

Should I file for divorce before my spouse?

My wife and I have both realized that divorce is inevitable for our marriage. Do I benefit by filing before she does, or does it matter?

We notice this is a common topic during our consultations when assisting those who haven't filed yet. Aside from certain circumstances, we never recommend rushing to file for divorce. On the other hand, situations involving the threat of [physical harm](#) to you, your children, or property usually warrant moving as quickly as possible with the process.

A divorce filing is usually viewed as, "it's now me vs. them". The typical perception held by most is if you file for divorce first, then you solely desired the split of the marriage and therefore you're the bad guy. This portrayed image is troubling for most, and causes hesitation with filing even when it's acknowledged that the marriage is over. The other popular perception with being the first to file (as the "petitioner") is extra power that the individual holds during the process.

With the two common perceptions mentioned, most people want to know how the court or judge views each party as it relates to the title of petitioner and respondent. So, is there a strategy behind going first, or waiting? The answer depends on what you consider advantageous.

Filing first to obtain an advantage on jurisdiction or location

Venue: Let's assume you live in Contra Costa County and [consult with an experienced divorce lawyer](#) here. You're ready to file but decide to hold off because your wife lives in Los Angeles. The difference in this scenario is that if she files first, it's likely that the case will be handled in Los Angeles. This is a huge inconvenience for you, as you'll have to find an attorney down there and become burdened with travel back and forth. Let's say you decide to file here in Contra Costa County and you file before she does – the situation is reversed and she is left with the inconvenience factor.

Jurisdiction: The power the court has in allowing your case to proceed and make orders. Let's say you've lived in California for 4 months. There's a 6 month residency rule in order to file for divorce. However, you can [file for legal separation](#) before the 6 month period if you file first. Most aren't aware of this angle, and it can prove itself an advantage.

Potential danger to your children

If your children are in physical danger or the potential exists for abduction, waiting to file is a bad idea. The family law system has the ability to make immediate court orders regarding your children if their welfare or safety is in danger. Your family law attorney must be quick and driven in seeking these child custody orders. Time is of the essence because if your spouse abducts the children (or

is a threat to their health or safety), waiting to file has several negative implications. If your spouse takes the children and flees to a different county or state, you'd be forced to file in another city or county in attempt to get the children back. To further the consequences of waiting in this scenario, the family court that handles the location where your kids were taken may not perceive your allegations seriously because you didn't act immediately after realizing the danger they were in.

Danger to assets or property and the need to file divorce first

Any experienced family law attorney can tell you numerous stories related to cases where the husband or wife has drained bank accounts, sold property or valuables, or disappeared with community money.

In majority of these cases, there are warning signs and red flags associated with this potential behavior. We've worked with clients who readily identified these behaviors in their spouses, but didn't heed our advice to file right away. As expected, money and property ended up missing. Their decision to wait cost them a lot more time and money in order to pursue resolution as part of the divorce process.

Bottom line

The idea of filing for divorce can be scary and unnerving, taking most people out of their day to day comfort zone and familiar lifestyle. It presents a lot of unknowns. The decision should only be a serious consideration if the relationship has truly ended and the parties have invested best efforts to maintain the family. As we've mentioned before, every situation is unique and you might have additional questions about the timing of when to file. [Feel free to contact us](#) and we'll be happy to guide you on the best route during this difficult time in your life.