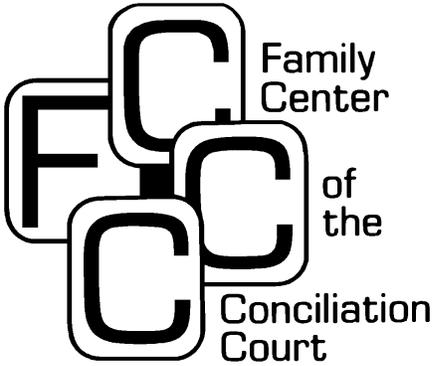


“CONSIDERING DIVORCE?”
An Educational Program of the Family
Center of the Conciliation Court, The
Family Law Section of the Pima County Bar
Association and the Tucson-Pima Library



Emotional Aspects of Divorce - Family Center of the Conciliation Court

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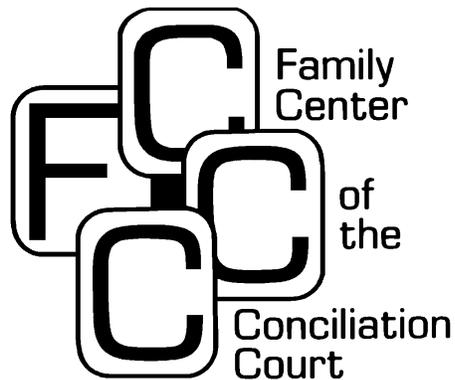
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Community Resources

See Separate Handout



NOTE: THIS MATERIAL IS NOT INTENDED TO BE A COMPLETE DESCRIPTION OF EITHER THE EMOTIONAL OR LEGAL ASPECTS OF A SEPARATION OR DIVORCE. SOME OF THE TOPICS ARE COMPLICATED ISSUES THAT MAY REQUIRE ADDITIONAL CONSULTATION WITH A COUNSELOR OR AN ATTORNEY.

INTRODUCTION

Welcome to the “Considering Divorce?” program. This program, which is scheduled to last about an hour and a half, features a counselor from the Conciliation Court who will talk to you about the emotional aspects of divorce, and a divorce attorney who will talk to you about the legal aspects of divorce.

This program is co-sponsored by the Conciliation Court, the Pima County Bar Association and the Tucson-Pima Library. The purpose is to provide you with information about the divorce process so that you can make an informed decision and have some idea of what to expect. The Conciliation Court is part of the Superior Court of Pima County and offers a variety of services to individuals and families having problems. A brief description of Conciliation Court services can be found on pages 7-10 of this handout. The lawyer is a member of the Pima County Bar Association who has a practice in the area of family law.

Both the counselor and the attorney will be happy to answer your questions. Please understand that in this group setting questions can only be addressed from a general point of view. It may not be possible to answer questions requiring specific, personal information about a particular situation which often requires an extended interview or consultation before an answer can be given. Please feel free to ask your questions and we will do our best to answer them.

MARITAL STABILITY

TASKS OF SUCCESSFUL MARRIAGES (from The Good Marriage by WALLERSTEIN AND BLAKESLEE)

1. "Emotional detachment from the families of childhood, commit to the relationship and build new connections with the extended families."
2. "Build togetherness through intimacy. A good marriage must shift from Me-Me-Me to Us-Us-Us. Within this new unity there must be a balance of togetherness and individuality."
3. "Raising responsible children while maintaining the emotional richness of the marriage."
4. "Confront the inevitable challenges and unpredictable adversities of life, including illness, death and natural disasters, in a way that strengthens the marriage despite suffering."
5. "Make it safe to express differences, anger and conflict which are part of every marriage."
6. "Establish an imaginative and pleasurable sex life."
7. "Share laughter and humor and keep interest alive in the relationship."
8. "Provide emotional nurturance and encouragement to each other."
9. "Develop a realistic view of the marriage. One that combines the changes over time with the images of the courtship and early marriage."

IS THE MARRIAGE OVER?

