

# Divorce: Issues for Consideration

By Eric C. Trosch

Should you have a single lawyer for both of you? Because I am giving legal advice that may be good for one party and may be bad for the other, I do not believe it is ethical for a lawyer to represent potentially competing interests. In those isolated instances where you and your spouse have agreed on absolutely everything, it may be possible for me to do all of the drafting of documents.

To make this determination, one spouse must come to the office and give me the statement of agreement. Even if it looks like you will agree, I follow the policy of representing only one spouse; and if you and your spouse disagree later, I will continue to represent you unless I have been directed otherwise.

## **Dating**

I suggest that you do not date until your divorce is final or you and your spouse execute a Separation Agreement with the appropriate provisions that allows you to live as though you were single. Even in light of the changes in the law in the last five years, your spouse may still be able to use your "dating" during separation against you.

For example, an intimate relationship with another person immediately after separation may be used as corroborating evidence supporting other evidence that marital misconduct occurred during the marriage and prior to the date of separation. This type of relationship may also be used to corroborate evidence that may lead to the two tort actions, criminal conversation and alienation of affection.

Since spouses can reconcile, the offended spouse may have a claim against the third party because he/she ended that opportunity. There is also an emotional element to dating after divorce. Emotions are an important factor in settlement negotiations and if one spouse has their feelings hurt because they are aware of a post-separation relationship by the other spouse, settlement can be greatly delayed or hindered.

Naturally, the ultimate decision whether to date after separation is yours. If you do decide to date, be very discreet. For the reasons stated above, I recommend against it until you have executed a Separation Agreement with the appropriate waivers.

## **Confidentiality**

In order to best represent you, I must have all the facts involved in your case. Toward this goal, I will ask you to fill out a questionnaire and to have an initial conference with me. Anything that you tell to anyone in this law firm is strictly confidential and will not and cannot be disclosed without your permission.

I caution you not to discuss the confidential matters that you discuss with me or anyone in our firm with anyone. Friends often pass information to the other party. When this happens, our efforts to help your case can be greatly inhibited or defeated.

**New Wills**

A divorce subsequent to execution of a will does not revoke the will. The North Carolina Probate Code, however, does invalidate certain provisions of wills that were made prior to a divorce. Following the signing of a separation agreement or divorce, you and your former spouse will need new wills.

Conrad, Trosch & Kemmy has an estate planning group that can prepare a simple will for you. Please contact our office and we will arrange an appointment with an attorney in our estate planning division.