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Interdisciplinary Family Mediation Center:

An Evolving Way to Meet the Needs of Families

Attorney Susan A. Hansen, Family Mediation Center and Hansen & Hildebrand

“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”

—Justice Sandra Day O'Connor

The words of Justice O'Connor take on even greater significance when parties to legal disputes do not hire lawyers. Today, the statewide estimate of self-represented parties in divorce and other family law actions is approximately 70%, and that number is even higher in Milwaukee County. While some parties who choose to proceed *pro se* truly cannot afford to hire a lawyer, many others see lawyers as necessary only if there is a legal battle. Some even see lawyers as causing, rather than resolving, conflict.

During my career, the percentage of *pro se* parties in family court has skyrocketed from under 10% to the current 70%. A majority of parties now attempt to navigate divorce without any legal guidance or advice; instead, they rely on check-the-box forms and limited court resources. Our family court judges and commissioners, and their staffs, face overwhelming challenges in dealing with *pro se* parties who have little knowledge of court procedures and even less understanding of the legal and financial issues inherent in their family law proceedings.

This leaves many parties making decisions that will affect them and their children for a lifetime without adequate education and with no legal guidance. Many do not understand the current or future impact of agreements or legal documents, or how to effectively meet the requirements of the family court process. The Milwaukee Justice Center is a positive resource that provides procedural assistance, but the resources and scope of volunteer programs are limited, and our non-profit agencies cannot meet the escalating need. Although approximately 98% of all family cases resolve by agreement, the question is how to help self-represented couples make informed decisions to avoid the regret, anger, implementation problems, and post-judgment litigation that too often results otherwise.

How can couples receive help if they are unable or unwilling to hire lawyers? There is no single answer, but alternatives do exist. The new limited scope representation rule and concomitant statutory and SCR changes effective January 1, 2015 provide support for collaborative practice and other forms of non-litigation representation. Though the collaborative process has helped many couples, it requires that each party retain a limited scope/settlement-only lawyer, and many individuals are not hiring or even consulting with any lawyers at all.

While mediation is not the answer for everyone, it is an option for many. Most couples want to reach an agreement rather than engage in a court battle – with or without lawyers. The option of a privately retained mediator has grown beyond the “impassé” mediation that many lawyers and retired judges conduct with represented parties; it is also an option for couples who need and want professional assistance despite their choice to proceed *pro se*. Mediation has been employed by couples considering divorce or legal separation, unmarried couples, domestic partners,

and parties with post-judgment issues. As couples struggle with how to reach agreements and navigate the court process, many realize the court process and decision-making are not as easy in reality as the state check-the-box forms may make them look.

A structured and efficient interdisciplinary mediation process can assist a wide range of couples. Lawyer mediators, child and family specialists, and financial neutrals, working together, can provide a team mediation approach for couples. Teamwork tailored to meet the needs of individual families reduces legal costs, provides individualized child and financial expertise, and helps couples make livable and durable agreements to avoid court conflict now and returns to court in the future.

One current example of such a coordinated interdisciplinary process is the Family Mediation Center that is based in Milwaukee and now has mediation sites in Ozaukee and Waukesha Counties.

In such a process, the lawyer-mediator provides neutral legal education and guides the couple through all the necessary decisions, documents, and court procedures. The child or family specialist assists the parties with the emotional transitions and family restructuring inherent in separation, and helps parents focus on their children's needs to create a workable co-parenting agreement. The financial neutral assures parties' understanding of their financial issues, including tax, budgeting, retirement, and business valuation to help them explore the current and future impact of various settlement options. This interdisciplinary approach is an efficient and effective way to provide parties with professional education and guidance needed to help them make informed and healthy decisions for themselves, their family, and their future.

A structured interdisciplinary family mediation process should begin with a joint education session. At this session, the lawyer-mediator provides both parties with an overview of the court process, all process options (*pro se*, mediation, collaborative, lawyer negotiation/

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*(Not all firms will qualify for all items listed)

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Even with a corrected birth certificate, the ambiguity will persist with regard to my wife's legal parental rights as the non-biological parent of our son. LGBT advocates argue that Wisconsin's spousal presumption law should equally apply to same-sex couples after *Wolf v. Walker*. The statute creates the rebuttable presumption that a child born to a married woman is the biological son of the woman's husband, regardless of whether the child is in fact biologically related to the husband. This law would allow my wife, the non-biological mother of our son, to be presumed and treated for all intents and purposes as the legal parent of our son, as she would be were she my husband and the non-biological father. This, too, is being litigated.

