

GEVURTZ Attorneys at Law
♦ MENASHE

YOU & YOUR DIVORCE LAWYER

HOW TO GET THE BEST
FROM YOUR LAWYER AND
THE MOST VALUE FOR YOUR
DOLLAR

Preface to Second Edition

The original pamphlet, written by Ron Gevurtz and published in 2000, has been revised to expand on the original core ideas and to reflect the nature of today's family law practice.

Preface

At the request of the lawyers in our firm, I have prepared this pamphlet, which is a collection of my thoughts about divorce, divorce clients and their lawyers over my 40 years of practicing in family law. It mirrors the philosophy of our firm, which limits its practice to only family law. Although there are numerous other family law issues, this brochure deals only with divorce. In addition to divorce, we are fortunate to have expert lawyers in all of the following practice areas:

- ◆ Juvenile law
- ◆ Step-parent adoption
- ◆ Custody and parenting time
- ◆ Post-decree problems
- ◆ Paternity
- ◆ Dissolution of domestic partnership
- ◆ Domestic partnerships and prenuptial agreements
- ◆ Grandparent rights

About the Author. Ron Gevurtz retired in 2002 after 40 years of practicing law. As one of the founding partners of Gevurtz Menashe P.C. he is missed very much by the attorneys and staff who had the good fortune to learn from him and had the pleasure of his wisdom, professionalism and sense of humor.

We feel very fortunate to have learned a great deal from Ron. His legacy to this firm is that family law, like no other area of practice, requires everyone in the firm to be deeply committed to the needs of the client with compassion, understanding and patience.

This philosophy remains strong among the other attorneys in the firm who are available to help you with any family law matter that may arise.

You and Your Divorce Lawyer

SELECTING A LAWYER

Ask other lawyers you know. They will know lawyers who practice in this area of law. They will probably give you several names of prominent domestic relations firms. Ask friends or relatives for lawyers they have used in a domestic relations case with whom they have been satisfied.

Talk to business acquaintances, house counsel or other professionals, such as CPAs, psychologists or your doctor.

Look at lawyer websites. The website will often give you a lot of information about the expertise of the firm and will usually include biographies of individual lawyers. It is good to select a firm that has more than one lawyer doing family law work. You do not need to interview all of them. Interview until you find one that you feel confidence in and stop.

The laws pertaining to issues in a family law case call for professional judgment. They are not exact. Having a number of experienced family law practitioners in the same firm gives your lawyer an opportunity to share ideas with knowledgeable colleagues.

The prominent domestic relations firms are not necessarily the most expensive. Many times you will hear a firm is good, but it is very expensive. A law firm may have many good divorce lawyers at different hourly rates.

Lawyers generally charge by the hour based on their years of experience and sophistication. Depending on the facts in your case, you may not always need the senior partner in a firm, so why pay for him or her?

When you call to make an appointment, ask if there is a charge for the first consultation. If there isn't, you might wonder

why not. You should receive more information at that first meeting than you will again throughout the case. The lawyer should listen to you and explain your rights and responsibilities. He or she should explain the procedure and you should leave the office knowing generally where you stand. Whether you come to the office wanting to take legal action, or just to find out what your rights are, the lawyer should charge for this important meeting.

You may want to pay for your consultation with a credit card. Find out in advance if the firm takes credit cards and which ones they take.

PREPARING FOR THE INITIAL INTERVIEW

You have now made the appointment. The legal assistant who scheduled the appointment may have suggested information for you to bring to the office. For example, it could be very helpful to the lawyer to see your tax returns for the last three years or a financial statement you may have prepared to take out a loan or refinance a house.

Make a list of questions you want answered. Some of the questions will be answered in the natural course of your conversation with the lawyer. You will have the list with you to remind you to ask all of your questions while you are there.

If it is at all possible, do not bring children with you. If you must do so, bring someone who can watch them during your visit with the lawyer. The information you will receive is very important and the presence of children can be distracting for you and for the lawyer.

