

Untangling Fear in Lawyering

A Four-Step
Journey Toward
Powerful Advocacy



HEIDI K. BROWN

Harriet Newman Cohen,
Cohen Stine Kapoor LLP
11 Times Square - 10th Floor
New York, NY 10036
(212) 512-0801
hcohen@csklawny.com

Chapter 3 Fear in Clients

A GLIMPSE INTO CLIENT FEARS IN DOMESTIC RELATIONS CASES

Attorney Harriet Newman Cohen is a founding partner of Cohen Rabin Stine Schumann LLP, a matrimonial and family law firm, and coauthor of *The Divorce Book for Men and Women: A Step-By-Step Guide to Gaining Your Freedom Without Losing Everything Else*.¹⁶⁵ She shared the following list of fears that her divorcing clients express:

- Starting over
- Revenge by one spouse
 - Divorce may be a time for a fresh start or a quest for revenge. For example, in one case, a couple together had decided to freeze embryos that they had created with the husband's sperm and the wife's inseminated eggs while both partners focused on their careers throughout their 30s. When they decided to divorce in their 40s, the wife wanted to have a right to have the embryos implanted, but the contract with the hospital provided that releasing embryos to either spouse would require the signature of both spouses. The husband refused to consent. The wife was devastated, particularly because the husband could procreate until his 80s while her clock was running out. Coaxing and cajoling the husband and his attorneys were of no avail. He remained adamant, and the law was on his side.
- Transitioning from a life of means to one of austerity
 - This fear may manifest in being cut off from adequate support and assets and even in not being able to socialize with the same group of people. The diminution in the standard of living at the time of divorce is particularly common when parties have signed prenuptial agreements (which are very difficult to set aside in New York City).
- Loss of financial security

- Running out of money
 - This is a serious fear even for a financially secure spouse, who can be asked to pay the counsel fees of the less financially secure spouse to “level the playing field.” Divorce can and regularly does deplete hard-earned savings set aside for the education and well-being of children.
- Disruption of the family
 - Some spouses take children (both minor and emancipated) into their confidence and disparage the other parent, to the detriment of the children. Such parents frequently are unable to heed or “hear” the pleas of their lawyers to desist from such inimical conduct due to their deep-set hurt and anger at the other parent, or their inability to be introspective.
- The psychological effect of the divorce on one’s children
 - Children may need psychotherapy during these trying times. Children also may be interviewed by a judge, assigned an “attorney for the child,” subjected to interviews by a court-appointed forensic psychiatrist or psychologist, and made to feel as though they are being asked to choose, i.e., being placed in the middle of the maelstrom.
- Alienation from one’s children
 - Some parties allege what is tantamount to the now discredited “parent alienation syndrome,” which had traditionally been used to harass the mother and get the divorcing women to take less support from their husbands. Alienation of children does occur, but there are instances when children are reluctant about their relationship with one of the parents as a result of that parent’s poor parenting conduct.
- Loss of respect by one’s children
 - Not infrequently, battered spouses’ children turn against them and side with the batterer, who may be seen as the more powerful parent and, therefore, the safer parent with whom to side. In such instances, the children also may copy the batterer’s disrespectful conduct towards the battered spouse and may join in abusing that beleaguered parent, thereby causing the battered spouse to become the target of a child’s abuse as well as the spouse’s.
- Social stigma and humiliation
- Blackmail by the angry spouse

- Some vindictive spouses are so fueled by their anger that they will contact bosses, friends, new partners of their ex-spouse, publications, and sources on the Internet. This occurs even though it is predictable that if financial reverses occur as a result of the vindictive conduct, the entire family will suffer the financial consequences.
- The spouse's emotional volatility or lack of humanity
- Losing the family home
 - In some jurisdictions, the court has the power to sell the family home to provide each spouse with a fair share of the marital assets ("equitable distribution").
- Opposing counsel
 - The level of stress during the case is directly related not only to the adversary spouse, but also to the personality profile of opposing counsel. Assuming that adverse counsel has control over his or her client, well-adjusted, dimensional, reasonable matrimonial lawyers who were mentored by talented and respected mentors in the field generally portend that a reasonable negotiation may ensue, or that litigation, if the case cannot be settled, will proceed in a civil and even cordial manner, zealous advocacy notwithstanding. Such an adversary will make every attempt to take his or her client in hand and educate and train the client to stay focused on attainable and fair goals, let go of anger, and work on moving forward in a positive and productive way. If adverse counsel, however, is, himself or herself, a warlike person who revels in toxicity, who may, in addition, have been mentored by an attorney with similar negative traits, that scenario foretells trouble for all—the court, the attorneys, the clients, and the families—as well as limitless financial and emotional costs.
- Embarrassment in admitting to counsel that the spouse handled all the finances
 - Even a highly educated spouse may have allowed an overly controlling spouse to handle the marital finances, often to keep the peace. Sharing this with counsel may be embarrassing, and the resulting lack of financial knowledge will hamper the attorney's ability to advise the client as to what the likely financial scenarios will be. Fortunately, since the advent of "equitable distribution," there are mandatory disclosure and automatic orders that prevent a spouse from diminishing the marital "pot" once a matrimonial action has been commenced.

