

Daily Journal

www.dailyjournal.com

THURSDAY, APRIL 25, 2019

Why heightened emotions and conflict help no one in a divorce

By Michael G. Reedy

Divorces are among the most emotionally draining experiences in one's life. The pain, anger, and disappointment that arise when divorce becomes a reality can be all-consuming. Ending a relationship that began with the expectation and hope that it would last a lifetime can feel like failure, or betrayal, or numbing shock. The death of the relationship around which your entire life revolves changes everything.

The emotions come in waves and raise questions about your spouse, yourself, what will happen to your children, the choices you have made, the new issues that confront you. You may wonder how you will survive, how you will recover, when you will feel normal again. Your life gets turned upside down and there are no easy answers.

In addition, what happens to you, your children, your finances, and your property are subject to a legal process that is difficult, confusing, and time-consuming. Your expenses increase because separated spouses need two homes, which means dividing furniture and household supplies, paying two utility and grocery bills, getting separate phones, and each spouse taking on responsibilities that the other spouse previously handled.

If you live in an area with high housing costs, such as the Bay Area, the financial pain of divorce can be exponential. It may force you to move somewhere else, more affordable, but that is difficult when you have children. In a divorce, your life becomes increasingly expensive and complicated at a time when



Shutterstock

your emotions are mercurial and unrelenting.

What can and should a lawyer do under these circumstances?

Family law attorneys must help their clients make the best decisions for their future. That's difficult to do because most families cannot afford a 40 percent or more increase in their expenses, which is typical for a family going through divorce, at a time when their income remains flat. Emotions do not help you decide how to divide community assets, whether to sell the family residence, or what expenses you have to reduce or eliminate.

I have met with prospective clients who have asked if I can be an attack dog or a shark, someone who will make the other spouse's life difficult. I tell them that is not how I practice law, and hiring someone to attack the other spouse will not help them move on with their life. Attorneys who insult and berate the other spouse and the other attorney, who stoke the level of conflict and keep the parties in court, usually end up

hurting both sides and wasting precious community funds.

This type of approach becomes even more damaging if the parties have children. The conflict bleeds into the parties' communications, their body language, and their discussions with friends and families. Children can be like sponges; they absorb their parents' emotions and feelings, even for communications not made directly to them.

Heightened emotions and accusations put the children in a position where they may feel the need to take sides. Which parent is right? Which parent is wrong? Children cannot and do not want to make those choices. They want and need to love both parents, and be loved in return.

Children tend to blame themselves for a divorce. They do not understand why their parents cannot stay together. If one parent insults or denigrates the other parent in front of the children, it is like a kick in the stomach. If children feel it is a betrayal of one parent to love the other parent, they will be emotionally damaged for a long period of time.

The best family law practitioners help their clients move past the wreckage of the marital relationship. They encourage their clients to fully engage the emotions they are feeling, but to process those emotions in an appropriate setting. Clients should talk with friends and family about their anxiety, anger, fear, and disappointment. They should seek emotional support from therapists, counselors, ministers, rabbis, priests, or other professionals who can help them deal with overwhelming emotions.

The vast majority of Californians going through a divorce represent themselves, a trend that has increased in every one of the 26 years I have practiced family law. The trend toward self-representation is happening because divorces are expensive and many people cannot afford attorneys. When you see self-represented spouses appear in family court, emotions can be raw. These people want the court to vindicate them, they think the other spouse is unfair or unreasonable. They want justice.

Family law courts, however, are not about justice. They are courts of equity, and they divide the community property 50-50, even if one spouse is a miserable human being. They base child support on current income levels, and apply a mathematical formula that does not consider whether one spouse has lied or been unfaithful.

If you have children, you have to determine how to support them, and how to divide your time with them. And you have to make those decisions with someone you are divorcing. These choices require pragmatism, and they are complicated by emotions.

Parents going through divorce are required to meet and try to resolve custody issues, often without attorneys. By law, children generally spend equal time with both parents, unless one parent has been physically abusive, or has problems with drugs or alcohol. Children spend equal time with both parents not because both parents have equal parenting ability, but because social scientists have determined that “frequent and continuing contact” with both parents is in the best interests of the children. Family Code Section 3020 memorializes this standard as California’s public policy, and family law courts support it fully.

Emotions will not change the court’s opinion about what is in the best interests of the children. Some attorneys, however, will prey on that emotion, or try to instigate it to make their client feel better, to make their client the righteous parent. They may use offbeat conduct or circumstances to allege abusive or addictive behavior by the other parent, in order to give their client more time with the children. If those allegations are false, and known to be false, the party making them may be subject to sanctions under Family Code Section 3027.1. In addition, making false allegations knowingly should result in a loss of credibility with the court.

