

I N S I D E T H E M I N D S

Strategies for Family Law in New York

*Leading Lawyers on Navigating Changing Family
Law Trends, Developing Effective Strategies, and
Building Client Relationships*

2016 EDITION



ASPATORE

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Helping Clients Achieve
Happiness in Family Law
Matters: Key Qualities and
Strategies of Successful Family
Law Attorneys

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Introduction

The law is a noble profession. And nowhere is it more noble than as practiced with talent and integrity in the field of matrimonial law. Like doctors who see patients when they are in extremis, lawyers see matrimonial clients at their lowest points: their hopes and dreams have been dashed. The very fabric of their lives is coming apart. Collateral damage is everywhere. The children. The relatives. The friends. All are affected. Nothing is the same.

The lawyer who can counsel, calm, protect, strategize and bring order out of chaos is a noble lawyer. No reward is as great as the feeling that the client's lives, hopes and dreams have been put back together again. Maybe in a new way. Certainly different. Maybe better. And it is because of the inspired work of the matrimonial lawyer. The lawyer is the author, the director, the actor, the producer. When the play is successful, there is no greater reward.

In this chapter I have focused on pragmatic approaches to the practice of matrimonial law as well as on nuances. I have reviewed certain recent developments in matrimonial law and have weighed whether such developments are necessarily steps forward. I have given a "how to" here and there. The chapter ends with key "takeaways."

The law is ever changing. Not only is there ongoing new legislation and case law, but also the mores change constantly. The world is growing smaller. The information explosion has changed everything. Yesterday's truths are just that. They no longer apply today. So matrimonial lawyers must be lifelong students. They must be lifelong teachers. Confidants. Counselors. Pacifists. Pugilists. As necessary. They must be chameleons who can reflect the needs and colorations of their clients, but never lose their own integrity or role.

I have dedicated this chapter to my clients who have taught me so much about life and relationships. It is my experiences with them that have informed this chapter.

Effects of the Marriage Equality Act on Family Law in New York

The recent passage of the Marriage Equality Act¹ in New York has created a new class of married people with all of the rights and obligations that

¹ See N.Y. Dom. Rel. Law § 10-a.

heterosexual married couples have always had. Marriage is a privilege, but it also involves a set of obligations—obligations that are willingly accepted on the way into the marriage, but that may feel burdensome on the way out. It is understood, of course, that allowing intimate partners to marry is a wonderful thing. It was hard fought for and finally won across the country and across the Western world.

The passage of the Marriage Equality Act has had a direct impact on the economics of my family law practice, bringing this new group of clients who need prenuptial and postnuptial agreements, divorces, and legal representation for custody disputes, as well as for second-parent adoptions to my offices. Single-sex intimate partners also need legal counseling. We family lawyers are well equipped by our training and experience to provide good advice, both on the going in and the coming out ends of marital relationships.

We also handle what are known as second-parent adoptions, which remain necessary, since there is not yet a statutory or case law presumption of “legitimacy” or parentage by both parties to a marriage in a single-sex marriage, at least in New York. So when there is one biological and one non-bio parent, the non-bio parent adopts and obtains all of the rights and obligations that flow from the adoption. The rights of stepparents are not the same as the rights of adoptive parents; the obligations in the event of divorce are not the same either. The other parent sometimes marries a person who already has a child or children. In such event, as well as when a parent gives birth to a child during the single sex marriage, there may be an adoption. In some situations, there may be the need for third-party waivers or contracts as to parentage rights. However, when there is no known sperm donor or third-party surrogate or gestational mother, there will be no such need.

New Legislation Relating to Maintenance or Spousal Support

As of January 25, 2016, the last piece of the puzzle dropped into place in terms of the complete overhaul of New York’s laws pertaining to both temporary and permanent maintenance. According to the legislation that Governor Andrew Cuomo signed into law on September 25, 2015, if the “advisory schedule” is followed, not only will the duration of maintenance

be substantially shortened, but also, maintenance will be calculated based on a much lower cap than pre-legislation.

