A VIEW FROM THE BENCH

A perspective prepared by Judge Elizabeth Rochford
and Judge Charles Smith
for the Lake County Bar Association Family Law Seminar

In 30 minutes we cannot possibly share all of our thoughts and perspectives. However, we will attempt to provide perspective on several common issues we confront in attempting to follow the laws of the State of Illinois governing dissolution of marriages and custody issues.

While the court and the attorneys work cooperatively on many issues, it is important to keep in mind that the system is here to serve your clients who are going through one of the most difficult and emotional experiences of their lives. It is not rational to expect logical thinking at all times by people going through the breakdown of their marriage. Clients are often grieving, angry, vengeful, and depressed, among many other emotions. Often clients will not listen to their attorneys, but they will listen to a judge, not always, but sometimes. That is why it is important to make use of the pretrial process or even in your pleadings to let the court know what is your client’s biggest/central issue. Often if we come out after a pretrial and address the client’s issue and explain why they are not entitled to the relief that they seek, at least the client will know that their concerns have been heard. The most common complaint that is heard from clients is that “I never got to talk to the judge.” Obviously, the judge cannot “talk” to each litigant as every judge is carrying an active case load of approximately 730 cases and time does not permit the extensive one-on-one that clients would relish.

We have attached a few articles on the client’s perspective; there are many others out there, but most particularly at a seminar such as this it is appropriate to reflect
on the needs of clients and how the entire system - lawyers, judges and court staff - can attempt to do a better job of getting the litigants to a place where they can begin to rebuild their lives.

BENCH AND BAR
Managing Expectations

1. **Provide your courtesy copies early.** Nothing is more frustrating than walking into our chambers in the morning and finding courtesy copies that were sent to the library during the morning for a hearing that morning. All the judges on the first floor take pride in being prepared when we take the bench and last minute pleadings and memorandums make that difficult.

2. **When arguing, do not repeat what you have written.** We can read faster than you can talk. While you may think repeating what you have written (numerous times) emphasizes your point, it frankly is not helpful.

3. **Discovery Disputes.** Read and reread Supreme Court Rule 201(k). Sending a letter and calling that correspondence a 201(k) letter does not comply with the Rule. The written correspondence is the first step to be followed by a phone call and an offer to meet and review the disputes regarding discovery. Only then should you be seeking court intervention. Discovery disputes are not favored and Judge Smith has suggested that if the parties cannot resolve their disputes per the Rule and that if the court must oversee the dispute, that weekly court appearances at 8:30 a.m. may be the remedy for the Court to monitor discovery. The court has no desire to micro-manage discovery, but we will act and sanction if necessary.

4. **GAL and Child Rep Appointments.** The court considers a number of factors in making appointments, and also attempts to balance appointments among the
attorneys on the list, however, that does not mean that appointments will be equally distributed. Ultimately, the court seeks to appoint the person who is best suited to assisting the court in determining the best interests of the child. If you are interested in gaining experience, or to have the court become familiar with your work, let court administration (Pom) know that you are available and willing to take a pro bono case.

5. **Case Priority.** SCR 900 Purpose and Scope provides as follows:

(a) **Purpose.** Trial courts have a special responsibility in cases involving care and custody of children. When a child is a ward of the court, the physical and emotional well-being of the child is literally the business of the court. The purpose of article (Rules 900 et seq.) is to expedite cases affecting the custody of a child, to ensure the coordination of custody matters filed under different statutory Acts, and to focus child custody proceedings on the best interests of the child, while protecting the rights of other parties to the proceedings.

SCR 922. **Time Limitations.** Provides as follows:

All child custody proceedings under this rule I the trial court shall be resolved within 18 months from the date of service of the petition or complaint to final order. In the event this time limit is not met, the trial court shall make written findings as to the reason(s) for the delay. The 18 month time limit shall not apply if the parties, including the attorney representing the child, the guardian ad litem or the child representative, agree in writing and the trial court makes a written finding that the extension of time is for good cause shown. In the event the parties do not agree, the court may consider whether an extension of time should be allowed for good cause shown.
6. **Pretrial Conferences.** Again, it is very important to provide the court with your pretrial memos in advance of the pretrial. Both sides should work together to tell the court what the central issues are in the case. Your clients should be present if the parties are truly committed to settlement. The court cannot assist you with your client if your client is not present. We use pretrials not only to make recommendations but, again, to let your client know that you have presented their concerns to the court and why the court is recommending a settlement on that issue.

