

Accessing Economic Justice for Survivors in Family Law Cases

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THE CENTER FOR SURVIVOR AGENCY AND JUSTICE

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Protecting Client's assets/credit

- Obtaining a credit report
- Transferring funds
- Changing names, beneficiaries, addresses
- Changing passwords
- Canceling accounts (both banking and credit cards)
- Checking for spyware on home computers and cell phones

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Discussing Financial Matters with Clients

- Have client safely obtain all documents, such as:
 - Income Tax Returns
 - Bank statements
 - Credit card statements
 - Retirement accounts
 - Children's account statements
 - Loan documents
 - Mortgage/loan applications
 - W-2, wage statements
 - Business income tax returns, corporate documents
 - Names, addresses of any person listed on these documents

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Discuss What Client Needs

- Create a budget for client and children
 - Use a Financial Affidavit from your state to create budget
 - Consider if client stays in an owned home (marital residence) or rents
 - Discuss client's skill levels to obtain employment and what possible income from employment may be
 - Discuss child care costs
 - Begin with what client currently spends and consider if it will be more or less with spouse out of financial picture

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Discuss If Public Benefits is the Best Option

- 2 questions:
 - Does spouse work "off the books" (is all spouse's income shown on his paystub and tax return)?
 - Are the assets in a third party (Spouse's mother owns everything, though client pays for asset)?
 - IF YES, it may be difficult to prove spouse's income or to execute on spouse's income to receive consistent support
 - SO, public benefits may be an option

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Public Benefits Considerations

- If children receive public benefits (public assistance and certain rental assistance), then parent does not get support directly from non-custodial parent, they only receive a "pass through" amount
- If spouse is on the above public benefits, they can not get spousal support (also called alimony or maintenance), as any money goes to public assistance.
- Monies obtained from distribution of assets in a divorce will be counted as assets in determining public benefits eligibility
- This is not the case for food stamps or Medicaid

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Is Divorce the Right Choice Now?

- Questions to consider:
 - If client will be on short term public benefits, should client wait until they are off public benefits, so they can litigate support issues in the divorce?
 - Many spouses become more abusive if money is at issue than if other issues are being fought over, so, will client be safe?
 - All the documents necessary in a divorce could allow the spouse to determine a location of your client, so, is client safe?
 - If one has been married for 10 years, they can obtain social security retirement benefits from the other spouse, so, is client near the 10 year mark?
 - Does your state have any statutes that change the distribution of property/spouse support if one has been married for a certain amount of time?
 - Once client is divorced, they can not receive health insurance from their spouse, so do they need any medical procedures done?
 - Is the client emotionally ready for this?
 - Does client have custody? The longer the client leaves the children with the other spouse, the weaker her custody case is.
 - Does client have cultural/religious reasons for not getting divorced?

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Legal Separation/Separation Agreement: Is this the better option?

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| <ul style="list-style-type: none">■ Pros<ul style="list-style-type: none">■ Can maintain health insurance from spouse■ Can secure assets/control debts during this action■ Will allow client to obtain support and settle many issues■ Can force monied spouse to continue to pay for house, car and debt | <ul style="list-style-type: none">■ Cons<ul style="list-style-type: none">■ It is litigating the entire divorce without the divorce, so either party may be able to re-litigate the entire action again.■ In some states, property can not be distributed or sold until the divorce occurs■ Many judges do not like legal separations and force clients to opt for divorce while in court■ Separation agreements must be agreed upon by both parties. |
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Remember, living apart without a written agreement or decree does not make you legally separated, and can never turn into a divorce without court intervention.

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What can a client receive from a divorce: the initial relief?

- Once a divorce is started (or simultaneously with the filing of a divorce), the client may obtain the following relief, which many states call Pendente Lite Relief:
 - Monied spouse may be ordered to pay mortgage, car payments, and insurance payments
 - Court will order spouse to keep other spouse on health insurance and as beneficiary of insurance policies
 - Court can determine who will live in the marital home with the children
 - Court will determine temporary custody and visitation
 - Court can restrain parties from withdrawing funds in any account held by either party or both parties jointly, including retirement accounts
 - Courts can order monies be held by attorneys, instead of the parties
 - Court can restrain either party from selling real property (house), car or any other item of value

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Child Support

- In 1980, the federal government told each state to create a easy formula for child support or lose federal funding for certain projects
- So, most states have a child support standards or guidelines, which allows an attorney to plug in the incomes and determine a base child support calculation
- Some formulas are easier to follow than others because some more difficult formulas consider the following: number of nights child is at non-custodial parent's house, income only under a certain amount, certain business expenses as income, and passive income

