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A Poor Divorce: The Impact of Economic Class on Divorce Accessibility and Processes

Evan Lovell

Abstract: The implications and effects of a divorce are largely determined by family dynamics and how the separation is processed. The three methods of settling divorces discussed in this paper—independent settlement, mediation, and litigation—are designed to best suit and alleviate a particular case’s ills and circumstances. Consequently, the accessibility of these procedures heavily impacts the health and well-being of divorcees and their families. Through qualitative inquiry and expert interviews with a financial analyst, a divorce attorney, a family therapist, and a mediator, this paper examines how economic class impacts the divorce process and—more specifically—how income level changes or influences the way divorces are settled. The results of this research indicate that independent settlement is only preferable for low-income classes, mediation is available to both upper and lower income classes, and attorney-represented litigation is only an affordable option for high-income couples. Further, across all income levels, the spouse with greater financial stability is advantaged in divorce proceedings due to their ability to control and outspend the other spouse in legal fees.

Keywords: *divorce, economic accessibility, divorce mediation, divorce litigation, civil law*

Introduction

A marriage—minus the social pretenses and romantic implications—is a contract between two people. The American Bar Association (ABA 2018) defines divorce as a decree by a court that a valid marriage no longer exists and leaves both parties free to remarry. Essentially a divorce is the dissolution of a contract, and as such requires extensive paperwork (Llewellyn 1932, 1281). Despite the wide state variance in the factors given consideration in the division of assets, what is startlingly consistent across the entire nation is the methods available for reaching and finalizing one’s divorce settlement (ABA 2020). The ABA states that in divorce proceedings, the court may divide property and order spousal support, and, if children are involved, award custody and child support. The method by which the decisions regarding property, custody, and spousal and child support are reached and the way marital separation agreements are filed is primarily dependent upon the type of official, if any, that is used to moderate the process. The parties can utilize a family law attorney, a non-legal third party official, or go through the process independently. For the purposes of this research paper, divorce litigation will be defined as the hiring of an attorney for the settlement process. The ABA recommends this option for those who can afford it because it allows for individuals to “best prepare themselves for the upcoming decisions and division of resources” (Kessler 2017). Using a non-legal official involves what the ABA calls ADR, or Alternative Dispute Resolution, which is primarily practiced in the form of mediation (2019). This method is generally seen as more cost effective, collaborative, and hospitable than involving litigation, but only when the parties are confident that they will be able to work together. Finally, the option to divorce unassisted is best suited for “simple” cases in households without children or complicated assets. (ABA 2018). For convenience and clarity, these methods, and the types of divorces they are most suited for, are summarized and displayed in *Table 1*.

The article continues with Table 1 on the following page

Divorce Procedure	Suitable/Ideal Clientele
Independent Settlement	Households with limited assets and no children.
Mediation (ADR)	Amicable divorcees who are willing to work together.
Divorce Litigation	Couples who can afford the expense, or whose circumstances differ from those listed above.

Table 1

A primary determinant in the suitability of a method is the state of the relations between the divorcees, which, in turn, is characteristic of, or dependent on the reason for the divorce in the first place. While there are a wide range of causes and circumstances that bring a couple to divorce, a study by the American Psychological Association found that the most commonly reported reasons were infidelity, conflict, and lack of commitment. Additionally, the study found that domestic violence and substance abuse, when present, were considered the main factors that prompted a spouse to file for divorce (Scott et al. 2013). Other reports have shown that lack of communication, jealousy, differing levels of spousal materialism, perceived financial problems, and lifestyle differences are other common causes (Amato and Rogers 1997, 612-624). Several cases and studies have shown that individuals will often blame themselves and cite that they married too young or were not ready for the challenge of marriage (Stanley 2017).

Because there are so many variables, not every divorce needs to be handled the same way. Further, having the ability to choose the best option is essential for a family to recover from the harmful process of divorce. This research focuses on the accessibility of these options and aims to investigate how economic class shapes the divorce process.

