

Matrimonial & Family Law Reference Guide



Presented by **Steven A. Paquette, Esq.**

*Bousquet Holstein PLLC
Matrimonial & Family Law Practice Group*



BOUSQUET HOLSTEIN PLLC
Formerly known as Green & Seifter, Attorneys, PLLC

Contemplating separation or divorce from a spouse and imagining the next phase of one's life can seem overwhelming. I have listed for you some of the key areas that will need to be addressed, in order to provide some clarity, education and the frame work for a "game plan" as you move forward with the next phase of your life.

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About Bousquet Holstein PLLC

Mission Statement

Our mission is to understand each client's goals and provide innovative and practical counsel to achieve valued results.

Our Beliefs

We believe...

- balance between personal life and professional life is necessary to maintain a life of quality
- in the value of teamwork and we respect each individual contribution
- achievement requires goal setting, hard work and opportunity
- people who feel involved in decisions which affect them are more motivated
- professional ethics cannot be compromised
- in providing the highest quality services
- recognizing change enables us to identify and capitalize on opportunities
- by creating an environment where loyalty is given and received, we strengthen ourselves, our relationships and our organization
- it is our responsibility to contribute to our community and make it a better place for all to live
- open and honest communication will improve our relationships with each other and our effectiveness with our clients

Bousquet Holstein PLLC
Matrimonial & Family Law Practice Group

We distinguish ourselves by seeking solutions best suited to the needs of our clients, whether through pre and post nuptial agreements and enforcement, settlement, collaborative law, or more traditional trial methods. Should a case proceed to trial, we will represent our client's interests with resolve and reason, as we find that this approach often has a positive effect on opposing counsel, minimizing rancor and speeding resolution.

During this emotionally charged process, complications often arise regarding sophisticated financial issues involving such matters as valuation and tracing of assets, closely held businesses, executive compensation and benefits, tax planning, and complex support arrangements. Leading the practice area for the firm is **Steven A. Paquette, Esq.**

We also draw upon the firm's breadth of experience and resources on behalf of its clients through experienced attorneys in our other practice groups, such as **Sharon A. McAuliffe** for **Employee Benefits and Trusts and Estates**, **David A. Holstein** for **Tax Planning & Advocacy, Business Transactions, and Trusts and Estates**, and the members of our **Bankruptcy** and **Litigation** practice groups.

In a divorce setting, these issues must often be determined against the backdrop of significant custody, visitation and support issues. Our child-centric approach ensures that each solution is handled with compassion and as uniquely as the individuals involved.

During our initial meeting, we work together with our client to assess the best method for resolving matrimonial difficulties. Oftentimes, negotiation is better for everyone, but sometimes it is not. We are prepared to negotiate an agreement using traditional attorney driven negotiations, or to enter into a contract to work collaboratively with other trained collaborative counsel. In that setting clients work together with their own attorneys to resolve, through a series of meetings, how their lives can be positively transformed within the realities of changing circumstances. We call on other non-lawyer experts to help with the analysis and transition as appropriate. And the clients together agree upon a final result.

Whenever necessary, we use the court system to resolve disputes, especially where the parties have been polarized by the split in their relationship in a way that may require the help of the courts, or where urgent circumstances do not allow for a negotiated resolution of certain issues.

In all cases, we obtain a fair resolution for both parties and allow all those affected to maintain their dignity.

Steven A. Paquette, Esq. Professional Profile



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Practice

Steven is an experienced litigator who brings over 31 years of practical experience to seek fair and reasoned solutions to client problems. His current practice involves successfully navigating sophisticated divorce and family law matters to a successful conclusion and working with businesses to maximize their potential for success. Steven works with a team of equally seasoned professionals at the Firm to resolve both sophisticated and routine matters economically, expeditiously and fairly, and is skilled at creative problem solving.

