



Divorce Digest

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Greetings! In this month's newsletter, we have included articles written by attorneys James P. Reape, Lovette T. Mioni, Russell H. Thaw, and law clerk Charlotte Thaw regarding mediation of divorce, determining date of separation, and evidentiary hearings. Mr. Reape's article provides information regarding mediation as an alternative to going to court, while Ms. Mioni's article discusses the important issue of how to determine the date of separation. Mr. and Mrs. Thaw's article discusses a case which created a new statute regarding evidentiary hearings. We hope you find these articles informative and we encourage you to visit our website www.divorcedigest.com to review other articles written by attorneys at The Reape - Rickett Law Firm. You can also find our articles in The Magazine of Santa Clarita and periodically in The Signal's "It's the Law" section.

Sincerely,
James Reape and David Rickett
The Reape-Rickett Law Firm

Mediating Your Divorce



By James P. Reape, Esq.
Senior managing Partner of The Reape - Rickett Law Firm

Every divorce eventually comes to an end. How you reach the end and how much damage the process causes depends upon the form of dispute resolution you and your spouse choose to undertake. Aside from death, a court is the only way to have a marriage dissolved. But having the court dissolve a marriage does not require you to use the court and the adversarial model of litigating to obtain justice to resolve your disputes. Mediation is often for most parties more efficient, less costly, more predictable, faster and less damaging than litigating the issue in court.

A mediator is a neutral person who is trained to help people talk so that the parties can better understand their problems and reach an agreement. A mediator does not take the side of either party, and does not pass judgment on the parties or their problems. The function of the mediator is to manage the process for the parties, to get them talking, to help them better understand the problems and to help them reach a solution that meets their needs. The mediator keeps the conversations going and focused.

The mediator sets the tone for the negotiations. The mediator helps create an atmosphere conducive to discussion and resolution of the issues. The mediator when needed reminds the parties to take a more co-operative and less competitive approach as that is more consistent with their highest goal, reaching a reasoned and reasonable agreement. Because the parties have usually experienced a significant breach of trust, responding to trust issues is one of the most challenging tasks for a mediator.

The emotional consequences of the breakdown of relationships in family disputes cannot be overstated. Lawyers who are working hard to advocate for their clients may miss the emotional significance of some of the matters that cause the most grief and about which a person becomes most intransigent. Family mediators consider the emotions and the feelings that the parties are experiencing which can be a significant obstacle to settlement. Understanding the emotions is key for a mediator to help guide the parties away from simply responding to the emotions and focusing on the real problem at hand.

The parties that choose mediation are not any different than those who choose litigation. Some litigants take that route either out of perceived necessity or lack of knowledge of the availability of mediation. For many litigants they too grow tired of the court system and later submit their issues to mediation seeking a more peaceful end to the proceedings.

Staff Spotlight



Julia P. Vose, lead Case worker, has worked in the legal arena since 1979, serving as an administrative professional with a stable track record of achievement in a professional office environment. Her particular skills involve the ability to effectively liaison with clients and managing and maintaining highly sensitive file systems. Since 1998, Ms. Vose has worked solely in the family law field and in our employ since January 2004. Ms. Vose has lived in Santa Clarita since 1986 and volunteers for our local hospital.

Hot Topics on the Interactive Forum

View the hot topics, ask a question, or voice your opinion on The Reape-Rickett Law Firm's [Divorce Digest Message Forum](#).

I have been acting in the capacity of mediator for nearly 25 years. My settlement rate is astoundingly high. Cases that settle in mediation tend to stay settled as the parties have developed new skill in dispute resolution without the past build up of tension and anger. Parties who mediate the resolution of their family matter transition into a two household model of former spouses with much more dignity and much more of their joint assets than those who choose litigation.

To determine if you matter is right for mediation, give me a call.

I Know When We Married, But When Did We Separate? Determining Your Date of Separation



By Lovette T. Mioni, Esq.

The date of separation is a very important date in dissolution proceedings. There are a number of things the date of separation determines. Most commonly, it determines how much debt the community is liable for, since debt incurred after separation is the separate debt of the spouse that incurred it. It also most commonly determines the point your earnings become separate property.

For financial and personal reasons, parties sometimes disagree on the actual date of separation. Normally, the date of separation is when one party moves out of the family residence or tells the other party that the marriage is over. However, it is not always that simple. Sometimes moving out and having a new romantic interest isn't enough to say that you are "separated" from your spouse. This is exactly what happened in Marriage of Baragry.

