

### **In Lieu of Court and Hardball Litigators**

If you are separating or divorcing, there are good reasons you don't want to go to court and why you want to avoid hardball, winner take all litigators.

The reason to stay away from court is to avoid the win/lose mentality of settling a case. The reason you want to stay away from the win/lose outcome is because in the end, very often both parties subject to the litigation wind up losing. The question is, how can that be?

It goes like this.

When you go to court and put your life into the hands of a third party who makes decisions over your life, you can rest assured that the decision, good or bad, will not be as well crafted as you may craft yourself because that person will never have all the intimate details of your life.

The other and perhaps the more important reason why so many court imposed outcomes fail, is that no one likes being the loser. No one likes holding the "dirty" end of the stick.

While you may be thrilled to have won, consider the psychology of the other. That person is likely to feel hard done by and resentful. How well does someone who feels resentful follow rules to which they are opposed?

Resentment begs revenge and the nature of the revenge is to undo whatever was imposed against their favor. That means that the "winner" now has a huge target painted on their back and the "loser" is seeking to take them down to re-right their view of an imposed wrong.

You may not even see your opponent coming as revenge can go underground and come back in passive aggressive strategies or subtle and sometimes not so subtle strategies of undermining behavior.

Winner/Loser? Now both have lost as you are embroiled in an ongoing battle of undoing perceived injustices. This is hardly ever a favorable outcome.

Keep the lawyers from being central as they too, fighting on your behalf are more often at tremendous risk of only ratcheting up your conflict. Sadly enough, this occurs amidst the conflict of interest where your intensifying conflict is directly related to their financial gain.

Instead of the folly of litigation, Court imposed outcomes and lawyer assisted or directed negotiation, consider those strategies that facilitate negotiation between the opposing parties themselves.

Those strategies include collaborative law and mediation.

At least in collaborative law, while you have tremendous lawyer support, the parties subject to the dispute are central to the process and always present in every negotiation. In other words, you remain in control throughout, although assisted and guided by your lawyers.

In mediation, you get to work with a single neutral facilitator to help you craft your agreement. Bear in mind, the mediator will be neutral with respect to the final outcome of your agreement. However the mediator will not be neutral with regard to respect and safety. There the mediator will seek to facilitate a safe and courteous environment within which to carry out your work. In so doing, the mediator very often also serves as coach to help improve separating couples communicate more effectively between themselves. This is very useful for maintaining that ongoing relationship as co-parents.

While your collaborative lawyers are expert at law, you can chose a mediator with expertise directly related to your area of dispute so that the mediator can provide information and guidance to help achieve an agreement consistent with your needs, interests and the well being of your children.

In the end, it is not just the agreement that is reached, but the likelihood of the parties honoring the agreement over the passage of time. It may be more advantageous to craft a less than perfect agreement to which both persons buy into and to which both can maintain, than an agreement that suits primarily one that will likely crash and burn anyways.

Statistically, more than 95% of most matters settle prior to a trial, so why not spend your time and less money by going directly to those strategies that avoid court and the escalation of conflict?

You still want your lawyer, chose collaboratively trained lawyers and enter a collaborative law process. Want to preserve greater costs and be the most central figures in your settlement, chose mediation.

Want a lawsuit that will cost countless thousands of dollars and take years to settle chose litigious lawyers and go to court.

Not sure when you really may need to litigate? Consider domestic violence, serious mental health issues or criminal behavior. In the absence of those issues, and indeed often even in the presence of those issues, the alternative strategies might very well still be your preferred strategies.

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