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TOP FOUR URBAN LEGENDS OF DIVORCE

Charles T. Boyle

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Many people have misconceptions when they walk into their attorney's office to explore what will occur if they become divorced. In my twenty-five years of experience as a divorce lawyer, the following are the top "Urban Legends" which I have encountered.

1. Mothers automatically become the primary residential parent of the children.

WRONG! The Florida divorce statutes and case law specifically provide that mothers and fathers walk into a courtroom equal in the eyes of the judge on the issue of who will become the primary residential parent. It is true that, statistically, more mothers than fathers are designated as the primary residential parent. This occurs most often simply because, statistically, mothers do most of the parenting in the American family. Which parent, prior to the divorce, does most of the parenting, is an important factor in the court's decision on who will be designated as the primary residential parent.

2. Fault is important to the judge.

MOSTLY WRONG! Florida is a "no fault" divorce state. So, when it comes to the financial aspects of a divorce, how good or bad a husband or wife you were has very little relevance. There are exceptions, and the most important exception deals with the intentional dissipation of marital assets by a spouse. Dissipation of assets is a complicated issue which requires a careful factual analysis. However, it could make a big financial difference to the court award in a given case.

3. Permanent alimony no longer exists.

DEFINITELY WRONG! In a long-term marriage (fifteen or more years) where there will be, post-dissolution, a significant disparity in income there is a presumption that a court should award permanent periodic alimony. How much permanent periodic alimony will be awarded by a court is largely dependent upon the presentation to the court of the appropriate and relevant facts.



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4. Each party will receive those assets titled in his or her name and pay those debts held in his or her name.

ALMOST ALWAYS WRONG! If an asset or debt is acquired or incurred during the marriage it is presumptively a "marital asset" or a "marital debt." Marital assets and marital debts are presumptively split 50/50. However, there are exceptions which can make significant financial differences in the outcome of a divorce. Such exceptions include the source from which the asset came, whether there has or has not been commingling of other marital assets into the asset in question, and whether a debt was incurred for a non-marital purpose. Again, the analysis of these issues and the presentation to the court of the relevant facts is what will make a significant difference financially on this issue.

Most non-lawyers and many lawyers who practice divorce law sporadically have misconceptions as to what a trial court will or will not do in a divorce case. If you are anticipating a divorce, a thorough analysis of your individual facts by an experienced family law attorney who concentrates his or her practice in family law may make a significant difference in the outcome of your case. When you consult with your attorney for the first time, ask him or her if he or she is certified in family law. Ask how long he or she has practiced. Ask what percentage of his or her cases are family law cases. Experience and expertise can make a big difference in the outcome of your case.

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