

# Do Lawyers Make Divorce Less Predictable?

## Survey reveals big disagreements on what's basically fair

**F**airfield County Bar Association president Eric Broder, a matrimonial lawyer, says that “aside from serious health problems, about the worst thing people experience in their lives is a divorce.” Just as surgeons care about better anesthesia, Broder would like to minimize unnecessary pain in a marital split.

All things being equal, how much of the pain is being inflicted by the divorce lawyers themselves? In an attempt to find out, Broder, of Broder & Orland in Westport, created a survey for the state's divorce lawyers, asking them to recommend fair settlements in a “plain vanilla” divorce matter with children. Of the 106 lawyers who responded, about 46 percent put Stamford as their primary court, and the rest were from throughout the state.

What Broder found was wide disagreement, and those results were analyzed by a panel and roundtable discussion in Darien on Friday, Feb. 7. Broder was joined by divorce mediation lawyer Maurice Segall of Wilton, and former Superior Court judge Elaine Gordon, an alternate dispute resolution specialist. Broder spoke recently about this with Senior Writer Thomas B. Scheffey.

**LAW TRIBUNE:** What prompted you to undertake this project?

**ERIC BRODER:** I had a case a few years ago in Stamford before a special master who said: “This is pretty much a cookie-cutter case: Here's how I would split the difference and resolve it.” Soon after, I had a case with a partner in the same lawyer's firm. The facts were very similar to the earlier “cookie-cutter” matter his partner worked on. I proposed the same approach, and the partner vehemently disagreed. Tens of thousands of dollars in litigation later, we resolved the matter on terms very similar to the original “cookie-cutter” terms first proposed. I began to think, “Is there a cookie-cutter case?” What do lawyers really think about how these cases should end up? I put together a fact pattern, as simplistic as possible, that didn't allow for too much leeway. I had it submitted to the entire state, asking family lawyers to respond.

**LAW TRIBUNE:** What was the result?

**BRODER:** I was shocked. The range of results were relatively astonishing.

**LAW TRIBUNE:** What were the biggest differences?

**BRODER:** Sixty-five per cent of the Stamford lawyers said it was a 50-50 case, for equal asset division between the husband and wife. Only 40 percent of the rest of the state said it was a 50-50 case. Of the Stamford lawyers, 30 percent gave 55 to 60 percent to the wife. In the rest of the state, you had 56 percent of the respondents giving the wife 55 to 60 percent. That's a pretty big difference, between how Stamford and the rest of the state look at things.

**LAW TRIBUNE:** How about child support issues?

**BRODER:** Ironically, the amount and percentages of support were similar for all parts of the state, but when I asked about the “step-down” where the support would be reduced due to the aging of the children, in Stamford they weren't so much in favor of a step-down. In the rest of the state, they were in favor of a much more accelerated step-down. In other words, the alimony would be reduced much faster, during the term of alimony. The results for alimony were all over the place — that's what's remarkable.

**LAW TRIBUNE:** What does this say for a client, for someone picking a lawyer? Is it a total roll of the dice?

**BRODER:** In some respects, yes. Unfortunately for litigants, the matching of the lawyers could make for quite a dramatic difference in how their case is viewed. It's more an art than a science. And it's challenging for the lawyers, because you lack predictability as to what's going to happen. That's the most frustrating thing. Clients crave predictability. But when you see the disparate results on a survey like this, it becomes very difficult to predict the outcome of the case.

**LAW TRIBUNE:** And this hypothetical case lacks the idiosyncrasies of a real-life case, so there would be fewer grounds for disagreement.

**BRODER:** It's a plain vanilla situation. The kids don't have special needs. There's some money saved, not a ton.

There's a house.

**LAW TRIBUNE:** Was there agreement about how to handle the house?

**BRODER:** That was very interesting. In the example, the house's equity is \$300,000 and the balance of their assets is \$350,000. I asked when do you sell? The kids are 15 and 12. Almost 50 percent of the respondents said they should wait six years for the house to be sold.



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**Matrimonial lawyer Eric Broder says 'clients crave predictability,' but a recent survey of divorce lawyers indicates a wide range of viewpoints on even the most 'plain vanilla' case.**

That means they deny the husband half the assets for six more years. And so you've tied the parties together.

**LAW TRIBUNE:** Would it be better for Connecticut citizens if matrimonial lawyers had more basic agreement on what is fair? Would rules of thumb, or default guidelines, be good for clients?

**BRODER:** It's not healthy for litigants that the lawyers they're hiring show such a wide range of what they thought the outcome would be in a relatively simple fact pattern.

**LAW TRIBUNE:** The lawyers were not answering as advocates for one side or the other, right?

**BRODER:** I was asking lawyers to play judge here. And I was surprised that it was so disparate.

**LAW TRIBUNE:** What would be the advantage of having more of a framework of fairness, some default formulas to start with?

**BRODER:** I think predictability promotes settlement, and an efficient resolution is good for the children involved. Even resolving financial issues well is good for the kids. If the dispute drags on, if parents come home in a terrible mood, it's bad for the kids. And the children come first, and second, and third. ■



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