

Psychology and Family Law

By Mark Baer, Esq.



In my last column, I explained that the public's use of "pit bull attorneys" in family law matters is a suboptimal choice because such attorneys act in their own self-interest by always looking for more points to fight over, and even taking unreasonable positions on behalf of their clients in order to generate more money in fees that are billed at an hourly rate. I want to point out that both sides have to incur such costs even if only one party is represented by such an attorney, which is why people often complain that after paying the legal fees and costs associated with their divorce, they had little if anything left of their marital assets. It is no coincidence that divorce is often a factor leading to bankruptcy. What I failed to mention in my last column is that the field of family law has been flooded by "pit bull attorneys," because those are the type of attorneys that the public has sought out in such matters. This tragic result reminds me of the old adage, "Be careful what you ask

for, you might just get it."

The speakers at the March 5 SGVPA lunch meeting on "Collaborative Divorce" described the following four kinds of divorce: (1) contested divorce; (2) uncontested divorce; (3) mediated divorce; and (4) collaborative divorce.

The only way in which a contested divorce is resolved is through a trial. The cost of a fully contested case involving custody and financial issues can easily run \$250,000.00 and \$175,000.00 if it just involves a custody dispute. The percentage of divorce cases which go to trial has increased tremendously in the 19 years since I have been practicing law. This means that the average cost of a divorce has increased significantly, and an increasing number of people are assuming the risks involved in demanding your "day in court."

In an uncontested divorce, the parties resolve all of their issues on their own or with the assistance of their attorneys. This can occur at any stage in the divorce, even immediately before the commencement of a trial or just prior to the conclusion of the trial. Depending upon the issues involved and the point at which the matter is resolved, such a divorce could easily cost \$100,000.00. Even though the parties were finally able to settle their case, it may have been that a "pit bull attorney" made the case so costly for the parties that they ultimately settled out of desperation.

A mediated divorce is one in which the parties resolve their case with the assistance of a professional mediator. In my column (September/October 2009), I opined that the "safest" form of mediation is where each party is represented by counsel throughout the process, because otherwise the more dominant spouse may take advantage of the more submissive spouse. The panelists at the March 5 luncheon had the exact same concerns about mediation that I had mentioned in my article. The cost of such a mediation is not inexpensive because the parties would each be paying for their respective attorneys and the cost of the mediator. Moreover, just because the divorce is being mediated does not mean that the attorneys involved are conciliatory by nature.

A collaborative divorce is much like a mediation wherein the parties each have separate counsel, but without the mediator. The reason that the parties do not require a mediator is that the attorneys involved have been trained in the collaborative process. It would therefore be unlikely that any of the attorneys involved would be of the "pit bull" variety. In collaborative divorce, a team is assembled of specially trained attorneys, mental health professionals, and a neutral financial specialist to assist the clients when working out sensitive child custody and financial issues. Since the SGVPA luncheon, I signed up for a three-day collaborative divorce interdisciplinary team training, and am now practicing collaborative law, as well as litigation.

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