



REAL-WORLD SOLUTIONS IN
HIGH CONFLICT

Custody Cases



As divorce attorneys, one of our most important objectives is to leave our clients and their children in a better situation at the end of a case than they were at the case's beginning. Nothing is more challenging and detrimental to that goal than family cases which involve high-conflict parenting issues.

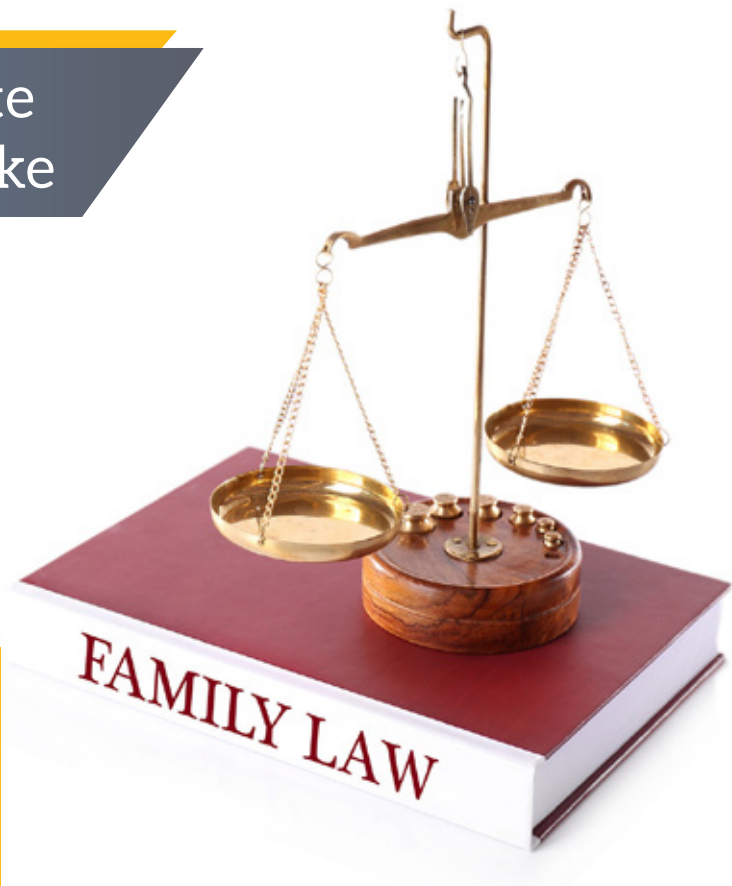
Resolving high-conflict parenting cases involving child custody takes time, energy, and a strong effort from our clients. The lawyer may create the game plan and provide the tools to carry it out, but the parent has to endure the stress and struggles of the proceeding which will be made even more difficult if the relationship with the other parent is severely strained.

The Goal Must be to Eliminate Conflict for the Children's Sake

Parental conflict devastates children. The evidence for this is so overwhelming that Florida lawmakers specifically addressed it in the statutes. "Parental conflict related to divorce is a societal concern as children suffer potential short-term and long-term detrimental economic, emotional, and educational effects during this difficult family transition. This is particularly true when parents engage in lengthy legal conflict." Florida Statute 61.21 (a).

The short-term and long-term consequences to children can be wide and varied depending on the age and emotional strength of the children and can include:

- Feelings of depression, anxiety, and obsessive worry
- Lowered academic performance
- Acting-out behaviors such as aggressiveness, poor conduct, or disobedience
- Problems with concentration and attention
- Difficulty with emotional regulation
- Sleep-related problems
- Resentment of authority
- Inability to adapt to new situations



To make matters worse, in as many as one-third of all divorce cases the parents themselves may have adjustment issues leading to high levels of conflict. And for approximately 5-10% of parents involved in a divorce case, the ability of the parent to adjust never surfaces and the level of conflict with the other parent remains elevated.

Restricting Custody of One Parent as an Option to Reduce Conflict?



It's abundantly clear that high-conflict divorce parenting is the worst thing that can happen to children in a divorce. The question then becomes, what can we do to alleviate the situation?

Commonly, a parent will come to us and suggest that because the other parent is so difficult and is the one causing all the problems an obvious solution would be for them, the "good" parent, to have the child all the time. While this may make sense, a resolution of this sort is not likely for a variety of reasons.

First, the psychological literature clearly shows that children do best when they have substantial time with both parents. The literature does not suggest that a good way to handle high-conflict emotional cases is to eliminate one of the parents from timesharing with the children.

Secondly, judges understand that it is rare for all of the fault in a high conflict case to rest with only one of the parents. There is usually some truth in the adage, "it takes two to tango."

Thirdly, judges recognize that it does not matter where children lay their head at night most of the time if there's conflict between the parents. Parents often focus on time with the children as if that's the solution to all of the difficulties in high conflict cases. But that's not the reality. The only thing that really eases high-conflict cases is a focused and concerted effort by both parents on co-parenting and trying to minimize the conflict for the benefit of their children.



Fourth, judges are required to utilize the least-destructive means for solving a problem when there's conflict between parents. Far and away the most disruptive means for solving the problem would be to eliminate one of the parents from having custody. So you can be sure that a judge will use all other means first when trying to solve the problem before looking at the possibility of minimizing the time a parent spends with their children.

So, knowing the above, let's focus on some actual solutions that can help in negotiating high-conflict cases.



