



DIVORCE AND COVID-19



19 Tips to Productively Navigate Your
Family Law Matter During the Pandemic

A QUICK GUIDE BY THERESA LORELLA, J.D.



McKINLEY IRVIN

FAMILY LAW

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INTRODUCTION

About this Guide

This guide is intended to help answer basic questions you may have about your family law case—divorces, generally—in the midst of the COVID-19 pandemic. I am a practicing family law attorney and mediator with 15 years' experience and the topics in this guide reflect the most common questions I have been answering since the first stay-at-home orders went into place in early March 2020. My hope is that this guide can reach people who need the initial information to know they are not alone during this crisis and their lives do not need to be put on hold. If you need help or want to move your case forward, that is completely possible.

I will suggest in every single section of this guide that you get legal advice for your specific issues and for your specific jurisdiction. That is because this guide is NOT legal advice and as such can't give you all the details you will need to make ultimate decisions about your next steps. There are many resources available to use if you need to talk to an expert. This is a really difficult time and if you already had a family law issue or divorce underway when the pandemic hit, it may feel even more oppressive. Do not try to shoulder the questions or technical issues in your case alone—give an attorney a call and find someone to help you navigate the next steps in your matter.

Read on to find out how the stay-at-home, social distancing, and emergency orders based on COVID-19 may affect how you get your case resolved. It may be a bit of time before we achieve a new normal, but if you want to keep your case moving you can emerge from this crisis with your family law matter completed, ready to move forward with your life in every way.



Family Law Attorney Theresa Lorella

Please be advised that family cases can be very complex. The information provided here is for general information purposes only. Nothing in this guide should be taken as legal advice for any individual case or situation. This information is not intended to create – and receipt or viewing does not constitute – an attorney-client relationship.

TIP #1

COVID-19 Does Not Mean You Need to Delay Your Family Law Matter

When the word came out in March 2020 that attorneys were going to be working from home, I was worried about my clients. I know that interpersonal crises do not slow down even in the face of global pandemic and imminent recession. The legal system can be very slow to adapt to times, and I was worried about how my clients would be able to move their lives forward as everything around them closed down. Writing this in May 2020, I am pleased to say that we found ways to immediately address our clients' needs and have continued to use tools, new and old, to make sure family law matters continue to move forward.

I practice in Western Washington so the examples I use throughout are based on the current practices and COVID responses of the courts in my jurisdiction. Where you live things could be the same, or very different. In Seattle, we are working with the courts almost exclusively through online, phone, or remote connections. You may live in a jurisdiction where the courts remain open but practitioners—and you yourself—may be more comfortable working remotely and thus you choose one of the [dispute resolution options](#) listed in this guide to avoid unnecessary exposure. Here's my first chance to follow through on my promise to keep saying it: Get advice specific to your case and jurisdiction to see how your courts, mediators, and other legal professionals are handling cases like yours.

Whatever the particular manner in which your local court is addressing the issue, you can start or continue to work through your divorce, legal separation, parenting plan issue, modification, or contempt action. You absolutely can—and should—address any potential domestic violence issues. And, you can even finish your case so that you can start the



Interpersonal crises do not slow down even in the face of global pandemic and imminent recession.

new normal with this part of your life behind you. While you may need to adapt your previous plans to move forward to the current times and closures, a bit of flexibility can allow your case to move forward. Using alternate dispute resolution tools, you can solve problems both temporary and final.

First things first, figure out where you are in your matter, and what needs to be done next. Talk to an attorney to get input on your rights and obligations, but also to keep abreast on the current preferences of your local court and the tools professionals are using to keep cases moving towards resolution. Break your case into manageable steps and keep your focus on moving towards a resolution.



TIP #2

Time to Move On: You Can Still Get a Case Started...or Not

People thinking about divorce or separation as COVID guidelines went into place have fallen under two broad categories now that the stay-at-home orders are upon us: Those who told their spouse (or physically separated, or filed a case, etc.) before the pandemic hit; and those who didn't have the chance to break the news before all the COVID regulations went into place. For those who did have the opportunity to have a meaningful conversation with their spouse prior to COVID measures, the first step to consider is whether or not the time is right to move forward on this life-changing journey. But for those who had made the decision to divorce and didn't speak to their spouse about it prior to COVID, the time may not feel right to move forward.

Plan Your Timing

If you haven't had a chance to talk to your partner in a meaningful way about divorce or separation, you may be wondering if now is the appropriate time. Pandemic or not, I always remind people that the right time is what works for them and their family. It is true that delay (or not) may have legal or financial implications, but the decision to pursue a family law matter is one that is deeply personal. As long

as you are physically, emotionally, and financially safe, you may be thinking that the time is just not right. That's just fine—things are different than they were in the pre-COVID world and they likely will be different again on the other end. Hopefully for the better.

