
Psychology and Family Law

By Mark Baer, Esq.



Many people hold the unfortunate belief that when they become involved in a lawsuit—including divorce—they need to find a lawyer who is a “fighter,” or “pit bull” (i.e., like the dog bred specifically to fight other dogs). Since legal disputes are adversarial by nature, the logic seems to be that an aggressive attorney will more successfully advance one’s interests in court. By logical extension, a lawyer who is not ruthlessly aggressive would be a suboptimal choice.

However, I would like to point out that strong, proactive, and even aggressive representation does not necessarily equate with the “pit bull model.” Attorneys classified as pit bulls often tend to be belligerent, argumentative, and eager to fight. What the public does not realize is that highly contentious individuals (attorneys included) usually place self-interest above all else. It should be obvious that always looking for more points to fight over, and even taking unreasonable positions on behalf of their clients, generates significantly more money in fees for the lawyer who charges on an hourly basis. Moreover, such attorneys tend to derive a great deal of pleasure from the fight *in and of itself*. In fact, many attorneys enter the field precisely because they enjoy argumentative confrontation, and tend to be disagreeable and difficult people in general.

These attorneys thus tend to delay the resolution of a case, file motions that make no sense from a cost/benefit analysis, and often cause the other side to need to file motions, or incur significant legal fees and costs because their client is refusing to disclose required information and/or is hiding marital assets. (In my many years in the field, I have noticed that difficult and combative clients tend to retain difficult, combative counsel, while reasonable and cooperative clients usually retain more reasonable representation.)

“Pit bull attorneys” are not concerned with resolving a case in a fair and equitable manner, despite the fact that the family law court is considered a court of equity, or fairness. Instead, these attorneys take advantage of the flaws and imperfections in the legal system to make the case for the other side so costly that they either cannot or will not continue to fight for that to which they are otherwise legally entitled. Such attorneys are focused on “winning,” no matter what the cost, irrespective of right and wrong, and in total disregard of equity.

In truth, the very concept of “winning” in court is somewhat subject to interpretation. For example, if a particular attorney “wins” a client \$30,000 in a case that more qualified attorneys would have potentially “won” \$300,000, is that considered a “win?” The attorney did “win”—insofar as the opposing side ultimately lost the case. However, wasn’t a more appropriate resolution lost? Then again, what if an aggressive attorney causes both sides to incur legal fees in the sum of \$30,000, and yet ultimately “wins” only \$5,000 for his/her client. Should that be considered a “win?” And if so, for whom?

From my perspective, neither of these situations can be considered to be a true victory for the client. While ruthless and combative attorneys, and other such people, would argue that a “win” is a “win,” this point of view assumes that the *only* thing that really matters is that the other side is defeated. Unless I am missing something, the true “winner” in such situations is *the attorney*. While some may argue that the client “won” his or her debate as a matter of principle, and that the toll it may take on both sides is irrelevant, I contend that the cost (both financial and emotional) of fighting with this notion as a guiding force is often just not worth it. If clients realized the extreme emotional and financial toll in advance of pursuing such principles, many would not do so. This is especially true if the vindictive emotions that fuel such legal wrangling could otherwise be diffused through the use of psychologists and other such mental health care professionals.

I have noted that disagreeable, contentious clients tend to seek out similarly oriented attorneys. Interestingly enough, I’ve seen that such individuals tend to relate well with each other—at least at first. Meanwhile, a client who tends to be more cooperative might retain an attorney who is more antagonistic toward others and vice versa, but such relationships do not tend to last. Ultimately, the difficult client and difficult attorney will not be able to treat each other any differently than they treat anyone else. Furthermore, the more reasonable client very often parts way with his or her overly aggressive attorney before long. These sorts of mismatching are why clients might go through several different attorneys in course of a single particular legal proceeding.

I have previously written about the supreme importance of trust, mutual respect, and good communication between a client and his or her attorney in order to have both a successful working relationship, and a positive outcome in legal proceedings. Here again, I must point out that “pit bull attorneys” and their clients can rarely, if ever, maintain these crucial aspects of the relationship.

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