

# Settling the High-Stakes Case: Q&A with Joy Feinberg

## **What do people with high profiles and substantial assets at stake look for when they're choosing a family lawyer to represent them? Is the firm as important as the lawyer?**

Most high-profile individuals with substantial assets really want to keep as much privacy as possible, and just as much control over what's going on with their own case.

Is the lawyer important? Absolutely. The lawyer is a critical piece of what you have: how creative the lawyer is, and how much emotional and psychological assistance as well as legal advice the lawyer can provide to help achieve the client's goals is always something the lawyer brings as an extra added feature to any type of case. In high-profile cases, especially where you're dealing with intelligent people who have made their own money, you have individuals who respect the intelligence and that special sauce that a very insightful attorney brings to a case.

Then there are the other types of people who are very wealthy. Inherited wealth cases are far different from people who have made their own money. How you handle those types of people is something that you learn from experience and understanding human nature. It's very important to understand who your client is and it's very important for the client to be comfortable with the attorney they choose; it's important that the attorney is not only knowledgeable, creative, and respected, but also helps provide all sorts of different scenarios from which to reach the goals of each client.

Is the law firm important? Yes, it's also very important. It must be large enough to have the security needed to ensure your information is kept private.

## **What kind of personal characteristics and professional experience do you need to be successful at handling high-stakes divorce cases and clients?**

You need to have an understanding of human nature and a very evolved sense of what the law is, and what is possible in the case. You need to have an understanding of the real goals of your client, whether they are stated or not stated, and how to meet both of those sets of goals.

You must also have a really good understanding of finance, taxes, and a strategic plan for how to achieve goals. A lawyer who just allows a case to continue without directing it is not a good lawyer.

## **As a family lawyer, what do you have to bring to the game to win a high-stakes case? How is this different from a "normal" case?**

You need to bring a respect that comes from many years spent in the courtroom and from everybody knowing your reputation - that you're not somebody who's going to back down easily; that you're going to make sure you have all the facts; and that you've used the best professionals needed. To assist in an analysis of this type of

case, you need to understand the tax strategies that can bring an added benefit to any type of division. It can spell disaster if they're not considered.

If your reputation is that you're thorough, honest, and somebody who knows where you're going in a case at all times, then you are going to be taken seriously, as will your client's actions. Believe me, if you end up in the judiciary and in the judicial system as opposed to private mediation, the judges take the high-end cases and treat them much differently than they do the average case. They understand that at any given moment they could be in the newspaper, or that at any moment the case could go up on appeal – on either temporary issues or after the trial is over. They're very cognizant that there's enough to be dealt with here and you better bring your very best game. It's important who you choose to take with you into the arena when you're going through this type of arrangement; you must have somebody who's competent, intelligent, and qualified.

**What are some of the creative options you've suggested or included in settlement agreements that are unique to such cases?**

Sometimes you realize that you're fighting more about emotion than you are about the money. One of the options, which I have used twice and really enjoyed, is taking a chunk of money that people couldn't decide upon and creating a foundation. There's so much need in the world for charity, assistance, and help. That's been a strategy to ameliorate the anger or resentment of somebody having too much.

Other strategies are considering the best tax actions you can take to divide property; making sure you're not taking low-basis property; making sure that you use, to the best extent possible, any tax loss carryforwards; making sure that you value those assets; and making sure everything has been included when you have intellectual property rights. It depends on the individual case as to what creativity and what financial strategies you can use to make things interesting, fair, effective, and achieve resolution.

**Are these cases taxing for every family attorney or do some attorneys thrive on this kind of work?**

Frankly, I think it's both. I love what I do, but it can be frustrating and aggravating. It can be challenging – you can have your stomach turning - but all of that makes you give it your best, and do your best to achieve things you may have thought were not possible.

To be a really great divorce lawyer, there has to be part of you that likes stepping out on the precipice with one foot hanging over the edge. The other part of it is that there's stress in small cases and there's stress in large cases. Money is money and it motivates everyone. But when you're fighting about children it can be as devastating and as stressful as any other type of case - even in cases where there isn't a significant amount of money. This is not a stress-free field of work.

**How do you set boundaries with a high-conflict client, particularly one who may have a personality disorder such as narcissistic, borderline, paranoid, etc.?**

It's difficult when you label people with those types of labels. You first of all need to treat people with respect. When you stop respecting a client, you're not going to make any progress with them whatsoever.

