

Best Practices for Family Law

By Henry Gornbein

Family law is often overlooked as a weighty area of practice. The truth is that it is a vital and complicated legal area. As an example, when people marry or start a relationship, they believe it is forever. Sadly, in my experience approximately half of all marriages end in divorce. This is not even counting the many relationships that fail without marriage but leave children to be dealt with after a breakup or one-night stand.

Everyone is unhappy in a divorce, and it can be one of the most stressful and traumatic events in one's life. Over the course of my many years working in the area of family law, I learned that some psychologists rank divorce second only to the death of a child or spouse. Divorces are difficult. Whether settled out of court, through mediation, or through a trial, divorce can result in the following scenarios:

- Parents spend 50 percent of their time (or less) with their children.
- One parent pays child support and the other receives it. Usually, both sides are unsatisfied with the amount; one feels it is too little and the other feels it is too much.
- Similarly, if spousal support is ordered, the recipient feels it is too little and the payor believes he or she pays too much.
- Because Michigan is an equitable distribution jurisdiction, in most divorces, property is divided equally between the spouses. Similarly, debts are divided in some fashion as well.¹
- There is a tremendous emotional cost to every divorce or custody battle.

- Attorney fees can be a delicate issue. Although usually untrue, most clients feel they got a lousy deal and could have achieved the same miserable result on their own.

Expertise

To excel in the divorce arena, an attorney must be competent in a diverse array of legal principles.

Obviously, it is important to be familiar with custody laws. However, a divorce attorney must also be familiar with real estate law, not only to deal with the marital home but, in many cases, to deal with commercial real estate or a family farm.

Additionally, knowledge of business and corporate law can be essential, especially in high-asset divorces in which a couple is trying to extricate themselves from a family business or multiple business entities. Tax law can be important in some cases, and being able to read a spreadsheet, balance sheet, or a complicated tax return (whether business or personal) can be critical.

Understanding retirement assets (including Social Security) can be important. Some divorces involve gifts, inheritances, or tort claims. A family trust or will can be a key issue, especially if property has been accumulated over generations. Pre- and post-nuptial agreements can also be the focus of a particular divorce.

Knowledge of discovery as well as the court rules and rules of evidence is valuable, especially if a hearing or trial looms in the future of your case.

Unfortunately, domestic violence and alcohol or drug abuse are increasingly important factors in divorce cases. Having a working knowledge of criminal law as well as personal protection orders can be vital.

Variables

Every divorce is affected to some degree by numerous variables: the reason(s) a husband or wife may or may not want

a divorce, as well as his or her individual personality and idiosyncrasies; how competent both sides' attorneys are, as well as their personalities and attitudes; and finally, the judge.

Combined with these variables are several other factors that affect the result. A variety of experts can be crucial, including therapists involved in counseling or psychological evaluations. There can be guardians for children, and the friend of the court is often involved. Where there are businesses involved, it is often important to bring in a forensic accountant to help with an evaluation. There can be appraisers for commercial and residential real estate, art, jewelry, antiques, or collectables. There can be vocational experts, certified divorce financial planners, and financial advisors. In most cases, there are mediators and, in some divorces, arbitrators to help resolve the clients' conflicts.

The initial consultation

- Do not oversell a case. Problems will arise when you cannot deliver what you promised.
- The potential client is evaluating you just as you evaluate a potential client.
- Give the client plenty of time; never make a client feel rushed.
- Do not take phone calls or allow interruptions.
- Answer questions honestly. If you do not know the answer, say so and tell the client you will look into the issue.
- Get as much information as possible so you can have a grasp of the case and potential problems.
- Discuss fees and always have a written retainer agreement. This discussion should include how time is billed for phone calls, office work, and emails as well as work done by other members of your staff.

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- Provide the potential client with an outline and overview of the process as well as what to expect.
- If there are potential problems, the client should know about them.
- Be careful of shoppers; some unscrupulous people will try to eliminate all of the leading attorneys by conflicting them out with a perfunctory initial client interview.
- Similarly, do not be a potential client's fourth or fifth attorney. I was the first attorney on an infamous case in which the client ultimately ended up going through 16 or more attorneys. In some divorces, there are personality issues or a breakdown of the attorney-client relationship. However, there is almost always a problem with a client who hires and fires attorneys regularly.
- If you have a team working with you, have the potential client meet the other attorneys or paralegals on the case.

During the case

- Communication is critical. Try to return all phone calls the same day and respond to emails and texts in a timely fashion. Some surveys have shown that clients expect to have a phone call returned within three hours. Sometimes that is not possible; explain to the client that because of court or other pressing matters, there was a delay in responding.
- Document everything.
- Copy clients on all correspondence, including letters, emails, pleadings, and any other information that is part of the case.
- Face-to-face meetings at different points of a divorce or custody battle can be important.
- If there are court appearances or hearings, make sure the client is prepared. It goes without saying that you must be prepared, too.
- In court, be succinct. Judges do not want a longwinded presentation that never gets to the point. Pleadings and oral arguments should spell out what you want for your client and why.
- As much as possible, your client should be present at all court appearances. This is important for four key reasons. First, decisions are often made that are critical to the case and the client must be involved. Second, if the motion goes well, it is important for the client to see that. Third, if things do not go well, the client must be present so there is no third-hand information and you can do damage control. Finally, it sends a poor message to the judge if your client is not there.
- Have your client keep a diary or journal to develop a case history as events unfold.
- Divorces go in stops and starts; there may be weeks or even months when little is happening. Check in with your client to make sure he or she knows what is going on.
- Have a closing letter at the end of each case or a final meeting to go through any remaining issues, and make sure all of your client's concerns have been addressed.
- A well-informed client will be more manageable and able to make better decisions throughout the divorce process. Always remember that the client must live with the results. A satisfied client can be worth future referrals. An unhappy client can damage your practice.

Building your practice

Unlike other areas of the law, family law practice has few, if any, institutional clients. Thus, a family practice must reinvent the wheel every day. Every time we finalize a divorce or other family law matter, we have to replace it. The goal is building a broad network for future referrals.

- Work hard on every case and referrals will follow.
- Have a professional website and engage in search engine optimization practices. If people cannot find your website, then a good website is meaningless.
- Maintain a regular blog.
- Network and find opportunities to market in areas that are underserved.
- Join organizations and let people know that you concentrate in family law.
- Attend seminars and lectures. Keep up to date on the law.
- Network with other professionals who deal with clients in possible need of a divorce, such as accountants, therapists, financial planners, realtors, and even people who run your local fitness club.
- Join a country club or other social organization.

- Give seminars.
- Write articles or even a book.

A team approach

A divorce team consists of secretaries, paralegals, and other attorneys. Consider including a therapist as well. A therapist can determine if a marriage is salvageable. If the marriage cannot be salvaged, a therapist can provide a support system going forward. Finally, a therapist can help the client move on and avoid repeating the same mistakes.

Make sure to also include experts in your team; do not hesitate to seek outside advice early and often so there is plenty of time to prepare for all contingencies.

Final thoughts

More and more attorneys litigate with a take-no-prisoners attitude; they shade the truth to get an unfair advantage for their clients. Perhaps more so than in other practices, reputation in family practice is critical. For this reason, a scorched-earth tactic in family law is wrong and harmful. Thoughtful representation is a better approach. For example, you should remind your clients that, as parents, they will have an ongoing relationship with their ex-spouses regardless of how the case is resolved. Having a working relationship with an ex-spouse is crucial to raising children long after the dust has settled.

By being a problem-solving attorney rather than one who antagonizes the other side, you will be more successful and have a better family law practice. ■



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ENDNOTE

1. MCL 552.401.