



## Divorce

by John D. Whitaker

Thankfully, most people don't have much contact with the court system. They have never been involved in a lawsuit, or accused of a crime. Maybe they spend a little time on jury duty, but for the most part they don't have much interaction with the system. That is, until something goes terribly wrong at home and they find themselves going through a divorce. This is probably the primary way most people are introduced to the legal system. Going through a divorce can be a very stressful and scary process. Setting aside all the emotional issues, the process itself can be very bewildering because most people don't know how the system works. We all fear things we don't understand.

A divorce action is a legal process to end a marriage. In most respects it is like any other court case. One party files a lawsuit against the other party asking the court to enter an order ending the marriage and resolving the disputed issues.

Wyoming is essentially a no-fault divorce state and it is not necessary to prove that you are entitled to a divorce because of some type of misbehavior by your spouse. The party seeking the divorce must show only that irreconcilable differences exist, and that they are the aggrieved party. Fault need not be proved, although it is frequently relevant to the two main issues in most divorce cases which are child custody and the disposition of property.

The court will award custody based upon the best interests of the children. This is not an exact science, but generally the court tries to determine which of the parties would be the best suited to take the children. Documented evidence that there has been child or spousal abuse is considered to be contrary to the best interests of the children, and if this is proved at the trial it is highly unlikely that custody will be awarded to an abusive parent.

The court will also determine the amount of child support to be paid to the party who gets the children. Child support is



determined by a statutory set of guidelines which are applied unless there is some compelling reason which would cause the court to deviate from the guidelines. They are based upon the combined income of both parties.

The court will also divide the property. The court has the power to divide all of the property of the parties including the separately held property of either party. The court will seek to divide the property in a "just and equitable" way based upon the respective merits of the parties.

The court will consider the condition each party will be in after the divorce, and how the parties obtained the property in the first place. Sometimes people assume that the court will automatically split the property in half. A just and equitable division of the property is more likely to be unequal because usually one party will be in a position to recover from the divorce much faster than the other.

Most divorce cases are settled prior to a trial. After a divorce case is filed, a request for a trial date will automatically cause the court to order that the parties attend a mediation session with a court appointed mediator. Mediation is a process where a neutral third party will look at the case and listen to the arguments on each side. The mediator will usually point out the risks involved in taking the case to trial and they may also offer an unbiased opinion on how the case will likely be decided.

If the parties are unable to settle the case, a trial will be held. With the present courtroom shortage, the trial may be set a year or more into the future. The delay presents a compelling motivation for the parties to compromise and get the case settled.

Divorce rarely brings out the best in people, and usually one party wants the divorce much more than the other party. This inequality in motivation can create an inequality in bargaining power, which can be exploited by the party seeking the divorce. For this reason alone, it is vitally important that you seek the help of a competent lawyer from the beginning.

**The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.**