

January 1951

Lawyers and Marriage Counseling - The Therapeutic Approach to Divorce

Stevens Park Kinney

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Stevens Park Kinney, Lawyers and Marriage Counseling - The Therapeutic Approach to Divorce, 28 *Dicta* 30 (1951).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

LAWYERS AND MARRIAGE COUNSELING—THE THERAPEUTIC APPROACH TO DIVORCE

STEVENS PARK KINNEY

Chairman of the Domestic Relations Committee of the Colo. Bar Assn.

While many attorneys do not handle domestic relations cases, and many attorneys practice this branch of law in a rather desultory fashion, there are a large number who can be rated as expert consultants in this field. Lawyers have seldom, if ever, convinced the public that their function is to offer advice on domestic issues as well as to legally sever marital ties. Social workers, physicians, judges, ministers, and priests, and even friends and relatives, apparently rate higher than attorneys in the general lay mind in their ability to advise the lovelorn and loveshorn.

There are many causes for this status, not the least of which has been brought about by the lawyers themselves. The fact that many attorneys do not handle divorce cases has given rise to the belief that attorneys do not wish to take part in domestic difficulties, and perhaps even in the mind of active attorneys, there is a stigma attached to such type of practice. Secondly, many divorce cases are handled by untrained or inexperienced attorneys whose sole purpose is to obtain a divorce decree, and whose legal training and background is such that they are not competent to settle the many problems that often arise in this type of case.

Another deterrent to counseling with attorneys on the part of parties involved in domestic problems is the fear they will be charged high fees for such services. Moreover, they are reluctant to discuss their personal problems with lawyers who are not personally known to them.

Lawyers receive little, if any, publicity, other than by word of mouth, of their ability to solve and counsel with litigants in domestic relations problems. No attorney could, even if he would, advertise his talents in this field, whereas, the work of social consultants, doctors, writers, and other may be widely proclaimed through the press or social agencies. Indeed, many popular writers in widely published articles seek to blame the attorneys and the courts for what they consider the present day evils existing in divorce matters. These articles fail to point out the real causes and conditions that lead to the divorce courts, but they do pin their sensationalism and public appeal upon what the writer considers the ease, stupidity, and the great number of divorces granted by the courts, and on the alleged insistence and efforts of the members of the bar in aid of such. The real truth is that attorneys have nothing to do with the causes of divorces. The need of a separation has been established long before the usual prospective litigant ever reaches an attorney's office.

ATTORNEYS CAN BE GOOD MARRIAGE COUNSELORS

An attorney should be the best qualified person to advise people involved in domestic relations problems because he is well-ac-

quainted with the laws and rulings governing the marital relationship, and has a broad and practical knowledge of the human frailties and misunderstandings that lead to family troubles. No conscientious practicing attorney subscribes to the theory that a consultation on marital difficulties must in itself lead to a divorce, annulment, or separate maintenance action. An attorney is highly practical in his solutions of problems of this type. Any attorney who has handled a number of divorce cases can accurately evaluate the causes that have led to the current disagreement between spouses. Thus, he can prescribe a practical and workable solution to the current problem, or properly conclude that there is no solution but a complete divorce.

Further, all parties concerned know that attorneys have the knowledge and power to correct by legal means, if necessary, an otherwise unbearable situation. They are less likely to try and color or cloud their statements on the facts and issues involved when discussing their problem with an attorney, or at least to do so successfully: Attorneys are qualified by their basic general and special training in the law and in their contacts with people to evaluate the evidence and testimony presented to them by their own clients, as well as the testimony of adverse parties or witnesses. Likewise, the attorney has a special confidential relationship with his clients and their statements and problems are his exclusively, and are not to be disclosed beyond the confines of his own office in any manner whatsoever.

Many attorneys have a sound education and knowledge of psychological and psychiatric problems, and they are able to understand and evaluate the motives, desires, and actions on the part of their clients in the relationship between themselves and other members of their families, and to discover the basic differences presented, and in so doing to suggest a workable remedy. The attorney can maintain an unbiased attitude in his approach to these problems, and in so doing he can sift fact from fiction, and the important and relevant from the unimportant and irrelevant. The attorney's knowledge is basic in that he knows that there are always two sides to each marital problem, and in such knowledge he can determine whether the problem is solvable or not.

HOW MAY LAWYERS ATTAIN RECOGNITION IN THIS FIELD?

My conclusion is that there are today many lawyers who are excellent domestic relations consultants. It is true that they are generally unknown to the public, and a client must seek them out for they neither advertise nor exploit such practical legal talents. Further, the fees charged for such consultation by attorneys are generally not as high, and certainly no higher, than those charged by psychiatrists or doctors for the same service.

Lawyers themselves might evolve some plan whereby the services of such practicing attorneys might become known to those

persons in need of their assistance, and thus enable attorneys to take their proper place in the drive to assist married couples in solving domestic problems without the need of legal action. Some marriage problems can be solved by good counsel, but the lawyer who is qualified to so act, may today be the least known and the last consulted in this field. By the time he is, the breach is generally too wide to heal.

Thus, the gauntlet is thrown down to the bar: (1) to devise a plan whereby the public may be made acquainted with the special qualifications of many members of the bar so that their talents might be utilized in this ever-increasing, complex field of family relationships, (2) to advise the general public that fees involved in these matters are fair, and that most desirable and satisfactory results may be obtained from consultations with competent attorneys on domestic relations problems.

WHAT IS YOUR OPINION OF REQUIRING A STATEMENT OF ASSETS IN DIVORCE SUITS?

It has been suggested that the rules of the District Court of the Second Judicial District be amended to require the filing of a statement of assets in divorce cases. The judges have requested that this proposed rule be given publicity in DICTA, and that members of the association express their opinion as to the advisability therefor.

The matter has also been referred to the Domestic Relations Committee of the Colorado Bar Association, but since the Denver Bar Association has no committee in this field, it is suggested that any comment on the proposal be directed in writing to the secretary, 319 Chamber of Commerce Building.

The suggested rule in substance would read as follows:

"That the plaintiff shall file with his or her complaint, and serve on defendant with the complaint, a full detailed statement under oath of his or her assets and liabilities, together with a copy of the income tax return for the past two years.

"That the defendant before any hearing on alimony and in any event in not less than twenty days, shall file and serve a similar statement upon the plaintiff. That on motion for alimony by the defendant the time for filing such statement shall be five days after the service of the motion, but before the hearing of the motion for alimony.

"That each statement filed with the Clerk be sealed by him and not made public.

"That the Clerk of the Court prepare printed forms to be used in filing said statements.

"That penalties be assessed against any party failing to file complete statements or for filing false ones."