

**Divorce Done Right**

By Richard T. Gallagher, Jr.

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## **Who is GWP?**

Gallagher, Westholz & Potter is built on on a strong foundation of friendship, knowledge, and mutual respect. Partners Ricky Gallagher and Thad Westholz have been friends and colleagues since 1987, and Ricky has been a mentor to Andrea throughout the early years of her practice.

Together, the colleagues and friends seek to provide their clients with the experience that only comes from years of practice. Regarded as leaders in their fields, Gallagher, Westholz & Potter will represent your case with the dignity and justice it deserves.

## Why Did I Write This Book?

My name is Richard Gallagher and I have been an attorney for 23 years. In 2000, my son Thomas was three years old and my daughter Brittany had just been born. I was working at a large, prestigious law firm in New Orleans, Louisiana. I was considered by many a rising star at this firm, and the firm showed its appreciation by giving me bonuses every year. But I was not raised as someone who thought that money was the same thing as caring.

I found myself spending more and more time working at the law firm. Because I was fearless and aggressive, I was often asked to do depositions and hearings that other attorneys did not want to do. Things were going well at the firm, but I was not happy.

I overheard my son telling a friend of his that his father came home after dark. I knew that I was working many weekends as well, so I was not spending as much time with my family as I wanted. I also looked around at people I knew. The ones who were partners in big firms such as the firm I worked at were not happy. You see, when you work at a big firm, that hard charging pace does not end when you make partner. It gets worse. Much worse. I also looked around at who were self-employed. Many of them also worked hard, but almost uniformly they were happy. So my decision became clear. I would start my own law firm.

I opened my own firm on August 1, 2000. Like any other new business owner, I was scared at first. How would I get cases? How would I feed my family? (My wife did not work). Would I be forced to do work I did not want to do? Would I be forced to represent clients I did not want to represent?

Thankfully, while there were tough times, none of my worst fears came true. You see, I spent many years on “the other side of the fence” before starting my own firm. I spent years defending doctors, insurance companies, business owners, and the State of Louisiana. Other attorneys recognized that this experience “on the other side of the fence” was valuable and began sending me cases. Soon, my caseload was filling, and I was able to select those cases and clients whom I wanted to represent.

You may be asking yourself, “why would a successful attorney bother writing a book on divorce?” First, I know it sounds like a cliché, but Gallagher, Westholz & Potter enjoys helping people. This is not the first time that we have agreed to help people for free. If you look at our testimonials, many of them come from people who **never paid a dime**. I also give lectures 3-4 times a year, and I never receive payment for these lectures. This is my way to help young attorneys. In my younger years (in other words, before I had kids), I volunteered to coach trial team at Tulane (we came in 3<sup>rd</sup> in the Nation, one of my proudest moments). So I have a long history of helping people for free. This book seemed to me to be the perfect way to help a large number of people relatively easily. Does it take a long time to draft a book like this? Yes it does. But it is a small price to pay for the number of people who can benefit from reading this book.

Another reason I wrote this book is that I want to answer your questions before you call my office. I have found in my years of practice that many times, I get asked the same questions again and again and again. And you do not even have to talk to me! You are probably sitting in your own house, comfortable, reading this book and educating yourself about your divorce.

**What this book is NOT:**

Before I give you the information, I need to tell you what this book is not. **THIS BOOK IS NOT LEGAL ADVICE.** To really educate you on divorce law regarding would take a book much thicker and more complicated than this one. This book does not do that and cannot give you legal advice. This book also does not replace a competent attorney. You cannot expect to read this book and be able to handle your case alone. If you do have a case, you will need an attorney to represent you. If you do not hire an attorney and work your case by yourself, you will probably get a terrible deal, and waste a lot of valuable time.

## **How Can You Afford a Divorce?**

Many of you many be stay-at-home moms or dads. You haven't worked outside of the home for years and you really don't have any income. You may be reading this late at night, thinking "I'm stuck." Well, you aren't. It isn't going to be easy, but you have options. Gallagher, Westholz & Potter offers Guaranteed Fees to select clients. This means that you know **exactly how much your legal fees will be before you hire us**. Most law firms quote you an hourly rate, and ask for a deposit, or "retainer" up front. We do this too for some clients. But for select clients, we are able to offer a "Guaranteed Fee."

