the important issues. Listen to the facts in the cases that are being presented. Was it difficult to figure out what was being asked of the judge? Could you follow the testimony, or was it comprised of numerous questions that didn't appear to be connected? How would you have presented the matter differently?

WHAT DID YOU OBSERVE ABOUT THE PARTY TESTIFYING?

Did the personality of the party on the stand make his testimony better or worse? Did you like him? If not, what did he do to cause you to dislike him in such a short period of time? Did you believe him?

You will soon recognize that you are forming opinions in just a few minutes or hours, based on your interpretations as the case unfolds before you, just like your judge will.

One of the many jobs of any attorney is to take complex issues and organize them into a clear, concise presentation. The attorney will constantly observe the judge during the trial. When the judge has heard enough on a certain issue, the attorney will end the testimony.

What did you learn? Was it beneficial to you? How do you think you might change your presentation to make it specific to this judge?

ADDITIONAL BENEFIT. You will also observe the cross-examination techniques of both attorneys conducting the trial you are attending. This will give you more knowledge of what to expect when you are on the stand. Most divorce trials contain the same basic issues with different facts. Cross-examination is a difficult concept to understand until you experience it. Was one attorney more effective than the other? In what way? Try to look beyond the obvious. Use all of your senses. The judge will.

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13. THE RULING

As abruptly as everything in life ends, so will your trial. When the judge makes his feelings known at the end of a contested divorce trial, it is often difficult to grasp the finality. It's over. The relief you will feel is yet to come. You should expect to be overwhelmed by a vast array of conflicting emotions. Some judges will rule from the bench with no hesitation. They will request the attorney for the "winning party" to take down the Order, prepare it, submit it to opposing counsel for review, and then to the judge for signature. This gives the attorneys a chance to ask for clarification of any issues that are confusing. It also gives the attorneys the opportunity to remind the judge of anything that has been omitted.

If the trial has been especially contentious, or if there are a lot of documents to review and everyone (including the judge) is exhausted, some judges may elect to have more time to reflect on the evidence. The judge may not rule at the conclusion of the trial, but rather will mail the decision after a few days. This is not an indication of anything negative or positive. Many judges do this. All the effort has ended. Everything that could be done was done to persuade the judge to see your side of the issues. Your attorney did his job well, as did you. You will now second-guess every single word and question until the end of time. Unfortunately, it will not change the drama that unfolded in court. Perceptions, intuitions, evaluations, conclusions – all the mental images formed by the judge throughout your trial have culminated in forming the final decisions. The judge brought his values to bear upon your life after only perhaps a few hours. You are left with the result. He has told you what your tomorrows are going to be like.

Rarely will a judge award everything to one party. The judge balances the equities and inequities – just like the scales of justice. You should not expect the judge to cut a parent out of a child's life, no matter how horrible a parent you believe them to be. You should not expect to receive every penny in every account, no matter how much money your spouse has squandered during the marriage.

Your attorney has prepared you to be realistic in your expectations, particularly in a long marriage where lives, money, and family were intertwined on a daily basis for so many years. You have discussed the why and the why not. Even if you don't like the outcome, you knew of its possibility. It was the probability you were fighting against. You came into court asking a stranger wearing a robe to make these life decisions that you and your spouse could not make. Every relevant detail of your married life was explained. The legal and emotional presentation of your evidence was carefully crafted.

As you know now, divorce is a process with all roads leading to the final day. The uncertainty and unknown interpretation by the judge was what you wanted to avoid. Your loss of control over the judge's thoughts is what you and your attorney attempted to minimize through countless hours and costs of preparation. Hopefully, you were successful. Now will you think differently about how to approach your divorce? Have your opinions changed? Has it given you positive ideas on actions to take?

This is your divorce which will affect your life. Act now, while you can bring about a change.

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