Steven worked for 20 years as a partner in a general practice law firm, before joining Bousquet Holstein PLLC (*formerly Green & Seifter, Attorneys, PLLC*) in 2001. His broad range of experiences as a general practitioner make him the perfect point person to work with busy executives in maximizing the quality of their experience with Bousquet Holstein PLLC, and assembling precisely the right team to tackle any problem or complete any task.

Steven is a seasoned litigator who has been repeatedly designated as a **“Super Lawyer”** by his peers. He recently was inducted as a **Certified Fellow of the Prestigious American Academy of Matrimonial Lawyers**. He also has substantial experience in government affairs, having worked in both the public and private sector to assist his clients in achieving their objectives. He has served the public as a New York State Tax Attorney, as a counsel to the Speaker of the New York State Assembly, and as Chairman of the Onondaga County Democratic Committee. He served for several years on the New York State Democratic Party’s Executive Committee and has also served on many occasions as a Special Prosecutor.

Practice Areas

Matrimonial
Alternative Dispute Resolution
Economic Development
Government Relations
Litigation
Real Estate

Education

J.D., Syracuse University
College of Law, 1979

B.S., Syracuse University –
S.I. Newhouse School, 1977

Admissions

- New York
- United States District Court, Northern and Western Districts of New York
- United States Supreme Court

Matrimonial & Family Law Reference Guide
By Steven A. Paquette, Esq.

Professional Profile continued....

Recent Experience

- Recently accepted as a Certified Fellow of the American Academy of Matrimonial Lawyers.
- Successfully advocated on behalf of client in a matrimonial matter who was able to protect millions of dollars in separate property interests from equitable distribution;
- Successfully advocated on behalf of several business owners in various matrimonial matters in order to protect their interest in maintaining their business after divorce;
- Advocated on behalf of several non-monied spouses in high income, high asset cases to assure that the spouse received a fair share of income and assets in divorce;
- Successfully completed several collaborative law matters on behalf of both wives and husbands achieving child centered results without the need for litigation.
- Represents matrimonial matters involving family businesses, professional licenses, sophisticated retirement plans, high income and/or high assets;
- Achieved resolution in dozens of matrimonial and family court matters involving divorce, custody, support and geographic relocation in Supreme Court and Family Court proceedings across the Central New York Region;
- Represents matters where child custody and support issues are involved;
- Won a decision after a lengthy trial regarding validity of Prenuptial Agreement involving a long term marriage and millions in assets;

Professional and Community Involvement

- Certified Fellow of the American Academy of Matrimonial Lawyers
- Super Lawyer, New York Upstate Edition, Family Law
- International Academy of Collaborative Professionals, (www.collaborativepractice.com)
- Central New York Collaborative Family Law Professionals, Board of Directors (www.cnycollaborativepractice.com)
- New York State Academy of Trial Lawyers
- New York State Bar Association
- Onondaga County Bar Association
- Juvenile Diabetes Research Foundation, Board of Directors
- Knights of Columbus, St. Michael's Parish, Onondaga Hill
- Onondaga Community College, Adjunct Professor of Business Law, Faculty Representative Student Conduct Disciplinary Board
- Syracuse University Alumni Association
- The Redhouse, Former Member Board of Directors
- Parish Council, St. Michael's Parish
- Delta Tau Delta International Fraternity Board of Directors
- Delta Tau Delta International Foundation Board of Directors

Recent Publications and Presentations

- Joint Madison County/Onondaga County Bar Association Presentation on recent developments in Matrimonial and Family Law
- National Business Institute Presentation on Custody, Visitation, and Child Support
- Divorce A to Z, National Business Institute
- "Collaborative Law: What it is and How it Works," OCBA website

The Separation and Divorcing Process

Before you may become separated or divorce, you must first choose a process. Different processes are a better fit for different circumstances. It is in large measure a matter of personal choice. Most choices require the cooperation, or at least the acquiescence, of your spouse. Only the last does not. They include the following:

a) Mediation:

Mediation may work best in simple matters, with little by way of assets or liabilities, without complicated child parenting issues, and with low conflict. Skilled mediators may or may not be attorneys. They will not be able to give the parties advice or advocate on behalf of either. They will be skilled at facilitating a conversation between two persons who are able to navigate their own separation or divorce with minimal guidance from legal counsel. Customarily, legal counsel will be involved at the end of the process once expectations and preliminary commitments have already been forged. Visualize a triangle, with the mediator at the point, and the two parties side by side seeking a resolution of all difficulties with that mediator's guidance.

