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The **DIVORCE** Issue

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Four of America's most prominent family law attorneys
see divorce becoming more **ACRIMONIOUS**,
more **EXPENSIVE** and more **TIME-CONSUMING**.

Fighting Words

DIVORCE IS HARD ON EVERYONE, but some splits bring complicated and unique burdens that require expert advice—particularly when the financial stakes are high. To gain insight into how to meet these challenges, *WORTH*'s editors invited four leading divorce lawyers to our New York offices for a roundtable discussion. Participating were Sheila Ginsberg Riesel of Blank Rome in New York, whose clients have included Al Pacino, Woody Allen and Geraldo Rivera; John F. Schaefer of The Law Firm of John F. Schaefer in Birmingham, Mich.; Lance S. Spiegel of Beverly Hills-based Kaufman, Young, Spiegel, Robinson & Kenerson, whose clients have included Janet Jackson, Will Smith, Jessica Simpson, Charlie Sheen and Reese Witherspoon; and Morton E. Marvin of Marvin, Ferro, Barndollar & Roberts in New Canaan, Conn.

MODERATED BY EMILY DENITTO PHOTOGRAPHY BY THOMAS HART SHELBY

WORTH: *How large a risk does divorce pose to wealth today versus years ago? For many men, divorce was positive, financially speaking, because the man was the one who brought the money to the relationship and then had more control of it afterward.*

SHEILA GINSBERG RIESEL: Yes, it used to be that title controlled. And at the end of a marriage, if the assets were in a party's name, that party walked away with those assets.

MORTON E. MARVIN: Connecticut was never a title state—at least during my life as an attorney—so title doesn't mean anything these days. But we have some uniquenesses vis-à-vis New York laws. We don't have a freeze date, which you do. We do not value licenses or celebrity status. We do not recognize separate property. We also don't recognize inherited property, though that is starting to change a bit.

RIESEL: That's all the more reason why prenups in Connecticut would be a critical thing for people to think about.

MARVIN: Connecticut passed a premarital statute in '95. And our Supreme Court just came down in a very famous case in which they basically said, "You sign it, we'll enforce it."

JOHN F. SCHAEFFER: Historically, premarital agreements were found to be void if they promoted or facilitated divorce. They were useful in protecting assets in the event of a death, but in the event of a divorce, they were historically found to be—because the law abhors divorce, supposedly—void. That has changed dramatically in the last 20 years.

RIESEL: Exactly. Prenups, certainly in New York, are very honored and accepted. If your prenup passes basic requirements of disclosure and counsel, and no-fraud and duress, it is going to be enforced. You have the opportunity to protect your assets going into a relationship. You just have to be careful not to destroy the relationship before it starts.

MARVIN: That's why I don't like premarital agreements.

WORTH: *Really?*

MARVIN: I am not a big proponent of premarital agreements for young people who are getting married today. I won't do them. I think they are valid for a person who's marrying for the second time, and who has a large estate and wants to protect children and grandchildren. I will consult on them, but I will not do them. I usually refer them elsewhere.

RIESEL: I think when the young children of the wealthy get married, there's a real concern that Mama and Pop or Grandma and Grandpa have about preserving the family wealth in that context.

SCHAEFFER: What do you charge for one of those, Sheila?

MARVIN: Not enough.

RIESEL: I think that's the right answer. I'll be candid and tell you I find them the most difficult agreements to do.

A divorce is easy—the relationship's over; I'm doing the best I can for my client.

SCHAEFFER: We don't have any crystal balls; it's tough. I just charged—I'll admit it—\$50,000 to do a prenup on a very wealthy young man whose father is one of the wealthiest people in the country. I represented the wife, or the wife-to-be. These kids are in their late 20s. Think of the risk I'm taking by trying to forecast how long this marriage is going to last and what she's going to get if it fails.

RIESEL: It's a nightmare. They really are very difficult.

LANCE S. SPIEGEL: Ten, 15 years ago, I litigated a prenuptial agreement. The attorney who represented the wife was on the stand for five or six days. The attorney who represented the husband was on the stand for five or six days. And they can't charge. That story is one I often use to justify why I charge those types of fees.

RIESEL: You've got to report it to your malpractice carrier as soon as you sign off on it.