Old Cap and New Cap

Whereas maintenance was previously based on an income cap of \$543,000 under the old formulae, under the new formula, it will be based on an income cap of \$175,000. Above that amount, the calculation of maintenance will not necessarily be determined by the formula, but, instead, will be determined discretionarily. Therefore, it will not be surprising if the new law reduces both the amount and the duration of maintenance in most cases. These formulae can be opted out of by written agreement of the parties that complies with DRL Section 236(B)3.

Old Duration and New Duration

We practitioners and the judges relied on the old rule-of-thumb one year of maintenance for every two years of marriage in the case of long marriages. This rule-of-thumb, of course, was just that. It was not mandatory and was not always applied. But it was salutary as a starting place in long-term marriages.

Under the new law, the old rule-of-thumb has been explicitly discarded and has been replaced with an advisory sliding scale based on years of the intact marriage, as follows:

- For a marriage of zero to fifteen years in duration, the dependent spouse will get maintenance for 15 percent to 30 percent of that duration.
- For a marriage of more than fifteen years to twenty years in duration, the dependent spouse will get maintenance for 30 percent to 40 percent of that duration.
- For a marriage of more than twenty years in duration, the dependent spouse will get maintenance for 35 percent to 50 percent of that duration.

So to get one year of maintenance for every two years of marriage under the new law, one would probably have to have been married for at least twenty-five years.

There are circumstances under which the courts may and should deviate from these guidelines. In fact, the matrimonial court has broad discretion in this area. Simply put, judicial discretion may and should be used in these matters, but that discretion has to pass the test of reasonableness. In other words, based on the facts of the case and the factors and criteria enumerated in the family law statutes and in the case law, matrimonial judges can deviate substantially from the new maintenance guidelines. The question is whether they will do so. Typically, once a pattern develops in a certain area of family law, people tend to adopt and rely on the formulas. In addition, deviations from the formulae will require comment and may subject the judge to scrutiny, both of which may act as a deterrent to deviation.

Awarding Marital Assets and Other Issues in New York Family Law Cases

At the same time as the new maintenance guidelines were passed by the legislature and signed into law by the Governor, a class of property that had been unique to New York — namely, degrees, professional licenses and enhanced earning capacity that New York had held was divisible upon divorce, was explicitly eliminated by the new statute. Simply stated, the court can no longer value and award to the non-titled spouse a percentage of the value of the other spouse's degree or professional license or enhanced earning capacity. The holdings of *O'Brien* (*O'Brien v. O'Brien*, 66 NY2d 576 (Ct. App. 1985)) and its progeny have been superseded by the new law.

Under the old law, a professional license or degree, such as a medical or law license, and the enhanced earning capacity that flowed therefrom, were deemed to have an ascertainable value and were yet another asset to be divided in divorce. Under the new maintenance law, the value of a professional license or degree and the enhanced earning ability obtained during a marriage can now be used only as a factor in determining other rights, such as equitable distribution or maintenance.

Advising Clients about Spousal Maintenance in New York

Notwithstanding the new maintenance guidelines, you must do your best to negotiate spousal maintenance that meets the needs of your client. This

requires solid lawyering skills. Help the clients to show what his or her needs are and what other means of support are available to him or her. The guidelines are just that. You may be able to get around the guidelines by showing the standard of living prior to the separation. Help your client compute what her or his cost of living has been over the past several years before the date of commencement of her or his divorce action, and remind her or him that, despite the new guidelines, she or he has a right to attempt to replicate her or his standard of living before the date of separation. If the client is able to prove what assets and income she or he has been living on, and the spouse claims that he or she never had and does not now have sufficient income or other wherewithal to support the prior lifestyle, the fact of the former lifestyle gives rise to the inescapable conclusion that the payor spouse must have had and has resources that are not being revealed.

Polish your accounting skills, and be able to see the client's entire financial picture to help your client receive the maintenance she or he deserves and needs. Also, be aware that factored into any spousal maintenance award will be the application of the new maintenance formulas together with discretion based on multiple codified factors, including former standard of living. In fact, given the new guidelines, standard of living is more important than ever.

