

Divorce: To Fight or Not To Fight... Your Wallet Wants To Know

I am sure when William Shakespeare wrote "To be or not to be" in the immortalized 'Hamlet' he never thought how profound that question would become. More importantly, how it would be adapted to different situations throughout time.

In the world of divorce the idea of "To Fight or Not To Fight" constantly rattles around a divorcee's head. The desire to draw out the divorce process any longer than it needs to be or to squabble over the "small things" makes fighting a lot less desirable. Especially considering fighting rarely benefits the couple.

But definitely benefits the attorneys...

This is when we need to peel back the pros and cons of fighting in a divorce so you can assess how big, or little, of a fight you want to pursue in the divorce. To do that we are going to cover two perspectives: the financial impact argument and the cost argument.

The Financial Impact Of Divorce

It goes without saying that divorce can get pretty messy and seems to cost an insurmountable amount in the moment. Between the assets you split and the fees you pay to the professionals you hire it can feel like you walk away with less than half of what you had when you were married.

This makes me wonder, "How should one evaluate the financial impact of divorce?"

When a client approaches me to be their [Certified Divorce](#)

[Financial Analyst](#) (CDFA) one of the first requests I make of them is to outline three outcomes they feel they can live with when the divorce is finally over. I tell them I want to see the 'best case', a 'middle fo the road', and their 'walk point'.

The benefit of outlining their outcomes this way is to set the expectations for how the divorce proceedings may go. Setting expectations amongst all involved parties allows the client, their attorney, and myself to start from a place of strength. Fundamentally, knowing what to fight for can help in the negotiations...

How?

Well if the attorney is worth the money you are paying them then they are skilled in the art of negotiation. This means they should be able to uncover what the other side is interested in, decide what you are willing to offer, and position a beneficial solution to the other side.

In the book "[Getting To Yes](#)" by Roger Fisher and William Ury, the authors explain that in order to reach an optimal outcome both parties will need to come together to find a desirable outcome. However if done correctly any concessions you make should not feel like a concession.

Throughout the negotiation process you, your attorney, or your CDFAs need to continue assessing the settlement options. If you lose track of where you are, as it relates to the three outcomes, you may find yourself left confused and unsure if you are moving toward one of your three outcomes.

How To Create Three Outcomes

I would like to tell you there is a simple formula. One that you could plug in a few facts and figures and out pops the desirable outcome on the other side. In reality to create your three desirable outcomes you need to ask yourself a list of

questions. Questions like:

1. If you could waive a wand and have the exact divorce outcome you want, what would that look like?
2. Knowing material items are just that – material – how important is it to fight over your various belongings? Based on the answer, what priority would you assign to the various pieces (i.e. highest to lowest)?
3. If you knew fighting for an item may lead to higher attorney fees, how hard would you fight for the item(s)?
4. If you could pick a middle of the road outcome, one that you could “live with”, what would that look like?
5. If pursuing something extended the divorce process and increase the total attorney fees, would you still pursue the fight?
6. At what point do you decide to just “walk”? In other words, what would need to be offered to say “I accept” and will walk from the rest?

Addressing each of these questions, along with many more, can be immensely helpful in creating the desirable outcomes AND will help you introspectively reflect on what you want, or need, to start the next phase of your life.

After the questions are asked, and answered, then you will need to start compiling the appropriate financials to outline how to arrive at your three desirable outcomes.

The Divorce Fees You Pay

It amazes me to think it costs more to unwind a marriage than it does to get married. With [weddings averaging \\$19k to \\$30k](#) in expenses the fees associated with divorce can run about [the same as the wedding](#) but can have a much larger affect on your wallet when you factor in dividing assets.

This poses an interesting question, “If the divorce rate is nearly 50%, depending on demographics and the geographical

part of the country, why wouldn't more people incorporate a prenup into their wedding vows?"

The answer I hear a lot, "marriage is about love and wanting to spend the rest of our life together. Asking my spouse to sign a prenup is like telling them I do not think we are going to last." While I understand the emotional element to marriage and the desire to share everything with a loved one, a marriage is a contract (hence the marriage license) which means it needs to be treated as such.

