SURVIVING DIVORCE IN PENNSYLVANIA

(Getting Through a Difficult Time - A Guide)

Karen Ann Ulmer, P.C.
174 Middletown Boulevard
Suite 300
Langhorne, PA 19047
(215) 752-6200
www.ulmerlaw.com

Written by: Karen Ulmer Pendergast, Esq.
Surviving Divorce in Pennsylvania

Getting Through a Difficult Time – A Guide

By Karen Ulmer Pendergast, Esq.
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Suite 300
Langhorne, PA 19047
(215) 752-6200
www.UlmerLaw.com
Client Testimonials

“Karen represented me in family law matter about 4 years ago and I found her to be trustworthy and knowledgeable. She has also represented several of my family members and friends. I personally have recommended her to many, many people. In fact, I am also an attorney, and I often am asked for names of family law attorneys. Whenever my clients need someone who specializes in Family law, I feel more than comfortable giving them her name.” - A Child Custody client

“Going through a custody dispute is a scary nerve wrecking experience but you don’t have to go through it alone. I made the mistake of opening up the phone book and hiring the attorney with the biggest ad, BIG MISTAKE.

After realizing my mistake by hiring the wrong attorney at first, I went online and did my homework, I met with several attorneys and then I met Karen. Unfortunately, if you are going through an ugly custody battle you need the best, Karen is the best. After meeting with Karen and discussing my situation, Karen explained all my options and what she was prepared to do. A feeling of total relief came to me, the first time in over a month. I am no longer worried about the outcome because I know I have the best attorney on my side.

In the first week Karen represented me she did more than my previous lawyer did in a month. She knows how to navigate these ugly waters like a pro. If you have to go through this ugly process, you need Karen on your side. Also, Karen is extremely good at getting back to you if you have a big or small
question/issue. You can make the same mistake I made, and use the first "phone book" lawyer you find, or not waste your time and money, and HIRE KAREN. I don't wish this experience on anyone, but if you have to go through it, you absolutely want Karen on your side...” – Jim
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ATTORNEY INTRODUCTION

Karen Ulmer Pendergast is an attorney licensed to practice in both PA & NJ. Ms. Pendergast founded the law firm in 2001, concentrating her practice in the area of family law. She grew up in the area and attended schools in the area, graduating from Archbishop Ryan for Girls. She received her B.S. in Psychology from Duke University in Durham, NC where she was the president of the Psychology Major's Union. She obtained her J.D. degree in 1995 from Widener University School of Law.

Ms. Pendergast obtained an advanced law degree in the area of Securities Law from Georgetown University Law Center in 1996. She undertook extensive mediation training and has received certificates for mediation in the area of Family Law. She previously was a list mediator for Montgomery County for custody cases.

Ms. Pendergast is an active member of the Family Law section of the Bucks County Bar Association and has held offices in the YLD having served as President of the YLD division, secretary and treasurer. She is also a member of the Pennsylvania
Bar Association and the Montgomery County Bar Association and is in the Family Sections of both associations. Ms. Pendergast has lectured to other lawyers on both custody and divorce issues through the National Business Institute as a speaker.

Ms. Pendergast practices in the areas of family & matrimonial law.
**Gender Differences in Divorce**

**Interviewer:** Do you find that men and women do divorce differently?

**Karen Pendergast:** I do not necessarily find that men and women do divorce differently. Both have the same concerns about what the future will look like both for themselves and their families. Men generally approach it less emotionally as a whole; however, there are certainly men that can be very emotional. Women also tend to be very concerned about affording to live on their own once the parties are separate and how they will care for the children and support themselves.

**Reasons for Divorce**

**Interviewer:** When people come to see you, what's the most common reason they give you why they're seeking a divorce?

**Karen Pendergast:** For most people, in the marriage, they've grown tired of their partner or things haven't changed that have been problems for awhile and they
just decided to move on. There's always the occasional adultery or they found someone else but I wouldn't say that's the majority. Usually it's just the parties have grown apart and they're not happy together.

**Divorce Process**

**Interviewer:** Do people need a reason to justify to the court why they should get a divorce or can they just do it for whatever reason? It seem like that would be a misconception.

**Karen Pendergast:** There are fault grounds for divorce but the majority go through the No-Fault Process, which, in Pennsylvania, is either that they've been separated 90 days and they both consent to a divorce or if one party is not willing to consent to a divorce then after a period of two years, you can move forward for a divorce based on a two-year separation.
Interviewer: Even if one party says, “I’m not signing anything,” and they refuse to give you a divorce, you can still get it done?

Karen Pendergast: You can still get it done when the two-year period is up. You serve the other side with an affidavit saying you've been separated two years. The person has the right to object saying, no, you either haven't been separated two years or the marriage is not irretrievably broken.

In the instance where someone says that the marriage is not irretrievably broken, you go to a hearing. The court will then decide if the marriage is irretrievably broken which is a very low standard to meet when one party wants the marriage over.

HOSTILE CLIENTS

Interviewer: When people come to your office, do they have reasonable expectations or do they get nasty? What's your cue?

