

Divorce Lawyers Must Bring Their Clients Back to Reality

By Fred Silberberg

As family law attorneys, we are trained professionals. Although we may not be trained in the field of psychology, we are no different from any other attorney who works with clients. Our job is to represent clients vigorously. No doubt, some of us are hired by certain types of clients exactly for that reason. But our job has another aspect, as well, and that involves imparting reality to clients who come to us, especially those who come in a state of emotional distress. In the area of family

law, that state is applicable to most clients.

Divorce is a painful process for most people, and that is understandable. There is the anger of rejection, the fear of the unknown and the general discomfort with things taking on a new form or just being different from the way they were. Dealing with these issues and becoming accustomed to a new way of operating are not easy tasks for most people. They often lead to anger, a desire for vengeance and a desire to take control of the situation. These may be "normal" reactions for

people faced with the prospect of divorce. But as lawyers, we should be bringing people back to reality. We have a level of experience and knowledge that the clients who hire us do not have. In fact, they come to us exactly for this reason. Our duty is to explain the realities of life, what can be achieved in a divorce and what cannot. Unfortunately, some family law attorneys capitalize on their clients' emotional distress, rather than trying to assist them in resolving the matter in a constructive way. They do this for one reason: to generate substantial fees.

We all hear about divorces that have cost a fortune. We know of cases in which "scorched earth" litigation policies have been applied. More often than not, this happens for only one reason: The lawyer allows the client to drive the case. That is akin to allowing someone who is intoxicated to be at the wheel. Clients are just not in the correct frame of mind to make these decisions, and they are fueled by anger.

The court system is not perfect. It is far from it. On learning the facts of a case, a lawyer can assess what is achievable and what is not. The lawyer should tell that to his or client. The lawyer should not allow the client to dictate what steps

are taken or how they are taken. That is not our job as family law attorneys.

Some lawyers believe that their job is to do what the client wants, regardless of the potential outcome. Some like to feed on the emotional duress of the client and let the client take control. The theory is that, if the client is paying for it, then it should be done. In these types of cases, you see all sorts of maneuvers being made, both in court and outside of court. The policy seems to be to promote a lack of cooperation whenever possible, to reach no informal agreements and to undertake no informal discovery. Motions are set before the court without even asking whether the other side agrees to the relief sought, or even whether the relief sought is unrealistic. Once the request is put into motion and the papers are filed, the other side has to file a response and incur more fees. Not until after that happens does the moving party decide to take it off calendar or say, "Let's make a deal." With some lawyers, that procedure is de riger.

All of this accomplishes only two things: It drives up the cost of the case, and it makes it take longer to resolve. In the end, the clients usually wake up from their

state of duress and recognize that they have spent a fortune in fees that they cannot recover, as well as an endless amount of emotional energy and time that they can never get back. The client is not happy, and nothing has been accomplished.

During this process, the lawyers are billing fees and telling the clients that they will obtain results that the lawyers should know are not realistic. Some of these lawyers excel at spinning the outcome, to make it sound like things went better than they did. Often, they allow the case to escalate further by letting the clients believe that they are in control and that things will turn out in their favor. Now the clients are refusing to agree to requests that are normally agreed to, determining what else can be done to expand the litigation and "get" the ex-spouse, or even making up deposition questions that won't lead to any discoverable evidence but will drag the process out longer and make it more costly. The clients think that the other side is being punished, the lawyers know that the punishment means more fees earned.

Sometimes, the clients' behav-

ior is intentional; sometimes, it is not. There is a psychological phenomenon known as "splitting." It is a defense mechanism that people employ when they are injured. Someone is hurt, and it is the fault of the other person. There is nothing that the other person can do that is good, and in this case, that is the spouse. The spouse deserves to be punished, and the divorce process allows that to happen. People who suffer from "splitting" often seek out the lawyer they think has a reputation for putting on the biggest fight, even though that fight may not lead to any tangible results. It is all about making the other side suffer.

Whether the client's motivations are intentional or not, as family law attorneys, we are obligated to put these people on the right track and not allow them to wreak havoc with their own lives. Physicians take the Hippocratic Oath and vow to "do no harm." Family law attorneys should take the responsible approach and do the same for their clients.

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