



By *Jana Aune Deach*



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OPTIONS FOR MANAGING THE COST OF DIVORCE IN A DOWN ECONOMY

Getting divorced can be expensive and stressful, even in the best of times. When the economy is struggling, the values of retirement and investment assets have plummeted, homes have negative equity, and job loss is a real possibility, getting divorced can be even more stressful. Assets that individuals once believed would be available to financially help them through a divorce may no longer exist, and divorcing parties fear they will be left with nothing.

Courts today are very cognizant of the benefits of getting involved in a dissolution proceeding soon after its commencement, directing the parties to resources and programs designed to resolve the divorce as quickly, and as cost effectively, as possible.

In 2003, Hennepin County implemented the Initial Case Management Conference (“ICMC”). The ICMC was designed to avoid prolonged and expensive litigation by bringing the divorcing parties and their attorneys before their judicial officer to manage the case early in the process. Many other counties in Minnesota have adopted the ICMC process, including Ramsey, Washington, Anoka, St. Louis, Brown, Itasca, and Fillmore. At the ICMC, judges often refer the parties to any of three different dispute resolution processes: Financial Early Neutral Evaluations, Social Early Neutral Evaluations, or mediation. All of these processes are voluntary and confidential, and the parties work with a highly qualified neutral expert to help resolve the issues in their divorce proceeding. All of these processes have proven highly effective in resolving cases early and cost effectively.

- 1. Financial Early Neutral Evaluation** - Many counties in Minnesota have implemented the use of Financial Early Neutral Evaluations (“FENE”). In this process, the parties and their attorneys meet with an agreed-upon neutral expert, either an experienced attorney or a financial expert, to resolve property and support issues. This program has been highly successful in settling cases quickly and reducing the cost of the divorce. The neutral expert works with the parties to identify the assets and liabilities and formulates options on how to divide them so each party is receiving a fair and equitable portion of the marital estate. The neutral expert also will assist with determining what, if any, child support and/or spousal maintenance payments one party might pay to the other. Neutral experts are typically very creative and can “think outside the box” to fashion a financial agreement that will meet both parties’ needs and address specific concerns. The goal is to have a report back to the court within 75 days. The process is completely confidential and, if the parties are unable to settle their case in the FENE process, information and settlement discussions will not be disclosed to the court. One benefit of the FENE process, and what sets it apart from mediation, is that the neutral expert serves in an evaluative role and can state his or her opinion of how the judicial officer might rule on financial issues in the case.
- 2. Social Early Neutral Evaluations** - Custody and parenting time issues can be very stressful for the parties and, if a custody evaluation is needed, very expensive. A private custody evaluation can cost between \$5,000 and \$10,000, and sometimes even more. A Social Early Neutral Evaluation (“SENE”) adopts a team approach to help parties resolve custody and parenting time issues by having the parties and their respective attorneys meet with two neutral experts, one man and one woman. These neutral experts are typically either experienced family law attorneys or psychologists who have worked extensively with families and children. The SENE process provides a “reality check” for both parents regarding their parenting roles and what is best for their children.



MANAGING THE COST OF DIVORCE CONTINUED FROM PAGE 6

Again, the neutral experts serve in an evaluative role and will offer their opinion on the outcome of a possible custody evaluation or how the judicial officer might rule on custody and parenting time issues. The SENE process also has been highly effective in getting custody and parenting time matters resolved quickly, avoiding an expensive custody evaluation, and helping the parties maintain a co-parenting relationship after the divorce is finalized.

- 3. Mediation** - Parties can mediate and settle their divorce even before filing a dissolution proceeding with the court. Mediators help parties cut through the facts of their individual case to determine what is relevant, and what is not, and analyze the

issues that are important to each party to achieve a global settlement. Using a mediator allows the parties to retain control of their divorce and guide the process. Mediators can assist parties and their counsel in a variety of ways, including formulating settlement options of which neither side may have thought to help resolve the divorce.

The courts have found that 70% of families who participate in the Early Neutral Evaluation processes or mediation resolve their cases, and do so in a short period of time. Obviously, not all divorce cases are going to be right for non-judicial resolution. When appropriate, utilizing these options can often result in a faster, more cost-effective settlement in which the parties direct the final outcome, rather than leaving the decision up to the courts.