

Importance Of Cultural Competence In Divorce

September 23, 2014 | by Jhanice Domingo

In order to truly advocate for clients from diverse cultures and backgrounds (hereinafter “diverse clients”) involved in divorce litigation, it is important to consider and understand various factors that may impact the case in a cross-cultural context:

- (1) the recognition of U.S. divorce decrees in foreign countries;
- (2) the norms and values of different cultures; and
- (3) the various family dynamics and structures within different cultures, among other things.

Without adequate consideration and understanding of these factors, relevant facts may not be properly elicited and important issues may be overlooked and ignored.

Recognition of Divorce Decrees in Foreign Countries

Today, some countries, like the Philippines and Vatican City, still do not recognize divorce as a means of dissolving a marriage. Thus, it is critical for diverse clients to know the legal consequences of this reality. For example, a person married in the Philippines and divorced in the United States may need to take additional legal action (i.e., annulment proceedings in the Philippines) in order for the dissolution of his or her marriage to be recognized by Philippine law. Additional legal action may be required even if he or she is a permanent resident of the United States and properly obtained a divorce decree in our country. Furthermore, if marital assets located in the Philippines are equitably distributed by virtue of a judgment of divorce, albeit properly obtained in the United States, additional legal action may still be required in order to enforce and effectuate the equitable distribution of assets located overseas.

Norms and Values of Different Cultures

An understanding of the norms and values of different cultures is important in order to develop a pragmatic plan for separation or divorce of diverse clients. For example, while it is well-known that domestic violence occurs among people of all races and cultures, the disclosure and prosecution of domestic violence have underlying consequences unique to diverse clients.

Some cultures, to this day, still do not view physical and/or emotional abuse perpetrated by a spouse as acts of domestic violence. Some diverse clients believe these acts should not be disclosed to a third party, let alone an attorney. Sometimes, the pressure to remain silent and keep the family's "dirty laundry" a secret comes from family members, community and religious elders, etc., making it more difficult for diverse clients to come forward out of fear of being shunned by their own family, community and/or religious group. In other cultures, it is considered disrespectful and again frowned upon by the community to say anything negative about one's spouse. In these communities, a cause of action on fault grounds, although truthful, may not be acceptable to the diverse client. Thus, it is important for diverse clients to be asked the right questions to elicit information about physical and/or emotional abuse, and other issues that will impact the course of the litigation and the protections that must be considered.

Another attendant circumstance of domestic violence unique to diverse clients is possible immigration consequences. It is important for diverse clients to be properly advised of the legal ramifications of a charge of domestic violence and/or other related offenses to their immigration status and/or future applications for permanent residency in the United States, deferred action, U.S. citizenship, etc. On the other hand, proper reporting of an act of domestic violence may assist the victim in obtaining permanent residency on his or her own.

Cultural and religious perspectives on "what's fair" also must be considered. Because of their cultural and/or religious upbringing, some diverse clients may not fully understand that they have a right to certain assets acquired during the marriage because of a (false) perception that they did not make a financial contribution to the marital enterprise. For example, some diverse clients believe that since they did not work outside of the home during the marriage (instead stayed home caring for their

spouse and children), that they have no legal right to share in their spouse's good fortune and/or assets acquired during the marriage because their non-economic contribution to the marital enterprise was simply an act of fulfilling a cultural and/or religious obligation. The opposite is also true — the (false) notion that the higher-income spouse does not have any legal exposure to be ordered by a Court to contribute to the support of his or her spouse and/or to divide marital assets. It is therefore important for diverse clients to understand the factors that a Court will consider in determining support and equitable distribution, which may be quite contrary to their perception of "what's fair" based upon the laws of their community of origin, their cultural perspectives, and/or their religious beliefs.

Various Family Structures within Different Cultures

Family structure varies within different cultures. Thus, in developing custody and parenting time plans for diverse clients, it is often problematic to simply apply the same family structure of the Western world. Many cultures share child-rearing responsibilities with extended family - aunts, uncles, siblings, grandparents - who sometimes live in the same household. As such, it is important to be culturally sensitive to the roles that extended family plays in child-rearing. Developing a plan that properly considers the intended upbringing of children of diverse clients, and familiarizing diverse clients of the rights of grandparents in applicable cases are paramount.

New Jersey, already a highly diverse state, is projected to soon join Hawaii, New Mexico, California and Texas, to become the next majority-minority state in our country. According to the 2010 census, New Jersey's population consists of approximately 8.8% Asian Pacific Americans, 14.6% Blacks/African Americans and 18.1% Hispanics/Latinos. The changing landscape of our state requires law firms to respond to the needs of diverse clients. Cultural competence and sensitivity are paramount for effective representation of diverse clients in legal matters. Divorce cases are no exception.