

**REPRESENTING “HIGH PROFILE” CLIENTS
IN FAMILY LAW CASES**

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PREFACE

This article, one which attempts to identify certain pitfalls and rules of thumb particular to cases involving the “high profile client,” stands in large part on the shoulders of articles previously written and published by the following attorneys at an American Bar Association Family Law Section meeting on the subject: Fred Glassman, Ellen W. Kessler, and Rick Robertson. It is with their permission that we include their valuable input and ideas herein.

ADVOCACY MEETS CELEBRITY: PRACTICE TIPS FOR THE REPRESENTATION OF THE HIGH PROFILE CLIENT

Who is the “high profile” client? Generally speaking, it is a celebrity, a well-known figure in the media or business world, or any individual who evokes greater-than-ordinary public attention or notoriety. A high profile client may also be an individual with extraordinarily high income who, while not in the public eye, often has other people managing certain everyday aspects of his or her life. Although not all high profile clients are in the movies, we rely on movie titles below to distinguish different categories of concern in the representation of this type of client.

A LIFE LESS ORDINARY

As anyone who has represented a high profile client will tell you, these types of clients bring with them particular areas of concern, but, at the end of the day, their concerns about their cases are remarkably similar to those of any other client whose life has suddenly been rendered less ordinary by the onset of a domestic case. Most high profile clients, like most other clients, want closure in the form of a speedier resolution that the courts can typically provide. Most high profile clients, like most other clients, feel their privacy being chipped away by public record pleadings and the burdensome process of discovery. Finally, most high profile clients, like most other clients, want an attorney who can be a doggedly protective force as well as available to them during the majority of hours on any particular day.

Apart from the special areas of concern that must be kept in mind when dealing with a high profile client – areas that will be discussed in greater detail below – perhaps the baseline difference, then, between a high profile client and another client is simply the level of expectation that must be managed. All clients come into a case with certain expectations, and it is part of an attorney’s job to contour those expectations in accordance with legal and practical realities. Unlike a typical client, however, high profile clients may have a level of expectation that is unusually elevated due to the “instant gratification” factor that their careers and lifestyles have come to contain. High profile clients, perhaps more than other clients, require meetings during unusual hours, quicker turn-around on phone calls, and more detailed reassurances about the progress of their case. Establishing a reasonable level of expectation from the beginning is therefore essential to keeping and cultivating a high profile client’s (as well as any other client’s) satisfaction.

SIX DEGREES OF SEPARATION

One of the greatest challenges in representing a high profile client in a domestic case lies in the degrees of separation that often come between 1) the client and an attorney's communications with him or her; and 2) the client and the everyday management of his or her finances. Both kinds of divides have the potential to jeopardize the outcome of a case.

Counsel to high profile clients do not always have the benefit of direct communication with their clients, but must instead give messages or instructions through a third-party intermediary such as an agent. To avoid confusion and to best protect both attorney and client, written letters and / or e-mails ideally should be sent both to the third-party intermediary and directly to the client. Written communications are particularly crucial where deadlines are concerned. Although memorializing advice in writing tends to create something of a defensive posture, it avoids the "telephone" game of miscommunication that frequently results from indirect contact with a client and creates a point of reference for future client and attorney use.

Maintaining a good relationship with any third-party intermediary is key to effective representation for obvious communication reasons, but it may also help when it is time for a bill to be paid. Because of what are surely a multitude of rationales, high profile clients do not always address the issue of unpaid attorney's fees in a timely fashion. This phenomenon may stem from the fact that these clients frequently see the role of attorneys as an unpleasant side effect of the development of his or her art or commercial success. It may also be that a particular client views him - or herself as "good for it" in the end, and does not understand the immediate impact on an attorney's bottom line and office resources. Whatever the case may be, the unpaid bill clearly impacts the attorney and his or her ability to continue forward in the case, and an amicable relationship with a third-party intermediary can work to clear the obstacle of an unpaid bill much more quickly. Additionally, it is wise to be very clear about how the fee is to be paid. Even when very wealthy people say, "Don't worry about the cost," they may be upset with a bill if they did not anticipate the amount. Be sure to mention dollar amounts as early as possible to avoid "sticker shock" later on.

