

# Professionalism, Viewed from the Bench

By Joan Seitz

I had two recent experiences suggesting that the relationship between lawyer and client – and how well the lawyer counsels the client on the necessity for a reasoned approach – can be of critical importance in resolving (or not resolving) dissolution cases.

I was once involved in resolving a very difficult dissolution case, one that resulted in six contempt hearings. At the conclusion of the last contempt hearing, after everything had been resolved, with one remaining lawyer present, I said to all the parties, “We obviously failed you. You have experienced probably one of the worst cases I’ve ever seen, and I’m sure it cost you a lot of money. What could we have done differently to make this process work better for you?” And one of the clients, the husband, said, “I had no idea it would be this painful, this expensive and this awful.”

I thought that was revealing, and I was glad the remaining lawyer heard it. The client was not saying this in an accusatory manner. He was saying it in a kind of a bleeding-all-over-the-floor manner. I had never done this before, and I did it on purpose, because I decided I had nothing to lose with this case, and I wanted to find out if there was something, and I wanted the lawyers who had been involved in this expensive and extremely disturbing process to hear that response. It was a very interesting dialogue.

Shortly thereafter, I suggested to one of the other judges in my county that we exchange dissolution cases and conduct settlement conferences. I said, “I’m going to take any five of your divorces off your trial docket, and you take five of mine, and let’s do settlement conferences on divorces; let’s just do it as an experiment.”

We did that, and I learned the importance of the lawyer-client dynamic in a dissolution settlement setting. When you do personal injury settlement work, you don’t really rely on the lawyer’s relationship with the client as much as you rely on communicating with and educating the plaintiff. I find that in those cases, lawyers sometimes do not fully educate their clients about the cost of litigation or the pitfalls of liability or damages. As a settlement judge, most of my time is spent working with the clients to make sure that they understand reality.

I found divorce settlement conferences to be completely different. The lawyer’s relationship with the client impacted my communication and my ability to work toward settlement. At pivotal points, the uncertain client relied upon a lawyer who impacted the settlement process. Often a client will select a lawyer based upon their style, such as as one who is aggressive and goes for the jugular. Much to my surprise, the settlement conference seemed to change the dynamics of the relationship or style. I needed the lawyer and the lawyer’s relationship with that client to help me to resolve the case. Instead of demonstrating aggressive posturing, the lawyer became an ally.

Interestingly enough, one of the lawyers who was present at the contempt hearing when his client expressed such dismay over the process was also involved in one of these settlement conferences. He turned out (in one of the settlement conferences on an unrelated matter) to be the pivotal point in resolving the case.

Some people do learn! ■

*The Hon. Joan Glawe Seitz is a Douglas County Circuit Court judge in Roseburg.*

**Some lawyers who are often quite aggressive end up being allies in the process – they drop their aggressive position when they see it isn’t to their benefit.**