

*The legal component of the parenting course shall provide general family law principles. The presentation of this material is not intended to constitute legal advice. Parents should consult with a licensed attorney for answers to specific legal questions.

Understanding Court Procedures and Financial Responsibilities

In all actions for legal separation, the court, in its discretion, may equitably divide, distribute, or assign the marital property in whole or in part, or reserve the division or assignment of marital property until a later time. If the court makes a final distribution of marital property at the time of the decree of legal separation, any after-acquired property is separate property.

“Marital property” means all real and personal property, both tangible and intangible, acquired by either or both spouses during the course of the marriage up to the date of the final divorce hearing and owned by either or both spouses as of the date of filing of a complaint for divorce, except in the case of fraudulent conveyance in anticipation of filing, and including any property to which a right was acquired up to the date of the final divorce hearing, and valued as of a date as near as reasonably possible to the final divorce hearing date.

One or both parents retaining an attorney or family mediator usually begins the legal process of paternity or divorce cases. Some couples inform their attorney from the start that they want a fair and equal settlement and to minimize conflict. This approach is recommended as to help accomplish this, find an attorney accustomed to working this way. One who helps mediate differences and works toward collaboration and compromise. This will be in everyone’s best interest. A way to choose an attorney is by getting a referral from a trusted friend or colleague. You will probably want to interview several attorneys, making sure you feel comfortable with their approach. Do not feel bullied into retaining an attorney not to your liking. Many attorneys will do an initial consultation for free, so you can decide if they will represent you effectively given the specifics of your situation.

Parents proceeding with the dissolution of marriage or legal parental responsibility requires that they begin dealing with some potentially challenging issues. These include financial support, visitation, and dividing up marital assets. In many instances, parents settle these issues on their own or with their attorneys’ assistance outside of court. Family-court judges prefer that divorcing parents settle their issues before reaching the courtroom, reserving formal trials as a last resort.

Should we use a Mediator?

Mediation is a common alternative couple's use to keep their legal fees under control. A neutral party is used to help both individuals reach an agreement regarding the terms of their separation. The time it takes will depend heavily on the details of your case and how quickly you and your co-parent want to move forward.

While many people still opt to retain their own attorneys, more and more couples are looking for alternatives to the traditional adversarial court battles. Today, many couples consult family mediators to assist with sensitive child-sharing and custody arrangements. Mediation is the process of finding a mutually acceptable settlement to the disputed issues. It is a cooperative method whereas hiring separate attorneys often sets off an adversarial process. Mediators are individuals who have specialized training in conflict resolution, and they can either be court appointed or retained directly by each parent

The mediator's job is to help couples resolve their various logistical sticking points without getting bogged down in personal conflict. In a safe, non-threatening environment, an effective mediator will help identify important issues, consider both parents' perspective and opinions, and ease conflict around differences or painful topics. When parents begin old patterns of arguing and disagreeing, a skilled mediator will keep the focus on the issues at hand and remind parents that attacking one another is not helpful to the mediation process, nor to the health and well-being of their children. According to a recent CBS news story, 96% of all divorces filed never go to trial but are settled beforehand. Therefore, if you can work from a reasonable balance of power and compromise, it makes sense to work out your settlement together with a skilled negotiator, rather than under pressure from the court.

Stages of Mediation

Mediation is a multi-stage process designed to get results. It is less formal than a trial or arbitration, but there are distinct stages to the mediation process that account for the system's high rate of success.

Stage 1: Mediator's opening statement. The mediator introduces everyone, explains the goals and rules and encourages each side to work cooperatively toward a settlement.

Stage 2: Disputants' opening statements. Each party is invited to describe the dispute and its consequences. When one person is speaking, the other is not allowed to interrupt.

Stage 3: Joint discussion. Some parties may respond directly to the opening statements in an attempt to further define the issues.

Stage 4: Private caucuses. The private caucus is a chance for each party to meet privately with the mediator in separate rooms. The mediator will go between the two rooms to discuss the strengths and weaknesses of each position and to exchange offers. These private meetings are crucial in the mediation.

Stage 5: Joint negotiation. After caucuses, the mediator might bring the parties back together to negotiate directly, but this doesn't usually happen until a settlement is reached or the time allotted for the mediation ends.

Stage 6: Closure. If the parties reach an agreement, the mediator will likely put its main provisions in writing and ask each side to sign the written summary of the agreement. If the parties didn't reach an agreement, the mediator will help the parties determine whether it would be fruitful to meet again later or continue negotiations by phone.

To find out more about mediation and where to find one, ask your attorney, the court clerk, or your local bar association.

Who pays child support?

Upon final judgement, whether dissolved absolutely or by a perpetual or temporary decree of separation, the court may make an order and decree for the suitable support and maintenance of the children by either spouse or out of such spouse's property, according to the nature of the case and the circumstances of the parties, the order or decree to remain in the court's control.

