

New Challenges to the Family Law Practitioner¹

I. INTRODUCTION

Broadly speaking, family law today encompasses every aspect of personal relationships and human values,² and changes in these relationships and values in our society reshape family law.³ Examples of recent changes in the law include the adoption of the concept of no-fault divorce and the growth of conciliation courts. One of the most important changes in the practice of family law is the growing awareness of the limitation of purely legal solutions to family problems. Lawyers must become aware of these limitations and reorient themselves to become effective family lawyers.

This article will examine the reasons for the traditional reluctance of lawyers to become family lawyers and point out new possibilities and responsibilities for today's family lawyer to participate more fully in meeting the needs of fellow human beings.

II. THE TRADITIONAL FAMILY LAWYER

Traditionally, most lawyers have been reluctant to practice family law.⁴ One of the reasons for this reluctance is the lawyer's view of the client's problems in family law as emotional, messy, and distaste-

¹The author is indebted to Ann Diamond, LL.B., for valuable references and other information used in this article. In *I CALIFORNIA CONTINUING EDUCATION OF THE BAR, CALIFORNIA FAMILY LAWYER* 43 (1961) (hereinafter cited as *I CALIFORNIA FAMILY LAWYER*) she wrote the chapter *The Lawyer and Family Law, A Point of View* (hereinafter cited as *Diamond Article*), which noted a turning point in the practice of family law. That chapter serves as a starting point for a re-examination of the role of the attorney in the changing field of family law.

²Stumpf, *Preface*, *I CALIFORNIA FAMILY LAWYER*, *supra* note 1, ix. Although the major example used throughout this article is of spouses seeking legal advice about divorce, this is used as a familiar example of the same human and emotional problems that arise in numerous family law contexts.

³Deal, *Introduction*, *I CALIFORNIA FAMILY LAWYER*, *supra* note 1, xvii.

⁴*Diamond Article*, *supra* note 1.

With the exception of criminal law, there is no other area where basic human emotions are so consistently involved as in family law. Similarly, with the exception of criminal matters, no case is accepted more reluctantly than one involving family law, particularly divorces.

Id. at 44.

ful.⁵ One study of a number of lawyers shows that the attorney's primary image of the matrimonial case is "client-emotionalism: the feelings, attitudes, and overt behavior of distraught husbands and wives."⁶ In this same study, attorneys noted that matrimonial clients didn't act like ordinary people. For example:

Marital clients are under terrible tension. They lose the ability to be adult and correct in their judgment. They are so emotional and excited that they can't see things in the right perspective. The heat is so severe that they don't know what they are doing.⁷

Attorneys who view family law clients as emotionally distraught and irrational feel justified in their reluctance to practice family law.

Another aspect of this reluctance is the effect the emotionalism of the family law client can have on the attorney. Clients "tend to be so anxious that a lawyer has to 'lead them by the hand, humor them, be mother and father to them, and listen, listen, listen.'"⁸ Client emotionalism creates an emotional strain on the part of the attorney, which in turn gives the attorney a sense of frustration. Clients demand constant reassurance, which is heavily time-consuming for the attorney.⁹ Attorneys report that clients "are always calling you," and "won't leave you alone."¹⁰ One authority notes, "the interpersonal context of matrimonial actions apparently generates more emotional behavior than most lawyers are accustomed to."¹¹ Emotional strain discourages many lawyers from taking family law cases and many "reject them as a matter of policy."¹²

Inadequate compensation is also a cause for the lawyer's unwillingness to take family law clients.¹³ The average practitioner of family law has the lowest earning capacity of all groups, twentieth out of twenty.¹⁴ This is due in part to the going rate in the communi-

⁵*Id.*, at 45-46.

⁶O'GORMAN, *LAWYERS AND MATRIMONIAL CASES* 158 (1963) (hereinafter cited as O'GORMAN). The data for the study were collected in 1957-58. Recent information gained from family law experts confirm the general findings concerning attorney attitudes and family law practice. See Diamond interview, *infra* note 47; Elkin lecture, *infra* note 30; Estabrook interview, *infra* note 17; and a telephone interview with Richard S. Chiolis, Yolo County Conciliation Court Counselor, December 21, 1972.

⁷O'GORMAN, *supra* note 6 at 89.