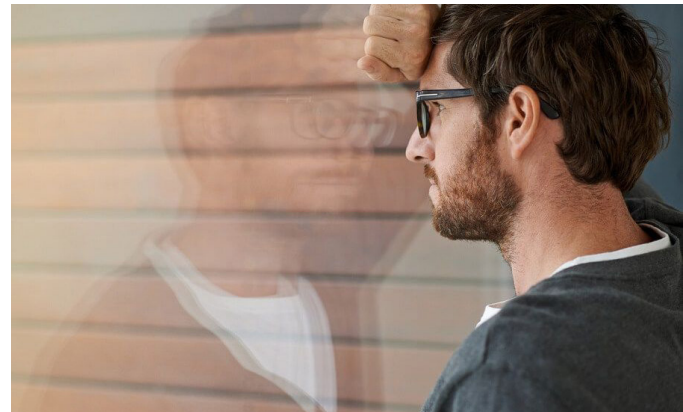
Get Informed

As you will hear over and over, even if you aren't sure if the time is right to pursue a family law matter, you can and should consult with an experienced family law attorney now to understand if there are any immediate concerns or issues to be aware of regarding your particular circumstances. An attorney may also be able to give some thoughts on how to approach the subject or how to use other experts, such as therapists, to help facilitate through this difficult step. You may find that what seemed overwhelmingly daunting is actually achievable. If all goes well, you may find that the talk goes better, or at least differently, than you are envisioning.

Perhaps one of the best reasons to get expert opinions on this step, COVID or not, is that once you have the talk, you can't undo it. You will now be on a path towards separation or other legal action depending on your particular situation. You may find that you need to take immediate action to find a new place to live, pay bills, or co-parent. We can never really know the reaction of the other person, but attorneys can help brainstorm a few different scenarios to help you be prepared and plan accordingly for some of the more common outcomes.

A Consideration About Safety

An important note that also transcends this pandemic: For some people, the initial steps of a divorce can lead to increased tension, including domestic violence. If you find yourself in this unfortunate situation, your first job is to protect yourself. There is a section about [domestic violence](#) in this guide. Even if you don't believe that domestic violence applies to your life, I suggest you read the section for your



Pandemic or not, I always remind people that the right time is what works for them and their family.

own knowledge. It may help you to provide support to a friend or family member experiencing increased conflict and violence during these trying times.



TIP #3

COVID or Not, Your Life Isn't on Hold

For many people, COVID—like other life-changing events—has only intensified their desire to move forward with their lives and to be honest with those around them. With the practical considerations and flexibility listed in this guide, you can absolutely get your case started so there is no need to delay approaching your spouse about a separation. If your partner is on the same page, you may even be able to use some of the tools listed in this guide to have your case resolved prior to the end of the pandemic. That said, there may be some COVID-based resistance from your partner to work through first.

Mitigating Resistance

In any circumstance, the person asking for the divorce is usually more ready to move forward than their spouse. There are many reasons for that reaction, including emotional and financial motivations. Those reactions may be heightened during this time period where stress and anxiety about the economy and health is running high. Your spouse may feel like they have too many things on their plate to deal with a divorce at the same time. If merited, compassion is often in order. However, some people will feel like they need to move forward regardless of their spouse's practical concerns.

It is possible that resistance can be resolved by seeking out a professional to help facilitate a conversation about next steps and how to address each party's concerns and worries moving forward. This is often done through a couples counselor or a collaborative divorce coach. Attorneys can also go over options to start a case in a non-confrontational manner and to steer the case onto a cooperative and mediation-based path. Often resistance is fear-based and once communication starts to flow, resistance begins to wane.



TIP #4

You're Stuck at Home: Avoiding Conflict, Agreeing to Disagree, Using the Current Tools to Move Forward

If you already knew you would like to move forward with a separation prior to COVID and you feel safe moving forward, you can continue to work on your case. If the plan—or circumstance—is to stay together in the same house pending next steps, there are a few things you can do to keep your case moving and to help avoid inevitable conflicts.

Safety First

Even partners who are not planning on a divorce are finding that stay-at-home orders are resulting in frayed emotions and higher levels of conflict and fights. If you are feeling stuck with an unwanted roommate for an unknown amount of time, first assess if it is safe to stay in the same residence. Safety in this sense refers to both your physical and emotional well-being. If the answer to either question is no, talk to an attorney or other professional about your options for splitting into two residences. Of course, if you try to stay in the same home and it just doesn't work, that is fine and you can always come up with a different plan.

On the most dramatic end of the spectrum, we don't want tensions to rise so high that physical altercations result. On the other end, we don't want to see two people's best intents to work together and have an amicable case fray to such an extent after living together too long that they find the mechanics of their case can only be achieved through higher conflict litigation.

Set Ground Rules and Boundaries

If you are still feeling comfortable with staying in the same home, set ground rules and boundaries. Know what each of you is expecting from



If the plan is to stay together in the same house pending next steps, there are ways to help avoid inevitable conflicts.

the other. Find a way of communicating that is clear and businesslike and come up with a clear plan on how you will resolve disputes. If you were already working with a couples counselor, that person may be a good resource to continue helping with interim issues. If you are ready to get your case moving, you can each speak to an attorney, respectively, to come up with a joint plan forward. Your attorney can help facilitate setting interim rules and agreements and can get to work on collecting information to move your case forward towards ultimate settlement.

An important note: If you are experiencing domestic violence, please see the next provision. Do not wait to talk to someone to get help and out of a dangerous situation. You do not need to negotiate with someone who is hurting you.

TIP #5

Domestic Violence: There is Help

One of the side effects of the government's stay-at-home orders is that people are now literally mandated to be in a house with a person who may be abusive physically, emotionally, or financially. Violence, control, and anger may be heightened by proximity and the aggravating factors of social stress, a bad economy, and the general anxiety of adapting to a new normal. Unfortunately, the stories—and jokes in poor taste—about the increase in domestic violence are true: Cases involving domestic violence orders are at a noticeable increase. If you already lived in a household with abuse stressors, they are likely heightened right now.



