



Families First

When Should I File For Divorce?

In a past article, I discussed that the process a party chooses to pursue a divorce (or legal separation) severely impacts the outcome of their case. Once a party 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. When a petition is filed and served, there are several legal outcomes of which clients should be aware when making their decisions.

FIRST, ONCE 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,” or “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. Clients should take note that Las Vegas is in Nevada as some parts of Lake Tahoe.
2. Cashing, borrowing against, canceling or changing the beneficiaries of any life, health, automobile, and disability insurance.
3. Transferring, encumbering, concealing or disposing any property, whether community or separation, 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 a nonprobate transfer or modifying a nonprobate transfer in a manner that affects the transfer of property without the written consent of the other party.

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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 has 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, arguably, 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 a party 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 parties should seek counsel.

Fourth, service of the petition (i.e. serving it on the other party) starts that infamous 6- months clock. The soonest a couple can have their status changed from married to di-

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orce is 6-months and one-day from service of the petition. The couple can finalize their divorce agreement prior to that date, but have to wait before for their status to change. For example, John has Amy served with the petition on June 28, 2013. The soonest they can be divorced is December 29, 2013. However, suppose John and Amy did not complete their divorce by December 29, 2013. This day will pass and nothing will happen in their case, unless they request that their status be bifurcated (a topic outside the scope of this article).

Finally, the party should be ready. Divorce is not easy. Prepare yourself 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. You want to avoid this at all costs. If possible, discuss the divorce with one another. Hopefully, it can be done peacefully. If needed, seek out the help of a professional. In that conversation, discuss the filing of the petition, the service of the petition, and how you desire to pur-

sue the divorce action (i.e. amicably through mediation). You may even discuss who will be the petitioner (the person that initiates the divorce action). Even if one party does not want the divorce, 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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Jordan Shafer puts it best: "When there is excessive stress on the receiving, signalling and switching part of the mid-brain called the amygdala, then another part of the brain, the hippocampus, will be inhibited from 'thinking' about the experience to give it perspective. Memories of the event or experience are stored by the mind as feelings, body sensations and visual images and without the use of language (semantic representations) for understanding or interpretation, that is, hippocampal cognitive evaluation. This means that for stressful experiences – this includes but is not limited to childhood – the 'cognitive' evaluation of the experience will be impaired and the information (memories) derived from it will be stored very differently than if there is no stress. This is important because the experiences shift from being memories you can consciously think about to memories that show up as feelings, body sensations or images only. This may result in having feelings such as anxiety or fear and not understanding them or knowing where they're coming from" (Shafer, 2013).

So, what exactly is EMDR, how does it work? It is an internationally recognized approach to trauma, anxiety, panic and post traumatic stress disorder (PTSD). Decades ago, these conditions took a long time to treat, however, the discovery of EMDR by Dr. Francine Shapiro brought quick and lasting relief for the above conditions. EMDR therapy uses bilateral stimulation (right and left eye movement similar to rapid eye movement in deep sleep), or sometimes tactile stimulation, which, according to Dr. Carol Boulware, "activates opposite sides of the brain, releasing emotional ex-

periences that are 'trapped' in the nervous system. This assists the neurophysiological system, the basis of the mind/body connection, to free itself of blockages and reconnect itself. As troubling images and feelings are processed by the brain via the eye-movement patterns of EMDR, resolution of the issues and a more peaceful state are achieved."

The EMDR Institute in Watsonville uses the following analogy to describe how EMDR works: "When you cut your hand, your body works to close the wound. If a foreign object or repeated injury irritates the wound, it festers and causes pain. Once the block is removed, healing resumes. EMDR therapy demonstrates that a similar sequence of events occurs with mental processes. The brain's information processing system naturally moves toward mental health. If the system is blocked or imbalanced by the impact of a disturbing event, the emotional wound festers and can cause intense suffering. Once the block is removed, healing resumes. Using the detailed protocols and procedures learned in EMDR training sessions, clinicians help clients activate their natural healing processes" (EMDR Institute website: www.emdr.com) □

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