7. **Financial Disclosures.** 750 ILCS 5/501 requires the completion of a financial affidavit on a form approved by the Supreme Court and these forms are now available in the courtrooms. This disclosure is also mandated by Local Court Rule 4-3.02(A)(1). These affidavits are not filed with the Clerk, Local Rule 4-3.02(A)(2), so that they are not part of the public record. These affidavits should be prepared with great care and research by the parties.

    If a party intentionally or recklessly files an inaccurate or misleading affidavit, the Court shall impose significant penalties and sanctions including, but not limited to, costs and attorney fees.

750 ILCS 5/501(a)(1)

This language is included on the Supreme Court form as well as certification under 735 ILCS 5/1-109, making it a Class 3 felony to providing a false statement. The judges of the 19th Judicial Circuit will impose sanctions if false statements are made intentionally and recklessly. This should be stressed to your clients.

We have observed that some firms have taken to putting a “disclaimer” on the affidavits designating the affidavit as “preliminary”. The statute and Local Court Rules do not provide for “preliminary” affidavits so attorneys should not expect that the
designation of a financial affidavit, previously 11.02 disclosures, as preliminary, would somehow avoid a sanction if the “preliminary” affidavit intentionally or recklessly mistakes the affiant’s financial position. This is not a game and the Courts are required to rely upon these affidavits without a hearing, to wit: on a summary basis in awarding attorney fees prior to judgment and temporary support or maintenance. 750 ILCS5/501 (a)(3).

8. **Trial Continuances.** First and foremost, they are not favored. The case management system being used by the courts provides, in most cases, a year from the time of filing to the date of trial. That should be sufficient time and where there are statutory grounds for a continuance, such requests are routinely granted. What is objectionable is when it appears that little or no discovery has been taken, trial is two weeks or less away, and now one party or the other wants a continuance. That is not looked upon with favor.

All the judges hearing divorce cases currently have had significant experience in private practice and we know what it is like to get behind in work. However, when we see a file that has been on file for over a year and very little has been done; it becomes difficult and condones that by granting a continuance.

9. **Final Pretrial Conference.** Let the court know how many witnesses will be testifying and what the 213 disclosures will state as to what their testimony will be. If you need a particular time slot during the trial week to accommodate a witness tell us at the final pretrial. You must have your exhibits marked and a copy for the court at the final pretrial.

10. **Trials.** If you have a trial brief or there are legal issues in the case, those should be presented at the final trial conference. On the day of trial please check in
with the trial judges before going to other courtrooms and have your witnesses present. If you need visual aids for the trial, request those from court administration well in advance of the trial. Similarly, for hearing assistance devices. Should your client have need for a translator, you must make your request well in advance so that arrangements can be made.

During the trial, check with the judge at the end of each session as to what time the court will resume testimony and if you need to go to another courtroom prior to the trial resuming.
Rules for being a good divorce client, from an attorney who’s been there, done that...

By Amie M. Simpson

We’ve had some debate in my office about whether a family law attorney who has personally been through a divorce or custody battle is more effective or less effective in her chosen field of law. Certainly, as a young, married family law attorney, I was seriously puzzled and frustrated by the way many of my clients behaved. I was further puzzled and frustrated by the way other attorneys behaved in family law cases. The one thing I was sure of is that I would never, NEVER, put myself and my family through such a hideous process.

