

JIM RUBENS

Walking Divorce Minefield with Humor, Pragmatism

by **Mary Buss**

It's not often that a litigator can walk into court and the judge has the book that he co-wrote open as a reference.

A litigator and an attorney since 1979, Jim Rubens is a partner at **Davis Friedman**. He co-wrote the "Illinois Practice of Family Law" handbook with Muller Davis and Jody Meyer Yazici. It is the largest-selling family law handbook in Illinois.

He garners his expertise from having handled diverse domestic relations cases. Most cases settle, and under 5 percent go to trial, he says.

Rubens says that no one wants to take a case to court. Witnesses on the stand are in a stressful situation because they are faced with the task of publicly divulging personal details of their lives. Rubens tries to prevent his clients from facing this vulnerable position. If he must, Rubens approaches litigation with careful adherence to court protocol, a calm demeanor, and appropriate touches of humor.

"If there's a light moment, it helps the judge to see your client as a person and not just as a litigant," says Rubens.

He seizes the opportunity to utilize the humanizing power of appropriate humor in court. During his client's testimony in one case, the opposing attorney was objecting with such frequency that Rubens suspected it was a ploy to make his client a less effective, more frustrated witness.

Flustered, the witness gave long, narrative answers, requiring that she be asked another question. Rubens stepped in to defend his client by drawing out the human conflict at hand.

"She is answering questions that aren't even being asked," Rubens recalls saying. "It would be far better if the client started asking her own questions and answered her own questions—we'd all get out of here a lot faster."

He says the moment of levity broke the tension and gave some power back to his client. Ultimately, Rubens seeks to help the individual with whom he is working.

"I like the idea of changing and improving people's lives," Rubens says.

"It's one of the amazing things about domestic relations law—and it's why I really love it," says Rubens. "It is the one area of law that covers more areas of law than any other area of practice."

Davis Friedman is somewhat of a collaborative work environment, according to Rubens. He says many questions about varying legal areas of focus arise throughout the course of a single case, and he finds his colleagues to be rich resources.

"It's important to be able to know where you can get the answers," says Rubens. "No one can be an expert in 40 areas."

Muller Davis, partner at Davis Friedman and his co-author, has known Rubens for more than 25 years.

Rubens is "a very fine lawyer in all respects," says Davis. "There are no drawbacks to Jim Rubens. I would consult with him on all aspects of whatever the case involves."

Rubens' background in criminal defense laid the groundwork for his meticulous adherence to the rules of evidence and of the courtroom.

He says criminal defense work prepared him for dealing with witnesses and the personal situations that arise in domestic relations law.

Sky-High Stakes

After law school, Rubens practiced as a criminal defense attorney with the Cook County Public Defender's Office for seven years, during the last two of which he practiced only murder defense.

"The stakes are overwhelming in criminal defense or domestic cases," says Rubens, calling domestic cases "the highest stakes you can get for an individual."

Rubens says domestic relations law and criminal law overlap all too often. Domestic violence is a huge issue in family law. While it may be involved in a minority of his cases, Rubens says the situation is already critical when it arises. Emotion run high, elevating the potential for disaster.

"When someone goes through a divorce, it's the worst point in their life," Rubens says. "A lot of people will act in ways they've never acted before."

Rubens teaches seminars on domestic violence to judges and lawyers through the Chicago Bar Association. He addresses topics like when to file an order of protection, when or how to object to a false allegation, and what to do after one has been filed.

According to Rubens, the most important thing to do in a situation where domestic violence is an issue is to seek protection for the victim. He says that an order of protection is not automatically granted just because an attorney files one.

"Safety and protection comes before we worry about the legal things," says Rubens.

He says that sometimes it is difficult for the victim to come forward, because a victim of abuse may experience a certain amount of unwarranted guilt.

"You're the victim. You didn't cause this," he tells victims of domestic violence.

The expectations Rubens sets for his clients are nothing if not realistic.

"I believe in telling them all the worst things in the world," Rubens says.

Rubens frequently picks up cases after a new client has fired a previous lawyer. Often, he has found, that lawyer promised things that couldn't be delivered.



