

Frequently Asked Questions for Potential Clients

Questions About Becoming a Potential Client:

- **Why should I consider hiring Melissa F. Brown, LLC?**

Melissa Brown has extensive experience practicing in the Family Courts of this state. While she typically settles most of her cases, she is always prepared to go to trial if necessary. Melissa is compassionate and caring, but she works best with successful business people experienced in handling other business dealings. Melissa is very selective about the clients she will agree to take, and she expects the client to become an active team member. To that end, she asks that all clients sign a document, in addition to their retainer agreement, where they agree to be an “A” client. Melissa recognizes that she is unable to represent friends, church members or neighbors because having an objective perspective brings a healthier approach to the unique nature of family law cases. Her experience, though, is that during the process of representing her clients, she becomes very close to them and stays in touch with many long after the case is completed.

- **Do you offer a free initial consultation?**

No, we do not offer free initial consultations. Melissa offers a few different options for individuals interested in an initial consultation. These options vary in price, consultation time, and preparation prior to the initial meeting. For more information please call our office at 843.722.8900.

- **How do I become a client?**

Please refer to the “Contact Us” page or call our office at 843.722.8900. We have set procedures that we follow during our representation as well as during our initial determination of whether or not we are able to take on a particular matter. First, we obtain preliminary information that you may provide on our Contact Us page. Once we conduct a conflicts check, someone from the firm contacts you about gathering more information prior to scheduling the initial consultation. If we are able to meet with you, we schedule a convenient date and time. Once you meet with Melissa and the two of you decide to work together, she sends you a retainer agreement. Once you review the agreement, sign it and return it to our office along with the retainer check, you become a client.

- **Is there certain information I should bring to my initial consultation?**

Once your initial consultation is scheduled, the firm’s legal assistant provides you with a detailed packet of information. This packet outlines all the documents and other information that we need from you prior to the initial consultation.



- **Why can't I speak with an attorney before I set up an appointment?**
Due to the volume of calls our office receives on a daily basis, our firm implements a policy where all initial consultations are handled by our legal assistant. This system works well for both the potential client and firm because often what may seem like a simple question becomes a more complicated matter requiring the potential client to explain a number of details in order to properly respond. Thus, we do not provide any legal advice over the phone. We provide information to those people committed to meeting with us for an initial consultation, and particularly to our clients, the number of whom we limit, so we are available to answer their questions and concerns.
- **What will my case cost?**
Each family law matter is unique. Thus, it is impossible for us to provide anyone with an exact dollar amount even after meeting with a potential client for an initial consultation. Many factors play a role in determining one's fees, including the attorney your spouse may hire and the behavior exhibited by your spouse during the case. During the initial consultation Melissa usually quotes a retainer fee, but at this time, we do not offer value based billing. Instead, we charge by the hour and the hourly rates of our firm staff range from \$75/hour - \$375/hour.
- **Is my initial consultation private and confidential?**
Confidentiality and privacy are taken very seriously in this firm and all communications with this office remain confidential from the initial consultation on. Filling out our basic "Contact Us" form, however, does not establish any sort of relationship that requires such contact to remain confidential. Once we meet with a client and obtain confidential information from that client, at our request, that information is protected by the attorney client privilege and it is not discussed outside this office without the client's permission or in open court or as part of the court file.

Questions About South Carolina Family Law:

- **What are the grounds for divorce in South Carolina?**
South Carolina has four fault grounds of divorce: adultery, physical cruelty, desertion, and habitual drunkenness/drug abuse and a fifth no-fault ground of living separate and apart for one year without cohabitation. In order to obtain a divorce, the party who files must prove at least one of these grounds with legally sufficient evidence.



