O'CONNOR
FAMILY LAW

Divorce Basics E-Book

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Introduction & Welcome

No matter how you came across this resource, we're glad you're here. It means that you are likely staring down a significant change in your life that comes along with some huge questions, so you are looking likely for a way to make sense of them.

This is exactly the first step you should be taking whenever you come to a major cross road! So, first, we'd like to extend our congratulations to you on being proactive in trying to navigate this situation.

In order to figure out the best way forward, you need answers that help you figure out what the best way forward is for you. That's what we want to try and provide you here.

Before we continue, we need to talk about what this book is and what this book isn't.

This book is intended to be a primer on divorce in Massachusetts to give you a general understanding of what you can expect. In no way should you construe the contents of this book as legal advice that you can use to build a case strategy or on what you should or shouldn't do moving forward. Because every person and every family is so different, there is nothing about family law that is "one size fits all."

We are going to take you through some of the procedural rules and general expectations that most people going through divorce face, but please remember that your case may take a slightly different path. That means some of the information in this ebook may or may not apply to your specific situation or case.

Our goal is to inform you of how the divorce process works, the different options that are available to you, and provide you with our insight on how to manage and reduce the stress that you might face up ahead.

Chances are, if you're reading this, it is your first time dealing with a divorce.

So, lets shed some light on this and, hopefully, help you feel a little better and less overwhelmed by the time you're done!

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Divorce in Massachusetts

Divorce is pretty well understood as a concept. It is the legal process that ends a marriage. As part of a divorce, assets are split up, custody can be awarded, alimony might be granted – you know, all the things that you typically see during an on-TV divorce or hear about from the guy at the end of the bar who had one too many drinks and is more than happy to tell anyone who mentions divorce how badly he got screwed.

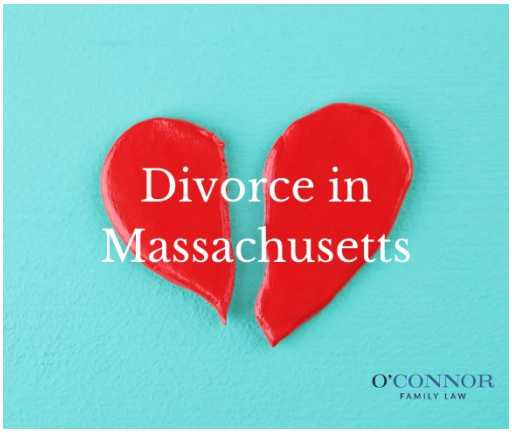
While we feel safe in assuming you have an understanding of what these things, are, knowing the terms doesn't explain what they actually mean or how they apply to you. But each of those terms relate to the different issues that need to be dealt with within a divorce that, when all put together and agreed upon, create the final end result – that Divorce Agreement that becomes your post-divorce Bible.

While the parts of a divorce are important (and we will cover them in a bit), we also want you to know how the divorce process actually works: Things like where you file, when you can file, what you need, and so on, so we're going to start with the most basic details.

Who can get divorced?

Anyone can get divorced in Massachusetts as long as they meet two conditions:

First, they must have a lawful marriage. Situations involving void or voidable marriages are extremely rare. The list is pretty short, but some examples of a voidable marriage are: (1) entering a new marriage when you are knowingly married to someone else, (2) the marriage being initiated based on provable fraud, (3) you married a close relative, or (4) one or both spouses could not legally consent to the marriage.



In these very rare cases, the appropriate legal course would actually be an annulment rather than a divorce. Annulments void the marriage as if it never existed and are used when we have these kinds of legal violations have occurred.

Despite popular culture references, annulments are not like having a 90-day return policy on a wedding. It's not like Amazon where you can get a refund if the package isn't quite what you expected.

If you have a lawful marriage, in Massachusetts, you have to get a divorce; even if the wedding was done at a drive through chapel in Vegas or only lasted a very short period of time.

The second condition to being able to get divorced in Massachusetts is that you must have been an established resident of Massachusetts for at least one year. If you and/or your spouse have lived in Massachusetts for the consecutive twelve months prior to you or your spouse filing for divorce, this requirement is easily met.

If neither of you have lived here that long, things can sometimes get a little tricky. If both you and your spouse have lived together in Massachusetts for less than twelve months, there may be an exception to still allow you to file here if, and only if, the breakdown of the marriage also occurred in Massachusetts.

If you or your spouse have lived in a different state or a different country within the last year, definitely seek the advice of an attorney to determine which state is the right one to file in. If you have recently moved to Massachusetts and want to divorce here, but you have kids, it's important to make sure that your kids have lived in Massachusetts for the last consecutive six months. If not, even if you might be able to get a divorce in Massachusetts, the Massachusetts courts might not have the authority (which we refer to as having "home state jurisdiction") to make custody decisions over your children. If you're going through the divorce process with kids, you will probably want to make sure you can address everything at one time for efficiency, less expense, and less stress.

There are some additional quirks within those two requirements, but those are pretty specific to unusual cases and don't apply to most people. Generally speaking, for the majority of couples who are married and live together in Massachusetts, you can file for divorce here.

"Fault or No Fault – That is the Question"

Way back in the day, if you wanted to get divorced in Massachusetts, you had to file what was called a "fault divorce" where you had to ask the court for permission to be divorced and prove that your spouse was at-fault for causing the breakdown of your marriage due to one of only seven distinct reasons. If you couldn't prove grounds of fault on any of the seven points, your divorce could actually be denied.

As you can imagine, with adultery being one of the grounds, private investigators were very common since to prove adultery, you'd have to catch your spouse in the act. Luckily, that's not the case any longer.

Technically, "at fault" divorce still exists but it's very, very uncommon. On occasion, someone will ask us about filing for an "at fault" divorce because there is a perception that, by proving fault, the spouse seeking divorce will gain an advantage in issues of custody, asset distribution, or otherwise.

Let us be clear: This is not usually the case.

Even in a "fault" divorce where fault has been conclusively proven, the judge will generally still decide the asset division issues and the custody decisions the same way they would if the divorce was filed under a "no fault" basis.

Just because your soon-to-be-ex was cheating on you, that does not inherently mean that they are unfit as a parent and would lose rights to custody or visitation, even if you are able to show pictures with your ex caught with his/her pants down so to speak.

Sometimes people think that if they file on a fault basis, it may scare the other person into settling faster or for more money. What we have found, however, is that it actually makes things more complex and contested (and more contested usually goes hand-in-hand with more expensive).

Why? Because to prove fault, there will need to be a trial. We can almost guarantee you that your spouse is not going to roll over and agree to the divorce proceeding on fault grounds. Trials cost a lot of money, so unless there is solid evidence that your attorney believes will lead you to get a better result rather than simply create more conflict (and this is almost never the case), filing on a fault basis is not usually the way to go.

Today, the majority of cases are filed under a "no fault" basis claiming there are "irreconcilable differences" or an "irretrievable breakdown of the marriage." In this type of divorce, the judge will only need proof of when the breakdown of the marriage occurred and that both parties believe their marriage is over, which the Judge will ask each party to state they agree to in order to make such a finding. At the end of the day, this means that if one person wants the marriage to be over, that, in and of itself, is enough to create an irretrievable breakdown for the Judge to grant the divorce.

The Probate and Family Court

In Massachusetts, there are a few different types of courts: district, superior, housing, juvenile, etc.

The court that will be hearing your divorce case will be the Probate and Family Court (PFC). Each county within Massachusetts has a PFC for the cities and towns within that county. Some PFC counties have more than one location (or "session") due to the size of the county.