Karen Pendergast: Everybody that comes to the office is different. There are people that are vindictive and want to tear the other person apart and some people are more realistic and they want to preserve
as much of their marital estate as possible by not spending so much money on legal fees.

What I do tell people is that it's best to try to resolve everything out of court if possible but, certainly, if it needs to be litigated, we give excellent representation in court and will move to a hearing, but that they need to pick their battles wisely because it is a costly process and can damage relationships. If they have children, it is encouraged that they try to maintain a working relationship.

**Common Misconceptions: Assets**

**Interviewer:** What would you say the most common misconceptions people have about a divorce process? Everybody watches TV and even movies so I'm sure their view is not what actually happens.

**Karen Pendergast:** On misconception is that people expect that everything is split equally, 50/50, which is not the case in Pennsylvania. Pennsylvania's an equitable distribution state which generally means one spouse is going to walk away with more of the assets and that spouse is normally the person that
makes a little bit less money, not the person who worked and earned it.

**Interviewer:** You said Pennsylvania is an equitable distribution state. What does that mean? Can you give me some examples of assets people might not even know they have and how they might be distributed?

**Karen Pendergast:** Equitable distribution means it's not 50/50. The court considers many factors in determining how they're going to divide the assets.

One of the primary factors would be the parties' incomes. The more someone makes, the more there's going to be a deviation from a 50/50.

Other factors that the court considers in division of assets is who is going to be the custodian of the children and the ages and health of the parties and the ability to accumulate assets in the future as well as other factors.
Those are factors that the court considers when they decide whether it's going to be 50/50 or 55/45 or 60/40 or some other division.

As far as the assets, one thing is to look at the tax returns. See if there's any interest income being claimed on the tax return to identify some of the assets if you're unaware of what they are. We also send out discovery that the other party has to complete, to list out all the assets and produce documentation on the assets that might be in their own name. Sometimes you pull the credit report to see what's on the credit report.

Interviewer: I guess there's a difference between things that someone accumulated before they're married, during their marriage, and then after the marriage ends. How are those things handled?

Karen Pendergast: Anything that someone had prior to the marriage is considered a premarital asset and that asset remains premarital and that person's separate property. However, if it has increased in value during the marriage, that increase in value is considered to be a marital asset.
You need to value the asset as of the time of the marriage and the date of the separation. Whatever that difference is, it's going to be distributed between the parties.

Anything accumulated during the marriage, from the date of the marriage to the date of separation, is marital regardless of whose name it's in. Like I said, if someone has a pension or they have a retirement account, it's going to be valued and distributed between those parties even though it's held in one person's name.

Any assets accumulated after separation would not be considered, as far as the distribution, but still needs to be disclosed because it is a factor the court considers when they decide what percentage to distribute the marital assets.

**Interviewer:** If someone had, before the marriage, a rental property and the couple's married for 10 years, and the rental property increases in value, that increase in value would be part of the marital community?
Karen Pendergast: Right. The increase in value would be part and the rental income would be part of that person's income.

Interviewer: Interesting. Let's just say a baseball card collection, Mickey Mantle or something. If they had it for 20 years before and then 20 years during the marriage, if the value of the card went up, that would be part of the marital community, right?

Karen Pendergast: Right. Whatever the value was on the date of the marriage and then the value on the date of separation, whether it's an increase or a decrease, that's what's marital. Increases are offset by decreases on assets that were owned prior to the marriage.

For example if that card went down in value, it would offset maybe a retirement account that went up in value.

Interviewer: Do you deal much with self-employed people who have a business?

Karen Pendergast: Yes. I represent people that have their own businesses and in those situations, we
recommend an expert to come in and appraise the business when the parties have value in the business.

It's hard when the business doesn't have any value because just to hire an expert of that nature could cost $10,000 alone.

You have to really look and decide if there is at least $10,000 or more worth in the business, but the court wants a value on the business in order to get it listed for a hearing. Either the parties can stipulate that there's no value or not much value or you have to hire an appraiser to come in and determine what that value is.

**Interviewer:** Do you see any bad behavior by people once they started divorce proceedings, like they try to clean out a bank account or transfer an asset or hide money or destroy a business, that kind of stuff?

**Karen Pendergast:** Sometimes it can be contentious and that's what people would do. I had clients that came home to just a box because, in Pennsylvania,
without a court order, anybody can remove any marital property from a home.

There are people that will get a moving van and you will come home to nothing with no advance warning. The court does not place much value on personal property unless it is appraised. It's a garage sale value. When you weigh the cost of litigating it and going to court on the issue, it ends up not being worth it.

I usually tell people to try to keep it amicable and only take half of the personal property if you're moving out and, likewise, half of the marital funds, mainly due to the need for support. It can take up to 2 months for the court to order support. It's a little different when the bank accounts are cleaned out. You can file an emergency petition and ask the court to freeze the accounts and return that money but sometimes the money's already spent by the time you hire an attorney to do that.