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Spousal Support

- Spousal support has many names : Alimony (federal term), spousal support, maintenance, rehabilitative support,
- Only one state, Pennsylvania, has a formulaic approach to Alimony, and they only have it for pendente lite support
- Several counties have a formulaic approach (Marin County, CA, Maricopa, AZ)
- Canada has a formulaic approach
- For the rest of us, the only advice to give your client as to what they might expect is to ask practitioners who frequently appear before the Judge you have for advice. Judges are known as "low maintenance/high maintenance" Judges, and usually have certain factors that they consider over others, such as: parent who does not work outside of the home, caretaker of small children, client with limited skills, client who refuses to look for work
- You should discuss with client what their employment goals are, such as, what courses do they want/need to obtain worthwhile employment and what does worthwhile employment look like to them (does it have flexible hours, health insurance, hourly wage of x, etc)

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Costs the Court Can Order One Side to Pay

- Courts can order the monied spouse to pay the following litigation costs (how much they order and when it is ordered vary by state, county and court)
 - Attorney's fees for the non-monied spouse
 - Appraisal fees for real estate, retirement accounts, businesses, professional degrees
 - Forensic Accountants
 - Mediators
 - Forensic Custody Evaluators
 - Vocational Evaluators

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What can your client receive: the final decree?

- What can be marital property?
 - Any real property
 - Any pensions/retirement accounts
 - Any stocks, stock options, mutual funds, equity holdings
 - Any bank/credit union accounts, including savings, checking, CDs,
 - Any debts: personal loans, mortgages, credit cards
 - Professional licenses/degrees (only NY)
 - Goodwill (only NY)
 - Any business owned by either spouse
 - Any personal property (including jewelry)

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What makes property marital (versus separate)?

- State by state determination of what is marital property, but factors can include:
 - Who owns property?
 - When was it purchased/used?
 - Who used it during the marriage?
 - Whose money was used to purchase it or maintain it?
 - Is there an agreement changing the characterization of the property? (pre-nup, ante nup, post nup)
 - Does your state have community property laws?
 - Has the property been comingled or transmuted?

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Tax issues in a Divorce

- Alimony is taxable to the payee and deducted from the payor's income
- Child support is not taxable
- Distribution of marital assets/debts is not taxable, but interest on distribution is
- Debt forgiveness (on a short sale, foreclosure or credit card) is taxable income
- Children are an exemption to the custodial parent, but this exemption can be given to the non-custodial parent by written stipulation and IRS form
- Children also have EITC, head of household and child care credit implications

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Other Issues

- Domestic Violence
 - Certain states allow for a greater share of the marital pot to be given to domestic violence survivors
 - DV can be used to show client is in need of greater alimony
 - DV survivors should obtain all their medical records, police reports, restraining orders and past petitions to show on-going duration of abuse

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Other Issues (cont)

- Immigration Status
 - Courts are not allowed to turn people away who do not have status, nor are they allowed to ask about immigration status (but they do!)
 - Some arguments (such as client can not work legally in the US and needs greater support because spouse refused to petition for her) will shed light on client's status
 - Client must be aware that her status may come out in litigation, no matter how hard one tries not to tell
 - Abusers have called ICE and they have been in court to arrest clients

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Interpretation

- Many states have translators available for court appearances, but not all
- Private interpreters are expensive
- Other options include: graduate students, other not for profits, tele language line

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Helping the Client Build her Case: Discovery

- In divorces, both parties obtain various documents through discovery processes, such as:
 - Interrogatories
 - Demands for Inspection
 - Deposition
 - Appraisals, forensic evaluations
 - Demands for items: computer hard drives, jewelry, personal property
 - Subpoenas

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Discovery (cont)

- So, advise your client to save everything during the litigation.
- Before the client flees, have the client safely obtain copies of every financial document they can, originals are not necessary.
- They should take pictures of anything of value (jewelry).
- They should take with them anything that is irreplaceable (such as photos, family mementos).
- Many times the spouse will claim the other spouse took the property, so the spouse will not be forced to return it.

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Experts

- Experts can be hired by the Court or either party
- They can evaluate custody, property, businesses, professional licenses, job skills, future earning capacity, and actual income
- They can be helpful in determining actual income for a less than earnest business owner
- They can be paid by the monied spouse, do work pro bono (rare) or paid by the court/state

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Resources for low income litigants

- Vary from state to state
- Can include free court transcripts, free translation, free custody evaluations, free attorneys for the child/Guardians ad Litem
- Local agencies may be able to assist
- Some states are creating Civil Gideon statues
- Some states have free representation for certain aspects of a divorce

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Resources for Attorneys

- Many professionals offer pro bono or "low bono", and will handle components of cases for low cost
- Many divorces need real estate expertise, and real estate attorneys can be helpful.
- Tort lawyers can assist in either suing the abuser in tort law, or assisting in placing a value on your client's injuries
- Business lawyers can assist in reviewing corporate documents and tax documents
- Real estate can be appraised by real estate agents for a lesser cost than real property appraisals
- CPAs and accountants are always needed to evaluate tax returns
- Therapists and psychologists can testify not only about the mental health of children, but also about the mental health of your client.
- Some states offer mediation, collaborative law and other ADR which can be cheaper than full litigation
- Save every business card you ever get...you never know!

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Questions?



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Visit our website at www.csaj.org to browse our resource library,
make a technical assistance request, or sign up for our listserv.

You may also reach us at:

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