CHOOSING A DIVORCE ROUTE | KNOW YOUR BILLING OPTIONS | CHILDREN'S NEEDS IN A DIVORCE | VOL. 48, NO. 1 | SUMMER 2025

FAMILY ADVOCATE

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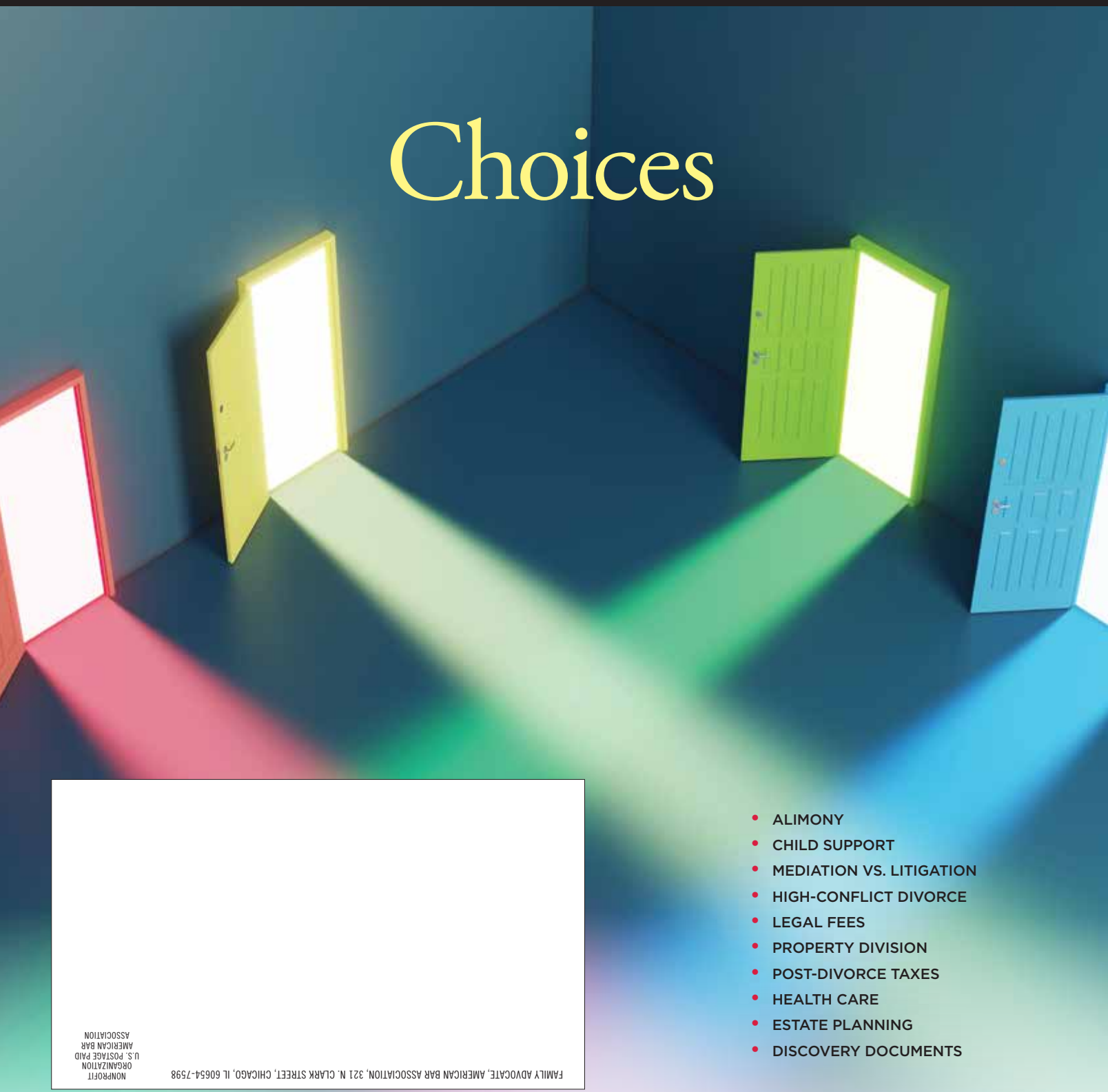

Choices

- ALIMONY
- CHILD SUPPORT
- MEDIATION VS. LITIGATION
- HIGH-CONFLICT DIVORCE
- LEGAL FEES
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Prioritize Your Own Well-Being

I have been truly honored to serve as Chair of our Section this year and am grateful to work alongside such dedicated and top-notch attorneys who care deeply about family law. My heartfelt thanks go to the hardworking Officers, CLE Chairs, *Family Advocate*, *Family Law Quarterly*, and Publications Development Board teams, FLS Committees and Council Members for your commitment and expertise. Our Section operates smoothly due to the hard work and dedication of Cindy Swan and Danielle Pruger. I especially want to extend my thanks to them for making the Chair's role seem almost easy!

Now, let's talk about stress. As family law attorneys, we often navigate complex and emotionally charged cases that can take a toll on our physical well-being. The high stakes involved in custody disputes, financial matters, and the emotional repercussions of relationship loss can weigh heavily on us. Stress and burnout are common challenges within our profession, making it essential to prioritize our wellness and develop effective stress-management strategies. Here are several approaches to consider:

Prioritize Self-Care

- *Regular Exercise.* Regular physical activity boosts mood and reduces anxiety; even a brisk walk can help.
- *Nutrition.* A balanced diet rich in fruits, veggies, whole grains, and lean proteins fuels both body and mind.
- *Sleep.* Ensure you are getting enough restorative sleep each night. Establish a regular sleep schedule and create a calming bedtime routine to improve sleep quality.

Set Boundaries

- *Work hours.* Set specific work hours and stick to them. This helps create a healthy work-life balance. I know this is a hard one for me.
- *Availability.* Limit email checks and phone responses outside of work hours.

A Well-Managed Caseload Can Significantly Reduce Stress

- *Prioritize tasks.* Focus on high-priority cases first, perhaps using task management apps.
- *Delegate when possible.* Use support staff for administrative tasks so you can concentrate on complex legal matters.

Develop Coping Mechanisms Is Crucial to Managing Stress

- *Mindfulness and meditation.* Practicing mindfulness or meditation can help center your thoughts and reduce anxiety. Consider dedicating a few minutes each day to mindfulness exercises.
- *Breathing techniques.* Use deep breathing to calm yourself during stressful moments. Yes, it works!

Build Healthy and Supportive Workplace Relationships

- *Communication.* Foster open communication with your team and clients to reduce misunderstandings.
- *Check-ins.* Hold regular team meetings to discuss challenges and celebrate successes. It fosters a sense of camaraderie and support.

Pursue Continuing Education

- Investing in professional development not only enhances your skills but can also invigorate your practice.
- *Workshops and seminars.* Attend workshops focused on managing stress and burnout, as well as legal updates that can keep you engaged in your field. The Family Law Section offers a wide array of relevant conferences.
- *Opportunities.* Network at legal conferences for inspiring ideas and insights.

Don't Hesitate to Seek Help If Stress Becomes Unmanageable

- *Therapy or counseling.* Professional therapy can provide coping strategies and tools tailored to your needs.
- *Support groups.* Joining a support group with fellow family law attorneys can foster connections and offer a platform to share experiences and advice. FA

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Seasoned family law attorneys know the enormous impact that custody evaluations can have on the lives of their clients. However, not every client has the financial resources to hire a forensic consultant to analyze a report.

This updated and comprehensive handbook provides a step-by-step system attorneys can apply to custody reports to discern their strengths and weakness. Dr. Wittmann presents his Custody Assessment Analysis System (CAAS-R) in an easily applied, and fully annotated format that the attorney can put to work immediately. Second edition refinements include annotation to the most recent forensic guidelines and treatises, an expanded bias typology, and a new "Short-Cut Analysis" for attorneys under time constraints.

When used side-by-side with the companion Custody Assessment Analysis System Workbook-Revised a once daunting venture into psycho-jargon becomes a clear roadmap to astute analysis and persuasive courtroom presentation.

About the Author

Dr. Wittmann is a licensed psychologist and trial consultant whose national practice focuses on trial support for attorneys in custody matters. He conducts peer reviews of child custody evaluations, assists with cross and direct exam design, and offers in-court consultation regarding expert testimony.

More information is available at

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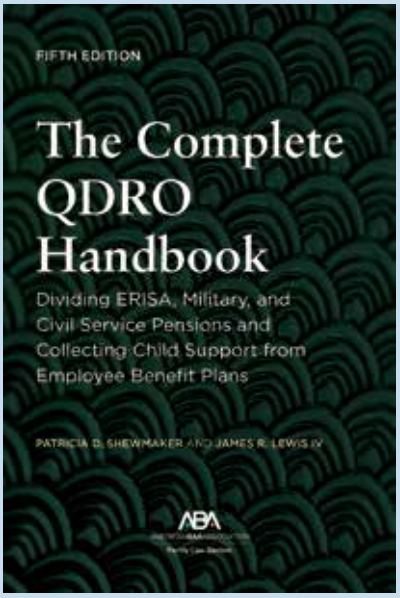

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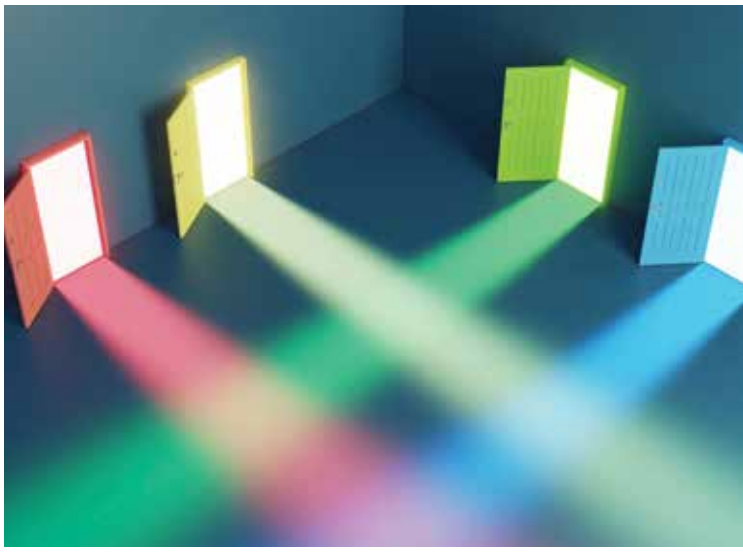

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FAMILY ADVOCATE

FROM THE EDITOR IN CHIEF

By Kathleen A. Hogan

Much of life involves trade-offs: I can splurge on the latest designer shoes or I can skip that purchase and put the money in my 401k instead; I can stay out late socializing with friends, or I can get a good night's sleep and maybe be more focused at work in the morning; I can put new tires on my car or I can take the fun vacation I have always wanted. Throughout life, the choices we make have consequences—some large and some small.

The same pattern of tradeoffs occurs as people weigh the decision to end a marriage and work through the steps involved in that process. In the typical case there will be pros and cons involved in deciding if or when to end the relationship. There will also be the reality that practically no one walks away from a dissolution of marriage having received everything they wanted. Instead, as in most other aspects of life, there will be choices to be made: pursuing one particular objective may mean it is not realistic to expect to obtain some other potential objectives. For example it may not be realistic to expect to keep the house and also receive all the retirement savings; or it may not be realistic to expect to keep all the cash and leave the other party with all the debt. The Board of Editors of the Family Advocate have created this issue to help clients consider the many choices that will need to consider in the course of the process of ending a relationship.

"Choosing the Divorce Route That Is Best for You," written by Peter M. Walzer and Sara Edwards addresses some of the initial choices to be considered. Figuring out where to start when seeking a divorce can be overwhelming. Learn about your options—litigation, alternative dispute resolution (ADR), or a combination—and tools to help decide the best course for you. Your choice can be made based on the emotional state of those involved, like children, and your budget.

Andrea Cozza has written Unraveling "The Mysteries of Alimony." Whether you are the party who will be paying alimony or receiving it, the prospect of going from a shared income to a split income can be daunting on top of the other stresses of divorce. A spouse may receive alimony temporarily or long-term. The amount of alimony and duration of an alimony award can vary drastically state to state and even within a state. Your attorney can guide you in what to expect and what financial information each party will be expected to provide.

Discovery is the method attorneys use to gather information and evidence during your divorce case. Ashley K. Quan and Chia-Hui (Danielle) Sze have written "The Choices You Make During Discovery." The choices you make during the discovery process can set the tone for your divorce process, including how expensive, long, and cooperative or high conflict it will be. The evidence gathered can be used to make potential claims and will prepare you for settlement or trial and narrow down the disputed issues in your case. When you feel out of control during a divorce, you can gain a level of control in how you approach the discovery in your case.

Mark Chinn has provided an article called "Fees and Billing." When hiring a lawyer for divorce, do some homework. Verify the lawyer's qualifications and how their fees compare to others in the area. This article will share the

KATHLEEN A. HOGAN (kah@hoganomidi.com) is a principal with Hogan Omidi, PC, in Denver, Colorado, and Editor in Chief of *Family Advocate.*

Dear Client:

This issue of *Family Advocate* is designed to provide additional support for you as you go through the process of a family law proceeding. The American Bar Association's Family Law Section has created it, and it has been given to you to help you make the most of your time with your lawyer. Whether you are ending a marriage or ending a relationship with your child's other parent, our goal is to help you understand what you will encounter throughout the process and to offer tips for saving yourself money, time, energy, and additional heartbreak. We hope that by reading this Client Manual, you will become more comfortable, confident, and capable as you work with your lawyer to create the best result possible for your own, unique situation.

As you read the articles, consider the views of our experts. Consult with your lawyer and other professionals, including your therapist, accountant, and financial planner. Consider ways to work with the other parent to help your children through this process. Then think through your options and make the best decisions you can to launch yourself and your family into a brighter future.

Best wishes,
Kathleen A. Hogan, Editor in Chief

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different types of billing and fees to expect in your case, including hourly billing; a retainer fee; contingency charging, value billing, where an attorney and client negotiate a price for the work based upon what the client seeks to accomplish and the value of that work to the client; other expenses to expect; and how to reduce costs.

An article called "Heroic Parenting" has been provided by Dr. Ruth Kraus. As the author says, "Marriage is about the adults; divorce is about the children." While anyone could excuse a parent for being stressed out during a divorce proceeding, the process can lead to what the medical community refers to as Adverse Childhood Experiences study (ACEs) that can have lasting psychological and physical impacts throughout the child's life. ACEs can contribute to developing depression, anxiety, addictions, unstable relationships and unstable employment, cancer, diabetes, and heart disease. The Centers for Disease Control and Prevention and Kaiser Permanente identified family instability due to divorce as one of the stressors that can lead to ACEs. In addition, in about one-third of divorces, contact with one parent is lost, which is more likely in a high-conflict divorce. Dr. Kraus offers tips for lowering the temperature in a divorce for the benefit of the children, including take care of yourself.

The financial upheaval of a divorce can cause many people to transition to a new job or reenter the workforce. "Redefining Your Path: Navigating Work and Divorce" by Meredith L. Cross discusses the key considerations when making employment decisions during a divorce, including how it will impact your or your spouse's earning capacity and therefore the amount of alimony or child support to be ordered; going back to school, retirement, and Social Security and life insurance benefits.

"Smart Property Choices during a Difficult Time" has been written by Sally L. Pretorius. While the people in our lives are the most important aspect in a divorce, the second may be our property. The choice of whether to keep, sell, or divide property in a divorce should be a well-informed one. Each spouse must do some information gathering about their shared property, including taking an inventory of all you own, determining its value (both monetary and emotional), tax implications, and hiring an expert when needed.

In an article called "Don't Get Overly Taxed: Know Your Tax Options during and after Divorce," Mary Vidas and Donna Pironti address the major tax questions and often-overlooked assets in divorce. One of the most important is your filing options during divorce, which are Married Filing Jointly (MFJ), Married Filing Separately (MFS), Single, and Head of Household (HOH), and whether you can or should claim the children on your taxes. Claiming children on your taxes is one of the most misunderstood options during the divorce and post-divorce with the confusion stemming from the Tax Cuts and Jobs Act of 2017 reducing personal exemptions to zero for tax years 2018 to 2025. Many people erroneously believe exemptions have been eliminated or mistakenly assume they are still in place. There is also uncertainty about what will happen for tax years after 2025.

Maura Carley has written "When Divorce Affects Healthcare Coverage, Review Options and Avoid a Gap in Coverage." Hopefully you have medical insurance, whether it be group coverage through an employer or union, individual coverage, Medicare or Medicaid, or another options such as short-term coverage or Christian healthcare co-ops. A divorce may not impact your coverage if you are the subscriber; however, when individuals do not qualify for coverage on their own, divorce often results in a loss of coverage. Therefore, it is important to check your coverage terms and plan ahead to avoid a gap in coverage.

