

The Divorce Handbook

“A chess match you cannot
afford to lose”

For Women Only!

By Peter J. Fiorella, Jr., Esq.



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"A chess match you cannot afford to lose"
for women only

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Introduction

Over the forty years that I have practiced matrimonial and family law in New York State, I have often been asked to share the methods that our office created and refined to serve our clients so successfully, and to relate some of our clients' stories.

The result is this book, a sort of Reader's Digest guide to getting through a divorce with the best possible outcome, personally, emotionally and financially. Women make up 85 percent of my clients, so I decided that women considering divorce could benefit the most from such a handbook.

To put the legal issues in perspective, the odd-numbered chapters represent our office policy and protocol that we have developed over the years. The even-numbered chapters reflect a composite of some of our clients who tell how they went through their own divorces, from a simple case to an average standard divorce to a highly complex case involving custody, enhanced earnings, maintenance/alimony, and distribution of significant dollar assets.

I firmly believe the title's admonition: Divorce is "A Chess Match You Cannot Afford to Lose!," learned from our office's experience with thousands of women's cases.

Clients interviewed for this book agreed that sharing their experiences would help other women of all ages, professional standing, heritage, and personal situations to prepare for their own divorces.

Since divorce is a new experience for most women, I try to answer questions a woman contemplating divorce might have, from the basic, such as, "Where do I find a lawyer, and how do

I find the right lawyer for me?" and "How many lawyers should I interview, and what can I afford?," to the complex, "How will my children be affected by the divorce process?" and "If I tell the judge how my husband has abused me, physically or emotionally, how will my husband respond? What will he say about me? Will he say it was my fault?" "What is the team concept?" "Do I need more than one lawyer?" "Will I be treated as a team member and not just as a client?"

Custody of her children is the primary concern for a mother seeking divorce. There are several types of custody arrangements, such as "sole custody," "joint custody," "joint-shared custody" and "joint custody primary residential," each with its own implications. I devote one chapter to some of the misconceptions and anxieties over this terminology, and explain how custody decisions affect the parents and, more important, the children. In our office, we believe it is important to negotiate a "Parenting Plan" – a comprehensive outline defining access for the parents with the children – as part of the divorce settlement.

Over the past two decades, Dr. Robert R. Demerath, a forensic psychologist, has been called to assist attorneys and courts in over 1,000 cases. Dr. Demerath has treated individual adults, children, and families for years in clinics, agencies, hospitals, and private practice. His chapter "A Psychologist's Overview – The Expert on the Team" will be a guide for understanding the role of a psychologist in custody matters.

In recent years, spousal abuse has been getting more attention from the courts in divorce proceedings. We have provided a chapter on domestic violence which continues to be a significant social problem. We believe the chapter will be invaluable to women deciding whether to prosecute their abusers and/or how to safeguard their children and themselves.

About 10 percent of the matrimonial cases, due to their complexity, the attitude of the husband, or his level of legal representation, will require hiring an "A" lawyer, someone I consider equivalent to a "chess grandmaster" in his handling of divorces. This book will help women in that situation interview and retain experienced legal counsel who have an "A" ranking, and to be active in the preparation of their cases.

Most women do not have the financial means to retain an "A-list" attorney - and their circumstances may not require one - but they can use this handbook to work with the lawyer they do hire to raise their level of awareness, their personal preparation and the level of their representation.

The final chapter provides a pragmatic way for a woman to have an experienced divorce attorney on her team: By hiring a lawyer as a legal *consultant*. The consultant would help by interviewing and recommending other members of her legal team, which, besides her trial counsel (chief counsel), could include a forensic accountant (CPA), a psychologist and perhaps an economist to assure that she receives the best professional representation for "her chess match," her divorce.

Many of our office protocols were developed with the help of social workers, psychologists, and psychiatrists, and through interviews with the women we represented. The best strategy comes from using both left brain strengths – the logical, linear and verbal skills – and right brain strengths – spatial perception, imagination and creativity – to achieve a settlement that is fair to our client and acceptable to the other side.

