

A ROUNDTABLE DISCUSSION

FAMILY LAW:

EXECUTIVE DIVORCE

>>Divorces involving executives, celebrities and other high-profile individuals are frequently complicated, and may entail sensitive information that could be damaging if made public.

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DONALD C. SCHILLER is a founding partner of **Schiller DuCanto & Fleck, LLP**, a family law firm with offices in Chicago, Lake Forest and Wheaton. He has dedicated his career to serving leaders and their spouses in the business, professional, entertainment and sports communities, and is well-versed in the complexities of high-net-worth and high-profile cases. He has built a reputation and family law firm around providing unique, personalized solutions for clients. For more than 15 years, in addition to client representation, he has taught divorce practice at the University of Chicago Law School.

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What changes have you seen over the last few years in how executive divorces are handled?

Donald C. Schiller: The "Me Too" era has brought changes in how businesses and particularly publicly held companies deal with high-level executives engaged in contentious divorces. Accusations of claimed sexual abuse or acts of workplace harassment may have career-ending consequences. Public companies, in particular, take these accusations very seriously and board members become alarmed about the company's image and consequences from condoning abusive behavior by a top executive.

What's the most common question or concern you hear from CEOs and other executives who are contemplating divorce?

Schiller: One of the most common concerns of CEOs contemplating divorce is how to keep the case under the radar—quietly handled and amicably resolved. They're usually smart enough to know that their highly visible position creates potential problems beyond those with less visible roles in their business life. It's important for executives to have a legal team that understands these kinds of issues and how to maximize protection.

What makes high-profile divorces different?

Schiller: Fame brings public curiosity and interest in what the divorcing parties are doing. If either individual brings an action for dissolution of marriage, it's important that they understand the consequences. Court files are rarely sealed except under extraordinary circumstances; the desire for privacy alone is not a sufficient circumstance. Nevertheless, lawyers experienced in handling high-profile cases know techniques for minimizing

what's in the public record and avoiding details of the settlement becoming public.

How do you promote privacy and confidentiality throughout a high-profile divorce?

Schiller: The best way to promote privacy and confidentiality is to quietly settle the case before an action is filed. However, if despite all efforts for an amicable solution, if there's litigation, some things may be done to promote privacy and confidentiality. Whenever possible, the executive's attorneys should seek a protective order either by agreement or as a result of a hearing that provides that the party receiving proprietary and confidential information will not disclose what they learn or received outside of the proceedings. Protections from disclosure are also available for children's issues, and medical care and conditions. There are special laws, rules and procedures where information concerning the medical and mental health of the parties, as well as issues concerning children, are to be kept confidential and protected from public disclosure. Ironically, although an angry spouse may think their executive spouse is a mental case, they certainly don't want the company to think that and jeopardize their employment.

How do you prepare a CEO to testify at trial or depositions?

Schiller: In a trial, the CEO should be prepared to tell their story, justifying why they should receive the relief they seek. The CEO must understand limitations on what they might say because of technical rules of evidence. They likely will not be able to just tell their story as they want to tell it—they must tell their story through questions asked and answers they give and not just give a speech or long narrative. Preparing

a CEO for a deposition is different than for trial. The opponent's purpose for taking a deposition is to get information that may be helpful to them from the party who's being examined. Therefore, the less said by the party examined, the better. There's no place for sarcasm, and the executive being examined must be careful to give narrow answers to questions and not expand beyond what's asked. The more said by the deponent, the more follow up questions they'll be asked.

How can a busy CEO parent maximize his or her parenting rights?

Schiller: If the CEO parent wants to maximize parenting rights, they should focus on the decision-making factors and not try to exaggerate the time they historically spent with the children or the time that they now want to spend with the children in order to significantly parent their children. In the day-to-day life of the children, the CEO may have very well-made decisions or made recommendations that were generally followed in areas such as healthcare or education. The CEO should focus on there being no good reason to stop the role they played in raising their children just because the parties are divorcing.

What are some of the unique challenges to finalizing property settlements in a CEO divorce?

Schiller: CEOs and C-suite executives generally have a large part of their net worth in their company's various employee benefit plans, stock, restricted stock and stock options. Transferring company stock to the other spouse could jeopardize control or a board seat. If stock holdings are large, there's often the problem of the CEO wanting to keep all of the stock, but lacking sufficient liquidity to compensate the other

spouse for retaining it. The same applies to stock options that are generally not transferable—terms must be worked out to protect the spouse entitled to compensation for their equitable share of their marital property interest in these corporate-related assets. Frequently, when the other spouse is given company stock, the CEO spouse will negotiate a right of first refusal before the spouse can sell any stock. Also, complications arise due to companies expecting CEOs to maintain a minimum stock holding in the company.

What other types of professionals does the legal team frequently consult with, and when do they typically get involved?

Schiller: The executive's team may also need to hire professionals to value assets that are company related, including dealing with tax issues related to any property division. Meanwhile, the non-executive spouse's team needs to learn about the company, its structure and all of the employee benefits and assets. They'll also need to value them and understand alternatives for dividing those assets.

What steps can happily married CEOs take to protect themselves in the event of a future divorce?

Schiller: Happily married CEOs who take aggressive steps to protect themselves in the event of a future divorce may not be happily married much longer. The best protection is to be open and honest and do nothing that raises suspicions of dishonesty and mistrust. That's the best way to achieve the quiet, private and amicable divorce settlement we've been discussing.