



Your First Steps:

7 Steps Planning Your Tennessee Divorce

MilesMason
FAMILY LAW GROUP, PLC

On your behalf.

Learn about this book

A man with grey hair and glasses, wearing a dark suit, white shirt, and a yellow and blue striped tie, stands with his hands clasped in front of a sign. The sign is illuminated and reads "MilesMason FAMILY LAW GROUP, PLC".

MilesMason
FAMILY LAW GROUP, PLC

Miles Mason Family Law Group, PLC
Memphis, Tennessee
901.683.1850

“Like many of life’s great adventures, divorce requires one step at a time.

Thoughtful preparation transforms baby steps into serious positive momentum forward.”

MilesMason
FAMILY LAW GROUP, PLC

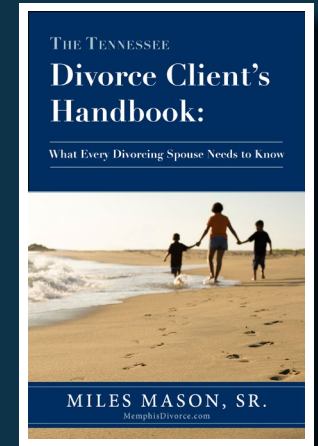
On your behalf.

Getting Started

Divorce is awful. Rarely does anyone file for divorce on a whim. Sometimes the decision to divorce is made by the other spouse and, for a few people, that may be a wake-up call. Yes, reconciliation can and does occur after a divorce has been filed. Some ex-spouses even remarry each other after their divorce has been granted. Additionally, many marriages have been saved through counseling with pastors, priests, rabbis, and family therapists. But to save a marriage, both spouses must be seriously committed. For most people, the only good thing about divorce is that it eventually ends and life continues.

As you begin the process, always remember that the legal aspects of divorce and the emotional aspects of divorce are two very different things. Quality of life after divorce is an individual choice. Failure, guilt, and fear of the unknown are three emotions commonly associated with divorce. Those feelings of failure and guilt will pass with time if you let them. On the front end, however, learning about divorce greatly reduces fear of the unknown. Knowledge and understanding begins the process of growth and change. This e-book is a great first step.

Now that divorce is a reality, the time is right for thoughtful planning about the case and your future. Learning about the legal aspects of divorce in advance can help significantly. Knowing what is going to happen as the case progresses gives you time to think, prepare, and protect your interests while, hopefully, avoiding impulsive and unwise decisions. The beginning of the divorce process is also the time to set specific goals. At first, your goals about the future may be just vague ideas. But over time you will begin to see more clearly what it is you want for yourself and for your children.



To learn more about Tennessee divorce and family law, Miles Mason, Sr. authored *The Tennessee Divorce Client's Handbook: What Every Divorcing Spouse Needs to Know* available on Kindle for only \$9.99 and [Amazon](http://Amazon.com).



This e-book does not begin to address everything about divorce law. It is a first step and companion to MemphisDivorce.com, a much more detailed and thorough resource about Tennessee divorce. Every case is different. There is no such thing as a “standard” divorce. And law changes over time. This e-book was published in 2013. If you are reading this after that year, keep in mind that the law may have changed on some points.

Also, be mindful that the lessons here make up only half the solution. To safely make your way through the many challenges ahead, you need a support group of passionate, understanding family law professionals on your side. People who appreciate the magnitude of your troubles and can create a safe haven while you take steps to improve your life. Read. Learn. Share. Repeat. One step at a time, your lawyer can help you handcraft solutions tailored to your particular situation.

Step 1: Who Stays? Who Goes?

“Leaving the home is a huge step. It requires careful analysis. Rational thought, not emotional impulse, will lead to the best plan.”

Lee Rosen, Rosen Law Firm, North Carolina

If you do not want to leave the marital residence, then don't be bullied into leaving. Don't feel that you must move out just because your spouse asks you to leave. Importantly, though, always put your immediate safety and that of your children first. If you feel threatened by your spouse, call the police. Ask the police or your pastor, priest, or rabbi for a referral to a shelter that can take you in. Talk to a lawyer. Learn whether you should apply for an order of protection to prevent your spouse from coming around you and the children. Such an order can provide other protection, too, including legally preventing your spouse from carrying a gun.



Yes, leaving home may reduce your stress today, but it may result in additional distress later. If you want to leave the marital residence, talk to your lawyer first. Many experienced family lawyers advise clients to resolve as many legal issues as possible before moving out.

Consider the increase in financial pressure. If you leave, you may be required to pay your share of household expenses for the marital home, even though you are no longer living there. Living together offered a unique opportunity to share expenses more efficiently. When one spouse leaves, two households must now be maintained. Where there was one mortgage, one utility bill, one cable bill, one Internet access bill, and one set of appliances, there will be two sets of bills for these and other basic needs. Many judges feel that separation is not an excuse for leaving bills unpaid. Thus, the departing spouse may be required to contribute to paying bills incurred at the marital residence if the spouse who stayed cannot afford all of the expenses alone.

If you leave the marital residence while the divorce is still pending, there can also be unresolved legal issues. What parenting time will be available to the spouse who lives apart from the children? When the departing parent's new residence is unsuitable for overnight parenting time, that could greatly reduce his parenting time schedule. Later on, courts look to see if the status quo is working when they consider awarding parenting time in the final decree. Which means that, during the divorce, both parents need to quickly orchestrate parenting time so that it's as close to their preferred arrangement as possible. Make sure to get copies of every document you can before leaving the marital home. But if you are unable to locate particular files, at least write down account numbers so the information can be retrieved later. Safe keep all of the documents and information by storing it in a secure location, away from your spouse.

Can you force your spouse to leave if you really want to stay? Tennessee law views kicking the other spouse out of her own home as a drastic action. Unless there has been some domestic violence incident, in most cases neither spouse can force the other to leave. However, there may be exceptions based upon your individual circumstances and your judge. Some judges may order spouses to leave the residence without evidence of domestic violence.

