

Preventing Future Conflicts Through Legal Wellness Check-Ups

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Editor's Note: The following is an excerpt from Chapter 19 of "The Complete Guide to Mediation: Increasing Skills and Profitability in a Family Law Practice," published by the (Family Law Section of the American Bar Association, copyright 1997) and reprinted by permission of the author. The excerpt has been reformatted to conform with the publishing guidelines of the Preventive Law Reporter.

INTRODUCTION

Getting the divorce does not mean that the family is free and clear of family court. Especially when there are minor children, long-term maintenance payments or continuing financial entanglements (e.g., deferred sale of the family residence, ongoing joint business or investments, deferred compensation, etc.), the parties may need legal and dispute resolution assistance in the future.

Chapter 19 of "**The Complete Guide To Mediation: Increasing Skills and Profitability in a Family Law Practice**" examines three methods of preventing conflict in the family. The first section discusses drafting dispute resolution clauses into the judgment itself. The second section discusses use of preventive mediation to form new family relationships. And, the third section focuses on the concept of the legal wellness check-up as a way to maintain and expand the legal health of all family members. This excerpt focuses on the third method -- the legal wellness check-up.

Preventive Legal Wellness Check-Ups

Mediation has many benefits in resolving conflict and managing conflict. However, even its most ardent proponents concede that even a successful mediation is focused on settling a dispute, not helping people having happier more satisfying lives. Research has shown that mediation does not bring about long term behavioral change in the participants. Compared to the process of psychotherapy, client contact with a professional is rather superficial in psychodynamic terms. Some mediation authorities, such as Robert A. Baruch Bush, Joseph P. Folger and

Gary Friedman, talk about mediation as a transformative experience in human change. Such transformation, when and if it occurs, may not be the motivation that propels people into mediation and is not likely to occur in mediation unless the presenting dispute is settled in a fair and satisfying manner. As I have heard two esteemed mental health colleagues, Dr. Constance Ahrons and Dr. Mary Lund say separately: "Mediation is not a growth experience. Fasten your seat belts and get ready for a rough ride. The best you can hope for is for it to stop hurting when it's over. Then you can start healing."

Having muted expectations for long-term behavior change through mediation is important in helping clients be satisfied with the progress they do achieve. Once resolution is achieved, having used mediation can significantly and positively impact a participant's future life. The benefits of saved money, expeditious finality, privacy, salvaging relationships and feeling satisfied (rather than victimized) can facilitate an improved personal lives for the participants and/or limit any damage caused by the dispute that would be compounded by the transaction costs of resolution.

The legal wellness check-up is an unbundled service product that can be used by family lawyers to improve the legal health of clients at every stage of representation. Just like a doctor who will examine a lump on your nose even though the presenting problem is a sty in your eye, a preventive lawyer will inquire about a client's legal health when trying to solve the legal problems (e.g., divorce, support or custody modification, adoption, etc.) that brought the client into the office. The legal checkup can be brief, such as one question "Do you have a will?" The client's answer can initiate a client-lawyer dialogue that could focus on the importance of having an up-to-date will, durable power of attorney, beneficiary designations and other related documents. It would be the client's choice whether to take any action or have any legal work. If work is desired, the client must decide whether to prepare documents without assistance, use the family lawyer who diagnosed the problem or hire another lawyer or financial planning professional.

If the lawyer proactively asks other questions concerning the client's life, the discussion could be more wide-ranging. Such questions could include the following:

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- ◆ "I notice that your expenses seem to be exceeding your available cash by about \$500.00 each month. How do you plan to solve this problem?"
- ◆ "You mentioned that you sometimes are feeling depressed these days--and that intensifies when the children are over at the other parent's home. What thoughts do you have about feeling better?"
- ◆ "I am delighted to hear that you and Jim are moving in together. You looked great together the last time he was in the office with you. He has custody of his three children, right? Do you have any concern as to how this might affect your relationship with your former spouse or your own children?"
- ◆ "You really do work long hours! I am sorry to hear that this work stress comes home with you. Are you going to do anything about it?"

