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FAMILY LAW

MINIMIZING CONFLICT IN PARENTING DISPUTES

**THE ROLE OF THE LAWYER IN DEALING WITH THE MATRIMONIAL CLIENT
SO THAT THE CLIENT DEALS "APPROPRIATELY?" WITH ISSUES OF PARENTING**

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1. INTRODUCTION

“And the King said, ‘divide the living child in two, give half to one and half to the other.’”

I Kings 3:25

This paper is about not fighting over children. Hopefully it will assist lawyers in educating and dealing with their clients so that clients are able to more effectively deal with parenting after separation. This is what I practice and this is what I believe. If you get nothing else out of this paper, what you will get is some idea of how my little brain works and how you can take advantage of my client and me next time you have a file opposite me.

On the other hand, I hope there is something of value here for everyone. Maybe there is nothing here for you, but your client could read it and save you some time. I wish I had the time to write a book about this, but, obviously there isn't time and others have already written the books.

Minimizing conflict in parenting disputes, in my view, requires a lawyer to look at the problem from a child-centred perspective. Depending on how one practices already, it may mean substantially changing the way one interviews, communicates with and advises clients, it may mean some slight variations in what one is already doing or it may mean one does what one has already done.

Although the lawyer's first duty is to their client, I suggest here that in order to fulfill that duty the lawyer also has to give consideration to the child's best interests. Sometimes just redefining the issue or setting it out graphically so that one's client can see it is enough to promote an appropriate resolution.

If a client is entering into a dispute with their spouse over custody and access or parenting of a child it is important that the client and the lawyer be clear about what the client's real needs and goals are as opposed to their expressed desires. It is important that the issue be defined in clear terms and that the client, in entering into the dispute or choosing to go to Court over children, is doing so with **informed consent** and a clear understanding as to what may happen as a result.

There are always options and alternatives. Usually the client needs to have those set out in black and white and explored in detail. Their grief limits their vision and the lawyer needs to assist them in expanding their view.

While there are parent education courses in some jurisdictions, and it looks like that may expand if funding becomes available, the lawyer also needs to spend the time to educate their client in order to make the advice they give meaningful and informed. As well, sometimes just changing the language we use and looking at things from a collaborative, or win-win basis, changes the tone and the client's perspective right from the beginning. To be effective, the lawyer must be more than just a lawyer and deal with matters the lawyer cannot learn from legislation and case reports.

Unfortunately, sometimes we allow our clients to rely on us too much and we as lawyers sometimes give too much. Sometimes there is a danger that we have aligned ourselves with our client instead of remaining an objective advisor.

As Barry Vogel said in, "The Vogel Version" of the Alberta Code of Professional Conduct - "Think, 'duty, not 'booty,' 'good skills pays bills,' 'upgrade your trade.'" If we aren't already, we need to continually upgrade our skills and our ability to direct our clients toward appropriate solutions and ensure our clients are informed about and have considered all their realistic options.

Sometimes custody cases are necessary, but that often our clients are locked into pursuing a fantasy result without really being honest with themselves and giving due consideration to the real needs and interests of the children.

2. BEST INTERESTS OF THE CHILD

Here I am not referring to Section 16 of the *Divorce Act* or particularly 16(10) - the "friendly parent" rule. What I had hoped was to say something meaningful or useful about what is in the child's best interests as it relates to whether or not parents choose to go to Court over custody and access.

After looking at stacks of material to find something more clear and authoritative, I am confirmed in the initial premise of this paper that it all boils down to:

'Rarely, if ever, is it in the interests of a child for their parents to be in conflict over them. A custody dispute is almost never in a child's best interests.'

Obviously, each case has to be looked at on its own facts. There are cases where it is appropriate to restrict a parent's time, contact and control over a child, but the parent seeking that time, contact and control is not prepared to accept it. I suggest those cases are rare and would be even more rare if

clients were properly educated, whether by their own lawyers or through a parent education course, and if every lawyer, from the beginning, managed their client's goals, needs and expectations appropriately.

3. LAWYER'S DUTY TO THE CHILD

Section 9(2) of the *Divorce Act* imposes a duty on lawyers to discuss with their clients the advisability of negotiation of custody matters and to inform their clients about the option of mediation. I suggest this is a legislative recognition that going to Court over children should be a last resort.

To be duty bound to advise a *de facto* custodial parent of the *advisability* of negotiating custody matters and to *inform* the client about mediation in relation to custody, may, and will in some cases work against that *client's interests* in securing what, in that client's view, is an appropriate custody regime. That is in the case where one client clearly has the upper hand and wishes to (inappropriately - from a child-centred view in the particular case) limit the other parent's contact with the child. I would argue that this creates a duty on the lawyer to do something that may be in the child's interests but not in the client's interests. It doesn't really create a direct duty, but it should work, coincidentally, in the child's interest.

In *Young v. Young* [1993] 49 R.F.L. (3d) 117 S.C.C., the Court held that the express wording of Section 16(8) of the *Divorce Act* requires the Court to look only at the "best interests of the child" in making orders of custody and access. That is, there should be no consideration to parental preferences or parental rights.

If that is the test then it follows, one would argue, that lawyers should promote a parenting plan or custody and access regime that is based on what works for the child although it may coincidentally also work well for the lawyer's client. It follows that to serve one's client one has to serve the child.

4. LAWYER'S DUTY TO THE CLIENT

"My responsibility is to my client. How can I ever advise my client that it is in their best interest to give up custody of their child?"

Wishes are different from needs. Wishes are not interests. A client may wish to have no contact with the other spouse and have maximum contact with the child but the real need and interest will be to have the child parented in a way that works for the child.

Their wish may be that those parenting arrangements are worked out in a way that fits their wants, their schedule, their financial goals and meet their desire to avoid pain or their conscious or unconscious desire to cause the other spouse pain. Sometimes the client's desires do fit with a parenting regime that will work for the child and sometimes they do not. The trick is whether or not the client is being objectively honest and rational.

What appears at first to be in the client's interests may not be in the client's interests if we dig deeper and explore matters fully with our clients. By definition, it should not be in our client's interests to do something that is not in the child's interests.

5. WHERE'S THE FIRE? DEFINING THE ISSUE(S)

In terms of managing a client's goals and expectations in a parenting dispute I find it useful to keep handy a supply of sheets on which I have reproduced a four week calendar as follows:

MON	TUES	WED	THURS	FRI	SAT	SUN

Then I might say something along the lines of "Unless someone is Charles Manson or Clifford Olson they could expect to be able to care for their children at least every second week and, if they are available, half the school holidays including summer, Christmas, Easter, etc."

