

FAMILY LAW RIPPLES

May 2007, Vol. 5, No. 2



About Family Law Ripples

Family Law Ripples is a bi-monthly newsletter focused on legal matters affecting families. It promotes resolving legal matters and responding to the resulting changes in family life with cooperation, connection and positive values. Please feel free to distribute copies of any of its articles to clients, friends, attorneys and others, with due credit to the source.

Re-Building Trust

What does the cold war experience offer to divorcing parties and litigants in other family matters? GRIT, that's what. GRIT is an acronym for graduated and reciprocated initiatives in tension reduction, a model developed by psychologist Charles Osgood to address the dysfunctional distrust between the U.S. and the U.S.S.R. during the cold war.

Trust, or rather the lack of it, between the parties in a family case occurs with some frequency. (See chart on page 3 for ways it could impact a family law case.)

For some of these parties, "trust" means a belief that the other person is honest or reliable. In that situation, mistrust means a question as to whether the other person is honest, a belief that the other person is dishonest, or a belief that the other person will act unpredictably and is not dependable.

For other parties, "trust" means a belief that the other person will take the party's needs and wishes into account, similar to the way that the other person would take into his/her own needs and wishes. Many intact families depend on this type of trust as one partner may defer to or delegate to the other partner decisions and acts which affect not only the partner but other members of the family unit.

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When mistrust results in realistic wariness, it can allow parties to set realistic limits on their dealings with the other party. For example, a party may feel that he/she can't trust the other party to be on time for a four way meeting. If being late is a characteristic of the other party, then there could be a ground rule that the one side of the case will only wait 15 minutes for the other side to show up – or there could be one arrival time set for one party and a later arrival time set for the other party.

Sometimes, however, the mistrust becomes entrenched and exaggerated. At that point, mistrust can prevent parties from reaching agreement on anything or even being able to engage in unilateral problem solving. An example of this severe level of mistrust is when one party discounts information provided by the other side even if it is fully documented by a third party – repeatedly requesting current updates.

Imagine how intractable such a conflict could become if there is mutual mistrust. Even a Court Order determining a legal issue, might not abate the harmful impact of severe mistrust.

Enter GRIT. In using this concept, Party A will tell Party B that he/she wants to work cooperatively together and wants to rebuild trust. Party A will state a specific, unilateral and unconditional act that he/she will perform, which can be verified, and invite a reciprocal response.

With regard to the documentation example above, perhaps Party A could say that he/she will give Party B a release to obtain information directly from the source which is good for six months, and invite Party B to confirm at the end of the period that the verification from the source tracked Party A's compliance with the Court Order. Party A must make sure that any promised act is in fact performed no matter what Party B's response is or even if Party B fails to respond.

One key element to re-building trust is patience. Trust requires reliability, dependability and predictability, from which develop a belief in the good faith of Party A. This belief takes time to form and typically results from repeated interactions between the parties. Many GRITs may need to be selected and performed over indefinite periods of time.

And there is no guarantee that GRIT will work. However, when the mistrust is severe and impacting an important aspect of the family and thereby the family law case, it may be well worth Party A's efforts to try to re-build trust.

For more on this issue see "Managing Distrust in Intractable Conflicts," in Conflict Resolution Quarterly, Vo. 24, No. 2, Winter 2006, at page 219.

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Selected Examples of Mistrust Impacting a Family Law Case:

Party B might generalize that Party A cannot be relied upon to be honest about anything – not just the issue(s) precipitating the mistrust.

The Party B might have a need to have factual representations made by the Party A confirmed by documents or substantiated by persons who made direct observations of the alleged facts. There might be a desire to obtain these verifications further back in time than might otherwise be requested in the case. There might be repeated requests for updates to verify circumstances occurring during the pendency of the family law case.

Attorneys might feel the need to use several formal discovery techniques to obtain information from both parties instead of relying on only one or informal information gathering. They might feel the need to involve more people in order to obtain cross-checking accounts of the facts. They might feel a need to write more letters to the opposing attorney to ensure clarity and "make a record" of events as each party understands them.

Attorneys might encourage the parties to be clear in their expectations of each other and follow through with the expectations. They might encourage the parties to generate agreements which involve less dependency on the other side in the future than in a typical case or give the parties separate obligations or rights instead of mutual ones. There might be discussions of consequences for failure to follow through on agreements.

Mistrusting parties might never feel that the information base for decision-making is sufficient and as a result, might not be able to reach any agreements.

A party might speculate as to what the "real facts" are and take positions based on those speculations.

Even if agreements are reached, the mistrusting party might not believe the mistrusted party will fulfill the agreements honestly; the mistrusted party might feel unfairly stereotyped.

Events occurring before or after the case is resolved, might be repeatedly interpreted by the mistrusting party with an overlay of mistrust. Offers from the mistrusted party which seem reasonable or generous might be viewed suspiciously and rejected.

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Short and Sweet: Booklets, Brochures, Etc.

Wondering how an early neutral evaluator is different from a custody evaluator? The Minnesota State Bar Association has published a summary guide to the different roles that attorneys and other professionals might play in a custody case. Included in the summary is a brief description of each role and when a party or attorney might consider using a professional in that role. To order see <http://www.minncle.org/MaterialsSearch.asp#Family%20Law>

Looking ahead to remarriage? Then the booklet "Building Your Stepfamily...a blueprint for success" might fit the bill. Order information can be found at <http://www.bccf.bc.ca/catalogue/index.php?cPath=26>

New to divorce and wanting an overview? The booklet "A Divorce Manual" sets out all the issues and general considerations that parties usually have as they consider whether divorce is the right step. See <http://www.aaml.org/files/public/Divorce Manual.htm> for an online version and ordering information.

Wish you were better at avoiding conflict over kids? Learn about the skills necessary to keep children out of the middle of parental conflict and try out seven awareness exercises to keep you focused on the needs of your children. "Taking the Conflict Out of Child Custody" is available from KIDS FIRST, 1527 Adams Avenue, Dunmore, PA 18509.

Interested in giving and getting cooperation in your case? See the brochure "How to Maximize Cooperation" which discusses techniques for keeping your divorce issues on the negotiating table. This brochure along with four others on family law topics is available from the Minnesota Chapter of the American Academy of Matrimonial Lawyers – contact barb@bestmeetings.com.

Quote of the Month

Not all who wander are lost. J.R.R. Tolkien

Family Law Ripples is published by Deborah N. Dewalt, 2412 117th Street East, Lower Level, Burnsville, MN 55337. Telephone number 952-895-5543. Persons interested in receiving the publication should provide their name, address and e-mail address to the above telephone number.

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