“No Good Time To File For Divorce… But”



“When should I file my complaint for divorce?” This is one of the most common questions asked of all matrimonial practitioners. The answer is almost always the same – “When you are ready.” However, from a legal standpoint, the answer is almost always the same – “It depends.”

From a judicial perspective the filing date is largely irrelevant in establishing support obligations as there are many statutory factors that govern these calculations and determinations. The filing date will have a more definite impact on the distribution of assets/liabilities as it will act as the legal cutoff date for the marriage and starting the calendaring clock within the judicial system. While this date will not necessarily be determinative as to the amounts to be distributed, it will act as a guidepost for valuations and help identify those assets that are marital.

While that guidepost is something to consider, there are some more important practical questions and concepts that people should think about when considering filing for divorce – Is there a tax reason to file immediately? Are you or your spouse going to receive an inheritance that will be used to fund marital expenses? Do you own your own business or does your spouse own their own business? Does the business expect to have any substantial revenue growth or loss in the coming year? Is filing a joint tax return important to you? What is most practical for you and your family and your children? Can your family afford two households? Can you and your spouse remain under the same roof and behave civilly towards one another?

In answering those questions, consider that the filing of a divorce complaint (and certainly entering a judgment for divorce terminating a marriage) will have tax implications for a family, including but not limited to being eligible for head of household or whether to file upcoming tax returns jointly or separately. Also, if you are receiving an inheritance, there are several tax issues that will need to be discussed with your professionals as you consider filing a divorce complaint. By filing early in a year, a spouse may also gain the necessary time to file as head of household or single for the upcoming tax year.

We currently live in a world with an uncertain job market, rising interest rates and volatile financial markets. Filing a complaint

sooner rather than later may allow a party to rely upon higher current financial circumstances as well as those you anticipate in the coming months. The filing may also allow you to create some level of certainty as to the family's income levels and assets and, perhaps, minimize the impact of some of the volatility in the world. Or, if you are a business owner with expected drops in revenue, a delay in filing may allow you to have a lower business valuation or support obligations because of an involuntary drop in income.

From a practical standpoint, by delaying the filing of a complaint until after the holidays, a family may find a benefit by avoiding some of the emotional confusion associated with the Complaint's filing during a time when families get together. While this delay will be short lived, the short delay can remove some of the sting of the filing. In addition, by filing in the first quarter, a family will also provide themselves with sufficient time to establish separate living arrangements and work towards a custody arrangement for any school aged children. This extra time will provide the ability to establish separate households well in advance of the following school year and avoid the unnecessary stress of rushing to do so late in the summer.

In sum, while filing in the first quarter of a given year may provide a family with certain benefits, these benefits should not outweigh the most important consideration for an individual. That is, are you ready to file a Complaint which will end a marriage? Until you can answer that question in the affirmative, it is most definitely the wrong time to file a Complaint for Divorce.

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