

SURVIVING DIVORCE



**SEPARATING FROM YOUR SPOUSE AND
CONFUSED BY THE PROCESS?**

DIANA FIGUEROA, ESQUIRE

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Introduction

There's no way to sugarcoat it. Divorce is one of life's most emotionally taxing experiences – or at least it can be.

Whether your spouse abruptly announced over dinner that he or she had “fallen out of love” after 11 years together; or you discovered evidence of infidelity or criminal wrongdoing that prompted you to seek separation, you're no doubt confused, scared, angry and overwhelmed by the challenges you may envision ahead.

As a divorce attorney, I have the unique opportunity to connect with people going through this extreme hardship. These moments of inflection define people's lives for better or for worse (so to speak) for years afterwards. Helping people navigate the maze of divorce is a major responsibility – one I do not take lightly.

On the positive side, I know that effective support at this juncture can be life changing and even profoundly life affirming. For all its horrors and indignities, divorce is also an opportunity to clean the slate and start over – to learn hard lessons, so that the future is more in tune with your values and life purpose.

A skilled divorce attorney wears many hats. On the one hand, he or she must be the equivalent of a chess grandmaster – always calculating strategies and tactics to get “best” results in shifting conditions. But the work is not just intellectual. As a divorce attorney, you need to stay connected, empathetically, to your clients and to the situation. After all, “victory” is in the eye of the beholder. Do we define it as maximizing how much of the marital estate you obtain? Or is it measured by the speed of the process? Or is a child's safety and welfare the most important factor?

Ultimately, you can't make decisions in a vacuum – the client's values, purpose and complex history all must be considered.

My clients come from every walk of life, and their divorces run the gamut from simple and composed to complex, bitter battles involving millions in assets. For instance, Joy and her husband Steve were together for 7 years, but Steve's deployment overseas working on civilian contracts for the military opened an emotional void. Their cold war came to a head when Joy cheated on Steve with his best friend back home. Untangling the pain and regret for all involved will take skillful work and creative engagement.

Eleanor and Gill, meanwhile, accumulated a small fortune running an online SEO business but discovered after several years that they were better suited as business partners than romantic lovers. Although they both wanted to “do the right thing” by one another, their tangled financial interests made the separation challenging. Could they continue to run the business in tandem? What would the separation mean for their employees and customers? How would the split affect the succession plan for the company? These questions needed solid answers.

Still, other divorces lead to fighting much closer to the heart. Angela and Caroline were married for 4 years. They had two children, one from each biological mother. But their separation touched off bad blood – Angela accused her wife of being emotionally unstable and a risk to the children. A big child custody dispute and accusations of alienation followed.

I wrote this e-book to give you a 20,000- foot perspective on the divorce process. It is by no means a *complete* guide about how to handle your particular divorce, nor is it legal advice. Rather, I wanted to address the most common questions that people like Joy, Eleanor, Angela, Gill and Caroline have about what it means to get divorced and what can be done to make the process easier and more certain.

You are in pain right now – maybe one of the most painful experiences of your life. My team and I can help you get through this in a way that respects your dignity, your needs, and your children’s rights.

I hope this book is helpful and offers you some solace and the knowledge there is hope for the future!

Figueroa Law Group, P.A. : A Unique Approach

Note to client: It is our approach to assist each client through the steps of the divorce process with a thorough understanding of the law and available options to facilitate a settlement or prepare for trial.

Back in Control 1:

What are my options for separating or getting divorced?

Let us go over a few scenarios.

1. Uncontested divorce

Jeremy and Melissa mutually decided to part ways after just two years of marriage. They do not have children together, and they don't have many assets or debts. They opted for an *uncontested divorce*. They will work with their respective lawyers to draft documents to separate (e.g., a property settlement agreement, etc.). For them, the divorce process is straightforward, low stress and fast.

2. Mediation

Caroline and Chuck were married for 6 years. They have two children, including one child from Chuck's first marriage. They chose mediation, a form of what's known as "alternative dispute resolution". They each hire attorneys and work with a mediator, a neutral person who stewards the negotiations on how to amicably divvy up their assets and debts and figure out alimony and child support. The mediator does not decide what to do but rather helps negotiations work smoothly so both parties can make decisions for their agreement.

