

DIVORCE IN NORTH CAROLINA:

WHAT YOU NEED TO KNOW

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with your divorce

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Published by Author 2 Market

Printed in the United States of America by Author 2 Market.

ISBN 978-1-7353402-0-3

Additional copies are available at special quantity discounts for bulk purchases for sales promotions, premiums, fundraising, and educational use.

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INTRODUCTION

Divorce is widely ranked as the second most stressful event that one can go through in life; the death of a spouse is the only thing that is rated as more stressful.

While that's not a happy statistic, it does put the magnitude of the divorce process into perspective. And knowing the enormity of this life change, you also know that the way that your divorce is handled has major implications for every aspect of your future.

It really doesn't matter whether you are the person who has decided to end the marriage, whether your spouse

has surprised you with this decision, or whether you've agreed mutually on this step. However you got to the point of investigating your options for a divorce, you are likely to experience a complicated mix of emotions during the process, including sadness, anger, disappointment, and confusion. Add overwhelm and stress to this mix, and you have the makings of a very difficult stage of life.

As an experienced divorce attorney, I see the divorce process as a beginning as much as it is an end. My job is to help guide you through this turbulent period, while at the same time helping you set the stage for a future that you're excited to begin.

So many times, I've seen the most acrimonious divorces lead to healthier lives for my clients. Once you've taken some time to mourn the end of this marriage, you can also envision a different future – one that is in keeping with your values, your priorities, and your life's purpose.

People often ask me how I chose family law. My personal story is defined in part by a childhood that

Introduction

included plenty of teasing, and a good bit of what might be considered bullying today. I was a short, nerdy, mouthy ginger growing up in a small Southern town. I didn't know when to stop talking, and I maxed out at a height that can only be described as really short. Suffice it to say that middle school wasn't the best time of my life. But that period left me with some lasting lessons and a positive outlook that defines my personal life and my legal practice.

The bottom line lesson of my childhood is that I do not like to see anyone get picked on or taken advantage of, and as a lawyer, my life's work boils down to standing up for people, their rights, their interests, and their futures.

In a divorce, being picked on looks different than it did in my middle school classes, but it boils down to many of the same motivations, and sometimes even includes similar behaviors.

As a divorce attorney, I am committed to making sure that my clients have someone to stand up for them,

and to fighting hard so that they get a fair outcome. I do that by considering legal strategy and tactics, by staying on top of cases throughout the divorce process, and by maintaining a consistent flow of communication with my clients as their cases progress.

To me, doing my job as your attorney means more than knowing the legal system and using it to get a fair deal for you. It also means making sure that you don't get picked on – not financially with an unfair settlement, not emotionally with continued abusive or disrespectful communication, and not as a parent with your children used as a weapon against you.

Throughout the divorce process, my team and I will guide you through the series of decisions that will shape your settlement and set the stage for the next phase of your life. We'll consider your priorities, your goals, and your future as you conclude this chapter of your life and work toward a future that you can look forward to. We will protect what is important to you.

Introduction

I've guided people from all walks of life through this process, and I consider it a privilege to have prioritized my clients' goals, to have kept them informed throughout the confusing stages of divorce, and to have protected their interests, because that's why I became a lawyer in the first place.

Throughout this book, I'd like to share with you some stories of the people I've represented. Many of them have told me that their lives were changed for the better by having someone who would fight for them in their corner.

Of course, I've changed clients' names and case details to protect their privacy, but these stories are representative of my work for real clients. I hope that these stories give you some clarity about the divorce process, and also some hope about the potential for a bright future on the other side of divorce.

The stories in this book are just the tip of the iceberg that is divorce law, and there's no way that anyone can write a completely comprehensive guide or offer

personalized legal advice in book format. Instead, I intend this book to be a practical, real world perspective on the topic of divorce – a sort of drone’s eye view of the process.

I wrote this book for people who are contemplating divorce, for people who are in the middle of it, and for people who would benefit from hearing the objective perspective of an expert who has seen, if not “it all,” then at least the vast majority of it.

If I could offer you one word of hope at the outset, it would be that my team and I have helped hundreds of people who came to their initial consultation confused, upset, and overwhelmed.

We can’t immediately take away the pain that goes with divorce, but we can help protect your emotional wellbeing, your relationship with your children, your assets, and your future. And we can help you emerge from this process in a better place emotionally, financially, and personally.

Introduction

If you would like to talk to me directly to see how my team and I can help you through the divorce process, please skip to the end of this book for information about a special offer for readers. Be sure to mention that you've read this book when you call to schedule your consultation, and you'll receive a special \$195 initial consultation, which is a \$250 value.

Whatever route you choose to take through the divorce process, I truly wish you the best, and my hope for you is that you'll look back on this time as a challenge that you got through -- and as a process that set the stage for better days to come. Here's to the next chapter of your life, with you as the author and the blank page as a place to begin the story of achieving your goals and dreams.



BREEDEN
LAW OFFICE

HOW WE ARE DIFFERENT

I care about every client, and I am personally invested in every case.

I will take your phone calls, answer your emails, and keep you in the loop throughout your case.

I will give you straightforward advice about your options.

I will help you determine the best legal strategy for achieving your goals.

Divorce in North Carolina

I will fight hard to protect your rights, your interests, your relationships, and your future.

I will not just tell you what you want to hear. I'll tell you what you need to hear and what a likely outcome will be at each step of the process.

I will not let you get pushed around or bullied as long as I am your attorney.

BACK IN CONTROL 1

WHAT ARE MY OPTIONS FOR SEPARATING OR GETTING DIVORCED?