By probing these hot spots that are uncovered by concerned conversation between lawyer and client, the client can think about possible solutions. The client need take no action at all. The preventive lawyer has fulfilled an important function just by raising the question. The client can ignore advice, cut corners or make stupid or self-destructive choices once these questions are on the table. The client is ultimately in charge of the information and options provided by the lawyer in regard to legal health.

In addition to spontaneous conversation sparking preventive counseling, many lawyers use preventive checklists to guide the conversation. Invented by Louis M. Brown, the internationally recognized Father of Preventive Law, such checklists are available commercially. Two sample checklists are provided below.

People are more than willing to pay for a medical wellness checkup on a regular basis. They will go to their doctor's office for these checkups even if they have no symptoms or pain. They do not expect the doctor to find a problem. In fact they are delighted and will pay their bill if given a clean bill of health. Why do lawyers generally believe that problems must be present before clients need to see us? Some preventive family lawyers schedule the next office visit before the client leaves the office. Others have implemented non-litigation calendars that alert the lawyer to contact the client on a regular calendar basis or when significant client events occur either through life cycle dates or events that resulted from the executory provisions of the settlement agreement. Some examples of events triggering a notice from the lawyer to the client to make an appointment are shown on the chart below:

October 1, 1996: Settlement completed which provides that the client reside in the family house until the oldest child, Mary, is eighteen (on September 15, 1999). The youngest child (Johnny) is at local elementary school and will matriculate to middle school in February 2000.

October 2, 1996: The preventive lawyer makes all the following entries into the office's non-litigation calendar.

January 15, 1997: Write client concerning upkeep and expense of house.

October 1, 1997: Write client inquiring about house and general status. Remind client about buyout date and monitor efforts to save money for possible buyout. The mortgage interest is 9 percent on date of the judgment (October 1, 1996). Check current interest rates for refinancing possibilities. Remind client of wellness checkup.

January 15, 1999: Monitor buyout or sale progress. Discuss initiating negotiations with other spouse (either directly between the clients or through counsel).

May 1, 1999: Monitor buyout or sale progress. Remind client to bring in listing agreement or any sales documents before execution and financing. Discuss seeking extension of September 15th deadline.

August 1, 1999: Monitor house sale listing or buyout. Final check to ascertain if court action to extend deadline is required.

September 1, 1999: Final monitoring of house sale listing or buyout.

October 1, 1999: Write client to schedule wellness review re: residence, insurance, estate planning, and status of possible career change.

In respect to life cycle events, the non-litigation calendar can be set to trigger client contact one year before, six months before, three months before and one month before important dates in client lives which include: age of retirement eligibility, when children are matriculating to a new school or college or date each child attains majority.

When negotiating or mediating custody and support agreements, many family lawyers educate the parties about the possibility of having wellness checkups on a regular basis with the mediator. Generally these check-ups are scheduled on a six-month or one-year basis. The contract is that the parties come to see the mediator even if there are no presenting problems. The appointment is generally one hour but if there is a pressing issue, more time can be booked.

On occasion, the spouses can complete a wellness check-up and no repressed or latent issue arises. In that case, the parties deservingly get a clean bill of health and support from the mediator that they are doing well. However, generally something comes up -- often parties save up their concerns for the checkups knowing that their discussion will be monitored and

managed by the mediator and not get out of hand. Rather than let problems fester and resentment build over parenting, financial or communication concerns, these regular discussions can preempt and solve problems before they ripen into expensive and destructive conflict.

Personal Legal Wellness Check-Up

The following Legal Wellness Check-up was approved in May 1996 by the American Bar Association Law Practice Management Section to be given to lawyers in that Section to diagnose their legal health. The results will be assessed by the Section's Law Task Force, chaired by Thomas Gonser, former ABA Executive Director and NCPL Turstee, to recommend an ABA Agenda for