For example, Bristol County has three locations – Taunton, Fall River, and New Bedford. Middlesex County also has three locations – Woburn, Lowell, and Marlborough. Plymouth County has two sessions – Plymouth and Brockton. If you are in a county with more than one session, it is extremely important to make sure you are heading to the right courthouse before you head there. Unfortunately, we've fallen victim to driving to the wrong courthouse to show up in the morning of a hearing and realize we were at the wrong court. Learn from our mistakes and double check to make sure you're going to the right court.

Pro Tip: Just because you went to a specific courthouse for your last hearing does NOT mean that your hearing will definitely be scheduled at the same courthouse for the next hearing. Always double check!

If you and your spouse are living in the same county or one of you still lives in that county even though the other moved out, that county where you both lived is where the divorce should be filed.

If you have both moved out of the county you last lived in together and live in different counties now, then the divorce can be filed in either county and will typically depend on simply who files first. This is where you can do a little forum shopping and try to get into the courthouse where the judges there might most consistently find the way you are looking for them to based on their past decisions. (However, to be very clear – no outcome is ever guaranteed! Even if a judge decided

one way 100 times, there is still a chance that the judge may decide differently this one time. Frustrating, yes, but part of how this goes.)

If you are trying to do your divorce on your own, each county PFC will usually have a "lawyer of the day" program available during certain days and hours. This is a free service where you can go to the courthouse (or register online if it is being held virtually) and get some basic legal advice and guidance regarding your case.

This program can be extremely useful as the clerks at the registry are not allowed to answer any legal questions you may have. So they do not cross the line, sometimes the clerks will not be able to answer some procedural questions you might have either. Do not get mad at the clerks if they cannot help you though as they are not lawyers and cannot provide legal advice.

The Marital Estate

There is always confusion when it comes down to what is and what is not in "the marital estate." Unless you have a prenup, the answer to that is very simple: EVERYTHING is part of the marital estate. Now, this does not mean that everything you own is going to be divided and half given to each spouse. However, it does mean that, if you own it, it needs to be mentioned within the divorce agreement (otherwise referred to as the "Separation Agreement") and assigned to one person or the other so it is clear who will have possession or responsibility for it after the divorce.

The marital estate also includes both assets and debts. (Whenever we refer to an asset, you could also substitute the term debt and deal with it the same way.) There are a lot of different factors that the Court will weigh when deciding who gets assigned what and how much either or both will be assigned relating to each asset or debt. We often hear people say things like, "The house is only in my name, so that's mine" or "I owned that account before we got married, so that's mine" or "The $50,000 credit debt that my spouse racked up in their name only is theirs." Again, unless there was a prenup or postnup (same as a prenup but is created after the marriage starts) that categorizes certain assets or debts as one person's to the exclusion of the other, everything needs to be assigned.

Think of the divorce like a giant pot. Every single asset and debt that you have, whether individually or jointly held, must first go into the pot. Then, you and your spouse will pull each asset or debt out, one at a time, and decide what to do with it – whether to put it on one person's side and whether to give the other person any credit for any part of its value. Once you've taken everything out of the pot and addressed it within the divorce agreement, your marital estate will have been fully divided.

Fair and Equitable; Even if it Doesn't Feel That Way

The division of the marital estate can cause quite a bit of conflict between people going through a divorce. That's because, in Massachusetts, the division of the marital estate does not happen simply

by dividing everything in half. To approve a marital estate division, the Court must find that the division is "fair and equitable." If there is a disagreement about the division of the marital estate, the Court will have to weigh a number of factors to determine a division it considers to be fair and equitable. It is important to remember that equitable does not always mean equal though. Even if you've agreed on a certain division, if the Court reviews it and thinks one person is getting screwed, it's possible that the Court could deny the request for the divorce until the marital estate is divided in a way the Court believes is fairer.

"Fair and Equitable" can be fairly subjective, and what the Court might find equitable may not always feel the same as what you think is fair or be what you might think of as equal.

Although in the majority of cases you can assume that an equitable division of the marital estate means it will be divided fairly equally, that's not necessarily always the case and it also does not mean that everything is simply split in half.

For example, if Mary and John own a home that has $100,000 worth of equity in it and John is going to keep the house, he will have to pay Mary $50,000 for her half of the equity in the home. Let's also say that this couple has $20,000 worth of credit card debt; within their divorce, they would also be responsible for $10,000 of the debt. However, because of the flexibility that comes with an equitable division, numbers can shift from one side of the equation to the other, changing the final payout amount. For example, if John keeps the home but also remains solely responsible for paying the full $20,000 of the credit card debt, then his final payout to Mary in relation to the house would only be $40,000 as he will get a $10,000 credit for paying her half of the debt.

Now, that is a very simplistic example. Most people's finances, even when they do not have a lot, are much more complex than that. A pension and the equity in a marital home may not be the same dollar for dollar figure when discussing crediting one spouse for the value the other spouse is keeping.

Equitable also doesn't mean everyone walks away with the exact same amount. Even if there is not a prenup, if Mary brought a retirement account with a $200,000 balance into the marriage, the Court might let her keep the full $200,000 that she brought in without giving John any of that amount. However, the Court might still split any amount over the $200,000 between them.

Same thing with a home. If John brought the home into the marriage, the Court might say he gets to keep the home and the majority of the equity. The longer the marriage lasts, the less likely this is, however, as the Court will look to whether the "character" of the asset changed from individual in nature to joint.

This can be a complex situation, but to try to show a simple example, let's say that John used $100,000 of his own money to buy a home before he even met Mary. When they got married about five years later, John's home had around $300,000 of equity in it, although he still had a mortgage balance of $200,000. Mary moved into John's house after the marriage and contributed money toward the mortgage and the household expenses. They remained married for two years, but then Mary filed for divorce. John might feel like Mary should not get any payout for "his" house since he put in the money for the down payment, paid a good majority of the mortgage by himself before they got married, that even when they lived together that he still paid the majority of the expenses since Mary would have had to pay for her own apartment if she hadn't moved in with him, and because their marriage wasn't all that long.

Although John, in this situation, has a good argument that he should retain the home, Mary could argue that they did not have a prenup and that the character of the home changed from individual to joint because she lived there and contributed to the costs of the home, which helped increase the value of the home. Mary's argument would likely result in the Court awarding the home to John so he can remain living in it, but that John would still have to pay Mary a certain percent of the equity that was gained after the date of their marriage.

The longer the marriage, the more likely the Judge is going to be to find that the complete character of the home changed though and award Mary a greater percentage or half of the entire amount of the equity. When marriages reach 15 years, it can be tough getting a Judge to side with you that an asset, or some percentage of the value of an asset, should retain its individual character and only be awarded to the spouse who brought it in.

The same type of arguments and negotiations will need to be made in relation to everything either spouse owns within the marriage: businesses, vehicles, investment accounts, recreational vehicles, vacation homes, inheritances, collections, and debts. The more complex a couple's estate is, the more likely it is that lawyers will need to be involved because then things like tax implications or future values versus current values also need to be taken into consideration within the division.

The examples provided were rather simplistic, but even with what sometimes seems like a simple division, you (and your legal team) can come up with all sorts of creative and effective solutions to resolving the marital distribution bumps in the road to get you to a final judgment.

All the Different Paths to Divorce

The end game of the divorce process is to obtain a final judgment that lays out the rights and responsibilities of each person after the marriage terminates and legally declares you divorced from your spouse. However, although the end game is always the same, there are a number of different paths you can take to reach that goal.

Each path falls into what can be considered a hierarchy based on the amount of intervention that is needed to resolve all of the outstanding issues that are applicable in your specific case. The path you take can significantly impact not only your immediate future, but also years down the road and possibly even for the rest of your life.