Divorce looks different depending on several variables, so it makes sense to start with some illustrative stories to explain the most common options.

1. UNCONTESTED DIVORCE

After just a few years of marriage, Jason and Christine agreed that they wanted to end their marriage. They had no children together, few assets, and little debt. In short, there wasn't much to fight about. They chose to seek an uncontested divorce.

Divorce in North Carolina

To get an uncontested divorce, they'll each hire an attorney to draft and review the necessary documents, probably including a separation agreement. Jason and Christine should each be represented by an attorney to provide advice about aspects of the separation that they may not have considered, and to help draft and review the final document before signing.

For this couple, getting divorced is fairly straightforward. To get divorced in North Carolina, you have to be separated for one year. Separated in the legal sense means living separate and apart with the intent of at least one spouse for the separation to be permanent.

Jason and Christine should be sure to record the date of their separation, because confusion or disagreement about that date can slow down their divorce unnecessarily. They can get a separation agreement drafted and signed immediately, and their divorce can be finalized once they have been separated for one year.

2. MEDIATION

Charles and Betsy were married for eight years. They have three children, including one child from Charles's first marriage. They could not agree on the details of their divorce, but they hoped to avoid a trial, so they chose mediation, a form of what's known as "alternative dispute resolution."

Each of them hires an attorney to clarify and represent their individual interests in mediation. A third person (typically an attorney) is hired to serve as a mediator to help them reach a settlement that resolves the issues between them, typically including some or all of the following: custody, visitation, the division of assets, and the assumption of debts.

The mediator's role is not to serve one side or the other, but rather to help settle disagreements and to get to an agreement that is fair to both parties. As a general rule, mediation is a good option when the parties cannot agree by informally working things out through their lawyers, but they still want to avoid a trial.

3. COLLABORATIVE DIVORCE

Melissa and Robert also want to settle their differences through an alternative dispute resolution strategy. They opt for something called collaborative divorce. Similar to mediation in that it is voluntary and has as a main goal the avoidance of litigation, collaborative divorce involves many support people, such as financial advisors and psychologists, to solve problems.

If Melissa and Robert can't reach a settlement through the collaborative divorce process, they will have to hire new lawyers in order to go to trial. Part of the incentive to reach a settlement is the additional hassle and expense that both sides will face if they choose to opt out of the collaborative divorce process. (As a note, Breeden Law Firm does not currently offer collaborative divorce as one of its services.)

4. LITIGATION

Sarah and David were married for 10 years, and they have three children together. During the marriage, they accumulated quite a bit of property, including

some that was inherited and some that was earned by the couple. By the end of their marriage, they were both unhappy and very angry.

Sarah and David were not able to reach an agreement, and they headed to court to settle the issues between them, including division of their marital property and custody of their children. Each was represented by an attorney, and their case was argued in court. After a trial that lasted three days, a judge issued a ruling on all of the issues between them.

BACK IN CONTROL 2

DO I HAVE TO PROVE THAT MY SPOUSE DID SOMETHING WRONG IN ORDER TO GET DIVORCED?

Each state has its own rules, or grounds, for getting divorced. Every state, including North Carolina, allows “no fault” divorces, meaning that you do not have to prove that your spouse did anything wrong to separate and divorce. North Carolina only has no fault divorces, and the only basis for a divorce in North Carolina is that the parties have lived separate and apart for one year, with the intent of one of the parties to remain separate and apart.

Divorce in North Carolina

Even if you have a situation like Derek and Carrie, for instance, the divorce is still a no fault divorce. This couple split up when Derek was sentenced to prison time for burglary. Carrie had no idea that Derek had committed any crime until he was arrested, but she still could not get a divorce in less than a year, or get a divorce based on fault, in North Carolina.

As a note, I am often asked about alienation of affection, typically as it relates to the discussion about grounds for divorce. North Carolina is one of the few states that recognizes alienation of affection as a tort claim. While a tort is a separate civil action that takes place outside of a divorce, I'll address it here.

In North Carolina, if your spouse cheats with someone outside the marriage, the person that he or she cheated with may be held civilly responsible for the breakup of your marriage. A successful lawsuit for alienation of affection may lead to a financial award to compensate you for the loss of your marriage. The legal term for the financial award is damages.

Successful alienation of affection lawsuits are fairly rare, and they are subject to complicated rules. You have to be able to prove to a judge or a jury that if not for the actions of the outside party your marriage would have survived. You also have a limited period of time in which to bring a lawsuit for alienation of affection (known as the statute of limitations).

Also, the elements that you must be able to prove can be difficult to show, even if you're certain that cheating occurred.

Another consideration is whether the person your spouse cheated with has enough money to make a lawsuit worthwhile. While the legal victory may be sweet in the case of a cheating spouse, in financial terms, there usually has to be something to sue for to make the lawsuit worth the effort.

An experienced family law attorney can help you determine whether there is a good chance of success with an alienation of affection lawsuit, and also whether the action is likely to be worth the time and effort. He

Divorce in North Carolina

or she will have a network of private investigators with experience gathering information to prove alienation of affection, and can guide you through the process from start to finish.

BACK IN CONTROL 3

WHO WILL GET TO MAKE DECISIONS FOR MY CHILDREN AND TAKE CARE OF THEM?

Child custody is one of the most important questions, if not the most important one, that comes up in family court cases.

Family law identifies two types of child custody:

1. LEGAL CUSTODY

Legal custody determines who gets to make important decisions about a child's life and wellbeing, including

schooling, medical care, religious worship, and other major choices.