"Is It Time to Update Your Estate Planning?" has been written by Lauren Davies. We may not like to face reality, but if you die without an estate plan, your wishes may not be realized. The state where you live has default provisions about where your assets will go if you do not have a last will and testament. This article shares the steps you need to take both after a separation but before the divorce has been finalized and after a divorce to ensure your final wishes are known and fulfilled. Lauren Davies suggests parties to a divorce should consult with an estate attorney to prepare your last will and testament, draft advanced health care directives, choose a power of attorney, and create trusts and other avenues for your assets to go to loved ones. Special considerations are laid out for the care of children after parents pass away. FA

Choosing the Divorce Route That Is Best for You

BY PETER M. WALZER AND SARA EDWARDS

Divorce does not play favorites. Regardless of who you are—your profession, financial status, educational background, or emotional bandwidth—the initial impact of divorce can leave you uncertain and overwhelmed. Before you choose your path—litigation, alternative dispute resolution (ADR), or a combination, we will provide tools to decide the best course for you. Litigation is the process structured according to your state's laws, where you ask a judicial officer to make support and custody orders and divide your property. It can be a time-consuming, technical, and expensive process. Litigants do not always consider it "fair," and the participants have little control. ADR is consensual and encompasses mediation, collaborative law, and arbitration. It can also mean negotiations between you and your mate with or without attorneys. You can transform a challenging breakup into a constructive new beginning if you divorce intelligently. Ready to choose your course? Let us guide you through this journey.

Litigation and ADR aren't mutually exclusive; you can settle anytime during a litigated divorce. Evaluating your options independently and consulting with a lawyer will help determine your best course of action. Although it may be easier said than done, approach your breakup as a problem to be solved rather than a battle. This neutral approach will enable you to make better decisions and save much money and grief. It may take much work to get to and stay neutral. Neutrality does not mean being a pushover and not standing up for yourself and your children economically and psychologically.

Evaluating Your Breakup

Take the Emotional Temperature of Those Involved

Before diving into the divorce process, take a moment to assess your, your mate's, and your children's emotions. What is your relationship like? Is it full of anger and distrust? Or is it just that the love has evaporated? Consider whether your breakup can realistically resolved in mediation or a collaborative setting. If your situation involves physical or mental abuse or financial fraud, mediation or a collaborative process may not be viable options – at least until appropriate restraining orders protect you and you feel safe enough to mediate.

Budget—What Can You Afford?

Divorce litigation is costly. Assess your financial situation to determine what you can afford and how much you will spend on your case. The cost will influence whether you pursue litigation or ADR. Evaluate whether the court will order your partner to pay your attorney's fees, whether you will pay them out of joint savings, or you will be solely responsible for them.

What Is at Stake?

Consider what is at stake in your divorce. If you anticipate a custody battle, this will impact your decision. Preserving emotional relationships for your children while undergoing a litigated custody dispute is difficult, if not impossible. Additionally, understanding the nature and extent of your shared assets and liabilities is crucial. Determine if privacy is important for your family's emotional health and safety.

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Do You Need Help?

Reflect on whether you can navigate the process alone or need professional assistance. Even the rich and powerful need help in navigating a divorce. If you decide to hire a family lawyer, you should have a candid conversation with your lawyer at the outset about your desired outcome. Your attorney will tell you which goals are attainable and realistic, which can also influence your decision to choose litigation or ADR. You and your attorney should select a process that best aligns with your goals and financial limits. You may also need financial, custody, and vocational experts to resolve your case. Litigation is a last resort, but it may be the only way to get a fair outcome.

How Complex Is Your Situation?

Evaluate the complexity of your situation. Factors such as the length of your marriage, the size of your estate, the extent of your nonmarital property, the income of the parties (and its source), and custody issues can all play a role in the situation's complexity. You should also assess whether your partner is trustworthy. Will they voluntarily disclose the assets and income? Will they honor their agreements? Is a party planning on moving away? Are there grave psychological issues?

You Have to Know When to Hold Them

Understanding the stages of divorce and setting realistic goals will help you decide your next steps. When emotions are high is not the best time to settle the case. However, when the attorney's fees increase and the feelings fade, opportunities for settlement may present themselves. In any case, wait until you have adequate information about your assets and obligations before you settle.

Evaluating Your Options

Justice may not be attainable in family court, and the dramatic "gotcha" moments seen on television are infrequent in reality. ADR is a viable alternative to litigation. Depending on individual preferences and circumstances, ADR can include mediation, collaborative divorce, or arbitration (which is more adversarial but guarantees a resolution). ADR offers more control over the pace, cost, and outcome in a more private environment.

Methods of Alternative Dispute Resolution

Mediation

Mediation is facilitated by a neutral third party, allowing spouses to make informed decisions outside of court. The mediator remains neutral and does not offer legal advice or make decisions. Confidentiality is key to mediation, ensuring that what the parties say cannot be used in court. Parties may mediate without lawyers, but when the stakes are high, there is a power imbalance or complex legal or financial issues, the parties should be represented by counsel. Mediators may be retired judicial officers, attorneys, mental health professionals, or trained mediators. It is prudent to review their training and experience before hiring them. You must ensure that the mediator has no prior relationship with either party.

Other forms that mediation may take include:

- **A Voluntary Settlement Conference (VSC)** is a form of mediation where parties agree to negotiate a resolution.
- **A Mandatory Settlement Conference (MSC)** is a court-ordered process to encourage settlement.
- **Private Mediation** is a structured conversation between opposing parties that can cover any topic related to the breakup. It is voluntary, and both parties will agree on the mediator. The mediator will facilitate the conversation and help the parties collaborate on solutions.

Settling Single Issues

In voluntary and mandatory settlement conferences, parties do not need to solve all issues to reach an agreement. They can agree on specific issues, narrowing down topics for litigation.

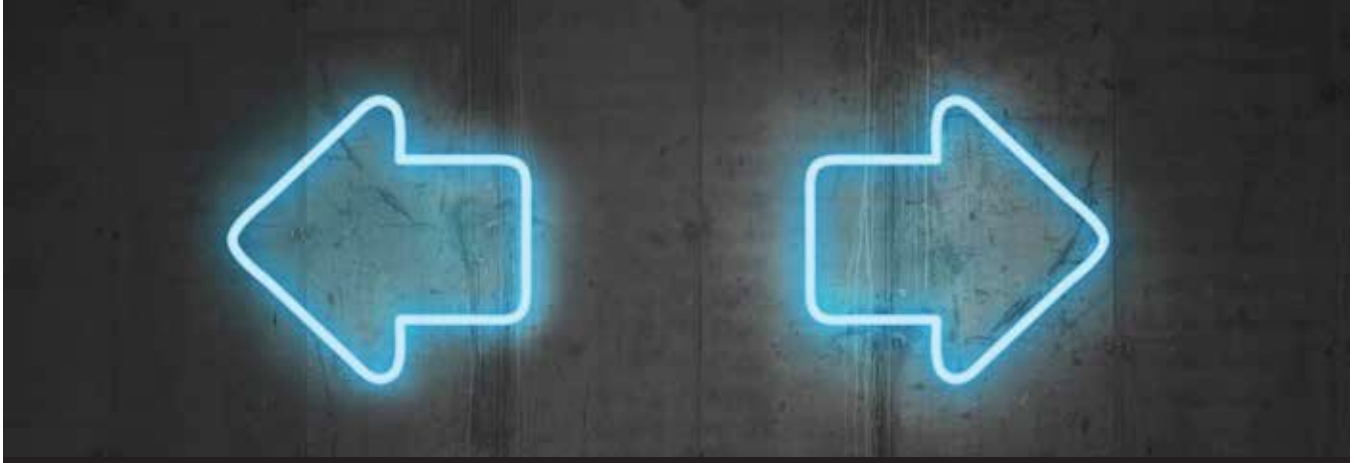
In-person or Video Conferencing

Both can be viable options depending on the location of the parties, their attorneys, and the mediator. Issues may be easier to resolve in person than by video because you are unsure whether the parties fully participate on video. Video is useful when one party feels unsafe around the other party.

Factors to Consider for Mediation

Mediation is appropriate when parties wish to preserve their relationship, when emotions obstruct resolution, and when both parties are committed to finding a mutually beneficial solution. However, mediation is not suitable for situations involving significant power imbalances, a history of domestic abuse, an unwillingness to compromise, or untreated substance abuse. When evaluating whether to mediation, consider the following:

- Is this relationship abusive? In domestic violence cases, it may be safer and healthier to resolve disputes through litigation if being in the same room or frequent communication with your spouse would cause turmoil or immense stress.
- Is your partner trustworthy? If your spouse is deceitful, mediation is not a viable option for you. Mediation requires a level playing field and complete honesty on all parties. For instance, if your partner is not truthful about their assets, there is no formal process to obtain the truth like in formal litigation.
- Is your partner mentally stable? If your partner has a mental disorder, mediation may not be productive.



First, lay out all the issues in your divorce, such as child custody, child support, alimony (spousal support), and division of property and debts. Once you grasp the potential issues, you should determine which issues are likely contentious and which ones you can agree on more easily.

Even if you answer yes to all of the above, mediation may still be a viable option at the right time. Litigation—the alternative to mediation—does not ensure a better result and worsens the situation.

A mediator cannot formally end your marriage—only a judge can do that. Even when your mediation is successful, you must take additional steps to finalize your divorce. After you have completed mediation with a marital settlement agreement, the court will need to review your agreement and issue a final divorce decree.

Arbitration

Arbitration involves a neutral arbitrator who makes decisions based on evidence and arguments. The decision can be binding, final, or nonbinding, where parties can request a trial if they disagree. In choosing the arbitration, the attorneys decide what rules are followed, including the right to discovery (financial investigation) and whether you can appeal the arbitrator's decision.

Collaborative Divorce

In a collaborative divorce, spouses hire lawyers trained in the collaborative process to negotiate a settlement. The key to many collaborative models is that the attorneys agree in writing that they will resign from the case if there is litigation. The possibility of resigning from the case motivates the attorneys to resolve the matter constructively. A case manager is appointed to keep the process moving, and allied professionals are used to provide information and guidance. The case manager may use mental health professionals, accountants, and financial planners. The collaborative process can be effective if everyone is flexible, amicable, and has the ultimate goal of settling the case, even if that means compromising in certain areas. However, if the collaboration process is unsuccessful, the collaborative lawyers may be unable to represent the spouses in litigation. Further, considerable expense and time may have left the parties with no resources to take another approach. Each party would have to hire their lawyers for the litigation process, which will undoubtedly add significant time and cost to your case.

Standards for Settlement—Conducting a Cost-Benefit Analysis

When considering your standards for settlement, conduct a cost-benefit analysis and consider intangibles such as children, pets, and emotional issues. Safety concerns, such as domestic violence and child abduction, should also be addressed.

Here are some steps you should take in your cost-benefit analysis:

Identify the Issues at Stake

First, lay out all the issues in your divorce, such as child custody, child support, alimony (spousal support), and division of property and debts. Once you grasp the potential issues, you should determine which issues are likely contentious and which ones you can agree on more easily. You can settle the easier issues quickly, addressing the larger issues later.

Estimate the Fees

Consult with your lawyer to estimate the fees for each phase of the litigation process. Factor in the time and effort you and your lawyer must invest in preparing for trial and attending court hearings. Weigh these fees against the cost of mediation or the collaborative process to develop the best plan for your case. Take into account that by reaching an agreement, the case is over. If you litigate, there can be post-judgment motions and perhaps an appeal.

Evaluate Potential Outcomes

Based on your desired outcome, estimate your likelihood of success by assessing the strength of your case and the possibility of achieving a favorable result at trial. Evaluate the quality of the evidence you have to support your claims and how persuasive it might be in court. However, it is important to understand that judges have discretion in making decisions, which could lead to outcomes different from what you expect.

Consider Non-Financial Factors

Evaluating non-financial factors is vital. When deciding whether to settle outside of court or proceed to trial, assess the emotional toll a trial might take. Trials can exacerbate stress and anxiety, not only for the divorcing spouses but also for children and extended family members who may be involved or affected. The trial process can take years, and subsequent appeals can delay a final result. The public nature of courtroom proceedings can also strain personal relationships and expose intimate details of the breakup to public scrutiny.

Choosing to settle privately through mediation or negotiation can offer a more discreet resolution. It shields sensitive details from public view and minimizes emotional distress for all parties involved. This privacy can be particularly valuable for those seeking to protect their children or maintain a sense of dignity throughout the divorce process.

Compare Settlement Offers

If you receive settlement offers from your spouse or their legal representation, take the time to assess each offer thoroughly. Consider how each proposal aligns with your goals and expectations for the divorce outcome. While the prospect of a trial may seem daunting, evaluating settlement offers against potential trial outcomes can provide clarity.

Settling early in your case offers advantages as it reduces stress and uncertainty associated with prolonged legal proceedings. It provides a quicker resolution, allowing both parties to move forward with their lives sooner rather than later. Additionally, settling can offer a degree of control over the outcome, whereas trials introduce uncertainty because the judge's decision is unpredictable.

Consult with Your Lawyer

Your lawyer is an invaluable resource throughout the divorce process. They can provide insights into the strengths and weaknesses of your case based on their legal expertise and experience. Understanding these dynamics can help you decide whether to pursue litigation or seek a settlement.

Additionally, your lawyer can outline the potential costs associated with litigation, including legal fees and court expenses. They can also provide a realistic assessment of the likely outcomes of going to trial versus negotiating a settlement. This information empowers you to weigh each option's financial and emotional costs and choose the path that best aligns with your objectives and circumstances.

Understanding Your Best Alternative to Negotiated Agreement (BATNA)

BATNA means knowing your best options if negotiations fail. This acronym reminds us to consider the alternatives to a settlement in your case. Dispassionately estimate the projected result, select the best alternative, and evaluate the lowest acceptable offer. This analysis gives you a tool to weigh the risks associated with litigation.

Conclusion

Every divorce is different, and the right approach depends on factors such as the personalities of the parties, their emotional dynamics, financial considerations, and the complexity of your situation. Choosing between litigation and ADR requires careful consideration and is not necessarily an either-or decision. By evaluating your options and preparing thoroughly, you can better decide the best method of dispute resolution. Whatever case path you choose during your breakup, staying focused on and prioritizing what truly matters for you and your family's future is critical. FA

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Unraveling the Mysteries of Alimony

BY ANDREA L. COZZA

Embarking on a termination of marriage has a certain degree of uncertainty and anxiety for most people. There are a number of unknowns in the process and many things are outside of the control of the litigants. It is a concerning time when the income is now going to be split between two households, regardless of whether you are paying alimony or receiving alimony. Sitting down with an attorney to discuss the nuances of alimony (also called spousal support or spousal maintenance in some states) can remove the cloud of mystery surrounding this significant and often esoteric issue in family law.

There are many definitions for alimony, however, it is essentially financial assistance paid from one party to the other in conjunction with a termination of the marriage or legal separation. Depending on the facts and circumstances of your case, alimony may be paid on a temporary basis while litigation is pending and may continue following the termination of the marriage. The reasonableness and duration of an alimony award can vary drastically state to state, amongst courts within each state, and even amongst different judges or fact finders within the same courthouse. The client should consult a local attorney to determine the specifics of alimony within his or her own jurisdiction and how it may be handled in the case based on state and local practice. One should be cautious about general online information regarding alimony as there are a number of different ways states determine alimony based on the law of each state. For example, some states have very specific formulas based on income and the duration of marriage. Other states consider multiple statutory factors to determine the amount of alimony, which can give the fact finder a great deal of discretion in the amount and duration of the award.

When discussing alimony with an attorney, it may be important for the attorney to have the following information about your situation depending on your jurisdiction: income from all sources, whether you or your spouse receive variable pay such as bonuses/overtime/commission, whether either of you are self-employed, a budget and expense breakdown, duration of the marriage, health of the parties, whether a party stayed home to raise children of the marriage, and the assets and liabilities at issue in the case.

If temporary alimony is paid while a divorce case is pending in court, it may vary significantly from the final order issued in the case. Parties need to be prepared for this. Temporary orders are often imperfect and intentionally established quickly, with limited information given the early stage of the case. Further,

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on a temporary basis, the court may consider how existing marital debts are divided during this period, which may impact the alimony order. The court may also consider a higher temporary alimony order to provide time for the alimony recipient to seek employment if they were not working outside the home during the marriage.

Parties should be aware that if one party did not work during the marriage, it may be appropriate to impute that spouse at a full-time employment income based on their education, work history, jobs available in the area, and other factors. That imputation could occur at the time of the temporary orders or at the conclusion of the case in determining final alimony orders. A vocational evaluation by an expert may be necessary to support an allegation that the alimony recipient is capable of earning a certain level of income if the parties are not in agreement. Vocation evaluations often occur when the recipient spouse is not employed or is believed to be voluntarily underemployed at the time of the litigation. The payor of alimony may ask the court to calculate alimony based on an income the other spouse is not actually earning at the time, thus potentially reducing the alimony that would otherwise be ordered.

Each party may be required to complete financial affidavits, including budgets, at the commencement of the case and/or at the time of trial. When completing any financial affidavits in the case, ensure accuracy and put thought into completion of these forms as they could be utilized by the court or opposing counsel to evidence financial expenses later in the case. When determining your budget for an alimony case, it may be appropriate to prepare a temporary budget as well as a budget outlining your anticipated financial situation post-divorce. This may mean evidencing future expenses you expect to have, including future housing or health insurance costs, to provide your financial need.

