

MilesMason
FAMILY LAW GROUP, PLC

On your behalf.

“Like many of life’s great adventures, divorce requires one step at a time.

Thoughtful preparation transforms baby steps into serious positive momentum forward.”

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Getting Started

Divorce is awful. No one files for divorce on a whim. Sometimes the decision to divorce is made by the other spouse. For a few people, that may be a wake-up call. Yes, reconciliation can and does occur after a divorce has been filed. Some ex-spouses even remarry each other after a divorce has been granted. In addition, many marriages have been saved by counseling with pastors, priests, rabbis, and family therapists. To save a marriage, though, both spouses must be seriously committed.

For most people, the only good thing about divorce is that it eventually ends and life continues. Always remember that the legal aspects of divorce and the emotional aspects of divorce are two different things. Quality of life after divorce is an individual choice. Three words commonly associated with divorce are “failure,” “guilt,” and “fear.” The feelings of failure and guilt pass with time. On the front end, however, learning about divorce reduces fear of the unknown. Learning begins the process of growth and change.

This e-book is a great first step. Now is the time to begin thoughtful planning. By learning about the legal aspects of divorce, you protect yourself by knowing what is ahead before it happens and, hopefully, thereby avoiding impulsive, often unwise, decisions.

The beginning of the divorce process is the time to prepare to set specific goals. At first, you may just have some vague ideas. Over time, you will begin to know what you want for yourself and your children.



This e-book does not begin to address everything about divorce law. It is a first step and companion to MemphisDivorce.com, a much more detailed and thorough resource about [Tennessee divorce](http://TennesseeDivorce.com). Every case is different. There is no such thing as a “standard” divorce. And law changes over time. This e-book was published in 2012, so if you’re reading this after that year, keep in mind that the law may have changed on some points.

Also keep in mind that the lessons here make up only half the solution. To make your way safely through the many challenges ahead, you need a support group of passionate, understanding family law professionals on your side. You need people who appreciate the magnitude of your troubles and can create a safe haven while you take steps to improve your life. Read. Learn. Share. Repeat. One step at a time, your lawyer can help you handcraft solutions tailored to your particular situation.



Step 1: Who Stays? Who Goes?

“Leaving the home is a huge step. It requires careful analysis. Rational thought, not emotional impulse, will lead to the best plan.”

Lee Rosen, Rosen Law Firm, North Carolina.

If you don't want to leave the marital residence, don't be bullied into leaving. Don't feel that you must leave just because your spouse asks you to leave. Regardless, though, always put your immediate safety and that of your children first. If you feel threatened by your spouse, call the police. Ask the police or your pastor, priest, or rabbi for a referral to a shelter. Talk to a lawyer. Learn whether you should apply for an order of protection that prevents your spouse from coming around you and the children. An order of protection can provide other protection too, including legally preventing your spouse from carrying a gun.

Yes, leaving home may reduce your stress today, but it may result in additional stress later. If you want to leave the marital residence, talk to your lawyer first. Consider the increase in financial stress. If you leave, you may be required to pay your share of household expenses for the marital residence, even though you're not living there any longer. Living together offers a unique opportunity to share expenses more efficiently. Thus, when one spouse leaves, where there was once only one mortgage, one power and gas bill, one cable bill, one bill for Internet access, and one set of appliances, there will now be two sets of bills for these and other basic needs. Many judges feel that separation is not an excuse for leaving bills unpaid. The departing spouse may be required to contribute to paying the bills incurred at the marital residence if the spouse who stayed can't afford all of the expenses alone.

If you leave the marital residence while the divorce is still pending, there can be unresolved legal issues. What parenting time will be made available to the parent not living with the children? If the departing parent's new residence is unsuitable for overnight parenting time, that might cause a greatly reduced parenting schedule. Later, courts will look to determine if the status quo is working when considering awarding parenting time in the final decree. That means that, during the divorce, both parents need to orchestrate parenting time so that it's as close to their preferred situation as quickly as possible. Many experienced family lawyers advise clients to resolve as many legal issues as possible before moving out.

Make sure you get copies of every document you can before you leave. But if you are unable to locate particular files, at least try and make sure you write down account numbers. Keep all of the documents and information safe.

If you don't want to leave, can you force your spouse to leave? Tennessee law views kicking the other spouse out of her own home as a very drastic action. In most cases, unless there has been a domestic violence incident, neither spouse can force the other to leave. There may, however, be exceptions based on your individual situation and your judge. Some judges have ordered spouses to leave the residence without evidence of domestic violence, but that is unusual.

If you must stay in the same residence during the divorce process, be smart, stay calm, and protect yourself. Try to sleep in a separate room from your spouse. Stop living like you once did. Don't cook for the other. Don't be romantic or send mixed signals. Do your own laundry. Get your own cell phone separate from the family plan to prevent your spouse from tracking your calls. Keep all of your divorce information safe – even if that means you must keep it in another location. If you think your divorce will be hotly contested, assume everything you do or say will be digitally recorded. It just might be.

Whether you stay or go, immediately change all of your online usernames and passwords for all bank accounts and personal communications. Create a new e-mail account for communicating with your lawyer. Use G-mail or Hotmail so that you can check your e-mail from different locations. Get off of or turn off your Facebook and other social media that can be used to track your activities and communications. Your social media postings can be used as evidence against you, no matter what you say or why you say it. Lawyers are experts at twisting words.

This is an important time to maintain or regain contact with significant people in your life. In addition to friends and family, make a complete list of telephone numbers, addresses, and e-mail for preachers, priests, or rabbis; doctors; teachers; dentists; financial advisors; CPAs; counselors; insurance agents; stockbrokers; day care centers; and employers. Let people who care about you know what is going on. Even if you don't know what to say, let them know how you are doing, and don't be afraid to ask for help. Sometimes, talking with your closest friends and family is exactly what is needed most.