Theory

I propose the following hypotheses:

H1: Irrespective of income class, all households will not be able to settle divorce cases independently without the assistance of ADR methods or litigation.

H2: A household's access to assisted resolution methods will vary by class income.

H3: For all income levels, the spouse with a higher level of income will be advantaged in divorce proceedings.

This is based on the following research:

Hypothesis 1 - Irrespective of income class, all households will not be able to settle divorce cases independently without the assistance of ADR methods or litigation.

In 2011, a study conducted in the Netherlands to determine the relationship of social class with divorce rates found a negative association between illiteracy and divorce (Kalmijn, Vanasche, and Matthijs 2011). Numerous news articles also detail how difficult and complicated the divorce process can be (Greiner 2018; Falzone 2016). In fact, tips and advice on how to circumvent the confusion and frustration associated with the divorce process is a common topic for self-help and financial advisory organizations (Stophel 2014; Bodyfelt 2014; Rodman 2015).

In addition to its inherent legal complexity, the divorce process can be further complicated when there needs to be an agreement on child custody and how to divide financial assets like homes, automobiles, stocks, and financial investments. To be able to successfully file for divorce without professional help, one would need a background in legal knowledge or an innate ability to understand and accurately interpret legal rules and requirements (Ferguson, Bovaird, and Mueller 2007). This, however, is highly unlikely. Legal writing is so complex and confusing that it is often considered its own separate language (Baude 2017). The American Bar Association has even stated that legal writing is "notorious for its unnecessarily complex words, legal jargon, and convoluted sentences that can obscure meaning

and create ambiguity” (Adams 2019).

Hypothesis 2 - A household’s access to assisted resolution methods will vary by class income.

According to the ABA’s quarterly magazine, *The Family Advocate*, court litigation is the most expensive method of handling divorce settlements. Linda Olup (2004, 16-19) explains that going to court can be financially draining because most divorce attorneys charge on a temporal basis, which means the cost will greatly increase if there is any hesitancy, confusion, or indecisiveness during attorney-client meetings. These instances, however, as different mental health counselors have indicated, are difficult to avoid, as it is quite common, and natural, to feel sad, conflicted, and emotional during the divorce process (Hammond 2018).

The *Yale Law Journal* also cautions against immediately resorting to divorce litigation, stating that there are “obvious and substantial savings when a couple can resolve distributional consequences of divorce without resorting to courtroom adjudication” (Mnookin and Kornhauser 1979). As a substitute to attorney-based litigation, the ABA (2019) publicizes mediation as one of the cheaper, more cost-effective forms of ADR. They state that litigation is time-consuming and expensive, while mediation is more “economical and efficient than the court system.” Another study also found that on average the comprehensive costs of an adversarial divorce involving lawyers was 134 percent higher than the average cost of mediated divorces (Kelly 1990).

Hypothesis 3 - For all income levels, the spouse with a higher level of income will be advantaged in divorce proceedings.

In criminal trials, the quality of defense provided to the accused varies significantly depending on their income level and quite commonly hinges upon whether they hire a private attorney or use a court-appointed public defender. Data from the Department of Justice has shown that defendants with publicly appointed attorneys are more likely to be detained before trial and incarcerated post-conviction (Spangenberg et al. 2000; Harlow 2000). Though these findings can be partially accounted for by

differing income levels and types of offenses, they have also been attributed to the national shortage of public defenders. The Department of Justice has estimated that to adequately manage and handle the current caseload and demand for publicly-appointed attorneys, more than 6,000 public defenders would need to be hired nationwide (Buckwalter-Poza 2016). Consequently, those who are available are overworked and underpaid. And due to these temporal and financial limitations, publicly funded attorneys often forgo providing substantive defense, and instead recommend plea bargains to minimize their caseload. As a result, 90-95 percent of defendants represented by public defenders plead guilty (Spangenberg et al. 2000).

