

Domestic stress during COVID shows need for change in family courts

Dec. 11, 2020

Opinion // Open Forum



Throughout the pandemic, we have seen the effects that COVID-19 has had on families across the country. But little attention has been given to the increasing rates of divorce and domestic violence, combined with the decreased access to family courts with long delays. Which makes now the perfect time to make some long-overdue changes to the divorce process that will benefit the system in the long term.

Personality disorders are a huge and largely unrecognized problem in society and they are dominating our family courts. With the additional anxiety brought on by COVID, people with these disorders act worse, not better. The diagnostic manual for mental health professionals suggests that 15% of U.S. adults have at least one personality disorder. Those with so-called Cluster B personality disorders (narcissistic, antisocial, borderline, histrionic) are considered to be erratic, emotional and dramatic. A recent study on interpersonal dysfunction in personality disorders found that they

specifically impact relationships “with one’s children, parents, peers, and romantic partners” and are particularly “domineering, vindictive, and intrusive.”

Recently, a study by Santa Clara University School of Law found that these personality disorders are a big part of what drives high-conflict cases in family courts — the ones that drag on for years, with stacks of paperwork, numerous lawyers and judges, crushing financial and emotional burdens for parents, and constant distress to their children. In many of these cases, one parent loses their relationship with a child because of alienating behaviors. In extreme cases, this can escalate into homicide and suicide.

The Santa Clara study found that, in particular, those with narcissistic personality disorder fundamentally “thrive on conflict” and their dysfunctional behavior “is amplified by the traditional civil process.” This is because those with high-conflict personality disorders are preoccupied with blaming others and take zero responsibility for their own behavior. They see all relationships as adversarial.

When you put these adversarial personalities in the adversarial legal process, you get endless adversarial behavior. This won’t stop until family courts handle most of their cases in non-adversarial ways and more effectively set limits on people with high-conflict personality disorders.

Here’s how this can be done:

Skills Before Decisions

Family courts should require potentially high-conflict families to learn new conflict-resolution skills from the start of a case, in small steps in a structured, repetitive, non-blaming manner — much like substance abuse treatment programs — before big decisions are made. These skills can be taught online by counselors, classes or recorded interactive programs, such as the *New Ways for Families* method. While about half of high-conflict

families have only one high-conflict person, it benefits both parents and the children to practice the same conflict resolution skills.

Professional Family Mediation

Family courts should require most of the parties to make serious efforts to resolve their separation and divorce decisions (parenting, finances, etc.) in non-adversarial processes, such as in professional family mediation or negotiation with collaborative professionals, before turning to a judge.

When required to overcome their high-conflict urges, most of these cases can be resolved through these non-adversarial processes, especially when the parties have had proficient skills training.

Problem-Solving Family Courts

With more family-court cases being diverted into non-adversarial approaches, family courts will be able to focus more deeply on understanding and managing the patterns of abuse, deception and blame of the most high-conflict personality disorders. In reality, today's family courts are becoming family *behavior* courts, with hearings primarily on domestic violence, child abuse, substance abuse, alienating behaviors, lying about finances and false allegations of all kinds. They need to adapt the approaches of modern problem-solving courts, such as Drug Courts and Mental Health Courts, which focus on identifying behavior problems, ordering treatment for minor offenses, providing ongoing supervision and imposing consequences as needed.

The Santa Clara study said that family law professionals — lawyers, judges, and experts — need training in recognizing and managing the predictable patterns of high-conflict personality disorders. Armed with this knowledge, judges will know the right questions to ask and provide appropriate orders for treatment and/or more consequences for misbehavior. Lawyers can look for and present more useful evidence of harmful behavior patterns. Experts

can better explain personality disorders and how likely (or not) they are to change.

Family courts need to rein in the extreme behavior of those with personality disorders, require skills training or treatment for those who can change, and protect family members and society from those who cannot. With the family stresses of COVID-19, these changes should happen now.

Bill Eddy is a lawyer, therapist, mediator and co-founder of the High Conflict Institute. He is the author of several books including "Splitting: Protecting Yourself While Divorcing Someone with Borderline or Narcissistic Personality Disorder."

Sign up for the Opinion Central newsletter

Hard-hitting views from The Chronicle's Editorial Board.

By subscribing, you agree to our [Terms of use](#) and acknowledge that your information will be used as described in our [Privacy Policy](#).