Note/Discussion

Grief and Involvement in Wrongful Death Litigation

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The theory of grief work, symbolic interaction theory, and family systems theory are used to gain theoretical perspective on the impact on a family of involvement in wrongful death litigation. Involvement in litigation may speed up, slow down, or alter an individual litigant's grieving, and any of these effects may alienate the litigant from nonlitigant kin. The completion of litigation, no matter what the outcome, may lead to renewed or to new grieving and relationship problems. The theoretical analysis includes discussion of the entanglement of the attorney in the individual grief process and in family tensions.

INTRODUCTION

Following the traumatic death (for example, by automobile accident, accident at work, or apparent error in medical treatment), one or more relatives of the deceased may choose to sue (the driver of a car involved in the fatal accident, the employer, or physician of the deceased). If the 517 wrongful death suits filed in Minnesota in 1980 provide a representative estimate of how many such suits are filed nationally (no national statistics are available), there were nearly 29,000 wrongful death suits filed in the U.S. in 1980. Although the large majority of wrongful death suits are settled out of court, they still require the preparation of

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a case. The preparation of a case hinges on matters of law, not on any family relationship matters, but for family members of the deceased the relationship matters may be salient. Moreover, people who choose to sue, to become plaintiffs in a wrongful death suit, often find that it takes years for the final legal decision to be reached (Rosenthal, 1974). Involvement in the developing and carrying out of a suit, even in suits in which the client is ostensibly passive while the attorney does all the work, may have profound effects on the grief process at the individual and family levels. This paper is designed to alert attorneys to individual, familial, and attorney-client complications that may arise from involvement in such a suit. The complications discussed in this paper arise out of the dynamics of individual and family grief processes. It is hoped that attorneys who are alert to these dynamics will be more sensitive to client needs to be referred to therapy, more sophisticated in advising clients about the implications of involvement in a wrongful death suit, generally more helpful to emotionally needy clients, and more helpful to themselves when they may be getting entangled in client grief processes. In addition this paper is designed to clarify and develop some aspects of grief theory and to spell out some of the research implications of this analysis of grief and involvement in wrongful death litigation. The analysis rests on the key theoretical perspectives used in the study of grief, the theory of grief work, symbolic interaction theory, and family systems theory. Before developing the theoretical analysis, some key assumptions about involvement in a wrongful death suit must be outlined.

While a wrongful death suit is being developed, while it is pending, and while it is being carried out, the family members involved may recurrently review all that they lost when the death occurred and may recurrently define the causes of the death and the effect on the family of the death. Thus, people may repeatedly review what the deceased meant to them, how they relied on the deceased, how the deceased died, what the pain, disruption, economic loss, personal disorganization, and so on have been as a result of the death.

While the suit is in process, the family members involved must wait for resolution of economic issues related to the death. Bills may remain unpaid; needed medical care, home repairs, clothing needs, and the like may be neglected. A surviving spouse with dependent children may find herself or himself especially hard pressed to deal with the economic costs of loss of spouse. And this problem will be magnified by the memory of how things used to be, by the continued living (for many families) among neighbors and friends who are not financially deprived, and by the sense that things could be better if only the suit were completed with a successful outcome.

THE THEORY OF GRIEF WORK

The theory of grief work asserts that the key process in grief is a painful struggle leading to the withdrawal of investment in hopes centering on the deceased and to a kind of neutralization of the evocative power of memories connected to the deceased (Freud, 1959). The process takes a long time, in some