Maybe there are some types of cases that the attorney isn't particularly good at because the type of client is somebody who he or she can't work with. You find yourself in some oil and water situations. However, when you have a client who's narcissistic, you understand that you have to make sure the client always understands that you're on their side and you see their point of view. You try reaching out to the very best part of that person to get them to do the right thing.

With something like a borderline personality disorder, once the client turns on somebody, there's no going back. Those people are very tough to deal with and you try to see if you can make it through to the end. You may not be the attorney that's there at the end of the case, but you may have provided the guidance that was needed to take it through to conclusion. It all depends on what type of individual it is and what type of person you can work with.

Most of the labels given to people are exaggerated, but from time to time there are some people who are very difficult to work with. You do the best you can, but if you're not the right person for a client, then you tell them that you are not.

### **Do you have any strategies for when your client's spouse is the high-conflict person?**

You try to do a tightrope walk: you have to say, "I'm strong enough to stay here and I'm strong enough to stop the client from going on," but you are not going to create problems where you don't need to and cause that individual to start spiralling. Once they start to spiral, things go out of control for a very long period of time. You need to establish that you are not to be messed with; then you can maybe move forward, but maybe not.

If you were to look at a political situation today, everyone is talking about how we have to reach across the aisle and work together, but nobody is doing it. People do get upset if you can't work with the other side. In most cases, they want to see that you're able to do so. It's a balance of having strength and demonstrating that you will use strength when needed, but not forcing issues that are of no consequence.

### **How do you keep the stress of high-conflict cases from bleeding into your personal life?**

It's difficult. High-conflict cases are very painful to participate in when you're not fully centred. You need to let go of everything else and walk into the case saying, "I need my best Zen." That's the way I put it. If I don't stay centred, then everything will explode. There's always that possibility of an explosion, but the louder somebody gets on the other side or the more somebody starts demanding things that are unobtainable and irrational, the quieter I like to get and the calmer I stay. Eventually, it's unnerving to the person who is trying to bluster their way into something. It's a steeliness that you have to maintain.

It's hard to do, but I've learned with time that the best thing I can do is stay utterly calm and let the spin continue until it wears itself out. It's like watching a tornado; eventually the winds dissipate.

**Do you think litigation or alternative dispute resolution, such as mediation and collaborative law, work better in terms of settling high-stakes cases?**

It all depends on the individuals, from what I have seen over the last 10 years. There has been a substantial rise in collaborative law and mediation outside of the courthouse. People want to maintain control over their own destiny and they want to do it with individuals who can guide them with intelligence, rationality, and speed, and who have the time to deal with the individual.

The true appeal of private mediation is that you can schedule a full day or two. You can bring in experts and everyone can give it their full attention - the attorneys, the parties, the experts, and the mediator. By having that focus and attention, you finish far more quickly and without the slowness, without what I call "garbage motions," and without the frustration that you find within the court system.

Mediation doesn't always work; collaborative law doesn't always work. But I would say at least 90% of the time it does work in cases where people are intelligent and have enough money to say, "I don't want somebody who makes \$100,000 or \$150,000 a year telling me what I'm supposed to do, how I'm supposed to spend my money, what's appropriate, and whether or not I get to continue with the private jet."

There's a whole different world out there in high-end divorce cases where a public servant might not be the best person to deal with your individual case. I see alternative dispute resolution as rising and, ultimately, it is going to be the leading force in divorce.

**Is alternative dispute resolution possible when one spouse is very high conflict?**

It is if you have the right mediator or the right arbitrator. One type of alternative dispute resolution is arbitration, which is far different than mediation because somebody does make a decision - but if you have somebody who can centre themselves and stay on issue, then the person who tries to spin out of control has lost their power.

If you have a judge or any person who gets really angry, that high-conflict person is going to be able to wreak havoc for some period of time. Those cases are very, very difficult. It's not better or worse, but with arbitration you might have a better choice of an individual who is more capable of dealing with somebody who likes to manipulate, irritate, and aggravate.

**Every young attorney dreams of really high-stakes or high-profile cases; it's either going to make them a lot of money or build them a great reputation, but is this kind of work really for everyone?**

I don't think every lawyer has the knowledge or ability to handle this on their own. Lawyers need to understand that when they have cases that require more knowledge than they themselves have, they need to bring in somebody who's more seasoned and has the ability to work with and guide them in these situations. Most

lawyers do that so they can properly handle things and not be charged with having neglected or not handled a case properly.

In high-stakes cases where you have a lot of assets, your liabilities can be huge. Malpractice awards can be massive. A really good younger lawyer who's not that experienced and hasn't been with a big firm where they've worked on these types of cases will usually work with somebody to help guide them.

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