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Rules for being a good divorce client, from an attorney who's been there, done that...

By [Amie M. Simpson](#)

We've had some debate in my office about whether a family law attorney who has personally been through a divorce or custody battle is more effective or less effective in her chosen field of law. Certainly, as a young, married family law attorney, I was seriously puzzled and frustrated by the way many of my clients behaved. I was further puzzled and frustrated by the way other attorneys behaved in family law cases. The one thing I was sure of is that I would never, NEVER, put myself and my family through such a hideous process.

Never say never. So, here I am, five years divorced, and with five more years of family law experience. In fact, I spend a great deal of time mentoring a very new family law attorney in our office and watching her constant amazement at the behavior of her clients and the other attorneys. While having gone through a divorce might not make you a better lawyer in the field of family law, it certainly helps to create an understanding of what the INSIDE of the process looks like. For family lawyers out there who are happily married, don't despair. You can get the exact same information by listening carefully to clients and friends. For those of you who are not family law attorneys, the information is still valuable because inevitably in your practice you will find yourself working with or for someone who is going through a divorce, and it is going to change their behavior in radical ways.

The fact is that I have never run into a "nice" divorce. Because my specialty is domestic violence litigation, and because I work for legal aid, I thought I might have a biased sample, so I interviewed other friends who do the same work but get paid by their clients. I came up with the same result. This is not to say that collaborative law is not possible or effective in divorce—it is both. Collaboratively-minded, trained attorneys can work what seems like magic as far as reduction of conflict and efficient resolution of issues. But reality dictates that the very nature of divorce, which is the dissolution of the family unit, creates stress on both participants. This enormous stress will cause them to behave badly at times and will certainly cloud their judgment. Further, dealing with people in a constant state of stress and anxiety, all day every day, creates an unbelievable amount of stress on family law attorneys, who then are subject to their own types of bad behavior. This combination is a recipe for disaster. Left unchecked, and coupled with the inclination of some attorneys to believe that being a "zealous advocate" means adopting a scorched earth policy, this bad behavior can snowball and result in divorces that are the equivalent of nuclear warfare. No one wins, no one gets out unharmed (including the kids) and the cost is astronomical.

While we're on the subject of cost, why should we be alarmed if a divorce costs our client upwards of \$20,000? We did the work, right? Of course, as every family law attorney in our current economy knows, this is a stupid question. While you may wind up doing \$20,000's worth of work, you are increasingly unlikely to get paid for the very real value of your

time. Also, the longer a divorce goes on, the less money the participants generally have, and the more unhappy they generally are. This combination is not conducive to payment of attorneys. Further, if a divorce ends with the client financially devastated and with the attorney having to take extraordinary collection efforts against that client, no one has been adequately served.

Based on my own experiences on BOTH sides of the fence, I have adopted some simple rules of behavior which I encourage my clients to follow. By bringing these issues up at the outset of representation, I hope to give clients some insight into the divorce process. I am also able to weed out potentially problematic clients before I sign them up. Finally, during litigation, I am able to go back to the rules with the clients and help them ground themselves. My goal is to help clients come through a divorce or other family law case successfully which, for me, means that they emerge with enough financial and emotional resources to start a new life. The other goal is to keep myself, and the attorneys who work with me, as sane as possible.

The following are my Ten Rules for Being a Successful Divorce/ Custody client.¹

1. Acknowledge your inner four-year-old -- and put her in time out if necessary.

Everyone going through a divorce will eventually say "It's not fair." It is our job as attorneys to say the same thing we would say as parents: "You're right—it's not. But we're going to work together to make sure this process is as fair as it CAN be." We also need to point out to our clients the victories they have already achieved. To this end, it is extremely important that you have clients list their goals for the divorce before you get started. Have them do it in writing. This will do two things—it will help you determine unrealistic goals up front, so you can explain to your client WHY they cannot, for example, "make sure he never sees his kids again." It will also help you, as the divorce progresses, be able to say to your client, "Yes, the judge ordered that your ex will get to take the kids to soccer practice. But your goal was residential custody, and we've gotten that. So, no, he is NOT getting everything he wants, it just feels that way."

2. Believing what "he" "she" or "they" say will get you into trouble, unless he she or they are your attorneys.

This problem comes in two forms. First, the client who has a relative, or a friend, or a boss's nephew, who is an attorney, and THAT person says that maintenance is a cinch. It is important to let these clients know that the advice they are getting may be inadequate, since their boss's nephew is a patent attorney in Alaska. They need to understand that they have retained you because of your expertise as a family law attorney, and that if they feel they cannot trust your judgment they should probably seek other counsel. The other time this rule comes into play is when your client constantly bases their behavior on statements made by the opposing party. "Well, HE says the judge will give him custody." I tell my clients that, especially now that they are getting divorced, it is best not to rely on what "he" says, that "his" interests are bound to be different than hers, that this may be a ploy to keep her off balance, and that "he" is not an attorney. (If "he" is an attorney, your client will obviously need extra reassurance, and I try to remind these clients that "he" is not the judge).

3. A court order is not a suggestion.

While this seems obvious to those of us who practice law, lay people often, amazingly, don't realize the truth in this statement. As a result, it is incumbent upon you as an attorney to make sure ALL orders in your divorce case are clear, specific, detailed, and do not involve unnecessary "lawyerese." These orders take time to write, and judges may grow impatient while you put them together. But that is far better than the judicial wrath you will face if your client decides that she can engage in behavior that would clearly be prohibited by the court order—if the court order were clearer.

