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Counseling Panicked and Desperate Clients: Practicing Family Law in a Pandemic

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Martha Cohen Stine practices family law as a founding partner of Cohen Stine Kapoor LLP and co-chairs the New York County Lawyers Association Matrimonial Law Section, says she's found herself in a "first responder" role for clients.

Two weeks after the New York state court system moved to an essential functions only mode, lawyers in all areas are still adjusting to the change and trying to determine how the ongoing coronavirus pandemic will affect their firms. In family law, most filings have stopped, though lawyers can still seek emergency applications for clients facing domestic violence or a short list of other issues.

Martha Cohen Stine, who practices family law as a founding partner of Cohen Stine Kapoor and co chairs the New York County Lawyers Association matrimonial law section, said she's found herself in a "first responder" role for clients, counseling them through the upheaval of the pandemic while also continuing to provide legal advice.

Stine answered questions Friday about the pandemic's effect on her practice, the newly important role of videoconferencing software and the increase in divorce filings she expects to see when the crisis ends.

This interview has been edited for clarity and length.

Q: How has the court's shift to essential functions affected your practice? What are you able to do and not able to do?

A: We're very limited...in what way we can use the court system right now. For example, we can't file a summons for divorce and start a new matrimonial action except under very limited emergency circumstances and with the court's prior permission, because the courthouse is closed to anything other than 'essential matters.'

What this means is that unless you can show an emergency, you cannot file a summons for divorce right now and get the benefit of the automatic orders which spring into place automatically when you file and are designed to preserve the financial status quo. For example, the other spouse would be prohibited from transferring assets without your client's permission.

Filing a summons sooner rather than later also has other benefits in many cases, because it's a date from which many rights and obligations are measured under the domestic relations law. For example, the date that you file a summons cuts off the accumulation of marital property and starts the clock running for spousal support and child support.

Another example of how our hands are tied is that unless you can show it's an emergency and I'm referring to New York County here if a case is settled, we cannot file papers for an uncontested divorce, which means that we can't get our clients divorced. This could result in prejudice for many reasons, including a client who's expecting a baby and wants to remarry and cannot remarry because he or she is still married to the first spouse, or a client whose obligations, for example, to keep the other spouse covered on health care continue until the entry of a judgment of divorce. Now the entry of that judgment may be very delayed, increasing a spouse's financial obligations beyond what was contemplated.

What's going on is that an administrative order was issued that limits applications in matrimonial matters in the Supreme Court to essential matters. The purpose is to limit what's getting presented to the court to matters that are true emergencies, where it's absolutely essential that a court get involved. This is not how litigators generally operate there are many reasons why you want a court involved without an emergency.

Essential matters that can be presented are applications for temporary orders of protection, emergency applications related to the coronavirus and 'any other matter that the court deems essential,' a catch all that we are being told will be very narrowly construed.

If you do decide that you have an essential matter and you need a judge, there's an elaborate procedure we are supposed to follow, which involves emailing our request to an email address, attaching a form called a notice of essential filing asking that your matter be designated an essential matter, and then you wait and see if a judge agrees with you that your application is urgent enough to warrant connecting you with a judge.

I had one situation earlier this week where I explained the procedure to a client and urged her to let me make the application, because I felt from what I was hearing about what was going on in the apartment that there was potential for domestic violence in the home and I needed a judge for protection. After I explained the procedure, the client was reluctant to proceed and is trying to calm things down at home on her own.

Similarly, in family court, only certain types of petitions are being accepted, including family offense petitions and writ applications where a child has been abducted. In our litigated cases, all dates and deadlines are essentially suspended without date, meaning unless counsel for both parties cooperates to move the case forward, the case may stall. One party may benefit from the delay and might not have an incentive to cooperate for example, if he or she is receiving pendente lite support, the status quo may be just fine for that spouse.

On the other hand, some judges presiding over ongoing cases are taking conference calls and issuing rulings on the phone followed by emailed court orders. In one of my cases, a custody trial that was supposed to start on March 17 was adjourned without date. The court is asking the lawyers to provide

good dates in May, although at this point that may not be realistic. In another case, a family court judge is exploring the possibility of proceeding with an ongoing trial via Skype for Business there would be many moving parts, and it's yet to be arranged as the courts are experiencing technical difficulties with this process and with their equipment.

Q: Speaking of the emergency matters, I just heard at Gov. Andrew Cuomo's press conference that domestic violence reports are up is that reflected in what you're seeing?

A: Yes, because of parties being cooped up together in small apartments. Even the large apartments in New York City are small when you really can't go outside too often and when you're living together with a spouse where there's conflict and small children.

Q: Does it seem like access to the courts is going to expand as this situation goes on?

A: I know that the administrative judge and the statewide supervising judge for matrimonial matters and the chief judge of the Court of Appeals are all working very hard, around the clock, to implement procedures for the weeks to come that will facilitate more access to the courts, and I know that all that is being worked on at this time, but this is where we are currently.

Q: What's the role that you can play for clients who can't move forward right now or the ones who are in a small apartment or a home with a spouse?

