CHAPTER 1
The Need for Divorce with Decency

Nothing anybody tells you about marriage helps.
—Max Siegel

The very manner in which a divorce case is handled as it progresses through the legal system will be a major factor in determining how the parties will feel about themselves and one another afterward. If the parties can successfully handle their dissolution in an aboveboard and mature fashion, the stage will be set for them to maintain better communication between themselves and their children in the years following the divorce. This, in turn, greatly increases the likelihood that the divorce experience can serve as a springboard to something more positive in terms of each of their individual personal growth patterns thereafter. The constructive input of a caring and creative divorce lawyer at this stage can be crucial.
Let’s take a look at just how bad the alternative can get. I will never forget the call I received one afternoon from Distraught Doris who had just come home, totally without warning, to a completely vacant house.

Distraught Doris and Horrible Harry. Doris’ husband Harry had hired a moving company to remove all the furniture, had had a locksmith change all the locks on the doors, had hidden both cars, and had even pulled their yacht out of the water and stashed it in an undisclosed shipyard. Then this prince of a guy had left a heartless note pinned to the front door saying that he had already physically taken the two children and planned to keep them, that he would not tell her where they had gone, and that she shouldn’t bother going to the bank, since he had already drained all their joint financial accounts.

When this scenario becomes the opening gambit in a divorce case, it is almost impossible to put the parties back on track. By his actions on just this one afternoon, Horrible Harry had managed to ensure that hatred, mistrust, and emotional devastation would inevitably become the primary emotions that would characterize his and Doris’ feelings toward each other for the rest of their lives.

Perhaps the most bothersome factor in this case was that when we finally got into court seeking temporary restraining and other orders (including, of course, the immediate return of the children and the money), Harry testified that he had taken the actions he did based on the advice of his attorney. I was appalled, but hardly surprised. It’s absolutely incredible the amount of (in)human damage that insensitive lawyering can do.

If this book does nothing else, I’m hopeful that it will serve as a blueprint to assist parties who know little about the divorce process to take control of their own cases. This must include knowing the right questions to ask of the lawyers when initially retaining them and learning to explore some of the more positive paths along which a client can direct their attorney’s (and their own) actions throughout the course of the case.

Positive divorce: It’s not an oxymoron. If the parties themselves ever hope to use their divorce as an opportunity to maximize their own personal growth, then they must both learn to act like
adults in arriving at fair and principled agreements regarding child custody, support, property settlement, and other issues. This is an objective that is frequently at the forefront of the initiating party’s mind, but it is not always easy for the more surprised or reluctant responding party. It is nevertheless one that I firmly believe should ultimately be a goal of both parties.

Negotiations and subsequent agreements should be grounded in fundamental fairness, with maximum attention shown to the interests of the children, rather than either party simply using the children or the property settlement as a club with which to inflict pain or seek revenge on their former spouse. Particularly in the arena of child custody and support, both parents need to step outside their own personal agendas and reaffirm a complete commitment to their children for the long haul.

The phenomenon of mass-scale divorce in American society has arrived with a bang, and I suspect it will stay for a while. Since divorce is going to have such a far-reaching impact on our society and on our families, it becomes imperative that we learn more about the functional, logistical, and psychological aspects of the divorce process itself. Only then can we try to maximize whatever good may come out of it, and minimize the pain and the suffering.

**Divorce Hawaiian Style**

‘Ulo ‘ia i ka mānai ho’okāhi.
Strung like flowers on the same lei.
—*Hawaiian proverb, said of a married couple*

Some of my more “decent” instincts regarding the handling of divorce cases may well be derived from the fact that I practice in the relatively mellow and progressive state of Hawai‘i. Hawai‘i has been in the forefront among the several states in seeking farsighted and practical ways to deal with divorce.

Hawai‘i was an early jurisdiction to adopt a “no-fault” divorce statute. Under this approach, a party seeking a divorce need only allege that the marriage is “irretrievably broken.” There is no need to allege adultery, mental cruelty, or other spousal misconduct,
and the issue of fault is virtually irrelevant regarding custody, alimony, property division, and other issues.

Hawai‘i has also adopted a property division statute that requires “equitable distribution.” Rather than relying on who has title to any given asset or on an arbitrary split down the middle, Hawai‘i’s divorce courts divide and award marital property on the basis of what is fair and equitable.

Hawai‘i has a tradition of ho‘oponopono, or family-to-family mediation and healing, which is well suited to divorce and custody cases. Mediation has gained wide acceptance here as a cheaper and more mature way than the court route of resolving divorce disputes.

One other aspect of culture in Hawai‘i makes a big difference for the children of divorce: the concept of ʻohana. Most of America still operates on the nuclear family model, but the Hawaiian tradition is multigenerational families and even multifamily families. In ancient Hawai‘i, children were sometimes given to a close friend or relative to raise—a process called hānai. These children were not abandoned by their birth parents; rather they shared families and effectively had two sets of parents. Maybe that’s why shared custody and stepparenting seem to be better accepted here than in other states.

Hawai‘i has been on the cutting edge in other ways. We were the first to establish a consolidated family court to deal with all family law issues. Hawai‘i has also established a mandatory educational program for divorcing parents called “Kids First.” And as many folks may recall, we were one of the first states to consider legalizing same-sex marriage. Can same-sex divorce be far behind?