



Pragmatic Decisions In Difficult Economic Times

Attorneys can help couples assess value of mediation, special masters

By **RICHARD J. POBER**

Depending upon the article you read, divorce is either the top stressor or one of the top three stressors in a person's life. When one considers divorce during these financially difficult times, the stress can increase exponentially.

Most clients want to save money, and many people speak to their friends for advice on how to proceed with a divorce. However, the sooner a professional divorce attorney can explain to a client the process of divorce and that one size does not fit all, the more quickly that individual can start to relax and can proceed in a direction that makes the most sense for his or her situation.

When a potential divorce client calls and wants to discuss whether she should move forward, now more than ever is the time to be practical and explain the divorce process and all the available options and issues before the person files for divorce. Our clients need to be practical when determining if they wish to proceed with dissolving their marriage, and we as attorneys need to be pragmatic when we represent them.

Some clients ask if mediation is appropriate, as mediation is generally thought of as less expensive than if both client and spouse each have their own counsel. Whatever the economic conditions, mediation can be an excellent approach for the right parties in the appropriate circumstances. As most experienced matrimonial attorneys are aware, for mediation to work, at a minimum you need two individuals who are able to speak to each other and accept that their marriage is over. You then need a good mediator who will be

able to discuss settlement of the case.

As an alternative to mediation, the Connecticut Superior Court requires all matrimonial cases to be heard by special masters before a trial will be heard by the court. Special

masters are the most experienced matrimonial attorneys in the state. Private attorneys volunteer their time to assist the court by trying to settle cases before they go to trial. A court appoints special masters who will appear in court several times a year.

If a case is waiting to go to trial, the court will assign a date before the trial for the attorneys and their clients to meet with special masters (usually two). Several cases will be set on the same date and the special masters will generally have one hour for each case. The special masters will examine the financial affidavits of the parties and a memorandum setting forth each party's position. More than half of the cases I have been involved in as a special master have settled because the attorneys and their clients have agreed to the special masters' recommendations. Like judges, special masters are neutral when evaluating a case, and base their recommendations for settlement on their experience trying divorce cases.

Additional Time

Unfortunately, since the special masters can only give one hour to each case, certain cases that might settle need more time de-



Richard J. Pober

voted to this possibility. Many are willing to serve as "private" special masters to allow the parties to have more time to try and resolve their case. Private special masters are hired by the two attorneys in the case and can give as many hours as needed to try to get the parties to agree on all terms (division of assets, liabilities, pension, alimony, support).

There are other considerations that become more important in this economy. It is generally not good advice to stay together for the sake of the children. However, the new advice is that it might make sense to stay together for the sake of the assets – at least until they regain their value.

If a person's job is tenuous and that individual provides the majority of the income of the marriage, it might be wise to wait before proceeding with a divorce action. The equity of many houses has diminished, retirement accounts have lost value and stock portfolios have decreased. If thus far the parties have been civil to each other and can remain so, it might be advantageous to wait until all assets recover so there is a greater pie to divide.

If, after taking all of these matters into consideration, a client decides to continue with divorce proceedings, we need to think of ways to give our clients greater value for the results we achieve. Obtaining a greater portion of the assets for a client, a lesser time period for a payor or a greater time period for alimony to the payee are all good returns on an investment.

We are always well thought of when clients see that we are looking after their interests. When a client realizes that we are providing excellent services for great value, we not only have a client who will be pleased when the case is concluded, but we have a referral source – something which all lawyers can use during these difficult times. ■

Richard J. Pober is a partner in the Litigation Department of Pullman & Comley, LLC.