

Our Appointment with a Divorce Lawyer



In his many years of practice, Attorney Howard Jacobs, a senior partner at Jacobs, Grudberg, Belt, Dow and Katz in New Haven, has amassed both knowledge and wisdom regarding the divorce process. Attorney Jacobs is recognized as one of Connecticut's outstanding divorce attorneys and is listed in *The Best Lawyers in America* in both Personal Injury and Family law, and in *New York Magazine's* recent list of Top Lawyers.

Over the years, Howard has represented significant clients from New Haven to Greenwich. We have all seen friends and neighbors in Weston struggle with divorce and its many related problems. To help sort through this painful, confusing time, Weston Magazine asked Howard for a consultation and he graciously obliged us.

I have just been served with divorce papers, what do I do?

HJ: Take a deep breath. You are now beginning a new phase of your life. Divorce can be stressful and scary, but there are some things that you can do to minimize the negatives. Most often, being served with divorce papers is not a surprising experience. If it is – or even if it isn't – the best place to start is to talk to your spouse. Although this is a difficult time, keeping the lines of communication open will be important – especially if you have children. If you have not already discussed why your spouse has filed for a divorce, now is a good time to try to get that information.

You should next concentrate on finding a lawyer. In fact, you should interview several lawyers in order to hire someone who will best suit your needs. When meeting with potential lawyers, be prepared to discuss the issues that are important in your case. The most common issues are custody, child support, division of financial assets, house, bank accounts, 401K, pensions, and alimony. It would be helpful to bring several items to your initial meeting: legal papers (such as the divorce complaint), tax returns (the previous three years if possible), a list of assets, house information (appraisals and mortgage balances), bank accounts, stocks, bonds, a list of liabilities, and your best estimate of basic monthly expenses. Keep in mind that because you have been served with divorce papers, there is no tactical advantage to either your spouse (who has initiated the action) or yourself.

How do I find a good divorce lawyer?

HJ: A good place to start your search for the right lawyer is with family and friends. These are the people who know you best and will likely have some advice or anecdotal information about lawyers that they have used and would use again. If you have a family lawyer, that

staff that will be available to answer your questions if the lawyer is in court or otherwise unavailable? In divorce cases, there are often many questions which do not require an office appointment, but do require prompt attention. A lawyer whose support staff can answer basic questions and reach the lawyer if an urgent situation arises is a lawyer that has already proven he or she is committed to meeting a client's needs.

My spouse and I are contemplating divorce. I have a friend who tells me that I should be interviewing every divorce lawyer from Greenwich to Hartford. I have been told that if I speak to somebody, then my spouse cannot use that person as a lawyer. Is this good advice?

HJ: No. Your friend is wrong – and any lawyer who would advise this strategy is giving you unethical advice. Although in some situations lawyers have been disqualified for prior contact with an opposing party (such as a consultation for service), a strategy to disqualify your spouse from receiving competent representation will only anger your spouse and cost you money in the long run. The best thing for you, your spouse, and your children is for you to keep your temper in check. The next best thing (and it's close to being first) is for you and your spouse each to be represented by competent, experienced divorce attorneys.

I think my spouse may be having an affair, although I do not have any proof. Should I hire a private investigator?

HJ: If you have already retained a lawyer, this is a question to discuss with your lawyer who can give you the pros and cons as to how this might play out in your particular situation. While a private investigator may ultimately turn up evidence which would be admissible in court, using a private investigator is not always a good idea. In general, the first place to start if you have questions about your spouse is with your spouse. Getting counseling (whether or not your spouse is involved in an affair) may be a better way to address issues of doubt and mistrust than engaging your

own Sam Spade. On the other hand, concrete evidence of infidelity is useful in a divorce as evidence of fault for the breakdown of the marriage. Fault is one of many factors that courts will use for property distribution and alimony considerations, and may persuade the judge to allocate more of the marital assets to the faithful spouse. In other areas of the divorce – child custody for example – fault is not used to determine anything. Also, keep in mind that Connecticut is a no-fault state: that is, you do not need to prove fault to get divorced.

