

## Making Divorce Easier and Faster Would Benefit Spouses and Children

By Fred Silberberg

Few things in life are more stressful than a divorce. Aside from the emotional factors that make dissolution of marriage proceedings much more stressful than just about any type of litigation (except perhaps criminal), stresses are associated with such things as attempting to adjust to a new financial reality. Add to that having to make custody arrangements, and people who are engaged in divorce proceedings don't act as they normally would during that time.

The best thing that our courts could do for people who are caught up in such proceedings is to ensure that they end quickly and are handled efficiently. Unfortunately, that is not the reality for many people caught in these circumstances. For some lawyers, the name of the game is to stall as long as possible in or-

der to keep things going. Often, the courts, the only entities that have the ability to make things wrap up in a reasonable time, fail to do so.

Clients expecting to get divorced are often aware of the "six-month rule." No divorce can be finalized sooner than six months from the time of service of the petition. The theory behind this long-standing California rule is that people need a cooling-off period and may change their minds. Experience tells us that this almost never happens. Once the proceedings begin people, rarely "cool off." Instead, they get caught up in the whirlwind of the case, and they become more polarized, not less. Nonetheless, the general public seems to come to counsel's office with the naive belief that the case will be over in six months. If the case is not a contested one, that may be true. However, if items are in dispute, the case likely will take a

year or two, sometimes even longer. One can get married with little effort. Getting divorced, however, is a Herculean task. It shouldn't be.

Many complicating factors cause the process to become more protracted than it should be, but each one of them can be addressed with a view toward getting the case resolved.

A truism in family law cases is that there are two types of parties: the one who instigates the divorce and the one who doesn't want it. Often, the one who doesn't want it uses the proceedings as a means to get back at the one who does — and unfortunately, our court system allows this to happen. If the marriage is over, the best thing for all concerned is to face that fact and move on as quickly and with the least amount of trauma as possible. Unfortunately, that is not a common occurrence in a California divorce.

First is the issue of lawyers who like to keep things going as long as they can. If they represent the spouse who wants to use the proceeding to extract proverbial blood, doing it is not difficult. At times, continuances should be granted, but they should not be granted simply because counsel cannot get ready for a proceeding on time or because they waited until the last minute to address necessary discovery. Faced with 20 or 30 matters set for any particular day, a judge is often tempted to grant the continuance just to knock the case off that day's docket. But doing that does not serve the parties' interests. The case is just going to come back on a later day, and even more court time may end up being taken in addressing yet another continuance.

Issues need to be addressed promptly, and each step forward is increasingly likely to cause settlement as the issue set becomes progressively narrower.

Then there is the issue of custody evaluations. A mental health professional is often necessary in making recommendations for a custody evaluation, and the court routinely makes such appointments. However, no custody evaluation should take nine months to a year. Yet that time frame is not uncommon in our state. Custody evaluators take on many cases at one time, and certain evaluators are more popular than others. Although qualified analysis is absolutely necessary to ensure that the children's best interests are protected, evaluators should be appointed with a mandate to complete an evaluation within a relatively short time. If

they cannot complete the evaluation in that time, then another evaluator needs to be sought. Requiring children to be caught between acrimonious parents for up to a year until a recommendation is made is untenable. Yet that happens to thousands of children in California each year when their parents cannot agree on custody recommendations.

Then there is the issue of setting cases for trial. This is the most likely means by which the court can expedite the resolution of a case. It is a statistical cliché that 90 percent of the cases filed in our courts settle before going to trial. However, many of those cases settle only because the trial is imminent, and it is in that eleventh hour that people suddenly realize the importance of making their own decisions to resolve their

In civil cases, matters need to be prosecuted within a certain time or be dismissed. Family law cases should not be any different. Because of their potentially negative impact on children and because of the severe emotional and financial stress placed on the parties to divorce proceedings, trial dates should be set at the outset of a case and should be kept to by the courts. The systems we have do not allow for this. In most counties, counsel are required to request a trial date by submitting a "form for same." That form puts the case on a list for a trial-setting conference. The conference often does not take place until months after the form is filed. Once it does take place, it usually does not result in a case being set for trial. Often, one of the

parties requests more time, and the court usually grants it and sets yet another trial-setting conference.

