

# Controlling Divorce Costs

Although nearly everyone agrees that divorce is expensive, there are things you can do to help control costs.

The first step is understanding the process and your role in it. A divorce is like a fingerprint. The curve of the lines identifies the pattern as a fingerprint, but every fingerprint is unique. Each divorce, too, has its own unique set of facts, emotional issues, and cast of characters - including the parties, their attorneys, and the judge.

It is impossible to know in advance how your divorce will play out. Your attorney will offer a blue-print of the process and a frank discussion of the costs. Together you will decide how to proceed and a frank discussion of the costs. Together you will decide how to proceed and what “frills and options” you can afford.

The cost of divorce can range from less than \$1,000 to more than \$1 million, depending on the issues involved, the level of hostilities between the parties, what the parties want to accomplish, and how much they are willing to spend.

Every divorce has some predictable costs. These account for necessary expenses during the four stages of the divorce. In the first stage, one lawyer drafts the initial “pleadings” or documents and serves them on the other spouse. Some cases also require an initial hearing, which can cost several thousand dollars, depending on the amount of information to be presented to the court. Included in this is the expense of preparing several pleadings.

Next is the information - gathering stage called “discovery.” During this phase, marital debts and assets are identified and valued. The discovery phase may involve several pleadings and, sometimes, depositions. Information gathering can be costly, especially if the other side is uncooperative. For example, bank officials may be deposed to gain access to records and financial statements the other party refuses to provide.

The third stage of a divorce is settlement. Settlement discussions can be time-consuming. Your attorney must assemble the case and then discuss with you your options and your rights. The longer it takes for you to understand what is presented and reach a decision, the more costly the divorce will be.

The fourth stage is trial. If the case settles, this stage consist of submitting the divorce decree and entering it with the court. At trial, the information discovered about your assets and liabilities

as well as custody and support issues must be presented formally to the court.

Trial preparation is time-consuming and expensive. During a trial, your attorney will work 10- to 14- hours a day. In a complex case, he or she may have an associate or paralegal assist in court. After trial, there may be closing arguments and, if one or both parties are dissatisfied with the judge's decision, posttrial motions may be necessary.

### **What you can do**

To help with your case and keep costs under control, consider the following.

1. **Find a therapist.** If you need help coping with emotional issues about the divorce or your grief, talk to your lawyer about finding a therapist. Your lawyer needs to know about your therapy because in some states, a therapist's records can be subpoenaed and may be relevant in a contested custody or alimony case. Don't expect your attorney to help you resolve emotional issues. Your lawyer is trained to handle your legal problems.
2. **Find a support group.** If you need to download your feelings about the case and the legal process, investigate a support group. Using your attorney as a sounding board for your feelings will only inflate the cost of your divorce.
3. **Stay calm.** When you call your attorney to discuss a legal matter, make sure you are calm and collected. The clearer you communicate with your lawyer, the less expensive his or her addressing of your needs will be.
4. **Make a list.** When preparing to speak with your attorney, make a list of questions to ask. Be task-oriented. Don't waste time - that you will be charged for - complaining about your spouse. Discuss your grievances with your therapist, a friend, or your support group.
5. **Speak with an assistant.** Whenever possible, rather than asking to speak with your lawyer, pose routine questions to his or her support staff or paralegal. You will be charged less for their time, and often they can answer your questions. If a paralegal or associate attorney cannot answer the question, ask for a conference call with your attorney. Make sure the paralegal or associate communicates your question before the call so that your attorney can give a thoughtful, concise response.
6. **Ask to help.** Tell your attorney that you want to contain costs by helping with the case. Ask about collecting information about assets and debts. Remember, when your attorney or his or her support staff must acquire information on your behalf, it will cost you money.
7. **Work quickly.** When asked to help, gather the requested information or documents promptly and keep everyone informed of your progress.
8. **Ask before signing.** Your attorney should give you a contract or retainer agreement. This agreement should outline charges for the lawyer's time as well as an associate attorney's, paralegal's, or other staff person's. It should cover miscellaneous charges for fax, photocopy, postage, outside vendors, and experts. Read the retainer agreement carefully and ask questions before signing it.
9. **Billing Questions.** When you receive a bill, review it carefully and call your attorney's office administrator with any questions. Do not wait until the end of the

case to question the fee.

10. **Set financial limits.** Decide at the beginning of your divorce how much you can afford to spend and set a financial limit. Ask your attorney to be aware of this amount throughout the case. Request a conference if your fee ceiling appears to be unrealistic. Ask specifically what you can do to keep costs down.

### **Time Charges**

Divorce lawyers charge for their services based on time spent on the case. The time required will vary depending on factors of the case, including the:

- impact of grief,
- emotional needs of the client,
- issues of the case,
- experience and expertise of the attorney,
- county in which the case is filed,
- judge before whom the case is being litigated, and
- opposing client and his or her counsel.

Grieving the loss of a marriage is similar to grieving the death of a loved one. The grieving process has five distinct stages: denial, anger, bargaining, depression, and acceptance. You and your spouse will grieve the loss of this relationship, but not everyone will experience each grieving stage or the same sequence of stages.

Getting stuck in any one stage (denial, anger, bargaining or depression) can have a significant impact on the cost of your divorce. Anger can significantly increase costs, too. Divorce costs will be minimal if at the beginning of the case both spouses are at the acceptance stage of grieving.

