

Life After Love Gone Wrong – A Fox Rothschild Family Law Podcast Series

Episode One: Breaking Up Is Hard to Do

Featuring: Sandra Fava and Katherine Nunziata

Sandra Fava: Hi, welcome to our podcast. We are so excited to launch our inaugural episode of “Life After Love Gone Wrong,” a podcast about all the tough questions people face as they are contemplating and going through a divorce.

Katherine Nunziata: This podcast has been our brainchild for a long time and we are thrilled to see it coming to life. The topics we are going to discuss in each episode are questions and concerns that come up over and over again from our clients. We are really happy to address these topics in a fun, informal way for anyone out there who is facing this big life decision, or for someone who is already in the middle of a really difficult process of going through a divorce.

Sandra Fava: We are going to get into some pretty deep and emotional topics, so before we start asking you soul-searching questions, it’s only fair for you to know a little bit about us. My name is Sandra Fava and I’m a lawyer and partner in the New Jersey Family Law practice group at Fox Rothschild. I’ve been practicing family law for almost 15 years, and what I love about my practice is that no two cases are the same because every family is unique. Clients come to me because I bring innovative solutions, effective strategies and compassionate counsel to the table. I love what I do and it comes through with each client I serve. I have been recognized by my colleagues, peers and clients as a “Top Leading Women Entrepreneur,” a “Top 50 Women in Business,” and a “Trailblazer” in the area of Family Law.

Katherine Nunziata: I always tell clients that every divorce is a fingerprint, and that you have to approach every one with a fresh set of eyes because every personality involved brings a new layer to the case. But, is it safe to say, Sandra, that in your 15 years of practice, you’ve pretty much seen it all?

Sandra Fava: I’ve helped hundreds of clients, both as an attorney and in my role as a mediator, so it is safe to say that it takes a lot to surprise me nowadays.

Katherine Nunziata: And I’m lucky that we get to work together and I can learn from your experiences and bring a fresh perspective to the table. My name is Katherine Nunziata and I’m also a Family Law attorney at Fox Rothschild in New Jersey. I have been practicing Family Law for three years, and I’ve learned to roll with the punches, because there is never a dull day in family court. For that reason, I work really hard to help our clients stay out of court when they can and be in control of their own destiny when it comes to divorce. I’m a people person by nature and

it's great to connect with people and help them navigate a difficult process and time in their life, and make it a little easier and less mystifying.

Sandra Fava: Speaking of mystifying, it's no secret that this is a podcast about divorce – so today we are going to start at the very beginning with the first question you should be asking yourself if you were drawn to this podcast: should you get divorced?

Katherine Nunziata: So, we have all heard all of the lawyer jokes under the sun and know that sometimes we get a bad reputation, but we want to be clear that divorce really has to be your last resort.

Sandra Fava: We have clients that come in for consultations all the time and we say to them: have you talked to your spouse? Have you tried therapy? Would you consider couples counseling? There are a lot of options to explore before you think about filing for divorce.

Katherine Nunziata: And the only exception to this is if you are in a situation involving domestic violence, which deserves an episode all to itself. If you are in a relationship where you, or your family, are being subjected to abuse, there is absolutely no reason for you to stay in the marriage and you should get help immediately and make a plan for a safe exit from that relationship.

Sandra Fava: Yes, 100 percent, that is the exception to the rule. Otherwise, you should really think long and hard about whether divorce is the end of the road for you and your spouse. I've had many clients jump the gun and file before they were absolutely certain about what they wanted to do. I can tell you that it ended up costing them a lot more time, money and stress.

Katherine Nunziata: We just handled one of these not too long ago.

Sandra Fava: We had a client who came to us in the middle of her divorce. I'm sad she didn't come to us from the beginning because we would have absolutely told her to weigh her options before pulling the trigger on filing a complaint for divorce. Her first attorney did not do that and she ended up filing a complaint with the family court to get her husband's attention and let him know she was serious. Basically, they were fighting because he stopped being affectionate and then got behind on their family bills. She tried to get him to be the man she married, but she couldn't get through to him. It was clear when she came to us that even though she was almost six months into the divorce, she really still loved him and didn't want to divorce him. She just wanted him to honor his financial obligations to their family and thought that filing for divorce would make him take her seriously.

Katherine Nunziata: It didn't help that her husband also did not want the divorce and would send her love messages and flowers, and promise her everything under the sun, only to fall

short in the eleventh hour and not live up to his promises. The back and forth went on for months, She'd get all ramped up about divorcing him, tell him off, ask us to file a motion and then she would change her mind once it was filed.