Then I'll seek the client's agreement that it wouldn't be unfair for each parent to share that weekend and holiday time with the children. That agreement is usually reached.

MON	TUES	WED	THURS	FRI	SAT	SUN
				⋮		⋮
				⋮		⋮

(And 1/2 the school holidays, Christmas, Easter, etc.)

It then becomes graphically obvious that what is left to be talked about is how the child is parented Monday to Friday outside of the holidays. Then I show the client some options that are available by either extending the weekends to include Thursday evening, or continue through Monday morning, or continue through to Tuesday morning, or longer on either side of the weekend. We talk about adding in some weeknights, either overnight or just evening, and look at some different sorts of schedules, while at the same time shading those schedules in on the chart to give the client a "picture" of what it might look like.

I find the clients are then able to see, quickly, that **it is not an issue of whether it is their child or the other client's child, but an issue of how and when the child is going to go back and forth between the two homes in a way that fits for everyone.**

Clients have all kinds of misconceptions about what custody means, what access means, what joint custody means, and all kinds of fears about whether or not they are going to lose their children completely or not be able to have appropriate contact with their children.

It helps to break things down further. Suggest to clients that they can look at it as three separate issues: **(1) What is the label we want to put on it; (2) What is the schedule of how the children go back and forth; and (3) How are the parties going to work together and cooperate, or not, as the case may be.**

The most important issue is really how the parties are going to work together, after separation, to parent the children. If they are going to work in a mature, cooperative fashion after separation then the schedule and the label are not really important.

Where parents are unable or unwilling to cooperate then the schedule becomes very important. Each parent will care for and parent the children in the manner they deem appropriate during the time that the children are "scheduled" to be with them. Practically speaking, there is little either parent can do to control the other parent during these times and parents should be encouraged to recognize and understand that and work from that basis.

The label is usually the least important thing to be determined in a parenting plan. It is not unimportant or irrelevant, but the point is that when the client comes in saying "I absolutely have to have sole custody" or "I absolutely have to have joint custody," we need to determine what that means to them and how that might "look." Clients are quick to express their desires. Those stated desires may have little to do with their real needs and goals.

Obviously there are other ways to do this. I find that explaining it to clients in this way makes it easier for them to understand and deal with the issues more appropriately.

GUARDIANSHIP VERSUS CUSTODY VERSUS ACCESS

Whether it's legally accurate or not, I have found it useful in explaining to clients the difference between guardianship, custody and access to suggest to them that all the rights and obligations that they and their spouse have toward their children is a 'bundle of sticks.' While they live together they share the bundle. The bundle represents guardianship. When we break it down, access includes: (1) a stick that says one has an obligation to financially support the children; (2) a stick that says one has the right to find out what the children are doing and what's happening to the children, for example to go to the doctor and say, "What did you do to my child?" or go to the school and say, "Did my child show up? How did she do?" But not to go to the doctor and say, "Do this, don't do that," or go to the school and say, "Put her in this course, don't put her in that course"; and (3) a stick that says one has the right to be with the child from time to time.

Custody is all the other sticks.

When it's joint custody, the spouses continue to share the whole bundle and have the obligation to involve each other in major decisions regarding the child's care and upbringing. That requires some further explanation to the client. I am also careful to explain that joint custody does not automatically mean shared 50-50 time with the children or shared "physical" custody. **The schedule is separate from the label.**

6. THE DECISION TO FIGHT - INFORMED CONSENT?

Just as a patient should know what the expected outcomes or risks are involved in surgery, clients should know what the expected outcomes and risks and costs are involved in having a Court perform surgery on their family, particularly since it is elective surgery. Elsewhere in this paper I talked about whether or not it is in the interests of the children or the parents for the children to be fought over and about some of the problems with proceeding to Court. In addition to those, the client must also be informed of their costs in proceeding to Court. Those costs cannot only be measured in strict economic terms.

NON-FINANCIAL COSTS INCLUDE:

- (a) time away from work, family and other pursuits;
- (b) opportunity costs, the client's time, money and energy could be better spent elsewhere;
- (c) the further poisoning of the relationship between the two parents, making further cooperation or collaboration in respect of parenting unlikely if not impossible;
- (d) the indirect impact on the children involved. Even if the children do not see the conflict directly they experience it by osmosis;
- (e) the direct impacts on the children when the parents make the children take part in the conflict;
- (f) the indirect impact on the children of parents spending their time, money and energy on the lawsuit as opposed to in other ways that are more conducive to the short-term and long-term well-being of themselves and the children;

- (g) the short-term and long-term impact on the parties' mental and physical health (I have had clients say that during the whole term of the lawsuit they didn't have a "solid shit.")
- (h) etc., etc.

THE FINANCIAL COSTS

No one in the audience at the Banff Family Law Refresher needs to be told that the easiest way to manage a client in a custody case is to start off by asking for a huge retainer.

Every case is different and the work necessarily invested to adequately and properly prosecute a child custody case depends on the circumstances. It is appropriate to sit down with the client and put together a budget, even in a rough sense, to give a client an overview of what might be involved.

At the beginning of a file I always give clients three ranges:

- (1) Minimum - if matters are simple, the parties resolve big issues themselves, the property is relatively simple and there is no dispute over anything, then a range of \$1,500.00 - \$2,500.00 is in the ballpark, the parties have their deal and the lawyer is basically just "papering" it;
- (2) Realistic - \$2,500.00 - \$5,000.00- usually matters go beyond the minimum because the property is more complex than can be dealt within the minimum range, one or both parties aren't able to focus quickly on the necessary issues and provide either the necessary information or instructions to resolve the matter reasonably;
- (3) What if? - \$5,500.00 and up is where we start looking at if there is going to be a dispute about anything, property or other issues are more complex (or one of the parties is an engineer!).

