

CUSTODY – FANTASY AND REALISM – John M. Eccles, Esq. (60 Minutes)

Of all the things argued about in Family Court, custody tends to be the most contentious. However, it is possible to minimize the level of conflict and strife if the client is advised, at the onset of your representation, the probable outcome of a custodial dispute. My advice on how to deal with custody is largely anecdotal, with some references to applicable law to assist in setting and reaching realistic goals for your clients.

A. The Problem of Realistic and Unrealistic Expectations in Custody Matters

There are various reasons why a litigant might seek primary physical custody of their children. The client may honestly believe the children will be better off in their custody. The client may also realize that if the other parent gets primary physical custody, there will be financial consequences (i.e., having to pay the other parent child support). Still others may be inclined to relocate outside Nevada with the minor children – a feat more easily accomplished if the relocating party has primary physical custody of the children. All too frequently, the issue of custody is used as a point of leverage or to provide post-divorce control over the ex-spouse. The reasons for seeking primary physical custody are numerous and varied, but not all are meritorious.

The Nevada Legislature has expressed a stated preference to have both parents actively involved in the lives of their children whenever possible. (*See* NRS 125.460. *See also* NRS 125.490) Although this preference does not come out and say the Nevada Legislature wants the Court to first consider the possibility of joint physical custody, the reality is that if one of the parties seeks joint physical custody, the Nevada Legislature has directed the District Court that it must provide findings of fact, conclusions of law, along with its judgment, indicating why joint physical custody can't work in the case before it. [*See* NRS 125.480(3)(a)]

A lawyer can take this information into a consultation with a client to detail the difficulties associated with trying to obtain primary physical custody of the parties'

children if the other parent has sought joint physical custody. It appears the intent of the Nevada Legislature was to provide a method by which a party could take a reasonable position (i.e., seeking joint physical custody) so as to force both the parties to consider the very real possibility that substantial resources will be expended fighting for primary physical custody, with the ultimate result often being joint physical custody.

In Clark County in particular, many of the Judges will state initially that in the absence of some compelling reason to the contrary, their inclination will be to award joint physical custody of the minor children to the parties. While somewhat ambiguous, the “compelling” reasons might include a work schedule which effectively precludes joint physical custody (fairly rare), domestic violence, drug and/or alcohol abuse, neglect of the children, or a parent posing a substantial risk to the children (i.e., somehow placing the children in harm’s way)

All too often, in the heat of the moment, a client will ask you to pursue a claim for sole physical custody – a request which is, to put it lightly – infrequently granted by the Nevada Courts. As with seeking primary physical custody, the road to sole physical custody is long and arduous. Frankly, there are parents incarcerated in prison who have at least some semblance of custodial rights (though visitation is less practical in those instances). Since sole physical custody is akin to the non-custodial parent having no custodial rights, and therefore, is effectively stripped of parental rights, the Courts are reluctant to grant sole physical custody in all but the most egregious cases.

The practical reality, as an attorney, is with a few simple questions, you can determine whether your client has any legitimate claim for custody other than joint physical custody. Has the other party been convicted of domestic violence against your client? Has the other party been convicted of abuse or neglect of one or all of the children? Is the other party a habitual user of illegal drugs, abuser of prescription drugs, or abuser of alcohol? Can any of these allegations be corroborated independently with documentation or credible witness testimony? If the client can’t provide you with a basis

to deviate from joint physical custody, then you should advise them the probability of prevailing on a claim for primary physical custody is slim or virtually non-existent.

Before lodging a claim for primary physical custody based on a client's representation of malfeasance by the other parent, you should require your client to provide evidence supporting their claims. In the absence of being able to produce such evidence, you should be reluctant to proceed on a claim for primary physical custody. Whether it is right or not, we are judged by our actions before the Court, and Judges will remember attorneys who make unreasonable claims on behalf of their clients and expend valuable judicial resources better utilized to review legitimate claims. There is a balance required between the oath to zealously advocate on behalf of our clients, and the effect such advocacy can have on our credibility, and more importantly, our future clients' cases. It is very much like the boy who cried wolf one too many times.

