



A collaborative assessment of the value of forgiveness in a litigation practice

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Eileen begins the discussion

It is not unusual for a plaintiff's lawyer to encounter clients whose anger clouds their judgment and prevents them from making good decisions, much less a good impression. After all, every plaintiff is a person whose well-being has been disrupted by the actions of another. Plaintiffs need monetary settlements but sometimes also need peace and closure on what may have been one of the most difficult experiences of their lives.

Forgiveness has the potential to introduce an element of humanity and healing that has been absent from the legal field. This is vital when many in society hold cynicism and mistrust towards the legal system, and many lawyers report great dissatisfaction with their jobs, wishing for careers more in line with their values.

In the past several decades, a severe crisis in the legal profession has been well documented, one that includes widespread burnout, career dissatisfaction, and high rates of alcohol and substance abuse, divorce, depression, and suicide. These problems are reversed when lawyers adopt a new approach to law that embraces "(1) a desire to maximize the emotional, psychological, and relational wellbeing of the individuals and communities involved in each legal matter; and (2) a focus on more than just strict legal rights, responsibilities, duties, obligations, and entitlements. (Daicoff, *Law as a Healing Profession*, 6 Pepperdine

Dispute Resolution Law Journal 1 (2006).)

By recognizing the larger issues implicated, plaintiffs' lawyers have the opportunity to restore dignity and leadership to the legal profession, and to fulfill the highest ethical duty of a lawyer: To serve the best interests of the client.

What is forgiveness?

Forgiveness is a decision not to pursue resentment, retribution or revenge. It means letting go of the desire to blame and the need to be right. It enables a person to make peace with painful things that have happened or are happening to them. At the same time, there are many misconceptions about forgiveness, including the following:

Forgiveness is a sign of weakness.
Forgiveness isn't for the weak. It takes courage to forgive. Archbishop Desmond Tutu put it like this: *Anyone who thinks forgiveness is weak hasn't done it.*

Forgiveness means what happened is ok.
Forgiveness does not mean poor behavior is condoned or excused. Nor does it negate the need for accountability and justice, or the right to seek reparation and wholeness.

Forgiveness means I have to forget what happened.
Forgiveness does not mean living in denial. It is important to fully acknowledge what occurred and learn from the experience, in order to make sure it doesn't happen again.

The other person doesn't deserve to be forgiven.
Forgiveness is not done for the other person. It is done solely for the benefit of the one forgiving. It enables the release of toxic emotions that are

incredibly destructive to one's health and well-being.

A person should forgive.
Forgiveness is a choice, one that each person must make for himself or herself. Sometimes, people need time before they are ready to forgive, and it's not something that should be rushed or forced.

Forgiveness means reconciling with the other person.
Forgiveness and reconciliation are two different things. When forgiveness occurs, it can open the door for reconciliation, but it is possible to forgive without reconciling.

Some things are simply unforgivable.
We often resist forgiveness on the grounds that what happened is too egregious to be forgiven. Forgiveness expert Fred Luskin says *nothing is per se unforgivable*:

Our major obstacle is not the offenses themselves but the lack of tools with which to work. We only imagine it is the nature of the offense that is unforgivable. However, if any of us look around we will find people who have forgiven the very same offense.

What if the other person won't apologize?

While bilateral forgiveness requires an apology or show of remorse, *unilateral* forgiveness is always available. We all have the ability to forgive at any moment, without any pre-conditions. The other person does not need to apologize, be available, or even be alive.

Few people realize the high price they pay when they *don't* forgive. In the past 30 years, there has been extensive



scientific study showing that holding onto anger and resentment takes a serious toll on our physical and mental health. Scientists have demonstrated that just thinking about a conflict or grudge increases the risk of heart attack, cardiovascular disease, stroke, diabetes, and a myriad of other serious diseases. At the same time, chronic stress weakens the immune system and can give rise to depression and psychological disorders.

Conversely, many of the leading medical institutions in the United States, including Johns Hopkins Medical Center, the Mayo Clinic, and the University of California San Francisco espouse the benefits of forgiveness and note that these benefits seem to increase with age, including:

- Healthier relationships
- Greater psychological well-being
- Less anxiety, stress, and hostility
- Stronger immune system
- Improved health
- Higher self-esteem and less depression
- Clearer thinking and creativity
- Increased hope, trust, happiness, and gratitude

When do you consider forgiveness?

While it is important for plaintiffs' attorneys to understand the relevance of forgiveness in legal disputes, this is not to say that forgiveness will be appropriate in every case or with every client. That is certainly not the case.

Forgiveness is most likely to have relevance for a client when some or all of the following factors are present:

- The client has suffered a particularly deep loss.
- The client's anger is getting in the way.
- He/she is unable to participate effectively in mediation, deposition, or settlement discussions.
- The client's suffering seems disproportionate to what occurred.
- The client's resentment is over an event that happened long ago.