- **Do my spouse and I need to agree to get a divorce?**
No. Your spouse cannot stop you from obtaining a divorce if you can prove your ground for divorce and your spouse does not have a legitimate defense to dispute your claim.
- **What is a legal separation?**
South Carolina does not recognize a legal separation. A couple is either married or not married. However, there is a similar type of action called “An action for Separate Maintenance & Support.” This action is very similar to other state’s legal separations.
- **What is separation?**
A separation is when the parties live in two separate locations. Living in two separate bedrooms in one’s house does not qualify as a separation. If you have a separate guest house or a garage apartment, you need to discuss with your attorney whether the court would consider this a separate location.
- **Do I need to live in South Carolina to be able to file for divorce here?**
To file for divorce in South Carolina, one party has to have resided in South Carolina for at least one year if the other spouse lives in another state. If both parties have lived in South Carolina for at least three months, either party can file for a divorce in South Carolina. If one party has lived in South Carolina for at least one year, such party can file for divorce in South Carolina even if the other spouse has never set foot in this state. However, other issues such as the division of property, alimony, visitation and child support require obtaining personal jurisdiction over the non-resident spouse. Obviously, this issue is complex and one must consult an attorney to avoid having their case dismissed or to avoid the resolution of the entire divorce.
- **Where do I file for divorce?**
In South Carolina, the Family Courts have exclusive jurisdiction over actions for divorce. Each of our state’s 46 counties have a Family Court. Actions for divorce are tried in the county where the defendant resides at the commencement of the action or the county where the parties last resided together as husband and wife. If the defendant is not a South Carolina resident then the action is tried in the county where the plaintiff resides.



- **Does fault play a role in the divorce?**

The court may consider fault by either party when determining alimony, separate maintenance and support, and the equitable distribution of property. In South Carolina, adultery by the party who would otherwise receive alimony is a complete bar to the receipt of alimony. Given the severe ramifications fault has in the divorce process, please consult an experienced divorce attorney to discuss your questions and concerns.

- **How long does it take to finalize a divorce? How fast can I obtain a divorce?**

While each case is different, there are a few general rules to consider. Unless the Plaintiff seeks a divorce on the ground of one year's continuous separation, any request for a divorce on a fault ground cannot take place at a hearing until two months after the complaint is filed, but the actual divorce cannot be issued until three months have passed. With the no fault divorce on the ground of one year's separation, the Plaintiff can file the action a year and a day after the year passes and then, a hearing and divorce are possible either thirty days after service upon the Defendant or if the Defendant files an Answer before the thirty days run, one could immediately request a hearing.

- **Should I leave the marital home? Could this negatively impact my case?**

This answer truly depends on the individual circumstances of your case. The choice to move out of the marital home does not forfeit your right to an equitable division of marital property. However, if you move out and want to move back in, the potential for complications arise. Thus, this is a question one needs to discuss with a skilled, experienced family law attorney.

- **How will property be divided? Does my spouse automatically get 50% of our marital assets and debts?**

South Carolina Family Court has jurisdiction to equitably divide the parties' marital property. There is no pre-set rule regarding the division of assets. Instead, the Courts consider a variety of factors set out in our statutes including: duration of the marriage; separate maintenance and/or alimony awarded; child custody arrangements; physical and emotional health of each spouse; financial/economic circumstances of each spouse; vested retirement benefits of each spouse; need for additional training or education to achieve spouse's income potential; liens or encumbrances on marital and separate property/debts; nonmarital property of each spouse; tax aspects of divorce; support being paid or received by either spouse



regarding a prior marriage or child; desirability of retaining the marital home; each spouse's contribution to the marriage; fault or marital misconduct of either party; and any other factors necessary to do equity and justice. Therefore, it is impossible to completely answer this question, as it is the Court's job to apply these factors to the case before it.

- **What is the difference between marital and non-marital property?**
On a very basic and general level, non-marital property is usually considered any asset owned prior to the marriage, inherited by a party during the marriage or a gift from a third party during the marriage. Marital property includes all real and personal property acquired by the parties during the marriage, gifts between spouses given during the marriage, vested and non-vested benefits or funds accrued during the marriage such as retirement accounts, pensions and real property. There are, however, many exceptions and nuances to this list, and there are situations where non-marital property can turn into marital property. To adequately protect your interests it is always recommended that you consult with an experienced family law attorney who can give you sound legal advice on this topic tailored specifically to your own situation.
- **What is alimony? What is separate maintenance and support?**
Alimony is post-divorce support payments made by one former spouse to another former spouse. There are five types of alimony: periodic, lump sum, rehabilitative, reimbursement and other.