Never say never. So, here I am, five years divorced, and with five more years of family law experience. In fact, I spend a great deal of time mentoring a very new family law attorney in our office and watching her constant amazement at the behavior of her clients and the other attorneys. While having gone through a divorce might not make you a better lawyer in the field of family law, it certainly helps to create an understanding of what the INSIDE of the process looks like. For family lawyers out there who are happily married, don’t despair. You can get the exact same information by listening carefully to clients and friends. For those of you who are not family law attorneys, the information is still valuable because inevitably in your practice you will find yourself working with or for someone who is going through a divorce, and it is going to change their behavior in radical ways.

The fact is that I have never run into a “nice” divorce. Because my specialty is domestic violence litigation, and because I work for legal aid, I thought I might have a biased sample, so I interviewed other friends who do the same work but get paid by their clients. I came up with the same result. This is not to say that collaborative law is not possible or effective in divorce—it is both. Collaboratively-minded, trained attorneys can work what seems like magic as far as reduction of conflict and efficient resolution of issues. But reality dictates that the very nature of divorce, which is the dissolution of the family unit, creates stress on both participants. This enormous stress will cause them to behave badly at times and will certainly cloud their judgment. Further, dealing with people in a constant state of stress and anxiety, all day every day, creates an unbelievable amount of stress on family law attorneys, who then are subject to their own types of bad behavior. This combination is a recipe for disaster. Left unchecked, and coupled with the inclination of some attorneys to believe that being a “zealous advocate” means adopting a scorched earth policy, this bad behavior can snowball and result in divorces that are the equivalent of nuclear warfare. No one wins, no one gets out unharmed (including the kids) and the cost is astronomical.

While we’re on the subject of cost, why should we be alarmed if a divorce costs our client upwards of $20,000? We did the work, right? Of course, as every family law attorney in our current economy knows, this is a stupid question.
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While you may wind up doing $20,000's worth of work, you are increasingly unlikely to get paid for the very real value of your time. Also, the longer a divorce goes on, the less money the participants generally have, and the more unhappy they generally are. This combination is not conducive to payment of attorneys. Further, if a divorce ends with the client financially devastated and with the attorney having to take extraordinary collection efforts against that client, no one has been adequately served.

Based on my own experiences on BOTH sides of the fence, I have adopted some simple rules of behavior which I encourage my clients to follow. By bringing these issues up at the outset of representation, I hope to give clients some insight into the divorce process. I am also able to weed out potentially problematic clients before I sign them up. Finally, during litigation, I am able to go back to the rules with the clients and help them ground themselves. My goal is to help clients come through a divorce or other family law case successfully which, for me, means that they emerge with enough financial and emotional resources to start a new life. The other goal is to keep myself, and the attorneys who work with me, as sane as possible.

The following are my Ten Rules for Being a Successful Divorce/ Custody client.¹

1. Acknowledge your inner four-year-old -- and put her in time out if necessary.

Everyone going through a divorce will eventually say "It's not fair." It is our job as attorneys to say the same thing we would say as parents: "You're right—it's not. But we're going to work together to make sure this process is as fair as it CAN be." We also need to point out to our clients the victories they have already achieved. To this end, it is extremely important that you have clients list their goals for the divorce before you get started. Have them do it in writing. This will do two things—it will help you determine unrealistic goals up front, so you can explain to your client WHY they cannot, for example, "make sure he never sees his kids again." It will also help you, as the divorce progresses, be able to say to your client, "Yes, the judge ordered that your ex will get to take the kids to soccer practice. But your goal was residential custody, and we've gotten that. So, no, he is NOT getting everything he wants, it just feels that way."

2. Believing what "he" "she" or "they" say will get you into trouble, unless he she or they are your attorneys.

This problem comes in two forms. First, the client who has a relative, or a friend, or a boss's nephew, who is an attorney, and THAT person says that maintenance is a cinch. It is important to let these clients know that the advice they are getting may be inadequate, since their boss's nephew is a patent attorney in Alaska. They need to understand that they have retained you because of your expertise as a family law attorney, and that if they feel they cannot trust your judgment they should probably seek other counsel. The other time this rule comes into play is when your client constantly bases their behavior on statements made by the opposing party. "Well, HE says the judge will give him custody." I tell my clients that, especially now that they are getting divorced, it is best not to rely on what "he" says, that "his" interests are bound to be different than hers, that this may be a ploy to keep her off balance, and that "he" is not an attorney. (If "he" is an attorney, your client will obviously need extra reassurance, and I try to remind these clients that "he" is not the judge).