Effects of the No-Fault Divorce Law

Virtually all states in the United States now have no-fault divorce laws. It was only recently, however, that New York joined the countless other states that have no-fault, becoming the last state in the United States to enact a no fault divorce law. New York's no fault ground is, "irretrievable breakdown of the marriage for a period of six months." New York delayed its adoption of such a ground out of concern that the loss of fault grounds would be the loss of leverage for the dependent spouse who was typically on the receiving end of the divorce. If the earning spouse could not have a "divorce upon demand," experience showed that that spouse would negotiate a financial quid pro quo in exchange for the divorce. The Catholic Church also expressed principled misgivings about divorce on demand, citing the sanctity of marriage. Nevertheless, in October 2010, New York's no fault ground was adopted.

One of the intents behind the enactment of the new no-fault divorce law was to reduce the financial cost of divorce. The new law has, in fact, eliminated the legal services and time entailed in drawing up a verified complaint or verified counterclaims detailing the fault grounds on which the party was seeking the divorce. It is also now the new public policy that if a person wants out of a marriage, that person will be granted a divorce, it having been held that there are no defenses to a divorce demanded on the grounds of irremediable breakdown of the marriage, and that it is a subjective standard.

Child Support

New York's child support laws are the finest in the country, not only because children are entitled to support until age 21, not 18, but also because its child support formula yields the highest amounts of child support in the country, based as it is on gross, not net, income. New York has prided itself on the fact that children of divorce in New York are not relegated to the crumbs at the time of their parents' divorce.

Representing the Child

I am appointed with some regularity as an attorney for children in contested custody cases; I work in those cases to protect the rights of children in divorce cases. In those cases, I have to decide whether I will simply be the "mouthpiece" for the children or substitute my judgment for the expressed wishes of the children. The latter is permissible if the children are suffering from some impairment or lack of understanding. Cases that involve supervised visitation due to a potential danger that a parent may pose to the safety of the children are particularly trying. Most often, a neutral mental health professional is also appointed to assess the parents and the children. The neutral interviews the parties, the children and collaterals. The neutral writes a lengthy report. The neutral is examined and cross-examined on the stand. Including by me. Ultimately, the Judge makes the decisions. Not the doctor.

The Risk of Giving Up a Career in New York

Despite the lip service given to the doctrine that a spouse who gives up a career to devote him or herself to promoting the career of the other spouse

and to tending to the home, the needs of the other spouse and to the children, will be recompensed for those sacrifices and services at the time of divorce, the experience is often otherwise. The new maintenance laws in New York reflect this reality. In recognition of this reality, a growing number of younger people recognize that they cannot stay home after marriage to raise children and care for the home and spouse, and they return to the paid workforce after children. They also realize that the non-remunerated or stay-at-home spouse will be expected to return to the paid workforce after a divorce, especially if the children are in school.

Unique Aspects of New York Family Law

As discussed above, our child support laws keep children supported until the age of 21 and then through college, unlike other states in which child support stops at age 18.

Another unique aspect of New York family law is its consistency in upholding prenuptial agreements if fair when entered into and not unconscionable at the time of divorce. In the absence of a prenuptial agreement, the presumption in New York is that property acquired after the date of the marriage is marital and distributable between the parties at the time of divorce, with the burden of proof on the party who is trying to segregate separate property. New York prenuptial agreements, on the other hand, typically protect separate property and permit the definition of separate property to be broader than under the equitable distribution law. New York will uphold such provisions. Other states, such as Connecticut and Massachusetts, appear to have different public policy where prenuptial agreements are concerned, and they tend to award a blend of separate and marital property in divorce cases, despite the terms of a prenuptial agreement. Consequently, many people who are coming into a marriage with substantial separate property favor the New York laws for their prenuptial agreements, because they know that it is an uphill battle to overturn a properly executed prenuptial agreement in New York.

Perjury and Other Misconduct in Divorce Cases

Some people think that lying in a matrimonial case about intimate matters is not the same as perjury in a white collar criminal or other type of case.

Family law practitioners must understand that a client who lies or a lawyer who suborns perjury in a matrimonial case is risking punishment and even jail time and, in the case of the lawyer, the loss of his or her license to practice law. This is a real minefield for both attorneys and clients. Fortunately, most people in the matrimonial law field understand that there are ethical rules in this area and that they are applied stringently.

