

CHOOSE CIVILITY: A HIGHER STANDARD FOR FAMILY LAW PRACTITIONERS

By Christopher Musulin and Christina Groves



Few areas of the law invite or invoke the collision of human emotion with legal procedure as does matrimonial practice. Unlike other forms of litigation, the parties maintain significant ongoing relationships centered around their children, despite their personal break-up. For too many, the financial aspect of the litigation can be catastrophic for a family. Accordingly, a resolution that is both swift and amicable frequently benefits the entire family.

The AAML was established in 1962 to provide leadership and promote the highest degree of professionalism in the practice of family law. As the Rules of Professional Conduct are directives for all areas of specialization, in 1987 the AAML published the Bounds of Advocacy specifically to guide matrimonial attorneys in their unique area of practice.

Noting family practitioners must serve not only as advocates, but also as counselors at law, the Bounds of Advocacy provides clear and meaningful principles rising above the Rules of Professional Conduct, which guide attorneys in practicing in a professional and civil manner. The subtitle reveals the important purpose: "To provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law." In furtherance of this goal, the Bounds of Advocacy focuses on the many facets of family law practice, including advice, communication, conduct of the client, professional cooperation and even the interests of the children involved in the conflict. These principles are closely intertwined.

Effectively managing the visceral emotions of divorce and custody matters is a vital and complex task for family law practitioners that can change the course of the litigation. The Bounds of Advocacy offers the following guidance:

1.3 – An attorney should refuse to assist in vindictive conduct and should strive to lower the emotional level of a family dispute by treating all other participants with respect

1.4 – An attorney should be knowledgeable about different ways to resolve marital disputes, including negotiation, mediation, arbitration, and litigation

5.1 – An attorney should not condone, assist, or

encourage a client to transfer, hide, dissipate, or move assets to improperly defeat a spouse's claim

7.1 – An attorney should strive to lower the emotional level of marital disputes by treating counsel and the parties with respect.

It is not uncommon for clients to want their matrimonial attorney to mirror their raw emotion and support their desire for revenge or restitution. In the role of counselor as well as advocate, however, matrimonial attorneys are called upon to act with respect to all involved and reduce the level of conflict. Instead, focus should be on a model of problem-solving and resolution of disputes.

Quieting the tension serves the dual purpose of generally benefiting both parties while also minimizing the impact of the adult conflict on the children. Family law practitioners do not owe a duty to children as clients, but advocacy and competent representation of a client cannot be at the expense of the children. Because the client has a responsibility to act in the best interests of the children, the duty of a matrimonial attorney to his/her client, in turn, cannot ignore considerations of how children will be affected by parental decisions. The nature of family law practice necessitates this elevated standard of professionalism. Therefore, while the general Rules of Professional Conduct do not contain any guidance in this regard, the Bounds of Advocacy specifically speaks to child-related considerations:

5.2 – An attorney should advise the client of the potential effect of the client's conduct on a child custody dispute

6.1 – An attorney representing a parent should consider the welfare of, and seek to minimize the adverse impact of the divorce on, the minor children

6.2 – An attorney should not permit a client to contest child custody, contact or access for either financial leverage or vindictiveness

6.4 – An attorney should not bring a child to court or call a child as a witness without full discussion with the client and a reasonable belief that it is in the best interests of the child.

In reality, the best interests of the children and the welfare of the parents are not mutually exclusive. The family relationship continues despite litigation in the Family Part, and the attorneys for both parties should collaborate with their clients to preserve stability for the children.

Striking the balance between being counselor and advocate in family law matters requires an attorney to respect the client's wishes, while also recognizing emotion can cloud a client's ability to make rational, objective decisions. The unique trust developed between attorney and client when handling such personal issues makes effective communication a paramount concern. The

Bounds of Advocacy provides essential advice on weighing these considerations:

- 2.1 – An attorney should accord clients respect
- 2.2 – An attorney should provide sufficient information to permit the client to make informed decisions
- 2.4 – An attorney should share decision-making responsibility with the client, but should not abdicate responsibility for the propriety of the objectives sought or the means employed to achieve those objectives
- 2.5 – When the client's decision-making ability appears to be impaired, the attorneys should try to protect the client from the harmful effects of the impairment
- 2.6 – An attorney should not permit a client's relatives, friends, lovers, employers, or other third persons to interfere with the representation, affect the attorney's independent professional judgment, or, except with the client's express consent, make decisions affecting the representation.
- 2.7 – An attorney should not allow personal, moral or religious beliefs to diminish loyalty to the client or usurp the client's right to make decisions concerning the objectives of representation.

While ultimate decision-making authority rests with a client on matters affecting the merits of the case, the family law attorney is in a position to provide counsel not only on the law, but also moral, economic and other relevant considerations. It is not the attorney's role to impose his/her own personal beliefs on a client but, rather, to attempt to encourage consideration of all pertinent factors and dissuade the client from making a decision that will be detrimental.

The practice of family law is unique because of the deeply personal, emotional and inherently complicated issues in need of resolution. The effects of the breakdown of the parties' personal relationship extends beyond the parties to children, other family members and friends. Animosity that develops during family litigation does not end with the litigation, as the parties will continue to interact long after the matter is concluded. It is therefore necessary and appropriate that family law practitioners hold themselves to a higher standard of professionalism. The AAML's Bounds of Advocacy offer standards we should all strive to achieve.

If you are committed to professionalism, considering joining the Burlington County Bar Associations Professionalism Committee, by contacting a Berge Tumaian bergelaw@comcast.net or Marie E. Lihotz, mlihotz@archerlaw.com.