WORTH: *Is that why you're not interested, Mort?*

MARVIN: No. I'm just not a proponent for youth. I understand what Sheila said about parents and grandparents, and I think there are other ways you can protect those assets. Trust-and-estate planners can protect those assets. That's the advice I give to clients. As you're going into this marriage, are you marrying for love or for money? Take the money aspect out of it, and then you don't have to worry about it.

Like John said, I don't know five years from now whether she should get \$100,000 a week or \$5 a week—and why shouldn't she benefit from some of the growth that's been accumulated during the marriage, notwithstanding that it came from premarital assets or inherited assets? If you're going to take the concept of marriage as a partnership, then the partnership has to have some validity.

SCHAEFFER: If they've been married for five years and he's got \$200 million, she's going to get something.

SPIEGEL: It's an emotional minefield. It turns into an "I would never do that to you" discussion. Lawyers who are trying to protect their clients get blamed for it.

WORTH: *Have you seen it do damage to relationships?*

SPIEGEL: I don't think it's ever forgiven. Traditionally, it's the guy who wants it. I've seen cases where it didn't happen because the conflict was so great, and then, when the

divorce came: "I never forgave him for bringing up the premarital agreement."

MARVIN: I've seen people not get married on account of it.

RIESEL: While I agree with Mort that in the situation I proposed, you can do it another way, there are situations based on New York law where you can't be protected other than in a prenup from valuing an enhanced earning capacity. That's something that really gnaws—that they not only have to divide their accumulated assets, but when you have to pay your spouse out for your enhanced earning capacity, it's really your earning power going forward. You don't have an asset, really, to divide, there's no bank account you can split up.

SCHAEFER: And it's the same assets that generate the income that you're paying the alimony and the child support and all the other expenses out of, so it's truly a double dip.



WORTH: *Would you say divorce has always been an expensive proposition, or has it become more expensive for people of great wealth?*

MARVIN: I think divorce has gotten expensive regardless of wealth. Just what you have to do now to protect your client and what's involved has become a very expensive ordeal. In most of our cases, I assume we're going to have at least one or two appraisers or evaluators involved. We're going to have trusts-and-estates people. The total cost is just rising.

RIESEL: But it's not just cost; even in equitable distribution states, you now divide the entirety of the marital assets. And in a long marriage, where there are children, the likelihood is you're going to divide those assets 50-50, or close to it.

SPIEGEL: In the real world, people cannot afford this kind of litigation. And in the world that probably the four of us live in and practice in, where the resources are available, it tends to become very, very expensive. The complexity of the issues, what we have to deal with versus what the old-timers dealt with in the '60s, it's not comparable.

WORTH: *And the roles of men and women have changed. Isn't the woman sometimes the one with more money?*

ALL: Oh, sure.

SCHAEFER: That's the situation where you say to a woman, "You're going to have to pay your husband alimony."

WORTH: *Is that more common today?*

RIESEL: I'm certainly seeing more and more women being the moneyed spouse. And it's not only the financial cost that they have to come to grips with. When their spouses have become more of the child-rearing caretaker, women who have made substantial wealth are now faced with losing physical custody of their children.

WORTH: *What if there was a nanny?*

MARVIN: Well, you weigh nanny against nanny.

SPIEGEL: Nannies tend to be the best witnesses. They often see what's really going on.

WORTH: *What are some of the other special circumstances for people of wealth? How about access to business contacts and social contacts?*

MARVIN: I find it in the foundations they have established. The foundations are very important assets, because people

"I just charged—I'll admit it—\$50,000 to do a prenup on a very wealthy young man whose father is one of the wealthiest people in the country."

—John F. Schaefer

get tremendous benefits from being involved with them. How you value and divide them can be very contentious.

RIESEL: Country club memberships can also become contentious, because there is often not the possibility of both spouses remaining members.

SCHAEFFER: You run into questions about whether or not a membership is transferable, or whether a court can order a club to transfer the membership to one spouse.

RIESEL: I found the best way to handle it is to divide the assets in the foundation. It can be done from a tax perspective; it's not too difficult and that gives each of them the opportunity to control what's done with the assets.

SCHAEFFER: Sometimes there's a divergence of opinions as to what the goals of the foundation would be. We've seen situations when foundations become a problem, then you can spin off or create a different foundation as part of the equitable distribution.