Don't have sexual relations with your spouse, especially if your spouse has cheated on you. In legal terms, cheating is adultery. Adultery is a ground, or legal basis, for divorce. Also, the adultery may comprise marital fault, one of the factors for alimony. Once you have marital relations with your spouse after learning about his or her cheating, you may be forgiving your spouse. This is called condonation, and it's a defense to a divorce on the grounds of adultery.



Step 2: Financial Planning and Budgeting

There is no one way to handle every divorce situation. One very important goal in every divorce, though, is to avoid mistakes. Begin by making these simple strategic financial moves:

- Open a bank account to which only you have access. Deposit your earnings in that account. Understand that earnings deposited in a separate account are still marital property.
- If you receive automatic deposits from any source, move them to your new account.
- If you pay bills by automatic withdrawal, deal with how those bills will get paid after you make changes to accounts.
- Maximize cash assets in your individual name. You need to prepare to be responsible for your own legal fees, expert fees, and courts costs, in addition to other living expenses.
- Consider requesting a credit limit increase on credit cards and lines of credit—just in case.
- If your mail is not absolutely secure, obtain a P.O. box for bills and correspondence from your lawyer.
- If a divorce has been filed, learn if a mandatory injunction has been issued and how that may affect you. See discussion of “Mandatory Injunction” below. Check with your lawyer before transferring money between accounts.
- Talk to your lawyer to see how much of the joint funds you can move. Prior to issuance of the mandatory injunction, it may make sense to move half of the balances from joint checking accounts, joint savings accounts, and joint investments into your own accounts.
- Run your own credit report. Read it in detail. Look for previously unknown debt obligations.
- Cancel joint credit card accounts. This reduces the risk of your spouse increasing joint debt.
- Make hard copies of account statements and key documents.
- Determine if you need a financial advisor separate from your spouse’s. There are many financial advisors willing to help. And you don’t have to have much money to have a financial advisor. Ask your family lawyer for a referral.
- If you need temporary support now, you can file for divorce and ask the court to order your spouse to pay it. This is called pendente lite support and can include temporary alimony, child support, and attorney’s fees.
- If you and your spouse executed wills together and may have signed durable powers of attorney, tell your lawyer as soon as possible. Durable powers of attorney may allow your spouse to act on your behalf in many legal and financial situations. You need to revoke the power authorized in that document.

Resources



*I*n this early period of separation, feelings are hurt, and communication is difficult. Money may be tight for both spouses. The departing spouse may have a new mortgage or rent payment, rental deposits, moving fees, and expenses for furnishings and appliances. Negotiating for everyday living expenses is never easy, and making sure you are not at a disadvantage can be tough. Money keeps the lights on. Divorces are expensive. Resources matter.

If the departing spouse is the supported spouse, she may feel desperate, leading to a series of poor, short-term decisions. If the departing spouse is the primary earner, she is in control of where paychecks get deposited and can manage cash flow. Control of cash flow is important.

Even though most judges take a very dim view of leaving the other spouse destitute, the unsupported spouse may need to get into court to be awarded temporary support. Marshalling resources can help balance the power between the spouses, preventing a helpless feeling from dictating day-to-day decision making. Save money. Resist the temptation to immediately buy new things to replace the old. Ask others to share used furniture, children's clothes, and toys. Stay calm. Manage the situation as best you can.

Budgeting



It is essential that you get a handle on your finances. Create a budget. Dave Ramsey's Total Money Makeover is a great book for help. Listen to Dave Ramsey's radio show and/or podcast. Both are free. Later, consider attending his Financial Peace University. To learn more about Dave Ramsey, visit www.DaveRamsey.com.

To budget, start with income. What are your sources of earned income? Are there other sources of income? What about your spouse's income? Your lawyer will also need copies of documents about current income. Make copies of current pay stubs, last year's last pay stub, W-2's, bank accountant statements, and tax returns.

Then, list expenses. Be thorough. It is easy to move quickly and forget something. If you have them, make copies of personal finance reports from Quicken or QuickBooks, canceled checks, and credit card statements. The more detailed a budget you prepare, the better of an understanding you will have of your needs and resources. Later on, your lawyer will help you organize things in the format your local court will want to see. But for now, you need to understand how much money it takes to live or what you have left over to help support your spouse. Having a detailed budget will help you make smarter decisions.

Step 3: Parenting

A parent moving out of the marital home affects children. Some parents think that it reduces stress for the children, especially if the parents are constantly arguing. In some cases, it may. But at the same time, the children's stress is going to be high regardless. When possible, both parents should work together to help children through the transition. Change is emotionally unsettling for everyone, but especially for children.

Depending on your children's ages, they may not understand what is happening. Whether moving out is the first of many changes or the last step during the divorce process, children often don't have the emotional tools to deal with divorcing parents and the fact that one parent is no longer living with them. Professional counseling can help. A qualified mental health professional can help smooth the transition and, at the same time, listen for warning signs of more serious problems.

Start and keep a parenting journal and a detailed calendar. Record events, overnights spent with the children, and time the children spend with the other parent. What scheduled parenting time was missed by your spouse? What was the excuse this week? What requested parenting time was denied? Do not include flippant comments like "Jerk Face failed to make Tommy's baseball game AGAIN." The calendar or journal may be shown in court someday as a contemporaneous record of what happened. If there is serious conflict between the parents, this type of information is too important to risk to a faulty memory. During stress, memories are short-lived creatures. Credibility comes with specific knowledge of dates and circumstances. Even without any major conflict, the journal can document what went well. Recording parenting successes can be just as important as documenting failures.