THE INTERVIEW

Please try to arrive on time. The lawyer has generally reserved one hour for you. He or she may have another

appointment scheduled to follow yours, and you should not have to hurry through your visit. Your time is valuable too. If you are kept waiting, call this to the lawyer's attention.

The receptionist and staff should be cordial. They are there to make you feel as comfortable as possible in a stressful situation. The lawyer or their legal assistant should come out to greet you and escort you to a private office. You may be asked if you want something to drink before starting the interview. Do not be shy to say "yes."

SUBJECTS FOR DISCUSSION

The lawyer may start by asking you for some factual information. This gives the lawyer an opportunity to relate to you and for you to answer the easy questions first. The information will also be useful if you decide to proceed. When we file papers with the court, we are required to include information such as social security numbers, driver's license numbers and prior marriages. The court does, however, seal some of your personal information from public view.

The lawyer will want to know why you have come in. This is your opportunity to tell the lawyer what is going on in your life or marriage that brings you to need the lawyer's advice. Always tell the truth as you know it so the lawyer will understand.

The lawyer may ask you many questions about your children, finances, real and personal property, debts and your spouse. You may not know all of the answers at the consultation, but do not worry about that. The information can be obtained by you or the lawyer at a later time.

Expect the lawyer to explain your rights and responsibilities in various areas of family law that apply to your situation.

- ◆ Custody of children
- ◆ Parenting time

- ◆ Child support
- ◆ Tax exemptions for children
- ◆ Health insurance for children
- ◆ Deductible or uninsured medical and dental expenses for children
- ◆ Life insurance to protect child support
- ◆ College expenses
- ◆ Spousal support – how much and for how long
- ◆ Health insurance for the uninsured spouse
- ◆ Life insurance to secure spousal support
- ◆ Property distribution
- ◆ Premarital assets and liabilities
- ◆ Inherited and gifted assets
- ◆ Debts
- ◆ Attorneys fees and costs

TIME

After the lawyer has covered the above material relevant to your case, you may wonder how long the divorce will take. The answer to that question is largely in the hands of you and your spouse. A divorce can take as little as a few days or longer than a year. The degree to which the spouses are cooperative and assist the lawyers and each other may well determine the time and the cost of the divorce.

ATTORNEY FEES AND COSTS

There is no way a lawyer can tell you exactly how much your divorce will cost. After hearing what you have to say about your situation, he or she can make an estimate. If the case bogs down, the cost could be much higher than estimated. If the parties are able to fully cooperate with each other, it can be much less.

Most lawyers will require you to pay a retainer. This is a deposit that is made to the attorney's trust account, it does not earn

interest for you or the lawyer. The lawyer will only withdraw funds as he or she completes work for you. You should require the lawyer to send you a statement each month showing and the balance which remains in trust, the amount withdrawn and the work performed that month.

How does your lawyer determine the amount of the retainer? If the lawyer is experienced in domestic relations, he or she will have some idea by the facts and issues you have presented. The lawyer should set an amount, not on the basis that everything will go totally smoothly, not on the basis that the case will become a war, but rather somewhere in between. If the case settles more easily than expected, a portion of your retainer may be returned to you. If the case becomes more difficult and your retainer is used up, you will need to replenish it or make other payment arrangements with the lawyer.

Even if your written agreement does not require it, plan on keeping money in your lawyer's trust account at all times. You want your lawyer to be able to focus all attention and energy on accomplishing a good result for you, not worrying about getting paid for the effort.

One often-asked question is "Can't we make my husband/wife pay for this?" In a way, you already are. Assets are mostly looked upon as jointly held and, to the extent the funds come from a bank account or a credit card, each of the parties is essentially paying half. In a given case, property may be divided unequally so that one party will receive a larger portion, but almost always each party will be required to pay his or her own attorney fees. For this reason, most lawyers opt for retainers and look to their own clients for the payment of fees.

PAPERS TO TAKE HOME

Make sure to have a written fee agreement with your lawyer. Such an agreement is a contract between you and the lawyer or firm and defines the responsibilities of the lawyer and the client.

