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A different approach to dispute resolution

The techniques utilized in settlement-focused evaluative mediation are rooted in the theory and practice of alternative dispute resolution.

This innovative method strives to resolve custody disputes outside of court. The process weaves elements of the traditional child custody evaluation with well-established mediation practices, while utilizing a child specialist.

This process is entirely voluntary and does not require a court order; however, both attorneys and both parents must consent to the process. The focus is on resolution, rather than "evaluation" and strives to be collegial rather than judgmental.

The procedure

The parenting plan consultation is an alternative to the traditional evaluation. The court does not become involved until the very end — if and when the parents choose to submit the parenting plan to the court. The consultation is conducted by a parenting plan consultant. Most PPCs are mental health professionals due to the specialized nature of these procedures.

John Palen, a licensed clinical social worker with a doctorate, specializes in working with divorcing families in high-conflict situations. Palen firmly believes that this process works best if utilized at the start of a case — "the earlier the better."

"Experienced lawyers," he said, "can sense where people are on a continuum of readiness to benefit from a congenial process and can suggest they go through a settlement-focused consultation rather than a custody evaluation."

The consultant conducts both joint and individual interviews with the parents, interviews the children, speaks with collaterals, reviews records and may observe the children with their parents. Home visits also may be incorporated on a case-by-

case basis.

There are notable ethical concerns to be aware of at each stage in this process. Currently, there are not any specific model standards of practice governing the role of the PPC and the process itself, however, PPCs who are mental health professionals should abide by the ethical principles governing their profession.

"If the parties consent to communication with therapists, the PPC must approach the topic delicately. The PPC must be as discreet and sensitive as possible when reporting conversations with the therapists in order to avoid disrupting the alliance between therapist and client," Palen said.

PPC's role

The PPC is expected to possess expertise in both child custody evaluations and mediation. The PPC does not have decision-making authority and will not pressure parties into settling. Instead, he or she will provide parents with recommendations to facilitate and accelerate settlements. Due to the highly sensitive nature of child custody discussions, the PPC should have extensive training and experience in family mediation, family law and the legal processes and statutes governing family law.

In addition, the PPC should have considerable training in child and family psychology to ensure he or she understands the effects of divorce as well as the appropriate interviewing techniques to utilize with children of varying ages.

The role of the PPC fits seamlessly in our field as it combines elements of the roles of a child custody evaluator in litigation and the child specialist in the collaborative divorce process. Much like the child custody evaluator, the PPC is expected to remain objective and utilize a wide variety of data gathering methods in order to obtain a

COLLABORATIVE CONCEPTS



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complete picture of the family's dynamics.

Much like a child specialist in a collaborative divorce process, the PPC provides insight to the parents into how the children are dealing with the divorce as well as how the children are coping with any interim parenting plans. Importantly, the PPC conducts a joint feedback meeting with the parents and attorneys at the end of the process.

A proponent of conducting settlement-focused parenting plan consultations, Palen steps into the role of the PPC whenever possible. With a background in providing custody evaluations spanning two decades, he believes that this approach is a more positive experience for most families since it "keeps the parents in control; maintains privacy for the family; takes less time; is less expensive; and very importantly brings the voice of the child into the process."

Benefits of an alternative approach

The benefits of utilizing this approach are many: reduced costs to the parties and reduced time to complete the process. Most significantly, it allows the parties to focus on being parents. This process costs less than half the price of a child custody evaluation, and it takes approximately

four to six weeks. A traditional custody evaluation often takes more than three months to complete.

Children are in a comfortable space and feel involved in this process and listened to by the PPC. The PPC, with his or her background in mental health, can educate parents about their children's coping mechanisms, specific needs, concerns and desires. In turn, the PPC helps parents refocus and learn appropriate co-parenting skills.

Settlement-focused evaluative mediation (or child custody consultation) is consistent with, and will be helpful when looking to, the changes to the Illinois Marriage and Dissolution of Marriage Act effective this month.

Under the new act, child-related issues are to be heard on an expedited basis, and parents have 120 days to submit either joint or separate parenting plans to the court. The settlement-focused parenting plan consultation may be one way to ensure timely submission of parenting plans.

Not a one size fits all

The parenting plan consultation approach is not right for every family. According to Palen, parents with active substance abuse problems or who struggle with physical, emotional or sexual abuse, are not appropriate candidates for this process.

Attorneys must assess clients' capacities and limitations at the outset. If the client has a significant history of domestic violence, has hidden agendas or is unable or unwilling to attempt to reach a compromise, this process will likely prove futile.

In the alternative, for parents who are capable of engaging in more amicable discussions about parenting time, this process may be precisely just what the attorney ordered, according to an article in Family Court Review (Vol. 49, No. 1, January 2011 59-71).