



Broken Love: The Intersection of Divorce and Therapy

A Legal Perspective by Dina Haddad, Esq. LLM

When Should I File for Divorce?

Dina Haddad is the founder of Families First Mediation, a family law mediation boutique, and provides family law mediation services in San Jose. She is a panel neutral for Agency for Dispute Resolution, headquartered in Beverly Hills, and sits as judge pro tempore for the Santa Clara County personal property arbitration program.

If you have a topic you would like to see addressed, or comments and questions about this column, feel free to reach Dina at (408) 357-3486 or dina@ffmediation.com or her website www.ffmediation.com.

In past columns, I have discussed that the process clients choose to pursue their divorce impacts the outcome of their case. Once a client has decided on the process, the next decision might be when he or she should file for divorce. A divorce is initiated when a party files a Petition for Dissolution of Marriage and has it properly served on the other party. Once a petition is filed and served, there are several legal outcomes of which clients should be aware when making their decisions.

First, after the petition is filed and served, certain protections are afforded to each party in the form of restraints. These are known as “Automatic Temporary Restraining Orders” (ATROS) Specifically, both parties are legally restrained from:

1. Removing the minor child or children from the state without prior written consent of the other party.
2. Cashing, borrowing against, canceling, or changing the beneficiaries of any life, health, automobile, and disability insurance.
3. Transferring, encumbering, concealing, or disposing of any property, whether

community or separate, without the written consent of the other party or an order of the court, except in the usual course of business or for necessities of life (i.e. food, shelter, and other daily needs).

4. Creating or modifying a



nonprobate transfer in a manner that affects the transfer of property without the written consent of the other party.

Unless a petition is filed, there are no restraints. If a client is concerned that his or her spouse might dispose of assets, kidnap the children, change insurance policies, or commit any other violation of the four restraints above, the client should consider filing immediately.

Second, once a petition is filed, that filing date is arguably the last possible date for

the “date of separation.” The date of separation is when one party determines the marriage is irretrievably broken and there is no intention to reconcile. The date of separation is very important. It stops the community property clock. After this date, the couple’s earnings are no longer community property, but separate property. If John files for divorce on February 26th, the date he believes the marriage is over, and receives a stock grant the following day for future employment, the stock grant would be his separate property.

Third, the court has the ability to award child support from the date of the filing of the petition. In other words, even though it might take time to have a child support case heard for the first time, the judge is not limited in ordering support from the date of the hearing. Instead, child support can be granted retroactively to the date of the petition. There are some specifications here, so clients should seek counsel.

Fourth, service of the petition (i.e. serving it on the other party) starts the infamous six month clock. The soonest a couple can have their status changed from married to divorced is six months and

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one day from service of the petition. The couple can finalize their divorce agreement prior to that date but have to wait for their status to change. For example, John has Amy served with the petition on June 28, 2013. The soonest they could be divorced would December 29, 2013. However, John and Amy did not complete their divorce by that date. They will not be divorced until they do so, unless they request that their status be bifurcated (a topic outside the scope of this column).

Finally, the client should be ready. Divorce is not easy. The client needs to be as prepared as possible - emotionally, physically, and spiritually. Often, filing for a divorce is a sign of war, especially if the other party is unaware. It often results in a race to hire lawyers and a court fight. If possible, the couple should discuss it with one another. Hopefully, they can do so peacefully and, if needed, with the help of a professional. In that conversation, the couple should discuss the filing of the petition, the service of the petition, and how they desire to pursue the divorce action. They might even need to discuss who will be the petitioner (the person who initiates the divorce action). Even if one party does not want the divorce, as stated in a previous column, the party should absolutely participate or risk losing a great deal. In my practice, I prepare the petition for the couple, review it in session with both parties and file it for them. Although only one person is the petitioner, this process allows both to be involved. We then serve the petition on the other spouse (respondent) by mail or in my office to take away the sting or embarrassment that might happen when served in public. ☞

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