Also, matrimonial lawyers are not permitted to become personally or intimately involved with their clients during their representation of those clients. As a result, unlike in earlier times, few lawyers wind up marrying their clients after a divorce representation these days because he or she is not allowed to develop an intimate relationship with his or her client. A lawyer who disregards the rules does so at his or her own peril.

Working Effectively with Court Personnel and Judges in New York Matrimonial Cases

Be prepared when you come to court. Keep in mind that the bench may understand as well as you what is going on in your case. Speak to your adversary in advance and try to reach as much of an agreement as possible before you ask the judge for help.

Act in a civil and responsible manner toward your adversary, court personnel, and the judges. Everybody is watching. Compromising your credibility in one case will affect your credibility in all of your cases. Know that what you do affects not just one case, but every case. Simply put, once you lose your credibility, you will have a hard time in the New York divorce courts winning it back. Your reputation will be tarnished. Word gets around.

Important Factors to Consider in a Child Custody Case

Best interests are the paramount consideration in New York child custody cases. New York is a state where custody cases are guided by what is in the child's best interests, and that premise is defined by case law. A child of a divorced couple has to be safe and secure, and he or she has to be able to function normally and stay healthy with predictability and stability

as the watchwords. If one parent has always been the primary caretaker of the child or children, emphasize that important factor. Emphasize that divorce is not the time suddenly to disrupt the way of life that a child has always known.

At the same time, new modes of living may well come into play in a divorce scenario. It is common, for instance, for the formerly not-so-involved parent to change his or her approach to working outside the house so that he or she can spend more time with the children. But the role of the primary caretaker—the person who made most of the decisions regarding the children before the divorce and was more of the hands on parent—will typically be carried over to some extent in the post-divorce household.

Handling High-End New York Family Law Cases

I handle high-end New York family law cases; in other words, my clients tend to be people who have substantial assets, some of whom have entered into prenuptial agreements, many of whom have complicated custody contests, child and spousal support issues and complex equitable distribution trials. I have found the celebrity cases to be very rewarding in that they tend to involve extremely intelligent and energetic people who are accustomed to working hard and collaboratively, and they trust their professionals.

The best strategies for dealing with high-end cases, as with all cases, include being extremely well prepared and surrounding yourself with your own paid experts whom you hire for the client and who prepare analyses that allow you to see at a glance what assets exist are at stake. I find it helpful to put together three scenarios -- good, so-so and bad results. Then the team including the client can chart a course.

In high-end cases, when a home is sold during the divorce proceedings, and the proceeds of sale are put into escrow, the amounts in question can be upwards of \$25 million and more. The court ultimately determines what percentage of that money your client will get. That is because New York is an equitable distribution state, which means that the basis for the division of marital assets is not necessarily a 50-50 arrangement, but whatever the

judge thinks is fair. If the home has been in jointly titled names, however, there is a presumption that it is equally and jointly owned, absent a prenuptial agreement that provides otherwise.

Inheritance rights change tremendously when a couple gets divorced. In New York, a spouse cannot disinherit his or her spouse in the absence of a properly executed agreement, such as a prenuptial agreement. A matrimonial action changes that, however, in that divorce ends the spouse's otherwise protected right to inherit on the death of his or her spouse. The effect of divorce on inheritances and estate rights can be huge. This is especially so in high-end divorce cases.

Among the other changes that divorce may threaten in high-end cases is the ability to attend and sponsor charity balls with frequency and enjoy the honor and privilege that such endeavors afforded during the marriage. It is always good not to lose sight of such emoluments of gracious living and to negotiate or fight for their continuation for your client.

The litigated matrimonial law cases I handle routinely involve neutral experts who are appointed by the court to assist in various aspects of these cases—for example, mental health experts, such as psychiatrists and psychologists in cases where children's issues are involved; financial experts to value assets; and appraisers, actuaries, and vocational experts to provide their services in their areas of expertise. The neutral mental health professionals typically interview the parents and their children, as well as any collaterals the expert deems appropriate, and write reports and/or testify in court. The judges take their input seriously. I, too, am sometimes called upon to serve in the role of a neutral evaluator. People who are involved in complex financial divorce cases seek me out through a selection process that occurs under the auspices of the court, or they personally select me to act in a voluntary, as opposed to paid, capacity to try to help them resolve their issues without having to continue litigating their case. I do this as an aid to the litigants and to the courts.