As you plan, think about everyone's schedules for work, school transportation, extracurricular activities, holidays, and doctor's visits, as well as the other parent's time constraints. Later, you will need to prepare a parenting plan that takes into account an entire year's parenting time, also called residential time. In addition, you need to think about who makes which decisions. In Tennessee, the parent with whom the children reside on any particular day is generally responsible for day-to-day decisions when exercising parenting time. The parents may share or alternate other final decision-making authority, such as education, choice of physician, extracurricular activities, and choice of religion. The permanent parenting plan will establish parenting time and decision-making authority.

Parenting Schedules are Important to Get Right - Right Now

Whether or not you want to be the primary residential parent (formerly known in Tennessee as the custodial parent), you need to decide if you want to maximize the amount of parenting time and involvement you have with your children. If either parent moves out, get the desired routine in effect as soon as possible.

If the parents can't agree on a parenting schedule, either one may ask the court to adopt a temporary parenting plan. The "status quo" is vitally important in all family law matters because, "if it ain't broke, why should a judge fix it?" Some judges will leave the current parenting time routine in effect if the schedule is working reasonably well. Proving that the status quo is not working reasonably well can sometimes be more difficult than one would think. Later, the parents can negotiate a different schedule, or the judge may order something different, but it may be more of an uphill battle than it needs to be. Talk with your lawyer as soon as possible about making adjustments to the parenting schedule that you feel are needed. Furthermore, remember that, no matter how the divorce progresses, you must do your very best every day to stay involved with your children. If you can't see them, call them. Skype them. Do whatever it takes to keep in touch, even if it's just a five-minute phone call before bed. Tell your children you love them, and give them a chance to talk to you.



Step 4: Do Not Date

Dating is not a good idea. This may be the most ignored legal advice given by family lawyers to their clients. Many people start a new relationship prior to considering divorce, so is it really that big of a deal? It can be. Often, the advice not to date does not change, even if the other spouse has already left the marital residence and is living with another person.

Some may say to themselves, “The marriage has already fallen apart, so what’s the harm?” While it’s natural to want to seek affirmation from another in times of stress, don’t date. Every choice you make can be subject to scrutiny by courts, especially when children are involved. Most courts treat adultery as meaning that a person has had sexual intercourse with someone other than that person’s spouse – even if separated and living apart. Even if the relationship is more emotional than physical, judges may treat the two similarly. Tennessee courts can rule that the extramarital relationship can constitute inappropriate marital conduct even if there is no “hard evidence” of sexual intercourse.

Evidence of adultery can affect court decisions about custody and amount of parenting time because affairs can negatively impact children. The paramour may even be subjected to scrutiny. A DUI, a prior drug conviction, an awkward Facebook photo, and, yes, even a bad check arrest could end up being mentioned in court pleadings or arguments. Even if the children have never met or seen the boyfriend or girlfriend, they may learn about the relationship from a third party in a way no one would want. Even if there is no actual harm to a child, judges are fearful of such harm. Judges expect parents to make their children their highest priority. Extramarital relationships are never viewed as putting children first. Here, the perception of priorities matters.

In addition, allowing children to interact with a paramour is a very bad idea. Children who find someone new in their lives can become confused during an already challenging time. Courts may see this exposure as evidence of very poor judgment, giving the court a reason to award custody to the other parent. Parents should always be a positive role model for their children.

In addition, legally, adultery is grounds for divorce. Proving adultery can often be a challenge, although many divorcing spouses admit affairs. But know that direct evidence of the affair may not be required to prove adultery. Circumstantial evidence may be enough.

Furthermore, in Tennessee, “the relative fault of the parties” is considered by courts when deciding alimony. Having an affair, before or after separation, can constitute marital fault. The affair may not affect the alimony determination one way or the other, but it could play an important role in the decision. It just depends on the circumstances. In any event, you can bet that the lawyer of the spouse not having an affair will make as much noise about the affair during court proceedings as possible. That is never comfortable for the spouse having the affair.

Even when there are no children, dating is still a bad idea. Not only can dating alter the relative negotiating position of the spouses, but affairs often inflame emotions—fueling the need to seek retribution and revenge. Money is often seen as the vehicle for both punishment and vindication. The other spouse may decide to take the deposition of the boyfriend or girlfriend and ask embarrassing questions about the first time sex occurred, gifts, loans, and trips. In other words, don’t give your spouse a reason to hate you and fight you tooth and nail.

During a divorce, there is one important rule to never forget – never give a judge a reason to dislike you. Explaining an extramarital relationship is always tricky, but telling the truth is vitally important. Getting caught in a lie can be a lot worse than actually having an affair. Destroying your credibility is never worth lying. Also, know that one spouse’s dating can be found out by the other spouse, no matter how careful the secret is kept. Know that one spouse can ask the other about affairs under oath during the divorce—in written discovery, during a deposition, and during trial.

If you have already started a relationship before you read this, your situation is not unusual. You are not the first, and you will certainly not be the last. But tell your lawyer. Talk it through. Don’t let your lawyer find out about the relationship later from your spouse’s lawyer. You’ll need to make some tough decisions. You might decide to dump the relationship, or you might choose to live with the consequences. Just make sure that the decisions you make are informed ones.

Step 5: Flee from Stress and Violence

Managing stress during the divorce is more important than you might think. Stress can lead to very serious depression and poor decision making. While no one can completely eliminate physical and emotional problems associated with complex legal problems such as divorce, counseling, proper nutrition, and moderate exercise can have a very positive impact on your well-being and judgment. If you have health concerns, consult your doctor.

