

The Truth About Going to Court

AND HOW TO AVOID IT

Karen Drury Russell
MEDIATION AND COLLABORATIVE LAW

408-832-0012 | www.kdrlaw.com

WHY LISTEN TO ME

There are lots of e-books out there, so why read this one? Well, here is what sets me apart from the rest:

I worked as a paralegal for seven years before becoming a lawyer and I started practicing law in 1984. Yes, yes, I know, but trust me, I am really not *that* old!

For the first 14 years, I was a litigator with a focus on high conflict custody cases. I represented both moms and dads and was also appointed to represent children when their parents' behavior got in the way of them making good choices for the children. I worked on high asset cases and I was known to be very good in the courtroom.

Since 1997, I have focused completely on Mediation and Collaboration and have not litigated a case since 1999.

I have been a leader in the local bar association and the Family Law community and currently help the court by administering a project that helps families with young children (under age 6) stay out of court and work together to parent their children through and after divorce.

I teach other lawyers to do what I do and have taught a law school class I developed on Collaborative Practice at Santa Clara University.

I have received several awards and honors over the years for my work. I am a co-founder of the International Academy of Collaborative Professionals (IACP).

In short, I have been in this line for a long time, have lots of experience and know exactly what I am talking about.

So read on and learn "The Truth About Going to Court...and how to avoid it."

To learn more about me, see my [Biography](#) and [My Story](#) on my web site at www.kdrlaw.com.



Karen Russell

51 E. Campbell Ave.
Campbell, CA 95008
Office: (408) 971-7172
Direct: (408) 832-0012 direct
Email: karen@kdrlaw.com

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First of all, if you are afraid for your safety or that of your children, you should immediately consult an attorney who can help you obtain court orders to protect you and your children.

As for the rest of you, let's talk. It's been said that going to court is like sticking a knife in an open wound and then twisting it.

Actually, I once had a Collaborative client who started off through the court process and later switched to collaboration. She described her earlier experience in as "being on a bobsled ride to hell."

Quite an image, isn't it?

The typical Santa Clara County divorce case with what I call "traditional representation," some call it the adversarial process, begins with a client who has no clue about what to do (maybe that's you) going to a lawyer's office. They know they are getting divorced, and not much else.

It is a very emotional and confusing time. Usually people are afraid they won't have enough money, don't know where they will live and, most important of all, are worried about how the divorce will affect the children. Their friends tell them to see a lawyer and EVERYONE wants to give them advice about what to do based on what they or someone they know went through.



We call these helpful friends the "Greek Chorus" since they seem to always be in the background talking to you as you go through everything, just like the chorus in a Greek play.

Just remember, none of them are lawyers ... 'Nuff said?

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Finding a Lawyer

If you are like most people, you don't know any lawyers and don't want to. Lawyers don't come with references and many do not have Yelp or Google+ accounts (I do, by the way). Because lawyers are bound by rules of ethics and confidentiality, we cannot tell you who past clients are, so we can't give you their names to call. For the most part, you have to rely on referrals or the Internet.



Once you have selected an attorney and are in their office he or she will have a note pad and pen and start asking a bunch of questions that are pretty personal to you but are standard practice for them.

I mean, here you have just met this person and you are being asked to pour out the most private, intimate details of your life: “How old are you? How much do you make? How much savings and others assets do you have? How are your children doing?” Depending on the lawyer, they may want you to give them some dirt on your spouse. Throughout all this, the lawyer is furiously scribbling notes and writing in the margins.

They may or may not actually talk to you about how you are feeling. Again, that depends on the lawyer. What they ARE doing this whole time is something we all learned to do in law school ... issue spotting.

So, once you have poured out your story and answered all the questions, the lawyer will give you some kind of overview about what they think the issues are and what needs to be done next to protect you. Sometimes (depending on the lawyer) they will tell you all the things your spouse could do to screw you, which is basically designed to scare the heck out of you. Usually the plan involves going to court.

Going to Court ...

Eventually, your case is set for a hearing. Now, the court requires the lawyers for each side talk to each other and try to settle things before they ask the judge to make a

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decision. Problem is, they can be so busy with their own practices going to court that they don't get around to actually talking to each other about your case until they are actually in court for YOUR hearing.

So, when that happens, you have to take time off work to be at court, then sit there waiting while your lawyer talks to the other lawyer and then comes to tell you what they said. (Believe me, they do not tell you everything because they are talking about you and your spouse.)

Your lawyer will either tell you his or her recommendation or they will tell you about the deal he or she worked out with "the other side" or "opposing counsel." It is then up to you, on the spot, to decide whether or not to take the deal. However, you have no time to really think it over or discuss things in any detail because you are only there for three or four hours.

In most cases that go to court, it is rare for the judge to actually hear the case. Cases with lawyers are expected to settle since the judges spend a lot of time dealing with all the folks without lawyers.

The point of all this is that YOU and your spouse are not present in the discussions between the lawyers. Traditional representation is a lawyer-centered process. If the lawyers cannot agree, then you wait until a judge has time to hear your case. All this time you, by the way, are paying for your lawyer to sit around and wait with you. Picture a meter running at **\$7 per minute!** Or, imagine a month's worth of groceries in an hour, or a tank of gas every eight minutes ... you get the idea. It is NOT cheap.



So, once the preliminary orders are out of the way, the next phase begins. This is where the lawyers conduct what is called "discovery."

The whole point of discovery is for each side to have the information they need so they can settle the case. But, BEWARE -- some lawyers *love* to litigate and they will run the case with a tough court battle in mind.

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This is YOUR money being spent.

