

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 Financial Analyst (CDFA). 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. CDFAs, 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 CDFA 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 CDFA 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.

Recently, I presided over a trial where the sole issue for my consideration was spousal support. Under Michigan law, which I imagine is similar to case law in other states, I am obligated to consider and announce findings of fact and conclusions of law on the following factors:

1. the past relations and conduct of the parties,
2. the length of the marriage,
3. the abilities of the parties to work,
4. the source and amount of property awarded to the parties,
5. the parties' ages,
6. the abilities of the parties to pay support,
7. the present situation of the parties,
8. the needs of the parties,
9. the parties' health,
10. the prior standard of living of the parties and whether either is responsible for the support of others,
11. contributions of the parties to the joint estate, and
12. general principles of equity.

Additionally, some courts may consider a party's fault in causing the divorce.

I had requested trial briefs analyzing the parties' respective financial and legal positions relative to the 12 factors. What I received were perfunctory briefs that outlined basic facts and provided minimal financial information. The proofs at trial were equally empty and perfunctory. I was left, as always, to make my decision upon what I had before me. What was lacking was a great deal of "non-legal" information I would have liked to have had from other disciplines. In this matter, testimony from a CDFA would have helped me to make a more sound and expert decision. Also, it would have enlightened and educated the parties as to the long-term impact of their financial futures.

Flash back to my law-school days. What did my trial practice professor overlook? That spoon-feeding should include more than just meat and potatoes. Trial lawyers should not overlook "dessert": spoon-feeding your judge with non-traditional offerings -- such as financial planning, economic assumptions, tax consequences, and actuarial projections -- will surely sweeten the result.

Going to court: a judge's tips

1. **Be clear as to your objectives.** Present your issues in court with a proposed resolution. Use your own creativity instead of leaving that solely to the judge. Bring in all documents that support the facts and your theory.
2. **Be civil and professional.** Lawyers and litigants should address their remarks to the court -- not to each other -- and confine these remarks to the issues at hand. Engaging in personal attacks on opposing counsel and litigants is unprofessional and discouraged.
3. **Respect everybody's time.** Punctuality is important, and courtesy is important, too. If you're going to be late, advise opposing counsel and the court.
4. **Dress appropriately.** Your attire and person should be neat, clean, and professional: as though you're going for a job interview. This isn't a Saturday night date or an afternoon at the gym. You are in a court room, and your appearance should demonstrate respect.

5. **Know the Rules of Procedure.** Local or general court rules are the oil that keeps the engine running. Procedural *faux pas* get in the way of efficient administration of justice.

The Honorable Kathleen M. McCarthy serves in the Family Division of the Wayne County Circuit Court. As a mother, stepmother, and practicing attorney specializing in family law prior to taking the Bench, she has firsthand experience regarding the difficulties affecting blended and divorcing families. Judge McCarthy is the current president of the Dearborn Bar Association and a recent recipient of the "Judge of the Year Award" presented by DADS of Michigan, and MOMS for DADS for her commitment towards ensuring that children have frequent access to both parents when appropriate. For more information about Certified Divorce Financial Analysts, call (800) 875-1760, or visit their website at www.InstituteDFA.com