If, on the other hand, your client is able to document a conviction for domestic violence (or will be able to prove, at the time of trial, domestic violence by clear and convincing evidence), you should not hesitate to advise your client to proceed with a claim for primary physical custody. [See NRS 125.480(5)] Similarly, any conviction for abuse or neglect of the parties' children (or, possibly, a conviction for abuse or neglect of other children in the care of the other party) would be a basis to proceed on a claim for primary physical custody. Child abuse and neglect is often considered the equivalent of domestic violence. [See also NRS 125.480(4)(j)]

Abuse of illegal drugs, prescription drugs, or alcohol by the other parent also can weigh in favor of a claim for primary physical custody. [See NRS 125.480(4)(f)] However, several Clark County Family Court Judges are more interested in getting parents better, rather than punishing them for an addiction disorder. Although there is a point at which the Judges will all make the addicted parent choose between their children and their addiction, several will give the addicted parent ample opportunity to seek therapeutic assistance so as to protect their Constitutionally protected right to parent their children. Although sometimes frustrating, this policy is consistent with the holding of the

United States Supreme Court in *Meyer v. Nebraska*, 262 U.S. 390, 43 S.Ct. 625 (1923) and its progeny, which indicate fit parents have a Constitutionally protected right to parent their children as they see fit.

Ultimately, although clients may have a basis for seeking primary physical custody, it is incumbent on the attorney to rein in the client who has a weak basis to seek primary physical custody – or worse, a client who has nefarious reasons for seeking primary physical custody.

B. The Statutory Criteria and the Real Criteria that Judges Apply

In determining custody, the overall directive from the Nevada Legislature to the Judges is to make a decision which is in the “best interests of the child”. In fact, it is the “sole” consideration of the Court. [See NRS 125.480(1)] The factors the Court may use in reaching a determination as to what custodial arrangement serves the best interests of the children is contained in NRS 125.480(4), which details each factor the Court can and should consider in making such a determination. The list is non-exhaustive.

NRS 125.480 Best interest of child; preferences; considerations of court; presumption when court determines that parent or person residing with child is perpetrator of domestic violence.

4. In determining the best interest of the child, the court shall consider and set forth its specific findings concerning, among other things:

(a) The wishes of the child if the child is of sufficient age and capacity to form an intelligent preference as to his custody.

(b) Any nomination by a parent or a guardian for the child.

(c) Which parent is more likely to allow the child to have frequent associations and a continuing relationship with the noncustodial parent.

(d) The level of conflict between the parents.

(e) The ability of the parents to cooperate to meet the needs of the child.

(f) The mental and physical health of the parents.

(g) The physical, developmental and emotional needs of the child.

(h) The nature of the relationship of the child with each parent.

(i) The ability of the child to maintain a relationship with any sibling.

(j) Any history of parental abuse or neglect of the child or a sibling of the child.

(k) Whether either parent or any other person seeking custody has engaged in an act of domestic violence against the child, a parent of the child or any other person residing with the child.

In reviewing the factors to identified by the Nevada Legislature, several of them are difficult to attribute to one party or the other. Which parent is responsible for the level of conflict between the parents, under NRS 125.480(4)(d)? Which parent is responsible for an inability of the parents to cooperate to meet the needs of the child, under NRS 125.480(4)(e)? How do the physical, developmental and emotional needs of the child affect the custodial determination, under NRS 125.480(g)?

Other factors are often inapplicable – if you are litigating the issue of custody, a nomination by a parent, under NRS 125.480(b) is typically a wash, since both parents typically nominate themselves. Many times, there is no abuse, neglect, or domestic violence. Children may be too young to render an opinion on the custodial arrangement they believe serve their best interest, or prefer not to be placed in a situation where they are, in essence, being asked to choose one parent over the other.

However, using these factors as the basic framework of an argument for primary physical custody can be effective, especially if you and your client put together a fairly comprehensive analysis of the applicable factors which weigh in the client's favor. If a factor listed in NRS 125.480(4) applies to your client's case (and, of course, benefits your client), then you and your client should really focus on the applicable (and beneficial) factors. Similarly, if there are obvious factors which work to your client's detriment, it is incumbent on you and your client to mitigate the effect such applicable and detrimental factors may have on your client's claim for primary physical custody.

