

« FAMILY LAW PRACTITIONERS 2010

From Divorce to Child Support & Everything in Between

By Ashley Cisneros Published Feb 14, 2010

[Add a Comment](#)



From Left: Martin Johnson, Lydia A. Milone, and Nancy Chemtob.

Family law encompasses many issues including marital agreements, adoption and paternity, but the practice is probably better known for areas of divorce, support and custody.

While no one really plans to get divorced, the numbers are clear. According to the Vital Statistics of New York State, there were 127,817 marriages in New York in 2007—and 54,679 divorces.

There are a few things that New Yorkers should know about family law, in particular about divorce. For one thing, citing “irreconcilable differences” doesn’t fly here.

“New York is the only state left that requires grounds for divorce,” says Nancy Chemtob of Chemtob Moss Forman & Talbert, LLP.

Grounds include cruelty, abandonment (including “constructive abandonment” which happens when one spouse refuses to engage in sex); imprisonment for three years or more; adultery; conversion of a separation judgment or conversion of a written separation agreement.

Divorce is costly for everyone, even high net worth clients.

“No matter how much money a person has, expenses seem to rise to meet his or her income,” Chemtob says. “In many cases, affluent clients have obtained wealth by owning a company, so there are not just W-2s to be taken into consideration, but businesses to be divided.”

In New York, advanced degrees, professional licenses and private practices are considered intangible assets that are distributed in a divorce.

Financial concerns have always affected when a person files for divorce, Chemtob says.

“Depending on which spouse it is, a person may file before or after an anticipated bonus, for example,” she says. “In the past two years, incomes have become so deteriorated, that many couples are waiting to get divorced.”

Due to the challenging economy, some New York courts are becoming more lenient in allowing

individuals to renegotiate divorce judgments or settlement agreements when the payer's or recipient's financial circumstances have changed, Chemtob says.

In addition, couples that discover that they cannot afford the terms of their prenuptial agreements are drafting postnuptial agreements.

A COLLABORATIVE APPROACH

In addition to being financially expensive, divorces are emotionally costly, says Lydia A. Milone of Bodnar & Milone LLP.

Milone practices matrimonial law using both the traditional litigation model and collaborative law, a process designed as an alternative to court.

In a collaborative law setting, a team consisting of attorneys, a neutral financial advisor, a neutral mental health specialist and the clients work together to reach a settlement in an open, respectful way.

"The collaborative attorneys still represent their respective clients, but work to achieve one goal for the family," Milone says. "If a spouse leaves, he or she can't hire the same attorney used in the collaborative process to pursue litigation. This tends to keep both parties at the table."

Collaborative law is different than mediation. A mediator is a deal broker, and is not there to advise either spouse, Milone explains.

"Collaborative law is not for everyone, and there are some cases that need traditional litigation due to the psychodynamics and attributes of the case," Milone says.

Collaborative law is not necessarily less expensive than traditional litigation, but can quicken the process and make it smoother for everyone involved, including the children, Milone says.

THE CHILDREN

Custody matters can be one of the most emotionally-charged aspects of a divorce, says Martin Johnson of Johnson & Cohen, LLP.

"Challenges arise when parents who are not living together are vying for custody of the child," Johnson says. "This leads to many questions including how long have the parents lived separately? Which parent left? Did that parent make a determination that the other parent was fit to be a better parent? Why did the parent leave the child? Who would be the best parent? Who is the child emotionally and psychologically bonded to? Who is better able to foster a relationship between the child and the other parent?"

Johnson has noticed that custody determination is now more gender neutral, and that more fathers are obtaining custody of the children.

"With two income households no longer an anomaly, but rather the norm, we're seeing more of two parents raising the kids together on a full-time basis," Johnson says. "Courts are becoming more sensitive to that."

Johnson says that child support awards are trending upwards, and will most likely continue to do so as the income cap for child support in New York increased from \$80,000 to \$130,000 on Jan. 31.

A standard formula is applied to a divorcing couple's combined income to determine child support. Before the change, income that exceeded \$80,000 was negotiated separately in regards to child support. Now, a couple's combined income up to \$130,000 is subject to the same standard formula to determine child support.

Next: Seyfarth Shaw Litigator Richard M. Reice

Start the Discussion - [Add a Comment](#)