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**AMELIORATING THE EFFECTS OF
DIVORCE ON CHILDREN**

I. Introduction

This article will begin with a review and summary of the historical and current view regarding divorce and the effects of divorce on children, followed by a description of four court affiliated intervention services and programs including: divorce education classes for both parents and children experiencing their parents' divorce, mediation, parent coordinator programs for high-conflict parents, and collaborative practice. The overall goal of these programs is to provide parents with the motivation and skills to reduce inter-parental conflict both during and after the legal process of divorce. This article will also present the empirical findings related to the effect these programs have on reducing conflict and how satisfied participants are with these programs.

II. The Effects of Divorce on Children

To understand the effects of divorce on children it is helpful to review how the public has viewed divorce and the effects experiencing parental divorce has on children since 1950. During the 1950s to 1970, divorce was rare and fault based. To prove fault, the innocent spouse had to demonstrate the guilty spouse had committed some marital offense.¹ Divorced persons were stigmatized and people viewed divorce as devastating to children.² These children were from "broken homes" and believed at tremendous risk for school failure, delinquency, and psychological disorders.³

Beginning in the 1970s people began to see divorce in a different light and therefore the effects on children were viewed differently. Divorce became much more common and social

¹ Eleanor E. Maccoby & Robert H. Mnookin, *Dividing the Child: Social and Legal Dilemmas of Custody*, 6 (1992).

² Paul R. Amato, *Good Enough Marriages: Parental Discord, Divorce, and Children's Long-Term Well-Being*, 9 VA. J. SOC. POL'Y & L. 71, 72 (2001).

³ *Id.*

attitudes toward divorce changed as no-fault divorce was introduced.⁴ The stigma associated with divorce was reduced as divorce was seen as necessary to allow adults to have a second chance at happiness. People believed that if the parents were happy, then the children would be happy. Children were seen as resilient and able to cope successfully with the changes associated with their parents' divorce.⁵

Numerous empirical studies have been undertaken in the past 25 years to investigate the effect of parental divorce on children. This research indicates the majority of children from divorced families do not have long lasting effects as they fall within the average range of both psychological and social adjustment in the years following divorce.⁶ Those children at risk for long-term effects following their parents divorce experience diminished support and contact with one or both parents, high inter-parental conflict, and loss of economic resources.⁷

The most dominant factor in a child's psychological and social adjustment following divorce is now thought to be the level and intensity of parental conflict occurring prior, during, and after the legal processes of divorce.⁸ Inter-parental conflict concerning child-related issues, such as custody, child support, and child rearing practices, is more closely associated with child adjustment problems.⁹ This type of conflict tends to elicit more self-blame and guilt and efforts by the child to intervene in the parental conflict, through taking sides or trying to mediate parental conflict.¹⁰

⁴ Maccoby, *supra* note 1 at 6.

⁵ Judith Stacey, *Brave New Families: Stories of Domestic Upheaval in Late Twentieth Century America*, 260 (1991).

⁶ Joan B. Kelly, *Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice*, 10 *V.A. J. SOC. POL'Y & L.* 129, 130 (2002).

⁷ *Id.*

⁸ Linda D. Elrod, *A Minnesota Comparative Family Law Symposium: Reforming the System to Protect Children in High Conflict Custody Cases*, 28 *WM. MITCHELL L. REV.* 495, 497 (2001).

⁹ John H. Grych, *Interparental Conflict as a Risk Factor for Child Maladjustment: Implications for the Development of Prevention Programs*, 43 *FAM. CT. REV.* 97, 98 (2005).

¹⁰ *Id.*

The effects on children of experiencing parental divorce include: higher levels of depression, more learning disabilities, and more problems with peers.¹¹ Studies also report poorer psychological adjustment, more physical health problems, lower academic performance, and greater likelihood to engage in antisocial or delinquent behavior, reduced social competence, and lower self-concept.¹² Children from divorced families are more aggressive toward parents and teachers and are two to three times more likely to be referred for psychological help at school than peers.¹³ Internalizing problems, such as self-blame and guilt, are most likely to emerge when conflict is very high or when the child is unduly exposed to or used in the parental conflict.¹⁴ Adults having experienced the divorce of their own parents as children have higher rates of divorce and maladjustment in adulthood.¹⁵

III. The Adversarial Process and Inter-Parental Conflict

The adversarial process focuses on a competition which results in a winner and loser and encourages parents to become polarized and focus on one another's deficits.¹⁶ The adversarial process discourages parental communication and cooperation at a critical time when the focus should be about the children's needs during this time of family change and upheaval.¹⁷

Children face five potential sources of stress when their parents litigate over them.¹⁸ These sources of stress include: parents involving the child in inter-parental conflict, parent-child role re-

¹¹ Judith Wallerstein, Julia Lewis, & Sandra Blakeslee, *The Unexpected Legacy of Divorce*, xxiii (2000).

¹² Paul R. Amato & Bruce Keith, *Parental Divorce and the Well-Being of Children: A Meta-Analysis*, 110 *PSYCHOL.* 26, 30 (1991).