If you must stay in the same residence during the divorce process, be smart, stay calm, and protect yourself. Try to sleep in a separate room from your spouse. Stop living like you once did. Don't cook for your spouse. Don't be romantic or send mixed signals. Do your own laundry and shopping. Get your own private cell phone, one that is separate from the family plan so your spouse cannot track your calls. Keep all of your divorce information safe, even if that means you must keep it at another location such as a safe deposit box. If you think your divorce will be hotly contested, assume everything you do or say will be digitally recorded. It just might be.

Whether you stay or leave, immediately change your online usernames and passwords for all bank accounts and personal communications. Create a new e-mail account for communications with your lawyer. Open a new Gmail or Hotmail account so you can check your e-mail from different locations. While the case is ongoing, log off from Facebook, MySpace, My Opera, Twitter, and other social media websites that can be used to track your activities and communications. Your social media postings, including pictures, may be used as evidence against you in court. No matter what you said, what you meant, or why you said it. Lawyers are experts at twisting words.

With so many changes in your life, this is an important time to maintain and reestablish contact with significant people in your life. Along with friends and family, make a complete list of telephone numbers, addresses, and e-mail contacts for preachers, priests, or rabbis; doctors, optometrists, and dentists; day care centers, teachers, and school administrators; stockbrokers, financial advisors, and CPAs; counselors and therapists; insurance agents; and employers. Let the people who care about you know what's going on. Even if you don't know what to say, let them know how you're doing. And don't be afraid to ask for help. Sometimes, talking with your closest friends and family is exactly what is needed most.

Do not have sexual relations with your spouse, especially if he or she cheated on you. In legal terms, cheating is adultery. Adultery is a ground, or legal basis, for divorce in Tennessee. Also, adultery may comprise marital fault, one of the factors for alimony. By having marital relations with your spouse after learning about his or her extramarital affair, you may be forgiving your spouse. This is called "condonation," and it's a defense to a divorce on the grounds of adultery.



Step 2: ***Financial Planning and Budgeting***

There is no one right way to handle every divorce situation. One very important goal in every divorce, though, is to avoid mistakes. Begin by making these simple strategic financial moves:

- Open a bank account to which only you have access. Deposit your earnings in that account. Understand that earnings deposited in a separate account are still marital property.
- If you receive automatic deposits from any source, move them to your new account.
- If you pay bills by automatic withdrawal, deal with how those bills will get paid after you make changes to accounts.
- Maximize cash assets in your individual name. You need to prepare to be responsible for your own legal fees, expert fees, and court costs, in addition to other living expenses.
- Consider requesting a credit limit increase on credit cards and lines of credit, just in case.
- If your mail is not absolutely secure, obtain a P.O. box for bills and correspondence from your lawyer.
- If a divorce has been filed, learn if a mandatory injunction has been issued and how that may affect you. (See discussion of “Mandatory Injunction” below.) Check with your lawyer before transferring money between accounts.
- Talk to your lawyer to learn how much of the joint funds you can safely move. Prior to issuance of the mandatory injunction, it may make sense to move half of the balances from joint checking accounts, joint savings accounts, and joint investments into your own accounts.
- Run your own credit report. Carefully read every detail. Look for previously unknown debt obligations.
- Cancel joint credit card accounts. This reduces the risk of your spouse increasing joint debt.
- Make hard copies of account statements and key documents.
- Determine if you need a financial advisor separate from your spouse’s. Many financial advisors are very willing to help. And you don’t need much money to have your own financial advisor. Ask your family lawyer for a referral.
- If you need temporary financial support now, you can file for divorce and ask the court to order your spouse to pay it. This is called “pendente lite” support which can include temporary alimony, child support, and attorney’s fees.
- If you and your spouse executed Last Wills together or durable powers of attorney, tell your lawyer as soon as possible. A durable power of attorney may allow your spouse to act on your behalf in many legal and financial situations. You need to revoke the power authorized in that document.

Resources

In this early period of separation, feelings are hurt and communication is difficult. Money may be tight for both parties. The departing spouse may have a new mortgage or rent payment, security deposits, moving fees, and expenses for furniture, furnishings, and appliances. Negotiating for everyday living expenses is never easy, and making sure you are not at a disadvantage can be tough. Money keeps the lights on. Divorces are expensive. Resources definitely matter.

If the departing spouse is the supported spouse, she may feel desperate, leading to a series of poor, short-term decisions. If the departing spouse is the primary earner, she is in control of where paychecks get deposited and can manage cash flow. Control of cash flow is important.

Even though most judges take a very dim view of leaving the other spouse destitute, the unsupported spouse may need to get into court to be awarded temporary support. Marshalling resources can help balance the power between the spouses, preventing a helpless feeling from dictating day-to-day decision making. Save money. Resist the temptation to immediately buy new things to replace the old. Be frugal. Ask others to share used furniture, children's clothes, and toys. Stay calm. Manage the situation as best you can.





Budgeting

Getting a handle on your finances is essential. Create a budget. Dave Ramsey's Total Money Makeover is a great book for help with budgeting. Listen to Dave Ramsey's radio show or podcast available on iTunes. Later, consider attending his Financial Peace University. To learn more about Dave Ramsey visit www.DaveRamsey.com.

To budget, start with income. What are your sources of earned income? Are there other sources of income? What about your spouse's income? Your lawyer will also need copies of documents about current income. Make copies of current pay stubs, last year's last pay stubs, W-2s, bank accountant statements, and tax returns.

Then, list expenses. Be thorough. It's easy to move quickly and forget something. If you have them, make copies of personal finance reports from Quicken or QuickBooks, canceled checks, and credit card statements. The more detailed your budget, the better your understanding will be regarding your needs, obligations, and resources. Later on, your lawyer will help you organize everything in the court's preferred format.

For now, though, you need to understand how much money it takes to live, or what you have left over to help support your spouse. Having a detailed budget will help you make smarter decisions with available resources.

Step 3: Parenting

A parent moving out of the marital home affects children. Some parents think that it reduces stress for the children, especially if the spouses are constantly arguing. In some cases, it may. But at the same time, the children's stress is going to be high regardless. Whenever possible, both parents should work together to help their children through the transition. Change is emotionally unsettling for everyone, but that's especially so for children.