When we are dealing with the issue of custody, a "budget" for a client might look as follows:

ACTION	HOURS	SUB-TOTAL	TOTAL	DISBURSEMENTS
1. Initial information gathering	2 - 5 +			
2. Begin lawsuit	1 - 3	3 - 8	3 - 8	\$210
3. Initial Interim Chambers Application (Morning docket)				
- prepare Affidavit	2 - 5 +			
- Notice of Motion/Service	0.5 - 2			
- Necessary communications	1 - 5 +			
- Examination on Affidavits (optional)	3 - 20 +			
- Transcript				\$35 minimum - \$1,200
- Necessary meetings with client in preparation, etc.	1 - 5 +			
- Attendance at Court	2 - 4			
- Prepare and serve Order	0.5 - 2	.9 - 23 + optional exam 3 - 20	12 - 31 15 - 51	
4. Further Interim Chambers Application (if necessary)	5 - 15		20 - 66	
5. Special or Domestic Chambers Application	2 - 20			
- Preparation of further material and brief	2 - 6			
- Attendance at Court	0.5 - 2	4.5 - 28	24.5 - 94	
- Prepare and serve Order				
6. Dealing with custody and access assessment, expert witness, and reviewing report	2 - 15	2 - 15	26.5 - 109	\$4,000 - \$10,000+
7. Full Examination for Discovery				
- Preparation	8 - 32	8 - 32	34.5 - 141	
- Transcript				\$400 - \$3,000+
8. Collection and enforcement of undertaking	0 - 10	0 - 10	34.5 - 151	
9. Preparation of and conduct of trial 3 days - 2 weeks	30 - 100	30 - 100	64.5 - 251	
TOTAL			64.5 - 251	\$210 - \$14,410+

- (a) 64.5 - 251 hours @ \$150.00 per hour equals \$9,675.00 to \$37,650.00 plus G.S.T. plus disbursements, \$210.00 - \$14,000.00 or more;

- (b) 64.5 - 251 hours @ \$250.00 per hour equals \$12,900.00 to \$50,200.00 plus G.S.T. plus disbursements, \$210.00 - \$14,000.00 or more.

WHAT HAPPENS NEXT?

After all that, the judge can make an Order for the parenting arrangement to be reviewed after a period of time such as six months or a year. There has to be a better way to go.

Or a year or two later the parent who was awarded the primary care of the children remarries, the children are older, or some other event happens and the children for whatever reason move in with the parent who lost the trial.

Certainly, custody hearings, lawsuits and trials can be done for less than I've suggested in the above budget, but in my view, not unless the appropriate resolution is immediately apparent or some corners are cut. Naturally, there is a wide divergence in cost depending on the complexity of the issues, the level of conflict between the parties and the resources the parties are able to put into a lawsuit. (Can they afford to leave no stone unturned or do they want to roll the dice on something quick and dirty?)

The point of setting out the custody case budget is to give the client some idea of what they will be starting. Certainly the lawyer knows but the client may not appreciate the scope and size of the project.

From the client's perspective, they may see it as simple as scheduling a day down the road a few weeks or months where they can stand up in Court and tell their side of the story, the Judge will believe them and they will be vindicated completely. Why should they have to go to the time and expense to prove what is obvious to everyone? Telling them it's expensive and asking for a \$2,000.00 or \$3,000.00 retainer up front to get started doesn't really give the client a clue.

Unfortunately, once we get started, it tends to become a self-fulfilling prophecy. It becomes difficult to pull back and do anything different. Starting the fight creates greater anger and conflict. Sometimes the client may believe that they do not have the option of pulling back and doing anything different. They may believe that once the process has started to set the matter down toward having the matter decided at a trial that there is no other option other than to see it completed in the fashion which it was started. Or it may be difficult for the client to tell their spouse, "I'll see you in Court" and then back down from the promise. Not losing face is more important than doing what is right. It's hard to find a dignified face-saving way to quit or shift directions.

My constant advice to my clients is they should never make any threats or promises to their spouse but to have their constant communication be, "I only want to do what is fair and reasonable to all of us - myself, you and the kids. Right now I might not be sure what that is, and I might change my mind about what that is in the future, but my goal is to be fair and reasonable and to do what works for the kids."

7. THE ALTERNATIVE - A SOLUTION EVERYONE CAN LIVE WITH

I would suggest that lawyers have a choice. The lawyer can create a custody battle if they choose, or they can facilitate their client entering into a co-parenting relationship that while not perfect at the beginning has at least a chance of developing into something that will work to the benefit of the children and both parties in the long run.

So what do you do? You have reviewed everything with your client and determined that there is no compromise that can be reached, the other side does not want to work collaboratively to reach a solution, your client does not want to just give up, and your client would rather not enter into a competition over the kids.

The answer is to accommodate the other side. Give them what they want willingly.

That is, put in place the parenting plan that can be put in place without pushing too hard. Then educate your client about using their time, energy and money working toward creating a more cooperative and positive co-parenting relationship with the opposite party on a long-term basis and to use their time, energy and money toward creating a more positive and fulfilling parent-child relationship over time. That is, **to be a parent, be a parent**. One doesn't create a positive parenting relationship by fighting the other parent.

Tell the client to show up when they are supposed to show up, pay the support on time, be cordial and businesslike with the other parent even if the other parent is being completely unreasonable and unrealistic, give the other parent no opportunity to point fingers, to do what is expected of them and more. In short, work around the edges so the other parent no longer feels the need to have barriers and boundaries to the client becoming a more equal, more involved parent. Work at creating trust and cooperation as opposed to looking for opportunities to blame, attack and convict the other parent of not trying or not doing the right things. Support the other parent whether they deserve it or not. Take

the opportunities to parent the children rather than complaining that the other parent is getting free babysitting.

If one is acting for the parent who has been their primary caretaker and is likely to be the primary caretaker after matters are concluded, it is important to recognize that the world spins differently today than it did when divorces first became common. In the book, *Families Apart, 10 Keys to Successful Co-Parenting*, Melinda Blau estimates that by the year 2000, 50 - 70% of all children born since 1980 will live in single-parent homes or step-families by the time they are 18.

Regardless of whether some commentators think it is good or wise for our society for it to be happening the definition of family is changing. The parent with the primary care of the children has to be educated to understand that it is not appropriate to consider that the other parent is no longer part of the "family" but that the family is now "bi-nuclear" or a "family apart." They have to be made to understand that often they are not doing it "for the benefit of the children" but have rationalized pushing the other parent out of their children's lives for their own benefit and to make their own life easier.

People are smart. They can find rationalizations for almost anything. It is a hard job to listen to the client, hear what the client is saying and then kindly and gently expose their rationalization for what it is so that the client can give it up. It takes patience and time. In the stressful world of practising matrimonial law we rarely have either.

As Melinda Blau says on the cover of her book, "Divorce ends a marriage. But it doesn't end a family...." It is an excellent book and I would recommend it highly to both matrimonial lawyers and their clients. Buy it. (See the attached appendix with Blau's Ten Keys or Principals of Sound Parenting - which apply to both intact and separated families).

There are those clients who will (unfortunately sometimes with the approval and assistance of their lawyers) take **unfair** advantage of the difficulties of pursuing custody and access cases through the Courts in order **to meet their own needs without due regard for the children's needs**. It is trite to say that when children lose a parent it has a lifelong impact. That is recognized in our divorce legislation and is recognized by most people while they are in an intact family. They often lose sight of it when the family splits up. They need the lawyers to help them regain the path. Lawyers need to remember that law is a healing profession.