¹³ Wallerstein, *supra* note 11, at xxiii.

¹⁴ John H. Grych & Frank D. Fincham, *Interparental Conflict and Child Development: Theory, Research, and Applications*, 339 (2001).

¹⁵ Paul R. Amato & Juliana M. Sobolewski, *The Effects of Divorce and Marital Discord on Adult Children's Psychological Well-Being*, 66 *AM. SOC. REV.* 900, 903 (2001).

¹⁶ Kelly, *supra* note 6, at 131.

¹⁷ *Id.*

¹⁸ Richard Wolman & Keith Taylor, *Psychological Effects of Custody Disputes on Children*, 9 *BEHAV. SCI. & L.* 399, 406 (1991).

versals, living in a situation where the child and parent have little control over the legal events, confusion resulting from parents' changed view of reality, and disillusionment over the child's family and its values.¹⁹

A survey conducted in Ohio of parents who had recently participated in parental determination, custody, or child support cases in court was undertaken. A total of 1,375 surveys were returned.²⁰ Respondents reported low satisfaction with their attorneys and judges.²¹ Attorneys were perceived as contributing to parental conflict by telling parents not to communicate with one another and ignoring clients during the legal decision making.²² The researchers suggested that dissatisfaction with attorneys may be reduced if a more collaborative approach to representation is undertaken, more legal information is provided to clients, and more attention to children's interests is demonstrated.²³ Implementing ways to facilitate a process that is shorter, simpler, and less expensive was also suggested to improve client satisfaction during the divorce process.²⁴

IV. Court Interventions Designed to Decrease Inter-Parental Conflict

Both the legal community and social scientists in response to the damaging aspects of the adversarial process and inter-parental conflict have sought to reduce reliance on litigation.²⁵ This has resulted in the emergence of alternative legal interventions including divorce education classes for both parents and children, mediation, parenting coordination and collaborative practice. These interventions provide many opportunities for parents to settle disputes cooperatively with one another both during and

¹⁹ *Id.*

²⁰ Randall W. Leite & Kathleen Clark, *Participants' Evaluations of Aspects of the Legal Child Custody Process and Preferences for Court Services*, 45 *FAM. CT. REV.* 260, 263 (2007).

²¹ *Id.* at 269.

²² *Id.*

²³ *Id.* at 270.

²⁴ *Id.*

²⁵ Kelly, *supra* note 6, at 132.

after the legal divorce process in order to reduce conflict and allow them to exit the legal system sooner.²⁶

A. Divorce Educational Programs

Many jurisdictions now mandate parental attendance at divorce education classes prior to the divorce being granted.²⁷ Some jurisdictions also offer classes for children coping with their parents divorce and a few jurisdictions offer parallel classes for both parents and children.²⁸ The broad goal of these programs is to reduce inter-parental conflict and focus parents on the needs of their children both during and after the legal process of divorce. Concerns with mandatory attendance at these programs include whether it is constitutional to require attendance before granting a divorce and whether attendance at these programs are appropriate for families experiencing domestic violence.

1. Parent Focused Divorce Education Programs

Well designed divorce education programs for parents focus on the effects of divorce on children and encourage parents to remain attached to their children even as their relationship to each other through marriage ends.²⁹ In order to help parents focus on their children these programs focus on: (1) informing parents how children usually respond to divorce, (2) alerting parents to the negative effect of conflict and their harmful behaviors on children's adjustment both in the short and long term, (3) discussing benefits of, and skills needed, to build a cooperative or parallel parenting relationship, (4) focusing parents on the needs of children for an on-going relationship with each parent, (5) teaching positive parenting behaviors and appropriate discipline, (6) discussing the process of adult adjustment to divorce and how to cope with this change, (7) focusing on responsibilities of each parent to the children, and (8) describing helpful court processes, such as mediation.³⁰

²⁶ *Id.*

²⁷ *Id.* at 133.

²⁸ *Id.* at 134.

²⁹ Theresa Glennon, *Still Partners? Examining the Consequences of Post-Dissolution Parenting*, 41 FAM. L. Q. 105, 116 (2007).

³⁰ Kelly, *supra* note 6, at 134.

Divorce education classes use many methods to engage parents in the learning process including: video, role playing exercises and demonstrations, discussion, handouts, and didactic presentations.³¹ Those programs most effective in fostering children's adaptation to divorce help parents to reduce the amount of inter-parental conflict children are exposed to, foster healthy parent-child relationships, and teach parents to avoid placing children in the middle of parental disagreements.³²

Empirical research has demonstrated the most effective programs focus on a skills-based approach to teach parents how to effectively communicate with one another and how to reduce inter-parental conflict as opposed to an information-based approach.³³ Informational programs provide lists of "do's and don'ts" for parents as opposed to skills-based programs which teach strategies by employing role plays, experiential exercises, and group discussion.³⁴

The Texas Young Lawyers Association produced the video *Kids in the Crossfire: Helping Parents Understand the Impact of Divorce*.³⁵ This 20-minute video focuses on the impact of parents' behavior on children.³⁶ The video educates parents about behaviors to avoid and how to effectively communicate and minimize the stress they inflict on their children.³⁷ Excerpts from interviews with therapists, educators, family law attorneys, judges, divorced parents, and children who have experienced their parents divorce are featured.³⁸ The video also includes several dramatized scenes that focus on situations in which parents may not be aware of the hostile environment their children are experienc-

³¹ *Id.*

³² Grych, *supra* note 9, at 97.