It certainly does happen but there are remedies available if it does.
Interviewer: What about debts? We talked about marital assets. What about debts? How are they allocated?

Karen Pendergast: Debts accumulated during the marriage are considered marital debts. Even if one person charged up a credit card and the other person had no knowledge that that card even existed, if it happened during the marriage and you can produce a statement showing that it existed at the time of your separation, the court will factor it into the equation and the parties are both going to share in that debt.

It may be the case that the person whose name the debt is in has to pay it, but the other person makes it less of an asset to pay off their share.

Interviewer: What about bankruptcy? Do any of your clients have to file bankruptcy to make things work?

Karen Pendergast: People have filed bankruptcy and unless you get it from the bankruptcy court, it does stay a divorce action.

So we try to caution people: if they want to get a divorce, file the bankruptcy after the divorce goes through and that way any debt that they may have
taken on as part of the divorce agreement or part of the divorce order can be discharged.

It's important if you do an agreement and you represent the other spouse, that you put in the agreement that the debt owed to that spouse is non-dischargeable in bankruptcy because what could happen is you have a client that owes money to one spouse and then files bankruptcy and now they don't have to pay the spouse that money that was owed to them as part of the divorce.

**Interviewer:** Would this divorce affect the alimony or spousal support?

**Karen Pendergast:** Bankruptcy doesn't affect child support or alimony. Those things are protected in a bankruptcy.

**Interviewer:** Both alimony and child support?

**Karen Pendergast:** Right.
COMMON MISCONCEPTIONS: CUSTODY & CHILD SUPPORT

Interviewer: What about misconceptions about child custody? Do people say, “No, she wants child support money and just wants the kids. I'm afraid, I'm worried.” Is that a misconception?

Karen Pendergast: People have a misconception about who might be able to get the children. Some people are still under the misconception that because you're female, the court will automatically give you the children and it's really a gender-neutral law.

It's based off of the best interest of the children; a court considers who has been the primary caretaker for the children and what they did while the parties were together.

Interviewer: I've heard that there's not just one kind of custody. I guess, physical custody and legal custody?

Karen Pendergast: Right.
Interviewer: What is that?

Karen Pendergast: Physical custody is where the child actually lives and is spending their time, and legal custody is the right that you have to make decisions in a child's life regarding religion, medical care, right to access to school records and those types of decisions.

Interviewer: How do custody rights get allocated by the courts? How do they work?

Karen Pendergast: Every case is different. If the parties live close together and both parents have been involved in the children's lives, the court may recommend a joint physical custody, which could be a week on, week off. It could be two days, two days, and an alternating weekend. It really varies depending on the circumstances.

But in some cases that's not feasible either because the parties live too far apart or one parent has really been the primary custodian of the children while the other parent might have been the one that worked all the time.
In those cases, the court will setup a more traditional type of custody schedule where one party may get every other weekend and a night for dinner during the week, but it's really fact-specific to the parties.

Interviewer: How much of people's preferences come into account or does the court tell you to just make amends before you do it in a way that they're trained to do it?

Karen Pendergast: If both parties are in agreement, the court will adopt the custody agreement, but what one party wants really doesn't have a place so much in what the outcome of the case would be if it were litigated. A person may want primary custody but they haven't been the primary custodian and it's not in the best interest of the children, so that wish isn't really going to factor in for the judge.

Interviewer: This is an area in which it's very important to try to agree; otherwise, bad things can happen.
Karen Pendergast: If you don't agree on having someone dictate a schedule to you that you may or may not like, or you may like part of it but not all of it, you're going to have to live with it on a daily basis.

Interviewer: You said that courts neither favor the woman nor the man. It's really the circumstance and other factors, right?

Karen Pendergast: It's really based on the relationship with the children and who's been the person that's been caring for the children, spending the time with the children.

But other factors always come into play. If someone has a drinking problem or a drug problem, obviously, that's going to factor against that person even if they were the primary custodian.

Interviewer: How else is child support calculated? If you're going to ask to pay child support but you have the kids for this week and the spouse has them for three, will you pay less child support? How does it work?
Karen Pendergast: In Pennsylvania, there's a guideline calculation so it's based off the husband's income and wife's income (or mother and father's income). They consider the number of children that there are and if there's a custody schedule. If one parent has the children at least 40% of the time and is paying child support, they will get some reduced credit.

Another big misconception is that people think that when the custody's 50/50, that there is no child support. That's not the case. The person that makes less money will still be entitled to child support and the person that pays will just be getting a reduction because they have the child half the time.

Interviewer: Is child support maxed out at a certain level or can it go as high as it can go?

Karen Pendergast: Based on the guidelines, it does max out based on the number of children and based on the income. Child support is fixed, whereas, APL or alimony spousal support is not fixed.
Interviewer: I know every case is different and there are no exact numbers, but is there a ballpark figure...?

Karen Pendergast: It wouldn't be just to say that there's a ballpark figure because someone that has less income may only be paying $250 a month, whereas, someone making a lot of money may be paying $3,000 a month. It really varies based on the incomes and the income's a huge factor.