In high end as well as in all cases, it is always important to stay on top of the case and to try to establish a working relationship with your adversary, if possible, so that you can reach a settlement, rather than having to go all the way through the process of discovery, depositions, motion practice, trials,

briefs, appeals, counsel fee motions and counsel fees, on the end of either making them or defending against them.

In fact, one of the most significant developing areas of New York family law in recent years has to do with counsel fees—*i.e.*, when there is a disparity between the two parties in a divorce case such that one of the parties has enough money to pay counsel and the other party does not. In New York State, we have a body of law that says that you are supposed to have a level playing field in a divorce case, and, therefore, the party with more money can be directed to pay the other spouse's attorney's fees. Of course, in most cases, the moneyed spouse does not want to do so, and that often entails motion practice that is costly in time and money.

Judges are sometimes reluctant to award the amount of counsel fees required to carry a big case, although it is not unusual for a counsel fee request to end up in a \$1 million counsel fee award, which is not infrequently the amount that a law firm has already spent on a case without being paid. The issue that then arises is whether the moneyed party will pay that \$1 million to the lawyer for the spouse, or will instead file an appeal and pay the money to a court or a bondsman thereby obtaining an automatic stay of the requirement to comply with the court order until the appeal has been decided. That prevents the awardee from actually receiving its counsel fees—thereby also preventing the level-playing-field scenario. Certainly, counsel fees are a big issue in high-end matrimonial cases. It is true that in New York, if the counsel fee is ultimately paid, the interest rate that is added to the award is 9% per annum.

Supporting Clients in Initiating a Divorce Proceeding

When you represent a client who has not yet broached the subject of divorce to his or her spouse, it is usually a good idea for the client to have a little breathing room while working on getting his or her ducks in a row. In other words, it is probably impolitic for the client to announce too soon to his or her spouse that he or she has seen a lawyer. That should probably await a strategy being worked out. Next, try to learn as much as you can about your client's psyche, and obtain a good history from your client as to each party's background. Find out about the client's children and about the special issues—for example, are there special-needs children in the household? Of course, you need to find out why the client wants to file for

divorce. For example, is a third party causing the breakup of this marriage? Is the client, his or her spouse, or the children working with mental health providers? It is important to conduct an intensive intake session at the first client meetings.

It is also important to keep in mind that the attorney-client privilege is waived if a third party is in the room, such as a father, mother, boyfriend, or girlfriend. It is a good idea to discourage the client from insisting that a third party remain present during your meetings, intake and otherwise, because there is no confidentiality involved if a third party is present. A brief hello, and then the escort can wait in reception.

Obtaining an understanding of what is going on in your client's life includes conducting an in depth financial analysis of your client's situation. That includes asking the client to gather financial records and calling an accountant to put together and analyze a financial package. The financial records include financial statements that were submitted at various points in the client's married life—*e.g.*, when a residence was purchased. When you have a handle on the client's financial situation, you need to determine whether a matrimonial action should be commenced immediately, with the summons being immediately served on the other party. Where there is no need for the commencement of the matrimonial action, you may consider sending a letter introducing yourself and saying, "I have been retained by your spouse in connection with your matrimonial difficulties. Please contact me or have your lawyer contact me so that we may discuss these issues and hopefully reach an amicable settlement."

Alternatively, a matrimonial action may be initiated, particularly when there is a need for emergency action— for example, a temporary restraining order or a temporary order of protection because of a domestic violence situation, or it is in your client's strategic financial interest to close the marital pot (in New York, the commencement of the matrimonial action closes the marital pot). In the situation where orders of protection are required, you may be permitted to go to court with your client and to have her or him testify *ex parte* (without the other spouse present), and the court does not require the other party to appear because his or her presence may result in potential danger to your client. In fact, an order of protection or restraining order may be obtained *ex parte* under emergency circumstances or circumstances

involving danger, and the party who is the alleged perpetrator of the violence may be removed immediately from the home by a police officer and told to stay away until a judge lifts the stay.