Depending upon your children's ages, they may not understand what is happening. Whether a parent's moving out is the first of many changes or the last step during the divorce process, children often lack the emotional tools to deal with divorce and the fact that one parent no longer lives with them. Professional counseling can help. A qualified mental health professional can help smooth the transition and, at the same time, listen for warning signs of more serious problems.

Start and keep a parenting journal and a detailed calendar. Record events, overnights spent with the children, and time the children spend with the other parent. The calendar or journal may be shown in court someday as a contemporaneous record of what happened. What scheduled parenting time was missed by your spouse? What was the excuse this week? What requested parenting time was denied? Do not include flippant comments like "Jerk Face missed Tommy's baseball game AGAIN." If there is serious conflict between the parents, this type of information is too important to risk to a faulty memory. Credibility comes with specific knowledge of dates and circumstances. During times of stress, memories are often too short-lived to be dependable. Even without any major conflict, the journal can document what went well. Recording parenting successes may be just as important as documenting failures.

As you plan, think about everyone's schedules for work, school transportation, extracurricular activities, holidays, and doctor's visits, as well as the other parent's time constraints. Later, you will need to prepare a parenting plan that takes into account an entire year's parenting time, also called residential time. In addition, you need to think about who makes which decisions. In Tennessee, the parent with whom the children reside on any particular day is generally responsible for day-to-day decisions when exercising parenting time. The parents may share or alternate other final decision-making authority, such as education, choice of physician, extracurricular activities, and choice of religion. The permanent parenting plan will establish parenting time and important decision-making authority.

Get the Parenting Schedule Right, Right Now

Whether or not you want to be the **primary residential parent** (once known as the custodial parent), you need to decide if you want to maximize the amount of parenting time and involvement you have with your children. If either parent moves out, get the desired routine in place as soon as possible.

If parents cannot agree on a temporary parenting schedule, either one may ask the court to adopt one. The “status quo” is vitally important in all family law matters because, “if it ain’t broke, why should the judge fix it?” Some judges will leave the current parenting time routine in effect if that schedule is working reasonably well. Proving the status quo is not working reasonably well, however, can sometimes be more difficult than one might think. The parents can negotiate a different schedule later, or the judge may order something different, but departing from the status quo may be more of an uphill battle than it needed to be.

Talk with your lawyer as soon as possible about making adjustments to the parenting schedule, changes you believe are needed. No matter how the divorce progresses, you must do your very best each and every day to stay involved with your children. If you can’t see them, call them. Skype them. Text them. Do whatever it takes to keep in touch, even if it’s just a five-minute phone call before bedtime. Tell your children you love them, and give them a chance to talk with you.



Step 4: Do Not Date

Dating is not a good idea. Even when the other spouse has already left the marital home and is living with someone else. This may be the most ignored legal advice given by family lawyers to their clients. Many people start new relationships prior to divorce, so is it really that big of a deal? It can be.

Some may say to themselves, “My marriage is already over, so what’s the harm?” While it’s natural to want to seek affirmation from another in times of stress, don’t date. Every choice you make can be scrutinized by the court, especially when children are involved. To most judges, adultery means the party had sexual intercourse with someone other than his or her spouse, regardless of whether they’ve already separated and are living apart. Furthermore, even if the relationship is more emotional than physical, judges may still treat the two similarly. Tennessee courts can rule that the extramarital relationship constitutes inappropriate marital conduct even when there is no “hard evidence” of sexual intercourse.

Evidence of adultery can influence court decisions about custody and amount of parenting time because extramarital affairs can negatively affect children. The paramour may even be subjected to scrutiny. A DUI, prior drug conviction, awkward Facebook photo, and even a bad check arrest could end up being mentioned in court pleadings or arguments. Even if the children have never met or seen the boyfriend or girlfriend, they may learn about the relationship from a third party in a way no one would want. Even if there is no actual harm to a child, judges are fearful of such harm. Judges expect parents to make the children their highest priority. Extramarital relationships are never viewed as putting children first. Here, the perception of priorities does matter.

Allowing children to interact with a paramour is a very bad idea, too. Children who find a new adult in their lives can become confused during an already challenging time. Courts may see this exposure as evidence of a parent’s very poor judgment, giving the court a reason to award custody to the other spouse. Parents should always be a positive role model for their children. In addition, adultery is legal grounds for divorce. Although proving adultery can be challenging, many divorcing spouses will admit to having affairs. Direct evidence of the affair may not be required to prove adultery. Circumstantial evidence may be enough.

Furthermore, in Tennessee “the relative fault of the parties” is considered by courts when deciding **alimony**. Having an affair, before or after separation, can constitute marital fault. The affair may not affect the alimony determination one way or the other, but it could play an important role in the decision. Everything depends upon the circumstances. In any event, expect the lawyer of the innocent spouse to make as much noise as possible about the other’s affair during court proceedings. That’s never comfortable for the spouse who is having the affair.

Even when there are no children, dating is still a bad idea. Not only can dating alter the relative negotiating positions of the spouses, but affairs often inflame emotions—fueling the need to seek retribution and revenge. Money is often the vehicle for both revenge and vindication. The other spouse may decide to take the deposition of the boyfriend or girlfriend and ask embarrassing questions about the first time sex occurred, gifts, loans, and trips. Don’t give your spouse a reason to hate you and fight you tooth and nail.

Throughout the divorce, always remember this important rule: never give the judge a reason to dislike you. Explaining an extramarital relationship is always tricky, but telling the truth is vitally important. Getting caught in a lie about an affair can be a lot worse than actually having one. Destroying your credibility is never worth lying. Also, know that one spouse’s dating can be found out by the other party, no matter how carefully the secret is kept. One spouse can ask the other about affairs under oath during the divorce—in written discovery, during a deposition, and during trial.

If you already started dating before reading this, your situation is not unusual. You are not the first, and you will certainly not be the last, to look elsewhere for comfort. But do tell your lawyer. Talk it through. Don’t let your lawyer find out about the relationship later from your spouse’s lawyer. You’ll need to make some tough decisions. You might decide to end the extramarital relationship, or you might choose to live with the consequences. Just make sure that the decisions you make are informed ones.