This is how it works.

1. Call our office to set up a meeting with one of our lawyers to discuss your case. The lawyer will listen to your story and ask you questions about your case.
2. The lawyer will then quote you a fee for your case. You can either accept the Guaranteed Fee, or **you can decide** to pay the traditional hourly rate for our work.
3. If you agree to the Guaranteed Fee, we will put that agreement **in writing**. The written agreement will clearly say that your fees for your divorce will only be the amount in the agreement. Unfortunately, the Guaranteed Fee does not include other costs, like filing fees or copying costs. The Bar Association does not allow us to guarantee those costs. But you will know exactly how much our legal fees will be for your divorce.
4. Also, we may even allow you to pay your legal fee over time. In some cases, we have offered clients 6-9 months to pay their fee.

We feel that this is the best way to make sure **all people**, regardless of income or status, have a chance to have great representation in their divorce.

## **How much will this divorce cost me?**

By far, the most frequent question we are asked is how much the divorce will cost. At Gallagher, Westholz & Potter, we completely understand why this is important. It is bad enough that your family is breaking up. It is bad enough that you are going to see your kids less than you did before. It is bad enough that you are going to have two households to pay for. On top of that you have to pay an attorney.

With this in mind, we offer two options to try to make it easier for you to afford your divorce.

1. The first option is a ***Guaranteed Fee***, which we discussed above. This means that we would quote you a fee at the very beginning of the case. (Note: fee is not the same thing as costs; costs are paid separately as they are accrued).
2. The traditional hourly method of billing, which most firms do. Gallagher, Westholz & Potter bills in .1 increments. This means that each time you call us, we will bill you at least a .1 (six minutes). We will also keep track of our time at hearings, during meetings, preparing for hearings, and any other time we work on your case. You will be billed an hourly rate, which will differ for each attorney and/or paralegal working on a case. We typically bill monthly for these services.

Regardless of which system you choose (and we will discuss these options further if you are allowed to meet with us) understand that the Gallagher, Westholz & Potter will work with you so that we can all accomplish our goals. Of course, we need to be paid for our work. But we truly understand the difficult financial situation you are in. So, we will work with you to the best of our ability to accomplish your desires within a reasonable budget.

## **What's the First Thing I Should Do If I'm Considering a Divorce?**

- The first thing you need to do if you're definite about getting a divorce is you need to be prepared. You have already taken the first step by going to our web site. In addition, you need to be financially prepared for the divorce. This means that if you have joint accounts, you should take out half of the money from those accounts. Keep this cash in a separate account that you control. This way your spouse won't be able to take out money and leave you unable to support yourself.
- Second, if you are going to move out of the house, find a place to live. As we've mentioned in other lessons, the divorce process is expensive, and the process of setting up an entire separate household often pushes families over the brink financially. You may want to consider living with a relative for a period of time until you figure out exactly what's going to happen with your finances.
- Third, gather all of your important documents together. You may want to make copies of them so that your spouse can have them as well. These documents include all financial documents, bank statements, credit card statements, brokerage account statements, or any other document related to your finances. This would include insurance policies. Courts require you to submit tax returns, so make sure that you have copies of your tax returns going back at least two years, preferably five. Some courts also require proof of income, so you may want to make copies of your most recent pay stubs.
- Fourth, if you have a will, you will want to revise it. The Gallagher Law Firm offers this as a free service to all of our clients.
- Fifth, you should close all joint credit cards, in writing. This will prevent your spouse from running up huge credit card balances while you are going through the divorce process.

Remember, you own everything together unless you have a prenup. This means that any debt that your client incurs during the divorce proceeding is your debt as well.

## **How Will Divorce Affect My Kids?**

One great resource available in many parishes is a parenting class. The parenting class will help all members of the family, husband, wife, and kids, understand and cope with the divorce process. We have found these parenting classes to be a fantastic resource and very helpful to especially the children in coping with the divorce process. Jefferson Parish requires that families attend these parenting classes. But even in places where they're not required, we strongly recommend that our clients attend these parenting classes. The instructors will explain to the children that the divorce is not their fault. This is the primary thing you want your children to know: it's not their fault. It will be more helpful coming from an authoritative figure, such as a teacher, rather than from the parents themselves. These classes are relatively cheap (\$25.00 per person who goes to the course).