Sometimes a divorce case starts because a third party is involved, and one spouse has asked the other spouse to live somewhere else because he or she does not want to live with a person who is having an affair. Various issues arise in that scenario, including in relation to the children—*e.g.*, will the children be protected from being exposed to a parent's paramour?

It is important for the lawyer to be available to the client at all reasonable times, but, in particular, during the initial stages of a divorce case, much as a doctor needs to be available to patients during an acute illness. This is a time of *extremis*. Typically, lawyers provide e-mail addresses and cell phone numbers to their clients and make themselves readily available to their clients during the emergency. In fact, it is common, especially during the early stages of a divorce case, for clients to call their lawyers on a 24/7 basis until things settle down a bit.

You should explain to the client how your billing works. Typically, matrimonial lawyers charge by the hour. In New York, matrimonial lawyers are not permitted to represent their clients on a contingency fee basis. Since billing by way of time charges includes round the clock telephone calls and emails, it can get costly. This should be explained to the client. Detailed monthly bills should be sent. In New York, billing is mandated no less frequently than every 60 days.

Helping Clients Respond to a Divorce Filing

When representing a client who is responding to a divorce filing, you must ask the client to be completely candid with you so that you can understand how to best help her or him. If your client is not completely candid, you might steer the case in the wrong direction and cause further problems. Unfortunately, clients sometimes have a great deal of trouble being candid with their lawyers about what has happened in a marital situation. A client who is on the receiving end of a divorce action may be a completely innocent victim or may have provoked the situation. Ultimately, you have to get a good handle on which kind of client you have, and in some cases,

you may need to do damage control. Children issues are delicate and need skillful handling. Your abilities in this regard will make a lifetime of difference in the life of your client and the family unit.

The process of representing a client in a divorce case involves taking one step at a time in an effort to help her or him through a difficult period that is filled with emotional stress. In this practice area, you must be a financial advisor, a psychiatrist, a companion, and an important supporter on every front who, again, is readily available to your client. Clients can often be so stressed that it is difficult to work with them. It may be a challenge to keep yourself from getting worn down and even exploding at your client, but the client deserves no less.

Supporting Family Law Clients during the Discovery Process

The discovery process during a divorce proceeding involves much hard work at both ends: you have to produce discovery, and you have to receive. You and your client should work together to the extent that is appropriate under the particular circumstances to put together the documents that have to be produced and to understand the documents that have been produced to you. Likewise, you need to compile a thorough inventory of what has and has not been received—*e.g.*, are any important documents missing, and if so, was the omission inadvertent?

A lawyer who is undertaking discovery has to be organized and on top of all of the information that is going out and coming in. These days, the discovery process includes electronic drop boxes and portals. Complex divorce cases that involve an enormous amount of financial documentation are much like the breakup of a corporation or a business partnership, and the documents often come in electronically and in enormous quantities. These days, discovery is an expensive and time-consuming part of the divorce process, and it makes divorce much like a business or a commercial case.

The Role of the Family Law Attorney

You are the counselor. One of the biggest challenges that a family law attorney has to deal with is, as noted, being supportive of clients who are going through an extremely difficult time. You have to be able to provide

what the client needs at each stage of the divorce process. You have to be a mother or father confessor; you have to be a psychotherapist; you have to be a financial advisor; and you have to be there to take a call, even if just to say, “I will talk to you later.” You have to respond to the client’s e-mails and say, “Do not worry—I am taking care of this,” or “I am aware of this problem; come in, and we will talk about it.”

Most important, you need to know what is going on at all times so that the client feels safe and taken care of. A celebrity client of mine liked to say, “Harriet was not only beside me, but she was in front of me and behind me, and I felt very much protected. She was everywhere; she was always there.” Your clients should also feel as if your entire focus is on them. They are not interested in hearing your war stories; they only want to talk about their needs. Consequently, you have to focus on your clients’ needs—they should be your top priority and focus. Each case has to be all about your client, who needs that and is entitled to that.

Divorce is a process. It takes patience and time. And, often, the divorce process cannot be rushed.