We recommend our clients buy “You Can Work Your Own Miracles.”* Our strategy is to focus on “an alliance of two or more minds in the state of harmony, for the attainment of definite purpose.” The “definite purpose” is to win your chess match.

This book contains an Appendix with samples of the New York State Domestic Relations Law 236B(5) including factors for equitable distribution, Statement of Client’s Rights and Responsibilities, the Course of Matrimonial Action Letter describing the legal process, a Personalized Safety Plan, and Internal Revenue Service Form 8332 – a Release of Claim for Child Exemption along with a guide to helpful reference materials.

Each chapter includes a quotation from *The Art of War*, Sun-tzu’s classic treatise on strategy. While divorces are not about victory or defeat, they are *all* about strategy, requiring preparation, planning and proper execution if you are to win

*Napoleon Hill, “You Can Work Your Own Miracles,” A Fawcett Gold Medal Book, Fawcett Publications, Inc., Greenwich, Conn.

your chess match, because you are playing for the rest of your life.

The cover depicts a pensive woman, her hands slowly drawing apart as she reflects on her lawyer's advice and on the chess pieces of her divorce. The King – the husband/ wife who need to be protected – the Queen, the lawyers, the most powerful pieces in the chess match who are trying to protect their clients – and finally the Bishop, the judges who move diagonally and sometimes unpredictably.

Finally, we believe The Divorce Handbook will be:

interesting;

informative; and

instructional

for any woman to interact with her lawyer or, if necessary, her team of lawyers and experts.



Table of Contents

	<i>Preamble</i>	1
Chapter 1	Grandmasters.....	3
Chapter 2	Alone.....	7
Chapter 3	Pieces on a Chessboard.....	13
Chapter 4	The Gnat.....	21
Chapter 5	Three Chessboards at Once.....	29
Chapter 6	Boot Camp.....	35
Chapter 7	I.C.E.D.-T.....	43
Chapter 8	The Bully.....	49
Chapter 9	The Team Approach.....	55
Chapter 10	Where to Begin.....	63
Chapter 11	Dual Track.....	71
Chapter 12	The Anchor.....	77
Chapter 13	Custody.....	85
Chapter 14	My Angel.....	93
Chapter 15	Custody: A Psychologist's Overview – The Expert on the Team By Robert R. Demerath, Ph.D.....	99
Chapter 16	Domestic Violence.....	113
Chapter 17	Afterword.....	123
Chapter 18	Consultant.....	127
	<i>Ten Steps in Preparing for a Divorce</i>	135
Appendix A	NYS Domestic Relations Law 236B(5).....	139
Appendix B	Statement of Client's Rights and Responsibilities.....	145
Appendix C	Course of a Matrimonial Action.....	149
Appendix D	Personalized Safety Plan.....	153
Appendix E	Release of Claim to Exemption for Child of Divorce or Separated Parents.....	159
Appendix F	Reference Materials.....	161
Appendix G	Resume.....	169

Profile

Wife's age:	52
Wife's Income:	\$25,000 - \$30,000
Children:	Two, emancipated
Husband's age:	60
Husband's Income:	\$110,000 - \$125,000
Assets:	Significant investment assets, real property, and retirement funds, in excess of \$1 million in assets.
Liabilities:	None.

The Skillful Strategist
Defeats the enemy
Without doing battle,
Captures the city
Without laying siege,
Overthrows the enemy state
Without protracted war.

---- Sun-tzu, *The Art of War*

CHAPTER

Alone

After living for years in what I thought was a good marriage, I suddenly found myself alone. I mean, I *thought* I had an idyllic marriage, until I was handed a paper that said "Summons with Notice - Action for Divorce."

My world was shattered.

What was my husband doing? What had I done to deserve this? It just didn't make sense. I was 52, and my marriage was over. My life was turned completely upside down.

'George' and I had been married 26 years, and we never had discussed even the possibility of divorce. I still loved my husband, I thought he loved me, and now he was leaving.

That reality overwhelmed me as I stared at the paper. My name was on it as "Defendant." I did not even know what a Defendant was. More shocking was the grounds for divorce - "cruel and inhuman treatment." The only thing that I was guilty of was that I loved my husband. Was I going to have to defend that I loved my husband, and I hadn't been "cruel and inhuman" toward him?

