

THURSDAY FRIDAY MONDAY TUESDAY TODAY

Feedback

Previous Next Bookmark Reprints

NEWS RULINGS VERDICTS

Why the US Family Law System Is Barbaric

Mark B. Baer is a Los Angeles family law attorney based in Pasadena. He was trained in mediation by Forrest "Woody" Mosten, and now practices as a mediator, collaborative law practitioner and litigator.



In 1996, the Australian government reformed its family law system in an effort to better serve families in need. It accomplished this by making mediation the primary dispute resolution in family law (now referred to as family dispute resolution), whether the case involves parenting issues,

financial issues or both. The Australian government recognized that the adversarial nature, expense and slow pace of litigation inhibited the possibility of an ongoing relationship between parents that is essential to families. It determined that resolving family law matters through mediation was more expeditious, less costly and led to arrangements that were far more likely to meet the needs of those involved.

England and Wales are following Australia's lead and have made similar reforms to their family law system. On Feb. 23, the British government announced that effective April 6, divorcing couples must attempt mediation for child custody and financial issues before they are eligible to litigate the case in court, except when domestic violence or child protection issues are involved. Justice Minister Jonathan Djanogly has stated that mediation is "a quicker, cheaper and more amicable alternative" to litigation. He noted that "[n]early every time I ask someone if their stressful divorce battle through the courts was worth it, their answer is 'no'.... It gives people the opportunity to take their own futures in their own hands." According to the minister, "programme statistics suggested that more than two-thirds of couples who took up mediation were 'satisfied with the results.'"

Many states in the United States have a mandatory divorce "mediation" requirement. However, with few exceptions, the mandatory mediation is limited to child custody and visitation matters. California is one such state. The "mediator's" job is to assist the parents in reaching a custody agreement. These mediators use their position to strong-arm parents into entering into such agreements while parents are often extremely vulnerable emotionally. For example, a parent who was denied access to their child by the other parent for a few months before the mediation appointment may agree to any custody or visitation arrangement that allows them to finally see their child. Once the agreement is reached, the issue is no longer before the court at the upcoming hearing, unless the agreement is rejected in a timely manner.

Some counties within California have recommending mediators, who make provide suggestions regarding child custody and visitation to the court based upon what the mediator learns in the course of the mediation. In accordance with recent legislation, courts have until Jan. 1, 2012 to change the title of such mediators to "child custody recommending counselors." The reason for this change is because a recommending mediator cannot be a "mediator" because all communications, negotiations and settlement discussions made in the course of mediation are confidential. The state Supreme Court has found that the confidentiality provisions are "clear and absolute." Nevertheless, recommending counties may still permit recommending mediators, just called by a different name.

SPECIAL REPORT

Intellectual Property

Our annual list of the leading intellectual property litigators and portfolio managers. Plus, a profile of Chief Judge Randall Rader.



Wednesday, April 13, 2011

Government

Courts Saved From Cuts in Budget Deal

In addition to averting a government shutdown, the congressional spending deal should also close a serious spending gap at the federal courts, according to details released Tuesday.

Corporate

Marvell Founders Sue Goldman Sachs

Two founders of a Silicon Valley-based semiconductor giant are suing Goldman Sachs, accusing the investment bank of fleecing them out of more than \$100 million to shore up its own ailing finances.

Banking

Suit: Lenders Failed to Document Loans

A class action pending in federal court takes a novel swipe at two major mortgage lenders, alleging they damaged plaintiffs by failing to properly document securitized home loans.

Tax

Mogul's Feud With Ex-Lawyer Proceeds

The legal feud between media mogul Haim Saban and his former lawyer over a billion-dollar tax shelter is set to proceed after a judge lifted a 15-month stay in the case Tuesday.

Family

Why the US Family Law System Is Barbaric

The United States should join Australia, England and other countries and make mediation the first resort in family law disputes. By **Mark B. Baer**.

Law Practice

Familiar Lawyers Join Howrey Troubles

In a new batch of legal trouble for now-dissolved Howrey LLP, a familiar group of attorneys are joining the fight.

Mergers & Acquisitions

Turkish Online Site Latest eBay Purchase

Online auction giant eBay Inc. went shopping for the second time in as many months and again turned to Dewey & LeBoeuf LLP as legal advisor.

Family

You're Right Until You're Wrong

A recent change to the "seven-day rule" demonstrates how sound advice can become bad advice. By **Mitchell A. Jacobs** and **Ryan McEachern** of the Law Office of Mitchell A. Jacobs.

