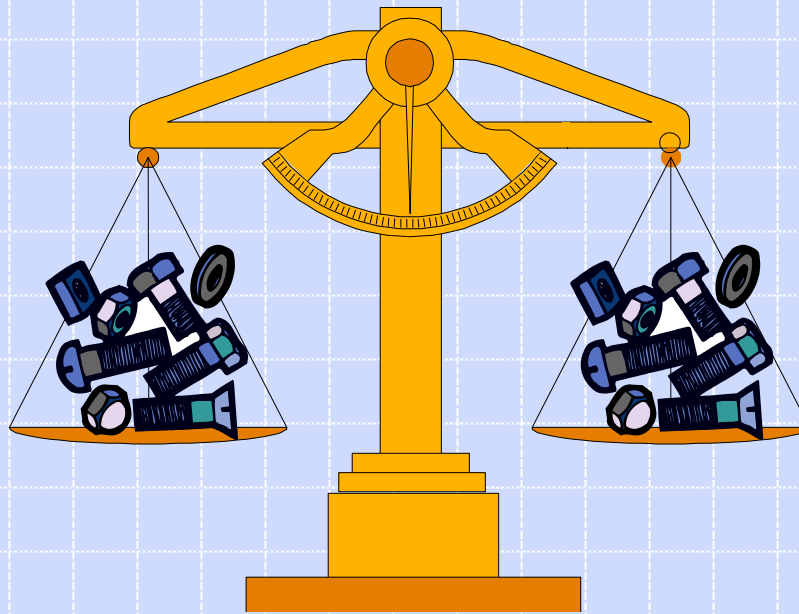


The Nuts and Bolts OF DIVORCE



THE LAW OFFICES OF MICHAEL R. MAGARIL

1199 ROUTE 22 EAST -- SUITE 206

Mountainside, NJ 07092

(908) 408-5500

Overview

- ◆ Legal issues
- ◆ Legal process
- ◆ Preparation
- ◆ Conflict management

Legal Issues

◆ Jurisdiction

- *Can I get divorced in New Jersey?*

◆ Grounds

- *What do I have to prove?*

◆ Children

- *Custody*
- *Visitation*
- *Removal*

◆ Support

- *Child support*
- *Alimony*
- *Modification*

Legal Issues

◆ Dividing property

- *What's in the pot?*
- *What is it worth?*
- *How do we split it?*

◆ Other issues

- *Marital torts*
- *Domestic violence*

Jurisdiction

- ◆ *The power of a court to decide a dispute*
- ◆ One party must be a resident of New Jersey:
 - For one year before the filing of the complaint; AND
 - When complaint is filed; AND
 - When the “cause of action” arose

Venue

- ◆ Where the plaintiff lives when the cause of action arose; or
- ◆ If plaintiff did not live in New Jersey at that time, then where the defendant lived when c/a arose; or
- ◆ If neither party was in New Jersey when c/a arose, then where defendant lives when service of complaint is made.

Grounds for Divorce

- ◆ 18 Month Separation

- ◆ Desertion

- ◆ Adultery

- ◆ Extreme Cruelty

- ◆ Other Grounds

- Voluntary substance abuse (12 mo.)
- Institution for mental illness (2 yr.)
- Imprisonment (18 mo.)
- Deviant sexual behavior

Living Apart

◆ Separation

- “No Fault”
- Separate homes for at 18 consecutive months
- No reasonable prospect of reconciliation

◆ Desertion

- 12 consecutive months
- Not by mutual consent
- Does not have to be “against the will” of the plaintiff.

Adultery

◆ Courts define as an act of sexual intercourse by a married person with another person other than one's spouse

- ◆ Proof:
- Opportunity
 - Inclination
 - Corroboration not required
 - Direct proof not required

Extreme Cruelty

- ◆ Endangers the safety or health of the plaintiff;
- OR --
- ◆ Makes it improper or unreasonable to expect plaintiff and defendant to continue living together
- ◆ Physical or mental
- ◆ Last act of cruelty three months before the filing of the complaint for divorce

Custody

◆ Legal

- **Major decisions**
 - ◆ *Health*
 - ◆ *Religion*
 - ◆ *Education*

◆ Physical

- Daily decisions
 - ◆ *House Rules*
 - ◆ *Bed Time*
 - ◆ *T.V. , etc.*
- Authority when child is with the parent

Joint legal custody with one parent having primary physical custody is a common arrangement

Parenting Time

- ◆ Parenting Plan
 - ◆ Traditional
 - Every other weekend
 - One evening per week
 - ◆ Weeknight overnights
- ◆ Alternating vacations
- ◆ Block time during summers
- ◆ Shared parenting schedule

Removal of child to a different state

- ◆ Both parents must consent; or
- ◆ Child is of suitable age consents; or
- ◆ Order of the court on good cause
- ◆ Bauers standard
- ◆ Best interests of the children control
- ◆ (1) Does the custodial parent have a good faith reason for moving from this jurisdiction? If so, then
- ◆ (2) Will the move be inimical to the best interests of the children?
- ◆ (Alternative Parenting time Schedule)