With the passage of the Tax Cuts and Jobs Act in 2017, alimony orders executed after December 31, 2018, were no longer deductible as income by the payor spouse or includable in the income of the recipient spouse for tax purposes. Many attorneys have software that calculates the net income of each party after taxes following the exchange of alimony and/or child support. Utilizing these software programs can provide the client with a range of options for support and assist the client in understanding the after-tax income in different support scenarios. If you are in a jurisdiction where alimony is more discretionary for the court, this can be particularly helpful to understand the possible range of alimony and child support (if applicable) at the conclusion of the case and help with expectations for the future.

It is also advisable when looking at alimony to understand possible termination factors for alimony payments in your jurisdiction. Depending on the laws of your state and your specific case facts, alimony orders may not terminate or be defined by a set number of months/years. This can be particularly true in long-term marriages when a spouse has not regularly worked outside the home. In the alternative, the order may terminate upon attaining a set number of alimony payments. There can be other termination factors that may apply, such as death of a party, remarriage of the recipient, or cohabitation of the recipient in a relationship like a marriage. Discuss these potential termination factors with an attorney to determine if any may apply to your case.

It is important to understand, when finalizing your court order, whether that order will be modifiable or non-modifiable. In some situations, spousal support may be non-modifiable, meaning the court is unable to make changes to the support in the future, even if requested by a party. That could apply to the amount of support paid, the duration of the support or both depending on your court order and, potentially, your jurisdiction. If a support order is modifiable in the future, inquire as to what type of situations could impact your order. For example, disability of a party, job loss, an increase or decrease in income, or other situations. If you are the party that pays the support and it is a modifiable order, make sure you consult an attorney before voluntarily reducing your income. That may not necessarily correlate with a reduction in your support obligation depending on the specifics of the income change.

Parties should be aware that there is more than one way alimony can be paid. Although monthly payments over time are more typical, parties may instead wish to consider a lump sum payment of alimony. This can have risks and benefits for each party depending on the facts of the situation. If a lump sum is being considered and is permitted in your state, there may be a discount negotiated for an upfront payment with no termination or modification risks attached.

Another option to consider when establishing alimony orders is whether a life insurance policy may be appropriate. This death benefit would secure alimony payments in the event of the payor's death. Courts may or may not order a life insurance guarantee if the parties do not agree to incorporate that provision into the order voluntarily. This can be especially true in jurisdictions in which alimony terminates upon death of the payor as it could be seen as a windfall to the recipient. In situations where a party has been out of work for a significant period of time, has ongoing health or disability concerns, or is significantly dependent on the support they are receiving, a life insurance policy may be appropriate to provide security. This assures some form of

Alimony has many different nuances and varies greatly depending on a person's jurisdiction and the facts of the case. It is vital to seek legal advice that is specific to your situation so that you are provided with the best tools and resources for your situation.

continued payments after the payor's death. However, the receiving spouse may have to pay the premium expenses for the policy to obtain this benefit. It may be a worthwhile expense to assure future income and minimize risk.

Both parties need to be cognizant of the fact that past due and future alimony is not dischargeable by the payor in bankruptcy. If there is an agreement for a party to pay a debt or expense in the other spouse's name *in lieu of alimony*, discuss the risks. It may be appropriate to include language in your domestic orders to help prevent the discharge of that obligation in a later bankruptcy proceeding. Specifically, referencing that debt as a domestic support obligation to help evidence the intention of the parties.

Lastly, it is important to understand that obtaining a court order is one step, but parties still must follow the orders for things to progress smoothly. If a party does not comply with court orders, it may be necessary to request the court intervene to assist with enforcement. Unfortunately, that can be the case with alimony payments. Courts will typically provide an opportunity for each party to be heard as to the allegation. With alimony, it is important that all payments have a record so payments can be evidenced in the event of an enforcement action.

Alimony has many different nuances and varies greatly depending on a person's jurisdiction and the facts of the case. It is vital to seek legal advice that is specific to your situation so that you are provided with the best tools and resources for your situation. Hopefully, this will help raise some awareness of the issues when considering alimony in your case. FA

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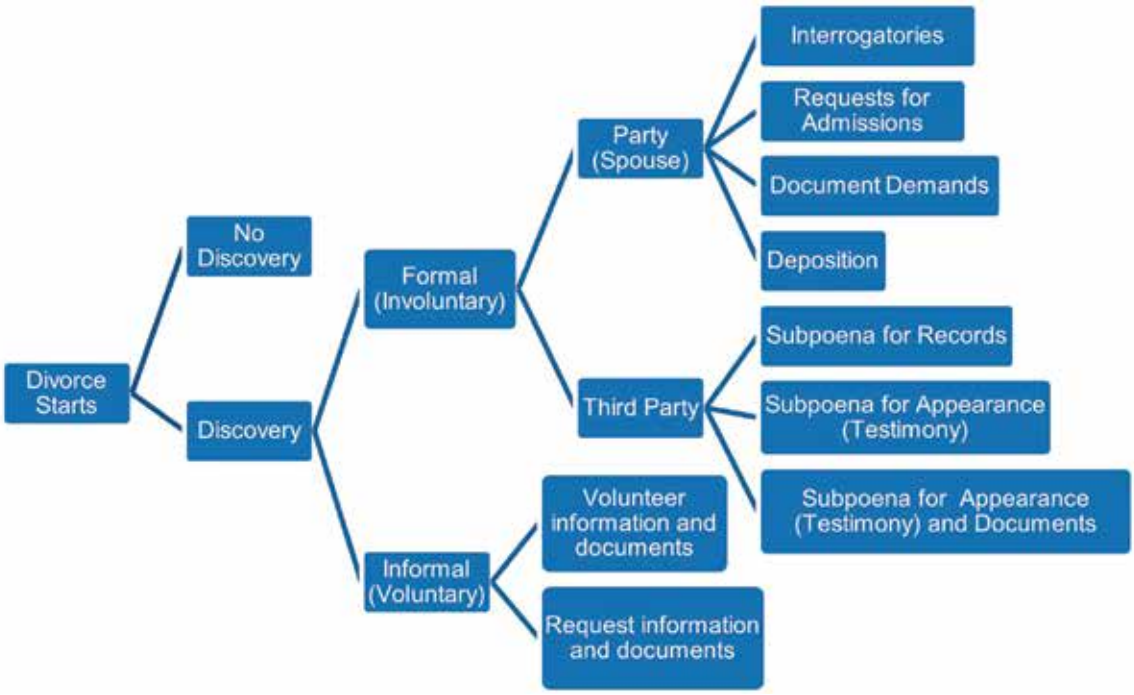
The Choices You Make During Discovery

BY ASHLEY K. QUAN AND
CHIA-HUI (DANIELLE) SZE

After making the choice to pursue divorce (or having had that choice made for you), you will decide how you want the divorce to proceed. One of the first things you will do in your case is discovery. The choices you make during the discovery process can set the tone for the divorce process. Will your divorce be cooperative or high conflict? How litigious will it be? How expensive? How long will it take?

Discovery is the method to get information during your divorce. You will investigate potential claims, gather evidence to evaluate those claims, and gain a better understanding of your case. In addition, discovery will also prepare you for settlement or trial and narrow down the disputed issues in your case.

Discovery is not a one-size-fits-all process. There are many choices to make throughout the process. This article identifies main decision points and gives an overview of the factors you may consider at each decision point, so that you can evaluate the discovery tools and decide on a strategy that will accomplish your goals. The decision tree below represents those decision points. At each node you can follow the branch to different choices. Keep in mind that you can choose an overall discovery strategy or make different choices based on each specific claim or issue.



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The first choice you make is whether you want to do discovery. Discovery is not required. . . . You can choose to entirely waive any discovery and still get divorced. Typically, discovery is waived if you are satisfied with the information you already have and can agree to a settlement based on that information. Limiting the scope of discovery is an effective way to reduce legal fees during your divorce.

The first choice you make is whether you want to do discovery. Discovery is not required. You can choose to entirely waive any discovery and still get divorced. Typically, discovery is waived if you are satisfied with the information you already have and can agree to a settlement based on that information. This can apply to the entire case—thereby settling your entire divorce case—or a specific issue—i.e., you and your spouse agree to mutually waive spousal support so no discovery is needed on that issue. Limiting the scope of discovery is an effective way to reduce legal fees during your divorce.

You can waive discovery even if you have no information for a particular claim. For example, you may decide that the monetary value of any spousal support you may receive is not worth the time, cost, and effort to investigate and litigate it. Alternatively, you may choose to seek discovery for claims that have little monetary value but personal value to you. For example, if you want to verify what your spouse was spending money on during marriage.

The second decision point is whether you are proceeding with informal discovery or serving formal discovery requests. Informal discovery is voluntarily sharing information and documents without serving or receive a formal legal request. You can start by volunteering information and documents that you know your spouse will need, i.e., bank statements, credit card statements, and pay stubs. You can also ask for information or documents from your spouse.

Formal discovery consists of written requests for information or documents. There is a deadline imposed by statute to provide a response and documents (typically 30 days). The party responding to your discovery request has a duty to make a reasonable and good faith effort to comply by providing a response or the documents demanded. The response will be accompanied with a sworn statement that the responses are true under penalty of perjury. The responses and documents you receive during formal discovery can be used as evidence during trial. Similarly, documents will be provided with a sworn statement that they are true copies of the original records. You can enforce your formal discovery requests if you receive nonresponsive and/or incomplete responses by filing a motion to compel with the court. If the court rules in your favor, you will receive the information you requested and may be entitled to monetary sanctions for filing the motion to compel.

Informal discovery is cheap, quick, and can be effective if you and your spouse cooperate. It can also encourage collaboration between you and your spouse to get the divorce done as cost-effectively as possible. However, you may choose formal discovery over informal discovery if your spouse refuses to cooperate with informal requests or you want the assurance that the information or documents are provided under penalty of perjury. Formal discovery can be expensive because you will likely need a lawyer to help you propound it. It can also be a slow process; the responding party may have up to 30 days to respond and they may respond with only legal objections to your requests. If you receive objections rather than the information you seek, you are required to meet and confer with the responding party to negotiate to receive the information or documents you need. If the responding party remains uncooperative, you may be forced to file a motion to compel with the court to enforce your discovery request, which would further delay receiving the information.

Even within formal discovery there are different choices. First, you must choose whether you want the information from your spouse or a third party. If you serve discovery on your spouse, you have three options for written discovery: interrogatories, which are written questions; requests for admissions, which ask your spouse to admit or deny the truth of a fact or whether a document is authentic; and demands for production of documents. When your spouse responds to your formal discovery request, they have a duty to make a reasonable and good faith effort to obtain the information and documents. If your spouse does not have the document, they must respond with the name and address of anyone who they believe has the document, which is also valuable information.

You can also depose your spouse: your attorney asks your spouse questions that they must answer under oath. Their deposition testimony is transcribed and sometimes videotaped. A deposition can be very effective because it affords you the opportunity to ask follow-up questions, check your spouse's credibility or demeanor while testifying. You will also receive the information you seek more quickly than written discovery.

However, if your spouse is angry or hurt because of the pending divorce, they may have an incentive to be uncooperative or obstruct your discovery. If you are forced to file a motion to compel against your spouse, it will make the discovery process expensive and slow.

For third-party discovery, you can serve a subpoena that requests their appearance for a deposition, documents, or both their appearance at a deposition and documents. You may wish to subpoena a third party if your spouse does not have the information or documents you seek or you are worried that your spouse will provide false or incomplete information. However, a third party can also respond with only objections, which would still require a meet and confer process and a motion to compel.

Regardless of how the discovery process unfolds, remember that the choices you make have downstream consequences. You can choose to cooperate with your spouse during discovery in hopes that they will cooperate with you, or you can aggressively litigate your divorce from the start. Remember that you can choose a discovery strategy for your entire case or tailor it for each issue depending on your need for information. Making informed choices during discovery is one way to gain control over your divorce. FA

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Fees and Billing

BY MARK A. CHINN

Most lawyers become lawyers because they want to help people. They care very much that their life's work be viewed as a service to people and to the betterment of the community and nation. For that reason, many lawyers are somewhat embarrassed to bring up the subject of fees. But lawyers know that clients need to know the basis for the charges they are about to incur. So, if your lawyer does not bring up the matter of his charges, don't be afraid to take the initiative and ask the lawyer how he charges. You might say something like, "Is there a charge for the initial consultation?" Or, "How does your firm charge for its services?"

Finding the Right Fit for Your Case

In the initial discussion with your lawyer, ask basic questions to quickly determine if the lawyer handles the type of case you have. You will also need to share enough personal information for the lawyer to determine if there is a conflict, such as the lawyer having previously worked for one of the parties. Neither client nor attorney is well served if a businesslike approach is not taken to quickly determine if the two are right for each other.

Do Some Homework

Before you agree to hire a lawyer, do some homework as to the qualifications of the lawyer and the typical charges by other similarly qualified lawyers in the area. You can do this by checking the internet and asking your CPA, friends, and other lawyers in the community.

Types of Fees

Flat Fee

A "flat fee" is a one-time charge which is designed to cover all of the work. For example, a lawyer might charge $1500 to draft a property settlement agreement where the understanding is that the parties have reached an agreement. Another example is that a lawyer might charge a one-time fee to attend a hearing. Of course, flat fees can be designed to encompass almost any situation. The fee can be due "up front" or it can be divided into installments. The primary attribute of the flat fee is that it will not change depending on what happens in the case or how long it takes. The flat fee has several advantages. First, it allows the client to determine on the front end whether the project is affordable. This is

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different from the "hourly billing method" where the true cost of the project cannot be known until the very end of the project. Second, the flat fee fixes the cost for the client. As long as the project remains within the bounds of the understanding as to what is to be done, the client should not be charged more than the agreed-upon price, no matter how much time is expended by the lawyer.

Hourly Billing Method

The most common form of billing in the divorce world is the "hourly fee." Attorneys record their time in predetermined intervals and then charge the client according to the time spent. The most common intervals are either quarter hour intervals or sixth of hour intervals. For example, under the quarter hour interval method, the minimum charge for any effort is at least 15 minutes. Under the sixth of hour method, the minimum charge for any activity is 10 minutes.

The attorney keeps track of his or her time every month and then sends the client a bill which usually sets forth the date something was done, a description of the activity and the amount of time spent. The bill will vary each month depending solely on how much time it takes the lawyer to perform the work.

The advantage of the hourly billing method is that it metes out the cost of the litigation according to the amount of time it takes. If something takes very little time, then the amount of the charge will be less than if the matter drags out. On the other hand, if the matter becomes difficult and protracted the cost to the client will increase accordingly.

Value Billing

Many Codes of Professional responsibility allow for what is called, "value billing." What this means is that the attorney and client negotiate a price for the work based upon what the client seeks to accomplish and the value of that work to the client. Value billing requires a lot of work between the lawyer and client to customize the price to the project. Since such charges are based upon "value" there is an infinite combination of arrangements that the attorney and client can devise. For example, a client might agree to pay a certain amount of money each month for a service. Or, an agreement might call for certain charges for certain tasks, such as fixed charges for depositions, hearings, or mediation.

Contingency

Contingency charging involves the lawyer taking a percentage of the amount collected on behalf of the client. In family law cases this method of charging is generally not permitted by State Codes of Professional Responsibility, except in child support arrearage cases, where contingency fees are generally permitted. For example, if a person is owed $18,000 in past-due child support pursuant to an order, it is permissible for the attorney to agree to take the case and collect a percentage of the amount collected from the delinquent parent when the money is received. This is the same way most personal injury lawyers might handle a car accident case. They might collect a sizeable percentage, but they don't collect anything unless they make a collection. The advantage of this form of charging is that the client can obtain an attorney without having to advance any funds.

Retainers

Most lawyers employ the use of "retainers." A retainer is a certain amount of money that is obtained in advance of the work. This retainer is placed in the trust account and used as a reserve for the lawyer to charge against. Abraham Lincoln, who was a great trial lawyer, advised that a retainer is important because the lawyer then knows he has a client and the client knows he has a lawyer.

Abraham Lincoln, who was a great trial lawyer, advised that a retainer is important because the lawyer then knows he has a client and the client knows he has a lawyer.

The amount of the retainer should be determined from a number of different factors. The factors are much the same as setting an hourly rate or flat fee. The advantage of a retainer is that it secures the lawyer's representation for a certain amount of time and additional payments do not have to be made until the retainer is exhausted. Clients should always understand, though, that a retainer is not to be confused with the price for the work and the actual cost of the project may exceed the retainer.

Refundable or Non-refundable. Retainers can be either refundable or non-refundable. A refundable retainer is where the amount of retainer left in trust after charges is refunded to the client upon closure of the case or termination of the

representation. A non-refundable retainer is not refunded. The attorney simply keeps whatever is left, whether they have billed for the work or not. The rules vary from state to state on whether non-refundable retainers are permitted.

End retainer or "Evergreen Retainer". The end retainer is a method of holding a certain amount of retainer until the end. The lawyer takes the retainer in at the beginning of the representation but does not use it. Instead, the client is expected to pay the bill as it is incurred so the retainer is not used. Typically, the full amount of the retainer is refunded at the conclusion of the representation if all other bills have been paid. The end retainer or evergreen retainer gives the attorney comfort that his final charges will be paid.