You are not alone if you are experiencing abuse and you do NOT have to wait to get help.

Get Help Now

You are not alone if you are experiencing abuse and you do NOT have to wait to get help. The courts in many jurisdictions (if not all) are prioritizing these cases. Get help, don't wait. Talk to a lawyer, the

court, the police, or local law schools to find a path towards getting assistance on determining what relief you are entitled to and how to best obtain that relief. Domestic violence is defined differently not only by the law but by us as people. There may still be relief available to you even if what you are experiencing is not captured under the criminal or civil code. Don't be afraid to talk to someone to get not only legal advice, but another person's thoughts on how to move forward and to get some perspective on what you are dealing with behind closed doors.



TIP #6

Temporary Orders: Think Outside the Box

What are Temporary Orders?

At the beginning of a case, usually after filing and beginning a divorce action with the court, parties seek temporary orders to determine who will live where, who will pay what bills, and how they will take care of the children, amongst any other particular issues, between the time of filing and the time of finishing the case. The more traditional route to temporary orders is through the court, by filing a series of documents and pleadings, setting a hearing to appear at the courthouse, and allowing the other party to respond and file their own documents. Eventually, a commissioner or judge review the documents, listen to each side (or their attorneys), and determine the answer to any of the parties' particular issues. These orders usually last until the final orders go into place and may also direct the parties on next steps, or set in place investigations or other fact-finding procedures to help the parties come to settlement or the trial judge come to a ruling when the time comes.

COVID Has Disrupted Temporary Orders

COVID-related regulations may have a very direct impact on parties' ability to seek this type of relief from their courts at the given time. Currently in my jurisdiction, the court is only hearing a select number

of cases and has issued a list of the types of issues that will be heard now and/or first. Usually these are cases that involve fairly emergent issues such as domestic violence or the immediate placement of children, as examples. Other cases, not deemed to be emergencies, are being continued into the future or removed from the calendar for later filing. Of course, for people in the early stages of a divorce, the next steps may very much feel like a personal emergency to them, even if not so defined by third parties. This can be very frustrating and anxiety producing, particularly if there are unresolved financial or parenting issues to solve.

Other Ways to Obtain Temporary Orders

There are several different methods to obtain temporary orders, even if the courts are effectively off limits or too delayed for timely relief.

The first is to come to an agreement through negotiations. For some people that is possible through one-on-one conversation, but for most people, that is not possible. Attorneys can help to facilitate agreed orders by advising their respective clients on the current status of the law, providing insight and other possible options, and helping to communicate offers and responses to the other party's attorney. Often the parties can come to an agreement, or the ability to agree to disagree for the temporary time period in order to move the case forward into the next steps and ultimate resolution. Their attorneys can draft up the agreement and enter it with the court.



With courts backlogged, temporary orders can also be obtained through negotiation, mediation, and arbitration.

If the issues are too complicated or there is too much conflict to reasonably come to a negotiated agreement, there are tools from the alternate dispute resolution toolbox that can be used for temporary orders. While attorneys traditionally use mediation or arbitration at the end of a case to come to a final resolution, many of us have been using those options to help reduce conflict earlier in the case and will often bring on a mediator or arbitrator for temporary orders or disagreements. The specifics of these two types of dispute resolution are described below, but in a nutshell, mediation allows the

parties to come to a mutually agreed resolution and in arbitration an attorney is hired to act as a private judge to make a decision for the parties.

In an era where the courts are closed to certain types of cases, or perhaps feeling overwhelmed with the ones they are currently hearing—not to mention the inevitable backlog that will likely arise once restrictions are lifted—early alternate dispute resolution is more popular than ever and usually a great fit for obtaining temporary orders during the COVID regulations. An agreement reached through mediation or a decision handed down by an arbitrator can also help to shape and determine the next steps of the case and often the parties will return to their mediator or arbitrator after a few months to finish their case completely.

As a mediator and arbitrator myself, I will almost always recommend the option of early mediation, regardless of COVID and court backlog.



TIP #7

Practical Issues: How to Do Anything When Everything is Closed

Some things are easier said than done during the COVID-19 pandemic, even if parties are agreed. While businesses are beginning to open up again, it is often with limited schedules and capacities, or specific rules. This means that some of the physical steps of separating may be a bit more difficult than they were prior. While this applies to just about anything that once seemed normal, the issue of moving to a new residence has been one that has required a fair amount of flexibility. For example, if one party is moving out, they may need to consider if they can tour homes, find another place to live, and hire a moving truck. The parties may agree to list their house for sale and must determine the current safety regulations for making any repairs, hiring contractors, real estate agents, inspectors, and other professionals who must come to the property to complete the process. The same issues apply to buying or selling a car, appraising personal property, or any other step that involves another human being.

While it may be different for the time being, most practical steps are achievable and most professionals are working per the current regulations. Needless to say, delays may be par for the course and it may be more difficult than it was prior to schedule meetings or other work with outside contractors. Flexibility is in order if for no other reason than to preserve your own sanity. That said, if your case is experiencing heightened conflict, many of these steps will be disagreed or your spouse may be seeming to create unnecessary roadblocks to scheduling in an already difficult environment. An attorney can help to facilitate these steps and make sure your rights and interests are being preserved. If your spouse is represented, the two attorneys can set out ground rules and expectations for any of these steps, and help to facilitate some flexibility if things don't go as planned.

