

# Preparing an Emotional Client for Trial or ADR for a Family Law Matter

By Richard Roane

**D**istraught. Angry. Depressed. Flippant. Hysterical. Vengeful. Crying. Hateful. These labels describe the emotional state of most of our clients as we guide them through a family law case. Whether it is a fierce custody battle, a fight over the division of assets (yes, including end tables and lamps), or the agreement on child or spousal support, these cases are particularly difficult and require patience, practice, and good client management skills. After all, we are dealing with two issues dear to nearly everyone: family and money.

## Know Your Client

One of the first steps in successfully representing an emotional client happens at the intake stage. Quite often at the beginning of a divorce action, a potential client arrives at your office in a highly emotional state. During the initial interview, you need to determine your client's expectations. Questions to consider:

- Is the angry client demanding an unrealistic share of assets or an unlikely custody outcome because of his or her rage over the spouse's behavior?
- Is the crying, hysterical client capable of focusing on the advice you give?
- Is the client capable of providing the information necessary for you to do your job?
- Is the emotionally charged client willing to engage in personal counseling or therapy at your recommendation?

Answers to these questions can determine whether you have a client with whom you can work or one who is virtually unable to assist with preparation of the case. You must decide whether it is wise to represent the client based on your assessment.

## Case Preparation

You should assess the financial picture of the marital estate, including all assets and liabilities, and verify the parties' respective incomes. It is important that you work actively with your client during discovery, trial, or mediation preparation so he or she has full knowledge about the other party's financial status. In many marriages, one spouse primarily handles family finances, pays bills, prepares tax returns, and manages everything from mortgage financing to investments and retirement savings. The other spouse may be largely in the dark regarding details of the family's financial picture. As attorneys, we need to piece together these details and proceed to negotiation or litigation. If you proceed to trial or an alternative dispute resolution session (mediation, arbitration, or collaborative practice), your highly emotional client may have a difficult time functioning under the added pressure of the legal proceeding if he or she has not been actively involved in preparation. Actively involving clients in case preparation is key in successfully representing them.

## You Know All the Answers

As you prepare your client for the witness stand or ADR session, the assurances you give may be critical to success in court or mediation. Consider the following reassuring statements:

- Although the setting will be uncomfortable, this hearing will be easy. You know the answers to the questions you'll be asked because you are simply telling your story.
- You can't mess this up because you will be asked questions regarding your relationship with your children and you know the answers.

Statements like these can help calm your client and allow him or her to focus on answering questions.

## The Lay of the Land

Quite often, highly emotional clients are nervous or afraid of the unknown. If your client has never been in a courtroom, arrange to take him or her to the courthouse well in advance of the scheduled hearing. Visit the courtroom where the hearing will take place and point out its key components. Show your client where the judge, witnesses, and respective attorneys will sit. Note that the courtroom is open to the

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public, but for the most part, trials are conducted without a lot of spectators unknown to the parties. Seeing the physical layout of the courtroom can help displace the client's fear based on uncertainty of the physical environment in which the hearing will take place.

If you are proceeding to an ADR session, make arrangements with the mediator or arbitrator to visit his or her office with your client ahead of time. Show your client the facilitator's office building, where to park, the waiting area, and the conference rooms that will be used during the session. Again, familiarizing your client with the physical layout of the mediation site can alleviate some of his or her fears.

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### The Night Before

Encourage your client to maintain his or her normal routine the night before the hearing or ADR session. Instruct an angry or highly emotional client to *not* review his or her file or any financial data, materials, or reports—it's like cramming for an exam and will likely increase your client's anxiety. Instead, suggest that your client participate in an enjoyable or relaxing activity, such as knitting or watching movies or sporting events. Encourage your client to get a good night's sleep and to refrain from excessive alcohol consumption to ensure he or she is well rested for the day ahead.

Remind your client to eat breakfast before the hearing or session and to arrive early at the courthouse or conference room. Heavy traffic, difficulty in finding parking, or just running late can add greatly to the client's anxiety and spell disaster for your upcoming hearing or session.

### In the Courtroom/Conference Room

During a formal courtroom hearing, attorneys should provide their clients with a pen and notepad to write notes, questions, or comments during the session. Reviewing notes during a break or at an opportune time will be less disruptive to the trial process than a client constantly whispering to his or her lawyer during testimony.

When your client is on the stand, help him or her to feel as comfortable as possible. Consider using your client's first name if it seems appropriate. If your client becomes distraught, hysterical, or cries, politely ask the court for a brief recess to allow your client to regain his or her composure.

### ADR/Caucus Sessions

Contact the ADR facilitator ahead of time to determine how he or she engages in caucuses. If your client is uncomfortable or fearful of facing his or her spouse or becomes highly emotional during the proceeding, request a caucus (separating the parties into different rooms) to reduce stress levels and diffuse the situation.

### Conclusion

From initial client intake to entry of the final judgment, consider the steps presented here to calm a highly emotional client. Remember, attorneys represent generally good people in bad situations. Good people end up engaging in bad behavior for a variety of reasons, usually as a result of the emotionally charged issues they are facing. With your help, your clients can navigate these troubled waters and get through otherwise difficult situations. ■

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