The agreement may be as long as five pages. You should take the proposed agreement home with you and take the time to read it before returning it with the retainer. If you have any questions about the terms, ask and get them answered to your satisfaction before signing the agreement.

If support is an issue, the lawyer should give you a Uniform Support Affidavit or financial declaration form to take home with you to fill out. This is the document that will be used by the lawyers and the domestic relations court to evaluate the need for support and the ability to pay support based upon the income and expenses of both parties.

AFTER THE CASE BEGINS

A shared understanding between you and your attorney is always essential. You and your attorney should be able to speak freely with each other. Throughout the process, you are entitled to your lawyer's honest opinions and his or her best professional advice. You should be honest and candid with your lawyer. With certain limited exceptions, your communications with your lawyer will be confidential.

Your lawyer should keep you informed concerning the status of your case, answer questions you may have and respond to your communications. You should expect to receive a copy of every document that comes in or goes out. If a document arrives with a cover letter from your lawyer, the letter may explain the document or may ask you to act in some way other than the subject document would suggest. If the document arrives without a cover letter, it is probably self-explanatory. If you ever have a question in this regard, you should not hesitate to contact your lawyer in order to discuss this with him or her.

Expect your lawyer to do what is necessary or desirable to represent you in your legal matter. On some matters, especially those of court procedure or professional courtesy, he or she may act on your behalf without consulting you first. On other matter,

your lawyer will ask for your input and invite discussion before committing to any course of action. On ultimate matters, such as the terms of your settlement, your lawyer can only advise; you decide.

Perhaps the most important work you can do, in order to keep your legal action moving forward, is to gather the documents which will show the existence of various assets owned by you and your spouse and what each one is worth. Expect this information to be shared with your spouse and with the court. The general rule with regard to property and finances is that both of you are entitled to know all of the relevant facts about the other's situation; and both of you owe a duty of full disclosure to the other. It will be to your advantage to disclose fully, to do so early, and to keep the other party updated with changes as they occur; you should do these things through your lawyer. When necessary, formal procedures, such as depositions, subpoenas and appraisals are available to obtain the needed information. You save both time and money, though, when we can obtain complete information through informal exchange.

In the course of your legal action, you and your spouse will likely reach agreement regarding the terms of an appropriate parenting plan for your children. Most people eventually compromise and settle such disputes. Lawyers can help you do this. Mediators, private and public, are available also to help you do this. You must sign up to attend any required parenting class through the county you filed in as soon as you are able. In some counties, attending the parenting class is required before you can take advantage of the court's mediation program. In the end, you will want the children to be the final winners of any argument about custody.

Most family law cases settle. Settlement is best for most people. You will exercise more control over the outcome, you will likely save time and money, and you will establish a healthier foundation for resolving future disputes that may arise between you. If you want to successfully settle this matter, be aware of your

priorities and recognize those of your spouse; be willing to compromise; be fair, reasonable and even generous.

Dissolving a marriage is an end, however, it can also be a beginning. This is an opportunity for you to plan a new future and make a fresh start. Your practical plans for an independent future will help to determine the results of this legal action. Where will you live? What will the children's schedule be with you? What work will you do? What training or education will you require in order to do that work? What property and support will you need in order to make your way forward? What division of liquid and long-term assets is best for your situation? Giving thought to these matters now is an investment that is likely to yield benefits for years to come.

WHERE DO CASES BOG DOWN?

Dual Agendas: Remember, how the lawyer and the client approach the case can have far reaching effects. There are two agendas at work in almost every case. The first is the financial agenda, such as support, property distribution, etc. The lawyer can advise you with respect to these kinds of problems. The second agenda is the emotional agenda, which may include feelings of anger, fear, grieving and betrayal. These issues are separate from the financial agenda. Your lawyer should be able to recommend a counselor to help you with these problems. The divorce process will not help them. The extent that a client allows either agenda to influence the other in a case only results in more work for the lawyers, at greater cost to you. In a divorce case there is generally no reward for the "good person" and no punishment for the "bad person." Oregon is a "no fault" state, meaning that you need to prove only "irreconcilable differences" to legally dissolve your marriage.