A: My role in those clients' lives is greater than ever before. Some clients are lonely, some are panicked and desperate, and I will stay on the phone or on a Zoom conference with them for as long as it takes, sometimes for more than an hour, to try and make the client feel better, to give the client hope, to make the client know that I'm here to reassure the client that there's a light at the end of the tunnel and a happier new chapter awaits, to remind him or her that we still have our health, a roof over our heads, food to eat, that it could be worse and we have to keep perspective.

I have one client in the hospital now with COVID, and I've been emailing with him on a regular basis. He's unable to have visitors, so this connection with his lawyer right now is very important to him. For now, I'm more than just a lawyer who gives advice and counsel and analyzes litigation strategy. With a client who was recently furloughed from his job, I reassure him that it's only temporary, that he will be back at work when this passes. I share what I've been doing day to day, what kind of tea to try at night instead of alcohol. I suggest that the client take a walk, or I suggest a good Netflix series.

Yes, I'm a legal counselor, I give advice, I edit emails, I explain next steps, I figure out strategy and how to handle conflicts with the children, but I also find that my job has been to be a first responder for my clients. For some clients, settlements that were being discussed are no longer feasible, because perhaps the client lost his job. In a case like that, where circumstances have suddenly radically changed, we may be faced with having to change terms that were on the table previously. Deciding how much of that takes place now, as opposed to when we get back to normal life, is on a case by case basis.

Perhaps estate planning should be undertaken now does the will leave everything to the other spouse? Does it need to be revoked? For couples cooped up together, I try to work with the other lawyer, if there is another lawyer, to set boundaries at home and agree on a code of conduct. In one case recently where the parents are cooped up together with small children and talking about a divorce, a neutral mediator was able to intervene and hold video sessions to work on an interim agreement with an in home schedule and a code of conduct.

Q: How are parents who already have custody orders dealing with the issues in isolation and quarantine?

A: What I've been doing is telling clients that in deciding how to handle issues that are coming up under custody agreements, where there's a parenting schedule, is to try to look at it from a judge's point of view

in a few months from now. If at all possible, and if not dangerous, I will tell the client to try to stick to the parenting plan. Often the plan is court ordered.

On the other hand, if a client cannot strictly follow the schedule because it would be dangerous for the child for health reasons or logistical reasons, I ask is the client responding in a reasonable, flexible way that promotes the relationship with the other parent? Is he or she using the public health crisis as an excuse for gatekeeping and withholding the child? Would the child really be in danger at the other parent's home? Are your concerns reasonable, or are your concerns tinged with anger and resentment towards your ex? What would a judge think? Are you being creative? Are you suggesting alternative ways for the other parent to see the child? Are you facilitating frequent video chats or making the child available in a park to spend time outside with the other parent, if going to the other parent's apartment is an issue? If you're the noncustodial parent, are your demands that the schedule be rigidly followed reasonable, or would strictly following the schedule put the child in danger?

Understand that a judge will expect that you made reasonable accommodations, and that if you have been inflexible in these unusual circumstances, this will come back to haunt you. There will be consequences. I remind clients that the court cares only about the children's best interests, not about theirs.

Q: What technology tools have been helpful lately for you and your clients?

A: My whole firm, all 22 of us including 11 lawyers and two paralegals have been working remotely from home. We've been having firm meetings via Zoom that enable attorneys to see each other on camera and feel they are present at a meeting, so that they can talk and brainstorm together. We've been having Zoom video conferences with clients and with counsel for the other party. We've been working on arranging depositions through video conferencing. We've been getting prenup agreements signed and having them notarized and acknowledged through video conferencing.

The lawyers in my firm have been set up remotely, to work from home, for years. The biggest change now is that the support staff have also been set up to work from home, and more and more the use of video conferencing.

Q: In terms of business, how is the current situation affecting the firm? Do you still have new cases?

A: We're a small firm, and almost all of us have been together for many years. Like other small companies, we're happy to see that the government's [Small Business Administration] Paycheck Protection Program provides financial incentives to firms like ours that don't want to lay people off. The cases are still coming in, but not at the same pace they did before we had to shelter in place.

In the last two weeks, since we've all been working at home, we did have new clients sign retainer agreements, but we had met with them face to face prior to the social distancing. It remains to be seen in the next few weeks whether people who are on the fence and not yet ready to pull the trigger will decide to move forward with divorce at this time. If they do, they will be consulting with us through videoconferencing to see if we are a match.

For now, we are still extremely busy in fact, we are swamped with work that needs to be done for existing clients. I have to admit that I've had more than a few sleepless nights worrying not only about the virus and my sister, the doctor on the front lines, but also about what impact the crisis and shutdown of the economy will have on our practice.

I have no doubt that once life is back to normal, we will be seeing many new cases as a result of the parties having been cooped up together during the shelter in place period. Let's face it: not all relationships are strong enough to survive that. Many relationships will be strained.

Whether those spouses will go forward now or wait until the crisis is over remains to be seen. The monied party might want to proceed now, while his or her income is lower than before, and the value of accounts and 401(k)s is lower. If you are the non monied party, you are going to want to wait and see if the economy recovers. Of course, after the economic crisis, parties might not have enough money to pursue divorce, so there are many variables and the future remains to be seen.

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