



In the old days, a spouse won a divorce case if the judge was persuaded there were grounds to grant a divorce. Then came no-fault divorce with changes in the divorce laws about kids, income and property. It became less clear what a “win” meant. As divorces became more common, you started to hear about win-win solutions.

“Win-win” means that the solutions to the practical problems raised when one household splits into two are workable and realistic. The goal is for each side to have enough to move ahead into its future. “Enough” means enough given the resources of the marriage

Talk around town and media headlines sometimes still reflect the “battle” model of divorce. We all need to make a deliberate and conscientious shift away from that paradigm to one that better reflects today’s reality.

Compare some common “battle songs” with win-win “counterpoint”.



I will see you in Court. ?

WIN-WIN: Most divorces in Minnesota settle. The earlier the case settles, the more certainty each spouse has to start planning for his/her future. Often legal fees are dramatically lower in cases with early settlement.

Things will be better once the divorce is done. ?

WIN-WIN: To some extent, that depends on how the divorce is resolved. The more matter of fact and focused the parties are on their search for workable solutions to the real problems created by a divorce, the more likely they have minimized the emotionality of the divorce and the less likely the process of the divorce in and of itself created hurt and hostility that will last long after the divorce is final.

I want to protect my rights and get the right decision. ?

WIN-WIN: A “right” means that you are entitled to something; if you ask for it, the court should grant it. You can choose not to ask for it, to ask for less, or to ask for the maximum that the law provides. Without an agreement, a judge or other decision-maker will determine the extent of your rights.

Some rights in divorce are spelled out specifically, for example with Minnesota’s guidelines for child support. Often there are exceptions to specific rights such as (1) deviations upwards or downwards from the guidelines or (2) designing your own financial support for your children as part of a parenting plan.

All of these factors mean that there are very few divorce cases that can be resolved in only one way. There are usually several different possible solutions on each issue and many different combinations of those solutions.

It is the principle of the thing; I am not giving in. ?

WIN-WIN: No one can settle a case if neither side is willing to say yes. When a reasonable solution is identified – no matter who proposed it -- it will empower both sides to acknowledge its appropriateness and agree to it. Focus on the impact of the proposal on your daily life, not the principle.

I want the whole package or the deal is off. ?

WIN-WIN: If the last disputed issue is very important to the other person, your attempt to force a complete resolution will likely fail any way. Then it is most cost-effective for you to reduce the number of issues for trial rather than present evidence on every issue in the package deal. But wait – before you head off to trial, why is that issue so important to the other side? Why do they think their proposal is more workable than yours? Maybe the differences make no difference and you should say yes. Maybe identifying the differences will help you see some shared interests – things that are important to both of you - and you need to re-evaluate both proposals and generate more options.

He/she is only interested in the money. ?

WIN-WIN: Divorces generally create two households that have less money per household than when there was only one. Both sides of a case are reasonably concerned about their finances. Both sides probably have multiple concerns that coexist with financial considerations. For example, one can love the children and want enough money to live on.



Shifting from the battle paradigm of divorce to a win-win model necessarily focuses couples on the realistic and workable ways to deal with the practical problems raised by divorce. A win-win attitude, by itself, will not settle your case, but it is an important first step. It can set a tone to your case that right from the beginning focuses on productive negotiations.

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THE PARADIGM SHIFT

A Strategy for Win-Win Solutions in Your Divorce



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