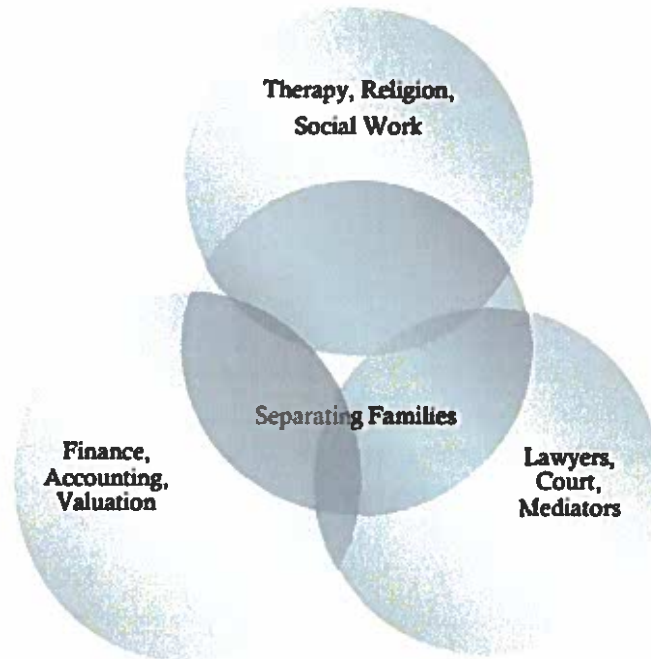


SENSIBLE SEPARATION

This issue of *Sensible Separation* will focus on gender bias in the divorce process.

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Sensible Separation is an interdisciplinary newsletter for professionals assisting families with divorce or separation. If you would like to contribute an article, please submit to GKincaid@hrkklaw.com. For more information about divorce mediation, please visit www.SensibleSeparation.com. Another opportunity to share helpful thoughts or insights about our work exists on the Sensible Separation FACEBOOK page, which is located at www.facebook.com/sensibleseparation. Please visit our site. We appreciate the traffic and any helpful information that you would like to share.

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Overview by Greg Kincaid

In full, 80% of violent crimes are committed by individuals with this gene. The elusive gene? It's called the Y chromosome. So, we may not particularly like to talk about it, but the truth the matter is that that men are much more prone to violence than women. I'm sure there is ample evidence out there to support further differences in how men and women function in our society. How about in a divorce, are there differences that occur with enough statistical regularity that they might be helpful to think about?

Those of us that do this work, day in and day out, are often tempted to generalize about differences in approach between the sexes--perhaps men having their eyes on the dollar sign while women may be more relational. But no sooner than we are tempted to venture out on the shaky ground of a stereotype, some client will come along that shatters our gender based notions and we're left wondering if stereotypes aren't just a lazy way to avoid a more thorough understanding of the human behind the chromosome. We're left wondering if it is even helpful to think about men and women as having meaningful differences in their dispositions when going through a divorce.

Whatever our own reluctance, our clients are often not so shy about forming their own conclusions. When it is quitting time at the *XY Bar and Grill*, there is a consensus easily reached: men pay the heavier price for divorce. Across town, at the *XX Grill*, similar discussions progress through the night, but with the opposite consensus reached. Opinions abound about whether the system tends to favor or disfavor each gender in one way or another.

While I'm sure that men and women are different in many important and often wonderful ways, it's very hard to generalize in ways that are helpful to divorce professionals. Still, when enough people finish their divorce and say, "I got the short end of the stick because I'm a man/woman," it is a subject that is worth our attention. Why do men and women feel differently about divorce and their outcomes? Is it possible that they are both right? Or, perhaps, both wrong?

There are lawyers and law firms that specialize in somehow being more acutely tuned in to the needs of men or women in divorce. I thought it was worth exploring this topic further, so I asked two lawyers to contribute to this issue of *Sensible Separation*. Laura Boatwright is employed by Cordell & Cordell. Their webpage and marketing is focused toward adequately addressing the unique need of men in divorce. I also contacted Katie McClafin, of Manson & Karbank, to weigh in on the subject. Katie worked at *Safe Home* for years. She has certainly experienced how women might feel disempowered by the legal process. Before turning it over to Laura and Katie, in their interviews, below, I would like to share two thoughts, of my own.

First, from my standpoint, I think a lot of the perceived prejudices in the system get down to the difference between correlation and causation. For example, it's probably true that women will have more parenting time with their children than men. I would argue, however,

that this is simply because women spend more time with their children before the divorce. Because divorce courts look to continuity as a factor in making custody decisions, it stands to reason that women will spend more time with their children after the divorce, too. Hence there is a correlation (divorced moms have more time with the children than divorced fathers), but not causation—the divorce judges do have some bias toward moms when making custody decision. Likewise, men are generally better situated in the financial workplace than women before the divorce, so it is more likely they will be better situated after the divorce. There seems to be an economic momentum in the marketplace that favors men and the divorce courts are not equipped to reverse it.

