

January 29, 2015

HUFF POST DIVORCE

MARRIAGES COME AND GO, BUT DIVORCE IS FOREVER



Caroline Choi

Family Law Attorney, Solomon Ward Seidenwurm & Smith LLP

Divorce Confidential: Child Testimony in Divorce Proceedings

Posted: 01/29/2015 4:34 pm | Updated: 01/29/2015 4:59 pm



In litigated custody battles, clients sometimes ask if their child can testify. This is undoubtedly tempting, especially if your child is saying he or she wants to spend more time with you than your ex-spouse. However tempting, there are a few things you need to consider before you and your lawyer decide whether to allow your child to testify in the divorce proceeding.

1. Is Your Child's Testimony Necessary? Ask yourself tough questions including why you want your child to testify. What is the real reason? Can your child help the judge understand the circumstances in your home and how the custody arrangement is affecting your child? If circumstances are difficult for your child and he/she is mature enough to express his/her desires, then you may want to allow your child to testify. But if you're only really looking to get revenge, want to embarrass your ex-spouse or just simply want more custody time than your ex-spouse,

think twice before you allow your child to testify. My general advice is to only allow your child to testify if there are extremely difficult circumstances which would endanger the child.

2. **Think About the Long-Term Effects On Your Child:** Consider the long-term effects testifying will have on your child. A divorce is already a traumatizing experience for most children. It is even worse if the parents engage in a bitterly-litigated custody battle. Will it be difficult for your child to testify because it will make him/her feel as if he/she is picking sides? You need to consider how your child will feel and what it will do to your child psychologically. Remember that you normally want to encourage your child to have a healthy relationship with your ex-spouse who is, after all, the child's mother or father. Allowing your child to testify will undoubtedly affect the relationship dynamic between you and your ex-spouse and your child. How would you feel if your child were testifying against you? Would you resent your ex-spouse or your child? Also try and determine why your child is expressing an interest in testifying. Take some time to talk with your child and ask tough questions before making a final decision.

3. **Research Child Testimony Laws In Your State:** Consult with an attorney in your state to see how the law treats child testimony in custody cases. California allows a child fourteen (14) years or older to testify in divorce proceedings involving custody issues, unless the testimony would not be in the "best interest" of the child. This doesn't mean a child under the age of fourteen (14) cannot testify. The court may consider a child under fourteen (14) if the child is of sufficient maturity. In Georgia, the court will hear a child's testimony only in extreme cases and may assess the child's competency. Talk to your attorney and ask if there are specialized procedures the court will take when deciding whether to permit a child to testify. For example, your court may allow video depositions of your child's testimony, or may allow your child to be accompanied by a trusted companion during the testimony.

Regardless of whether you decide to allow your child to testify, it is important to remember that this decision should not be taken lightly. The long-term psychological effects on your child is something which may not surface for some time. If anything, just remember to keep your focus on the best interests of you and your ex-spouse's child.

Follow Caroline Choi on Twitter: www.twitter.com/@carolineychoi