

Five Common Misconceptions About Basic Family Law Issues

By Amy Kapner

Family law matters are by their nature very personal. As a result, people often turn to family and friends for advice about their family law related issues before contacting a professional. This can lead to the spread of partially accurate and completely inaccurate information about some fundamental family law rules and concepts, and that can cause undue distress and confusion. Below is a brief summary of some basic misconceptions people commonly have about family law that can and should, quickly be dispelled and corrected.

Misconception No. 1: After a 10-year marriage, one party will automatically have to pay the other party spousal support forever.

There is a general rule that a marriage of 10 years is considered a long-term marriage, and that no court will terminate its jurisdiction to award spousal support on a long-term marriage. However, when making orders for the payment of spousal support post-judgment, the length of the marriage is only one of 14 factors the court is required to consider.

In addition to the length of the marriage, the court must consider the needs of the supported party and the ability of the supporting party to pay support; the obligations and assets of each party after the marital assets and debts have been divided in the divorce; the extent to which the supported party contributed to the supporting party's attainment of an education or career; and the age and health of the parties, among nine other factors.

Depending upon a court's analysis of these 14 factors in light of the facts of a given case, a court could order permanent spousal support on a short-term marriage of less than 10 years, or set or reduce support to zero, after a long-term marriage of 10 years or more.

Misconception No. 2: No community property is created if the parties keep their incomes separate.

Absent an agreement otherwise, all earnings from employment during marriage are community property, even if a married couple deposits those earnings into separate bank accounts in their own respective

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names. In addition, anything purchased with money earned during the marriage is presumed community property. In the event of a divorce, the bank accounts containing the earnings from the marriage and the assets purchased with the earnings from the marriage will presumably be divided equally between the parties.

Misconception No. 3: Moms always get majority custodial time with children.

While it is true that in many cases courts grant greater custody timeshare to the mother, the Family Code expressly prohibits the court from giving preference to one parent over the other on the basis of the parent's gender when making custody decisions. As such, in cases where the father has been the primary caretaker, the father is often granted a greater custody timeshare.

Misconception No. 4: Only wealthy people need prenuptial agreements.

Prenuptial agreements can provide varied and extensive protections, and are crafted by family law attorneys to meet and anticipate a client's particular circumstances and needs. In addition to protecting people entering a marriage with significant wealth, prenuptial agreements are important to consider for people who do not necessarily have significant wealth, but who own their own businesses, who create intellectual property, and who have children from prior relationships.

Misconception No. 5: Any attorney can skillfully manage a family law matter.

Family law is a specialized area of law and it is important for people facing fam-

ily law issues to meet with a family law attorney for guidance. Family law attorneys can spot an attorney unfamiliar with family law a mile away and use it to great advantage, not only in terms of knowledge of the family code and local family law rules, but familiarity with the family law judicial officers and court rooms, and the relatively small expert community.

Amy Kapner is an attorney at Feinberg, Mindel, Brandt & Klein LLP, a family law firm in Los Angeles. Amy joined the firm as a summer associate in 2011. Amy approaches her work with the fundamental understanding that knowledge is power. For many people, their family law matter is their first experience with the legal system, and it can be confusing and intimidating. Amy ensures that her clients are informed at every stage of the process in order to minimize the stress and fear that plagues many family law litigants. To contact Amy Kapner, email akapner@fmbklaw.com or call (310) 447-8675.