At the Pasadena Bar Association's Family Law Section Luncheon on Jan. 26, Judge Thomas Trent Lewis commented that 'as couples watch their \$1 million estate reduce to \$200,000 after the cost of litigation, people might begin behaving differently.'

Other counties, such as Los Angeles County, are non-recommending counties. If the couple is unable to reach an agreement during the course of the mediation, the mediator merely advises the court in writing that the parties were unable to reach an agreement. Attorneys are not permitted to participate in the 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 first occurs. What these mediators and many attorneys fail to explain to the parties is that if they timely reject the 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.

North Carolina is the first state to have a collaborative divorce statute and mandatory mediation rules. In Utah, divorce mediation has been mandatory since May 1, 2005. Two thirds of the mediated cases result in full settlements and approximately one half of the remaining third result in partial settlements. This has, in turn, reduced court caseloads, stress levels for the couple and their lawyers and the ultimate cost of the divorce. The only factor that has increased since May 1, 2005 is the satisfaction levels of the parties involved.

In 2011, the California Legislature made major changes to the family law system. In essence, the changes are expected to make litigating family law matters take longer than before, and be more costly and adversarial. In fact, at the Pasadena Bar Association's Family Law Section Luncheon on Jan. 26, Judge Thomas Trent Lewis commented that "as couples watch their \$1 million estate reduce to \$200,000 after the cost of litigation, people might begin behaving differently." That is assuming that people learn from the mistakes of others, which is inconsistent with the history of mankind. Moreover, each couple that wastes its savings and assets will never recoup that loss.

It is fascinating that when more civilized, enlightened and less barbaric countries are plagued with the same problems in their family law systems, they embrace mediation and other forms of consensual dispute resolution, which address most, if not all, of the problems with litigation and courts in family law situations. Yet, in the United States, litigation and courts are still the first choice for the resolution of family law disputes. Mediation, collaborative divorce and the like are referred to as alternative dispute resolution, or more recently, as consensual dispute resolution. The name change may more accurately reflect the manner in which the disputes are resolved, but it does not change the fact that it is still not the first choice for the resolution of family law disputes.

[Previous](#) [Next](#)

freeman | freeman | smiley
ATTORNEYS AT LAW | LLP

3415 S. Sepulveda Blvd., Ste. 1200
Los Angeles, CA 90034
ffslaw.com



WE ARE PLEASED TO ANNOUNCE

Kevin L. Finch
has joined Freeman Freeman & Smiley, LLP, as a Member of its Corporate Department.
Mr. Finch spent 19 years of his career at Irell & Manella.

His broad-based corporate practice includes M&A, securities regulation, public and private equity securities offerings, venture capital, and corporate governance. In addition, Kevin has expertise in the transactional IP realm, having worked on licensing and technology transfers.

Legal Ethics & Professional Responsibility

Judge Calls His Ticket-Fixing 'Thoughtless'

The state's judicial discipline agency will conduct a formal hearing into whether Judge Richard W. Stanford Jr, a 26-year veteran of the Orange County bench, fixed traffic tickets for friends, family and a juror.

Health Care & Hospital Law

Health Reform, Uniform or Deform?

Recent attempts by the government to address health care conscience protections fail to resolve ambiguities. By **Shilpa Mathew** of the Law Office of Barbara A. Goode.

Criminal

Judges Back Away From Parole Decisions

It's the end of an era for California prison inmates seeking federal judges' help in winning parole, the 9th Circuit made clear in opinions filed Tuesday and last week.

Judges and Judiciary

Kronstadt Confirmed to Federal Bench

The Senate unanimously confirmed Los Angeles County Superior County Judge John A. Kronstadt to serve on the federal bench Tuesday.

Law Practice

How Women Can Benefit From Law Firm Succession Planning

The retirement of the baby boom generation presents an opportunity for women to rise in the legal world. By **Katherine C. Piper** of Steptoe & Johnson LLP.

International

India Backs Off Generic Drug Licenses

Officials in India announced on Monday they would not expand their country's use of compulsory licenses, which the government can issue under World Trade Organization rules without permission from patent holders when there is a public health or national security emergency.

Labor/Employment

New Labor Regulations Highlight Important Issues for Public Employers

Two of the Department of Labor's regulations to the Fair Labor Standards Act are of particular importance to public sector employers. By **Brian Walter** and **David Urban** of Liebert Cassidy Whitmore.

Judicial Profile

William D. Burns

Superior Court Referee
Los Angeles County (Los Angeles)

Government

Deal in B of A Bid-Rigging Suit Under Fire

Plaintiffs' attorneys accusing banks of rigging the bidding process for municipal bonds want governmental entities to know a \$67 million settlement with Bank of America Corp. is not the only game in town.