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New Alternatives in Divorce Procedure

by Lynn Caudle

Uncontested divorces may now be obtained through mediation or (after January 1, 1982), by motion for summary judgment, as well as through the traditional litigation process. Both methods are being heralded as means of avoiding unnecessary expenses in the resolution of uncontested divorce cases.

Divorce mediation is a fairly recent concept said to be less expensive than legal expenses would normally be for the parties involved. It should also be less emotionally draining as settlements are the result of mutual agreements instead of series of legal battles. Although divorce mediation has been advocated as a preferred method of obtaining an uncontested divorce, questions as to the qualifications and responsibilities of mediators remain.

The concept of divorce mediation was elaborated upon by O.J. Coogler, an Atlanta attorney who is the author of *Structured Mediation in Divorce*.¹ The Family Mediation Association, a Washington, D.C. based, private, non-profit organization trains and certifies mediators. Training to be a divorce mediator includes the study of the psychological as well as the legal aspects of divorce litigation. The Family Mediation Association's training program consists of a five-day seminar and a 250 hour supervised practicum. Candidates for certification as mediators must have either a law degree or an M.S. in behavioral science, and then must earn 50 hours of study in the other field. In Maryland, certification is not a requirement to practice divorce mediation.

There is concern among the legal profession that allowing persons other than attorneys to handle divorces may leave the parties involved without adequate protection due to the lack of regulation of divorce mediators. The ethics committee of the Maryland State Bar Association issued an informal opinion concerning the rights of attorneys reviewing settlement agreements that are the result of mediation. The opinion expressed

concern over the fact that one attorney may review the agreement for both husband and wife, explaining that such review would constitute a conflict of interest for the attorney. Of course a mediator may recommend that the parties have the agreement reviewed by separate attorneys, but there is no regulation requiring this.

The mediation process calls for the husband and wife to go to the divorce mediator simultaneously with the purpose and intent of determining their out of court settlement agreement. The parties may then take the agreement to an attorney for review. This procedure is considerably less complex than typical divorce cases: the procedure seeks to cause less bitterness, is less time consuming, and is less expensive. The mediator's purpose is to guide the couple towards a mutually fair settlement that will accommodate the best interests of all members of the family involved. Proponents of the mediation procedure feel that this new alternative method will relieve attorneys of the counseling aspect of domestic practice, leaving them free to practice law.

Mediation in domestic cases, and arbitration in other areas such as business will be resorted to more and more frequently as court dockets are overburdened, and people's needs can be more efficiently resolved at the hands of a mediator or arbitrator. Baltimore City Supreme Bench Judge, Robert B. Watts supports divorce

mediation, saying "It is the divorce process of the eighties." Provided that parties' interests are protected to the extent that they would be under traditionally adversarial proceedings, these simpler methods of resolution may prove to be the "preferred method."

Another alternative, divorce by summary judgment, will be available in Maryland as of January 1, 1982. On October 6, 1981, the Maryland Court of Appeals approved a proposed amendment to the Rule S74 (Testimony) and Rule 610 (Summary Judgment) of the Maryland Rules of Procedure. An uncontested divorce may be obtained by virtue of a motion for summary judgment provided there are no disputes as to any claim or defense, including disposition of marital property. In essence, a final decree of divorce, annulment or alimony would be granted upon motion for summary judgment only if granting the motion would be dispositive of all issues in the case. The motion must be supported by testimony, deposition, or affidavit, or by a combination of the three.

The Court approved the amendment by a narrow 4-3 margin, despite strong opposition to the amendment by attorneys and judges throughout the state. The procedure has been critically acclaimed to be nothing more than mail-order divorce, and the effect of the amendment would be to "cheapen" the institution of marriage. Advocates of the change in the current required hearing system argue that the old system unnecessarily wastes money of parties who have no disputed issues. Judge Marvin H. Smith, a strong advocate, was quoted in the *Baltimore Sun* as saying, "to go through the [current] procedure, I almost want to call it a charade, places unnecessary expense on the litigant."

¹ See also: Kimble, *Divorce Mediators Give Couple Chance for Peaceful Separation*, *The Daily Record*, Sept. 24, 1981, at 1, col. 1. Kimble, *Legal, Ethical Problems Arise Without Proper Representation*, *The Daily Record*, Sept. 30, 1981, at 1, col. 1.