Perhaps the most controversial factor is the stated preference of children of a sufficient age to render an informed opinion on the custodial arrangement which will serve their best interests, under NRS 125.480(4)(a). There is a specific Local Rule, EDCR 5.03, which precludes parents from involving their children in custody litigation, and yet there is another specific Local Rule, EDCR 5.13, which permits the Judges to

have the children interviewed for their preferences, or to outsource a custody evaluation to aid in the decision making.

There seems to be a “magic” age where children suddenly are imbued with the knowledge to render a reasoned and well-informed opinion as to the custodial arrangement which would serve their best interests, and that age is 13. Once a child is a “teen”, the Courts are much more inclined to take into account their stated preferences.

There are principally three (3) problems with a child interview, which is usually conducted by an employee of the Family Medication Center (FMC) [usually a Marriage and Family Therapist (MFT) or Master is Social Work (MSW)].

The first is the duration of the interview. Because of time constraints, it is pretty rare for an interviewer to delve deeply into the underlying basis for the child’s preference. This effectively precludes FMC from being able to draw any conclusions relative to whether the child’s stated preference is thoughtful and intelligent, or to determine to any degree of certainty, whether or not the child has been coached by one parent, the other, or both. Far too frequently, FMC will fail to provide the Court with any observations as to whether the children have been coached, to what degree, and by whom. There is also a question about whether or not the FMC interviewers are adequately trained to determine if the opinion given by a child is intelligent, or if the opinion has been implanted by a parent.

The second problem is that children are, by their nature, inclined to try to keep the peace between their parents. As such, even if your client swears her daughter will tell the interviewer she wants to live with your client predominantly, it is common for children to tell the interviewer they love both their parents, and would like to spend as much time with each of them as possible. Your client may not have considered, when she tells you the child will want to live with her predominantly, that the child may well have told the other parent the same thing. It happens more often than I originally expected it would.

The third problem is that children are sometimes – in fact, often – smarter than their parents give them credit for, and upon finding out they will be interviewed as to their custodial preference, will pit their parents one against the other to negotiate the best possible living arrangement. This may include bargaining for greater freedom in one household, less chores, gifts, promises of trips to theme parks - almost anything a child desires. Sadly, parents will often fall into this trap, and capitulate to negotiating their children's future against the other parent. Ironically, parents rarely recognize that by empowering their children in this regard, they are guaranteeing conflict not only with the other parent, but with their children as well. Under the preceding scenario, if a parent “wins” custody, it will be a short-lived victory. The first time there is conflict in the household, the child will invariably ask to speak to the Court again to let the Court know he or she has had a change of heart, and now wants to live with the other parent.

The fourth, and legally, the most important issue with a child interview, is that the Court will invariably rely to some degree on the contents of the child interview report to make its decision on custody, and the attorneys will not be afforded an opportunity to examine the interviewer as to methodology and conclusions, and will not be afforded an opportunity to examine the child as to the statements made to the interviewer, or the basis for those representations. A child interview report is a Court sanctioned hearsay document you will not be afforded an opportunity to contradict or refute.

For the foregoing reasons, I am adamantly opposed to the use of child interviews. The pitfalls are many, and the opportunity to impeach or challenge the contents of the child interview report is non-existent. However, an outsourced evaluation (usually to a Psychologist or Psychiatrist) can be an invaluable tool in some cases, and does not foreclose the opportunity to examine the expert as to methodology and/or conclusions.

There are a small number of experts qualified by our District Court Family Division which serve as custodial evaluators. Most are highly degreed, experienced in the custody evaluation process, and fully qualified to render an expert opinion on the ultimate issue of custody. However, even these evaluators can, to some degree, be pigeonholed as to their

propensities. It is important as an attorney to know the propensities of these evaluators so as to avoid sinking the client's case before it really even starts.