LEGAL CHECK-UP QUESTIONS		YES	NO
1.	Do you have a will which has been revised within the past 3 years?		
2.	Are there any estate planning changes which should be considered?		
3.	Is your contract of employment, partnership (PC, etc.) agreement both current and adequate for your current needs?		
4.	Are you adequately covered by policies of life, vehicle, liability (both personal and professional) disability, umbrella, and other insurance?		
5.	Do you have any financial or liability exposures which are insurable but presently uninsured (e.g., disability insurance, umbrella policy)?		
6.	Have the liability policy limits changed within the past three years?		
7.	Are there any potential claims which could be asserted against you?		
8.	Do you presently have a written and current listing of all important future dates, such as expiration, option, maturity and due dates?		
9.	Have you within the past 5 years checked whether the Social Security Administration has properly accounted for your future benefits?		
10.	Do you have a file, stored in a secure and fireproof location, containing all important documents (wills, securities, contracts, Marriage/divorce papers, deeds, pension/profit sharing plans etc)?		
11.	Have you within the past 3 years reviewed the beneficiary designation on all documents which requires such information?		
12.	Do you have a complete and current personal financial statement which lists in detail all of your personal assets and liabilities?		
13.	Do you have a complete and current inventory of all of your physical possessions, sufficient to support a claim in the event of a loss?		
14.	To the extent the foregoing questions are relevant to your spouse (if any) and minor children (if any) are there any matters or issues which should be updated, reconsidered or changed?		
15.	To the extent there are persons other than spouse or children for whom you may have some responsibilities (e.g. aging parents) are there items or issues which should be updated or changed?		

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Preventive Law and use of the Legal Check-up by American lawyers for themselves, and, most importantly, for their clients.

Take the Legal Check-up yourself to monitor your own legal health. Does it stimulate any thinking or concerns about decisions or actions you wish to consider in your own life? How can you use it with your own clients in its present or modified form? Can you see ways of using it as a marketing tool to attract new clients or generate additional revenue for your law office? Have any of these questions caused you to consider taking some action or making some further review?

Is there any other major category of personal legal exposure which should be included on this summary list? (Please specify)

The following check list provides general steps individuals can take to help keep their legal health in order.

Sample Personal Legal Checkup

When making agreements or transactions, or when dealing with important documents:

- ✓ Read documents carefully before signing;
- ✓ Ask for an explanation of anything you do not understand before signing.
- ✓ Consider writing the explanation you receive on the document you are signing.
- ✓ Keep copies of anything you sign.
- ✓ Put any agreement you consider important in writing.
- ✓ Use certified mail when sending important documents to verify transmittal.
- ✓ Keep documents, like wills, up-to-date by reviewing them after major events like birth, death, marriage, or divorce.
- ✓ Keep notes of conversations you have that you consider to be important, especially if the conversation concerns money or property.

Keep the following documents for at least six years:

- ✓ Agreements, loan papers, and similar documents
- ✓ Bank statements and cancelled checks
- ✓ Copies of income tax returns
- ✓ Real estate bills
- ✓ Child care payments

Consider keeping the following documents in a safe deposit box for safekeeping. (Note: Someone else should be made aware of the safe deposit box so that it can be accessed if you are somehow incapacitated).

- ✓ Adoption papers
- ✓ Automobile ownership certificate (pink slip)
- ✓ Birth certificate
- ✓ Marriage license
- ✓ Will
- ✓ Deed to your home and title insurance policy for your home
- ✓ Life insurance policies
- ✓ Stock certificate and bonds
- ✓ Passport

A current list of personal property, including descriptions of major items along with identification numbers, purchase receipts for the items, and photographs of the items. This may help verify your loss to the police and your insurance company in case of theft or fire.

Keep your cancelled checks or get and keep receipts when paying cash for the following:

- ✓ Mortgage or rent payments
- ✓ Insurance payments
- ✓ Automobile payments
- ✓ Credit card payments
- ✓ Consumer loan payments

Developed jointly by the National Center for Preventive Law and the American Association of Retired Persons for Model Program in Pennsylvania. (Reprinted with Permission)

CONCLUSION

Every client and any type of contact provides an opportunity for the mediation- and prevention-friendly lawyers to educate and probe for asymptotic legal disease. Once diagnosed, it is the client's decision to take action, and if, so whether professional help is needed.

Legal check-ups are one set of diagnostic tools available to family lawyer to prevent future conflict and maximize legal health. ♦

CORPORATE COMPLIANCE PRINCIPLES

The Corporate Compliance Principles are nearing publication. For more information on reserving your copy, call the National Center for Preventive Law at (303)871-6099 or e-mail to ncpl@adm.law.du.edu.