

When Money Runs Low: Options for Our Clients

Q. HELP! I'm not even near the end of my case, but I'm at the end of my money! My mom says that she won't finance my divorce case any more, and I have no money of my own - my husband took it all.

A. First of all, before we talk about letting the law firm withdraw or other options - let's see if there's really no money. Are there any credit cards, which are available? Other family members who might help out? Funds in the house equity, which can be "pulled out" through a refinance or a home equity line?

Q. But if I try to get money out of the house equity, won't my spouse have to sign? Can the court order him to do so? Are there other options?

A. Sometimes the court can enter an order for "interim allocation." This would free up some of your marital funds when they're in the hands of the other side. You first locate funds, which are marital. That means, in general, that they were earned during the marriage, such as a savings account, investments (stocks, bonds, mutual funds), CD's, or - if you're willing to take a hit on taxes and penalties - retirement assets (e.g., 401(k) account, IRA). Equity in the home might also qualify. Next, you file a motion for interim distribution, asking that the court award you all or part of the asset containing the money. Then you calendar a hearing and, once the case is called, you make your case. If the judge grants the relief you've requested, then you'll be able to spend your own money, not your mother's, on your divorce case. Of course, the judge will require that you be credited with those funds when the final hearing on property division (or settlement) takes place. In effect, you've just gotten "an advance" on your final settlement.

Q. What if there are no liquid assets lying around - just a house, the land and the furniture and vehicles. There's just too much case for the money! I'm down to my last \$1,000 in the law firm trust account. I have no credit cards and I can't get a loan.

A. In that case, the option that most of our clients choose is a consent for the firm's withdrawal. This might be called the **Clean Break Option**, since it allows you to let our firm go before the account goes into the red; the last thing you need is to be owing money to one more person or business.

Q. Please explain about the **Clean Break Option**. What does withdrawal involve?

A. In a case which is not in litigation - one that's only at the negotiation stage, with no lawsuit filed - then you can write to your attorney and instruct him to stop work on the case and that you no longer wish to employ him to assist you on your case. That's all it takes. If, on the other hand, you have a case which is pending in the courts, you'll need to sign a withdrawal consent, so that your attorney can file a motion to withdraw. The withdrawal consent merely states that you agree with the attorney's petitioning the court for withdrawal. The withdrawal is complete upon the judge's signing an order allowing withdrawal.

Q. Are there any complicating factors?

A. Here are two:

- If the motion to withdraw is done shortly before the trial, the judge might not allow withdrawal since it's so "late in the game."
- And - of course - one big complicating factor is that you'll be representing yourself from now on. This can be a very unpleasant experience if you have skilled counsel on the other side. Judges are not permitted to "help you out" when you have no attorney. A *pro se* litigant - one with no attorney - is treated the same as one with an attorney.

Q. Can't the firm keep working on my case? I know that I'll eventually get some money!

A. While some firms may extend credit to their clients, that's not our practice. As a small firm, we have to rely on every case paying its own way to allow our employees, creditors and landlord to be paid each month. Even one case falling behind can create problems. Lawyers are not permitted to tell their clients that we will continue to work on the case although the client has no funds left. How would you feel if your boss told you to keep working every day, but your paycheck would not be there for a couple of weeks (or months)? The lawyer's responsibility is to work hard, completely and diligently for the client. The client's responsibility is to cooperate in preparing the case, in providing funds, and in locating witnesses. Both sides - attorney and client - have to meet their respective obligations. We ordinarily expect that our trust account balance for each client will have sufficient funds for at least two months' anticipated work.

Q. Well, let's talk about other options. My account has at least \$5,000 in it. Can't we see if there are ways that I can get some help from the firm, but not at the "full-bore" litigation rate?

A. Yes, there's another way that the firm could help by withdrawing from the litigation case and then helping you "on the sidelines." This might be called the **Coaching Option**.