Many of the Judges rely heavily on these evaluators for their determination of custody. Some will not agree to an outsourced evaluation unless the parties agree in advance the recommendation will be determinative. Still others will not Order an outsourced evaluation even if the parties agree, under the premise that the Judge is the ultimate trier of fact, and as such, should not delegate any of that responsibility to "experts".

One problem with an outsourced evaluation is the cost, which is usually between \$5,000.00 and \$7,500.00. This may make an outsourced evaluation prohibitive in some cases. Furthermore, if the evaluation is not favorable to the client, you may need to obtain an alternate expert to refute the conclusions and/or methodology of the originally assigned outsourced evaluator, at significant additional cost, and the best you can hope for with an alternate expert is to neutralize the original evaluator's recommendations, which essentially means, if you are successful in this regard, the parties have expended \$10,000.00 to \$15,000.00 to have conflicting reports which are of little or no use to the Court.

Another problem is that, sometimes, the report from the evaluator is not particularly useful. It may be incomplete – lacking recommendations, or a detailed list of matters relied upon to render the recommendation, or a failure to express how the matters relied upon led the expert to his or her conclusion. Other times, in testimony, the expert may actually acknowledge a bias, or "propensity", to make a certain recommendation. I had an expert admit, under oath during her deposition, that she recommends primary physical custody to the father in about 65% of cases. A demonstration of bias will probably lead to the Judge disregarding the recommendation, but the parties will still be on the hook for the costs associated with the evaluation.

It may be possible, in high conflict cases where the parties have limited resources, to call on the assistance of an experienced family law attorney to act as Guardian *ad Litem* (GAL) for the children, and to have the GAL prepare and submit a Report and Recommendation to the Court relative to custody. Because such an appointment will require the attorney, in most instances, to act in the capacity of GAL *pro bono*, the availability of such an appointment is by no means assured. As with any other evaluator, the GAL will be subject to examination as to methodology and findings, in the absence of an agreement between the parties that the Report and Recommendation shall be determinative.

Of course, agreeing to the determinative effect of any recommendation is fraught with peril. Although it will certainly cut down on litigation expenses for the client, it also may foreclose the ability to examine the evaluator as to methodology and conclusions, which is always dangerous.

It may be possible to agree a recommendation would be determinative, but reserve the right to examine the evaluator as to methodology and conclusions to flesh out for the Court how the evaluator reached the conclusions reached, and then let the Court determine if, in fact, the recommendation logically flows from the methodology used. If pressed into an accommodation that the recommendations be determinative, try your best to reserve the right to examine the expert so you can have the Court review, through your line of questioning, whether or not the conclusions of evaluator make sense from the information gleaned by the evaluator in order to make the recommendations.

Ultimately, where evaluators are used, it is common for the Judges to rely to varying degrees on their recommendation. Because these evaluators are not always aware of legal bases for rendering a decision on custody, they can rely on extrinsic matters which the Court itself would not (or may not be permitted to) rely on. The evaluators may also use factors which the Court would not otherwise consider or use. As such, there is some inherent danger in using an expert who does not fully understand the “best interest” factors the Nevada Legislature has laid out in NRS 125.480(4). A good evaluation will

make reference, if not directly, then at least indirectly, to the factors in NRS 125.480(4). The absence of consideration of these factors by the evaluator in reaching recommendations is fodder for cross examination of the evaluator, when circumstances require.

Some criteria the Court may use may emanate from their own personal lives. Although somewhat discouraged, there is technically nothing wrong with the Court injecting its own experience to its determinations. Which leads us, in part, to the next section...

C. Prejudices, Foul-ups and Other Cruel Realities of the Courtroom

Prejudice in the courtroom can take many forms. No attorney practicing in Family Law should be surprised that there are political aspects to Family Law (notwithstanding the fact it took me 4½ years to figure it out myself). The Court may be biased for or against a particular attorney, or opposing counsel. The Court may be biased for or against a particular litigant, or opposing party. The Court may have substantial and preconceived notions of how custody should be split between parties, and these ideas may not align with the “best interest” standards in NRS 125.480(4). Some Judges have a reputation of being “female friendly”, while others are thought of as “male friendly”. The propensities of the Judge assigned to your client’s case are nearly as important as the facts of the case and the law applicable to the case.

