

Filing a Complaint for Divorce and Whether to Use Fault or No Fault

Often times, it is difficult to get a client to file the Complaint for Divorce. They may be reluctant to do so for religious or moral reasons or sometimes because they simply do not want to be the person who initiated the divorce.

On the other hand, some clients want to prematurely file the Complaint out of anger or resentment. Try to avoid making the decision for such reasons. You should discuss with your attorney whether there are any legal issues which may affect the timing of the divorce filing.

Sometimes there are medical insurance issues, sometimes there are pending changes regarding your assets or sometimes there are significant pending changes in your income or employment status. Any of those could significantly affect the decision as to whether or not a Complaint for Divorce should or should not be filed.

Absent such legal considerations, it usually does not make any difference who files first or on what grounds. Pennsylvania has comprehensive "no fault grounds" for divorce. The most common no-fault ground for divorce is when both parties consent that their marriage is "irretrievably broken". Parties living "separate and apart" can also seek no-fault grounds.

However, notwithstanding the ease of using such grounds, you should review with your attorney whether or not your situation meets the criteria for using such grounds, or if a fault ground should be used.

In some cases, the fault may be so egregious or may have such a significant impact on the family finances, that it should be used. For example, a history of violence, substance abuse or alcoholism may be very important with regard to parenting issues. A long history of infidelity, particularly when family income or resources have been squandered on extramarital affairs, may be relevant to how the remaining assets should be distributed. Additionally, fault which involves or affects the children may be relevant to the resolution of custody issues.

When considering a fault ground, however, a word of caution is appropriate. You should not be over zealous. For example, you may not want to call instances of marital infidelity with a subordinate to the attention of your spouse's employer if to do so may result in them losing their job.

Similarly, unnecessarily or inappropriately disclosing unreported income may result in IRS liens or penalties which could be minimized or avoided with a more reasoned approach. If the disclosure of such matters is important to your case, your attorney can discuss with you the use of arbitration or another alternative to dispute resolution.

The timing and grounds for a divorce complaint is important as it may impact the determination of your financial status relative to your divorce and must be discussed carefully with your attorney.