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## A fighting chance

### RESOLVING FAMILY LAW DISPUTES REQUIRES SKILLS BEYOND THOSE TRADITIONALLY TAUGHT IN SCHOOL

For the past 4 1/2 years, I have been very vocal about my views that we need to change the way in which family law is handled in the United States. I have received a great deal of media attention regarding my opinions that the family law system in the US destroys families and my views on better and more constructive ways of handling such matters. Many people who pay attention to my efforts consider me a thought leader in the field of family law, which is my field of practice. In fact, the producers of The Divorce Expo in Detroit selected me as the keynote speaker for the opening night of their weekend event, which took place in March.

The expo offered resources and information to the Detroit metro community regarding positive and future-oriented options for divorce. Even though family law is state specific, they "imported" me from California to speak at their event. Moreover, after hearing my keynote speech and seeing people's reactions to it, organizers invited me to become a member of their advisory board. They said their future events would benefit from my "innovative and thought-provoking contribution."

I began my speech by saying, "Like it or not, if there are children of the relationship [regardless of their age], the family still exists after the relationship ends. The manner in which you end a relationship determines whether your family will be functional or dysfunctional from that day forward."

Rarely is a legal problem purely legal, especially in family law. Almost all disputes involve emotional and interpersonal dynamics. Successfully resolving those disputes requires skills beyond those traditionally taught in law schools.

In her book titled "The Good Karma Divorce," Judge Michele Lowrance, a domestic relations judge in the Circuit Court of Illinois, wrote "The court system was not built to house these emotions, and attorneys are not trained to reduce this kind of suffering. Divorcing people expect relief far beyond what the legal realm can provide from their attorneys and the courts, and they often end up feeling like members of a powerless, unprotected class."

Almost all divorces occur because of some level of conflict between the spouses. The adversarial system certainly does not reduce that conflict. If there are children involved, we should be attempting to reduce the conflict. That certainly cannot occur in an adversarial system. The amount of damage that the adversarial system causes families is a matter of degree — some more than others. Research indicates that the process of litigation increases the conflict and trauma for separating parties. This impacts the children of the relationship and even extended family members.

In 1996, the Australian government reformed its family law system in an effort to make it "more responsive to families in need and by making it simpler to negotiate appropriate outcomes." It accomplished this by shifting the focus from litigation as the first choice for the resolution of family law disputes. Since then, mediation has become the primary dispute resolution in family law.

Almost a year ago, England and Wales made similar reforms to their family law systems. And British Columbia recently passed the New Family Law Act, which shifts the focus from litigation to mediation as the primary means of dispute resolution in family law.

While litigation is costlier and more destructive than handling matters through some sort of consensual dispute resolution process, it is much easier. All the parties need to do is throw their money at the lawyer, and the "guns for hire" experts they employ and ultimately allow a judge to decide their fate and that of their family. It is much more difficult for individuals in conflict or high conflict to jointly resolve their issues, even with the help of professionals.

Unless and until the default process for handling divorce and other family law matters is changed from litigation to some form or forms of consensual dispute resolution, it only takes one person to sink the ship and thus destroy the family. Without actually changing the default process itself, someone may likely abandon the consensual dispute resolution process as soon as it becomes too difficult for them. Parents who end up in court are forced into an adversarial system that knows little about child development and less about the best interests of children or the family unit.

The decision to take the easy way out creates a massive amount of destruction to assets and children and destroys families. We must, therefore, do what other countries have already done and change the default. One member of the family should not have this much power and ability to cause so much destruction to his or her spouse and the other members of the family.

It is my opinion that no one can expect a couple to effectively parent after being exposed to the court process. ■

Mark B. Baer is a family law attorney/mediator/collaborative law practitioner with an office in Pasadena who has practiced law in Los Angeles for more than 20 years. His firm represents individuals on issues regarding family law, divorce, child custody, child support, spousal support, restraining orders, paternity actions and domestic partnerships. For more information, please visit [markbaeresq.com](http://markbaeresq.com).



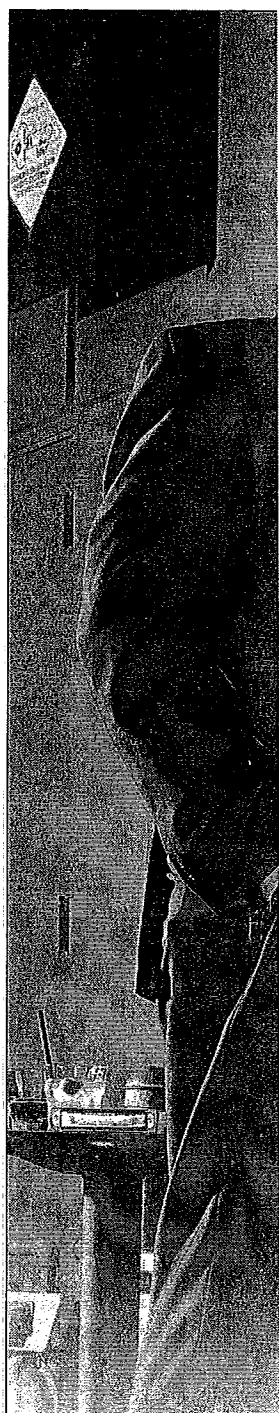
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RICK ESTRIN LEADS TO  
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