### **Should I Let My Spouse Visit Before the Judge Orders Visitation?**

Another question we are often asked is whether our clients should let their spouse see the kids before the court decides visitation. Our answer is that it is best for both parties to work together and make the divorce process, including visitation, as easy for the children as possible. Remember, the courts are putting the kids first. Your concerns as a spouse are inconsequential compared to the welfare of your children. What this means is that it is best for you as a spouse to work with your partner with regards to visitation. Be reasonable. We know that there are often very strong emotions involved. You might not want to talk to your spouse, you might not want to see your spouse, and you certainly don't want to do anything to make your spouse's life easier. But for the sake of your children, you need to put this aside. We all know that it is very important for children to have a relationship with both their father and their mother. Accordingly, go out of your way to do what you can and encourage a relationship between your kids and your spouse. If this means letting your spouse have visitation before the court decides what the arrangement's going to be, so be it. Remember, put your kids first.

Now, there is one exception to this rule. If you have a legitimate, real fear that your spouse might abuse your children, you need to seek a protective order immediately. There are very few true emergencies in divorce cases, but this is one of them. Either you by yourself or with the assistance of an attorney should petition the court and ask for a restraining order prohibiting your spouse from seeing the kids. Know that you need strong grounds for this protective order.

## **Can My Spouse Take My Kids Away?**

The basic answer to this question is, unless you are abusive or a pedophile, no. We can't tell you how often a husband who is emotionally abusive to a wife, and who also earns all of the income in the family, will threaten his wife with taking the kids away. The husband will say that the courts will look at his income and say that the kids are better off with him, because he earns more money. THIS IS NOT TRUE. Courts are smarter than this. They realize that kids need love and affection, not money. So who earns the most income in the family, who the breadwinner is, is really irrelevant in the court's decision as to who the kids should stay with. In fact, courts most often like the parents to share custody. This shared custody can take any number of forms. For example, the wife could have the kids Monday and Tuesday, the husband could have the kids Wednesday and Thursday, and the parents could split alternate weekends. If the husband works a lot, the wife might have the kids during the week, and the husband would have weekend visitation. The variation on this visitation schedule is vast, typically, the parties try to agree on this and make sure that it is best for everybody. If the parties cannot agree on it, the court will listen to everybody and try to do the right thing. But the bottom line is, unless you are a really bad person, your spouse cannot take your kids away.

## **What is the divorce process?**

The first step in filing a divorce is to file the petition for divorce. This is basically a document that you send to the court telling the court what you want. You have to tell the court certain factual information, such as when you were married, whether you had kids, how old the kids are, and when you separated. You also have to ask for what you want in the divorce. For example, if you want spousal support, you need to ask for it. If you want child support, you need to ask for it. If you want a certain type of visitation or custody, you need to ask for that as well. All this document does is put the court on notice of the fact that you want a divorce and the other issues involved in the case.

After that, the court will take numerous steps to decide the issue set forth in your petition. Different courts do this differently. For example, in Jefferson Parish, they use hearing officers. The hearing officer will decide how much spousal support you receive and how much child support you receive. If you disagree with the hearing officer, you can always appeal to a judge. In other courts, the judge will decide all of these issues himself or herself. Once issues such as spousal support, child support, custody, and visitation are resolved, you are ready to actually be divorced. If you have children, you must be separated for one year before you can be divorced. However, if you have already been separated more than a year before you actually file for divorce, you can ask for what is known as a 103 divorce. This basically means that you have already been separated for a year and you are ready to get divorced quickly. If you have not been separated for a year with kids, then you need to file a 102 divorce (unless you can prove adultery, which is the subject of another lesson). In a 102 divorce, you must wait the full year before you could ask the court to sign a judgment saying you are officially divorced.

An additional issue that will have to be decided is the property settlement. This can be done a number of ways. The parties can agree on how to divide the property. Or, the parties can ask the court to decide. As with most things, it is better if the parties can agree on this amongst themselves.

## **How Does Adultery Affect the Divorce?**

Adultery is one of the most sensitive topics that we regularly face in divorce proceedings. Unless you have been there, it is hard to describe the strong emotional reaction involved when adultery arises in a marriage. Our clients often bring up the fact that either they or their spouse committed adultery. Our clients mistakenly believe that they need to assert fault in order to get a divorce. This is no longer the case in Louisiana.

