

In the Best Interests of the Child

THAT'S IT! After multiple failed attempts at reconciliation, weekend retreats, marriage workshops, and visits with your Chaplain, you've opted for the nuclear option in the realm of marital relations--filing for divorce.

You're not going to make your loss an attorney's gain, so you and your spouse decide to go at it alone, *pro se*. After all, an uncontested divorce with children in the State of Hawaii only costs \$225 (\$175 without children) as opposed to the thousands of dollars you would spend just for an attorney's retainer fee. And an uncontested divorce can be final in as little as 8-weeks as opposed to 8-months for the alternative.

Now all you have to do is sit down with your spouse, fill out the divorce forms, give a little, take a little, and undo the "I do." Sounds easy, right? In some cases divorce is painless, particularly for marriages that have only lasted a few months and do not involve children or significant marital property.

However, for the vast majority of military couples contemplating divorce, the compromises that each spouse will have to reach to facilitate the money saving benefits of an uncontested divorce will hurt, at least a little. This is most true in divorce cases dealing with children.

Though it is not easy for parties to divide retirement pensions, cars, homes, and jewelry, generally, when "stuff" is involved, compromises can be reached in a civil manner.

But when custody is at issue, the fangs tend to come out, congeniality is replaced with contempt, MAJ Jekyll becomes Mr. Hide, and any hopes of doing an uncontested divorce quickly evaporates along with the money that you had hoped to save.

Sadly, once a couple reaches the point of no return and begins down the long, expensive, and intrusive road of litigation, they lose a lot of control over how custody will be arranged. Personal opinions are replaced by those of professional custody evaluators, free discussions become billable hours for attorneys, and custody decisions are relinquished to a presiding neutral judge—that has never laid eyes on the children involved.

It doesn't have to be that way. By applying a few rules, an uncontested divorce can be accomplished, even when kids are involved:

First, custody involves two things: physical custody and legal custody. Legal custody deals with the right to make legal decisions on behalf of a child. Physical custody involves who the child will live with after the divorce is final. Unless there has been a history of abuse, legal custody should generally be "joint." Most of your time and energy should go to determining physical custody.

Next, you would not be willing to sell your child for any sum of money; therefore, keep property division and child custody completely separate. Prioritize your conversations from most important to least. Consequently, if you have children, their wellbeing should be discussed first and independently of anything else, even your retirement pension.

Third, in a fully-contested custody dispute the Family Court does its very best to determine a custody arrangement that is in the best interest of the children involved. This standard is aptly named "the best interests of the child standard," and it too should govern your conversations. You are in a much better position than any court to know what is truly in the best interest of your children.

Fourth, regardless of the eventual decision regarding custody, and again assuming no history of abuse, both parents should be willing to allow the other parent frequent, continuing and meaningful contact with the child after divorce. Divorce ends the marriage contract, not all parental contact.

Fifth, joint physical custody is rarely practical, especially for military parents. Again, physical custody concerns who the child will live with after the divorce, and unless the parents plan on living together after divorce, generally, physical custody should be given to only one.

Next, make sure that a reasonable visitation plan is drafted and part of the divorce decree. Ensure that it is detailed and free of any ambiguity. Take the time to make the visitation plan now and avoid the possibility of a court battle later.

Finally, while the family court can take into account the wishes of a child of sufficient age and capacity (generally 12 years old) in making their custody determination, it will never force a child to pick between two parents. Neither should you. You are not doing your children a favor by leaving this most difficult decision to them.

Child custody is always subject to modification if circumstances change. Therefore, don't try to plan for each and every scenario. Make this custody arrangement for the short term—specifically the next two years. When circumstances change, so too can the custody arrangement.

Additionally, an uncontested divorce may not be in your best interest if your spouse's demands are unreasonable. Please speak to a legal assistance attorney before deciding to process an uncontested divorce. Consider attending a divorce and separation brief at the Schofield Barracks client services office. Each brief is presented by a licensed attorney and Judge Advocate of the US Army. Briefs are held every Tuesday and Thursday from 1330 to 1430. Both you and your spouse can attend, and your general divorce related questions are answered at these briefs.