Initially, there may be an opportunity to file a peremptory challenge of a Judge to have that Judge removed from your client’s case. In Clark County, there are currently thirteen (13) Family Law Judges, of which ten (10) typically hear contested custody matters. The other three preside over Juvenile proceedings, or Guardianship matters. One of the remaining ten (10) Judges is the Presiding Judge, and carries a one-half (½) caseload to accommodate other duties assigned to the Presiding Judge.

In evaluating whether or not to exercise the right to file a peremptory challenge, it is prudent to evaluate whether or not your peremptory challenge could result in receiving a

Judge which, given the facts of your case, may actually more negatively impact your client's case through their propensities as applied to the facts of the case. In other words, a peremptory challenge is usually only a good idea if, in fact, you originally draw a Judge whose propensities, given the facts of your client's case, is the worst possible Judge for your client's case. Even if you execute a peremptory challenge and the newly appointed Judge is the best Judge for your client's case, you are not out of the woods – the other side can file a peremptory challenge as well.

The worst case scenario is where you originally draw the second worst Judge for your client's case, execute a peremptory challenge, get the best possible Judge for your client's case, and the other side files a peremptory challenge, thereby getting the case assigned to the worst possible Judge for your client's case. It happens, so be judicious in the use of peremptory challenges, and discuss the pros and cons with your client before making the call to file one.

The various Judges all enforce Court Rules in varying degrees, and this too can impact your client's case. I had a case where opposing counsel provided me with an interpreted transcript of a voicemail message he had in his possession for months prior to the trial. However, he failed to provide me with a copy of the tape or the interpreted transcript until the day before trial. I objected to the introduction of the voicemail, or the transcript, and the interpretation of the voicemail into a transcript because it was a classic “trial by ambush” strategy which the Nevada Supreme Court has said not only cannot be condoned by the Court, but may warrant sanctions. [*See Pierce Lathing Co. v. ISEC, Inc.*, 114 Nev. 291, 956 P.2d 93 (1998)]

The Judge permitted the transcript into evidence over my objections, claiming that the Nevada Legislature had directed him to look at any evidence which may provide indicia of acts constituting domestic violence, regardless of whether the “evidence” was otherwise impermissible. Since the voicemail suggested the other side of the case and “her” judge could have oedipal relations with their respective mothers, my client's case for custody was sunk. However, other Judges would not have even considered admitting

such “evidence” in a trial because of the ambush litigation strategy used by opposing counsel.

Yet another Judge considered a custody evaluation in rendering a decision on Motion calendar, even though the matter was not scheduled for the presentation of evidence or to take the testimony of the expert as to methodology and/or findings. In that particular evaluation, the conclusion of the expert was that the children would benefit from contact with extended family, despite the objections of both parents where the intervening grandmother had not even alleged unfitness by either parent (or a denial of access, for that matter).

Aside from the Court’s misdoings in that case, this was a classic case of the expert not being versed in Nevada law on the issue of grandparent visitation, and rendering its decision based on psychology in general, without consideration of the inviolate and Constitutionally protected rights of the parents to raise their children (and therefore, control access to the children by extended family) as they see fit.

Again, it pays to know the propensities of the Judges. Not all of the Judges know all of the law, and although it is difficult to do so, sometimes they require some guidance from an attorney who has a good understanding of controlling law. Even then, results are mixed on the Judges’ amenability to consider the argument of counsel as to applicable law. Remember, the Judges are somehow expected to know everything about the law, so any persuasion of a Judge relative to applicable law has to be done delicately, and in a manner which does not suggest that the attorney is “schooling” the Judge. If the Judge feels like the attorney is somehow diminishing their esteem before their colleagues and the general population, the probability of convincing a Judge as to the efficacy of your analysis is slim and none.

There are a number of cruel realities in court. The first, as expressed above, is that Judges are, because of human nature, subject to certain propensities, and these propensities do not always jibe with applicable Nevada law.

