



From the desk of Ezra Goldman

Some things you need to know about divorce...

1. **Things may not be as bad as you think.**

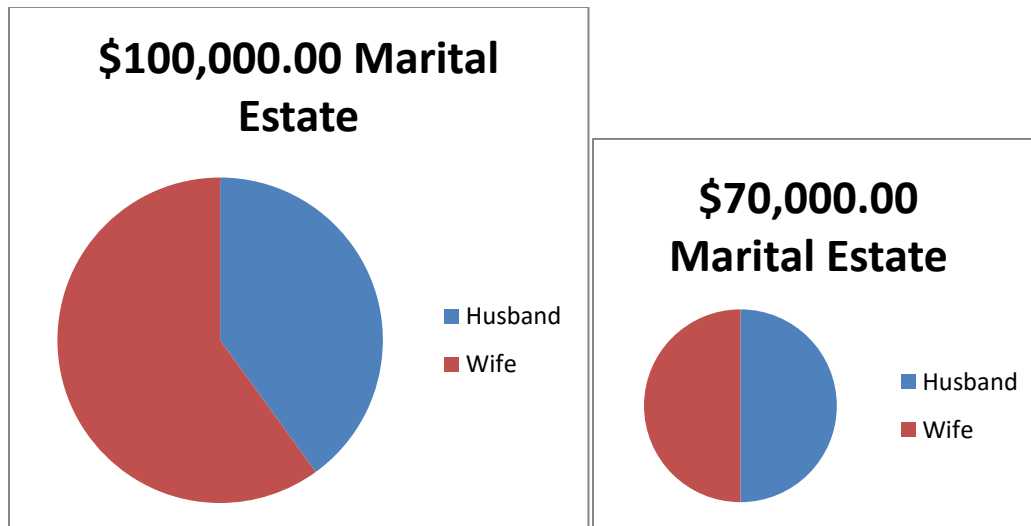
As a guy married for 20 years, with one kid in college and two almost there, let me tell you that the time when you kids are young flies by. Before you know it, they are gone. It is a shame to spend that time fighting. On the other hand, your marriage may not be salvageable. But consider the options before jumping to the conclusion that you need to be divorced. Counseling is always a nice option...

2. **Fight! Fight! Not...**

If you listen to the commercials on the radio and tv, this one will fight for your rights! They will fight for you! Men's rights! Women's rights! One thing they hope you won't ask is "who is paying for all this fighting?" The answer, of course is you.

Consider this: The parties have \$100,000 in their marital estate and one party unreasonably demands 60%. The other party is properly outraged - he wants a 50/50 division. So, he hires a "fighter." The fighter charges him a fortune and the spouse's lawyer, the one who told her she can have more than 50%, charges an equal fortune. At the end, the guy wanting 50/50 wins because, absent unusual circumstances, that is how it goes. Nice story, right? Justice prevails~!

But...They each spent \$15,000 on the fight. Now, the \$100,000 marital estate is only worth \$70,000. The husband's 50% is \$37,500.00. Had he just agreed to take 40%, though unfair, he would have wound up with more money. It looks something like this:



The bottom line is that "fighting" is costly, only satisfying in the short run and may not make sense in your case. The parties often fail to focus on the fact that there is no pot of money from which to pay attorney fees other than their own savings. Is that what you want to spend your retirement on?

3. **My wife's lawyer is a hack!**

In many if not most legal arenas, it is a bonus for the opposing counsel to be weak. And weak, unprepared and inexperienced lawyers are very easy to come by. In a criminal case, an inexperienced prosecutor is a blessing. In a civil case, an inexperienced opposing counsel can ruin his client's case in 1,000 ways. But in a divorce, you need people who know what they are doing on both sides. Otherwise, you could waste a lot of time and effort on things that don't matter and you could lose steam by the time an important issue comes along. Also, you need the other side to be a good negotiating partner.

4. **It is all about negotiation**

I once represented a guy who was an engineer. When he and his wife decided to part ways, they sat down at the kitchen table and wrote up a list of what they considered to be 'everything,' indicated who would get what and signed it. But when I filed his divorce, his wife's lawyer was unwilling to accept any of that. She argued that her client is emotionally unstable (which was quite true) and needed the advice of an attorney before agreeing to this sort of thing. Now, I really wanted to file a Motion to have the court determine the validity of the written agreement. The other lawyer and I knew this to be a meaty legal issue and our lawyerly instincts wanted to hash this out and the loser would take it to the court of appeals. This is precisely their sort of thing.

So why didn't we?

Because we both knew that would cost around \$50,000 worth of attorney fees. These parties didn't have that kind of money. They had "only" about \$50,000.00 total. So, sometimes the best legal issues can not be resolved for lack of money to fight them out. So how do the issues get resolved? You negotiate. Give and take, Sometimes, you need the help of a 3rd party mediator. But good faith negotiation is key. By the time a divorce goes to trial, expect to have spent \$10,000 at least. A divorce with no trial where the parties compromise their issues in good faith can be done for less than half of that...

The least expensive (and smartest) divorces I have ever done are for people who say "this is what we worked out - now just make it legal." One lawyer is not allowed to represent both parties but a lawyer has no interest in pushing for more than his client wants. So, one lawyer can represent one party and then ask the court to enter the judgment upon which they have already agreed. The court will honor the parties' wishes if they are fair and otherwise within the law...

5. **What is Alimony? Do I have to pay it?**

The concept of "alimony," sometimes called "spousal support" harkens back to an era when the husband might have been older than the wife, had all the education, had all the business contacts and know-how and, after 25 years of marriage, leaves the wife with nothing and no way to support herself. It was for this case that the Courts created a system of evening the parties out. The concept is that the work in the home is also work and that the same way he benefited from the work in the home, she should benefit from the work outside the home. Therefore, for a period of years, generally based on how long it would take her to get back on her feet and be self-sufficient, the Courts award each party roughly half the net marital earnings. If the husband earns \$150,000.00 and nets half of that after expenses, he has to divide that balance with his ex-spouse period determined by the Court.

In Michigan, there is a complex formula as to who pays alimony. It depends on several factors, including the ages of the parties, the length of the marriage, each person's education, each person's earnings and some other factors. As to the amount of alimony, there are formulas and calculators on line but the courts have not adopted any of them; they can be used as a guide but for little more.

Whether or not a person will end up receiving or paying alimony is very case specific – I have had more than one case where I got alimony for the husband. This is another point that the parties can and should resolve through negotiation.

What about our kids? Child Support? Visitation?

That will have to be a whole separate article...

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