How do we best tackle the perception of gender bias with clients and patients? Laura and Katie have some ideas, below.

For me, I think the trick is to get both genders to avoid this “thought trap.” It simply isn’t helpful. The best way to address it, is “Yes there are lot of things about divorce that are hard on men. Yes, too, there are lots of things in a divorce that are hard on women, but thinking about men and women in divorce misses the point. Who is divorce really the hardest on...

I also asked Amorita Johnson, of CASA, to contribute the third article in this issue of Sensible Separation. She has some thoughts on children and divorce. I find this to be a good place to redirect the attention of the gender offended!



Lauraleen Boatright

While working as a paralegal, Overland Park divorce attorney Lauraleen A. Boatright gained valuable experience second-chairing depositions, conferences, hearings and trials. In doing so, she developed a passion for domestic litigation and helping people navigate out of the murky minefield-laden waters of divorce. She has experience guiding clients through high-conflict division of property, child custody disputes, child support modification disputes, maintenance disputes, and more. Ms. Boatright possesses patience, initiative, a clear understanding of the law surrounding family law issues of the day, and the drive to help her clients obtain their goals.

Cordell & Cordell’s webpage indicates as follows, “Our Kansas divorce lawyers focus entirely on men’s divorce, child custody, paternity, and other dad’s rights issues.” I interviewed Laura Boatwright to help me understand why men may have peculiar or different interests than

women in divorce and how each of us who assist divorcing families might be more sensitive or attuned to those issues. What follows is a brief summary of our conversation

Laura, how do men and women, in your experience, approach divorce differently?

I think men tend to be more left-brained, more analytical, and women tend to be more right brained or relationship based in their processing of their divorce. A good example of this would be how men and women differ in their approach to the marital residence. For example, for men, the question might be simple--can either of us afford this house? For women, the impact of the ownership of the residence on the children in the family unit might be a paramount concern. So, it would be my job to help my client to understand that the analysis has to be more nuanced than just money.

How do you talk to men about child custody issues?

Personally, I think the courts are more gender-neutral than most men realize. The problem is that the courts simply and correctly institutionalize the post-divorce life for the children as a mirror of the relationship between the parties prior to the divorce proceedings. In other words, if mother was more involved prior to the divorce being filed, she will likely be more involved after the divorce is filed. This gives the impression that the system favors women and that's not the case—the system favors not disrupting what the children are used to any more than necessary. I therefore have to explain to men that what appears to be an institutional bias in the legal system is really more of a reflection of what worked best for the family in the past is likely to also work best in the future.

Do you have any observations about men and child support?

Interestingly, I see the entire gamut. Some men need to be reined in because they are willing to pay not only more than they are obligated, but probably more than they can afford. Other men, and it's not always the lower earning individuals, struggle to see beyond their own budgetary needs. They simply see what's going out (after taxes and support) and don't see how they can make it.

Laura, in your opinion, is there any part of the divorce/legal system that might systemically be unfair to men?

I think maintenance (or alimony) is an area--while has evolved in many ways—but still needs to be looked at harder. The old notion, which made sense, was that wife did not work and needed assistance so that she could obtain the education and training to (re)enter the workforce. Today, there is not the educational gap. Now, it seems like the focus is more on preservation of

a life style, which neither party is necessarily entitled to have. Another problem is that even with the exact same “economic facts,” men do not appear to get maintenance as often. Maybe it’s a pride thing and men just don’t seek it as often.



Katie McClafin

Katie focuses her practice on complex divorce and child custody matters. She serves on the Johnson County Family Law Bench-Bar Committee. She is the current President of the Johnson County Bar Association and Chair of the Civics Outreach Committee. Katie frequently serves as Guardian ad litem in family court proceedings. Katie co-authored the 2016 Supplement on Property Division and Maintenance in the Kansas Bar Association’s Practitioner’s Guide to Kansas Family Law, as well as the Family Law chapter of the 2016 Kansas Annual Survey of the Law.

Katie, from your experience, do you think men and women (tend) to approach divorce differently, if so how?

I represent both men and women in all stages of the divorce process. In my experience, gender is not the best indicator of how a client will approach most aspects of a divorce. Neither group has a uniform approach. A much stronger indicator of how a client will navigate the process is whether the client has the ability to support him or herself after the divorce. If there is a significant income disparity, the lower earning spouse is typically more anxious, wary and hesitant each step of the way. The most resistant client, whether a man or woman, is a spouse with no income, very little earning capacity and remarkably limited knowledge about the marital finances. For many reasons, all of which are beyond the scope of this article, this is more often the wife. But I have seen men in this role who have similar responses to and difficulties with the divorce. It is an extremely vulnerable position for any spouse to be in after years of marriage. This can cause anxiety, depression, and resentment which can delay the resolution of the case, increase attorney fees and leave both parties feeling angry, broken and bitter. I do not believe this is an unavoidable or natural consequence of dissolving a marriage. I encourage clients to look at their divorce not as a failure of the marriage, but as the end of a marriage which was likely successful for at least some period of time.