Expenses

There are many expenses above and beyond the payment of attorneys fees. These include charges for support staff such as paralegal. These are often charged at a rate of about one quarter to one third of the hourly rate of a lawyer. The following list contains other expenses: copying, long distance telephone, computer legal research, service of process, court reporter fees, expert witness fees, private investigator fees and mediator fees. These fees are usually charged to the client at the rate paid by the attorney. Sometimes attorneys charge for office expenses such as copying and long distance by adding a simple per cent age surcharge, such as 3% to the bill.

Reducing Costs

The best way to reduce costs is to ask your attorney how you can keep the cost of your case down. There may be specific suggestions that can be given to help reduce the cost of your particular case. In addition, there are some cost-cutting techniques that may be applicable in just about any case, such as:

- Tell your attorney you do not want a copy of everything that comes in or goes out of his office. Ask for only the most important documents;
- If documents need to be copied, copy them yourself;
- Don't call you attorney unless it is absolutely necessary and keep the calls short;
- Don't call your attorney about matters that should be discussed with your therapist;
- Ask your attorney what certain actions might cost so you can decide if you really want to pay for it;
- Suggest that your attorney tape record or video noncritical depositions in order to save reporter fees;
- Don't ask you attorney to subpoena unnecessary witnesses or documents;
- Communicate by email; and
- Do record searches, such as corporate searches or deed searches yourself.

Always be careful with attempts to cut costs. Make sure with your attorney that an effort to save a cost won't be detrimental to your case.

Timely, Regular Billing

If the billing agreement is "hourly," both the attorney and the client are best served by regular monthly billing. Clients have the right to know how their retainer is being spent and how the expense of their case is progressing. Clients should feel free to ask their attorneys for statements on a regular basis such as once a month.

Talking about Fees

It is important to talk candidly and often with your attorney about your fees. Ask him or her what the things you are asking them to do will cost. It is important for you to know the cost, or an estimate of the cost before you embark on a course of action. A good example of this comes from the movie, "Kramer vs. Kramer." Dustin Hoffman has just lost custody of his child to Meryl Streep and he is talking with his lawyer at a bar about what to do. The lawyer has a glass of scotch, and when Dustin Hoffman emotionally protests the trial result, the lawyer calmly replies, "You can appeal, but it will cost you $20,000." Hoffman elects not to appeal. That scene is very important. The client was not left with an unclear picture of what lay ahead. The client was given the information necessary to formulate his decision. And, if Hoffman had elected to appeal, he and the lawyer would know and understand that $20,000 was necessary to start the work.

If you are struggling with payment of a bill, it is best to communicate immediately and honestly with your lawyer. The same is true if you are not happy with your lawyer's handling of something. Call your lawyer and tell him or her what is on your mind. If you are concerned about charges, be prepared to tell the lawyer exactly what charge you are concerned about and why. This will be of much more benefit to you *and the lawyer* than simply stating the "bill is too high."

Written Fee Agreement

Most states do not require that your fee agreement be in writing, but it is always best that contractual relationships be placed in writing. Ask your lawyer to provide you with a written fee agreement which outlines what he or she is going to do for you and how he or she is going to charge. FA

MARK A. CHINN (mark@chinnlaw.com) is the founder of Chinn & Associates in Jackson, Mississippi. He is a seasoned family law attorney who has dedicated his career to helping clients through some of the most difficult times in their lives.

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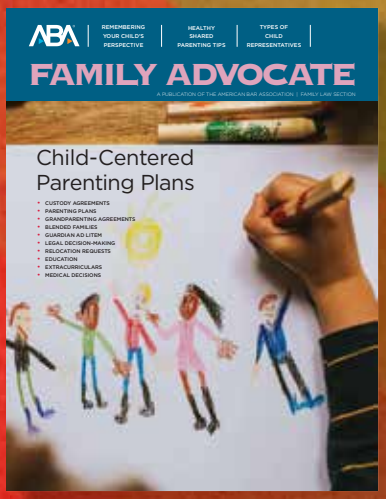

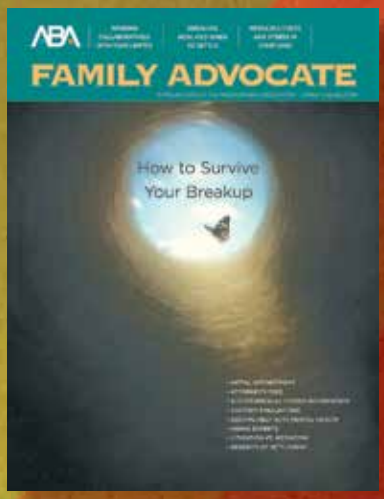

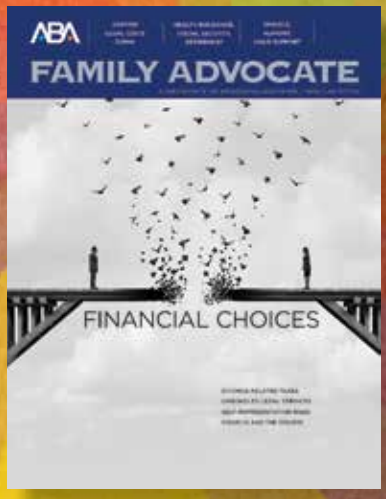

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Heroic Parenting

BY RUTH KRAUS

Marriage is about the adults; divorce is about the children. During the divorce you transition from having two relationships with each other—that of married partners *and* that of co-parents—to having just one relationship, that of co-parents. The way you manage this change in relationships is the most important aspect of the divorce. It will set the course for your child's adjustment and development for the rest of their childhood and into adulthood. The way you settle into a co-parenting relationship with your ex-partner/spouse will change the trajectory of your child's life, for better or for worse.

In the late 1990s the Centers for Disease Control and Prevention and Kaiser Permanente conducted the Adverse Childhood Experiences study (ACEs), a seminal study that looked at the impact of childhood trauma on functioning in adulthood. The study identified various stressors in childhood that have negative long-term effects. One stressor was family instability due to divorce. Another was loss of a parent, which happens in about one-third of divorces and is more likely in a high-conflict divorce. ACEs found that the more stressors a child experiences early in development, the greater the risk of developing not only psychosocial challenges, such as depression, anxiety, addictions, unstable relationships and unstable employment, but also physical illnesses including cancer, diabetes, and heart disease. Essentially, when humans are under stress our bodies produce inflammatory hormones that protect us and help us deal with danger. Prolonged stress leads to prolonged exposure to these hormones which, especially early in life, can change brain chemistry and structure, impact immune response, and have a profound impact on your child's future well-being.

It's Mostly about the Conflict, Not the Divorce

Ongoing intense conflict, protracted legal battles, weaponizing children, loss of a parent are all adverse childhood events, and they all place your children at enormous risk for present and future suffering. In my work with families struggling through high-conflict divorce I have seen many worst-case scenarios, and almost all of them were preventable. The parents who fought in court for over 18 years, from the time the child was in utero until the child aged out of the system; the court battle and conflict between parents overtook this individual's childhood and changed the course of their life, and not for the better. The parents who could not agree on who "owned" the child's glasses so half of the time the child went to school without her glasses. The parent who coached the child to make allegations of abuse against the other parent that resulted in a child protective services call, an order of protection, and the loss, for a while, of a loving parent. As a parent you want the best for your child. I have never heard a parent tell me "I want to create trauma

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and distress for my child and put them at risk for all sorts of psychological and health problems when they get older," but this is the outcome of these behaviors. The trauma and distress occur when parents are unable or unwilling to put their child first, parents who hate their ex more than they love their child.

Now the good news: Children can be resilient and make it through the divorce in a positive way. Although even in the best of circumstances divorce can be challenging for children, it does not have to create lasting trauma, toxic levels of stress, and the array of problems described above. Most children make it through their parents' divorce without lasting effects. In fact, experiencing a functional, amicable co-parenting relationship can help children develop better adaptability, resilience, and conflict resolution skills. There is evidence that separation or divorce can even be beneficial to children when it reduces exposure to parental conflict. Of the 8.2 billion people in the world, there are only two, you and your co-parent, who would take a bullet or jump in front of a train to save your child. That counts for something. You can make the decision to value your co-parent, who is in this same unique position, and support each other as parents rather than tear each other apart.

What Can You Do?

Take Your Child out of the Middle

When children's worlds are turned upside down, they look to parents to help them regulate and feel safe. Most parenting agreements include some sort of non-disparagement clause exhorting parents to refrain from making demeaning, disparaging, derogatory, or other statements criticizing the other parent or their families in front of the child. In my experience, parents often sign the parenting agreement without truly considering the meaning of this clause; it may just look like a standard, throwaway clause and who's going to monitor it anyway? But this clause is perhaps *the* most important part of the parenting agreement. Children know intuitively that they are half of each parent, which means that if one parent sees the other parent as bad that makes half of the child bad. Or, as my colleague's 8-year-old client told her, "Mom thinks dad's an asshole, I guess that makes me half asshole." And voila, your child's self-esteem just tanked. Children need to know you see the good in the other parent because then you will see the good in them. And it isn't solely the words themselves that have impact. Children whose parents are divorcing become exquisitely sensitive to their parents' moods, attitudes, and beliefs. Eighty percent of communication is nonverbal; we communicate emotions and thoughts through facial expressions, body posture, tone of voice, and gestures. Children are quite adept at picking up on these. It is important to watch not just the words you say but how you say them. If you say, "Mom's picking you up at 6" with a pained expression on your face or sad tone of voice, then the words themselves won't matter. Your child will understand that going with mom is a bad thing, and they will feel guilty or uncomfortable when mom comes to get them.

Children whose parents are engaged in high conflict often perceive their parents as being at war, on opposite sides, and this creates a loyalty bind for them. They don't feel they can have a close relationship with both parents simultaneously. Examples of behaviors displayed by children caught in loyalty binds include being reluctant to show affection to one parent in front of the other parent, resisting contact with a loving parent and even with that parents' extended family, complaining about one parent to the other parent, and seeking frequent contact with one parent during the other parent's parenting time. Sometimes children feel they need to pick a side - after all, it's easier to be firmly on one side than to be caught in the crossfire – and sometimes they will refuse contact with a parent. This can lead to increased conflict and litigation, while the child experiences the distress of having to cut off half of themselves. I once explained to an 11-year-old boy who was refusing contact with his father that there were no sides between his parents, that they were both on his side, a foreign concept to him. He sat on my office couch, shocked and incredulous, repeating, "No sides? No sides!" Children need permission to love both parents. As co-parents, you can commit to presenting a unified front to your child, explaining to them that there is only one side, your child's side, and you are on it together.

Create a Business Relationship

The process of letting go of your adult relationship with your partner, with all its complex emotions and history, and establishing a new co-parenting relationship is one of the most difficult tasks of a divorce. It helps to think about co-parenting as a business relationship. You are now business partners, and your business is raising your child. Businesses whose partners cannot work together, who undermine each other, sue each other, and are generally hostile to each other tend to fail miserably. You can decide to treat your co-parenting as a successful business endeavor by doing the following:

Share a common goal. Write out a vision statement, a mission statement, and a set of business values that guide your behaviors and decision-making. Even in high-conflict situations, parents see that they share core values and have a shared vision when it comes to raising their child. Any time you must make a parenting decision, such as whether to be flexible to your co-parents' request for a schedule change or whether to attend an event for your child when you know your co-parent will be there, look to your vision, mission, and values and act in accordance with them. Most of the time you will make the right decision for your child.

Communicate. If you do not communicate with each

other directly, your child becomes the go-between, vulnerable to a "shoot-the-messenger" situation where, if a parent doesn't like the message from the other parent the child bears the brunt of the negative response. Communicate regularly and commit to being amicable, or at least neutral, in your communications. Well-run businesses consider what is best for the business and do not get sidetracked by emotional reasoning or hurt feelings. Agree on a workable platform for communication such as text, email, or a program specifically for separated and divorced parents. As co-parents, you no longer need to communicate about your adult relationship, argue, rehash the past, or give your opinions about the other parent. You can agree to maintain civil, respectful communication focused only on your child. Some parents have weekly business meetings where they discuss what is going on with the children, while others only communicate when necessary to ask for or provide information or to discuss scheduling. Whatever you decide, keep communication business-like and cordial.

Co-parenting is not a zero-sum game. It is natural to feel if you "give in" or compromise then the other parent has won. When viewed in this light, the biggest loser will be your child.

Commit to a win-win approach. Co-parenting is not a zero-sum game. It is natural to feel if you "give in" or compromise then the other parent has won. When viewed in this light, the biggest loser will be your child. During a divorce it is common to seek out other adults—family members, friends, therapists, attorneys—fto be on your "team," but sometimes these adults can unwittingly (or wittingly) fan the flames and prolong the conflict. Beware of those who want to take up the gauntlet for you against your ex. Explain to them that you are committed to resolving conflict and to co-parenting for the sake of your children. If they can't respect this then perhaps you don't need to talk to them about the divorce.

Take Care of Yourself

If you are struggling to let go of hatred or other negative feelings towards your ex, seek out support—therapy, spiritual guidance, support groups—to manage the emotions that get in the way of establishing your co-parenting relationship and get in the way of healing yourself. Holding onto emotions from the marriage, such as pain, hurt, anxiety, fear, resentment, anger, or rage, can affect your own health and your ability to care for your child. Some children want to help their parents with these emotions as a way of maintaining a close connection; some parents seek emotional support from their children for the same reason. Your child is not your friend or confidant. Even if they seem willing to take this on, putting them in this role will cause further harm. Your job is to shield them. Instead, work with a therapist on finding a path to forgiveness for your ex so you can truly heal. To paraphrase an old saying, holding onto resentment and not forgiving someone is like drinking a cup of poison every day and waiting for the other person to die. By holding onto anger and resentment, the only person you harm is yourself or, in this case, both yourself and your child. When you let go of these emotions you can show up and be entirely present for your child as your best self, as the parent you want to be. So much in the divorce process can feel beyond your control. You do have some choices, however, and you *can* choose to put your child first, you *can* commit to letting go of the marriage and working collaboratively with your ex for the sake of your child. In talking about his parents' divorce, Jakob Dylan (son of Bob Dylan) said this: "My father said it himself many years ago: 'Husband and wife failed, but mother and father didn't.' My ethics are high because my parents did a great job." How wonderful will it be for your child, in the future, to be able to say the same about you? FA

DR. RUTH KRAUS (ruthkrausphd@sbcglobal.net) is a clinical psychologist in private practice in the Chicago area. She is a founding member of Breakthrough Family Solutions, a program that works with parents and families during and after high-conflict separation/divorce.

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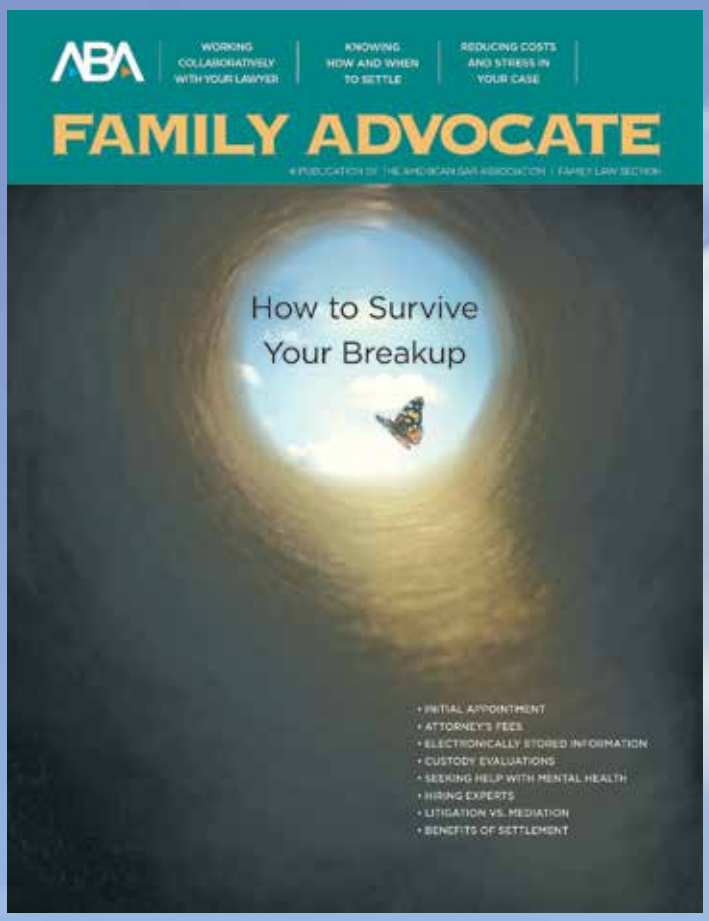

