

I take issue with the "either/or" way that this discussion is looking at the law, and at lawyers' responsibilities about the law.. It sounds like people are afraid of talking about the law. Why?

It's not our enemy. How lawyers engage with the law in a collaborative context is the problem. My pal George Richardson has a grand metaphor for this: in adversarial practice the law is like the sun in the solar system. In collaboration the law is still there and has a place, but it's like the sun in the Milky Way. If you talk about it as if it were the sun in the solar system you are giving it huge power, but that power is what you are giving it as the lawyer, not something intrinsic to the law.

I see this as part of lawyers shifting paradigms. An important part. I don't share the view that lawyers can just not give clients information about the legal context in which they are reaching an agreement. For what it's worth, I view that approach as treacherous ground; we have some non-waivable duties as licensed professionals. I think knowing what would likely happen in court to a similar couple with a similar issue who did not reach their own better terms of resolution is part of my client's fully informed consent to the terms of settlement.

When and how the law is discussed is where the artistry comes in. Done skillfully, we can provide that kind of contextual information in a way that strengthens our clients' commitment to the settlement terms they themselves crafted. It requires educating them about what the law is, and what it is not. Demystifying it. More law, not less, is the technique, and Don Royall and I wrote about it years and years ago in the *Collaborative Review*. Not making predictions about what the judge in your own local court would or would not do with a given issue, but rather helping clients see the law of your state and the local rules of your county as representing only one of many ways that civilized countries have gone about providing resolution to typical family law issues when parties can't resolve them outside the courtroom. The more discretionary the issue, the easier it is to help clients see that what a judge might do is first of all very difficult to predict, and second might be very different from one courtroom to another and one state or country to another.

Where issues are not so discretionary the conversation can turn toward how family law judges rarely give one party the benefit on all contested issues. If you win on who gets the house, you'd better watch out about valuation. Etc. etc.

If a California court might give my client generous spousal support more or less forever and on the same facts a Texas court or a London court probably would not, that is the start of a conversation that can disempower law and courts by putting them in proper perspective as just one of many different but equally reasonable ways that legal systems get the problem resolved if you can't do it yourself. They can't all be "right" and few are intrinsically better or worse than other ways of skinning the cat. So why not go with what you and your spouse, guided by your own values, can most comfortably settle on, is how that conversation ends up.

Not only do I think we have a professional responsibility to do this as lawyers, but I think that the clients take stronger ownership of their own solutions when they know that what the judges locally are doing has no greater intrinsic rightness to it than what they decide to do.

And an important collateral benefit is that they are in the process being inoculated against the devastating impact of the Greek Chorus and the Fishing Buddies who, after the deal is done and the client talks about it, often will say "You did what??? You got what??? What kind of a lawyer did you have? Mary down the street had exactly the same situation and she ended up with twice as much as you did." Knowing a lot more about the law, what it is and what it is not, strengthens our clients' confidence in the rightness of what they and their spouses decide to do and gives them strong legs to stand on when they talk about their divorce experience.

Best, Pauline

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