

How to divorce in the best interests of the children: Part 2

BY STEPHANIE BLUM



As a family law attorney, I have seen firsthand the damage that can be done by excessive litigation — and the polarization that ensues. It doesn't have to be that way. There are ways to bring down the temperature on the two hottest topics of contention: money and custody.

Financial accounting

Spouses in California have fiduciary duties to one another. This means they are required to disclose all material facts and information regarding their income, assets and debts. If people can see their way clear to honoring those obligations and voluntarily providing the information and supporting documentation to their spouse and the divorce professionals involved, it can save an enormous amount of time, attorney's fees and headaches.

For example, instead of each hiring their own accountant, the spouses can choose to work jointly with one forensic accountant. This professional can assist them both in ascertaining the value of a business, or of the parties' respective cash flows, to calculate the support that will be due from one parent to the other.

But when warring spouses retain lawyers who hire separate forensic accountants, expenses — and tensions — may rise dramatically.

And when parents going through a divorce are spared from any fights, that serves to benefit the children. When interviewing divorce lawyers, ask if they would be willing to work on a case with a joint forensic accountant. It could provide a clue as to their approach to the process. If they object, and if keeping hostility to a minimum is your goal, ask why. Sometimes there are valid reasons for each side having their own accountant, but not always. But some lawyers aren't comfortable with the collaborative model, and it is important for the client to understand those attitudes before they choose counsel.

Custody

Designing custody arrangements, however painful and challenging, can be made easier using a trained mediator. Various mediation options are available to parents going through a divorce and your counsel should be able to assist in choosing those options as well as providing you with referrals to such professionals. It would also be helpful to know if any counsel who you are contemplating retaining is willing to participate in the process of mediation.

As mentioned last month, parents can work with a mental health professional who specializes in custody to help reach an agreement for a parenting plan. Parents can work with a mediator from the outset regarding all the issues involved, who can explain the process, explain the paperwork and assist them in reaching a global agreement.

Parties contemplating this process should understand that using a mediator does not mean that you should not or do not have counsel. The mediator's goal is to help you reach a settlement agreement. Having your own counsel advise you of your rights through that process can be valuable.



Getting to agreement

After the parties and their counsel have obtained all the discovery they need, figured out how much income each party has, placed a value on the assets involved, then the parties and their counsel can sit down with a retired family law judge who can help them hammer out an agreement on all the remaining issues if they have been unable to do so previously.

Surely, from the perspective of maintaining a cordial coparenting relationship between the spouses, that is a better approach than going through an expensive prolonged trial and letting the court — who won't know the family — hand down the decisions.

There are many options one can choose when embarking on the rocky road of divorce. Not every case lends itself to an amicable resolution or a mediated resolution. But if it is possible, given the facts and circumstances of your case, to work amicably with your spouse, it is well worth the effort.



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