When the shock started to wear off, I thought about calling someone for help. I knew I needed a lawyer, but I did not know any divorce lawyers, or where to find one. Looking in the Yellow Pages seemed risky, but I then remembered a family friend - an attorney of long standing - and I started by calling him.

PIECES ON A CHESSBOARD

THE KINGS

THE QUEENS

THE BISHOPS

THE ROOKS

THE KNIGHTS

There are Five Essentials

For Victory:

Know when to fight

And when not to fight;

Understand how to deploy

Large and small

Numbers;

Have officers and men who

Share a single will;

Be ready

For the unexpected;

Have a capable general,

Unhampered by his sovereign.

---- Sun-tzu, *The Art of War*

CHAPTER

Pieces On A Chessboard

Divorce is a major life change, on the same order as marriage or the death of a loved one, but in a much different way. Many people delight in planning a wedding, and it is a happy occasion. When a loved one dies, it can be wrenching, but most people are with others who share their grief, and they get through it together.

When a woman heads into a divorce, she is often all alone.

A divorce is between two people, a husband and a wife. When they decide to end their marriages most couples have no idea how many *other* players could have a role in their case. Some, such as the lawyers, will have integral roles from the start of the “matrimonial proceeding” to its conclusion; others will assist in a specific area, such as property valuation for division of assets or matters involving the well-being of the couple’s children. The legal process to end a marriage can take as few as three months in some localities, and as long as eighteen months or more in others.

Whatever time it takes, there are moments when it will feel like forever. You should talk to your lawyer early on about how divorce actions proceed through your local judicial system. While each state has its variations, most have enacted what is called an “Equitable Distribution Standard” for the steps that must be taken. Generally, this is the process:

- One spouse, the plaintiff, files for divorce, with a document titled “Summons for Divorce,” “Summons with Notice for Divorce,” or something similar.

APPENDIX G

RESUME

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LAW SCHOOL

University at Buffalo Law School, Year of Graduation 1963

PREVIOUS WORK HISTORY (AFTER GRADUATION FROM LAW SCHOOL)

Deputy Family Court Clerk, Erie County Family Court, 1963-1965

Private Practice, Matrimonial Law 1965-present

MEMBERSHIP IN ASSOCIATIONS, COMMITTEES, ETC.

Executive Board of Directors, National Conference of Christians and Jews

Chairman, Erie County Bar Association Law Day 1993-94

President, University of Buffalo Law School Alumni Association 1994-95

Fellow, American Academy of Matrimonial Lawyers

American Bar Association, Family Law Section

New York State Bar Association Executive Committee

State of New York Unified Court System Family Court Advisory and Rules
Committee 1985-93

Erie County Trial Lawyers Association

Erie County Bar Association

Chairman, Erie County Matrimonial and Family Law Committee

Vice-Chairman, Western New York Matrimonial Trial Lawyers

Association 1997-2008

SYMPOSIA

Equitable Distribution, One Year Later, October 1981

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Settlements, March 1982*

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(Chairman & Moderator), Mar. 1985
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- "Gay Marriage, Gay Divorce - Uncharted Waters." Bar Bulletin, November 2008
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HONORS

- "New York Super Lawyers" 2007, 2008
- "Who's Who in Law Western New York", Business First, Buffalo Law Journal, 2003, 2004, 2005, 2006, 2007
- "Best Lawyers in America", 1983-2008 (One of 125 Matrimonial and Family Law Lawyers Throughout The U.S. To be Included for All 25 Years)
- "Martindale-Hubbell" - Highest Rating A/V

EDUCATION

- Juris Doctor, University of Buffalo Law School, Buffalo, New York* 1960-63
- Bachelor of Arts, University of Buffalo, Buffalo, New York* 1956-60

SKILLS

- Settlement of highly complex custody/access cases under New York State Law
- Settlement of highly complex divorce cases under New York's Equitable Distribution Law
- Trial of highly complex divorce custody/access cases under New York State Law
- Trial of highly complex divorce cases under New York's Equitable Distribution Law

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