⁸*Id.* at 114. Attorneys describe family law cases as "exhausting", "devastating", "depressing", "trying" and "demanding", indicating the stress family cases exert on the attorney. *Id.*

⁹*Id.*

¹⁰*Id.*

¹¹*Id.* at 159.

¹²*Id.* at 117.

¹³*Diamond Article*, *supra* note 1 at 44-45.

¹⁴Statistics by Economics of Law Practice Committee of ABA in Fain, *Fixing Adequate Fee and Fee Arrangements in Domestic Relations Cases*, 1 *FAMILY L. Q.* 92 (Dec. 1967); and a study of John D. Conner and William J. Fuchs, *The Anatomy of Fee Determinations* presented at the ABA Annual Convention

ty,¹⁵ the client's inability to pay,¹⁶ and the difficulty in collection of the fees.¹⁷ Inadequate compensation may also be due to the lawyer's lack of conviction of the value of his or her services.¹⁸ Many attorneys feel unjustified in charging for just talking to a client, or if the client decides not to resort to a legal remedy at all. Many lawyers are reluctant to take family law cases because the remuneration inadequately compensates the attorney's time and effort involved.

Lack of professional satisfaction is another factor causing lawyers to be reluctant to practice family law.¹⁹ The type of problems family law is concerned with, and the unique human situations presented, may not be intellectually stimulating or professionally satisfying to some attorneys.²⁰

Because of the enumerated problems it is understandable that many attorneys avoid the practice, or become reluctant practitioners, of family law. When the attorney accepts cases he views as emotionally messy and frustrating, he deals with the problems at arm's length, spends only as much time as is absolutely necessary, and severely limits his contact with the clients.²¹ He then views the family problem strictly as a means of producing income²² and will tend to ignore the human needs of the client by pushing for a quick legal solution to the problem. The result is that the family law case is frequently handled inadequately. Often human needs are unmet, and new problems are created, often leading to future litigation.²³

(August 1966) in Gibbs, *Practical Views of the Family Lawyer on the Subject of "Our Separate Ways"*, 1 FAMILY L. Q. 3, 4 (Sept. 1967).

¹⁵The going rate in the community refers to the minimum fee schedule, which does not compensate the attorney for time spent on the emotionally upset client. (It is often too high in the friendly, uncontested divorce.)

¹⁶*Diamond Article*, *supra* note 1 at 45.

¹⁷Interview with family lawyer Stan Estabrook, March 23, 1973, Sacramento, California.

¹⁸*Diamond Article*, *supra* note 1 at 45.

¹⁹*Id.*

²⁰*Id.*

²¹*Id.* at 46.

The lawyer who reluctantly accepts a divorce case will proceed to handle it the way we do all things that are unpleasant — at arm's length. He will spend as little time and will have as limited contact with the client as possible. Some attorneys do not even see their client in a divorce case until the first court appearance; their secretaries obtain all the necessary information on forms.

Id.

²²O'GORMAN, *supra* note 6 at 70. Many lawyers define handling matrimonial cases as opportunities to provide professional services for a fee. *Id.* One lawyer said, "Clients are clients. Matrimonials are bread and butter. It's a question of economics. If I can get a fee and do something for a client, that's it." *Id.* This "bread and butter" view "attaches more importance to income than to the content of a legal problem." *Id.*

²³Alexander, *The Lawyer in the Family Court*, 5 NATIONAL PROBATION AND PAROLE ASSO. J. 172. (1959).

III. THE NEW FAMILY LAWYER

The traditional reluctance to practice family law must be reevaluated on the basis of recent changes in family law and practice. Several California judges, evaluating the recent non-fault divorce law of California, state that it is "far easier to resolve these matters in an atmosphere free from the heat that fault testimony invariably engenders."²⁴ "The act, although no panacea, appears to be well designed to bring some sanity into deeply complex and emotional matters."²⁵

It is true that the Family Law Act freed the courts from some of the emotion-charged battles that used to prevail in contested divorce cases. Today, evidence of misconduct is not ordinarily admitted. Does that mean that the grievances and hostilities and the charges and countercharges of both parties have disappeared? Does it mean that the parties are satisfied with the smooth courtroom performances which cover up the real problems of the marriage?²⁶

