



Advice from a Judge

A Family Court Judge talks about effective preparation for court -- and how to achieve results in court by utilizing all available resources.

By Hon. Kathleen M. McCarthy

Back in law school, my trial-practice professor lectured to us to always assume the judge knows nothing about the law of our cases. He advised us to "spoon-feed" the judge all detailed facts of our cases and the applicable law necessary to lead the Court to our desired result. I was both amused and taken aback, assuming he meant that judges are inept at their jobs. Then I thought, okay: feed the judge some meat and potatoes and a full stomach would produce a satisfied result. Now, I think he may have left something out.

As a judge in the Family Division of the most populous county in the State of Michigan, I now more clearly understand his wisdom. Not about the judicial ineptitude, mind you, but about the importance of bringing to the court's attention all facts necessary upon which the court can make a fair and informed decision. In Michigan, there is no right to a jury trial in domestic matters. The judges of the Family Court are the sole fact-finders and decision-makers. Obviously, if a lawyer provides a great deal of quality information, the judge is better positioned to arrive at a truly fair and equitable decision. This, I am sure, is not some enlightening bolt of wisdom that knocks you off your feet.

The purpose of this article is not so much to extol the significant virtue of trial preparation and presentation, but rather to offer my perspective on an underutilized resource available for effective trial results and to give you some tips about going to court.

Before I became a judge, I was introduced to a Certified Divorce Planner (CDP). I was initially skeptical of the "value added" that could be derived from such a person's involvement in the divorce process. I assumed the practice was a fancy name for what we family practitioners did. Was this another encroachment against the practice of law by a non-lawyer?

Yet, here was a well spoken, motivated young professional, lap-top in tow, talking about financial considerations surrounding property divisions, spousal support, and debt retirement. CDPs, I found, operate within a happy amalgam of accounting, financial planning, sociology, and economics that they tailor to the case at hand. I was able to ascertain much more clearly the interdependence between property distribution and spousal support, and how shifting strategies would meet my client's immediate needs, while offering some kind of reasonable projection of the financial situation of the parties five to ten years down the line.

More than that, the CDP provided a series of visual aids in the form of graphs and charts, which made all the calculations and projections easily understandable -- even by the mathematically challenged. I was impressed and I was hooked. I had a more expansive view of what it would take to meet my client's long-term needs. With those informational tools, opposing counsel, our clients, and the court had a deeper understanding of the parties' needs and positions and how those positions would impact each of the parties' futures. The case was settled.

Fast-forward to the present. Now that I am on the bench, with a thousand-case caseload, I am rushed. I am precluded from spending the hours with the parties, with their lawyers, and with experts. The time constraints occasioned by my caseload limit me to rendering decisions based on the information I am given by the lawyers, who present a snap shot of the parties' present situation with their trial briefs, in-court testimony, and closing arguments. Utilizing non-legal disciplines, a CDP can provide invaluable information that allows the court to arrive at a fair, equitable, and just resolution -- not just at the moment of trial, but down the road as well.

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