

APPENDIX E

Handout for new clients:

Before You Go To Family Court

Make sure you have realistic expectations: In family court, the judge will never really know what is going on in your case. The family court's job is to decide narrow legal issues based on limited permissible evidence. Hearings are mostly short and to the point. In real life, family court is not like most court cases on television or the movies—or even the news. Trials are rare, as most cases are resolved by hearings and/or settlement by agreement of the parties—often with the help of knowledgeable attorneys.

Do not expect validation or vindication: The judge does not decide your character as a person—or who has been “all good” or “all bad.” In family court, it is assumed that both parties have contributed to the breakup of the family and that it is not a matter of “fault,” but of “irreconcilable differences.” Finding fault is against the principles of family court. Instead, family courts focus on problem solving. If the court finds that someone has acted improperly, then the focus is on what should be done now—such as modifying custody, visitation, support, property division, issuing restraining orders and, in rare cases, sanctions. Rather than punishment and blame, the court prefers to order drug treatment, domestic violence programs, individual counseling and parenting classes.

Avoid emotional reasoning: When we are upset our perceptions can be distorted temporarily or permanently. Our emotions may cause us to jump to conclusions, view things as “all or nothing,” take innocent things personally, fill in “facts” that are not really true, unknowingly project our own behavior onto others, and unconsciously “split” people into absolute enemies and unrealistic allies. This happens at times to everyone, so check out your perceptions with others to make sure they have not been distorted by the emotional trauma of the divorce and related events. Many cases get stuck in court for years fighting over who was lying, when instead it was emotional reasoning which could have been avoided from the start.

Provide the court with useful information: The judge does not know your family or your issues, except for the information that is properly submitted to the court. Make sure to provide important information, even if it is embarrassing. The court cannot sense the behavior of each party. If you have an abusive spouse, the court needs sufficient information to make helpful decisions. If you hold back on important information, it may appear that abusive incidents never occurred and that you are exaggerating

or making knowingly false statements. If you are accused of actions you did not take, the court will not know this information is inaccurate or false unless you inform the court.

Be careful about unverifiable information: The accuracy of the information you provide to the court is very important. Based solely on what you say in declarations or testimony in court, the judge may make serious orders regarding the other party, yourself, your children and your finances. If it later turns out that you made false or reckless statements—even if you were well-intentioned—there may be negative consequences, such as sanctions (financial penalties), loss of custody or restricted contact with your children.

Try to settle your case out of court: Today there are many alternatives to going to court which can be used at any time in your case, including Divorce Mediation, Collaborative Divorce, negotiated agreements with attorneys, and settlement conferences assisted by a temporary settlement judge. The expense for each of these is much less than for court hearings and prolonged disputes. You have nothing to lose, and you can still go to court afterward if you do not reach a full agreement. By trying an out-of-court settlement, you can limit animosity and protect your children from the tension of having parents in long, drawn-out court battles.

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