In contrast to the less informed, dependent spouse, the higher earning spouse or breadwinner typically navigates the process with more confidence. Because they know they can make more money, increase their net worth and end up replacing what they “lose” in the divorce, this spouse is able to be more logical, calm and even optimistic throughout the process. I find this is true with regard to the division of net worth as well as support issues.

Katie, in your opinion, is there any part of the divorce/legal system that might systemically be unfair to men?

Without delving into whether left-brained people are more likely to be higher earners, or whether men or women are more likely to be left-brained or right-brained, I suggest avoiding categorizing clients based on gender. I focus on identifying where the client is operating during our very first meeting. I evaluate the client’s level of knowledge about the net worth, income and spending. I ask them what they want their life to look like six months, one year and five years after the divorce. That helps the client focus on the future and helps me evaluate what strategy to pursue. If I represent the less knowledgeable spouse, I will personally walk them through the domestic relations affidavit, focusing on monthly expenses and annual expenses. Once we have sufficient information about the net worth and income, I may refer the client to a financial advisor who can help solidify long-term financial goals and conduct projections so the client can more effectively and confidently negotiate support terms. Telling a client what the “guideline” support is does little to ease anxiety if they have no idea how much they need in order to maintain their lifestyle. Empowering them with accurate information and encouraging them to personally engage in their financial planning is a much more effective way to minimize anxiety. It can help alleviate some of the anger and bitterness that comes with the fear of the unknown. A more knowledgeable and empowered client, regardless of gender, is much better equipped to effectively engage in settlement negotiations or testify at trial.

I am not suggesting there are no differences between women and men. Of course, there are. But as more women pursue higher earning careers and more men take on a fairer share of child rearing duties, it is more effective to evaluate clients based on their level of knowledge of and confidence regarding finances.

There are aspects of our society that tend to create systematic disadvantages to women. The legal system has to function within that context. There are certainly things that can, and should be done to ameliorate the effects of gender discrimination within the legal system. That is probably a topic for a separate issue of Sensible Separation...



Amorita Johnson

Amorita has been employed since 1998 and oversees both the CINC and Divorce/Custody programs. She has a Bachelor's Degree in Psychology and has previous work experience with New House, a women's shelter. Amorita is a member of the Community Against Violence Acts (COMVAC) Judiciary Committee.

Amorita, what do you suspect children are thinking or fearing when their parents are going through a divorce?

In my experience, children in the midst of high conflict divorces or custody disputes have some basic fears or beliefs in common. These children are often overwhelmed because they believe they have done something to cause their parents' relationship to fail. Typically, these children also feel burdened to fix what they think they have broken. No child should carry this burden. Children see their foundation crumbling and feel powerless to stop it.

The parents of these kids are so entrenched in the dispute, they cannot or will not focus on the needs of their children, which would mean putting their needs first. Children need absolute reassurance that the breakup or fighting is not their fault and must be given permission to continue to love their other parent.

The child is also fearful they will hurt one parent by simply speaking about the other. The child is put in a position to never mention the other parent unless it is to report something the other parent did wrong. These children are isolated and know they cannot speak about their feelings aloud unless it serves the need of the parent who is in front of them at the time. Children can see that one parent appears to be pleased when they hear of the other's transgressions.

Lastly, there is the fear of punishment or repercussions for entrusting their feelings to the other parent, a teacher, a counselor, their CASA volunteer etc.

How can parents best minimize the negative impacts of their divorce on their children?

- Parents must put the needs of their children above their own. Parents should maintain as much stability for their children as possible. For instance, keeping the marital home and each parent take turns living in the home with the children. This will allow continuity for the children's school, extra-curricular activities, church etc. and minimize trauma. The focus should

be to keep the child's world intact as much as feasibly possible and maximize their time with both parents.

- There should be absolutely no disparaging comments made about either parent around the child. Parents must make a conscious effort to have conversations about or with the other parent outside earshot of the children.
- Talk to the children about what is going on and allow them to say how they feel. Assure them that they are secure and both parents love them unconditionally. Tell them it is not their fault.
- Give the children permission to love the other parent.
- Children should never be interrogated about what happened while they were in the other parent's home.

When parents realize that, for whatever reason, they are the cause of the collapse of the relationship and their children are innocently caught in the wake, a chance for positive change arises.

What programs does CASA or other local organizations offer, that you're aware of, to help children cope with divorce?

- CASA of Johnson and Wyandotte Counties provides advocates for children in the midst of custody disputes. CASA's are caring and consistent adults who act as the child's voice in court. CASA volunteers are friends who have nothing but the child's best interest at heart.
- The Layne Project offers the Changes program which is a "a four-week, four-hour course for children of all ages struggling with the "two home" phenomenon."
- DC4K is a faith-based program offered by some local churches. This goal of this program is described as "mak[ing] it easy for you to help children who are hurting and confused by the divorce or separation of their parents.
- The children of our community need more peer support groups. Knowing that they are not the only kids in the world going through this struggle is something children need to hear from other children.