

DIVORCE MAGAZINE – FAQs AND ANSWERS

LEGAL ISSUES

- ? **“I’m considering hiring a family law lawyer who doesn’t come across as a good negotiator, is that an important consideration when hiring a family lawyer?”**

You should not hire a lawyer that is not a good negotiator. Even though family law cases tend to be litigated, over 90% of family law cases are ultimately settled and do not go to trial. You must hire a seasoned, experienced family law specialist to represent you to obtain the best possible outcome in your divorce case and the art of negotiation is the most important skill this family law lawyer should have.

Typically, cases get settled at four way meetings, at mediations, in settlement conferences and other similar types of mediation settings. The skilled, negotiating attorney will have all of his/her discovery completed, have updated values of all assets and debts, know the intricacies of the incomes of the parties and be otherwise as prepared as one could possibly be both prior to and during the settlement meeting. This way, the attorney will have the maximum amount of leverage possible to put your position in the best and most favorable light. In short, the attorney must have “all of his/her ducks in a row.” Armed with this preparedness and leverage, the other side will become fearful to go to trial since their attorney is not as nearly prepared. With these forces in play, your attorney will present an air of confidence that the issues will prevail in your favor at trial. This is the best way to induce the other side into folding thereby resulting in an extremely favorable result for you.

- ? **“My spouse suggested we have a trial separation and I’m wondering if there’s anything I need to do to protect myself in case we do eventually get a divorce?”**

I have seen some of the worst situations occur as a result of a trial separation. If you have children and move out of the home based upon what you believe to be a trial separation, the spouse in the home can file a petition to dissolve your marriage and then automatically have primary physical custody since it would be virtually impossible for you to move back into the house since you are living somewhere else. In effect, this could cause you to lose custody. During a trial separation, you are still married. Therefore, one of the spouses could run up all the bills and leave you with half since this would still be a debt incurred during the course of the marriage for which both parties are equally responsible. During a trial separation, you could lease an apartment and be responsible for the rent and still be equally responsible for the mortgage on the family residence you left thereby creating an impossible financial situation for you especially if you live pay check to pay check. Since divorce cases sometimes take in excess of one year to fully adjudicate, this could leave you in an economic mess for quite some time.

There are many more scenarios. The best way to protect yourself from these types of events is to have a written agreement with your spouse during the “trial separation.” The agreement should involve a detailed parenting plan setting forth the days and times when you see the children and when your spouse sees the children. An agreement on payment of support should be set forth. There should be a written agreement setting forth what debts each spouse will pay, including the rent, the mortgage, the credit cards and the like. There also should be an agreement that neither party will incur extraordinary expenses or incur out of the ordinary debt during the trial separation process and if they do, the incurring party would be responsible. In short, before the trial separation process, you need to hire an experienced, seasoned family law specialist.

? **“My ex-wife and our two kids have moved in with her boyfriend. Do I still need to pay alimony (spousal/maintenance support) and child support?”**

You need to continue paying the support order in place unless and until you obtain a court order modifying it. Therefore, the mere fact your ex-wife may have moved in with her boyfriend, does not result in an automatic modification of the then existing court order. If you file a Request for Order based upon these facts, you must prove that the boyfriend is supporting your ex-wife. Under the code, there is a presumption that if a supported spouse resides with a person of the opposite sex, it is presumed the person of the opposite sex is supporting the supported spouse thereby decreasing the need for support. However, you would need to prove that the boyfriend is in fact paying the expenses of the supported spouse and your children. In such an event, additional income can be imputed to the supported spouse thereby possibly decreasing the amount of money you are ordered to pay the supported spouse. However, this is very difficult to prove since you don’t live in the household and usually in these type of situations, the parties hide their expenses well and make sure the finances are kept separate. Before going to court or before stopping payments, you need to consult with an experienced family laws specialist to give you the appropriate advice on your particular situation.