8. LANGUAGE AND MEANING

*"...divorce is not a conflict. Divorce is simply a desire on the part of either one or both partners in a marriage to **restructure** the relationship. The present partnership is not longer workable; therefore it must be restructured, emotionally, economically, parentally."¹*

If we accept that divorce is not a conflict then we should give consideration to the language we use when talking to our clients. It works better to talk in terms of parenting than it does to talk in terms of custody and access. 'Custody' is a bad word. It leaves one with the impression that the person who has 'custody' own's or has the child while the other person does not. It is also a harsh 'sounding' word.

It is helpful right from the beginning to start talking about "parenting" instead of custody and access. When the client indicates that they want to talk about custody and access, just reframe the issue and put it back to "so you want to talk about how the parenting of your children is going to work?"

Talk about achieving an appropriate resolution of how people are going to parent after separation as opposed to having a custody dispute. Talk about what people are going to do and what the parenting arrangement is going to look like as opposed to what it is going to be called. Try to avoid words and language that suggest battle, war or gamesmanship.

9. ON BEING MORE THAN A LAWYER

Everyone has heard that to be an effective family lawyer we sometimes have to extend our services to our client beyond just strictly providing "legal" advice. We have to be counsellors for our clients and provide them with advice that has nothing to do with what we learned in law school. Most often it simply amounts to providing common sense objective direction. Figuratively grabbing the client by the head and saying don't look out that window over there, look out this window over here. Separating the relationship and emotional issues from the legal issues but at the same time giving legal advice that appropriately takes into account the client's emotional and relationship needs.

Lawyers worry about whether they have sufficient competence and skill in order to serve their clients. **Clients worry about whether or not the lawyers are compatible and available.** Part of being

¹Joel Edelman and Mary Beth Crain, *The Tao of Negotiation*, 1993, Harper Collins Publishers Inc., New York, N.Y. @ p. 209.

compatible and available is caring about the client. It does help to care about the client. It is much easier to do the work when one believes in the client and believes in what the client is doing, although it is not essential.

There is the danger, however, that the client can expect too much from the lawyer and the client's relationship with the lawyer in that the lawyer falls into the trap of attempting to meet those expectations or alternatively the lawyer creates the wrong expectation.

An excellent article on this appeared in the Spring, 1995, issue of the American Bar Association's *Family Law Quarterly*², Rhoda Feinberg, Ph.D. and James Tom Greene, Ph.D. indicate that transference issues exist in all relationships but that they "are most likely to arise, and often acted out, in attorney-client and psychologist-patient relationships."³

"In an ideal professional relationship, there will be a minimum of acting out of transference and countertransference. Both parties will have reasonably objective perceptions and expectations of self and other; deal with issues in a logical manner; agree on goals, provide information, discuss issues openly; work on compromises; and respect and appreciate the difference in their roles. The client will see the professional as a service provider and will not expect a fantasy result. The professional will acknowledge his or her expertise as a service provider and work toward the best outcome in the situation."

".... Transference and Countertransference distortions thrive when there is exaggerated neediness and unrealistic goals for either the client or the professional."

In a marriage breakdown situation dealing with children, it is usual for the power differential in the relationship and the client's emotional intensity and anxiety to create exaggeration and transference issues. Feinberg and Greene list the following examples of transference and countertransference:

TYPES OF TRANSFERENCE

"There are many forms of transference, for the phenomenon encompasses a wide range of possible beliefs and expectations. Within this context, the client believes or expects or hopes that the professional will:

² Rhoda Feinberg, Ph.D., and James Tom Greene, Ph.D., "Transference and Countertransference Issues in Professional Relationships" (1995) 29 *Family Law Quarterly*, p.111 - 120, published by the Section of Family Law, American Bar Association

³Ibid at p. 112

- ✍ solve all of his or her problems and be all-knowing, all powerful, all-loving, all-protective;
- ✍ rescue him or her in some way, financially or personally;
- ✍ always agree with his or her perceptions/issues as being accurate and see those of the spouse and all others as wrong;
- ✍ help him or her get the “other” and “set them straight” or “even things up”;
- ✍ vindicate his or her innocence and help prosecute the “real” problem person;
- ✍ champion a just cause, i.e., play the Sir Galahad role for an innocent victim;
- ✍ be a financial wizard, a wise law giver, and idealized father;
- ✍ be a settler of scores; and
- ✍ be a judge and/or jury.”

TYPES OF COUNTERTRANSFERENCE

“There are a number of specific or concrete signs that the professional is acting out a dislike of the client or is having a negative countertransference. A partial list includes:

- ✍ the feeling that one is putting on a show;
- ✍ experiencing an emotional reaction that he or she does not understand, i.e., the client “pushes their button”;
- ✍ feeling anxious before an appointment;
- ✍ feeling drained during or after a session;
- ✍ getting excessively angry at nonpayment of bills;
- ✍ inattention and distractibility during an interview;
- ✍ forgetting to make notes or follow through;
- ✍ failing to answer or return telephone calls;
- ✍ putting the client’s work at the bottom of the pile;
- ✍ getting angry with the client often; and
- ✍ the client reminds them of someone of significance from the past and the professional thinks of that person while with the client.

There are also signs that suggest a professional is acting out unusually positive feelings toward the client, or is having a distorted positive countertransference:

- ✍ looking forward to seeing the client and wearing his or her best clothes;
- ✍ making excuses to the bookkeeper for the client's nonpayment of the monthly bill;
- ✍ rearranging the schedule of other clients to see this client at his or her convenience;
- ✍ developing definite negative opinions regarding a spouse whom they have never met;
- ✍ developing strong feelings and opinions of a suspicious nature about the other lawyer or the other lawyer's motives;
- ✍ interrupting other interviews to take the client's calls;
- ✍ "feeling the client's pain";
- ✍ feeling sexual arousal during interviews;
- ✍ thinking of the client often during non-office hours;
- ✍ giving the client a beeper or private phone number and making oneself available at any time;
- ✍ marvelling at the uniqueness of the client's situation; and
- ✍ preoccupation with the client when involved in other activities."⁴

They further go on to say that "in addition, at an unconscious level, the professional may become arrogant, more adversarial, or even a martyr: 'I am better than other professionals.... I'll get them [the other spouse's attorney or the other spouse].... They don't have much money, much of a case, can't pay, but I'll take it; it's my function in life.'"⁵

As can be expected, this leads to negative results for both the lawyer involved and their client.