Advantages: Cost, speed, informality, and independent decision making.

Disadvantages: A lack of timely legal advice, the risk that the problems that brought the two parties to the mediation table in the first place may prevent agreement, inequalities of bargaining power, and negotiating talent and strength may tilt the process, commitments may be made without full facts or options being considered.

b) Collaborative Law:

Collaborative law is a process whereby the parties seek a personally satisfactory transition from a married life to two separate lives through collaboration. Where children are involved (no matter their ages), the process becomes child centered. The parties have full voice at the table, but each is guided by their own attorney/advocate, and the process is facilitated by a trained professional. Each professional has been fully trained and is skilled and experienced in the collaborative process. Outside experts may be called upon where necessary in order to inform both parties regarding financial planning, tax issues, or other concerns. Skilled facilitators may assist in the creation of a parenting plan often with little direct attorney involvement.

Collaborative Law continued...

This process may be used without regard to the level of difficulty in the issues at hand, since fully trained experts are always part of the process, but at the same time, the participants have a real voice in fashioning an agreement that works best for their own particular circumstances. Conflict between the parties is not a bar to the use of this method, unless it is so extreme that it will impede one or both of the parties' abilities to be active participants in the proceedings or unless the level of trust is so minimal that the mistrust will derail the process. In picturing collaborative law, imagine a round table, in which facilitator, attorneys, and parties are all actively engaged in seeking solutions resulting in an agreement satisfactory to both parties.

Advantages: Proactive participation in fashioning one's own future, a child centered process to maintain a post-divorce level of communication and cooperation between the parties, the ability to forge creative and novel solutions to the particular issues faced by an individual couple, some cost savings through the avoidance of formalized discovery processes, and the hiring of duplicate experts, the full availability of required information, and a modicum of collegiality and informality to the process.

Disadvantages: The process will not work where the parties are not able to generally communicate with one another with the assistance of a professional facilitator, where there is rampant dishonesty, where one of the parties seeks to "game the process", or where there has been a history of physical violence in the relationship. Also, if the process fails, much of the financial data gathered will be useful in a litigated process, but the parties will need to select new counsel to assist them in the courtroom.

c) Traditional Negotiated Separation Agreement:

Under this model, attorneys are the primary voice, communicating with one another through emails, telephone calls and letters, and occasionally a non-collaborative "four way" to include the parties, hopefully resulting in an agreement that both parties are willing to accept. The attorneys become the voice for the clients, and negotiations are more formal. In the simplest of matters, with little conflict, few assets, and no parenting concerns, this method may be reduced down to the preparation of a proposed agreement in the first instance, sometimes the product of "kitchen table conversations" leading to an agreement acceptable to both parties.

Advantages: Cost, informality, and where the parties are unable to communicate with one another, the avoidance of any direct interaction between husband and wife.

Traditional Negotiated Separation Agreement continued...

Disadvantages: No direct voice by the participants, with communications being had mainly between attorneys, the risk of failure if one of the parties refuses to sign or agree, and often the establishment of an adversarial framework that pushes parties further apart.

d) Litigation:

The traditional method by which two parties divorce is through a law suit commenced in the Supreme Court with the same formality as any other civil litigation. One party sues the other, albeit usually using "no fault" grounds, resulting in the need for the other party to respond to litigation within 20 days. Applications may be brought to the court seeking financial assistance, dictating temporary measures to be established between the parties, prohibiting the change of insurance policies or the transfer of assets during the pendency of the action, and establishing a temporary parenting plan for the parties. Discovery is by direction of the court, is formalistic in nature, and often results in subpoenas, discovery demands, and sworn dispositions by the parties, culminating in either a court guided settlement or full civil trial between the litigants.

