

Family Law: Courtroom Emotions Can Cut Both Ways
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Courtroom Emotions Can Cut Both Ways

Lawyers must know when to fan the fire, or cool things off

By GREGORY A. ALLEN

A family lawyer needs to be a master of handling emotions. Family law clients generally seek a family lawyer as a direct result of an emotional response to an event, whether it be fear, love, or betrayal. This means emotions are always just under the surface of any family law case. Consequently, the family lawyer is all too often presented with an emotional case to litigate alongside the legal case.

The cornerstone of our judicial system is that all litigation is decided on the logic and legal reasoning behind the cause of action being litigated. This is not to say that emotions are not a part of the litigation process. Any experienced lawyer or judge will tell you emotions can be a factor in a case. In fact, when properly introduced into court proceedings, emotions can help convey a client's message beyond what words can do alone.

The reason for this is simple. Courts deal in human interactions. Part of what makes us human is our emotions. Emotions are a necessary part of all of our interactions whether related to a car accident, a business deal or a pending divorce. Emotions can be highly effective when utilized to enhance an argument. They show a human side to an action or event and help make the retelling of it in court more real for the judge hearing the case. Real life is not made up of a string of cold, unemotional events. Consequently, cold, unemotional testimony cannot convey an accurate picture of what happened to a judge.

However, all too often emotions become a hindrance to a client's case. Emotions can actually impair a client's ability to relay her case to a judge if they cloud the facts of the case instead of enhancing them. Emotions are conveyed by body language as much as by words. The tone of a client's responses on the witness stand and the client's body language in the courtroom are both evidence. A judge may look at body language, listen to inflections in the voice and assess the subtleties of each witness beyond simply what the witness' words themselves say. See *In re. Davonta V.*, 285 Conn. 483, 497 (2008).

A judge will notice if the words and emotions of a witness do not match. Because of this, clients must be counseled not only on how to testify but on how to act in court. They must also be made aware that all their actions in the courtroom are being observed. Some clients will require an opportunity to offload some of their emotional baggage before they go to court to testify.

Some will need to be told it is OK to express emotions in court. Some clients may have an emotional response to an event that is not what most people would expect. This client's lawyer

needs to know that in advance so that an explanation can be made to the court. The explanation should include the life events that contribute to the client's incongruent response and how the client's response is "perfectly normal" for their life events. There is more to preparing a client for court than simply helping him find the best words to convey his story.

Dangerous Feedback Loop

A family law litigator who has accomplished this still has another pitfall to avoid. As a family lawyer, it is entirely too easy to get swept up in a client's strong emotions. The simple reason for this is that a family lawyer has to wade waist deep into the emotional baggage a client is carrying.

The typical first step in representing a client is researching and interviewing the client and potentially other witnesses about the emotional events that lead the client to turn to the court system. In doing this, the lawyer will experience these events from the client's point-of-view and share in the client's emotional response to the retelling of those events. The goal of this attorney-client interaction is to allow the lawyer to draw on those emotional experiences in advocating for the client in court. However, once in court it becomes all too easy for the lawyer to share in the client's emotional response and begin to express those emotions for the client. While it might seem natural for a client to be indignant at a spouse's response to a question, it is less so if her lawyer has that reaction for her. This situation can become further compounded if the client then feeds off the lawyer's emotional response. This can cause a dangerous feedback loop that obscures the client's life story. These strong emotions are not tied to the underlying events and run the risk of seeming unnatural to the judge and may impact the client's credibility.

This same effect can be reached by a lawyer who gives into the pressure of a client to go after his soon-to-be ex-spouse to make her feel as miserable as she made him feel. This in turn can lead to an emotional investment in the litigation causing it to take on a life of its own. When this occurs, the end goal of the litigation is lost and clients and lawyers begin litigating for the sake of litigating. Litigating this way will have a negative impact on the client, the lawyer and the case.

A good litigator knows when and how to use emotions in the litigation process to amplify his legal argument and reasoning. He also knows that he walks a delicate tightrope. He must be constantly aware of his client's emotions and his own, and he must know when and how to fan the fire or cool things off. A litigator must be constantly aware of the emotions in a case but remain separated from them. His client's case and not the emotions in it must drive the litigation.