The second is that people lie in Family Court – even under oath. Large chunks of Family Law cases are nothing more than “he said, she said”. This makes proving lies very difficult. However, there is a concept called the “rule of threes” which may help in such instances. If you can catch the opposing party in three (3) documentable lies, he or she will typically have no credibility with the Court. Of course, it is important your client not get caught in three (3) lies, or neither of the parties will have any credibility. In this regard, paper discovery and subsequent depositions are useful to lock in testimony, because you can then pursue documentation that responses were false. Impeachment of a witness is one of the most fun (and sometimes, most difficult) things you can do in Family Court.

I am constantly amazed at clients who are surprised people lie under oath. Since it is difficult to catch someone in a lie – especially on the fly, while they are testifying – it stands to reason people will lie under oath if they think they will get away with it. This is especially true when things like custody and money issues are on the line.

One final cruel reality in the courtroom is that having good facts and good law does not always translate to victory. As I inform each of my clients, I am a poor predictor of what will happen in Family Court, and every day in Family Court is “anything can happen” day. It is similar to the question constantly posed to the creator – “Why do bad things happen to good people?” There never seems to be an adequate answer. If you lose your client’s case, despite good facts and good law, it is difficult to console your client, no matter how effective your litigation strategies and presentation should have been.

D. Helping the Client to Accept Realistic Goals

In evaluating a claim for custody with a client, it is important to first glean as much information from the client as could be useful to support a claim for the custodial arrangement they are seeking. This includes information which could be adverse to their request, including incidents of domestic violence, alcohol, drug, or prescription drug abuse, abuse and neglect of children, and the like. Although the client may not want to

give you negative information, it is similarly important to warn the client of the possibility of being blindsided in the event there is an incomplete disclosure from the client about issues he or she may have which would impede the ability to obtain the result sought.

If the client cannot provide you with sufficient information to support the requested custodial arrangement, it stands to reason you should explain to the client that his or her expectations exceed the probable results – what I like to call a “come to Jesus” talk.

There are numerous ways to rein in unrealistic goals of a client. One particularly effective way is to go over the proposed strategy to get the client where they want to be, and discuss, at length, the costs associated with the strategy. If the position is unreasonable, it is fair to assume there will not be an agreement, and so litigation will ensue. A half day evidentiary hearing on custody will require a conscientious attorney to expend upwards of twenty (20) billable hours in paper discovery, depositions, trial preparation, and conducting the trial. The net result may not be cost effective for the client, and you should explain it to the client as fairly as you can.

For example, although a high income earning parent with a low income earning spouse might seek primary custody, and have the resources with which to litigate the issue, if the principal basis for obtaining joint physical custody of the children is to avoid paying child support, you could advise the client that the difference in child support between sharing custody and the other spouse having primary physical custody would be modest compared to the amount expended in the fight. This is not to say you should necessarily advise your client not to seek joint physical custody, but at least the financial differences between the different custodial arrangements should be laid out for the client.

Another favorite of mine is to inform the client that my reasonable clients are not the ones paying the monthly payment on my imported luxury sports car. Only my clients with “principles” pay that payment for me. Anyone who thought principles were cheap never litigated anything “on principle” – certainly not in Family Court.

Similarly, it is incumbent on the attorney to discuss the ramifications on ancillary matters of each possible custodial arrangement with their clients. For example, under current Nevada law, it is somewhat more difficult to relocate outside Nevada with the minor children if the parties share joint physical custody. [*See Potter v. Potter*, 121 Nev. 613, 119 P.3d 1246 (2005)] You should also discuss that a parent not having joint or primary physical custody of the minor children cannot seek permission to relocate outside Nevada with the minor children.

It is common for clients, at some point of litigation, to express unrealistic expectations, and when this occurs, it is important for the attorney to rein in the client. If you don't, then the client's expectations will increase as the likelihood of success dwindles. This, in turn, can lead to Bar complaints. Furthermore, unhappy clients do not refer others to your practice. Keeping your client's expectations realistic will generally lead to the client having a better perception of the ultimate outcome, and your abilities as an attorney. Therefore, it actually behooves us as attorneys to keep our client's expectations reasonable.