³³ Kevin M. Kramer ET AL., *Effects of Skill-Based Versus Information-Based Divorce Education Programs on Domestic Violence and Parental Communication*, 36 FAM. & CONCILIATION COURTS REV. 9, 26 (1998).

³⁴ Brenda L. Bacon & Brad McKenzie, *Parent Education After Separation/Divorce: Impact of the Level of Parental Conflict on Outcomes*, 42 FAM. CT. REV. 85, 95 (2004).

³⁵ Kevin Priestner, *TYLA Creates Video to Help Children of Divorce*, 69 TEX. B.J. 422, 422 (2006).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

ing.³⁹ These scenes include the interaction between parents when the child is being exchanged for visitation and an argument over finances and child support which the child overhears in an adjoining room.⁴⁰ Parent divorce education classes include the use of this video followed by discussion and other activities to help parents acquire and demonstrate the use of skills helpful in reducing the inter-parental conflict their children experience.⁴¹

Parent satisfaction with parenting classes was surveyed in the Ohio study.⁴² This study found low levels of parental satisfaction with the divorce education classes they attended.⁴³ However, participants stated a strong preference for the continued availability of parent education classes for other divorcing parents.⁴⁴ This suggests parents are concerned about the effects of divorce on their children and want information on how they can reduce these effects. The researchers suggested further attention is needed to ensure the contents and structure of the programs effectively engage and address diverse parental needs in order to increase satisfaction with the overall educational experience.⁴⁵

Minnesota also surveyed parents about their satisfaction with divorce education classes.⁴⁶ Of the 69 surveys analyzed only five respondents indicated that “nothing” was helpful and 94% of the respondents indicated they would recommend the class to others.⁴⁷ The researchers suggest participants should attend the divorce education classes early so that children do not suffer needlessly from parental conflict.⁴⁸

A Canadian study assessed parent education program effects on post-separation parenting.⁴⁹ The researchers found statistically significant changes from pretest to both four month and

³⁹ *Id.*

⁴⁰ Priestner, *supra* note 35, at 422.

⁴¹ *Id.* at 426.

⁴² Leite & Clark, *supra* note 20, at 270.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Solveig Erickson & Nancy Ver Steegh, *Mandatory Divorce Education Classes: What Do the Parents Say?*, 28 WM. MITCHELL L. REV. 889, 890 (2001).

⁴⁷ *Id.* at 908.

⁴⁸ *Id.* at 909.

⁴⁹ Bacon & McKenzie, *supra* note 34, at 85.

six month follow up on all scales related to parental conflict.⁵⁰ They found greater evidence of change in programs of at least six hours in length.⁵¹ Their findings also suggested that parents should participate in the educational programs soon after separation in order to take advantage of increased levels of co-parental support.⁵²

One study examined parental education programs in five different settings, including: Phoenix, Arizona; Camden, New Jersey; Connecticut statewide; Tulsa, Oklahoma; and Grand Rapids, Michigan.⁵³ Parents at each site completed an anonymous questionnaire which contained a place for the respondent to indicate if he/she would be willing to take part in a confidential telephone interview about the parent education program.⁵⁴ Half of the participants indicated the program was interesting and held their attention and 60% agreed that parent education should be required.⁵⁵ Parents who participated in education at the beginning of their divorce were more likely to agree the program helped them believe they could work cooperatively with the other parent.⁵⁶

Mandatory attendance at parental divorce education classes have proliferated across the United States. Two major concerns have arisen in association with mandatory attendance. First, whether requiring attendance before granting a divorce is constitutional and second, whether mandatory attendance is appropriate when domestic violence is present in the parental relationship.

In states where attendance is mandatory, that authority is created by the state's legislature.⁵⁷ Legislation is enacted requiring all parents seeking a divorce within the state to attend parent divorce education program with a clause allowing the court to

⁵⁰ *Id.*

⁵¹ *Id.* at 95.

⁵² *Id.* at 97.

⁵³ Nancy Thoennes & Jessica Pearson, *Parent Education in Domestic Relations Court: A Multisite Assessment*, 37 *FAM. & CONCILIATION COURTS REV.* 195 (1999).

⁵⁴ *Id.* at 198.

⁵⁵ *Id.* at 203.

⁵⁶ *Id.* at 204.