Sandra Fava: They would break up and make up almost daily. The problem is, once a case is filed with the court, the court doesn't care about the day-to-day changes of hearts. Deadlines come and go and the court will require you to show up periodically and prosecute your case. The court doesn't have time to sit around and wait for you to decide what you want to do. Every time they'd change their minds, the attorneys would have to communicate and get up-to-speed, ask the court to extend deadlines or postpone appearances, and it ended up costing the parties time and money to figure out they ultimately wanted to stay together.

Katherine Nunziata: So what other options did they have?

Sandra Fava: Well, a relatively simple way to buy yourself some time and figure out what you want to do is to execute what is called a cutoff agreement, or agree on a marital terminal date with your spouse. For purposes of alimony and equitable distribution of assets and liabilities, the court looks at a date when the marriage ended. In New Jersey, for examples, the day one party files a complaint for divorce is the marriage end date by default, meaning that the duration of the marriage is artificially stopped on that day, even though you're not divorced yet. When you look at dividing assets and liabilities, by default, you are dividing them with values as of the date of that complaint. In some cases, that date can be very important – like if you know an asset is going up or down in value in the near future, you may want your cutoff date as soon as possible, or delayed as long as possible. In the former case, that might make you want to file your complaint right away to preserve that date. However, a cutoff agreement is essentially an agreement between you and your spouse to use a certain marriage end date without having to file a complaint.

Katherine Nunziata: And the advantage of that is that you don't actually have to get the court involved, while keeping the same date. Because once you file in court, you start getting scheduling notices from the court, having to file certain forms and paperwork, and having a judge keep an eye on your case to make sure that it's handled efficiently and as quickly as possible. The courts want to open and shut cases as quickly as they can, and sometimes it's nice to create some breathing room for yourself while you decide what it is you want to do. The cutoff agreement is the best of both worlds in that respect, but it's important to consult with a lawyer so you know if that is a good strategy for your specific case.

Sandra Fava: Something similar that I get asked about a lot are reconciliation agreements. These are essentially for people that want to stay married but have terms in writing about their respective marital obligations. These are generally not enforceable in New Jersey, so you have to proceed with caution if someone brings this up to you. Same goes for separation agreements, because in New Jersey, there is no such thing as legal separation. I know there is a lot of

confusing information on television and on the internet about these topics, so it's even more so important to consult with a lawyer in your state to know what you can and cannot do in this regard.

Katherine Nunziata: OK, so let's assume that you've looked at all of your options. You've done some soul searching and you decide, yes, I'm 100 percent certain that I want to get divorced, Now what?

Sandra Fava: Timing can be a critical factor. We already mentioned that things like alimony and equitable distribution are influenced by the length of the marriage. In New Jersey, the length of the marriage is just one of many, many factors that go into this. So I won't say timing is everything, but it's pretty important. In New Jersey, the court is going to look at the marital standard of living to determine alimony. The court is going to look at your income and your spouse's income to determine alimony, child support and it could even influence how assets and liabilities are divided. So, if there was a big change to anyone's income, or the standard of living, this is something to consider.

Katherine Nunziata: So, things that you want to consider are whether you're up for a bonus, or expecting an inheritance soon, or maybe you're changing jobs. Maybe you have a milestone birthday coming up and you just need to make a big change at what feels like a significant point in your life. A family court is a court of equity, so there are no bright line rules when it comes to timing, but considering these issues may have an effect on the outcome of the issues in your divorce.

Sandra Fava: Another common timing consideration is with custody and child support if you have children. In New Jersey, custody and child support are only an issue in your divorce for your un-emancipated children. Emancipation is a legal term, so it's not a magic event on your child's 18th birthday, but if you know your child is about to be emancipated, that may affect when you want to file. Your child's entry into college is another big life event that may affect your decision of when to file.

Katherine Nunziata: So, once you figure out that you do want to get divorced and you know when you're going to do it, you have to take the necessary steps to prepare. This can be tricky and depends on the dynamic of your relationship with your spouse.

Sandra Fava: The first thing you should do is consult with a lawyer. I can't stress this enough. They can help you figure out the timing issues and explain what you need to do to start the process. If you want to do a cutoff agreement, or ask your spouse to go to mediation first, or even just write a letter to say you have counsel to let your spouse know this is happening, your lawyer is the first person you need to speak with. We will do a whole episode on mediation because it's such an important topic. But regardless of whether you want to try mediation or go

right to filing a complaint, or even something in between, you have to prepare yourself for what's to come and your lawyer will help you do that.

Katherine Nunziata: And you know your spouse best. When they find out that you want a divorce, what are they going to do? Breathe a sigh of relief? Fly into a rage? Cry and beg to get you back? Maybe this is a long time coming and it can be totally amicable. Maybe your spouse will be blindsided. Maybe they'll be devastated, or maybe they'll be angry and vindictive. You are in the best position to predict their reaction and plan accordingly.