Step 5: Free From Stress and Violence

Managing stress during the divorce is more important than you might think. Stress can lead to extreme anxiety, poor decision making, and very serious depression if not addressed. Perhaps no one can completely eliminate emotional problems associated with complex legal matters such as divorce. But counseling, proper nutrition, and moderate exercise usually has a very positive impact on well-being and clarity of judgment. If you have health concerns, consult your doctor.

Consider counseling. Ask your lawyer for a referral. If you have access to a **mental health professional** through your employer or insurance, take advantage of that. Even if life isn't all that bad right this now, things can get worse. Have a plan. Arranging to talk with a counselor you can trust may make all the difference. If you sought counseling before, but didn't like the counselor for whatever reason, try again with someone else. It's not unusual to meet with a few counselors before finding the right person for you.

Eat smart. Stay away from fat and sugar. Overeating comfort food can lead to feeling even worse, both physically and emotionally. Eat fruits, vegetables, and foods containing protein. Exercise in moderation. Stay hydrated. Relax. Get to bed on time, and get plenty of sleep. If you're having a hard time sleeping, try to avoid regular use of sleeping pills. You should work on your divorce some every day, but learn how to put that aside and get the rest you need. Focus on taking things one step at a time. With divorce, sometimes baby steps are best.

Lastly, your head must be as clear as possible. Avoid stressful situations. Conserve your mental energy. Learn to say "No" to everything you absolutely can. Remember what they say on the airplane: "When oxygen masks deploy, put yours on first before assisting others with their masks." If you can't breathe, you can't be expected to help other people with their problems. Now is the time for you to take care of you. If this means giving short shrift to someone else's needs (except your children, of course), you can make it up to that person later. You'll be back to being yourself sooner than you might think.



Domestic Violence

Unfortunately, family lawyers see **domestic violence** more regularly than most people think. This national problem knows no economic, social, or racial boundaries. In the 1990s, Tennessee dramatically changed its civil and criminal laws to provide more legal protection for abused spouses. If you were ever the victim of domestic violence, if you fear reprisal for filing the divorce, or even if you are the aggressor, be sure to discuss this with your lawyer. There are important legal steps that you can take to help.

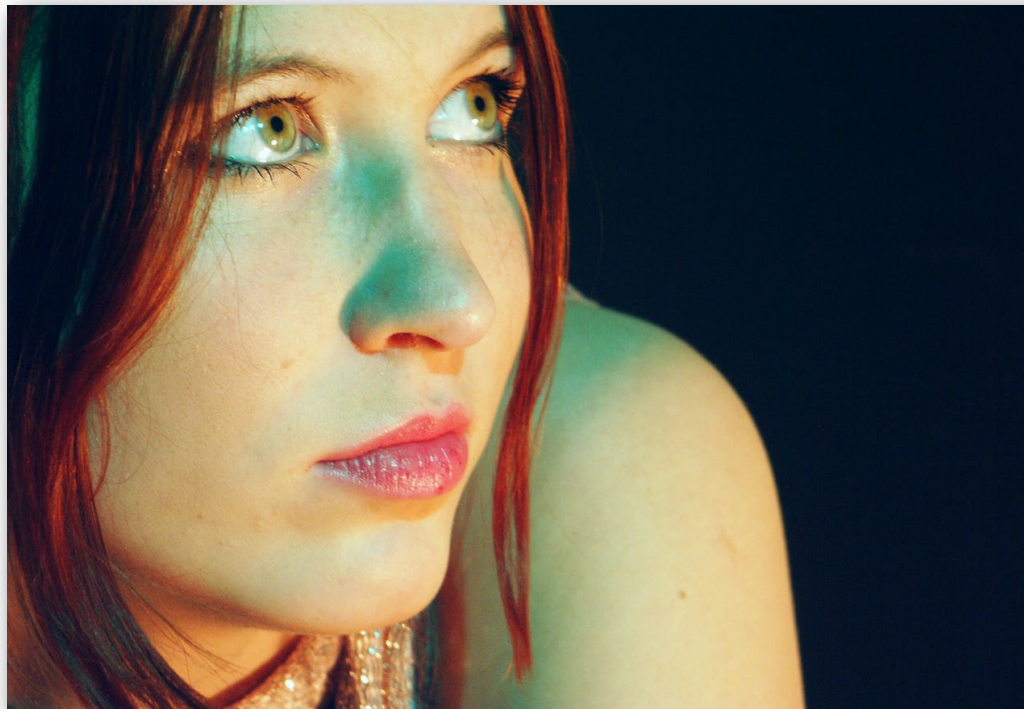
One of these steps is getting a protective order. A protective order enjoins, or prohibits, the party from coming around, and from abusing, harassing, or threatening the protected person. Restrictions may prevent the party from contacting or telephoning the other spouse. A protective order is effective in most cases. When law enforcement officers see the party violate the protective order, he or she will be arrested. If law enforcement is not present, violation of the protective order can result in a petition for contempt being filed later, seeking jail time, fines, and legal fees. Judges take violations of their protective orders very seriously.

The person subject to a state-court-issued protective order must also understand and comply with federal law prohibiting the carrying of firearms. There are no exceptions, even for law enforcement personnel. Ask your lawyer for more details.

If you find yourself in the middle of a domestic violence altercation, call the police immediately. Call them first. If you are represented, then also call your lawyer. The law dictates that law enforcement's preferred response to domestic violence is arrest. If you fear for your life and have nowhere to flee, the police may direct you to an absolutely secret shelter for safety. At these shelters, even your lawyer is not allowed to know where you are. If you have children, they may go to the shelter with you.

If you are the victim of abuse, never underestimate the true danger that rage poses. Fight back any feelings of responsibility for the abuse or the abuser. In the middle of a difficult situation, worry about one thing only—saving your life and the lives of your children. Sort out the details later.

If you are the abuser, seek treatment. You are not alone. Help is available. The cycle of rage and terror will continue without some form of professional intervention. Don't risk jail time and losing parental rights.