Separate maintenance and support refers to pre-divorce support payments made by one spouse to another spouse. While either the Plaintiff or Defendant may be eligible for alimony, fault by either party is considered by the court when determining the alimony amount. It is important to note that proven adultery can bar a spouse from receiving alimony or separate maintenance and support. In South Carolina the courts consider the following factors when awarding alimony: duration of the marriage together with the ages of the parties at the time of the marriage and divorce; physical and emotional condition of each spouse; education background of each spouse including the need for additional training to reach their income potential; employment history and earning potential of each spouse; custody of the children; standard of living established during the marriage; tax consequences; the existence of a support obligation from a prior marriage; current and reasonably anticipated earnings of each spouse; current and reasonably anticipated expenses of each spouse; marital misconduct or fault of either party; and such other factors the court may wish to consider.



- **What happens after I become a client?**

Each family law case represents a unique and highly individualized situation. At the initial consultation, Melissa discusses many avenues a potential client could pursue so all actions are tailored to the parties' particular situation. A flow chart is attached as one of the downloadable documents. It is a great visual to explain South Carolina's Family Court process.

- **Can my spouse and I use the same attorney?**

No. Every divorce, regardless how amicable is inherently adversarial. Thus, South Carolina's Rules of Professional Conduct do not allow one lawyer to represent both parties. (This statement does not apply to instances where parties hire an attorney to act as their mediator. In this case, the mediator cannot represent or even give either party legal advice, but the mediator can help the parties reach a mediated agreement that they can later use as a Settlement Agreement that the Court approves and makes an Order of the Court.)

- **What is the difference between mediation and arbitration?**

Mediation is a negotiation tool where the parties agree to present all or select issues in dispute before a third-party neutral called the mediator. The mediator works with the parties and assists them in settling their issues, but mediators cannot advise either party or make a decision for them. Further, the parties are not bound by the mediated agreement. In addition, there is no requirement that the mediator reach a certain result, thus it is possible that the parties may settle all of their issues, some of their issues, or none of their issues.

In arbitration, the parties agree to submit their issue or issues to one or more third-party neutral called an arbitrator. The arbitrator will listen to each party's side of the case, and then, the arbitrator, acting as if he or she is a judge, issues a binding decision called an arbitration award. Unlike mediation, an arbitration award is final and may only be appealed in extremely limited situations.

Questions about Child Custody and Support:

- **What factors may the Court consider when awarding custody?**

The paramount consideration the court looks to in all child custody controversies is the best interests of the child. There are variety of other factors the court may consider when awarding custody such as: religious faith; child's reasonable preference when appropriate; domestic violence issues; the character, fitness, attitude and inclination on the part of each



parent as they impact the children; who has been the child's primary caregiver; immoral conduct by a party that would be detrimental to the welfare of the child; the psychological, physical, environmental, educational, medical, family, emotional and recreation aspects of each child's life; and any written agreement between the parties. Given the complexity of custody cases and the unique nature of each case, we highly recommend that you consult with a knowledgeable and experienced family law attorney when dealing with such an action.

- **What types of custody arrangements exist in South Carolina?**

South Carolina Family Courts can award parents, and in some cases non-parents, sole, joint, or shared custody of a child. On the reverse end of the spectrum, the Family Court also has jurisdiction to terminate a parent's parental rights. Many factors affect the custody award, all of which you should discuss with a qualified, experienced Family Court attorney.

- **What factors may the Court consider when establishing child support?**

In South Carolina child support is governed by the Child Support Guidelines from the Department of Social Services. In rare circumstances, the court has deviated from these guidelines. Please see the "Link" titled "Child Support Calculator" under the "Links" tab on this website to calculate your child support amount. However, one should consult an attorney to understand all the nuances involved in calculating support for your child(ren).

- **Is it possible for a father to get custody?**

It is absolutely possible for a father to get custody of their child. The paramount consideration the court looks to in all child custody controversies is the best interests of the child. South Carolina abolished the Tender Years Doctrine which gave mothers a preference when awarding custody of young children.