Burning Bridges: A further difficulty is something called "burning bridges." If there are children, the parties do not end their contacts with each other because their marriage has ended.

They will spend the next 30 to 40 years having to communicate in some way. There will be graduations, marriages, grandchildren, etc. Do not let the emotional agenda and the desire to “get back at each other” make all these wonderful occasions uncomfortable events. You and your spouse may be getting divorced, but the family is not.

You can also view this more pragmatically. Your lawyer is charging you by the hour, therefore the more time spent on issues that do not bring the parties closer to a resolution, the more your money will go to the lawyer. Frequently, we receive calls from a client complaining they have spent several thousand dollars and are no closer to a divorce. If we review the charges, there will almost always be things that could have been avoided, but were requested by the client.

VIEW YOUR DIVORCE LIKE A FUNNEL: LARGE AT THE TOP AND SMALL AT THE BOTTOM. THE CASES THAT RESOLVE MOST QUICKLY AND ECONOMICALLY ARE THOSE THAT MOVE FROM CIRCULATING AROUND THE TOP TO THE BOTTOM OF THE FUNNEL IN THE QUICKEST WAY. WHEN THE CASE CONTINUES TO CIRCULATE AT THE TOP OVER MINOR ISSUES, THE FEES GO UP AND THE MATTER IS NO CLOSER TO CONCLUSION.

Lawyer attitude: Frequently, how a case begins will dictate both the emotional and financial costs of the case. The lawyer's job is to be your advocate within the parameters of the law. The lawyer's job is not to make life difficult for your spouse and their lawyer so that everyone hates each other by the time the case is completed. There are many domestic relations lawyers, unfortunately, who confuse advocacy and aggressiveness. The good lawyers do not have to pound on tables and send nasty letters to be heard. They let their results speak for them. The good lawyers are not handmaids for angry clients; instead, they realize that no good purpose is served for the client by pandering to their anger and then charging for it. Being a good advocate does not

mean always agreeing with the client. Remember, you are paying for an advocate and a knowledgeable expert who may tell you things you do not want to hear. If you do not believe him or her, the result will be the same, but the cost will be higher. Start your case in a cooperative way from your side and see if it is reciprocated.

Do not be a victim: A “victim” is a spouse who believes they have been treated unfairly in the marriage and that somehow the divorce can get for them retribution and satisfaction. As indicated before, a divorce will not do that. It was never designed for that purpose. A “victim” often is in a marriage that produced neither happiness nor financial security. They will want the lawyer to go to the ends of the earth to try to find assets that are not there. Therefore, the lawyer is left in a quandary: if they comply, it will cost a great deal of money for no result; and if they do not, the client will be unhappy. Remember, the lawyer cannot change the facts. They cannot create assets that are not there, and they cannot produce income that is not being earned. When all is said and done, the victim will end up unhappy with their spouse and their lawyer, and no settlement or trial will make them less unhappy. It will only make them poorer.

Dirty tricks: Parties may do things or say things to anger each other. Each party will call their lawyer, and the lawyers in turn call each other, and then call back their clients. Each call has a charge and nothing has been accomplished. Do not do things you know will annoy your spouse, unless you are willing to pay for it.

Discovery: Every domestic relations lawyer knows what the other side is going to need by way of information. Most lawyers use similar forms to request the “production of documents.” One of the largest wastes of money in a divorce is when clients and their lawyers play games with discovery. For instance, they might receive a list of 30 items that are needed. These may include items such as bank account information, retirement information, property information and investment account statements. The responding lawyer sometimes waits for a long time to produce the information. When received, it is sometimes only half of what was

requested, and some statements might be several months old. This begins the exchange of letters and phone calls for more information, all of which should have been available from the beginning of the case. Sometimes lawyers have to go so far as to file motions to force the production of discovery. Thousands of dollars are wasted bringing the case no further down “the funnel.”