We're going to detail each option here, but keep this in mind: No matter what direction you head in, you should educate yourself as much as you can about what your legal rights are. You will have no idea if the agreement you are entering into is fair if you do not know what the issues are or what you would typically be entitled to or protected from. Please always have at least one meeting with an attorney to review any proposed settlement with your spouse prior to signing anything and ensure there are not any glaring red flags.

The DIY (Do it Yourself) Option

Something that is important to know and is the basis of several of the options to resolve a divorce is this: You do not necessarily need to argue your case in court. There is no obligation or demand that you file a complaint with the court and have to go before a judge to argue on why you should get financial support, use of the house, or anything else. The only time you are required to go before the judge is when you are ready to submit a separation agreement and finalize the divorce. Everything else is optional depending on how you want to proceed.

With that in mind, the first option available to you is to just talk it out with your spouse and file a joint petition for divorce (otherwise referred to as an "uncontested divorce"). It is entirely possible that you can work out the details of how you would like to dissolve the marriage and get everything written out into an agreement. There are plenty of templates that you can get online on how to draft a separation agreement. Additionally, all of the filing forms that you need to file at the same time as the joint petition are available on Mass.gov (just google "Divorce Forms + Massachusetts).

This is inarguably the most cost-effective way to get a divorce because it requires the least amount of intervention, but there are a lot of potential road blocks here that may make it an unrealistic option.

Complex estates with a lot of property, business interests, and even basic retirement investments like a 401(k) can be complicated if there is a desire to start pulling value out of them for any one person in the divorce. A Qualified Domestic Relations Order (QDRO) might be required to handle the distribution of 401(k) funds to one party in part or in whole. Special paperwork for business interests might have to be drawn up to specify roles and ownership of the business going forward. It can quickly add up to be a lot.

DIY'ing your own divorce is possible, but it also requires a specific type of relationship with your spouse to get through. You need to simultaneously be at the point of wanting a divorce, but you also need to be in a place where you can constructively work with and trust each other to be disclosing everything that he or she has. If there is any sort of imbalance of power (via domestic violence or controlling behavior), this situation will typically leave someone walking away with a lot less than they should be. In our experience, this is a very uncommon set of circumstance. Most people who get to the point of divorce arrive at that point because there has been some kind of breakdown in trust and communication, where working together becomes extremely difficult.

Even where it would be feasible, you must still consider that this is something you're going to have to address on top of everything else going on in your life. Work, kids, errands, commute, family obligations – all of those things don't go away and get put on pause for this. The world is going to on forward, and you need to be prepared to handle this and all the emotional weight that comes with it, too. We aren't saying this to scare you – we just don't want to be less than honest.

You also need to put in the time to educate yourself about the legal aspects of the divorce agreement you're coming to. Sadly, we've seen a number of people think they are going to get divorced go in front of the Judge only to have the Judge reject their agreement because they either missed vital issues or the Judge does not find the division to be equitable. We've also had a number of people come to us after the fact because they realized that their agreement did not give them or require the other person to do something that they thought it did originally. Once you sign that agreement and a Judge approves it, it is almost impossible to get out of. You need to make sure you understand your rights and responsibilities, so put the time into learning and understanding what they are.

If your divorce is something that you and your spouse can do on your own, even if it's just the place you and your spouse try to start, keep two things in mind: (1) Anything you submit to the court must comply with all the rules and laws of Massachusetts; and (2) Your lack of experience in this realm can create gaps in your agreement that can cause conflict later down the road, even if you do not see it yourself at this time. In order to make sure every "i" is dotted and every "t" is crossed, it is recommended that you both contact separate attorneys to at least just do a once over of your final agreement and give you their opinion on what it says and where you may want to make some adjustments.

It is true that most agreements that are drafted collaboratively result in higher overall satisfaction in outcome, but agreements that are done incorrectly also often result in having to go back to court later down the road to address changes. The language you put into your agreement will become binding, and the court will enforce it as such. An example that we commonly hammer home is the use of the term "reasonable." "Reasonable" is subjective and doesn't mean any one specific thing. So, if you agreed to the very vague "reasonable parenting time" schedule or the even vaguer "parenting time by agreement of the parties,", "reasonable" to them might mean once a month because you can only see your children on weekends but they always make plans while

"reasonable" to you may mean getting to see them on any days that you're not working. By agreement means that if you do not both agree, there is no agreement. This language will almost always end up feeling like one parent (usually the one who has the children more) gets to dictate when and where the other parent can have the children.

Don't fall into traps like this because you didn't want to spend some money in the beginning – a review by an attorney can be well worth it in the long run.

Mediation

The next step up our intervention ladder is Mediation. This is the first step in which you would be required to hire a professional to provide input and oversight for the duration of negotiations. The mediator's job is to provide neutral input in the settlement discussions with your soon-to-be-ex. They do not, and cannot, legally represent the interests of one party over the other. Think of your mediator like your personal library of knowledge – they can give you insight into procedural issues relating to divorce, give input on common ways that divorces are resolved, and help provide suggestions that might get the parties through an impasse. Their entire purpose is to help you work through everything and arrive at a settlement. They cannot force you into an agreement if you don't want it.

In mediation, you are still working with your spouse directly. You could theoretically bring an attorney with you to mediation, or have one sit at the table on your behalf, but that tends to sour the mood in the room. Most people interested in mediation do so with the intention of keeping lawyers out of it. Violating that unspoken rule of "no lawyers" can increase tensions and conflict, making it harder to achieve a settlement. That being said, this is where it is even more important to educate yourself. Even if you do not bring an attorney with you, it's wise to have one in your corner to inform you about the laws and help you formulate how to articulate what you want and why you should get it. During mediation, you will definitely need to be your own best advocate.

You still need to be able to work constructively and have some level of trust that what you're being told in settlement talks is true. Just like a DIY option, mediation takes place outside of the courtroom. You aren't going to make any kind of filing until you've resolved all the outstanding issues, or reach such an impasse that the mediation simply cannot continue. There needs to be a full disclosure in relation to the financial position of each person, but here, you are usually taking what the other person provides at face value as you cannot send a subpoena to get documents from a company if you do not think your spouse is being honest or giving you everything he or she is supposed to.

In order to engage in mediation, all parties involved (you and your soon-to-be-ex) need to make the decision to do so on the basis of informed consent. Specifically, you must be aware of what mediation entails and you must agree to take part in good faith. You cannot be compelled into mediation if you do not want to do it. If you do choose to participate, the mediator is obligated to make sure you understand what the process entails, and how the mediation will be conducted.

In addition to providing support to the negotiation process, the mediator is also there to ensure that the playing field is fairly level. If the mediator finds good cause, they can limit the scope of the mediation or outright terminate the mediation. Examples of which might be one party actively engaging in bad faith, concerns about the ability to meaningfully understand or participate in mediation due to things like cognitive impairments or language barriers, when domestic violence has been an ongoing issue within the relationship, and so forth. In this way, we start seeing the first level of real intervention from a legal professional. A good mediator may not be there to represent any specific interest, but they have their own interest in ensuring the process is "fair."

Collaborative Divorce

This is the final option before something has to be filed directly in court. Collaborative divorce has a lot in common with mediation in terms of how the process plays out, but there are some important differences in the setup.

The first is that attorneys are going to actively be engaged in the dispute resolution process and each of you will have separate attorneys to represent each of your individual interests, although the underlying agreement is a cooperative spirit in trying to obtain each person's most important goals. The attorneys for both parties must be trained, certified, and fully committed to carefully working through rough spots in negotiations. The attorneys engaged in the process have a vested interest in ensuring that the process resolves constructively, because of the second reason:

All parties – including the attorneys involved – must sign an agreement to not go to court.