You also have to be smart, dimensional, scholarly and up-to-date on the law. You should take many continuing legal education (CLE) courses and become or remain an authority in this area. The client should feel that you know what you are talking about—and you can know what you are talking about only by reading and studying. Indeed, the practice of matrimonial law is a lifelong learning process; you are always going to school and researching. I write an annual article for the *NEW YORK LAW JOURNAL* on a topic that is important to lawyers in my field, and that writing is one of the ways I stay on top of issues in this area. I also write numerous legal papers that include distinguishing cases from each other and explicating on the law. Ultimately, a family law client needs to have a lawyer who is on top of all of the latest developments in the law and knows the background of the law. It also helps if you are well rounded and up to date on the goings on in the world.

Mistakes to Avoid in New York Family Law Cases

Never go to court or meet with a client or an adversary unprepared.

Typically, the matrimonial lawyers with whom I interact work hard, are effective, and respect the law. In turn, they deserve to be respected. Most of the matrimonial lawyers I work with are impressive.

Do not bring acrimony into a case.

Lawyers can and should be civil to each other. That need not jeopardize their clients' strength, arguments, or position.

I do not believe that it is necessary to be a bully. In fact, that is counterproductive. You can hear the other party's point of view and internalize it. Understand it. It will help you negotiate if you understand what is position and what is merely posturing. You may disagree with the adversary's position, but remain civil. If there are attempts at bullying between lawyers, judges should step in to stop that.

Conclusion: Upcoming Developments Impacting the Practice of Family Law in New York

I am concerned that shortening the duration of post divorce spousal maintenance and lowering the maintenance cap may create a larger poverty class. To deal with this potential, lawyers in this practice area need to keep an eye on upcoming family law decisions, as well as the statistics pertaining to family law case demographics, including people's standards of living before and after divorce and to bring untoward trends to the attention of the law makers, the executive and the courts.

I also think that new studies on this issue will be necessary. In the 1970's, when the equitable distribution law was first put into effect nationwide, studies were written about how at the time of divorce, men's incomes and lifestyles improved, while women's incomes and lifestyles were reduced. In response, many states enacted more generous maintenance laws, and things got much better for dependent spouses. In light of recent developments, once again, reforms may be needed in this area.

Advice for Family Law Practitioners

Ideally, family law practitioners should possess several key qualities to be successful family law attorneys. They need to be well educated in the law

and be very intelligent. They need to be hard workers and good listeners, as well as good analysts and problem solvers. They truly need to be counselors. They need to surround themselves with the people who can supply the expertise that is necessary in every aspect of their cases, including mental health professionals where children's issues or issues of addiction are concerned; financial experts where complicated financial issues and complex depositions are involved; asset evaluators and appraisers; and vocational experts, among others. They need to have excellent indices of resources. Certainly, being scholarly is helpful; and it is important to understand nuances in relation to their cases. They must also have a tremendous amount of patience. Accessibility is necessary; therefore, they need to manage their time in such a way that all of their clients have an opportunity to speak to them when they need to and to have their services to the exclusion of all others when necessary.

The family lawyer must be a multi-dimensional person to succeed in this area. Empathy is an important quality for a family law attorney. At the same time, he or she has to remain strong and not break down under pressure, succumb to threats, or simply be a minion to the client. He or she also needs to have self-confidence and experience. Therefore, anyone who is just coming out of law school or a court clerkship should align himself or herself with well-respected family lawyers to learn as much as possible—much like medical interns and residents.

In closing, I would like to say that family law is a wonderful field. I was a Latin major at Barnard and had a classics education; I was also a pianist. Both of those disciplines have informed who I am today, how I take in and process information, and my work ethic. I believe that going into the field of law was the culmination of all of my education. I find myself dealing with the most extraordinary situations, and the opportunity to help clients solve their problems and return to or improve their previous quality of life is itself rewarding. It is gratifying to see sad family-related situations turn around and clients become healthier, happier and more fulfilled as a result of the divorce process and the way it was handled.

I do not believe that anybody should be in a relationship with someone who does not want to be in a relationship with that person. Even those clients who first come into my office devastated at the prospect of divorce

that has been thrust upon them often come to realize that if they can put together good or even excellent post-divorce lives, they will be better off because they will no longer have to be with people who have been giving them heartache. As a family law attorney, I find it gratifying to bring people to a better place in life.

