
Keeping Book on Opposing Counsel

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Just as every lawyer has to develop a personal style, he or she needs to be aware of the personal style of the lawyer on the other side. Knowledge is power, goes the saying, and nowhere is this more true than in negotiating a divorce settlement.

The best baseball pitchers keep a book on hitters they face on a regular basis. Does a hitter like fast balls? Does he swing on three-and-one with runners on base? Human beings are creatures of habit, and knowing the habits of those on the other side can give you the edge in settlement negotiations.

Michael J. Albano keeps a book on opposing counsel: What were their positions on other cases? How can this be used to keep them consistent? Following his lead can be of great help the next time the bases are loaded against you with a count of three and zero.

Matrimonial law practitioners always find settlement negotiation to be frustrating. It is a particularly disturbing aspect of my practice because of the "consistent inconsistency" displayed by my opponents. It may be understandable, but is it right and proper to submit offers of settlement based solely on whether the client is male or female? Should maintenance (alimony) and property-settlement offers depend on the facts and circumstances of the individual case, or should they depend solely upon the sex and status of the client?

For example, in one case, in which my opponent is representing the higher income spouse, I find that the offers of maintenance are nonexistent or are for very little, and the offer of property is discounted substantially by tax considerations. In the next case, the same opponent, now representing a lower income spouse, makes a demand for substantial, long-term maintenance and a request for property division with no deductions for anticipated future taxes. More often than not, when I confront an opponent with these apparent inconsistencies, he or she replies that the facts of the one case can be distinguished from the facts of the other case.

Because of the consistent inconsistencies, I keep all of the settlement letters I receive from the opponents I see frequently in my cases. I keep track of the offers and demands they make for their various clients by placing them in a special computer file. For each offer, I record the following:

1. Name of the attorney
2. Date of the offer
3. Sex of the client
4. Length of the marriage
5. Number of children
6. Number of minor children
7. Cause of the breakup

8. Respective income of the parties
9. Educational status of the parties
10. Health status of the parties
11. Standard of living of the parties
12. Maintenance offer and/or demand
13. Division of property offer and/or demand
14. Division of debt offer and/or demand
15. Inconsistencies from previous offers

This file gives me a convenient source of information about previous letters that I can cite to my opponent during four-way settlement conferences and in settlement letters. Although some lawyers clearly do not care if they are caught in consistent inconsistencies, most are embarrassed sufficiently to at least temper their extreme positions.