WORTH: *Do you find people trying to conceal their wealth?*

MARVIN: Sure.

RIESEL: And how easy is it to find assets that have been cleverly concealed?

SCHAEFFER: Boy, if somebody really wants to do it to you, and they have enough time . . .

LEGAL LAND MINES

Beware of these concealed conundrums that often ensnare unsuspecting and emotionally vulnerable litigants.

DIVORCE IS RIFE with hidden hazards. From exorbitant attorney fees to unpredictable judges, divorcing couples become vulnerable to insidious pitfalls, particularly as the emotionally wrenching process clouds their judgment. Below we outline some of the most troublesome areas and provide advice for proactively managing them.

STATE OF CONFUSION Many individuals who file for divorce under the assumption that they are entitled to half of all marital assets are shocked to find out otherwise. Forty-one states, including New York, Florida, Illinois and Pennsylvania, allow only for equitable distribution of marital property. This enables a court to decide how much to award each party according to criteria such as the length of the marriage, earning capacity and contributions to the marriage. This also encourages aggrieved spouses and their high-priced attorneys to argue in innumerable ways over evidence of these factors. In nine states—California, Idaho, Nebraska, Arizona, New Mexico, Texas, Louisiana, Washington and Wisconsin—divorce courts are

bound by community property laws stipulating that spouses equally own all income and assets acquired during the marriage.

DON'T MESS AROUND IN TEXAS Texas remains a community property state: By law, divorcing spouses share ownership of income and assets acquired during the marriage. But the state adds its own twist to the concept: Divorce court judges can adjust awards based on fault, and do not award maintenance (alimony) except in dire situations. Even in these circumstances, Texas enforces a two-year limit on maintenance. But this state's penchant for allowing judges such extreme latitude—call it a cowboy mentality—makes some attorneys cringe.

"If you have an affluent spouse, don't get divorced in Texas," says Connecticut attorney Gaetano Ferro, president of the American Academy of Matrimonial Lawyers, who favors a uniform federal divorce law. "The same case can be decided tremendously different if you file papers five miles to the east or five miles to the west."

BENEATH THE VEIL Hiding assets from the court when divorcing a spouse is illegal, but common. Spouses can squirrel away money in off-shore accounts, disguise liquid assets as interest-free loans and conceal them among bogus business expenses. Most courts will do little to assist the other party in the discovery process. The burden of proof lies with the

accuser, who is often left with the expensive task of hiring forensic accountants and paying additional attorney fees and court costs.

"It's a terribly unfair system in order to get assets presumably rightfully yours," says Penelope (whose name is changed at her request), a former corporate lawyer who was married 17 years before her husband filed for divorce.

While some spouses can afford the high-cost hunt, others may reluctantly decide to cut their losses. "Chasing assets is a process that can take years of emotional strife," Penelope says. "See what you need, try to get that, and be done with it."

Lying spouses rarely face legal ramifications for their subterfuge. Accusing spouses should not expect to be reimbursed for the added fees that come from lawyers, forensic accountants and other professionals. "What a judge will do is give a person what she should have gotten if assets were disclosed," says Ferro, who represented Jane Welch in her divorce from General Electric chairman Jack Welch. "There's no real disincentive for being dishonest. More often than not, there's no punishment."

THE MORAL MORASS The scales of justice do not weigh the damage caused by a spouse who becomes needlessly belligerent during divorce proceedings by filing baseless and vindictive motions. "All it takes is one unreasonable person out of four people,"

WORTH: *How do you go about uncovering that?*

MARVIN: You have to do the tracing routine. We have it, even in a small office like mine. I have a very brilliant woman who's a former Big 8 tax partner. And she's full time.

RIESEL: You need someone who will look at the assets in each of your cases to see if there's been a fall off.

SCHAEFFER: Precisely. We do an analysis; I'm sure all of us do the same thing. You look at the income, the expenses, the assets. If there's an unusual gap, you start searching.

SPIEGEL: One of the evolving areas is electronic discovery. It's just really beginning, and it's going to be enormously expensive. I've heard stories in a corporate litigation context—

millions of dollars are being spent. It's just a matter of time until that's going to get into family law.