Walking away with 90 percent of marital assets is “a wonderful goal,” says Rubens. “But it’s not realistic.”

Marital Assets Course Needed

Beyond those unreasonable expectations, he also concedes that an equitable division of assets sometimes seems counterintuitive.

“What sounds fair and good isn’t always legal,” Rubens says.

The law in Illinois calls for equitable division of assets. Setting expectations by this standard requires knowing what assets are legally marital assets, and how to legally and equitably divide them. Assets are rarely split down the middle.

If consumer education and the Illinois Constitution Test are required subject matter in schools, Rubens argues that a course on marital assets would be equally as useful to the general public.

One former client, who asked not to be identified, says Rubens is a “good listener” who is “very interested in what the client wants, and what is reasonable.”

She was primarily concerned with the welfare of her children and says that Rubens was incredibly sensitive to her priorities. She says he took into consideration the goals that were most important to her, and then figured out how they could achieve them.

Rubens says that he can usually tell what a reasonable settlement range would be after the first meeting with a client. If he can’t get clients what they want, Rubens at least wants his clients to know what to expect.

“It’s very rare for someone to walk away from a divorce case saying ‘I got everything I wanted,’” says Rubens.

While he supports the principle that an attorney should always be ready to go to trial, Rubens advocates a cooperative approach to divorce cases.

“A fair settlement is better than a bad trial,” says Rubens.

Clients generally have three different routes by which to conclude the legal proceedings of a divorce. The default is the traditional litigation route. A collaborative approach is where both parties and their attorneys sign an agreement that they will work together to settle. The attorneys must withdraw if the two parties cannot reach a settlement.

The cooperative approach that Rubens advocates is similar, except that attorneys do not have to withdraw if the parties cannot reach an agreement. He says that this saves time and money because there is no learning curve with a new lawyer, and there is no room for one party trying to oust the other party’s attorney.

He says that understanding the other party

is key to settling or litigating a domestic relations case successfully.

“You don’t have to hate the opposing party,” says Rubens. “If you can’t be objective and see the strengths and weaknesses in your case, you are missing a big, big opportunity to help your client.”

Another one of Rubens’s former clients, who asked not to be identified, asked three very close lawyer friends of hers for seven to eight names of domestic relations attorneys. Rubens was the only attorney who showed up on all three lists.

The former client recalls that when her husband’s attorney made provocative comments in court, Rubens did not react.

“Jimmy does not give in to that mean-spirited behavior,” she says. “He remains even-keeled, regardless of what he thinks.”

“My approach to most of life has been trying to help the underdog,” Rubens says.

Even if they are objectively not the “underdog,” Rubens says that most people in a domestic relations case feel like they are.

“I think everybody deserves their day in court and that everybody deserves the best representation they can have,” says Rubens.

The most gratifying legal work for Rubens is legal work that effects change and helps people.

He worked as a student attorney under a 711 license for the Land of Lincoln Assistance Foundation while he was in law school. He appeared in court as an attorney on the Disabilities Law Project from 1978–1979, and helped to draft motions that brought the construction of Chicago’s State Street Mall into compliance with accessibility codes.

“To be able to do that as a law student was pretty exciting,” says Rubens.

Rubens serves on the board of directors for Envision Unlimited, a non-profit group that provides resources such as vocational and life skills training to people with developmental challenges or other special needs.

The thought of being able to change an individual’s circumstance or effect change more globally is what enticed Rubens to pursue a career in family law.

He brings a personal perspective to the practice of family law because he has been through a divorce himself and is now part of a blended family.

At the age of 6, Rubens started handing out campaign literature at the local shopping center in Glencoe, his hometown.

“I always thought either politics or law would be likely, except then in college I got interested in psychology,” says Rubens.

When deciding whether to go to graduate school for psychology or to go to law school, a friend of Rubens’ father delivered an argument pivotal in Ruben’s decision to opt for law school.

He told Rubens that if he became a psychologist, he would be able to help a couple thousand people during his career, but if he became a lawyer, he could affect millions. ■