

# **DON'T BE FOOLED**

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I have spent most of the 39 years of my family law attorney career as a family law litigator. There was a time that if you asked me to describe what a really good day looked like, I would have replied by telling you that "I shredded someone on the witness stand and made them cry." Seriously! Today my answer to that same question is "I helped someone achieve success as they defined it for themselves by facilitating a peaceful resolution." I feel much better about myself, the work that I am doing, and the legacy that I am creating.

Some time ago I decided to no longer accept litigation cases and only work as a peacemaker by providing collaborative divorce and mediation services. I made that decision because I was tired of seeing the failure of the family law court system and the resulting devastation to families in crisis and transition. I had hope that there was a better way for families to transition by achieving peaceful solutions that promoted healing, growth and development. Once that decision was made, I still had to manage the volume of litigation cases that I already had, while working as a peacemaker for the families that were seeking peaceful solutions and no court divorce options. The litigation cases did not just go away because I decided to do something very different. They have to be finished, and family law litigation takes a long time to finish, in part due to the congested family law departments and their broken system. I was in court this morning for one of my few remaining litigation cases. This is the story of what happened today and what it really meant.

I left the house at 8:00 AM and arrived in court at 8:45 AM which was "on time". When I checked in with the bailiff, I was told that the other attorney had called the court and left a message that he would not be there until 10:00 AM. I sat and I waited. At 10:00 AM this other attorney pranced into the courtroom, walked up to me and said "We need to talk." We went into the conference room, he quickly told me his client's position and then said "I have to go to the courtroom next door and I will be right back.." He returned at 10:30 A.M.. The Judge called our case at 10:45 A.M. The Judge asked us what we wanted to do. The other attorney spoke for about 1 minute and I spoke for about 2 minutes. The Judge made his "ruling", and I left the courtroom.

I started thinking that often times potential clients are very focused on the hourly rates that we quote. This is very misleading because there is the hourly rate we charge, and

then there is the “effective hourly rate” that clients end up paying. From the client’s perspective, the “effective hourly rate” is a better measure of value. For example, on one collaborative case my hourly rate was \$500 and the other collaborative attorney's hourly rate was \$350. At the end of our combined peacemaking efforts, his total billing and my total billing was less than \$400 apart. Because I use a Dispute Resolution Assistant at \$150 per hour, and because I "No Charge" wherever possible and do not bill for every little detail, my hourly rate was \$500 but my effective hourly rate was \$350.

Contrast that with my litigation client today. My hourly rate was \$500. My billable time was 4 hours including drive time for a total of \$2,000. The actual time I spent working for the client was less than five minutes. My effective hourly rate was \$500 per minute! The rest of the time I was sitting in court texting on my cell phone, checking my e-mail on my cell phone, and chatting with other lawyers who, like me, were sitting around passing time waiting for our time with the judge. I had no choice as there was nothing for me to do until (1) the other attorney actually showed up and (2) the judge was ready for us. This obvious waste of time and resources is not the exception in family law litigation, it happens often.

When we are so fixed on the hourly rate that we overlook the effective hourly rate, we lose sight of the value of the return on the investment we make in employing divorce professionals to assist us as we transition. Paying a family law litigator to go into court, take a win-loose position, and ask the judge to make the decision for you and your spouse is not a good strategy for success, nor is it well thought out. Rarely does this option result in high satisfaction or rewarding problem solving. When divorcing there are divorce options including which process will be used to take your family from what it was to what it is going to be. The more empowered you are, the better decision making you will engage in. How you model adult problem solving is part of the legacy that you leave your children and yourself. Divorce is a problem to be solved, and not a battle to be won. Don't be seduced by the hourly rates that divorce professionals charge. They mean nothing! The process decisions that have to be made, and the return on your investment in divorce professionals is a better place to be focused on. Don't be fooled!