
Psychology and Family Law

An Uncivilized, Unenlightened and Barbaric System:

The U.S. Family Law Court

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In 1996, the Australian government reformed its family law system in an effort to better serve families. It accomplished this by making mediation the primary dispute resolution in family law, 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 amicable relationship between parents that is essential to families. It determined that resolving family law matters through mediation was more expeditious and less costly, and led to arrangements that were far more likely to meet the needs of those involved.

England and Wales have followed Australia's lead and made similar reforms to their family law system. Divorcing couples must now attempt mediation for child custody and/or financial issues before they are eligible to litigate the case in court (except when the case involves domestic violence or child protection issues). Justice Minister Jonathan Djanogly said, mediation was "a quicker, cheaper and more amicable alternative" to litigation. The Justice Minister added, "Nearly every time I ask someone if their stressful divorce battle through the courts was worth it, their answer is 'no'.... [Mediation] gives people the opportunity to take their own futures in their own hands." According to the minister, "program statistics suggested that more than two-thirds of couples who took up mediation were satisfied with the results."

Many states in the U.S. 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 limited to assisting the parents in reaching a custody agreement. These "mediators" 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 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 typically no longer before the court at the upcoming hearing.

The Los Angeles County court system has what are called are "non-recommending mediators." These mediators do not make any recommendations to the court regarding child custody and visitation pursuant to mediation. 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 simply advise the parties that they may reject any agreement entered into within 10 days or the morning before the court hearing, whichever first occurs. What these mediators fail to explain to the parties is that if they reject the agreement, the judge will often inquire as to the reasons, and unless the rejection is based upon a significant incident that occurred since entering into the agreement, will usually only make a custody order that reinstates the terms of the original agreement.

In California, the legislature made major changes to the family law system in 2011. In essence, the changes are expected to make litigating family law matters take longer than before, more costly and more adversarial.

It is fascinating that when more civilized and enlightened countries are plagued with the same problems with their family law systems, they embrace mediation and other forms of consensual dispute resolution which minimize most, if not all, of the problems with litigation and courts in family law situations. In those countries, litigation and courts are now referred to as Alternative Dispute Resolution means, and mediation has become the Primary Dispute Resolution means. Yet, in the United States, litigation and courts are still the first choice for the resolution of family law disputes. It is mediation, Collaborative Divorce and the like that are sidelined as alternative dispute resolution

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