Regardless of who has parental responsibility, child support is based upon a shared income model of calculation. Therefore, the income of both parents will be factored into the determination regarding the amount of child support necessary to cover the basic needs of the child or children.

There are a few ways that the spouse that owes child support can pay the other spouse. You make your choice on the Parenting Plan form. You can agree that the child support will be paid using one of the ways below.

- The spouse that owes child support will pay the other spouse directly, OR
- The spouse that owes child support will pay the child support to the State's Central Child Support Receiving Unit. Then the Central Child Support Receiving Unit will send the support to the other parent, OR
- The child support will be paid by Wage Assignment Order. A Wage Assignment Order is where the child support is automatically taken out of the paycheck of the spouse that owes child support, OR
- The spouse that owes child support will set up a direct deposit to the other parent, OR Other arrangements that the court can approve.

Should a parent refused to allow parenting time if child support is late or unpaid?

No, it is never recommended child support and parenting time be contingent upon one another. Parents are not permitted to make decisions regarding withholding parenting time it has been previously ordered by the court.

How do I handle my ex's failure to make timely child-support payments?

One potential problem with respect to finances involves late payment or non-payment of child support. While it is tempting for parents to consider withholding visitation rights in this circumstance, it is never a good idea. Experts agree that withholding visitation does children more harm than good, and it risks getting yourself into legal trouble as well. Instead, you should attempt to resolve the matter with the other parent directly. If you are unsuccessful, consult an attorney to help enforce correct and timely child-support payments. Be aware that you still have a responsibility to your children as you are dealing with stressful financial situations. Realize that your children will be aware of your angry feelings, even if you do not openly bad-mouth the other parent. Children of all ages know how parents feel toward one another, regardless of what is said.

Final Judgment

The final judgment is a document signed by the judge, officially ending the marriage and defining the terms of the divorce by court order. This document specifies:

- *Division of assets and debts
- *Parenting time responsibilities
- *Alimony and child-support payments, where applicable
- *Responsibility for financial issues like provision of health insurance and life insurance
- *Financial and legal rights like visitation and tax exemptions
- *Other issues that can vary from case to case

Parental Alienation

Parental alienation is a process that can occur between two parents who are consciously or unconsciously trying to influence the children at the emotional expense of the other parent. Named by Dr. Richard Gardner, Parental Alienation Syndrome (PAS) is a distinctive family response to divorce in which the child becomes aligned with one parent and preoccupied with unjustified and/or exaggerated denigration of the other parent. In severe cases, the child's once love-bonded relationship with the target parent is destroyed. If, however, the reason(s) for the alienation can be substantiated by documented abuse or neglect, then the alienation is necessary for the child's safety and well-being, and PAS would not be an appropriate designation or explanation for the children's feelings or the alienating parent's actions.

How do we begin to separate financially?

When a romantic relationship ends, it means more than physically separating as a family. It also means separating your family finances. Both types of separation can bring great emotional stress. You will be better off financially, however, if you can keep your emotions from influencing your financial decisions. At the very least, you will be able to make better financial decisions for yourself and your children. The following information will help familiarize you with some issues that accompany the division of finances during a divorce. It is not intended as a complete guide or as a substitute for legal or financial advice.

During a partnership, one party usually takes primary responsibility for managing finances and keeping financial records. If you are not well informed, this is your opportunity to be involved in your financial affairs. Many people feel anxious when considering finances, but realize that it is mostly about gathering information and making decisions. The sooner you begin participating in your financial decisions, the sooner you will have the peace of mind that you are taking the necessary steps. Remember, knowledge provides you with a more realistic view of your financial situation as decisions are made. Even in 'friendly' divorces, you should not rely on fate to determine what do about shared property or joint accounts. Be aware that accounts shared jointly can be accessed by both parties. In addition, each person authorized to use a credit card can run up an extensive bill. Try to be objective about your situation and use some common sense. Your immediate goal is to reduce your financial ties to the person you are separating; your ultimate goal is to create two financially separate households. While it is usually impossible to sever all financial ties, you can greatly reduce the areas where you are at risk. Seek the advice of an accountant or financial planner to help you learn about various financial issues.

How do we divide property?

In general, each person is entitled to an equitable or fair distribution of the property. Property includes automobiles, homes, and furniture, in addition to possessions such as cash-value insurance policies, pension funds, savings accounts, etc. As you negotiate the division of property, think about your needs and the needs of your children, as well as the financial consequences of your decisions. Frequently, material items that you valued during your marriage may have little value once you are divorced. It is not uncommon for people to

spend a great deal of time arguing over material possessions. It can also be a ready-made battleground for continuing past marital arguments. Choose your battles carefully, and realize that you will be making some concessions when it comes to material possessions. Ultimately, you and your children will be better off if you can minimize the conflict around dividing property and material possessions.