3. A court order is not a suggestion.

While this seems obvious to those of us who practice law, lay people often, amazingly, don't realize the truth in this statement. As a result, it is incumbent upon you as an attorney to make sure ALL orders in your divorce case are clear, specific, detailed, and do not involve unnecessary "lawyerese." These orders take time to write, and judges may grow impatient while you put them together. But that is far better than the judicial wrath you will face if your client decides that she can engage in behavior that would clearly be prohibited by the court order—if the court order were clearer.

4. If it's not a court order it doesn't count.
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Refer back to the information in #2. “He” said we have to file taxes together, his mother says we have to sell the house, my realtor says he has to pay her fee. I tell clients if they want something, we ask the court via a motion. But until it’s on paper with a judge’s signature, it’s just speculation.

5. You can hate your ex, but it can’t affect your kids, your decision-making, or the rest of your life.

Clients who make decisions based only on how much the decision will hurt the opposing party are not good clients. They are also not acting in their own best interests, since many of the things that will make their ex miserable will have painful consequences for the client herself down the line. Encourage your clients to make decisions based on the welfare of herself and her children.

6. The ONLY person you can control is yourself.

Divorce is a horrible, roller-coaster-like process which clients perceive as almost entirely out of their control. Like people in any situation in which they feel helpless, clients will seek to try to control anyone in the vicinity. They will want to control you, their children, and their ex. The frustration when they fail to do so, and when the process itself is unfathomable, makes it difficult for them to behave rationally. You can do several things to address this issue. The first is to give your clients as much knowledge about the process as possible. Instead of wading through continuance after continuance without explanation, TELL the client about the source of the problem and what can be done to address it. Sometimes, it’s the client’s own behavior gumming up the works, and you have to address that with her. For example, “Client, the fact that you keep changing your mind AFTER we’ve drafted an agreement and brought it into court only prolongs the process and makes it more difficult and expensive. You need to be able to express clearly to me what you want, and to stick with that.” The client will inevitably say, “But HE did (whatever the horrible thing he did was which caused her to change her mind about agreeing to ANYTHING).”

7. Practice saying “whatever.”

This goes along well with the previous rule. Divorce clients will spend a breathtaking amount of energy trying to figure out WHY their ex’s engage in a particular behavior, and they want you to speculate with them, i.e. “Can you just tell me WHY he has to have Wednesday instead of Thursday? He KNOWS Wednesday is my favorite day of the week…” I tell clients that they may NEVER know why their opposing party behaves the way he does, and IT DOESN’T MATTER. Clients need to keep their eyes on THEIR goals. I tell them, “Don’t get aggravated, don’t ask why, don’t let it get under your skin... Just say, ‘whatever.’” A colleague of mine tried to teach me the same principle by encouraging me to say the “f” word in four different intonations when I got frustrated (in private, of course), but I always wound up feeling silly. If clients can master the phrase “whatever” with the kind of disdain my pre-teen daughter can put into it, they WILL feel better.

8. You have to be BETTER than perfect: Before you do it, ask yourself what the judge would think.

Generally speaking, clients will never in their lives live in such a “fishbowl” as during the time they get divorced. This is especially true if there is a custody battle involved. They need to be made aware that people ARE watching, and those same people WILL testify. During the long pendency of the divorce, they need to behave as if their every action will at some point be revealed to the judge in their case. (This rule actually came about based on another rule I give my children, which started out as “If it doesn’t seem like a good idea, don’t do it” to but changed to “if MOM wouldn’t think it was a good idea, don’t do it.” This happened after I realized that what I thought was a good idea, and what THEY thought was a good idea, were two radically different concepts). Living as if they are under the judge’s microscope is stressful, but in the long run doing so will reap huge benefits for your clients.

