

## **LAW OFFICE OF JAMI K. FOSGATE**

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### **SHOULD YOU LITIGATE OR MEDIATE YOUR FAMILY LAW CASE?**

“Litigation” is a war in which the two parties each hire a “General” (a.k.a. attorney) to lead them into battle to “win” and “defeat” the other party and exact “revenge” against the other party. What the parties do not realize is that the outcome of the war will not be determined by their “general,” but instead will be decided by someone they do not know and who has nothing at stake in the case - a Judge or Commissioner. The Judge or Commissioner will make important decisions that effect every aspect of the parties’ future, yet the Judge or Commissioner knows nothing about the parties, their children, their jobs, their lifestyle or their unique situation. The parties will pay their generals (attorneys) thousands of dollars to engage in battle over the course of many months - maybe years - and then the parties will either agree to a last minute settlement as trial approaches, or, if trial is held, then thousands of more dollars will be spent. After the court issues its ruling following trial, each party will be left feeling they did not “win” and all they have left is an empty bank account and few, if any, remaining assets.

“Mediation” provides the parties with the opportunity to control the process and act as their own “General.” In Mediation, the parties will be able to develop a mutually acceptable agreement tailored to their individual situation. Mediation is convenient, less stressful, non-adversarial and minimizes animosity. Mediation is also much less costly than Litigation - emotionally and financially. In Litigation, each party usually retains their own attorney and pays an initial retainer fee of \$5,000 to \$20,000 or more depending upon the complexity of the case and whether minor children are involved. As the litigation war progresses, many parties spend \$25,000, \$50,000, \$100,000 or more in attorneys’ fees. In a May 4, 2008 interview with the Los Angeles Times, Marjorie Steinberg, the Supervising Judge for Los Angeles Superior Court Family Law Division, was asked what a “typical” divorce in Los Angeles costs and she answered:

“It's nothing for us to see \$50,000 spent on each side and sometimes \$1 million on each side. When I see someone with only \$25,000 in attorney's fees I think that's pretty cheap. One of my colleagues just had people fighting over tea bags--tea bags! That's hardly worth spending your child's college education and your retirement savings on.”<sup>1</sup>

In Mediation, the parties usually share the fees equally which will be a fraction of the cost of litigation. For example, the Law Office of Jami K. Fosgate charges only \$195 per hour (or \$225 per hour for evenings and weekends) for three hour mediation sessions. Many parties resolve the issues after two or three sessions for mediation fees of \$2,000 to \$3,000. The court filing fees, notary charges, copying and other costs are estimated at \$1,000. If requested, the Law Office of Jami K. Fosgate will also assist the parties with preparation of the required Judgment documents to finalize the case for a fee of \$2,000 or less. **This is a total mediation cost of \$5,000 to \$6,000 for BOTH parties**, not “\$50,000 spent on each side” as Judge Steinberg has observed in courtroom litigation. Most family law attorneys will require EACH party to pay an initial retainer of \$5,000 just to begin the case and bill at \$250 to \$500 per hour.

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<sup>1</sup><http://articles.latimes.com/2008/may/04/magazine/tm-influence4>

## Comparison of Court Litigation to Voluntary Mediation

<b>Litigation</b>	<b>Mediation</b>
Scheduling Conflicts between the court, the parties and their attorneys may cause expensive delays	<b>Convenient</b> -Mediation sessions are scheduled when convenient for the parties, including evenings and weekends
Lengthy and time-consuming - usually taking 12 months or longer to complete	<b>Efficient</b> - Parties work at their own pace and can complete mediation in only a few weeks
Courts are overburdened with dozens of cases being heard daily giving the parties little time to present their individual facts and situation to the Judge or Commissioner	<b>Comprehensive</b> - Parties determine the schedule and the issues and the mediator will take all the time needed for each party to explain their position and explore a resolution and no court appearance is necessary
It is impossible to predict how the judicial officer will rule on the issues and oftentimes the parties rush into a settlement reached in the court hallway as trial approaches without time to analyze the choices	<b>Control</b> - Parties make the decisions they will be living with for the rest of their lives and agreements made in mediation after discussion, analysis and reflection typically work better than those negotiated under pressure right before trial
Costly - thousands of dollars for attorney's fees paid by each party, including each hour the attorneys spend waiting in court for your case to be heard, even if no progress is made and the hearing is continued. \$25,000 for each party is considered "cheap" for a divorce and most family law attorneys will require each party to pay a \$5,000 retainer and bill at \$250 to \$500 per hour	<b>Cost-Effective</b> - the parties share mediation fees estimated at \$2,500 to \$3,000 plus court fees, service and notary costs and copying estimated at \$1,000 and required Judgment forms to finish the case of \$1,500 to \$2,000 for total of \$5,000 to \$6,000 for both parties [Note: Fees for accountants, appraisers, counselors and other experts, if needed, are not included]
No privacy or confidentiality - in litigation your financial information and intimate personal details are made part of the public record with parties testifying in open court in front of dozens of other litigants and attorneys	<b>Private and Confidential</b> - in mediation, your financial information and intimate personal details are shared only with the mediator and any other experts needed to resolve the issues
Stressful - litigation is adversarial in nature and encourages combat between the parties which is not conducive to a healthy and cooperative working relationship when legal proceedings are over - especially detrimental to children	<b>Less Stressful and Minimizes Animosity</b> - mediation encourages communication and cooperation which leads to a healthier relationship after legal proceedings are completed and this is beneficial to the children involved
	<b>Mediation is inexpensive to try and if a party feels mediation is not working, the courthouse doors are always open and there are hundreds of attorneys who are ready to charge both parties thousands of dollars in litigation fees</b>