The "No Court" clause will be included in the agreement for collaborative divorce and become part of the contract. Typically, the clause will dictate that in the event that either party fails to negotiate in good faith or if the negotiations come to an impasse, the entire process is thrown out and you and your spouse must start from scratch, including getting new attorneys to head to court with. So, if you felt like you had a strong ally with your counsel, they would be out for future work in court.

In some cases, collaborative divorce cases may employ the services of other professionals – like therapists, financial advisors, divorce coaches, or an array of other professionals who must also be certified to participate in the collaborative law process.

Litigation

This is the highest level of intervention that can be deployed to resolve a divorce, but the only one where you can guarantee to be divorced within a certain period of time. With any other type of process, you still need to file and get in front of a Judge to have your agreement approved and the divorce ordered. Because of this, we have seen cases where one person "plays along" with the process, but then, refuses to sign the paperwork for one reason or another. Without both people

signing off on the agreement and appearing in court (or legally having their appearance waived), you are not guaranteed a divorce with the first three paths we discussed.

Once you file and have the Complaint for Divorce served, the other person may be able to drag their feet and delay the process, but the day will come where the Judge puts the case down for trial and you get your divorce, even if the other person doesn't want it.

Filing a Complaint for Divorce is similar to what you likely have seen on television. One person serves the other person with papers from the Court and the person who is served is like, "Oh my goodness! I can't believe you're doing this to me!" Although that can most definitely be someone's reaction, it's not always so dramatic.

Reasons to start the process this way is because you need to protect yourself, your finances, or your relationship with your children. By filing a Complaint for Divorce and serving the other person, there is an automatic financial restraining order that is issued. Now, this isn't like the restraining order most people think of (the type you can get arrested for violating if you go near the other person) and it is not even anything that physically refrains the other person from blowing through funds, but what it does is puts both people on notice that a divorce is pending and that they cannot waste through funds, run up debt, sell off property, or hide accounts. If they do, they can be held in "contempt" and the other person could get a significantly higher amount of the marital estate than they otherwise may have.

Another reason to file a Complaint for Divorce through the litigation process is if you need a Temporary Order issued by the Court for both you and your spouse to follow until the divorce is finalized. These may include issues like who remains living in the marital home, who gets the kids when, how much child support or alimony is to be paid, how the bills are going to be paid, and a number of other issues.

It is fairly common for us to reach out to the other spouse during this process to try to resolve the matters rather than arguing them in front of the Judge. If an agreement is reached, the Court will usually allow that agreement to be issued as a Temporary Order, sometimes not requiring an actual court appearance at all. However, if the other person will not negotiate or is dead set on an outcome that is simply not acceptable to you, going before the Judge will be an option here. Your attorney can run you through the pros and cons of entering into an agreement versus arguing in front of the Judge so you can make an informed decision when the time comes to make sure you are making the right decision for you and your family.

At this point, most people are aware of the drawbacks to court. It can be an expensive process to work through, especially if in depth discovery is required or where more professionals become involved, such as a Guardian ad Litem or Expert Witnesses. Court hearings can take up a great deal of time through the preparation and attendance. These are all things you will be responsible for covering the cost of. Additionally, litigation can be a lengthy process. While you can come to a final agreement at any time, if you do have to rely on bringing disputes to the Judge or getting a

Judge's feedback before one person will move from their position, you become reliant on the schedule of the court – and wheels of the legal system can grind very slowly.

However, there are also a lot of benefits to litigation. This is the only level of intervention which truly levels the playing field between you and your spouse. Each party will have an opportunity to present their arguments to the court and, in many instances, receive feedback from the judge based on the facts of the case. Each party must lay bare their finances and assets, and each party has the ability to utilize the discovery process to uncover details and facts that might support their claim. There is no need to simply rely on the word of your spouse, and they cannot intimidate the judge into a favorable outcome.

Also, this is typically an adversarial process instead of a specifically collaborative one. We will reiterate here – there is nothing stopping you from working together on a divorce agreement, even if a contested divorce has been filed. However, unlike collaboration, it is not entirely uncommon to have one party simply refuse to respond to settlement proposals or provide appropriate and complete responses to discovery. When this happens, it is frustrating for your legal team, although we are aware that is nowhere near as frustrating as it is for you. We tell our clients, we can fight to make your voice and argument heard and we can try to negotiate with the other side to reach a resolution, but we can never twist someone's arm to force them to sign an agreement. Again, the benefit with litigation is that, even where we are unable to, a Judge can override the other side's refusal and grant the divorce at the end of the day no matter what.

Sometimes you can use a hybrid of sorts – you can file a Complaint for Divorce but your attorney can reach out to your spouse (or his/her attorney) to try to see if a resolution can be reached. This way, if you are unable to get your spouse onboard with resolving the matter, you have a backup plan and can get into court quickly if need be.

What we have seen though is that there is no way possible to know which divorce cases are going to be quick and which ones can take months if not years to finalize. We had a case come in once where there had already been emergency motions filed and each spouse was claiming the other was abusive and controlling. Our client was certain that this case would go to trial. However, when we went to court for the emergency issue five days later, us and the other attorney were able to work through every single issue and come to a resolution the two of them could live with. They were divorced that very same day.

Conversely, we had a client come in to get a divorce where the marriage had not even lasted a full year and the parties no longer lived together. They had nothing. No children, no assets, no significant debt, and they each earned approximately the same amount of money. There was NOTHING to fight over. However, the spouse refused to sign the divorce agreement. We tried, begged, and pleaded for over eight months until our client gave us the go-ahead to just file in court. Once we filed, he signed and they were divorced a few weeks later.

The majority of divorce cases will settle around the time of pretrial (which is usually 8-12 months from the date of service). A majority of cases that are scheduled for trial also settle prior to the

trial starting. However, we have represented many clients through their divorce trials because there was one or more issues where an agreement just could not be reached in a way both people thought was fair. Our longest divorce took over five years from the date of filing to the date the trial ended.

Many people want to know the costs. That's impossible to guess because the quicker you and your spouse can negotiate and work toward a resolution that you can both live with, the less expensive your legal costs will be. It's important that your attorney always walks you through a cost-benefit analysis of what you are fighting over – are you more or less likely to get more than what you will pay your attorney to get you that result? You also need to consider the emotional costs that have no price tag. Going through litigation takes a toll on most people emotionally. If the two of you are fighting over $5,000 – between what you'd pay your attorney and the emotional rollercoaster you will be on, is half of that amount truly worth it? You are the only one who can answer that question. It always gets even tougher when the contested issues surround children because it's hard to put a price tag on the love you have for your children. Make sure your attorney gets this though and constantly checks in with you about the cost-benefit analysis of the journey.

Preparing for a Divorce

Before we continue, just another quick disclaimer here: Anything in this section is generalized advice and should not be construed as legal advice for your specific case. We cannot effectively advise you on your legal interests because we do not know all the circumstances and facts around your case, and we cannot know them without engaging in some manner of legal services where we can learn them. Our hope is to give you some direction and orientation on where you need to start heading if and when you decide you want to pursue a divorce action.

Decide on how, and if, you want to get divorced

If you're reading this book, we're operating under the assumption that you are actively ready to take some kind of action towards a divorce. If you're not at that point yet, that's ok – being proactive and educating yourself and looking into your options is a big step, and it can be ok to not know just yet exactly what you want.

Answer this question: On a scale of 1 – 10, 1 meaning that you have almost no true interest in divorce and 10 meaning that you're like, "SIGN ME UP!", what number are you at if you had to decide whether you were ready to file for divorce tomorrow.

