

“THE THREE HORSEMEN OF THE FAMILY COURT – *ANIMOSITY, MISTRUST and CONTROL*”

If you practice family law in South Carolina, then you’ve been introduced to these three specters seated between your client and you inside a family courtroom or at the mediator’s table. They are your three worst enemies in a courtroom or at your clients’ mediation, and you’ll *never* beat them...unless, that is, you’re clever enough and insightful enough to realize you were the one who invited them to this party...or you did nothing to prevent their attending.

They will stand in the way of your conversations with your clients. They will prevent all manner of rational and reasonable settlement discussions. Like a poltergeist, they will whisper controversy in your client’s ear and interfere with the presentation of your case. They will cause you to be second-guessed by everyone inside the courtroom - the judge, the other attorney(s), your own client. You will become victimized by them, vilified by them, cursed by them. You may even lose sleep over them and, perhaps worse, you will certainly *lose* money (not make money) because of them.

And this will happen in every divorce case you accept and in every divorce case you will mediate or litigate.

Let me introduce you to ***The Three Horsemen of The Family Court.***

Seated to your right is ***Animosity – Horseman Number One.*** I’m sure the two of you have met...many times. *Animosity* drove your client to your office. It introduced your client to you, and, in fact, during your initial interview, *Animosity* was the voice of your client. *Animosity* answered all of your questions, and when, in responding to your client’s/*Animosity’s* questions, you said all the right things (necessary to fuel that emotion), *Animosity* convinced your client to pay you a retainer fee. It didn’t matter to you at the time whether you would be clever enough in the end to protect your client’s financial future and his/her interest in obtaining child-related relief.

The problem is, *Animosity* doesn’t give a damn about those things.

The end game for *Animosity* is not financial or familial...it’s about vindication, and not just your run-of-the-mill vindication. No, no. *Animosity* has retained you to make certain that the hurt you’re going to inflict on the other spouse or parent lives on well past your client’s day at the mediation table or in court.

Here are just a few “suggestions” to help you feed *Animosity*.

- At your initial interview tell your client you “understand” how he or she must “feel” (angry, bitter, hurt). Your client will immediately (and permanently) perceive that you’re his/her confidante and ally instead of a counselor at law. Perfect fuel for the fire.

- Then, when you're preparing affidavits for your client, get as many as you can from relatives and others who will describe what an SOB the other spouse/parent is. (Don't worry that the judge will neither have the time nor the inclination to read all of them. To your client, it's the volume of the materials that matters most, not the content. Also, the other side will have plenty of time after court to read all of them.)
- Make sure during the other spouse's/parent's deposition that you focus on the "fault" aspect of the relationship (don't worry about the financial part...you can always subpoena that stuff).
- If the other side makes you an offer, make sure that the first words out of your mouth to your client are "it's entirely up to you whether you want to take it or not...I'm ready to try your case...and I'll be honest with you, I don't like him/her or his/her attorney"...or words that have that similar effect. (*Animosity* also feeds on equivocation.)
- Take only the "bare bones" amount of time to prepare for the mediation, and make certain your client hears you tell the mediator what you're capable of "bringing up" about the other side if the case does not settle.
- When you get to court, call as many witnesses as you can to testify about the other spouse's/parent's "most important" characteristics, like alcoholism, drug addiction, unfaithfulness, laziness, meanness, narcissism.

Animosity will encourage you at every turn, and will applaud your courtroom pandering and flair.

[Just a quick word of caution here: Family Court judges don't give a damn about *Animosity*. Judges just naturally assume that if your client is sitting inside a family courtroom, *Animosity* probably had something to do with that.]

Now, seated to your left is ***Mistrust* – Horseman Number Two**.

Mistrust loves to observe, but not to participate. *Mistrust* just really enjoys weaving in and out of everything, and its favorite words spoken by your client are "I don't know anything about that", or, "he/she always kept that from me", or, "I don't know where everything (or anything) went...it's just not here now", or the best yet, "he/she was always secretive about that stuff, and at the time it didn't matter to me". Or..."I don't trust him/her with the kids...the kids told me things about him/her which now bother me".

When the time is right – and rest assured there will be a "right time" – *Mistrust* will swoop in at every opportunity to blunt any progress you feel you're making in your case. Let me give you some "examples":

- You'll get a discovery order and the other side will produce all the parties' income tax returns for the past (five?) years. You'll show them to your client who will tell

you that all the information in those returns “makes no sense to” her/him...”I just signed them, I didn’t read them...I trusted him/her then”.

- You’ll throw out subpoenas like confetti and a treasure trove of salary information (if the other side is employed by some company/agency) and stock information and credit card information will come flowing in. You’ll spend hours with your client reviewing and analyzing everything. You’ll tell your client what you believe the financial status of the marriage has been, and *Mistrust* will tell your client to respond “that can’t be right...he/she did a lot of business in cash, hid a lot of money somewhere”, and “you’re the attorney...I’m paying you to find out about all this stuff”.
- You’ll tell your client that you want to hire an “expert” financial witness (forensic CPA, business analyst, accountant) to review all the information and materials and provide an analysis that you can present in court or at a mediation. You tell the client this will be expensive, but it’s absolutely necessary. Your client is hesitant to spend the money and remains convinced (by *Mistrust*) his/her spouse and his/her family are too clever, and the client is certain there are “hidden assets” everywhere.

You can *never* convince a client/*Mistrust* that the other side has offered or presented or told the truth about anything...period. Progress at mediation or in settlement discussions takes a back seat to *Mistrust*, and so do you.

Now, finally, please meet ***Control*** – **Horseman Number Three**.

Control is the perfect “sword-and-shield” in divorce or custody litigation. It’s the “sword” being used effectively against you when your client tells you that he/she has always been belittled or maligned by the other party; that your client has been made to feel marginalized or trivialized during the relationship, and that to “get along”, he/she simply ceded all decision-making to the other party. *Control* is the “shield” when your client tells you he/she will have to rely solely upon you for advice and for “the best way to handle” the other party; your client wants you to now become the decision-maker (in other words, for you to take “control”).

But *Control* is the cleverest of the “Three Horsemen”, because you will *never* know when *Control* will reverse course and turn against you. *Control* will make sure that any reasonable settlement offer is rejected by your client’s suspicions that the other side would never make such an offer if there wasn’t some way to control how the parties will relate to one another in the future, or co-parent their child, or divide their assets. *Control* will blunt, if not terminate, any forward progress at mediations. *Control* is the “leader of the band”, while *Mistrust* observes, smirking and nodding approvingly, and while *Animosity* sits there silently and stoically).

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