How should we deal with debt?

When you divorce, you divide not only property, but debt as well. In general, you both are responsible for paying any debts acquired during the marriage. Managing debt issues carefully during the divorce process may lead to less conflict and a more stable environment for you and your children. You should act promptly to close all joint credit cards or other lines of joint credit. Be sure to establish credit in your own name before doing so. Often, you can open an individual account when you close a joint one. A credit card can help you through some short-term emergencies during the divorce transition. However, avoid saying, "charge it," rather than making necessary cuts in spending after divorce. Make a list of the outstanding balances on any credit cards or other debts. Get the address of a credit bureau from the phone book and request a credit report to make sure you are aware of all open accounts. Once the divorce is filed, debts should be divided between you and your spouse, and each person should be responsible for payment of his/her debt.

Remember that even after the divorce is final, creditors may attempt to collect on debts from both partners. A decree will be honored by the courts, but it may not matter to collectors—their goal is to collect the money. It is not always possible to remove your name from a joint debt until the debt has been paid in full. Finding out what your options are and remaining aware of your financial situation can help ease the financial separation that comes with the divorce process. This process will take time, but the payoff is a brighter financial future.

In summary, be aware that finances are a big consideration when separating. Parents who can discuss financial issues calmly and fairly will ultimately save money. Remember to get professional advice where appropriate. In addition, realize that your children will fare much better and feel more secure when they see you handling adult matters (such as financial issues) with fairness, dignity, and respect.

Case Study

One of the most difficult issues to navigate when going through a divorce is the legal side of things. A few years back I had a case involving Damien (31) and Michelle (29). They had been happily married for seven years before it was discovered that Michelle had been having a long-standing affair with a co-worker. Damien was furious and underneath the anger, of course, was hurt. After a brief course of ineffective traditional marriage counseling, he decided to file for divorce.

Like many people in this situation, Damien sought out an attorney. However, he first asked his brother to act as a mediator since he wanted to reduce legal costs as much as possible. Fortunately for Damien, his brother was training to be a lawyer, and so had at least some familiarity with legal matters.

Damien and Michelle had just had a newborn baby a few months before the revelation of the affair, and so, on the suggestion of Damien's brother, they sought out counseling. Not to figure out how to stay together, but rather to figure out how to transition out of the relationship in a loving and healthy way. Although this was both of their stated wishes, their initial presentation was that they were headed for a very contentious divorce. It soon became apparent they had marital issues long before the revelation of the affair.

Like many couples, Damien and Michelle came in with their own ideas about custody. They soon learned that in their state, there was no such thing as sole custody but rather shared parental custody. We also discussed various issues related to visitation schedules and finances. I told Michelle, like I tell all couples in divorce counseling, they can decide some of these issues themselves, or pay to have attorneys help decide for them. I also reminded them that they would be more likely to stick with a system of their own construction, rather than one that was imposed on them from attorneys.

So much of Damien's initial anger and frustration was because he was hurt by Michelle's affair. We openly discussed the affair in ways that allowed Damien to express his emotions. At the same time, Michelle got the opportunity to discuss how she felt pushed to look outside the marriage to get her needs met. These were difficult conversations, fraught with a lot of intense emotion and they took a lot of courage to have. However, it was important that they arrive at some understandings to allow them to move past a very painful situation. It was through these conversations that this couple was able to realize the opportunities available to them as parents as they strive to be happy. They were able to clear away the hurt and frustration and this couple was able to make great strides toward providing a stable environment for their child, as well as themselves.

This couple also used our counseling sessions to talk about some serious issues concerning how best to raise their daughter. At first I was worried that they were a little immature, but I came to realize they were just in shock at how fast their marriage had disintegrated after making such a large commitment to raise a child together. Whenever I find myself judging clients, I am reminded that divorce takes people and sometimes causes them to do destructive things. It is the process itself, that can take otherwise responsible people, and reduce them to making poor choices for themselves and their children. Once Damien and Michelle both realized the severity of the situation, they decided it was best to divide up assets based on the needs of their newborn. This drastically reduced the tension between the parties, and from there, a firm basis for dialogue was soon established.

Damien set out immediately to find work in order to be able to pay child support, but to also clear the debt the couple had accumulated over the years. Although the parties retained a cold personal relationship, they had finally learned how to deal with one another in a formal, official capacity as the parents of a young child.

During my sessions with this, couple Damien missed one payment, and Michelle feared he had gone off the rails. I arranged another meeting, and found out that Damien had lost his job. With a few more sessions he was energized again, and quickly found employment. Upon a 6-month follow-up, he had not failed to meet another obligation or payment related to his daughter Macy (now age 2).

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