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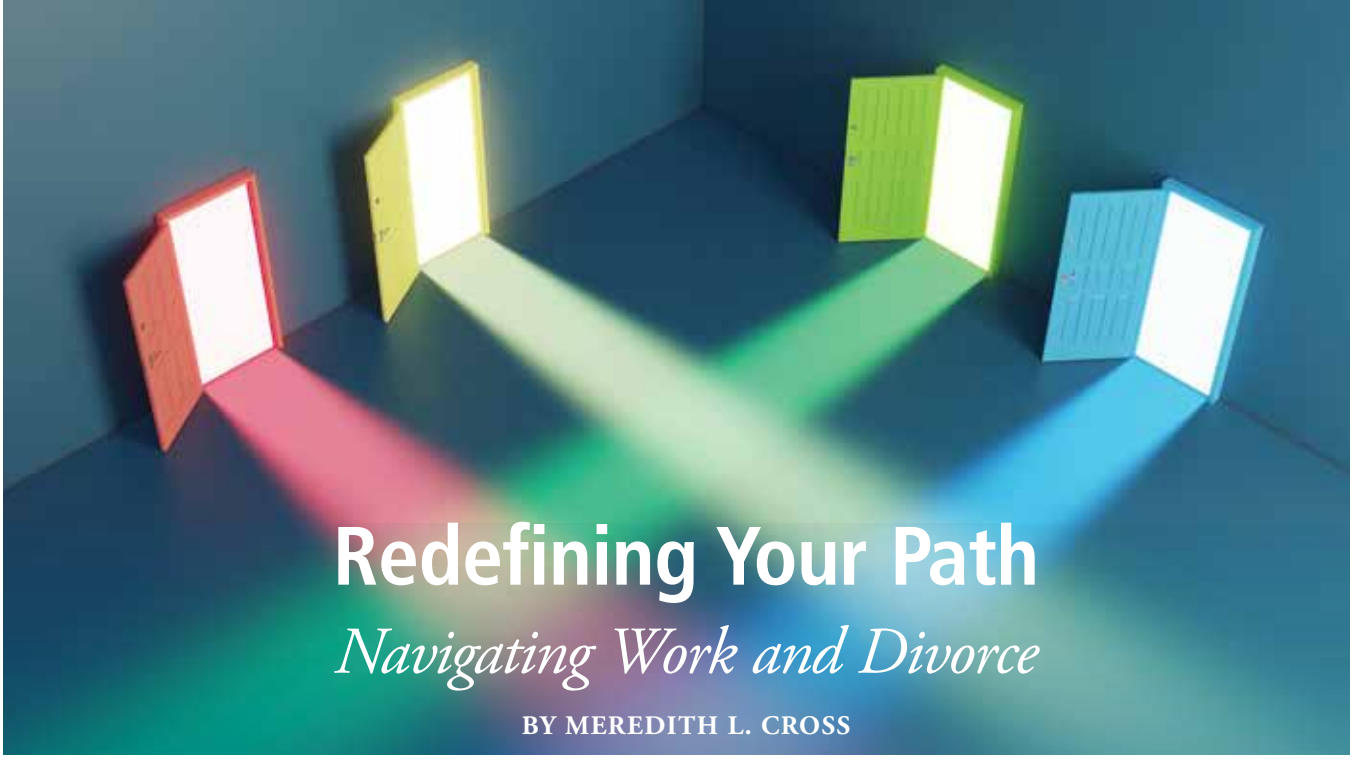

Redefining Your Path

Navigating Work and Divorce

BY MEREDITH L. CROSS

Divorce can be a challenging time, not only emotionally but also financially. Many individuals find themselves reevaluating their career paths or re-entering the workforce to ensure financial stability. This guide explores key considerations and strategies to help you manage employment transitions effectively during this period.

What does "earning capacity" mean?

Earning Capacity refers to your ability to earn income based on your skills, education, experience, and the job market. During divorce proceedings, earning capacity can be a significant factor in determining spousal support or child support obligations. Depending on the circumstances, earning capacity may be based on a spouse's present income, or in the alternative, a spouse's ability to earn an income. Additionally, courts may impute income to a spouse who is voluntarily unemployed or underemployed to avoid paying support. This determination is based on evidence such as education, work history, and experience in the workforce. Conversely, if a spouse is caring for a young child or has legitimate health concerns, imputing income may not be appropriate. It is important to have a realistic understanding of your earning capacity and consider whether enhancing your skills or qualifications might improve your financial outlook.

How does earning capacity affect my claim for support?

Earning capacity is used to evaluate support claims such as child support and alimony. Since the amount of support a spouse will receive or will be ordered to pay is based upon these numbers, it is important to have an accurate accounting of your and your spouse's respective incomes and earning capacities when calculating support. For example, if in anticipation of divorce your spouse voluntarily quits a high paying job only later to assert an inability to pay support due to a lack of income, this new, lower income would not be an accurate reflection of your spouse's earning capacity for purposes of calculating support. Under these circumstances, it would be appropriate for the court to find an intentional depression of income for an improper purpose has occurred and impute income to your spouse at their prior level of earning capacity. To do otherwise would incentivize this behavior by rewarding the supporting spouse who has acted in bad faith, while penalizing the dependent spouse acting in good faith.

Can I have the court impute income to my spouse?

Potentially. In certain situations, courts assign a hypothetical income to an individual, known as "imputing income," especially when calculating support obligations. This typically occurs when an individual is voluntarily unemployed or underemployed, suggesting an attempt to evade financial responsibilities. For instance, if your spouse intentionally reduces his or her income in an apparent effort to lower support payments, the court may impute income based on his or her earning potential. Conversely, if your spouse is unemployed as a result of being the primary caregiver to your young child (for example, age 3), generally the court will not impute income under those circumstances, recognizing the legitimacy of the unemployed spouses' caregiving role.

I have not worked outside the home in 15 years. Am I expected to immediately seek employment after my separation or divorce?

While each case is unique, in general, you are not required to

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seek employment immediately after a separation or divorce, nor are you obligated to accept the first low-paying job you find. Depending on the jurisdiction in which you live, you may be entitled to spousal support, with the amount and duration varying based on individual circumstances. However, courts typically expect spouses to re-enter the workforce eventually. Since alimony is most often viewed as rehabilitative and not permanent, it is important to plan for your long-term financial stability. Rather than relying on debt to maintain your previous standard of living, consider adjusting expenses to avoid future financial strain. Be patient and take the time to find a job that aligns with your interests while providing you with financial independence. If you have legal representation, follow your attorney's guidance on employment decisions, as your income can impact child and spousal support claims.

How will going back to school help me after my divorce?

Divorce can be an opportunity to invest in yourself through education or retraining. This is especially relevant if you have been out of the workforce for an extended period or are considering a career change. Regardless of *why* you are looking to go back to school, first assess how additional qualifications will improve your earning capacity and job satisfaction. Retraining should be a step toward your financial independence. Take time to evaluate opportunities that align with your skills and interests while also ensuring financial stability for you now as well as in the future.

When in the divorce process should I go back to school?

Unfortunately, there is no "one size fits all" answer to this question. The answer to the question of "when" you should pursue higher education will depend entirely on the facts of your case. Although there may not be a "perfect" time to hit the books, there may be a time which works better for you and your family. Once you have made the decision to go back to school, determine what type of educational program will work for you, while also ensuring you financial stability. Consider your children's needs and how your return to school might affect childcare arrangements. Many schools now offer night, weekend, or online classes, which cater to the working, non-traditional student. Determine in advance how you will fund your education and whether financial aid or spousal support might help. Research scholarships and grants that might be available to you, to minimize debt and avoid delaying work unnecessarily.

What is a "vocational evaluation"?

A "Vocational Evaluation" is an impartial assessment conducted by a vocational expert to determine an individual's true earning capacity. Through interviews, testing, and labor market analysis, the expert evaluates factors such as education, skills, work history, and job availability. In divorce proceedings, these evaluations are particularly useful where allegations are present that a spouse is intentionally underemployed and/or has the potential to earn more than their current income suggests. The vocational expert's findings can help the court objectively assess these claims and make informed decisions regarding support obligations in your case.

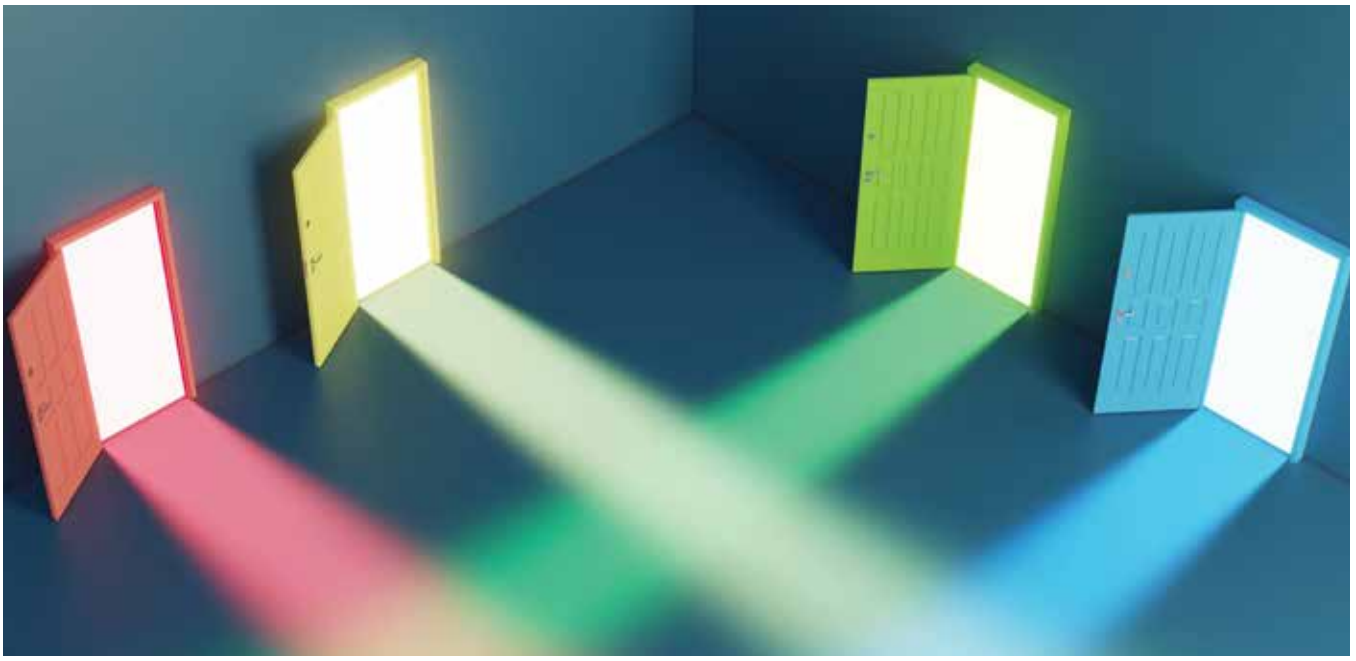
How can a vocational evaluation help my case?

The specific facts and circumstances of your case will dictate the necessity of a vocational evaluation in your case. While expert reports are not legally binding, they can be highly persuasive to the judge, who ultimately determines the facts in your case. When allegations exist that a party is intentionally underreporting income to reduce support obligations or has the potential to earn significantly more despite a limited work history, a vocational evaluation can provide the judge with an objective analysis of the individual's (or individuals') earning capacity rather than speculation. Additionally, if you have experienced an illness or injury that affects your ability to work, you may want to consider whether a vocational evaluation could help demonstrate to your judge why your earning capacity is lower and/or has changed. Since support determinations rely on accurate income assessments, a vocational evaluation can play a crucial role in influencing the amount of support ordered by the judge.

I had planned to retire at age 65, but instead I am now divorcing. Can or should I still retire as I had previously planned?

Your ability to retire as planned—or whether you should—will depend on the unique facts of your case. The rise in divorces among individuals aged 50 and older, often called "Gray Divorce," presents distinct financial challenges compared to younger divorcing couples. Unlike those still in their peak earning years, individuals nearing or at retirement age may find it more difficult to recover from a significant reduction in retirement savings.

If you have a premarital agreement or postnuptial agreement, it may help protect a portion of your retirement assets. However, if no such prior agreement exists, you may need to reassess your retirement goals to accommodate the financial impact of divorce. Consulting with a financial advisor can help you develop a strategy to manage your remaining retirement funds effectively and maintain financial security and stability. Depending on your circumstances, delaying retirement until age 70 could help maximize your Social Security benefits. Additionally, it's important to ensure that any changes to your income are not perceived as an attempt to reduce support obligations.



5 Tips for Reentering the Workforce

1. **Identify Your Area(s) of Interest.** Just because you worked in a particular field before getting married or leaving the workforce to raise children doesn't mean you must return to the same line of work. If you're considering a shift into a different industry—such as technology after a long absence—you may need additional training or education to be and/or remain competitive in the job market. Take time to reflect on your current interests and explore new career opportunities that align with your skills and goals.
2. **Set Goals for Yourself and Manage Your Expectations.** Once you've identified your desired career path, determine the steps needed to qualify for job opportunities in that field. Set clear, achievable goals and hold yourself accountable. Sharing your goals with a trusted friend or family member can help keep you motivated and on track. Meeting these milestones will not only bring you closer to employment but also boost your confidence and sense of accomplishment. Throughout this process, manage your expectations—landing your ideal job may take time. Remember to stay realistic and open-minded as you explore employment opportunities.
3. **Update Your Resume.** This tip may seem obvious to anyone job hunting, but if you've been out of the workforce for a long time or are considering a career change, updating your resume can feel overwhelming. Don't hesitate to seek help from friends, family, or professionals. You can also find resume examples online tailored to your field of interest. Additionally, many colleges and universities offer career services that can assist you in creating a strong, polished resume.
4. **Consider Retraining or Additional Schooling.** If you are unemployed, have limited work experience, or want to pursue a new career, consider taking retraining courses or returning to school—either full- or part-time—to gain qualifications in your chosen field. If you have young children, explore flexible education and work options that fit your schedule. However, be mindful not to use further education as a reason to delay reentering the workforce. While earning a new degree doesn't guarantee your dream job, it can significantly enhance your earning potential and open new opportunities for career growth as well as financial security and stability for your future.
5. **Network.** Networking is one of the most valuable and effective strategies when searching for a job. Professional networking platforms like LinkedIn allow you to connect with individuals in your desired field. Meeting new and old contacts for coffee or lunch can help you to build meaningful relationships and future opportunities. Beyond online networking, consider joining local organizations such as Rotary, Kiwanis, Junior League, and ATHENA to expand your connections in person. Introduce yourself to professionals in your industry and let them know you're seeking employment. Lastly, always show appreciation—when appropriate, send a handwritten thank-you note to those who have offered guidance or assistance along the way. Writing a handwritten note reflects sincerity, thoughtfulness, and appreciation. It shows you took the time to personally acknowledge someone's help or support, which can leave a lasting positive impression. In a professional setting, a handwritten note can set you apart, demonstrating professionalism, gratitude, and a strong attention to detail. It also reinforces relationships by making the recipient feel valued and respected.

5 Tips for Navigating a Gray Divorce

1. **Determining the Amount of Support.** For individuals separating later in life, determining income for purposes of support may be challenging. Unlike individuals separating early in their careers, income of individuals separating at age 50 or later may include alternate forms of compensation, such as stock options, Restricted Stock Units, grants, options, stipends, and bonuses. These alternate forms of compensation should be considered in addition to a party's regular income, such as W2 income, when determining the amount and duration of child support and spousal support.
2. **Social Security Benefits.** When negotiating support, it is important to know what you may expect to receive from Social Security. Do not assume that you will be eligible to collect Social Security under your spouse or former spouse's earnings simply because you have been married ten years or more. If necessary, make an appointment at your local Social Security Office to determine what you could expect to receive in Social Security benefits when you retire. At present, age 62 is the earliest you can claim Social Security. However, claiming your Social Security benefits early will result in you receiving a lesser overall benefit. If you are able to defer to age 70 to collect, you will maximize your Social Security Benefit.
3. **Life Insurance as Collateral for Support.** Depending on the jurisdiction in which you live, you may be required to provide or entitled to receive life insurance sufficient to cover the outstanding support obligation. If you are in a jurisdiction in which life insurance as collateral for support is not required, you may still be able to contract for this as a part of a private contract, such as a Separation Agreement and Property Settlement.
4. **Dividing Retirement Benefits Can Be Complex.** Depending on the facts of your case, dividing retirement benefits can be an involved process. Some forms of retirement such as defined contribution plans (401(k)s and IRAs) can easily be divided using a Qualified Domestic Relations Order or Domestic Relations Order. However, other forms of retirement, such as pensions, are not as easily valued and divided. Unlike 401(k)s and IRAs, the division of a pension may require a valuation to determine its actual value as it may include other benefits, such as healthcare coverage, in addition to a monthly monetary benefit. For example, if you or your spouse worked for the Federal government, you might be entitled to receive retirement benefits related to the Civil Service Retirement System (CSRS) or Federal Employees Retirement System (FERS). A Court Order Acceptable for Processing (COAP) is required to divide retirement benefits associated with Federal Employment. Educate yourself on what retirement benefits exist, what you are entitled to receive, and what actions you need to take to ensure that you receive the retirement benefits to which you are entitled. For instance, if you are entitled to future financial support through the military's Survivor Benefit Plan (SBP) via your soon-to-be former spouse, it's crucial to understand that the retiree must elect SBP coverage by completing a specific form. Then this SBP election form must be submitted within one year of the divorce decree; otherwise, you will lose eligibility for SBP coverage.
5. **Proving Marital Property vs Separate Property.** Determining the classification of property prior to its division is an essential part of Equitable Distribution. If you have a Premarital Agreement and/or Postnuptial Agreement, determining the classification of property as Marital, Separate, or Divisible, may be a simple process. However, if you are like most individuals involved in a divorce and do not have a Premarital or Postnuptial Agreement, you will be required to prove your contentions regarding the classification of the property. Generally, inheritance and gifts from third parties are considered the Separate Property of the recipient. However, over time the line between Separate and Marital property may become blurred, depending on how the recipient subsequently used and/or titled the property. To successfully argue your proposed classification of property, you must provide the Court with supporting evidence. Such evidence can include, but is not limited to deeds, titles, affidavits, bank statements, wills, correspondence, photographs, and the testimony of witnesses. If you believe that the classification of property is an issue in your case, gather your supporting documents now, as records are usually maintained for a limited period of time before they are destroyed by the provider. FA

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Smart Property Choices during a Difficult Time

BY SALLY L. PRETORIUS

There is no doubt that going through a divorce is one of the most challenging times in a person's life. When going through a divorce, you are coping with the emotions of breaking up one of the most intimate of relationships, while making decisions about you and potentially your children's future—financially and emotionally. This article will focus on considerations surrounding the property portion of a divorce. Before you make any decision about your financial future or how to divide assets, it is important that you fully understand what choices you have and what the consequences are to make an informed decision that best fits you. This article provides general information and should never be a substitute for your own legal counsel's and your own financial advisor's advice as they are more intimate with the specifics of your case and the laws in your jurisdiction.