Adultery today plays a very minor role in a divorce. In fact, the only place it will come in is if one of the spouses asserts or seeks final spousal support. One way to avoid final spousal support is to allege and prove that the spouse asking for final spousal support was at fault in breaking up the marriage. One way to prove fault is to prove adultery. This is almost the only way that adultery will have any legal consequence on your divorce proceedings. We completely understand that when adultery occurs, it is a hugely significant factor in your life. However, its role in the divorce is minimal.

A second way in which adultery can affect your divorce is that it may allow you to seek a divorce more quickly than you would otherwise. For example, if you have children from your marriage, Louisiana law requires you to wait one year from the time you were separated before you can get a divorce. If you can prove that your spouse committed adultery, the courts allow you to skip this one year time period and get a divorce much more quickly. Understand, however, that proving adultery is not as easy as it sounds.

**My spouse lives in Louisiana, but I live in another state. How can my spouse sue me in Louisiana if I don't live there?**

The bottom line answer to this is they can. Louisiana law allows any of its residents to get a divorce in Louisiana. To be a resident of Louisiana really depends upon your spouse's intent. This means that if your spouse can show that they have lived in Louisiana for any period of time (even a few months is sometimes long enough), if your spouse can show that they vote in Louisiana, if your spouse can show that their driver's license is in Louisiana, and other similar proof, then your spouse can get a divorce in Louisiana. You cannot prevent the Louisiana divorce by arguing that you've never set foot in Louisiana. It really doesn't matter to Louisiana courts. The marriage goes with either spouse. So if the spouse is in Louisiana, then the marriage is in Louisiana and your spouse can get a divorce here.

### **Am I entitled to alimony?**

Louisiana does not recognize alimony. Instead, Louisiana law provides for two types of spousal support: interim and final.

Interim spousal support is money provided to one of the spouses during the divorce proceedings. The purpose of interim spousal support is to allow a spouse to seek a divorce without fear that their standard of living is going to decrease dramatically. With this purpose in mind, the court's attempt to maintain the standard of living the spouse enjoyed during the marriage during the divorce proceedings. This means that the courts will look at what the family spent during the marriage in trying to calculate the amount of interim spousal support. Interim spousal support may last six months beyond the date of the divorce. For example, if you have kids, you must wait 12 months to get a divorce. So, if you and your spouse separate on January 1, 2018, and you filed divorce on January 2, 2018, the soonest you could get divorced would be January 3, 2019. If you asked for interim spousal support, you would receive \_ and your spouse made significantly more income than you did, you would receive spousal support during the divorce proceedings (in other words, from January 2, 2018 through January 3, 2019). You may also continue to receive this interim spousal support for six months after the divorce is final.

## Can I Live in the House?

One question we are frequently asked is who has the right to live in the house. A better question might be, "Can I afford to stay in the house?" Many people don't realize the financial strain a divorce puts on a couple. So many of us now a days live from paycheck to paycheck. Once a divorce proceeding starts, one party will have to move out of the house and set up new living arrangements, whether with friends, family, or in a separate apartment. This means that instead of the couple paying for one household, they are now paying for two. If a couple is living paycheck to paycheck, they often can't afford to do this. So one important consideration right off the bat is to make sure that you can afford to stay in the house. This is not an easy decision, but it is better to face this decision before you decide to file for a divorce, rather than wait until you get into the divorce and realize that you cannot sell your house.

If you decide that you do want to stay in the house, the court has a number of options in deciding who gets to stay. If you are a mother and have small children, the court is likely to allow you to stay in the house and require your husband to get a separate home. If you do not have children, the court will more often than not allow the wife to stay in the house, but it depends upon a number of factors. One factor would be who makes the most money and who can best afford to pay for a separate apartment.

All of this assumes that you own the house jointly. Basically, Louisiana is a community property state. This means that whatever you buy during the marriage, both the husband and the wife own equally. It is important to understand that it does not matter "whose name" an asset is in. If during your marriage your husband puts \$2,000.00 into an account in "his name" the wife still owns half of the account. So, if you bought the house during your marriage, chances are it is a joint property and each spouse owns half. This can be complicated, however, if there is a prenuptial agreement. This can also be complicated if one of the spouses used separate property (for example, an inheritance or property which the spouse owned before the marriage) to buy the house.

