

# PASADENA STAR-NEWS

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## Realizing limits of mediation

Pasadena family law attorney warns of unforeseen 'what-ifs'

By Jim McConnell Staff Writer

At last count, the state's budget crunch has forced the closure of 56 courts in Los Angeles County.

Three of the closures involved family law courts, creating a back log of divorce cases. And that has sparked interest in mediation and collaborative divorce.

However, Pasadena-based attorney Mark Baer sounds a note of caution. As good as a mediator might be, and as cooperative as the soon-to-be ex-marrieds may be, important details can get overlooked.

"What does a mediator do?" Baer said. "He or she seeks to facilitate a resolution. And the parties involved may be too emotionally involved to think beyond that. They just want to get it over with."

"That's why having an attorney in the process is important. Lawyers are trained to see the 'what-ifs' in any agreement. We look farther down the road, to what might happen once a divorce is finalized and it's too late to alter the agreement."

While Baer views collaborate divorce and mediation as beneficial tools to resolving family law issues, he stresses they have their limits.

"Mental health professionals, accountants, financial advisers and others untrained in the law are acting as family law mediators," Baer said. "In some instances they are either advising clients to reach agreements without consulting family law attorneys or are involving attorneys merely to draft agreements after crucial, long-term decisions have already been made."

Baer offers examples from his own experience. In one case resolved



in mediation, the wife agreed to a financial arrangement that provided her with spousal support at a level that would pay her bills and maintain her lifestyle. Unfortunately, the mediator and both parties did not stop to realize that spousal support is taxable. Thus the now ex-wife wound up taking a sizable financial hit, despite the fact that that was never the intent of the settlement.

In Another instance, a long term marriage was breaking up and a mediator decided the couple's best option was a legal separation, thus keeping the wife on her husband's health insurance. Six years later, the husband decided he wanted a divorce in order to marry someone else, and the wife was suddenly deprived of her financial safety net.

"A family law attorney," Baer said, "looking at that case, would no doubt have asked the 'what-if' question, which in this case was 'what if the husband wants to marry someone else?' As it was, the circumstances created a huge conflict in that relationship, where

that had been something both parties were seeking to avoid."

Another case involved a lesbian couple who were registered domestic partners. Under California law, registered domestic partners are provided with most of the rights and responsibilities afforded married couples, including the creation of community property. Several years later, the couple decided to dissolve their registered domestic partnership.

"Federal benefits law prohibits non-spouses from dividing retirement benefits without penalty. Since same-sex couples are not recognized as spouses under federal law, the couple was unable to divide the community property interest in their retirement accounts without penalty," Baer said. "The thing is, this situation actually was run by an attorney first who didn't see the problem. So if he missed it, you can probably assume a mediator would miss it."

Baer says the best scenario is to have mediation-friendly family law attorneys present at the mediation sessions. The parties should then consult with them before discussing financial matters.

"It's easy for a mediator to look at needs, rather than the law," Baer said.

"And it's easy to focus on short-term results rather than the long term. Add to that the fact family law issues are highly emotional ones. Studies show that, under stress, your IQ can undergo a 30 percent reduction. And what is more stressful than a divorce?"

Baer said attorneys can bring clarity and focus to a situation when one party or the other is only thinking about how to get back at somebody.

"Remember, once a deal is struck you can't unring the bell," he said. "The way to avoid an unfavorable outcome is to go into any mediation with your lawyer by your side. Or, at the very least, run all the ramifications past your lawyer before you agree to something you may regret."

Baer, who has been practicing family law for over 20 years, specializes in divorce, child custody, child support, spousal support, visitation privileges and restraining orders.

He can be reached at 626-389-8929 or at [www.markbaeresq.com](http://www.markbaeresq.com)