Keep, Sell, or Divide Property

One of the biggest financial/property choices to make during a divorce is whether to keep, sell, or divide property. Let's first tackle this topic by defining each choice.

Keeping Property

This occurs when one party (or both parties in rare cases) retains ownership of a tangible or financial asset in totality either in whole or in part. For example, one party keeps an entire retirement account, the marital residence, or even a couch—that will be keeping the property. In rare circumstances, parties to a divorce may agree to continue to co-own property under specific terms—but there are specific risks associated with co-owning because there is already an inherent distrust in divorce and co-owning a piece of property requires the parties to be able to make joint decisions and work together. Co-owning an asset may be a possibility when there are strict operating agreements or well-drafted terms for co-ownership, including maintaining the property and potentially disposing of the property under specific terms. When this is a possibility, it will be imperative to bring in expert legal advisors to draft co-ownership agreements or alter existing operating agreements to allow for co-ownership in the event of a divorce.

Selling Property

This occurs when the parties for different reasons discussed in this article decide that the best way to allocate the property is to sell and divide proceeds. Selling property may be necessary because co-ownership is not a possibility, a party may not be able to purchase the other party's equity or if the parties are not able to agree to a value of the property (and allowing the market to determine the value by sale is the only feasible possibility.).

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Dividing Property

This is an option when a client may agree to split an asset that is capable of being divided, like a retirement account, bank account or even stocks according to a certain percentage agreed upon or ordered by a court. Many times attorneys see property divided when it comes to tangible divisible property like household items or items that have cash values like checking or savings accounts Dividing property may not be a possibility when the asset itself does not allow for the division of the property as further discussed in this article.

Property Information Gathering

Now that this article has explored the basic choices to make when it comes to property in a divorce, there is some information gathering that must be done as it relates to each piece of property.

Inventory

First you need a list of all items that you and your partner own, which are subject to allocation. Depending on the jurisdiction that your case is pending, there may be rules for going about getting a complete understanding or inventory of items that are subject to the divorce. Once you have a list or basic inventory of all of the items that are subject to allocation then you can create a spreadsheet or list of the items and start gathering information specific to each asset.

Valuation

Once you know what items exist, then you must determine the value of each piece of property. Depending on the property, this may be a difficult or easy task. For most jurisdictions, it will likely be fair market value, meaning what it will go for in its current condition on the open market. Most day-to-day items will be relatively easy to determine the value of; for example, a couch's value would likely be what a buyer would be willing to pay for it, or a car's value may be its trade-in value or peer-to-peer sale price.

However, some items may be more complicated and may require some level of expertise to determine the value. Your lawyer may advise you that engaging an expert like a business valuator, appraiser or niche expert (think sports card expert, antique jewelry expert or even exotic animal expert) to determine the value. There will likely be rules that will apply to when and how to use the experts as part of your divorce process.

Tax Implications

It is important to consult with a tax expert to see if there are any tax consequences associated with taking a certain piece of property. In general, the upfront transfers of assets between spouses incident to a divorce is not a taxable event. But, there may be a taxable event in the event that you have to sell or divide an asset once it is awarded to you (for example capital gains or selling a homestead). For example, the cashing out of certain retirement accounts may carry a tax penalty for early withdrawal as well as the payment of taxes based on your current tax rate. Additionally, there may be tax consequences associated with certain payouts, selling certain assets without reinvesting or properly allocating said assets. Having a conversation with a tax expert and fully understanding any tax implications with keeping, selling or dividing an asset may impact your ultimate decision. You don't want to have any unintended or unexpected tax consequences after you have already finalized your agreement.

Transferability

Some assets may not be capable of being transferred between spouses. For example, some restricted stock units or pensions may not be divided in a divorce, but your jurisdiction may allow for a constructive trust to be created to allow your spouse to own the property on your behalf. It will be important for either you, your attorney or an expert to review any plan documents or allocation documents related to assets such as stocks, retirement plans, corporations or similar assets to determine transferability and the process. Sometimes even if the asset can be transferred, there may be additional legal work or steps (which could cost more fees) that should be considered when allocating an asset. Some retirement accounts can be split; if they are allowed to be split, they will require a formal document called a qualified domestic relations order (QDRO) or a domestic relations order (DRO). These are legal documents drafted and submitted to the administrator of the account letting them know it is okay to split the account and how to split it. Your attorney can guide you through getting one drafted and entered.

Ease of Division

Bank accounts and brokerage accounts are generally easier to divide and require only the click of a transfer button and then a simple document from the financial institution to remove a party from the account. Do remember that brokerage accounts contain investments that may have considerable tax implications upon division.

Property "Soft" Considerations

Now that you understand how assets can be allocated, it is time to take note and evaluate some of the soft considerations when contemplating whether to sell, divide, or keep property.

Emotional Attachment

Are you emotionally tied to an asset- like a residence or a car? Some assets carry emotional value like raising your children

Litigation is required when a party is not able to agree on how to dispose of a marital asset and involves the time and cost of an attorney, as well as your time away from work. How do you know if an asset justifies litigation?

in a house, or memories associated with a specific asset. It is important to at least recognize the emotional attachment to an asset so when the time comes to divide you can understand how the emotional value plays into the actual value. At some point during the divorce process, a decision about disposing of an emotionally charged asset may make for a better financial break. Litigation costs (which are discussed below) are also a huge factor in deciding if the emotional value is worth the financial cost.

Realistic Expectations

Consider the realistic motivation behind wanting an asset. Do you truly need or want the asset? Are you wanting the asset just because the other side wants it? If you don't grill, do you need the luxury grill or and likewise if you don't carry purses do you want the luxury brand purse? It is important to recognize whether another asset may prove to be more valuable in the ultimate asset division or the cash equivalent may better serve your purpose or allow you more freedom.

Long-Term Goals

As you begin to evaluate some of the allocation possibilities, it is also important to remember your long-term goals and how the division will fit into those. Where do you see yourself in the future? Does owning this property fit into your long-term goals? Sometimes meeting with a divorce financial planner may assist you in evaluating this consideration.

Litigations Costs

The cost of litigating to divide a specific asset may be a consideration when deciding how to dispose of a marital asset. Litigation is required when a party is not able to agree on how to dispose of a marital asset and involves the time and cost of an attorney as well as your time away from work. How do you know if an asset justifies litigation? You must consider some of the aforementioned factors such as whether it is an emotional asset (your grandma's piano) or is realistic to own the property (like can you afford the upkeep of the property).

Often clients are litigating over the value of an asset-whose value is the value that prevails including a battle of the valuation experts. If that is the case, you must weigh how much it will cost to litigate the issues and whether the difference in value justifies that litigation cost. For example litigating over a Yeti cup (true story) may not justify the cost of litigation, but litigating over a $1 million versus a $100,000 valuation of an asset may be justified.

At the end of the day, you still have the decision to keep, sell, or divide—but the choice is yours. Armed with the right information, an understanding of your options, and expert guidance, you can navigate this process with greater clarity and confidence, setting yourself up for the right decision. FA

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From the Family Law Section

AMERICANBARASSOCIATION
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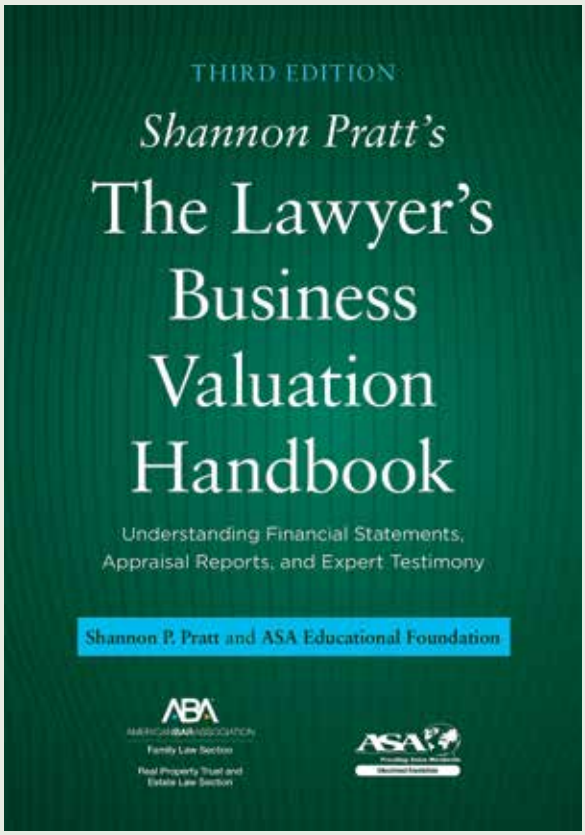
Understanding Financial Statements, Appraisal Reports, and Expert Testimony, Third Edition

Edited by Roger J. Grabowski and Alina V. Niculita



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Don't Get Overly Taxed

Know Your Tax Options during and after Divorce

BY MARY VIDAS AND DONNA PIRONTI

We are going to attempt to address the major tax questions and often-overlooked assets we see in divorce. This is not a substitute for consulting with your attorney and accountant to determine what the right tax situation is for your individual marital dissolution.

What are the filing options available during divorce?

Your filing status possibilities during the divorce are Married Filing Jointly (MFJ), Married Filing Separately (MFS), Single, and Head of Household (HOH).

To be Single, you must not be married OR be "considered" not married on 12/31 of the year. To be considered not married you must be legally not married or have a legal separation agreement. Note that some states do not have legal separation (such as Pennsylvania) and in those states, at no time are you considered Single if you are still married.

During the divorce, you could be considered HOH if you lived apart from your spouse for the last six months of the tax year. In addition, you have a qualifying child for purposes of the dependency exemption and the child tax credit rules and you paid more than half of the cost of keeping up a home that was your home and home of your dependent for one-half of the year.

In any year you have a final divorce decree by December 31st you are considered divorced and therefore, you can file as HOH (if you meet the criteria noted above) or Single.

Who should/can claim the children?

This by far is the area that is the most misunderstood during the divorce and post-divorce. The confusion really stems from the Tax Cuts and Jobs Act of 2017 reducing personal exemptions to zero for tax years 2018 to 2025. Many believe exemptions have been eliminated so it doesn't need to be discussed. Since we do not know what will happen for tax years after 2025 this should be addressed in all agreements in case it is brought back. In addition, although personal exemptions were reduced to zero the Internal Revenue Code (IRC) Section 152 wasn't eliminated because it defines what a dependent is and this definition is used in Head of Household filing status determination and child tax credit eligibility.

Who can deduct the children is really determined by the custody of the child. The custodial parent is the parent with the most overnights in a calendar year and any tiebreaker would then be the parent with the higher adjusted gross income. However, we have never seen where the tiebreak needs to be used. So, if either parent has more than 50% custody and they follow the custody agreement, then they are the person who can claim the child because they have the most overnights. This then leads to the question of whether the person who has the majority custody can transfer their rights to claim the child. To obtain that answer, we must turn to Form 8332 "Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent". This form very clearly states at the very top "Note: This form also applies to some tax benefits, including the child tax credit, additional child tax credit, and credit for other dependents. It doesn't apply to other tax benefits, such as the earned income credit, dependent care credit, or head of household filing status. See the instructions and Pub. 501." As can plainly be interpreted from the above, a person cannot transfer their ability to claim the child for head of household, earned income credit, and dependent care credit purposes. These still reside with the custodial parent regardless of what any agreement says. The only benefits that can be transferred are the exemption

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deduction and child tax credits. It should not be written into an agreement that each party can alternate the head of household deduction based on this form as the IRS will not agree that is the case unless the parent is the custodial parent. However, the exception here is that if there is 50/50 custody there could be room for alternating the head of household deduction. Note that whichever party has the most overnights gets the exemption. An acceptable form of evidence for the IRS is a calendar showing which nights each party had. Therefore, if you want to alternate years, you need to keep track of your overnights and each party needs to ensure that the party whose turn it is to take the head of household deduction actually has the most overnights. If you don't do this, then the agreement doesn't apply and the person with the most overnights could take the deduction which may not be the party that is supposed to take the deduction.

What tax credits can I get by claiming the children?

There are three major types of tax credits related to dependents that currently can be claimed on a tax return:

1. **Child Tax Credit.** This credit was created to help families with qualifying children who have a social security number receive a tax reduction. The 2024 credit amount at the time of this writing was $2,000 per a qualifying child with a refundable portion up to $1,700 per a qualifying child. Schedule 8812: Credits for Qualifying Children and Other Dependents is filed with your personal tax return in order to make this claim. You must meet the rules of the qualifying child as well as have annual income in 2024 not greater than $200,000 (or $400,000 if MFJ). There is a phase out so there is an ability to claim a partial credit on Schedule 8812. To meet the qualifying child rules, the child must be:

   - **Age.** Child needs to be under 17 years (16 years and younger at the end of the tax year)
   - **Relationship.** Child must be your son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of these individuals (grandchild, niece, nephew); adopted child is considered your own child
   - **Support.** Child must not provide more than half their own support
   - **Citizenship.** Child must be a US citizen, US national or US resident alien
   - **Dependent.** Must be able to claim the child as your dependent (this is the definition provided under IRC Section 152)
   - **Residence.** Child must live with you for more than ½ of the tax year (some exceptions apply)

   Note: There is a "Credit for other Dependents" for $500 if you meet all the above rules except your child is 18 or older.

2. **Child and Dependent care credit.** If you paid someone to care for your child or another qualifying person so you could work or look for work, you may be able to claim a credit for child and dependent care expense. The credit you claim will reduce your federal income tax on our tax return. To be eligible to claim this credit on your tax return, you (and your spouse if filing jointly) must have lived in the United States for more than half of year. Note: special rules apply to military personnel stationed outside of the U.S.. A qualifying person is generally a dependent under the age of 13 and/or a spouse or a dependent of any age who is incapable of self-supporting and who lived with you for more than half of the year.

3. **Education credit.** An education credit helps with the cost of higher education by reducing the amount of tax owed on your tax return. To claim this credit, you must file Form 8863: Education Credits (American Opportunity and Lifetime Learning Credits). If the credit reduces your tax to less than zero, you may even qualify for a refund. There are two education credits available: the American Opportunity Tax Credit (AOTC) and the Lifetime Learning Credit (LLC). The maximum credit for the AOTC is $2,500 and applies to the cost of tuition, required fees and course materials needed for attendance and paid during the applicable tax year for those finishing the first four years of higher education. The LLC is worth 20% of your eligible education spending up to $10,000 per year. The maximum tax credit is $2,000 if you spend $10,000 or more on qualified expenses. One can claim only one Lifetime Tax Credit per tax return, so it is limited to one tax credit per taxpayer per year.

   Note: There are several differences and some similarities between the AOTC and the LLC. One can claim these two benefits on the same return but *not* for the same student or the same qualified expenses. According to IRS Publication 970: Tax Benefits for Education, "For purposes of the qualified tuition reduction, a dependent child of divorced parents is treated as the dependent of both parents" and therefore either party can take the deduction for what they paid but both cannot.

   Hot Tip: It is important for noncustodial parents to understand Form 8332: Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent as this form does allow a noncustodial parent to claim the child tax credit and credit for other dependents not the child and dependent care credit. In addition, the noncustodial parent must get this form each year from the custodial parent.

What payments should be considered when filing taxes?

There are several types of tax payments that need to be

considered when filing one's taxes: extensions, estimates and overpayments from prior year. These payments could have been made in an individual's name or jointly. A tax return extension gives a person six more months to file their return but the taxes owed must still be paid on time as a tax extension does not give you more time to pay the tax owed. An estimated tax payment is a quarterly payment of taxes for the year based on the filer's reported income for the period (usually made around April 15, June 15, September 15, and January 15 of the next year). Most people who are required to pay taxes quarterly are business owners, freelancers and independent contractors. A good rule of thumb is to pay your estimated tax based on 90% of your tax for the current year. Note: If your adjusted gross income for the year is over $150,000 then you will need to pay 110% of your taxes for the prior year. This is called the "Safe Harbor Provision" which is designed to protect you from penalties for an underpayment of the taxes you may owe.

