Dealing with Self-Represented Parties
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DEALING WITH SELF-REPRESENTED PARTIES

As legal professionals working in family law, we see more people that are representing themselves [pro se] in both the Provincial Courts and Queen’s Bench Courts. There are many challenges that can be encountered when dealing with opposing parties who have a very personal and vested interest in the outcome of the matter. Another complicating factor is that most persons who represent themselves have little to no understanding of the law and/or the Rules of Court.

These challenges are not unique to Alberta, and many other jurisdictions have commented on the issues that arise with self-represented litigants [hereinafter “self-reps”]. I will review some of the critical considerations of dealing with self-reps in a family law context, and provide some tips to endeavor to make the experience more efficient and less problematic.

The Different Types of Self-Reps

Carolynne Burkholder-James of Prince George, B.C. recently wrote for the Canadian Bar Association’s blog on this topic. One of her featured tips was that, as lawyers, it’s helpful to recognize the difference between individuals who are without a lawyer due to financial circumstances, and those who choose to be without counsel.

Financial Necessity

Dealing with the first type of individual, those that cannot afford representation can be difficult because they would benefit greatly from legal advice, and often look to you, as a legal professional, for suggestions. This can lead to many issues, the most important of which is that you must not provide legal advice to a self-rep or be seen to be providing legal advice to them. Often when things do not go their way in court a self-reps will tell the Judge that you gave them legal advice that was against their interests.

Choosing to Self-Represent

Dealing with individuals who choose to be self-reps brings out many of the same issues, but should also raise a red flag if the matter is sufficiently complex that it merits hiring counsel. These individuals are likely to believe that one does not require “education or objectivity to be a lawyer or really want to have their voices heard.” These are the individuals that you may find yourself battling

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2 Ibid.
with for even the most minor things (such as the wording of an interim Order, or the reasonableness of an adjournment), and can put a strain on both your professionalism and your client’s wallet.

**Tips:**

- Consider which Court you put your matter into. While many senior lawyers feel more comfortable in Queen’s Bench, proceedings can often move much faster in Provincial Court, and there tends to be more time for self-reps at this level than in the higher Courts.

- Consider whether a Case Management Conference, a Case Management Justice or Case Management Counsel might be of assistance in moving the matter forward.

**Costs to Your Client**

As noted above, dealing with a self-rep can increase the cost of the matter for your client. Self-reps often deal and negotiate from an emotional standpoint, and do not have the filtering mechanism that a lawyer brings to the table. While acting as counsel, we often advise our client of what is reasonable and unreasonable, what the law is on a particular matter, and speculate what the best (or worst) case scenario would be for our client, should the issue being negotiated need to go before a judge. The self-reps is at a disadvantage in not having counsel to help them with negotiations and rational decision-making, but this can result in your own client bearing the cost of going before the Court to deal with matters that might otherwise be settled. Even when matters are going well, you will find yourself drafting documents in their entirety, sometimes those that should be at the cost of the other party, in order to ensure they meet the standards of the Courts or the other agencies that may need to use them going forward.

Similarly, the costs related to communication often increases. Rather than picking up the phone to negotiate or relate information to the other party, you will find yourself writing more letters or sending more emails. What may have been a short call or an informal email to your colleague to discuss an adjournment or delay may become a letter or email, or a chain of letters and emails between yourself and the self-rep.

While your client will not be happy about the increased cost, it’s in your best interest to advise your client of those costs sooner rather than later. There is little that your client can do to reduce the costs of litigating with a self-rep, however, being aware early will help reduce the sticker-shock later on. Melanie Del Rizzo of Smyth Woodland Del Rizzo, advises that we should not shy away from