WORTH: *What does that mean, exactly?*

SPIEGEL: It means going in, getting court orders authorizing you to go through not only my email, but [my spouse's] email for the last three years, and all kinds of issues.

WORTH: *How does that affect how you counsel your clients?*

SPIEGEL: Often, especially in custody cases, people are so polarized they can't talk, so they're emailing everything to each other. I tell them, "Make sure that you expect a judge is

says Ferro, counting each spouse and the lawyers. "It will cost more money, the process will be more difficult and dealing with the children will be more difficult."

Unethical behavior can drag once-loved ones into an ethical abyss. One party can secretly record telephone conversations, a practice legal in some states. Software clandestinely installed can record keystrokes to expose affairs and pornography habits, and unlock hidden assets and passwords needed to calculate a spouse's true worth. "I ask clients from day one, 'Is your computer safe?'" Ferro says. "Buy a new one, keep it away from your spouse and email me only about procedural matters. It's easy to steal something off a computer. Now there's spyware that you can remotely install via email."

PIGS AT THE TROUGH Unless you have resolved to settle matters between yourselves—Tim and Edra Blixseth, founders of Yellowstone Club in Montana, split their estimated \$2 billion estate before hiring lawyers to execute the deal—each spouse will need a lawyer who will not put his fees above a client's interests. It is essential that clients become educated consumers during this process.

"Lawyers can be persuasive, and clients are generally vulnerable," says Howard Benjamin, a New York attorney who represents clients in divorce proceedings and fee disputes with their lawyers. A former attorney

for the New York Departmental Disciplinary Committee, which investigates and prosecutes lawyers in Manhattan and the Bronx for professional misconduct, he also represents lawyers threatened with disbarment.

Clients commonly switch attorneys when they feel their case is being handled improperly. Likewise, it's not uncommon for divorce lawyers to jettison their clients. The first attorney Penelope hired told her that her husband was too much trouble. Finding new representation can be complicated by attorneys who refuse to take cases in the midst of proceedings. Clients should be ready to cough up another five-figure retainer simply to bring up to speed an attorney who accepts an in-progress case.

"Shopping for a lawyer is harder than buying a used car," Benjamin says. "A used car you can drive around the block and see if it's going to fall apart. In an interview, you can't tell competence from incompetence or laziness." He says another pitfall clients face is that their assets are exposed to the very person who is determining what to charge them. "In what other area of law do clients have to show the value of their home, bank accounts, investments, jewelry and everything they supposedly own?" A divorcing spouse should always talk to previous clients of any attorney they are considering hiring, and avoid relying solely on recommendations from family or friends, a magazine article or a lawyer who does not specialize in divorce.

WATCH YOUR WALLET Clients should not sign a retainer agreement until an outside expert familiar with matrimonial law reviews it. "Clients may read something like, 'Billing in 15-minute increments,' and might not think much of it," Benjamin says. "Do you know how many phone calls aren't 15 minutes long?" In the event of a fee dispute, some lawyers may reserve the right to have a lien put on a home for outstanding bills, although in some states a client can prohibit this tactic. Some states also give clients the right to written estimates of future costs.

Benjamin says the legal system can intimidate even the most successful business people. Clients must become their own advocates and pay close attention. Billing should be itemized and reviewed in detail every month. "Clients should get explanations for anything they don't understand or think is inaccurate on a bill," Benjamin says. "A lawyer shouldn't be billing for time discussing the invoice."

Matters such as the tax ramifications on property sales, maintenance payments and legal fees are often ignored by attorneys on both sides of a divorce. These and other issues must be discussed with other professionals of the client's choosing. Clients should never rubber-stamp the selection of third-party experts to evaluate assets and child custody issues without independently verifying their bona fides. Be especially wary of attorney-recommended experts who often appear before divorce courts. —*Kimi Puntillo*

going to read that email.” I often edit their emails on a regular basis. You’d be amazed what goes on, what they put in email when they don’t get that type of advice, and it’s going to end up in front of the judge at some point. No thought is given to: What if somebody looks at this?

SCHAEFFER: About 80 percent of the time, we can talk until we’re blue in the face and give them the best advice the four of us could muster, and they’re going to ignore us anyway.

WORTH: *Well, it’s so emotional.*

SPIEGEL: People who don’t communicate well in a bad marriage expect that, all of a sudden, they’re separated, they’re at war and their communications are going to improve.