Sandra Fava: The other thing to remember is that pre-divorce everyone is going about their married lives, depositing their paycheck, paying bills, leaving their login information saved on the family computer. When you announce you want a divorce, all of this may change. This is a really important consideration if your spouse has some financial advantage over you, whether it's that they are the primary breadwinner or they manage all the household bills, or they access to certain information that you don't. All too often, we see the situation where one spouse says they want a divorce, or goes ahead and files a complaint, and all of a sudden, credit card access is cut, income is diverted to a separate account, and bank accounts are drained or money is moved. Retirement account statements that used to be left on the kitchen table, or filed in an unlocked cabinet, are now missing. For the spouse with less financial leverage, this is a terrifying experience. It doesn't happen every time, but it happens a lot. You have to prepare yourself for the worst.

Katherine Nunziata: OK, so what do you do? Before you announce your plans, take a quick peek around the house where your financial records are kept. Make a list of all the accounts you find, with bank names, account numbers and values. If you can make copies of statements that you have access to, and then put the originals back, that's even better. And, to be clear, we're not advocating that you spy or hack into something that you don't have access to. But it's a good idea to take stock of what you do have access to, in case the you-know-what hits the fan when you tell your spouse that you're leaving them. Except for cash under the mattress, pretty much anything that is kept in a bank account or in any kind of account is traceable. So rest assured that your lawyers can probably help you uncover all of the assets and liabilities. But it helps to know what you're looking for.

Sandra Fava: Alright, so you have a plan, you've talked to a lawyer, you've done your homework, how do you pull the trigger? This again depends on your spouse. If you think that sitting down at the kitchen table and calmly announcing your plans will result in a difficult, but rational and calm conversation, go ahead. If you think the news is best to come from you, but might make everyone emotional, you can try to do it in public to prevent your spouse from making a scene, and have a clear exit strategy so you can leave separately and allow everyone time to cool down. Again, if you have a situation involving domestic violence, there is absolutely no circumstance under which you should do this yourself. For some people, they want to keep it professional and businesslike, and they want to news to come from their lawyer. Others think it's

best to simply serve their spouse with a complaint for divorce without any warning. There is no right or wrong way to do this, and it all depends on what is right for your family. This is a really important conversation to have with your lawyer to talk through the pros and cons of each approach, depending on your specific situation.

Katherine Nunziata: So that covers telling you spouse, but the hardest part will telling your children, if you have any. This is again something so personal that general guidance will not work for everyone. But as a rule of thumb, it's important for you and your spouse to be on the same page, or at least agree on a consistent plan for how to do this. It will depend on how old your children are, and the unique dynamic of your family. We always advocate that families seek counseling individually to cope with the divorce process, and this is most important for your children to have a safe space to discuss these issues. You have to plan for the emotional safety of your family during this difficult time. Giving your children access to therapy after they learn of the divorce is the single most important thing you can do to protect them at the beginning.

Sandra Fava: We covered a lot of ground today, and for those of you listening who are on the fence about what to do in your relationship, hopefully we've given you some tough questions to think about.

Katherine Nunziata: And as lawyers, we can't help but make a closing argument. And at the end of each episode of our podcast, we want to make sure that you walk away with our top three takeaways. For this episode, they are:

Number One: Remember that divorce is the last, but not the only, option. Look at why you are considering divorce, and think about whether there are other solutions to your problems that maybe an honest conversation, or counseling, could fix.

Sandra Fava: Two: think about timing and whether it is the right time for you to get divorced. If you need more time to figure out what you want, consider mediation or a cutoff agreement before resorting to litigation in court.

Katherine Nunziata: And three: This is the most important one, talk to a family law attorney. You want to talk to someone in your state who practices family law specifically. Your uncle's college buddy who practices corporate law doesn't count. You need an expert to help you weigh your options, even if you ultimately decide to try something else first, or wait. Knowledge is power, and if you don't know all your options, you can't make an informed decision.

Sandra Fava: We hope you enjoyed this podcast and will tune back in. On our next episode, we're going to discuss those other options besides litigation in more detail. We'll talk about mediation, arbitration, collaborative divorce and all of the considerations that go into choosing an alternative form of dispute resolution. You'll hear our mediation war stories and helpful hints for how to choose these options and then how to prepare for them. If you have feedback or



topic you'd like us to cover, please reach out to us. We'd love to hear from you. We can be contacted at liferafterlovepodcast@foxrothschild.com. Until next time, we're Sandra and Katherine here to help you through life after love gone wrong.