Not only the income of the person paying but also the income of the person that's receiving the money factors in. You can't really compare what you're getting for one child with somebody else that's receiving child support with one child because you're coming from two different households with two different household incomes.

Interviewer: If you're paying alimony and child support, do the two offset each other or are they totally independent?

Karen Pendergast: They do factor in the formula together so that the court will consider child support with the alimony. If you're receiving child support,
you're not going to receive 40% alimony plus the child support. The alimony will be less.

If the person is receiving alimony but has to pay child support, the court will first factor the alimony into the income before they then calculate the child support, which can affect the amount you have to pay in child support because of that alimony income boosting up the income.

But whichever one is higher will determine who's getting the money. So if you're entitled to alimony but you have to pay child support, you're only going to continue to get your alimony if it's more than what your child support obligation is and it would be reduced by your child support obligation.

**Interviewer:** I've heard that alimony is taxed; what about child support?

**Karen Pendergast:** Spousal support, APL and alimony are all the same thing. It just matters what stage you are in of the divorce process. Those are taxable if it's part of a court order, whereas child support is not taxable.

**Interviewer:** Are people surprised by that?
Karen Pendergast: Not generally. Most people realize that the support is taxable and child support is not. I haven't really had that misconception much by people.

Interviewer: I don't know if anyone does this but if there are substantial marital assets, has anyone tried to buy down child support by giving away more assets than they otherwise had to give?

Karen Pendergast: Generally, no, because child support is something you can't waive. By doing that, you do put yourself at a risk. It does happen. I've had it happen in cases, but then that person that bargains for less child support is exposed because the child support's a separate remedy. The other person can just go to court, try to get the correct amount of child support in the future, and the court may not consider that assets were waived.

I would not recommend it. I think it's a very dangerous bargain to make. A waiver of child support is not enforceable in Pennsylvania. Some people will say, “Give me custody and I'll waive
child support,” and they make those agreements but the part about the child support is not enforceable. The other person just gave their child away because they thought that was the best. They didn't have to pay but they're going to end up paying anyway.

**Interviewer:** That's very important. I didn't realize that. Do you have cases where one spouse says, "Hey, I'm paying the other spouse child support. They're using it on themselves. They're not using it on the kids. I want it taken away."

**Karen Pendergast:** I do hear that. I heard it frequently over the years. What I tell those people is it's not really their right. I've had people asking they want to see receipts and, normally, what I would explain to those people is that child support isn't based on the out-of-pocket expense that you might actually pay for the child.

The court considered the cost of, maybe mom's living in a two-bedroom instead of a one-bedroom apartment so part of that child support is to pay for that increased overhead of having a child. Even though the person's trying to say, "Hey, she has an apartment anyway." Really, they're not looking at the
added expenses of having an extra person. They're not looking at the added expenses of the food for another person or the increased water and electricity usage.

Those people are just looking at how much it cost for clothes or how much they're paying for a haircut and saying it doesn't add up but there's no way the court would entertain ordering somebody to pay receipts as a guideline calculation and they have to live with that.

**Interviewer:** What if you marry somebody that has a child already with someone else; do they become a child that you have to support if you divorce that person?

**Karen Pendergast:** Only if that person adopts the child. I must say, there's always going to be another parent, even if that parent is deceased. Then whoever that other parent is, is responsible to pay child support.
A stepparent only becomes liable for child support if they adopt a child. I have heard of the case where a stepparent did adopt the child and then the mother went and remarried the original father whose rights have been terminated and the stepfather had to pay child support to the natural parents.

**Interviewer:** That's crazy.

**Karen Pendergast:** It is crazy. But that's legally the way that it works. If you adopt, you will become liable. Short of an adoption, you're not going to be liable.

**Interviewer:** Interesting. Anything within child support we haven't talked about that's important? Are there any issues that I haven't covered?

**Karen Pendergast:** With child support, another thing that factors in that someone should bring forth is if they're covering medical insurance for the child. Whoever's providing the medical coverage needs to demonstrate what the cost is for the child and they will receive a credit factored in the child support equation.
Other things would be if there are any unusual needs of the child. Say the child has recurring medical needs and you know that the cost is $300 a month, then those will be things that you could ask the court to deviate from the guidelines to factor in that extra cost.

Also, if the child has to go to summer camp, that would be another expense that the court would consider. You would need to establish that expense or any after-school care expense. Any type of childcare expense while a party is working does get factored in and that should be brought to the court's attention when they're fashioning the order.

In addition, if parties are living in a marital residence and they're not yet divorced, the person in the residence with the children can ask for a mortgage deviation as part of the child support and it's really up to the court to decide whether they're going to award that extra money and the mortgage deviation.

It's a fraction of what the mortgage would be but every dollar helps when you're splitting up two households and you have the children in the home.
Interviewer: Makes sense.

Karen Pendergast: Of course, the Pennsylvania child support terminates when the child is 18 or graduates from high school, unless the child is deemed disabled; then child support can continue through the length of the disability.