There is some indication that custody conflicts (where evidence of misconduct is admissible in non-fault divorce)²⁷ may have become more numerous and more acrimonious. "It is suspected that in some cases, fathers are now contesting custody in cases where they do not expect to get it, merely to secure the right to show the shortcomings of the wife."²⁸

When there is no custody dispute to give the parties an opportunity to air their animosities and their emotionalism, where do they turn for someone to listen to their troubles? Inevitably it is the lawyer more than ever before who must lend his ear to his client's miseries. Attorneys are in a unique position in the family law process, called upon more frequently than any other group by people with marital or family problems.²⁹ One expert has stated, "[t]he legal profession is in the most strategic position to help the family in a crisis."³⁰ How is he going to handle this burden and this responsibility?

²⁴CALIFORNIA CONTINUING EDUCATION OF THE BAR, ATTORNEY'S GUIDE TO FAMILY LAW ACT PRACTICE 115 (2d ed. 1972).

²⁵*Id.*

²⁶This is far from the intent of the Legislature in passing California's Family Law Act, which was, according to the California Supreme Court, to eliminate guilt or fault by "requiring the consideration of the marriage as a whole and making the possibility of reconciliation the important issue . . ." *McKim v. McKim*, 6 Cal. 3d 673, 679, 493 P.2d 868, 871, 100 Cal. Rptr. 140, 143 (1972).

²⁷CAL. CIV. CODE § 4509 (West 1970).

²⁸O'Flarity, *Divorce Modern Style*, 8 TRIAL 16 (Sept.-Oct. 1972)

²⁹Elkin, *How the Social Worker Can Assist the Attorney in Rehabilitating Broken Marriages*, in N.C. KOHUT, THERAPEUTIC FAMILY LAW 205 (1968). (Hereinafter cited as KOHUT).

³⁰Lecture by Meyer Elkin, Director, Family Counseling Services, Conciliation Court of the Superior Court, Los Angeles, California, to Family Law Class at UCD School of Law, October 4, 1972 (hereinafter cited as Elkin Lecture).

One of the ways the attorney can help his client is by referring his client to a professional marriage counselor. At present, available information indicates few attorneys make referrals to other professionals.³¹ Perhaps many lawyers fear the loss of business and fee to another attorney³² or to a professional marriage counselor. Many lawyers will not refer more of their clients, saying that by the time a client with family problems comes to him, the marriage can't be helped or repaired; the marriage is too far gone.³³ In fact, being unable to help a client on an emotional level, the attorney is more comfortable believing that the client is beyond help. One researcher believes it possible that "lawyers, by believing that their clients' marriages are beyond rehabilitation, may be contributing to the dissolution of these marriages" by virtue of a self-fulfilling prophecy.³⁴

The fact is that many marriages with apparently obvious examples of irreconcilable differences, can be helped by short sessions with professional counselors in individual and group settings.³⁵ One noted family lawyer who also engages in psychological counseling indicates counseling may even help in serious cases of alcoholic and drug addiction, desertion, violence, beatings, and adultery.³⁶

This is not to say that all marriages can and should be saved. The real question is which marriages can be saved, and which should be dissolved. Inadvertently, the attorney is often the one who decides that a marriage can't be saved when he fails to refer his clients to counseling, when possible. Because it appears there are no absolute signs or symptoms that a marriage is beyond the point of conciliation or reconciliation, it is recommended that in all cases the attorney provide an opportunity for the client to be referred to a counselor.³⁷

To refer effectively, the lawyer must know how to refer, and he must be aware of referral resources. Conciliation Court Counselor Meyer Elkin states, "[r]eferral is an art and a skill. It is knowing enough to help the client walk away comfortably to another person for help."³⁸ It is helping "the troubled person to accept the services of a qualified marriage counselor."³⁹ It must also be noted that to

³¹KOHUT, *supra* note 29 at 92 and n. 22 using a nationwide survey by Joint Committee on Mental Illness and Health.

³²Kargman, *The Lawyer as Divorce Counselor*, 46 A.B.A.J. 399 (1960).

³³KOHUT, *supra* note 29 at 85-86.

³⁴O'GORMAN, *supra* note 6 at 150.