Shelters and Safe Houses

Memphis

The Family Safety Center
www.familysafetycenter.org
(901) 222-4400

YWCA of Memphis
www.ymcamemphis.org
(901) 323-2211
(901) 752-4277 (Crisis Hotline)

Vday
www.vday.org
(212) 645-8329
(510) 841-4025

The Exchange Club Family Center
www.exchangeclub.net
(901) 726-2200

Jackson

WRAP
www.wraptn.org
(731) 668-0411

Nashville

YWCA - Nashville & Middle TN
www.ywcanashville.com
(615) 269-9922
(615) 385-9754

Nashville Baptist Healing Trust
www.baptisthealingtrust.org
(615) 284-8271

*TN Coalition Against Domestic
and Sexual Violence*
www.tcadsv.org
(615) 386-9406

Chattanooga

*Partnership for Families,
Children and Adults*
(423) 755-2822

*The Coalition Against
Domestic and Community
Violence of Greater
Chattanooga, Inc.*
(423) 875-0120

Knoxville

Serenity Shelter
(865) 971-4673

Family Crisis Center
(865) 637-8000

*Knoxville Police Department
Domestic Violence Unit at the
Knoxville Family Justice Center*
(865) 215-6810

Step 6: Cost of Divorce

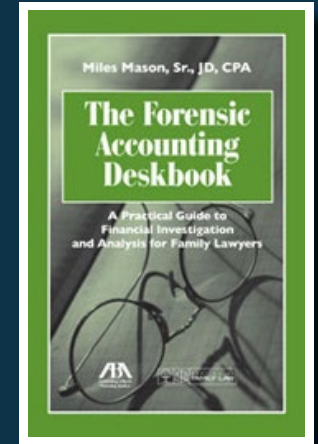
If you ask experienced divorce lawyers why some divorces cost so much, most answers will include revenge, pride, fear, and complexity. In some cases, an aggrieved spouse may seek revenge by directing his or her attorney to make the process as painful and expensive as is possible. Sometimes, a high legal price tag results because one party has been denied access to the other's accounts, which has caused the party denied access to initiate costly discovery and motion practice. In other cases, certain assets are complicated and difficult to value, as with a closely-held business or professional practice, which can also increase costs, especially if expert valuation is required. Both spouses have a right to learn about and fully understand the other spouse's complete financial picture before determining a settlement position.

For cases with little conflict, the cost of divorce may directly relate to the size of the marital estate and whether or not it contains complex assets. A divorcing couple married five years with no children, for example, who rent a home, have no pensions or investments, and own no businesses may expect a much lower legal bill than, say, the couple married 25 years who own their house, have pensions, a vacation home, stock options, and two children in prep school.

If you're worried about the cost of your divorce, then discuss this with your divorce attorney. Be honest about your resources and any fears you may have about expenses. Don't avoid having this conversation. There are opportunities in every case to reduce costs. Agree to accept legal services only if you can pay for them.

Your exact legal fee will vary. Family law cases require many services and activities. Legal issues include separation, divorce, custody, visitation, alimony, child support, property division, valuation of assets, and attorney's fees and costs. Services may include court appearances, legal research, investigation, drafting correspondence, conferences with you, settlement negotiations with your spouse's attorney, preparation of pleadings and other legal documents, pre-trial discovery, mediation, trial preparation, and litigation at trial. You will need to obtain advice concerning your assets, liabilities, income, expenses, insurance, and taxes, as well as recommendations concerning property division and support. If a divorce trial is necessary, the court has authority to order one spouse to pay the other's attorney's fees in alimony, child support, and child custody matters. If there is a trial, courts rarely order the full amount of attorneys' fees be paid by the other spouse.

By far, the most common method of calculating legal fees is charging for the amount of time for each service. Lawyer's hourly rates may differ dramatically. A greater hourly rate does not guarantee superior service, however. Hourly rates generally range from \$150 per hour to over \$500 per hour. Some lawyers' hourly rates depend upon the complexity of the case. The other method of calculating fees is the flat rate fee. A flat rate fee may be charged for the entire divorce or for a particular stage of litigation. In addition to legal fees, there are copying costs, expert witness fees, court reporter fees, mileage, and other expenses. In addition, the court clerk may charge court costs, which may be based upon the number of motions or others pleadings filed. Additional court costs beyond the initial case filing fees may amount to nothing or may amount to several hundred dollars.



To learn more about complicated divorce issues involving self-employed professionals and business owners, or proper handling of a divorce case using a forensic accountant, consider purchasing *The Forensic Accounting Deskbook: A Practical Guide to Financial Investigation and Analysis for Family Lawyers*, authored by Miles Mason, Sr. and published by the American Bar Association Family Law Section, available on Amazon.



Step 7: Checklist for Filing Divorce and Hiring Your Lawyer

Even if you feel overwhelmed by the thought of divorce, do not procrastinate. There is much to do and think about, but just take it one step at a time. One of the very first steps should be choosing and retaining an attorney. As soon as you think divorce is possible, you should interview two or three attorneys who only practice family law. You will be making some very important decisions early in the process and you'll need professional legal advice for many of those. Divorce changes everything, so be prepared. Having an experienced professional at your side early on can help you make important decisions and avoid serious mistakes. Experienced family lawyers have important advice to share.

Begin by researching lawyers. Talk to people you respect and trust. If you know a lawyer, ask him or her for a referral to a lawyer who practices family law only. Most attorneys will agree to meet for a consultation. More experienced family attorneys may require that a fee for the initial consultation be paid in advance.

Once armed with several referrals, carefully read each law firm’s website, including the lawyer’s detailed professional biography or resume. You want the lawyer who is committed to family law practice and who has extensive relevant experience because family law constantly changes and evolves. Family lawyers stay apprised of changes by being active members of the American Bar Association’s Family Law Section, the Tennessee Bar Association’s Family Law Section, and other organizations devoted exclusively to current trends in family law. Every day Tennessee Courts of Appeal issue new opinions. Every session, the legislature enacts new laws. Every few years our Child Support Guidelines are revised. Keeping up isn’t easy. Additionally, divorce attorneys subscribe to monthly family law newsletters and annual family law books to stay on top of things. Without a serious commitment to family law practice, many lawyers simply will not have the tools to do the job.

