

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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**DEREK J. BRADFORD** is a founding partner of matrimonial and family law firm **Bradford & Gordon, LLC**, which has offices in Chicago and Elmhurst. He was recognized as a 2019 Top Divorce Lawyer by Chicago Lawyer Magazine; was named one of the 10 Best Attorneys by the American Institute of Family Law Attorneys; and has been featured in Illinois Super Lawyers and Leading Lawyers. Prior to his legal career, he worked as a tax consultant, and he frequently utilizes his early background in tax law to assist clients with complex financial divorce planning.

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

**Derek J. Bradford:** With the revisions to the Illinois divorce statute and the federal tax code, the way we calculate income and maintenance—formerly called alimony—is the most drastic change in recent years. Additionally, more and more executive compensation packages include stock—whether it be restricted stock, stock options, phantom stock and the like. I've also seen a significant rise in female executive clients that are the primary income earner in their family.

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

**Bradford:** Most are concerned about both the present and the future. My high-level executive clients frequently ask about the ramifications of anticipated growth in income and assets after the divorce, and its effect on a settlement and payment of spousal support. Their career and income trajectory is almost always on the rise. That means we need to find solutions that best allow the client to work hard, earn more money in the future and ultimately keep most of that money after the divorce is final.

**What makes high-profile divorces different?**

**Bradford:** High-profile divorces often bring in outside voices—the media, business partners, advisors—that put pressure on what should be a

private matter. One or both of the spouses might find themselves influenced by these outside voices, leading them to react or behave in a way that they otherwise wouldn't. My job as an attorney is to act in the best interests of my client. Sometimes that means helping them to block out the noise and focus on what's most important to them.

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

**Bradford:** Privacy and confidentiality are at the core of my relationship with any client, whether they're high-profile or not. My team and I have a responsibility to keep the divorce and all details of it out of the public eye to the extent that we can. But the client also has a part in promoting privacy. I encourage them to exercise good judgment when it comes to social media, to use discretion in all communications, and to be mindful of their public actions, understanding that they may impact private negotiations. Divorce inevitably involves emotions, and sometimes those emotions can drive a client to publicly behave or communicate in a way that compromises privacy. This is usually unhelpful in the pursuit of a resolution, so I try to counsel my clients to find a more productive outlet for their emotions.

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

**Bradford:** I tell them to be natural, tell your own story, and answer the questions being asked

of you. When someone is testifying at trial or in a deposition, they're on high alert. They feel like they're being attacked or like if they give a "wrong" answer that they're in trouble. Depositions are for information gathering—and the CEO testifying knows more about their life and their company than the attorney asking the questions knows. So, take the opportunity to naturally tell your version of events to the questions being asked of you.

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

**Bradford:** Stay invested in their kid's lives. Exercise their parenting time, go to their soccer games, schedule their parent/teacher conferences. The fact that the CEO's work schedule is busy doesn't preclude them from being a parent. Typically, the CEO's work life is what provided the income and assets for the family—so they shouldn't be "punished" for still providing post-divorce. So long as they can demonstrate they're interested and have a plan for how they're going to balance their requested parenting time with their work schedule, then they should be set up for success.

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

**Bradford:** CEO compensation can be a moving target from year to year because it's often tied to stock and a future value of that stock. This type of income fluctuation causes difficulty in negotiations

because neither party wants to negotiate when the opinions about earnings by each party are so disparate. For example, the CEO may anticipate earning less in the future because of changes or shifts he/she sees in the industry; at the same time, the spouse may assume that income will rise every year because it always has in the past. There are lots of uncertainties. Additionally, fear of making a final decision is a frequent problem in CEO and executive divorces when the CEO spouse has historically been the primary income earner. A final settlement is a binding contract and convincing the spouse of the CEO to agree and pull the trigger on a final settlement is always one of the hardest parts.

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

**Bradford:** If a CEO is not inclined to broach the subject of a postnuptial agreement with his or her spouse, the best advice is "keep separate property separate." If a CEO has non-marital assets or receives an inheritance or gift that would be defined as non-marital property, it's imperative to keep that property in its own account, not co-mingled with other assets. Keeping it separate helps preserve the non-marital nature of the property.