



Through the Legal Looking Glass and Down the Family Court Rabbit Hole by Richard Coffee, JD (Cordell & Cordell, PC)

The dissolution of marriage or the paternity determination process can be a journey through a maze of rules and requirements which can be illogical or contradictory, even by legal standards. Today's family law statutes are a patchwork of compromises among politicians, legal practitioners, social advocacy groups, and other segments of society resulting in a system which makes Alice's adventures in Wonderland appear completely sane, while leaving the uninitiated muttering the inscription on diminutive Alice's very small cake (or on the Delta House homecoming parade float in Animal House).

The lay person attempting to resolve their own family law matter, or even being represented by counsel who does not practice extensively in the family law field, risks an outcome that is either inadequate or incomplete, or both. The considerations and consequences of decisions involving property, support, custody, and visitation can be far reaching and complex. The wording of an order or settlement agreement is prime territory for the application of the law of unintended consequences, which consequences may not surface until years later. The reasonableness of a settlement or litigation position is determined not just by the letter of the law, but also the appellate decisions of the jurisdiction and the discretion of the particular judge in the case. Not knowing how the courts or the particular judge has ruled on similar issues is a significant disadvantage in pursuing either settlement or litigation of family law issues.

Property division considerations turn on legal definitions of values, depreciation and dissipation. The division of property may have tax ramifications which may be avoided by proper allocations of various properties between the parties or the correct wording of the agreement or order. Not assuring that all debts, regardless of the party in whose name the debt is incurred, are properly secured, refinanced, or extinguished can affect the credit score of, or result in collection efforts against, either party regardless of who incurred the debt.

Pension divisions can involve complex calculations of benefits and require careful drafting to avoid undesired limitations on future benefits. Failure to promptly prepare and record the proper

deeds, titles, or transfers to implement the property division can allow unwarranted liens to accrue on the property which thwart the intended division.

Spousal or child support issues require the proper inclusion, and exclusion, of items of income and expense. For the self-employed, commissioned, or other non-traditional wage earner, the income and expense calculations are usually not the same as taxable income or cash flow, but a hybrid of definitions and calculations. The reasonableness of a support amount is often defined by the law, court decisions, and the particular judge's discretion, not simply a logical, mathematical formula. The duration of the support obligation is also subject to numerous variables, not just the age of the child or the employment or remarriage of the ex-spouse. Tax consequences of the support order on the individuals involved must also be fully understood and addressed.

Not properly presenting all of the variables to the court or not insisting on tight drafting of the terms of the support obligation affect both the initial support award and future efforts to modify the support. Custody and visitation issues can involve not just what the parties believe is best for their children, but the opinions of experts or advocates as to what is best for the children. The court is not constrained by the desires of the parties or the children as to custody or visitation, particularly where the parties disagree. The court may involve an attorney for the children or mental health professionals to render opinions on what would be in the best interests of the children.

Knowing how the judge and any such experts view custody and visitation issues, and what factors or behaviors might be considered significant, are critical to understanding the possible custody and visitation options and in achieving an acceptable custody or visitation decision. As the initial custody and visitation order or agreement sets the baseline for future modifications, it is imperative that the initial decision be correct and fully address the custody and visitation issues. Clients who were not properly represented in the initial proceedings, particularly against an opposing party whose attorney will draft the order or judgment in terms favorable to their client, face an uphill battle in attempting to reverse or modify those initial decisions. The exact provisions of the court's order or judgment control and are subject to modification only under specific circumstances. Assertions that a party did not fully understand the terms or consequences seldom prevail.

Agreements between the parties that are not set out in a court order are generally unenforceable. Relying upon the representations of the other party or common sense interpretation of less than precise language is a certain recipe for disaster. A knowledgeable and experienced advocate to navigate the family court system is essential to understand the issue, rights, and options in resolving or litigation the dissolution of a marriage or establishing paternity rights and responsibilities. The expense of a qualified family law practitioner may seem unaffordable, particularly at a time when resources may be stretched already, but the cost in money, time and peace of mind of not retaining qualified counsel is most likely much greater in the long run.



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