



5 Critical Questions to Ask BEFORE You Divorce

You want to do this right. And you don't want to spend more money than you have to. There are a ton of things to figure out and you don't even know where to start. Everyone you know has an opinion and you just feel overwhelmed at times. So stop, read through these critical questions and answers, and feel confident with how to move forward shaping your best future.



1. How To Get Divorced in Michigan?

Steps you **must** take before a Judge will sign a document declaring you divorced:



1. Develop the terms dividing your assets and debts, and how your children will be raised and supported by both parents. Sometimes decisions have to be made about one spouse supporting the other with spousal support/alimony. How are these decisions made?

Either  You settle the terms yourselves
OR
 Your judge settles them for you at trial

2. File documents with the Court to initiate the divorce and start the waiting period (60 days if you do not have children; 180 days if you have children). Choose one:

 Complaint for Divorce if you haven't settled the terms
OR
 Petition for Divorce if you have settled the terms

3. After the waiting period is over, submit these final documents (plus some miscellaneous minor documents) to the court to finalize the divorce.

- a. Judgment of Divorce based on  Your own settlement terms
OR
 What your judge ordered
- b. Child Support Order
- c. Spousal Support (Alimony) Order

**There are a number of ways to accomplish these 3 "must do's".
One is right for you! We can help you choose the best process for
you & your family**

2. Can We Use One Lawyer?

You probably want to keep costs down and might believe you and your spouse can agree to everything anyway. So why complicate things with two lawyers (and lawyers do have a way of complicating things!)? Here's what you have to know: *a lawyer cannot represent two sides of a lawsuit. And a divorce is lawsuit.* So if you use one lawyer, that lawyer *has an ethical* duty to look out for the best interests of his or her *one* client. If that's not you, you are at a distinct disadvantage. For example, you may not know that retirement benefits are an asset of the marriage and they get divided in a divorce. And your spouse's lawyer isn't going to alert you to that fact if it's her *one* client who has the 401k. There are plenty of other examples I hear regularly when a year or two later, the spouse who wasn't represented brings me a Judgment of Divorce to review--a judgment which heavily favors the *one* spouse who did have a lawyer.

The impulse is good. Definitely work to keep costs down and don't turn your divorce into a battle. There are good ways to accomplish both these goals but having one lawyer look out for only one of you isn't one of them.

3. How Much Will A Divorce Cost?

It depends on how you divorce. There are some fees which are always the same such as the court's filing fee (\$255 if you have children; \$175 if you do not). From there, it all depends on the route you choose to divorce.

- **The most expensive route?** #2 above: only one of you has a lawyer. While the costs may initially appear low, when you factor in losing out on receiving your fair share, the costs can be astronomical. You just don't realize it for a while.
- **DIY Divorce** You can do it yourself! A DIY divorce can cost as little as \$1400-\$2200 and requires you to obtain the forms from the courts' Legal Assistance Centers or the state's website and complete them yourselves. If you have no children or assets and have agreed on all terms, this can be a smart approach. Regardless, you both should review the documents

with your own separate lawyer or you may end up with very costly mistakes making this a potentially expensive route. Do what you can and then buy an hour or two of an attorney's time to review the documents before you sign. (Consider choosing an attorney who has been trained in both mediation and collaborative law as they are solution-oriented rather than court-battle oriented.)

- **Mediation** can be a reasonable cost option (\$2400-\$3600) for those who have children and have accumulated the typical assets and debts the average couple owns. In this process, you both meet with your neutral mediator who guides you both, together, through all the decisions which have to be made. The mediator CANNOT one of your lawyers because s/he is not neutral and has one client to represent). Remember: Mediation helps you develop your settlement (the first task in "How To" above) and results in a private contract. A mediator cannot draft court documents (Steps #2 and #3 in required steps listed in the first question above).
- **Collaborative Divorce** In contrast, the Collaborative Process, handles all of the required steps and so, naturally costs more (typically \$3000-\$4000 for each spouse plus the divorce coach's fee and other professionals, if applicable). The goal of the collaborative process is not to be the cheapest alternative today but the least expensive. How is that possible? When people speak of costs, they are usually just thinking about the financial cost--and it's definitely worth keeping those down. (Before my kids finished college, if clients were being unreasonable in their settlement demands, I would caution them that they could continue to make unreasonable demands we know a judge won't grant, and pay for my kids' college expenses, or they can be pragmatic and reasonable and pay for their own kids' educations!) But in addition to the dollar costs, there are emotional costs of divorce as well. Too often children pay that price tag. Collaborative divorce utilizes the skills of a divorce coach which allows families to fully resolve their conflict and develop a satisfying

divorce settlement. We've heard from these clients that neither they nor their children required years of costly post-divorce therapy trying to recover from a devastating divorce. And they aren't in and out of court every few years--continuing to watch costs mount--as a result of never really resolving their conflicts. In our view, a divorce is miserable enough to go through once. To continue to be in conflict year after year is a miserable way for parents to live and for kids to grow up. We'd love to tell you more about the collaborative process and help you determine whether your situation is a good fit.

