

A Friendly “First Step?” by Susan A. Heinemann, Esquire

I notice when I talk with a potential new client about divorce, that the potential new client assumes that their first step is to hire an attorney to file for divorce, but indicated they would prefer “alternative options” for settling. As a family law attorney in Pittsburgh, I would like to pretend for a moment to have a fictional phone call with Madame X, who contacted our office for a free phone consultation, regarding a divorce from Mr. X:

Scene:

I pick up the phone in my office and dial Madame X’s phone number...Ring, Ring

Madame X: “Hello?”

Attorney Heinemann: “Hello, may I please speak with Madame X?”

Madame X: “This is she.”

Attorney Heinemann: “Hi. My name is Susan Heinemann from Notaro and Associates. You asked for me to give you a phone call regarding some questions about divorce. Can you give me a brief background as to your situation?”

Madame X: “Yes. My husband and I were thinking about getting a divorce. We still live together in Mt. Lebanon but we know that the marriage is over, and we know we can try to work through this amicably. What should I do?”

Attorney Heinemann: “Are the two of you willing to work on a settlement in mediation?”

If the answer is yes, I would setup a time for her to speak with Attorney Bethany Notaro, the owner of our firm, about mediation and divorce. Mediation is a process wherein the parties sit down with a mediator to hammer out their differences regarding issues arising from their marriage. The issues may include divorce, dividing up the assets/debts, custody, and support. Many attorneys offer mediation services but many are not specially trained in the area. In our office, Attorney Notaro is certified in Conflict Resolution and Professional Mediation from the Pittsburgh Mediation Center, and is educated in Mediation and Alternative Dispute Resolution at the University of Pittsburgh School of Law.

Attorney Notaro provides further details about mediation during her initial phone consultation. Normally, she will bring in both parties for a sit-down, one hour office consultation to discuss the mediation itself and documents needed for the mediation session. Next, she will schedule a date for the mediation session (usually three hours). Her role at the mediation is to facilitate a settlement between the parties (which she can reduce to a Memorandum or Agreement). For parties that choose the mediation route, note that the mediator (and firm) does not represent any party nor does the mediator give any legal advice. Sometimes,

parties go through mediation and take their agreement to their own attorneys to review. However, if one party refuses or will refuse to participate, mediation is not the appropriate course of action. Example:

Madame X: “No, I don’t think he would be willing to do that. Also, I want my own attorney.”

Attorney Heinemann: “Okay. Have the two of you discussed any type of settlement?”

If the answer is yes, I will bring Madame X in for a sit-down, one hour office consultation to review the outline of a settlement and to discuss the divorce, support and custody law. Madame X could then retain our office to draft the Marriage Settlement and send to Mr. X to take to his own attorney to review. If a settlement is possible, we will try and work one out prior to filing for divorce. If not, and no amicable “First Step” options are available:

Madame X: “No. I can’t talk to him about anything. I want him to move out of the home and move in my younger lover, Jean-Paul, with me and my three children.”

Attorney Heinemann: “Well then, I recommend that you come into our office for a sit-down, one hour office consultation to talk about your options before your Husband or you do anything.”

If an immediate settlement looks unlikely, I will bring in a client for a sit-down, one hour office consultation to talk about the divorce, support and custody law. Madame X should come in to consult with a family law attorney before anyone does anything more. A family law attorney in Pittsburgh or anywhere in Pennsylvania can explain that the person who moves out of the marital residence and the person who files for divorce can impact the amount of potential support, how long the divorce takes, a potential custody arrangement, etc. Similarly, Madame X may want to know what is not relevant to the Court. For example, marital misconduct is not a factor that the Court considers in how to divide up the marital estate. However, Madame X will want to know that marital misconduct is one of many factors the Court considers with alimony.

Thus, a party should not naturally assume that there is only one option to a marriage ending. Again, a person may want to explore mediation, negotiating a settlement prior to filing for divorce or just living separate and apart from their spouse, without getting divorced. The most important first step in your divorce is to talk and ask questions from a Pennsylvania family law attorney to find out which is the most appropriate next step for you.

Susan A. Heinemann, Esquire is an experienced Pennsylvania family law attorney who practices in Allegheny County and surrounding areas. For a free phone consultation, contact (412)281-1988 to set up an appointment to speak with an attorney.