TIP #8

Parenting: How to Navigate Stay-At-Home Orders and Health Concerns

Parenting issues during COVID are prevalent. Many disputes arise between parents during times of anxiety and we are currently experiencing a moment of global worry. For people who are already experiencing a contentious parenting scenario, the heightened stress of worry about finances and health has spilled over to additional parenting tension. For those with a serious concern about their children's health, the concern is very real. Many people are making determinations about parenting that are not necessarily in line with their court orders, creating an additional level of anxiety. Fortunately, parenting issues have remained a priority for many courts, particularly those of a time-sensitive nature. Obviously, this will depend on your court's particular ability to handle family law cases at the time you need to file, but as a general rule parenting is always a priority for the courts.



Speak to an attorney about whether your current parenting agreement can or should be followed during COVID.

Do Parenting Plans Need to be Followed During COVID?

The most specifically COVID-related parenting issue is the concern about whether parenting plans need to be followed in the midst of the pandemic. Many parents have genuine worries about the other parent's exposure rate, perhaps there is a high-risk family member in one home, or perhaps your child has a health condition that puts them in a higher risk category. In other families, there is disagreement about how to handle having visitors to the home or taking the children in public as restrictions begin to relax. These are all valid concerns. Likewise, it is a serious concern if your child is not returned to you by unilateral decision of the other party.

Speak to an attorney if you have any concerns about whether your current parenting agreement or orders can or should be followed during COVID. Each state and court may be handling this issue differently and an attorney can help determine if you have a case that is likely to be successful or not in your jurisdiction and local court. Likewise, if you are not seeing your child per your parenting order, an attorney can use that same knowledge to determine if the court is able or likely to find the other parent in contempt or otherwise enforce the parenting plan. While you may find that the order itself isn't changed, you may be able to find some relief in coming to terms about how to best transfer the children or come to other agreements about safety while the child is in the other parent's care.

Seeking Out Creative Solutions

As with so many issues during this pandemic, many people are finding creative and mutually agreeable solutions to parenting, either through direct negotiation between their attorneys or through an alternate dispute resolution process. Many people are coming up with timely and flexible parenting solutions to protect the child or other vulnerable people in one parent's home. Often this will be through an agreement for make-up time later and acknowledgement that these are temporary, emergency agreements and won't be held against one parent or the other later on. Certainly, if your attorney spots a valid concern, they can help craft a creative solution to keep your child and their loved ones safe while preserving your rights as a parent.

Parties experiencing parenting disputes benefit greatly from using mediation or other alternate dispute resolution provisions. Your parenting plan may already set out procedures to follow to attempt a mutual agreement, including naming a particular mediator. Whether that is the case or not, working with a trained and skilled family law mediator for COVID or other parenting issues can help to bring down the conflict between you and the other parent and keep the conversation centered around your children. Arriving at a mediated settlement can also help to create a longer term and more durable agreement so that you minimize conflicts moving forward. Mediation allows each parent to have a forum to voice their concerns and empowers each to come to an agreement for the benefit of their children.

Working with Experts

As COVID regulations remain in place, you may find yourself in the middle of a parenting investigation that must go on despite stay-at-home regulations. Many investigators or guardian ad litem have switched to remote meetings or will meet families using social distancing techniques. This can make an already awkward and anxiety-provoking experience that much more so. Talk to an attorney about techniques for working with these experts, particularly if the investigators aren't able to have the benefit of personally seeing you interact with your children.



TIP #9

Child Support: Paying and Receiving When the Economy is Suffering

This is a hard time economically for everyone. That may be putting it too lightly: This is a terrifying time economically for most people. Even if you are able to work, you may be facing cuts, loss of benefits, or the anxiety of worrying about the sustainability of your job if this lasts for months into the future. Some people have lost their jobs completely, and are now spending days on end trying to obtain the federal and state benefits they may be entitled to as relief. If you are the person

paying support, you are worrying about your ability to do so; if you are the person receiving support, you may be needing that support more than ever. We can all understand both sides of this issue. The bad news is that your current path to relief may be a bit more difficult than with other family law issues, at least through litigation. The good news is that attorneys can work together or with alternate dispute resolution to come up with a solution that addresses the specific issues of your case.

You Can't Pay

If you have less income, or none at all, you may not be able to make your current support payment. However, you are still obligated to pay your court-ordered support. If the state is enforcing your support order, you may be able to contact them to find out if there are any steps towards relief. Your ability to seek relief through the court will be determined by your court's current emergency response situation and if they deem your case to be emergent enough to move forward before opening up to all cases. For most people, regardless of the enforcement tool, these scenarios are not given first priority. Stay current with your court-ordered obligations. While you are doing that, collect and maintain all documentation of your change in employment circumstances. If you qualify, make sure you are at least applying for any form of government related relief possible—it's likely that a judge will want to know if you did everything you could to mitigate the situation.



Attorneys can work together or use alternate dispute resolution tools to come up with child support solutions during COVID.

You Aren't Receiving Your Court-Ordered Support

Unfortunately, the primary issue for the receiving parent remains the state or court's current capability to hear any cases that aren't considered an emergency. I would suggest that the ability to pay or receive support for children is a personal emergency for the family involved: The issue is simply the capacity of the courts under current COVID restrictions to help. If you are in the position of not receiving the support you need for your children, be sure to keep track of

all of the funds that are past due and any and all receipts or other documentation you can gather to show amounts due under your current order. You will likely use that information once the courts open in some form of contempt or enforcement action to recover past due support.