Interviewer: If the child is permanently disabled, would support continue throughout their entire life?

Karen Pendergast: It could, yes.

**COMMON MISCONCEPTIONS: ALIMONY**

Karen Pendergast: In addition, another misconception is there are people that come into the office who believe that alimony does not exist in the State of Pennsylvania and alimony certainly does exist in the State of Pennsylvania and there is a formula for it. It's 40% of the difference in the net incomes between the parties.
How long somebody gets alimony would be based on the length of time that they've been married and, as a general rule, the sum is for every three years someone's married they’d be paying a year of alimony.

You may not see alimony in a shorter marriage. Alimony also terminates if somebody lives with another person of the opposite sex that they're not related to or if they remarry.

**Interviewer:** You said its physical spousal support or alimony in Pennsylvania?

**Karen Pendergast:** Spousal support is what it's called prior to a divorce being filed. If there's no divorce filed and parties are just living separately, it would be called spousal support. It can also be called spousal support while the divorce is pending but once the divorce goes through, it's now called alimony.

**Interviewer:** What are the factors that determine how much you have to pay and for how long?

**Karen Pendergast:** For spousal support, there's a guideline. It's 40% of the difference of the incomes
unless the child support's factored in and then it's going to be a third. How long? It's usually for every three years you're married it's a year so in very short marriages, there may not be an award but in longer marriages it can be permanent. I mean over 25 years.

**Interviewer:** What if one spouse hasn't worked and they've been a homemaker and took care of the kids? From the moment that the divorce starts, they have to have some kind of income, so what do they do?

**Karen Pendergast:** If the person hasn't worked and they're not living together, then that person would be the one entitled to spousal support. I tell people that it takes about eight weeks to get in court. They can file their petition before they move out but they need to allege in their position that they will be residing separately within those eight weeks so they can get a date as close as possible to the move out for that spousal support. Then that person may have assets accumulated during the marriage so, again, I always tell that person that they shouldn't take more than half the assets but they may want to take some of the assets and joint names and put them in their own
name because they may need that money to live on until they have their spousal support award.

The court generally can hold someone to an earning capacity depending on the circumstances, but if someone still has children that are not in school, you have to factor in the cost of daycare with an earning capacity and sometimes these people are held to a zero earning capacity.

If the children are in school, more than likely the court will hold someone to an earning capacity but it may be at minimum wage if there is no recent work history. It doesn't mean that the person has to work; it's just a number the court uses in the calculation for that person.

Interviewer: Do you have instances where people just don't want to work? They want to get the alimony and just use it. That's it. Is there a requirement that they work?

Karen Pendergast: Some people don't want to work. They haven't worked and they have no desire to
work. It's whether they can afford to live off of that alimony. Also, in those cases, we have to caution people that it's not usually permanent, so at some point in time, that's going to end. It will be better for them to establish some work history now, even if it's part-time, so that when they get closer to it terminating they would be at a better income level.

But there is no requirement that someone work if somebody wants to not work and just collect their alimony. They'll be held to an earning capacity but they'll still receive their alimony.

**Interviewer:** What if one of the spouses is elderly or disabled and they're just not able to work for some reason?

**Karen Pendergast:** If someone's not able to work then they're not going to be held to an earning capacity. If someone's receiving social security disability, the court will use the social security disability income as the number for that person when they run the equation, but you have to show that you are disabled.
There is a form. You have to send it to the court, signed by a doctor, stating why you cannot work.

And then, of course, if someone is elderly and at retirement age, then the court is not going to assess an earning capacity but will use social security income in the equation.

**COMMON MISCONCEPTIONS: LENGTH OF PROCESS**

Karen Pendergast: Another thing that people misconstrue about divorce is that it's a quick process. It really is not a quick process. You need to know what all the assets are before you can even get to a divorce hearing. Some people don't understand why they might not be in court within a year distributing their assets so that's another misconception that people have. But if parties are able to agree, the quickest divorce is about four-month process.

Interviewer: How long can divorce take? You said it can be as little as four months but is it an average?
Karen Pendergast: I would say that the average is probably two years, maybe three, depending on whether you have to wait the two years for the separation. I've seen divorces go on for ten years.

Interviewer: Wow!

Karen Pendergast: There are various reasons. Sometimes someone's being difficult on disclosing assets. Sometimes neither party is really emotionally ready to move to that final conclusion and at some point, someone has that motivation to finalize it. On average, I would have to say probably two and a half to three years.

**COMMON MISCONCEPTIONS: ROLE OF ATTORNEYS & SELF-REPRESENTATION**

Interviewer: Any other misconceptions maybe about attorneys themselves – that they're there just to drain people of money and feed on the assets of the divorce? Any have you heard?

Karen Pendergast: There are misconceptions about attorneys and what their roles are and that they just want to make money. Divorce is an expensive process. The best thing you can do to keep cost down
is to limit your communication to legal questions so that it's not an everyday, on-going venting session. Ask the legal issues from the attorney then vent to your friends or to a therapist instead of venting non-legal issues to your attorney.