³⁵Church, *Court-Ordered Counseling, Can It Work?* I BEHAVIOR, LAW AND REMEDIES 8, 11 (1972).

³⁶*Id.* at 11-13.

³⁷One judge suggests that since "we cannot be sure [which marriages cannot and should not be saved] every couple seeking a divorce should receive understanding counsel." Wham, *An American Tragedy: Divorce — Tentative Suggestions*, 47 CHICAGO B. RECORD 212, 213 (1966).

³⁸Elkin Lecture, *supra* note 30.

³⁹See KOHUT, *supra* note 29 at 197.

be effective in their referrals, attorneys should be knowledgeable about the community's counseling resources, including the availability of a Conciliation Court.⁴⁰

Referrals present difficult problems for both the attorney and the client. Clients often resist referrals, particularly where the problem involves some maladjustment or disorder.⁴¹ Both client reluctance, and the attorney's reluctance to initiate a referral, may be overcome if the attorney helps the client realize that the counseling procedure will help the client through the emotional stresses of the legal process, and is not for the purpose of convincing the client to divorce or not. For example, Conciliation Court Counselors have two functions: to help a family explore the possibilities of reconciliation; and to help a family who cannot reconcile to "close the book gently" on their marriage.⁴² Further problems arise with the often long waiting periods for a new appointment, and limited referral resources.⁴³ This is especially critical in marital conflict where time is of the essence.⁴⁴ These problems can be overcome to some degree by a close working relationship between the attorney and those to whom he refers his clients.

If referral is impossible or unnecessary, the client may have to be counseled by the attorney. There is "a large class of cases that need to be handled entirely by the lawyer."⁴⁵ These include "[t]hose who obviously will not follow through with a referral, those who can be handled effectively in a few conferences, and other related cases of a minor nature."⁴⁶ One type of case that will not be successfully referred involves a client who has already attempted to obtain psychological or counseling help with poor results. No amount of effort by the attorney will result in a successful referral. As one attorney puts the problem,

[f]or many of my clients, it is not possible for them to go to a psychiatrist or therapist for various reasons. It simply is not possible, but they can accept what a lawyer says . . . Particularly if they had some experience (as many have) of trying to get help from a therapist who is really inadequate. They have made this big effort once. — You can't get them back in therapy no matter how hard you try.⁴⁷

⁴⁰ [T]he competent lawyer in divorce actions should know of marriage counseling resources and the techniques necessary to help his client face problems and to accept referral where necessary.

Zacher, *Marriage Counseling*, MISSOURI FAMILY LAW 142, (MISSOURI BAR 1967).

⁴¹KOHUT, *supra* note 29 at 93.

⁴²Elkin Lecture, *supra* note 30.

⁴³KOHUT, *supra* note 29 at 93.

⁴⁴*Id.*

⁴⁵*Id.* at 102.

⁴⁶*Id.*

⁴⁷Interview with family lawyer Ann Diamond, San Rafael, California, October 19, 1972.

The attorney is faced with the dilemma of either ignoring the emotional problems or doing a certain amount of counseling.

When the attorney is unable to effect a referral, the attorney can expand his role of counselor-at-law to help the client deal with the emotional aspect of his problems. One of the lawyer's functions is that of counselor, to advise his client as to the proper course of action.⁴⁸ When a client brings a personal or family problem to an attorney, law becomes personal counseling.⁴⁹

Counseling clients has been a part of the American practice of law in all its aspects from the first. Specialized counseling of clients in domestic relations cases has arisen as a necessity out of the nature of the problems presented.⁵⁰

In family law,

a lawyer who cannot recognize or who ignores the psychological needs of his client is unqualified to carry out the tasks for which he has been engaged.⁵¹

"If the lawyer does not know the degree of his personal interaction with his clients and with the court, he will not be an effective counselor or courtroom lawyer."⁵²

Most family lawyers lack training in counseling. Therefore, the attorney needs to be trained to counsel clients who can't or won't benefit from referral. The attorney already has analytical skills that can be very helpful to the client unable to see the problem, or to think straight.⁵³ The attorney will need to be trained to realize that what the client asks for may not be what the client really wants or needs.⁵⁴ A client asking for a divorce may really be asking for help with a marital problem, help in deciding if a divorce is the right thing to do, help in obtaining better treatment from the other spouse, or the client may be in a state of despair where divorce seems the only answer.⁵⁵ When the attorney fails to discover the real motivation of the client and institutes dissolution proceedings at this point, he can do a grave disservice to his client.

