Need To Know-Key Aspects That Could Impact Your Divorce Litigation



You have just learned that your spouse has filed for divorce, or you have decided that you want a divorce and are ready to file a complaint for divorce. You have spoken to friends, family members, perhaps your therapist, co-workers or just about anyone that will listen. You have been given advice, you have been told stories about others' divorces and you have accessed the numerous articles and blogs regarding divorcing your spouse. You think you are ready. This article addresses key aspects that could impact your divorce litigation.

1. Litigation is expensive. Make no mistake litigation is expensive. In divorce litigation much of the legal and professional expenses incurred are not tax deductible and are paid by you personally from after tax savings. When you and your spouse litigate you are literally suing yourselves. Each and every day the litigation continues your assets will diminish. If you need to retain experts and other professionals like accountants, forensic experts, therapists and best-interest evaluators for the children your expenses will be considerable.

There is no concept of winning in divorce. Remember, a divorce litigation involves a fair and equitable division of the marital assets, a fair amount of spousal support, custodial and parenting issues involving the children, allocation of debt and disposition of property. It may involve valuation of property, but in short divorce is about dissolving the marriage and addressing the unwinding of the marriage. Therefore, change your view of what divorce litigation is about and strongly consider alternative dispute resolution.

2. Let Your Lawyer be Your Lawyer. Too often, clients seek out and absorb all sorts of information and advice. They battle with their own lawyer or fail to follow legal advice. Inform yourself, ask questions, but in the end you are paying this professional to guide you. More importantly, communicate with your lawyer and do not withhold information. Be clear and concise when talking to your lawyer and be prepared for each communication. Do not use your lawyer as a therapist. Also, do not ask your lawyer to achieve results that they cannot achieve. Remember, the lawyer's job is to represent your interests in the case, to negotiate on your behalf towards a settlement and to represent you in court.

3. Manage your Invoices and Expenses. Client's should review there invoices carefully that they receive from their attorney. Communicate any concerns with their attorney as soon as possible. More importantly, manage your legal expenses. A client should think twice about incurring expenses on litigation positions that are unlikely to be successful or the cost of the battle far outweighs the benefit. Be reasonable in your positions. The point is that you are the manager of your litigation and need to be careful how you spend your assets you will need for your future.

4. Settle your Case. As a trial lawyer who enjoys trying cases, who would not want to take every issue to trial. However, in a divorce case, it is a mistake. Divorce cases are tried before a judge. Matrimonial judges are overwhelmed with significant caseloads. They must move many cases and often cannot schedule trials for years. Trials are never over consecutive days in a divorce case. They are often conducted over many days, even months. Trial judges know the law and matrimonial law is very narrow and there are statutes and precedential cases to guide trial judges. There a very few issues in a matrimonial case that require a plenary trial to resolve the disputes. This is why the majority of matrimonial cases settle. If you can settle your case, you should. Do not be fooled into thinking that your case will be different or the judge will agree with you or that your positions will be adopted by the trial judge. All too often, neither party is satisfied and the Court is guided by equity and what is fair and reasonable. In the case of a settlement, the power to settle is in your hands and you and your spouse can shape the outcome of the issues in the case, where a judge may not be able to. Settling your case is not defeat.

5. Be Efficient, Prepared and Cooperate. All too often divorce cases are made expensive by endless motions, discovery failures, skirmishes over inconsequential issues and intentional delay. The goal is to get through it quickly and efficiently. Be cooperative in discovery and exchange information. Cooperate with your attorney and be responsive to issues that arise. Where cases get out of control is when parties carry the marital battle and emotions into the litigation. It is difficult, but control the emotions, make careful decisions quickly and resist making motions to the Court unless absolutely necessary.

6. Hire the Right Professionals. This cannot be overstated. Hire an attorney that you can work with and that will represent your interests properly. If you need a forensic expert or another professional consider their skills and expertise and follow their advice. For example, if you need to value your spouse's interest in a closely held business consider a joint expert or if not possible set reasonable restrictions on the experts to get the job done and within a reasonable time and amount for their services.

Finally, other than perhaps estate litigation, divorce litigation is personal and not like any other litigation. Remember, this is your spouse and if you have children the case will affect them. The longer the case takes the more impact it will have. Try to find common ground and be realistic in your goals for the case, hire skilled professionals, listen to their advice and manage your case.

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