Raising the level of emotion in a divorce also raises the conflict level. It is difficult to make important decisions when you are told your spouse is horrible, is trying to hurt you, is an idiot. You may feel those raw emotions, but if you make decisions based on them – rather than on the law and the facts – you and your lawyer will spend more time in court. Which means paying more money to the attorneys, and leaving the decision-making to a judge who does not know the full story about you, your spouse, your finances, and your children.

Most judges, including judges in family law courts, have exceedingly large caseloads. They often conduct morning or after-

noon hearings in which they have to decide ten, fifteen, twenty, or more cases, with different attorneys, different issues, and different facts. It is impossible to get it right every time, no matter how hard the judge works. For that reason, as most judges advise people who appear before them, the best way forward is to reach reasonable agreements with the other side.

The best way to reach agreement is to remove or minimize the emotions. I tell my clients the rules of etiquette evolved as a way to keep people from killing each other. People shook hands to show they were not hiding weapons. They allowed each other to speak, without interruption, to demonstrate respect and a willingness to listen.

Those rules are challenged in today’s social environment, where everyone wants to be heard and people think that shouting over the other person is the way to win an argument. It is not, certainly not in a divorce. Showing respect and listening to the other person, especially when it comes to children’s issues, may lead to understanding and agreement.

For clients, it sometimes feels impossible to make these decisions. Many suffer from depression and anxiety as a result of the divorce. I once spent what seemed like hours on the phone with a client who had suicidal ideation. She felt like she was leaning over a dark abyss, and wanted to fall in. I reassured her she would be okay, that people in her life loved her, that she could survive this pain. But mostly I listened, and let her know I understood how she felt, how difficult it was, how overwhelming.

I made sure she had other people she could talk to, people who loved her and would support her. I gave her contact information for a suicide prevention hotline. She needed to keep talking, to know someone heard her and understood how much pain she was suffering. When she regained her equilibrium and composure, and when she promised to reach out

for help to better qualified people, I ended the call. It was hard to do, because I was not certain she would survive.

But she did. She got the help she needed, and she was able to move forward. She eventually reached the point where she could make the decisions she needed to make about custody, support, dividing community property.

My job as a family law attorney is to calm the waters and lower the level of conflict. At times, it feels like triage in an emergency room, where you need to patch up the client and help them take a few steps forward, to believe in themselves. They cannot make good decisions if their emotions overwhelm them.

People going through divorce may experience the same stages of grief and loss people feel when someone dies: denial, anger, bargaining, depression, and acceptance. The parties go through these stages at different times and different rates. If I represent the petitioner, I counsel patience because my client usually has moved through several emotional stages, while the other spouse is processing denial and anger.

The respondent often cannot understand how the petitioner has made the decision to end the relationship in a way that seems sudden and abrupt. It rarely is, but that’s because the parties are on different emotional paths. Attorneys on both sides should understand the emotions their clients are feeling, and help them move forward in a way that is not undermined by those emotions.

Family law attorneys should do what they can to minimize emotions. Try to reach agreements on issues without going to court. Bring in a mediator if needed. Work to resolve the financial issues that hurt both sides. Focus on the future and how to survive those first few years after divorce.

Because of the certainty that their expenses will increase significantly at a time when money is tight, clients should do what they can to reduce the level of conflict in a divorce, or hire an at-

torney who will do so. Attorneys can, and should, fight for their clients and for the best result possible under the law. But creating conflicts that increase the client’s expenses, when they can least afford those expenses, will hurt both sides.

Make sure the client’s children also have the emotional support they need during divorce. Parents need to listen to the children, communicate regularly, and assure them that both parents love and support them.

Better decisions are made when your clients think clearly. Hatred and anger make it nearly impossible to think clearly. Finding a way to communicate and resolve the issues will give your clients, and their children, a better future.

Not all issues in a divorce can be resolved by agreement. If the parties cannot resolve an issue, a judge will decide it. But if the attorneys minimize the emotional conflict, they also minimize the cost and pain of divorce. Attorneys should help their clients build a road to a future life without their spouse, not burn the bridges to the client’s former life.

Michael Reedy is a partner at *McManis Faulkner* who handles complex family law cases. He relies on his experience in civil litigation to help clients with restraining orders, property and business division, and custody and support issues. He may be reached at mreedy@mcmanislaw.com or 408-279-8700.



REEDY