The inefficiency of this process is obvious, but it is de rigueur in most family courts. If, on the filing of a case, everyone were given a deadline in the not-too-distant future by which the case was going to go to trial if it were not settled, cases would settle more quickly, parties would save money and unnecessary stress, lawyers would be forced to behave diligently and, most important, children would not be subjected to protracted unsettled custody arrangements. It's time to start moving it along, folks.

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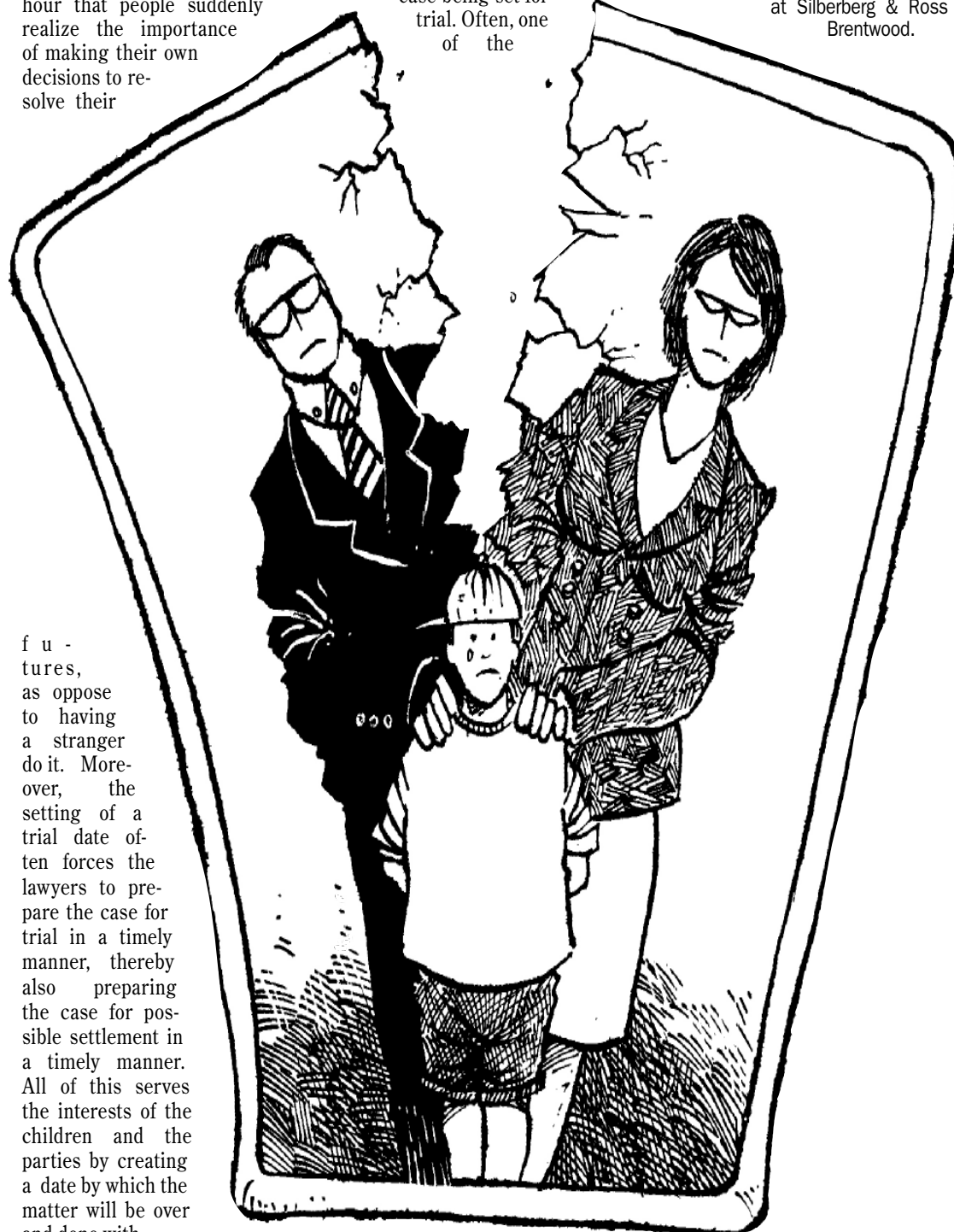
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