⁵⁷ Debra A. Clement, *1998 Nationwide Survey of the Legal Status of Parent Education*, 37 *FAM. & CONCILIATION COURTS REV.* 219, 220 (1999).

waive attendance with good cause shown.⁵⁸ Some have argued mandatory attendance is an impediment to divorce.⁵⁹ However, divorce is not a constitutional right and therefore attendance may be mandated.⁶⁰ It has also been pointed out a constitutional violation could exist in requiring payment for attendance at mandatory programs.⁶¹ The Fourteenth Amendment would be violated by denying access to divorce by the indigent based solely on the inability to pay for the divorce education program.⁶² This potential constitutional violation can easily be avoided by providing programs on a sliding fee scale and providing fee waivers for those with no ability to pay.

A second concern is the issue of domestic violence. Parent education classes must be sensitive to the presence of this issue. It had been noted that the most dangerous time for a victim is the period between separation and divorce.⁶³ Several steps should be followed to ensure the safety and sensitivity needed for this complex issue.

First, screening for domestic violence must be conducted and courts should not refer parents to education classes if there is an indication of domestic violence.⁶⁴ These waivers for attendance should be well publicized. However, this is not the only step which must be taken as many domestic violence victims do not self-identify and therefore will be present in parent divorce education classes.⁶⁵ Therefore additional steps must be taken to ensure their safety while in attendance and to ensure the curriculum is sensitive to the presence of domestic violence.

Many safety provisions have been suggested. Parents should be required to attend separate sessions on different days or at

⁵⁸ *Id.*

⁵⁹ *Id.* at 223.

⁶⁰ *Id.*

⁶¹ *Id.* at 225.

⁶² *Id.*

⁶³ Victoria L. Lutz & Cara E. Gady, *Necessary Measure and Logistice to Maximize the Safety of Victims of Domestic Violence Attending Parent Education Programs*, 42 FAM. CT. REV. 363, 365 (2004).

⁶⁴ Hon. Evelyn Frazee, *Sensitizing Parent Education Programs to Domestic Violence Concerns: The Perspective of the New York State Parent Education Advisory Board*, 43 FAM. CT. REV. 124, 125 (2005).

⁶⁵ *Id.*

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different locations.⁶⁶ Even when parents request to attend the same class, it should not be permitted.⁶⁷ There is no way to ensure that the request is voluntary rather than a coerced decision of the abused partner.⁶⁸ The easiest and safest way to implement this is to require the name of the child's other parent on the enrollment form.⁶⁹ If both parents are requesting the same class, the second parent should be told the class is full and register that parent for a different class.⁷⁰ The parent should not be told his/her former partner is enrolled in the class as this may allow stalking.⁷¹

All programs should also have a safety plan and security personnel on site or readily available to provide assistance.⁷² Classes should be held in well lit, public places with easily accessible parking.⁷³ Confidentiality of attendance lists must be kept so that victims cannot be located by their abusers.⁷⁴

Curriculum content and delivery must also be sensitive to issues of domestic violence. First, all educators should be trained in the dynamics of domestic violence.⁷⁵ Second, every class should educate parents about the definition of domestic violence and its dynamics.⁷⁶ Handouts about domestic violence and resources for victims should be available for all parents.⁷⁷ Parents should also be advised at the beginning of class that some information is not appropriate when domestic violence is present in the parental relationship.⁷⁸

There are several ways to ensure the course content is sensitive to domestic violence. It should be pointed out throughout the class when the information is not appropriate for those ex-

⁶⁶ *Id.* at 128.

⁶⁷ Lutz & Gady, *supra* note 63, at 365.

⁶⁸ *Id.*

⁶⁹ Frazee, *supra* note 64.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Lutz & Gady, *supra* note 63, at 369.

⁷⁶ *Id.* at 367.

⁷⁷ *Id.*

⁷⁸ Frazee, *supra* note 64, at 130.

periencing domestic violence.⁷⁹ An example is the goal of cooperative parenting which may not provide the degree of safety needed for domestic violence victims. Therefore, parents should be presented with information about parallel parenting also.⁸⁰ Parallel parenting keeps the parents separate and allows a degree of safety.⁸¹

Another way to sensitize content to domestic violence is to identify and change messages which could be harmful if adopted by those experiencing domestic violence.⁸² The message that parents who cannot cooperate may be harming their children can be used by the abusive parent to make the abused parent feel responsible for potential harm to the children.⁸³ This message should be altered to include that cooperation is not a goal for families where domestic violence has occurred because it could place a parent at risk and the goal for these families is parallel or detached parenting.⁸⁴

The message that divorced parents must rebuild trust is also potentially harmful.⁸⁵ This message should be altered to make the goal of divorced parents to achieve a businesslike relationship with one another focused on raising their children.⁸⁶ It should be pointed out that families where violence has occurred should conduct this businesslike relationship through a neutral third party.⁸⁷

Adhering to these suggestions from waivers of attendance to altering course content will help to ensure the safety and sensitivity needed for those experiencing domestic violence. Therefore, divorce education classes may be appropriate for those divorcing parents where domestic violence is present in the parental relationship.

