



## **Divorce, Wisconsin Style: The Starting Points An Overview of the Divorce Process**

**By Daniel P. Bestul**

The divorce process is a paradox; although each case brings unique issues and concerns, divorce laws themselves suggest a “cookie cutter” approach. The only legal grounds for divorce in Wisconsin is that the marriage is irretrievably broken. Wisconsin divorce law presumes that child support should be set at a percentage of gross income from all sources, with the percentage being set by law, rather than by a judge who has analyzed the needs and abilities of the parties. The law presumes that property should also be divided by mathematical formula: each party is to get 50% of the total marital estate. Some courts have even gone so far as to create a “standard” visitation schedule!

While this last provision is no doubt extreme, there is a basic philosophy underlying the apparent “cookie-cutter” approach to divorce in Wisconsin. The Legislature has recognized that, although a marriage is much more than a financial relationship, there is a very strong financial component to a marriage, and it should be treated as a partnership on divorce. The Legislature also recognizes it would be impossible to enact laws that would take into consideration all the factors a divorcing couple might consider important to the unraveling of their financial affairs. As a result Wisconsin law starts with the premise that all property (except property that was received as a gift or inheritance) is to be divided equally between the parties.

Although the percentages are different, the Legislature has tried to reach a similar result with child support. Several years ago, the Legislature directed the Wisconsin Department of Health and Social Services to conduct research into the costs of raising children. The study, conducted by the University of Wisconsin-Madison, determined that a couple spends about 17% of the household’s gross income on one child, an additional 8% on a second child, an additional 4% on the third, and an additional 2% on each additional child. The percentages were adopted as the child support income standards for Wisconsin. More complex formulas are used if each party has placement at least 25% of the time.

Of course, non of these “cookie-cutters” are absolute. A divorce court is given discretion to vary from the “standard” approach, and the Legislature has given the courts a lengthy list of factors that are to be considered before a decision can be made on child support, property division or maintenance. However, the standard approach is preferred in most cases by most judges, because of the tremendous difficulty the court has in deciding these intensely personal issues.