Typically, the courts prefer to award both parents joint legal custody, so that important decisions about the child's life are made by both parents together. Without a clear reason to exclude or limit one parent's rights in this regard, courts in general want both parents to share this authority and to participate in the decisions.

There are exceptions to this general rule, though. Sometimes, one parent will exercise legal custody temporarily or permanently. When that happens, typically the other parent is unable or unwilling to make reasonable decisions on behalf of the child. Possible reasons include severe mental illness, abandonment, substance abuse, and incarceration.

2. PHYSICAL CUSTODY

When the court rules on physical custody, it is determining who gets to take care of the children.

Physical custody disputes are more common than legal custody disputes, and are among the most important reasons to consult with an experienced divorce attorney when children are involved in a family law case.

The best physical custody arrangement for your children is likely to be based on the children's ages, the location of your residence and of your spouse's residence, the location of the children's school, and other factors.

Sometimes, families share physical custody 50/50, with roughly equal time in each parent's home. Custody schedules may vary according to the children's ages, parents' work schedules, children's school schedules, and other factors, but the goal of most judges is for each parent to get about the same amount of time with the children.

In other situations, one parent may get primary physical custody or majority physical custody. Factors that may lead to such an arrangement include parents'

preferences, work schedules, deployment or work travel, medical conditions, drug or alcohol abuse by one parent, unstable housing by one parent, and other circumstances.

Custody is one of the most emotionally charged and draining aspects of contested divorces, and we strongly advise you to consult with an attorney to know what is customary in your area, as well as what might work best for you and your children in your specific circumstances.

BACK IN CONTROL 4

HOW DOES THE COURT DECIDE PHYSICAL CUSTODY, AND WHAT CAN I DO TO STRENGTHEN MY CASE?

Physical custody can be decided by mutual agreement, by mediation, or by going to court, but in every case, there is a multitude of individual factors that will affect the optimal resolution.

Among the factors that must be considered in determining physical custody are:

- Lifestyle: The court will consider income, work demands, school schedules, the amount of

required and recreational travel, the involvement of extended family, and similar factors for you and for your ex-spouse;

- **Ability to Care for Children:** This aspect of your case encompasses your physical ability to care for your children as well as your capacity to make good decisions and to prioritize your children's welfare;
- **History of Abuse:** The court will take into account whether you, your spouse, and/or any significant others has a history of physical violence, physical abuse, or emotional abuse;
- **Quality of the Home:** The court will consider whether you can provide a safe and nurturing home for the children;
- **Child-Related Factors:** The court will consider the children's ages, physical health, and possibly their preferences;

- **Caregiving:** The quantity and quality of caregiving from each parent in the past may be considered, including who was the primary caregiver if relevant;
- **Cooperation:** The court will consider whether you and your former spouse can cooperate with each other in a co-parenting relationship;
- **History of Compliance:** The court will take into account whether you or the other parent has violated custody rules in the past.

One of the most common misconceptions is that courts generally grant mothers primary physical custody. While this was once true, today's courts are less biased against fathers by default. Working with an attorney who is familiar with what is customary in your area is helpful in knowing what to expect.

BACK IN CONTROL 5

CAN GRANDPARENTS, STEP-PARENTS, AND OTHERS FIGHT FOR CHILD CUSTODY?

This is a common and complicated question. Like so many legal questions, the only truly correct answer is "it depends." When one or both parents can exercise their rights and discharge their responsibilities, it is very unlikely that the court will award custody to a third party, even if that person is a grandparent or other relative.

However, if neither parent is in a position to protect the children's wellbeing, there may be grounds for a

grandparent or other third party to win temporary or permanent custody.

For example, if the children's father is in prison and the mother has severe, debilitating mental illness or substance abuse problems, the children's grandparents might ask for custody. If the grandparents can show that they are willing and able to care for the children adequately, and both parents are unfit or acting contrary to their constitutionally protected rights as parents, the court might award the grandparents custody of their grandchildren even though there are two living parents.

Step-parents can also seek custody under certain circumstances. For example, if a biological parent is in jail or has abandoned the family, the step-parent might have a good case for custody. We have seen situations in which a step-parent was also able to exercise the custodial rights of a parent who was absent for a period of time, such as during a deployment, or to take full custody if both parents were found to be unfit or acting

contrary to their constitutionally protected rights as parents.

BACK IN CONTROL 6

ARE CUSTODY AND VISITATION TERMS SET IN STONE, OR CAN THEY EVER BE CHANGED?

Generally speaking, the main goal of custody determinations is to create a stable, predictable situation in which children will thrive. However, custody and visitation arrangements may be modified to reflect changing circumstances in either or both households, or with the children themselves.

Some examples of situations which might merit modifications include situations like these:

Sam and Ben had worked out a physical custody and visitation agreement regarding care for their 6-year-old son, Dylan. In the beginning, a near 50/50 arrangement worked well. Sam got Dylan on the weekends and on Monday and Tuesday; Ben took him Wednesday through Friday. However, the onset of MS left Sam chronically tired, and caring for their energetic son became increasingly challenging. Sam and Ben renegotiated the custody arrangement, expanding Ben's responsibility and time with their son. In this case, child support might also need to be renegotiated to account for the amount of time that Dylan spent in each parent's care.

Ahmed and Amanda worked out a custody arrangement in which Ahmed would be the primary caregiver and breadwinner. However, after one of Ahmed's clients sued his company, causing him to file for personal bankruptcy, Ahmed could no longer support the children at the agreed upon level. The court allowed Ahmed and Amanda to renegotiate child support based on the change in Ahmed's financial circumstances.

