

# Filing a Complaint for Divorce and Whether to Use Fault or No Fault

Podcast # 4 of 10

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Often times, it is difficult to get a client to file the Complaint for Divorce. They may be reluctant to do so for religious or moral reasons or sometimes because they simply do not want to be the person who initiated the divorce.

On the other hand, some clients want to prematurely file the Complaint out of anger or resentment. Try to avoid making the decision for such reasons. Discuss with your attorney whether there are any legal issues which may affect the timing of the divorce filing. Sometimes there are medical insurance issues, sometimes there are pending changes regarding your assets or sometimes there are significant pending changes in your income or employment status. Any of those could significantly affect the decision as to whether or not a Complaint for Divorce should or should not be filed.

Absent such legal considerations, it usually does not make any difference who files first or on what grounds. As to the grounds for divorce, New Jersey and Pennsylvania both have comprehensive "no fault grounds." Irreconcilable differences are now the most often used no-fault grounds. However, notwithstanding the ease of using such grounds, you should review with your attorney whether or not a fault ground should be used.

In some cases, the fault may be so egregious or may have such a significant impact on the family finances, that it should be used. For example, a history of violence, substance abuse or alcoholism may be very important with regard to parenting issues. Or, a long history of infidelity particularly when family income or resources have been squandered on extramarital affairs may be relevant to how the remaining assets should be distributed. Or, fault which involves or affects the children may be relevant to custody issues.

When considering a fault ground, however, a word of caution is appropriate. You should not be over zealous if the fault issue is not directly related to or cannot favorably impact upon your legal rights with regard to the divorce. For example, you may not want to call instances of marital infidelity with a subordinate to the attention of your spouse's employer if to do so may result in them losing their job. Similarly, unnecessarily or inappropriately disclosing unreported income may result in IRS liens or penalties which could be minimized or avoided with a more reasoned approach. If the disclosure of such matters is important to your case, your attorney can discuss with you the use of arbitration or another alternative dispute resolution.

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