Please keep in mind that the judges in our jurisdictions are human beings. They understand the difficulties of going through a divorce and they will make their best efforts to try to ease the process as much as possible. They are going to try to do the right thing.

## How Do I Pick The Right Lawyer?

Of course, I think my firm offers a great service to our clients. But here is what I would look for in a lawyer.

- 1. Responsiveness.** The number one complaint people have about their lawyer is “My lawyer never called me back.” We constantly hear this from clients who have already started the divorce process with another lawyer. And I once had this problem as well. But I solved this problem by doing something no other lawyers I know do. If you call my office to speak to me or one of my lawyers, **you will be given a phone appointment to talk to that lawyer.** This is just like meeting the lawyer in person but it’s over the phone. You will not have to wonder if the lawyer got your message or whether the lawyer will ever call you back. You will know exactly the time and date of the return phone call. This eliminates phone tag because both you and the lawyer know exactly when the call is to take place. This also allows the lawyer to be prepared for the call. Just tell the person making the appointment what you want to discuss, and the lawyer will be ready to answer your question(s) during the call.
- 2. Efficiency.** Does your lawyer do things as efficiently as possible? In most cases, you are paying your lawyer quite well for his or her time. (The exception is our ***Guaranteed Fee*** - you are paying us fairly, but you are **not** paying for our time) How does your lawyer spend that time (and your money!)? Does your lawyer nickle and dime you for every phone call? Do you call your lawyer and get charged for an update? Does your lawyer sit in court on your case, work on another case, and bill for both?

Keep in mind that the “billable rate” is not the only thing that decides your bill. You may think that a lawyer who bills at \$150 per hour is cheaper than a lawyer who bills at \$200 per hour. Right? Wrong. If the \$150 an hour lawyer takes 1 ½ hours to prepare a Petition for 102 Divorce, but the \$200 an hour lawyer takes only 1 hour, the “cheaper” lawyer cost \$225 for the Petition but the “expensive” lawyer only cost \$200. So the efficiency of the lawyer effects your final bill much more than the billable rate.

- 3. Experience.** How good is your lawyer at what he or she does? Has your lawyer handled this type of case before? Does your lawyer know the area of law? There are really two things to look at with a lawyer’s experience: how well does he do the things lawyers do, and how well does he know the area of law. The things lawyers do that require skill and practice are writing, arguments in court, and depositions, for example. The area of law would be divorce law, personal injury law or medical malpractice law, for example. If you are selecting a divorce lawyer, you should look for a lawyer who not only understands divorce law, but also someone who can argue in court, write a coherent brief and take a damaging deposition. To see if a lawyer knows the area of law, you can ask them questions and see how they respond. Understand that no lawyer knows everything about any area of law, but they should be able to answer most question. To see whether a lawyer knows how to do the things lawyers do, you can ask to see some of their work. I will send you copies of depositions, trial testimony and motions, all of which highlight my work. I understand that you may not know whether what I did was good or not, so I will explain why I did what I did and what I accomplished.

**4. Personality.** You have to like and trust your lawyer. You and your lawyer will be spending much time together working on your case (Please do not think you can give your case to your lawyer and your work is done - it's not). You do not want to spend time with someone you don't like. I like to say about people "I could have a beer with that guy." This means I like someone enough to sit down and casually talk to them - not business but personal talk.

Some lawyers will talk to you and spend time with you on your case. Other lawyers rush you in and out of their office like they don't have time for you - if you can even get in to see them at all. Or maybe they talk on their cell phone when they are meeting with you. This type of behavior is unacceptable. You should expect your lawyer to work with you on your case, to spend time with you answering your questions.

### **So What Do I Do Now?**

Now that you have some information about divorce, you have a decision to make. I can't help you with that decision. You need to decide whether you are ready to get divorced, or not. I spent eight years being taught by the Jesuits, so I am not about to say you need to get a divorce. But I also live in the real world. Sometimes, marriages don't work. Sometimes, everyone will be happier once the marriage is over. Sometimes, you know in your heart divorce is the right move. If you have reached that point, give Gallagher, Westholz & Potter a call and we will be happy to help you. If you call us, we promise to help you get through the process as easily as possible.

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