**Interviewer:** That's taking up the time making the case more complicated.

**Karen Pendergast:** We recommend normally that someone get involved with a life coach or personal coach to help them through the process so that the person that would be listening to the emotional parts of the divorce where we would focus more on the legal aspects of the divorce for that person.

**Interviewer:** This really is a stupid question but does each person in a divorce need their own separate attorneys or can both parties go to somebody to get the divorce done?

**Karen Pendergast:** There's no requirement that anyone has an attorney but it's very difficult to file
divorce yourself. The code is very specific, not only on the documents but on the time frame and how they need to be served.

An attorney in Pennsylvania could never represent two parties. You can only represent one party. That being said, there are cases where only one person hires an attorney and it's made very clear to the non-represented party that the attorney involved in the case does not represent them.

I do find that in cases where there is one attorney, they do tend to settle more because you don't have that element of another attorney pushing someone to litigate as opposed to settling the case.

It does happen and it really depends on the parties whether it's wise or not. It depends on the educational background, the experience, whether they've gone through a divorce before, and whether they understand what the laws are in Pennsylvania when they're negotiating.
Based on the ones that I've been involved in, the more that person has that experience or education, it's worked out fine.

**Interviewer:** You mentioned that the paperwork's complicated and it's not advisable for someone to do it themselves. It means you get people that say, "Do I even need an attorney? Can I just do this myself?" Or you're just saying what are the benefits between representing yourself versus hiring an attorney?

**Karen Pendergast:** We do get people that want to represent themselves. As far as the divorce, it's nearly impossible to represent yourself because it is complicated due to forms and time tables and proof of service.

I do tell people that forms are available at the court house if they want to file for custody or they want to file for child support, but that it would not be wise to actually go to the hearing or conference representing themselves because, sometimes, they don't understand when they have to agree, when they don't have to agree and they end up making foolish agreements.
Interviewer: There are places in your areas that advertise like, "Divorce, only $299." Are those document-preparing places?

Karen Pendergast: There are places that do advertise but I don't know whether they're local or they're statewide. I have seen cases that came in from Pittsburgh where people ordered forms online through a Pittsburgh firm and they come see me because they get a kit but they don't know really the steps to move forward.

The other problem with those cases is that there are only cases where there are no division of assets, custody or support and sometimes people don't realize that and they go for a divorce and they actually had assets to divide whether they realize that or not.

For example, even though assets are just amongst spouse's name like in IRA or a pension or business, if it accumulated during the marriage, then both spouses are entitled to that and by going the cheap route, they're not getting that legal advice. They're getting a divorce and then they lose the right to the
distribution of assets or they lose the rights to alimony because they didn't have that legal guidance.

**Characteristics of a Good Divorce Lawyer**

**Interviewer:** What, in your opinion, makes a good divorce lawyer, versus someone that's just right off the mill?

**Karen Pendergast:** I think that’s someone that listens to what your goals are, because attorneys may have their own separate agenda on how they see things, but in a divorce, it is emotional and it is involving two people that may have to continue to work together in the future because they have children or they have grandchildren together.

I think it's important for the divorce lawyer to be able to listen and understand what that goal is in order to come to some type of amicable resolution or, at least, put forth the right arguments for the client to achieve their goal.
I also think it's important to make sure you're not hiring a divorce lawyer that just likes to litigate because while litigation is necessary at times, it's certainly not the avenue you should use for everything.

**Interviewer:** What signs will tell you that you got someone that wants to litigate every case that may not have your best interest at heart?

**Karen Pendergast:** There's word-of-mouth – talking to other people that have gone through a divorce. Maybe try talking to other lawyers in the area who would be able to tell you who they want to have on the other side because the volume of the file is large due to a lot of litigation. That would be one way to detect.

Short of that, it may be difficult until you're actually in the case to realize that you have an attorney whose primary focus is to litigate.

**Interviewer:** As you've been practicing for so long, do you tend to know who's on the other side? When someone comes to see you and their spouse has an
attorney, do you know how the other side works or literally know them personally?

Karen Pendergast: I would say that I know probably 90% of the attorneys that are on the other side of my cases and I know their litigation style, whether they're someone that's reasonable and someone that's fair and honest versus somebody that will do motions and pleadings to litigate everything. I do have a good sense of that.

Interviewer: That's great. It sounds very important to be able to tell someone what they can expect.

Karen Pendergast: Right.

RESOLVING DIVORCE OUT OF COURT: MEDIATION

Interviewer: Once the parties – I guess the term is “lawyer up” – and both have attorneys representing them, are they allowed to speak to each other? Do they have to go through the attorney? What's their condition?

Karen Pendergast: The lawyer is not allowed to talk to a represented party but the parties themselves can always speak with each other, unless the court has
entered a protection from abuse against one of the parties. Short of that, they can always speak between themselves and I encourage them to speak between themselves because that's the best way for them to resolve things out of court.

