TOWN & COUNTRY

T&C'S GUIDE TO CIVILIZED DIVORCE

Special Section: DIVORCE Including Top U.S. Lawyers

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To Love, Honor and Litigate?

BY ESTHER M. BERGER

Divorce does not come easily for anyone. Even when your marriage really is over, you can't help but feel that to end it means to admit failure. But admitting the truth can also mean planting the seeds of hope for a better future. As I've learned during my career as a certified financial planner, author (of *Money/Smart Divorce: What Women Need to Know About Money and Divorce*®; Simon & Schuster, 1996) and speaker, and from more than a decade of advising women in the throes of divorce, you can best nurture those seeds by managing your divorce in the most humane, equitable and least expensive manner. There are ways to do this and to protect yourself both financially and emotionally, and it is imperative that you learn to use them.

First Things First: Taking a Business Approach

Your critical first step is to adopt a rational, problem-solving approach rather than an emotional one. However natural your fury, sadness or frustration may be, letting it rule your actions now is a surefire prescription for trouble. (This holds true whether you and your soon-to-be-ex-spouse have engaged separate attorneys or a mediator or are hammering things out together before bringing in a third party.) It's entirely appropriate to unleash your anger in a therapist's office, which can be healing. It's self-destructive to explode during a negotiating session in your attorney's office or across a mediator's bargaining table. "You should **never throw emotions** during negotiations," counsels family-law attorney Dennis Wasser of the Los Angeles firm Wasser, Rosenzweig & Carter. "It gives the other side an advantage and will end up costing you time *and* money."

Another reason to stay calm is that it enables you to carry out a cost-benefit analysis for each decision you'll make, whether your divorce is amicable or anything but. In plain English, the cost of your divorce should never outweigh its benefit to you. But when you're seeing red, you don't see anything clearly. One East Coast attorney recalls a case in which the client and her husband both wanted a painting valued at $10,000. The client's attorney warned her that, in a legal war, the attorneys' and appraisers' fees could easily top that figure, but the client wanted to fight. At $18,400, emotional satisfaction was dear. She got her day in court; he got the painting.

If all this advice sounds like so much pious preaching, given the marital wrongs you've suffered, it might help to remind yourself of what hangs in the balance in a divorce—particularly if you're not the chief breadwinner.

What's at Stake?

"There are stories of women hitting the divorce jackpot, but these represent an infinitesimal percentage of divorce cases," stresses celebrity divorce attorney Raoul Felder. It's sad but true: after a divorce, women and children generally wind up with the short end of the financial stick. Numerous studies bear this out. Primary breadwinners (still mostly men) can improve their standard of living as much as 40 percent in the first year following a divorce; during that same period, children and their primary caretakers suffer an average drop of 30 percent. Since long-term earning power is one of a marriage's biggest assets, women have difficulty maintaining their predivorce standard of living—even with spousal and child support. "Eighty to 90 percent of men wind up, within three or four years, better off financially than they ever were before," says Sorrell Trope, a certified family-law specialist at Trope & Trope in L.A. and an adjunct professor at the University of Southern California School of Law. "Just the opposite is true for women." The bottom line: in order to pay your children's private-school tuition fees or maintain an exclusive country-club membership, you could wind up selling the $1.5 million Oyster Bay mansion you won in your divorce. Or you can keep the house and cut back on all the rest. Either way, for most women, something or everything changes—and often for the worse.

"It's not hard getting married. It should be a hell of a lot harder to get married than it should be to get divorced. And forget about children; you should have to apply for that."

— *Joanna Barrios, married at 24 for five years, no children.*

REACHING A CONSENSUS

Choosing an Advocate

Having achieved (at least most of the time) the proper businesslike spirit, you need to find an attorney. Although a divorce-yourself divorce or legal clinic may sound appealing and relatively painless, for most high-asset divorce cases—and almost all divorces involving custody issues—going the lawyer route is advisable. And unless your divorce is amicable (uncommon) and relatively simple (in which case you might use a mediator; see "Consider Mediation"), you'll [illegible] specialist (a family-law or matrimonial attorney). [illegible] of the final outcome will depend on his or her ac- [illegible] skills—legal and personal—so you'll need to devote [illegible] to the selection process (see "Finding the Right [illegible]"). Special note: It's also in your best interest that your [illegible] legal counsel. An opposing lawyer who's not on [illegible] things down—and cost you time and money.

[illegible], the manner in which your marital property is [illegible] on the laws of the state in which you reside. [illegible] Mississippi, the only state that adheres solely to [illegible] principles (which divide property strictly accord- [illegible]), your assets will be divided according to [illegible] "distribution of property" laws or "community [illegible]" laws. Women has different legal and financial im- [illegible] attorney to explain how your state's laws will [illegible] judgment. (A settlement is worked out [illegible] submitted for court approval; a judg- [illegible] the court in cases that reach litigation.)