When families use divorce as a substitute for problem solving, they follow the path of personal and familial self-destruction — for di-

⁴⁸PATTERSON & CHEATHAM, *THE PROFESSION OF LAW* 138-139 (1971).

⁴⁹TOCH, *LEGAL AND CRIMINAL PSYCHOLOGY* 24 (1971).

⁵⁰Church, *Counseling the Troubled Family* in *FLORIDA FAMILY LAW* §17.5 (2d ed. 1972).

⁵¹Goldfield, *Practice Limited to Family Law* 3 *PORTIA L. J.* 250, 253 (1968).

⁵²George, *The Team Approach to Family Law Teaching*, 1 *FAMILY L. Q.* 64, 65 (June 1967).

⁵³Divorce counseling "can maximize the training and experience of the lawyer in the handling of human relationships and relating such a skill to divorce counseling." See Kargman, *supra* note 32 at 401.

⁵⁴FREEMAN & WEIHOFEN, *CLINICAL LAW TRAINING — INTERVIEWING AND COUNSELING* 169 (1972).

⁵⁵*Id.*

voice is only one choice among many possible alternatives. When alternatives are not carefully weighed, we often have the tragedy of the unnecessary divorce.⁵⁶

There are a variety of approaches and resources available to train attorneys in counseling and referral skills.

[T]he attorney who wishes to become a competent and qualified family lawyer should . . . understand the principles of psychology, psychiatry, and the skills of the behavioral and social sciences and [b]ecome familiar with the psychotherapeutic tools of self-examination, counseling and guidance.⁵⁷

Professor Brigitte Bodenheimer has noted many new approaches of psychiatry and counseling that lend themselves to aiding the family client.⁵⁸ She describes, among others, conjoint family therapy, reality therapy, and existential therapy, and concludes:

It is evident that the "new psychiatry" offers us radically shortened treatment time; availability of services when needed in a crisis; increasing emphasis on communication and interrelation, especially within the family; a declining interest in unconscious motivation; de-emphasis on labels of mental illness; and a great deal of practical, down-to-earth advice.⁵⁹

Two noted psychotherapists have found that "effective counseling and therapy can be accomplished by non-professional persons trained to offer high levels of psychological conditions that correlate with constructive change."⁶⁰ More studies cited indicate highly effective

⁵⁶See Elkin in KOHUT, *supra* note 29 at 191-192.

⁵⁷Tilton, *Psychology, Psychiatry, and Family Law: Strategy of the Lawyer in Advising the Emotionally Upset Client*, 8 WISC. CONT. LEGAL ED. 59, 69 (1968).

⁵⁸B. Bodenheimer, *New Approaches of Psychiatry: Implications for Divorce Reform*, 1970 UTAH L. R. 191.

⁵⁹*Id.* at 207.

⁶⁰BERENSON & CARKHUFF, *SOURCES OF GAIN IN COUNSELING AND PSYCHOTHERAPY* 1967 at 3. They found at the University of Kentucky that the use of lay therapists with a minimum amount of training (4 hours a week for 4 months) can "provide moderately high levels of therapeutic conditions to hospitalized patients." *Id.* at 381. A Wisconsin program cited "the measured level of accurate empathy, unconditional positive regard, and therapist genuineness for the trained lay therapists meet or exceed those obtained on the average from a group of more experienced therapists." *Id.*

Further examples of effective lay counseling programs are discussed in CARKHUFF & BERENSON, *BEYOND COUNSELING AND THERAPY*, (1967) at 15.

[T]here is extensive evidence to indicate that in relatively short periods of time, both professional and nonprofessional trainees can be brought to function at minimally facilitative levels. The effective training programs incorporate a heavy experiential emphasis with a focus upon the trainee's own constructive change or gain.