3. Collaborative divorce

David and Demos chose a different alternative dispute resolution strategy, known as collaborative divorce. This is similar to mediation, in that it's a voluntary process that seeks to get the spouses to resolve their issues and avoid litigation. It involves many support people, such as financial advisors and psychologists, to solve their problems.

If David and Demos can't work things out and cannot come to an agreement, they will have to find new attorneys in order to go to litigation. In other words, there is a price to pay if they bow out of the collaborative process.

4. Litigation

Jenny and Alex were married for 12 years, and they have two children together. They owned substantial property – both inherited and earned during the marriage. They also fought a lot, particularly during the last two years of marriage. Jenny and Alex were not able to negotiate their differences; instead, they chose litigation. Both went to court, represented by different attorneys, to fight over things like child custody and the marital estate.

Back in Control 2:

Do I have to prove that my spouse did something wrong?

Every state has its own rules (known as “grounds”) for getting divorced. In Florida, the courts allow what are known as “no fault” divorces. In other words, you don’t need to prove that your spouse did anything wrong in order to move forward with a divorce case.

In Florida, one of the grounds for divorce is that the marriage is irretrievably broken, and counseling cannot save the marriage. For instance, Dani and Sam might say that irreconcilable differences drove them apart.

Back in Control 3:

Who will get to make decisions for my children and take care of them?

Divorce law distinguishes two types of custody:

1. Legal custody

This has to do with who gets to make important decisions about a child's welfare (e.g., schooling, medical care, religious affiliation, etc.) The parents can have shared parental responsibility where they share in the decisions. One parent can have ultimate decision-making as to specific areas such as medical and education when the parents cannot agree. In cases where a parent can show detriment, one parent can have sole parental decision-making.

2. Physical custody

This has to do with which parent has the physical custody of the child or children per their timesharing plan.

In general, the courts prefer to award timesharing that is in the best interests of the child or children. All things being equal, the court wants parents to participate in the spiritual and educational upbringing of their children.

However, consider the sad case of Elias and Billie. After Billie developed schizophrenic mental illness, Elias asked the court for sole parental responsibility arguing that his ex-wife lacked the mental capacity to make safe and well thought-out decisions about the children's welfare.

Timesharing disputes are more common. Sometimes, families agree to timesharing on a 50/50 basis. Other times, one parent gets majority timesharing. The timesharing schedule depends on what is in the child's or children's best interests.

For instance, Katarina and Georg had two children together. Georg was often away in Europe on business, so they negotiated this situation: Katarina would be the custodial and majority timesharing parent (the one who takes care of the children most of the time); while George would spend 5 days with them every month after returning from Europe.

Back in Control 4:

How does the court decide physical custody and timesharing?

Whether you negotiate timesharing through mediation or fight it out at court, many issues must be considered, including:

- Your and your ex's lifestyle and job schedule;
- Your physical ability to take care of your kids;
- Your mental capacity to make good decisions and keep them safe;
- Whether you have or your spouse has a history of violence or emotional or physical abuse;
- Whether you can keep the home safe and nurturing;
- The children's ages and (potentially) their preferences;
- Whether you or your spouse has been the primary caregiver in the past;
- Whether you and your ex can cooperate with each other; whether you and your ex can encourage a positive and healthy relationship with the other.
- Whether you or the other parent has violated custody rules in the past.

Today's courts are gender neutral. They just want what's in the best interests of the children.

Back in Control 5:

Can grandparents, stepparents and others fight for child custody?

It depends. Courts tend to favor parental rights, but they also want to protect children and ensure their welfare.

Dora and Raul were married for 3 years when Raul deserted the family, leaving Dora to raise her 2-year-old and 6-month-old on her own. Dora then fell into an acute depression and developed substance abuse issues.

Her parents – the children’s grandparents – sought physical custody of the children to ensure they got good meals, stayed safe and avoided dangers caused by Dora’s mental illness and impulsiveness.