Joy and Justin worked out the perfect time sharing plan amicably in mediation. However, they did not foresee that Justin would get a job offer in another state. At the same time, Joy moved in with her new fiancé. Either of these life events would likely have allowed Joy and Justin to renegotiate their custody and child support arrangements in court or through mediation. With both events together, they certainly had a change in circumstances that was enough to cause them to renegotiate their agreement on custody.

BACK IN CONTROL 7

HOW DO I FIGURE OUT WHAT PROPERTY IS MINE AND WHAT BELONGS TO MY EX?

Often, one of the most challenging aspects of divorce is achieving a fair settlement of the property involved.

The law will take into consideration any prenuptial or postnuptial agreements between you and your former spouse, the amounts and methods of accumulating your assets and debts, and other relevant factors.

Often, there will be some forensic work required to arrive at a full accounting of the debts and assets in the marriage, particularly if one spouse is more

knowledgeable about the family's finances than the other, if there is a family business, if one spouse is paid in cash or in bonuses that are variable, and/or if one spouse has been planning to leave ahead of time and making financial decisions on that basis.

The goal of dividing property is a fair split of assets and debts, ideally with each party being able to establish and maintain a separate household. When the parties cannot agree, the court will make determinations about the value of assets, the amount of liabilities, and the fair division of both.

Every situation is unique, and some are inherently more challenging when it comes to sorting out what is fair to each side.

For instance, Jane and Larry own a diverse portfolio of marital property that needs to be divided equitably between them. They have joint bank accounts with marital money, investments, and a home that they bought together and remodeled. If they cannot agree on a fair division of their assets, the court has to make a

determination about what is fair and equitable based on the available information.

Things get even more complicated when one side claims that there is separate property within the marriage that should not be subject to division due to divorce. When Mike and Cara divorced, Cara's position was that she had assets which should not be included in the marital settlement. These assets included a cash inheritance from her aunt and a beach house given to her by her grandparents. Situations like these can be especially tricky when the assets have been mixed in joint bank accounts or improved by sweat equity or cash investments made by both spouses.

Retirement assets are another point of contention in many divorce settlements. When José and Erica got married, José had a retirement account with several hundred thousand dollars of contributions already in it. During the marriage, Erica contributed several thousand dollars to that account, and by doing so, she likely earned an interest in the account, but probably

not a 50% interest. Sorting out a fair settlement that takes into account Erica's contributions and growth during the marriage, but that also considers the length of the marriage and the size of the account at the time of marriage is critical to obtaining a fair resolution to this part of the case.

Ellis is a business owner, and he is contemplating divorce from his wife of 20 years, Melissa. Their assets, all of which were acquired during the marriage, include substantial equipment for his business, their primary residence, several savings and retirement accounts, and a hunting property with a modest cabin in the mountains. Melissa has never worked outside the home but has served as a bookkeeper for the business and has been the primary caregiver for their four children, the youngest of whom is a junior in high school.

Ellis's primary concern is keeping the business completely in his own name, and he would also like to hang on to the mountain property, which is the fulfillment of a longtime dream and has been the scene for some of his best memories with his children. Melissa

is concerned that her lack of formal work history will make it hard for her to get a job, and she suspects that Ellis may have had one or more affairs during the marriage. She is also concerned about how little she knows regarding the business's finances, and the balances in their personal joint accounts.

In situations like these, a qualified divorce attorney can help determine what a fair settlement looks like. Given the assets at stake and the contentiousness that may be involved over time, hiring an attorney with significant trial experience is often the best strategy. While avoiding a trial may be possible, being forced to take an unfair deal because your attorney is not prepared or experienced enough to try the case is rarely a good option. Even if your goal is to avoid a trial, letting the other side know that you're prepared to go to court is often part of a strong legal strategy that protects your rights and your financial future.

BACK IN CONTROL 8

WHAT IF I DON'T HAVE A CATALOGUE OF ALL OUR ASSETS AND DEBTS?

One of the best things that you can do while you're considering your options is to get a full accounting of your assets and debts, with paperwork to back up that accounting.

You can start by printing out statements for all of your bank, investment, credit card, and retirement accounts with a specific focus on the date of marriage and date of separation values of each asset. We also suggest

tracking down deeds and titles to all property, including real estate, vehicles, and other items.

If your family owns a business, and especially if the business includes cash transactions, the detective work that you do now to piece together an accurate portrait of your cash flow and assets will help your attorney protect your interests in the future.

If you have access to statements that show the value of your assets and accounts at the time of your marriage, gather those documents, as they are likely to strengthen your case as well. Doing so is especially important if you brought substantial assets to the marriage, such as existing retirement and/or bank accounts.

Maria let her husband, Jack, take care of the family finances while she raised their two children and kept the home running smoothly. During the divorce, thanks to a tip from Jack's brother, Maria found out that her husband had been keeping a separate bank account with \$250,000 in it.

This tip led Maria to investigate further, even hiring a private investigator suggested by her attorney. She learned that Jack had been going on “business trips” with a young female employee to fancy hotels, and she also found charges for upscale restaurant meals, massages, jewelry, and other gifts that were not for her.

While these discoveries were painful, having the information and a legal team with plenty of experience putting private investigators’ reports to good use helped her take a strong position in the divorce negotiations, and ultimately resulted in a financial settlement that allowed her to start a new chapter in her life free from worries about money.

BACK IN CONTROL 9

IF I GO TO LITIGATION, HOW DOES THE COURT FIGURE OUT HOW TO AWARD ALIMONY AND DISTRIBUTE PROPERTY?

The financial settlement in any divorce depends on a complex and unique mix of factors, but the following questions are usually a good starting point for determining the outcome.

