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4 Reasons to Litigate a Family Law Case

Just about anyone who has ever been involved in family law litigation will confirm that it is a less than ideal way to solve family problems. Litigation is expensive, lengthy, destructive, emotionally draining, risky, and is a poor way to truly address family dynamics. And as a bonus, a complete stranger makes the decisions, based on principles dictated by the legislature and appellate judges, and on information that can only be presented consistent with formal rules of court procedure, some of which originated hundreds of years ago. Sounds like a wonderful process, doesn't it?

So why would anyone choose litigation as the process for resolving a family law dispute? Admittedly, sometimes litigation is necessary. Here are four such situations:

First, litigation may be the only alternative if the other spouse refuses to provide financial support that is needed to survive. The test here initially should be economic sustenance, not comfort or even the lifestyle to which one has become accustomed. Some may feel this test is too strict, and unfair to a spouse who is being wrongly confined to a disproportionately low share of the family income. Indeed, when to initiate litigation in a situation of financial inequity can be a difficult decision. The cost of litigation in proportion to the expected result and the length of time before a decision can be enforced, are important factors. When the issue is limited to economic support, it makes no sense to incur litigation costs that exceed the amount of support that can reasonably be obtained. In that circumstance, a smaller, but sufficient, settlement might be better than a very expensive court order. Other considerations include the impossibility of true enforcement against a person who will sacrifice everything to avoid paying - and whether the payor in this case may be one of those persons. Experienced counsel can help in making this decision, and carrying out litigation as efficiently and rapidly as possible.

Second, one should consider litigation if the other parent prevents the exercise of a parental role, including access to the children, that the *children* need. The emphasis is on the children's needs. Unfortunately, it is too common for parents to spend tens of thousands of dollars (or, gasp, more) for a certain custody outcome that the *parent* really wants, sometimes hinging on a dispute as trivial as an occasional overnight. These are dollars that could be used directly for the child or children. And the resulting custody decision is modifiable upon a material change in circumstance, thus making any "victory" ephemeral, if not also Pyrrhic. Yet some parents cause real damage to children from their actions and decisions. In a case where compelling reasons exist to fight for the needs of the child/ren, litigation, while less than perfect, may be necessary.

Again, experienced legal counsel can be essential to advocating an outcome that serves the needs of the children.

Third, one should consider litigation if every other reasonable means of resolving the dispute has been tried and has failed. While multiple preferable forms of dispute resolution exist—mediation, negotiation, collaborative practice—participation in each of those processes is voluntary. Only litigation is compulsory. And some cases cannot be resolved except by litigation. Care is warranted, though, because some issues cannot be resolved even with litigation. Limits exist on the authority and willingness of courts to order certain remedies. Legal advice is useful in developing a sound and comprehensive strategy. Often the earlier one seeks legal advice, the more likely litigation can be avoided through use of the other process options.

And last, one usually must accede to participate in litigation if the other party chooses to start that process. Even in situations where the other party initiates litigation, however, it may be possible to shift the case to a less taxing and less destructive dispute resolution process. Sometimes, a party may file suit based on the reality or perception that the opposing party is unwilling to participate in any other process. In these situations, the mere act of starting litigation can promote the choice of a different alternative. And even where litigation is the only process pursued, one can always hope and strive for settlement short of trial. Often in this situation, a strong case is the best defense against the negative consequences of litigation.

If none of these situations exist, then the decision to start litigation should be approached very carefully. The potential detriments of this process option can easily and quickly outweigh its benefits. And it should be obvious from this discussion that skilled and experienced legal counsel is an essential ingredient to success with this process option.