Stepparents can also seek legal recourse to obtain custody under special circumstances – for instance, if the biological parent is in jail or if he or she has abandoned the family.

Back in Control 6:

Are custody and visitation terms set in stone?

The court wants to create stable and safe environments for children. The process is flexible and the court understands circumstances can change. Parental responsibility and timesharing arrangements can be modified with a substantial change in circumstances not contemplated at the time of the previous timesharing plan.

Here are some examples:

Julie and Lander had worked out a timesharing agreement regarding care for their 4-year-old son, Nils. At the beginning, the timesharing was practically equal. Julie got Nils on the weekends and on Monday and Tuesday; Lander took him Wednesday through Friday. But then Julie contracted Lyme Disease, rendering her chronically fatigued. Suddenly, Julie couldn't handle the responsibility of taking Nils on weekends, so she and Lander renegotiated the timesharing arrangement, expanding Lander's responsibility and time with the child.

Aziz and Karen had worked out a deal in which Aziz would be the majority caregiver and breadwinner. However, after one of Aziz's clients sued his company, he had to file for personal bankruptcy, and he could no longer support the children. The court allowed Aziz and Karen to renegotiate child support.

Kendra and James, through mediation, worked out the perfect timesharing plan... perfect, that is, until James got a job offer that he couldn't pass up and moved three states away. This move coincided with Kendra moving in with her new fiancé.

When you change your relationship status or move out of state, the court will generally allow you to file a modification case to change the timesharing agreement and modify child support. In this fact situation, a Petition for Relocation is filed for the parent that moved out of state.

Back in Control 7:

How do I figure out what property is mine and what belongs to my ex?

The answer might take some investigation and forensic accounting work.

It depends on things like whether you and your spouse had a prenuptial or postnuptial agreement and how you accumulated your assets and debts. It also depends on what you owned before the marriage.

For instance, Debbie and Lawrence owned diverse marital property jointly that needed to be distributed equitably between them. They had bank accounts to which they both contributed, wedding china, investments, and a home they bought and remodeled together. Dividing these assets equitably wouldn't mean just splitting it down the middle.

Equitable means fair and each side gets a fair share of assets. The division may be equal or unequal depending on the circumstances.

When Doug and Sadie divorced, Sadie claimed that some property was hers and separate from the marriage. For instance, five years prior, she received an inheritance from her great aunt, which she kept in a separate bank account. Sadie also owned a beach cottage given to her in trust by her father. These items would not be considered part of the marital estate if she kept these assets separate and no marital monies were used for the beach cottage.

The situation can get quite tricky. When Georgina and Rafael got married, Rafael had a Roth IRA that had several hundred thousand dollars of contributions already in it. During the course of the marriage, Georgina contributed several thousand dollars to that IRA. The experienced lawyer will engage a professional to separate out the pre-marital portion plus interest and gains. Then only the marital portion which are the contributions after the date of marriage is divided.

A qualified and experienced divorce lawyer can help you figure out exactly what belongs to whom and what you need to do about it.

Back in Control 8:

What if I don't have a catalogue of all our assets and debts?

If you don't have a handle on what you own and where those assets are kept, prioritize finding out right away. This will avoid increasing the attorney's fees. Start making your list now.

Kelly let her husband, Ernesto, take care of the family finances, while she managed the home and raised their twins and three Great Danes. During the divorce, thanks to a tip off from Ernesto's brother, Kelly discovered that her husband had been keeping a separate bank account with \$230,000 in it.

Her investigation of the financials also revealed evidence that Ernesto had been going on "business trips" with his secretary to posh hotels and that he had purchased champagne and roses for her. She was able to use this information to leverage better terms from Ernesto during the divorce negotiations. Also, the separate account, although titled in Ernesto's name only, was really a marital account that the court could divide. The title of assets are not what determines if an asset is marital. If the asset was acquired after the marriage and there is no agreement otherwise, it will be considered a marital asset.

Back in Control 9:

How does alimony and property distribution work?

