

# LEGALLY SPEAKING

FALL NEWSLETTER 2009

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## THE MODERN MATRIMONIAL LAWYER

The modern term for lawyers who handle divorce matters is “matrimonial lawyers.” It is not really a contradiction as they deal with marriage – the end of a marriage. Some think matrimonial lawyers are only warriors and seeing one means there will be a fight. That is a stereotype born of the conflicts often present in divorce and not a true understanding of the lawyer’s role.

Marriages end for a variety of reasons. Lawyers do not end marriages, spouses do. The lawyer is really helping to lay the foundation for life after the marriage is declared over. Ending a marriage is complex and requires an orderly conclusion. Matrimonial lawyers help divorcing individuals resolve important issues such as custody of children, who will live where, how assets and liabilities are divided, how the parties and their children are going to exist financially.

A number of people having doubts or concerns about their marriage see matrimonial lawyers, but never divorce. Knowing one’s rights and reasonable expectations is crucial for informed decision making. What will ending the relationship really accomplish? Considering all options, is the marriage relationship actually the best alternative? If so, why not try to improve it? Consulting with a matrimonial lawyer helps to guide one’s thinking. Waiting until a crisis to learn about your rights and the process is a mistake, because crises limit options.

Consultations are privileged communications. That means generally that the lawyer cannot disclose any facts learned during the meeting. A spouse may never learn that the other had a consultation with a matrimonial lawyer. Of course, one may feel that seeing a matrimonial lawyer in confidence is a breach of trust, but it may be the best choice between bad alternatives. If a divorce is to begin, the lawyer helps the

party decide how to proceed or how to respond if the process is initiated by the other spouse. Acting in a manner

that promotes an amicable resolution can speed the process and preserve dignity. Ultimately, it is likely that the divorce case will eventually be settled— over 90 percent are. Parties can prevent much distress by beginning with a view toward settling. That does not mean giving in or giving up more than what is reasonable. Experienced capable lawyers will know how best to pursue a conclusion once they master all of the facts. If the lawyers dis-

agree on issues, the courts, in pretrial conferences, or third party mediators, can provide unbiased guidance to resolve disagreements to help reach a complete settlement. Most capable trial lawyers handling matrimonial cases, if at all possible, will explore settlement possibilities first.

There are always cases that require an aggressive approach. The need for protection from abuse, a wrongful removal of a child, or a threat to dispose of family assets call for immediate action. A stubborn uncompromising opposing spouse or

attorney may require that you proceed to trial. If that happens, having a highly qualified matrimonial trial lawyer on your side assures that your case is fully and persuasively presented to the court for decision. The key to all of this is that if someone is having marital problems, see the best matrimonial lawyer within your means. It will prove to be a wise investment.



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“HAVING A HIGHLY QUALIFIED MATRIMONIAL TRIAL LAWYER ON YOUR SIDE ASSURES THAT YOUR CASE IS FULLY AND PERSUASIVELY PRESENTED TO THE COURT FOR DECISION.”

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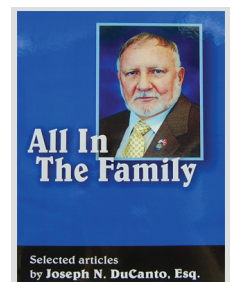
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### JOSEPH N. DUCANTO PUBLISHES BOOK

Co-founding partner, Joseph N. DuCanto, recently published a collection of his writings. His 224-page book, published by the Law Bulletin Publishing Company, contains select articles that

Mr. DuCanto has published over the years, consisting primarily of columns published as a monthly columnist for the *Chicago Lawyer*. These articles, in the main, review family law cases rendered by the Appellate and Supreme Courts of Illinois, comment acerbically upon them, and propound many perplexing questions and issues raised by these decisions. The book is available directly from the law firm upon request. Call (312) 609-5564 to order.



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# GAY MARRIAGE DEBATE

A loud conversation is taking place across America on what marriage is and who it is between. The question strikes at the heart of society, prompting the courts, legislature and church to all speak out on the issue. Presently, six countries legalize same-sex marriage: The Netherlands, Belgium, Spain, Canada, South Africa and Norway.