Forgiveness can help the client resolve intense emotions, think clearly, and make smart settlement decisions.

By defusing intense emotions, it can enable the client to make a better impression in mediation and be a more effective witness at deposition or trial. The client who forgives is likely to be easier to work with and, ultimately, happier with the results.

At the same time, forgiveness will be of help to the lawyer when some or all of the following factors are present:

- The lawyer is burned out by legal practice, chronically stressed.
- The lawyer's anger is greater than the client's.
- The lawyer is embroiled in his/her own conflict(s).
- The lawyer suffers from depression and/or addictive behavior.

Lawyers who practice forgiveness are better able to align their work with their values, feel energized by their work, attain greater career satisfaction, and achieve work/life balance. They are also better able to understand the emotional nuances of cases, which enables them to be more creative and effective.

How does forgiveness apply to litigation? Barbara's thoughts.

We lawyers have a professional responsibility to act in our clients' best interests. Representing plaintiffs, we often think that obtaining the most money is the goal. While this may be true to a great extent, sometimes what is in the best interest of our clients may be to resolve the case before trial, or before litigation has begun, even if this results in a smaller dollar recovery for both clients and us.

Several years ago, I attended a workshop on "Forgiveness," thinking that being able to forgive would help my clients. I had noticed that some clients still suffered even after they "won" their cases. They were not able to let go of the pain of the case, regardless of what settlement was achieved. I wanted to know if there was something else I could do for clients to help ease their suffering besides getting them a monetary award.

In this workshop, I learned that "forgiveness" does not mean that one condones bad behavior or minimizes pain, but that one can actually let go of feeling pain, anger, and victimization. If one could do this, one could make better choices and move on with one's life.

I then started reading about forgiveness, taking more trainings and doing forgiveness work myself. Through working on myself, I learned that while I do not generally think of myself as a victim, I too was holding on to hurt feelings as a result of bad things having been done to me and some instances in which I did not forgive myself for the way I handled a situation. The more I worked on myself, the more I came to see how I could incorporate the principles of forgiveness into my work as a litigator and as a mediator. Now the power of forgiveness informs all of my work. There is no going back to the old ways; I have been transformed.

Here are some examples of how elements of forgiveness have affected my litigation and mediation work:

Commercial

In a several day, multi-million-dollar commercial case I was mediating between two former business partners, defendant offered a very large settlement figure and even apologized for what he had done. To everyone's surprise, plaintiff rejected the offer. Plaintiff told me that the money and apology would not satisfy him. He was so angry that he wanted to bankrupt his former partner and put him out of business. The litigation process had fueled his anger, and his emotions had taken over the mediation and settlement negotiations. Attorneys for both sides were frustrated.

Towards the end of the day, with the permission of plaintiff and his attorney, I met with the plaintiff alone. I am not a therapist or psychiatrist, but through my own experience, I thought there may have been some "back story" that was causing plaintiff to hold on to his anger and to sabotage his opportunity for an excellent settlement.

After plaintiff worked with me for a little over an hour, he discovered that what was preventing him from settling



was that he was actually angry with himself. He wanted to make sure the defendant was seen as the “bad” person so he could remain the “good victim.” By remaining the “victim,” he could continue to avoid taking responsibility, and remain perceived as the innocent.

Once he realized that he was angry with himself, he was ready to resolve the case and to consider forgiving himself. He realized that his severe anger with his partner was partly fueled by his embarrassment about not having put certain agreements in writing and not vetting key employees. He was not forgiving himself for his part in the breakup of the once successful company. Once he was able to see his part and acknowledge his anger with himself, he could move on.

When he left the mediation, he realized that he still had some work to do on himself, if he became willing to do so. He accepted the settlement offer and the apology. He considered forgiving his former partner and, more important, himself.

In this case, I knew attorneys for both parties well and they felt they had nothing to lose in trusting me to try something new to resolve the case. Plaintiff was willing to meet with me alone because we had already worked on this case for a couple of days, and he knew that I was not taking anyone’s side. Both parties benefited from plaintiff’s willingness to consider forgiveness.

Sexual abuse

In a sexual abuse case in which I represented plaintiff, settlement was thwarted by my client’s desire for revenge. My client felt like the victim. She wanted to go to trial to regain some power over her life, and the only way she saw to stop being a victim was to publicly expose her former boyfriend. She felt that if the judge and jury could see what a bad person he was and punish him, then she would feel powerful, and would have achieved justice. We had a skilled mediator who helped plaintiff feel some power in confronting the defendant, who made a generous

settlement offer. The case did not settle at the mediation.

We had a strong case. I was concerned, though, that the experience of a trial might cause more emotional damage to plaintiff. She thought that settlement meant that she was “giving in” and therefore losing power. She believed she could feel power only by making defendant suffer publicly, and she did not see that power was within herself. After many discussions, my client allowed me to meet with her therapist. Together, we worked on a plan to help plaintiff forgive the former boyfriend, and let go of the power his behavior still had over her.