Don't be afraid to consider seeking counseling. Ask your lawyer for a referral. If you have access to a mental health professional through your employer, take advantage of that. And even if things aren't bad right this second, they can get worse. Have a plan. Having someone to talk to can make all the difference. If you have sought counseling in the past and you didn't like the counselor for whatever reason, try again. It's not unusual to try more than one or two before finding a counselor who is right for you.

Eat smart. Stay away from fat and sugar. Overeating comfort food can lead to feeling even worse, both physically and emotionally. Eat fruits, vegetables, and foods containing protein. Exercise in moderation. Stay hydrated. Relax. Get to bed on time, and get plenty of sleep. If you're having a hard time sleeping, try to avoid regularly relying on sleeping pills. Work on your divorce some every day, but you must also learn how to put that aside and rest. Focus on taking things one step at a time. Sometimes, those steps must be baby steps.

Finally, your head must be as clear as possible. Avoid stressful situations. Say no to everything you absolutely can say no to. Remember what they say on airplanes: When flying with others and oxygen masks deploy, put yours on first before assisting others with their masks. If you can't breathe, you can't be expected to help with other people's problems. Now is the time for you to take care of you. If this means giving short shrift to someone else, except your children, of course, make it up that person later. You'll be back to being you sooner than you think.

Domestic Violence

Unfortunately, family lawyers see domestic violence more regularly than most people think. This national problem knows no economic, societal, or racial boundaries. In the 1990's, Tennessee dramatically changed its laws, both civil and criminal, to provide more legal protection for abused spouses. If you have ever been a victim of domestic violence, if you fear reprisal for filing for divorce, or even if you are the aggressor, be sure to discuss this with your lawyer. There are important legal steps that you can take to help.

One of these steps is getting a protective order. A protective order enjoins the parties against coming about, abusing, harassing, or threatening each other. The restrictions can also prevent one or both parties from contacting or telephoning the other. A protective order is effective in most cases. When law enforcement officers see a party violating the protective order, the violator will be arrested. If law enforcement is not present, violation of the protective order can result in a petition for contempt being filed later, seeking jail time, fines, and/or legal fees. Judges take violations very seriously.

The person subject to a state-court-issued protective order must also understand and comply with federal law prohibiting carrying firearms. There are no exceptions, even for law enforcement personnel. Ask your lawyer for more details.



If you find yourself in the middle of a domestic violence altercation, call the police immediately. Call them first. If you are represented, also call your lawyer. The law dictates that law enforcement's preferred response to domestic violence is arrest. If you fear for your life and have nowhere to go, the police may direct you to an absolutely secret shelter. At these shelters, even your lawyer is not allowed to know where you are. If you have children, they may go as well.

If you are the victim of abuse, never underestimate the true danger that rage poses. Fight any feelings you might have of responsibility for the abuser. In the middle of a difficult situation, worry about one thing only—saving your life and the lives of your children. Sort out the details later.

If you are the abuser, seek treatment. You are not alone. Help is available. The cycle of rage and terror will continue without some form of professional intervention. Don't risk jail time and losing parental rights.

For places of shelter and other safety, please refer to the next page.

Memphis

The Family Safety Center
www.familysafetycenter.org
(901) 222-4400

Sophia's House
www.accinwesttn.org
(901) 728-4229
(901) 722-4700

YWCA of Memphis
www.ymcamemphis.org
(901) 323-2211
(901) 725-4277 Crisis
Hotline

Vday
www.vday.org
(212) 645-8329
(510) 841-4025

*The Exchange Club
Family Center*
www.exchangeclub.net
(901) 726-2200

Nashville

*YWCA – Nashville and
Middle Tennessee*
http://www.ywcanash-
ville.com
(615) 269-9922
(615) 385-9754

*Nashville Tennessee
Baptist Healing Trust*
www.baptisthealingtrust.
org
(615) 284-8271

*Tennessee Coalition
Against Domestic and
Sexual Violence*
www.tcadsv.org
(615) 386-9406

Knoxville

Serenity Shelter
(865) 971-4673

Family Crisis Center
(865) 637-8000

*Knoxville Police
Department
Domestic Violence Unit @
Knoxville Family Justice
Center*
(865) 215-6810

Chattanooga

*Partnership for Families,
Children and Adults*
(423) 755-28224

*The Coalition Against
Domestic and Community
Violence of Greater
Chattanooga, Inc.*
(423) 875-0120

Jackson

WRAP
(731) 668-0411
http://wraoptn.org/



Step 6: Cost of Divorce

If you ask an experienced divorce lawyer why divorces cost so much, most answers will include revenge, pride, and fear. In some cases, an aggrieved spouse may seek revenge by directing his or her attorney to make the process as painful and expensive as possible. In other cases, a high legal price tag results because one party has been denied access to the other's accounts, which has caused the party denied access to initiate costly discovery and motion practice. Sometimes, certain assets are complicated and difficult to value, as with a closely-held business or professional practice, which can also increase the cost, especially if experts are required for the valuation. Both spouses have a right to learn about and completely understand the other spouse's complete financial picture before determining a settlement position.

For cases that don't have a great deal of conflict, the cost of the divorce may directly relate to the size of the estate and whether or not it contains complex assets. For example, a divorcing couple who are married for five years, who rent a house, who have no pensions, and who own no businesses can expect a much lower legal bill than the couple who are married twenty-five years, have two kids in private high schools, have pensions, own a vacation home, and have stock options.