person will be a great resource to recommend a lawyer for your divorce. You can also look in the yellow pages, or on the Internet. Now that you have gathered a certain amount of information from others, it is time to do some work yourself. Obtain basic information about the lawyer and his or her practice prior to making an appointment. There are various ways of finding out about the lawyer and the lawyer's practice: call your local bar association, research the lawyer on the Internet, or use various lawyer-rating services, such as Martindale-Hubbell. You want to find a lawyer who is technically competent, as well as someone who will be supportive of your needs and able to provide you advice and direction when it is required. When meeting with a lawyer, ask about the lawyer's staff. Does the lawyer have a support

I am thinking of moving out of our home, but my friends tell me that I should absolutely not do this as it will affect the outcome of my case.

An Interview with Attorney Howard Jacobs

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What do you think?

HJ: As a general matter, the division of marital property will not be affected by who is currently residing in (or is absent from) the marital home. If there are no children involved and the domestic situation is volatile, it is very unwise for the parties to stay together. One person should definitely move out. Some care and consideration should be given to who will move, and how the expenses will be split (especially the maintenance of a jointly owned home). If a party abruptly leaves without discussion or instituting divorce proceedings, it can be considered to be evidence of abandonment. Conversely, if divorce is being contemplated, causes of the marriage breaking down will be more heavily weighed than anyone leaving the house. Once again, this is a situation that is best discussed between the parties – and also with your lawyer – prior to anyone packing up boxes and hiring a moving van.

My spouse and I are in the middle of divorce proceedings. We have two children. I would like to plan for their college education now, but my spouse is opposed to this and tells me “we can figure this out later.” What is the best way to deal with this?

HJ: Connecticut law provides that the parties must consider post-secondary education during their divorce. This is generally done in one of two ways: the court reserves judgment until the children reach college age, or funds can be reserved at the time of the divorce for children’s college education. Consideration should be given as to the parties’ assets and ability to set aside present funds while maintaining money for the children’s present needs. The law also provides a limitation on the amount that

can be ordered to be paid, which is based upon the cost of a State school education. This law is relatively new and judges are just beginning to interpret what it means in specific situations.

What are the rules about alimony? My friends tell me that you have to be married for more than ten years in order to get alimony. Is this true?

HJ: Unlike child support (where there are court guidelines for payment based on the party’s income), in alimony determinations there are no black-and-white rules. Courts base alimony on a variety of factors about the parties: the length of the marriage, each spouse’s income, health, education, and employment, lifestyle and current need. In recent years, the trend with alimony is to award less both in terms of amount and of duration. This overall decrease in alimony is largely due to the codification of child support amounts, which have increased child support payments.

I would prefer to stay in the home after we divorce. My spouse has agreed to this, provided that I refinance so that the mortgage is in my name only and we split our interest in the house. My spouse says that we should get an appraisal, subtract the mortgage from the appraised amount, and use this as the payoff amount. Is this the way we should do it?

HJ: This is clearly an issue for which you need legal advice. Decisions about the property should be made in the context of your overall divorce settlement. Holding onto marital property should make sense financially and for your new lifestyle. Your lawyer can help you

consider the various factors surrounding any proposal and help you to focus your priorities.

How do I find out about my spouse’s pension? Am I entitled to some of it?

HJ: In general, there are two types of pensions – Defined Benefit Plans and Defined Contribution Plans. A Defined Benefit Plan is one in which a participant receives a specific amount of money at some point in time (for example, \$2,000 a month when your spouse retires). A Defined Contribution Plan is generally more like a 401k, in that it is a tax-free account accumulated over time, which is later distributed to the participant. In considering one spouse’s share of the other’s pension, it is important to know what type of pension plan (or plans) exists, what portion of the pension was accrued during the marriage, and the pension’s present day value. A QDRO (Qualified Domestic Relations Order) is the way in which a portion of one spouse’s pension is transferred to the other. Pension information should be shared as a part of mandatory discovery.

How does child support work?