⁷⁹ Lutz & Gady, *supra* note 63, at 367.

⁸⁰ Frazee, *supra* note 64, at 131.

⁸¹ *Id.*

⁸² Geri S. W. Fuhrmann, Joseph McGill, & Mary E. O'Connell, *Parent Education's Second Generation: Integrating Violence Sensitivity*, 37 *FAM. & CONCILIATION COURTS REV.* 24, 31 (1999).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

2. *Child Focused Divorce Education Classes*

Only a small minority of U.S. counties have a court-connected program for children experiencing their parents' divorce.⁸⁸ However, when asked what they would like to change about their divorce education program, a majority of court personnel reported a desire to add a children's program.⁸⁹ The average length of children's programs currently being conducted is five and a half hours and the average number of sessions is four.⁹⁰

The goal of children's programs is to help children cope with their parents' divorce.⁹¹ These programs facilitate the children's expression of feelings and are designed to help children understand their parents' divorce and develop skills for coping with their feelings associated with the divorce.⁹² Children's programs are not counseling but provide cognitive and emotional support in group settings at school or in the community.⁹³ Children's programs are most helpful when they help children learn ways to cope with situations in which they feel pressured to choose sides or to intervene in conflict between their parents and avoid placing blame on themselves for parental problems.⁹⁴

The Children of Divorce Intervention Program (CODIP) is a school-based intervention program.⁹⁵ The program's primary goals are to create a supportive group environment in order for children to share their experience with one another, establish bonds between the children, dispel misconceptions related to parental divorce, and learn and practice skills to enhance children's

⁸⁸ Robyn J. Geelhoed, Karen R. Blaisure, & Margie J. Gleasler, *Statutes of Court-Connected Programs for Children Whose Parents are Separating or Divorcing*, 39 FAM. CT. REV. 393 (2001).

⁸⁹ *Id.*

⁹⁰ *Id.* at 396.

⁹¹ Rebecca Hinton, *Giving Children a Right to be Heard: Suggested Reforms to Provide Louisiana Children a Voice in Child Custody Disputes*, 65 LA. L. REV. 1539, 1553 (2005).

⁹² Videotape: Kids & Divorce For Better or Worse (PBS Home Video 2006).

⁹³ Kelly, *supra* note 6, at 136.

⁹⁴ Grych, *supra* note 9, at 97.

⁹⁵ JoAnne L. Pedro-Carroll, *Fostering Resilience in the Aftermath of Divorce: The Role of Evidence-Based Programs for Children*, 43 FAM. CT. REV. 52, 55 (2005).

ability to cope with stressful changes and feelings associated with their parents' divorce.⁹⁶ A child who fears she is responsible for her parents' divorce can find comfort and relief from a peer with similar feelings.⁹⁷ This engagement and sharing with peers is often more helpful to a child than an adult reassuring a child others have experienced similar situations and feelings. Skill acquisition is another important part of the group and is achieved through active role-play and learning how others' have solved similar problems, dealt with emotions, and disengaged from loyalty conflicts between parents.⁹⁸

CODIP has been developed for children of different age ranges and adapted for children of different socio-demographic backgrounds.⁹⁹ Different techniques to match the developmental needs of the age groups have been developed in order to encourage the expression of emotion and the acquisition of skills at every age level.¹⁰⁰ Young children are encouraged to draw to express feelings and use dolls to role play.¹⁰¹ Adolescents are encouraged to write about their feelings and actively role play with one another.¹⁰²

The effectiveness of CODIP has been documented in controlled studies.¹⁰³ CODIP's efficacy on children's adjustment was assessed from perspectives of parents, teachers, group leaders, and the children themselves.¹⁰⁴ Based on these reports children attending CODIP improved significantly as compared to matched controls randomly assigned to a delayed treatment condition.¹⁰⁵ Parents reported improvements in children's adjustment and children reported lower anxiety after attending the group.¹⁰⁶

⁹⁶ *Id.*

⁹⁷ *Id.* at 56.

⁹⁸ *Id.*

⁹⁹ Pedro-Carroll, *supra* note 95, at 56.

¹⁰⁰ *Id.* at 56.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 55.

¹⁰⁴ Pedro-Carroll, *supra* note 95, at 58.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

3. *Parallel Divorce Education Classes for Parents and Children*

Parallel group sessions for parents and children allow the focus on children to be even stronger.¹⁰⁷ As children discuss their feelings about being caught in the middle of conflict, the parent groups are informed about what the children's group is discussing each week and this leads to more open discussions at home between parents and children.¹⁰⁸

Hawaii uses a parallel program for parents and children called Kids First.¹⁰⁹ Both parents and their minor children are required to attend prior to the divorce being granted.¹¹⁰ The program begins with parents and children together watching the Purple Family movie.¹¹¹ The parents then hear a presentation from therapists and experts on marriage, divorce and child development.¹¹² These presentations inform the parents about the effects of divorce on children, warn that parental conflict harms children and suggest ways parents can reduce inter-parental conflict.¹¹³ Parents are reminded to keep their "kids first" as they move through the divorce process and establish new parenting relationships.¹¹⁴ The goal is to encourage parents to focus their energies on conflict resolution rather than litigation.¹¹⁵

The children are separated into age appropriate groups of eight to ten children.¹¹⁶ Facilitators teach children what divorce means and through participation in the group the children learn their family is not the only one experiencing divorce.¹¹⁷ Facilitators help to create an atmosphere in which children feel safe to express and discuss their feelings with one another.¹¹⁸ The children are ensured what they say will not be shared di-

¹⁰⁷ Kelly, *supra* note 6, at 155.