Ultimately, the more unrealistic your client's expectations are, the higher the degree of probability there will be conflict between you. In a case involving the inappropriate release of medical information without a release under HIIPA, where the doctor provided the District Attorney with the client's prognosis so the DA could determine whether or not prosecution could occur before the client dying, I told my client his damages were, in fact, fairly nominal – maybe \$15,000.00 at most. After three (3) months of negotiations, the client went off the deep end and insisted we take the matter to trial for no less than \$1 million. I was not able to rein that client in, so we parted ways before he had a chance to become any more antagonistic and unrealistic.

Similarly, if the client will accept nothing less than sole legal and sole physical custody – a rough equivalent of termination of the other parent's parental rights, and there simply isn't a basis in law or fact to obtain such an award, if the client won't accept a more realistic goal, that client will eventually be disappointed with the result, and the

disappointment in any event will not result in referrals, and may result in a fee dispute or worse, a Bar complaint.

E. Helping the Client to Act Responsibly

There are numerous practical reasons why you should direct your client to act, at all times, in a responsible manner. The first is that being petty and irresponsible can have a deleterious effect on the client's case. For example, an irresponsible client may refuse to respond to discovery requests, or to permit a deposition of the client to occur. This did not work out so well for Britney Spears. When she refused to attend her own deposition, the Judge suspended her visitation rights.

Additionally, clients may act inappropriately by speaking poorly of the other parent in front of or to the children. As I have previously stated, children are smarter than their parents give them credit for, and when children figure out a parent has been demeaning the other parent without justification, the children naturally gravitate toward the aggrieved parent, and shun the trash-talking parent. While it is true such behavior may have a limited short term positive effect, the long term effect is always the same – the children will eventually protect the offended parent to the detriment of the parent doing the demeaning. What can be frustrating for clients is that while children will eventually figure it out, it may not actual occur until the children are emancipated. Still, most right thinking clients would not sacrifice a relationship with their adult children simply to exclude the other parent from the lives of their children during their minority. This doesn't mean it doesn't happen, however.

Equally importantly, Judges are more inclined to rule in favor of likeable, believable, and reasonable clients than to rule in favor of unlikeable, unbelievable and unreasonable clients. As such, if the client is not acting in a responsible manner during the pendency of litigation, the likelihood of prevailing diminishes.

The role of the attorney in maintaining a responsible client is to discuss, at some length, the ramifications associated with being irresponsible. If the client refuses to have

his or her deposition taken, remind them what happened to Britney Spears. If they don't want to respond to Requests for Admission, remind them that refusing to respond will be treated as an admission, and the admissions will stand even if they are subsequently disproved (or, more accurately, the Court will not permit you to attempt to refute the admissions). If they don't want to permit the other parent to have visitation, remind them that one of the factors the Court looks at to determine custody is which parent is more willing to foster a relationship between the children and the other parent. If the client refuses to pay child support, remind them that a drivers license can be suspended when as little as \$1,000.00 in child support arrears accumulate. Remind them that it isn't that much more to have their professional licenses revoked (if the client is a professional).

Frankly, as a practicing Family Law attorney, a full quarter of my time is devoted to keeping clients on an even keel, discussing their behaviors (actual and proposed) with them, and trying to make sure the client doesn't undermine my ability to effectively litigate on their behalf. There are few things worse than a client who sinks his or her own case. The feeling of helplessness that accompanies watching your client's case sink slowly into the quagmire is not pleasant. Remind your client that anything they say or do can and will be used against them in a Court of Law. It often is. Remind clients that the other side doesn't need their permission to record voicemail messages your client leaves on their phone for it to be admissible against them. Remind clients what a declaration against interest is, or an admission by a party opponent is, so they don't make declarations against their own interest, or admit to things they should not.

A great individual, whose name escapes me, once said: "The practice of law is the perfect profession, except for the clients." This individual must have been a Family Law practitioner, because it is the clients who typically do the most harm to their own cases. If you can keep your client on track and make sure he or she in all instances acts responsibly, you can avoid having your own client do more damage to the case than opposing counsel. Family Law is difficult enough without being attacked by opposing counsel and your own client.