9. Keep meticulous records -- this is the most important job you will ever do.
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Clients should understand—and most do—that the outcome of this divorce will affect the rest of their lives and those of their children. However, because of the depression and anxiety inherent in the divorce process, many clients are much less organized than they would normally be. They need to be encouraged to treat their divorce as a job. While it is tempting to rely on your friend, your mother, or your attorney to keep track of everything that is going on, it is neither safe nor healthy. Adequate organization will help clients be better partners to their attorneys in the divorce process, and will help them feel more in control.

10. Take care of yourself. No one else will.

This is perhaps the most crucial rule, but also the hardest to follow. Many of us, especially of my generation, went from home to college to marriage without pause. In retrospect, this was probably a bad idea, but it certainly SEEMED like a good idea at the time. Unfortunately, people who have followed this pattern have very little idea about how to meet their own needs. The most obvious situation in which this becomes an issue is financial. Clients need to know that while they are entitled to child support, and sometimes maintenance, it is always best for their long-term financial and emotional health if they are able to support themselves and their children. This may not be realistic at first, but it is an excellent goal. Also, while clients can and should seek the emotional support of others during this extremely difficult process, they need to remember that they will often find themselves on their own. Have you ever noticed that at the times you feel most down, and most need someone to talk to, all you get is voicemail? It’s difficult but true. Clients need to be able to figure out what their emotional, financial, and health-related needs are, and they need to expend the time and effort necessary to meet those needs. If they neglect their feelings, their finances, or their health, they will NOT be able to come through a divorce intact. If that means finding a good counselor, fabulous. If it means seeing a doctor and figuring out a good exercise program, terrific. But if they expect others—including their ex or their attorney—to meet these needs, they will not be able to achieve the kind of post-divorce life that they want.

Exercising these rules kept me sane through my own divorce, and has kept me sane in my family law practice since. Every client with whom I have used them has found the rules useful. I would hope that, by preparing my clients to exit a divorce successfully, I am doing a service to the client, my practice, and (in a small way) to the court system. I am grateful to be able to understand, at least in part, what my clients are going through, and I believe I am a better and happier person after surviving my own divorce. As to whether I am a better attorney, I can’t say—but I am happy in my practice. As to the rest, well... “whatever.”

Amie Simpson is the managing attorney for the Will County Legal Assistance Program, an office of Prairie State Legal Services. She has been practicing family law since 1997.

1. Note that I use the pronoun “she” frequently. Most of the clients I work with are female. However, these rules should work equally well regardless of the client’s gender.

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Member Comments

I found going through my own divorce made it much more difficult for me to sympathize with this moronic behavior. I understand there are cases where one side or the other or both are just unreasonable or nuts.

But it amazes me that adults have an inability to do what my ex and I have been doing for 5.5 years. I pay support, which until my practice recently improved, was over 50% of my income. Meanwhile, mom stayed home with our son (age 9 at separation) as she had since his birth. I went from a 3000 sq. house with a huge lawn to an

https://www.isba.org/committees/women/newsletter/2010/10/rulesforbeingagooddivorceclie...  4/7/2017
800 sf apartment (had never rented in my life) with a garage I shared with my neighbor. Sending our son to parachial schoo, working 70 hours a week, accumulating credit card debt of almost 70,000, equal to a year's salary. I had never carried a credit card balance in my life. Why? Because that's what I had to do so our son would not suffer as much.

My wife gave up a good career to do the thankless work of raising a child. Boy I couldn't do that. She is a great mom so why would I want her to work and leave our son with a stranger when he had access to the best babysitter in the world.

We have been separated all this time. We have no written orders. Visitation is worked out by agreement. Sometimes it gets changed on 5 minutes' notice, with a 30 second phone call. What, no drama with each side calling their counsel, 5 pm faxes, 10 page agreed orders to modify, motions for emergency relief, police escorts? Exactly how is that in the best interests of the children?

— Ted Harvatin on October 28, 2010

What an insightful article! Very wise and thoughtful.

— Steven N. Peskind on October 28, 2010

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