When a client is not yet at the acceptance stage, the attorney's job becomes more complicated. He or she must keep the client involved in the process while at the same time doing everything possible to minimize costs. If the other spouse is not yet at the acceptance stage, the attorney must do what he or she can to prod the case along while keeping a lid on fees.

Clients who cope with their grief outside the legal forum and accept the inevitability of the divorce usually have less expensive divorces. Attorneys can present the law and offer options to a client who is able to "hear" what is being said. The client participates in the process, makes the necessary choices, asks appropriate questions, and thus plays a part in resolving the conflict. Such interaction makes the work of the attorney easier and results in lower overall costs to the client. Such a client can be an abundant source of information and insight on many different issues, including custody and spousal maintenance, and can provide detailed histories and a perspective on issues that might otherwise not be available.

A client who is devastated by the divorce presents a difficult challenge for the attorney. Consoling the client is time-consuming and expensive. A devastated client often makes daily telephone calls to the lawyer and repeatedly needs to hear the same information, even if it has been

provided in writing. This client is unlikely to read letters or brochures, and thus requires personal contact for every detail of the case.

## **Mediation**

Over the last 10 years, mediation has blossomed as a means by which spouses can effect a kinder, gentler conclusion to their divorce. Mediation is a process by which a facilitator or mediator will guide the parties to an agreement through compromise and negotiation.

Mediation differs from litigation in that during litigation attorneys guide clients through the process. Because attorneys are advocates for their respective clients, they approach mediation with a built-in bias that a mediator does not have. Although it may seem more expensive to enter into mediation accompanied by your attorney, it may be the wisest course. An experienced attorney may be able to provide the parties and the mediator with additional innovative options or alternatives. However, even when attorneys participate in mediation sessions, the mediator runs the show.

Mediation can be commenced at any time before entry of a decree. Sometimes parties enter mediation immediately after the divorce is started or just before trial to resolve one or two complex issues. It is never too late to consider mediation as a cost-saving option. If undertaken with a competent and experienced mediator, the parties can save a lot of money and emotional damage.

## **The litigated case**

A divorce case involving complex issues relating, for example, to custody or the valuation of a family-owned business requires more time and money than the average case.

A litigated custody case is among the most expensive because it usually stems from anger on the part of one or both spouses. Two parents who can accept the inevitability of the divorce are better able to understand the child's needs. A custody case that goes to trial with a court-appointed expert could cost more than \$50,000. A custody trial with two or more experts can cost each client more than \$100,000. Before embarking on a custody fight, consider what it will cost, whether you are prepared to pay for it, and what your lawyer thinks about your chances of winning. If you decide to proceed, be sure that your attorney has the expertise, stamina, and willingness to handle the case within the limits of your budget.

Other potentially expensive divorce cases involve closely held corporations or small businesses. In a case involving a business valuation, an attorney is required to examine many documents, books, and records. A forensic accountant may be needed to testify as an expert and assist with the case. Retaining the expert, examining records, and deposing witnesses can add from \$10,000 to \$100,000 to the over cost of the case.

Simple and relatively inexpensive-to-resolve issues include valuing pensions, 401 (k) plans, and IRAs. Generally, monthly statements show the value of the asset and whether it has been liquidated. The value of a house can be ascertained through its valuation or sale.

The division of household goods and furnishings can be more complicated, especially when encumbered by emotional attachments. When vehicles, real estate, jewelry, or special collections must be valued or vocational experts are needed to assess future earnings potential, the cost of the case may increase by a few thousand dollars.

### **The other side**

Although you control your own behavior and the lawyer you select to represent you, you cannot control your spouse's behavior or his or her choice of an attorney. If your spouse is locked into one of the grieving stages or is merely intent on fighting, fees will increase even though you and your attorney are doing everything you can to keep costs low. Your spouse's attorney also can contribute to the expense of the divorce through tactics or postures that are not settlement oriented.

Two good attorneys who are committed to getting the case resolved with a minimum of cost will keep fees low and define any issues for trial so that the presentation to the court is clear, concise, and void of any behavior likely to increase fees.

### **Expertise**

Many clients mistakenly believe that an attorney's hourly rate indicated show expensive the divorce will be. However, an attorney's hourly rate is only one factor in the final fee. An attorney who charges a somewhat higher rate may actually be more efficient and cost-effective than a less experienced lawyer. Likewise, the work product of a more experienced attorney may be more thoughtful and better protect your needs.

Clients generally seek an attorney whose professional demeanor best reflects their needs. If you genuinely want your case to be resolved fairly and with minimum expense, choose an attorney who is courteous and capable, not the local junkyard dog.

### **The county**

The county in which a case is heard can have an impact on divorce costs. Counties with long motion calendars may require attorneys to appear at the courthouse first thing in the morning for every scheduled case. You and your attorney may have to wait several hours to resolve your case. While waiting, your lawyer cannot work on other matters. You will be charged for the total time at the hearing, perhaps including travel time.

Some judges do not have a thorough understanding of family law issues. The complexity of family law issues makes it difficult for judges to acquire the necessary expertise unless he or she handles such cases routinely over a long period of time. The judge's expertise will have an impact on his or her ability to understand the issues presented in hearings and at trial. If your lawyer must spend time educating the judge, your fees will increase.

Whether you are leaving the relationship or being left, remember that your divorce is not a normal time in your life. It is a transitional time, characterized by loss. You have a role in managing

and minimizing both the emotional and financial losses. Follow the tips set forth here, breathe deeply, and when the time comes, thank your attorney for a job well done.