Studies conducted have discovered valuable information about how marriages succeed or fail. The following material comes from research by Dr. John Gottman, Ph.D. of the University of Washington, and is described in his books Why Marriages Succeed or Fail and What Predicts Divorce?

Dr. Gottman found that “it is the balance between the positive and negative emotional interactions in a marriage that determines its well-being---whether the good moments of mutual pleasure, passion, humor, support, kindness and generosity outweigh the bad moments of complaint, criticism and coldness.”

“Satisfied couples, no matter how their marriages stacked up against the ideal, were those who maintained a five-to-one ratio of positive to negative moments.”

The research showed “that it is not the lack of compatibility that predicts divorce, but the way couples handle their inevitable incompatibilities, not whether they fight all the time or never fight at all, but the way they resolve conflicts and the overall quality of their emotional interactions.”

“There are negative patterns of interaction which if not reversed in time will eventually lead to a point of no return, after which not much can be done to save the marriage.”

“No marriage of any type -- even one exhibiting a healthy five-to-one ratio of positive to negative interactions -- can long sustain itself once four particularly corrosive personal exchanges have insinuated themselves into (become part of) the relationship. These four processes -- criticism, defensiveness, contempt and stonewalling...can ultimately destroy a relationship.”

“Anger and disagreement are quite distinct from criticism and contempt.”

Excerpts taken from “Why Marriages Fail” by John Gottman, Ph.D., The Family Therapy Networker, May/June, 1994, pg 41-48.

HEALING FROM DIVORCE

Divorce is like a death, the death of the hopes and dreams that began the marriage. So healing from the effects of a divorce is like recovering from a death in the family. This is true even if it was not a “good” or “happy” marriage. The healing process is similar, though often more complicated, for divorce. Healing the wounds of an emotional divorce can take up to five years or longer while the typical time frame to obtain a legal divorce in Pima county is 6 - 9 months.

There are several typical stages which often overlap and repeat as events trigger the various responses. These stages are:

SHOCK
DENIAL
ANGER/BLAME
DEPRESSION/LONELINESS/HURT
BARGAINING
ACCEPTANCE

It is important to realize that for some people their hurt and anger may be severe and difficult to endure. Often the grief surrounding a divorce is the most intense emotional pain that a person has experienced. Sometimes people fear they “are losing it” and are dismayed at some of their own behavior. It is also important to realize that healing takes time, usually considerably more time than most people imagine. This is true for both adults and children.

The process of physically and emotionally separating, grieving the loss and preparing to move on can be very different for the various people involved. Generally, people need to talk about what is happening to them. This enables them to begin to accept the reality of the divorce. As talk begins to shift from what has happened to what needs to happen, the person begins to forge a new life apart from the old.

As grief work progresses the individual becomes more future focused and less distressed. Recovery is never a steady progression but always full of ups and downs and unexpected reversals. While the grieving process can be frustrating and discouraging, it is important to remember that it is necessary to go through in order to heal and prepare to go on with life in a healthy way.

HIDDEN ASPECTS OF DIVORCE

HIDDEN LOSSES:

The loss of spousal roles is obvious. Other losses may not surface immediately. In this respect divorce can be likened to an iceberg. The loss of spousal roles is like the tip of the iceberg, easily recognizable. But like an iceberg there can be several losses which lie hidden under the surface. If and when they surface, they can trigger the loss process all over again. The following are a list of some of these hidden losses.

1. INTERNAL LOSSES

- Self-esteem
- Dignity, pride
- Sense of competence
- Control
- Pleasure
- Hope
- Security, predictability, certainty
- "Dream" of the family/relationship
- Faith in the "system"
- Spontaneity

2. EXTERNAL LOSSES

- Family
- Friends
- Privacy
- Job
- School
- Money
- Home/neighborhood
- Possessions
- Routine
- Usual and predictable family atmosphere

CHILDREN AND DIVORCE

A growing body of research in recent years has documented the long-term emotional consequences of divorce for children. It has been shown that this impact can, unintentionally, be very damaging even when parents are working hard to keep their children out of the conflict.

For this reason Arizona and many other states now require all parents with minor children who are going through a divorce or legal separation to attend an educational program on how to minimize negative effects on children.