CHILD SUPPORT

- ◆ *Not related to visitation*
- ◆ Generally set by support guidelines
- ◆ Guidelines factor in both parties' incomes and apportion based upon percentage of contribution
- ◆ Work related child care
- ◆ Visitation expenses
- ◆ Contribution to medical insurance
- ◆ Payment through Dep't. of Probation
- ◆ Garnishment and enforcement

Alimony

◆ Permanent

- Ends on remarriage of recipient or death of either party

◆ Rehabilitative

- Requires a specific plan to get recipient back on feet

◆ Limited Duration

- For set number of years
- Mid-term marriages
- No plan required

◆ Reimbursement

- Educational degree

Alimony Factors

- ◆ Need and ability to pay
- ◆ Duration of the marriage
- ◆ Age and health of the parties
- ◆ Education and earning capacity
- ◆ Standard of living during the marriage
- ◆ Length of absence from the job market of person seeking alimony
- ◆ Parental responsibilities
- ◆ Time to retrain

Equitable Distribution

◆ The Marital Estate

- ◆ Pre-marital property
- ◆ Gifts and Inheritance
- ◆ Property acquired during cohabitation
- ◆ Commingling and transmutation

◆ Valuation

- ◆ Valuation at filing of the complaint
- ◆ Passive gain or loss
- ◆ Increase in value of premarital business
- ◆ Business valuation
- ◆ Professional license

Equitable Distribution

- ◆ Retirement funds
 - QDRO'S
 - Coveture fractions
- ◆ Personal injury awards
- ◆ Debt
 - Credit cards in one spouse's name
 - Mortgage

