DIVORCE COSTS: CHOOSING YOUR DIVORCE PROCESS & PROFESSIONALS

Breathe. One moment at a time. One thing at a time.
All is well. You got this.

DIVORCE COSTS: CHOOSING YOUR DIVORCE PROCESS

Go to VirtualDivorceCa.com and register for a no-cost "Divorce Options®" webinar. Learn about the 4 legal divorce processes, before deciding which best fits your family's needs, budget and values. ***Choosing your divorce process is the single most important decision you will make***! The process you select will have a critical impact emotionally, financially and legally on you and your family going forward.

Divorce costs are impacted significantly by any kind of adversarial approach, regardless of the divorce *process* you both choose (e.g. do-it-yourself, traditional court litigation, collaborative divorce, traditional or integrative mediation). These costs are financial, as well as emotional – particularly in terms of the impact on children.

Financial costs are also determined by any personal characteristics of partners/spouses that require more professional intervention, such as the extent of your knowledge of financial and legal divorce matters, your ability to understand and organize materials, and to organize and express your desires and concerns clearly, respectfully and succinctly.

Similarly, divorce costs are affected by your ability to: consider your higher values and align your behavior with those, realistically assess your budget for divorce, communicate respectfully/civilly with one another, be flexible rather than taking rigid or righteous positions, consider and offer win-win solutions that take both person's interests into account (while prioritizing the children), manage intense emotions (e.g. anxiety, depression, fear, anger, reactivity, defensiveness), attend to mental health challenges, addictions and/or disabilities, share time with children, and consider *their* best interests as distinct from your own desires.

The more you both invest time and money in *both* of you being and becoming more skilled in *all* the above arenas, the less you will *both* need to pay professionals to inform, guide and intervene to ensure your family's wellbeing, in the short and long-term. The cost of a divorce will go up exponentially for both partners, when one insists on an adversarial approach and/or refuses to become more skilled, or get help to become more skilled, in any of the above areas. Persons who are truly unable/unwilling to consider views other than their own are not likely effective candidates for non-litigation divorce processes.

When you engage a divorce or custody resolution process, you are dismantling "the way things were," and embarking on a new life. While tackling all the demands of a divorce, you may also be creating a newly restructured family, new identities, tackling new responsibilities, new residences, new budgets, new careers, new work schedules, new schools, new child-care arrangements, etc. While divorce is common (approx.. 52% of us), it's a significant life crisis.

It can be counterintuitive in the midst of a crisis to take on learning. It can *feel* like you're being asked to learn to swim, amidst the panic of watching the ship you're on sink. And . . . even dog-paddling will get you to shore more safely and sanely than flailing and clinging to the fragments of a sinking ship, "the way things *were*." There is a saying that enhanced my courage and determination during my own divorce: "When in deep waters, become a diver." Breathe. Learn. You got this.

CHOOSING THE RIGHT PROFESSIONALS TO GET YOU TO THE FINISH LINE AS EFFECTIVELY AND SANELY AS POSSIBLE

Most people invest less thought in selecting their divorce professionals, than they do finding a piano teacher for their child protégée, or a plumber. Choose wisely and thoughtfully. This is a noteworthy investment of your time and money. Let any your professionals you interview know clearly that you are shopping. Capable professionals are not bothered by this. Request a CV. Note the quality and years of experience in family law, related volunteer service work, and any awards granted by peers. Ask frank questions about fees, given your budget, assets, needs and values. What story do you want your children to tell about how *you* handled your divorce? What kind of co-parenting context do you want for your children going forward? What kind of divorce process is most in line with your family's budget and values? Make sure your professionals are fully trained for and experienced in the process you select. If they have experience working together that can save you considerable money as they don't have to "learn" how the other works.

Interview at least two or three attorneys to ensure a professional fits your needs, budget and values. Inquire about *their* personal values and how these guide their work and impact their outcomes. When the "personal style" of your professional is adversarial or feeds a more adversarial stance, as noted above, your divorce costs are likely to go up significantly. It only takes *one* over-litigating attorney to increase costs significantly for both partners. Is the family law attorney reflexively adversarial? Settlement-oriented? Seeking win-win solutions? Respectful and professional in emails to opposing counsel? Does the mental health professional endorse and align with your negative judgments and anger at your former partner/spouse? Facilitate skills-building, such as civil and respectful communication? Passively just listen when you are overcome by negative emotions, and a crisis requires your thoughtful and immediate attention? Does your financial specialist or forensic CPA enhance your fear that your spouse is hiding money? Or calmly suggest simply requesting some additional documents without jumping to negative conclusions?

