

No Excuse

By Fred Silberberg

The manner in which justice is supposed to be administered in the family law court is through court orders. Parties come to the divorce court for assistance in protecting their rights. Those may be rights to property, support or child custody matters. In fact, unlike in other areas of the law, family law cases start with court orders being imposed automatically at the outset of the case. The party who files the proceeding is bound by the orders when they sign the petition; the other party is bound upon service of the same.

As a case proceeds, parties often seek the assistance, and protection of the court by way of certain court orders. These orders are intended to be enforced by the court. When a party violates a lawful court order, that violation is supposed to have consequences. If there are no consequences, then there is no reason to make orders in the first place. If orders are not enforced, and there are no consequences, then no one has the benefit of the protection he or she seeks, and the judicial process is meaningless.

Family law courts are courts of equity. Unfortunately, it seems that many family law judicial officers interpret that to mean that court orders are optional, and that non-compliance with them can be excused for any myriad of reasons. The result is that not only do parties fail to obtain the protection they seek, but the court system becomes overburdened with repeated requests attempting to enforce orders, calendars get backlogged, litigants spend unnecessary time and attorney fees that could otherwise be avoided and the public view of the court system becomes more and more negative. The fact is, because these orders are not enforced with any significant consequences in many family law courts, litigants no longer trust the court to assist them.

It seems that in family law court, an order, in many instances is treated like a suggestion. A parent is told to follow a certain custody schedule. The children are not available to the other parent when they are supposed to be available. The parent who loses out on his or her custody time comes to court to get relief. The court admonishes the parent not to do it again, but that serves no purpose. The parent was already

ordered not to engage in that type of conduct, and they did it anyway. The fact that they got away with it is nothing more than an incentive to do it again.

A party is ordered to show up at family court services for mediation. They do not appear. The case comes up for hearing, but the court cannot proceed to determine any custody issues on the date for which it was set because one party did not show up at mediation, and the statute makes that a prerequisite for the court to hear the matter. Rather than sanctioning the party who did not show up, the court continues the matter to another date and tells the party who already violated the court order that he or she needs to make a new appointment and appear on that date. While the matter could have been resolved on the date for which it was scheduled, the party who complied is forced to wait longer for resolution, the mediation office is burdened with yet another appointment that could have been avoided, the court's time was taken up in preparation for a hearing that did not proceed, and lawyer fees may well have been incurred by one party to show up at the hearing that he or she initiated, only to have it continued.

Similar to the last example, someone files and serves the other party with an Order to Show Cause. The other party does not respond in the statutory time frame. On the day of the hearing, counsel for the party who failed to respond shows up and asks for a continuance. More often than not, the court grants the continuance as a matter of course. Lawyers know that may happen and it encourages them to occasion delays by coming in to a case last minute, knowing that there will likely be little, if any, prejudice as a result. It is not uncommon for a party to not show on a continued hearing date, or to have some excuse as to why he or she cannot proceed. The court may order them to produce documentation to validate the excuse on the return date. When they don't show up with it, the court continues the hearing yet again. Now more delay has occurred, the court's calendar gets more congested, more fees are wasted and it is of no consequence to the offending party.

The foregoing are just a few examples of what goes on in family law court on a daily basis. These examples are based on actual cases. It is not uncommon

for clients to come to their lawyers and ask for recommendations on dealing with family law problems. The lawyers often tell them to seek assistance from the court, after all, that is why the courts exist. It is not uncommon at all for the litigants to respond: "The court won't do anything about it." These statements are sometimes the result of personal experience, and sometimes emanate from someone having heard the story of another family law litigant. While it may be true that our courts are not equipped to handle all situations, and no one expects them to, what we do expect is that judges enforce court orders.

Every time a judge lets a litigant slide, it sends a message not only to that litigant but to others in the courtroom, as well as the public in general, that you can skirt the rules. Every time a judge lets a litigant slide in a family law case, someone is hurt by it and the offending party is further empowered. When the order is not complied with, fees are unnecessarily expended in obtaining that order. When the compliance is excused, there is more incentive to continue making more and more excuses. When the custody order is not enforced, it is the children who are harmed by not being able to spend time with the other parent. The failure to enforce family court orders has results that often trickle down to multiple levels.

The court has the power to enforce its own orders. It is time for family law judges to stop excusing people because it is easier to do that than to enforce the court's orders. The norm should be enforcement, not excuse. If this were the case, there would be a decrease in the amount of litigation and wasted court time, a decrease in the expenditure of attorney fees, and perhaps, over time, faith in the family law judicial system would be restored. At this point, the family law court system has a significant public relations problem because excuse has become the norm, not the exception.

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