It would logically follow that if this sort of economically-based detriment exists in criminal cases where individuals have a constitutional right to legal representation, it would certainly be present in a comparable fashion, if not to a heightened extent, in civic cases where there is no such guarantee. According to the National Center for Access to Justice (2016), there is less than one publicly-funded civil legal attorney for every 10,000 people living in poverty. There are a few civil legal aid organizations that offer assistance to low-income families but they, like public defenders, are for the most part underfunded and difficult to find. For the nearly 110 million people who qualify and are considered “in need” of free legal assistance, there are less than 7,000 legal aid attorneys to help them (Covert 2016). This is in part due to the near 300 percent reduction in congressionally appropriated funds to the Legal Services Corporation (the primary source of funding for these legal aid groups) that has occurred since 1981, despite the rising number of eligible Americans in need (Sandman 2015).

Due to the underfunding of civil legal aid and various support services, a divorcee’s capacity for representation and third-party help in assisted resolution methods will be strictly based on what they as individuals can afford; consequently, the spouse with the larger income will be able to afford attorneys with higher legal fees. While the correlation of attorney cost to quality representation has not been empirically proven, an intensive study in 1997 of conferences between attorneys and clients revealed that divorce lawyers often promote the idea

that more experienced and “expensive” attorneys will be more successful and influential (Sarat and Feltsiner 1997). Though this is only a widespread portrayal and not a confirmed reality of the legal system, it is a very real perception and can prove to be quite advantageous to higher wage earners when their spouse is deciding how much they want to fight and how much they want to spend on their divorce case. As the study explains, a divorcee may feel obligated to compromise and settle simply because they know their spouse will be able to afford a “better” attorney. This effect is likely exasperated for already fearful spouses who are in a relationship with a historically asymmetrical power dynamic.

The 1997 study is supported by a recently reported trend that indicates a wide variance in spousal income has resulted in numerous women staying in unhappy marriages to avoid suffering procedural disadvantages within the divorce process (Francis 2019). These women fear that because they have a comparably smaller income, their spouse could strategically aim to maximize their attained assets by engaging in expensive litigious divorce proceedings where they would not be able to adequately defend themselves.

Additionally, the financial advantage present within divorce cases is not just apparent within litigation and cases involving attorneys. In fact, a 1987 examination of twenty-five informally settled divorces (cases that used ADR methods) found that most of the settlements reached were in part a reflection of unequal financial resources (Erlanger, Chambliss, and Melli 1987). Further, this study indicated that the agreements that were reached on contestable issues such as child care were commonly and primarily based on non-legal situational factors like relative impatience, which again could be a matter of finances.

Methodology

The data for this research paper comes from qualitative interviews with different family law and divorce professionals. When I reached out to each potential source I provide the following checklist of information:

Name: Author

Job: UCLA Student Researcher

Reasons for the study: To learn more about the divorce process (I kept this brief to avoid biasing the report and findings.)

Study's sponsorship: UCDC Program, UCLA Department of Political Science

Where the respondents name would be found: Only within my research paper

Why they were selected: "Upon Referral from _____" (if applicable)

What will be asked: Information about divorce processes, procedure, and cost

Tape Recorded: Only with permission

Confidentiality: Fully assumed unless otherwise stated

To ensure consistency, I contacted sources using a premade interview template and had a prewritten questionnaire that was provided upon request if the sources wanted to prepare their answers before the interview took place. The questions were tailored to elicit answers that would provide data for my hypotheses. While these sample questions were important and helpful to maintaining organization and consistency across my samples, I did not prioritize reciting these questions word for word at the cost of paying close attention to the interviewee. To some extent, I let the sources steer the conversation so they could focus on areas where they had the most knowledge and expertise, but I also tried to maintain the interviewee's attention to topics relevant to this research.

