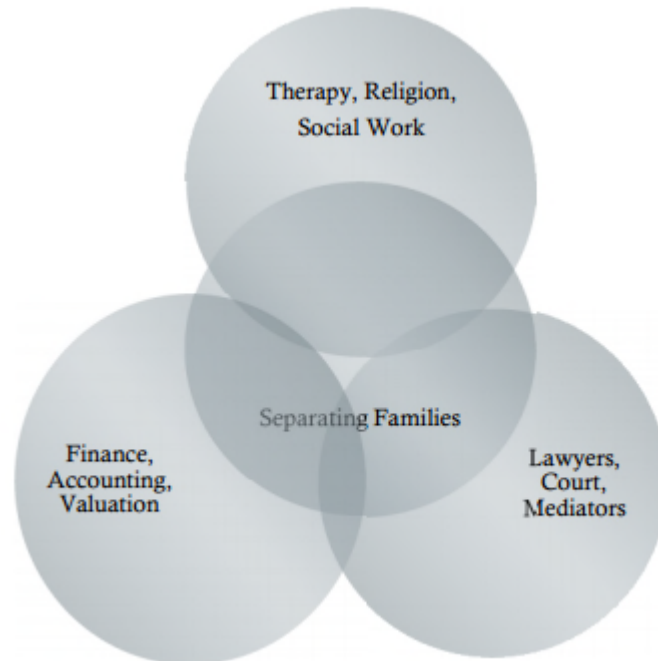


# SENSIBLE SEPARATION

This issue of *Sensible Separation* will focus on Coronavirus and Divorcing Families.

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Sensible Separation is an interdisciplinary newsletter for professionals assisting families with divorce or separation. If you would like to contribute an article, please submit to [GKincaid@hrkklaw.com](mailto:GKincaid@hrkklaw.com). For more information about divorce mediation, please visit [www.SensibleSeparation.com](http://www.SensibleSeparation.com). Another opportunity to share helpful thoughts or insights about our work exists on the Sensible Separation FACEBOOK page, which is located at [www.facebook.com/sensibleseparation](http://www.facebook.com/sensibleseparation). Please visit our site. We appreciate the traffic and any helpful information that you would like to share.

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Over the last few weeks, the public health community has struggled to better understand the coronavirus pandemic. We have all focused on the big questions. How do we stave off this illness and keep our families safe? How will the pandemic impact my financial security? In the beginning, we were not even sure if there was a real basis for concern. We hoped that it would all just go away--like a bad dream. We've not been so lucky. Today, in fact, we are facing a massive public shut down of non-vital services, exponential infection rates, sheltering-in, and likely job, or at least income loss for most of us. We are reeling.

As the medical community struggles to understand the virus, so too must the legal community begin to grapple with its consequences. The impact of this pandemic on divorcing families is only just beginning. In time, it will likely present significant and complex problems that will need solving. My office, and other professionals helping divorcing families, are beginning to field new questions. *What is the best way to shelter in when children live in two shelters? How do you handle child support when neither parent has income or a reduced income? How will we handle childcare since we are both essential workers and schools and day care are closed?*

Today, I am just starting to get my legal mind and my mediator mentality, around the problems we are likely to face. As with other professionals, I expect my thinking, and the thinking of the community of professionals that supports divorced or divorcing families, will evolve. Still, we need to start thinking about this in a logical way. It's not too early to offer some early guidance with the hope that by getting ahead of the problem, we will all be better prepared.

After a hiatus, I decided to dedicate this issue of *Sensible Separation* to the most-timely issue I can imagine. How can we best help divorcing families as they struggle through the pandemic?

To organize the discussion, I've divided the impact of the virus on three separate groups of families: (a) families that have not yet filed for a divorce (b) families that are currently in the process of divorce; and (c) families that have already completed their divorce. With each group, I would like to discuss questions I have been fielding and questions I anticipate needing to field.

### **Families that have not separated or filed.**

So, the big question likely on the mind of those that have not yet filed is going to be, "I'm so miserable, can I still file or should I wait?" Technically, the clerk's office is open, and a divorce lawyer or mediator can file a divorce, if it is necessary. Filing a divorce is the easy part; moving it to completion under these highly unusual circumstances may be much more difficult. First, the Courts, like everyone else, are trying to keep employees, including Judges, safe. Likely, that means fewer hearings and focusing on emergency matters only. In general, a divorce is not going to be considered an emergency matter and as a result our courts will likely postpone or "continue" most of the divorce trials and settings. However, when divorcing spouses can process their divorces in friendlier way, as for example with a mediator, or with two attorneys that can work well together, they can file or compete a divorce without a hearing—essentially with very little judicial involvement. Now more than ever, clients in mediation will likely have more success completing their cases. So, yes, it is technically, possible to process a divorce right now. I expect some unusual considerations, but they are not unheard-of

problems. For example, I am now meeting with clients via video or phone conference to maintain social distancing and it is working out well.