Apart from the problems inherent in indirect communication with a high profile client, challenges also arise from the client's unfamiliarity with the management of his or her everyday expenses. In a recent case handled by our firm, for example, it was the client's accountant, not the client himself, who alone had the requisite knowledge to verify the domestic relations financial affidavit submitted to the court. Unlike the typical family law client who can, at a glance, determine whether his or her spouse or ex- is artificially inflating the expenses of the parties' child based upon his or her own common sense and experience, high profile clients are often utterly at a loss as to what expenses they incur on a month-to-month basis – whether for their child or for something else. Moreover, the accountants or financial advisors employed by high profile clients are hired to pay bills and to manage money, not to make judgments or distinctions as to what expenses are being incurred. Proving finance-related elements of a case therefore

requires much more effort and creativity than may be normal from the attorneys and financial consultants involved.

BROADCAST NEWS

The one aspect of a high profile case that unquestionably distinguishes it from other cases is the media interest component. While all clients are concerned about very private aspects of their lives being made part of the public record, very few need be concerned that anyone will actually go to the trouble of finding or further investigating such a public record. The contrary, of course, is true for a high profile client who is subject to media scrutiny. In a high profile case, public opinion can play a large role in the impact of a case on a client's life and career, if not in the disposition of the case itself. Confidentiality orders and contact with any public relations firm hired on the client's behalf are invaluable tools when publicity has the potential to figure largely in a case.

While the availability of confidentiality orders is somewhat constrained by constitutional issues such as the public's right of access to information, these kinds of orders will generally be entered by a court when both sides are able to agree to the information that warrants protection. If you do not have a proposed confidentiality order already on file with your office, try contacting colleagues to see if they have a form that they are willing to share with you. Because of their protective benefits, such orders should almost always be sought to shield a client's privacy in a high profile case.

As for the role of any public relations firm hired on the client's behalf, it is always useful to confer with the client and the PR firm itself as to how the client's public image can be benefitted as the case goes on. Often a "no comment" statement from an attorney creates a negative inference on behalf of the client, but any comments other than "no comment" should be carefully crafted in light of the client's wishes and the PR firm's expert advice. Since press images and sound bites from a high profile case are likely to have a longer shelf-life than the case itself, we must carefully consider not only how the publicity will affect the case, but also how it will affect the client's career and future opportunities.

THE INSIDER

Because high profile clients do not always have the same level of intimacy with the management of their finances or other details of their daily lives that other clients might have, experts are particularly useful in the development of a high profile case. Financial experts such as forensic accountants, for example, are invaluable in sorting out the myriad transactions that occur on a monthly or yearly basis in the bank and credit card accounts of parties with extraordinarily high income. Custody experts such as psychologists may also be useful; this is particularly true where a high profile client's "image" as a public persona may be confused by the trier of fact with what is the client's much more private, but much more accurate, at-home persona. As always, the bottom-line is how to put on the most compelling case possible on behalf of the client. To the extent that such presentation can be improved with the use of experts, those experts

should be retained and their testimony presented. In this sense, representation of a high profile client is not altogether different from any client who walks through an attorney's door.

In conclusion, high profile clients bring atypical challenges with them in the form of adequate attorney-client communication, never-ending public scrutiny, and effective fact development. Should these hurdles be met, and we hope that they might be better met with the suggestions set forth above, high profile clients are, in essence, no different from the other clients who form the basis of our practice. They, like every client, deserve our respect, our attention, and our best efforts.

Ultimately, adapting to the special concerns which arise in "high profile" cases is simply another challenge for family law practitioners who regularly strive to handle all types of personalities, emotions, and practical problems. Although these special clients may require additional degrees of perseverance and creativity from those who represent them, those extra efforts almost certainly will be rewarded in the form of a well presented case, a more satisfied client, and, last but not least, a hard earned and well deserved fee.

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