Extensions, estimates, and overpayments from a prior year may have been made in joint names and then would need to be divided. Although this can be done on the tax return, it is easier to leave it under the Social Security Number of the person who was the primary custodian (so either the individual it was paid in on or the "taxpayer" versus the "spouse" listed on the joint filing document). Not only is it important to look at what payments were made, but it is also important to look at the source. Was it from a marital account or was it from post-separation earnings of a party? In addition, it must also be looked at whether a joint return is all marital income and should the marital pot be paying the taxes on post-separation or nonmarital income?

The source and actual payments and the source of the income are important when trying to determine who should claim the payments as these may or may not be marital assets. These potential assets are often overlooked when preparing a marital settlement agreement and they could be very significant.

Can I file with my spouse and then amend the return later?

The instructions for amending a return (Instructions for Form 1040-X) state "In general, you can't change your filing status from a joint return to separate returns after the due date of the original returns". Thus, if you have filed your return married filing jointly and the due date of the original returns has passed by, then you cannot change your filing status. However, you can switch from filing separately to then filing jointly if you file an amended return within the three-year limitation. Also, whether you have filed estimates or extensions jointly or separately does not mean that your return filing has to be the same. Check with both your attorney and your accountant to make sure you are filing the way that best provides you with protection and the best tax scenario for your situation.

Should I file joint with my spouse?

When it comes to filing your tax return as either Married Filing Jointly or Married Filing Separately it is almost always better from a financial perspective to file Married Filing Jointly as many tax benefits are not available or limited if you file separate returns. Primarily, this is because some common credits and deductions are not available or are reduced to the tax filer on separate returns. There are also sometimes tax benefits to filing separate tax returns. A Married Filing Separate tax return would be of benefit if the taxpayer is subject to the Alternative Minimum Tax (AMT) on a joint return because the spouse with the lower income can qualify for tax deductions only by filing a separate return. Another example is the current electric vehicle credit could be eliminated on a joint return but one party may have low enough income to take the credit on their return. Note: The best way to determine whether to file jointly or separately is to prepare the returns both ways and then choose the filing status with the lowest net balance due or refund.

The most common reason for telling your client to file separately is if they know that their spouse is providing fraudulent or incomplete information on the return and you do not want your client to be a party to the fraud and/or problem This is most often seen when the spouse owns their own business and are making deductions they shouldn't be or are not reporting all of their income. If this is the situation, then you consider two issues: indemnifications and innocent spouse filings.

An indemnification agreement is where one party (the "indemnifying party") agrees to compensate another party (the "indemnified party") for and defend and hold harmless against damages losses, liabilities, obligations, settlements, payments, assessments, claims judgment, expense or other costs incurred as a result of the filing of a joint tax return.

Note: The tax indemnification agreement does not prevent a tax issue or problem nor does it bind the IRS or State taxing authorities. This only allows the injured party to go after their spouse but still holds them accountable to the taxing authority. So, although this is some protection it is not going to keep your client from being party to fraudulent activity or owing additional tax.

If a party had previously filed a joint return and now realizes it was erroneous they could consider the "innocent spouse rule." The innocent spouse rule can relieve a taxpayer from paying additional taxes if the other party underestimated taxes that were due on a joint return and the innocent spouse taxpayer did not know about the errors. Innocent spouse relief is only for additional taxes, penalties and interest due on errors related to your spouse's income from employment or self-employment. Getting innocent spouse relief is not automatic and very hard to prove. The IRS can deny such a request and the process can take as long as six months.

Here are several important things to remember about qualifying for innocent spouse relief as noted in IRS Publication 971:

- You must file jointly.
- The error has to be attributable to the other person.
- You must not only prove your innocence but that it is unfair to hold you accountable.
- You are claiming that when you signed the joint return you did not know and had no reason to know that there was an understatement The IRS looks at everything from the nature of the error to your financial situation, educational background, how much you participated in the activity that created the problem, whether the issue is part of a pattern as well as any other relevant factors, including spousal abuse.
- You generally have to request innocent spouse relief no later than two years after the IRS started trying to collect the additional tax from you.

Hot Tip: If you request the other party sign a tax indemnification agreement the likelihood of being granted innocent spouse relief is not likely to be granted.

What carryovers should be considered when filing returns and in settlements?

When settling the divorce, you want to make sure you have captured all your assets. There are many carryover tax items, but the three most common are capital losses, passive losses, and net operating losses.

Capital losses are those that have been created by selling certain assets in past years such as stock. In any year, you can only deduct as much loss that you have in gains, plus $3,000 ($1,500 if married filing separately). For example, if you have had stock losses of $55,000 and gains of $35,000, you have a net loss of $20,000. On your return you would be allowed to deduct an additional $3,000 over the gain (so $38,000) then have $17,000 in losses to carryforward indefinitely until they are used. Carryover losses can be found on Schedule D "Capital Gains and Losses" of your personal tax return. Keep in mind that the losses are supposed to follow the person who owns the account/asset that created the loss so in that situation, you can calculate the tax savings (federal, state, and net investment income Medicare tax) as the asset value.

Passive loss carryovers are created when a passive asset has had a loss that cannot be deducted. Passive activities are defined by the Internal Revenue Service in Publication 925 as "trade or business activities in which you don't materially participate during the year" as well as rental activities unless you are a real estate professional. These passive loss carryovers are created when there is a loss and there is no other passive income to offset the loss so that the loss is carried forward indefinitely. In many circumstances the passive loss is not released until the asset is sold. However, this loss has a tax value and should be taken into account when calculating the value of the underlying asset.

Net operating losses (NOLs) are more complex and only occur if there is a business in the marital estate. There is a going forward issue on calculating this as asset and/or using it as part of the tax calculation in net income available for support. For those states with a double dip, you want to be careful. The tax laws on NOLs changed during the past few years from allowing a carryback feature to only being allowed to carry the loss amount forward (IRS Publication 536 covers NOLs). The annual loss is limited based on rules from the Tax Cuts and Jobs Act (TCJA) and is in place for tax years beginning after 2020 and ending before 2029. The calculation for tax savings should be discussed with your accountant.

Is alimony taxable or deductible?

For any divorce separation agreement entered and/or executed after December 31, 2018, alimony is no longer deductible from the income of the payor spouse nor includable as income to the recipient spouse. Prior to December 31, 2018, the spouse paying support could report the payments as a tax deduction and the support recipient had to report and pay taxes on the alimony payments as income (unless the agreement or court order said otherwise.

In many cases, alimony agreements and/or court orders entered prior to December 31, 2018, were deductible by the payor. However, many agreements and court orders for alimony provide for modifications of future alimony payments and/or true-ups for alimony payments based on fluctuating income scenarios. In these cases, any future alimony modification and/or true-up will make the new alimony payment non-deductible unless they can fall under a previous order that provided for deductible alimony.

Note: For individuals participating in and/or receiving alimony payments, unlike other provisions of the TCJA that expire at the end of 2025, there will be no reversions back to the pre-TCJA deductibility of alimony payments. FA

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When Divorce Affects Healthcare Coverage,

Review Options and Avoid a Gap in Coverage

BY MAURA CARLEY

Healthcare coverage is one of the most important financial protections an American can have. Most individuals in the United States have either group coverage through an employer or union, individual coverage, or are covered by Medicare or Medicaid. There are also other types of coverage, such as short-term coverage, Christian healthcare co-ops, or products that purport to provide access to coverage through a union or association that anyone can join, but one's objective is to obtain comprehensive coverage regulated by a state or federal agency as presented below.

Many individuals going through a divorce will not have their healthcare coverage affected because they are the subscriber in a group or individual plan, or they are eligible for Medicare or Medicaid on their own. Even though these individuals sometimes have a joint account with their spouse, such as a Medicare supplement joint account, for example, upon or prior to the divorce they should separate the joint account into two individual accounts. This is an administrative matter and should not result in loss of coverage.

However, when individuals do not qualify for coverage on their own, divorce often results in a loss of coverage, and anyone facing a loss of coverage should plan ahead to avoid a gap.

Loss of Coverage Due to Divorce: Group

When a divorce is final, a former spouse on a group plan through an employer or union as a former dependent is not eligible to remain on the plan but is eligible for COBRA, explained further below, which is the temporary extension of group coverage at one's own expense. COBRA, an acronym for Consolidated Omnibus Reconciliation Act of 1985 was passed by Congress to provide a temporary safety net for those losing eligibility for group coverage.

Federal COBRA applies to group coverage through an employer or union of twenty or more employees. For groups of under twenty employees, so-called "mini-COBRA" applies and is state-based. Federal COBRA allows for up to thirty-six months of additional coverage for an individual losing coverage through a divorce. Someone who elects COBRA pays the full cost of the premium plus an administrative fee. Anyone losing small group coverage should research their state's mini-COBRA program because the coverage extension period is often much shorter than under federal law.

Loss of Coverage Due to Divorce: Individual Plan

Another option to consider when losing group coverage is the purchase of an individual plan. Involuntary loss of coverage through a divorce is a qualifying event which creates a special enrollment period of sixty days to apply for individual coverage. Individual coverage is based on the state of one's primary residence and is purchased through the federal marketplace, healthcare.gov, a state-based marketplace or directly from the insurance company.

If group coverage is not involved and a divorcing couple

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have individual coverage together, the separation of the joint account into individual accounts is an administrative matter to sort out with the insurance company. This may involve new identification cards or even worst case, reapplying for the coverage.

COBRA vs. Individual Coverage

There are many factors that should be considered when someone losing group coverage chooses between COBRA and individual coverage. In many states, the network of physicians available through individual coverage is not as attractive as what is offered to those with group coverage. And many products in the individual market limit all but urgent and emergent care to one's local area. The network issue is the primary reason many losing group coverage through divorce remain on COBRA coverage as long as possible.

However, if a divorcing spouse losing group coverage is eligible for a subsidy in the individual market, that may be a compelling reason to consider individual coverage.

COBRA premiums vary widely and individual coverage in most states is age-rated. There are many more options for coverage in the individual market than offered through a group. One should evaluate options based on projected cost, the provider network, the type of insurance product offered, and the rules of the Plan.

Anyone who remains on COBRA should save the documentation associated with the COBRA election and any official correspondence indicating the end of COBRA. If one applies for individual coverage outside the official open enrollment period, documentation substantiating the end of COBRA coverage will be necessary to prove involuntary loss of coverage which creates the special enrollment period. One has sixty days from the end of COBRA to qualify for individual coverage but plan ahead in order to avoid any gap in coverage if at all possible.

Medicare

Most individuals are eligible for Medicare at age sixty-five and should transition to Medicare. According to federal law, those who work for a company of twenty or more should be offered the group plan offered to employees under age sixty-five and can defer a transition to Medicare.

Anyone losing group coverage and eligible for Medicare should transition to Medicare and not consider COBRA. The employer or COBRA administrator rarely distinguish between the Medicare-eligible population and other workers in this regard, but COBRA was never intended for Medicare-eligible individuals. Coordination of Benefit rules indicate COBRA should be secondary to Medicare Part A and Part B so one should already be on Medicare A and B to properly elect COBRA as secondary but that is rarely a wise financial decision.

Because Medicare is always associated with an individual, if a divorcing couple are both on Medicare, there is no impact on their coverage unless, as mentioned previously, they have a joint account for their private Medicare supplement. Again, that is simply an administrative issue to separate the accounts, set up new payment mechanisms and possibly obtain new insurance cards.

Even if the individual on Medicare has earned Medicare eligibility on a spouse's work record, divorce does not subsequently affect one's Medicare coverage.

Medicaid

Medicaid is a joint federal and state program and state environments vary. The Affordable Care Act allowed for the expansion of Medicaid to take advantage of more federal funding and most states at this point have implemented Medicaid expansion. Unlike other types of coverage, Medicaid has continuous open enrollment so one can apply for Medicaid at any time and the state agency involved will assess the applicants' eligibility based on income.

If an entire family is on Medicaid and the parents divorce, each parent should notify the state agency which administers Medicaid because the former spouse's eligibility will depend on the income of each individual.

Summary

Evaluating healthcare coverage options can be a complex task for the novice but the objectives are to select the best coverage option one can afford and avoid a gap in coverage.

Losing healthcare coverage due to divorce can also be challenging because unlike other qualifying events, divorce is self-reported to the employer or union and there can be a lack of goodwill when the divorce is bitter. Of course, the opposite can also be true. The divorcing spouse who is the subscriber doesn't report the divorce timely to keep the former spouse on the plan. This is not wise because a divorced spouse is not eligible for the group coverage and risks having claims denied. We have also seen situations where small business owners adds a former spouse as an employee to maintain their coverage. This is also not wise if the individual is not an employee. Always review coverage options for which you are eligible. Again, if you are losing coverage through divorce, plan ahead to understand your options and avoid a gap in coverage. FA

MAURA CARLEY, MPH, CIC (mcarley@healthcarenavigation.com) is founder and president of Healthcare Navigation LLC, a national healthcare advocacy and medical insurance consulting firm that focuses on assisting clients as they transition from one source of coverage to another.

Is It Time to Update Your Estate Planning?

BY LAUREN DAVIES

An estate plan allows a person to direct where their assets go on their death – having your estate planning in order allows your voice and your wishes to be heard. If you die without an estate plan, your wishes may not be realized. Different states have different statutes that contain default provisions for where a person's assets go if they do not have a Last Will and Testament – and these laws may or may not be in accordance with your wishes.

Don't Leave Your Legacy to Chance

As you go through life's many changes, it is critical to make sure your estate planning is updated to ensure your wishes are followed. Some examples of life changes that merit considering an update to your estate plan include the birth of a child, marriage, divorce, loss of a loved one, moving from one state to another or a change in financial circumstances. Generally speaking, it is prudent to review your estate planning documents every year or two even if you have not experienced any major change in circumstances. If you have an estate plan and you don't understand what's in it, you can have an attorney review it and give you a summary of the documents. If you don't have an estate plan, you can make one – with or without your spouse if you have one. Representation by an attorney can be just for one spouse or it can be joint where information is shared with both spouses.

Anatomy of an Estate Plan

Last Will and Testament

A Last Will and Testament is the document that formally states in a binding way where your assets will go after you pass and, where appropriate, names guardians for minor children. It also names the executor (or personal representative in some states) of your estate. The executor is the person or people who are responsible for carrying out the wishes of the deceased person and administering the estate in accordance with the laws of the state in which you lived.

If you have minor children, you will want to consider who should be their guardian or guardians and who should act as trustee of the assets you leave for the benefit of your children. The guardians and trustees can be the same people or different people depending on what is the best fit for your family.

Advance Health Care Directives

Advance Health Care Directives name who you would like to make medical decisions for you if you are unable to make them yourself. If your existing Advance Health Care Directives name your ex-spouse, they should be updated to name a close friend or relative whom you trust in this position.

Depending on where you live, Advance Health Care Directives may also state your preferences regarding organ donation, who may access your confidential health information and contain a living will. A living will, if you include one, is a binding statement about your end-of-life care preferences and may contain your specific wishes to be given (or have withheld) particular types of care (e.g., artificial respiration, nutrition, hydration). If you have particular preferences regarding the custody and control of your remains, you may include your wishes in this regard in a non-binding way in your Advance Health Care Directive. Even if you do not have strong preferences in this regard, it can provide comfort to your loved ones to know they are acting in accordance with your preferences.

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Power of Attorney

A power of attorney names a person or people who you choose to speak for you financially, as your agent, during your life. If you have a power of attorney in favor of your ex-spouse, it is important to revoke it so it cannot be used by your ex-spouse in the future. The powers are broad and sweeping so it is important to name a person (or people) whom you trust.

Trusts

Some plans also include a trust or multiple trusts to accomplish a person or family's wishes. Trusts are useful tools for a wide variety of situations. A few examples of circumstances where are a trust or trusts may be helpful are: 1)keeping control of how your assets are used after your death or disability; 2) minimizing estate taxes; 3) creating a framework of rules for your bequest to your beneficiary (this is useful for many reasons including, for example, minor beneficiaries, disabled beneficiaries, beneficiaries who are not financially responsible, have mental health or addiction challenges and more); 4) as a way to leave assets to your current spouse but ensure that any remaining assets pass to your children from your previous relationship; and 5) to protect your bequest from your beneficiary's future potential creditors, including their spouse.

Planning after Separation

After a separation but before the divorce has been finalized, there are state specific rules that govern the changes you may make that will need to be honored.

Speak with your family law attorney or consult an estate planning attorney in your state to find out what documents can be updated during this period. Transferring assets or changing beneficiary designations may not be allowed, however, updating the names of the people you want to make decisions for you if you cannot make them yourself (for example your health care representative and power of attorney) may be possible.

Planning After Divorce

After your divorce has been finalized, it's important to update your estate plan. If your existing estate planning arrangements are in favor of your former spouse, now is the time to update it in accordance with your current wishes (and any obligations in your divorce agreement) to ensure that your ex-spouse does not inadvertently inherit your assets. Different states have different rules about the effect of divorce on estate planning documents that should be considered.

Beneficiary Designations

Often overlooked, beneficiary designations relate to assets such as life insurance, retirement benefits and other assets where you may designate in a binding way where that asset will go when you die. As part of updating your estate planning arrangements (especially after divorce), reviewing and updating your beneficiary designations is critical to ensure that your assets will pass in accordance with your current wishes. Updating your Will alone is not enough—assets with beneficiary designations on them will pass to the beneficiaries named in those designations even if they contain outdated or incorrect information. Different states have different rules regarding the effect of divorce on beneficiary designations—it is best not to leave the result to chance and ensure that your assets will go in accordance with your wishes on your death.