For each lawyer on your list, learn his involvement with the ABA Family Law Section, TBA Family Law Section, local bar association’s family law section, and other related organizations. Has the lawyer attended conferences or served on committees? Has he presented seminars? Has the attorney published any books or articles? What about serving as a leader? Gauging a lawyer’s leadership, public speaking history, and publishing in family law is one way to objectively consider the attorney’s professional competency, involvement, and reputation among peers.

Watch out for lawyers who promote “low-cost” or “discount” divorces, or those with questionable endorsements from “former clients.” Helping keep costs down is always a good idea, but promoting low cost divorces can be a warning sign. Seasoned family lawyers can tell horror stories about being asked to repair devastating legal problems. Problems caused by lawyers who made avoidable mistakes just to cut costs; of shortcuts taken which proved far more costly in the long term. Some lawyers post glowing reviews on websites which could be self-manufactured. Even when valid, testimonials and endorsements are only one aspect of your research. Be diligent in doing your homework.

Make calls and set up appointments for consultations. Although not required, it may be helpful to gather certain documents in preparation for your first meeting with an attorney. Locate and copy your important documents, including:

- Pleadings if the case was already filed and is ongoing;
- Financial statements;
- Income tax returns (last two or three years);
- Bank statements (business and personal); and
- Brokerage or retirement account statements.

Arrive on time for the consultation prepared to ask questions that are important to you. Expect the lawyer to pay attention and listen to you. Expect him to be patient and to answer your questions. Expect assertiveness without arrogance. Trust your intuition. Run away from any lawyer who acts like you are lucky to be his client or who tells you what he thinks you want to hear without really listening. Expect the lawyer to present himself in a professional manner. The lawyer and the office should not be messy. Expect to understand the lawyer. Even when talking about complicated aspects of the law, the attorney should make himself understood. If you do not understand what is being said, that's not a good sign.

You should also expect the lawyer to keep your children's best interest in mind. Sometimes the legal fight can be more devastating to children than the break-up itself. Experienced and caring lawyers can teach you how to keep the children out of the fight. Some lawyers may refuse to represent parents hell-bent on putting their children in the middle of the crosshairs.

Expect the lawyer to have a policy for returning calls. Some attorneys have their policy in writing. Ask to see it. Then read it. If a lawyer's client is unhappy, the most likely reason is that he failed to return calls and keep the client updated.

You should expect to feel comfortable on a professional level with the lawyers you interview. Don't be offended when the lawyer interviews you, too. You want an attorney who is selective in taking cases. For a number of important reasons, the better family lawyers are not interested in representing every person who walks through the door. Just like you may not feel comfortable with the lawyer, the lawyer may not feel comfortable with you. And that's fine. If it happens, don't take it personally.

Expect the lawyer to be up front about who will work on your case. Some portions of every case may be handled by an associate attorney or competent paralegal working under the supervision of an experienced family lawyer. Some clients prefer more direct time with their attorney through strategic planning and full discussion of all issues. Other clients would rather keep costs to a minimum by spending most of their time with a paralegal. Share your preference during the consultation.

You should expect the lawyer to explain exactly how he will attempt to get your case settled. Expect him to be candid about his family law experience and current caseload. Less experienced lawyers may advise clients to take unrealistic positions or encourage unrealistic expectations. While no lawyer can predict the future, professional judgment comes from both winning and losing cases over a legal career. An attorney with too many active cases may not have the time or resources to devote the attention your case deserves.

Family law is rarely black and white and there are no guarantees. Any attorney who leads you to believe a particular outcome is 100% guaranteed is being irresponsible. We are all drawn to positive personalities, but remember that the most important part of being a family lawyer is advising the client about the realities of the situation, good and bad. The final outcome of your divorce will almost always relate more to your smart decisions than on the lawyer's courtroom skills. Smart decision making begins with an understanding of what could go wrong, as well as what may go right.

When you interview a lawyer, expect to be given a clear picture of that attorney's billing payment policies. The lawyer should detail the hourly rates of everyone in the office who will be working on your case. You should learn how the lawyer charges for expenses, such as photocopies, long distance telephone charges, courtroom reporters, and postage. Find out if you are to pay these expenses in advance. Additionally, lawyers vary on their definition of the word "retainer." Find out what the attorney means by that term during the interview.

At the consultation, you may also ask the lawyer the following questions:

- How much do you charge for travel time, expenses, computer research, cell phone calls, expert witness fees, and expenses other than time?
- What does the retainer pay for? Under what circumstances may I receive a refund? How does that work?
- What do you think about the judge assigned to my case?
- Speaking generally, what do you think is a realistic, favorable settlement for my situation?
- What do you foresee as the most serious challenge to obtaining a favorable settlement?
- Do you ever work outside normal business hours to meet with clients? Do you charge extra for those meetings?
- What happens if I call, leave a message, and my call is not returned within 24 hours?
- Can I see your fee agreement? Ask to read the lawyer's written fee agreement. Read it carefully. Ask questions.

If you don't feel comfortable with the lawyer after the consultation, politely walk away. Interview another lawyer. Speaking with more than one attorney is a good idea, even when doing so means another consultation fee. You will learn a lot from this process. No attorney should be insulted because you've decided not to hire. Experienced family lawyers are very comfortable with clients being patient and talking to more than one lawyer before deciding who they want to represent them. When in doubt, trust your gut. Don't feel rushed into making a rash decision that you'll regret later.

Tips for Keeping Legal Costs Down

Keeping legal fees down requires clients to take a few extra steps, but it can be done. Share your concerns with your lawyer. Listen carefully to what your lawyer tells you. Move forward every day. Complete the homework assigned by your lawyer in a timely manner. “Homework” includes reading and learning about the divorce process. It also means obtaining and organizing the documents needed by your lawyer early in the case. The more you organize documents and prepare information for your lawyer, the less the lawyer or paralegal must do. And the faster you work, the sooner your lawyer can take your work and do something with it. Delay usually adds cost.

Learn about the divorce process so you won't be taken by surprise. Learn the meaning of some basic legal terms. The more you learn about Tennessee family law, the more efficient you will be in conversations with your lawyer. Your lawyer will likely present you with options from which to choose. Informed decision making saves time and money and reduces stress.