Along with securing better legal protections for transgender individuals, LGBT family rights will be one of the next major focuses of the LGBT movement. Many LGBT families, despite of or perhaps as a result of marriage equality, find themselves dealing with antiquated notions and definitions of "family" that have been codified into laws and that discriminate against them. In fact, three cases in Wisconsin courts right now deal with LGBT familial issues that have come to light since *Wolf v. Walker*. These cases, brought by the ACLU, Lambda Legal, and the Law Center for Children and Families, focus on the parental rights of same-sex married couples. They seek to "ungender" the spousal presumption law and clarify its applicability to same-sex married couples, as well as to make it easier to obtain a parentage order and a birth certificate revision for same-sex couples when necessary. Until these cases reach a resolution, the fate of my wife's parental rights, and therefore our family's legal recognition, remains in limbo, as it does for many Wisconsin LGBT families. Thus, while many of the consequences of *Obergefell* have been positive, not all of them have been and LGBT families continue to fight injustice on a daily basis.

In other areas of the law, as well, discrimination continues against the LGBT community. In 31 states, a person can still be fired because of his or her sexual orientation or gender identity. While many federal agencies now recognize and enforce employment protections for LGBT individuals, uniform protection in employment and other areas is needed. LGBT individuals can be denied access to public accommodations, fair housing, credit, and educational opportunities because of their sexual orientation or gender identity. To that end, the Equality Act 2015 was recently introduced in the Senate; it would, among other things, amend the Civil Rights Act of 1964 explicitly to protect LGBT individuals

from these types of discrimination. Passage is by no means certain given the current makeup of the Senate. A similar bill, the Employment Non-Discrimination Act, has been introduced each and every year since 1974 but has never gained enough traction to pass.

Even though we have far to go before we have complete protection of our rights, cultural acceptance of LGBT individuals and families is on the rise in America. A Gallup poll in January 2015 found that "the number of those dissatisfied with how gays are treated and [who] believe society should be less accepting has plummeted over the last decade, from a high of 30% in 2006 to just 14% in 2015." While this is encouraging news, clearly some folks are resistant to change. Until there are laws explicitly protecting LGBT individuals and families from legal discrimination in all aspects of life, marriage equality is just one piece of the pie. Much work remains in the fight for full equality.

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litigation), legal issues to be addressed, and basic education about each issue. If parties choose to mediate, the lawyer-mediator works with other professionals as needed to help the parties gather information, identify goals and interests, discuss options, reach agreements, and complete data input and processing for all their required financial and legal court documents.

Self-represented family mediation clientele range from individuals unable to afford two lawyers to high-net-worth individuals committed to mutual problem-solving. Interdisciplinary family mediation practitioners can also provide a community education and referral resource to help clients meet various life transition needs, including financial planners, therapists, realtors, accountants, and lawyers in other fields such as business and real estate. Lawyer-mediators should also maintain a resource list of family lawyers for clients who want individual legal consultations during their mediation process.

Competent interdisciplinary family mediation can provide education and professional support to assist couples in making well-informed, livable, and durable decisions, and that is a win-win for families and the court system.

Attorney Susan A. Hansen is a co-founder of the Family Mediation Center, which offers structured family mediation services and resources including a flat fee initial education session for couples. She is also a partner at the family law firm of Hansen & Hildebrand. For more information, visit www.familymediationcenter.org.

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specifically. We heard from representatives of all disciplines in the audience. There was no universal agreement on anything, but there was respectful listening and dialogue. We said from the outset that this was only the beginning of the conversation, and I hope we accomplished that.

Since then our organizing group has continued to meet. We sponsored an exercise called "People in Crisis" to help people understand and experience what it is like to be poor and try to navigate the world. In addition we are planning a follow-up conference for this October (thanks to MATC), to include a much larger contingent of law enforcement officers.

The issue of racial disparity in the justice system has continued to garner a lot of attention locally and elsewhere. I believe we have an opportunity and an ongoing responsibility to add our perspective to this critical community debate.



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