**Interviewer:** You talked about it being better to keep things out of court if possible. I've heard the term mediation used a lot, so what happens when the word is used to describe going through court and the court process versus just working it out on your own? Is that mediation? Is that arbitration? What is that called?

**Karen Pendergast:** Mediation involves someone that is trained in mediation. It could be a lawyer. It could be a counselor. It could be anyone in a specific area other than law.

They are a mediator by the fact that they've gone through training on mediation and negotiation. If you're an attorney and you're a mediator, when you sit in a role as a mediator, you're not allowed to give any legal advice.
The difference between going to mediation and through the court process is that, in mediation, neither party is getting any legal advice. It's merely a form to try to negotiate an agreement and come to a resolution.

The problem that I see with that and the difficulty in mediation is that if you're an attorney, you want to be able to tell someone what their legal rights are. But through mediation, they may come to an agreement that doesn't serve them well or that is significantly less than they would get in court. They would have no way of knowing that unless they also hire an attorney to give them legal advice while going through the mediation process.

**Interviewer:** Strange. In terms of mediation, are there any benefits to it? Is it cheaper?

**Karen Pendergast:** It varies. Normally, if it's an attorney, they're going to charge about the same rate that they would if they were doing legal work but the difference with mediation is it's voluntary. Both parties have to agree to go to mediation so you have two people that are already in the mindset that they want to try to work things out of court.
If you can work things out of court and come to an agreement, it will be much cheaper than if you litigate. But when mediation fails and you cannot come to an agreement, that's where the cost of mediation can be considered more expensive, obviously, because you're still going to have to go through the court process.

What I've told clients that have gone through mediation and it didn't work out is maybe they reached 75% of an agreement where they would have started at zero had they not even gone to mediation.

I try to get them to see the value of mediation. Maybe they did resolve some of their issues and they can limit and identify what the issues are that they couldn't agree on.

**Interviewer:** In the cases you've dealt with, how many settle or stay out of court versus how many litigate?

**Karen Pendergast:** The most litigated area, I think, would be custody, where people are not able to resolve their issues. Financially, most people can resolve the support out of court because it involves a
guideline calculation, especially for people that are W-2 employees.

The cases that get litigated in support are the self-employed cases because self-employed income has to be thoroughly looked at. It's not always what's reported on the tax return. As far as the divorce, most cases settle at the lowest level. I would say when people end up settling with the divorce, probably 70% of cases settle on the divorce and only 30% ends up having to go to court on the distribution of property.

But that's not to say that 70% of them end in an agreement quickly. It could still be three years and it may take the filing and the scheduling of the divorce hearing before people actually come to the table to negotiate.

I think it's important to have a scheduled court date to force people to sit down and face the issues and try to reach an agreement. Without that deadline, it could go on forever.
POST-DIVORCE FINANCIAL PLANNING

Interviewer: That makes sense. At the end of the day, as you clear away all the disagreements, the divorce can move forward to completion. That's the goal, right? When people are going through a divorce, do you have them focus on planning because one household become two, expenses will change, that kind of thing?

Karen Pendergast: What I do is I will run the support numbers to give people an idea of what they're going to have as income. If they're the person that doesn't have the children or they're the income-superior spouse, they have to be able to pay and also move out. In Pennsylvania, the support law starts or kick in once somebody vacates the home. Sometimes a party may need to wait until the divorce actually goes through, because that's when maybe the proceeds of the home are distributed.

That's when they're going to have to start paying support and they may not be able to afford to
maintain a place of their own and pay support without the distribution of the assets.

Planning ahead on what you're going to owe or planning ahead on what you're going to receive can help somebody determine whether it's the right time to leave the home.

**Interviewer:** That's difficult. How deep do you get into the financial part of things? Do you tell people to see a financial planner or create a detailed budget?

**Karen Pendergast:** If somebody needs help with their finances, we would refer them out to a financial planner, but as far as handholding somebody on their budget, we give them guidance. We do have an income and expense form they fill out. They can see and project what their expenses are and we can project for them what they're going to receive as part of the divorce so they can make those decisions themselves. We try to teach people to be independent.
SUCCESSFUL CLIENTS

Interviewer: What have you seen the most successful clients you have do to get through the divorce in one piece and move on and start a new life?

Karen Pendergast: The most successful clients are the ones that can put their differences aside and focus on the actual issues. By differences, I mean their emotions or their different parenting styles, and they can focus on the goal, which is to distribute their assets or come to a custody agreement for the best interest of their children or accept that, maybe, they've been the income-superior spouse and they're going to have to pay support.

The best of clients are a little bit less emotional, more realistic, and willing to reach some type of agreement.
NOTABLE DIVORCE CASES: INTERNATIONAL CUSTODY DISPUTE & RELOCATION

Interviewer: Okay. Can you give me a couple of case studies, obviously without revealing names or anything, of the different (crazier, interesting) types of cases that you've handled?

Karen Pendergast: I've litigated an international custody dispute with someone who wanted to relocate. Someone wanted to relocate out of the country with their child, who is a US citizen.