- How liquid are the marital assets? (Liquid is just a fancy way to say that an asset can be quickly and easily converted into cash. For example, a savings account is very liquid; a home that must

be appraised, put on the market, and sold is not very liquid.)

- How healthy is each party? This may include physical and mental health.
- How employable is each party? Factors like work history, education, and childcare responsibilities are likely to be assessed.
- How were the couple's assets acquired, and what are they worth? Is there truly separate property involved, and if so, what evidence shows that the property is separate? Are there mixed assets to be divided, and how strong is the case for the portion that is separate and the portion that is mixed? What is the value of the joint property, and how can it realistically be divided?
- What were the contributions of each spouse to the household during the marriage, including financial earnings and childcare?

- Why is the marriage ending?
- What are the debts and liabilities of the marital estate?

BACK IN CONTROL 10

ONCE ALIMONY HAS BEEN
ESTABLISHED, ARE WE STUCK
WITH THAT AGREEMENT
FOREVER?

At the risk of sounding like a broken record, financial considerations within a marriage and divorce are often extremely complex, and there are very few cut and dried answers. To assess your personal situation, it's best to consult with an attorney who can help you consider the specifics of your situation and your best path forward.

The short answer is that there are many factors that affect initial alimony claims, and there are also reasons that the court may reassess alimony after that claim has been settled.

As an example, Brittany and Cameron had been married for 2 years before separating. Brittany did obtain alimony support from Cameron, but since the marriage was short, the alimony was only for one year, or about half the length of the marriage. Brittany used this period of alimony support to complete coursework at the local community college. She chose a program whose graduates were in high demand after graduation, setting the stage for her to be financially independent from Cameron quickly.

Carol and Jim, however, had been married for 25 years. Since she was the primary breadwinner, Carol was prepared to pay alimony to Richard indefinitely to compensate him for the fact that he had sacrificed his earning potential to take care of their children and their home while she traveled for work and earned a higher income. However, Richard got remarried about five

years after he and Carol divorced, and Carol successfully sought to end his alimony support due to his remarriage. Alimony in North Carolina ends with the death of either spouse or the cohabitation or remarriage of the dependent spouse, which is the spouse receiving the alimony.

BACK IN CONTROL 11

WHAT SHOULD I DO IF MY EX SAID OR DID SOMETHING THAT THREATENED ME OR MY CHILDREN?

You should always take threats seriously, particularly when you have let the other side know that you intend to end the relationship, or have done so. (Please call 911 if you're in immediate danger. If there is no imminent threat, please consult the resources in the back of this book for help.)

If you have been physically assaulted in any way, or if your children have been, seek medical assistance as

soon as possible. Keep documentation of everything that has happened, including medical records, pictures, and your own dated notes about the events.

After Michelle confronted her ex, Don, about his missed child support payments, he came to her house and yelled that he was there to get the kids and take them to his parents' house. When Michelle stood her ground, Don hit her, causing visible bruises, and did several 360 degree turns in her yard before speeding away in his truck.

Michelle did everything right from that point: She immediately called 911. She took pictures of her injuries. The police made a report of the incident and opened a criminal matter against Don. Michelle made an appointment with her doctor to have her injuries evaluated. She also started a folder and put the following items in it: paperwork and receipts from her doctor's appointment; a written account of exactly what happened just before, during, and after the incident, including quotations that she remembered; pictures of her injuries and of the yard damage where

Don had spun his truck; contact information and a written statement from one of Don's friends, who had been in his truck during the incident; a copy of the police report from the officers who responded to her 911 call; and written statements from two of her neighbors who witnessed the events.

Michelle used the documentation that she collected to seek a domestic violence protective order, and with the help of her attorney, she was able to keep herself and her children safe from Don. Her lawyer was also able to get their custody order modified substantially based on this incident.

BACK IN CONTROL 12

WHAT IF MY EX MAKES UP FALSE ALLEGATIONS ABOUT ME IN ORDER TO GET A BETTER RESULT IN COURT?

Domestic violence is a serious issue in the United States, and it's widely agreed that it is under- rather than overreported. If you or someone you know is a victim of domestic violence, calling 911, contacting the police, and/or contacting a shelter is a first step toward safety for you and your children.

Having said that, there are cases in which one spouse tries to gain a strategic advantage in divorce or

custody proceedings by making up claims of domestic violence or child abuse.

In other words, one spouse makes up stories about abuse or neglect, and may even try to convince the children to back up these false claims. When children are involved in these untrue allegations, the legal term is alienation, and the court typically takes a strong stand against it. However, proving that alienation is occurring can be complicated, and a lawyer's guidance is really valuable in doing so.

For instance, Roger and Chelsea have a 7-year-old daughter together. When Roger told Chelsea that he had fallen for a high school sweetheart he reconnected with on the Internet, Chelsea was furious. In addition to screaming at Roger in front of their daughter, she began telling the child details about the breakup of their marriage, and making false negative statements about Roger to the child.

Chelsea also invented false stories about Roger's poor parenting during his custodial time, including discipline

of the child that bordered on abuse and neglectful acts like leaving the girl alone for hours at his home, forgetting to provide regular meals, and calling Chelsea names in front of the child.

Rather than confront Chelsea initially, Roger kept careful notes about these false accusations, kept his attorney apprised of each incident, and worked with his attorney and a family therapist to resolve the situation in a healthy way for their daughter.

