

20 Ways to Lose Your Divorce (Even if You Win)

In divorce, you can win your case and still lose. I've had a client since 2009. Let's call him Fred. He had a simple financial case. I've had complex financial cases, and his case isn't one by any measurement. His case instead was complicated by a forensic accounting firm. But there were other factors. The facts and the law have always been on his side according to his attorneys. Fred now represents himself because he is broke. This is what he wrote in his trial brief.

Divorce is a Costly Civil War

"My case has gone through ten years of litigation. It is 2.5 times longer than the American Civil War (1861 to 1865). We've had seven judges and five mediators. Each of us have had five attorneys. There have been 350 hearings and 250 court orders. It has **cost us \$1 million in fees** from the proceeds of our home and our retirement accounts." **As of September 2019, Fred has not yet gone to trial.** He is in his late seventies and I am still with him. I am also the only one left who understands his case. Fred's case is not unique. It's just a more expensive version of what I often see. So, how does this happen?

1. **Purpose.** Your goal is to live after your divorce. Your divorce should be short like your wedding. The wedding was not your goal. It was your life afterwards. Spending more on your divorce is like spending more on your wedding than your marriage. Don't forget your goal.
2. **Priority.** You sincerely believe your children are the most important thing. But they've become your messengers. "Can you ask your dad?" "Can you ask your mom?" Even worse, they've become a number in a child support formula. "One" is the only number your children should ever be. It should not be cliché. It should be your attitude.
3. **Profit.** "Children are pawns," you've heard. If you are unfamiliar, pawns are sacrificed in chess. By formula, the more time with your children, the more child support you receive. Your children benefit when the support is mostly for them. And they don't when it's not. You should always make your children kings and queens.
4. **Partnership.** You used to share the responsibility of raising your children together. Now, you do it apart. Children need both parents without question. You should accept your spouse can be both father and mother but can never be both equally well. That's why you should always be there to fill the gap.
5. **Prevent.** Avoid litigation as much as you can. But it's not who we are as a society. Naturally, the first thing you do is see an attorney. This is a good thing. You need to understand your rights beforehand. But litigation can never be your first and only resort. You should explore **alternatives to divorce.**
6. **Preserve.** I believe you should **dissolve your marriage and not your wealth.** Your wealth is your time, money and emotion. Unfortunately, litigation may cost you your wealth over an issue worth much less. We have different values. So, I cannot give a universal example. Just be practical.
7. **Practical.** Be reasonable. Why does everything have to be a trial issue? Everything is not equally important. To prove this, just visit the emergency room. The least critical wait the longest. Treat your case like an emergency room doctor would. Only litigate the issues you sincerely cannot negotiate.

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8. **Promises.** Both of you are contemplating divorce. So, each of you see an attorney. Both of you explain the same facts and each of you are promised more than the other. Shouldn't both attorneys have promised the same? Attorneys only respond to the facts they have. It's tough, but you should first agree on the facts.
9. **Probability.** I've sat in many consultations with attorneys and their clients. Attorneys talk about the probability of losing. But they emphasize the probability of winning. Attorneys are your zealous advocates. This is a good thing. Divorce is a two-horse race. Don't bet your house on a losing horse.
10. **Planning.** Weddings are happy so we plan them for months. Divorces are impulsive because they are sad. And we want sad things to end quickly. It's tough, but you should gather your financial life months or sometimes years before filing your petition. Respond intellectually to your sadness.
11. **Production.** If you are contemplating divorce, you should watch several Judge Judy episodes. She crucifies those with insufficient facts. Attorneys gather facts using discovery. They use a type of checklist. This may not work in complex financial cases. The checklist must be customized so you have enough facts.
12. **Passive.** You have a complex financial case. So, you hire a forensic accountant after you've hired an attorney. Your work has just begun. It's tough, but you must now go through your bank and credit card statements. We see numbers. You see a long-term marriage. You should not totally delegate your financial case.
13. **Preparation (Trial).** Cases are won with enough facts. Facts are intellectual, and not emotional. I am not saying this happens, but imagine your attorney going to trial and just arguing the law without the facts. "Law, law, law, law" is all the judge hears. The judge wants to hear the facts. They know the law.
14. **Posturing.** When I think of this word, I imagine my mom with hands on hips scolding me. I also imagine sitting at my desk and the teacher leaning over me. It was intimidating. Have you ever seen adults kneel when they speak to children? There's a lot of posturing in divorce. Shrewd litigants kneel without demeaning.
15. **Pain.** I used to wonder why peoples go to trial after months of preparing only to settle. I kept asking attorneys the same question until one day I got the best answer. I was told, "People have different pain points. They must feel the pain of litigation before they become reasonable." Be practical and avoid the pain.
16. **Pressure.** Your divorce has been endless. It has been costlier than you thought. You're broke and your credit cards are maxed. You can't pay your attorney and can't afford a new one. You are emotionally drained. It has affected your job. At this point, you will sign anything and regret it later. **How did you get here?**
17. **Price.** The cost of divorce is your time, money and emotion. We don't have an endless supply of any. Fred is well-educated and was solidly middle-class before he filed for divorce. But ten years after he filed, he is financially and emotionally broke. Fred planned his life and retirement. **He never planned on being broke.**
18. **Policy.** "The goal that the supported party shall be self-supporting within a reasonable period of time." This is the law under Family Code Section 4320. It is also a good social policy. The obligor spouse must support their spouse. With some exceptions, they should not support them forever.

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19. **Preparation (Life).** The greatest fear in divorce is uncertainty. The lower earning spouse usually has the greatest fear. This is valid. You are entitled to spousal support without question. Control is the greatest weapon against uncertainty. So, when you control your income, you control your life.
20. **Prize.** What do you get after your litigated divorce? Well, you often get exactly what you deserved - half. The difference is you get half a grape instead of half a melon. Earning \$50,000 a year, it will take Fred 20 years to recover his \$1 million. In his late seventies, he has half of nothing.

My list is not meant to offend anybody's sensibilities. My insights are from my divorce and professional observations. Fred's divorce is a cautionary tale. If you want to discuss how to avoid losing your divorce, please call Greg Raffaele at 714.386.1446 for a free one-hour telephone consultation.