

Initial Discussions

Podcast # 1 of 10

STARK & STARK

ATTORNEYS AT LAW

Robert J. Durst
Shareholder/Chair
Stark & Stark Divorce Group
993 Lenox Drive
Building Two
Lawrenceville, NJ 08648
609.895.7342
rdurst@stark-stark.com

Sometimes the initial discussions with your spouse regarding a separation or a divorce are the most difficult you will have in the entire process. These discussions may occur because your spouse has advised you that he/she wants a separation or divorce, or, conversely may be as a result of your desires and intentions.

How to handle those discussions and what do you include in them

In those cases in which there is a history of temper, rage or violence, the format of the discussion is particularly important. In such cases, the discussion should take place in a public setting such as a coffee shop or restaurant. You should, in advance of the discussion, put in place a plan in which you have enlisted the aid of a trusted friend or family member with whom you can contact and who will obtain assistance for you if necessary. If you are not going to return to your home following the discussion, you should make arrangements, in advance of the discussion, to have your personal items and basic clothing, your checkbook and other vital information in your possession.

Fortunately, in the majority of cases, such extreme preplanning is not necessary. Although there may be some initial anger, hurt feelings and recrimination, most couples will be able to move past those reactions and evolve to some reasonable level of communication. Assuming that you are able to move forward, the matters which you should then begin to discuss with your spouse are:

A. How you are going to tell your children. A joint approach which assures the children that the divorce is not their fault and that notwithstanding the divorce, both parents will remain significant participants in their lives is by far the best and most assuring conversation you can have with your children.

B. Short term access to funds. Each party should have short term access to necessary funds for day-to-day expenses, spending money and the like.

C. Continuation of payments for basic bills. Simply because you and your spouse have elected to separate or divorce, does not mean that your mortgage, telephone, electric, automobile payments, credit card and other bills do not have to be paid. You should come to some fair interim arrangement for the allocation of those bills. If you do not, the consequences of non-payment will initiate action by the utility companies, credit cards companies and like which will unnecessarily complicate the matter.

D. Parenting time and obligations. In most cases, both parents should have continuing, meaningful contact with the children. You should approach those discussions with an eye toward your respective work responsibilities, work schedules and, perhaps more importantly, the children's schedules and their needs. In many cases it is equally important that each of the parents

Robert J. Durst
Shareholder/Chair
Stark & Stark Divorce Group
993 Lenox Drive
Building Two
Lawrenceville, NJ 08648
609.895.7342
rdurst@stark-stark.com

participate and assist in transportation to school activities, extracurricular and sporting activities and other responsibilities for the children. For one or the other of you to leave all of those responsibilities to your spouse is certainly unfair to your spouse, and, more importantly, extremely unfair to your children and their right to have their lives and activities proceed without unnecessary interruption as a result of your marital issues.

E. Continuation of medical, life, car insurance policies.

In addition to these basic issues which should be included in your discussions, there are other issues which should not be discussed. For example:

A. This is not the time to rehash all of your spouse's faults and shortcomings. This is the time to have some constructive discussion on a going forward basis. You are not going to convince your spouse that he/she is the sole basis for the breakdown of the marriage and insistence to do so will simply create unnecessary animosity and impair your ability to direct the conversations toward constructive issues.

B. Do not make unnecessary or unreasonable threats. It is relatively common that under the stress of the moment, a party will make threats to the effect that "you will never see these children again," "I am going to take everything you have," or "you'll never get another penny from me." Such statements are not only foolish, impossible to achieve, and seldom in anyone's best interest, but set an extremely confrontational tone for future discussions.

C. Do not say or do anything you would be embarrassed to have the Judge see or ultimately hear. From this point forward, your conduct and statements become relevant to the overall litigation process and will undoubtedly be disclosed to the Court. Immature, hostile and confrontational statements are often irreversible and create an inappropriate and lasting impression that will not work to your advantage as the matter proceeds.



Robert J. Durst II is Chair of the Divorce Group of Stark & Stark and is certified by the New Jersey Supreme Court as a Matrimonial Attorney and by the National Board of Trial Advocacy as a Civil Trial Attorney.

Mr. Durst is a frequent lecturer on Family Law topics, was a Co-Founder of the New Jersey Summer Family Law Institute and is currently the Co Director of the American Trial Lawyers annual Boardwalk Seminar on Family Law. His leading lectures include a nationally known presentation on the distribution of stock options, the use and distribution of life insurance, and an original series on evidence in divorce cases.