Negotiation and Alternate Dispute Resolution

Nobody enjoys giving out the advice that we have to wait an unknown amount of time before seeking relief for our clients. Child support is another area that is seeing more use of direct negotiation and use of alternate dispute resolution resources such as mediation and arbitration. Attorneys are able to help craft solutions that speak not only to their client's particular needs, but to the objective issues of the day. A general example would be an agreement where the parties acknowledge the temporary nature of this economic emergency and review their current finances. They can then come to an agreement to allow for temporary monthly payment and adjustments for current child care and other expenses, and create a jointly agreed path forward to move back into the current order and pay any arrears as able. Of course, any agreement should be looking not only to the parents' economic status and ability to receive COVID-related benefits, but towards making sure there is as little as possible economic detriment to the children involved.

For some people, the concept of negotiating temporary child support issues will seem relatively straightforward. For others, they may find that the conflict level in their case results in even objectively understandable concepts being difficult to apply to their lives. For either, attorneys can help determine how much facilitation their clients may need, whether a mediator or arbitrator can be of use and, importantly, help to capture any agreements or arbitration decisions correctly and in a manner that addresses all of the many technical nuances of current and back child support.

**TIP #10**

Spousal Support: Short-Term Issues and Long-Term Worries

The overall issues regarding spousal support—alimony—mirror the general themes set out in the provision that describes child support. Namely, the person who is supposed to pay may not have the funds right now and the person who is receiving support likely needs those funds more than ever. Because this issue doesn't involve children, it may be even less emergent to the court in your jurisdiction, meaning you may not be able to get your issue—on either the paying or receiving end—in front of a judge for several weeks or months. The payor should continue to document any attempts to gain income or benefits and the receiving party should continue to document any missed payments.



Issues regarding spousal support can be directly negotiated through counsel while courts are unavailable.

Resolving Spousal Support Disputes Outside of Court

As with so many other issues, that of paying or receiving spousal support is one that can be directly negotiated through counsel. However, alimony is a far more emotionally fraught area than child support and usually attorneys suggest having a mediator or arbitrator help determine the issue. Now, more than ever, alternate dispute resolution is a good tool to consider to determine issues of spousal support.

People with cases involving spousal support or alimony should always consult with an attorney to understand the laws and rules in their state, county, and local courts to determine what their obligations or rights to receive may be under the local laws and practices of their area. Often these views, particularly the local judge's preferences regarding alimony awards, are tempered by the current economic situation. Needless to say, current and future fallout from COVID-related regulations may affect your current jurisdiction's feelings about enforcement and awarding of support in the future.



TIP #11

Discovery: Continuing to Gather Information Virtually

“Discovery” is an umbrella term that attorneys use to mean several different tools to gather information. Some of these tools are formal, such as subpoenas and depositions, and some of the tools are informal, such as an agreed exchange of bank statements and other financial information. This phase of the case typically happens after you have filed a case with the court and usually after you have made some temporary or interim orders or agreements. For folks who may not need a lot of work on temporary orders, attorneys will often jump into the discovery process to start to gather the documents and information needed to prepare for settlement or trial.

There shouldn't be a reason that you cannot continue to conduct discovery during COVID closures and restrictions, but be prepared for delays or changes to regular operating procedures.

Many institutions may want to do everything electronically, so check with an attorney to see if there are any issues with submitting copies or scans to the court or the other party. If you are requesting paper copies, it may take a bit longer than normal to receive documents. Likewise, expect experts such as real estate appraisers to be working on limited schedules and to have specific rules about how they can enter a home. They may not be able to have anyone present, so if there are requests for both parties or third parties to be present, that may not be possible during social distancing.

A Note about the Market

While it is subject to change by the moment, overall it seems that the financial market has experienced a downturn and people are worried about that. If you are concerned about how valuations will



Be prepared for changes to regular operating procedures and delays in receiving documents from banks and financial institutions.

affect your bottom line if your retirement or investments have taken a hit since separation, speak to an attorney about how to best address these issues during discovery and for settlement or trial. Through the discovery process you may find that both you and your spouse are similarly suffering losses if you both have similar type accounts in your respective names. The date you use for valuation/division will play a big role in the effect the market has on your financial division, as will the types of assets you have to divide. Talk to an attorney about the different ways to divide your estate and use experts such as CPAs and valuation experts as recommended by counsel to get a bigger sense of the value of your assets and the best path towards an equitable division. Likewise, use the tools of discovery to get the information you need to create a full picture of assets and debts, both at separation and in the current market so you can arm yourself with enough information to not only settle your case, but to do so in a manner that is the most beneficial for everyone.

TIP #12

Settlement: Negotiation, Mediation, and Arbitration are Great Options

Now more than ever is a wonderful time to utilize one of the many alternate dispute resolution processes available, also known as “ADR.” This blanket term encompasses a variety of tools that can be used to reduce the conflict in your case and guide you to an efficient and final determination. If done through mutual agreement, this resolution may be one that is durable and empowering to both parties.