In custody cases, the most often outcome is that a lawyer becomes aligned with their client and accepts what the client is saying without objectively analysing it or providing objective

⁴Ibid at p.114

⁵Ibid at p.115

recommendations and advice. **There is a big difference between advocacy and alignment.**

Feinberg and Greene give a number of examples of intervention to help professionals deal with these issues, including:

1. "I know that you are hurting very badly and feel vindictive, but we first have to look at the data to see how to proceed."
2. "I understand that you want me to get everything that I can for you. I will do my best, but I must work within the constraints of family law in this jurisdiction."
3. "You seem very angry and sometimes when feelings are so strong, they interfere with the ability to sort out needed information. Let's try to do that together."
4. "You have been acting as a single parent in this marriage and now your husband wants shared custody. That must be very difficult for you. **We have to look at all of the options before we jump to any conclusions about how to proceed.**" (Emphasis added)
5. "You think that he should not get a penny of your inheritance because of the way that he took wild risks with your father's money. But we cannot be certain that this will be the outcome until we look at the financial data."
6. You are angry and feel betrayed by your wife's involvement with your associate, and that is very understandable. However, this may not be considered as a legal factor in your case."
7. You want all your children to come for visitation and sleep over and you say that you can manage them by yourself. However, we cannot fight the issue for the baby since he is under one year old and is still being breast fed."
8. I appreciate your flattery and acknowledgement of my skills, but I have to investigate further before I make any commitments about what we can achieve in this particular situation."
9. "Yes, thank you, I did handle your friend's case and we worked out an equitable settlement. I can't go into the details of that case with you just as I would not reveal your information to anyone else. We have to thoroughly review your case to see what we can do."
10. "I understand your hesitancy about engaging my services when I tell you about possible outcomes. You say that other attorneys have made what sound like more specific promises to you regarding the outcome. I suggest that you be your own consumer advocate and check with them again or with other attorneys before committing yourself to a contractual agreement between you and any lawyer, whether that be me or someone else."

11. "Yes, some of your behaviour was less than admirable. However, as your advocate, I cannot let you punish yourself by walking away from the business and the house and giving him all of the assets. I want to help you to the fairest resolution possible. You should not let your personal guilt feelings interfere with a fair settlement."
12. "Yes, I do have a good reputation in the law community of this jurisdiction which I earned by doing the best I can for my clients while playing according to the rules. However, that doesn't make me Clarence Darrow, and I cannot guarantee the outcome."
13. "I appreciate your social [personal] invitation, but I must decline. I see clients only during business hours and separate business from social and personal contacts." ⁶

It is also suggested there are ways of using transference issues positively. For example in the case of a client who is very dependent and cannot seem to do anything without the lawyer's assistance and advice it would be wise to force the client to do some things for themselves, and a wise lawyer would insist that the client do those things so that self-sufficiency can be encouraged.

Treat the client as a partner to get the case completed. Don't take responsibility for the whole case. Some simple things the client can do include not only gathering financial documents, but organizing, indexing and making appropriate copies for themselves and for opposing counsel.

'Assist' the client in their divorce, don't 'do' it all for them. Depending on the client and the situation, they can do information gathering, goal setting, and negotiate with their spouse, whether it is in a mediation context or otherwise. Let them 'own' part of the case.

In setting up your client as a partner to assist you it is important that the lawyer be the 'senior partner' or the captain of the team. If the client is steering the ship, there is a real problem. The client should set the goal and the destination in consultation with the captain as to what is a realistic journey and ultimate destination, but should not be steering the ship.

The essential aspects to successful handling of transference and countertransference issues "focuses on four key words: observe, acknowledge, confront without judgment (both within oneself and with the client), and discuss when appropriate."

⁶Ibid at p.116

10. THE LAWYER'S MISSING TOOLS?

To be an effective matrimonial lawyer one needs to have not only a sound understanding of negotiation but also an understanding of the nature and psychology of conflict itself, and a deeper understanding of human relationships, human interaction, and communication. That wasn't taught at the law school I went to. Alternate dispute resolution wasn't on the curriculum either.

I would also suggest that to be truly effective one needs to have an academic understanding, if not personal experience, with the breakup of a love relationship to really understand how unfocused, confused, emotional and sometimes crazy people can be both during and after a marriage breakdown. I buy, by the box load, a book called "Rebuilding When your Relationship Ends" by Bruce Fisher, and I give one to each of my clients (your client reads the book and thinks you really understand what they are going through). I find it helps the clients understand and separate the emotional from the legal issues.

Sometimes if we didn't get it in school we get it from experience but experience itself is not enough. One has to stop and think and remember sometimes not to operate by rote. Push, probe, try different things and learn from them.

After a while we recognize that there are two opposing factors in any conflict situation. One is the degree to which each party wants to satisfy their own concerns (assertiveness) and the other is the degree to which each party wants to satisfy the other party's concerns (cooperativeness).

There are five basic ways to handle any conflict situation:

- (1) Competition (win/lose);
- (2) Collaboration (win/win);
- (3) Avoidance;
- (4) Accommodation;
- (5) Compromise (compromise is different from collaboration).

Most often, I suggest, lawyers use Competition and Compromise. We should use more collaboration when dealing with issues surrounding children. Each method has its advantages and disadvantages and situations where it may or may not be appropriate. That is really beyond the scope of this paper. The short story is that it is not appropriate to deal with every conflict in the same way.

The greatest tool that we can use as lawyers is to sit and think about what we are doing and how it is going to impact on our clients both short-term and long-term. We operate on auto pilot and do the same thing in each and every one of our cases because we have seen so many of them we “know” how it should be handled.

11. SOME CHOICES FOR RESOLVING THE ISSUES

Clients like options. They like to know that there is more than one way to do something so that they can choose what fits for them. I explain it to clients in terms of a spectrum. Cheap and certain at one end, and expensive and uncertain at the other.

At the cheap and certain end, the parties are sitting at their own kitchen table and creating the broad brush strokes or outline of how they want the picture to look at the end of the day. At the other end of the spectrum some stranger sitting in a stuffy room, with limited information about the family and limited time to decide, will decide for them and it may be a decision that works for neither side (I think it is appropriate to use this sort of language to influence one’s client and set the right tone or expectations, although it is also important to tell them that the Courts do the best they can but there are limitations imposed by the systems).