At the conclusion of my data collection, I had reached out to twenty-five different legal organizations and received a total of ten responses (including both positive and negative responses). To keep all of my outreach efforts organized, I listed my correspondence with each potential source by date and logged their responses. From these responses, I was able to construct a convenience sample of 4 sources:

Source 1 – Ginita Wall, Divorce Financial Expert with Second Saturdays, and Co-Founder and Chief Financial Advisor of

WIFE.org

Source 2 – Risa Garon, a Family Therapist and Executive Director of the National Family Resiliency Center

Source 3 – Jean Biesecker, Mediator and Collaborative Family Law Attorney at the Law Office of Jean M. Biesecker

Source 4 – Hugh Algeo, Divorce and Family Law Attorney at Eastburn and Gray, P.C.

With this data, I utilized two phases of qualitative analytic coding: open coding and focused coding. Open coding entails going sentence by sentence within a transcript and identifying the ideas and themes that are suggested and mentioned (Emerson, Fretz, and Shaw 2011, 172). However, despite the great benefit of this preliminary work, my findings and notes from this phase are not included in this paper because they are not easily comprehensible to readers who are not directly acquainted with the topic or material.

Alternatively, focused coding, the next step in my analytical work, is better suited for inclusion. Focused coding is the process of categorizing interview data according to specific topics that have been identified as areas or subjects of particular interest (Emerson, Fretz, and Shaw 2011, 172). I chose themes and topics that naturally developed and arose during open coding and are consistent with the goals of this research (Emerson, Fretz, and Shaw 2011, 188). The following were chosen:

- Independent Settlement Feasibility (*H1*)
- Access to Assisted Resolution Methods (*H2*)
- Financial Advantages in Divorce Settlement (*H3*)

As is emphasized by the italicized parenthesis, these topics mirror and correlate with this paper's hypotheses. Because of this, I was able to present my findings in a synchronic fashion that is clear and easy to follow. I first discuss the evidence that regards Hypothesis 1, and then Hypothesis 2, and then Hypothesis 3.

Findings

Hypothesis 1

While independent settlement is a viable option for divorce settlement, it is not easy or advisable. The inherent difficulty of finalizing one's divorce without third-party assistance stems from the complexity and rigid nature of the divorce filing system—there is no general or universal way of filing for divorce; for every household, the needed paperwork is different. For example, some families will need income statements for support determinations, others will need child care receipts and educational assessments for their child care decisions, and some might need property division forms for real estate investments and family businesses (Jean Biesecker, telephone interview with author, November 18, 2019). Further, the court's staff that is responsible for file intake are far from supportive. In fact, as Pennsylvania divorce attorney Hugh Algeo explains,

The clerk of the court most often takes the position that it is not their responsibility to teach you how to do it. They... just tell you it's correct or it's not... They say this is not correct and send you on your way and now you have to figure out what's not correct about it. (Telephone interview with author, November 18, 2019)

Court personnel's distant and unobliging nature can prove to be especially cumbersome for divorcees when they are forced to abide by the strict, often arbitrary, requirements of divorce paperwork. In some counties, such as Delaware County, the court will reject any submitted documents that are printed on standard, white copy-paper; this is because in Delaware, Pennsylvania, they only accept documents that are submitted on yellow canary paper. Other counties require that all continuances be submitted on carbon paper, which, like yellow canary paper, adds an extra step and strain to the independent settlement process (Biesecker 2019).

The difficulty of the process is further heightened by each

individual's relative unfamiliarity with the divorce process. As divorce financial expert Ginita Wall expresses,

It's an uphill battle. It's fought in an arena that the parties just don't really understand, because they haven't been through this before. (Telephone interview with author, November 11, 2019)

While there are websites and tutorials available online that are dedicated to making the process more comprehensible, this intention does not ensure their clarity and effectiveness (Judicial Council of California 2015). Some are still confusing even for experts with years of experience in divorce and family law. In fact, Algeo describes some of these “how-to” websites and their procedures as overly “convoluted.”

