
Psychology and Family Law

By Mark Baer, Esq.



Now that I have had an opportunity to share with you the realities of the legal system, and the risks involved in demanding your “day in court,” I am going to address the use of mediation in family law matters. I also want to point out that mediation is only one form of collaborative law used to resolve matters outside of court.

By utilizing some form of collaborative law, the parties maintain control over the outcome. After all, a settlement can only be reached by *agreement* among the parties. If the parties are unable to reach an agreement on each and every issue at some point, they will then be forced to litigate the unresolved issues in court.

Mediation has been used by the Los Angeles Superior Court as a means of resolving child custody disputes since its inception in 1955. If the parties are involved in a custody dispute, mediation is *required*. In fact, a court will not make orders related to custody unless the parties have attempted to resolve their custody dispute through mediation. Court employees trained in resolving such disputes work with the parents in an effort to reach a custody agreement. This form of mediation is known as Conciliation Court. Attorneys are not permitted to participate in this process and the “mediators” advise the parties that they have the opportunity to reject any agreement entered into within 10 days or the morning before the Court hearing, whichever occurs first. What the “mediators” and many attorneys fail to explain to the parties is that if they timely reject the Conciliation Court Agreement, the judge will often inquire as to the reasons for the rejection of that agreement. Unless the rejection is based upon a significant incident that occurred since entering into the agreement, many judges will make a custody order that basically reinstates the terms of the original agreement, regardless of the rejection.

Many of the Los Angeles County courthouses utilize attorney mediators for the family law matters. Family law attorneys are asked to volunteer their time at a particular courthouse and are sent cases which the judge or commissioner believes are appropriate for mediation. As an example, I must point out that there are three family law courtrooms in the Van Nuys Courthouse, and that there are typically at least 20 matters set for hearing in each of those courtrooms on any given morning. However, it is rare for more than a three to five cases to be sent down to mediation at any given day. The reason that so few cases are sent to the mediator is that the judges and commissioners do not believe that every case is appropriate for mediation.

I have been volunteering as an attorney mediator on a rotating basis at the Van Nuys Courthouse since January of 2008. I have found that program to be a very effective means with which to resolve such legal disputes. To date, I have settled one 100% of the matters that I have mediated as a volunteer for the at the Van Nuys Family Law Court. Those matters have involved custody/visitation disputes, spousal and/or child support issues, and requests for contribution toward attorneys fees. I have found mediating family matters so personally rewarding that in or about May of 2008, I completed a 40 hour training in mediation skills.

I tend to agree with those judges and commissioners that hold that mediation is not appropriate for every case. The parties and/or their attorneys must have a good faith desire to resolve their disputes in such a manner. I use the term good faith because I have found that in a family law situation, one party generally tends to be more aggressive than the other. I have also noticed that the more aggressive party tends to be the one pushing the idea of mediation and that the parties participate in mediation without legal counsel. It is important to note that a mediator cannot represent the interests of any particular party. In fact, the mediator’s job is to assist in resolving the legal dispute. If the parties are not represented by separate counsel and one party is more aggressive in the mediation, he/she may be able to put into effect a mediation settlement that is unfair to the other party through intimidation or just by “steam rolling over” the weaker party. Unfortunately, once the agreement is signed, it is almost impossible to set aside. While such a case may be resolved through mediation, if the agreement is unfair to the weaker party, I am not sure that I would consider the mediation to have been a success.

Often times, the parties participate in mediation without legal counsel, but the mediator recommends that each party

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go over agreements reached with separate counsel before signing the agreements. While in theory this is a means of protecting the weaker party, the problem is that both parties are aware of the agreement that each was willing to make. If material changes are requested after consulting with attorneys, it is often difficult or impossible to make those changes because of the terms that were preliminarily agreed to by the parties, as mentioned above.

As a result, I believe that the "safest" form of mediation is where each party is represented by counsel throughout the process. Obviously, this is often not the case. I do not mean to convey that mediation cannot be effective unless each party is represented by counsel. However, the parties should exercise caution when mediating without separate counsel because of the risks involved.

If used effectively, a mediated resolution allows the parties to heal much sooner from their emotional wounds caused by the dissolution of their relationship. Mediation also enables the parties to delve into the underlying reasons they desire certain results and thereby allows for more creative resolutions that might accomplish those needs through means that are more palatable to the other party. However, it is a misconception that mediation is always a less costly form of dispute resolution. It certainly has its benefits, if used effectively. However, if the primary reason for utilizing mediation is cost savings, the parties may not use it effectively.

Although I mentioned that I have successfully mediated matters in short time frames, it must be noted that those resolutions were merely on issues set for hearing on a particular date and not on each and every issue involved in the case. Furthermore, the parties had spent time and money briefing those issues for the hearing and I was able to review and analyze the file and the both sides' positions before commencing the mediation.

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What's Happening with Early Career Professionals?

By Colleen Warnesky, PsyD
ECPC Chair



Colleen Warnesky, PsyD

The Early Career Professionals Committee was busy in the month of June. On June 19th we celebrated the newly licensed professionals at the home of Deborah Peters, PhD. The newly licensed professionals: Maggie Ateia, PsyD, Carrie Dilley, PhD, Joe Dilley, PhD, Valla Walker, MFT, and myself were toasted by members of SGVPA. We wish to honor all of you who become licensed so when you are licensed please inform either the ECPC or the Membership Committee. This is a huge step and the last of many for us, and you should be

honored!

On June 24th, the ECPC sponsored a continuing education event on "Building Your Practice." Drs. Linda Bortell, Alan Karbelnig, and Gabrielle Taylor presented to a group of 15 members regarding how to get your practice started, how to generate new referrals, ways to get to know others in the community, and how to balance your workload. Many in attendance found the information invaluable and noted that the speakers were knowledgeable and quite varied in their experiences. We hope to offer a continuing education event on this topic at least once a year, so look for announcements on the listserv and in the newsletter regarding this matter.

The next event for the ECPC will be a happy hour in September to welcome the new school year in and network with colleagues. We will announce this event shortly on the listserv, and Facebook page. Please join us on Facebook if you have suggestions, ideas or just want to see what the Early Career Professionals are up to...

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