Mediation

The most common dispute resolution option for family law is mediation. This term could mean a couple of different things: Sometimes parties will work one-on-one with a trained mediator. In this scenario, there



Negotiation, mediation, and arbitration can be accomplished virtually to reach efficient and mutually-agreeable resolutions.

are no attorneys and the parties are usually in the same room, talking directly with the mediator, who works as a facilitator through difficult conversations. If you choose this process, be sure to consult with an attorney prior to your mediation sessions and ask your mediator to allow your attorney to review any agreements prior to signing.

Usually when attorneys use the term mediation, we're referring to something called a "settlement conference," or "shuttle mediation." In this scenario you and your attorney and your partner and their attorney are in separate rooms, respectively. The mediator goes back and forth, using information learned in each room to help shape and communicate settlement offers. This form of mediation allows each party to say what's on their mind without the fear of hurting the other person's feelings or causing anger. It also allows both parties to have an equal say—and compromise—in the outcome and resolution of their family law dispute. It can be an empowering and efficient process, particularly for families that have to move forward in co-parenting situations.

Arbitration

Some parties will determine that, even if they want to, they will not be able to reach an agreement with their spouse. If an agreement is unlikely, parties may want to consider participating in the arbitration process. Entering into arbitration means hiring a family law attorney to act as a private judge to determine resolution of remaining disputes. Each side will present their respective position on the disputes either through writing or testimony, or a mix of the two. After reviewing the materials of each side, reviewing documents, and hearing from applicable experts, the arbitrator will issue a binding decision for the parties. Arbitration is a good opportunity for parties in conflict to get a firm and final resolution.

Mediation/Arbitration

Some people will choose a mix of mediation and arbitration. This may be agreed upon prior to a mediation session, but often occurs when the parties are in a mediation session and they can see it is not going to result in a full settlement, but they don't want to lose the work they have done thus far with the mediator. In this case, parties can ask

their mediator, who's already familiar with the case, to act as a private arbitrator on the issues remaining. An attorney can help their client determine the pros and cons of switching gears and converting the neutral mediator into a decision-maker.

Direct Negotiation

Prior to sitting down with a mediator or arbitrator, parties can certainly attempt to negotiate a settlement between themselves. At any stage of the settlement and negotiation process, it's advised to work with an attorney to help understand your rights and potential legal obligations. Attorneys can help in the direct negotiation process by facilitating the conversation and passing offers back and forth with your spouse's attorney. Attorneys can also determine if it's unlikely that direct negotiation will be an efficient tool to resolve your case and can work with you to represent you at mediation or arbitration so that you can come to an efficient and mutually agreed resolution.



TIP #13

Trial: Moving Forward When the Court is Ready

Many trials have been delayed, perhaps emphasizing the option to use alternate dispute resolution to come to a solution in divorces and other matters. Most family law cases will settle before they go to trial—in my area, the percentage of agreed cases is probably around 97%. Sometimes settlement is months before the scheduled trial date, soon after filing a case, or even before parties file at all. Sometimes settlement doesn't come until weeks or days before the scheduled trial date. Needless to say, when it is a possible solution, settlement is always the preferred method of resolution in a family law case. But sometimes it's just not possible. There may be issues that are too difficult to resolve by agreement or there may be one party who is not willing to compromise. In those cases, trial is not only a good answer, but the only answer to find a resolution to a case.

For most people, the most prevalent issue to consider regarding their trial during the COVID restrictions is whether or not it will proceed

as currently scheduled. In the counties where I work, most non-emergency trials were suspended for several weeks. Many family law trials were continued until after the initial phases of the governor's stay-at-home order had passed. Of course, those orders change as necessary to adapt to ever-changing health conditions, so even if you have a new trial date, it may not end up being the day that you actually go to the courthouse. We also don't know yet how all of the already continued trials are going to affect the trials that were already scheduled for later in the year. While the court is at work behind the scenes to keep cases moving, there will likely be a backlog for several months to come, perhaps into the next year.

Preparing For Trial

Trials are stressful and they require a lot of work in preparation. This is heightened if you don't have a reasonable sense of when your trial will occur. Work with an attorney and other experts to prepare your case and advise you moving forward, and to help communicate with the court about your ultimate trial date. Working to stay on top of your possible day in court will also help you to prepare third party witnesses and experts and keep them up to date so they can plan accordingly and be available as necessary.

As with other aspects of family law, when preparing for your trial, be aware of new and current parameters for providing testimony, argument, and documents to the court. Know if the judge hearing your trial will allow parties to appear via remote meetings, telephonic appearance, or if some or all parties will need to be present. Make certain witnesses know the login and other information to be timely for their appearance. Likewise, know how the court expects the introduction of exhibits and other documents. As with any other step in this process, stay up-to-date and informed as to the court's current regulations and the desires of your particular judge.

If your case is going to trial, stay in close contact with your attorney and keep communication channels open. Trial will require a lot of



Find out if the judge hearing your trial will allow parties to appear via remote meetings or telephonic appearance, and prepare for these new parameters.

preparation and your attorney will be very busy organizing arguments, exhibits, and expert testimony. They will work with you to prepare for testimony and cross-examination. In the midst of all of that activity, work with your attorney to ask any questions and to let them know how you are feeling about the process. This rule applies to any trial, but particularly during COVID regulations when procedures and plans seem to change on a weekly or daily basis. Trial is a difficult process, but your attorney is on your team and will help you get to a completion of your case.