The nationwide debate exploded in 2003, when the Massachusetts Supreme Judicial Court first declared its state ban on gay marriage unconstitutional. Connecticut, Iowa, Maine and Vermont have since legalized same-sex marriage (as recently as this year), and other states such as New York and New Hampshire are considering letting gay couples marry too. New York does not allow same-sex marriages, but recognizes those conducted elsewhere. In April 2009, the District of Columbia counsel passed a bill allowing it to recognize all legal same sex marriages contracted in other states.

Marriage in Illinois is limited by statute to a man and a woman and prohibited between members of the same sex. In the Spring, Illinois lawmakers were considering a civil union bill (HB 2234), which would give same-sex couples some benefits of marriage, such as hospital visitation, emergency health care decisions and probate rights; it would not legalize gay marriage. Should the civil union bill, which was re-referred to the Rules Committee, ever pass, this will expand



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upon the rights and remedies for committed couples and perhaps ultimately lead, as it did in Norway, to a gender-neutral definition of marriage and legalization of same-sex marriage in Illinois.

In states that do not legalize same-sex marriages, a trend is developing to give certain rights to gay couples, such as health care and employment benefits. As legally married gay couples from Iowa relocate, their rights are expanding in states that do not allow same-sex marriage but recognize marriages performed legally in other states. The issues are also expanding and run the gamut of custody, divorce, insurance, taxes and death benefits. New York recently granted a divorce to two gay men and surviving spouse benefits to another. Maine, two years ago, at a

time when gay marriage was banned, allowed a lesbian couple to adopt the children they had been caring for.

America has made strides toward equality between same-sex and heterosexual unions, but barriers stand in the way of same-sex marriage and, in turn, same-sex divorce.

Same-sex partners and cohabitating heterosexual couples do not have the same rights as married couples in Illinois. However, they can enter into domestic partnership or cohabitation agreements to protect and determine their respective rights in property, custody and support. Family law lawyers at Schiller DuCanto & Fleck LLP engaging in mediation and collaborative law can help individuals arrange an agreement to suit their needs until the law becomes more certain regarding these types of arrangements and rights and remedies upon dissolution.

*Chief Judge James Holderman appointed Celia G. Gamrath to serve as a member of the 2009 Magistrate Judge Merit Selection Panel of the United States District Court for the Northern District of Illinois. Ms. Gamrath also presented a case law update at the Condon Group's Family Law Symposium on October 12th.*



## SCHILLER DUCANTO & FLECK LLP SUPPORTS RACE JUDICATA

Schiller DuCanto & Fleck LLP is proud to support Race Judicata 2009, which raised over \$200,000 to assist Chicago Volunteer Legal Services (CVLS) in the fight to provide equal access to justice to all.

## Equitable Doesn't Mean 50/50. *A primer on how property is divided in an Illinois divorce case.*

If you follow the tabloids and Hollywood divorces, you might believe that property is automatically divided on a 50/50-basis in divorce proceedings. If so, you would be mistaken, for while it is true in community property states like California, it is quite a different matter in Illinois, which is an equitable distribution state. This means that marital property is divided in "just proportions," not necessarily 50/50. In deciding what is meant by "just proportions," the court considers a myriad of factors including, but not limited to, the following: Length of marriage, age and health, custodial provisions for children, debt obligations, waste of property, homemaking contributions, each spouse's contribution to the marital estate, and tax consequences. In short, there is very little that the divorce court is allowed to overlook in dividing property fairly. It is significant that the division of property does not turn simply on which party made the greatest financial contribution to the marriage. Non-financial contributions such as homemaking and child-rearing activities may be equally important, especially in long-term marriages.

In my personal experience, most judges begin the process of dividing the marital estate with a mindset that asks, "Why shouldn't this be a 50/50 division?" They then let the lawyers argue about which client, if any, should get a disproportionate share. In Illinois, cases have been decided in which an equitable division of property resulted in a 90/10 split or even — in very unusual cases — 100/0 (i.e., one party gets everything; the other, nothing at all). It is a fact-specific determination by the judge, but the vast majority of cases fall within the 50/50 to 60/40 range.

In negotiating the division of property, it is as important to ensure that assets and liabilities are fairly valued as it is to negotiate fair portions of the marital pot. The reason for this may not be readily apparent, but a moment's reflection makes it clear that if some assets are over- or under-valued, a 50/50 division on paper is not really a 50/50 division.