[illegible] relatively short time, do not expect life- [illegible] lawyer cannot do more than the [illegible] Dennis Wasser. Five years in a mar- [illegible] such support; ten years or more may [illegible]. As the very least, though, you'll [illegible] standard of living. And you'll need [illegible] and your contribution to the [illegible] Worth"). The latter issue has been [illegible] Loma Wendt took her bus- [illegible] Gary Wendt, to court over the [illegible] cost-benefit analysis. A prolonged battle [illegible] adequate child support can cost $30,000 or more, but con- [illegible] the sky-high expense of private-school education. It may well [illegible] an extra $50,000 in attorneys' fees to secure your spouse's written [illegible] agreement to pay tuition fees that could run to $25,000 a year or more.

Helping Yourself

In the end, you'll do best for yourself by helping your attorney to do the best job he or she can. Whatever you stick to reasonable expectations, separate your money from your emotions and stay cool-headed when making tough decisions about your and your children's future, you are taking control of your divorce—and your life. Take comfort in the thought that, though there are seldom any winners in a divorce, there needn't be any losers. Well handled, your divorce can allow you to put the past behind you and get on with your life. As Raoul Felder says, "Divorce will never create happiness, but it can create an environment for future happiness."

Dollars and Sense

A large chunk of any divorce tab is, of course, the attorney's fee. An experienced, highly regarded attorney will charge high hourly rates as well as a big retainer. (Don't assume, though, that the more money you spend on [illegible] bigger your settlement or judgment [illegible] guarantees.) Fees may [illegible] on [illegible]

Finding the Right Attorney

You need to be absolutely certain the attorney you choose is knowledgeable, responsive and completely understanding of your goals. Here's how to hire the best family-law specialist you can.

1. Consult people you know and trust for recommendations. Friends who are attorneys are especially good bets, since they know others in their profession personally and by reputation. Recently divorced friends are also good sources of firsthand information. You can also call the American Bar Association or your local bar association for a list of family-law specialists. And talk to any judges or retired judges you know—after all, they've seen the attorneys in action.

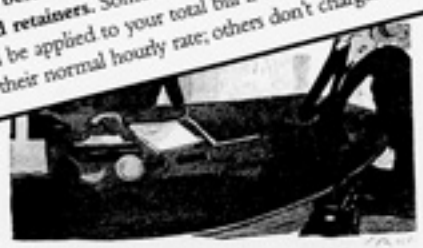
2. Keep your options open. Consult with several attorneys before choosing one, and do your homework beforehand. Find out if the attorney has a reputation for settling cases amicably or for duking it out in court; find out if he or she has ever been disciplined or censured by the state bar association; ask whether clients you know have been happy with their settlements or judgments.

3. Ask beforehand about initial consultation fees, billing rates and retainers. Some attorneys charge a consultation fee that will be applied to your total bill if they represent you; some charge their normal hourly rate; others don't charge. Ask about billing rates and retainers, so you're not shocked later. Also get an estimate of how long your divorce is likely to take, since extensive litigation can propel costs into the millions.

4. Ask what percentage of the attorney's cases have gone to trial and how many have settled out of court. This is especially important to know in divorces with very substantial assets and complicated property divisions, which more often go to trial. If most of an attorney's cases go to trial, it may signal that he or she plays hardball and that you could win a bigger judgment by doing battle. On the other hand, you could end up that much poorer. You may decide that fighting it out in front of a judge is not worth the emotional wear and tear on you or your children, and opt for an attorney with a reputation for settling *out* of court. Carefully weigh your own wishes against your children's best interests and your legal entitlements, and choose accordingly.

5. Assess the attorney's communication style. "You could have the most brilliant lawyer in the world, but if you can't get that person on the phone, or if you don't speak the same language, it doesn't matter how brilliant that person is," says Stacy D. Phillips, a family-law attorney at Mannis & Phillips in Los Angeles. She recommends that clients make sure a lawyer has "the three A's: ability, affability and availability."

E.M.B.



Proving Your Worth

Taking these steps can improve your postdivorce chances of maintaining your current standard of living.

1. Keep receipts for living expenses. Document everything from food and clothing to vacation trips and car purchases.

2. Show your contribution to the family income. Use old paycheck stubs and records of deposits you made to personal or joint accounts. If you helped your spouse get through medical school or start a business, for instance, or if you put your own education on hold while he or she pursued an income-boosting Ph.D., these may count as contributions.

3. Demonstrate your contribution to a family-owned business. Document your title and salary. If it's not on tax returns, use company brochures, letters addressed to you at work or business letters with your signature.

4. Document children-related tasks and expenses. List everything you do for your children—from dropping to chauffeuring to arranging for tutors. If a custody battle looms, you'll need to demonstrate your role in their lives (and your spouse's noninvolvement), especially if you're the primary caregiver.

5. If you move out, document everything possible beforehand. Exiting your home may legally terminate your right to live there unless your spouse agrees to let you return. *Before leaving:* Photocopy all financial records; take pictures or videos of the property, including the contents of drawers or cabinets. Ask for records of repairs, improvements or remodeling. *Most important:* If your children remain with your spouse, work out a visitation plan for the duration of your separation—and get it in writing. E.M.B.

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