Key Takeaways

- Conduct an intensive intake session at your first client meetings. Be aware that the attorney-client privilege is waived if a third party is present at the meeting. Accordingly, ask the parent or the friend to wait in reception after exchanging brief and generic introductory remarks. Work with the client to put together the documents that have to be produced, and/or understand the documents that are produced to you during discovery. Work with a financial expert if appropriate.
- Note that in the wake of the passage of the no-fault divorce law, it is now taken for granted that if a person wants out of a marriage, he or she will be granted a divorce, and the lawyers on both sides can devote their time to negotiating the custodial and financial aspects of their cases or getting ready to try the real issues in the case.
- Understand that New York State law is quite firm in defining separate and marital property. If a party can prove that certain property is actually her or his separate property and not a product of the marriage, then she or he will probably be able to keep that separate property following a divorce. But the person asserting the separate property claim has the burden of proof. The presumption is marital property, absent a prenuptial agreement.
- Be extremely well prepared when working on high-end or any divorce cases, and work with financial experts. Find out what assets exist in relation to a marriage. What is separate property? What is marital property? Can a party prove that certain property is separate to keep it out of the marital pot? Did the party commingle the assets? Will he or she be able to trace the separate property? Did the party put the property into jointly titled accounts?
- Stay on top of the case at all times, and try to establish a relationship with your adversary that may help foster settlement.

Do not deal with an adversary lawyer acrimoniously; lawyers can and should be civil to each other; that does not jeopardize your clients' strengths or arguments.

- Keep in mind that a client who lies or a lawyer who suborns perjury in a matrimonial case may be exposed to jail time and, in the case of the lawyer, the loss of his or her law license. Never lose your credibility; never lie for a client; keep all schedules well in hand. Act in a responsible manner toward your adversary, the court staff, and the judges; losing your credibility will affect all of your clients.
- Focus on the client's needs; that should be your top priority. Be smart, scholarly, and up-to-date on the law. Take continuing legal education courses, and become an authority in this area. Be a good listener, as well as a good analyst. Surround yourself with the people who can supply the expertise that is necessary in every aspect of your case.
- Manage your time in such a way that all of your clients have an opportunity to speak to you when they need to.
- Anyone who is just coming out of law school should align himself or herself with well-respected family lawyers to learn as much as possible. Family lawyers should also mentor and groom young people entering the field and should encourage young lawyers to enter matrimonial law.
- Honor the practice of matrimonial law. It is a challenging and rewarding, indeed, a noble field of law, and it crosses all disciplines.

Harriet Newman Cohen, a founding partner of Cohen Rabin Stine Schumann LLP, is a graduate of Barnard College (BA), Bryn Mawr College (MA) and Brooklyn Law School (JD, cum laude), where she was an editor of the Brooklyn Law Review and a top graduate. As an undergraduate, Ms. Cohen majored in Latin and Greek and was a musician. Ms. Cohen has been sought out for her legal expertise in complex matrimonial and family law negotiations and litigations throughout her stellar career. Her book, "The Divorce Book for Men and Women: A Step-By-Step Guide to Gaining Your Freedom Without Losing Everything Else," was published by Avon Publishers, New York City, in July, 1994. She writes regular analyses and articles for the edification of bench, bar and lay persons, including an annual article on matrimonial and family law for the New York Law Journal Special Matrimonial Section.

Ms. Cohen represents high net worth individuals and celebrities, but she does not turn away from other worthy clients or court appointments as, for example, attorney for the child appointments in deserving cases.

Ms. Cohen is committed to the practice of law in the finest tradition, zealously representing the clients she accepts as well as making herself available to work for reform in the law by sharing her knowledge and expertise in the law with the Governor, the Legislature and the Courts.

Dedication: *I would like to dedicate this chapter to my clients, the men and women and children from whom I have learned so much about life and relationships. In 1994, I wrote a book titled, THE DIVORCE BOOK FOR MEN AND WOMEN: A STEP-BY-STEP GUIDE TO GAINING YOUR FREEDOM WITHOUT LOSING EVERYTHING ELSE, published by Avon Books. It is now twenty-one years since I wrote that book. I still believe that whether you have been the prime mover or on the receiving end of a divorce, life can be better after divorce than before. Good legal representation can make all the difference.*



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