

Children and Divorce

Almost all parents who go through divorce are primarily concerned about their children. The concern is well founded. We have all heard too many stories of children who suffered significantly as a result of conflict between their parents. For some families, the divorce can mean an increase in that conflict. For other families, the divorce could lead to a reduction in conflict. It is common to have the following questions.

Will my children be okay?

Most parents want some assurance that their children will be okay, so let's start with that. The answer is maybe. While divorce is almost always hard for everyone in the family, we have seen some children who suffered significant harm during the divorce and we have seen children who have thrived after the divorce. The choices you make during these next few months may affect that outcome in a very big way. If keeping the children free of conflict is your primary concern, that is where you should focus your primary attention. One of my favorite psychologists, Deb Clemmensen, has a saying about children in divorce, which is that "children should be at the center and not in the middle."

Will my children be worse off because of the divorce?

That is impossible to say because we don't know about your current home. If your children are currently in a home with two loving parents, it is hard to beat that. However, if one of you is considering divorce, it is likely your family is under considerable stress. Whether the stress of your current situation is better or worse than the stress of the divorce is always a consideration. If you believe your marriage can be saved, it will be best to focus your efforts on improving your home life. On the other hand, if the divorce needs to happen, (and that may not be entirely up to you), it is best to focus on how to get through the divorce in a way that helps you protect your children's essential needs.

How can I protect my children?

In most cases, protecting your children will mean protecting the relationship that your children have with both parents. Of course, there are situations in which one parent is not able to function in a healthy way. Otherwise, these remaining comments will relate to situations in which your children are likely to spend a substantial amount of time with both parents.

- Substantial time in both households. Please note "substantial time" in both households does not mean "equal time" or "joint custody." We will talk about those issues later. For now, let's just assume that the children need substantial time in both homes. If your children are going to need substantial time with their mother and their father, the most critical thing you can do is to find a way to make that happen. Mostly, that will mean creating a "parenting plan" that describes how that will occur and finding a way to communicate with the other parent.
- Parenting Plans: Under Minnesota Law, the parents can make a "parenting plan" to help them decide how to parent their children. A parenting plan is, as it sounds, a plan that describes how you and your spouse are going to co-parent your children after the divorce, including the parenting schedule, how you will make certain decisions, etc.

What about custody?

You may be wondering why we have not yet talked about custody. This section has started by discussing parenting plans, rather than “custody” or custody labels, because these labels can sometimes be confusing and often get people thinking in a way that is not helpful to their parenting. Often children get “caught in the middle” (and not at the center) because one or both parents have become focused on these “custody labels” and not on how to parent their children. Very likely your children need a healthy relationship with their mother and their father and they need to be free of conflict more than they need a custody label. However, these custody labels still do have a place in Minnesota statute, so you will need to have some understanding of what these labels mean.

What about percentages of time?

You may also be wondering why we have not talked about percentages of time. My decision to explain parenting time, rather than start with discussions of custody labels and percentages of time is based on a theory that many people call “interest based” decision making. Under that theory, people make better decisions when they start by focusing on what they really care about, (i.e. their true interests) rather than on “positions” such as custody labels and percentages of time.

We will come back to the issue of labels and percentages and how they may have some impact on your final decisions. However, for now, let’s focus on how to create a successful parenting plan that meets the “goals” that you have for your children.

Who will help us in creating our parenting plan?

A big factor in helping you create a successful parenting plan will be deciding who can help you make these decisions. There are a few people who can create a successful parenting plan with little or no help from any professionals. However, most successful parenting plans are created with the help of one or more other professionals. So, your success may depend on determining the kinds of professionals that can help you. Let’s look at the professional options separately.

The two big questions in getting help: Expertise and Neutrality. In deciding what kind of help will be most useful, (with parenting or any other issue) it is best to think about two key questions. What kind of expertise do you need and do you want a “neutral” or an “ally” (or some of both)?

- Expertise: Professionals who work in the area of divorce generally have one or more of the following areas of expertise: law, negotiation, child development, communication and relationships, and financial. Successful parenting plans sometimes require some expertise in all of those areas. But let’s start by thinking about what is the most critical expertise that you need.
- Lawyers and Judges: A common mistake that people make is to think that their best resource for determining parenting issues in a divorce is either an attorney or a judge. Although lawyers and judges may have a role in your final decisions, it generally makes sense to look outside of those professions. Almost any judge who has worked in divorce will agree that you do not want a judge to decide your parenting. No matter how well intentioned the judge may be, he or she does not know as much about your family as you do and their background is in law and not child development. As a result, fewer than 3% of final parenting decisions are made by judges.

While it is much more common to have lawyers help with parenting decisions, lawyers like judges, do not generally have backgrounds in child development. Therefore, while lawyers can

help you sort out your options, think about negotiating strategies, or draft your agreement, they are not generally the best experts available to tell you about the unique needs of your children. The best parenting plans are generally created with the help of people that know the most about parenting and relationships. (Explain more about those two elements) While that may seem obvious, most people have difficulty finding parenting assistance. While there are many people in our communities who have expertise in parenting or relationships, there is often confusion as to where these people fit in the divorce process. I'll explain a little more about the different people in your community with expertise in this area and the various roles that they may play in a bit. But first, it would be helpful for you to think about the second important factor in deciding about help you can get in any divorce.

- Neutral Help vs. People who are "on your side": All professionals who work in divorce fit into one of two categories: they are either "neutrals" or they are "on your side." The most common example of people who are "on your side" are lawyers. In a divorce, lawyers work for either one person or the other. They cannot represent both the husband and the wife. They must be "on one side" or the other. Whether they need to behave as fierce advocates or gentles counselors or some of both is discussed later. However, for now it is just important to understand that they have to be allied with either you or your spouse. There are other examples of people who can be "on your side", such as "coaches" and "therapists" which we will also explain later. However, for now, it is important to compare these people who are "on your side" from the people who are hired to be "neutral".

Of course one example of a person who has the job of being neutral is a judge. A judge is obligated to serve in an unbiased neutral capacity. However, since, as we discussed, judges rarely make final parenting decisions, it is helpful to be familiar with the other types of neutrals, which include the following: mediators, parenting consultants, financial neutrals, child specialists, evaluators, and arbitrators.