The court looks at many factors when it weighs in on who gets what. Some of the factors include, but are not limited to the following:

- The standard of living enjoyed during the marriage
- The length of years of the marriage
- How liquid the marital assets are, whether the assets produce income;
- The age, health and future earning capacities of each spouse;
- How different assets were acquired and whether they are considered marital property or separate property, or marital contributions to separate property;
- How much each spouse contributed to the marriage, homemaking and to child rearing;
- Dissipation or depletion of marital assets, frivolous spending;
- The estate's debts or liabilities, if any.
- The contribution to the other's career and education

Back in Control 10:

Once alimony has been established, can it ever be altered?

Yes. For instance, Britney and Kayden had been married for 3 years before separating after a bitter fight at Christmas. Britney did obtain alimony support from Kayden but only for 2.5 years after the divorce.

Richard and Carol, however, had been married for 25 years. Since she was the higher earner, Carol was prepared to pay alimony to Richard on a permanent basis. But when Richard got remarried, Carol was able to stop the spousal support.

Spousal support or alimony may be modified as stated in the Agreement or Final Judgment or by filing a Modification case and showing a substantial change of circumstances. An experienced lawyer can analyze your situation to determine the appropriate spousal support or modification of spousal support. But when Richard got remarried, Carol was able to stop the spousal support.

Spousal support or alimony may be modified as stated in the Agreement or Final Judgment or by filing a Modification case and showing a substantial change of circumstances. An experienced lawyer can analyze your situation to determine the appropriate spousal support or modification of spousal support.

Back in Control 11:

What if my ex threatened me or my children?

Short answer: get help right away!

Call the police if you believe that you or your child are in imminent danger. If you have been hit, or if you or your children have been physically assaulted, seek medical assistance ASAP. Document everything that happens.

After Leila confronted her ex, Dennis, about his failure to make child support payments on time, he showed up at her house in his truck with two of his friends. Dennis announced that he was here to pick up the kids and take them to his parents' house. When Leila stood her ground, Dennis threw her to the ground, breaking her arm, and then left.

Leila immediately called the police and took pictures of her injury. She also kept notes from her doctor and wrote down exactly what happened during their argument, word for word, in a journal. One of Dennis's friends from the pickup truck later agreed to write out exactly what he had seen.

With the help of a lawyer, Leila obtained an order of protection (injunction for protection) to prevent Dennis from harassing her and her children in the future, and the court modified timesharing to grant her sole custody.

Back in Control 12:

What if my ex makes up false allegations?

Domestic violence is a huge problem in the United States – and unfortunately vastly underreported. However, some desperate parents may abuse the protections the law affords battered spouses by engaging in false allegations in order to gain a strategic advantage in the case. Their goal is to use the false allegations to obtain custody of their child/children or to gain physical, exclusive possession of their home causing the other parent to have to live in an alternate place.

However, if a party has suffered abuse or is in imminent fear of becoming a victim of abuse, he or she should act and report the abuse or threats of abuse to law enforcement. He or she should also consider filing an Injunction for Protection. The court can order a temporary injunction until the court has a hearing for a permanent injunction which usually is within fourteen (14) days. Lastly, a victim of abuse should seek counseling right away.

Additionally, some parents engage in inappropriate behavior by directly saying negative or false things about the other parent to their child/children in what's known as "Parental Alienation".

In other words, the spouse lies about abuse or neglect and attempts to brainwash the children to go along and then act out against the other parent.

For instance, Candy and Reggie had a 5-year-old daughter together. When Reggie announced that he wanted to leave because he had fallen back in love with his flame from high school, Candy reacted with outrage. She was hurt and lashed out by saying horrible (and untrue) things about Reggie to her daughter, effectively brainwashing her against her father. In addition, in revenge and out of anger, she made up stories about how Reggie fed their daughter only sugar cereal when he had custody (not true) and hit her when she wouldn't go to bed (also not true).