If you're worried about the cost of your divorce, discuss this with your divorce attorney. Be honest about your resources and any fears you may have. Don't avoid this discussion. There are opportunities in every case to reduce expenses. Agree to accept legal services only if you can pay for them.

Your exact legal fee will vary. Family law cases require many services and activities. Legal issues include separation, divorce, custody, visitation, alimony, child support, property division, valuation of assets, and attorney's fees and costs. Services may include court appearances, legal research, investigation, drafting correspondence, conferences with you, settlement negotiations with your spouse's attorney, preparation of pleadings and other legal documents, pre-trial discovery, mediation, trial preparation, and trial. You will need to obtain advice concerning your assets, liabilities, income, expenses, insurance, and taxes, as well as recommendations concerning property division and support. If a trial is necessary, the court has the authority to order one spouse to pay the other's attorney's fees in alimony, child support, and child custody matters. If there is a trial, courts rarely order the full amount of attorney's fees be paid by the other spouse.



By far, the most common method of calculating legal fees is charging for the amount of time required for each service. Lawyer's hourly rates can differ dramatically. A greater hourly rate does not guarantee a superior service. Hourly rates generally range from \$150 per hour to over \$500 per hour. Some lawyers' hourly rates depend upon the complexity of the case. The other method of calculating fees is the flat fee. A flat fee may be charged for the entire divorce or for a particular stage of litigation. In addition to legal fees, there are copying costs, expert witness fees, court reporter fees, mileage, and other expenses. In addition, the court clerk may charge court costs, which may be based on the number of motions or other pleadings filed. Court costs which are in addition to the initial case filing fees may be nothing or may amount to several hundred dollars.



Step 7: Checklist for Filing for Divorce

Hiring Your Lawyer

Even if you feel overwhelmed by the thought of divorce, don't procrastinate. There may seem to be too much to do or think about, but just take one step at a time. And one of the very first steps should be picking and retaining an attorney. As soon as you think there may be a divorce, you should interview two or three attorneys who practice only family law. You'll make some very important choices early in the process, and you'll need professional advice for many of those decisions. Divorce changes everything, so be prepared. Having an experienced professional assisting you in making important early decisions can help you avoid mistakes. Experienced family lawyers have important advice to share.

Begin by researching lawyers. Talk to people you respect and trust. If you know a lawyer, ask the lawyer for a referral. Always ask for a referral to a lawyer who practices family law only. Most attorneys will agree to meet for a consultation. Many experienced family attorneys require that a fee for that meeting be paid in advance.

Once you're armed with several referrals, carefully read each lawyer's Web site, including the lawyer's detailed professional biography or resumé. You want a lawyer who is committed to family law and has family law expertise because family law constantly changes and evolves. Family lawyers keep up with these changes by being members of the American Bar Association's Family Law Section, the Tennessee Bar Association's Family Law Section, and other organizations devoted to family law. Every day, the Tennessee Courts of Appeal issue new opinions. Every year, the legislature enacts new laws. Every few years, the Child Support Guidelines are updated. Keeping up isn't easy. At a minimum, family law attorneys should have subscriptions to monthly family law newsletters and annually updated family law books. Without a serious commitment to family law, many lawyers who practice in other areas won't have the tools to do the job.

For each lawyer on your list, learn his involvement with the ABA Family Law Section, TBA Family Law Section, local bar association family law section, and other related organizations. Has the lawyer attended conferences or served on committees? Has he presented seminars? Has he published books or articles? What about serving as a leader? Gauging a lawyer's leadership, public speaking, and publishing in family law is one way to objectively consider that lawyer's competence, involvement, and reputation among peers.

Watch out for lawyers who promote low-cost divorces and who present multiple questionable endorsements from "former clients." Helping keep costs down is always a good goal, but promoting the lowest cost can be a warning sign. Experienced family lawyers can tell horror stories about being asked to repair devastating legal problems caused by lawyers who made avoidable mistakes—all in an effort to keep costs down, which often entails shortcuts which prove more costly in the long run. But hiring a more expensive lawyer won't guarantee a better result either. Also, on the Internet, some lawyers post glowing reviews which may be self-manufactured. Even if valid, testimonials and endorsements should always only be just one part of your research. You must do your homework.

Make calls and set up consultations. Although not required, it may be helpful to gather certain documents in preparation for your first meeting with your attorney. Locate and copy your important documents, including the following:

- Pleadings if the case is already filed and ongoing;
- Financial statements;
- Income tax returns (last 2 or 3 years);
- Bank statements (business and personal); and
- Brokerage or retirement account statements.

*A*rrive on time for the consultation, armed with questions important to you. Expect the lawyer to pay attention to you. Expect him to be patient and answer your questions. Expect him to be assertive without being arrogant. Trust your intuition. Run away from any lawyer who acts like you are lucky to be his client. Expect the lawyer to present himself in a professional manner. The lawyer and the his office should not be a mess. Expect to understand the lawyer. Even when talking about complicated aspects of law, if you don't understand what's being said, that's not a good sign.

You should also expect the lawyer to keep your children's best interest in mind. Sometimes the legal fight can be more devastating to children than the split itself. Experienced and caring lawyers can teach you how to keep the children out of the fight. Some lawyers may refuse to represent parents who are hell-bent on putting their children in the middle of the litigation's crosshairs.

Expect the lawyer to have a policy for returning calls. Some attorneys will even have their policy in writing. Ask to see it. Then read it. If a lawyer's client is unhappy, the most likely reason is that he failed to return calls and keep the client updated.

Even though you shouldn't expect to feel like you are personal friends with the lawyers you interview, you should expect to feel comfortable on a professional level. Expect the lawyer to interview you, too. Don't be offended. You want a lawyer who is selective in taking cases. For a number of important reasons, the better family lawyers are not interested in representing every person who walks in the door. Just like you may not feel comfortable with the lawyer, the lawyer may not feel comfortable with you. That's ok. If that happens, don't take it personally.