Over time, partly due to gentle pressure from Roger through his attorney, Chelsea sought help to resolve her feelings about the divorce, and Chelsea and Roger were able to develop a workable co-parenting relationship. Most importantly, their daughter thrived. Roger's ability to follow his attorney's advice by documenting each inappropriate incident and by remaining objective about the situation as a whole strengthened his position in custody negotiations and ultimately led to a healthy outcome for his daughter and himself.

BACK IN CONTROL 13

WHAT IF MY SPOUSE AND I HAVE SUBSTANTIAL ASSETS (OR DEBTS)?

A “high net worth divorce” is one that involves marital assets of at least a million dollars, according to The Securities and Exchange Commission (SEC).

Typically, a high net worth divorce will include many or most of the following items:

- An extra layer of challenges in identifying and valuing all of the marital assets;

Divorce in North Carolina

- Negotiations about a prenuptial or postnuptial agreement, and how to enforce it;
- Conflict about assets with high monetary and/or sentimental value, including real estate, business assets, art, jewelry, vehicles, and other items.

If you've seen *War of the Roses*, you're familiar with the stereotypical worst case scenario of a high asset divorce. Given what is at stake, emotions tend to run high, and attorneys become incredibly valuable both for their experience in discovering and inventorying assets and for their detached, objective perspective on the situation.

Merida and Paul are a prototypical high net worth couple. They built two successful businesses together and amassed a total net worth of \$3.4 million. Their assets included two vacation homes and accounts held offshore.

While things were acrimonious between them, neither wanted to see their hard earned fortune be

squandered on unnecessary legal bills. In the end, they agreed to sell one of their businesses in order to add enough cash to the estate for Paul to buy out Merida's interest in the other business. This resolution left them able to part ways completely rather than trying to run businesses jointly, and each spouse received enough in cash and assets to feel that the settlement was fair and the future bright.

Especially since they share adult children, it was important to Merida and Paul that each of them be confident in the business valuations and the resulting settlement. Satisfied that the settlement was fair, they felt that they could coexist peacefully at future family events, and possibly remain friends after a cooling off period.

BACK IN CONTROL 14

HOW SHOULD I USE SOCIAL MEDIA (AND OTHER FORMS OF SUPPORT) TO GET THROUGH THE DIVORCE?

When you're going through a divorce, it's natural to want the support of your friends and family. This desire is completely normal and can be very helpful as well, but you have to be careful to channel it in ways that create meaningful support and that do not compromise your legal case.

Generally, social media is fine to use for short periods and in positive ways. Following inspirational sites,

connecting with friends between in person meetings, seeking knowledge and support in online communities – these are examples of ways that light social media use can be helpful when you're going through a major transition like divorce.

As an attorney and as a fellow human being who can spend a few too many minutes on social media at times, I have two main warnings about social media.

The first is general: Social media can suck you in, both in terms of time and negative outlook. It's easy to get caught up comparing your real life to the highlight reel that others post on their feeds, and it's easy to go down rabbit holes that steal an hour instead of a quick glance. If you find that you're feeling anxious or irritable, or if you find yourself turning to your phone at the first sign of boredom, I suggest taking a step back from social media. In person support and volunteer groups can serve as a great alternative to social media if you notice these negative effects – and even if you don't.

The second is specific: Follow your grandmother's advice, and do not write or say anything that you would not want your mom, your boss, *and* your pastor to hear. Even when you think you're anonymous in an online community, it's incredible how fast a screenshot can make a poorly considered comment posted on social media into a piece of evidence in divorce and custody proceedings.

In the same vein, if your children are struggling during divorce, avoid making specific references to them on social media while your case is in progress. If you need help, seek out family, friends, a pastor, a counselor, and/or a therapist; do not seek specific advice on social media, and for heaven's sake, please do not vent about your spouse or children on social media during your case.

I have had clients who have found productive outlets for their need for support in lots of interesting ways. Volunteering with local groups and agencies, taking classes, picking up a new hobby, joining a Bible study or small group at church, adopting a pet, and joining an

adult rec sports league are just a few of the creative ways that my clients have found to burn off steam, vent a little frustration, and turn their energy into a positive force that moves them toward a great future.

BACK IN CONTROL 15

HOW MUCH WILL I HAVE TO PAY DURING THE DIVORCE?

The legal costs associated with divorce run the gamut from modest dollar amounts to huge legal bills, with the average falling around \$13,000 in North Carolina. Your specific circumstances, as well as your spouse's, will determine where in that range your divorce falls.

When looking at the average, keep in mind that the majority of divorces are resolved by the parties without going to court, and often without formal mediation. These divorces are done very inexpensively, and bring the average down considerably. On the other hand,

divorces in which mediation and/or trials are necessary are less common but tend to cost far more than the average.

The main factors that affect the total cost of a divorce include:

- Whether or not your divorce includes a trial;
- The assets and debts at stake;
- Whether or not you need to hire expert witnesses, a parenting coordinator, a business valuator, a private investigator, and/or other specialists during the process;
- The level of cooperation between you and your spouse during the process;
- The amount of legal work involved in your divorce, including communication with your attorney, negotiations with the other side, drafting and revision of legal documents, and filing of motions.

My perspective is that everyone should consult with an attorney to review any separation agreement before signing it, even if the parties were able to reach those terms fairly easily between themselves. That may sound self-serving because I provide those services for a living, but whether you hire my firm or another attorney, I want you to consult with someone who will alert you to any issues with your proposed agreement before you sign it.

I say that because I have seen so many separation agreements that locked people into deals that were not fair to them, for many different reasons.

Sometimes, prospective clients simply didn't realize what their rights were, or that the deal they were signing was final. In other cases, clients' needs evolved as their circumstances changed, and their agreements did not take into account the common life events that an experienced family law attorney would advise them to consider.

