BEAN KINNEY & KORMAN PC
ATTORNEYS

The Seven Things You Wish You Knew At the Beginning of Your Divorce

ATTORNEYS

Christian Lapham

RELATED PRACTICE AREAS

Domestic Relations

Christian Lapham
BKK Family Law Newsletter
October 2015

In my spare time, I host a workshop on the separation and divorce process, bringing together professionals who help people through this difficult time in their lives. From therapists to financial planners, private investigators and me, the lawyer, we try to provide helpful information for the participants who are beginning this journey so they can learn from the mistakes we have seen others make. Often, other speakers have themselves gone through the process. When such a speaker attends, he or she almost always says, “I only wish I had attended a program like this prior to my divorce.”

In this spirit, I would like to provide seven important things that everyone should know before they go through this process, in chronological order as the process unfolds:

1. Know what you have.

Many people come to see me with no idea as to the nature and extent of their assets, or even how much they or their spouse earn. This is not an insult: it is very common that one spouse is responsible for keeping track of the family assets and paying the bills and the other is responsible for other family functions. However, if separation and divorce is imminent, it is incumbent upon you to figure out as soon as you can what you have, what you earn and what you owe. If you have a financial advisor or planner, ask for the most recent asset and debt spreadsheet and obtain the last three tax returns. If you have recently applied for a loan to purchase real estate or for your or your spouse’s business, try to obtain the personal financial statement or loan application. Your attorney will be able to ultimately get this information, but it will be expensive to gather once the parties are in court. In addition, the legal advice you receive even in that first consult with your attorney will be far better if your attorney knows what all of the assets, debts and incomes are.

2. Your selection of attorney matters.

Sure, I am biased. This is my profession. But I can tell you from seeing how my cases turn out that there are cases in which the result in court or out of court mirrors what I reasonably expect would occur at the onset. There are also other cases in which the result for my client is far better because we face inexperienced or ineffective counsel. There are many fine family law attorneys, but like every profession, there is a broad spectrum of talent. Hourly rate is not the determining factor: there are some fantastic family law attorneys who are young and therefore less expensive. You want value out of your counsel. In the initial interview, don’t be afraid to be assertive. Their practice should wholly consist of family law. They should be a good match in personality. They should know their subject matter inside and out. They should be in court frequently - at least three to five times per month or more. How we think a judge will rule guides how

we as attorneys negotiate out of court because the only other alternative to a negotiated settlement is a trial.

3. Your game plan matters.

In your initial consult, you should have a clear understanding of what the process looks like. What will your attorney do in the first 1-2 weeks? What happens after that? What will you be doing? This is critical. This game plan could mean a difference of tens of thousands of dollars. A fault-based divorce in which a judge must decide every single issue will often cost over $100,000. Many clients think about the initial retainer as a function of the cost of the case. This bears little relationship to the overall cost. If the case can be resolved for the same or similar result as you can obtain from a judge and you save $80,000 to $100,000 in attorney's fees, why wouldn't anyone do that? Never be the client who says "I would rather spend two dollars on you than give a dollar to my spouse." Never put your attorney's children through college and take out loans to do the same for your own children.

4. If you have children, don't engage in a campaign to "be done with your spouse".

This is a common misconception. This person does not need to be your best friend. But if you have children, you cannot surgically remove this person from your life. You will be raising children with this person every year until your child turns 18. And guess what? After eighteen, you are still stuck with them, because they will be at your child's graduations, wedding and the birth of your grandchildren. Do you want those moments to be happy ones, or unbelievably awkward ones? Do you want your child to have to think about how to deal with his or her dysfunctional parents on one of the happiest days of his or her life? You don't have to capitulate to their every demand. You can be firm, protect your child's best interests and not engage in a villainizing campaign against the other party. This is not only good life advice, it is good legal advice. Judges abhor acrimony between parents, particularly when it impairs the parent's ability to put their children's best interests first. This is a critical factor in the child custody statute in Virginia and one which judges carefully consider in all custody and visitation trials.

5. Sometimes, a waiver of spousal support makes a lot of sense for both parties.

This is hard to believe for the party who is entitled to spousal support. Let's say you have been married for 40 years and your spouse is 65. He or she earns over $500,000 and you have not been earning income for over twenty years. The conventional strategy is to seek and receive a permanent but modifiable spousal support award, which is an award of an indefinite duration which can be modified or terminated by agreement or court order only. In such a case, two things are guaranteed to happen: 1) you will be taxed on those spousal support payments as such payments are taxable as ordinary income and 2) you are setting both you and your spouse up for litigation when he or she retires and attempts to modify or terminate his spousal support obligation. Permanent spousal support awards benefit lawyers because it guarantees us business. We know there will be at least one more time, and probably multiple more times, in which you will need our help to negotiate a reduction or termination of spousal support. Most clients don't consider this hidden cost when arriving at a permanent award of spousal support.

6. If you want to send an angry email/text/letter/smoke signal to your spouse, take a deep breath and don't send it.

Cases are won and lost based upon nasty emails. Imagine how poorly you would be judged by someone who witnesses your worst two minutes in the last two years. This is how an email works. Unless you have that Google program with the "delayed send" feature, it is out there, and you will be judged on it. Don't give the other side this advantage. Communicate with your spouse as if the presiding judge is cc'd on your email.

7. Relatedly, shut down or minimize your social media accounts.

The Seven Things You Wish You Knew At the Beginning of Your Divorce (Cont.)

Respectfully to all of you on social media out there who might be reading this in the blogosphere, there is a culture of oversharing which is encouraged by social media. Running times. Pictures of your dinner. Thoughts about Benghazi or Kim Davis. Oversharing is a killer in family law cases. "Thank God my husband left the house, now I can start dating in peace" is not a good status on your Facebook account. Why do I suggest shutting it down altogether? Let me give you an example: in a gesture of support, a Facebook friend posts the following on your wall: "I heard Brian finally left the house. Thank God that snake is out of your life and your children's lives forever." You then "like" this comment. If your life were a movie, the next clip would be Brian's attorney cross-examining you on the witness stand and you sinking into your seat, stammering about how you just wanted to make your friend happy. Your best bet is to just shut it down. Don't worry, Facebook, Snapchat, Instagram and their successors will all be waiting for you when your legal process is final.