See also p. 298 which concludes:

The results demonstrate the effectiveness of time-limited lay group counseling, evolving from a short-term integrated didactic and experiential approach to counseling training.

therapeutic results can be obtained by minimally trained lay counselors:

There is substantial basis for believing that trained nonprofessionals can assume much of the burden for prophylactic and rehabilitative efforts for more effective living. Experimental lay-therapy training programs appear to demonstrate a level of efficacy as great or greater than the traditional programs designed to train professionals.⁶¹

The result of the new psychiatric approaches is that the non-professional can learn to use some of these and other methods successfully.

Contrary to a commonly expressed view it is this author's opinion, based upon his research and some practical experience, that like other laymen the attorney can be trained in a comparatively short time to learn how to use modern therapeutic methods effectively. Thus, it appears that lawyers can be trained to effectively counsel their clients.

The lawyer can participate in training programs of the type discussed, through local university or college programs, or professionally sponsored programs. Examples of current resources include Bar sponsored or co-sponsored programs.⁶² In addition, many articles have been written to help lawyers learn to counsel.⁶³ Law schools can

⁶¹*Id.* at 446-447.

⁶²One program at the 1972 ABA Convention in San Francisco was entitled *What You've Wanted to Know About Counseling, But Never Knew How to Find Out*. The program featured Transactional Analysis with Dr. Thomas Harris, author of *I'M OK - YOU'RE OK*, and Dr. Benjamin Ard and other therapists demonstrating Rational-Emotive Therapy. FAMILY LAW NEWSLETTER, Vol. XIII, No. 1, 7 (June, 1972).

Another program announced in the Family Law Newsletter was *Therapies of the 70's*. The program's purpose "was to make known to court-oriented professionals the new short-term, non-Freudian therapies, effective as marriage crisis interventions." *Id.* at 4. The three-day program, sponsored by Florida's Inter-Professional Family Council, was held in Clearwater, Florida. Formal presentations, workshops, and mini-marathons were conducted with Gestalt, Rational-Emotive and Transactional Analysis. This was followed by a half-day

... devoted to outlines of ten therapeutic approaches or adjunctive treatments including Glasser's Reality Therapy, Bach's Fair Fight training, Goldstein's Behavior Modification for Couples, Ellis' Rational-Emotive behavior change techniques (which lawyers can use effectively) . . .

Id. at 5.

⁶³In addition to sources already cited in this article see: Church, *Counselor-at-Law: A Game of Chess*, 8 TRIAL 27 (Sept.-Oct. 1972); Fain, *The Role and Responsibility of the Lawyer in Custody Cases*, 1 FAMILY L. Q. 36 (Sept. 1967); Foley, Jr., *Lawyer's Roles in Domestic Relations Cases*, 36 THE JOURNAL (of the OKLAHOMA BAR ASSO.) 2377 (December 25, 1965); Freeman and Weihofen, *Client Counseling in Negotiating the Terms of Divorce*, 18 PRAC. LAW 41 (April 1972); Hamilton, *Counseling in the Legal Profession*, 58 A.B.A.J. 39 (Jan. 1972); Issac, *The Family Lawyer and Extra-Legal Resources*, 1 FAMILY L. Q. 13 (1967); Usdin, *Marital Problems and the Attorney* 12 LOYOLA LAW REVIEW 9 (1965-66); Walzer, *The Role of the Lawyer in Divorce*, 3 FAMILY L. Q. 212 (Sept. 1969); Walzer, *Variations on Certain Frequently Heard Divorce Themes*, 2 FAMILY L. Q. 82 (March 1968);

also train law students to be effective counselors.⁶⁴ Although only a few schools have family law taught by a team of law professors and psychologists or psychiatrists, the casebooks and textbooks are beginning to recognize the need for the family law specialist. "[A] lawyer who handles a divorce case owes it to himself, his client and the legal profession to prepare himself with specialized training" and law schools should "recognize that divorce counseling should receive their attention just as tax counseling and labor counseling do at present."⁶⁵ Modern counseling techniques and the availability of a wide range of training make it possible for attorneys to develop necessary counseling skills to become true family lawyers.