If you are the person with access to the information, get a copy of the “Request for Production” from your lawyer, start to gather the information immediately, and provide it quickly. The other lawyer will get it sooner or later anyway. As an aside, if you want to save a little more money, separate the documents by number on the “Request for Production” and make your own copies for the other side and for your lawyer.

Produce information quickly: Many clients take the position that they will provide the documentation only when they get to it and not before. The only result will be delays that produce cross letters and phone calls that you end up paying for.

Lists of questions: Lawyers charge for their time. Most lawyers charge a minimum of 12 minutes for telephone calls, even when the call takes less time. If you want to save money on phone calls, make a list of your questions and concerns and make one call instead of three.

Develop goals and objectives: You should discuss with the lawyer your goals and objectives in terms of all of the issues related to the divorce. They will change as more information is provided, but at least you will have a good starting point. Do not be upset if the lawyer indicates that some of your goals and objectives are unrealistic.

Carefully consider the lawyer’s advice: The good domestic relations lawyer does not automatically agree with the client, but takes his or her experience (and perhaps the input of colleagues) and tries to determine what a court would decide on the issue if the matter ever got that far. If the lawyer knows that you will not get what you are asking for, he or she owes it to you to

tell you so. And you owe it to your lawyer to recognize that your demands might be unrealistic or based on some other agenda.

OTHER TIPS

Do not expect your lawyer to be immediately available when you call. He or she is actively working on your case and likely many others too. Work does not always take place in the office or at a desk. You may be able to leave a voice mail message on the telephone, an e-mail message on the computer, or a written message by fax or post. Do remember that some forms of communication, such as facsimile or e-mail, may not be absolutely secure. If your lawyer works in a firm of several attorneys, he or she may have a legal assistant who can schedule a time, connect you with another lawyer if appropriate, or answer some questions outright.

Do not make repeated phone calls and do not spend time waiting for a return call. If you do not reach your lawyer within a reasonable amount of time, schedule a time when he or she will definitely be available to meet with you or take your call. Avoid frustration and suspicion and keep the work moving forward.

As important as it is that you be able to reach your lawyer, it is even more crucial to the success of your mutual endeavor that he or she be able to reach you. Respond to calls and letters. Let your lawyer know whenever your address or telephone number or job changes. Be sure your lawyer always has a way to reach you. Stay in communication.

Do not take out your unhappiness on your lawyer. He or she did not have anything to do with your marriage. A counselor can help in this area.

Before making a financial decision while your case is pending, talk to your lawyer. He or she may suggest a reason why the timing is wrong or may make other suggestions. The lawyer can also recommend other professionals with expertise in a specific area, such as a CPA or business lawyer, that can help.

Remember, it is unreasonable to think that one lawyer can handle all aspects of a situation well. The use of other experts is not a weakness in your lawyer, it is a strength.

Before commencing a new relationship, talk to your lawyer. It is not always what you do that is a problem, but how you do it that could affect your case. We would prefer that you wait to start a new relationship until the other one is legally ended. This is not a matter of our dictating morals, ethics or the law, rather, we know there are many things that have a big effect on how much your divorce costs and how it turns out. These include how funds are expended in a new relationship, how emotions for the spouse have changed because of a new relationship, and how kids have been affected.

Gevurtz Menashe P.C.

Remember, it all begins with whom you select to represent you. Family law is all we do. Our attorneys work at a variety of hourly rates that make us affordable to most pocketbooks. Most important, our advocacy and advice may save you much more money than if you worked with someone who is less experienced or who has an aggressive attitude. The bottom line is: life does not end with a divorce. Our greatest joy is when a client tells us how well their life is going and how much they appreciated our advice and help.

Please feel free to learn more about our attorneys and our unique approach to the practice of family law by visiting our web site at www.oregondivorcelawyers.com. The attorneys who created this booklet are especially dedicated to issues involving parents and children.

Portland Office

111 SW Fifth Avenue, Suite 900
Portland, OR 97204-3604
Phone: 503-227-1515
Fax: 503-243-2038