For Additional information call the Family Center of the Conciliation Court (520) 740-5590

Parents getting a divorce cannot prevent it from affecting their children, but they can significantly determine how much the children will be affected. The single most important task of divorcing parents is to contain their own anger and hurt so that they will be able to work effectively with their children. It is important to remember that children need to grieve the loss of relationships also. Following are some helpful hints for talking with children about divorce:

When the decision is made, the children need to be told and if parents can do so without quarreling, telling them together is best. If parents are unable to talk to the children together, each parent needs to tell the children and reassure them that they will continue to be the child's parent, will continue to love them and care for them.

Use simple language suitable to the age of the child and have enough time to deal with the child's questions and feelings.

Children should be told the truth about the separation and what it will mean to them such as:

- *Where the child will live*
- *Who will take care of the child*
- *When the child will be with each parent*

Children should not be told everything about why the divorce is happening. No matter how upset a parent is, things that are "adult business," such as infidelity, money issues, etc., are not appropriate to discuss with the children.

CHILDREN AND DIVORCE--CONTINUED

Do not put the children in a loyalty bind by blaming each other or asking the children to take sides. Make the commitment to preserve and protect the child's relationship with each parent. Give permission for the child to continue to love the other parent and to be with the other parent without guilt.

Reassure the children that neither they nor their behavior is responsible for the divorce. Assure them that the adults will make the necessary decisions for the restructuring of the family.

Explain that this is a difficult time for everyone in the family and that it is O.K. to be upset and to talk about it. Allow them to feel and to express themselves even if it means that they are temporarily upset with you.

As soon as possible provide a new structure for the children's lives and use the child care plan consistently. It is vital that the children be able to trust that their parent will do as she/he says so don't make promises in an effort to make the children feel better unless you are sure that you will be able to follow through.

Reassure the children about the future and about the family's ability to come through this experience to a positive outcome.

SERVICES OF THE FAMILY CENTER OF THE CONCILIATION COURT

All services are free to residents of Pima County. The counselors who provide the services have, at least, a master's degrees and several years of counseling experience; especially working with individuals, couples and families with regard to marriage and divorce related issues. Additionally, the counselors have been trained in domestic violence issues. *IF THERE IS A SAFETY CONCERN, CONTACT THE CONCILIATION COURT BEFORE YOUR APPOINTMENT SO THAT ARRANGEMENTS CAN BE MADE FOR THE SAFETY OF ALL PARTIES.* For more information or to make an appointment, call 740-5590.

CONCILIATION SERVICES

As provided by Arizona law, a petition for conciliation counseling may be filed by either or both spouses with or without a dissolution or legal separation action pending in the domestic relations court. The court will then order the parties into Conciliation Court for counseling. The purpose of conciliation counseling is to assist the couple in making an informed and thoughtful decision regarding their marital relationship. At least one session will be held which begins with an individual conference before involving both parties in joint counseling. The counselor may determine that no joint counseling will be conducted.

Conciliation counseling usually includes assistance with effective communication between the parties, exploration of issues presented by each spouse, education regarding relational dynamics, attempts at problem-solving and a decision, made by the parties themselves, as to whether to continue in attempts to repair the relationship or to follow through with a decision to divorce. Even when the decision is to divorce, conciliation counseling may still be valuable in assisting the couple to understand what happened in their relationship and in making a more positive transition.

SERVICES OF THE FAMILY CENTER OF THE CONCILIATION COURT

MEDIATION

Mediation is usually mandatory in Pima County if there is a dispute during the divorce process regarding the custody or time sharing arrangements of the children. At the beginning of the mediation process the mediator will meet individually with each person to determine any significant health or safety matters that could affect the parties ability to mediate. Steps will be taken to ensure safety and a determination will be made about whether or not mediation is the appropriate means of resolving the conflict.

Mediators are neutral parties who assist the parents in deciding on custody and working out child care plans for their children. It is a confidential process that gives parents an opportunity to work out plans that are suitable for their children and their situation. Financial matters such as property, debts, assets and child support are not subject to mediation.