Carefully identify your most important strategic objectives and share those with your attorney. Work with your lawyer in choosing your battles carefully and wisely. In family law, not every battle needs to be fought. Conceding an unimportant point, one you really don't care about, can keep your attorney out of the courtroom on that issue and save money. Save your resources for the times you need to send a message to the other party that you're not afraid of the courtroom. Your strategic goals should influence all of your decisions.

On [Miles Mason Family Law Group's](#) web site, view our helpful Tennessee family law videos:

[Child Support Video Series](#)

[Property Division Video Series](#)

[News Interviews on Various Family Law Topics](#)

Another way to cut costs is to batch your questions. In divorces, not every question must be answered the same day you think of it. Get a notebook, keep it in safe place near you, jot down questions as they occur to you, save them up, and make one call to your lawyer or paralegal and ask the questions. You can save a ton in legal fees by making your phone calls more productive. However, if you're upset over a particular issue, don't wait. Let your lawyer know your upset and need to a return call. When you talk to your attorney or his staff, stay on task, be direct, and get the answers you need. If the lawyer doesn't answer your question, or you didn't understand the answer, say so. If you're emotional or feeling out of control, don't spend a great deal of time talking to your lawyer when you should be speaking with a counselor or mental health professional.

Controlling costs includes carefully reviewing your attorney's invoices. Most family lawyers bill monthly. As soon as you receive your invoice for legal services, read it. Make sure you understand every sentence. You should understand what was done on your case and why. Are there any errors? Even law firms make occasional billing mistakes. If you find an error on your statement, immediately share your concerns and ask questions. Memories fade with time.





Another way to save money in your divorce is to avoid litigation to resolve disputed issues whenever possible. Preparing for court is often as expensive as going to court. Keep your emotions in check. Never use litigation or court procedures to punish your spouse or to vindicate yourself. Going to court should be a last resort.

Lawyers and clients should create a **strategic plan** together. Divorce is emotional, complicated, and moves quickly. With so little time, wrapping your head around everything can be tough. In addition, you may forget some of the reasons why your attorney is using a particular strategy or tactic. If you don't know what the "plan" is, ask. If you think you're headed to Kentucky and you see a sign that says, "Alabama-10 Miles Ahead," you need to ask the driver (your lawyer), "Where the heck are we going?" Be on the same page.

Finally, letting your spouse's lawyer take the lead by doing all the work is a bad idea. That's "penny wise and pound foolish." It is not the other lawyer's job to look out for your interests. Every legal document presents subtle opportunities to hurt you or help you in the event of a real problem in the future. Waiting for your spouse's attorney to seize control means your own attorney is only reacting. Your spouse's attorney can frame issues in a way that is most advantageous to your spouse and most detrimental to you. Letting the other lawyer do all the work because your spouse is paying for it can really cost you in the long run.

Assemble Your Team and Documents

After choosing your family law attorney, you should discuss with him additional advisors you may need. A mental health professional can help you cope with the emotional aspects of divorce, helping you with any associated depression and provide divorce coaching. A financial advisor can help you prepare a detailed budget and project your future financial needs. In addition, a financial advisor can explain what categories of financial assets you should prefer over others (cash, investments, or retirement). A forensic accountant can help identify, classify, and value marital property subject to division and perform a lifestyle analysis for any alimony dispute. A **business valuation** expert or business appraiser can place a realistic value on the worth of a business. A forensic psychologist can help with mental health issues in a custody case. A vocational expert can advise on a spouse's earnings capacity at present, after additional education or training, and after retirement.

Remember, every case is different. You may not need to consult with any professionals, or you may need to consult with more than one. Your lawyer will identify what must be done, the help you will need, and can make recommendations for specific professionals to meet with. Don't be afraid to rely on experienced professionals who help divorcing spouses like yourself. Divorce can be overwhelming. Solving problems begins with admitting you need help and acting on that need.

After assembling your team, continue the learning process. Read as much about divorce as you can. Ask questions. Take meetings and notes. This is a process. As you study each step, many of your worries will begin to dissipate.

Next, your family lawyer will give you a detailed list of documents and information to obtain. Gather everything available to you as soon as possible. Documents tend to disappear, especially over a long period of time. If there are electronic files relevant to any of the issues in your divorce (pdf files, excel files, turbo tax files, and so on), download those, too. Take all of these materials to your lawyer for safe keeping. This is one of the most important things you can do. You'll save money and help prevent your spouse from hiding assets and income.

Who Should File First?

In many cases, it does not matter who files first. If there is a trial, the party filing first will likely get to argue first, which is often an advantage. But most cases are settled and never go to trial. There may be important strategic reasons for waiting until the other spouse files. It depends upon many different factors, such as the spouses' relative anger and fault, and the makeup of the estate. Unlike fine wine, legal problems do not improve with age. Two additional good reasons for filing for divorce first include obtaining the mandatory injunction and gaining access to a temporary support hearing. Both require a divorce to be filed.



Miles Mason, Sr. also authored *Tennessee Parent Relocation Law* available on [Amazon](#) and [Kindle](#).

Mandatory Injunction

Tennessee law provides for a “mandatory injunction” (also commonly called an “automatic injunction”) that grants the person filing the divorce (or a counter-complaint) the ability to obtain a court order preventing either party from engaging in certain potentially harmful activities, including the following:

1. (A) An injunction restraining and enjoining both parties from transferring, assigning, borrowing against, concealing or in any way dissipating or disposing, without the consent of the other party or an order of the court, of any marital property. Nothing herein is intended to preclude either of the parties from seeking broader injunctive relief from the court.

(B) Expenditures from current income to maintain the marital standard of living and the usual and ordinary costs of operating a business are not restricted by this injunction. Each party shall maintain records of all expenditures, copies of which shall be available to the other party upon request.

2. An injunction restraining and enjoining both parties from voluntarily canceling, modifying, terminating, assigning, or allowing to lapse for nonpayment of premiums, any insurance policy, including, but not limited to, life, health, disability, homeowners, renters, and automobile, where such insurance policy provides coverage to either of the parties or the children, or that names either of the parties or the children as beneficiaries without the consent of the other party or an order of the court. “Modifying” includes any change in beneficiary status.