TIP #14

Post-Decree Issues: Finishing Up, Enforcing, or Changing Court Orders

Perhaps it is the increased time at home, or perhaps it is the increased economic anxieties, but it seems as if many people are finding themselves in situations where they are wondering if their original court orders should be modified moving forward. Others are seeing that their court orders may not be sustainable in the face of this pandemic and they need help to enforce the terms of their current decree or parenting orders. Because rules and practices regarding the feasibility of such actions vary greatly both legally and per jurisdiction, any post-decree or modification issue should be run by an attorney in your area before you take any action. If you find you have a valid case, most of the same rules and guidance listed throughout this guide should apply.

Modifying Orders Due to COVID-Related Issues

A roadblock that may arise for successful resolution of any case to modify or enforce orders already in place is whether or not the current issue is temporary based on the current circumstances or something that would have occurred regardless of COVID-19. If it is COVID related, you may find that a court sympathizes, but does not find there is a reason to make a long-term change to any orders. The court may issue some temporary fixes to fit the current problems, but otherwise keep orders in place. An attorney can help to strategize about the best

path forward and the likelihood of any success with your local court in this climate.

Prioritization of Cases by the Courts

The other issue that many people are facing is whether or not such cases will meet their court's requirements to be heard now or in the future once the courts open up. As with other issues, any cases that need to be rescheduled now may also experience additional delays as the courts catch up on the backlog of family law cases that is likely to result. Post-decree, enforcement, and modification issues are all cases that may be good fits for alternate dispute resolution, including mediation or arbitration. The result will be a more immediate opportunity to find a resolution and it may be one that is more tailored to everyone's particular circumstances, helping to increase the likelihood of continued compliance in the future.



TIP #15

Collaborative Law: A Court-Free Path to Resolution

Most people, including attorneys, use the term “collaborate” to mean working together cooperatively. When we use it in family law, we are referring to a specific process where both parties agree—in a contract—that they will not use litigation to resolve their family law matter. They will each hire a collaborative law attorney and begin to work together, using their attorneys to facilitate a process that aims to achieve a mutually agreed and sustainable agreement. Through the process, the attorneys will determine what additional experts should come in to help their clients, including counselors, parenting experts, and financial experts.

Normally, collaborative cases involve a series of in-person meetings as the parties talk through their disputes. Most, if not all, collaborative professionals have adapted to the times and are able to conduct meetings through remote meetings. Even prior to COVID, many collaborative cases utilized technology to allow for flexibility and

to help people who may be out of the area at the time of any given meeting.

If this process is something you and your spouse are interested in pursuing, you should be to move forward and make significant progress towards resolution, even while working remotely. Seek out collaborative attorneys in your area to get more information and to begin working together to achieve a mutually agreed and sustainable resolution to your family law matter.

TIP #16

Get Help from an Attorney

As I pointed out in the first section of this guide, the number one piece of advice I have for anyone facing a family law issue is to get an attorney. This is particularly true now that local regulations and court procedures are changing on a nearly daily basis. If you are feeling like you can't afford an attorney for full representation, you can always consult with an attorney for an hour or two to get some real time jurisdictional-based advice for your particular case and then determine your needs and abilities to work with counsel going forward.

When you decide to talk to an attorney, you will discover we are working and available to help clients during this time, even with the current regulations in place. Most offices are working remotely, and doing so very efficiently. Much of the work we've been doing over the past few years has been fairly computer based already, with much communication being done via email or telephone calls. We are able to conduct business almost exactly the same as before providing all of the same services to our clients. As of this writing, we likely wouldn't have our first meeting with you in person, but the flexibility of remote meetings allows us to still communicate and meet face-to-face.



The number one piece of advice I have for anyone facing a family law issue is to consult an attorney—particularly during this time with ongoing changes to legal procedures.

Finding a Family Law Attorney

If you would like to speak with an attorney, there are a lot of ways to find a good fit in your area. Take a look online to look for family law attorneys in your city. Ask your family and friends for personal referrals. If you've used an attorney in the past for something other than family law, such as drafting your will or business matters, they may be able to provide a referral to attorneys who handle your type of case. If none of those options are good fits, look at your local or state bar association website to see if they have a referral line.

Worried About Legal Costs?

If you are worried you will not be able to pay for legal fees, including a consultation, look to see what local resources are available in your area for pro bono or sliding scale services. Many local bar associations have referral lines or programs that can provide you with information about how to get legal advice. There are usually many resources available to victims of domestic violence in particular, and the police, court advocates, bar associations, or local law schools may be able to help.

Regardless of your current economic circumstances, there are attorneys out there ready and willing to help.



TIP #17

Be Flexible and Adaptable: We're in This Together

No doubt this one goes without saying: Things are changing on a daily basis. A close second: Technology works really well until your internet goes out completely during your Zoom meeting, or your printer/scanner/camera/speakers/microphone inexplicably stops working only when you need it. I can't help with the IT issues, but can give the heads-up to allow plenty of time—more than what is scheduled—for any phone conference or remote meeting. This particularly applies if you have any sort of appearance with your local court. Double check the information provided for call-in or remote meetings...and keep

checking it regularly. In my experience thus far, numbers have changed, phone appearances have been switched to video appearances, or the call initiator has changed last minute. Always make sure you are checking your contact information and, whenever appropriate, confirming login or call-in information in a timely manner. Hopefully it will save you the anxiety of knowing your hearing is happening and you are not there.

