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Frequently Asked Questions

Q: How do I choose an attorney?

A: Choosing an attorney in a domestic case is one of the two most important decisions that a client must make. This choice may affect your current well being and your future life in significant ways, for good or for ill.

Q: How do I start a divorce?

A: The initial question that a wise client will focus on prior to initiating a divorce action is not "What will be the outcome." It is "What process will I use to reach the outcome?"

Q: What is the difference between a divorce and a legal separation?

A: Divorce is a final settlement of all legal issues between two married people. Legal Separation is similar to a divorce in that there is a final settlement of all legal issues between two married people, except the couple remains legally married and can take advantage of certain tax and health insurance benefits not available to divorced people.

Q: How are attorney fees negotiated?

A: Clear communications between attorney and client around the fee arrangement is critical to a good working relationship.

Q: Can my spouse and I use one attorney?

A: The use of one attorney by you and your spouse is a desirable option when you have already resolved the issues or are close to resolving them and only need minimal additional information to complete a final settlement. In some situations, you and your spouse may use one attorney to help you complete a legal divorce or other legal action. This does not mean the attorney represents both of you, because to do so would be a conflict of interest. However, when you have worked out an agreement, or when you want to do so with minimal lawyer involvement, you can use one attorney. Under these circumstances, it is the role of the attorney to:

- Provide both of you with the necessary information to make informed decisions.



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- Draft the necessary legal documents.
- Complete the case by taking it through the court system.

In the one attorney divorce case, the attorney formally represents you OR your spouse, since this is the ethical requirement. However, in this situation there is a clear understanding that the attorney's role is limited to the three tasks described above, rather than being a zealous advocate for the spouse who is represented. When one attorney is used to do the primary work in a case, it is always recommended that the other spouse have a consultation with separate counsel to review the legal documents before signing them.

Q: Will I need to pay / will I receive spousal maintenance and if so how much and for how long?

A: It may or may not be the case that you or your spouse meets Arizona's legal requirements for spousal maintenance. When the requirements for spousal maintenance are met, the spouse (who has a substantially higher income) will be required to assist the other spouse achieve reasonable economic independence. This may occur through the payment of short-term or long-term spousal maintenance, whichever may be appropriate under the circumstances. In Arizona, there is no formula to determine whether spousal maintenance should be paid. There are general legal guidelines, but at best they only point the way without providing specific answers. Because of this, an attorney must give your particular circumstances careful consideration prior to making a spousal maintenance recommendation.

The general legal guidelines that are used to decide whether spousal maintenance should be paid are:

- Does the potential receiving spouse have sufficient separate assets for economic independence?
- Is the potential receiving spouse able to be economically independent through appropriate employment?
- Is the potential receiving spouse taking care of the parties' small children?
- Has the potential receiving spouse contributed to the educational opportunities of the other spouse?
- Has there been a marriage of long duration?
- Is the potential receiving spouse of an age that precludes the possibility of economic independence?



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How Much Spousal Maintenance Should be Paid? Since there is no formula in Arizona for determining the amount of spousal maintenance to be paid, answering the following questions may help you make that determination:

- What is the couple's standard of living?
- What are the potential receiving spouse's reasonable expenses?
- What portion of these expenses can the potential receiving spouse pay through his or her own employment or other income, including interest income earned from investments?
- What is the "shortfall" between that potential receiving spouse's expenses and what that spouse can independently contribute to meet these expenses?

Then consider:

- What is the potential paying spouse's income?
- What are the potential paying spouse's reasonable expenses?

Lastly:

- Can the potential paying spouse reasonably afford to pay the "shortfall" amount needed by the potential receiving spouse to meet his/her expenses and still have sufficient income remaining to meet his/her own reasonable expenses?

If not:

- What other options are there to help the potential receiving spouse meet the "shortfall between income and expenses.

Your attorney should fully explore these questions to help you arrive at a reasonable spousal maintenance payment.

How Long Will Spousal Maintenance Be Paid? In determining how long spousal maintenance will be paid, consider the following:

- What educational or employment plan will result in the potential receiving spouse either becoming employed and/or earning an income sufficient to support a standard of living reasonably similar to the one enjoyed during the marriage? You may need assistance from your attorney to help with this often-complex determination.



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- How long will it take the receiving spouse to complete the plan?
- Is the plan reasonable given both parties' circumstances?
- Are the potential paying spouse's circumstances such that spousal maintenance can be paid for the time period requested?

Tax Consequences of Spousal Maintenance. The spousal maintenance paid is considered income for the spouse who receives it, and that person must pay taxes on the amount received as if it were ordinary income. On the other hand, all amounts paid for spousal maintenance can be deducted from the taxable income earned by the paying spouse.

Effect on Child Support of Spousal Maintenance. If the case involves children, the amount of spousal maintenance paid is also deducted from the paying spouse's income and added to the receiving spouse's income in calculating the child support obligation.

Consult Your Attorney about Spousal Maintenance. Like parenting orders for children, spousal maintenance is an area of domestic relations law that requires an attorney's experience and skill in fashioning an order that is fair and workable. This means that a spousal maintenance obligation must be sufficient, if representing the receiving spouse, and it must not be overly burdensome, if representing the paying spouse.