In between those two extremes the choices are limited only by one’s imagination and include at least the following:

- (a) **Clients meeting alone**, either at the kitchen table or some public place such as a restaurant, the library or a donut shop. Sometimes a meeting at a neutral public place will help tone down the discussion to the point where people can actually talk. Sometimes.
- (b) **Mediate**. Mediation works. Not always, but much more often than not. Those lawyers who do not promote mediation as an option for their clients just haven’t learned enough about mediation yet. I would suggest (and I have suggested to our Law Society in my reply to the request for input on certification of specialists) that those practising in this area should be mandated to take mediation training whether or not they plan on ever conducting mediations themselves. Mediation training creates an understanding of the mediation process, helps the lawyer gain a valuable perspective of what it’s like to be a client and can be very helpful in continuing one’s education in the area of conflict and negotiation.

The factors that most influence whether or not mediation is successful are:

- (1) Whether the client is committed to solving matters in mediation;
- (2) Whether or not the clients are mentally healthy;
- (3) The mediator's skill and ability;
- (4) The level of trust between the clients;
- (5) The level of hostility between the clients.

Having hostile clients doesn't make mediation impossible, it just makes it more difficult. If a client is properly prepared for mediation by their lawyer and the clients are properly motivated to solve matters in mediation and the mediator is sufficiently skilled and experienced then it will usually work. Unfortunately, it is not always appropriate and there are cases where mediation will not work.

On the other hand, there are cases where lawyers do not want to send their clients to mediation because it looks like the matter can be resolved quite "quickly" or "simply" between either the clients themselves or between the lawyers. One response is that the parties should still go to mediation in many of those cases, it's just that the mediation will be very quick and easy. What starts off as something that should be resolved quickly and easily often gets bogged down in the areas of disclosure and sharing of information, miscommunication of goals and objectives, etc., etc., or sometimes just because of the lawyers' schedules. If it is going to be relatively simple, then why not have a neutral intermediary help the parties wrap it up in a nice neat package rather than spend a whole bunch of time going back and forth between lawyers. Refusing to mediate can be a false economy in these situations.

- (c) Having the **lawyers** resolve it on behalf of their clients pursuant to their respective clients' instructions.
- (d) **Four-way settlement meeting.** This is often one of the most effective ways of resolving matrimonial matters. Once again, it is not appropriate in every circumstance. I would suggest that it is only appropriate if both lawyers can put their respective egos aside and work cooperatively on a win-win basis. It does not work if the lawyers are posturing on behalf of their clients or are only there to convince the other side that they are correct.

In an open discussion at the National Family Law Program in Ottawa in July 1996, during a negotiation seminar the participants at the seminar generally agreed that in a four-way meeting it is usually necessary for one of the lawyers to work as a sort of "semi-neutral facilitator" and for the other lawyer to take less of a role during the discussions. It is important that both clients understand that this is what is taking place before the meeting so that neither one of them feels that their lawyer is abandoning them during the meeting.

It is also important in a four-way meeting for the lawyers to let the clients speak for themselves. The lawyers should "sit beside" their client, not "in front" of their client.

- (e) **Med/Arb.** A combination mediation/arbitration might be one of the most under utilized and useful tools in our repertoire.

For those unfamiliar with the process, the parties sign a binding arbitration contract that sets out that the arbitrator will attempt to mediate the issues between the parties and to the extent the issues can be mediated that will form the award. To the extent the issues cannot be mediated the arbitrator will decide. The actual process, timing and structure of the med/arb can vary greatly depending on the needs of the parties, the complexity of the case, the issues involved, the ingenuity of the parties and their lawyers and the skill and experience of the mediator/arbitrator.

That is, it can be as involved and complex or as simple as one can imagine. As an example of the effectiveness of a med/arb, Diane Harms of Turnbull Boyes and I conducted a med/arb with Pat Blocksom of the Dunphy Calvert firm in December of 1996. Before that, the file had been ongoing for two years and Diane had just come on as second counsel two or three weeks before the med/arb. Previous counsel wasn't able to convince the client to agree to such a process. Things were going nowhere because no one really had the resources to proceed to Court. As well, the parties' positions were not significantly far apart or the issues urgent enough that the cost or expense of going to Court was appropriate. It was one of the normal sorts of cases where the parties just couldn't agree and a final decision needed to be made in some fashion or another.

It was a simple sort of case where both parents were employed at modest jobs, had two young children, and they could not agree on any of the issues of parenting, child support or division of property but there were no significant factual disputes.

After two years of struggle to get there, the mediation/arbitration took approximately three hours at the end of which everything was resolved and the award was published approximately one week later.

What made it successful, in my view, was that both clients were adequately informed and prepared about the process beforehand, both clients were adequately prepared and informed as to their respective rights and obligations and the potential outcomes beforehand and came into the process motivated to resolve it once and for all, understanding that a “quick and dirty” decision is often just as good or just as arbitrary as a decision made after one week of trial.

- (f) **Arbitration.** In my view, arbitration is an under utilized tool of lawyers in the matrimonial area. I know that there are lawyers who do not like to arbitrate because of the potential for it to be appealed and are concerned about having to “do it twice.”

The *Arbitration Act* provides for a very limited right of appeal. An appeal is not a trial *de novo*. As in a med/arb the actual process or structure of the arbitration can be anything the parties can imagine if they can agree on it and put that process and structure appropriately into an arbitration contract.

For example, at one end of the spectrum the arbitration can amount to a private trial following the same rules and procedures as a trial in the Court of Queen’s Bench. At the other end of the spectrum if there is a very simple or small issue in dispute the parties can agree that each of their counsel submits a letter to the arbitrator outlining the dispute and the facts, evidence and arguments supporting that client’s position and the arbitrator decides without anything further.

Unfortunately, clients somehow see arbitration as “inferior justice” in that going to Court is somehow superior to arbitration. In this regard, see my comments about Judges under the section “Things to say to your client.”

The obvious advantage to arbitration is that the parties can agree on who is to be the decision-maker. Generally speaking, that decision-maker will be someone who the parties know is well versed and experienced in the subject of the dispute. Generally, the decision-maker’s biases and prejudice will be well-known to the parties’ counsel. The arbitrator is generally speaking, seeking to earn a reputation that will create repeat business whereas the

Judge does not have the same motivation. Generally speaking, arbitration is faster, cheaper, and more certain than going to Court. It is really beyond the scope of this paper to fully go into the merits, advantages and disadvantages of arbitration. Counsel who do not educate themselves about and do not consider seriously the option of arbitration in the appropriate case are limiting their client's options.

- (g) **Judicial dispute resolution.** Those who have experienced this know it can be either really good or really bad. The Courts are doing more and more of this. Once again, the format can be almost anything imaginable from either a binding or non-binding mini-trial at one end of the spectrum down to an expanded pretrial conference at the other end of the spectrum.