The reasons that prospective clients have signed unfair separation agreements include all of these, and many more:

- They were eager to end the process;
- They were intimidated by the other side;
- They felt guilty about their own conduct;
- They thought that ending the marriage immediately was worth any price;
- They thought that their children would benefit from a quick resolution;
- They were experiencing mental health issues that made full consideration difficult;
- They didn't fully read or understand the document.

Perhaps my least favorite stories are of prospective clients who downloaded free or inexpensive legal documents online, only to find that they are unfair, unenforceable, or both.

Once you've signed off on unfair terms, sometimes I can still help. But too often, due to the nature of the legal process and its rules, you may be stuck with that bad deal.

That's why I strongly recommend consulting with an attorney who can be objective, who is not caught up in the emotions of your divorce, and who represents only your interests before signing any documents in your divorce.

The consultation fee can seem intimidating, but the headaches and financial consequences of a bad separation agreement are potentially far worse.

BACK IN CONTROL 16

HOW SOON AFTER MY SEPARATION CAN I DATE OR GET REMARRIED?

We know you didn't buy this book for dating advice, but based on a long career helping people get divorced, I strongly recommend taking a break from serious romantic involvement while you're in the divorce process.

Take a few months, or longer, to focus on yourself. Doing so is an investment in not repeating any dysfunctional patterns, in not jumping into a relationship for the wrong reasons, and in building a "new normal"

with your children that is independent of any dating relationship.

I am not saying that you shouldn't date or find companionship for the entire period of your separation, but you do want to show the court that you are able to create a safe, stable home for your children.

As an example of how dating seriously while separated can complicate your divorce, consider Laura, who joined a dating website and began dating a lot very soon after she separated from her husband, Chris. While Chris proceeded more cautiously on the dating front, Laura had introduced their young children to three "serious" boyfriends during the course of the one year separation from Chris, and had lived with two of them at different points.

Judges are human, and the court generally regards such quick involvement of dating partners in children's lives negatively – especially when the children's living arrangements are affected. Chris has a great case for increased restrictions on Laura's custodial time to

protect their children's safety and their emotional wellbeing.

Again, I am not advising you not to date at all – that's not my job, and not really my business. Rather, I am suggesting that dating too seriously and too fast may compromise your decision making and your legal options.

Keeping your children separate from any new relationships during your separation, and particularly putting off moving in with a new romantic partner before you are divorced, are very helpful in setting the stage for a successful settlement of your divorce.

BACK IN CONTROL 17

DO I NEED A LAWYER TO HANDLE MY DIVORCE?

This is my best advice based on years of family law work, including many consultations with people who regretted signing something that was difficult or impossible to undo: Before you sign any agreement, pay for a consultation with a reputable attorney who will look over the proposed settlement and give you an objective, experienced evaluation of what you're agreeing to before you commit to it.

I get that it seems self-serving for a divorce lawyer to say that you always need an attorney to handle your

divorce. And the reality is that you don't necessarily need a lawyer to "handle" the entire case.

There are online forms, do-it-yourself kits, financial calculators – tons of resources that will help you begin the process of sorting out the division of your marital estate and the shape of your future obligations to your ex-spouse and your children.

But even if everything is amicable, divorce is a rule bound process, and a consultation with a lawyer is a small investment in understanding the rules that govern the process so that you can avoid unforeseen negative consequences down the road.

Finally, the more pressure the other side is leveraging to convince you not to consult an attorney, the more likely it is that you need to do so.

When Jessica and Tom decided to divorce, everything seemed amicable, and Tom was an attorney, so Jessica figured that getting the proper paperwork filed would be simple enough without hiring her own

counsel. She didn't want to be married to Tom any more, but she trusted him – and she was happy to save them both money that they could put toward starting over as soon as possible.

Fortunately for Jessica, the revelation that Tom was cheating with a colleague came before she had signed anything. In the course of a short conversation with a mutual friend, Jessica went from trusting that Tom would deal with the situation fairly and professionally to wondering about the implications of his infidelity for their settlement – and not trusting him about much of anything.

Jessica paid a consultation fee to a divorce attorney in her town, and within 30 minutes, she learned that her rights and interests were not the same as Tom's in this situation. That consultation fee alone saved her from signing a settlement that did not take into account Tom's cheating, and that did not protect her future adequately either.

While divorce law is not rocket science, it is a highly complex field. When you build a rocket, a small mistake can lead to a catastrophic outcome. Likewise, a small misstep in what seems like an unimportant detail – missing a deadline, not responding properly to legal documents, making a poor impression in front of a judge, or simply not knowing the legal meaning of a few words – can have major consequences for your case, including negatively affecting the terms of your permanent custody agreement, your alimony arrangement, and/or your property settlement.

I will come up with a DIY vacation plan, let my wife cut my kids' hair, and even try a (really tiny) home project all day long. But those things have two important facts in common: They are temporary, and they are cheap to fix. Divorce settlements are, in my opinion, never completely DIY friendly, and bad ones are never cheap to fix.

BACK IN CONTROL 18

HOW CAN I CHOOSE A QUALIFIED ATTORNEY TO REPRESENT ME?

The most important conversation to have before you hire an attorney is a heart to heart with yourself. You'll have the best experience if you know what you want your life to look like on the other side of the divorce, and can be realistic about what is possible. What are your goals? What is most important to you? What are the things that you need to emerge from your divorce with to be happy in the next few years?

When you search for an attorney, you want someone who will listen to your priorities and work hard to protect them. You don't need to be best friends with your attorney. Actually, that's counterproductive – you need someone who can be objective about your case. But you do need someone you can work with, and whom you trust to be honest, forthright, skillful, and prepared.

