

10 Tips for Limiting Child Custody Litigation and Conflict by Charles McCall Medlin and Erica Byrd¹

A divorce involving minor children, or other child custody and visitation disputes, can result in high tensions and high costs. Litigation and conflict can be demeaning to the parents, as litigants often attempt to exaggerate each other's flaws; can expend and deplete a family's resources; and, most importantly, can be detrimental to the children involved. Here are some ways to minimize litigation and conflict, and the associated negative effects, in child custody cases:

1. **Non-Disparagement.** Both parents should adhere to a strict policy of reinforcing a positive image of the other parent with the children. This will greatly benefit the future mental health of your children. If because of severe abuse, distrust, or hatred, the parents cannot make positive statements about one another, they must, at the very least, refrain from making negative comments in the children's presence. Failure to do so will harm the children psychologically, and will only serve to create further conflict.
2. **Mediation.** Mediation has proved to be a valuable asset in reaching agreements that are amenable to both parents, reducing the number of cases that go to trial, and reducing prolonged parental conflict. Early mediation is frequently recommended, and selection of a good mediator is critical. Mediation can be useful in obtaining a partial settlement. Many times, early mediation can help the parties reach a reasonable temporary framework, and a second mediation later in the case can often replace a costly trial.
3. **Decide Custody Issues Separately.** Deciding custody issues prior to or separately from financial issues can yield significantly positive results in terms of reducing conflict and litigation. Parents may be worlds apart in terms of financials and unable to settle the case for this reason. Discussing custody issues separately can take the edge off of very heated conversations and result in partial settlements of just the custody issues.
4. **Collaborative Divorce and/or Parent Coordinators.** Collaborative divorce is an innovative way of filing for divorce wherein the parties must reach a complete agreement prior to filing anything with the court. Both sides must agree to participate, and both attorneys must be certified in collaborative divorces. Mr. Medlin is certified as a collaborative divorce lawyer in the state of Georgia. If the parties are filing for collaborative divorce, then a complete agreement would be reached regarding all issues, including custody, before proceeding with the actual divorce paperwork. Collaborative divorce also uses the concept of a teaching coach for the parents or a parenting coordinator. In essence, parent coordinators

¹ Charles Medlin is the senior family law partner of Bovis, Kyle & Burch, LLC, which has offices in Atlanta, GA and also in Cumming, GA. The firm has eight attorneys who regularly practice domestic relations law. The group specializes in custody litigation. Erica Byrd is a recent graduate of the University of Georgia School of Law and a new associate with the firm's family law practice group.

are third-party neutrals who provide quick and easy access to a decision maker for minor conflicts that interrupt the day-to-day operation of a parenting plan. The parenting coordinator will first try to mediate the issue and allow the parents themselves to arrive at a workable solution. If the parties are unable to resolve the issue on their own, the parenting coordinator makes a decision.

5. **Negotiated Parenting Plans.** Parenting Plans negotiated by parties directly or through attorneys can eliminate litigation all together. In addition, Parenting Plans negotiated by the parties and their lawyers can include many more details than a Parenting Plan created by the courts. This allows the parties more guidance for solving future disputes.
6. **Equal Co-Parenting.** Equal co-parenting describes a situation where parents seek to maintain equal responsibility for the child's upbringing after a divorce or separation. Co-parenting can give children stability and fosters close relationships with both parents. Co-parenting after a divorce or separation can be frustrating and challenging, but may ultimately minimize conflict in custody cases. Co-parenting requires consistent and purposeful communication between parents, and such contact helps to reduce the miscommunications that often lead to conflict. Equal co-parenting does not necessarily mean equal physical custody, it only connotes equality of decision making and involvement. True equal co-parenting is rarely achieved in a high conflict divorces.

An alternative to equal co-parenting would be parallel parenting. Parallel parenting is a style of parenting in which parents have minimal interactions with one another. Successful parallel parenting is premised on strict adherence to a Parenting Plan and no interference with the other parent's style of parenting. The theory behind parallel parenting is that the less the parents interact with one another, the less chance there is for negative interactions. Parallel parenting is a good model for parents who are unable to co-parent effectively or without constant conflict.

7. **Mental Health Professionals.** One of the reasons conflict arises in custody cases is because parents are coping with huge adjustments to their family structure, and emotions are very high and very strong. Mental health professionals can assist the parents (and children) in negotiating these changes and emotions in a healthy way. Although family counseling can be relatively expensive, it is worth every penny.
8. **Attorney Counseling.** Attorneys involved in custody disputes should diligently and liberally exercise their counseling function. Effective attorney counseling can avoid inappropriate litigation and diffuse high conflict situations. Attorneys should advise their parent clients about the consequences of custody conflicts on their children and should discuss litigation alternatives and resources to reduce conflict. Attorneys should also provide practical advice to their parent clients,

such as instructions not to attack the other parent personally and not to use the children as a bargaining chip.

9. **Third Party Visitation Exchanges.** During third party visitation exchanges, a third party either supervises the visitation exchange or is solely responsible for the visitation exchange. These exchanges can be informal, such as having a family member or friend facilitate the visitation exchange, or formal, such as using a supervised visitation facility. Third party visitation exchanges help avoid unnecessary contact and tension that often accompanies visitation exchanges.
10. **Parent Education Programs.** Parent education programs teach parents about the risks and harms to children that are associated with conflict and divorce. In Georgia, it is mandatory for divorcing parents to attend a Divorcing Parents Seminar. However, custody disputes outside of the context of divorce have no such requirement.

Not all of these tips will work in every child custody case – some will work better for parents who already have a somewhat amicable relationship, while others are geared more towards high-conflict or conflict-prone relationships. Ask your attorney for recommendations of counselors and specialists, as they will know professionals with an established track record of success in helping troubled families.