Special Considerations for Children

Estate planning for children requires careful consideration. Due to their age and rules that govern distribution of assets to minors, trusts are often used to plan for children's needs as they allow assets to be left for children but give a trusted adult (the trustee) control over the decision making. Trusts for children can run to a specific age or ages or be for the lifetime of a child. If you have a blended family, step-children, adopted children, children from a prior relationship, etc., it is critical that your estate planning documents accurately reflect your wishes and properly include (or exclude) children who do not fall within your state's definition of issue. This is of particular importance as several states have adopted the Uniform Parentage Act that expands the definition of children and issue to include many different types of parent/child relationships. Additionally, it is important to ensure that your estate planning documents include all of your children or specify that children born after the date of the Will and/or Trust are specifically included.

Lastly, as your children become grown or their needs have changed, you may wish to update the arrangements you have made for them in your estate planning documents. FA

LAUREN DAVIES (ldavies@pullcom.com) is an attorney at Pullman & Comley in their Westport, Connecticut, office. Her practice is focused on estate planning, trust and estate administration, and estate settlement.

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By Rose Vacanti Gilroy

Crossroads: The Many Choices on the Path to Parenthood through Assisted Reproduction

The path to parenthood through assisted reproduction has always required hopeful parents to make complex decisions. Today, advances in reproductive technologies, coupled with a resurrected politicalization of *in vitro* fertilization (IVF) and LGBTQ+ rights, challenge intended parents with more life-altering choices than ever before.

Access to a vast array of medical procedures and legal arrangements should be celebrated and can be exciting and empowering for intended parents, but the options often become overwhelming. While individual circumstances dictate which decisions an intended parent may face, this article highlights some of the possible considerations that could lie ahead.

Third-Party Reproduction Arrangements

Third-party reproduction refers to arrangements that involve an individual other than an intended parent in the reproductive process. Examples of third-party reproduction include sperm or egg donation and surrogacy arrangements. Some intended parents, and especially LGBTQ+ intended parents, know that their path to parenthood will inevitably involve a third-party, while others may have never considered the option before confronting the complex decision to pursue gamete donation and/or surrogacy. Either way, there are complicated choices inherent to the process.

Donor Gametes

Intended parents using donor gametes (eggs and/or sperm) to conceive must decide between a "directed" donation arrangement—i.e., when the donor and the intended parents are known to one another—and one in which the donor and intended parents are anonymous (at least at the outset). When best practices are followed, in either situation, intended parents will have access to medical, family, and genetic history of the donor, but with directed donation the intended parents may have additional firsthand knowledge of the donor, and the arrangement may enable other practicalities, including opportunities for multiple donations and streamlined sharing of information. Advances in commercial genetic testing—including ancestry.com and 23andMe—have undermined the possibility that any "anonymous" arrangement will remain so, which intended parents must consider.

The highly personal choice may be dictated by intended parents' intentions regarding future contact between themselves and/or their children and the donor, their desire for a genetic link to the donor (i.e., in the case of a donor who is a relative), and/or their interest in controlling the number of other recipient families to whom the donor donates.

Increasingly, donor-conceived individuals are speaking out about directed versus "anonymous" gamete donation, which can be instructive to intended parents. State laws may also factor into the decision, as some states have specific requirements regarding donor conceived individuals' access to their donor's information.

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There are also options for sourcing donor gametes when the donor is not known. Some intended parents may choose to work with a cryobank or donor agency, whereas others may obtain gametes through their IVF clinic's donor bank.

Surrogacy

From start to finish a surrogacy journey presents a host of considerations for hopeful parents: whether to match with a surrogate independently or through an agency; geographic proximity to a surrogate; whether a surrogate has been a surrogate before; a surrogate's religious beliefs if those beliefs could impact pregnancy decision-making, to name a few. Many intended parents pursuing surrogacy have never navigated a pregnancy themselves, which can make the multitude of choices even more daunting to navigate.

Intended parents who elect the agency route must next choose which agency to work with. This decision may be dictated by estimated costs, predicted wait times to match, and many additional factors. Concierge services are also increasingly available, presenting yet another option.

Intended parents who pursue an independent surrogacy journey may match with a surrogate on social media or on platforms specifically built to match intended parents and surrogates, or may prioritize working with a surrogate to whom they have a pre-existing personal connection.

Many surrogates live in states with restrictive abortion and selective reduction laws, calling upon intended parents to assess their personal comfort level with the risks of such limitations.

Embryos

Before undergoing IVF and creating embryos, patients must make dispositional elections at the fertility clinic about the fate of their embryos in case of divorce, separation, death, and/or incapacitation, which elections can include a decision to destroy or donate the embryos or to allow use by the surviving party. Patients may further choose to memorialize their elections in a freestanding embryo disposition agreement.

There is also the question of how many IVF cycles to pursue and how many viable embryos constitute "enough." Often, an (understandable) desire to increase the odds of a successful live birth will lead to the creation of surplus embryos. While hopeful parents may find comfort in knowing they have the option of multiple pregnancy attempts, more embryos remaining in storage means more dispositional decisions.

Finally, parents who create embryos must decide whether to perform pre-implantation genetic testing/screening on the embryos, and depending on the outcome of that testing, must make decisions about which embryos, if any, to transfer in hopes of achieving a pregnancy.

Choice of Law

Parentage laws pertaining to children conceived through assisted reproduction vary by state, as do laws defining "personhood" and reproductive freedoms. This results in choice of law considerations.

For intended parents who undergo IVF and create embryos, if the embryos are stored in a state where the laws regarding embryo disposition—and increasingly the concept of "personhood"—are uncertain, intended parents may face the choice of whether to transfer their embryos to a "safe-haven" state.

Intended parents who engage in third-party arrangements must also consider the varying parentage proceeding processes that exist state-by-state. Many states have adopted laws that allow intended parents to obtain a pre-birth order establishing their exclusive legal parentage of the subject child immediately upon birth. However, some states only allow for interim decision-making authority or post-birth establishment of legal parentage, and in certain circumstances, the ability to obtain a pre-birth order can vary by county. Intended parents must weigh these factors, which can also be impacted by sexuality and marital status, when deciding in which jurisdiction to pursue third-party reproduction.

Conclusion

Some of the choices hopeful parents face when on the path to parenthood through assisted reproduction have a clear answer dictated by law. However, most considerations are highly personal and lack a "right" answer. Arguably, the most important decision intended parents can make is to surround themselves with knowledgeable professionals who can provide guidance throughout the process. FA

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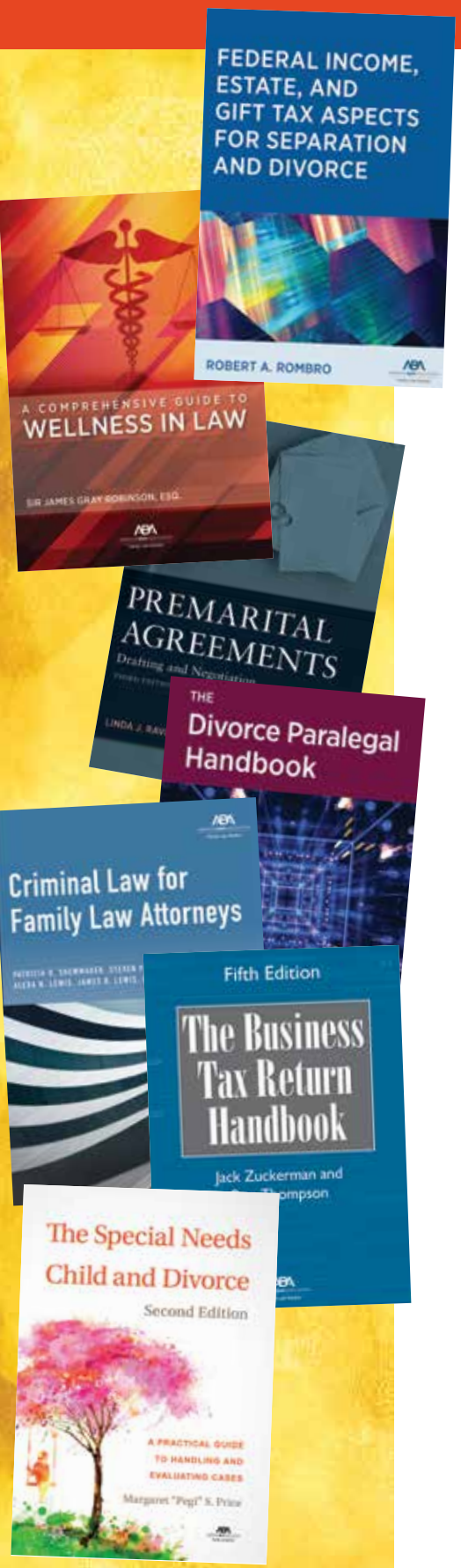

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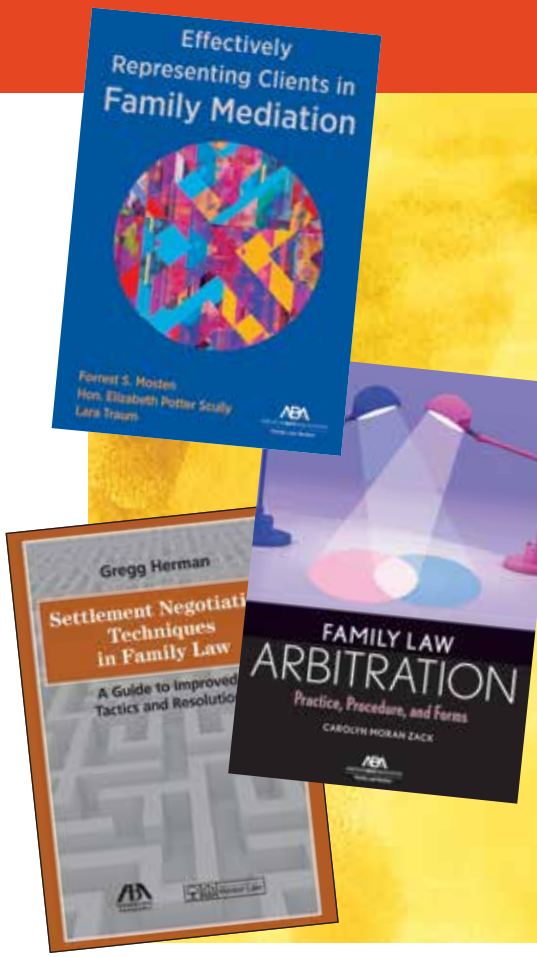

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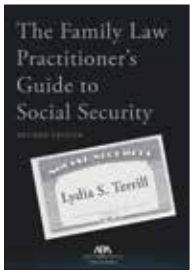

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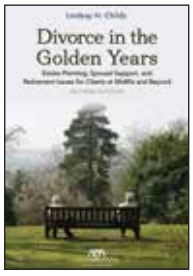

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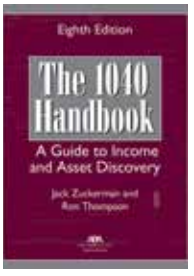

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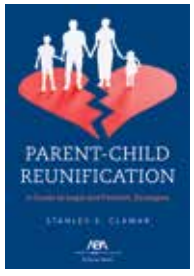

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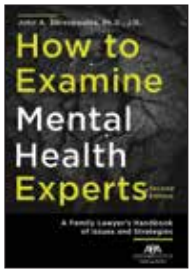

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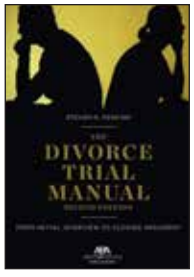

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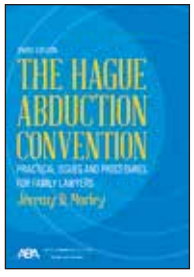

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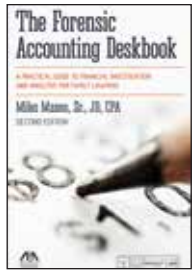

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Chlece Walker-Neal-Murray Named 2025 Jean Crowe Pro Bono Award Recipient

Chlece Walker-Neal-Murray, JD, MSW, MS is the Co-Founder and Executive Director of Chicago Advocate Legal, NFP (CAL), a nonprofit law firm created to expand access to justice in family law for low-income and underrepresented populations. For over a decade, she has provided pro bono and low-cost legal services to families navigating domestic relations, child welfare, and parenting disputes, often in communities where legal resources are scarce. Chlece has also been a longtime volunteer with Chicago Volunteer Legal Services (CVLS), serving as both a Guardian ad Litem and Child Representative. Through her career and volunteer commitments, Chlece has shown sustained commitment to protecting the rights and well-being of vulnerable children and families. Through Chlece's leadership, CAL has received grants from the Illinois Chapter of the American Academy of Matrimonial Lawyers, the Illinois Lawyers Trust Fund, and the Polk Brothers, to name a few. Currently, Chlece plans to lead CAL into create a supervised parenting time agency, targeting low-income families.

Beyond the practice of law, Chlece is the creator of the Preventative Law Initiative (PLI), an exploratory model that uses legal education, cognitive-behavioral tools, and anticipatory planning to reduce court involvement and promote self-advocacy, particularly among Black families and low-income parents. PLI reimagines how legal services can be delivered through community workshops, peer advocacy, and technology-driven early intervention, helping people navigate conflict before it escalates into crisis and court involvement.

Chlece is also a doctoral candidate in social work at the University of Illinois-Chicago, where her research focuses on health equity and access to justice in domestic relations courts. In addition to being a volunteer with CVLS, Chlece is also an approved court-appointed Guardian ad Litem and Child Representative in the Circuit Court of Cook County, where she brings a trauma-informed and equity-centered lens to every case.

Her work reflects the spirit and legacy of Jean Crowe, who fiercely advocated for those most overlooked by the legal system. Like Jean, Chlece integrates deep community commitment with visionary leadership—fighting not only for individual clients, but for systemic transformation in how the law serves those it too often fails. Her work goes "above and beyond," not just offering representation, but building structures for sustainable, dignified justice.

Chlece did not simply fall into her career. On the contrary, her commitment to advocating for low-income and underrepresented populations guided her throughout law school and her master of social work program, but also into obtaining a Master of Science in Software Engineering, specifically to learn how to design online tools to improve outcomes for self-represented litigants.

Furthermore, Chlece's enate ability to completely immerse herself into the spirit and legacy of Jean Crowe, has also led her to be an adjunct faculty member of Loyola University Chicago (LUC) School of Law and previously as the Child Trafficking Coordinator of the Center for Human Rights of Children at LUC School of Law. Previously, Chlece was awarded the 2022 Illinois State Bar Association Young Lawyer of the Year and the 2021 Loyola University Chicago School of Law Public Service Merit Award. FA

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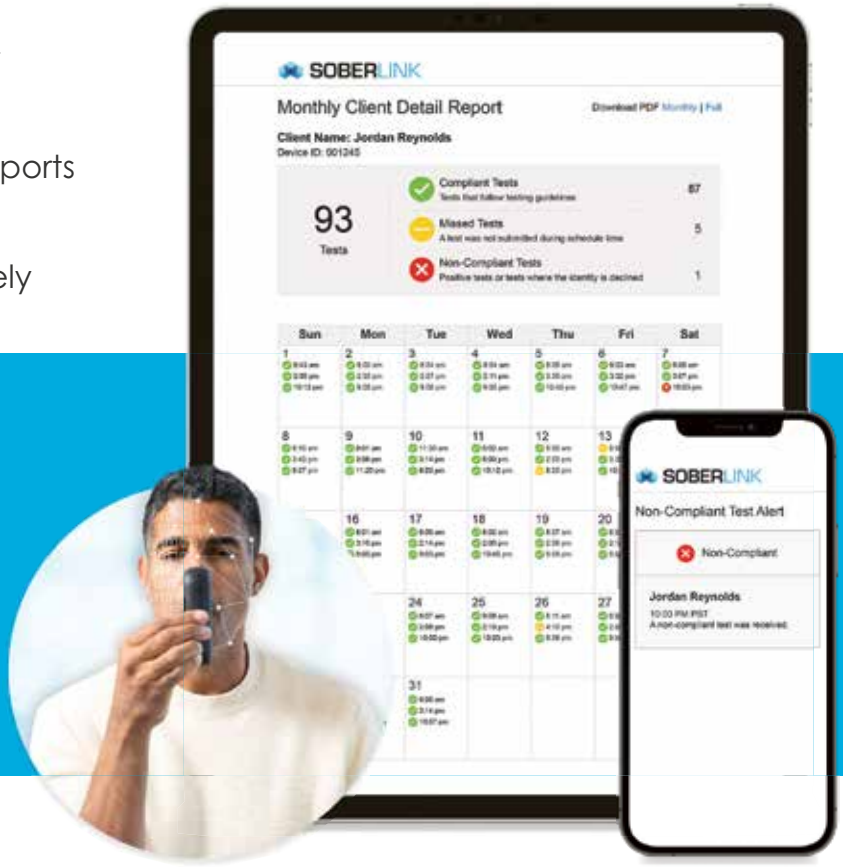

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