

HOW DO YOU GET YOUR FAIR SHARE: THE COURTROOM OR THE CONFERENCE ROOM?

By: John E. Finnerty, Jr., Esq.

Every case is different, so there is no universal answer to this question. However, everyone who is about to start the divorce process needs to be aware of the comment attributable to Lenny Bruce, the acerbic, satirical humorist from the 50's and 60's. In one of his commentaries, Mr. Bruce was quoted as saying: "In the halls of justice, there is only justice in the halls".

The divorce process ("the system") is rarely a friendly place. Litigants who are entering the matrimonial process should understand the dynamics of the system. They should understand that the system's primary concern is to move cases expeditiously. The system's priority is processing and concluding cases, not addressing the daily indignations or unfairness litigants feel that they experience at each other's hands.

Of course, there are great variations from judge to judge. After all, judges are people too and there is as wide a range of capacities and caring in the judicial population, as in the general population.

Regardless of the judge, there are times when a litigant has no choice but to bring the case to a judge for a determination. If your spouse will not negotiate reasonably, and gives an ultimatum or proposal that your lawyer thinks is not in the "range of reasonableness", then there is no real choice. To have a chance at a fair resolution, you must try your case, either before a judge, or if your spouse will agree, a designated arbitrator for whose services you pay.

When you decide to go to a judge, you must understand that judges have vast discretion. Frequently that discretion is exercised based upon the personal values, biases and upbringing of a particular judge. Principles of matrimonial law are general and broad enough that they can accommodate many diverse personal values. In other words, the same facts presented exactly the same way to two different judges, may result in two different decisions, both of which might be sustained on appeal.

Consequently, the more you can keep control of the case yourself and make your own decisions, the better off you generally are likely to be. Of course, there are some cases where the voice of reason is unilateral; one party understands what is appropriate and the other does not care. In those cases, you have no choice but to prepare thoroughly and carefully and to present your case to a trier of fact so that a determination can be made.