More often than not, while it is sometimes referred to as judicial mediation, it is not always true "mediation." Sometimes it simply amounts to "judicial head bashing." Once again, depending on the issues and the facts of the particular case, this can be a satisfactory way of resolving matters or it can be a very unsatisfactory way of resolving matters.

The downfall, sometimes, of judicial dispute resolution, is that Judges may be restricted by time whereas the private mediator or arbitrator has more flexibility.

- (h) **Court.** Expensive and uncertain. The downside of it is that the parties give up total control to the Court and anything can happen as a result. I never go, so I'm not talking about it.

12. OTHER THINGS TO DO AND SAY

LEADING YOUR CLIENT DOWN THE PATH

As discussed, setting the tone at the first interview can make all the difference in the world. It is important to listen to the client and see what the client's stated wants and desires are, but it is important to discern from that and discuss with the client what the client's real needs and goals are and should be.

In this regard, I find it useful to think in terms of taking the client by the hand and leading the client down a path as opposed to having the client set the direction without any consultation with the lawyer beforehand.

After dealing with the threshold question of whether or not there is any possibility of reconciliation I **always** talk about parenting next. The appropriate resolution of child support, spousal support and division of matrimonial property will change in most cases depending on how parenting is dealt with.

If one begins the parenting discussion first and talks in terms of the client's plan for the parenting of the children, their goals for how they would like to see matters resolved in relation to the parenting of the children, it seems to work better than talking about the financial issues first.

Talking about the financial issues first, without setting the client's goals for resolving parenting is to resolve the financial issues in a vacuum. Also, there is the danger that parties will adjust their thinking with respect to what is an appropriate parenting plan from a child-centred perspective in order to achieve a more favourable financial settlement. Then we end up fighting over kids where it is not appropriate but because one or both parties want to achieve financial goals.

The building blocks are: (1) no possibility of reconciliation; (2) an appropriate parenting plan designed around the best interests of the children; (3) a financial resolution built on top of the parenting plan.

WHAT HAPPENS IF?

Myopia is caused by emotional pain on a marriage breakdown. For each thing that the client wants to do it is useful to ask "If you do that, what do you think will happen as a result? Today, a month from now, a year from now, two years from now, 10 or 20 years from now? If you do this or do that, how do you think your spouse will react? What do you think they will do today, or at some other time in the future? How do you think it will impact on your 'parenting relationship' down the road with your spouse? How do you think it will impact on your relationship with your children today and down the road?" Is it a mere want or a real need? What are the options? Is the client being honest with themselves?

Clients need their lawyers to assist them in focussing on not just short-term goals, but also long-term goals. Sometimes there is a conflict between the short-term goal and the long-term goal. A short-term goal might be to escape the pain of the relationship and the breakdown of the relationship by having as little contact as possible with the other spouse but a long-term goal might be to have a long-term positive co-parenting relationship with the other spouse. Often, that means discarding or modifying one's goals.

We all know that sometimes meeting our short-term goals will frustrate us in terms of meeting our long-term goals. We spend our money today on lifestyle instead of saving it for our retirement (or for our nervous breakdown after practising family law for too long).

The client's short-term goal may be to spend a lot of money now to prove that they are right when if they really examined the issue objectively they may choose to resolve it in a less costly manner and save their resources for use in some other fashion. This is an area where the lawyer has to be vigilant to ensure the lawyer's self interest doesn't influence the lawyer's advice.

How many clients consider the long-term financial impact on their retirement and their future ability to provide for themselves and their children when they decide to spend thousands of dollars to litigate whether someone has three days a week with the children or two days a week with the children? Once a client starts making noises about a custody fight, it is imperative that they understand what they are getting into and how bad it can really be.

THINGS TO SAY TO YOUR CLIENT

Some of these are obvious and most people do them, but here they are anyway. Clients need to hear the following:

- (a) A custody battle is rarely, if ever, in the children's best interests;
- (b) Judges are just people and while they generally do their best they are in many cases not any more specially equipped to make a decision regarding appropriate parenting of the children than the client's favourite aunt;
- (c) The Judge will be making a decision based on less information than the client's favourite aunt ever would;
- (d) Although the Judge will make a decision they would prefer not to have to make these sorts of decisions. Judges don't like custody cases: How could they?;
- (e) The Judge might not decide conclusively, and instead, set a period of time after which the matter has to be revisited;

- (f) The Judge might make a decision which is totally at odds with the client's goals or which is totally at odds with both clients' goals;
- (g) The Judge can't be picked;
- (h) Not every Judge will deal with it the same way;
- (i) Because Judges are people, they have their own biases and prejudices which may impact adversely on the client's case ('one person's bias or prejudice is another's well grounded opinion' - Gerry Spence, How to Argue and Win Everytime);
- (j) Because Judges are people, and people are lazy, the Judge may look for an easy way out in making a decision. The easy way out may have nothing to do with what is right;
- (k) Although the legislation is gender neutral, the application of it is not necessarily gender neutral;
- (l) With some Judges, the application of the law is less gender neutral than with others;
- (m) Some Judges don't even feel they need any information or evidence before they decide the appropriate result in some of these cases;
- (n) Judges have a limited time period in which to make these decisions;
- (o) Because of the way the system operates even the best Judge can get it 'wrong';
- (p) The Judge could get it 'wrong' in a way that is not open to appeal;
- (q) An appeal is an appeal not a retrial.

CHILDREN ARE STUCK WITH THE PARENTS THEY HAVE

My line with clients is that if instead of having a rule that custody is decided in the children's best interest, it was decided on the basis of who is the "best parent," then I would have custody of everyone's children.

People who separate often have higher expectations of their spouse as a parent after separation than they did prior to marriage, during marriage, prior to and during conception and even after years of that person sharing parenting with them during the marriage. It 's sometimes useful to explain to clients that the law presumes that people intend the natural consequences of their actions. The natural consequence of sexual intercourse is that someone may become pregnant. The natural consequence of pregnancy is that a child may be born and that child will need and will use up financial resources. Another conclusion is that if one chooses to have sexual intercourse then one is choosing the other person as a parent of their child. They may have made a poor choice, but it was still their choice and now they are stuck working with it in some fashion.

That is, if the client chose this other person to be the parent of their child, how can they now complain that person is not an appropriate person to parent the child. What does that say about the complainer's ability as a parent and the choices they make?

Of course, it is important to sell it softly to your client in a way that does not insult anyone and in some cases it may not be appropriate at all. If find it is a useful discussion to have when a parent is suggesting that the other parent should have nothing to do with the children, but the facts don't appear to justify that.