Obviously, that involves the Hague Convention and it involves the Relocation Laws. A lot of times, you have to go through a court evaluation with the psychologist. The psychologist makes the recommendation on what the custody should be and whether this person should relocate.

A lot of attorneys rely heavily on that recommendation in guiding their clients on a custody case. In that particular case, it was recommended to not relocate but we went through the litigation process and through the litigation trial. I was able to
establish why it was in the best interest of her child to be able to relocate overseas.

**Interviewer:** What if one of the spouses wants to relocate either out of state, or more than 20, 30, 50 miles away? Are they allowed to even if there are kids involved?

**Karen Pendergast:** If somebody wants to relocate, I always tell people that it is an uphill battle. It is an expensive battle unless the other party's agreeable. They have to serve notice of the relocation and the proposed address and date of relocation to the other side and if the other side objects, then they have to file a petition to relocate.

They cannot just up and leave the state with the child. People that do that have court orders entered against them where the person in the state gets custody of the child and the child has to return to the state. It's never wise to do that.

I also tell people it takes a good eight months to a year and a half before you even get through the process. People that think that they're going to relocate in a month; it's not realistic. It doesn't matter
that their spouse is in the service. It doesn't matter that they may be pregnant with another child with their new spouse in the service. Those people are still stuck waiting until it goes through the court process which could be eight months to a year and a half or longer.

**NOTABLE DIVORCE CASES: BUSINESS VALUATION**

**Interviewer:** That's interesting. Maybe another example of a complicated divorce case you've ever dealt with. What happened?

**Karen Pendergast:** The parties executed an agreement to settle divorce and no appraisal was done on a business which was a flooring business.

The court found that the agreement was valid despite no stated value or appraisal because the wife was familiar with the business and its value even though the agreement did not state a value and no appraisal was done.
CONTACTING ATTORNEY KAREN PENDERGAST

Interviewer: I guess last thing is if you want to give a personal statement to the people that now read this material and they're interested in a free consultation with you, what's the best way to get a hold of you?

Karen Pendergast: The best way that I like my clients to get a hold of me is through email. My email is kupendergast@ulmerlaw.com.

Interviewer: Last question. You have already covered it, but what do you feel makes you different, unique, and particularly suited to help people that are facing divorce?

Karen Pendergast: Like I said, I've been through the process. I understand the process. I do try to work things out of the court but I also do have significant litigation experience and I do like to litigate when it's necessary. I think that I help people try to determine when to settle and when it's important to litigate and separate the two, as opposed to trying to settling everything or litigating everything.
DISCLAIMER

This publication is intended to be informational only. No legal advice is being given, and no attorney-client relationship is intended to be created by reading this material. If you are facing legal issues, whether criminal or civil, seek professional legal counsel to get your questions answered.

Karen Ann Ulmer, P.C
174 Middletown Boulevard
Suite 300
Langhorne, PA 19047
(215) 752-6200
www.UlmerLaw.com
SURVIVING DIVORCE
IN PENNSYLVANIA
(Getting Through a Difficult Time - A Guide)

“Karen represented me in a family law matter about 4 years ago, and I found her to be trustworthy and knowledgeable. She has also represented several of my family members and friends. I personally have recommended her to many, many people. In fact, I am also an attorney, and I often am asked for names of family law attorneys. Whenever my clients need someone who specializes in Family law, I feel more than comfortable giving them her name.”

- A Child Custody client

“Going thru a custody dispute is a scary nerve wrecking experience but you don’t have to go thru it alone. I made the mistake of opening up the phone book and hiring the attorney with the biggest ad, BIG MISTAKE. After realizing my mistake by hiring the wrong attorney at first, I went online and did my homework, I met with several attorneys and then I met Karen. Unfortunately, if you are going through an ugly custody battle you need the best, Karen is the best. After meeting with Karen and discussing my situation, Karen explained all my options and what she was prepared to do. A feeling of total relief came to me, the first time in over a month. I am no longer worried about the outcome cause I know I have the best attorney on my side.

In the first week Karen represented me she did more than my previous lawyer did in a month. She knows how to navigate these ugly waters like a pro. If you have to go thru this ugly process, you need Karen on your side. Also, Karen is extremely good at getting back to you if you have a big or small question/issue. You can make the same mistake I made, and use the first “phone book” lawyer you find, or not waste your time and money, and HIRE KAREN. I don’t wish this experience on anyone, but if you have to go through it, you absolutely want Karen on your side.”

- Jim

Karen Ulmer Pendergast founded the law firm, Karen Ann Ulmer, P.C. in 2001. Ms. Pendergast is an attorney licensed to practice in both PA & NJ. She primarily practices in the areas of family & matrimonial law, having received her B.S. in Psychology from Duke University in Durham, NC where she was the president of the Psychology Major’s Union. She obtained her J.D. degree in 1995 from Widener University School of Law where she served her first year as a representative of the SBA and currently serves on the board of the Alumni Association for Widener Law School. She is a member of the Bucks County Bar Association, Pennsylvania Bar Association and the Montgomery County Bar.