If you answer anything less than a 8, then take a moment to pause and reflect. Have you tried everything you possibly could to make your marriage work? We've had people come into our office to complain that their spouse does not do the same things they used to when they were dating. Our first question to that person, whenever we hear this type of complaint is, are you still treating your spouse like you did when you were just dating? If not, is it worth it to give it your best shot for the next thirty days to see if it makes any difference at all? Sometimes it will not, but

we have saved a few marriages this way (pat on the back for us divorce attorneys!). Sometimes it takes you being willing to make a change in your behavior and then you see that change happen in the other person too.

Not always, and we definitely are not taking that position if there is domestic violence or emotional abuse that is going on. In those situations, nothing you do will get the other person to change, so it's better to get out sooner rather than later. We highly suggest getting a really good therapist on your team to help you escape an abusive relationship.

If, however, you answered that question with an 8 or higher, then this is the time to take stock of things and figure out what path forward is best for you.

We are also fully aware that sometimes, getting divorced has nothing to do with what YOU want. Perhaps your spouse just told you that they want a divorce or that they filed. Maybe you feel shocked, scared, or confused. Feasibly, you may be quickly searching for information to try to figure out what your rights are because you had no idea this news was coming.

Making a marriage work takes two people who are fully invested in making that marriage a priority in their lives so that it does work. As much as you may love your spouse who has informed you that they feel differently, the fact that you're reading this means you are not willing to be an ostrich with their head in the sand, simply trying to ignore the inevitable. It means that you are making yourself and your future a priority – and that is a good thing.

So if either of those second two situations is where you find yourself currently, the first thing we suggest is that you really examine your communication skills with your spouse and, if you have children, your ability or inability to coparent. The methods of resolution we talked about all heavily rely on the nature of that relationship. You cannot force a combative and belligerent person into a mediation, and it's probably not a good idea to try. If you are the "yes" person in a relationship, you may find it very difficult to suddenly start saying "no" or to advocate for what you need and want moving forward in your new post-divorce life. These are all things to consider when deciding whether you need a lawyer or not and what process you think will be the most efficient and effective at getting you the outcome you will need.

You may need help with examining where your relationship currently stands – especially if you have recently been blindsided by the other person or you're in a situation where you feel like your spouse is a stranger. Because we can have a tendency to ignore or otherwise explain away some of the negative traits in our partners, having a trusted confidant give us an outside view of the relationship can paint a clearer picture of not only your spouse, but of yourself. Even if your spouse is fine, you may not want to go a DIY way if you often defer to their decision making and don't feel confident in protecting your interests on your own.

When you're examining your relationship, it will also be important to consider how your spouse treats other people. If your spouse is the type that is belittling or nickel and dimes everyone, then there is no reason to expect that they will treat you any different in divorce proceedings. For better

or worse, you will divorce the person you married. In fact, we generally think the worst side of people come out during a divorce. You will not be immune to the way they treat others.

Getting Your Ducks in a Row

Once you've made the decision on how (or whether) you want to move forward, there are some things you can do to start preparing yourself. To be clear, a divorce isn't easy. Even in the best circumstances, it can still be a stressful event that takes a toll on mental health. You will have to take care of everything that's going on in your day-to-day life – work, kids if you have them, groceries – and then you will also have to add this on top of it. It can very quickly get chaotic if you aren't on top of it.

That said – Regardless of whether or not you have talked with your spouse about a divorce, there are some things you can do before you take any steps to file or work out an agreement. First, you should start getting your finances in order. Any divorce which involves financial considerations (which is pretty much every divorce) will require you to complete a short or long form financial statement. The financial statement will ask you to detail all your sources of income, all your debts, and all of your expenses which need to be broken down on a weekly basis. The form itself gets fairly involved, and spots may be confusing. Organizing your finances before you get to that point will be a huge help to not only yourself, but any attorney you potentially work with. Not to mention that having an organized and detailed list of your finances can help lower legal costs as your team won't have to track down and sort that information themselves.

On the subject of finances, you need to start thinking about how you're going to pay for your divorce. The range in cost of a divorce varies wildly depending on the amount of conflict and tension between you and your spouse, but also based on the complexity of the divorce. It will be much easier to finalize a divorce agreement when there aren't any kids or assets, but it will be harder and take longer if there are multiple, intertwined business interests. It's just the nature of the beast. More on this in a minute.

Think about what is actually important to you for your future. It's undeniable that it sucks to be in this spot, but the truth of it is that a divorce is the start of a new chapter to your life, and you need to start imagining what you want that life to look like. Does it mean starting over in a new city? A new home? Does it mean ensuring you have the funds available to retire? Does it mean you may have to start working if you haven't been working? Does it mean that you may need child care moving forward? Do you need additional schooling or training? What position can you put yourself in now to help set you up for a great future? Defining what you want for yourself now will inform the negotiating process and/or the strategy employed by your attorney. Knowing what

you want for yourself will also help define the things that you don't want, which can help streamline reaching an agreement in the areas where there is little overlap between your goals and the goals of your soon-to-be-ex.

Divorce is absolutely a time of change. Change can be very hard. But since things are going to change regardless, this is the time to evaluate where you are in life versus where you'd like to be. Use this time to put yourself in a good position for the future and where you'd like to go in life.

Finally, you need to understand and accept the things that are in your control, and the things that aren't.

It is not your job to be responsible for the behavior of other people. Your spouse, the judge, attorneys involved – you cannot control their behavior. Your job is to focus on you: how you react to things, how you respond, and the way you engage in your divorce. If you could control your spouse's behavior, you probably wouldn't be here. Especially where you did not choose to file for divorce and it may be something sprung upon you; you can control how you respond. Meaningfully engaging with this process will result in better outcomes.

Of course, you're not going to be perfect at this. You are human, and you feel. There's no way to permanently separate emotions from the process of a divorce. It's normal, and it's ok.

Paying for Legal Fees

We've mentioned this several times – divorce can be expensive. The higher the conflict, the more intervention needed, the more complex it becomes, the more it can cost. The range on cost can vary wildly depending on the facts of your case and your relationship with your spouse. So, the question becomes, "how do I pay for this?" There are a few things to consider.

First, you can utilize the assets at your disposal to pay for legal fees and so can your spouse. When a divorce is filed, an automatic restraining order goes into effect that demands each party to the divorce maintains the status quo in relation to assets in the marriage. You can't just take a bunch of money and blow it on a vacation or a new car or buying a bunch of designer label clothes for your kids. You need to use your assets for your regular and expected costs, which now includes your divorce expenses.

After this, options for funding can start becoming less desirable, but they are still available to you. A quick rundown of things that people have leveraged in our experiences are: borrowing from friends and family, getting a personal loan, utilizing a hardship exemption to borrow from a 401(k) plan, exploring P2P (peer to peer) lending options, or utilizing a divorce financing group which will provide financing based on the assets in the marital estate.

Whether or not any of these options will work for you is a decision you have to make for yourself, and in some cases, might create some issues that need to be tidied up later. For example, a 401(k) could be considered marital property if it was established or contributed to after the marriage began. While you may be able to utilize funds in your 401(k) to finance a divorce, you may need to find a way to put that money back later, or otherwise compensate your spouse for the early distribution when it comes time to finalize a divorce agreement. This tradeoff is commonly done by doing something like providing excess share of a different asset. For example, if you borrowed $10,000 from the 401(k) to pay for fees upfront, you may be required by the court to give up that amount from your share of the sale of real estate. There are other creative solutions that can be had in any case, but it is going to be a good idea to talk to an attorney before you take an action that can affect an asset.