Given the usual emotional upheaval of divorce, you will likely have difficulty remembering important details during interviews and future meetings; *take notes by hand or on a laptop whenever meeting with a professional, or when professional information is provided.*

Be clear about your criteria/values for choosing, *before* interviews. In a divorce, "feeling better" as a result of meeting is *not* necessarily an effective criterion for evaluating your professional! Sometimes, having "bad news" delivered kindly is an indicator of an honest and experienced professional. In general, choose professionals who are diligent, reliable and hardworking and have a level of integrity, experience and expertise commensurate with the complexities of your case. Effective divorce professionals are diplomatic and straight communicators. They have a big-picture overview, and attend to details, without getting lost in them. They are trustworthy - they do what they said they'll do, by when they said they'd to it, or let you know in advance if there will be a delay. Effective professionals inform *your* expectations about their fees, time, availability, possible outcomes and *their* expectations about *your* participation, commitment, deadlines, and payment obligations.

FAMILY LAW ATTORNEYS

When choosing a family law attorney, make sure your attorney has extensive experience and a specialty in family law, and ask about any certifications. Inquire about the best/worst case scenarios regarding the financial investment required of you to complete the process you choose. (Note: *Much* will depend on your spouse and your spouse's attorney's tendency to escalate conflict, the complexity of your case and in litigation, the judge is always the wild card.)

Litigation "pit bulls" will drain family resources and habitually "over-litigate." Experienced judges confirm this. Those who keep promising results in court, while eating away at your family's joint assets, have little regard for the long-term financial impact on you and your family. The reality is that for 95% of litigated cases, the attorneys negotiate an agreement, *without* going to trial. Given settlement is the likely outcome, you want a skilled negotiator who perceives and seeks win-win solutions that consider the wellbeing of *all* family members, while working towards negotiated settlement from the outset (rather than gearing up exclusively for an extremely expensive trial). One client of mine had an attorney who over-litigated and over-promised – she was left with $600k of debt as a stay-at home parent, and the couple burned through their retirement accounts and all their assets totaling over $2 million, before even getting to trial. The husband in this case had a multi-million dollar business that is now filing for bankruptcy. By the time they get to trial there will be nothing left. It only takes ONE attorney to blast through your resources.

Choose someone who is a sharp, *diplomatic* advocate who knows to avoid ramping up emotions, and kicking up adversarial dust with opposing counsel - both strategies jack up your bills *to no end*. Despite your hopes and desires, honest lawyers are direct about possible adverse outcomes. No one can give you a flat rate, given all the variables. Skilled litigating attorneys can articulate clear, well-thought-out strategies for moving forward, and are capable fighters *only when necessary,* and without being hot-headed. They neither feed nor foment your (or your spouse's) negative judgments and feelings about your former partner/spouse, while respecting your experience. They keep in mind the short as well as long-term financial impact and wellbeing for you and your children.

On the other hand, you may have the most skilled attorney on the planet. Ultimately, when you litigate, a judge makes final decisions on any issues to which you and your partner can't agree. Your judge's decisions are limited by: the law, any (unchallenged) biases, years of family law experience (currently 2/3 of LA County judges have been transferred into family law from other areas of law, *without* experience in this arena), extreme time-constraints for case review, and unpredictable transfers to other courts mid-case. You will not have "your say in court," as occurs on reality TV. Your family's particular needs may not fit the constraints of the law that *must* guide a judge's decisions (e.g. religious training and who will pay for college are not covered by the law, so these kinds of decisions can *only* be made in mediation or a collaborative divorce). Few clients are fully satisfied with judges' decisions, so the more you negotiate between you, the better, regardless of the process you choose.

An effective family law attorney is a skilled communicator and listener. Misunderstandings are minimal because s/he communicates having understood you, and confirms whether *you* have understood. Effective attorneys practice with integrity and have a strong work ethic. They can assess whether they have the level of competence and skill required by the complexity of your case, and can articulate their reasoning either way.