Consequently, finalizing a divorce via independent settlement, even with the assistance of legal web-services, is not advisable. Despite the “friendly” interfaces of sites like Legal Zoom (2019), there is no guarantee that the documents they prepare will be compliant with their specific region's requirements. The interviewed experts all agree that there is a great regional variance in the specific rules and laws governing the divorce process (Algeo, Biesecker, Wall, and Garon 2019). Algeo even notes that there is an expression within the legal community: “if you know the rules of one court, you know the rules of one court.” He further explains that in many ways each court is its own little “fiefdom” with its own rules and procedures, which are not intuitive even to those familiar with another court's policies. With this general lack of universality, Algeo cautions, relying on a national web-service to do the job of a local legal expert risks failing to adhere to district restrictions and neglecting to include necessary elements of the divorce settlement paperwork.

For this reason, independent settlements with and without the aid of online legal services have a high likelihood of professional turnover and referral—meaning they eventually need to be reworked and renegotiated with a legal professional. Oftentimes when a couple works out their separation agreement with minimal guidance, they make mistakes and leave legal gaps

or loopholes in their contracts. Moreover, many parents fail to realize that verbal agreements excluded from the paperwork are not binding. This, as family therapist Risa Garon explains, creates an almost inevitable future conflict (telephone interview with author, November 18, 2019). Further, these households do not have the legal experience to foresee the necessary provisions. For example, families who make parenting plans without assistance frequently forget to determine who will pay for regular childhood expenses. Divorcees also rarely create contingency plans for when a spouse moves, gets fired from a job, or suffers great financial loss (Garon 2019). As a result of the absence of such provisions, these families must later revisit their failed or incomplete agreements and incur more costs than they would have by consulting a third party initially.

For these reasons, independent settlement as a means of finalizing one's divorce is not generally advisable. However, for a couple with limited finances, this process can be sensible and even cost-effective. If both parties are unemployed with no children, no assets, and no retirement pensions to manage, negotiation would be quite simple. Ginita Wall, the divorce financial analyst, explains that under these circumstances, the assistance of legal advisors is not entirely necessary; but the more children, money, property, and investments a family has, the more there is to dispute and fight over in the divorce process.

Hypothesis 2

Because money is a large factor in determining the quality of assisted resolution methods, the financial cost of divorce is a primary concern for spouses when separating. As Wall states,

Divorce is simply not fair... It takes money that [couples] don't really have. [They] haven't put money into a divorce [fund] over the years... to pay for all the expenses of divorce if it happens.

Divorce attorneys typically charge \$350-550 an hour (Garon 2019). This hourly rate results in contested alimony or child support cases priced around \$20,000-40,000, and contested

custody cases around \$30,000-50,000 (Biesecker 2019). A division of assets costs an average of \$20,000-40,000, and this is in addition to the standard \$500 filing fee (Biesecker 2019).

However, contrary to my hypothesis, the high cost of hiring a divorce attorney does not make the process of litigation inaccessible because a person can file a petition and appear in court without an attorney. In fact, this is quite common: in Philadelphia and Montgomery county, ninety percent of the filings in divorce court are pro-se, meaning the divorcees file on their own behalf as their own legal representative (Biesecker 2019). This, nonetheless, can be problematic because these divorcees typically do not know any rules of procedure or evidence. According to divorce mediator Jean Biesecker's description, self-representing parties start talking "extemporaneously" in the courtroom, which is a far from ideal way to conduct oneself during formal legal proceedings. So, while litigation may be accessible regardless of a person's income, one's economic resources do influence the level and quality of representation they are able to receive.