- Mediation is not counseling and is not designed to get people back together.
- Mediation is not an evaluation of the parents and no recommendations are made.

Parents may request mediation themselves by calling the Family Center of the Conciliation Court at 740-5590.

THE CONCILIATION COURT

SETTLEMENT BASED CUSTODY AND VISITATION EVALUATIONS

The Court may make a referral to Child Advocacy Services (CAS) of the Conciliation Court to determine whether an evaluation of a family is needed in order to make decisions about custody/visitation that will be in a child's best interest.

CAS will meet with both parents and determine whether an evaluation is needed and if needed, to what degree. With the assistance of CAS, the parents can develop a comprehensive child care plan that addresses the concerns raised by the parents and may build into the plan safeguards, consequences and periods of review.

If an agreement is reached, parents have the opportunity to return to CAS over the next year to iron out any problems that might arise with the plan or with the ability of both parents to co-parent the child(ren). Along with a copy of the child care plan, CAS sends a report to the Court summarizing CAS's involvement in the case and any additional recommendations. If the parents are unable or unwilling to reach an agreement, CAS will submit a report to the Court on the findings of the evaluation with recommendations. (This program is not mediation. In mediation reports and recommendations are not sent to the court.)

A Stipulation and Order (DR-6 Form) must be signed by the Court to begin the assessment. CAS requires sufficient time, sometimes several months, to complete the process.

SERVICES OF THE FAMILY CENTER OF THE CONCILIATION COURT

COMMUNITY EDUCATION

- Speakers available to community groups on topics of marriage, family, divorce, children, parenting, etc.
- “Considering Divorce?”

A monthly educational program providing individuals with information relevant to the emotional and legal components of the divorce process.
- Informational programs for unmarried parents.
- **“Domestic Relations Education On Children’s Issues”**

The Superior Court, through the Family Center of the Conciliation Court, contracts with a community service agency to conduct this program **which is mandatory for all divorcing and legally separating parents with minor children.**

LEGAL ASPECTS OF DIVORCE

A PRESENTATION BY A DOMESTIC RELATIONS

ATTORNEY

You may wish to consult with a family law (domestic relations) attorney if you have specific questions about your specific situation.

DISSOLUTION ISSUES

1. **No Fault: “Irretrievable Breakdown of the Marriage”**

The only requirement for a dissolution of a marriage (divorce) in Arizona is that the marriage is irretrievably broken. No grounds or reasons (such as abandonment) are necessary for the Court to grant the dissolution, except that the marriage is irretrievably broken.

2. **Property: Equitable Division of Community Property**

A. Separate and Community Property. Separate property is property acquired before the marriage, or property that is inherited or received as a gift at any time. Separate property goes to the person who owns it and is not divided. However, if the separate property is transferred into both names or handled such that it can not be clearly determined if it is separate or community then it may be considered community property.

Community property is property acquired during the marriage and includes earnings from work or a business and purchases with earnings. It includes retirement benefits earned during the marriage.

If the parties cannot agree on how to divide the property, a judge will divide the community property “equitably”, which usually means equally between the parties.

B. Debts. Most debts incurred during the marriage are community debts (which means both parties are responsible for the debt) and are considered by a judge in dividing the property. The order of a judge or the agreement of the parties that one person will pay a community debt is not binding on the creditor who loaned the money. The creditor can collect from either party.

DISSOLUTION ISSUES--CONTINUED

3. Spousal Maintenance

Spousal maintenance can be awarded to a person who: (1) does not have sufficient property to meet reasonable needs; (2) does not have reasonable income or earning ability to meet reasonable needs; (3) contributed to the education of the other spouse; (4) or was married for a long time and cannot be self-supporting. The amount and length of the spousal maintenance is either agreed on by the parties or determined by a Judge.

