

Five Ways to Privatize the Public Nature of Divorce

By Lucy Vartanian

Divorce is an emotionally taxing and highly intimate process in a couple's life, so it's no surprise that family law attorneys are often engaged in a balancing act to cater to a client's emotional needs while discerning the legal issues in the case. To add to this balancing act, divorce proceedings are a matter of public record. The thought of personal divorce documents being accessible to family, friends and employers can make even the most low-conflict divorcing couple nervous. Because the line between emotional and legal issues in family law cases is often blurred from the client's perspective, it is sometimes critical to apprise the court of unsavory information regarding the divorce so that court is able to see the big picture.

Given the sensitive nature of divorce pleadings, the following are a few steps attorneys can take to alleviate client anxieties regarding the public nature of one of the most personal events in a couple's life.

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1. Limit the content of court filings.

In divorce proceedings when the parties are emotionally charged, it can be tempting to editorialize a client declaration with comments about the other party's character and shortcomings. Generally, a legal declaration is not the time or place to assassinate the other party's character or air out grievances unrelated to the subject request. Sometimes, however, incorporating colorful facts is key to ensuring the court has all of the information it needs to make an order on an informed basis. This is especially true when clients are adamant about incorporating certain emotional aspects into a court pleading. Attorneys should have an open dialogue with their client to assess whether the information provides any legal support to the underlying request and whether there is a possibility that it may have the opposite of the intended effect (*i.e.*, aggravating the judicial officer assigned to the matter). It's easy to allow emotions to take over, and while there may be a momentary satisfaction of incorporating personal details in a declaration, once the information is out there, there's no turning back.

2. Consider your spouse's public persona and career.

Part and parcel with limiting content in court filings, if either party is a prominent member of the community, an executive of a large company, or simply a recognizable figure in the public realm, the attorneys should be cognizant of the media and the possibility of the pleadings being published by a news source or website. Accordingly, it may not be wise to make allegations in a court pleading that may harm an opposing party's career, unless it is critical to the request being made to the court (*i.e.*, a discussion regarding a spouse's substance abuse may be relevant to a request for child custody, but may also be harmful to the spouse's career). These delicate situations require a nuanced and thought-out analysis of the benefits and risks of including such sensitive topics.

3. The courthouse is open to the public.

Courthouses are open to the public, so it is likely that there will be spectators during the divorce proceeding. Courtrooms generally post a calendar regarding their daily docket outside the courtroom, which can be viewed and accessed by anyone even passing the hallway.

4. Be extra careful when filing financial documents.

California Rules of Court, Rule 1.201 mandates that the party or counsel filing financial documents with the court redact financial account numbers or social security numbers with the exception of the last four digits. Given the public nature of divorce documents, this is one way the state has taken steps "to protect personal privacy and other legitimate interest." While an inadvertently unredacted document can be subsequently redacted by engaging the appropriate court procedures, failure to cure an unredacted document may be grounds for sanctions.

5. Consider entering into a Confidentiality Agreement or Protective Order.

Although a confidentiality agreement does not change the public nature of a divorce proceeding, they are sometimes prepared in cases involving high profile parties or businesses owned by the parties in order to preclude disclosure of sensitive documents to third parties. Confidentiality agreements may be entered into to prevent irreparable harm from occurring as it relates to the disclosure of sensitive information. A confidentiality agreement does not *seal* a divorce file, but it may have the effect of deterring a party from filing a certain document that has been marked as confidential in the case. When a confidentiality agreement is in place, rather than file the documents designated as confidential with the court, the parties bring the necessary documents to court on the hearing date or simply lodge the same in order to avoid a permanent public filing.