There are multiple legal aid foundations from which divorcees can receive subsidies or partial coverage of fees, but these organizations rely primarily on fundraising and donations from other entities. Consequently, they are not the most well-funded programs and do not have the money to support everyone in need (Garon 2019). Although some attorneys in the field work pro-bono, it is highly uncommon for them to actually represent a client in family court. Instead, they give free advice and assist with case preparation and the filing process. In reference to the weekly hour-long pro bono advisement sessions that are offered in Maryland, Garon says,

You need a lot more... you really need to have an advocate for you. If you're a wreck and you're going through this process and feeling very sad and don't know what to do, you need an attorney who is going to guide you.

This sort of supportive representation is something that, for the most part, is made much more affordable through ADR.

A mediator's hourly rate is around \$350, which is less than that of a divorce attorney (Biesecker 2019). Additionally, since there is typically only one mediator, the cost is evenly split between the two participating spouses. ADR is also conducted in a limited number of structured session times (typically 3-5 mediations each lasting 2 hours), which minimizes the inefficiency and high opportunity cost that accompanies litigation preparation with a divorce attorney (Biesecker 2019).

Despite these benefits, the cost-effectiveness of mediation can be negated by a spouse's unwillingness to participate, any existing mental health concerns, or an imbalance of power within the relationship. In divorce cases, there is not always a mutual desire for separation; in fact, as Wall points out, it is not uncommon for one spouse to be quite resistant to the divorce itself. This attitude yields belligerent and uncompromising behavior that is incompatible with the required conditions of mediation. Any active addiction or untreated mental health issues can cause additional disruption. These factors, when present, may cause a participating divorcee to experience high levels of irritation, frustration, desperation and, in some cases, a lessened degree of rationality. Further, because a mediator's role is to facilitate, they have little opportunity to intervene in an "uneven negotiation," or one that is failing to reach an ideal agreement. As Garon explains,

It's hard as a mediator [because] you are not supposed to give your opinion. And if you have one parent, saying 'Well, I think that I should have the children all the time.' I can say, 'Well, Mom or Dad, have you thought about how this might affect the children? But I can't say, 'This is really bad for your kids!'

This aspect hinders mediation when a spouse is being either too lenient or too controlling. In couples with a history of domestic abuse, one partner commonly opts to compromise and grant more concessions, fearing physical retaliation or subsequent emotional and mental abuse. The victimized spouse can be so negatively affected during negotiations that mediators are advised to

immediately end the session if they detect any traces of abuse or violence in the relationship (Biesecker 2019).

Garon also states that if a divorcee has a personality disorder and tries to dominate the negotiations, the mediator cannot protect the other spouse without ending the negotiation and forcing them to pursue litigation. Even social advantages like charisma, charm, or merely “people skills” can be measurably advantageous to one party in the resulting settlement. Consequently, this can imbue some spouses with a fear and wariness of the mediation process. Wall states:

Sometimes people will tell me, ‘I can’t do mediation. My spouse is such a good negotiator... everybody loves him. The mediator will be on his side. I can’t stand up for myself. He’s a bully he will push me into doing things. Mediation won’t work.

The weakness of mediation is its vulnerability to the whims and personalities of its participants. While it is certainly cheaper than litigation with regards to opportunity cost and service cost, it is not a better alternative for *all* relationships because, Garon explains, “Parents in mediation need to be on a similar page of power”—which, to put it simply, is not always the case.

Hypothesis 3

A divorcee’s financial strength, especially in relation to that of the other spouse, is quite influential on the individual’s strategy and eventual outcome in divorce proceedings. Additionally, when there is a sizable difference in income between two spouses, the divorcee with the larger income has a considerable advantage. This advantage manifests itself in the apparent benefits of having more money within a divorce case, but also in the observable detriments of having less financial resources. This power imbalance is so common that Algeo, the Pennsylvania divorce attorney, refers to the two parties as “income superior spouse” and “income inferior spouse” (tel. int. 2019). These terms will be utilized throughout the remainder of

this section to reference whichever individual has either less or more money in the relationship.