MARVIN: A lot of the damage is done before they even come to see us—the emails between girlfriends and boyfriends, those kinds of things. We just have to tell them that these could be subject to discovery.

RIESEL: Cell phone records. They’re often a killer.

SCHAEFFER: Someone once asked me, “What do you think is the greatest source of business nowadays?” I said the BlackBerry and email.

MARVIN: And it’s all retrievable, everything . . . and now the photographs.

“People need to take swings at one another. They need that opportunity to feel that they’ve had some recompense for the wrongs, the infidelities.”

—Sheila Ginsberg Riesel

SCHAEFFER: I’ve got one that, if it ever hits the newspaper, it will trip Detroit upside down. What these people sent back and forth to each other, you wouldn’t want to look at. There’s nothing really particularly provocative about it, unless you’re a first-year medical student. And this is one of the highest-placed executives in the country.

SPIEGEL: One of the things I’ve learned to tell people is: Don’t inadvertently destroy any of that stuff, because if you do, you can create some major problems. You can lose things on the computer when you don’t want to. If that happens, you can be subject to accusation that you destroyed it.

WORTH: *You mentioned trusts and the role that they can play. Do you ever find that the older generation will establish, say, a generation-skipping trust in advance? Or what’s the timing in terms of what’s allowed?*

SCHAEFFER: If it’s a legitimate trust created by a nonparty to the divorce action, that is what it is. The court is bound by that. If it’s really an irrevocable trust set up for legitimate tax purposes or estate planning, the court’s bound by that. Our court

says that if it’s a trust, it’s irrevocable and you’re a beneficiary of it, to the extent that you have access to that trust’s books and records, you have to disclose them.

SPIEGEL: The cash flow from a trust is up for grabs as far as child and spousal support in California. There’s a recent case in California that said that recurring, regular patterns of gifts from parents could be treated as though it’s income.

WORTH: *What does that mean, recurring patterns?*

SCHAEFFER: It would be similar to a situation if you had a lawyer who’d been making half a million dollars a year and he said, “I can’t practice anymore, I’m 45 years old and I can only make \$50,000 a year.” It’s likely the court would impute the \$450,000 a year of income to him for the purposes of support and alimony.

RIESEL: The courts will do the same with this regular and consistent gift that parents or grandparents have given the spouse during the course of the marriage. If it suddenly dries up, the courts are very suspicious.

SPIEGEL: It’s really unfair in that the parent may want to make it in the context of an intact marriage, when some



of that money is going to the benefit of the grandchildren. But now the supported spouse has got a new significant other, living with somebody else, remarried and this money is going to the benefit of him or her.

MARVIN: I think it's also generational. Today's generation is much more involved. With really significant wealth, you have the family offices that look after all family members.

SPIEGEL: It's also highly, highly likely that grandparents of this generation have been touched by divorce. It's not like 80 years or 50 years ago, where it happened to other people.

MARVIN: Oftentimes the first suggestion of a prenup doesn't come from the parties who are getting married or their immediate family, but as was said, an office manager calls and says, "OK, we got so-and-so ready to do your prenup." "Well, what do you mean?" "Well, we're not going to allow anybody to see the books and records of our company." And then that starts everything spinning.

RIESEL: I think you put your finger on an issue that families of wealth have to deal with: It's not only at the time of the divorce that assets are going to be divided. They're going to have to let the spouse's forensics come into the family business or their own business and muck about in their books in an effort to put a value on it. There are huge issues the business owner faces at the time of the divorce.

SPIEGEL: The business can be held hostage. Key employees can be tied up. Often that's used as leverage to try to extract a settlement. Trade secrets can be exposed.

MARVIN: You're required to sign a lot of confidentiality agreements now, which we never used to do. The problem with those is that they are supposed to be signed by whomever you're outsourcing these things to. And there are more and more people who are seeing these things; if you sign the confidentiality, you get to see the books and records of the ABC Corp. Not even the IRS has ever seen those books.

WORTH: *We talked about prenups. What about postnups?*

MARVIN: A postnup is an agreement that you make after you've gotten married. I don't do postnups, either. That's even worse than a prenup because you're really saying, "Now I'm getting divorced unless you do A, B and C."

