

GRAY AREA: Divorces among 50-plus pose new obstacles for attorneys

By: Erika Strelbel, erika.strelbel@wislawjournal.com June 15, 2016 9:37 am



Garrick Zielinski of Divorce Financial Solutions works from his Milwaukee office on June 7. He says that of the roughly 1,500 divorce cases he and his colleagues take on every year, the bulk involve couples who are 50 years old or older. (Staff Photo by Kevin Harnack)

When it comes to divorce, it's not enough anymore to know the ins and outs of child custody or the complexities of the law governing property divisions.

That's especially true for the quickly increasing numbers of couples who are seeking "gray divorces" — meaning they are 50 or older and trying to end their marriages. Between 1990 and 2010, the divorce rate among Americans in this group doubled, according to a report that Ohio's Bowling Green State University released in 2013.

Garrick Zielinski of Divorce Financial Solutions, a firm in Milwaukee, says that of the roughly 1,500 divorce cases he and his colleagues take on every year, the bulk now involve couples who are 50 or older.

"It's been an explosion," Zielinski said. "We internally refer to it as an epidemic. It's something I haven't seen in 30 years."

It's a trend that Milwaukee family attorney Susan Hansen has also noticed over the past 10 years, making itself felt both in the work she does at her law firm and at the family mediation center she recently opened. The demand for divorce seems greatest among couples who have been married for more than 25 years, she said.

"Part of this is that people are living longer," Hansen said. "Also, there's an increasing number of both individuals having careers."

Couples that might have found purpose in their marriage when they were raising their children suddenly lose that when the kids grow up and become independent. What's more, older women who see their daughters finding fulfillment in a career might become dissatisfied with their lot as a housewife and seek a change.

No matter the reasons for seeking a divorce, either party's prospects of receiving retirement income often gives rise to a need to untangle various matters involving tax and business law. Financial planning becomes only more indispensable.

"The focus of a 30-year-old is more on the now," Hansen said. "If there are children, it's providing for children, whereas for those in their 50 and 60s, the focus is less now and more long-term: Will I have adequate financial resources to meet my living expenses, not just for the next year but for the rest of my life?"

There are several ways that people who are 50 or older tend to go about divorce differently than younger couples. Above all, the older a person is, the more attention he is likely to pay to Social Security benefits and 401K and IRA accounts and other retirement benefits.

Some of the biggest questions concern how retirement income will be divided up. The upshot is that it's not only

help with the divorce that's needed, but also a good measure of financial planning.

"These cases are the most intellectually interesting because you're taking all of these disparate financial pieces and trying to help not only your own client but the couple create a financial plan that's livable and sustainable for them long after their divorces," Hansen said.

Hansen said it's crucial to become adept at spotting flaws in clients' plans. To do that, lawyers who work on gray-divorce cases should make it a point to always gain a thorough understanding of their clients' finances.

Beyond that, divorce attorneys should become familiar with the workings of pensions, annuities and other fixed sources of income, said Zielinski. Pensions, he said, are particularly tricky because they are governed by rules that change often. And the various options that might be offered by a particular plan can trip up the unwary.

As is true for any sort of legal practice, lawyers working with gray divorces should be on guard against malpractice. Zielinski said the biggest trap is so-called qualified domestic-relations orders, which stipulate how retirement and pension plans are to be divided.

Sometimes, these sorts of orders are written up without language meant to protect a former spouse should the other partner in a now-dissolved marriage die. These sorts of omissions put surviving partners at risk of losing a lot of money.

Lawyers who fail to make sure such language is included thus expose themselves to claims of malpractice.

Other complexities of gray divorces have led Hansen to regularly turn to certified financial planners for help in the cases. Professionals of that stripe are particularly useful in making accurate valuations of assets and doing financial projections and analyses for clients.

"I'm working much more with a variety of financial specialists so that the clients really have an understanding that it's not just divide by two and walk away," Hansen said.

She works with Zielinski to make sure her clients are not only aware of their financial alternatives, but also that they aren't making costly tax mistakes or leaving money behind because things weren't properly divided or the value of assets wasn't maximized.

She's not the only attorney seeking specialized financial advice for her clients. Zielinski's financial-planning company, which has been designed specifically to be an aid to legal professionals, has around 2,200 lawyers on its client list.

Further complications arise when it's not only a married couple themselves who are going to be affected by a gray divorce, but also their adult children. In such circumstances, many people prefer so-called collaborative divorces or mediation.

Hansen says she is seeing more and more clients who are looking for less adversarial ways of ending a marriage.

"It tends to be a situation where they would rather restructure a family in the least destructive way possible because their adult kids and grandkids will be connected with them for the rest of their lives," said Hansen.

Hansen said people who are 50 or older should above all keep in mind that, at least in one way, the stakes of divorce are much higher for them than for younger couples.

"They don't have the next half of their life to recoup from a divorce," said Hansen.

Staff writer Lauren Kirkwood of The Baltimore Daily Record, a sister newspaper of the Wisconsin Law Journal, also contributed to this report.

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