Advantages: In high conflict circumstances, where communication is impossible even with the assistance of the facilitator, or concerns of dishonesty run high, litigation, as a formalistic process will force the parties to share information with one another and will give latitude to each party to explore financial affairs and litigate custody and parenting plans. The process will normally be completed within a period of nine months, and some result is usually certain in less than a year.

Disadvantages: Costs, the risk of high levels of animosity, the parties will clearly be "positional" and each looking out for their own best interests only, it may be more challenging for the children if not handled carefully, and will impose a high level of formality into the separation and divorcing process. If the parties are unable to achieve their own resolution, a judge will impose his or her view as to what is best for the family, using existing case law, statute and legal precedent.

Substantive Issues Commonly Requiring Resolution in Separation and Divorce

a. Child Custody and Parenting Arrangement:

Where there are unemancipated children of the marriage, parties will need to determine whether or not the presumption of a joint custodial arrangement should be implemented in their particular case. A parenting plan, which seeks to provide a predictable parenting arrangement for both parties and most importantly for their children, will be fashioned to include regular parenting time, and special parenting time to include holidays and vacation periods. It will be assumed that each parent is equally entitled to custody of the children or to equal time with the children. Practical considerations, including the parties distance from one another, the wishes of the children, the work schedule of the parties, and other factors, may result in a broad variety of parenting arrangements tailored to fit the needs and wishes of each particular couple.

Experts often say that the children of divorce will "turn out well" so long as the parents remain child centered, are reassuring to the children, do not play out their marital difficulties in front of the children, and do not place them "in the middle". A secure and loving separation and divorcing arrangement will signal to the children that they will continue to be "ok". Experts also indicate that it is important for the child to know that *you* will be ok.

b. Child Support:

A figure for child support will either need to be agreed to by the parties or imposed by the court. The Court considers the "first fruits" of your labors to be available to adequately support your children, no matter what other expenses you may have, subject to a self-support reserve. The Child Support Standards Act creates a presumptively correct formula requiring child support based upon the gross salary of the non-custodial parent minus social security and Medicare deductions only, as follows: one child 17%, two children 25%, three children 29%, and four children 31%. Additionally, child care costs related to the custodial parents need to work, medical insurance, and uncovered medical expenses are presumptively borne in pro rata share to the parties' relative incomes. The statute currently establishes a cap of \$136,000.00 in total household income for 2012 which is adjusted annually. This amount is presumptively sufficient to support the children, but which may be varied from based upon a variety of factors.

Child Support continued...

In many circumstances, there will be additional factors requiring consideration. Parties may choose an upward or downward adjustment based upon the period of time that each will spend with the children, the children's special talents or special needs, and the anticipation that the children will attend college.

The support may be paid directly, or through the Child Support Collection Services Unit. There are advantages to each method.

In cases where a 50/50 split is arranged by a parenting plan, the courts will look for that parent earning more money to pay child support to the parent earning less. Remember, however, that the parent who receives the child support is also expected to contribute to the children's care, and to be responsible for using the child support payment coupled with their own contribution for the full support of the children without much additional help from the non-custodial parent.

c. Equitable Distribution of Marital Property:

In order to determine how to equitably distribute property, one must know three things:

- 1) Is it marital?
- 2) What is it worth?
- 3) How should it be divided?

Marital property is, essentially, any property acquired during the marriage unless it is a gift to one party, an inheritance, or the fruits of a negligence settlement, which has not been comingled or transmuted into marital property by the behavior or intentions of the parties. In other words, an inheritance, for example, received by one spouse and always kept in the name of that spouse alone will not be marital property. Where the spouse has chosen to place it in a joint bank account, however, it will usually be determined to have been "comingled" and become marital. All property in existence at the time of the divorce action is presumed marital, and it is up to the party who thinks otherwise to prove that it is not.