Is that really how you want to spend it? I would think that you might rather use that money to fund your children's college expenses or your own retirement instead.

... Paying, and Paying, and PAYING Some More

So, let's talk money. Traditional representation can be VERY expensive, especially if you get a "litigation lover" on the other side or worse, a liar (or if you happened to unwittingly hire one).

Think about it: Most family lawyers in Santa Clara County charge between \$350 and \$500 per hour. Then they charge for people on their staff who work on your case. You can easily rack up fees in excess of \$5000 in the **first month**. I have seen people need to take out loans to pay the lawyers; sometime college funds, stock options, and 401K's are either cashed out or have loans taken against them just to pay legal fees.

You do NOT need to hire a jerk.

There are **NO WINNERS** in divorce court, only sad and resentful former partners who can no longer look one another in the eye.

Trust me, I have been there.

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Of course, no one likes to work for free, and that includes lawyers. But a lot depends on who you get and while you have control over who you hire, you have NO control over who your spouse hires.

IS ALL THIS REALLY LAWYER BASHING?

It sounds like I am doing a lot of court and lawyer bashing here. Actually, I am telling you how it used to be when I played fair and how other lawyers acted when I was a litigator. I have focused only on helping people resolve things out of court since 1999. For more details about how I came to that decision, see “[My Story](#)” under the [About Me](#) tab on my web site at www.kdrlaw.com.

But I Want My Day in Court...

Some people want their day in court so that they can tell the judge their spouse left them, had an affair, or other things, and they want them punished. Guess what?

The court doesn't care!!!

Here in California, the only grounds for divorce are irreconcilable differences and incurable insanity... yes, I know, some of us want to check that second box, but 99.9 percent of all cases are the first option and the court NEVER listens to fault arguments so get that idea out of your head right now.

Doing It Yourself...

Clearly not everyone hires lawyers... particularly the 80 percent of cases filed by people who represent themselves. Some of those have opted out of the court system (more on that later) but many of them either cannot afford counsel or choose to forego attorneys and take the DIY approach.

How much does that cost?

Take time off work, hire a sitter for the kids, or even worse, you may need to bring them to court with you... Then you stand in line and try to find your way around. It is confusing and no one at the courthouse is allowed to advise you what to do or give you legal advice; only lawyers can do that.

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If you and your spouse cannot agree and have to go to court for the judge to make a decision, you need to know the rules of the courtroom and you will be expected to know them just like the lawyers are required to do. There is no special set of rules just because you choose to represent yourself. Get to know the rules of evidence and the local court rules if you go this route.

Fortunately, you do not have to deal with all this; there are other affordable ways to settle your case out of court.

There Are Better Ways ... and the Courts Support Them.

Over 80 percent of those getting a divorce in Santa Clara County represent themselves. Many can afford lawyers but want to avoid all the hassles of traditional representation. Many of those who represent themselves don't know that they DO NOT HAVE to go to court. The judges are so overloaded they are GRATEFUL when a divorcing couple settles the case themselves and do not come to court. The judges support the processes I am about to describe for you and are happy not to hear your case.

Let's Talk Alternatives

What if I told you that you could get a divorce and never see the inside of a courtroom or talk to a judge? What if you and your spouse could sit down with a lawyer who explained everything to you in neutral terms, answered your questions, helped you figure out how to divide your assets, share parenting time with your children and allocate the money? Sounds too good to be true, doesn't it? Well, there are lawyers like that out there ... you just have to know where to look.

COLLABORATIVE PROCESS

In the Collaborative process you each have an attorney specifically trained in collaboration. You all sign an agreement saying you won't use the court process for any reason and if you can't reach an agreement, the lawyers are disqualified from EVER representing either one of you



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against the other in court or any other adversarial proceeding. WOW. Lawyers who actually agree not to go to court. Now isn't that a breath of fresh air?

In Collaboration the lawyers are all trained in mediation skills and they are NOT adversaries. They are there to work together with you and your spouse to help you reach agreement on all issues. You do this by participating in a series of meetings with each other and your lawyers. They will give you legal information together, not argue over the law or who is entitled to what and most importantly, they are NOT planning tactics or strategy to put the screws to the other party.

The Collaborative Process also provides you with the opportunity to build your team, including Divorce coaches and a Financial Specialist. Check out my web site for more details at www.kdrlaw.com.

Collaboration is a very transparent process, which requires that both parties share everything relevant to the discussions, provide documents regardless of whether or not they have been asked for and be honest about their needs and concerns. It requires a very high level of integrity, dignity and respect.

I have been a collaborative lawyer since 1996 and helped train many of the collaborative lawyers you meet in our county.

MEDIATION

In the Mediation process, you and your spouse or partner find a lawyer who specializes in Mediation in your county. A mediator is neutral and does not give either party independent legal advice. You both meet with the mediator together to discuss your situation and that person guides you through the whole divorce process. It is NOT a process where you tell your story to someone and they decide the case like a judge. That is known as hiring a private judge and it is not mediation.



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Now, every mediator is different so I will only talk about how I handle mediation cases. The process is the same but may be handled differently depending upon who the mediator is. We all have different styles and it is important for you to ask each mediator about their style when you are shopping.

ABOUT MY STYLE

I am a facilitative mediator. I do not represent either of you but I do give you lots of legal overview information designed to help you in your decision-making process. I also answer questions and discuss your settlement options. You decide what works for you. I do not impose that on you but I will give you some direction as far as possible ways to resolve things. I give you choices based on what other couples have done. I also have a unique method for problem-solving and resolving disagreements which I will share with you at your first appointment.

There is a better way and I can show you how to avoid court.

Learn more on my web site at www.kdrlaw.com.

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