

Straight Talk, Economy of Action Benefit Family Law Attorneys

By Fred Silberberg

It may sound trite, but the practice of family law could hardly be called a bed of roses. After all, there aren't many areas of practice where a lawyer gets to regularly deal with threats not only to his or her client, but also to him or herself; where a lawyer gets involved in the intimate details of a family (many of which we'd rather not know); where clients believe that every issue with which they are concerned is an emergency-, and where lawyers get to constantly chase their clients for payment in the hope that they will get it.

Add to that the current level of malpractice insurance premiums for family law attorneys and you can see why most lawyers would rather walk across hot coals than handle a family law case.

But then, family law attorneys aren't your typical lawyers. Family law attorneys, particularly those that are certified as specialists, have to be well-versed in constantly fluctuating areas of the law in order to be competent. At any particular moment, issues regarding discovery, custody, asset valuation, income taxes, probate transfers and fiduciary duties, just to name a few, arise.

When you couple the knowledge requirements with the hazards of practice, it is easy to see why the hourly rates for family law attorneys typically are double or triple those of general civil lawyers.

Still, family law has always been viewed as the stepchild of the legal community. Lawyers in other areas of practice commonly look at family law attorneys with disdain. Unfortunately, the general public also views family law attorneys with a certain level of distrust. The "LA. Law" character Arnie Becker did little to improve that public image.

This general distrust of family law attorneys has given rise to numerous cottage industries that purport to keep people out of the clutches of the "shark" family law attorney and offer alternative methods for resolving disputes. The purveyors



of these methods have gained ground in recent years, and the truth of the matter is that they have been successful in large part because of the actions of certain members of the family law bar.

Family law involves personal matters and high emotional stakes. And it is for that very reason that people seek out family law attorneys. We are, after all, supposed to be able to handle matters from a non emotional standpoint. We are here to advise clients on how to make appropriate, businesslike decisions during a time in their lives when they are unable to make those decisions on their own.

We are supposed to be removed from the drama by a few steps, and yet it seems that some members of our community just cannot keep that distance. It is those lawyers who promote the bad rap.

The problem is that some family law attorneys don't look at things from a cost benefit standpoint. They don't advocate good business decisions for their clients. Instead, they use every possible excuse to run a case into the ground. A marriage of three years suddenly becomes the springboard for hundreds of thousands of dollars in litigation. Discovery goes on

and on. Ex parte applications ensue one after the other. No stone is left unturned. And for that matter, no assets are left in the pot to divide, either.

It is absolute truism that certain cases cry out for aggressive litigation. The fact is, in most marriages the partners are not in parity. One may have the emotional as well as financial upper hand. Children and spouses are at risk. They deserve to be protected and the playing field needs to be leveled.

Our system of family law litigation does allow that to happen when it works correctly. But the system is easily manipulated and it doesn't help when the courts allow litigants to engage in never-ending discovery and ex parte applications without legal basis. It also doesn't help matters when family law attorneys persuade their clients that these maneuvers are necessary or that they will enable them to obtain the desired result — especially when that result is not realistic in the first place.

Lawyers are viewed by potential clients as saviors. The family law attorney is viewed as the knight in shining armor, ready and able to battle where the litigant cannot. In this area of volatile emotions,

it's easy to see how that image can take root and run wild with a case that does not justify it. It is the responsibility of us, the family law bar, to ensure that this does not happen.

When we fail to take that responsibility;- it hurts us and our clients in the long run: 'A competent family law attorney should recognize that the key to longevity is in the long run, not the short. Bleeding a case does little to help one's career. Many family law clients are dissatisfied when their cases end because that is when they suffer a huge emotional let-down. Therefore, it is easy to understand how a client can come out of the fog and then recognize that \$200,000 in legal fees not only did little to accomplish his or her objective, but left him or her saddled with unanticipated debt.

As family law lawyers, we'd be much better served to explain realistic our outcomes to parties. We would better serve our clients by making strategic decisions from a business point of view rather than an emotional one. Our clients would be more likely to refer other clients if they left their lawyers' offices feeling that those lawyers did their best, within reason, rather than feeling as though they were taken advantage of.

If more family law attorneys recognized that their own goals and the clients' goals are better served by this approach rather than always using "scorched-earth" tactics, they would be better off in the long run. Rather than having dissatisfied clients who don't pay the bills, they'd have been paid what they earned and the client would probably refer someone else'.

This is not to say that the majority of family law attorneys have ruined our reputation; that isn't the truth. However, as an organized bar we have to take action to address the public's concerns.

Those actions include taking responsibility for what some in our midst have done, and continue to do to our image, and taking steps to counteract it. Our clients are trusting us with their lives. We need to ensure that we are worthy of that trust.

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