

# The New York Times

NEW YORK, SATURDAY, JANUARY 6, 1996

## Divorce, New York Style

By Raoul Lionel Felder

Invoking Section 170 of New York State's domestic relations law, each year some 28,000 unhappy husbands and wives bring their marital and family disputes to the New York State Supreme Court.

Section 170 speaks of "cruel and inhuman treatment" between spouses. Little did litigants imagine that, as of Jan. 1, they would be subjected to even more such treatment — this from an unlikely source, the judicial system itself.

The cause of this embarrassment is a directive from E. Leo Milonas, the chief administrative judge, transferring three judges who have presided over 90 percent of Manhattan's divorce cases for years to other parts of the court system. Three other judges have replaced them.

This needless exchange came about

*Raoul Lionel Felder is a divorce lawyer.*

solely because a group of divorce lawyers complained about one judge, Justice Phyllis B. Gangel-Jacob. Afterward, 39 lawyers signed a letter supporting this fine judge. As it happens, she was due for regular rotation, and her transfer was announced. Then, court administrators, seeing that they might be perceived as knuckling under to disgruntled lawyers, delayed the transfer. In a face-saving move, they wound up transferring her and two other judges.

There would be little fuss now if the departed judges — Justice David B. Saxe, Justice Lewis R. Friedman and Justice Gangel-Jacob — could have finished the cases they had started. But they were allowed to take only the nearly one dozen in which trials were already under way.

By my estimate, the three judges left behind perhaps 3,000 cases affecting possibly 15,000 people (including the litigants' children). Now the litigants will be forced to suffer delay and emotional strain. Going back to square one, they will have to pay additional lawyers' fees.

Under court rules, judges must have a personal conference with litigants within 30 days of the date a case is assigned to them. The new directive means that a litigant, having connected personally with one judge, will be shuffled to another. That is only the beginning.

In custody and drawn-out matrimonial cases, the judge has presided over many conferences and motions — has, as it were, taken the temperature of the case and gotten to know the players, the facts and the dynamics. In some cases, the judges have been involved in settlement discussions and have begun to piece together settlements. In one case, for example, there has already been a hearing on an apartment and a partial settlement reached.

Sometimes minutes of the proceedings are not complete, or even taken, and lawyers depend on a judge's recollection about what was agreed on, or even stated, in court or at a conference. In some custody disputes,

judges have had many conferences with the children and the parties; now, the families face yet another ordeal.

Moreover, judges appoint experts whose opinions they trust: a psychiatrist, a specialist in appraising a business or real estate. The new judge may be uncomfortable with that appointment. Hence, more delay and expense.

The problem now is how to undo the damage. It is unrealistic to expect the court administration to do an about-face because the switch of judges has already been made. But the decision's effects should be softened.

Even if a trial has not begun, the three departed judges should be allowed, with the consent of the new judges, to take the untried cases with them, incorporating them into their new caseload. In addition, the procedure for complaining about judges and replacing them should be rethought so that the unseemly spectacle at the State Supreme Court should not be repeated. Litigants and the legal system itself deserve better. □