HJ: Connecticut, like most states, has child support guidelines. The guidelines are formulaic. Child support is mainly determined by the parties’ income evaluations, rather than by their living expenses. A party’s gross income is considered and then certain allowable deductibles are also considered. Based upon the number of children and similar information from a spouse’s income, a child support weekly payment is calculated. Although there are exceptions (called “deviations”) from the calculated amount for extraordinary situations, the child support amount that most people pay or receive is based upon the guideline amount. Guidelines



go up to \$4,000 weekly net income, so for most people, the guidelines will apply.

My spouse and I are contemplating divorce. My spouse has just received an inheritance. Is this something that my spouse has to share with me if we get divorced?

HJ: Maybe. Under Connecticut law, courts have to consider an inheritance part of the marital estate if it is received during the course of the marriage. However, that doesn't mean that there will be a 50/50 split. Courts will consider each party's individual assets, the marital assets, the size of the inheritance, when the inheritance was received, and a variety of other factors in order to arrive at an equitable solution.

My spouse and I are in the middle of a divorce. Prior to the marriage, we both had assets. We also acquired some things during the marriage. Are these assets considered different?

HJ: Connecticut is not a community property state. Assets obtained before the marriage are generally viewed as separate. However, if an asset has appreciated during the course of the marriage, that amount of appreciation could be considered part of the marital estate. In general, assets acquired during the course of the marriage are part of the marital estate as well, regardless of whose salary was used to purchase that asset.

My spouse is owner of a privately held business. Am I entitled to a portion of this business? Also, how do I determine the value of the business?

HJ: A business is an asset that can be considered and valued when considering the marital estate. Courts will often look at when the business is formed and how much the business has appreciated during the course of the marriage. In most cases, it will be necessary for a forensic accountant (an expert who is qualified to analyze a business) to review the business in detail and give an opinion as to its current worth.

My spouse wants to go to mediation and not hire lawyers. I am interested in keeping things peaceable. What is a mediator? If I mediate, do I need a lawyer?

HJ: A mediator is an individual whose goal is to obtain a just resolution of all the issues in the marriage. The mediator will do this by meeting several times with both parties. However, a mediator is not allowed to advocate for either party or to give legal advice. Mediation is a great way for some couples to arrive at a just result. Even with mediation, it is generally a better idea to have your own lawyer. Your own lawyer will provide you with advice, information and guidance solely for your own benefit.

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Do courts treat men and women differently in determining child custody?

HJ: In matters of custody and visitation, courts are mainly concerned with what is in the best interest of the children. There is no operational bias either for or against men, or women for that matter. Courts consider the current and historical pattern of childrearing and the current obligations of the parties. As a basic matter, judges are not going to be inclined to disturb a situation already in place if the children are benefiting from that particular situation. When considering litigation over custody or visitation, keep in mind that custody litigation is usually the most expensive and most destructive litigation undertaken in family court. Even the best custody litigation will take a toll on all of the litigants and, more importantly, on the child or children.

Do my kids need their own lawyer? What is the difference between a lawyer for the minor child and a guardian ad litem?

HJ: Children may need a lawyer in situations where custody or visitation is being disputed. Generally there are two types of lawyers for children – a guardian ad litem and an attorney for the minor child. A guardian ad litem's job is to determine what is in the best interest of the child, and to represent that interest to the Court. An attorney for the minor child represents to the Court what the children have expressed as their needs and wants. Generally, younger children will get a guardian ad litem (as they are generally believed to be less able to consider what is truly in their interest) and older children will be given an attorney.

When is it okay to date?

HJ: Although technically it is okay for either spouse to date once a dissolution action has been started, it is generally not a good idea for either spouse to start dating right away. The introduction of a significant other, or worse – insignificant others – to an estranged spouse or a child creates an extremely difficult



and awkward situation which is bound to inject more difficulties into an already adversarial and confusing time. *W*

Jacobs, Grudberg, Belt, Dow & Katz, P.C. is a New Haven, CT firm with a tradition rooted in the representation of people. The firm has a history of helping people recover damages for

all types of personal injuries, advocating for people in divorce, custody, and support matters, and defending individuals against misdemeanor and felony criminal charges. Their lawyers practice in the state and federal courts of Connecticut, and serve almost all Connecticut communities. 203/772-3100; www.jacobslaw.com.