A specific note: While they may be sympathetic, courts operate on strict rules about timing and appearance. That means you may lose your chance to speak on your own behalf if you are late or can't get through to the court at the appointed time. In other words, make sure you know what to do prior to the appearance and follow the directions provided by the court.



Allow plenty of time—more than what is scheduled—for any phone conference or remote meeting.

That said, a large part of the adaptability portion of this is a reminder to be patient with others when they are on the experiencing end of the technology issue—and share your knowledge if you have it. We're all in this together and the faster we can log on, the faster we can get your case settled and resolved. You may also find that just about the only times you have connection problems, the dogs bark, the kids have a tantrum, or people come to your front door and insist that you open it are the times you are on an important remote meeting or call. Be easy on yourself or others if it happens on your meeting.



TIP #18

Things Will Get Back to Normal...Or a New, More Productive Normal

No matter where this guide finds you in your life, we must remember that this is temporary. COVID-19 regulations will shift and change and, eventually, there will be a return to a new normal. At the point I am writing this, it's not clear if the return to "normal" will be in a few

weeks, several months, or even a year or two. But regardless of the ultimate timeline, things will slowly pick back up, the economy will start working, and some of the meetings, deadlines, and hearings that are delayed and postponed now will get back on track.

Virtual Tools Are Here To Stay

Almost certainly, the new normal will utilize many of the remote and virtual tools we have been learning to use over the past several months. While it is mandated now, the use of remote meetings and electronic sharing of documents will hopefully lead to a more efficient and flexible means of collecting and reviewing financial statements and pleadings, conducting meetings and settlement conferences, and perhaps even participating in court proceedings. As the world becomes more global and jobs and life take us more places (once that is allowed again), we should have more tools available to work with clients, other parties, and experts regardless of their physical location. Being forced to use technology now may help to make our lives more efficient in the future.

Conflict Resolution Tools Work

My strongest hope for the new post-COVID world as it applies to family law is that we continue to utilize the settlement and conflict resolution tools that we have relied on as the courts operate on emergency orders. Alternate dispute resolution should be used in nearly every family law matter, regardless of whether there is a global pandemic or not. Helping families find a path to mutually agreed resolution of conflict is the goal of every family law professional...or should be. After having to use tools earlier in a case that are often ignored until they are required, I hope that family law attorneys will see that conflict resolution—whenever possible—is always the preferable option for our clients.



Helping families find a path to mutually agreed resolution of conflict is the goal of every family law professional...or should be.



TIP #19

Give Yourself a Break: This is Hard, Be Good to Yourself

As the pandemic continues, we are often urged to remember that it's okay if you aren't okay. We're told to remember to stick to our regular routine (good job to everyone getting dressed on a daily basis!) and to not allow working remotely to seep into our personal lives. That is all easier said than done—by now we've all had the moment where we've looked at the calendar and discovered it's actually Thursday, not Friday, unfortunately. For those already suffering from anxiety or depression, having routines disrupted and being stuck at home can result in heightened symptoms and worry. None of these things can be particularly helpful for people who are dealing with a divorce or other family law matter.

Let's face it: Divorce is stressful and even an amicable case has elements of loss and worry of the unknown. So indeed, now, more than ever, it's okay if you aren't feeling okay. Take a break from your divorce every once in a while, and take care of yourself. It is never a bad idea to work with a therapist or other mental health professional during this objectively trying time. And get the support of an attorney so that you have input and guidance moving forward. I am often thanked by clients for explaining the process, outlining options, and being in their corner as we move through steps of a difficult process. You don't have to do this alone—attorneys are here to help.



Let's face it: Divorce is stressful. Get the support of an attorney so that you have input and guidance moving forward.

IN CONCLUSION

Last Thoughts and Next Steps

Just for anyone who didn't catch this prior, please speak to an attorney in your area to review your particular case and learn about how your courts are handling issues as we begin to open back up. As mentioned, there are many legal resources for people at all financial ability levels, including the following:

1. Private law firms or solo attorneys.
2. Legal foundations and non-profits. These may be geared to specific type cases, often for issues such as domestic violence or immigration-based issues.
3. Law schools often have clinics or services to pair students (working with teachers or mentor attorneys) with community members needing legal advice.
4. Local bar association referral services, including "low bono" or pro bono resources.
5. Local neighborhood legal clinics, usually put on by volunteer attorneys.
6. For those experiencing domestic violence, call your local court to find resources and contacts for domestic violence advocates to help protect you and your family.

Many people are very nervous before speaking to an attorney. Some are worried that they haven't behaved their best during a relationship and others are anxious they will hear only bad news. Sharing information with a lawyer is necessary for that attorney to best advise clients and what you share is confidential. It is true that you may get some hard news about potential division of finances or support, but knowledge is power and most people feel empowered by learning likely outcomes for their case. People usually feel better just by sharing their story and concerns and taking the steps to move forward.

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About the Author

Theresa Lorella is a family law attorney in Seattle, Washington. She has fifteen years of experience as an advocate and now also works as a mediator and arbitrator, helping parties to resolve their disputes in a durable and efficient manner.

Theresa is also an author of fiction and non-fiction and she is currently working on a series of books to help people work on resolving conflict in their family law matters and reduce their anxiety as they work towards a resolution of their disputes.

If you live in Western Washington and would like to reach out to Theresa for help with your family law matter, she can be found at mckinleyirvin.com.

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