One luxury afforded to the income superior spouse is that they are able to outspend and essentially “outlast” the other spouse in divorce court. Within the context of a divorce settlement process, money gives an individual power. More specifically, it gives them power and control over the length of time it takes to reach an agreement. As Garon explains,

If you have money, and you can’t stand me, and you’re furious because I wanted the divorce and I initiated it, you can carry [the divorce proceedings] out and extend it for years and years... [That is,] if you get an attorney who will fight for you and you have the money... (tel. int. 2019)

This extension is done via a process called “papering” in which the higher wage earner overwhelms the court and the other spouse with documents and behaves in a generally uncompromising and inefficient way (Biesecker 2019). Lengthening the settlement process drains both parties’ money and resources, and gives the income superior spouse the ability to break the other divorcee’s will to fight and “strangle favors” out of them in concessions (Algeo 2019). In these circumstances, the income inferior spouse has the option to concede or try to fight, run out of money, and lose the ability to afford a legal defense (Garon 2019).

The looming threat of “papering” and high legal fees places the lower-earning spouse in a weakened position to negotiate, and often forces them to comply with the demands of the income superior spouse. As Algeo explains,

[A divorcee with less income] can’t litigate the way someone who has more money does. And so, they may be more inclined to reach agreements or accept a less than ideal deal, if the alternative is basically spending thousands of dollars fighting.

Income inferior spouses are also less equipped financially to

pay for quality representation because the legal fees for reliable and successful attorneys are often high. This is not to say that a divorce attorney's value is directly proportional to the cost of their legal fees; expenses do not always accurately reflect skills and abilities. As Algeo explains it,

There are lawyers out there who are worth every dime that they charge. And there are lawyers that are not worth half of what they charge; and just because they charge a lot or don't charge a lot, doesn't mean that they are necessarily worth it.

What does give an attorney value, however, is their reputation and level of experience. It is beneficial to have one who is practiced, appears regularly before the court, and has a good reputation. Algeo asserts,

If you see someone walking around the courthouse and they seem to get along with everyone, that's probably a good lawyer. Because they are people who ... get along with people, and they are people who can represent you but also look out for your best interests.

Thus, by this standard, an attorney who has a good reputation and long-standing history with the court is a very powerful and influential asset in divorce proceedings. And to the disadvantage of income inferior spouses with limited funds, attorneys with this level of reputation and experience are rarely on the affordable side when it comes to legal fees.

Discussion

These sources were obtained via a process called "snowball sampling," a methodology in which a researcher uses the professional referrals of a source to find additional willing research participants (Weiss 1994, 24-25). In this paper, each of the four sources was found and contacted upon referral. Ginita Wall, from Second Saturdays and Wife.org, was referred by Greg

Welborn from DivorceHelp.org (who declined to be interviewed himself). Additionally, Risa Garon, Jean Biesecker and Hugh Algeo were all contacted upon referral from Ginita Wall. To maximize the likelihood of a positive response, I explicitly mentioned these referrals when contacting each source.

A factor to consider when interpreting and evaluating these findings is that they feature diverse perspectives from within the realm of family and divorce law. No field or method is oversaturated or underrepresented in the sample, which consists of one therapist, one financial analyst, one mediator, and one divorce attorney (Algeo et al. 2019). This research therefore draws insight from an expert who speaks to the emotional and psychological factors of divorce, an analyst who speaks to the financial cost of divorce, and two practicing professionals, each of whom speaks to one of the main assisted resolution methods, mediation and litigation, respectively. Because each type of professional is only represented in the sample once, these findings are resistive to potential claims of subjectivity and skew. No individual point of view is “outnumbered” and each source was given an equal opportunity to advocate or share their perspective. In this sense, the sample is quite strong and reliable.

