

"Divorce with Dignity"

Dignity, Law and Mediation

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In September, I attended a seminar on Guardianship Reform and listened to an impassioned and eloquent presentation by Joyce Hall of the Department of Elderly Affairs (DEA) about our elders and about the efforts of her department to preserve their dignity. Our elder citizens "deserve" dignity, she said. Her point was well-stated and well-taken. "Would we want less for our own parents?"

The word "dignity" was especially significant to me for another reason. The Newport County Association of Mediators (NCAM), has recently sent to press and distributed a brochure entitled "Divorce With Dignity." Much thought was given to the title of the brochure. If we are touting "Divorce With Dignity" to potential clients, what are we saying about mediation and what are we saying about the adversarial system of divorce? Is it true that our current system of divorce deprives divorcing parties (or some of them) of their dignity? Does mediation offer divorcing parties (or some of them) more dignity?

I have devoted more than 20 years to the practice of Family Law and it has been my primary legal arena, especially in the last decade. I attended monthly meetings of the Family Court Bench-Bar for years and witnessed first-hand the dedication of its members (both judges and lawyers) to the improvement of the legal process. More recently, I have been proud to be included as an attorney in the Rhode Island Family Court Inn of Court, which meets monthly to discuss methods to improve the Family Court legal process and its practitioners. What message is NCAM sending to these dedicated people? What is the relationship between lawyers and mediators? Between law and mediation? Is it law or mediation or is it law and mediation?

The August 1996, issue of the ABA Journal bore the headlines "The Lawyer Turns Peacemaker" and the cover summary said: "With mediation emerging as the most popular form of alternative dispute resolution, the quest for common ground could force attorneys to reinterpret everything they do in the future." The Rhode Island Supreme Court, as of May 20, 1996, adopted Standards for Professional Conduct within the Rhode Island Judicial System. In the preamble, it says that "Judges and lawyers are expected to make a mutual and firm commitment" to the principles enunciated in those standards. Under the sub-heading "Lawyers' Obligations to Clients:" item number seven (7) reads: "I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible." Item

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number eight (8) reads: "In appropriate cases, I will counsel my client with respect to mediation, arbitration and other alternative methods of resolving disputes." These two significant messages should speak to all lawyers.

I make the following series of assertions which are pertinent to the questions raised above and the changing legal climate:

- Parties in conflict are capable of playing an important role in the resolution of their conflict provided they are guided well by a trained person or persons.
- We, as a society and as a profession, have traditionally divided issues into legal (business) issues or personal (emotional) issues. No dispute is solely either, yet we try and solve our problems as if they were one or the other.
- Both lawyers and psychologists or counselors are capable of acting as mediators (guides) in that they can insure that the parties make informed decisions by leading the parties back to their attorneys and other experts for advice and counsel when necessary and by delivering generic information can help the parties to understand their problems and generate options; can time the process so it will proceed at a rate appropriate to the needs of both parties; can empower each of the parties as required.
- Mediation is usually cost effective.

So what does the foregoing have to do with dignity? I also assert that (in the adversarial system):

- If either or both of the attorneys involved refuse to negotiate in good faith or are incompetent, then the system drives the parties to destructive litigation.
- The legal system itself is over-burdened, slow and risky to the participants.
- Judges are heavily burdened and this affects their ability to give full hearings to all the cases before them.
- A "battle of the experts" is expensive and the sum of two opinions can often be of little assistance.
- It is demeaning to wait in the corridors (sometimes endlessly) for your day (or days or ten minutes) of court time.

In sum, it is healthy and dignified for two parties in conflict (especially divorcing parties) to privately confront their issues face-to-face under the careful guidance of a neutral person or persons with the counsel and advice of their respective attorneys.

We as lawyers should accept mediation as an appropriate challenge to our profession and our professionalism. It is up to each of us to consider our own actions as we represent our clients. Are we doing everything in our power to preserve the dignity of litigants through the process? To reiterate the words of Joyce Hall: "Would we want anything less for our own family members?" Likewise, mediators must ensure that mediating parties are fully advised and that they have equal power as they mediate.

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The legal system and mediation will "compete" for clients into the next century. I suggest that most parties in conflict will lean towards the professionals who are more concerned with their dignity. Lawyers and mediators must learn to work together and to appreciate each others proper place in the system. The competition and the cooperation will be healthy and will benefit everyone in the system.