4. If it's not a court order it doesn't count.

Refer back to the information in #2. "He" said we have to file taxes together, his mother says we have to sell the house, my realtor says he has to pay her fee. I tell clients if they want something, we ask the court via a motion. But until it's on paper with a judge's signature, it's just speculation.

5. You can hate your ex, but it can't affect your kids, your decision-making, or the rest of your life.

Clients who make decisions based only on how much the decision will hurt the opposing party are not good clients. They are also not acting in their own best interests, since many of the things that will make their ex miserable will have painful consequences for the client herself down the line. Encourage your clients to make decisions based on the welfare of herself and her children.

6. The ONLY person you can control is yourself.

Divorce is a horrible, roller-coaster-like process which clients perceive as almost entirely out of their control. Like people in any situation in which they feel helpless, clients will seek to try to control anyone in the vicinity. They will want to control you, their children, and their ex. The frustration when they fail to do so, and when the process itself is unfathomable, makes it difficult for them to behave rationally. You can do several things to address this issue. The first is to give your clients as much knowledge about the process as possible. Instead of wading through continuance after continuance without explanation, TELL the client about the source of the problem and what can be done to address it. Sometimes, it's the client's own behavior gumming up the works, and you have to address that with her. For example, "Client, the fact that you keep changing your mind AFTER we've drafted an agreement and brought it into court only prolongs the process and makes it more difficult and expensive. You need to be able to express clearly to me what you want, and to stick with that." The client will inevitably say, "But HE did (whatever the horrible thing he did was which caused her to change her mind about agreeing to ANYTHING)."

7. Practice saying "whatever."

This goes along well with the previous rule. Divorce clients will spend a breathtaking amount of energy trying to figure out WHY their ex's engage in a particular behavior, and they want you to speculate with them, i.e. "Can you just tell me WHY he has to have Wednesday instead of Thursday? He KNOWS Wednesday is my favorite day of the week..." I tell clients that they may NEVER know why their opposing party behaves the way he does, and IT DOESN'T MATTER. Clients need to keep their eyes on THEIR goals. I tell them, "Don't get aggravated, don't ask why, don't let it get under your skin... Just say, 'whatever.'" A colleague of mine tried to teach me the same principle by encouraging me to say the "f" word in four different intonations when I got frustrated (in private, of course), but I always wound up feeling silly. If clients can master the phrase "whatever" with the kind of disdain my pre-teen daughter can put into it, they WILL feel better.

8. You have to be BETTER than perfect: Before you do it, ask yourself what the judge would think.

Generally speaking, clients will never in their lives live in such a "fishbowl" as during the time they get divorced. This is especially true if there is a custody battle involved. They need to be made aware that people ARE watching, and those same people WILL testify. During the long pendency of the divorce, they need to behave as if their every action will at some point be revealed to the judge in their case. (This rule actually came about based on another rule I give my children, which started out as "If it doesn't seem like a good idea, don't do it" to but changed to "if MOM wouldn't think it was a good idea, don't do it." This happened after I realized that what I thought was a good idea, and what THEY thought was a good idea, were two radically different concepts). Living as if they are under the judge's microscope is stressful, but in the long run doing so will reap huge benefits for your clients.

9. Keep meticulous records -- this is the most important job you will ever do.

Clients should understand—and most do—that the outcome of this divorce will affect the rest of their lives and those of their children. However, because of the depression and anxiety inherent in the divorce process, many clients are much less organized than they would normally be. They need to be encouraged to treat their divorce as a job. While it is tempting to rely on your friend, your mother, or your attorney to keep track of everything that is going on, it is neither safe nor healthy. Adequate organization will help clients be better partners to their attorneys in the divorce process, and will help them feel more in control.

10. Take care of yourself. No one else will.

This is perhaps the most crucial rule, but also the hardest to follow. Many of us, especially of my generation, went from home to college to marriage without pause. In retrospect, this was probably a bad idea, but it certainly SEEMED like a good idea at the time. Unfortunately, people who have followed this pattern have very little idea about how to meet their own needs. The most obvious situation in which this becomes an issue is financial. Clients need to know that while they are entitled to child support, and sometimes maintenance, it is always best for their long-term financial and emotional health if they are able to support themselves and their children. This may not be realistic at first, but it is an excellent goal. Also, while clients can and should seek the emotional support of others during this extremely difficult process, they need to remember that they will often find themselves on their own. Have you ever noticed that at the times you feel most down, and most need someone to talk to, all you get is voicemail? It's difficult but true. Clients need to be able to figure out what their emotional, financial, and health-related needs are, and they need to expend the time and effort necessary to meet those needs. If they neglect their feelings, their finances, or their health, they will NOT be able to come through a divorce intact. If that means finding a good counselor, fabulous. If it means seeing a doctor and figuring out a good exercise program, terrific. But if they expect others—including their ex or their attorney—to meet these needs, they will not be able to achieve the kind of post-divorce life that they want.

Exercising these rules kept me sane through my own divorce, and has kept me sane in my family law practice since. Every client with whom I have used them has found the rules useful. I would hope that, by preparing my clients to exit a divorce successfully, I am doing a service to the client, my practice, and (in a small way) to the court system. I am grateful to be able to understand, at least in part, what my clients are going through, and I believe I am a better and happier person after surviving my own divorce. As to whether I am a better attorney, I can't say—but I am happy in my practice. As to the rest, well... "whatever." ■

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1. Note that I use the pronoun "she" frequently. Most of the clients I work with are female. However, these rules should work equally well regardless of the client's gender.

« [Back to the October 2010 Newsletter](#)

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