SPIEGEL: There's a recent case in California that gives some insight to this subject. Husband had an affair. Wife demanded a postnup. The postnup had a provision that, if he ever did it

again, it was going to be a liquidated damage provision—and, of course, he did it again. They went to court to try to enforce it. The court said, "We're not going to enforce that provision because we're a no-fault state and this is an effort by the parties to inject fault in their marital settlement, so we're not going to permit it." Can't fault her for trying.

WORTH: *Are there any other new tools our readers should consider?*

SPIEGEL: California child support in a high-income context is crazy. It makes no sense. Our system is based upon a computer formula. Basically, you put in Dad's income, Mom's income and how much of the time the kids are with each of them. In the real-world cases it helps, because 99 percent of the time, it kicks out a number that's not enough. But in the high-income context, you put the numbers in, and they come up with child support numbers that are just—\$80,000 a month for child support.



**"I am not a big proponent
of premarital agreements for young people
who are getting married today.**

—Morton E. Marvin

The fight becomes: Is there an opportunity under our statute to opt out of that guideline? And the argument is: Is the person an extraordinarily high earner? And if they're deemed to be an extraordinary earner, then the guideline doesn't apply. An extraordinarily high earner in Los Angeles County may be somebody making \$3 million a year. In another county, it may be someone making \$750,000.

But the new twist is that there's an effort to say that \$80,000 isn't enough. We want to impute additional income, because Dad has a \$9 million art inventory that isn't generating any money. So we want to say: If it was sold and you invested that money, here's a return, and impute additional income.

MARVIN: I don't want to be on the end of that one. Whoo.

SPIEGEL: The pendulum has swung in California in child support. Thirty years ago in paternity cases, Mom and the kids would take a bus across town. Mom would get out, point to the big mansion on the hill and say, "That's where your father lives." And they'd go back to the other side of town on the bus. Now Mom says, "I want the house next door."

WORTH: *Do you find there are more men who want custody today than there used to be? And not just as leverage in the situation?*

RIESEL: I've seen more fathers who have a sincere interest in being an active parent. The courts in New York don't have a

ABSENCE OF MALICE

Couples can manage successful dissolutions only if they prioritize planning and collaboration over raw emotion.

WHEN THE FOUNDER of a successful swimwear manufacturing company and his wife divorced several years ago, they turned not to high-priced divorce attorneys to divide their family business, but to a financial advisor in order to save it. The couple devised a plan to share ownership of the company after their divorce. And although Dan Genter, president and CEO of RNC Genter Capital Management in Los Angeles, worried about the scheme's long-term viability, he knew that, in theory, it was their best option.

Genter crafted a co-ownership agreement out of necessity because most of his clients' capital was in the \$15 million firm. An acrimonious battle over dividing this valuable asset would have jeopardized the entire business. Still, the plan's success hinged on a greater challenge for the couple: the ability to overcome their differences and cultivate a civil business partnership after severing their personal one. Too often, Genter sees a divorce sour communications, which leads to poor business and investment decisions based on resentment and anger. "The biggest mistake we see is when someone is

embittered and decides to sell out of everything," Genter says.

Many divorcing couples intend to maintain a convivial relationship after dissolution of marriage, but intense negotiations and emotional pain often lead to lasting acrimony—particularly in entrepreneurial families whose personal and business affairs are complicated and interlinked. Fear and anger can drive some spouses to rush through negotiations in an attempt to end agonizing debates as quickly as possible. Teresa Dentino, founder of theFinancial411 and a financial consultant in Woodside, Calif., coaches affluent women through the financial analysis associated with divorce. She urges them to slow down. "It's the biggest financial transaction most women will ever make in their lifetime in a high-net-worth situation," Dentino says.

The first step involves education. Dentino encourages her clients to track their family finances. Many times, the so-called nonmoneyed spouse lacks knowledge about household income, assets and even expenses. This creates problems for everyone because the nonmoneyed spouse may suspect the spouse is hiding assets. "If you don't know, you're negotiating in the dark," she says.