Appointment of a Parenting Coordinator

This is a relatively new phenomenon. Parenting coordinators are mental health professionals with explicit training and experience in helping parents cooperate to make decisions and reduce conflict. These coordinators often specialize in this sort of therapeutic setting and often limit their practice to facilitating parental cooperation. Sometimes the parents will meet with the parenting coordinator together. Other times the parenting coordinator will meet with them individually. The parties will then set reasonable goals. In high conflict cases, the biggest goal is usually for the parents to work together to find ways to reduce conflict and ease the strain on themselves and their children.



Use of Family Therapy to Help the Parent

While it seems odd to think that parties going through a divorce or custody battle may want to avail themselves of family therapy, this occasionally can be precisely the right option to move people in a better direction to reduce conflict.

Family therapy is available in many forms. Each party might meet individually, they might meet as a group, they may include their children when they meet with a therapist, or maybe the therapist might meet with the children in the absence of the parents. The bottom line is that even though this is a divorce and a separation of the husband and wife, there's still a family unit that must survive and must thrive after the divorce process is over. Family counseling can often help the parties readjust to their new roles and their new lifestyle.



Using a Therapeutic Mediator to Help Resolve Conflict

Imagine a negotiator or mediator who also has training in family therapy and other psychological training. These are called therapeutic mediators. They are mediators whose job is to try to help the parties come to an agreement among themselves and to turn high levels of conflict between the parties into an agreed-upon win-win situation.

Unlike a traditional mediation that may last for hours at a stretch, it's not uncommon in high conflict cases to get a therapeutic mediator who might break up the mediation into five or 10 bite-sized sessions of perhaps an hour apiece. The thought process behind this is that it took months or years for the parties to reach the current toxic situation and rarely can any mediator resolve such a longstanding situation in a single meeting. Better then to break it up into more manageable portions to keep the parties from becoming overwhelmed and hopefully help them reach an agreement among themselves (or often with their attorneys) through the use of a therapeutic mediator.



Setting a Narrowly Targeted Court Hearing with the Judge to Solve an Isolated Problem Leading to the Conflict

While litigation is not encouraged in high-conflict cases except as a last resort, sometimes a narrowly targeted court hearing can help when it appears that much of the conflict is stemming from a single isolated issue.

For example, consider the case where the mother and father are otherwise in concert but just cannot agree on whether or not their child should take ADD medication. Mom believes firmly that medication is the right course of treatment for the child. Dad, however, believes that a more therapeutic or less intense approach such as counseling but not drugs would be best for the child.

The conflict has been continuing for some time and both parties have firmly dug in their heels. In this case, attempts at therapeutic mediation may fail because both parties are so entrenched.

In these unusual cases it can be wise to go before a judge and let this impartial arbiter make a decision quickly and firmly. In effect it's like pulling off a Band-Aid. It gives the parties an answer and in some cases can be enough to help the parties readjust their thinking and move on.

Give Decision-Making Authority to a Particular Parent on a Specific Issue

When therapeutic resolutions like counseling fail, judges have the ability to give decision-making authority on particular issues to a single parent. For example, the judge may decide that because the parental conflict is so intense only one of the parents should be responsible for deciding whether the child go to public school or private school. In this case, the judge will give one parent the ability to make those educational decisions.

While this often sounds good, recognize that a judge may surprise everyone with the choice of exactly who will make these decisions. Also, recognize that to keep things fair a judge may give one particular decision-making authority to the mother but then give another decision-making authority (like health care decisions) to the father.



In a recent case, we represented a father who had minority timesharing. It was clear to us that the mother wanted to make the educational and health care decisions for the child and it certainly seemed that she was going out of her way to increase the conflict in the case to strengthen her position in court. The mother seemed to be banking on the idea that because she had the kids most of the time and traditionally she was a stay-at-home mom in a high conflict situation she could ask for decision-making authority and get it.

The judge surprised everyone by agreeing with the mother that decision-making authority should be held by one parent in this case. However, the Judge gave decision-making authority to the father. The mother's plan completely backfired and left her without a say in the educational and health care decisions of her children.



Take Advantage of Communication Tools Like “Our Family Wizard”

Often miscommunication and conflict go hand-in-hand. Fortunately in today’s increasingly electronic world, apps and social media programs have been developed specifically to help parents communicate transparently and in a positive way. One such app is “Our Family Wizard,” a structured communication tool in which parental discussions are recorded on their cell phones, over the Internet, or via some other device. Not only does the app’s structure facilitate communication itself, but its transparency encourages both parents to act appropriately. When you know that the judge could be “watching,” you’re more likely to act in a positive way. These communication tools are inexpensive and used throughout family courts in the State of Florida.

In Those Rare Cases Where it is the Other Parent’s Fault, Recognize that They Alone can “Lose” Their Case

Finally, there are those rare cases where one parent has become so unreasonable or malicious that they are indeed the ones that are sustaining the conflict. These rare cases will ultimately end up in court to address all these issues. In these cases, you can take comfort knowing that in child custody cases a parent behaving unreasonably can actually lose their case for themselves.



Without a doubt it’s the parent who works hard at minimizing and removing conflict and reaching amicable resolutions that ends up with the best custody arrangement for the child and for the entire family. Conversely, it’s the parent who instigates and fosters conflict and who is not interested in cooperating with the other parent for the betterment of the child that runs the risk of instigating the wrath of the judge and losing time and decision-making authority in regard to the child. Thus, the beauty of behaving responsibly and cooperatively is that the parent who truly tries to do the right thing for the child or children will also be the parent who is rewarded at the end of the day in contested custody cases, which not only makes sense but is also the most just of conclusions.

SUMMARY

After all, judges are charged not with rewarding parents but with making sure the best interests of children are protected first and foremost. And judges know without question that the parent who fosters and facilitates a good family dynamic is the parent who will be able to continue to do so when the case is resolved.