

Forum

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Family Law Judges Need More Power to Keep Order in Court

By Fred Silberberg

The world of family law is a world of drama, where law and emotions intersect. With each decision made by a court, implications reverberate long after the gavel has been pounded. In the process, things have a tendency to spin out of control, especially when money is involved.

California's family-law courts deal with every level of the socioeconomic spectrum, from the poorest of the poor to the richest of the rich and the wide range of people in between. In many cases, there are ample means to underwrite a runaway dispute.

Unlike business disputes, though, many decisions in family-law cases are, unfortunately, driven by emotions, not logic. Often, the clients are not sophisticated in a business sense or do not see the economic consequences of what they are doing with their cases.

Only when the dust has settled do people wake up and realize the financial impact of what they have done — but by then, the case is over. The legal bills remain, and so much of what existed has been spent that it is difficult, if not impossible, to pay them.

Because family-law cases tend to spin out of control, the need for case management is even more acute than in general civil matters. But Family Code Section 2450 precludes case-management plans absent a stipulation by both parties. The statute should be amended.

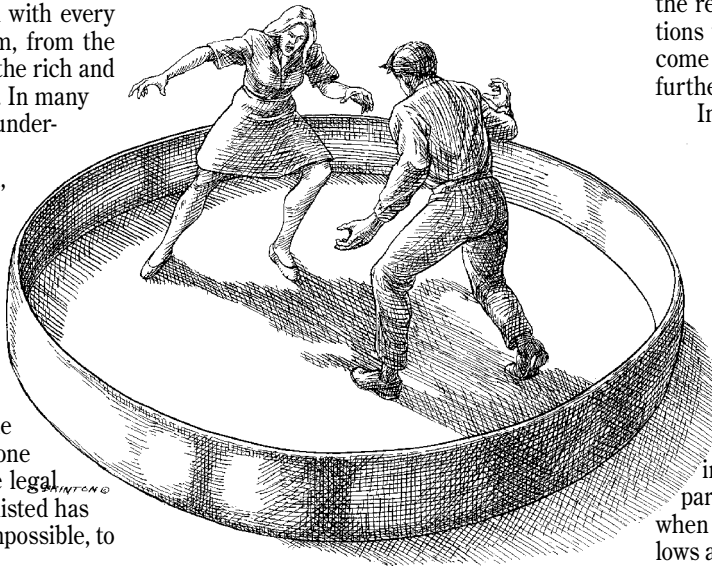
Given the lack of sophistication on the part of many parties, many rely on counsel to guide them through this stressful process. Those spouses may not instruct their attorneys to conserve resources.

Lawyers often tell such clients that they should not be concerned about the rate at which things are being billed because the other spouse will be ordered to pay those fees. More often than not, though, that does not ultimately play out.

With no one able to manage such cases and curtail the actions undertaken, estates often are ravaged through wars of attrition. Many times, one spouse will attempt to force the other into capitulation, attempting to extract a settlement

that might not be equitable or in keeping with community-property laws. In the process, that spouse will do things that are not reasonable or even necessary.

The use of repeated discovery requests is common as a means to tie up spouses and prevent them from working or conducting a business. Invasive discovery techniques that stop businesses from functioning or involve business associates



in disputes also might cause irreparable damage to community estates, resulting in hundreds of thousands of dollars being spent on legal fees.

It is not enough for courts to look for abuses in law and motion. Courts must have a sledgehammer available to take control of such matters effectively.

That sledgehammer does not currently exist. Under the existing statute, if one spouse or his or her lawyer is attempting to use the system to abuse the opposition, that spouse or lawyer will not stipulate to a case-management order — rendering the family-law judge relatively powerless.

Some attorneys will argue that a case-management program is not necessary and that tools already exist to curb abuse, including the appointment of discovery referees. But referees are ineffective for such purposes.

Discovery referees often examine matters

solely in light of the broad standard of “likely to lead to the discovery of admissible evidence.” They do not get involved in the particulars of a case, nor the economics.

Referees often will recommend that discovery proceed because it might lead to the discovery of admissible evidence, even if the methods do not justify the potential benefit.

Moreover, absent a stipulation by the parties, the referee generally only makes recommendations to the court. Those recommendations become the subject of objections and, potentially, a further hearing.

In addition, because referees generally are retired judges, their employment is an expensive undertaking. The flow of cash out of the estate is exacerbated, and interference with things like daily business operations is not necessarily curtailed.

Judicial officers need an effective means to take control of a case. A party needs to be able to call matters to the court's attention to justify case management.

If a case-management program can be implemented only with the consent of both parties, then it will never happen in situations when it is needed most. As it stands, the law allows abusive parties or lawyers to continue to do just that.

In general civil cases, case management occurs without the stipulation of the parties. It should be no different in family-law proceedings.

The individual best able to make a neutral assessment of what is going on in a case is the person most familiar with all aspects of it. In the past, family-law judges were assigned to matters for specific proceedings: One judge could hear a motion and another an order to show cause. Now, we assign family-law judges to cases for all purposes, so they can become familiar with the case from beginning to end.

It only makes sense, then, that the Legislature should give family-law judges the authority to take control of cases to ensure that they are handled properly, and that litigation is not permitted to run amok.

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