In Marriage of Baragry, Husband had a tiff with Wife and moved out of the family home and rented a separate apartment with his new girlfriend. During a period of four years while living with his girlfriend he went on family vacations with his children and Wife, took Wife to various professional outings and social events, ate dinner with Wife and children three to five times a week, and brought his laundry home twice a month for Wife to wash and iron. Wife and Husband did not have intimate relations and Wife knew Husband was living with his girlfriend. Despite this, Wife wished to reconcile and hoped that Husband would return to her

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*Testimonial of the Month Comment from a Current Client:

"The Reape-Rickett Law Firm's staff is incredibly knowledgeable, professional, and compassionate. After my consultation, as I was walking to my car, I knew that I had made the right choice retaining Mr. Reape...While in court, Mr. Reape's knowledge and performance was spectacular...I would not hesitate to refer The Reape-Rickett Law Firm to my family and friends."

***This testimonial does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter.**

The court was not persuaded that the parties were separated when Husband left the family home. "For four years husband maintained the facade of a marital relationship, but he now claims to have been legally separated from his wife." In re Marriage of Baragry (1977) 73 Cal.App.3d 444, 447. The court stated, "the question is whether the parties' conduct evidences a complete and final break in the marital relationship.

Parties are not separated unless parties are not holding themselves out as husband and wife and both parties know the marriage is over.

SO YOU WANT TO HAVE A HEARING!



**By Russell H. Thaw, Esq. and
Charlotte Thaw, Law Clerk**

In the not too distant past, your chance of holding an evidentiary hearing in Court was slim and none (better chance for none).

Why? Because of the rule set forth in a case called REIFLER (Reifler v. Super. Ct. (Reifler) (1974) 39 Cal.App.3d 479, 114 Cal.Rptr. 356). The Reifler case gave the Court authority to rule based on Declarations and other documents submitted by the parties. Many jurisdictions set forth Local Court Rules that placed even further limits on a party's ability to present evidence, including live testimony in Court.

Along came Jeffrey Elkins, a man who tried to follow Local Court Rules when introducing evidence during a divorce trial dividing all the assets and debts of his Marriage. Mr. Elkins represented himself, and, according to the trial judge, didn't do a very good job following Local Rules regarding presentation of evidence. As a result, most of the assets of the marriage were awarded to Mrs. Elkins.

Jeffrey appealed, and the California Supreme Court took umbrage with a trial judge who gave everything to wife because husband failed to follow Local Rules. The Court said ". . . efficiency is not an end in itself. Delay reduction and calendar management are required for a purpose: to promote the just resolution of cases on their merits. Accordingly, decisions about whether to grant a continuance or extend discovery 'must be made in an

atmosphere of substantial justice. When the two policies collide head-on, the strong public policy favoring disposition on the merits outweighs the competing policy favoring judicial efficiency." *Elkins v. Super. Ct. (Elkins)* (2007) 41 Cal.4th 1337, 63 Cal.Rptr.3d 483, 163 P.3d 160

Jeffrey received a new trial (at which he got most of his property back). But also, when the Supreme Court talks, the Legislature listens, and now we have a new statute, Family Code Section 217, which states:

"(a) At a hearing on any order to show cause or notice of motion brought pursuant to this code, absent a stipulation of the parties or a finding of good cause pursuant to subdivision (b), the court shall receive any live, competent testimony that is relevant and within the scope of the hearing and the court may ask questions of the parties.

(b) In appropriate cases, a court may make a finding of good cause to refuse to receive live testimony and shall state its reasons for the finding on the record or in writing. The Judicial Council shall, by January 1, 2012, adopt a statewide rule of court regarding the factors a court shall consider in making a finding of good cause.

(c) A party seeking to present live testimony from witnesses other than the parties shall, prior to the hearing, file and serve a witness list with a brief description of the anticipated testimony. If the witness list is not served prior to the hearing, the court may, on request, grant a brief continuance and may make appropriate temporary orders pending the continued hearing."

So bring your witnesses and put them on the Stand, just make sure you comply with Fam.C §217(c)! (And even if you don't have it ready at the time of the hearing, you can ask for a short continuance to submit the proper documents).

The Reape-Rickett Law Firm

Our mission is to provide Family Law legal services that are second to none. We conduct ourselves in accordance with the highest ethical standards and are committed to providing quality services. Each firm member takes special care to understand the unique and individual concerns of our clients. Our team approach to each case ensures efficient and timely responses to simple or complex issues. We empower our clients with knowledge and information, enabling them to make reasoned and results-oriented decisions. The Reape-Rickett Law Firm is the firm of choice when results matter.