Conclusion/Recommendations

Contrary to my previous expectations and the suggestions of published literature, independent settlement is a widely available option for divorcees of all income classes. But while this is a valid option for low income divorcees without children or valuable assets, it is not the easiest or simplest procedure for most other individuals and income classes. This means that despite its “availability,” independent settlement is lacking in comprehensive “accessibility.” Combating this would require fundamental and logistical changes in the rules and expectations of the divorce independent settlement process, and a general minimization of the required paperwork and documentation. For example, settlement forms could be limited to only those that are necessary and important. The process could also become much more “user-friendly” by removing archaic requirements. Doing so would require the implementation of an evaluative measure

to determine what aspects of the process were necessary, and hence, worth preserving. One way to do this would be to assess each component and ask two questions: “Will the divorce process benefit from the inclusion of this requirement?” and, “Will the divorce process be hurt by the removal of this requirement?” If the answer is “No” to both of these queries, then it can be deemed archaic and hence, worth removing. By this metric, Pennsylvania’s yellow canary paper and white carbon paper requirements would certainly fail to meet this “threshold” of necessity.

The impact of this change could further be catalyzed by reframing the role and responsibilities of filing staff and courtroom clerks. Instead of acting as a litmus test and providing little support beyond stating if the paperwork is acceptable or unacceptable, these personnel could be utilized and trained as facilitators. With the help of staff who are prepared to offer explanative guidance, the process of independent settlement would become far less daunting and burdensome for divorcees. In turn, it would also become less of an unrealistic settlement method and better suited for *all* income classes.

Regarding assisted mediation, economic class does not impact a divorcee’s ability to participate in court litigation but it does strongly influence, and at times impede upon, the acquisition of quality representation. The disparity lies not in the ability to be represented in court, but rather in the access to divorce attorneys. Currently, only a very small portion of the population can afford to pay the legal fees of attorneys who have the experience and knowledge to adequately advocate for their respective clients. Increased funding of pro-bono and legal services would help alleviate this, as would directing these funds toward subsidized legal representation instead of free legal advice. By doing so, the aforementioned ninety percent of divorcees who must represent themselves in court can be reduced in favor of more equitable and accessible legal representation (Biesecker 2019).

And while the accessibility of Alternative Dispute Resolution depends less on finances, it is not without its flaws or weaknesses. Mediation’s effectiveness hinges upon the cordiality of a divorcing couple and is vulnerable to spousal whims, tempers, and manipulation. As a result, this method is

incompatible with relationships that have an imbalance of power or a history of domestic abuse, and therefore inaccessible to low-income divorcees in abusive or unhealthy relationships.

This, and the almost universal advantage held by the higher-wage earner, could be minimized by implementing a nation-wide policy that extends the right to legal representation to divorce cases and settlements. While this right is typically associated with criminal cases, it does apply to some areas of civil law as well. Currently, in the United States, an individual has a legal right to counsel in civil cases concerning “domestic violence, termination of parental rights, paternity, civil contempt, civil commitment, civil forfeiture, and judicial bypass of parental consent to obtain an abortion,” but none such allowances are made for divorce cases, even when they involve domestic violence (Pollock, 2013).

Despite advocacy for the right to legal representation in divorce cases—and civil cases in general—this proposal lacks public recognition. It is commonly argued that, because civil law primarily regards monetary disputes and minor financial concerns, these cases are not as “serious” as criminal ones that may involve life-long imprisonment. However, the more awareness of and attention that is brought to the hidden and unrecognized impact of civil proceedings, the easier it will be to refute those claims (Erstad 2018). The executive director of Voices for Civil Justice explains that when discussing this matter, most opponents fail to recognize that in some civil cases, “you can lose your children, you can lose your home, [and] you can lose your livelihood,” without any sort of legal help or protection (Frank 2018).

Further research regarding economic-based differences in divorce settlement outcomes, as well as publications regarding the significance, weight, and impact of divorce cases and civil law, may combat these misconceptions and strengthen the arguments in favor of these reforms. These proposed changes and subsidized assistance may not be able to solve the economic disparity and lack of accessibility in divorce settlement methods, but it would certainly benefit all current and future American divorcees.

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