4. Custody and Visitation: See separate sheet.

5. Child Support

- A. Guidelines. Arizona has child support guidelines which determine the amount of support based on the income of both parents and some of the expenses for the children, as well as the amount of time spent with each parent.
- B. Medical Insurance. The Decree must order one parent to provide medical insurance for the children. The parents will be ordered to pay a percentage of the expenses not covered by the insurance or one parent will be ordered to pay it all.
- C. Tax Deduction. The Decree may state which parent can deduct the children on his/her tax returns as dependents. This is usually based on the amount of the child support, as well as the amount of time spent with each parent.
- D. Wage Assignment. Child support must be paid through a wage assignment (if there is an employer), which orders the employer to withhold the child support from the earnings of the parent and pay it to the state Clearinghouse. It is sent to the other parent by the state Clearinghouse.

DISSOLUTION ISSUES--CONTINUED

6. **Name Change**

A person's former name may be restored as part of the dissolution of marriage, if the request is made before the Decree is entered, and the person requesting a name change has paid an appearance fee.

7. **Attorneys**

- A. A Judge may order, or the parties may agree, that one person will pay all or part of the other person's attorney's fees and court costs.
- B. It is always a good idea to consult with an attorney regarding your rights and duties in a dissolution of a marriage. You may be able to handle the paperwork and filing by yourself. Don't rely on your spouse's attorney to protect you.
- C. Attorneys can be found through the Pima County Bar Association Lawyer Referral Service, Legal Aid, or by recommendations of family and friends.
- D. Attorneys charge in different ways to handle a dissolution case, so you should ask each attorney you talk to about the fees that will be charged in a dissolution case. A retainer is a fee that must be paid in order to hire an attorney. Retainers may be refundable or non-refundable. A fixed fee may be charged for the entire dissolution, and will depend on whether the case is contested or uncontested. You should talk to an attorney you hire about exactly how the retainer is handled and the fees are charged.

TERM DE FINITIONS

1. **Petition for Dissolution.** The document that is filed with Superior Court which starts a dissolution case. The petition requests that the marriage be ended and how the issues should be decided. See Issues in Dissolution.
2. **Service or Acceptance of Service.** Service is when a licensed process server gives copies of the Petition and other documents to the other person. Acceptance of Service or Waiver of Service is a form that is signed by the person receiving the Petition and documents. This form must be notarized. The Acceptance avoids having to have the documents served by a process server. The acceptance does not mean the Petition is agreed to, it only states that the person received the papers. The Acceptance of Service must be filed with the Court.
3. **Preliminary Injunction.** This is an order from the Court in every case, which is effective when the other party is served or signs the acceptance of service. It states that neither party may harass or physically harm the other party, that neither party may destroy, transfer, or conceal property or assets, except in the ordinary course of business, and that neither party may take the children out of Arizona without permission of the other party or the Court. It is effective until the Decree is entered by the Court.
4. **Answer or Response.** This is the written answer to the Petition and is filed with the Court. It must be filed in 20 days (30 days if service is outside of Arizona). A copy must be filed at the courthouse and sent to the other party. A longer response time is permitted if service is waived.
5. **Default Notice.** This is the notice that is sent by the Petitioner (the person filing the Petition) after 20 days has passed if no Response has been filed. It notifies the Respondent (the person receiving the Petition) that a default will be entered if no Response is filed in 10 business days (not including weekends).
6. **Motion to Set.** This is the request that is made by the Court to schedule the case for trial, if a Response has been filed.
7. **60-Day Waiting Period.** The Court cannot enter a final decree until 60 days after the service or acceptance of service was signed. The Court may enter temporary orders during this time on support, visitation, custody, or property. See Order to Appear below.