¹⁰⁸ *Id.*

¹⁰⁹ Charlene Deiber Anaya & Jeanne M. White, *Kids First*, 10-DEC HAW. B.J. 5 (2006).

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Anaya, *supra* note 109, at 5.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 6.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

rectly with their parents but will be used later to help other parents understand what their children may be feeling and thinking.¹¹⁹

B. *Mediation*

In mediation, neutral professionals manage the negotiation process to help divorcing couples resolve the problems of divorce.¹²⁰ The goal of mediation is to promote negotiation and an outcome benefiting both parties.¹²¹ The mediation process stresses good communication and conflict reduction. Many jurisdictions have made mediation mandatory.¹²² However, these mandatory mediations require an attempt to negotiate parental differences not settlement.¹²³ Mandatory mediation sends a clear message that efforts to settle disputes and meet the needs of children in collaborative forums are preferred over the adversarial process.¹²⁴

A study of court-based mediation program in Virginia found cases randomly assigned to continue with litigation were seven times more likely to go to court than the cases randomly assigned to mediation.¹²⁵ The researchers also found that even when mediation did not end in settlement, many parents settled with the aid of their lawyers outside of court.¹²⁶

Mediation has been found to be more efficient in time and expense; one study found disputes were settled in half the time when using mediation as opposed to the adversary process.¹²⁷ Re-litigation rates are lower and compliance with agreements is higher among samples who participated in mediation.¹²⁸ Parents surveyed were found to be more satisfied with dispute resolution through mediation than with the adversary process both at six

¹¹⁹ Anaya, *supra* note 109, at 6.

¹²⁰ John Lande & Gregg Hermann, *Fitting the Forum to the Family Fuss*, 42 *FAM. CT. REV.* 280, 282 (2004).

¹²¹ *Id.*

¹²² Kelly, *supra* note 6, at 137.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Robert E. Emery, David Sbarra, & Tara Glover, *Divorce Mediation: Research and Reflections*, 43 *FAM. CT. REV.* 22, 26 (2005).

¹²⁶ *Id.*

¹²⁷ *Id.* at 27.

¹²⁸ Kelly, *supra* note 6, at 139.

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weeks after mediation had resulted in settlement and 12 years later.¹²⁹

The effect of mediation on family relationships and parental conflict has also been studied.¹³⁰ There was no difference found in immediate and short-term effects on family relationships between the mediation and the adversary process groups.¹³¹ However, there were significant effects found when the twelve-year follow-up study was conducted.¹³² The researchers found increased contact between nonresidential parents and children when settlement had been reached through mediation as opposed to the adversarial process.¹³³ This greater contact did not increase parental conflict despite more opportunities existing for the parents to fight.¹³⁴ In fact parents reported they were more likely to discuss problems with one another, offer support to one another, and the nonresidential parent had a greater influence on childrearing decisions.¹³⁵

Researchers have speculated about the key ingredients that helps ensure mediation is valuable to parents and their children.¹³⁶ The strongest ingredient in mediation is cooperation and mediation promotes cooperation through helping parents focus on the long term even if cooperating with one another seems impossible in the midst of the divorce.¹³⁷ Mediation assists parents in recognizing they may be divorcing each other but they will be connected as parents forever.¹³⁸

Another important ingredient for mediation is the opportunity to educate parents concerning their own emotions and those of their children as they experience the process of divorce.¹³⁹ Unlike the detached lesson on emotion that may occur in divorce education classes, education in mediation can be a real and emo-

¹²⁹ Emery, *supra* note 125, at 28.

¹³⁰ *Id.* at 30.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ Emery, *supra* note 125, at 31.

¹³⁵ *Id.*

¹³⁶ *Id.* at 32.

¹³⁷ *Id.* at 33.