When choosing a mediator, choose a family law attorney who is trained to address the legal details in finalizing your agreement, and is trained in both mediation and collaborative divorce so s/he can use a team mediation approach to bring in other professionals as needed to ensure you get to the finish line (i.e. is trained about when/how to include neutral financial specialists, and/or licensed mental professionals as parenting plan mediators, coaches or child/adult child specialists, and/or can help with communication and intense emotions to help facilitate mediation discussions). Choose similarly trained, "mediation-friendly," *consulting* attorneys to

offer specific legal advice and options that consider *your best interests*. A neutral, primary attorney mediator can inform you about the law, as well as about what might happen in court, but *cannot* detail what would be in *your* particular best interest – your mediation-friendly consulting attorney *can*. Effective consulting attorneys understand the value of mediation, and will avoid telling you how *they* could get you a better deal by fighting in court. For a collaborative divorce, in addition to all of the above criteria, you want a family law lawyer who is a skilled *team* player and communicator, and is at ease respecting the specialized expertise of other team professionals.

Remember, literally ANYONE can hang a shingle and call themselves a "divorce mediator" after only taking a 30-hour course! Mediation, as a profession, is not regulated by the state or on a federal level. A mediator's other licenses and professional expertise matter! Even if you and your spouse come to an agreement completely on your own, it is worth the cost to have a family law attorney mediator review and write up the final agreement, to ensure you've crossed all your legal "T's" and dotted all your legal "I's," and that you've clearly understood all the ramifications of your agreement. It can be *extremely* expensive to try to go back and remedy a divorce agreement that's poorly conceived and written. Family law attorneys are best equipped to understand legal constraints and to write an enforceable mediated agreement. Mediation agreements are every bit as enforceable as those obtained in litigation.

LISCENSED MENTAL HEALTH PROFESSIONALS (MHP's)

People often avoid divorce, even when they know it's wisest, precisely because of the turmoil and upheaval it so often brings. While divorce may be statistically commonplace, it is *not* for those experiencing it. It can be all-absorbing and challenging, if not traumatic, for all family members. You will be expected to perform many tasks in order to effectively complete the process, despite however you may be feeling.

Consider getting support from a licensed mental health professional trained and/or experienced in High Conflict Divorce scenarios, Mediation and Collaborative. You need someone who understands the various divorce processes, to help you navigate the demands of each stage, and to help you put the oxygen mask on first, in order to skillfully manage intense emotions, communicate effectively and consider the quality of your parenting, the best interests of your children as well as your work performance.

The bad news: During a divorce or a custody dispute, parenting and job performance typically suffer. Intense emotions are common – anxiety, grief, fear, anger, sorrow, hurt, depression, overwhelm. *Whenever anyone* is in "flight, fight, freeze or fawn" crisis-mode, our thinking and reasoning, our ability to consider our impact, and to align our behavior with our values are all biologically compromised to some degree. Thus, negative assumptions and judgments and related reactivity and impulsivity are more likely. However "okay" communication was *prior* to the divorce, interactions tend to be more dysfunctional during a divorce.

Defensiveness itself is actually aggressive – defensiveness signals that we are armed, and haven't emotionally laid down our "weapons." Extended family members and friends may jump in and "take sides" in ways that aggravate matters, and ultimately undermine the family's ability to get through this challenging time. You will need skill to limit this kind of input from others. Calm consideration, an eye on win-win options, and the ability to set clear, respectful limits and boundaries may be restricted when you need them most. An effective MHP will build your skills in these arenas, while you divorce. You want a therapist who is a divorce specialist and conveys

understanding and caring, without siding with you *against* your spouse, which will increase your costs and leave you less skilled.

The good news: Capable help is available. Effective therapists specializing in divorce/custody empathize with your experience, and also respond to your ineffective behavior by empathizing, kindly blocking, redirecting, promoting thoughtful consideration, clarifying values and consequences, and training up new, more effective skills – either in private sessions or during a mediation or collaborative divorce. They recognize that divorce is often a crisis that can impair critical decision-making, when critical decisions need to be made. Consequently, more direct crisis intervention strategies are often more effective during a divorce, rather than deeper analytic and self-reflective therapy approaches. At the same time, some exploration of deeper historical and unconscious meanings may be necessary to help soften entrenched rigid or adversarial positioning, and to help clients mobilize and take on the challenges at hand.

Skills-building is key to being effective during and after a divorce, such as learning: focused attention, how to redirect and slow down thoughts, mindfulness, distress tolerance, emotion regulation, organizational skills and prioritizing, as well and effective interpersonal skills, including respectful assertiveness, negotiation, limit-setting and offering respectful proposals or requests for specific behaviors (rather than complaints, negative judgments and acting unilaterally on negative assumptions). Learning effective co-parenting and parenting skills related to divorce is *essential* to relieving your family's pressure and distress, while having difficult yet necessary conversations about divorce-related concerns.

