

Up Close

DIVORCE BUSINESS

Divorce process can be complicated course to navigate

Family Court Clerk's office provides Kentucky-specific forms to help guide divorcing couples

BY CARY STEMLE | CORRESPONDENT
Send comments to cgreer@bizjournals.com.

Although it is generally agreed the economy has slowed the rate of divorce, petitions for dissolution of marriage have not stopped completely, and there's no reason to believe they will anytime soon. Some couples are so ready to get away from one another that 10 Great Depressions could not stand in their way.

Here's hoping that doesn't describe you. But if you're facing the prospect of ending a marriage, whether that pending process is amicable or rancorous, and you don't know the first thing about it, there are logical places to begin, said Louisville attorney Diana L. Skaggs, who has focused her practice on divorce for nearly 30 years.

First, she said — echoing the view generally held by legal experts — hire an attorney. Skaggs suggests getting referrals from friends and family or a family attorney who has helped with estate planning, for example.

The Internet is a good resource for finding and studying attorneys, she said.

The American Academy of Matrimonial Lawyers is another reputable resource, Skaggs said, because it has stringent membership criteria. Lawyers listed there have passed a written exam on family law and other types of law that intersect with family law.

Handled in family court

In Kentucky, divorce proceedings are heard in family court, in which a single judge handles all of a particular family's matters. Jefferson County Family Court began as a pilot program in 1991 and was the state's first. In 2002, voters in all 120 counties endorsed an amendment to make fam-

ily courts permanent statewide.

Ten justices compose Jefferson County Family Court, and each gets 1,800 to 1,900 new cases a year, said Judge Stephen George, who oversees Division 9 and also serves as the Chief Judge in Family Court.

Besides divorce, family courts mainly handle three other dockets: paternity, domestic violence and neglect and abuse. George said the justices allot about half of their docket time to divorce and post-divorce cases — anything that comes back before the court, such as motions to change child support or visitation schedules, for example. Most divorces don't go to trial.

Generally, George agrees that parties in a divorce should hire professional legal representation because the proceedings are complex.

Nonetheless, he said, a significant number of people choose to represent themselves even if they can afford an attorney.

"It is who we are as a society," George said. "WebMD gets 30 million hits a month. We do our home improvement research online and go to the big box stores to get what we need."

But that self-reliance has created a mess. Many self-represented litigants (the legal term is "pro se") get legal forms from libraries or online but don't realize family law is state-specific.

Tired of seeing litigants waste the court's time with improper paperwork, George helped lead an effort to create a packet of Kentucky-specific forms. It is available for \$10 at the Family Court Clerk's office.

For those on a budget — and in a cooperative mindset — there are several online divorce sites. Louisville mediator Mark Stein owns and operates OurDivorceAgreement.com. For \$149, the site walks users through

the divorce process and a mediated settlement.

"It gives couples all the options they'd have in my office," Stein said. "It's a series of self-guided forms that leads them toward a comprehensive agreement and suggests things that will help reduce conflict later."

For example, he said, a frequent post-divorce conflict comes when one spouse commits a child to an extracurricular activity without the other spouse's knowledge — often on days the other spouse has custody. Stein's process stipulates that neither spouse should do that without the other's consent.

Looking for compromise

In a divorce proceeding, the primary issues are spousal support, child custody and child support, distribution of property and division of debt.

Regardless of the issues involved, Skaggs said, the goal in any divorce is to reach a settlement out of court and avoid a protracted fight.

Sometimes the parties come to a quick agreement without hiring experts such as business valuers. Skaggs typically advises clients to hire outside experts only when she thinks it will positively impact the client's financial settlement.

Divorcing couples often enlist a mediator. Collaborative law, in which the parties are represented by attorney but agree to negotiate an out-of-court settlement, is growing in popularity. (See related article on page 10.)

Mediators are not required to be attorneys, but in the current trend, most are, George said. Roughly 70 percent of cases settle at mediation, he estimated, and he said the court would be overwhelmed otherwise.

Instead of scheduling trials within two months, he said, which is the norm, it would take eight months or more to get a case started if all divorce cases went to trial.

Kentucky formerly required at least two hours of mediation, but that law recently changed. Judges still can order mediation, and George frequently does, but he typically leaves it to the attorneys on who to enlist.

"I prefer the lawyers to tell me because they know their clients' personalities better and who'd work best," he said. "A lawyer who may be good mediator in a property case or main-

DIVORCE | NEXT PAGE



RON BATH | BUSINESS FIRST
Louisville attorney Diana Skaggs said the goal in any divorce is to avoid a protracted fight.

TIPS FOR NEGOTIATING A DIVORCE

Louisville attorney Diana L. Skaggs, who focuses her practice on divorce, said two-thirds of her caseload involves financially complex cases in which the spouses own a business or several businesses.

She offers the following advice about divorcing in these circumstances.

- Hire an attorney, even if the divorce is amicable. A good lawyer will help you get the agreement on paper and follow up on issues that could come into play later, such as confusion over pension or 401(k) plans.