There are some other options available for covering specific costs, but they require the input of the court and should not be considered reliable, or guaranteed. For example, if there is a disparity in the amount of money you have available to you and the amount of money your spouse has, it is possible to ask the court for your spouse to cover your legal fees (to some degree). If this were to happen, it could effectively be treated as a pre-distribution of any assets from the marital estate to you, and just like if you were borrowing against a 401(k), you can be made to provide that money back through a share of anything you may get later down the road. That's not guaranteed, especially if there is a high disparity or your spouse controls the majority of the finances, but something to consider within your cost-benefit analysis.

We need to be clear: You need to approach a divorce as if you are responsible for 100% of the costs of your case. You cannot rely on the idea of having someone loan you the funds, or the court ordering your spouse provide you with them. These options are secondary and are not guaranteed.

Building a Team

Divorce is a large upheaval of regular life, and tackling it means building a team of family, friends, and professionals that can help keep things on track and guide you through the road ahead. Any attorney you end up working with is only one part of that effort, and their focus needs to be entirely on your legal challenges. But you can't ignore the importance of your emotional and physical help, or the potential side effects of a divorce like the loss of friends or associates. Even the shift from "we" to "me" can be daunting for a lot of people. It's not uncommon for married couples to have specific chores and tasks that they've always done, and after the divorce they now need to figure out how to do the thing that their ex always used to do.

It's important to note that your team is not going to be the same as my team, or the team your soon-to-be-ex has, or the team your friend has, and so on. Everyone's needs are different and it will be critical that you continually stop and take an assessment of where you are, what you want to accomplish, what you need help with, and even when an issue has been resolved. Every single person you bring into your team can only bring you so far before you need to part ways; and you can't be afraid to say goodbye when their job is complete, or bringing on a new team member for a fresh perspective and their strengths.

Your job will be to bring people on that compliment your strengths and weaknesses, and ensuring that they effectively collaborate with each other when appropriate. There may be times when you need to coordinate that communication to achieve a greater outcome than if each member of your team was stuck on an island. This is, again, an area where you can take control in a situation where you may feel you have none. Your team will guide and fight for you, but you need to be the Captain and point them in the direction you want to go.

A Quick Overview of What to Expect and Terms You'll Likely Hear

Once you have everything you need to file the Complaint for Divorce, it usually takes between 4-6 weeks for the Court to process all of the paperwork, assign your case to a specific judge, give your case a number, and return it to you (or your attorney) with the summons. That process is referred to as the "docketing" of the divorce.

The "Plaintiff" is the person who does the initial filing. The "Defendant" will be the person who is getting served. The Plaintiff will get to have their side of the case heard first at the pretrial and the trial, which to some people is important. The terms do not mean that the Court favors the Plaintiff or thinks the Defendant did anything wrong – this is not criminal court.

Another thing to note is that the form that is used to file the Complaint for Divorce does not have a place on it to ask for joint legal or joint physical custody. The way it is created often is interpreted that you can only ask for one of you to have physical or legal custody. Although your spouse may be seeking sole legal or physical custody of the children, if you've discussed sharing legal or physical custody, don't let this get you all upset when you see it and jump to the conclusion that your spouse is a liar trying to take your kids away from you. To avoid this, we recommend that, if the person filing out the paperwork wants joint legal or physical custody, just fill in both bubbles rather than one. If you need to pick one, almost always choose your own bubble. You can fill in one bubble but then agree to joint legal or physical custody. However, we've seen divorces definitely get started on the wrong foot because one person is offended because they think the other person is trying to take the kids.

Once you receive the summons, you have ninety days to serve the other side from the date that you filed (not the date you received everything back!). There are a number of reasons why you may or may not want to wait out some of this time, which I won't get into those reasons now. However, you MUST have the divorce served via a constable unless your spouse is willing to have the summons notarized. (Please note that there is nothing that will force them to have the summons notarized or return the notarized copy to you or to the court. Even if they've taken the summons and promised to get it notarized, if they do not, you will either need to go to court to get another summons and have them served or you will risk the divorce being dismissed for lack of service.)

The other side has twenty days to file an Answer to the Divorce. Usually, they will also file a Counterclaim at the same time. There are two main reasons for this. First, the answer signifies to the Court that they are going to be active participants within the divorce so that the Court will not simply grant a divorce if they do not show up at a court hearing. Second, the counterclaim makes it so that the plaintiff (the person who filed first) cannot amend their complaint for divorce without getting the court's permission first.

Once there is a docket number assigned to the case, you can file a motion for temporary orders. This is where you are asking the court to issue an order laying out the rights and responsibilities of each party in relation to issues that cannot typically wait for a final resolution – custody (although in a divorce, it's assumed to be shared legal custody), a parenting plan, who will live in the marital home (unless there's good cause or an agreement, however, the Court will typically let both parties stay in the home though), who will pay for the marital home and household expenses, who has to cover the health insurance, how co-pays and extracurricular activities will be paid, whether and how much child support or alimony may be awarded, how credit card bills will be paid, etc.

On the day of your hearing (assuming it is in person and not virtual – the pandemic has brought chaos to the courthouse and typical procedures), you will generally be required to attend family services through the Probate and Family Court probation department. This is similar to a mediation session. The probation officer will sit down and try to help you and your spouse come to agreements regarding any issues that are pending before the Judge. Whatever you're able to agree upon, the probation officer will usually type up and everyone will sign. If you have a full agreement on all the issues, congrats for your hard work! You will still likely need to appear before the Judge so the Judge makes sure that you're entering into the agreement freely and voluntarily (although sometimes the Clerk may be able to do this for you).

If you don't reach an agreement on all or any of the issues, you will get an opportunity to argue your case before the Judge.

It's also important to note here that, even if the probation officer is not taking your side or seems as though they are forcing you to enter into an agreement, if you are not 100% comfortable with that agreement, then you do not need to sign it. That doesn't mean you will get a better result by

going in front of the Judge, so please do not read this and think that. But what it means is that the probation officer is not the Judge, and the Judge may think differently than the probation officer.

It should go without saying that when you go to court, you should dress respectably. We tell our clients to dress like you're going to your grandmother's funeral. You should be courteous at all times. When you go into the courtroom, take off your hat. When your case is called, you and your spouse will each go to opposite tables in front of the Judge. If you have an attorney, you will stand on the outside of your attorney and your attorneys will stand on the inside, closer to one another.

Every time you go before a Judge, you will need to state your name. The Plaintiff will normally go first. Now, if you have an attorney, that should be the LAST thing you say in the courtroom. If you are spending the money to hire an attorney, let your attorney do all the talking. Do not butt in. Do not shake or nod your head. Do not laugh. Do not get offended or upset when you hear the other side say horrible things about you or make up lies. Do not flip anyone off. And obviously, do not act in any aggressive manner.

If you do not have an attorney, the majority of those things ring true except you will have to talk and argue your position. This is, however, where most "pro se litigants" (people who are representing themselves) mess up their case.

First, it's important to know that if you did not ask for something specifically within your motion, the Judge will almost never let you argue the issue at the hearing. This can be very hard for people to understand. It might have been something you completely forgot about until you were talking about it with the probation officer, but the Judge will usually cut you off and not let you finish if you start asking for something that was not "plead" (written down) in your motion.

Second, it's important to know what you want and be able to tell the Judge what it is you want and why. We've seen people go before the Judge and say they want the other parent to see their kids sometimes, but when the Judge asks for a proposed plan, they are not prepared with anything more than, "Just not too often." If you say you need support and the Judge asks you how much, you need to be prepared with a number. You need to have a detailed proposal the Judge can order if he or she agrees with your argument.

