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Family Law Counts™

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> Closing Statement

Effective October 1, 2016, section (b) of Maryland Family Law Article §7-101 has been stricken. This significant change means that a court may now grant a divorce on any grounds on the uncorroborated testimony of the party who is seeking the divorce. There is no longer a need for a party seeking a divorce to provide corroborating testimony from a third party. In light of this change, Maryland Family Law Article §8-104 has also been repealed in its entirety as it is no longer necessary. That statute provided that, in a suit for absolute divorce on the grounds of voluntary separation, a separation agreement is full corroboration of a plaintiff's testimony that the separation was voluntary if the agreement: (1) states that the spouses voluntarily agreed to separate; and (2) is executed under oath before the application for divorce is filed.

Alternative Means for Resolving a Divorce

If a couple has decided to separate and divorce, the next decision they face is how to go about addressing the issues related to the divorce, such as custody of their children, a disposition of the family home, child support, spousal support (alimony), and dividing assets. Ultimately, every divorce matter will end up in court if for no other reason than to get a judge to sign an order formally terminating the marriage. However, it is not necessary in all cases for a judge to make a decision about all of the related divorce issues. In fact, most cases are resolved by way of a settlement that is reached through negotiations, or an alternative dispute resolution mechanism, such as mediation or collaboration. Each divorce case is unique. Some divorces lend themselves to one form of resolution or another from the beginning; for others, the most effective means of resolution will change over time as the client's priorities or expectations change. In an effort to distinguish between those alternate forms, we plan to cover each one in some detail. In this issue, we address the negotiation and litigation options. We will devote the next issue to mediation and the collaborative process.

Negotiation

Negotiations can occur at any time during the separation/divorce process. Sometimes, parties to a divorce choose to attempt to negotiate a settlement agreement from the beginning of the process. In other cases, settlement negotiations take place while the parties are in the midst of litigating their divorce. Settlement discussions can be handled between attorneys or they can take the form of informal "kitchen table" conversations between spouses. In preparation for any negotiation, it is important to appreciate all of the issues that must be resolved, establish goals for resolving each issue, anticipating the other party's position on each issue, develop a negotiation strategy and determine a "bottom line" or "walk-away position." Negotiations directly between parties are usually verbal, while most attorneys prefer to negotiate in writing.

Negotiations often begin with an exchange of information, such as bank statements, retirement accounts statements, income information (tax returns, pay stubs), credit card statements, and appraisals of a home, an investment property, or a business. A negotiation can take a few hours or several weeks, depending on the complexity of the issues and the way negotiations take place. Sometimes, a "four-way meeting" that includes the parties and their respective attorneys will be held and may result in a settlement by the end of the meeting. Other negotiations are conducted via written communications sent over the course of weeks or months. In the event negotiations are unsuccessful, settlement proposals made during negotiations are not admissible in court in order to prove what a party was willing to accept as an outcome. (*Continued…)*

At the end of a successful negotiation, the parties should sign a written settlement agreement under oath that memorializes the precise settlement terms. The settlement agreement should also contain certain standard terms that are familiar to experienced family law practitioners, such as acknowledgements that various marital rights are being compromised in exchange for the outcome of the negotiated settlement. Once a settlement agreement is signed, it can be filed with the court as part of an uncontested divorce to be incorporated in the final judgment of divorce.

The attorneys in the WCS family law group have successfully negotiated thousands of cases for their clients.

Litigation

Litigation is the dispute resolution of last resort. If all other efforts at settlement fail, the parties are left with no choice but to go to court. A divorce may end up in litigation for many reasons. Sometimes, one or both parties remain emotionally invested in the marriage even after an extended period of separation. We are all familiar with cases where the parties are so bitter towards one another and the level of animosity is so great that rational discussions about settlement are impossible. In other cases, initial settlement discussions hit a stumbling block that can't be overcome without one side filing a contested divorce case as motivation to complete the settlement. Then, there are also cases that can't be settled because there are legal or factual issues that, depending on how they are resolved, will significantly shape the outcome of the case. Examples include cases involving: (a) allegations of abuse (affecting the ability of parents to co-parent); (b) real questions about a spouse's ability to work (impacting alimony); and (c) vastly differing expert opinions about the value of a spouse's business (determining a monetary award). Those sorts of issues may require a decision from an experienced judge.

Litigation usually consumes a great deal of time, energy and money. The court process is by design deliberate and methodical. The relatively simple matter of scheduling court appearances, conferences, depositions and meetings can require great effort. The process of formal discovery, where each side gets to learn about the other's case and legal theories, can be laborious. And getting on the court's trial calendar can result in significant delays in a busy jurisdiction. Litigation can also be stressful and often requires a large time commitment from a client, who will be expected to appear for court conferences, engage in the discovery process, and prepare for and attend trial. All of this may happen at considerable expense in the form of attorney's fees, expert fees, and discovery costs. However, for cases that must be litigated, these costs may be justified.

The family law attorneys at WCS are experienced litigators who know how to try cases, are always prepared, and are confident advocates in the courtroom.

Authors: Fred Kobb and Michelle Gomola