

The Advantages of Filing First

Divorce is not a pleasant undertaking. It is understandable that many people would rather wait and let their spouse take the first step. They seem to think that by waiting and not filing first, they will be immunized from the difficulties of the divorce process itself. That's wrong. Both parties usually face difficult times leading up to, during, and after a divorce. Filing first, sometimes, can make things easier to process internally. Most people – even most attorneys – believe that there is no real advantage to filing first. They're wrong. **Filing first is always a good strategy from a legal standpoint.** Here's why:

First, you will establish a clear mark in time that the court may use as the point of "irretrievable breakdown." This date will be critical if you fear that your spouse may try to hide or transfer assets to defeat your claims or deny you your fair share. It also could save you from debt that your spouse may recklessly run up. The earlier the date, the better off you will be. To delay filing will only give your spouse more time to hide and transfer away assets, or use debt as a weapon, before he or she files. Talk with one of our experienced professionals before you give your spouse the luxury of extra time to hide money and then the advantage of filing first.

Second, remember: first impressions count. By filing first you demonstrate to your spouse that you have the emotional and psychological strength and determination to deal with the situation. Rather than merely letting a divorce happen to you, you show that you and your attorney make a team that is prepared, resourceful, and ready to handle any contingency. This impression will help deter your spouse from reckless strategies and spiteful acts and, in the end, save you time, money, and frustration in court.

Third, when you file first, you make it your case. You put yourself in the driver's seat. Like most "Respondents," your spouse probably won't file a counter-suit for divorce. By filing first, you will give yourself an emergency exit – a parachute – in case things go wrong. If the case ever takes a turn for the worse and your bargaining power is undermined or your trial preparation is lacking, because you filed first you may dismiss the case. You'll have to start over, of course, but a fresh start is far better than a disastrous ending. Consider the alternative: if you let your spouse file first, and your case takes a turn bad, your only options may be to beg your spouse for another chance, or accept a defeat that will likely be painful in more ways than one.

Fourth, in a contested case, the Petitioner goes first. If your case goes to trial, as the "Petitioner" you and your attorney will present evidence and testimony first. Your team gets to benefit of staking out the high ground and explaining everything to the judge. Only after this will your spouse have the opportunity to try to change the judge's mind. Your attorney will be able to make arguments first and will also have the opportunity to rebut any argument made by your spouse. To an attorney, having the advantage of "going first" at trial is hard to overstate. Moreover, about half of all cases that go trial settle in the middle of the trial. By going first, your attorney can show your spouse how strong your case is. As the case goes on, and settlement discussion happen during short breaks, your bargaining power increases. By simply filing first, you can avoid being in the position of hearing the case being built against you and simultaneously having to make larger and larger settlement offers.

Finally, you should understand that once you and your attorney win the race to the courthouse and file first, the case won't immediately spin out of control into an ugly, messy, conflict. You don't have to run home to tell your spouse about what you've done. Most attorneys will wait a reasonable time after the filing (following your instructions) and only then will mail a copy of the papers to your spouse with a thoughtful letter establishing a civil and businesslike atmosphere for settlement.

If done properly, by filing first you and your attorney will create significant advantages for yourself, avoid some common pitfalls, and create a climate for settlement in which you have clear authority in, and control of, the situation.

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.