3. An injunction restraining both parties from harassing, threatening, assaulting or abusing the other and from making disparaging remarks about the other to or in the presence of any children of the parties or to either party’s employer.

4. An injunction restraining and enjoining both parties from hiding, destroying or spoiling, in whole or in part, any evidence electronically stored or on computer hard drives or other memory storage devices.

5. An injunction restraining both parties from relocating any children of the parties outside the state of Tennessee, or more than one hundred (100) miles from the marital home, without the permission of the other party or an order of the court, except in the case of a removal based upon a well-founded fear of physical abuse against either the fleeing parent or the child. In such cases, upon request of the nonrelocating parent, the court will conduct an expedited hearing, by phone conference if appropriate, to determine the reasonableness of the relocation and to make such other orders as appropriate.

Temporary Support

Once a divorce has been filed, temporary support may be awarded if the parties cannot reach agreement regarding their bills and finances. Temporary support is comprised of temporary alimony, **child support**, and attorney's fees. In some counties, it requires filing a "motion for support pendente lite." In Shelby County, the hearing occurs before a divorce referee and may be appealed to the judge or chancellor. In most counties across the state, the trial judge will hear the motion. These motions are often heard in an abbreviated proceeding that may include time limitations.

Most judges will limit testimony during the temporary support hearing to financial issues, such as who makes how much money and what bills must be paid. For these hearings, most courts only want to make sure the bills get paid and the status quo is maintained the best it can be until the divorce is resolved. Why a certain bill exists and who is at fault for the divorce take a backseat in these hearings. Just because the obligor spouse is ordered to pay a certain amount in temporary support does not mean that the same support amount will be ordered in the divorce. In fact, that's rarely the case. The temporary order ends when the final judgment for divorce is entered.



Complaint for Divorce

The **complaint for divorce**, and requests for relief included therein, generally ask the court to divide property, order alimony and child support, and provide for everything else possible. A court cannot grant relief that is not requested. A complaint for divorce that asks for everything does not necessarily mean there will be a full-scale war. Most cases settle. Experienced family law attorneys will advise their clients to prepare for trial, but to always allow for a settlement opportunity when it arises. If the primary breadwinner asks for custody, child support, and to be paid alimony, for example, that doesn't necessarily mean that party actually expects to receive custody, child support, and alimony.

As a jurisdictional requirement, a spouse must be a resident within Tennessee for at least six months prior to filing for divorce, or the acts complained of must have occurred in Tennessee. Some exceptions may apply for emergency situations, such as serious child or spousal abuse. Battles over which state has jurisdiction over children can be complicated and very expensive. Custody battles contested in more than one state usually require the judges from both states to communicate and decide which jurisdiction will hear the case. Most states have adopted a very complicated law called the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). One of the key factors is which state is the children's "home state," which usually means where the children lived six months prior to the filing for divorce.

Cases are most often filed in the county where the parties last lived together. If neither spouse still lives in that county, the case will most likely be filed where the filing party lives at the time. This is called "venue."

Serving the divorce papers means actually delivering the summons (official notice of the lawsuit) and complaint for divorce to the other party. The other spouse's lawyer, if known, may accept service, but most attorneys have a process server actually hand the paperwork to the other spouse. Service of process may be accomplished by a sheriff's deputy or a private process server. You may be able to mail copies to your spouse's residence or, if you don't know where your spouse is, you may publish a legal notice in a newspaper. Service by publication in a newspaper, however, can complicate what a judge may award as part of the divorce. Personal service of the divorce complaint and summons is preferred.

The cost of filing for divorce depends upon the county. Some are more expensive than others. In Shelby County, Tennessee, the cost may be over \$300.00.

Before or after the divorce is filed, if the parties agree, they can attend mediation. Or they can agree to participate in a collaborative law process. The key to a settlement in these alternative processes depends upon the willingness of both parties to timely share absolutely all of the needed financial information and cooperate with each other as much as possible.



Learn More

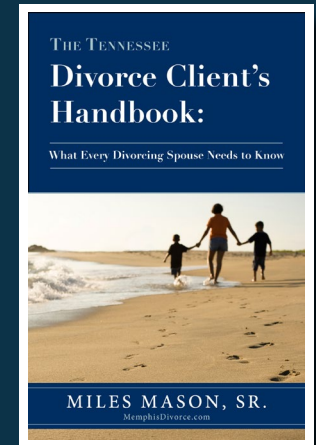
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To learn more about Tennessee divorce and family law, Miles Mason, Sr., authored *The Tennessee Divorce Client's Handbook: What Every Divorcing Spouse Needs to Know*. He also authored *Tennessee Parent Relocation Law*. To learn more about complicated divorce issues involving self-employed professionals and business owners, or proper handling of a divorce case using a forensic accountant, consider purchasing *The Forensic Accounting Deskbook: A Practical Guide to Financial Investigation and Analysis for Family Lawyers*, authored by Miles Mason, Sr., and published by the American Bar Association Family Law Section. All are available on [Amazon](#). The first two are also on Kindle.



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Miles Mason, Sr., is the founder of Miles Mason Family Law Group, PLC, and practices family law exclusively. He is past Chair of the Tennessee Bar Association Family Law Section and is a Certified Public Accountant. Miles is a prolific author and public speaker on divorce, presenting seminars to attorneys, forensic accountants, and business valuation experts. He is also often interviewed by the media for commentary on legal topics in the news.

The Miles Mason Family Law Group, PLC, is located in Memphis, Tennessee, and serves clients in Memphis, Germantown, Collierville, and in counties throughout western Tennessee, including Shelby, Tipton, and Fayette counties, as well as eastern Arkansas. The firm handles family law matters, including divorce, child custody, child support, alimony modifications, parent relocation, prenuptial agreements, child support modifications, and complex divorces involving business owners, business valuations, and forensic accounting issues.

To learn more about our professional staff, see our [“Meet the Team”](#) page. Also, see our [“Consultation and Fees”](#) page. Call (901) 683-1850 today and schedule your confidential consultation.