

Family Law Attorneys Deserve to Charge More for Their Work

By Fred Silberberg

There seems to be an undercurrent buzzing around the legal community, both bench and bar, that family law attorneys are too expensive and that our hourly rates are too high. Attorneys who do not practice in this area often are surprised to learn of family law hourly rates.

Judges, especially those new to the area, don't always understand our rate structure, either. Aside from factors of supply and demand, there are many good reasons the hourly rates of family law attorneys are higher than those of most lawyers.

Family law attorneys are dealing with people in serious conflict, under significant emotional stress. Unlike many other areas of practice, this is hardly a 9-to-5 job. Family law clients expect us to be available at their beck and call. In many ways, we have to be "on call" in a manner similar to medical professionals, although, in truth, other than providing a calming voice and at times direction to call the authorities, there is little we can actually do in the noncourt hours. Nonetheless, the intrusions are part and parcel of doing business in this arena.

Family law, while under the penumbra of civil court, is at times far from civil. The emotionality of these situations not only requires us to keep a schedule that is different than most, we have to be on guard in a way that many other lawyers do not. People involved in divorces and in custody disputes often perceive a former spouse's counsel as a threat. In turn, they can and are, at times, threatening themselves.

There is a modicum of personal risk present here that is not present in other areas of practice. Any lawyer who has been involved in the practice of family law for many years has either been at the receiving end of such threats or harassment or knows a colleague who has. And, at times, it is even opposing family law counsel that take unreasonable and threatening positions or ask for sanctions against lawyers out of spite, not because the sanctions are justified.

Collections in family law cases are also a problem. It is not uncommon to take a case for what may at first appear to be a substantial retainer, only to get caught up in an explosion of litigation or a proceeding that churns and churns at the courthouse, during which time not

only does that retainer get depleted, but, in addition, the account receivable starts growing exponentially.

With the family court system as backlogged as it is in other practice areas, a hearing that should take a relatively short amount of time can drag along day after day, with myriad interruptions as the court handles ex parte applications, trial setting conferences and other matters in between the ongoing hearing. All the while, lawyers and clients are kept hostage in the courthouse. When everyone is released, there is oftentimes a large bill, and the bill may not always get paid.

Sometimes the amount of fees that incur as a result of this round of litigation exceed the ability of the client-spouse to pay. And, of course, as the case goes on and on, the lawyer has no ability to get out. If one spouse is particularly out of control during the course of a case, or emotionally distraught, he or she may use the process as a way to vent anger, initiating repeated ex parte applications, motions and orders to show cause. Each such event results in the other spouse not only having to respond but to appear in court and spend more time waiting. Time gets taken away from other matters, and large bills run up, never to be paid.

Many times, the art of collecting the lawyer's fee is akin to playing the tables in Las Vegas. One party comes to the lawyer's office portraying the case, and the estate, as something it is not. One party does not necessarily have access to funds, even if they are there. In an effort to assist such a party, the lawyer takes the case, expecting to get paid at some point during its pendency — only to find out later that payment will never come.

Courts often order the payment of fees by one party on behalf of the other, but the party ordered to pay often refuses. The Legislature grants lawyers the ability to take real property liens. Despite the fact that the liens are intended to grant secured interests in real property, they don't always prove to be that secure. There is a period of time for the other side to raise objections. And, even when the objections are not timely made, judges sometimes impose orders preventing satisfaction of the liens, even though they are not legally permitted to do so.

In addition, family lawyers often remain on a case based on a client's plea and a promise of payment when the case concludes. Once the gavel falls or the case settles, however, that same client decides the lawyer is the enemy and refuses to pay no matter what. The lawyer initiates a proceeding to collect the fee and gives notice of arbitration; the client in turn sues for malpractice.

Malpractice insurance premiums for



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family lawyers are the highest of any practice area, except for those dealing in securities. These days, the insurance pool is shrinking as each year more and more carriers go out of the market. The number of carriers who will cover family law attorneys is slim to begin with. Those who do, charge premiums close to what obstetricians pay.

To make those premium payments and still make a profit, family law attorneys have to charge higher hourly rates. And, should the attorney face even a meritless claim, the carrier undoubtedly will cancel coverage when the policy period ends, giving the family law attorney the privilege of paying even more for coverage from another carrier, if the attorney can get it at all.

The standard of care for family law attorneys also factors into the hourly rate. Family law attorneys, especially those dealing with estates in which there are significant assets, must continually spend time on education, keeping up with changes in the law — tax law, probate law and real property law, just to

name a few. The body of family law is truly more all-encompassing than just about any other area of practice.

This is not to say that the rest of the bar should feel sorry for family law counsel. Certainly those who practice in this area choose to do so. The area of practice, while full of minefields and significantly more stressful than any other, also can be one of the most rewarding. It isn't often that lawyers get directly involved in the dynamics of the family, and it isn't often in the law that one can see the result of doing something good for a client and his or her children.

At the same time, it wouldn't be all that terrible for other lawyers, as well as the bench, to show some respect and understanding about why it is that family law attorneys charge what they do.

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