Expect the lawyer to be up front about who will work on your case. Some portions of every case can be handled by an associate attorney or competent paralegal working under the supervision of an attorney. Some clients may wish to spend most of their time with their attorney directly, though, seeking strategic planning and full discussion of all issues. Other clients would rather keep billing to a minimum, spending most of their time with a paralegal. Share your preference during the consultation. Be wary of the lawyer who tells you what you want without listening to you.

Expect the lawyer to tell you exactly how he will try to get your case settled. Expect him to be candid about his family law experience and current caseload. Less experienced lawyers may advise clients to take unrealistic positions or encourage unrealistic expectations. While no lawyer can predict the future, professional judgment comes from both winning and losing cases over a career. Also keep in mind that a lawyer with too many cases at one time can be detrimental, primarily because he may not have time to devote as much attention to your case as it deserves.

Expect a family lawyer full of promises to be just that. Family law is rarely black and white. Leading you to believe a particular outcome is guaranteed can be downright irresponsible. While it is human nature to gravitate towards a more positive person, remember that the most important part of being a lawyer is advising a client about the realities of a situation. The outcome of your divorce will almost always relate more to your ability to make smart decisions rather than to the lawyer's courtroom skill. Smart decision making starts with understanding of what can go wrong, as well as what can go right.

When you interview a lawyer, you should expect to be given a clear picture of that attorney's billing and payment policies. The lawyer should detail the hourly rates of everyone in the office who will work on your case. You should learn how the lawyer charges for expenses, such as photocopies, long-distance telephone charges, court reporters, and postage. Learn whether or not you are supposed to pay these expenses in advance. In addition, different lawyers have different definitions of the word "retainer." Find out what the attorney you're interviewing means by that term. Also, be concerned with how detailed the attorney is in his billing statements or invoices. When you look at a billing statement, you should be able to clearly understand what work was performed and the length of time that it took to complete the tasks undertaken.



Hourly rates and retainers vary greatly and usually depend on the lawyer's practice, caseload, and popularity. If you ask experienced family lawyers why divorces cost so much, honest answers often include revenge, pride, and fear. Some aggrieved spouses seek revenge by directing their attorneys to make the divorce process as painful and expensive as possible. Sometimes, a high price tag may be reasonable because one party has been denied access to the other's documents or accounts, causing the party denied access to initiate costly discovery and motion practice. Some other estates are just plain complicated or are comprised of assets which are difficult to value, such as closely held businesses or professional practices. When discussing the potential costs of litigation, tell the lawyer what you can and cannot afford to pay. You should agree to receive legal services only if you will be able to pay for them.

At the consultation, you may also ask the lawyer the following questions:

- How much do you charge for travel time, expenses, computer research, cell phone calls, expert witness fees, and expenses other than time?
- What does the retainer pay for? Under what circumstances may I receive a refund for your retainer? How does that work?
- What do you think about the judge assigned to my case?
- In very general terms, what is a realistic, but favorable, settlement for my situation?
- What do you foresee as the most serious challenges to obtaining a favorable settlement?
- Do you ever work outside normal business hours to meet with clients? Do you charge extra for those meetings?
- What happens if I call, leave a message, and my call is not returned within 24 hours?
- Ask to read the lawyer's written fee agreement. Read it carefully. Ask questions.

If you don't feel comfortable with the lawyer after the consultation, politely walk away. Interview another lawyer. It is smart to speak with more than one attorney, even if that means paying another consultation fee. If you perceive the lawyer is insulted by your not hiring him right then, that's a bad sign. Experienced family lawyers are very comfortable with clients being patient and talking to more than one lawyer before deciding who they want to represent them. When in doubt, trust your gut. Being in a rush to hire a lawyer can lead to making a rash decision you may regret later.

Tips for Keeping Legal Costs Down

Keeping legal fees down requires clients to take a few extra steps. Share your concerns with your lawyer. Listen carefully to what your lawyer tells you. Move forward every day. Complete the homework assigned by your lawyer in a timely manner. “Homework” includes reading and learning about the divorce process. It also means getting and organizing the documents needed by your lawyer early in the case. The more you organize documents and prepare information for your lawyer, the less the lawyer or paralegal must do. Furthermore, the faster you work, the faster your lawyer can take your work and do something with it. Delay usually adds cost.

Learn about the divorce process so you won't be surprised by what happens. Learn the meaning of some basic legal terms. The more you learn about Tennessee family law, the more efficient you will be in conversations with your lawyer. Your lawyer will likely present you with options from which you must choose. Informed decision making saves time and money and reduces stress.

In addition, carefully identify your most important strategic objectives, and then share them with your lawyer. Work with your attorney in an effort to pick your battles carefully. In family law, not every battle need be fought. Conceding an unimportant issue that that you don't really care about can keep your attorney out of the courtroom on that issue and save you money. On the other hand, there may be times you need to send a message to your spouse that you are not afraid of the courthouse. Your strategic objectives should influence all of your decisions.



*A*nother way you can help cut the costs of your divorce is to batch your questions. In divorces, not every question must be answered the same day you think of it. Get a notebook, keep it in a safe place near you, write down your questions, save them up, and make one call to your lawyer or paralegal, rather than several calls. Saving up questions to ask can save a ton of legal fees. If you're upset over a particular issue though, don't wait. Let your lawyer know you're upset and need a return call. When you talk to your attorney or his staff, stay on task, be direct, and get the answers you need. If the lawyer doesn't answer your question, or you didn't understand the answer, say so. If you're emotional or feel out of control, don't spend a great deal of time talking to your lawyer when you should be speaking with a mental health professional or counselor.