She was able to walk away from this situation and this lawsuit with a very good settlement. She felt that justice had been done. She was not forced to make her intimate life public at trial, and she could focus her energy on feeling more powerful. Forgiveness for her did not mean condoning defendant’s behavior or refusing a high settlement. She recognized that she could be powerful by forgiving, by letting go of the power her hurt and anger had over her life.

Tree and view dispute

In mediating tree/view cases, what often fuels the dispute is not always the obvious issues of the rights of neighbors to have views or to keep their trees. Sometimes, just acknowledging the presence of anger, of hurt feelings, of misunderstanding, or perceived victimization helps to soften rigid positions.

In tree cases especially, having each party physically “see” the views of the other is helpful, as it helps the neighbors view each other’s cases. I have each side literally stand in the yards and homes of the other party to get a feel for the importance of a view, or privacy, or a tree’s beauty. As a mediator, I spend almost all the time in joint sessions and moderate a discussion among the neighbors. This frank and open discussion, while not easy, is key to help the parties understand the motivations of the others, and often leads to forgiveness and willingness to

compromise. The actual law and local ordinances often have less impact on resolution than letting go of the anger and hurt.

In one case, one party did not want to cut down or even prune his tree, because he had constructed a shrine to his deceased wife under the tree, where his wife had spent much of the last months of her life. Cutting the tree to him was symbolic of letting go of his wife’s memory. Once his uphill neighbor understood these feelings, we were able to reach a compromise, by which the view was enhanced and the tree protected.

What part do emotions play?

You may think that delving into the area of emotions is the purview only of trained psychiatrists, and that we as lawyers or mediators have no business going into this area. No one says that you must do this. However, I have found in my litigation and mediation practices that in many conflicts there is more driving the case than the law and the apparent facts. Often there is an emotional “back story” of some hurt, anger, and unresolved feelings that keep the case going. It is easy to see this in divorces, family disputes over inheritance, neighbor disputes, elder abuse, and sexual harassment. I have also observed in personal injury, business, cannabis, and landlord-tenant cases that underlying feelings of betrayal, victimhood, powerlessness, and the desire to punish can keep a case going much longer than is good for the parties. Sometimes these feelings are fueled by lawyers, even by those who sincerely want the best for their clients.

The point is not to be weak or let the wrongdoer off the hook. Rather, the goal is for plaintiffs to let go of the power the negative feelings have over them, to face those feelings, and to move on to a more satisfying life.

ACT

I find it useful to keep three thoughts in mind, in the form of the acronym “ACT.”



A is for “ALL”

All things can be forgiven. Victims of apartheid in South Africa, who were tortured, were involved in the Truth and Reconciliation Commission after the abolition of apartheid. Thousands of victims of gross violations of human rights forgave the perpetrators for their own welfare and for the good of the country. Mothers in Northern Ireland publically forgave the murders of their children. Rape survivors forgive their perpetrators. Certainly our clients are able to forgive opposing parties in legal conflicts. Sometimes our clients need only to learn that letting go does not mean they are weak. Sometimes they need to realize that all things can be forgiven.

C is for “CHOICE”

Forgiveness is a choice. People can choose to hold on to resentment and anger, or choose to forgive and lower their blood pressure, decrease the risk of heart disease, heal faster, and be emotionally healthier. People can choose to feel like a victim or a hero in their own lives.

T is for “TIME”

For some people, just knowing it's good for them is enough for them to just let go and forgive and go on with their lives. For others the process will take some time and they let go gradually. Some will have to work with coaches and therapists and to learn about the process. For me, I had to intellectually come to

the realization through working through a formal process. I was surprised that I was holding on to self-blame. Now, I catch myself when I feel I am holding on to some anger or resentment and I can let go. Everyone's timeline may be different, but everyone is capable of forgiveness.

How is forgiveness being used? The authors join together.

There are many ways to help plaintiffs forgive, and each plaintiff's lawyer needs to find their comfort level and what best fits their practice and personality. Here are some of the ways lawyers are already doing this at a basic level:

1. Putting questions about “forgiveness” on the intake forms.
2. Recognizing the emotional “back story” in various cases and how this plays out in resolution.
3. Helping plaintiffs to take power and stop feeling like the “victim.”
4. Learning about forgiveness so they are prepared to give an educated response if a client expresses a desire to forgive.
5. Doing their own forgiveness work so they know what may be involved.
6. Putting forgiveness on the menu of options available.
7. Talking with clients about the benefits of forgiveness in appropriate cases.
8. Providing referrals to forgiveness coaches when needed.

9. Using the teachings of forgiveness to inform their work and help clients move forward, without necessarily even mentioning the word “forgiveness.”

10. Enlisting the help of the mediator in recognizing the emotional component of the case and the role of forgiveness.



Barker

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