Valuing assets such as bank or brokerage accounts and determining the cash value of life insurance is relatively straightforward. However, when real estate, closely-held businesses, or partnership interests are at issue, appraisals and valuation reports from experts are typically needed.

Based on such reports and expert opinions, the parties either negotiate fair market value or leave it to the court to decide the value of the assets and how they are to be divided.

The value of property must be measured as close to the end of the divorce case as possible. Particularly in today's volatile economic climate, valuing assets and liabilities can be a moving target. It is not unusual for valuations to be revised while the case is pending. Nor is it unusual for a spouse to obtain new property while their divorce is pending. That property must also be valued, of course, and the process could easily delay the settlement of the case.

In summary, an attorney who is knowledgeable about the intricacies of valuing and dividing property is of a great value to the client. Armed with the knowledge that an accurate valuation of assets is often as important as the percentage division, parties involved in a divorce with large or complicated property-division issues would be well advised to carefully consider the experience of any attorney they might be thinking of retaining.

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### STRAIGHT TALK *on* MARRIAGE

PRESENTED BY

THE WOMEN'S NETWORK OF  
SCHILLER DUCANTO & FLECK LLP

The Schiller DuCanto & Fleck Women's Network is hosting an evening of networking for women professionals on October 14th at the University Club. There will be a brief lively discussion about the do's and don'ts of marriage and divorce, and plenty of time to socialize with a group of highly skilled women. The Women's Network was created to cultivate relationships, enhance professional development, and collaborate with other women professionals about personal and professional issues unique to women and their clients.

WEDNESDAY, OCTOBER 14, 2009 FROM 5:00 - 7:00 PM  
UNIVERSITY CLUB OF CHICAGO, MILLENNIUM ROOM  
76 EAST MONROE STREET, CHICAGO, ILLINOIS

## IN THE NEWS

**Donald C. Schiller, Celia G. Gamrath** and **Sarane C. Siewerth** have been named among the best appellate lawyers in Illinois by the *Leading Lawyers Network*.

**Anita M. Ventrelli** was featured recently in a multi-page article by *Leading Lawyers Network* for her litigation skills and matrimonial expertise. Ms. Ventrelli, along with partners **Karen Pinkert-Lieb** and **Celia G. Gamrath**, were ranked in the top 100 Women Lawyers in Illinois by *Leading Lawyers Network*.

**Jane D. Waller** was appointed by the Illinois Legislature to serve on the Illinois Family Law Study Committee created by House Resolution 1101. **Benjamin S. Mackoff** and **Celia G. Gamrath** also serve on this Committee, which is charged with the task of recommending updates and improvements to the Illinois Marriage and Dissolution of Marriage Act and related laws.

**Benjamin S. Mackoff** was a featured guest at the First Annual International ADR Society Congress at Drake University Law School in Des Moines, Iowa, where he spoke about family law mediation. Mr. Mackoff also testified at the invitation of the Federal/State Anti-Terrorism Advisory Council. He spoke of his family's adventures and perils in India having been trapped inside the Taj Palace Hotel in Mumbai during the terrorist attack in November of 2008.

## BEST LAWYERS IN AMERICA RANKS SCHILLER DUCANTO & FLECK LLP THE #1 FAMILY LAW FIRM IN THE NATION

*Best Lawyers in America* announced that Schiller DuCanto & Fleck LLP is the Top Ranked Family Law Firm in the Nation, and tied for first in the growing field of Collaborative Divorce Law. The rankings for 2010, based on an exhaustive survey of more than 24,000 legal professionals, also designated the following 15 members of the firm as Best Lawyers:



TIMOTHY M. DAW



CHARLES J. FLECK



JAMES R. GALVIN



CELIA G. GAMRATH



MEIGHAN A. HARMON



BURTON S. HOCHBERG



DAVID H. HOPKINS



CARLTON R. MARCYAN



KAREN PINKERT-LIEB



DONALD C. SCHILLER



ERIC L. SCHULMAN



SARANE C. SIEWERTH



TANYA J. STANISH



ARNOLD B. STIEN



MARIO R. VENTRELLI

*The materials contained in this Newsletter are intended for general informational purposes only and not to be construed as legal advice or opinion. Some of the materials were printed originally in other outside publications.*

*Celia G. Gamrath, Editor      David Young, Layout/Design*

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