

What direction do you want your case to go?

A parent has his or her first meeting with their lawyer. The parent is upset, hurt and angry. It seems divorce is inevitable. The lawyer engages with the parent who while seeking a settlement, is also seeking retribution for the real or perceived wrongdoing of the other. The lawyer is prepared to send a letter on behalf of the parent in front of them on the basis of the one-sided account of events and demands. What will the letter say? What will be its tone?

Imagine being on the receiving end of the intended letter. You are likely well aware how your other conflicts have ended up. If the letter comes across as accusatory, even if deserved, the reply will likely start defensively and then turn offensive as the receiver of the letter first denies or minimizes the accusations and then seeks to “set the record straight” with his or her version of events. You will receive that response and then imagine how you will feel and how you would like to respond in kind.

Thus the conflict that saw the demise of the relationship will enter the settlement process and the settlement process will serve as the venue for not only the continuation of the dispute, but escalation too. Not much of a settlement process.

Thus, in view of the above, the direction a case goes is often predictable from the first volley of lawyer letters.

Notwithstanding upset and anger, the challenge for the distraught parent is to realize that angry or demanding legal letters while seemingly cathartic, are typical antithetical to settling disputes. So you may get your feelings off your chest, but expect them to bounce back with venom from the other side, only to inflame you further.

If you want to get your feelings off your chest, see a counselor. If you want to settle your dispute, don't start out accusatory, start out conciliatory.

If there are serious issues of concern such as power and control, violence, abuse, drugs or alcohol use, then you may wish to raise those issues, again, not in an accusatory fashion, but as matters of concern to be addressed in the settlement process.

If the other side responds defensively, angrily or accusatory, the strategy is not to defend and then fire back, but continue with the strategy of settlement. You can offer to attend mediation, assessment, arbitration or parenting coordination. The strategy is not to send volleys of defensive or accusatory letters, but engage in a process where the issues can be heard, addressed and resolved.

If your situation appears high conflict, you may have to look at yourself to determine if there is anything in terms of your behaviour that contributes to mutual distress and aggravation. If indeed your behaviour plays a part in the conflict, then settlement may require some change on your part too. The challenge here is to not only project culpability on the other side for the demise of the relationship but to take responsibility for one's own contribution too.

If settlement is the goal and you wish to be spared from the expense and upset of a drawn out and expensive court battle, the key then, is to focus on settlement and disengage from the name calling by concentrating on the outcome you seek and if not fully attainable, then seeking safeguards to mitigate concerns. Big challenge.

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