

DIVORCE PRACTICE IN PENNSYLVANIA BEFORE THE 1980 CODE

By David I. Grunfeld



As a young associate practicing in a small firm after law school graduation in 1968, I was given divorce work to handle because no one else wanted to do it. Why? Because it wasn't easy and was phony, as I'll describe.

The divorce law in Pennsylvania before 1980 had limited grounds, and the principal one was “indignities to the person.” We did not have any no-fault grounds.

What were “indignities”? It was everything you could think of as constituting mental cruelty: disparaging remarks in front of others, use of profanity, denial of intimacy, physical separation without justification, emotional abuse, etc.

How do you prove it? That was the hard part, because if the other spouse denied it at a hearing, you were not likely to win, and would have spent money on a trial.

So, what happened was this. Since there were no rights to property division, upon issuance of a decree, each party kept what was in their name alone (such as a retirement plan), and anything jointly owned was liquidated and split equally.

Therefore, the party wanting the divorce had no leverage for cooperation (i.e., non-defense), and, especially if it was the husband who had a business and/or retirement plans, his lawyer had to offer enough to the wife's lawyer in terms of property, and support or alimony if applicable, in order to be able to proceed uncontested.

Once that was done, an application would be filed for the appointment of a private master—there were no court-

employed divorce masters before 1980.

How did a lawyer get the job as a private divorce master? As a favor from a family court judge, such as to supplement (slightly) the income of a lawyer, likely to be either a young or older attorney.

But sometimes, the judge would hint that an equal amount should be donated to the judge's favorite charity, or even to the judge's re-election campaign.

What happened then? The moving party and that party's lawyer went to the law office of the master, and the party testified to all the indignities, usually from a script written by the lawyer, representing some more articulate version of the facts as gleaned by the lawyer from the party. In fact, many lawyers literally drafted the master's report for the master, so that it could be moved ahead expeditiously for a decree.

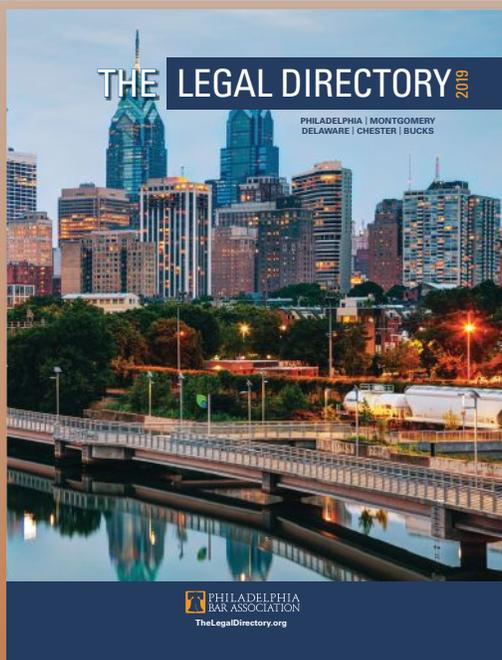
When the divorce code passed in 1980, it made it easier to get a decree on no-fault grounds but caused litigation of the economic issues. Nonetheless, a less phony proceeding. All of us were glad that era ended. ■

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