

Beware the Rambo Divorce Litigator - Let's be Sensible

***By: Mark Gruber J.D., L.L.M,
mg@gruberlaw.biz***

Litigators come in two distinct forms-emotional or intellectual. The old school litigator is one who twists and sensationalizes every minute issue. A skilled trial attorney has the power and opportunity to spin a fact to the level of fantasy. The divorce arena presents a fertile environment for this emotional approach to dispute resolution. One can allege anything and build a case on speculative conjecture. So what if the ultimate proofs fall short of the mark. The mere assertion of these unproven allegations can and often will create an implication of bias and credibility doubt, even without the requisite proof. As attorneys we have the power to elevate divorce litigation to that level. More aptly stated, there are some attorneys who reduce the level to the emotional hysterics of their clients. A simple example: A spouse loses a job because of the employer reduction in workforce. Without proof, the attorney advocate alleges conspiracy between the fired employee and the employer. A great amount of time can then be spent on the defense of the conspiracy allegation even though there is no proof of conspiracy. Use your experience to recall other unfounded emotional issues raised at trial that diverted attention away from the real issues and consumed an inordinate amount of time and legal fees.

The other approach to divorce litigation is to strip away the issues of client emotion and present the facts that can be proven. After all, the trial is before a judge and not a jury. A judge will best render a finding of fact in the absence of unproven emotional window-dressing, innuendo and red herrings. In the above example, the real issue is the earning capacity of the terminated employee, usually determined by the prior earnings history. What is the sense of raising an unproven irrelevant collateral issue?

Is the Rambo approach good for the client and the public's perception of our divorce procedures? Most would say no and for good reason. The psychological impact on litigants is devastating. The additional cost of discovery and trial is beyond most litigant's ability and serves no purpose other than to pursue our clients vendettas or to massage our trial egos. Our courts do not have the judicial resources to accommodate protracted litigation. The contentious and hostile environment is counter-productive to settlement. Let us as divorce litigator's come to our senses and litigate fact, not fiction.

About the Author

Mark Gruber, Esq. is certified by the Supreme Court of New Jersey as a Family Law Attorney, a Fellow in the American Academy of Matrimonial Lawyers, and a Fellow of the International Academy of Matrimonial Lawyers. He is certified by the AAML as a divorce mediator and arbitrator. He has practiced family law for 28 years in New Jersey. For more information about the author, to read other articles, or to link to other family related sources, go to gruberlaw.biz or email mg@gruberlaw.biz.