

FRIDAY, JUNE 27, 2025

Representing clients with mental health problems: At what cost?

A former family law judge reflects on the profound challenges mental health issues pose in high-conflict cases, urging the legal system and attorneys to recognize limits, prioritize true client well-being, and consider withdrawal or alternative approaches when managing mentally impaired litigants.

By Patricia Garcia

Toward the end of my tenure as a family law judge, I presided over a high-conflict case that indelibly imprinted itself in my memory. In an unpublished ruling, an appeals court affirmed my decisions finding that the appellant had not raised or preserved critical issues at trial and that those issues were thus waived.

It was a simple appellate question, but the underlying issues were far from simple. The case was routine and unsurprising, but the manner in which it came about raised profound questions for me about the practice of family law and, more broadly, any area of law when mentally impaired parties are involved. How should the legal system identify and deal with these individuals? How should practitioners manage clients – and themselves – when mental health issues are so pronounced?

Personal problems = family problems

In the family law case I heard, no evidence was proffered of a diagnosed mental health condition for the litigant, but no diagnosis was necessary. It was evident that she was in denial and was distorting reality, whether intentionally or not. A “label” would not have mattered; her conduct, language and context clearly underscored her challenges.

Add to this mix that the parties in the case were getting divorced: Now you have *emotionalized distortions of truth*. Family issues can be personal, painful, and messy even under the best of circumstances.



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When one of the spouses is dealing with mental health or substance abuse issues, the challenges can multiply exponentially.

In the case I oversaw, the unhappy litigant had had multiple lawyers by the time her trial ended many years after she first filed for divorce. She had accused the father of her children of being unfit to parent them and demanded that he be evaluated. Even after the evaluation vindicated him, she would not allow him to participate in court-ordered visitations.

Additionally, she had ignored multiple admonitions to become self-supporting, had lived well beyond her means, and had mismanaged her share of the proceeds from the sale of community assets, which she

received before trial. To make matters worse, she would not pay her outstanding attorney’s fees, had incurred unnecessary additional debt, and had filed a bankruptcy proceeding to dismiss these obligations. You get the picture.

Unfortunately, individual problems are never quarantined in a family dispute. One person’s misconduct, lies, or psychoses will end up impacting every other member of the family unit. Children may be denied the right to see a parent, a former spouse may watch and wait years for decisions to be made, valuable assets may be squandered. Judges and counsel must work through or around these ongoing obstacles.

The representation conundrum

Most counsel are sufficiently educated to see the red flags, and many may even agree to accept a client like this. They tell themselves that such a client can be managed by significantly increasing their retainer and committing to stop work if the retainer is exhausted and not replenished – assuming the case is not in trial.

But few attorneys may have factored in the emotional toll this type of client and case will extract from them, from their offices, from the legal community and from society generally. They will not have asked themselves whether any amount of money can prevent the toll on their emotional and physical health. A large retainer may be attractive,

but will it protect them and their office from the stress and anxiety of this needy client and an endless case? What might this representation do to their reputation, with colleagues and the court? Ultimately, what does it do to our society when we advocate for litigants whose positions and conduct promote distortions and false narratives?

A better approach

In hindsight, I can see clearly how a high-conflict case can cause the deterioration of relationships, as well as of family and legal systems. Cases such as this one tend to drag on, almost by definition, and in doing so they significantly delay the healing and normalizing of the post-separation relationship and family unit.

In this case, the children had been deprived of the love and support of their father during the entire 10-year divorce process, and perhaps even longer. With every newly retained lawyer, there was reduced trust between the attorney and the

client, and there was increased risk of non-payment. Add to this the frustration, stress, and anxiety for opposing counsel, representing the father, who is forced to respond to the constant turnover of lawyers, bring new counsel up to speed, and manage pressure from his or her client to hold the line and just defend the case.

I watched as the case was drawn out and over-litigated, just as I was ending my judicial career. I recognized that if we want to make things better, we need to move in the other direction. Going through the courts and working within the existing system is not a treatment plan. We should never kid ourselves that a mentally ill client's distorted and untruthful narrative deserves to be amplified.

Conclusion

Whether we're representing divorcees or former business partners, we should look at the choices that are actually before us when dealing

with a mentally challenged client. One of those choices is simply to decline or withdraw from the case. Yes, "they deserve representation," and yes, they can also represent themselves; family courts see self-represented litigants all the time.

But without the veneer of a lawyer who can speak for them, or the skills of a seasoned lawyer trained to extend or bolster a client's case, the reality of a litigant's mental health will become clear much sooner. When this happens, the system can respond by engaging resources to address the disease while moving toward appropriate resolution of important issues.

No child should be unfairly separated from a parent; no family should be left in limbo as their world is slowly blown apart; no litigant should be without support. And no attorney should be dragged over the coals of a client's mental burnout. Allowing a mentally ill litigant to show his or her true colors would be a significant move in the right direction.

Hon Patricia Garcia (Ret.) is a neutral with Signature Resolution who has extensive trial and family law expertise. She served as a child support commissioner and then as a family law judge on the San Diego Superior Court. As a bilingual mediator, she guides Spanish-speaking parties who would otherwise require the services of a translator. She can be reached at pgarcia@signature-resolution.com.

