



# IMPORTANT QUESTIONS THAT CLIENTS MOST FREQUENTLY ASK

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## Why Me Queries?

Hanging in my office as you approach the front desk, is a large *self-drawn caricature* by John Lennon. To the right of the self-portrait of Mr. Lennon is the hand-written inscription "Why Me?" Seeing this often brings a knowing smile to the faces of prospective clients as they first approach. They often have the same feelings as expressed in the drawing. They understand that they are not alone. That others have been here before, and there will be others that follow. It starts people thinking, and the questions begin flowing.

The following are questions that I am frequently confronted with at the initial meeting of a prospective client, followed by my brief response. The focus is on questions having a broad general interest and appeal. The intent of this article is to encourage clients to read these questions and answers, and then follow up with their own attorneys to clarify and address the particular circumstance of their own case.

## Can I stop the divorce?

Yes and No. Yes, but only if you convince your spouse that there are other alternatives that should be explored before obtaining a divorce. You might consider asking the judge to order marital counseling. Ultimately, there is nothing the reluctant spouse can do to prevent it. If one person wants to be divorced, then there is nothing that the other spouse can do to prevent the ultimate entry of a Judgment of Divorce.

## How long will the divorce take?

Michigan has two (2) different waiting periods that provide for the 'shortest' time possible before the Judgment can be entered. A divorce judgment generally may not be entered until after the expiration of a waiting period: 60 days after the complaint was filed for a divorce without minor children, and six months when minor children are involved. The court may shorten the six-month waiting period on written motion if the court finds extenuating circumstances of undue hardship or compelling necessity, but 60 days is the minimum waiting period permitted. The 'longest' time possible before Judgment is entered is much dependant on the parties ability to reach agreement to the issues involved

in their litigation, and ultimately the court calendar.

## How do I protect myself financially?

There are numerous ways to protect your financial health. Much is dependant on how much you trust your spouse, and what their reaction might be to the efforts you take with the marital assets. Some pro-active steps include:

- Write down all the ways that your spouse might adversely affect your financial health. Be creative... what can your spouse do to hurt you? Then take preventative steps to counter what you believe they may do.
- Obtain your credit report. See if there are any debts that you are unaware of. Your spouse may have obtained a new credit card by forging your signature!
- Check with all stock brokerages and financial institutions that you have assets in. See if there has been any withdraws that you are unaware of. Ask if you can put a 'hold' on the assets and not allow withdraws without your knowledge and consent.
- Check your credit cards. Take steps to prevent your spouse from charging on your account without your consent. Have their name removed from the account.

## Can I represent myself?

It is your absolute right to represent yourself in your divorce proceeding, but not recommended. It would be like you operating on yourself...might be successful, but probably not. If there are children involved, or you have real property, you need an attorney to discuss your rights and obligations, and the ramifications of the options available to you. If your spouse has an attorney, you need an attorney. Do not use the advise of the attorney hired by your spouse. At the very least, negotiate with your spouse or their attorney what you believe to be a fair settlement of the issues involved, and before you obligate yourself or sign anything, have the document reviewed by a competent attorney who you hire for that specific purpose.

## Can my spouse and I use the same attorney?

Ethically, no. An attorney can only have one client. If there



is a disagreement between you and your spouse on any issue...which is usually the case...then you need the advise of your own attorney.

## What are the grounds for divorce?

The sole 'ground' that the court must find before it grants a judgment of divorce is that 'there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.'

When people talk of 'grounds' for a divorce, they usually are asking what kind of 'fault' is required, such as adultery, or an abusive relationship. Michigan has no such 'grounds' for obtaining a divorce. Michigan is considered a 'no fault' state. This means that 'fault' or 'wrongdoing' is not a basis for obtaining a divorce in Michigan. You do not need to, and are not supposed to, allege 'fault' in any of the initial pleadings. However, 'fault' is an important element in alimony/spousal support, child custody and property distribution issues.

## Is there a trial in every case?

No. In fact, most divorces do not have a trial. The vast majority of divorces are resolved through negotiation or mediation. Only the contested cases involving very difficult legal or factual issues end up in trial. Most people resolve their differences with the help of their attorney, and after memorializing their agreement in writing, have it entered in the County clerks office following the Pro Con/Final hearing with the judge.

There are many reasons why people settle out of court without a trial. Cost of litigation is a big factor. If negotiation doesn't work, mediation is often successful in resolving disputes. The two parties to a divorce know better than anyone else how their children should be raised, and how fairly to deal with their property. Seldom does any rational person want a disinterested judge making decisions for them that will forever effect their lives, and the lives of their children. A good exercise is to find out who will be your judge and actually sit in on a court session. See for yourself if you would prefer that judge to make critical decisions involving your future. Usually not.

## Do I have the right to a jury trial?

No. There is no 'right' to present your unresolved issues to a jury. In Michigan since 1998, each county has its own Family Law Court comprised of Circuit and Probate Judges. Many counties also have referees, that will hear contested matters. If either of the parties disagree with the referee's decision, then there is the right to have the case heard with the judge. Most contested matters are resolved with the referee. The 'final hearing' is usually in front of a Judge, who

will approve and sign the Judgment, and have it entered with the County Clerk's office.

## Is there a residency requirement to obtain a Michigan divorce?

Yes. A judgment of divorce may not be granted unless one of the parties, either the plaintiff or the defendant, has resided in the state for at least 180 days, and the county of filing for at least 10 days immediately preceding filing of the complaint.

## How much will my case cost?

There is no way to accurately project the cost of divorce litigation during the earlier stages of conflict. Much depends on the difficulty of the issues, the time involved, and the ability of the parties to resolve their own conflict. There are at least two kinds of divorce -i.e. emotional divorce, and the legal divorce, that affect the financial cost obligation. The legal aspects of any divorce are substantially easier to resolve once the drama caused by the psychological divorce is over. Only then do the parties get down to the business of 'how do we fairly divide the assets and debts' of the relationship, and what is best for the children.