Another potential way of controlling costs is to read your invoices. Most family lawyers bill monthly. As soon as you receive your invoice for legal services, read it. Make sure you understand every sentence. Expect to understand what was done on your case and why. Plus, there may be an easily corrected error. Even lawyers can make mistakes. But if you find an error, don't wait. Share your concerns and ask questions immediately. Memories fade with time.

*W*hen possible, avoid going to court to resolve disputed issues. Know that preparing for court is often as expensive as going to court. Keep your emotions in check. Never use the threat to go to court to punish your spouse or to seek vindication. When you are too mad to talk to your spouse, just walk away. Call your lawyer to discuss strategies and options. Going to court should always be a last resort.

Lawyers and clients should create a strategic plan together. Divorce is painful, is complicated, and moves quickly. Wrapping your head around everything can be tough. In addition, you may forget some of the reasons why your attorney is using a particular strategy or tactic. If you don't know what the "plan" is, ask. If you think you are driving to Kentucky with a friend and you see a sign that says, "Alabama – 10 miles ahead," you need to ask the driver (your lawyer), "Where are we going?" Be on the same page.

Finally, letting your spouse's lawyer do all the work is a bad idea. The other lawyer is not looking out for you. Every legal document presents subtle opportunities to hurt you or help you in the event of a problem in the future. Waiting for your spouse's attorney to make a move means your own attorney is only reacting, not acting. Your spouse's attorney can then frame the issues in the way most advantageous to your spouse and most detrimental to you. Letting the other lawyer do all the work will cost you more in the long run and likely result in your getting the short end of the stick when the final decree is entered.

Assemble Your Team and Documents

*A*fter choosing your family law attorney, you should discuss with him what additional advisors you may need. A mental health professional can help you cope with the emotional aspects of divorce, help you with any associated depression, and provide divorce coaching. A financial advisor can help you prepare a detailed budget and project your future financial needs. In addition, a financial advisor can advise what categories of financial assets (cash, investments, or retirement) you should prefer over others. A forensic accountant can help identify, classify, and value marital property subject to division and perform a lifestyle analysis for an alimony dispute. A business valuation expert or business appraiser can opine on what a business is worth. A forensic psychologist can help with mental health issues in a custody case. A vocational expert can advise about a spouse's earning capacity at the present time or after some additional education or retraining.

You may not need to consult with any professionals, or you may need to consult with more than one. An experienced family lawyer can help you identify the help you need and make recommendations for specific professionals you may need to meet. Don't be afraid to rely on experienced professionals who help divorcing spouses like you. Feeling overwhelmed in divorce is natural. Solving problems begins with admitting you need help and acting on that need.

After you assemble your team, you need to continue the learning process. Read as much as you can. Ask questions. Take meetings and notes. This is a process. As you take one step at a time, many of your concerns will begin to dissipate.

Next, your family lawyer will give you a very detailed list of documents and information to obtain. Get the information and documents which are available to you as soon as possible. Documents tend to disappear, especially over a long period of time. If there are electronic files (such as pdf files) relevant to any of the issues in your divorce, download those too. Take all of this material to your lawyer for safekeeping. This is one of the most important things you can do to both save money and help prevent your spouse from hiding assets and income.

Who Should File First?

In many cases, it does not matter who files first. If there is a trial, the party filing first will likely get to argue first, which is often an advantage. But most cases are settled without ever going to trial. There can be important strategic reasons for waiting until the other spouse files. It depends on many different factors, such as the spouses' relative anger and fault and the makeup of the estate. Unlike fine wine, legal problems do not improve with age. Two good reasons for filing for divorce first include obtaining the mandatory injunction and gaining access to a temporary support hearing. Both require a divorce to be filed.



Mandatory Injunction

Tennessee law provides for a mandatory injunction that grants the person filing the divorce (or a counter-complaint) the ability to obtain a court order preventing either party from engaging in certain potentially harmful activities, including the following:

1. (A) Each party is restrained and enjoined from transferring, assigning, borrowing against, concealing or in any way dissipating or disposing of any marital property without the consent of the other party or an order of the Court.
(B) Expenditures from current income to maintain the marital standard of living and usual and ordinary costs of operating a business are not restricted by this injunction. Each party shall maintain records of all expenditures, copies of which shall be available to the other party upon request.
2. Each party is restrained and enjoined from voluntarily canceling, modifying, terminating, assigning, or allowing to lapse for non-payment of premiums, any insurance policy including, but not limited to life, health, disability, homeowners, renters and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties of the children as beneficiaries, without the consent of the other party or an order of the Court. “Modifying” includes any change in beneficiary status.
3. Each party is restrained from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other in the presence of any children of the parties or to either party’s employer.
4. Each party is restrained and enjoined from hiding, destroying or spoiling, in whole or in part, any evidence electronically stored or on computer hard drives or other memory storage devices.
5. Each party is restrained from removing the children of the parties from the State of Tennessee, or more than one hundred (100) miles from the marital home, without the permission of the other party or an order of the Court, unless in the case of a removal based upon well-founded fear of physical abuse against either the fleeing parent or the child. In such cases, upon request of the non-relocating parent, the Court will conduct an expedited hearing, by phone conference, if appropriate, to determine the reasonableness of the relocation and to make such other orders as appropriate.
6. The provisions of Section 36-6-101(a)(3) shall be applicable upon fulfillment of the requirements of subsection (d) of this act.
7. This injunction shall not preclude either party from applying to the Court for further temporary orders, an expanded injunction or modifications or revocation of this temporary injunction.
8. This temporary injunction remains in effect against both parties until the Final Decree of Divorce or Order of Legal Separation is entered, the petition is dismissed, the parties reach agreement or until the Court modifies or dissolves the injunction.