Seriously consider getting mental health support for your children, with a licensed mental health professional who *specializes in high conflict divorce/custody matters*, whether your divorce is high conflict or not. Such professionals will be adept at providing a safe haven for children, *free from*: parental intrusions, "advocating" for the child in favor of one parent over another, making negative assumptions based on one parent's report, or making custody recommendations. When an MHP is mediating a Parenting Plan (custody agreement) they may offer possible approaches or suggestions, but *you* make the final decisions. Custody recommendations are the exclusive, legal domain of licensed custody evaluators.

FINANCIAL SPECIALISTS: CFP's & CPA'S WITH FORENSIC/TAX EXPERTISE & FINANCIAL ADVISORS

Effective divorce financial specialists are trained in both mediation and collaborative practice. This is a critical "plus." Why? Because in addition to their mediation skills, they're also trained to function on interdisciplinary teams with family law attorneys and therapists, and they are more likely to avoid communicating in ways that increase adversarial divorce interactions and related costs.

Consequently, collaboratively-trained financial specialists can co-mediate with a collaboratively-trained attorney mediator and come in as needed. Similarly, they serve as "financial neutrals" in a collaborative divorce (just one for both divorcing partners), gathering and organizing the legally required financial data. A financial neutral can also provide much information/education to a less-financially savvy spouse who can more easily hear financial facts from the neutral, than the more savvy spouse who cannot usually be relied on in the ways they were pre-divorce.

Effective Certified Financial Planners (CFP's) and Certified Pubic Accountant's (CPA's) who are also Certified Divorce Financial Analysts (CDFA's) may be detailed-oriented and thorough, legally savvy, skilled and experienced at detecting financial anomalies, able to educate attorneys and

clients about the tax consequences of different agreement scenarios, capable communicators and effective educators for their clients. They also can tell when emotions are coloring decision-making. Given their collaborative training, they will be prepared to call in trained mental health professionals to help regulate emotions and facilitate communications as needed.

Financial specialists with tax and forensic training are often most helpful *during* a divorce. Other financial specialists like CFP's, unlike most CPA's, will usually help provide detailed household and divorce budgets depending on options, so both spouses can consider how various scenarios might play out financially *before* negotiating the sharing of assets and debts with an attorney mediator or with two collaborative attorneys. Often, financial specialists will refer clients to advisors who can help plan future investments and retirement accounts, once these are divided as well.

In a litigated divorce where there's a family business, for example, each partner has a litigating attorney AND a financial specialist (typically a forensic CPA or a CFP with forensic training) who you pay to work with your attorney. In litigation, your financial specialist works with your attorney and is trained to: request documents that the attorney subpoenas from your partner, review/analyze documents submitted, track missing financial data, and perhaps value a business. In litigation, your family pays for two financial specialists, instead of one neutral one in mediation or collaborative divorce. And, you pay both your attorneys to subpoena the other side's financial documents and to work with your financial specialist. If your case goes to trial, your family pays both financial specialists to also prepare for court, collaborate with your attorney, and prepare to serve as a witness for your attorney if you go to trial. At between $500-$700/hour for your attorney and also your accountant, including any travel time, waiting in court, preparation, etc., a family can easily spend $80k/day in a trial. It's not unusual to have waited all day in court only to be expected to appear the following day, while all professionals are paid to wait. Postponements can go on for 3 days, and you must nevertheless pay your professionals for travel time, time at court as well as preparation time.

In a collaborative divorce or co-mediation with a neutral financial specialist and mediating attorney, when one spouse fears the other is hiding assets, the neutral financial specialist trained in forensics can, for example, simply "request" needed documents from the other partner, stating that forward movement is impossible without this. And, that client's mediating or collaborative attorney helps encourage full cooperation, without subpoenas being necessary. You pay one financial specialist, instead of 2 financial specialists and two attorneys in litigation, who need to understand the finances to advocate in court.

Transparency is a requirement in *all* legal divorce processes. In one litigated case, one spouse withheld information about having won the lottery during the marriage. When the other spouse found out by accident and took the winner to court, the judge ordered ALL the lottery winnings to the spouse who hadn't known about the winning ticket.

Rather than changing professionals mid-stream, and having to pay to on-board new, replacement-professionals, it's important to carefully interview and select your team of professionals from the start!