

Comparative Chart of Traditional and Creative Future Directed Process Options for Divorce Agreements

Traditional Legalistic Process

Looking backward to determine the present consequences of past actions or inactions; based mainly upon past or present events/situations. (“Judicial” approach.)

Legal reasoning from appellate cases, details of statutes, and trial experiences.

Guidance from the legal profession and other lawyers; reliance upon legal sources (mainly statutes and appellate cases).

Zero sum game; if one party gets more, the other gets correspondingly less.

Keeping clients focused; managing difficult clients and not losing control.

Vocational specialist used to impute income to an unemployed or under-employed party.

Equitable distribution based upon statutory criteria for dividing property.

Accountant hired to trace commingled property or dissipated marital assets and present evidence for one side.

Evidence presented in court to establish that one parent is more experienced and competent than the other.

Use of traditional terms such as “custody” and “visitation”.

Use of civil discovery court procedures to obtain information and documents when a voluntary exchange does not suffice.

Litigation and negotiation strategies; use of court procedures to influence settlements.

Formal detailed drafting based upon a tested office formbook.

What is a court likely to do?

Creative Future Oriented Process

Looking forward to formulate a future plan that is fair and workable and seeks to meet the legitimate needs and goals of each of the parties. (“Legislative” approach.)

Also subjective considerations as suggested by the client(s) or by a relevant professional.

Ideas also from other relevant sources, such as mental health professionals, financial planners, and accountants.

Search for creative ways to “expand the pie” to accomplish a win-win result.

Understanding how the stages of the divorce process affect clients’ responses.

Career counselor to help a plan a career and suggest relevant employment opportunities.

Single impartial financial planner to help both parties plan sound financial futures.

Impartial accountant hired by both parties to help negotiate issues of commingled or dissipated assets.

Impartial evaluation by a skilled mental health professional or use of a parenting coordinator to aid parental cooperation.

Use of terms such as “parenting plan” and focus on cooperative future parenting.

Contractual agreement to exchange information and documents that are reasonably necessary to the process.

Cooperative strategies to seek common ground and to achieve win-win solutions.

Drafting in understandable modern English; collaborative revision process.

What is a fair and workable settlement?