- Stress-related health issues
 - Fears for the future, whether due to loss of an intimate relationship, loss of relationships with the children or friends, or loss of adequate financial security, are not figments of a divorcing client's imagination. These potential losses strike fear into the heart of the divorcing party. This can wreak havoc upon the health and well-being of one or both parties and on the children.
- Loss of health insurance
 - Under the law, at the time of divorce, a spouse may and is likely to lose entitlement to health insurance coverage provided by the other spouse, and may need to obtain it on his or her own, at significant expense and effort.¹⁶⁶

Other experts on the impact of divorce on clients highlight the reality of financial, social, and “what next” fears,¹⁶⁷ plus the “[f]ear of not being enough to get through your daily activities because there were two of you getting everything done before.”¹⁶⁸ One expert emphasizes tangible fears of loss, the legal divorce process, and “what might happen on the other side.”¹⁶⁹

As noted in the preface to *Bounds of Advocacy*, published by the American Academy of Matrimonial Lawyers in 1992, “[f]ew human problems are as emotional, complicated or seem so important as those problems people bring to matrimonial lawyers.”¹⁷⁰ While divorcing clients’ feelings and outlooks “are central to problem solving and planning,” unfortunately individuals going through this particular life trauma “are unlikely to be equipped to easily address those emotions.”¹⁷¹ Professor Fines and attorney Madsen point out that some “divorc[ing] couples avoid attorneys because they fear the lack of control and the exacerbation of conflict that introducing a lawyer may bring.”¹⁷² Further, “[t]he ‘stakes’ in family disputes may be economic, but the economics are imbued with fundamental psychological layers (whether the dissolution of a marriage, the breakup of a family business, or the challenge to an estate plan).”¹⁷³ Clients going through a divorce also might be struggling with “the need to relocate quickly, to find a safe place to store valuable possessions, even . . . escalating depression. All of these concerns are very real and sometimes as threatening as the legal trouble itself.”¹⁷⁴

Clients in child custody battles also fear that a spouse will reveal (or contrive) past troubling or compromising behavior by the client.¹⁷⁵ Other fears harbored by custody clients include “the other parent getting sole custody; not being able to enjoy one’s full visitation rights; parental relocation or the child being alienated against their own mom or dad.”¹⁷⁶ In some geographical locations, parents further “fear an international abduction” by the spouse.¹⁷⁷

As one law student poignantly noted about his externship in family court, “The Family Court docket, in its nature, is a breeding ground for fear and anxiety. There are countless people who come to court for Temporary Restraining Orders (TROs) and Final Restraining Orders because they fear for their safety. There are people who fear losing custody of their children or have anxiety about their parental rights being terminated. The involvement of fragile, innocent children raises stakes.”

Writing about collaborative family law practice, attorney J. Mark Weiss advises lawyers to “[r]ecognize that divorcing clients often cannot think clearly and may make poor decisions if they cannot distinguish reality from their own fears.”¹⁷⁸ He emphasizes that family lawyers need to aid clients “by realizing when they are suffering from such fears and stress, and develop client counseling skills to help them move from fear to problem solving.”¹⁷⁹ Indeed, family law practitioners “must be interdisciplinary. They must understand the psychological, social, and cultural influences on their clients’ decisions and decision-making.”¹⁸⁰ Lawyers must focus on understanding how “[c]lients’ emotions, their fear, their anger and vulnerability, distort communication, obstruct prediction and paralyze planning—for divorce and for their clients’ future.”¹⁸¹

Untangling Fear in Lawyering: A Four-Step Journey Toward Powerful Advocacy

For many law students and lawyers, studying and practicing law can be scary. We rarely talk about fear in law school or legal training. Instead, well-meaning mentors advise, “Just do it . . . fake it till you make it . . . if your dreams don’t scare you, they’re not big enough.” Yet, scientists confirm that fear blocks learning and performance. It can stoke anxiety and depression in a profession already saturated with mental health challenges. If we can turn down the dial of stress and anxiety even one notch for even one struggling individual in our profession by sparking a dialogue about the reality of fear in lawyering, let’s do it. This book discusses the reality, causes, manifestations, and consequences of fear in legal education and practice, from the standpoint of law students, junior attorneys, and clients. It analyzes fear from a cognitive, physical, and emotional perspective. The book draws guidance from how other industries address fear (and mistake-making) in education and training. The book concludes with a four-step process for law students and lawyers to reframe fear into fortitude: (1) identifying scenarios in our personal and professional lives that *should* induce fear but do not and those that arguably should *not* but do; (2) reframing and rebooting our mental approach to fear in lawyering—using vulnerability, authenticity, and humility to tap into personal power; (3) cultivating an athlete’s mindset toward the physicality of fear; and (4) fostering a culture of fortitude in tackling individual legal challenges and in helping others within our profession untangle fears.



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HEIDI K. BROWN is a graduate of the University of Virginia School of Law, a law professor at Brooklyn Law School, and a former litigator in the construction industry. Having struggled with anxiety and fear as a law student, attorney, and new law professor, she finally untangled her fears, embracing authenticity as a powerful asset in teaching and practicing law. She is the author of *The Introverted Lawyer: A Seven-Step Journey Toward Authentically Empowered Advocacy* and a two-volume legal writing book series titled *The Mindful Legal Writer*. Heidi champions the importance of openly discussing anxieties and fears in lawyering and helping quiet and anxious law students and lawyers become profoundly effective advocates, in their *authentic* voices.



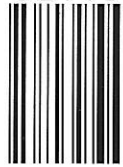
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