TERM DEFINITIONS--CONTINUED

8. **Discovery.** The pre-trial process by which one party becomes aware of the evidence gathered by the other party.
9. **Disclosure.** The process by which each party is required to inform the other party of the information that they will be presenting at court. This includes the witnesses and exhibits they will be presenting at court as well as their legal theories about the case.
10. **Mediation.** Parents are required to mediate disagreements over custody or visitation if they cannot reach an agreement on their own. Mediation does not apply to child support or property, only to custody and visitation. Mediation may be arranged through the Family Center of the Conciliation Court, at no cost to the parties, or a private mediator can be hired and paid by the parents. Mediation is a meeting between the parties and a counselor to try to reach an agreement on visitation and custody.
11. **Default Hearing.** This is a short hearing before a judge which takes place after the 60 days have passed, if there was no response filed, or if the parties have reached an agreement that is to be approved by the Court.
12. **Pretrial Statement.** A written statement filed with the Court, and with an inventory of the property in the case and a financial statement. This is required if the case has been set for a trial.
13. **Settlement Conference.** A conference takes place at the Court, before the trial, which must be attended by the parties and their lawyers (if any), at which settlement of the case is discussed.
14. **Trial.** The hearing before the Judge at which each party presents his and her case and witnesses.
15. **Decree.** The final document which is ordered by the Judge and dissolves the marriage and makes orders about property, custody, visitation and support.
16. **Settlement.** The agreement that is reached by the parties which settles the issues in the case. The settlement may be in the form of a Decree or a Settlement Agreement which is made part of a Decree, but must be a written document.
17. **Order to Appear.** A notice of hearing to be held by the Court, while a dissolution is pending or after a Decree has been entered, to settle temporary problems or to modify or enforce a Decree.

CUSTODY INFORMATION

The information below has been prepared by the Family Center of the Conciliation Court in conjunction with attorneys from the Family Law Section of the Pima County Bar Association. If you have questions, please consult an attorney.

LEGAL CUSTODY: The right of a parent(s) to make major decisions for the children.

SOLE CUSTODY: Although parents may consult with one another regarding the children's needs, one parent, the custodial parent, has the final say in major decisions such as medical care, education, religious training, *etc.*

Visitation with the noncustodial parent will be as stated in the final order.

VISITATION: The situation, also referred to as an Access Plan, in which a child is placed with a parent who has the right and responsibility to make, during that placement, routine daily decisions regarding the child's care. These decisions must be consistent with the decisions made by a parent having legal custody.

The noncustodial parent has the responsibility to provide emergency medical care when warranted. Every effort must be made to contact the custodial parent before authorizing such care, or if this is not possible, immediately following. Decisions regarding medical care must be consistent with the decisions made by the parent having legal custody.

JOINT CUSTODY: Refers to joint legal custody, joint physical custody, or both. The term JOINT CUSTODY does not necessarily mean equal parenting time.

JOINT LEGAL CUSTODY: Both parents share the right to make major decisions for their children. The term *JOINT LEGAL CUSTODY* implies that parents must agree. A parent cannot individually overrule the other parent except as specifically defined by the parents or by the Court and as incorporated into a court order.

JOINT PHYSICAL CUSTODY: The residence arrangements are such that the child has "substantially equal" time and contact with both parents. "Substantially equal" is generally considered to mean periods of time ranging from 40% to 60% of the time with each parent.

CUSTODY INFORMATION--CONTINUED

ACCESS TO RECORDS: For all types of legal custody, both parents are entitled to have equal access to medical, school, and other records of the child directly from the custodian of the records or from the other parent unless otherwise provided by a court order.

JOINT CUSTODY PARENTING PLAN: Before the Court will order JOINT CUSTODY the parents must submit a proposed plan that includes a description of each parent's rights and responsibilities for the personal care of the child. The term "responsibilities" as used in this Parenting Plan does not mean financial responsibilities.

The Plan must include:

1. Clear statements as to who (either or both parents) will make the decisions and take responsibility for:
 - Personal Care
 - Education
 - Health Care
 - Religious Training
2. A schedule which includes residence, holidays, and vacations.
3. A procedure by which changes, conflicts, or alleged breaches may be resolved. Conciliation services or private counseling may be used.
4. A procedure for periodic review to determine the continued appropriateness of the Plan.
5. A statement that parents understand that JOINT CUSTODY does not necessarily mean equal parenting time (*i.e.*, does not necessarily mean exactly equal time with each parent).

If parents are unable to agree on any element of the plan, the Court shall determine that element. The Court may also at that time consider the ability of the parents to make joint decisions for their children and thus manage Joint Legal Custody.