

Critical Decision: Play Fair or Be Tough?

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When you end a marriage, the decision of whether to fight to the end in court may be the most important decision you make.

Fairly early in the divorce, you should find a lawyer to represent you. Although it is a good idea to have an orientation session with that lawyer to learn more about Massachusetts law, the most crucial reason for this meeting is to learn about how the system really works.

For example, what gets depicted in movies and television soap operas is that divorcing people always have a trial before the judge. It may happen that way on television, but in real life 95 percent of all divorces are settled by negotiation way before the trial even starts. This type of proceeding doesn't make for very compelling television, but it's how it works in the Massachusetts Probate and Family Court.

Whether you choose to litigate or attempt some other form of alternative dispute resolution, you'll still have to organize your financial information and get a grasp on the issues involved. Then, your decision of which strategy to use may rest on whether opposing counsel advises your spouse to escalate the war.

Interestingly enough, either choice will still likely require you to have legal representation. Your lawyer must be able to fight for your fair share, and hold the other party accountable.

Your attorney should be able to predict the outcome on the three major issues in divorce – custody, support, and property/debt division – fairly easily. An attorney who has been in court litigating domestic relations cases should have a pretty good idea of what you are entitled to. This makes the formula for settlement ascertainable.

You should refuse to settle only when the offer from the other side, if accepted, will deprive you of so much that it is worth the attorney's fees necessary to get a better deal. For example, if your spouse refuses to give you your half of a \$10,000 piece of a piece of property, thus depriving you of \$5,000, which would probably otherwise be awarded by the judge, it is not worth going to trial unless your attorney's fees will be less than \$5,000. In short, you should take a business approach to your divorce.

If an attempt to settle doesn't work – and you choose to fight all the way – you should remember that the Massachusetts family law Bar is relatively small, and your

lawyer will likely have tried cases against the opposing attorney over the years, attended the same professional events, and may have even asked opposing counsel for advice at some point in their career.

If your attorney and your spouse's attorney are cordial to one another, don't be concerned they're forming a conspiracy against you! They're likely trying to create an atmosphere conducive to settlement. A skilled attorney will know when pleasantries ends and tough negotiation begins.

All the players – you, your spouse and both attorneys – need to avoid hostility, diffuse tension, and maximize the ability to arrive at a mutually acceptable settlement. The alternative is not good. If you can't settle out of court, you face the unknown associated with a trial, somewhere in the range of 50 additional billable hours from your attorney, and a huge emotional cost. Divorce battles take a lot out of people. Plus, if children are involved, a fight will usually adversely affect them.

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