

Two Advantages and Two Misconceptions about Filing First for Divorce

Advantages

The name given to the spouse that files first for divorce is the Petitioner and the spouse that files second is called the Respondent.

- About Filing
 - The clearest advantage to filing for divorce first is that at trial the Petitioner gets to present his/her evidence first. Thus, the Petitioner has the advantage of being able to decide which witnesses to call first at trial and the order in which they will be called.

For example, if the Respondent is a liar, the Petitioner may decide to call the Respondent as the first witness. The Respondent will then be forced to commit to his/her testimony before he/she hears other witnesses testify. This will prevent Respondent from changing his/her testimony to improve his/her case depending upon the evidence presented at trial.

- This advantage is not big enough to rush your divorce. If you think your marriage might be salvaged by marital counseling, then try that.
 - If you think that it would be better for your children to postpone the divorce until a certain date, then do so. For example, some parents will agree to wait to file for divorce after their child who is a senior student in high school goes away to college.
- To Gain Jurisdiction in the Best Court Location
 - In some instances there may be more than one court location where the divorce case may be properly filed. In such instances it might be to your advantage to file first to make sure the case is filed in the court location that is most convenient for you.

Two Misconceptions

- It Does not Make You More Righteous to File First for Divorce
 - California is a “no-fault” state when it comes to divorce or legal separation. It does not matter if you are filing for divorce because your spouse cheated on you, or because you just don’t get along anymore. “Fault” is generally not a factor in determining spousal support (alimony), child support, child custody, or division of property.
 - Therefore, it does not help you to be called the “Petitioner”, nor does it hurt you to be called the “Respondent”. This is not like being called a “Plaintiff” or a “Defendant” in a personal injury case.

- The Wrong Reason to Postpone Filing for Divorce
 - Some people wait for or encourage the other spouse to file for divorce first so the children will blame the parent who filed first for the failed marriage. This is bad judgment.
 - If you have already tried marital counseling and your marriage is still toxic your children will probably be psychologically better off and are more likely to develop into well-adjusted adults if you are divorced.
 - A parent should never tell the children that it was the other parent that filed first for divorce or caused the marriage to fail. It is best for the children if you involve them as little as possible in the divorce and that you only speak well of the other parent in their presence.