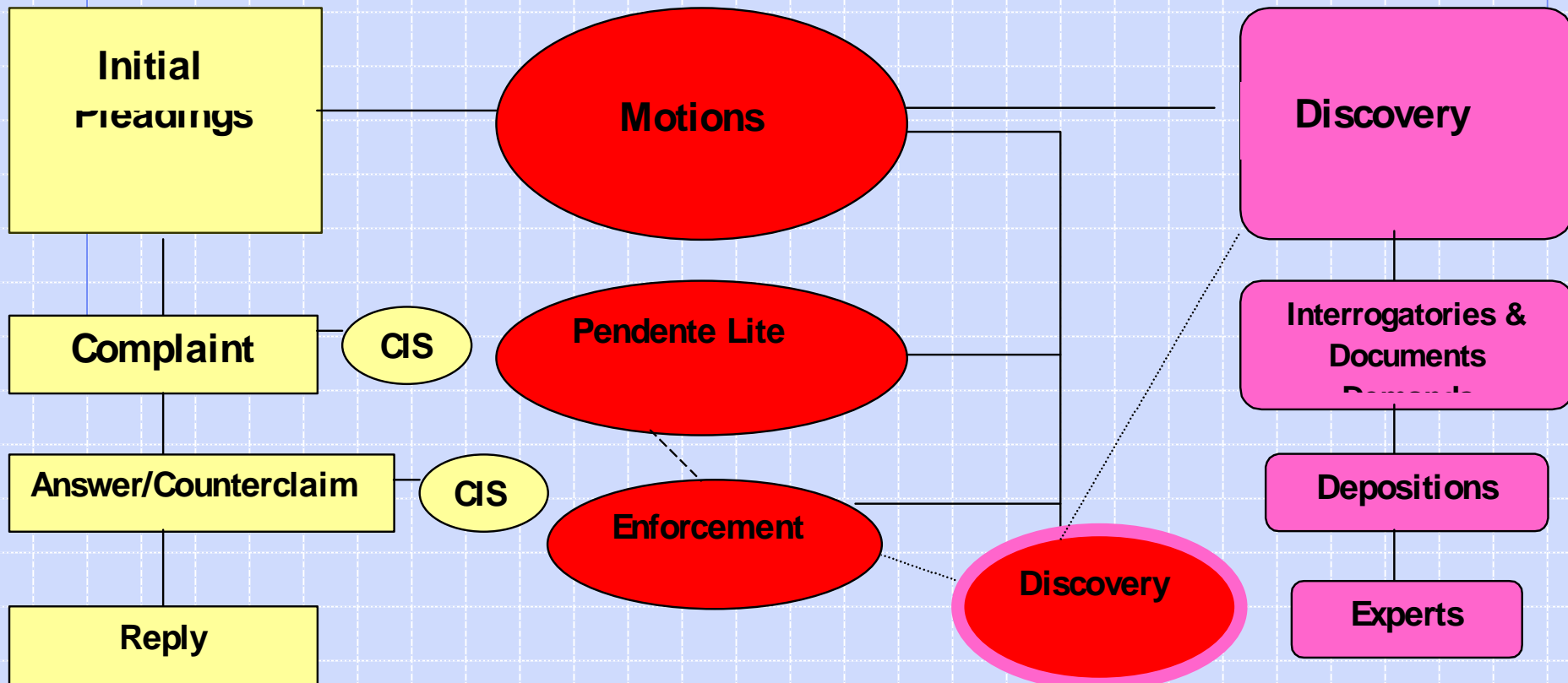
Preparation

- ◆ Tax returns
- ◆ Check registers and cancelled checks (front and back)
- ◆ Bank statements
- ◆ Securities accounts
- ◆ Pay stubs
- ◆ Inventory of Personal Property
- ◆ **Medical bills**
- ◆ **Child care bills**
- ◆ **Utility bills**
- ◆ **Credit card bills**
- ◆ **Car Loan/Lease bills**
- ◆ **Mortgage book**
- ◆ **Camp bills**

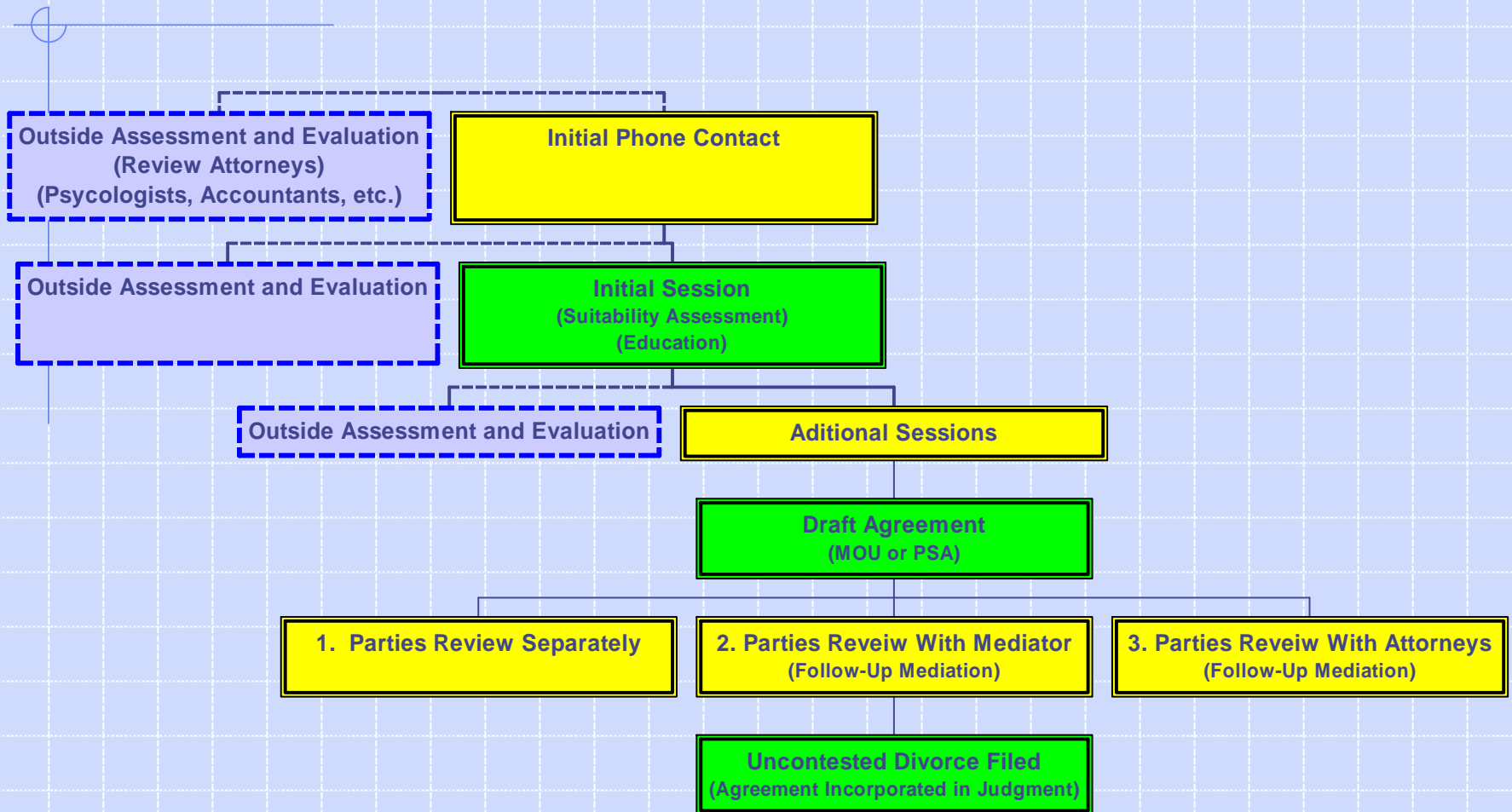
The Legal Process

- ◆ *95% of all divorces end in settlement*
- ◆ Negotiation
 - Face to face
 - Through lawyers
- ◆ Collaborative Divorce
- ◆ Litigation
- ◆ Mediation

The Litigation Process



The Mediation Process



Conflict Management