- Mediate. Trials are expensive and, because the judge decides, the parties lose the ability to negotiate. Examples of matters best negotiated outside of court include college tuition, life insurance plans, weddings and bar/bat mitzvahs.

- Remove emotion and remember that a divorce settlement is basically a negotiation.

- Therefore, be creative. For example, if one spouse will receive maintenance, which is the accepted term for alimony, and there's a business or businesses involved, it might make sense to negotiate a higher maintenance level and lower the business value.

- Maintenance is tax deductible to the payor and taxable to the recipient, so if the payor is in a higher tax bracket and the recipient in a lower bracket, take the opportunity to create cash flow at Uncle Sam's expense.

- Along those lines, parties might agree to wait for a better time to sell a business.

- Also, if the couple own several small investments that are difficult to sell, such as an apartment complex or minority shares in a business, the investments can be combined under a limited-liability corporation.

- Don't start dating until the divorce is final.

- If you can't wait, be discreet. |

Businesses owned by divorced couples can survive when parties set aside grievances

BY CARY STEMLE | CORRESPONDENT
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When a couple owns a business together and gets divorced, attorneys typically advise against trying to remain business partners.

"If they can't get along as a couple, it's hard to see how they'll get along as business partners," said Diana L. Skaggs, a Louisville attorney who handles numerous high-value divorce cases.

But, Skaggs noted, the current economy makes it hard to sell a business. Because credit is hard to come by, it is difficult for one spouse to buy out the other. Third parties who may want to buy the business face the same challenges.

If that's the case, there are other ways to go, Skaggs said. Couples who own a small business can remain co-owners and enlist a neutral board of people whom they trust and who have business sense.

The couple may agree to a buy-out deal that's contingent on certain conditions in the future.

Last year, Business First reported about

one former couple that has defied the odds. John and Vicki Hale, who established the Louisville gourmet grocery store Lotsa Pasta in 1982, before they married, divorced about six years ago but split the business 50-50. Both remain involved in the day-to-day operations of the St. Matthews shop.

In that article, John Hale said they "owed it to (their children) and ourselves to remain business partners."

"And to everyone involved in this store," Vicki Hale added. "If you enjoy the business, then you make it work."

A woman who works in retail, who asked that her name not be used, voiced similar thoughts. Her parents started the business and remained business partners after a divorce. More recently, she and her husband have divorced but remain involved in the business.

"I will tell you from my own experience that mature people who are willing to place the good of their family and their financial security above their own petty grievances can work things out," she said in an e-mail. "And that is the underlying reason why our business has survived two divorces."

"If you enjoy the business, then you make it work."

VICKI HALE
Lotsa Pasta

Mediation, counseling important parts of the process

DIVORCE | FROM PRECEDING PAGE

tenance case may not be as good in a custody case."

Sometimes the parties reach an agreement on some aspects but need the court to settle others. George cited a recent case in which the spouses settled nearly everything at mediation — two pieces of real estate, a significant business and other assets — but could not agree where their children would attend school. That was settled in court.

Skaggs strongly encourages clients to use mediation because it saves money and gives them a say. Family court judges have wide discretion. "If you go to trial, the judge has the final say, and you lose the ability to compromise," Skaggs said. "You have no control over the outcome, whereas you would in mediation."

Look out!

Divorce is so common that it's easy to forget that it is invariably emotional.

It has been said that criminal court is populated with bad people — criminals — on their best behavior, while family court features basically decent people on their worst behavior.

Those in the divorce field can only shake their heads at some of the abhorrent things they see, such as couples using their children as wedges in negotiations.

Skaggs will balk at representing any client who is getting divorced but is not in counseling, and she won't represent anyone who lies to her.

A typical problem she sees arises when one spouse begins dating before the divorce is final. She has seen negotiated settlements fall apart because of it.

George sees some spouses who are caught completely off guard by the divorce and might try to stop it. It cannot be stopped, and he usually will cut through any delay tactics by setting court dates.

When litigants put their children in the middle, George will admonish them, though he admits it often falls on deaf ears. In custody cases, he will challenge parents: "Do you love your children more than you hate your spouse?"

And, noting that children are the "casualty" when their parents downgrade one another, he added: "Kids have the right to believe their mother is best mother in world and their dad is the best dad in the world. If that's not true, they will figure that out. They don't need the other parent telling them that."

BY THE NUMBERS

Kentucky marriages (per 1,000 people)

1990	3.5
1995	12.2
2000	9.8
2005	8.7
2009	7.6

Kentucky divorces (per 1,000 people)

1990	5.8
1995	5.9
2000	5.1
2005	4.6
2009	4.6

U.S. marriages (per 1,000 people)

2000	8.2
2005	7.6
2009	6.8

U.S. divorces (per 1,000 people)

2000	4.0
2005	3.6
2009	3.5

Kentucky marriages (total number)

2007	33,351
2008	33,928
2009	33,422

Kentucky divorces (total number)

2007	19,743
2008	19,690
2009	19,931

SOURCE | NATIONAL CENTER FOR HEALTH STATISTICS' VITAL STATISTICS REPORT