¹³⁸ *Id.*

¹³⁹ Emery, *supra* note 125, at 33.

tional experience.¹⁴⁰ Mediators can achieve this real experience by reflecting on their own emotional reaction to conflict between the parents and this helps to reflect the children's emotional experience to parental conflict.¹⁴¹ Mediators can help parents start to understand the emotions lying underneath their anger at one another and encourage them to seek help and support in a therapeutic setting elsewhere, while finding a way to control these emotions in order to develop a cooperative parenting plan in mediation.¹⁴²

Perhaps the most important benefit in mediation is helping to keep parents from turning to the adversarial process to resolve disputes.¹⁴³ The adversarial system can cause these strained emotional relationships to deteriorate further and perhaps the primary benefit of mediation is to prevent the devastation of divorce from inflicting more harm on both parents and children.¹⁴⁴

C. Parent Coordinator Programs for High-Conflict Parents

High-Conflict families continue in chronic conflict after the divorce, re-litigate frequently, and use a disproportionate amount of the court's time and resources.¹⁴⁵ These parents regard each other as enemies and expose and involve their children in their toxic conflict.¹⁴⁶ They are marked by lack of trust and a high level of anger between the parents.¹⁴⁷ Many of the parental disputes involved are minor, such as one time changes in the visitation schedule, planning of vacations, and decisions regarding the child's after school activities and child-rearing.¹⁴⁸

In response to these high-conflict families, courts began to delegate limited areas of authority over child custody issues to Parenting Coordinators.¹⁴⁹ Parenting Coordinators are exper-

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Emery, *supra* note 125, at 34.

¹⁴⁵ Christine A. Coats ET AL., *Parenting Coordination for High-Conflict Families*, 42 FAM. CT. REV. 246, 247 (2004).

¹⁴⁶ *Id.*

¹⁴⁷ Elrod, *supra* note 8, at 500.

¹⁴⁸ Coats, *supra* note 145, at 247.

¹⁴⁹ *Id.*

icensed custody evaluators, mediators or family law attorneys.¹⁵⁰ They are impartial third parties helping the parents to implement their parenting plan by facilitating disputes between the parents, educating the parents, making recommendations to the parties, and making decisions within the scope of their court ordered appointment when the parents cannot agree with one another.¹⁵¹ The Parenting Coordinator works outside of the formal court process but is accountable to the court, writes and files decisions as court orders, adheres to court rules and procedures and their work is subject to judicial review.¹⁵²

The Parenting Coordinator reinforces a parallel parenting model, which is characterized by low engagement and low conflict between the parents.¹⁵³ The Parenting Coordinator does this through increased structure and detail in the parenting plan and becoming the link between the parents for any conflicted interactions.¹⁵⁴ This allows the parents to disengage from one another and parent independently using the Parenting Coordinator for any issues that involve co-parenting.¹⁵⁵

The primary goal of Parenting Coordination is to reduce the amount of parental conflict children experience. To achieve this goal the Parenting Coordinator focuses on children's developmental, social, and psychological needs rather than the parents' power struggles with one another.¹⁵⁶ Other goals include helping parents to refocus on the needs of their children, improve the communication between the parents, and educate the parents about their children's developmental and psychological needs.¹⁵⁷ The Parenting Coordinator offers a stabilizing presence to the family and reduces reliance on the courts.¹⁵⁸

Parenting Coordinators resolve a range of disputes and the particular disputes to be resolved within a family are determined by the court and parental choice.¹⁵⁹ The most common disputes

¹⁵⁰ Kelly, *supra* note 6, at 143.

¹⁵¹ Coats, *supra* note 145, at 247.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 248.

¹⁵⁶ Kelly, *supra* note 6, at 143.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

resolved by a Parenting Coordinator include scheduling the place and time of the child's transition between parents, children's activities scheduled on the other parent's time without consultation, child rearing and disputes arising from important family rituals, such as attendance at weddings, funerals, and family reunions.¹⁶⁰ Parent Coordinators try to mediate any parent disputes first but if the parents are unable to reach an agreement the coordinator will make a decision and write an order in regards to the resolution.¹⁶¹

There is little research on the effectiveness of parent coordination.¹⁶² However, the indications are that re-litigation is substantially reduced.¹⁶³ The majority of parents also report satisfaction with their Parent Coordinator and decreased conflict with the other parent.¹⁶⁴

D. Collaborative Practice

Collaborative Practice is built on the belief that settlement is not enough to address the best interests of children.¹⁶⁵ Addressing the best interest of children requires not only reducing conflict between parents but encouraging the maximum level of cooperation between parents to create the highest possible level of family functioning following the divorce.¹⁶⁶

Collaborative Practice is a team approach and includes a combination of Collaborative Lawyers, Divorce Coaches, Child Specialist, and Financial Specialist.¹⁶⁷ All members of the team work to help the spouses address all issues related to divorce.¹⁶⁸ They are all trained in mediation and agree not to go to court.¹⁶⁹ The team provides comprehensive support to both children and parents as they navigate the transition from marriage to di-

¹⁶⁰ *Id.*

¹⁶¹ Kelly, *supra* note 6, at 144.

¹⁶² Coats, *supra* note 145, at 247.

¹⁶³ *Id.*

¹⁶⁴ Kelly, *supra* note 6, at 147.