By referral or by direct counseling, the attorney can reduce the emotional aspects of the case. If he is trained and prepares himself adequately, the psychologically oriented counselor-at-law will be able to so handle his family law cases that they are not so stressful and time consuming. If the client decides to continue the divorce action after referral or counseling by the attorney, the decision comes after the client has become aware of the reasons for the disharmony in the marriage.⁶⁶ At that point "[t]he client has arrived at a decision independently and does not need the attorney's constant reassurance to continue with the divorce action."⁶⁷

By handling the emotional aspects of the family cases effectively, the attorney also reduces the resultant strain on himself. He is better able to communicate with the client, and able to identify and deal with the stressful situations in more honest and open ways. Through training, the lawyer will be in a position not only to help his clients, but also to prepare himself to tolerate the emotionalism of his clients.

To overcome another obstacle creating reluctance toward family practice — the problem of adequate compensation for his services — the solution according to the experienced practitioner Ann Diamond

Westerman & Cline, *Divorce is a Family Affair*, 5 FAMILY L. Q. 1 (March 1971). Periodical publications are also sources for information: BEHAVIOR, LAW AND REMEDIES; FAMILY LAW QUARTERLY; FAMILY PROCESS; and JOURNAL OF FAMILY LAW.

⁶⁴Levy, *The Perilous Necessity: Nonlegal Materials in a Family Law Course*, 15 J. LEGAL ED. 413 (1963).

. . . [t]he present systems of conciliation make it necessary that attorneys, in the field of domestic relations, be prepared to do much more than the minimum amount of counseling. To be able to counsel properly, the responsibility must fall on the law schools to make the experience available.

Merder, *The Need for an Expanded Role for the Attorney in Divorce Counseling*, 4 FAMILY L. Q. 280, 290 (1970).

⁶⁵See Kargman, *supra* note 31 at 401.

⁶⁶Zacher, *The Professional Responsibility of the Lawyer in Divorce*, 27 MISSOURI L. REV. 466, 479 (1962).

⁶⁷*Id.* at 474.

is to "charge strictly by time, whether time is spent in court, in the library, or talking with the client."⁶⁸ Attorneys should fix minimum hourly and per diem charges, regardless of whether the attorney just talks to the client or whether or not he pursues the legal remedy. If an attorney sees that his client needs impartial counseling, and takes them to the conciliation court, "[t]his should not deprive the attorney of a fee; a reconciled family can afford to pay more."⁶⁹ Finally,

[f]irm, consistent, efficient attention to the affairs of his client are likely to bring about good client relationships, and at the same time, understanding, acceptance and payment of good attorney's fees. Satisfied clients and sound solutions in the affairs of family life, will result in a continuing business from clients in other phases of their lives.⁷⁰

Family clients would pay more often if they had a feeling of satisfaction from the legal resolution of their problem. This feeling of satisfaction can result if the psychological aspects of these cases are adequately handled by the attorney or by his referral.

Family law can be professionally satisfying. If the client is satisfied by the solution, the attorney is bound to be satisfied also. If by counseling a client the attorney can prevent unnecessary hostility between parties, or help bring about the acceptance of such necessary parts of divorce as a child custody order, a great deal of professional satisfaction should result.

The field offers real gratification to the conscientious and competent professional who can assist in the adjustment of family relationships. Even the termination of a marriage can become a professionally satisfying experience if it is accomplished with a minimum of hurt to the parties involved and if it prepares them for a better future relationship.⁷¹

IV. CONCLUSION

Today's family lawyer can participate more fully in meeting the needs of fellow human beings. Unless lawyers and future lawyers become aware of the changes in the field of family law and counseling, traditional reluctance to practice in this area will continue. More would enter the field if family law practice, its opportunities and pitfalls, were more fully understood. Even more would join the family law ranks if they were able to deal with the clients' emotional problems. With the development of short-term therapy, resources are

⁶⁸See Diamond Interview, *supra* note 47.

⁶⁹See Wham, *supra* note 37.

⁷⁰Fain, *Fixing Adequate Fee and Fee Arrangements in Domestic Relations Cases*, 1 FAMILY L. Q. 92, 101 (Dec. 1967).

⁷¹Diamond Article, *supra*, note 1 at 45.

available for referral, or for the attorney to expand his role of counselor-at-law. This article has attempted to show that this is possible. The lawyer's strategic position concerning a family's problems makes his role of crucial importance to the success or failure of a family unit and to the future well-being of children and other members of terminated marriages. Now more than ever the attorney must overcome traditional and outmoded ideas to meet the challenges of ever increasing numbers of families turning to him for help.

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