Q. How does the **Coaching Option** work?

A. Once we're "off the case" (no longer appearing as your attorney of record in the litigation), we can assist by providing you information on how you can handle the case yourself. For example, we can -

- Advise on responding to motions that the other side files
- Suggest ways to obtain information (such as documents) from the other side through a "document request"
- Tell you what to do when the other side serves interrogatories on you, demanding that you reply with the answers under oath
- Give you information on how to conduct a hearing or trial
- Outline the questions you might want to serve as interrogatories on the other side
- Provide information on what to do if the other side refuses to answer your questions or turn over documents

Give you advice on what the law requires and how the courts operate, especially regarding the Local Rules for Wake County, which have extensive requirements for disclosure of documents and production of information in financial cases.

Q. But you don't understand! I just want my case *over with!* I want it done. I don't want to be in court any more, and I definitely don't want a "do-it-yourself" solution.

A. Well, the final option that we could discuss is called the **Quick Conclusion Option**.

Q. How does the **Quick Conclusion Option** work?

A. When there are sufficient funds in the account (and we're not talking about only \$1,000!), then the firm can try - and the emphasis is on TRY - to get the other side to agree to a quick settlement of the outstanding issues.

Q. OK - tell me more. It sounds simple and easy!

A. It can be relatively easy if there is only one issue on the table, such as a motion for increased visitation. Whether you're asking for it or resisting it, there are probably some compromises, which can be worked out. We've learned that it's a lot easier if both of the parties meet at the same time (but not necessarily in the same room) to work things out and to print and sign a settlement, whether it's an amendment to the separation agreement or a consent order for the judge.

Q. Can it get complicated?

A. Yes, it can - either when there are multiple issues at stake or when the issues are few but complex. It can also be difficult when the client is very attached to a particular outcome, such as

First Example: Sally wants the house, but her husband, Bert, demands that it be put on the market and sold immediately so that he can pull out his one-half share of the money and use it to buy a new home. Unless Sally has the financial resources to refinance the house, there is NO simple answer, which will come close to pleasing both sides. Someone will have to back down! If your funds are about to dry up, then you will probably have to be the one to give in and allow the other side what he or she wants.

Second Example: Bert demands joint and equal custody of the child, Johnnie. Sally is adamantly opposed to this. "He doesn't deserve it" is her first response. "He didn't lift a finger to help with caring for our son during the marriage, and he shouldn't be rewarded now, after the separation, when he's finally decided to step up to the plate and *be a good dad.*" In addition, Sally feels strongly that it will be confusing and harmful for Johnnie to spend half of every week or every month in two different homes. Bert is just as insistent that they ought to give it a try, and that it will be the best solution for Johnnie, who can have two involved parents instead of just one. Once again, there's no good answer to this. You cannot make both parties happy with any solution that is proposed. Someone will have to sacrifice. If you're coming to the end of the funds, then that will probably be you.

Q. But that's just awful. That's not fair. Why should I have to give in?

A. That's the main problem with the **Quick Conclusion Option** - it often involves a "quick and dirty" solution to a complex problem, and that usually requires that the one who is out of money - our client - make sacrificial concessions to obtain an end to the dispute.

Q. Are there other problems with the **Quick Conclusion Option**?

A. Yes - there are several -

— First of all, there must be enough money in the till to enable your attorney to conduct the negotiations to quickly wind down the dispute. This is, unfortunately, neither easy nor fast. Once the other side realizes that you are desperate, it'll be like a shark that smells blood in the water. The other side will realize that the longer it's dragged out, the better chance for more sacrifices by you! Rather than proceeding to a quick resolution, sometimes this approach just winds up prolonging the dispute and placing other demands for concessions on the table.

— We often need to hire a mediator to bring the parties together and bring the case to a conclusion. That can be very beneficial in "attitude adjustment" for the parties, in calming them down, and in pushing them and nudging them to a conclusion that is quick and complete, even though they might feel it is a "cut and run" solution which is totally unfair. However, engaging a mediator takes time and costs money.

Q. Are there any other options available to me when the money is about to run out?

A. Not that we've been able to discover. If there are no funds available through interim distribution, then the client ordinarily selects the **Clean Break Option** and consents to the withdrawal of the attorney from the case. If there is sufficient money left, we can always assist on the side with the **Coaching Option**. If the client is willing to make major concessions in order to finish the case, then we can attempt to negotiate a settlement through the **Quick Conclusion Option**.

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Thank you to the Law Offices of Mark E. Sullivan for sharing this with our firm.