### **Families in the process of divorcing**

For a divorce to be processed in a fair way, the financial facts need to be well established and preferably stable (not volatile). Generally, those facts are grounded in two separate areas: income and assets. For example, child support and maintenance are both driven by income. Currently, most of us are concerned about what our income will look like going forward. It is not unusual for divorces to have clauses allowing (or even requiring) support to be adjusted when circumstances change. So, we should have the tools to deal with this issue.

Assets and debts are typically allocated in an equitable, often nearly equal, way. With wide gyrations in the stock market and potentially in the housing market, it will be very difficult to tie down asset values. In an unstable world, what looked quite fair yesterday, may look very unfair tomorrow. Imagine, for example, the family, divorced just a few months ago, where one spouse took \$100K in stock value and the other spouse took \$100K in home equity. It seemed fair then, but it would likely not be seen through the same lens today. In these times, families may want to consider dividing their assets and debts equally, e.g. in my example, each spouse takes one half of the stock and the house equity is also divide equally between both spouses.

### **Families that are already divorced.**

With respect to families there are already divorced, a different set of problems will likely arise.

Most divorced families with children have a Parenting Plan that allocates parenting time, vacations, and holidays between both parents. Parenting plans consider a wide range of factors in establishing a parenting schedule, including the parent's working hours and the best interest of the children.

When parents change their work schedules, it often requires an adjustment to the parenting plan. We are about to experience a massive shift to our schedules. What made sense a month ago may no longer makes sense now when (a) the children are home all day and (b) both parents are working out of separate homes. For instance, if now only one parent is working out of the home, the children are out of school, and the other parent is home all day anyway, it may make sense to shift the parenting plan so the working parent has the evenings and perhaps weekends and the non-working parent accepts responsibility during normal school or work hours when the children are home.

In general, the courts don't expect parents to reshape their Parenting Plan for unusual circumstances that only last several weeks. If, however the pandemic stretches out for months, parents are going to have to work together to form new parenting plans that fit their new worlds. If they cannot do so, they will have to involve lawyers, mediators and ultimately judges to help them do so. When schedules change, often financial responsibilities may need to change, too.

Reshaping the post-divorce parenting structure for cooperative parents should not be difficult. It can be easily done with the help of a mediator or two cooperating attorneys. Families that are already in conflict, conversely, are likely to repeat that dynamic and have difficulties processing these changes.

In general, child support is driven by the Parenting Plan (schedule) and each parent's income. When each of these factors shift dramatically, the current child support structure may no longer be equitable. Again, if the shifts are only for a week or two, then no adjustment to the divorce agreements will likely need to be made. If, however, these shifts appear to be more long-lasting, then clients will need to try to work out a new child support arrangement.

Our current child support laws restrict courts from adjusting child support retroactively. A formal motion must be filed. It is imperative, therefore, for families to promptly address child support. It is unwise to allow an unfair support number to sit around for too long or to rely on unenforceable oral agreements to waive or reduce support. Child support adjustments must be approved by the court to be effective. A simple modification agreement is necessary.

Maintenance or alimony is often ordered for families that have already completed a divorce. Typically, courts only have jurisdiction to modify these obligations if they are no longer equitable. Again, the court cannot adjust their maintenance orders prior to a formal motion or request being filed. So, families need to promptly consider whether their agreed upon or ordered alimony orders remain equitable. Voluntary or oral agreements may not be enforced by the Court, so this will need prompt attention and any agreement reduced to simple modification agreements that are approved by the court.

This will be a time for families to consider more creative options. For example, one family I'm working with, that has been divorced for many years, decided that shifting the children back-and-forth between two homes increased the risk of infection and their current child support model was no longer equitable when the paying parent was unemployed. This family decided that they would designate Mom's house as the primary home for the children and then both parents would move in and out leaving the children in a stable place. This is referred to as "nesting." They all get along well, so this model works well for them. They don't have to worry about shifting around the children between two homes, can more easily accommodate their evolving work schedules and reduced their expenses to the point where they are just going suspend their child support and share expenses as a short-term solution. Families will need to create solutions that work for them. Thinking *out of the box* in these difficult times may result in better solutions.

We have also been receiving many calls from parents expressing concerns about holidays and vacations. Assuming travel restrictions are loosened, we may continue to have these issues in the coming months. It would make sense for both parents to address these issues upfront to avoid unnecessary conflicts later. How long will it be before any of us would feel safe allowing our children to take a cruise? To travel out of the state? It may be a long time.

It has always been the case that families that are able to sit down, either by themselves, or with a therapist or a mediator, and address their concerns together, will fare much better. Now so, more than ever. Since we are now social distancing for all of our health and safety, this can be accomplished by video chat. There are many platforms that allow free video chatting between 2 or more people. I am

offering this service for families that want to do modifications to their parenting schedules and/or child support. We are able to accomplish all of this remotely without face to face contact.

Please stay safe and let us know if we can help.