

# Top 3 Non-Negotiable Questions You Need to Think About Before Filing for Divorce



By Mark Baer

Families come in all shapes and sizes. Some married couples live together with their children. When those children grow up and move out of their parents' home, does that mean that they are no longer a family? Some married couples with children don't live together because of their work commitments and for other such reasons. Does that make them any less of a family? Religious beliefs aside, some couples such as Goldie

Hawn and Kurt Russell have children together, but were never married. Aren't they still a family? Married couples with children sometimes divorce. Does that mean that they are no longer a family? If you think about it, the nature of their relationship changed from being married with children to being unmarried with children. I'm afraid that when a couple has children together, their marital status does not control their status as a family.

Many may define a "perfect" family as one in which the parents are married and in love with each other. I opted to use the word "perfect" because that was the term and definition used by a minor child of divorce, who was interviewed in a documentary film by Ellen Bruno titled "SPLIT." While his family may not be "perfect," as defined by him, I promise you he still considers it a family.

### **What do you want your family to look like in the future?**

Like it or not, if there are children of the relationship (regardless of their age), the family still exists after the relationship ends. The manner in which you end a relationship determines whether your family will be functional or dysfunctional from that day forward. Life is like physics – for every action there is a reaction – cause and effect. As I like to say, outcomes are determined by the way in which the "game" is designed.

Parents are correct in the notion that causing the children to take sides can be extremely useful in their divorce game of chess. However, unlike chess, divorce is not a game and children are not pawns. Parents need to understand that what they do, say and how they act toward the other parent has long-term consequences. The things people do with or without the assistance of their attorneys have consequences that will last for generations to come. "When you start a court case, you are starting a war," says Justice Harvey Brownstone.

Parents should always remember that the casualties in such a war are the members of the family itself, including the children, who become collateral damage.

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### **What type of attorney, if any, do you want?**

While it may be expressed in many different ways, the selection of an attorney is the most significant factor in determining how a case will proceed. While an attorney's competency is extremely important, the selection process should not be limited to that aspect. After all, the attorney's personality and overall philosophy with regard to family law are of great importance.

It is not prudent merely to consult with an "experienced family law attorney." I have been trying desperately to educate the public that they need to consult with "competent and caring" family law attorneys. By the way, assertiveness is part of their competency. However, they should not be seeking out lawyers described as "sharks," "pit bulls" or "aggressive." The involvement of such attorneys typically leads to suboptimal results, destroys families and costs a great deal of money in the process. People must never confuse aggression and assertion. Words have meaning.

Remember, while you might win the battle, you can still lose the war. When families are involved, destructive behavior has consequences that can be felt long after the "case" is over. Is it the attorneys or the clients, their children and their families that get to live with those consequences? The personality and philosophy of the attorneys involved in a case have far more impact than people realize. Please keep this in mind when selecting your "teammates."

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### **Which divorce process is right for you?**

When people think of divorce, they typically think of litigation, which is the “default process.” What that means is that their case will be litigated, unless they “opt out” of that process. Other available processes are DIY (do it yourself), mediation, collaborative divorce, lawyer-to-lawyer negotiation, arbitration (keep in mind that certain types of matters may not be arbitrated in family law), private judging (if permitted in any particular jurisdiction). Unfortunately, family law is not spandex and there is no “one-size-fits-all.” However, people should consider certain things before making a decision regarding process.

First, litigation is an adversarial process in which both parties play to “win.” When a family is involved and both spouses are playing to “win,” the family dynamic is destroyed. An unfortunate byproduct of litigation is that it exacerbates the level of conflict, increases distrust and breeds paranoia. Doesn’t it make more sense to resolve family matters in a process that is designed to reduce the level of conflict and rebuild trust?

Second, a significant problem with mediation is the fact that the term itself is vague. Mediation could be evaluative, facilitative or transformative. Which of those approaches does one mean when they refer to mediation? It should also be noted that mediation is unregulated in most places, including California. Thus, a person can practice as a ‘mediator’ without ever having received any formal training. It is therefore strongly advised that you do your homework before selecting a mediator.

Third, collaborative divorce is an interdisciplinary team approach to family law. It is based upon specialization of labor, not duplication. In addition to the parties themselves, the team consists of attorneys, mental health and financial professionals. Collaborative teams are no different from any other team in that they are only as strong as their weakest member. Collaboration only works when the professionals

involved are like-minded individuals who actually trust one another.

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Fourth, lawyers do serve a necessary and useful purpose in family law matters and for society as a whole. For one thing, they warn of unforeseen “what- ifs.” Furthermore, words have meaning and the difference between “may” and “shall” could substantially change the meaning of a provision. Lawyers are wordsmiths in that regard. Moreover, divorce is a legal process.

Fifth, unless a matter is decided by a judge or arbitrator, the couple involved makes the ultimate decisions. According to a new study conducted at UC Davis, people had a clear preference for mediation and other forms of consensual dispute resolution over those forms of dispute resolution in which they relinquished their decision making authority.

*Mark Baer assists people in becoming independent of their spouses or significant others with integrity, by evaluating and facilitating solutions that are respectful to each other and their families. He accomplishes this by providing a thoughtful, creative, and caring environment. His vision and experience equip people with a new set of skills that strengthen and empower them to better cope with future challenges.*