One of Dentino's clients, the wife of a CEO, knew her husband earned a substantial income that supported overseas vacations and well-appointed homes. But she had no idea that they were worth \$14 million, Dentino recalls. Such lack of information often

contributes to a fear among affluent women that they will become bag ladies, Dentino says. She helps them overcome this anxiety by estimating their postdivorce costs and establishing a dollar range—from a baseline amount that would cover necessities to a top-line number representing everything the client wants. Parsing these numbers builds confidence and helps during negotiations.

"This is a jaw-dropper: how much it's costing for the overhead of their basic lifestyle. They have no idea; maybe it takes \$25,000 a month," Dentino says. "And in some cases, they have a whole new appreciation of their spouse."

Three years ago, when Dentino's client Patty (who asked that her last name not be published) was divorcing her CEO husband of 27 years, she had been completely unfamiliar with their family finances. With Dentino's help, she mastered the financial basics, enrolled in computer classes and took charge of creating a balanced investment portfolio. Dentino walked her through refinancing a mortgage on the San Francisco-area house that she received as part of the settlement and encouraged her to locate and comprehend financial and investment statements.

"If you don't have those skills, you don't survive very well," Patty says. "When I began my conversation with the attorney, I started with the phone calls and the faxes, and by the time we were done, I was emailing. It was a progression."

presumption of 50-50 the way I believe some states do. I'm seeing more judges recognize that fathers play an active role in the raising of their children. That doesn't end at divorce.

WORTH: *Is arbitration a way some people can avoid divorce? Is there more of that going on?*

MARVIN: Well, you can't avoid it, you just avoid the necessity of having court intervention. But you still have to, in my state, commence an action, even if you go to arbitration, I'm assuming.

RIESEL: There is a movement toward alternate dispute resolution, which is the catchall.

WORTH: *That involves a psychologist and others.*

RIESEL: Or the whole panoply of methodologies of avoiding a court. Mediation and something called "collaborative law" that some of us have been involved in. I think the foundation for looking at these alternatives is the recognition that resolution by a court is perhaps the least satisfactory way to resolve a matrimonial dispute.

SCHAEFFER: The thing that's troublesome about arbitration is, your client says, "Well, I'd like to not have this particular judge hear my case, for a variety of reasons." So you select an arbitrator or three, and when the decision comes down, you're done. The lawyer's taking on huge responsibilities.

While financial education can help a non-moneyed spouse acquire new skills, it may also aid a moneyed spouse and lead to productive negotiations. One third-generation business owner in New York, who asked not to be identified because he is still negotiating with his wife, is frustrated that she cannot articulate what she wants. He proposed she keep their beach house and has offered continued support for her and their two teenage daughters. But he is worried that she will want a share in his family business. In 2003, he acquired his father's share of the firm and has since helped it double annual revenues to \$15 million. Now he fears his company will suffer if she seeks half its value.

"The fact that she feels she's entitled to half of the value of the business that my father worked his whole life at doesn't make sense," he says.

Tapping the company's value could also damp future profits he intends to use to pay his wife maintenance and child support. The business constantly requires more than a million dollars of liquidity to make large purchases, which he won't be able to fund if she requests those assets in a settlement. "She doesn't understand the sales and profitability of the business," he says. "Her only concern at this point is the perks I get from expenses that are funneled through the business—meals or travel."

Couples may well find it impossible to avoid anger and frustration during these

negotiations. But Nancy Chemtob, a divorce attorney in New York and partner at Chemtob Moss Forman & Talbert, whose male clients comprise nearly three-quarters of her personal practice, believes that proper planning can help minimize the emotional and financial toll. Some clients who expect significant bonuses or the planned sale of a business will file for divorce before the anticipated windfall to halt any further joint accumulation of assets. For business owners, Chemtob will hire forensic accountants to establish a valuation for the business or an appraiser to value real property in order to control the process, rather than allowing the court to select an appraiser. She also will encourage the moneyed spouse to describe a spouse's involvement in important business deals. Diaries documenting participation, or lack thereof, are of even greater help.

"What I really want them to do is start thinking about the strategy," Chemtob says. "You need to recognize who your client is. Is your client the one who is making the money or doesn't have the money? Protect the marital assets."