Q: Will I need to pay / will I receive child support and if so how much?

A: Generally, Arizona law requires one spouse to pay child support according to a formula that is part of the Arizona Child Support Guidelines.

The primary factors included in the Arizona Child Support Guidelines formula are:

- The parents' gross incomes (or "adjusted" gross income if self-employed).
- How much time the children spend with each parent
- Whether the children have any special or extraordinary needs/expenses
- The cost of child care services
- The age of the children
- The cost of the children's medical insurance
- Whether alimony/spousal maintenance is being paid



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While the Arizona Child Support Guidelines may seem fair or unfair to a paying or receiving spouse, for the most part the domestic relations judges closely follow these guidelines in determining the child support obligations.

Q: How are child custody and visitation decisions made?

A: As concerned parents will attest, the divorce arrangements for the children may have the greatest long-term impact on the newly-configured family. An attorney's role in guiding you through this sensitive area transcends that of legal technician. When it comes to helping you with decisions about children, your attorney should be part counselor and part child development expert, doing the utmost to understand and keep the children's best interests in mind. No area of domestic relations law requires more of an attorney than helping guide a parent in making the best possible arrangements for the children. The issue of parenting arrangements is complex and challenging and should be fully explored with an attorney experienced in custody and visitation matters.

Questions to ask when determining parenting arrangements

How will the major decisions affecting the children be made? The issue of who makes the major decisions affecting the children falls into two categories - joint legal custody and sole legal custody. A court's joint legal custody order gives equal decision-making rights to both you and your spouse. It presumes you will communicate with each other and together make the major decisions that affect your children. A court's sole legal custody order may sometimes require both of you to first discuss major child-related decisions, but in the event disagreements exist, the final right to make these decisions lies with the sole custodial parent.

When will the children spend time with each parent? Time Sharing schedules for the children - where they will live and how much time they will spend with each parent - can be relatively open-ended. For example, a court's time-sharing child access (visitation) order can range from a few hours on weekends with the non-residential parent to a schedule where the children spend 50 percent of the time with each parent. The latter arrangement is often called joint physical or joint residential custody.

If you and your spouse are communicating and cooperative, you may mutually change the schedule to reflect your children's changing needs whenever you wish. Problems arise when ex-spouses do not communicate with each other and significant tensions exist between them. In this circumstance, life can be filled with stress for you and your children. Whatever the unpleasant feelings you and



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your spouse may sometimes have toward each other, it is always preferable to put your differences aside when it comes to focusing on your children's needs. Under the Arizona child custody statute, the standards that are considered in making parenting arrangements for children are:

- The age of the children
- The parenting abilities of each party
- The quality of each parent's interactions with the children
- The parents' parenting history
- The wishes of an older child
- The mental and physical health of the parents

Which parent is more likely to support the other parent's frequent and meaningful contact with the children?

Q: How are the marital assets and debts divided?

A: This can be a complex area of the law with multiple considerations. The completion of three distinct tasks helps to provide a road map for an appropriate distribution of the marital assets and debts:

- Identifying the Assets & Debts
- Valuing the Assets & Debts
- Dividing the Assets & Debts

Identifying the Assets & Debts. Clearly identifying your assets and debts is the first requirement. This may be a relatively simple process if, for example, you and your spouse own a house, two cars and some furnishings. It may be more complex if you have retirement and pension plans, stock options, a business, an investment portfolio and unusual assets. Before the identification task is complete, all assets and debts must be fully disclosed and a determination made as to whether an asset is "community" property and, therefore, owned equally by you and your spouse, or whether it is "sole and separate" property and belongs to only one of you. Sometimes this is a straightforward assessment; however, there are times when it can involve complex tracing and accounting issues.

Valuing the Assets & Debts. This task, like the first one, may be relatively simple or complex depending on the nature of your assets. Again, if you and your spouse own a house, two cars and some furnishings, the task of valuation is normally not difficult. However, to use the previous example, a valuation may



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be more challenging if your assets include retirement or pension plans, stock options, a business, an investment portfolio and unusual assets. In situations where a valuation is complex, an expert is often hired to place a value on, for example, a residence, a business or a retirement plan. In dispute resolution processes like mediation and collaborative law, or when the attorneys agree to cooperate in the traditional adversary system, one expert is hired by you and your spouse. The situation can become problematic, however, when opposing attorneys fail to act cooperatively and hire their own experts. The expense in this situation is not only higher, but if the experts disagree, they can duel with each other regarding the disputed value of an asset. This is one reason why attorneys must use an array of strategies, including cooperative ones, if you and your spouse are to be well served.

Dividing the Assets & Debts. When Tasks 1 and 2 have been completed properly, the final task - dividing the assets and debts in an equitable way - can sometimes be more easily accomplished. Although there are exceptions, generally you and your spouse are each entitled to half the value of the community-owned assets, and each of you is responsible for half the community-incurred debts. There are many ways to divide assets and debts, and an attorney must be able to think creatively so that this division supports your particular needs. Before the property division occurs, your attorney may have to assist you with some general life planning so the assets you receive will support your life plan. This is another area where the attorney's skill in listening and understanding your underlying interests and needs becomes an invaluable tool.