I know... I know... you are probably cursing me out and calling me cold hearted. Look I am not a cynic. I plan to get married again in the future but I want to make sure that everything I have built and all that I earn during the marriage is credited to me. Not necessarily to "us".

Too many times have I watched one spouse contribute more to a household financially while the other spouse did nothing to "pull their weight". Before I receive hate mail let me explain.

When one spouse works to take care of the family outside of the house and the other takes care of the family inside of the house then there is a strong argument for an equal division of labor. BUT at the moment you say "I do" there is no way to know what the roles in the household will be in the future or what the economic contributions will be. Therefore to protect BOTH parties, and the value they individually contribute to the household, an agreement needs to be made – in writing – that spells out what happens in the event of a dissolution.

To take it one step further the document both of you sign can have an exit clause that states something to the effect of:

"In the event one party contributes more than X% to the household's finances, the other party is entitled to an amount not exceed Y%".

This way the other spouse understand there is division of labor but the labor was not equal. Writing the clause in a manner like this works for both people because if party A financially contributes a larger percentage in the earlier years but party B contributes more in the later years then both parties can quickly tabulate the total financial contribution to the household and the corresponding percentages. The only caveat needed would be to assign an inflation rate to the income in order to calculate all income on an inflation-adjusted basis rather than in absolute terms.

While the preceding paragraph is an example of what a couple could do to draft an exit clause, there are many other ways to draft it. My interpretation of the exit clause should not be construed as legal advice. Instead I am only sharing an example of how some prenup agreements I have read are written. Furthermore, since different states interpret and enforce prenups differently, you want to be careful not to make your prenup so restrictive that it could be perceived as unfair at the start. I have witnessed this kind of situation with clients in community property states.

Divorce Attorney Fees

Throughout the divorce proceedings an individual, or couple, may hire a number of people to assist their divorce attorney in successfully arguing their client's perspective. In some cases I have seen multiple therapists, outside counsel, accountants, and auditors employed to argue a client's case. As you can imagine the messier the divorce the more people may be brought in to build a solid divorce defense.

However, what may be lost on many people is the expense of the attorney. For example, in some of the most basic cases the attorney provides a "boiler plate" defense (as described by some attorneys in confidence). They still work in the client's best interest but if the meter isn't running or isn't anticipated to run then the divorce advice may not be as

creative or colorful.

In fact, attorneys are in the business of maximizing revenue to themselves and their firm which means they manager their caseload based on the revenue they can generate. This means that those who may pay \$5,000 to \$10,000 in legal fees will receive some attention but not necessarily the same thoughtful and creative divorce advice as someone paying \$50,000 in legal fees.

So if divorce attorneys gauge their engagement based on how much lines their pocket's then are they incentivized to stretch out the divorce process? In other words, while no one will ever say they want their clients to continue suffering, why would an attorney want a quick, non-emotional divorce? The short answer: the messier and more emotional the better for the attorney.

This inherently begs the question, is there a better way?

Unless you are willing to file "pro se", where a couple drafts and files their own papers – which is not necessarily advisable – then the divorce attorney and judge are the gatekeepers to moving on.

Sadly, until attorneys are willing to fight for their clients on a flat-fee retainer basis they will continue making money off the misery of others and benefit the longer the process drags on for.

Conclusion

There is no perfect answer to marriage. I mean sure it would be great to believe that marriage is eternal for everyone, and people never fall out of love or ever drift apart. But the reality is, divorce rates have only declined slightly over the last thirty years, and that is due to marriage rates declining slightly over the same period.

No one wants to notch a divorce in their belt, but if you are going to get married, or are married, some serious consideration should be given to completing a prenuptial, or post-nuptial. Doing this when both of you care for the other is better than when tensions are hot and an attorney's meter is running. Why pay for the cost of two weddings when you could pay a fraction of that for a prenuptial or a post-nuptial which spells out how BOTH individuals will be protected over the rest of their life?

The opinions voiced in this material are for general information only and are not intended to provide specific individualized legal advice or recommendations for any individual. We suggest that you discuss your specific situation with a qualified legal advisor.