The most common mistakes I see in divorce proceedings are using an attorney with little family law experience, choosing someone who does not communicate with their own client well, and choosing an attorney who does not practice regularly in the county where the case is located.

An attorney friend who usually practices landlord-tenant law but is willing to help you get divorced as a favor, or a new attorney who “specializes” in traffic, criminal, family, estate, landlord-tenant, and tax law is unlikely to be able to protect your interests effectively.

Likewise, divorce is governed by local rules. You want your attorney to be familiar with those local rules, and to be able to share with you the available strategies with honest feedback about your options.

Take Julie, for example, who was on the verge of separating from her husband of five years, John. She wanted to get clear on her priorities before consulting with any attorneys, so she made a list of her priorities. Julie wanted:

- To negotiate peacefully and to keep a cordial relationship with John;
- To have open lines of communication about her case, so that she would not be wondering about next steps or the length of each stage. (She had heard nightmares about friends' attorneys who did not return emails or phone calls.)
- To divide their property equitably, and to protect a sizable cash inheritance that she had received from her father;

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- To be divorced as soon as possible under the law, without compromising her interests;
- To hire a skillful, ethical attorney who is good at negotiating, and who is not afraid to go to trial if needed. (While Julie hoped to be able to work things out, she was realistic enough to know that things could turn ugly, especially with money on the line.)

Julie was guided by her goals as she researched possible attorneys and chose one to consult with; because she knew what she expected from the attorney and from the process, she felt that she was making progress toward a positive outcome despite the emotional toll of the process.

I suggest looking online and asking friends and family for referrals as you develop a list of possible attorneys. When you have a list of options, consider these attorneys' backgrounds, qualifications, physical locations, and experience with divorces like yours.

Once you have narrowed your list down to a few possible options, schedule consultations with them. Pay attention to their intake process, and come to your consultation with a list of your questions.

Beware of attorneys who promise a particular result or whose answers to your questions are far off from what other attorneys have said. In reality, no ethical attorney can promise a result, and while lawyering matters, painting an overly rosy picture about the likely outcome can be a (dishonest) sales technique.

Here are some questions that I think most people should ask before hiring an attorney:

- What makes your firm unique?
- Will I be working with you directly, or with another attorney? Will I also deal with staff?
- How would you handle my case? What appear to be the biggest weaknesses and the biggest strengths in my case?

Divorce in North Carolina

- How do you typically communicate with your clients?
- What is the price range that I can expect for my case? What factors go into determining the price? How does the payment process work?
- How much experience do you have with litigation (taking cases to court)?
- Is there anything else I should know about your firm or background?

After consulting with attorneys, consider who you think is the best person to help you through this challenging legal process. Listen to your head, and also consider your gut reaction as you choose an attorney.

BACK IN CONTROL 19

WHY SHOULD I CHOOSE YOU
AND YOUR TEAM,
SPECIFICALLY, TO REPRESENT
ME IN MY DIVORCE?

My team prides itself on doing the best job that we can for everyone who hires us. Having said that, over the years, we've come to know our particular strengths well, and we know what makes us stand out as a firm.

First and foremost, we will fight to protect your interests and priorities, and we will communicate with you responsively about your case throughout the process.

Those are the defining characteristics of our firm, and our promises to you.

Beyond those fundamentals, we hold ourselves to high ethical standards with other attorneys and with our clients, and we take care of your money as if it were our own.

There are no silver spoon babies at Breeden Law. Everyone who works here knows that legal fees are a substantial investment. We pride ourselves on getting you a quality result for a fair price. The industry term for moving paper around in order to bill clients is “churning cases.” We have to bill for our time in order to continue to serve our community, but we use technological efficiencies, ethical billing practices, and our own moral standards to be sure that you are getting a good return for your investment with us.

TAKE ACTION NOW!

I appreciate your spending your time and attention on this book, and I hope that I have clarified the divorce process for you.

I'd like to return the favor and offer you something in kind. Normally, I charge a prospective client \$250 for an initial consultation with me. However, if you call my offices and mention that you've read this book, I would be happy to reduce that charge and to provide that

service **for a reader's price of \$95 (normally a \$250 fee).**

The past few months have no doubt brought you uncertainty, sadness, and frustration. It would be my privilege to help restore some peace of mind for you by listening to your concerns and helping you to consider your legal options.

Please call my team now at 919-679-9791 to schedule your consultation. I'm looking forward to helping you put the past behind you and enjoy a future that reflects your goals, your priorities, and your hopes and dreams.

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FAMILY LAW RESOURCES IN NORTH CAROLINA

Family Law Attorney in North Carolina:

Breeden Law Firm: www.breedenfirm.com
919-679-9791

Domestic Violence Resources in North Carolina:

National Domestic Violence Hotline: 1-800-799-7233

Interact (Wake County, NC): www.interactofwake.org
Crisis Line: 919-828-7740

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Harbor, Inc. (Johnston County, NC):

www.harborshelter.org

Crisis Line: 919-631-5478

Safe (Harnett County, NC): www.SafeofHC.org

Crisis Line: 910-893-7233

National Sexual Assault Hotline: 1-800-656-4673

Comprehensive Listing of Domestic Violence Shelters in

NC: www.ncadmin.nc.gov

[Search: Interactive Programs Directory]

Direct Address of the Interactive Programs Directory:

<https://ncadmin.nc.gov/advocacy/women/interactive-programs-directory>

General Court Resources in North Carolina:

North Carolina Court System: www.nccourts.org