Third, it's so important to understand what a Judge needs to hear in order to decide in your favor. We have seen people get up and ask for things that seem very reasonable, but then the other side starts lying or talking about things that, at the end of the day, aren't going to matter to the Judge. However, these things are very difficult to hear. All too often, the person with the reasonable request blows their shot in court because they allow the "smoke and mirrors" the other side is blowing to get them all emotional. Rather than solely sticking to the facts that the Judge needs to hear, suddenly the case becomes a circus where both sides are just making accusations against each other and the Judge stops listening. Don't let your emotions and feelings like you need to defend yourself ruin the outcome. Sometimes the best response is a simple, "I just disagree with pretty much everything they just said; however, as I said before . . ." Simplicity often gets the best results.

Fourth, if you've reached a full or partial agreement, you will know exactly what the outcome of the court case is that same day on those agreed upon issues. So long as the Judge approved the Temporary Order, you and your spouse will need to start following it that same day, unless there is another date specifically mentioned. However, if you do not reach an agreement, then, after your hearing, the Judge will "take your case under advisement." You WILL NOT get the decision that day (unless you were there on an emergency issue that was a true emergency). The Judge will go back and write up a Temporary Order that will be mailed out to you (or your attorney if you have one). Once you get that Order in the mail, it will be important to look at the date on it because that is the date that the obligations started.

This becomes very important where child support or alimony was at issue. If you went to Court on January 17th, but the Temporary Order was not dated until January 24th, and you did not get the Order until February 14th, if you were ordered to pay weekly support, you are going to find yourself in arrears right out of the gate. Always make sure you read the Order from the Court carefully once you get it and note any deadlines you need to meet.

With any Complaint for Divorce, there is mandatory financial disclosures that need to take place. These generally include tax returns, retirement or investment accounts, bank statements, loan applications, and profit and loss or asset statements. If you and your spouse are able to reach agreements, then you can waive your right to this disclosure if you do not believe you need it. However, these disclosures have to be completed before you can seek any further in-depth discovery. Discovery can get confusing, so we're not going to get into the in's and out's of that process. Just know that the discovery process is the way to verify, obtain, prove, or disprove what someone is claiming.

Typically, the next court hearing after a motion hearing would be the pretrial conference. Unless there is a restraining order between the parties, they are required to meet (if they have attorneys, then the parties and clients must all meet and this is called a "four way meeting") to discuss potential settlement possibilities.

If a full agreement is reached, then the Separation Agreement will be drafted. The term "Separation Agreement" gets some people confused because they do not just want a separation, they want a divorce, but rest assured, the term "Divorce Agreement" is interchangeable. Separation Agreement is more widely used though.

If only some issues are resolved, you might enter into a Partial Agreement for Final Judgment. Sometimes issues may heavily depend upon how other issues are agreed upon, so even though there may be a generalized agreement to something, it might be unwise to put it into writing to enter with the Court because then you can't change it if the contingent issue does not reach an agreement.

Unless ALL issues are resolved and you are filing a Separation Agreement with the Court, you are REQUIRED to prepare and file a "Pretrial Memorandum." This is a document that lays out the history of the case, any uncontested facts, the uncontested and contested issues, and the reasons why the contested issues should go the way that you want them to based on the facts of your case and the laws of Massachusetts.

Our pretrial memos are typically 8-12 pages, although some Judges have set page limits on them. (Make sure you check the Pre-trial Order and follow the directions!) We consider the pretrial memo to be one of the most important documents that you can submit to the Court because most Judges do read them before they call your case, so before you even get up to say a word, the Judge already has an idea of what the issues are and what they think the right result is. Notwithstanding, the Judge will usually still give each of you a chance to explain what you each want and why. (The Plaintiff will again go first here.)

After everyone has said what they need to say, the Judge will usually give feedback. It is important to know that the Judge's feedback is not set in stone at this point. The feedback is solely based off of the information that he or she has been provided with to date. If the case goes to trial, there may be extremely important evidence that you or your spouse may need to get your point across, but that evidence may not be admissible for one reason or another. (The rules of evidence are extremely complex, so we're not getting into those here either.) At trial, the Judge can only make a decision based on the evidence that is presented during the trial.

However, it is extremely important to listen to the Judge's feedback because that will help you in your cost-benefit analysis. If the Judge says they agree with you, then you will have to weigh out whether it's worth to keep fighting for it. If the Judge sides against you, then you may need to re-examine whether your case is as strong as you thought it was. Often, the Judge will give an opinion that falls somewhere in between what you and your spouse are each saying you want. If the two of you can agree on the remaining issues, you can often finalize your Separation Agreement, then bring the document back in before the Court to get your divorce granted that same day.

If not, then, depending on how far apart you are or whether there are any outstanding discovery issues, the Judge may either schedule a status conference or put the case down for trial. A typical "slightly contested" case will generally take between 6 – 18 months to resolve, but will settle prior to a trial.

As most cases do not go to trial, we are not going to focus on that within this book either. But that is a pretty general overview of the process and what you can expect.

About O'Connor Family Law

Heather O'Connor is the CEO and Founder of O'Connor Family Law. Choosing to practice in the field of family law is usually due to some type of personal connection with this particular area of law. The history of the firm itself as an entity as well as the spirit and values of what our firm is built on intertwines so deeply with Heather's story, that we feel it must be shared. Her story is one

of overcoming obstacles, of refusing to listen to those who told her she could not do it or was dreaming too big. It is one of finding that life can be more than what you can even physically imagine at the moment, and that no one is stuck in a situation if they are willing to change themselves and work hard. It is about finding a new path when divorce has closed an old one. The summary of Heather's path that led to you reading this book which we are including below is one that every new employee must read and align themselves with. Our firm's values and, as a result, every decision we make, exude a belief in the following: accountability, being forward-looking, remaining optimistic, being inspiring, throwing in a little bit of humor, and to always be learning and improving.

Heather O'Connor

Growing up, Heather was a figure skater. Her life focused on her dreams of being an Olympic competitor. Her family was what most would consider lower-class. However, as Heather's talent on the ice became apparent, her parents took on multiple jobs to be able to pay for her coaching, ice time, and eventually room and board as Heather moved away from home at 14 to train with Olympic level coaches. After a number of ankle injuries causing her to realize that she may not realize her dream of being an Olympic contender, she moved back home with her parents for the last half of her senior year of high school, graduating in 1994.

Heather applied for college, but neither of her parents had gone to college and did not know how to help her in that respect. Because of their hard work in supporting Heather's figure skating costs, they had moved up the status ladder to what most would consider middle-class. With the focus being on athletics, there was no college fund or savings to help with the expense of higher learning; however, her parents reached past the threshold of allowing Heather to get financial aid to attend school.

In 1995, Heather accepted a coaching position in Lake Ironwood, Michigan. Her boyfriend at the time decided to move to the Upper Peninsula with her. In the beginning of 1997, after finding out she was pregnant, Heather did what every girl afraid of being looked down at did – she got married. Heather had three kids during that marriage, and when the youngest one was about a year old, her husband was arrested for Domestic Assault and Battery and a very long, contested divorce followed.

The divorce was Heather's first experience with court. She hired a lawyer who her mother went to a networking group with. Although holding a restraining order against her husband, she found herself terrified and sleepless at night as her ex-husband's truck would drive past her house and rev its engine. The police said there was nothing they could do without proof it was him. Heather purchased a home security system, but still couldn't prove it was him. The words he said to her

before he left would replay over and over in her head every time she heard the truck driving down her street, “If you ever try to divorce me, I will take everything from you. You will have no money, no home, and I will make sure the kids hate you. You will be lucky if you can even find a park bench to sleep on.”

After nights of this going on, she called her attorney out of desperation. “There must be something we can do to make this stop.” His suggestion: “Try going to bed earlier.” Like she hadn’t already tried that and everything else she could think of.

