

Drawing the Line (aka Dealing with Unrepresented Opposing Parties)

How do you draw the line between what you can and can't tell the opposing party?

My historical rule of thumb has been that anything that is public knowledge (e.g. it can be easily googled) is fine to tell the opposing party.

Anything else (e.g. I have to draw upon my experience) is not something I can tell the unrepresented party.

Lately, I seem to be running into a lot of CA divorce cases where the client says they and their soon-to-be ex have an agreement on things like property division, alimony, etc. In California, this can simplify the divorce process, but there is still a lot to do because the CA divorce process is very paperwork-intensive. The problem I am running into, though, is that the soon-to-be ex who is the opposing party seems to have no idea what steps they actually need to do in order to complete their portion of that paperwork. The opposing party is often unrepresented, perhaps due to COVID-related job loss, etc. Worse still, some of these unrepresented opposing parties are sometimes actively stubborn -- for example, they think that they only have to sign 1 or 2 forms because, after all, they "have an agreement" so it should be simple.

The end result of this is that the divorce case is stuck in limbo because the unrepresented opposing party isn't doing something they don't know they actually have to do. There is a lot written about divorces online, but in doing google searches on my own, it appears that there is nothing that directly addresses, say, the top 3 or 4 things that unrepresented opposing parties get stuck on in the real world. If the unrepresented party did a bunch of google searches, it's possible they could synthesize multiple pieces of information together to figure out what they need to do, but realistically, that's not going to happen in appreciable numbers.

Practically-speaking, I could solve this problem by simply telling the opposing party to sign this form, file this document, look up this code section, etc. Obviously, I can't just do that, but the result of not doing that is having the case be stuck in limbo and the client be frustrated at why their case isn't done yet because, again, the parties "had an agreement".

Not my area of law, but couldn't you come up with a general instructions document that could be provided to all parties? Outline the steps, the documents, and what each party needs to do through the process.

Michael A. Koenecke, Texas

You say: "Practically-speaking, I could solve this problem by simply telling the opposing party to sign this form, file this document, look up this code section, etc. Obviously, I can't just do that..."

Why is it obvious you just can't do that? Especially, if you you preface any communication that opposing party should always check with his own attorney. if it helps get your client the divorce he wants, what is the problem?

Michael A. Blake, Connecticut

Maybe a section of your website could be devoted to how to handle your divorce when your spouse can't/won't get an attorney. While ostensibly directed to the represented party, nothing prevents OP from reading it. I wish I had thought of this sooner.

Marilou Auer, not a lawyer, Virginia

Are there any legal aid websites for pro-se parties to which you could direct them? I know that can be dangerous, given what they will read, but it might be worth it.

The other alternative would be to explain to your client what the opposing parties needs to know, and get your client's permission to explain it to them in an email. Or send such an email to your client, so your client can send it to them.

Frank Kautz, Massachusetts

Which jxn is this for? Michigan has a self-help divorce site that fills in some of the blanks... Why not suggest to the couple that they may agree to hire counsel that is a neutral party for purposes of drafting and submitting a proposed settlement agreement?

In case of doubt, the potential conflict may be waived in writing by both parties with adequate time to consult other counsel. Comments, suggestions?

Alex Salmu, Michigan

I generally tell them the same thing I tell my clients, just slightly differently.

Dear So and So,

Enclosed please find the <whatever document I have drafted that requires signatures on it> please sign and return to me. Please note the courts require our signature on this document as part of the paperwork they need to process and finalize this divorce. Failure to do so means that my client will

have to proceed forward, with the court case, as if there is no settlement. Please review, sign, return, yada yada, consult an attorney

Erin M. Schmidt, Ohio

When it starts hurting your client, get client permission to tell the respondent they need to fill out forms A, B, and C and direct them to the local family law facilitator or pro bono clinic. Give the minimum amount of information necessary to move the case along.

There are a number of people up here who do variations of joint representation specifically for this reason - the couple who already agrees on 90% of the property division and just haven't run a Dissomaster yet to figure out support.

Corrine Bielejeski, California