Reggie carefully documented these allegations and worked with his attorney as well as a therapist to address the situation compassionately

Fortunately, Candy also worked through her anger and came to understand that it arose from a place of love. She wanted to protect her child, and she still felt deeply hurt by Reggie's abandonment. However, she was actually hurting their child by involving the child in this conflict. Through counseling and the legal process, they were able to work out a solution and were able to manage a cordial and a healthy relationship going forward.

Reggie's quick but measured response as well as Candy's cooperation helped turn this potentially devastating situation around and an amicable result protected their child from further emotional damage.

Back in control 13:

What if we have substantial assets or debts?

A “high-net-worth-divorce” as one that involves marital assets of a million dollars or more. Hallmarks of this kind of divorce include:

- Challenges identifying all the marital estate’s assets and debts.
- Debates over whether or how to enforce a prenuptial agreement.
- Fights over business property, heirlooms, jewelry, precious art, and collectables.

Fortunately, not every high-net-worth divorce becomes as contentious as Michael Douglas’s in *War of the Roses*; but given the high stakes, the fighting can get intense. Charlie and Merissa owned two businesses together and had a net worth of \$2.4 million. Their assets included real estate investments and offshore trusts.

After delicate negotiations, they managed (just barely) to avoid litigation by liquidating one of their companies and distributing its assets. Merissa then bought out Charlie from the second business. Charlie and Merissa through their skilled attorneys were able to facilitate a fair and reasonable settlement of all their assets and debts

Back in Control 14:

How should I use social media or other forms of support during the divorce?

You need empathy and support. However, you want to be smart about meeting those needs! Avoid saying things or publishing things about your ex that could come back to haunt you. A good rule of thumb is: *Don't post anything to social media that you wouldn't want on the front page of the New York Times or read aloud in court.*

Find solid support from relatives, friends, and even online communities. However, avoid being overly disclosing about the particulars, just as a matter of practice.

Pay attention to your needs and try to meet them. For instance, after her separation, Karen recognized through therapy that she needed companionship badly. She also needed a constructive way to vent her anger.

With that knowledge under her belt, she rescued a Dalmatian (a new friend) and got back into racquetball, which gave her an opportunity to smash a ball around a court, instead of allowing negative feelings to well up with no release.

Back in Control 15:

How much will I have to pay during the divorce?

The average United States divorce costs \$15,000, give or take, but your divorce might cost much more (or possibly less) depending on:

- Whether you go to litigation;
- The size and scope of your marital estate and debts;
- Whether you need to hire experts to negotiate or testify on your behalf;
- How cooperative you and your spouse are during the process.

Mara divorced her husband Tim for only \$12,500, all told, including legal fees and court costs. However, she hadn't planned for the fact that Tim had been bringing in \$70,000 a year in income. Suddenly, her household budget didn't work at all.

Mara hired a financial planner to triage her finances. By doing this planning and getting a promotion from her boss, she weathered the financial storm and was able to efficiently obtain reasonably fair results and conclude her case.

Back in Control 16:

How soon after my separation can I date?

Particularly if you're going through a child custody negotiation, strongly consider forgoing dating while the divorce process is happening.

This isn't to say that you shouldn't date or find companionship, but you want to show the court that you can create a stable environment for the children.

Consider the cautionary tale of Larissa, who began serial dating almost as soon as she separated from her husband, Edgar.

Within the first year after the split, she had been in five whirlwind relationships, destabilizing the home for her 7- and 2- year-old children. The court did not particularly like Larissa's behavior and restricted her timesharing accordingly.

Back in Control 17:

Do I need a lawyer to handle my divorce?

Penny was a natural “lawyer skeptic,” perhaps because her ex-husband, Paul, was an attorney. In any event, she opted to handle the divorce by herself. She and Paul were married for 3 years, and they spent most of that time living on opposite sides of the country.

As Penny did more and more research, however, she realized how overwhelming the endeavor was (not to mention how daunting the paperwork). Penny realized that she was unfamiliar with the legal terms and the consequences.

When she discovered evidence from a friend that Paul had been sleeping around while on a work assignment, Penny decided to hire a qualified divorce attorney to take control of the situation.