There was no empathy in her lawyer’s advice. There was no hope provided that her future would be different than what she was currently living through. There was dry advice that left Heather feeling even more hopeless as she wondered if her ex would be able to make good on her threats.

Heather’s divorce was contentious to put it mildly. And if anything couldn’t be worse, the economy crashed in 2003 and extracurricular activities were one of the first expenses parents pulled back on, so her income from coaching figure skating dried up incredibly quickly.

A court hearing at the time meant dressing up and walking into a cold building where you know your life, your children, your future, absolutely everything was in the hands of people who had no idea about who you are or your life and, whether they even cared about all of that was up for debate.

The feeling of walking into this situation and then seeing the person who was threatening to take everything away and destroy your future, coupled with the realization that this is not what you ever thought would happen the day you said, “I do,” and promised to be by the side of the person who now sat at the table on the other side of the room, created intense competing feelings. In one way, there was excitement of a better and peaceful future, there was anger for getting to this place, there was hatred at how someone you thought you knew suddenly was a stranger who wanted to hurt you, there was fear of the worst case scenario, there was emptiness at the loss of a life partner and confidant, there was embarrassment for ever thinking love was real, there was sadness at the realization that the institute of marriage was not the same commitment it was previously believed. It was everything rolled into one huge knot in your stomach; not to mention seeing your ex and wanting to run up and hug them and reassure them everything will be okay but at the same time wanting to punch them right in the face or run over them with your car as they walked across the courtroom parking lot. It was all of those.

Heather sat in court one day waiting for her case to be called for probation. She had spoken to a number of people going through similar situations as hers, but this one woman on this one particular day resonated with Heather in a way that was life changing. “My attorney seems okay. I mean they get the law I guess because they seem to know all the right lingo, but I don’t know. They just don’t get it.”

Heather went home and had dreams about that last sentence. “It.” What was “it?” Suddenly, it dawned on her. Not getting “it” was the same issue she had with her lawyer. Sure, the lawyer could tell her about the factors the court looks at when determining custody or child support, but they

just didn't get IT. It was the empathy for what a person goes through emotionally, mentally, and physically when going through litigation that can influence their future. It was making sure the person was okay and helping them understand what was going on; not just lecturing them about something that, to the lawyers, was just another day of work. It was seeing a client doesn't just need legal representation. They need someone to give them hope. They need someone to let them know things will be okay. They need someone to inspire them so that they can push through the tough times, even if things don't go their way, so that they know it will work out in the end. They need someone who understands all of that.

As Heather sat in court watching each case get up, she noticed the first attorney would get up and make their speech. "Wow, that person is going to get exactly what they want." Then the next attorney would get up and give a presentation that left Heather saying, "Oh hold on! No, THAT person is right!" It was a strategic showcase where whichever attorney could pick up the puzzle pieces and present them in a way that made them fit the best for the Judge to decide in their favor – that person would win the Judge's favor.

It was the same as putting on a spectacular figure skating routine for an audience; only, the audience was the Judge and you wore a suit instead of a skating outfit.

Heather thought about the ways she could improve on the service. She thought of some of the injustices she had experienced during her three-year divorce. She felt she could do better. And, she thought, "Lawyers are all rich, so what's the downside?" (She laughs at that now!)

One day after a contempt hearing where the child support that her ex owed her was still left hanging in limbo while an order was taken under advisement, Heather's (new) lawyer turned to her and asked, "Heather, you are struggling financially and you have three little kids to support. What are you going to do?"

Heather smiled and said, "Oh, I know what I'm going to do actually! I'm going to go to school and become a divorce attorney and open a law firm."

The look of shock on his face is something Heather will never forget. After a moment he broke the silence. "No. Seriously," he laughed, "What are you really going to do?"

"I just told you."

"Do you have any idea what you'd be getting yourself into?" he asked questioning Heather's impossible dream.

"No. But I'll figure it out."

And figure it out she did. She started her college education at a local community college called Massasoit and finished with a 4.0 GPA. She received a full scholarship to the University of Massachusetts Dartmouth and graduated with top honors from there as well. She then went to law

school at Roger Williams University School of Law, where she also founded the Family Law Society and served on the editorial board of the school's Law Review.

Her proudest moment is not one of her own accomplishments. It was a story her daughter told her at the age of 11. Heather was in her first year of law school, and she lived in Fall River, which is a city not known for being high-income. Her daughter had to take a foreign language in school, and, although she wanted to take Mandarin, her teacher told her that she had to take Portuguese. Her daughter came home livid and was telling Heather the story of her day, "In front of the whole class, the teacher said that I needed to take Portuguese because I live in Fall River and everyone here speaks Portuguese so I needed to know how to speak it. I told her I didn't need to learn it because I wasn't going to stay here forever, and she laughed and me and said, 'Accept the fact you live in Fall River. No one leaves here.' I stood up out of my chair and I said, 'EXCUSE ME??? Don't you sit here and tell me or anyone else in this room that we are stuck and can't do things in our future just because of where we live. I watch my Mom who had nothing and had no education, but now she is in law school and she's going to be a lawyer. So don't you try to tell me or anyone else they can't be what they want to be."

Her daughter's words inspired Heather to push through every tough moment in her life because, as much as sometimes it did feel impossible and too hard and she heard the words echo through her head that she was dreaming too big or couldn't do it because, if she could get through – if she could make it – she could send a message to every single person out there who has heard those same limiting words know that they are not true. She had to make it; no matter what challenge she faced.

Heather graduated law school seventh in her class, and went on to serve for two years as a lead judicial clerk for the Chief Justice of the Rhode Island Supreme Court. When the clerkship was ending, Heather had every intention of commencing on her dream and hanging her shingle; however, a pesky LinkedIn invitation continued to show up in her email. She opened it and saw that a family law firm in Massachusetts was hiring. Thinking it might be some sort of sign (not to mention some good practical experience), she applied.

During the third round of interviews, the Managing Partner of the firm asked Heather, "Where else have you applied?" Heather looked at him and responded honestly, "Nowhere." The Managing Partner crossed his arms, leaned back in his chair, and smirked, "So you have all your eggs in this one basket?"

"Oh no," Heather replied, "I have all my eggs in my own basket. I was planning on opening my own practice, so this is my back up plan." She was offered the job.

She spent four incredible years with that firm, learning the ins and outs of family law and how to be an amazing attorney. But then the day came when she knew it was time.

In July 2016, she left the law firm she was with and opened the doors of O'Connor Family Law.

Since then, to date, the firm has grown to servicing clients in a manner that has provided an annual seven-figure revenue.

There are a lot of great attorneys out there, and there is a lot of competition. But this firm is where it is because we are NOT just every other firm. We give a shit and we get it. That comes across in every single thing we do, and that's why people refer us to their friends and family in a manner that has allowed us to grow to where we are so quickly.

Now, we just focus on getting better and better and showing each and every person who hires us that they are not limited by their circumstances or by limiting beliefs. They CAN have an amazing future. We give them the inspiration and hope to see that as a real possibility. That is why we succeed.

When You're Ready – Contact Us at 774-314-4725

We've covered a lot of material so far, and while we definitely hope you've found this book helpful; we've really only just scratched the surface. The material in this book has largely been procedural related and hasn't even begun to delve into the world of legal strategies and deploying one towards your goals. There is a lot of work that needs to be done. When you're ready to take the next step, or if you've been served and need immediate help, feel free to contact our Firm so that we can start work on a custom legal solution that meets your needs.

You can reach us at info@familylawma.com or by calling 774-314-4725. We look forward to being a part of your team.