



## A Breed Apart, Family Law Courts Require Special Care

By Fred Silberberg

There is no doubt that one of the most stressful jobs for a judicial officer is the family law assignment. It is not easy to sit, day in and day out, dealing with constant drama and emotion. It is not easy being saddled with the burden of knowing that a decision can so dramatically affect the lives of those before you.

At the same time, it isn't easy for the lawyers who deal with this on a daily basis, either. After all, while the litigants certainly want things from the court, they expect that their lawyers will be able to deliver — and that expectation is not always realistic. With a bang of the proverbial gavel, the court can put an end to hearing a particular party. The lawyer cannot.

It takes a certain demeanor to be successful as a judge or attorney in family law. Not everyone has it. Family law courts operate differently than civil courts. The volume of paperwork is exponentially higher in family law court than in civil trial assignments, and the number of cases per day is significantly higher, as well. To top that off, most litigants in family law courts represent themselves. Family law court judges and lawyers need to understand this and adjust their temperaments to accommodate the situation. Without that adjustment, the appearance of the system — to the litigants and the outside world — seems skewed, and the public's level of dissatisfaction with the court system increases.

Historically, the public regarded the courts, judges and court personnel with a certain level of mystique and accorded them a well-deserved level of respect. To maintain that respect, family law courts have to operate with extra care; after all, where is the public more present on a regular basis than in the family law courts?

Everyone who comes in contact with the family law court operates at a level of fairly high anxiety. That is the nature of the beast. However, that anxiety can ratchet up to an unnecessary level when court officers neglect to take simple measures to prevent problems — especially those involving timing.

For example, cases commonly take longer to hear than the lawyers estimate. Cases that are expected to conclude in one afternoon often continue into the follow-

ing day. That throws the court's calendar into havoc. While no one faults the court for such a problem, it would, however, be helpful if courtrooms instituted a system to contact the lawyers affected by such delays — allowing those lawyers and their clients to avoid wasted trips to court.

It's not easy telling a client, once he or she has arrived, to turn around and come back on another day — especially if it happens multiple times in the same courtroom. If lawyers could call and find out whether their cases will be heard that day, those lawyers could reset hearing dates on behalf of their clients, avoiding the frustration of unnecessary trips.

Of course there are certain situations, such as those involving restraining orders or jurisdictional issues, in which delays or fruitless trips to court are unavoidable. In the vast majority of cases, though, contacting lawyers about delays is possible, and it can make the system run more smoothly.

With funding for courts cut dramatically during the past several years, it is unlikely that the number of family law departments statewide will grow in the near future, while the number of new filings continues to increase. There are only so many hours in a day, and no one faults a judge for being unable to read every file in time for every hearing.

It is disconcerting, however, when a judge waits until the lawyers and clients are in court to notify them he or she has not read the papers and won't read them until much later that day or another day. If the court's time is jammed, it should be rather apparent a day or two in advance of a hearing. If reading the papers in time isn't feasible, lawyers would greatly appreciate a call from the clerk to either reschedule, suggest a later starting time or at least notify counsel. The public's vision of the court is not enhanced, nor are clients easy to deal with, when a judge's lack of preparation causes delays.

The bench, not just the lawyers, should follow the myriad rules and procedures set forth in family law courts. When the bench doesn't enforce the rules consistently, a backlog in the processing of cases results. It also sends a signal to the bar that the rules are there to be played with. Lawyers who sense such cracks in the system's armor argue with the court to try to find ways

around particular rules, wasting precious time. In fact, when a judge gets a reputation for not following the rules, lawyers take advantage by forum shopping, making certain requests in some courtrooms that they would not make in others. Cases would be processed more quickly and uniformly if the rules were applied consistently. It would also cut down on the number of appearances.

By way of example, the grounds for ex parte relief are quite limited. If the court would limit any ex parte hearings to only those specifically authorized, there would be less activity in court each morning, reducing delays and frustration for lawyers and their clients, as well as the bench and court staff.

As mentioned above, a certain level of frustration and anxiety is inherent in most family law proceedings. It only undermines a party's confidence in his or her attorney — and in the court system itself — when the bench lectures or scolds counsel and his or her clients about the way a case is proceeding. The court is there to resolve disputes; criticism of lawyers and clients does nothing to that end. If the court finds litigation vexatious, there are remedies. If the relief requested is not appropriate, then deny it. If the objection is incorrect, then overrule it. Sarcasm from the bench does not enhance proceedings; it only incites lawyers to engage the court in dialogue that raises frustration levels even higher.

This is not to say that family law attorneys are perfect; far from it. Rather, it is to say that everyone involved must understand the particular sensitivities of family law courts and how they affect every one of the participants: judges, clerks, lawyers and litigants. And while everyone plays a part, the bench sets the example as the ultimate authority.

Family law has many outstanding judicial officers. But there are always areas for improvement — and deeper understanding of the job of family law attorneys and their clients is a great place to start.

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