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 (e.g., an explosion). Likewise, a small error in a seemingly trivial legal detail (e.g., a missed filing deadline, improper wording in the agreement or an inelegant way of expressing yourself to the judge) can similarly lead to terrible outcomes, such as a bad child support or alimony arrangement.

Don’t approach this like Penny did. The “Do it Yourself” (DIY) strategy has its uses in life, but sometimes it’s smarter to get the right help from the right people to avoid costly mistakes down the road

Back in Control 18:

How can I choose an attorney to represent me?

First off, identify your goals, priorities, and values – possibly before you start researching lawyers. Dana, for instance, was on the verge of breaking up with Jason, her husband of 5 years. Before she started looking for an attorney, she wrote down exactly what her priorities were:

- Split amicably and maintain a friendly relationship with Jason;
- Make sure we divide our property fairly and protect the \$70,000 in inheritance my father left me;
- Get the process done as quickly as possible, all else being equal;
- Find an attorney who's respected, ethical, good at negotiating, and not afraid to go to court, if need be.

Next, collect referrals from friends and family and from online sources you trust. Check out these attorneys' backgrounds, qualifications, physical locations (are they near enough to you?) and experience with your type of divorce.

For instance, someone like Kay, who has a large business and three houses, would probably want an attorney who deals frequently with high-net-worth divorces. Steven, meanwhile, who is girding for a custody battle, might want an attorney known for skillfully handling child custody and time-sharing negotiations. If you or your spouse is or was in the military, you will want an attorney familiar with military issues.

Then you will want to schedule consultations with your top picks. Write down questions in advance, such as:

- Will an attorney be handling my case, and will an associate or paralegal be helping me? Will you arrange for me to be able to meet my legal team? How does the retainer work? What is non-refundable and what is refundable? Will you provide frequent invoices so I can see what is being done and billed?
- What distinguishes this firm from their competitors? Will you listen to my goals? Will you help me understand the legal process?
- How would you handle my case? What appears to be its biggest weaknesses and biggest strengths?
- How do you prefer to communicate? How often will we communicate? Will I get to review documents before they are filed with the court or sent to the other side?
- How much do the legal services cost, and how does the payment process work?
- Do you do mediation, collaborative, or other types of alternative dispute resolution?



ABOUT DIANA FIGUEROA, ESDUIRE

Diana Figueroa, Esq. was born and raised in South Florida. She received her Bachelor of Science degree from Florida State University and her Juris Doctor degree from Loyola Law School in Los Angeles in 1985.

Ms. Figueroa began practicing law full time in 1986 in Florida as an Assistant State Attorney with the Office of the State Attorney, 18th Judicial District. After gaining extensive jury trial experience, she continued her law career in private practice. While in private practice, Ms. Figueroa also worked as a Conflict Attorney for Brevard County and handled a multitude of felony

criminal cases. In her private practice, Ms. Figueroa handled thousands of cases including all types of divorces, military divorces, adoptions, dependency, paternity, child support, relocation, pre-divorce planning, and domestic violence.

Since starting out as a solo practitioner, Ms. Figueroa has successfully grown her practice into a cohesive firm throughout the years with a team comprised of lawyers, paralegals, legal assistants, and administrative personnel. She is grateful for the privilege of serving clients with a high standard of excellence. Ms. Figueroa has been married for over 30 years, raised four children, and is a proud grandmother, so she understands the value and importance of family.

Ms. Figueroa believes that every case deserves complete diligence and preparation. Believing in the value of a strong attorney-client relationship, she takes the time to get to know each client. Once she has heard your story and learned about you and your situation, she can discuss your options and review the process ahead. Every step of the way, Ms. Figueroa anticipates what will come next and acts in her clients' best interests. She aspires to facilitate solutions to legal issues and, when possible, avoid costly litigation. Most importantly Mrs. Figueroa handles her cases in a way to avoid emotional and psychological damage to minor children as well as the parties.

"Ms. Figueroa and her staff were highly responsive to my needs, answered all my questions, and demonstrated a high degree of professionalism in handling my case."



AGGRESSIVE REPRESENTATION WITH PERSONAL ATTENTION