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## Psychology and Family Law

By Mark Baer, Esq.



From my friends in psychology, I know that that good communication is at the heart of good relationships. As an attorney, I can tell you that good communication is vital to successful legal proceedings as well. Perhaps nowhere is this more true than in family law. However, in my experience, good communication is all too rare between individuals involved in family proceedings, which leads to a variety of unfortunate consequences.

After years of working in transactional law (that is, writing contracts related to creating business entities, or sometimes dissolving them, as well as creating estate planning documents), I began practicing family law in 1995. In transactional law, there is typically no overt conflict, and my work there focused on helping my clients make good business and contract choices, and otherwise protecting their interests. Family law, on the other hand, is a completely different ballgame. As a transactional attorney, I was typically hired to put something together, to create or renew a certain “relationship.” As a family law attorney, I am hired to help clients break a relationship apart. Somewhat ironically, “family law” is about dissolving a marriage or non-marital family involving children. Thus, whereas emotions are not typically problematic in transactional law-- where the work is largely about creating or renewing relationships-- painful and conflictual emotions are unfortunately the norm in family law.

Representing my clients as a family law attorney, most of the time, I am working with people who loved each other very much at one time, or who may still love each other, even though the relationship failed. As a result of the pain and anger involved in that failure, the parties very often no longer communicate (constructively) at all any more, and instead leave crucial communications up to their respective attorneys. This can be disastrous on a number of levels.

I believe that the best way I can serve my clients is to help them to make as many of the important decisions in the dissolution of their relationship *outside* of the court system. This demands clear, accurate communication between the parties to a divorce, as well as between their respective attorneys.

Unfortunately, many attorneys make themselves practically unreachable for the purpose of negotiating settlements. I have found that sometimes attorneys run family law mills, and have so many cases that they don't have the time (or make the time) to resolve cases outside of court. In other cases, an attorney sees only the financial incentives involved in dragging out a case, so that it has to go to court again and again. He has little interest in effectuating a timely settlement. (In the current economic climate, fewer people will be able to hire divorce attorneys, and I suspect that some attorneys will be seeking “cash cow” opportunities to meet their own financial goals. Such an attorney may fail to return phone calls and/or fail to respond to letters. Ultimately, the opposing attorney will of necessity resort to attempting to resolve the case through court proceedings, or and/or trial.

A good attorney also manages his or her client's best interests by promoting realistic expectations concerning what they may *want*, versus what they are likely to get in a negotiated settlement. For a variety of reasons, attorneys sometimes fail in that regard. They let their clients down by promoting unrealistic expectations, such that the clients want to keep fighting—through litigation, involving skyrocketing legal fees as well as high emotional tolls—for decisions that are unreasonable and ultimately unattainable. Clients who insist on having their “day in court” are often very disappointed with the results—especially considering the expense involved. They completely lose control over the resolution of a matter when they put it in the hands of a judge. A judge, after all, is only human and may have a very different perception from the client's.

Regardless of the reason, if one or both attorneys are unable or unwilling to make every effort to assist the clients in settling the matter out of court, the true losers are the parties involved in the divorce. In such cases, the only way that a case can be resolved outside court is by the clients communicating directly with each other and resolving the matter on their own based on the information they each learned in the course of the proceedings. Such resolution is only possible if the clients are ready, willing and able to communicate with each other. This is why I firmly believe that good legal representation involves diffusing powerful emotions and encouraging realistic, if not conciliatory goals in a divorce settlement. As difficult as it may be—and often, a supportive and constructive relationship with a mental health professional is key—the parties involved need to try and keep their emotions under control and maintain good communication with each other. In the end, the positive resolution is more than worth it.