Barbara Shapiro, a certified divorce financial analyst with HMS Financial Group in Dedham, Mass., observes that couples who made equal contributions to marital property find it easier to divide it. One couple, both physicians, decided to split their roughly \$2 million in assets in half. The husband kept the house, but rather than lose

the joint \$500,000 marital deduction on a primary home's appreciation, they negotiated an agreement to continue co-owning the property after their divorce, in the interest of preserving the tax-free gains. "They're looking for resolution that's peaceful," Shapiro says. "Let's do this in a mature, civilized way."

Shapiro, also a trained counselor, encourages both spouses to focus on the future. This helps eliminate vindictive behavior, like that displayed by the husband and wife trying to split \$10 million in assets and fighting over who would pay a \$163 bill to repair a bug zapper. "It doesn't need to be *The War of the Roses*," Shapiro says. "Fighting over a mosquito zapper is just focusing all the anger and angst on an object."

Over time, Genter's clients succeeded in creating a harmonious business relationship; the ex-wife now has an office at the business, which she never had during the marriage. Genter credits their plan for structuring co-ownership with creating a thriving working relationship. The ex-wife received part ownership and developed an agreement specifying equal distributions of business assets, which also permits the husband to continue to make business decisions, as he had in the past. She retains a liquidation interest in the company if it is sold.

Together, they share a financial incentive to make it work. "It was worth a lot more together than split up," Genter says.

—Elizabeth Harris

SPIEGEL: One of the things that I'm seeing more, and this is an expense-related item, is a scorch-the-earth mentality—people who just don't care if nothing's left. Let it all go to the lawyers. That's when the alternative dispute resolutions and the mediations and all of that, you want to try to use those options, especially in those kinds of situations.

Many times cases get to trial because there's a good-faith difference of opinion; it feels clean and you have to do it. Most of these cases can and should be resolved. But when you have a scorch-the-earth mentality, it's impossible.

WORTH: *How do you advise clients when they feel really wronged?*

RIESEL: Get over it, essentially. I think we would all agree that cases come in and you look at the assets and the child-related issues and we could, each of us, without our clients, sit down and settle it that afternoon. But that rarely happens because of the emotional issues. Every case has a life of its own; it needs to play itself out a little bit. People need to take swings at one another. They need the opportunity to have their story told, to get the feeling that they've had some recompense for the wrongs, the infidelities. That's human nature.

MARVIN: Well, I often say that divorce is the death of a marriage and you have to mourn it.

SCHAEFFER: In an actual death, the spouse didn't have anything to do with it, typically—unless she pulled the trigger. But typically, if somebody's spouse dies, there's a grieving process. With divorce, there's a lot of failure associated with that. Ego comes into effect.

WORTH: *You're always having to navigate that, but at the same time try to get beyond it, to calm clients down.*

SCHAEFFER: But you can't do it in a matter of a couple of days or 30 days or 60 days. Sometimes it takes the better part of a year before somebody's ready to move on.

MARVIN: Some courts put a timetable on it. I don't think any divorce can be resolved within a specific time frame. They should never force you to go to trial until the time is right. Lawyers know when the time is right.

RIESEL: I once was only able to settle a case by getting a judge to agree that he would let the wife get on the witness stand to tell her story. She told it in one sentence that went on for 45 minutes. The court reporter was typing so quickly, I thought her fingers would fall off. This woman could not settle until she had an opportunity to tell the story.

MARVIN: One other issue, when you asked if we see things differently. You're seeing a lot more grandparent issues and a lot more relocation issues now.

“I'm seeing more of a scorch-the-earth mentality—people who just don't care if nothing's left. Let it all go to the lawyers.”

—Lance S. Spiegel

SCHAEFFER: There are people who aren't the primary custodial parents who are relocating, and that creates all kinds of problems with visitation, with the ability to be involved in a child's daily life. We're also seeing grandparents' issues. Grandparents still don't have rights to vis-à-vis visitation, and it becomes a problem.

RIESEL: Living as we are in a global world and representing the people that we do, they have job opportunities all over the world. If they are the custodial parent and they have a legitimate reason for wanting to move to Dubai, that creates painful scenarios that require a real Solomon to try.

SPIEGEL: Some family law judges describe relocation as the closest thing a family law judge has to the death penalty. There are a lot of people who say, “I don't need him or her anymore and neither does my kid.”

MARVIN: Alienation now becomes a very popular thing, which is probably one of the most difficult things to prove to a judge, but it has a horrendous impact on the children. **W**