¹⁶⁵ Susan Gamache, *Collaborative Practice: A New Opportunity to Address Children's Best Interest in Divorce*, 65 *L.A. L. REV.* 1455, 1455 (2005).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 1460.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 1461.

voiced.¹⁷⁰ The goals of Collaborative Practice are to provide a civilized process, produce outcomes which meet the needs of all parties, minimize cost, and increase clients' control, privacy, and compliance with agreements reached.¹⁷¹

Collaborative practice requires a paradigm shift in family law.¹⁷² This shift is from a litigation approach to compassionate consultation.¹⁷³ In order to achieve this shift all participants must sign the Participation Agreement.¹⁷⁴ This agreement stipulates if the collaborative process derails both collaborative attorneys will resign from the case and the parties will be referred to trial attorneys.¹⁷⁵

Collaborative lawyers define advocacy as working individually, educating, and assisting the client to communicate and prioritize needs; giving legal advice; moving from debate to dialogue and reframing issues.¹⁷⁶ This definition of advocacy allows collaborative lawyers to meet the highest prioritized needs of each client, protect and safeguard the children's well-being, and maintain or create a working relationship between the clients.¹⁷⁷ Collaborative lawyers still advocate for their client although they believe the best way to advance their clients' interest is through agreements which satisfy both parties' prioritized interests.¹⁷⁸

The divorce coach is a licensed mental health practitioner well versed in divorce issues.¹⁷⁹ The divorce coach is also trained in mediation and collaborative practice.¹⁸⁰ The role of the divorce coach is brief, goal-orientated, and systemic.¹⁸¹ Divorce coaches focus on solving the problems of divorce and the whole family system is considered in this resolution.¹⁸² Long term ther-

¹⁷⁰ Gamache, *supra* note 165, at 1461

¹⁷¹ Lande, *supra* note 120, at 281.

¹⁷² Gamache, *supra* note 165, at 1461

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 1462

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 1463.

¹⁷⁷ Gamache, *supra* note 165, at 1463

¹⁷⁸ Lande, *supra* note 120, at 283.

¹⁷⁹ Gamache, *supra* note 165, at 1464.

¹⁸⁰ *Id.* at 1465.

¹⁸¹ *Id.*

¹⁸² *Id.*

apy of issues unrelated to the divorce would not be undertaken by a divorce coach.

The divorce coach helps the client in several general areas related to the divorce. She helps the client clearly identify his/her experience and communicate this to the other spouse.¹⁸³ She helps the client to understand how he/she affects the other spouse.¹⁸⁴ The divorce coach educates the client about the divorce process.¹⁸⁵ She assists the client in understanding the needs of his/her children and in the creation of a parenting plan¹⁸⁶ which will allow the parents to co-parent.¹⁸⁷

Each divorce coach works primarily with one spouse at the beginning to establish a working alliance.¹⁸⁸ However, when the couple is ready, both the clients and their coaches meet together to address any issues standing between where they are and a successful co-parenting relationship.¹⁸⁹ The two main products of divorce coaching are the co-parenting relationship and the parenting plan.¹⁹⁰ Each client takes a copy of the parenting plan to his/her respective Collaborative Lawyer and the plan becomes part of the couple's separation agreement.¹⁹¹

The Collaborative team also includes a Child Specialist, a neutral third party who focuses exclusively on the children's interest and concerns.¹⁹² The role of the Child Specialist as part of the team is to ensure the children's interests are considered as the issues of separation are resolved.¹⁹³ The Child Specialist performs this role through therapeutic assessment of the children, direct observation of parents and children as they interact, and consultation with extended family and community members.¹⁹⁴

¹⁸³ *Id.* at 1465.

¹⁸⁴ Gamache, *supra* note 165, at 1466.

¹⁸⁵ Lande, *supra* note 120, at 283.

¹⁸⁶ Gamache, *supra* note 165, at 1466.

¹⁸⁷ Lande, *supra* note 120, at 283.

¹⁸⁸ Gamache, *supra* note 165, at 1468.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 1469.

¹⁹¹ *Id.*

¹⁹² *Id.* at 1473.

¹⁹³ Gamache, *supra* note 165, at 1474.

¹⁹⁴ *Id.*

The Financial Specialist is the one neutral in the team.¹⁹⁵ This individual provides education on financial matters, assists in preparing budgets, and provides projections for the future, which allow the parents to understand how financial decisions made now will impact the financial situation of each in the future.¹⁹⁶ The work of the Financial Specialist is financial counseling as opposed to financial planning.¹⁹⁷

V. Conclusion

The legal system and social scientists are making many efforts to ameliorate the effects of divorce on children by reducing the inter-parental conflict they experience both during and after the legal process of divorce. Research indicates these programs are effective in reducing inter-parental conflict and individuals report satisfaction with their participation in the programs and a willingness to pay for such services. However, the willingness to pay does not reflect the financial reality for all families who would benefit from the use of these programs. In these instances, the legal community must find a way to offer these services either free of charge or on a sliding scale based on the ability to pay. In order to achieve this, grant money must be sought, affiliations with social service providers within the community must be built, and a pool of volunteers must be developed. The value and effectiveness of these services should not be lost because of a family's inability to pay for the services.

Cassandra Brown

¹⁹⁵ *Id.* at 1477.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*