Special provisions exist in the law for identifying a non-marital interest in a marital residence, where, for example, a deposit on the marital residence can be proven to have come from non-marital funds. Often times it is difficult after a long term marriage to prove the existence of separate property.

Equitable Distribution of Marital Property continued...

Once property is determined to be marital it is necessary to determine its value. Sometimes the property may be easy to value, or the parties may, in the interests of ease or economy, determine a valuation to be "close enough". Other times experts may need to be called in to value, for example, a marital residence, a closely held business, a pension plan, antiques, jewelry, household furnishings, art objects, or other difficult to value items.

Only when all items of property have been identified, and valued, may an appropriate decision on distribution begin.

The law provides that property will be "equitably divided." It does not say equally divided, but in most instances, particularly where the marriage is of long standing, that is in fact the case. One must remember that assets include all retirement vehicles, including IRA's, 401k, 403b's, deferred compensation plans and traditional pensions. Sometimes, a portion of the asset was accumulated prior to the marriage. An expert will be used to "carve out" the non-marital share. Court orders are utilized in order to allow for the tax-deferred transfer of some qualified retirement assets.

Under New York law, business interests are marital property, subject to the division (often not on a 50/50 basis) even if one of the spouses never had any direct involvement in the business. The spouses "indirect contribution" is considered.

Additionally, under New York law, a license or a degree earned, or partially earned by one of the parties during the marriage may be considered an asset requiring valuation, and requiring distribution of a portion of the asset to the spouse who did not earn the degree or license to (again) recognize that spouse's indirect contribution.

Of course, all other assets to include cash values and life insurance policies, stocks, bonds or other investments, bank accounts, real property, automobile, boats and other "toys" and, essentially, everything acquired during the marriage not subject to an exception, must be included in the distribution process. In most instances, a "Solomon-like" division of each asset is not practical, and so certain assets are passed to one spouse, others to the other spouse, resulting in a fair equitable split *in toto*.

Not to be forgotten is all marital debt. That likewise must be apportioned between the parties, once the debt has been identified, and qualified as marital.

d. Maintenance:

Sometimes maintenance is an important part of the separation and divorce conversation. That is most likely so where there is a substantial disparity in income between the parties, and its duration is often considered in light of the length of the marriage. Where the marriage is of long standing and the disparity in income high, particularly as a result of one spouse having maintained a home and cared for children and otherwise having sacrificed or forgone business opportunities to support the other spouse, maintenance will be appropriately considered.

Currently, the New York State Legislature is contemplating the creation of a maintenance formula or at least maintenance calculation guidelines that will extend beyond divorce.

So far, however, they have offered such a formula for maintenance on a temporary basis only. Tradition sometimes indicates that, where maintenance is required, one might expect to receive a maintenance award which is 15% to 33% of the *disparity* in the parties' income for a period of time equal to a quarter to a third the length of the marriage. Non-durational maintenance may be considered in a long term marriage where the spouse with little or no earnings will have no reasonable opportunity to "rehabilitate" and rejoin the work force in any meaningful way.

Maintenance is sometimes the most difficult part of the process to negotiate or resolve, since it anticipates a contribution by the higher-earning spouse into the future at a time when the division of the parties' resources into two households has already created a strain.

Additional factors to be considered in maintenance calculations and award include the other resources available to the non-monied spouse (through separate property holdings for example), the size and liquidity of assets, the presence of children in the household, and the period of time that it will take for the other spouse to "rehabilitate" and rejoin the work place.

If properly crafted in the agreement, maintenance is deductible by the spouse who pays it, for income tax purposes, and is includable by the spouse who receives it on their income tax return.

The forgoing is in no way intended to be comprehensive, nor will the general guidelines set forth necessarily apply to your particular matter. It is hoped, however, that "information is power", and that by providing you with the information shared above, you may begin to form a plan for your future.

NOTES

NOTES



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