Temporary Support

Once a divorce has been filed, temporary support may be awarded if the parties cannot reach an agreement regarding their bills and finances. Temporary support is comprised of temporary alimony, child support, and attorney's fees. In some counties, it is called filing a "motion for support pendente lite." In Shelby County, the hearing occurs before a divorce referee and may be appealed to the judge or chancellor. In most counties across the state, the trial judge will hear the motion. These motions are often heard in an abbreviated proceeding that may include time limitations.

Most judges will limit testimony during the temporary support hearing to financial issues, such as who makes how much money and what bills must be paid. Why certain bills exist and who is at fault for the divorce take a backseat in these hearings. For these hearings, most courts only want to make sure the bills get paid and the status quo is maintained the best it can be until the divorce is resolved. Just because an obligor spouse is ordered to pay a certain amount in temporary support does not mean that the same support amount will be ordered in the divorce. In fact, that is rarely the case for many reasons. The temporary order ends when the final judgment for divorce is entered.



Complaint for Divorce

The complaint for divorce and requests for relief included therein generally ask the court to divide property, order alimony and child support, and provide for everything else possible. A court cannot grant relief that is not requested. A complaint for divorce that asks for everything does not necessarily mean that there is going to be a full-scale war. Most cases settle. Experienced family law attorneys will advise their clients to prepare for trial but always allow for a settlement opportunity when it arises. So if the primary breadwinner asks for custody of the children, child support, and to be paid alimony, that does not necessarily really mean that spouse actually expects to receive custody, child support, and alimony.

As a jurisdictional requirement, a spouse must be a resident within Tennessee for at least six months prior to filing for divorce, or the acts complained of must have occurred in Tennessee. Some exceptions may apply for emergency situations, such as serious child or spousal abuse. Battles over which state has jurisdiction over children can be complicated and very expensive. Custody battles contested in more than one state usually require the judges from both states to communicate and decide which state will hear the case. Most states have adopted a very complicated law called the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). One of the key factors is what state is the “home state” of the children, which usually means where the children lived six months prior to the filing for divorce.

Cases are most often filed in the county where the parties last lived together. If neither is still living in that county, the case will most likely be filed where the filing party lives at the time. This is called venue.

Serving the divorce papers means actually delivering the summons (official notice of the lawsuit) and complaint for divorce to the other party. The other spouse’s lawyer, if known, may accept service, but most attorneys have a process server actually hand the paperwork to the other spouse. The process server can be a sheriff’s deputy or a private process server. Sheriff’s deputies have an annoying habit of knocking on doors as early as 4:30 a.m. Under certain circumstances, you may be able to mail copies to your spouse’s residence or, if you don’t know where your spouse is, you may publish a legal notice in a newspaper. Publishing a legal notice in a newspaper can complicate what a judge may award as part of the divorce. Personal service of the divorce complaint and summons is preferred.

The cost of filing for divorce depends on the county. Some are more expensive than others. In Shelby County, Tennessee, the cost may be over \$300.00.

Before or after the divorce is filed, if the parties agree, they can attend mediation. Or the parties can agree to participate in a collaborative law process. The key to both processes resulting in a settlement depends on the willingness of both parties to timely share absolutely all of the needed financial information and cooperate with each other as much as possible.



Read this entire e-book. It describes the first steps of what every person going through a divorce in Tennessee really needs to know from the start. From there, you will be able to ask your lawyer more intelligent questions. After hearing the answers, you can make better decisions. Remember that there are always exceptions to what is said here. In no way should the material in this e-book substitute for competent legal advice from an experienced Tennessee family lawyer.

To learn more about complicated divorce issues involving self-employed professionals and business owners, or proper handling of a divorce case using a forensic accountant, consider purchasing *The Forensic Accounting Deskbook: A Practical Guide to Financial Investigation and Analysis for Family Lawyers*, published by the American Bar Association Family Law Section and authored by Miles Mason, Sr. For more information about that book, see www.ForensicAccountingDeskbook.com or www.MemphisDivorce.com.

Memphis divorce and family lawyer, Miles Mason, Sr. is the founder of Miles Mason Family Law Group, PLC and practices family law exclusively. He is past Chair of the Tennessee Bar Association Family Law Section and is a Certified Public Accountant. Miles is a prolific author and public speaker on divorce presenting seminars to attorneys, forensic accountants, and business valuation experts. He has authored *The Forensic Accounting Deskbook: A Practical Guide to Financial Investigation and Analysis for Family Lawyers*, published by the American Bar Association. The *Forensic Accounting Deskbook* is an easy-to-follow introduction to the world of forensic accounting and managing divorce litigation involving complex assets. To learn more about the book, visit www.ForensicAccountingDeskbook.com.

The Miles Mason Family Law Group, PLC, located in Memphis, Tennessee, serves clients in Memphis, Germantown, Collierville, and counties throughout western Tennessee, including Shelby, Tipton, and Fayette counties, as well as counties in eastern Arkansas. For more information, please visit the Miles Mason Family Law Group at www.MemphisDivorce.com. The firm handles family law matters, including divorce, child custody, child support, alimony modification, prenuptial agreements, child support modification, and complex divorces involving business owners, business valuations, and forensic accounting issues. To learn more about our professional staff, see “[Meet the Team](#).” Also, see our “[Consultation and Fees](#)” page and call 901-683-1850.



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