- **Traditional divorce litigation.** When a trial is held and a judge decides, you will experience the highest expense. Sometimes there's no choice. Costs vary widely and are lower if agreements can be reached along the way, eliminating the need for court hearings and a trial over one or more days which greatly increase the costs. A minimal initial retainer for a traditional divorce lawyer is typically around \$5000 but costs for a highly contentious litigated divorce, with multiple hearings, routinely cost in excess of \$12,000 or more.

There's a lot to think about in choosing the right process for you and your family. Costs are an important factor and an upfront payment, termed a retainer or deposit fee, is always required. Choosing the right process, and getting specifics about how much *your* divorce is likely to cost are some of the most important topics you'll discuss with a potential lawyer in an initial consultation. Make sure that the lawyer offers you a client agreement (called by various terms, fee agreement, letter of retention, etc.) which spells out the hourly rate, the retainer fee, whether unused retainer is refundable, and what the fee covers.

4. Who Decides Who Gets Custody of our Children?

Hopefully you will, either because you talk it through yourselves or work it out in mediation or collaborative sessions. If you can't decide, a judge will do it for you based on the 12 Child Custody Factors. Contact us if you would like to discuss how those factors might apply to your situation.

If you believe that you and your spouse will have significant conflict over where your children live primarily, you cannot afford to not obtain experienced legal advice. And not just any experience. Divorce law is highly specific and each judge has his/her own peculiarities (like we all do). Look for someone with a minimum of 15-20 years of experience in family law and sit down and talk before doing anything that could compromise your position in court.

Also, think about what "custody" actually means. It is a label describing your role as caretakers and decision-makers for your children. What is more meaningful to most parents, and their children, is the *parenting time* they have together. If you had two hours every week with your kids, but your Judgment of Divorce says you are "awarded custody", that's probably not meaningful to you! So don't get too caught up in a label which often serves to just generate fear and anxiety. Instead, spend time with a generic monthly calendar (without holidays or birthdays as those get dealt with separately) and think about, on average, when the kids should be with mom and when they should be with dad. Talk first and see if you can agree. PARENTING TIME HACK: most parents, whatever else they do during the week, alternate weekends; so this can be a good way to start on a parenting time plan for discussion.

If your children spend roughly half of the time with each of their parents, the label you will likely choose is joint physical custody. If the kids spend most of their time with one parent, and see the other on a reduced basis (perhaps every other weekend and one evening each week) then the label most applicable is physical custody to the parent with the children the most.

In addition to physical custody, the terms of divorce will include whether you have joint legal custody which means you both have the right and

responsibility to make important decisions about your children. These are the big decisions such as medical care, education, child care, etc. and judges typically want parents to consult each other as they co-parent their children post-divorce. Joint legal custody is the choice most parents make but occasionally there are reasons for one parent to have all the decision-making authority. That's a question you'll want to talk over with someone highly experienced in family law.

5. How much Child or Spousal Support Will I Pay/Receive?

Michigan has developed a formula to determine child support and it's updated every year with tax and other adjustments. There are a number of factors and not as simple as paying or receiving "x percentage of your income" in support. Instead, the factors listed below are plugged into an officially approved software program (be aware that formulas you find online usually differ from the State's official software) and the program calculates the amount of child support to be paid until a child reaches the age of 18 or finishes high school (note, support is not required past age 19½ even if is high school not completed by that age). The legislature has mandated that support is to be set at the formula amount *unless* there are "compelling" reasons to vary from it. If so, you may have some ability to agree to a different amount. That's a more involved conversation and depends on your unique circumstances so call us if you'd like to discuss.

The factors the formula relies on include:

- All income for both parents (including bonuses and commission)
- Number of children
- Number of overnights each parent has per year
- Yearly child care costs (so add up costs for summer and costs for school year because those are usually different to get the yearly expense)
- Cost for health insurance *for the children only*
- How you file tax returns (married, single, head of household)
- # of dependents each parent claims
- Mandatory union dues or other expenses required by the employer

There are other considerations beyond the scope of this paper. For example, imputing income to a parent who chooses to not earn what they are capable of earning. Or how support is calculated if one child lives primarily with dad and the other lives primarily with mom. Give us a call and let's figure out together how these and other considerations might apply.

BONUS QUESTION: What's the most important decision I'll make when facing a divorce?

Answer: *The kind of divorce process you use.* Everything else is based on this one decision. If you don't proactively choose, the litigation process will be imposed on you. When that's the best fit for you and your family, that's great. But if your family would come out better on the other side if you chose to Do It Yourself (consulting with an attorney on the side) or the Mediation or Collaborative Process, then your divorce will be more difficult and costly than it has to be. You and your kids deserve better.

Have more questions? Call today to see if you qualify for a FREE CONSULTATION with one of our experienced family lawyers at one of these locations:

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