Except in unusual circumstances, each party will pay for their own legal costs involved in the divorce process. Statutes and case law govern the principles that the court considers in awarding legal fees. However, no rule places the financial cost on the party who initiated the action.

There are steps that can be taken to reduce your costs. They include:

- organize, and make copies of your financial & tax documents
- make a budget of your actual income and expenses. Keep copies of all documents that will support your budgetary items
- keep a diary of your involvement and conversations with your spouse and children.



## **What are the issues involved in a divorce?**

There are two basic issues in every divorce. The first involves *child-related issues* such as custody, support and parenting-time. The other involves *property-related issues* such as distribution of the marital estate, separate property, and spousal support. If there are no minor children that are the product of the marriage from which a divorce is sought, then only the property-related issues are relevant.

## **What's the difference between a divorce, and an annulment?**

An annulment proceeding is instituted to obtain a judicial ruling that a valid marriage never took place because of a defect existing at the time the parties were married. It is an appropriate means of dissolving two kinds of marriages -i.e. those that are *void ab initio* and those that are voidable. If a marriage is *void ab initio*, it is deemed never to have taken place because it was void from the beginning.

A divorce proceeding is instituted to terminate a valid marriage for reasons that occurred after the marriage took place. A strong presumption exists favoring the validity of a marriage.

## **I've heard of a legal separation. What is it?**

'Legal separation' is not authorized by Michigan statute. However, a judgment of separate maintenance, or a written separation agreement may be suitable and what is often thought of as a legal separation.

An action for separate maintenance is filed in the same manner and with the same grounds as a divorce action. Property is divided and spousal support may be awarded. When the matter is concluded, a judgment of separate maintenance is entered, but the parties will technically still be married. People may request separate maintenance because they have a religious objection to divorce, or they want to continue health care coverage.

## **Child Custody. What is it?**

Child custody is most often described by two concepts. The first is 'legal custody.' Michigan encourages judges to award joint legal custody to parents. This means that both parents would have a right to make decisions concerning such things as their child's education, medical treatment, religious training or enrichment activities.

The court also has the power to award 'physical custody' of the child to one or both parents. In establishing custody, the court reviews all of the facts that are presented, and

then determines where the child will primarily live based on what the court believes will be in the best interests of the child.

## **Parenting – Time? I don't want to visit my children.**

Michigan creates a presumption that it is in the best interests of a child to have a strong relationship with both parents. Michigan gives the child the right to parenting time with a parent unless it is shown that it would endanger the child's physical, mental, or emotional health. It is common for the non-custodial parent to have periods of parenting time consisting of alternate weekends, alternate national holidays, half of the child's school vacations, and one evening per week. The parents are free to agree on other times to accommodate their schedules.

## **Alimony. Does it still exist?**

Yes. 'Alimony' refers to support paid by one spouse or former spouse to the other. The purpose is to meet the financial support needs of a party who is unable to fully provide for their own support. Much is dependant on the discrepancy of income between the parties, and the need of one spouse, and the other's ability to pay. These payments can either be temporary, periodic, rehabilitative, or permanent and most often are taxable to the recipient and deductible by the payor, unless specifically agreed otherwise.

## **Child Support. Who decides the amount?**

In response to federal legislation, Michigan has adopted child support guidelines that establish the method for calculating child support. These guidelines are designed to ensure consistency and predictability in child support amounts. Though difficult to do, it is possible to deviate from these guidelines. The court may increase or decrease the amount of support as long as it gives specific reasons for doing so. Primarily, the courts are seeking to balance the financial needs of the child, with the non-custodial parents ability to pay. The incomes of both parents are used in determining child support. Child support usually ends at the later of when the child graduates from high school, or turns 18 years of age

## **Domestic Violence. What can be done?**

Michigan law provides for the obtaining of a Personal Protection Order. This is a court order that will prohibit your spouse from entering onto the property where you live, assaulting, beating, molesting or wounding you and/or removing the minor children from the legal custodian. It also can prevent harassment which has become stalking, such as following or appearing within your sight, approaching



or confronting you in a public place or on private property, or appearing at your workplace or residence. Numerous other protections may be included.

These orders are issued by the court without a hearing. The court clerks can assist you in preparing a petition for a Personal Protection Order, and the order. They then will take it to the judge who will decide whether or not to issue the order. The order is effective when signed and served on your spouse. Your spouse has the right to challenge what you've said, and the issuance of the order.

If the restrained party violates the terms of the order, they are subject to immediate arrest and to the civil and criminal contempt powers of the court. The person may be jailed or fined, or both.

## **Dividing Property / Who Gets What -**

Michigan is an equitable distribution state which means that the court may distribute the marital assets of either party in any manner it sees fit. The standard is that the

property division must be fair and equitable under all of the circumstances of the case.

The judges look at the following factors to determine what is 'fair:' the past relations and conduct of the parties, the length of the marriage, the ability of the parties to work, the source and amount of property awarded to the parties, the age of the parties, the ability of the parties to pay spousal support, the present situation of the parties, the needs of the parties, the health of the parties, the prior standard of living of the parties, whether either party is responsible for the support of others, and general principals of equity.

## **Conclusion**

As I labor in my practice, I am always mindful of the words of a learned attorney friend who said "For each person who is about to venture upon the ordeal of a dissolution of marriage – *knowledge, reasonableness, and legal expertise* will help bring closure to one life and mark the beginning of the adventure of a new one," If we, as family law attorney's, can bring these qualities to our clients, we and our clients are better people as a result.