I also find it useful to explain to clients that if they are going to expect the other parent to be perfect and not do things that may advertently or inadvertently frustrate them, they will continue to be frustrated, disappointed and angry. As an analogy, I use the example of driving a car. If we are smart when we are driving we are watching at the green lights for the people coming through the red lights or looking out at the cars around us in anticipation that the other drivers might make a mistake. If we drive with the anticipation that the other drivers might make a mistake, **we are ready for it and we are not surprised when it happens and as a result we don't get hurt.** We anticipate that someone might change lanes too quickly in front of us and we are ready for it. We anticipate that someone might jump the gun at a four-way stop. We anticipate that someone might come through a red light when we have a green one.

When we are dealing with the parenting of children, it's easy to forget that the other person is only human and that they might be five minutes late in returning the children, that they might not be very good with dealing with some discipline issues, some hygiene issues, and they might be insensitive to our needs and concerns on various other issues of raising the child. I tell my clients, "Don't expect too much, expect mistakes and disappointments, and you will be less disappointed and less frustrated when they inevitably take place."

Sometimes it is important for the client to consider planning ahead in expectation of these sorts of frustrations and disappointments by putting an “escape hatch” or “trap door” or some alternate plan in place in the event that the other spouse does not do what was planned or expected. This is not much different from dropping a hint about an upcoming anniversary or birthday.

It is also important to remind the client that just as they might not be able to rise above their own agony and grief in order to be able to deal cooperatively with the other parent, the other parent may have the same problem.

TAKE A BREAK

The client will say, “My child doesn’t want to go with the other parent.” A good question to ask the client is, “What if the child said to you, ‘I don’t want to go to school.’ What would you do then?” “Is there a benefit in the short-term or long-term to the child in seeing the other parent?”

Sometimes it is important to explain to the client that they do want the child to go with the other parent on a regular consistent basis for significant periods of time just so that they can have some time to do housework, to pursue educational or career goals, to work on or create a new relationship, or just time to rest so that they are more able to be a positive parenting influence in their children’s lives when the children are with them. Any parent, no matter how good they are, needs time away from their children in order to be a more effective parent in the long-term.

Planned respite is gaining increased recognition in our society as something that is a necessity for healthy families. In an intact family the parents can give each other breaks but in a single parent family where one parent is carrying the whole load respite is even more important.

In a book I looked at one time entitled something along the lines of “The End of Monogamy,” and I think subtitled something along the lines of “Why Marriage Isn’t Working,” it was suggested that there is historically a far greater incidence of mental illness amongst women who are stay-at-home mothers. It was postulated that this is due to the isolation and lack of any relief from the 24-hour a day, 7 days a week, 365 days a year obligation to parent.

We all need a rest to stay healthy, but sometimes in the throes of a divorce clients take on a martyr complex and think that they can parent the children without any input or assistance from anyone,

especially their spouse. Instead, we should be encouraging them to look at taking advantage of the other spouse's desire to parent the children.

13. MISCELLANEOUS THOUGHTS AND RAMBLINGS

GIVE THE KIDS AWAY TO HAVE THE MOST MONEY

Sometimes a discussion a lawyer can have with their client is to say, "If you give your kids to your spouse and let them have primary care, what would that be like? Think about how much free time you would have to pursue a new career or pursue educational goals or to work overtime or to become economically viable in the work force again." One point of view (it is not my point of view that this is necessarily appropriate) is that if in a marriage breakdown it was considered appropriate to look at things in a way that would create the best "economic" result for the family then in a traditional marriage where one parent has stayed home and raised the children and taken themselves out of the work force and the other parent is secure in their career or job the obvious best result would be to give the primary care of the children to the parent that is already established in their career and thereby free up the other parent to establish or reestablish a career.

Once again, short-term goals and long-term goals come into conflict. The person who has been the primary parent might choose to continue to be available for the children and thereby not work, or work at a job less than they might otherwise be able to, although their long-term goals might include economic security.

OUTSIDE INFLUENCES

Clients need to be cautioned against listening too closely to friends, relatives and people who have been through a divorce before. The reasons are obvious. Each client's situation is unique. If it were possible to stamp out cookie cutter solutions there would be no need for lawyers or Courts, ever. Explain to clients it's like snowflakes. While they all look the same from a distance, upon close inspection there are no two exactly alike.

The other danger is that their friends and relatives will lie or exaggerate. An example I use is one where the opposite client was quoted in a publication talking about divorces as saying that the divorce was amicable and cost \$20,000.00. The reality was the parties were never married (that person had changed their name to match their common law spouse's last name), it was bitter and brutal and at one point that person was arrested for being drunk and throwing rocks through my client's front

window, there wasn't \$20,000.00 between them in terms of matrimonial property, and my client's fees were in the range of \$3,000.00 as I expect the other client's fees were. Quite different stories.

Caution clients that the advice their friends, neighbours, relatives and co-workers give can never be objective.

14. CONCLUSION

"I have found the best way to give advice to your children is to find out what they want and then advise them to do it."

- Harry S. Truman

"Treat people as if they were what they ought to be, and you help them to become what they are capable of being."

- Goethe

Sometimes although they act like it our clients are not children and we are not their parents. Our job is not to give them what they initially say they want, but to help them discover what they need and then to guide them appropriately along the path so that they can best satisfy those needs.

APPENDIX I**TEN KEYS TO SOUND PARENTING**

1. Heal yourself - so that you can get on with your own life, without leaning on your kids.
2. Act maturely - whether or not you really *feel* it; you and your co-parent are the adults, with the responsibility to care for your kids and to act in their best interest.
3. Listen to your children; understand their needs.
4. Respect each other's competence as a parent and love for the children.
5. Divide parenting time - somehow, in some way, so that the children feel they still have two parents.
6. Accept each other's differences - even though one of you is a health-food nut and the other eats Twinkles, one is laid-back and the other a disciplinarian, one's fanatically neat, the other is a slob.
7. Communicate about (and with) the children - directly, not through them.
8. Step out of traditional gender roles. Mom learns how to fix a bike and knows what the "first down" is if her son's into football, and Dad can take his daughter shopping and talk with her about dates.
9. Recognize and accept that change is inevitable and therefore can be anticipated.
10. Know that co-parenting is forever; be prepared to handle holidays, birthdays, graduations, and other milestones in your children's lives with a minimum of stress and encourage your respective extended families to do the same.

From the book "Families Apart, Ten Keys to Successful Co-Parenting" by Melinda Blau, 1993, The Berkeley Publishing Group, New York, NY.