

Is the bad economy going to be good for family lawyers? No.
Cynthia Stump Swanson
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Do you agree that financial problems really are the #1 reason that couples get divorced? Does it seem that money troubles are the ones that grate the most? Cause the most dissension? If that is true, would a bad economy not just exacerbate all those financial disagreements and thus result in a huge increase in divorces?

In the past, we've been told that the number of divorces increases during a bad economy, but does this economy seem different? Most family law blogs I've seen are talking about a decline in divorce filings owing to the severity of the economic downturn. This very flat economy seems to have resulted in decreased divorce rates for couples with limited financial resources. The prospect of incurring expenses for two households seems overwhelming for those with limited resources.

On the other hand, high net-worth clients may seek to take advantage of the diminished value of their homes, stock and investment portfolios, and businesses to decrease their overall financial liability to their soon-to-be ex-spouse. When the marital residence or a family owned business is the most significant marital asset, the party who is able to retain the house or business may reap a significant benefit down the road, rather than the one who is compensated by cash or other assets, because the value of the house or business is likely to increase once the economy recovers. On the other hand, those who made agreements two or three years ago to pay large sums of cash in order to keep what they thought were greatly appreciating real estate or business assets are now having second thoughts about those agreements.

So, where divorce filings may be decreasing, modification and enforcement filings may be increasing. Parties are returning to court as a way to deal with financial hardships that are affecting their divorce obligations. Retirement accounts have dwindled to nothing for some people; people have been laid off, hours cut back. Both need and ability to pay are being affected.

The credit crisis has impacted us, as practitioners, as well. Have you been hearing from clients that their credit cards are maxed out and they can not replenish their retainer?

News reports abound that more people are acting as their own lawyers. "The number of people serving as their own lawyers is on the rise across the country, and the cases are no longer limited to uncontested divorces and small claims. Even people embroiled in child-custody cases, potentially devastating lawsuits, and bankruptcies are representing themselves, legal specialists say," the AP reported, as quoted in the Wall Street Journal's Law Blog. That blogger goes on to say, "Worse yet, these do-it-yourselfers are apparently making things worse for the professionals. The trend has resulted in court systems clogged with filings from people unfamiliar with legal procedure. Moreover, some of these pro se litigants, as they are known, are making mistakes with expensive and long-lasting consequences - perhaps confirming the old saying that he who represents himself has a fool for a client."

As the courts see more pro-se litigants, the courts are also suffering budget cuts. Support services are dwindling. There are fewer court resources to help pro se litigants figure out what the heck they are supposed to do.

If it is difficult for courts to handle pro se litigants, it is even more difficult for a lawyer on the other side of a pro se litigant. Most bar associations have gone to great lengths to publish manuals, handbooks, and forms to help pro se parties. The Florida Supreme Court has approved what must be hundreds of forms for use by pro se parties (and anybody else). The Florida Bar's Appellate Practice Section has published a 238 page handbook for self-represented appellants and appellees. So, there is a plethora of forms available, but that doesn't always mean that a cause of action will be properly stated, or that there is any evidence to support it.

Handling a matter against a self-represented party often seems like twice the work. It seems like you're the only one following the rules of procedure and evidence. It often feels like the Judge is bending over backwards to guide the pro se party, and offer the pro se party extensions of time, extra help in understanding what to do next, and so on. It is very important for you to create a good record, to provide a memorandum of law if needed, and for you to act with super-professionalism. And the temptation not to be professional will be great. When the other party files inappropriate documents, tries to get inadmissible items into evidence, fails to show up on time for hearings, makes arguments which are illogical or have no basis in the law, tries to talk to the Judge outside a hearing, and especially when it appears the Judge is going along with all of this, the temptation is very great to point fingers, call names, or worse, to underestimate your opponent, or to underestimate the credibility the Judge is finding in your opponent or his story. You do have to work twice as hard to prepare your client, your case, your evidence, and your arguments. Don't be pulled down or sucked in by a person who appears to be disorganized, uneducated, and ill-prepared. That doesn't mean he or she doesn't have a case, or that the Judge will not find him or her sympathetic.

Be polite and do not fuel the pro se litigant's David-and-Goliath complex. Politely remind the court that there are limits to indulging self-represented parties. Try to increase the seriousness of the pro se party's breaches of procedure, and decrease the court's sympathy for that person.

So, to sum up: It appears that divorce filings may be decreasing, while enforcement and modification actions may be increasing. But clients are having a harder time paying attorneys' fees and more are representing themselves. Is it time to move to a different area of practice? Or will this result in more work for competent attorneys later, after the people who either did it themselves or got what they paid for with a less expensive attorney find that they need some things fixed?